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3 January 2022

Dear Planning Policy and Development Management Team

**East Sussex, South Downs and Brighton and Hove Waste and Minerals Local Plan Revised Policies Consultation, September 2021**

This is the formal response of CPRE Sussex – the Sussex Countryside Charity – to the above application. CPRE Sussex works to promote the beauty, tranquillity and diversity of the Sussex countryside by encouraging the sustainable use of land and other natural resources in town and country.

Summary of our key points;

- The East Sussex, South Downs and Brighton and Hove Waste and Minerals Local Plan Revised Policies Document ('the draft plan') does not provide the required protection of protected landscapes.
- Climate Change Policy WMP24 is no longer fit for purpose. In order to remain sound, it requires up-dating to reflect your Authority's obligations to contribute to the achievement of national and local net zero emissions targets. This also affects Policy RD1.

More detailed comments;

**Chapter 3 Context**

We are surprised that you have again embarked on a partial review in this draft plan, and wonder why you have not taken the opportunity for a full review, given that all three authorities have formally recognised the existence of a climate emergency facing the region and the country.

In paragraph 3.4, you acknowledge that climate change necessitates a revision of the draft plan but you fail to recognise the urgency of this task, given the effects on the climate of both mineral extraction and waste disposal, the subject matters of the draft plan. The Environment Bill has now indeed been enacted and therefore its provisions so far as this subject matter should be addressed.

In paragraph 3.7 you state that you have taken the Government's 25 year Environment Plan into account, so we would urge you to accept the constructive changes we are suggesting in this submission to improve the protection of our precious environment afforded by the implementation of a more up to date and relevant Waste and Minerals Plan.

You further in this paragraph make reference to the adoption by your Councils of environmental strategies which include work on both climate change and the improvement of natural capital, both of which would be manifestly improved by the adoption of the policies and proposals which are being submitted in this document by CPRE Sussex.

### **Policy RV1**

We applaud the inclusion of the High Weald Area of Outstanding Natural Beauty ('HWAONB') within the scope of this policy. However we are extremely concerned that the policy as currently drafted lays open the possibility of new mineral and waste development in both the relevant areas of the South Downs National Park ('SDNP') and the HWAONB which have the 'highest protection' under national planning policy.

The prescriptive elements of RV1, with regard to 'major developments will be refused' is severely tempered by 'other than in exceptional circumstances and where it can be demonstrated to be in the public interest'.

This situation is made unclear by the reference to the footnote 3, which takes the reader to footnote 60 on p. 51 of the National Planning Policy Framework ('NPPF'), where it says that whether a proposal is 'major development' is a matter for the decision maker. That is frankly of little help to the actual decision maker, except for a reference to deciding 'whether it could have a significant adverse impact on the purposes for which the area has been designated or defined'. We believe that the correct emphasis in applying the relevant paragraphs of NPPF (paras 176 and 177) should be to recognise that almost all applications falling under the remit of your Waste and Minerals Plan will have profound environmental impacts and therefore by

definition will constitute ‘major developments.’ This consideration also is very relevant when further on, we discuss what we consider is an important immediate need to update and strengthen the section in the Plan on Climate Change.

As we have said in the previous paragraph, almost all minerals or waste applications will in our view meet the tests of ‘exceptional circumstances’ and the public interest test given the working impact of any permission granted on such matters as water and air pollution, noise, traffic and climate change.

Given the importance, ecological and environmental, of both the SDNP and the HWAONB, we urge that the policy, in relation to what constitutes major development, should made much clearer.

In draft Policy RV1, there are two provisos which, in most circumstances dealing with a contentious application, may be used to give support to an application for purely economic reasons, thus outweighing any environmental considerations. These two provisos are (ii) and (iii).

Both of these should be deleted, in particular so far as minerals are concerned. The Plan in its principal assertion regarding supply recognises that for sand and gravel it is very much dependent on marine-won supplies and as far as other minerals such as clay are concerned, there are no current major operations within the designated areas, and any other minor operations create little impact on the environment.

Proviso (iv) needs to be renumbered (ii) and also expanded to read ‘any detrimental effect on the environment, landscape, human health, transport infrastructure, air quality and/or recreational opportunities, and the extent to which it should be moderated’.

