This note sets out Wealden District Councils (WDC) written submission for the Hearing in response to questions raised by the Independent Examiner of the draft Hellingly Neighbourhood Plan (HNP). The Hearing is due to be held on 18th February at Hellingly Village Hall.

Q1. What are the implications for the Hellingly Neighbourhood Plan, of the Local Plan Inspector's letter, dated 20th December 2019, which recommends that the emerging Wealden Local Plan should be withdrawn? Does it necessitate any changes to the policies and the supporting text in the plan?

The Hellingly Neighbourhood Plan is required to be in general conformity with the NPPF and strategic policies of the Development Plan, which in this case, is the Core Strategy 2013, Affordable Housing Delivery Local Plan and South Downs National Park and East Sussex Minerals and Waste Local Plan 2017.

The Submission Wealden Local Plan (submitted in January 2019) was an emerging plan and due to the timing of the production and submission of the Hellingly Neighbourhood Plan is not relevant for the purpose of the basic condition test. However, in accordance with the NPPG (paragraph 009), the Council's planning policy evidence base is relevant. The NPPG states that the evidence base supporting the local plan process 'is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested'. The majority of the evidence base, save the housing supply and SA/HRA, remains current as many of the assessments have been prepared in accordance with the NPPF / NPPG.

The emerging submission Wealden Local Plan allocated growth in Hellingly Parish and there are currently 1,000 homes with either planning consent and/or are under construction. Please see appendix A. Wealden District Council does not currently have a five year housing land supply and will therefore be required to consider planning applications in Hellingly Parish on their merit.

Wealden District Council will shortly start to produce a new Local Plan and this is a relevant consideration on the basis that it is not currently possible to predetermine the Council's strategy for future growth. This is relevant because certain policies and recommendations in the HNP seek to restrict or indeed support growth and request certain infrastructure provisions or studies. The Council has considered recommendations made in the HNP in this context.

Following the receipt of the Wealden Local Plan Inspector's letter the Council has revised the Habitats Regulations Assessment of the Hellingly Neighbourhood Plan. The HNP will need to be updated in relation to HRA recommendations.

The HNP makes a number of references in the HNP to the emerging Wealden Local Plan. The Council considers that these need to be removed and the text revised accordingly.

Q2: Is it appropriate for the Neighbourhood Plan to include *"Recommendations"* which are not planning policy but nevertheless relate to matters regarding the "development and use of land", which are not subject to examination, or have regard to the basic conditions or will be subject to referendum?

Whilst WDC understands that Hellingly Parish Council wishes to include recommendations, it concurs that should the Independent Examiner be minded to allow the inclusion of such recommendations that these should be separate from the main neighbourhood plan document. The Council has previously responded in this regard in its Regulation 14

response to Hellingly Parish Council as well as verbally at meetings. The Council also provided a response to the Examiner's initial comments dated 19 July 2019 on this matter. East Sussex County Council has also responded to the recommendations.

Overall, the Council considers the recommendations to, in effect, be a 'list of asks' for action by other organisations. This includes Wealden District Council, East Sussex County Council and other infrastructure providers. Following comments made on the Regulation 14 version of the plan and also discussions with HNP the recommendations were updated by the Steering Group for the submission version of the HNP.

The Council is mindful that if 'made' that the HNP will form part of the District's Development Plan as relevant to Hellingly Parish. Wealden District Council works closely and iteratively with its infrastructure partners as part of its Local Plan production and also during the planning application process. It is through this work in which studies and infrastructure requirements are identified and delivered (where required to support growth). The Council considers the use of the recommendations within the HNP to therefore be misleading and also unnecessary. They are also out of context on the basis that the HNP does not specifically allocate growth.

For the purpose of informing the hearing, the Council has considered each recommendation in turn. This is provided in Appendix 2. Overall, the Council does not consider that it is appropriate to include the recommendations in a Neighbourhood Plan for the reasons provided above and also in appendix 2. This provides detail as to how the recommendations may be misleading for users of the HNP.

