MATTER 1 ISSUE 1: LEGAL COMPLIANCE

Question 1

1. The Submission plan is not lawful on the basis of deficiencies in (i) the Council’s justification for departing from the advice of Natural England in concluding that the effect of nitrogen deposition on Ashdown Forest justified a reduction in the overall housing figures; and (ii) the Council’s consideration of alternatives to this proposed approach. Legal Compliance is addressed in the Advice prepared by Sasha White QC and Admas Habteslasie attached as Appendix 1.

MATTER 1 ISSUE 1: SUSTAINABILITY APPRAISAL

Questions 5 and 8

2. The Practical Guide to the Strategic Environmental Assessment Directive (September 2005) (O6) confirms it may be useful to summarise the assessment results for the different alternatives in one table to help to identify the most environmentally beneficial or sustainable alternative, or to show the beneficial and/or adverse effects of different alternatives (O6 Appendix 6 Figs 16 and 17). This can make the decision-making process more transparent (O6 paragraph 5.B.7).

3. The various WDC committee reports and meetings held in March 2017 (see B46, 48, 53, 56, 57) confirm the overall strategy remains to focus development in South Wealden but as a result of testing and evidence gathered in relation to nitrogen deposition, the proposed level of housing growth was reduced from 14,101 to 11,456 dwellings, with a number of allocations being dropped (B48 paragraphs18/31).

4. The March 2017 SA (A4) provides no justification for the reduced housing numbers and deleted sites which is reflected by the amended Officer’s recommendation to delay “approval of the Plan as the supporting documentation needed to be available prior to Council making such a decision, such as the Sustainability Appraisal” (B46 17/19).

5. This resulted in the August 2018 SA (A6). Seeking to provide evidence to support a decision already made is contrary to the SEA Directive and conflicts with NPPF which confirms the Local Plan should be based on adequate, up to date and relevant evidence (P1 paragraph 158).

6. A6 paragraphs 6.9/10 states the re-allocation of 700 dwellings from Polegate to Hailsham is due to:

   - Highway congestion
   - Less facilities at Polegate compared to Hailsham
   - The assistance provided by additional houses at Hailsham to regenerate Hailsham Town Centre
7. But nowhere in the SA is analysis that justifies this conclusion. There is no proper comparison of the various options (including Hailsham, Polegate and Stone Cross distributions or the reliance on windfalls) as suggested by O6 Appendix 6 Figs 16 and 17.

8. This is contrary to the SEA that requires consideration of the significant environmental effects of the plan, and of reasonable alternatives that take into account the objectives and the geographical scope of the plan and confirms it is desirable to provide sufficient commentary to justify the conclusions arrived at (O6 paragraph 2.22).

9. B46 paragraphs 15 and 16 summarise alternative options considered including tolls, and restricting categories of vehicle, but the Council believed these measures would not produce any significant improvements. There is nothing in the SA or elsewhere in the evidence base documents that justifies this.

10. With the objective to improve air quality, the Ultra-Low Emission Zone was introduced in central London in April 2019 (to be extended the area bounded by the North and South Circular roads in 2021). A levy is charged to deter more polluting cars entering the ULEZ and to encourage the use of cars that meet more stringent environmental standards.

11. Limited roads pass through Ashdown Forest so is not clear why the introduction of tolls or restricting certain types of (polluting) vehicles traveling through Ashdown Forest are deemed not to provide reasonable alternative options.

12. A significant benefit of this type of measure is that it would help to address harmful emissions produced by all Wealden residents (148,915 in 2011 - A1 paragraph 3.1) and those from beyond the District travelling through Ashdown Forest, rather than focusing on emissions created by the anticipated 23,900 population increase by 2028 arising only (A30 Table 2).

13. A further benefit is that enabling additional housing to be provided in the District will help meet housing needs, an underlying objective of NPPF.

MATTER 1 ISSUE 1: HABITAT REGULATIONS ASSESSMENT

Questions 18 to 31

14. Natural England have recently (10th February 2019) issued the following document: ‘European Site Conservation Objectives: Supplementary advice on conserving and restoring site features. Ashdown Forest Special Area of Conservation (SAC). Site Code: UK0030080’. In relation to air pollution, this document confirms that whilst relevant Local Planning Authority Local Plans will result in increases in nitrogen deposition, nitrogen oxides and ammonia adjacent to roads that run through Ashdown Forest, Natural England conclude that improvements in vehicular technology will outweigh impacts from new development. Whilst the overall site conservation objectives are discussed in the Habitat Regulations Assessment (Document A35, p.204-208) the detail in the supplementary advice has not been specifically considered.

15. WDC rely significantly on the scientific advice from Professor Mark A. Sutton at CEH (I28) in their HRA (A35) and their response to NE’s Regulation 19 representations (A35, Appendix 12). However, it is not evident that the full extent of the advice has been considered. The CEH report states (I28, p.25) that in order to provide an accurate in combination scenario for air pollution impacts, there should be two elements of the assessment:
• A Local Part which defines the near-road increase, and includes traffic emissions associated with the WLP and anticipated future development at the UK scale and the likely consequences of both the WLP and national development on non-traffic emissions including domestic heating and other emissions.