A closing paragraph to this section should be inserted, on the basis that the suggested deletions take place, to read:

*“Development will not be in the public interest if the outcomes of (now) i-ii above do not give sufficient reason/s to override the potential damage to the natural beauty, cultural heritage, wildlife and quiet enjoyment of the National Park or AONB.”*

## **Policy RW1**

In addition to the pre-requisite criteria listed at A1 and A2, there should be an additional criterion A3:

*“The need for the facility has to be convincingly demonstrated, including the functional role of the facility, its intended catchment area for waste to be received, the market for any by-*

*products produced by the facility and is to be in general conformity with principles of sustainability, particularly with regard to the intended catchment area.”*

B1 should be expanded to include the following:

After ‘waste management uses’ insert ‘and not immediately adjacent to any residential development, nor to any land bearing any special environmental classification.’

## **Chapter 7 Development Management Policies**

In paragraph 7.2 Explanation para 3 on page 49, you do state ‘the importance of the biodiversity within soils and its potential to store carbon has significantly increased in the last few years’ This is your own justification for including ‘measures for protecting and minimising disturbance to soils’ in the Environmental Statement. We have to ask why then, if you feel justified in introducing new measures to protect the biodiversity in soils in the draft plan, you fail to recognise the even more pressing need to address in this plan, what you yourself admit are the inadequate measures in this Plan to address climate change.

### **Policy RD1**

We believe that Policy RD1 should also be expanded in the light of the climate emergency declared by your ~~local~~ Authorities and be made much more comprehensive. So specifically, we have suggested additions. These are designed to:

- highlight the three elements of planning policy
- ensure all possible mitigation measures are taken against b possible adverse impacts of development
- make it clear that any proposal has to clearly demonstrate how it will succeed in reducing any impact on climate change
- ensure there is a reference to the conservation and enhancement of heritage assets and landscape character, as your text suggests but your draft policy RD1 does not.
- safeguard all matters relating to water resources in the overall area affected by the proposal
- minimise all possible extremal elements resulting from the proposal
- ensure that the proposal sits well within the area it is sited
- strengthening the possible reasons for refusing an application in particular for reasons of cumulative impact

We also submit that “Designated sites” as used in RD1 appears to be an undefined term (it is not used in the NPPF). Please define or change.

The grey box guidance re HRAs on pp114-115 of the current WMP27 should be retained within this policy RD1.

The policy should be revised as follows:

*1.1 To conserve and enhance the built and natural environment, a proposal for development should:*

- a) contribute to the three dimensions, economic, environmental and social, as well as demonstrating how the proposal would make a positive contribution to reducing its effect on climate change by the incorporation of multifaceted mitigation measures*
- b) protect and enhance the character of any proposed site and any surrounding area including landscape, biodiversity, geodiversity, cultural heritage, built heritage and recreational value*
- c) avoid any negative impacts on biodiversity and geodiversity and achieve a net gain in biodiversity*
- d) as existing (c)*
- e) where necessary, protect and enhance the aquatic environment within or adjoining the proposed site including water quality*
- f) minimise as far as is possible potential effects from bird strikes, dust, emissions, flooding, illumination, noise, odour, run-off, traffic impact, vibration and visual intrusion to adjoining land use or users of such*
- g) include provisions that enable the siting, scale and design of any proposed development to reflect and complement the character of the surrounding landscape and to minimise any harm thereto.*

*1.2 Permission will not be granted where:*

- x) a site or area of international or national importance would be adversely affected unless there are no suitable alternatives and there is an overriding and clear public interest for the proposed development and necessary compensatory provision can be secured*
- y) the proposed development would have a significant adverse impact on such a site, area or feature as referred to in 1.2(x) above*
  - z) the cumulative impact of the proposed development together with already permitted development in the immediate vicinity of the site would result in unacceptable adverse impacts on the environment of the area or a local amenity or the health of the local community, either in relation to the collective effects of different impacts of the proposal or in relation to the effects of a number of developments occurring concurrently or successively.*

**Climate change Policy WMP24**

It is the position of CPRE Sussex that your 2013 Joint Waste and Minerals Plan's climate change policy WMP24 is no longer fit for purpose and needs to be updated as part of your current joint Plan review in order to ensure that Plan remains sound, Soundness of climate change policy in relation to minerals and waste development is no less important than soundness vis a vis deliverability of minerals or waste management.