Q3 Is it appropriate for the neighbourhood plan to be requiring the submission of various documents and studies or are they matters determined more appropriately by the Local List of Information Requirements and are the plan's requirements, particularly with regard to ecological studies, reasonable?

WDC agrees that additional studies and documents would be triggered by the Councils "Local Requirements List", which includes "conditional documents", to help planners assess development applications. The "Local Requirements List" is derived from local plan policies, national guidance and specialist requirements.

With regard to criteria iv) of policy HNDP5 and the requirement for a management plan for a green infrastructure asset on sites of 10 dwellings or more is ambiguous.

Q4 Is the plan's approach to flooding, including designating Areas of Critical and Drainage Concern, which covers areas beyond Flood Zones 2 and 3 appropriate and consistent with national policy and advice? Is the requirement to balance flood risk against "other public benefits" consistent with the Secretary of State's advice for dealing with development in areas subject to flooding and is it in general conformity with Policy EN4 of the Wealden Local Plan 1998? Is the presumption against land raising on development sites anywhere in Hellingly Parish supported by evidence and is it a reasonable and practical policy?

The NPPF at paragraphs 155 – 165 provide the requirements in relation to floodrisk. There is a national policy requirement to direct development away from areas at highest risk and a sequential test is provided. It also provides that when determining planning applications that flood risk is not increased elsewhere and development should only be considered appropriate in areas at risk of flooding where set criteria can be demonstrated. The NPPF

provides a policy approach for major and minor development as well as the process for allocating sites in development plans. The NPPG provides further detailed advice in relation to dealing with floodrisk for both development plans and planning applications.

As noted by the East Sussex County Council Local Lead Flood Authority (LLFA) (commenting also with the auspices as Pevensey and Cuckmere Water Level Management Board), the HNP's approach to flooding appears to add further policy advice beyond the NPPF and NPPG on areas identified as Flood Zones 2 and 3. This LLFA considered this as unnecessary and WDC share this view.

It is also the case that the basis for the extent of the area designated a Flood Control Zone on the HNP's proposals map is unclear as it extends much further than national models.

The policy title for HNDP 3 was updated from the Regulation 14 version from 'Areas at risk of flooding' to 'Areas of Critical Flood and Drainage Concern'. The title of this policy, if read alongside paragraph 50 of the supporting text ,appears to seek justification in the Areas of Critical Drainage Concern policy approach found in the East Sussex Local Flood Risk Management Strategy 2016 – 2026 (LFRMS).

The LFRMS is a key document in this regard which considers local flooding, defined as flooding from surface water, groundwater and ordinary watercourses. The Strategy acknowledges the cumulative impact of minor development and promotes the use the East Sussex SuDS decision support tool for small development, to help developers and planners when considering the drainage requirements of a particular site. In addition, the strategy confirms that ESCC, as LLFA, will review flood risk and drainage issues in the county to identify areas of critical drainage concern. Where these are identified by ESCC as LLFA planning authorities will be advised to require developers to use the SuDS tool to guide the drainage design of minor development proposals in these areas. It is important to note that to date ESCC as LLFA has not identified an area of critical flood and drainage concern within Hellingly Parish.

Notwithstanding the above, the strategic priorities on page 29 should be noted. Key here is that ESCC provide that they will work with local planning authorities on all flooding issues including 'in areas **it** identifies as an area of critical drainage concern'. To date, ESCC have not started a comprehensive programme of identifying such areas across the county, including Hellingly. Should an area be identified, then this area would be subject to ESCC advice on mitigating drainage issues and the concept of areas of critical drainage concern is not compatible with that provided by policy HNDP 3.

Currently ESCC is working with WDC (and all other planning authorities in the Pevensey and Cuckmere hydrological catchments), the Environment Agency, Natural England, the Pevensey and Cuckmere Water Level Management Board and the Sussex Wildlife Trust on a number of projects which will, collectively, develop a substantial evidence base[1] upon which strategic policy on flood risk and water quality can be developed. One of the objectives of this approach is to provide consistency of decision making within a catchment which crosses multiple planning boundaries. However, it should be noted that these projects have yet to conclude.

