SAVE CAPEL

HEARING STATEMENT

MATTER 1 – LEGAL COMPLIANCE

Abbreviations:

Submission Draft Local Plan: "the Draft LP"

Pre-Submission Draft Local Plan published for consultation at the Regulation 19 Stage: the "Reg 19 Plan"

Draft Local Plan published for consultation at the Regulation 18 Stage: "the Reg 18 Plan"

Tunbridge Wells Borough Council: "TWBC" or "the Council".

Objectively Assessed Housing Need: "OAN"

TWBC Duty to Co-Operate Topic Paper: "the DtC Topic Paper" [CD 3.132a]

Sustainability Appraisal: "SA" (whether the Reg 18, Reg 19, or Submission versions)

Town and Country (Local Planning) (England) Regulations 2012: "the Local Plan Regs"

The Environmental Assessment of Plans and Programmes Regulations 2004: "the SEA Regs"

Duty to Co-operate under section 33 PCPA 2004: "DtC"

Tonbridge and Malling Borough Council: "TMBC"

Sevenoaks District Council: "SDC"

INTRODUCTION AND SUMMARY

1. Save Capel is an unincorporated association. It currently has nearly 350 members, who elect the Executive, and around 1,900 registered supporters. Save Capel was formed in June 2019 to protect the parish of Capel from the threat of disproportionate development and to protect the Metropolitan Green Belt (MGB) and Areas of Outstanding Natural Beauty (AONB) within the parish.

2. Save Capel submitted an extensive Reg 19 Representation ("the SC Representation") addressing in detail the reasons why the Reg 19 Plan, premised on the inclusion of the proposed Tudeley Garden Settlement and Paddock Wood/East Capel strategic sites, failed the tests of legal compliance and the test of soundness.

3. In this Hearing Statement, prepared with the assistance of and input from counsel (Paul Brown QC and James Neill of Landmark Chambers) Save Capel highlights various legal flaws in the way the Council has formulated the Draft LP. The Statement explains in particular two fundamental flaws in the Council's plan-making process:

    a. The first is the failure of the Council at an early stage to engage properly with all its neighbouring authorities in order to assess whether or not any of those authorities could meet some of its housing need to avoid release of Green Belt land in the Borough.

    b. The second (which is closely linked) is the adequacy of the SA. For the reasons set out below, it is clear that the failure of the Council to meet its DtC and engage properly with other neighbouring authorities forming part of the West Kent Housing Market Area (and also with those with whom the Borough shares various functional and economic relationships) has meant that the assessment of reasonable alternatives in the SA has been unreasonably limited and confined to solely looking at growth strategies which seek to meet all of TWBC's OAN within its own area. As a corollary of that, there has been a failure to consider as a reasonable alternative strategy one that does not require GB release. Such a strategy was hamstrung as soon as the Council decided not even to include a "No GB Release" as an alternative strategy in 2017 at the Issues and Options Stage. That was an extraordinary and unjustifiable decision in light of national policy protecting the Green Belt and the strict requirement to demonstrate exceptional circumstances to remove land from the Green Belt, and it forms a major focus of the section of this Hearing Statement covering the SA.

4. This examination is of course taking place in the context of two neighbouring authorities, SDC and TMBC, having been found at examination to have failed in their DtC in relation to Sevenoaks unmet need. It is worth highlighting what the Sevenoaks Examination Inspector held:

> "*In respect of compliance with the DtC, my concern relates to the lack of ongoing, active and constructive engagement with neighbouring authorities in an attempt to resolve the issue of unmet housing need and the inadequacy of strategic cross boundary planning to examine how the identified needs could be accommodated*." (Inspector's Decision at [17]).

5. Equally telling is what the TMBC Inspectors held more recently in June 2021:

> *"However, there is no evidence that at any time the Council cooperated or even considered cooperating with SDC on a joint review of the Green Belt across both of their boundaries to understand the comparative quality across the two authority areas and any potential to amend Green Belt boundaries to fully or more fully meet needs. Nor was there any joint work to assess and reach an agreement on the housing capacity on non Green Belt areas across both authorities or on how that capacity might reasonably be maximised."* (para.24)

6. Those criticisms apply as much to TWBC as they do to TMBC and SDC.

7. TWBC will no doubt (based on its DtC Topic Paper CD3.132) seek to chronicle all its attempts to engage with SDC and argue that this suffices to meet its DtC. But the DtC cannot be met simply by TWBC seeking to exculpate and distance itself from SDC's non-compliance. The insuperable difficulty for TWBC is that the Sevenoaks Inspector rightly identified the inadequacy of strategic cross-boundary planning. That applies as much as to TWBC in its plan-making as it does to TMBC and SDC.

