Joint Position Statement by the South Downs National Park Authority, Lewes District Council and Tunbridge Wells Borough Council.

Matter 2: Vision and Objectives and Local Plan Growth

This joint position statement of the South Downs National Park Authority (SDNPA), Lewes District Council (LDC) and Tunbridge Wells Borough Council (TWBC) (henceforth referred to as ‘the Authorities’) has been prepared in response to questions 34-41 listed under Issue 2 for Matter 2: Vision and Objectives and Local Plan Growth.
Issue 2: Does the significance attributed to air quality considerations present a positive framework which is consistent with national policy, justified and effective, and will contribute to the achievement of sustainable development within the District?

34. Why is the Council’s proposed Main Modifications to remove reference to the Pevensey Levels Special Area of Conservation and Ramsar site required to make the Plan as submitted sound?

This main modification is supported, however merely to remove reference to it would not result in proper assessment of the growth scenarios. This is because the treatment of Pevensey Levels SAC as having an air quality issue is embedded within and throughout the SA documents and underpins the spatial growth strategy.

The growth and spatial scenarios are tested and derived using traffic and air quality modelling that includes the Pevensey Levels SAC and it is still apparent that overall growth patterns and levels are being determined on the basis of air quality impacts, including on the Pevensey Levels SAC. This is exemplified in the 2017 SA Table 23 Reasons for Selecting Alternatives for Hailsham, Polegate and Stone Cross. Air quality issues at Pevensey Levels SAC are cited as reasons (additionally Tables 24-27 growth scenarios and reasons for selection and rejection).

The assessment and selection of the growth scenarios and spatial distribution is based upon the assumption that there is an adverse effect on European sites from air pollution from traffic arising from new development and this is simply not the case if the advice from Natural England is followed in terms of allowing for some improvement in background emissions as forecast by DEFRA.

35. Is a simple reading of policy AF1, that all development, irrespective of whether it is included within the list of categories set out in footnote 14 of the LP, or where it is located within the Plan area, is reliant on the action of the LPA? Does this raise any risk to the delivery of development within the Plan? Would development be dependent on the delivery mechanism being created or implemented?

If mitigation were to be necessary, then the delivery of the development strategy is dependent upon both the mitigation delivery mechanism being created and, to some degree implemented.

Firstly, the mitigation must be suitable, deliverable and effective, and it is not clear from the mitigation strategy that this is the case. As outlined in our response to Q29, it is noted that there is still further investigation of mitigation measures required and it is unclear how the delivery mechanism would work, for example, how monies would be apportioned to each SAC. The creation of a suitable mechanism is a necessary component of determining effectiveness.

As regards implementation, mitigation measures, to be effective, are logically required to be in place by the time the relevant impact would occur, for this sort of impact (air quality impacts from traffic movements) some measures may apply to construction activities and some occupation of dwellings. If mitigation were to be necessary then delivery of development (full delivery of the strategy through to occupation) would be dependent on the implementation of the relevant mitigation measures.

36. Is Policy AF1 consistent with the presumption in favour of sustainable development and national policy? Is the policy justified by appropriate evidence to suggest that harm to Ashdown Forest Special Area of Conservation and Lewes Downs Special Area of Conservation will take place, in the absence of
mitigation, as a result of the envisaged level of Local Plan Growth, and in combination with other plans and projects?

For the reasons outlined in our response to Questions 19, 24 and 26-28 we do not consider that Policy AF1 is justified by appropriate evidence to suggest that harm to Ashdown Forest SAC and Lewes Downs SAC (i.e. proposed development resulting in the prevention of the sites achieving their conservation objectives resulting in an adverse effect on their integrity) will occur in the absence of mitigation. It is noted for context that Local Planning Authorities immediately adjacent to WDC have undertaken detailed assessments and concluded that there is no adverse effect to the integrity of these European sites in relation to air quality in respect of planned growth and this approach has been supported by Natural England.

37. How will the delivery mechanism work? Who is responsible for it? How does it mitigate any adverse impacts, and is there a clear direct link between development and mitigation on a pro rata basis? Should there be one? Is there a difference between the mitigation required for development already identified within the Plan and development which is in addition to that which has already been considered within the Plan’s HRA?