### **Policy WMP24 now outdated – reasons**

Your Councils/Authority ought to have acknowledged in this review of the current continuing soundness of your 2013 Joint Plan that the climate change policy WMP24, and associated text, is no longer up to date or legally compliant, and that the Plan is therefore unsound unless that policy is brought into line with (i) your Councils' own climate emergency/adaptation policies and greenhouse gas emissions reduction target, (ii) current Government policy on meeting national and international targets to eliminate net greenhouse gas emissions, and (iii) your individual legal responsibility to contribute to meeting those targets.

Climate change policy has evolved greatly since policy WMP24 was adopted, and has done so to a degree that necessitates an update to that WMP24 policy to ensure that you comply with your respective statutory responsibilities, and can demonstrate that you are all doing so.

At a local level, your Councils/Authority have now recognised the existence of a climate emergency, demanding appropriate responses from yourselves as policy setters. We welcome this recognition of responsibility to use your respective powers proactively and urgently to act to achieve carbon neutrality as soon as possible.

Planning policy, including the WMP, is an important instrument through which those powers should be exercised in relation to development and land use proposals with the purpose of prioritising and speeding up change away from fossil fuel generation towards energy demand reduction, community based renewable energy generation and energy efficiency. This fact is emphasised by the National Planning Practice Guidance which describes the need to address climate change as "one of the core land use planning principles" that should "underpin both plan-making and decision-taking."

At a national level:

- policy has also tightened with the policy objective (accepted through the UK's adherence to the 2015 Paris Accord on Climate Change) of achieving a 1.5<sup>0</sup> cap on global warming

and legislating to achieve net zero carbon emissions by 2050 (see the Climate Change Act 2008 (2050 Target Amendment) Order 2019)<sup>1</sup>;

- The Government has published its Clean Growth Strategy. This strategy places particular emphasis on the importance of local planning policy in delivering compliance with the UK's carbon budgets: *"Local areas are best placed to drive emission reductions through their unique position of managing policy on land, buildings, water, waste and transport. They can embed low carbon measures in strategic plans ..."*
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### **LPAs' duties re development plans**

The duty of local planning authorities under s.19(1A) of the Planning & Compulsory Purchase Act 2014 to use their development plans to help to deliver the Government's net zero target has been given new emphasis in the current version of the National Planning Policy Framework (**NPPF**). Para 152 instructs that *"The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure."* Para 153 provides that *"Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures. Policies should support appropriate measures to ensure the future resilience of communities and infrastructure to climate change impacts,..."*

### **Committee on Climate Change 's strictures**

The conclusions of the Committee on Climate Change – the Government's own climate change advisory body – is that the country is falling behind in its carbon reduction targets: In July 2019 they reported that *"The Government's own projections demonstrate that its policies and plans are insufficient to meet the fourth or fifth carbon budgets (covering 2023-2027 and 2028-2032). This policy gap has widened in the last year as an increase in the projection of future emissions outweighed the impact of new policies. .... The foundations in the Clean Growth Strategy have*

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<sup>1</sup> The Court of Appeal (*Plan B Earth v Sec of State for Transport* [2020] EWCA Civ 214) has ruled that UK climate change policy includes the objectives of the Paris Accord by virtue of the UK's accession to it, and that this must form part of any assessment of impacts of development proposals. We do not consider that nationally significant infrastructure projects and ones progressed through DPDs are distinguishable for assessment policy purposes.