8. Compliance with the DtC not only requires the Council to seek to engage with SDC and others over whether it could meet some of the OAN <u>from</u> SDC, but also to seek to engage with SDC and other authorities over whether they could meet some of TWBC's <u>own</u> OAN. There is a complete lack of evidence of any proper attempt to interrogate the statements by other neighbouring authorities that they could not meet any of TWBC's OAN. It was all the more incumbent on TWBC to do so, in circumstances where TWBC needs to demonstrate that there are "exceptional circumstances" to justify GB release. LPAs need to engage with other neighbouring authorities: NPPF para. 141. That makes it clear that there is a need for an LPA to be informed by discussions with neighbouring authorities before making any decision as to whether exceptional circumstances exist:

> *"Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development. This will be assessed through the examination of its strategic policies, which will take into account the preceding paragraph, and whether the strategy:*
>
> *a) makes as much use as possible of suitable brownfield sites and underutilised land;*
>
> *b) optimises the density of development in line with the policies in chapter 11 of this Framework, including whether policies promote a significant uplift in minimum density standards in town and city centres and other locations well served by public transport; and*
>
> *<u>c) has been informed by discussions with neighbouring authorities about whether they could accommodate some of the identified need for development, as demonstrated through the statement of common ground.</u>"*

9. The reason the scrutiny of the Council's alleged compliance with DtC is so important here, is because it is alleged in the Council's Development Strategy Topic Paper 3.64 that TWBC did approach other neighbouring authorities about capacity in order to reduce pressure on the borough's Green Belt (and AONB). This is what the Council stated:

> *"Neighbouring local authorities have confirmed that they are unable to meet any of TWBC's housing needs, following this Council's approaches about their capacity in an effort to reduce pressure on the borough's Green Belt (and AONB). Details of the Council's contact with its neighbours in both Kent and in East Sussex in relation to housing needs are set out in the 'Duty to Cooperate Statement'."*[1]

10. Yet the DtC Statement is completely lacking in any detail specifically about discussions over housing needs to reduce pressure on the borough's Green Belt and AONB in the first half of 2019 (when the decision appears to have been taken that a 2 garden settlement strategy ("the New Settlement Strategy") at Tudeley and Paddock Wood should be the preferred option). The DtC Statement merely asserts that other authorities stated that they were not able to meet any of TWBC's need. For an LPA to be "informed by discussions" it has to ensure it has gathered adequate information at the right time as a result of those discussions. Accepting at face value a blank refusal by a neighbouring authority to accept any need from T Wells (in late 2020) without any substantiation or proper analysis as to whether that refusal is warranted is merely paying lip service to what was expected of TWBC in terms of national policy and its legal DtC.

11. The lack of any detailed analysis, discussion, or interrogation by the Council as to whether in fact it was the case that these authorities could not do more to take the pressure off T Wells Borough reflects the reality of what has occurred here: namely the Council's identification early on in the process of a politically palatable solution which involved the bulk of housing development being located well away from the town of Tunbridge Wells.

12. Save Capel acknowledges of course the constrained nature of the Borough arising out of the extensive AONB and MGB designations. But as soon as the Council considered that there was a real risk of not meeting its OAN unless land was released from the MGB (and that seemed to be apparent from at least as early as the Issues and Options Stage in 2017), it was incumbent on the Council to work with other neighbouring authorities (some of whom – in particular Tonbridge and Malling and Sevenoaks – were similarly constrained by MGB and AONB designations) to come up with a holistic solution and to see if GB release could be

[1] D3.64 page 59

avoided or minimised through a joint co-ordinated solution. That is what strategic cross-boundary planning means. The failure of SDC (and indeed TMBC) to do so is symptomatic of a complete and wholesale failure of all local planning authorities in this area to work together proactively and identify a joint solution to how to meet OAN appropriately.

13. Having made those general points, this Hearing Statement now proceeds in three sections:

    a. **Section 1** (pages 5 – 10) addresses Issue 1 and the Council's lack of compliance with the DtC set out in section 33A PCPA 2004.

    b. **Section 2** (pages 11 – 24) addresses Issue 3 (Sustainability Appraisal), in particular the legal adequacy of the SA and whether or not the findings of the SA properly informed the formulation of Draft LP.

    c. **Section 3** (pages 24 – 27) addresses Issue 4, and the question of compliance with the legal duties of consultation and engagement, and other legal issues including air quality, climate change and biodiversity.

14. It should also be noted that Save Capel endorses the position of the Friends of Tudeley on Issue 2 (HRA) but for the sake of conciseness and to avoid repetition has not included submissions on that specific issue in this statement. Save Capel reserves its right to address the Inspector on that issue as appropriate.