• A National Part which defines background increase based on national mapping scenarios of future traffic emissions for all national plans across the UK, and including all sources of development.

16. The HRA (A35) does not respond to this scientific advice which recommends a wider consideration of air pollution impacts as part of the in combination assessment.

17. The HRA (A35) sets out a series of ‘mitigation’ measures associated with perceived in combination air pollution impacts, which WDC consider will ensure that there will be no adverse effect on the Ashdown Forest SPA/SAC and Pevensey Levels SAC. These include implementation of policies AF 1 and AF 2, to be funded through Developer Contributions from new residential development on allocated sites in the WLP. What is unclear however, is the evidence-base confirming that the proposed mitigation measures will successfully mitigate (ie remove or reduce to an acceptable level, any adverse effects) the perceived adverse effects from air pollution due to WLP development. The measures proposed are to be funded through Developer Contributions and delivered strategically by WDC. However, it is clear that this mechanism will not ensure that these ‘mitigation measures’ are in place prior to any impacts from new development being experienced, due to the mechanism for collecting such funds through S.106 or CIL agreements.

18. The joined CJEU cases C-293/17 and C-294/17 confirmed that for the case considered, any strategic approach to deal with ammonia emissions would need to allow for front-end delivery of measures to reduce existing emissions as part of a wider permitting approach. Of relevance to the WLP therefore, is the requirement to ensure that environmental capacity would be created before additional nitrogen loading can be permitted from new plans or projects (Chapman, 2018). It is unclear from the HRA how this front-end delivery will be achieved (if funding is directly tied to development) and how the ‘environmental capacity’ targets will determined and assessed and as such the HRA is considered to be unsound.

19. The HRA (A35, p.218-220) attempts to justify the potential effect of the mitigation measures by considering information from other schemes that have implemented ‘soft’ mitigation measures such as those proposed in Policy AF2. The HRA concludes that the evidence supports an assumption that there will need to be a reduction of between 6-10% of vehicle km driven to allow the development proposed in the WLP to be ‘mitigated’. There is no clear evidence to show how these assumptions, when taking into account the ‘precautionary principle’, have been used to inform the quantum of development and development locations proposed in the WLP.

20. It is not therefore evident how the mitigation measures proposed will ensure that there is suitable ‘environmental capacity’ created, and what ‘triggers’ will be used to assess which developments can be delivered at what stage during the WLP period. In the absence of clear ‘trigger levels’ for the created ‘environmental capacity’ resulting from Policy AF2, there does not appear to be a scientific justification for the limiting of development based on the mitigation measures proposed.

21. See Appendix 2 for further information.
MATTER 2 ISSUE 1: OBJECTIVES AND PLAN PERIOD

Questions 32 and 33

22. In Spatial Objective 1 there is an over-reliance on windfall housing sites which is not justified by the evidence nor consistent with the NPPF. The plan period should be extended and the level of housing increased accordingly. See also responses to questions 33, 48 and 58.

23. In Spatial Objective 2 the allocation of employment floorspace in a single location along the A22 is not consistent with the objective to provide floorspace in locations close to larger resident populations. The reliance on windfall sites does not provide for a range of business needs. See also response to question 57.

24. The plan period 2013-2028 is not consistent with paragraph 157 of the NPPF. Some six years have passed from the base date and the period to 2028 is only one year more than the 2013 adopted Core Strategy. The short time period of eight or nine years after adoption would not be effective in meeting longer term development requirements as required by paragraphs 47 and 157 of the NPPF. See also responses to questions 48 and 55.

MATTER 2 ISSUE 2: AIR QUALITY

Questions 35 to 38 and 41

25. As set out in the response to questions 18 to 31, it is unclear from the HRA (A35) or WLP (A1) when the mitigation measures set out in Policy AF2 will be delivered and when suitable ‘environmental capacity’ will thus be available to allow development to proceed. Policy AF1 suggests that for development which is in addition to that identified in the WLP, mitigation measures must be in place prior to completion / occupation of the development proposed. It is therefore assumed that this will also be required for development which is identified in the WLP. This could therefore have a significant effect on the certainty of delivery of the housing and employment requirements under the WLP, ultimately undermining the whole Plan.

26. If the delivery of mitigation measures is required to be funded by Developer Contributions, it is considered likely that there will be a ‘lag’ in the delivery of the mitigation measures whilst suitable funds are generated, and the mitigation measures are delivered by the LPA, and then another ‘lag’ before suitable measurements can be taken to prove that the mitigation has been successful.

27. The WLP Interim Air Quality Mitigation Strategy (A36, Appendix B) provides an expenditure and cash flow projection, which shows that in Years 1-5 the costs required to deliver the strategy will exceed the income from the Developer Contributions. These costs include for significant contribution to a wider SNAP, however, the HRA itself (A35, p.213) concludes that “It is not… possible to consider a SNAP as either a preventative measure or mitigation at this current time due to the benefits being uncertain”. It is therefore unclear how this can form part of the mitigation package, to be funded through Developer Contributions, required under Policy AF2, if it is not deemed to be a suitable mitigation measure. The proposed A36 strategy is therefore unsound.