*not been developed into a coordinated approach that will deliver even the existing carbon budgets.” and “there is little evidence of adaptation planning for even 2°C” and “The time for action is now”.<sup>2</sup> In June 2020 the Committee told Parliament that “ It is 12 months since Net Zero became law, requiring the UK to reduce net emissions of greenhouse gases to zero by 2050. Initial steps towards a net-zero policy package have been taken, but this was not the year of policy progress that the Committee called for in 2019.” Your Councils have a responsibility, and through your joint Plan, an opportunity, to play your required part in catching up and delivering on the net zero target.*

### **Need for compliance with national climate change policy**

In order to meet the NPPF para 35 tests of soundness your Plan needs to demonstrate that it is

*“Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.”*

Therefore you need a positive and effective policy that enables your Council to demonstrate how your Plan contributes to national climate change policy as it has evolved since 2013, and the Climate Change Act target regime. This, in turn, means

- ❑ undertaking a robust assessment of local baseline carbon dioxide and other greenhouse gas emission levels,
- ❑ setting one or more appropriate emissions’ reduction target based on the opportunity for new waste and minerals developments to contribute to the reduction of those levels during both construction and operation,
- ❑ considering the implications of those climate change reduction targets and opportunities in the context of air quality improvements and required net biodiversity gains, and then
- ❑ enshrining those assessments within your Plan policy and ongoing monitoring process.

In order to be able to do that it is necessary for your Councils/Authority to introduce specific greenhouse gas emissions reduction targets into your joint Plan’s climate change policy, and to be able to assess, and to report at least annually on, the delivery of greenhouse gas performance against those Plan targets and those deriving from the Climate Change Act.

In this changed policy environment, current Policy WMP24 is unsound in that

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<sup>2</sup>  
2020).

Committee on Climate Change 2019 Reports to Parliament (July 2019 and June

- it is not sufficient to enable your Councils/Authority to demonstrate their compliance with the Planning & Compulsory Purchase Act 2004 S.19(1A) that requires that “*Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change*”. It is insufficient because it fails to link WMP24 to your Councils’ or the Government’s net zero targets, and it sets no measurement criteria to evidence how its development and land use policies do contribute to the mitigation and adaptation of climate change, or to what degree;
- it fails to enable your Councils/Authority to assess the climate change impact of development proposals according to defined criteria that will contribute to achieving relevant greenhouse gas emissions targets;
- it fails to offer leadership in promoting a shift away from fossil fuel development towards renewable energy generation and demand reduction as major contributors to greenhouse gas emission reduction<sup>3</sup>;
- it takes no account of the fact that climate change also has inevitable major long-term air quality and biodiversity impacts which need to be assessed as part of its consideration of development applications under the Plan to ensure that granted applications will achieve net biodiversity gains over time as well as in the short term as the NPPF requires;
- WMP24 does not provide a proactive response to, and is disconnected from, your Councils’ declarations of a climate change emergency in an aspect of planning policy in which your Councils/Authority have a real individual and collective ability to have a significant influence within the county through the exercise of its planning powers on reducing carbon emissions given that traditional waste and minerals development and operations tend to be large scale greenhouse gas emitters;
- the WMP misses the opportunity for your Councils and Authority to offer leadership to other local planning authorities in the area in linking hydrocarbon exploration/exploitation infrastructure development to alternative energy development options that will co-ordinate and drive the overall switch within the county to a low carbon economy and improve public well-being.

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<sup>3</sup> CPRE Sussex would support a policy that clearly stated that exploration for, and development of, coal or hydrocarbons within the county will not be permitted on either climate change or environmental grounds.

## **Conclusion**

For these reasons we believe that WMP24 as it stands no longer satisfies the soundness tests in NPPF para 35. It is not consistent with national (or your own) climate change policies as that has changed since 2013 and fails to meet your legal obligations as planning authorities under s19(1A) of the 2004 Act; it is not positively prepared, in that it does not contain policies or targets for meaningful climate action that accord with the requirement for sustainable development; it is not justified by the available evidence that underlies the switch in national climate change policy; and it is not effective to ensure that zero emissions targets will be achieved.

We therefore call on your Councils/Authority to bring forward an updated climate change policy as an essential part of your current soundness review exercise. If appropriate, we will so argue at the amended Plan's public examination.

We would be happy to discuss with you what we consider would be appropriate components of a sound climate change policy if that would be helpful.

Yours sincerely,

**Stephen Hardy MBE**  
**CPRE Sussex Trustee**