Overall, the area identified as an area of critical flood and drainage concern has not been agreed by ESCC / LLFA. Policy HNDP 3 is more prescriptive than necessary and in its

[1] The evidence base currently being undertaken includes: The South Wealden groundwater study (part funded by Wealden District Council); The Pevensey SuDS project; The Pevensey Catchment Water Levels Management Board survey and flow modelling; and The Environment Agencies asset management review.

current form may prevent workable solutions to flood risk management. Furthermore, WDC is concerned with the wording “unless the proposal has other public benefits”. This wording is not recognised within the NPPF and is ambiguous for decision makers. The Council also considers that Policy HNDP 3 goes beyond policy EN4 in the 1998 Local Plan.

In relation to Policy HNDP 4, ESCC has confirmed in its responses that it cannot support this policy. The Council cannot also support this policy and considers that the policy should be deleted on the basis that it is not supported by evidence. There are many solutions to flooding including land raise where appropriate and these will need to be considered on a site-by-site basis.

Question 5

Does having a policy for the Locally Valued Landscape Area for the northern half of the parish devalue the rural character of the southern area and how would a proposal be considered differently for a countryside location in the south, compared to the north of the plan area.

Paragraph 172 of the NPPF places great weight on conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. As such, WDC advocates an approach which is evidence based and has produced a detailed landscape evidence base, which is considered to be up-to-date for the purpose of plan making. The Council considers that the area identified in the HNP as a LVLA does not accord with the landscape evidence base, which identifies 4 character areas to be within the Parish. The area identified as ALVL only covers half of the Parish and on this basis the HNP does not provide a landscape policy for the remaining area to the south. Should this policy come forward, there would therefore be a distinction in these areas as to how development would be considered. On the basis that the LVLA is not supported by appropriate evidence in accordance with the NPPF / NPPG it would be difficult for the Council to apply this policy.

The HNP sets out that the “parish is a locally valued landscape not only because it is an area of attractive and unspoilt countryside but, more particularly, because it provides a green lung for the rapidly expanding town of Hailsham” (para 23. of NP).

WDC is concerned that HNDP1 presumes against development that would harm the “inherent visual qualities and distinctive character of the area” yet these are not explained. The para 23 preamble to the policy would appear to suggest the land is considered to be an important recreational resource rather than important as a landscape area or area with scenic beauty.

The support to the text includes footnotes 11-13 which refer to articles in Planning Magazine from 2017 and 2018. It would be preferable to have the appeal decisions set out in the citation. WDC have been unable to source these appeals that are relied upon.

It is of course important to note the distinction between the 2012 version of the NPPF and the current 2019 version. NPPF 2012 109. “The planning system should contribute to and enhance the natural and local environment by….’protecting and enhancing valued landscapes, geological conservation interests and soils…’

NPPF 2019 Para 170 “Planning policies and decisions should contribute to and enhance the natural and local environment by: a) **protecting and enhancing valued landscapes**, sites

of biodiversity or geological value and soils (in a manner commensurate with **their statutory status or identified quality in the development plan**) (emphasis added).The additional text indicates that land within statutory landscape designations (such as National Parks and AONBs) should be regarded as of the greatest value, but the value of non-designated landscapes must be informed by their identified qualities or valued attributes), as well as how a proposal would affect these attributes/qualities. The HNP does not do this.

The text to Policy HNDP 1 also presumes against the grant of permission unless the exceptions are met. Whether a site that is judged to be, or is judged to be part of, a 'valued landscape' can override the presumption in favour of sustainable development is clarified in the 2019 NPPF. The NPPF clearly sets out policies that can restrict development as a clear list rather than a non-exhaustive list of 'examples'. The landscape-related policies set out in the list include those referring to Areas of Outstanding Natural Beauty, National Parks (or the Broads) and Heritage Coast.