28. Unless it can be shown ‘beyond reasonable scientific doubt’ that the proposed mitigation measures will result in the creation of suitable ‘environmental capacity’ in relation to air pollution
within the Ashdown Forest SAC/SPA and Lewes Downs SAC, the conclusion of ‘no adverse
effect’ resulting from the WLP cannot be reached and ‘Stage 3: Assessment of Alternative
Solutions’ and ‘Stage 4: Imperative Reasons of Overriding Public Interest and Compensation
Measures’ of the HRA process should be completed prior to adoption of the WLP.

29. See Appendix 2 for further information.

MATTER 3 ISSUE 1: HOUSING NEED

Questions 48 and 54

30. The plan period would not provide for longer term housing need contrary to paragraph 157 of
the NPPF. In terms of housing supply the period to 2028 would not enable the Council to
identify sites or broad locations for housing in years 11 to 15, ie 2030-2035, as required by
paragraph 47 of the NPPF.

31. The plan period should be extended to cover a 15 year period following adoption to 2034 or
even to 2037 as previously proposed in the Issues and Options Consultation Paper (Document
C1).

32. The level of housing should be increased to cover the extended plan period. Based on the
housing provision of 950 dwellings per annum in Policy WLP1 an additional 5,700 dwellings
should be planned for over the period to 2034 or an additional 8,550 dwellings over the period
to 2037. Any windfall allowance should be justified by evidence.

33. The impact of additional traffic on Ashdown Forest can be mitigated if necessary.

34. It is unclear from the submitted documents why the period for employment and retail floorspace
(2015-2028) differs from the period for housing provision (2013 to 2028). The periods should
be consistent to ensure that development needs are appropriately planned for.

35. See also responses to questions 18-31, 33, 35-38, 41, 55 and 58.

MATTER 3 ISSUE 1: EMPLOYMENT LAND NEED

Questions 55 and 57

36. The time period for employment and retail floorspace (2015-2028) in Policy WLP1 differs from
the period for housing (2013-2028) but both periods should be consistent. There is further
confusion in Policy WLP9 where the jobs growth and floorspace equivalent is based on the
2014-2028 period.

37. The plan period is only one year more than the Core Strategy and should be extended to cover
a 15 year period following adoption to 2034 or even to 2037 as previously proposed in the
Issues and Options Consultation Paper (document C1).

38. See also responses to questions 33 and 48.

39. The plan does not comply with paragraphs 21 or 161 of the NPPF with regard to identifying
sites to meet economic development needs over the plan period.
40. Paragraph 8.1 of the Economy background paper (document A17) states that the A22 employment allocation in combination with the identified jobs growth capacity figures will meet the business land requirements.

41. However, the provision of jobs and equivalent floorspace in Policy WLP9 is a capacity led approach largely related to an assessment of traffic movements across Ashdown Forest. It is a ‘windfall’ approach that takes no account of the availability of employment land in each area, the type of sites that might be provided, how they would meet the needs of the professional, scientific and technical sectors identified in paragraph 5.1 of A17 or the potential to deliver the large amount of floorspace which totals of over 200,000 sqm.

42. In order to meet business needs more employment land should be allocated having regard to the type and location of sites required and the windfall allowance reduced accordingly. Account should also be taken of the unmet need for employment land in Eastbourne and of an extended plan period.

MATTER 4 ISSUE 1: SUPPLY OF HOUSING

Question 58

43. The draft plan reported to Full Council on 22nd March 2017 (document B45) provided for 11,456 dwellings over the 2013 to 2028 period. The Submission plan provides for 14,228 dwellings over this period with the increased housing, 2,772 dwellings, to be largely delivered by windfall sites rather than by housing allocations.

44. The windfall allowance of 2,516 dwellings is a significant component of the housing supply amounting to 17.68% of the total as shown in Table 16 of the Housing background paper (document A30) and Spatial Objective 1.

45. In Table 18 of A30 windfall completions on previously developed land over the 2014/2017 period have been projected over the 2017/2028 period on a ‘straight line’ basis with no evident regard to the availability of land or the likelihood of delivery over the plan period. This is contrary to paragraph 48 of the NPPF which requires compelling evidence that such sites will continue to provide a reliable source of supply.

46. Furthermore, the windfall allowance is increased in Table 19 of A30 and Policy WLP7 by 85% from 1,357 dwellings to 2,516 dwellings. Paragraph 8.4.3 of A30 explains that this is due to the introduction of Core Areas and a number of development boundary changes. Again, there is no evident regard to the availability of land or the likelihood of delivery over the plan period contrary to paragraph 48 of the NPPF and to paragraph 157 that local plans should plan positively for the development required in the area.

47. The allowances in Policy WLP7 include major development of over fifty dwellings in some sixteen areas which would likely involve greenfield sites including land in the High Weald Area of Outstanding Natural Beauty which has not been justified in the context of paragraph 115 of the NPPF.

48. The scale of windfall housing in the plan is not realistic, justified or consistent with the NPPF. It should be reduced significantly taking realistic account of the likely availability and deliverability of land and, as a consequence, additional housing allocations should be included in the plan.