The mitigation measures set out in the HRA, and the chosen measures brought through into the development requirements of Policy AF2, plus their delivery mechanism, are not considered to be effective because, crucially, they do not truly constitute ‘mitigation’ and do not have enough certainty to meet the requirements of the Habitats Regulations – please also see the response to Question 29. Furthermore there is no clear and direct link between development and mitigation; the measures are not commensurate with likely impacts i.e. pro-rata and so would fail the CIL Regulation 122 Test – this renders them unimplementable (see answer to Question 40 for further details).

38. Is criterion a) of Policy AF1, clear what development will fall within its remit and how developers should satisfy its requirements? Is the policy internally consistent in how the Lewes Downs SAC and the Ashdown Forest SAC are treated? What evidence is there that the harm would ensue without mitigation, and that the mitigation measures set out within Policy AF2 would be effective and directly relate to the proposed development?

This matter is partly covered in our earlier responses where the Authorities demonstrate that a conclusion of no adverse effect on the European sites can be reached without the need for mitigation. The Authorities would additionally add that there is no evidence that the ‘mitigation’ measures would be effective or that they directly relate to development when they only amount to general good practice measures applied almost universally outside Wealden district as good planning practice through sustainable transport policies. It is also unclear as to whether various mitigation alternatives have duly been considered.

Furthermore the tariff-based approach does not properly differentiate for different development types and locations related to likelihood and magnitude of impact– merely the amount of money to be collected by the Council would vary based upon a generic calculation (number of homes x ~£3,000) unrelated to the potential impact on a specific designated site from that development or the true cost of mitigation, which has not been costed properly (significant proportions of the tariff for investigations and WDC staff costs).
There is no evidence that harm would ensue without mitigation; moreover there is a consensus of evidence that demonstrates the opposite is true i.e. mitigation measures are not required for the growth levels proposed.

39. What would be the impact on development viability of the proposed financial obligations set out in the Air Quality Mitigation – Interim Mitigation Strategy Tariff Guidance for Residential Dwellings and Business Development?

A tariff of nearly £3,000 per dwelling will undoubtedly reduce the headroom or viability cushion for developments and this could lead to a reduction in the provision of infrastructure where negotiation is still possible i.e. non-CIL items such as affordable housing, and non-CIL transport infrastructure via S278 agreements. This may be particularly likely where abnormal costs are identified including for site-based mitigation such as ecology, surface water, landscape, contamination etc.

40. Are the two policies consistent with the CIL Regulations?

No the Authorities do not consider that AF2 and the generic district-wide development tariff is consistent with the CIL Regulations and in particular CIL Regulation 122. The Authorities would argue that it fails all three criteria of Regulation 122.

For example, residential developments of similar size one located in Crowborough and one in Polegate will give rise to different levels of traffic on the Ashdown Forest and this is simply not recognised by the generic tariff, which would require the same financial contribution. Furthermore the viability of development decreases from north to south of the district and so development putting less traffic on the Ashdown Forest and in an area of lower viability would effectively be paying a disproportionate contribution by having the same financial contribution as a development close to the Forest in an area of higher viability. This cannot be consistent with CIL Regulation 122 that requires a planning obligation to be both directly related to the development site and fairly and reasonably related in scale and kind to the development. We have already answered why the Authorities consider it would not meet the test in respect of being necessary.

There is a further issue with the tariff-based approach and the pooling restrictions in CIL Regulation 123 for the consideration of measures within AF2 that constitute infrastructure, such as electric vehicle charging infrastructure.

Overall the mitigation tariff is not sufficiently differentiated to be compliant for the reasons set out above. Additionally and most critically there has been no apportionment of the tariff or the measures to be delivered by the tariff to the two different European sites: Lewes Downs SAC and Ashdown Forest SAC. Opportunities for mitigation measures for each European site should be considered on a site-specific basis and targeted by relevant development on a proportionate basis.

41. Specifically, how would such measures set out in Policy AF2 be differentiated from other strategies, good practice, and the wider principles of sustainable development consistent with core planning principles of the Framework?

Measures outlined in Policy AF2 such as electric vehicle charging infrastructure and travel plans are considered good planning practice. These are what might normally be required of other policies to promote sustainable development as part of achieving the wider national air quality strategy and related goals in the reduction of background levels of pollution. Indeed these measures feature in relation to WDC Local Plan Policy INF3: Infrastructure. It is unlikely to be possible or appropriate
to effectively separate out these measures from wider sustainable development goals for the specific purpose of mitigation due to their spatially broad impact. These measures are therefore unlikely to be sufficiently specific and direct to be considered mitigation for impacts to the Ashdown Forest SAC and Lewes Downs SAC. This has also been outlined in response to Question 29.