The implication of this is that even if a site is proven to be part of a 'valued landscape', it will not be enough to override the presumption in favour of sustainable development unless it is also part of an AONB, National Park or Heritage Coast and the proposal can be shown to fail to protect those areas. It still stands, however, that an adverse landscape impact of a development can significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

Q6 Are the additional criteria set in Policy HNDP 8 –Isolated New Dwellings justified on the basis of the specific characteristics of the plan area?

Paragraph 79 of the NPPF seeks to avoid new isolated homes in the countryside unless there are special circumstances which are set out in paragraph 79 (a) to (e).

For HNDP8 'Isolated New Dwellings' (i), when determining such applications the Council can appoint a rural estates surveyor to assess each application on a case by case basis.

Some of the phraseology used in (i) is unclear:

> *'Where an essential need to live at or near the place of work is argued proposals will need to satisfactorily demonstrate that this need cannot otherwise be met **nearby'***.

Nearby is not defined. It is not clear and this will present ambiguity when processing applications.

> *'The essential need to live on the land as opposed to merely the greater convenience of it will be satisfactorily proven'.*

If this sentence remains, it should not be qualified by' *satisfactorily'* since this is vague and generalised.

> *'This should include a detailed assessment of the functional needs of the enterprise as well as a financial assessment of the investment and sustainability of the enterprise over the **long term'**.*

If this sentence is to survive, long term ought to be defined. It is not clear and this will present ambiguity when processing applications.

'Proposals for any new dwelling should be able to justify the scale of the dwelling when assessed against the nature of and investment on the agricultural or local enterprise'.

The industry standard used is 160sqm per dwelling (including an office space). The origins of this are rooted in the scale of a dwelling that can be mortgaged on an agricultural workers wage, however this may differ depending on the individual circumstances of the application.

For HNDP8 'Isolated New Dwellings' (ii), the suggested requirement for submissions to explain how proposals significantly enhance their immediate setting and are sensitive to the defining characteristics of the area does not add to NPPF para 79 and should therefore be omitted.

Appendix A: Sites above 10 units with planning consent / under construction

Planning Permission Reference	Site Address / Wealden Local Plan Reference	Status
WD/2017/2776/MFA	Land to the East of Park Road and South of New Road, Hellingly Site HN1A in submission WLP	Detailed planning permission for 460 (net) dwellings. The site is under construction and has 384 (net) dwellings left to construct as of 1st April 2019.
WD/2018/2161/MAJ	Land West of Park Road, Hailsham	Detailed planning permission for 240 (net) dwellings. The site is under construction and has 97 (net) dwellings left to construct as of 1st April 2019.
WD/20170470/MEA	Land at Sussex Plants, Park Road, Hailsham Site HN1B in submission WLP	Outline planning permission for up to 180 (net) dwellings. A reserved matters application has been lodged with the local authority.
WD/2016/1948/MAO	Land East of North Street, Lower Horsebridge Site LH (page 205)	Outline planning permission for up to 110 (net) dwellings. This permission was granted in early 2019 and no reserved matters have yet be lodged with the local authority.
WD/2019/1425/MRM	Land South of New Road and Land North of Amberstone, Hailsham Site HN1A in submission WLP	Detailed planning permission for up to 59 (net) dwellings.

Sites Without consent but included in the submission WLP – HN1C and HN1D. An application has been lodged for HN1E.

Appendix 2 – Wealden District Council comments on recommendations

Recommendation	WDC comments
Recommendation 1 – HV R1	The Council has 33 Conservation Areas and the Council is currently working on Management Plans. The timing of producing a management plan and priorities for this work is a matter for the District Council in considering its priorities and resources. Information is provided on the Council's website in this regard. As Character Area Appraisals are completed for the 33 Conservation Areas these are uploaded on our website. We can also confirm that in relation to Hellingly Conservation Area that work is at an advanced stage and will be published in the very near future. This recommendation should therefore be deleted. https://www.wealden.gov.uk/planning-and-building-control/heritage/conservation-areas/
Recommendation 3 – HV R3	The emerging Local Plan is recommended to be withdrawn (subject to a decision by Full Council on 19 February 2020), therefore this recommendation is no longer relevant. Any scheme that may come forward will be considered on its merits. In accordance with national policy a Neighbourhood Plan should not seek to prevent growth or indeed seek to restrict options for future growth.
Recommendation 2 – HV R2	The requirement, process of consultation and delivery of any traffic management scheme is primarily a matter for the Highway Authority who will work in partnership with organisations as appropriate.
Recommendation 1 – LHB R1	Wealden District Council will be taking forward a new local plan. This will consider options for development as part of that process. In accordance with the NPPG a Neighbourhood Plan should not seek to prevent growth or indeed seek to restrict options for future growth.
Recommendation 2 – LHB R2	It is a matter for East Sussex County Council to consider and identify work programmes.
Recommendation 3 – LHB R3	This application was assessed in 2016 and was refused. The Council is concerned that the HNP is endorsing an application without an up-to-date consideration of a scheme and any policy or material considerations. Any application will need to be considered on its merits at the time it is submitted.
Recommendation 1 – LD R1	(i) This recommendation partly relates to the Submission Wealden Local Plan which is recommended to be withdrawn (subject to a decision by Full Council on 19 February 2020). It is not a policy and it is therefore incorrect and misleading to include this recommendation. (ii) This recommendation partly relates to the Submission Wealden Local Plan which is recommended to be withdrawn shortly (see above). It is not a policy and it is therefore incorrect and misleading to include this recommendation. (iii) The provision of development boundaries will be a matter to consider as part of the development of a local plan.
Recommendation 2 – LD R2	

	(i) The matter of a waste transfer station is a matter for East Sussex County Council to consider within their Minerals and Waste Local Plan. The recommendation contradicts the allocation in the Minerals and Waste Local Plan. (ii) The HNP has not allocated land for development. Allocating land may be considered as part of any HNP review or within a Local Plan. The allocation of sites has not been determined at this stage.
Recommendation 3 – LD R3	The Council and its partners use a national system for monitoring air quality, with additional localised monitoring, which is considered by DEFRA to be fit for purpose. Additional monitoring has not been identified to be a requirement.
Recommendation 1 - RPR1	The Council does not control the timing of development. The timing of development is a matter for the developer. The recommendation seeks to influence the use of the Chapel building. Development in this location will be considered as part of any future application and will be considered on its merits.
Recommendation 2 – RPR2	The HNP does not provide a policy on the provision of open space, sports and recreation provision. The requirement for future provision will therefore be considered as part of any forthcoming planning applications and as part of any future allocations or policies that will come forward as part of the development of a new Local Plan.
Roads and Transport	East Sussex County Council confirmed in their Regulation 14 response that they could not support the recommendation as written. Notwithstanding this, ESCC provided amendments that they could support. The submission HNP did not take on board these recommendations. (i) A traffic movement and access plan is a matter for ESCC to consider. (ii) ESCC have previously requested the removal of this recommendation. Speed restrictions is a matter for ESCC which would require a traffic regulation order including liaison with emergency services. ESCC in their submissions have stated that the most appropriate way of dealing with such matters is through a speed management programme. (iii) See above. (iv) The HNP does not allocate growth. This is also a matter for ESCC and WDC as part of any development management process or any future Local Plan.
Education	This is a matter for ESCC education department who will consider future need and options for meeting education needs.
Sport and Leisure	This is a matter for the next iteration of the local plan. The Council has CIL Governance in place and it is a Council decision as to how CIL funds are spent. The Council's evidence base supports planning decisions in relation to required provision.
Digital Communication	This is not provided in the HNP as a policy and the recommendation is a matter for communication providers.

Retail, employment and other services	(i) It is a matter for the Clinical Commissioning Group to consider the need for additional healthcare facilities. (ii) This would go against the NPPF and the sequential test for retail provision, where there is a requirement to provide retail in town centres first.
Sewerage	This is a matter beyond the planning system.