PART 1: ISSUE 1: DUTY TO CO-OPERATE

The failure of the Council to comply with the key DtC requirements (SC's answer to MIQs Q.1 and Q.2, Q13)

15. The key components of the DtC are below:

    a. The duty to co-operate is on strategic matters that cross administrative boundaries. A strategic matter is sustainable development or use of land that has or would have an impact on at least two planning areas: section 33A(4).

    b. "*The obligation (see subsection (1)) is to co-operate in "maximising the effectiveness" with which plan documents can be prepared, including an obligation "to engage constructively [etc]" (subsection (2)). Deciding what ought to be done to maximise effectiveness and what measures of constructive engagement should be taken requires evaluative judgments to be made by the person subject to the duty*

regarding planning issues and use of limited resources available to them": Zurich Assurance Limited v Winchester City Council [2014] EWHC 75 at [109]

c. The engagement required under section 33(2) includes "considering" adoption of joint planning approaches, which is a matter of judgment: *ibid* at [110].

d. Once there is disagreement, that is not an end of the duty to co-operate, which remains active and on-going even "*when discussions seemed to have hit the buffers*": St Albans DC v SSCLG [107] EWHC 1751 at [51].

e. Discharging the duty to co-operate is not contingent upon securing a particular substantive outcome from the co-operation but "*the duty to cooperate is not simply a duty to have a dialogue or discussion. In order to be satisfied it requires the statutory qualities set out in section 33A(2)(a) to be demonstrated by the activities comprising the cooperation*": Sevenoaks DC v SSCLG [2020] EWHC 3054 (Admin) at [51], added emphasis. Accepting as a fait accompli a neighbouring authority's assertion that it cannot meet OAN from another borough without scrutiny or challenge does not demonstrate active engagement (as required by section 33A(2)(a). It constitutes mere acquiescence.

f. The DtC applies specifically to plan preparation, and plan preparation ends when the plan is submitted for Examination: see e.g. the approach of the Inspector who conducted the Sevenoaks examination (see para. 24 of her decision), and the Tonbridge Inspector at para. 9: "*Account can only be taken of the engagement undertaken by authorities up to the point of submission of the Plan, as the assessment of compliance with the DtC only relates to the preparation of the Plan*".

g. The PPG makes it clear that "*the statement of common ground is the means by which strategic policy-making authorities can demonstrate that a plan is based on effective cooperation and that they have sought to produce a strategy based on agreements with other authorities*": (Paragraph: 029 Reference ID: 61-029-20190315).

16. There is no doubt here that the development of the sites at Tudeley and Paddock Wood/East Capel are strategic matters: first, it is a determinant as to whether or not TWBC can meet its OAN or not, and in any event the development of these sites would clearly have a significant impact on TMBC (as well as potentially Maidstone BC and other areas). TWBC itself has accepted since 2017 that the potential for unmet housing need is a strategic matter: see DtC Topic Paper **CD3.132a page 25**.

17. As an overarching point, as evidence of joint working TWBC relies heavily on the fact that meetings of the Strategic Sites Working Group ("SSWG") have taken place (see e.g. the Consultation Statement Pt 1, para. 2.9). In terms of evidence before this examination, however, none of the minutes of the SSWG have been made public. Save Capel have been unable to review them or scrutinise exactly what was discussed and what the substantive output of those meetings actually was, and in particular whether they were simply briefing meetings or meetings where substantive joint working took place. Given that those minutes do not form part of the evidence it is hard to see how much weight, if any, should be attached to the mere fact that these meetings took place.

18. The following are the key failures in the approach to joint working that TWBC has purported to carry out with its neighbouring LPAs.

    a. **Failure to co-operate with SDC over housing need**. There has clearly been a major breakdown in co-operation with SDC regarding meeting SDC's own needs. But that should not be allowed to obscure the lack of any attempt by TWBC also to require SDC to consider the possibility of meeting any of TWBC's OAN: see DtC Topic Paper D.132 pages 22 – 23. There is no evidence that this was at any stage even considered by TWBC: the focus was all on SDC's request to TWBC to meet SDC's unmet need. As a result, no attempt has been made at jointly planning or analysing where GB release was most appropriate across not just SDC's area but across all the neighbouring authorities in the MGB as well (see the TMBC Inspector's report at [24]). That is fatal to this plan in itself.

    b. **Failure to co-operate with TMBC over housing need**. TMBC merely stated that it was not able to assist in meeting some of TWBC's housing need: see **CD3.132a** page 40. Reference is made simply to the TMBC October 2021 SoCG paras 2.2- - 21, but: that does not take matters any further or contain any evidence of effective co-operation on this issue. The DtC Topic Paper merely states that: "*Both authorities agree to continue to engage with each other*". That falls far short of proper engagement with each other to maximise the effectiveness of TWBC's own plan.

    c. **Major issues are still unresolved with TMBC in any event in relation to impact on highways and transport modelling**. The DtC Topic Paper states that:

> *"TMBC has raised serious concerns, including in relation to the impact on highways (para 5.10) and the transport modelling. TWBC recognises that the strategic sites will impact on T&M borough, including on Tonbridge town. Despite TMBC's concerns there is a clear commitment*

> *and agreement between both authorities to continue to discuss and undertake collaborative working on the strategic cross boundary implications of the proposed growth at Tudeley and Paddock Wood, and to work to address those with infrastructure providers and statutory consultees".* (**D3.132a, page 42**).

There is no reason why transport modelling should not have been commissioned and agreed on a joint basis on something so self-evidently important and cross-cutting as the transport impacts on Tonbridge – yet TWBC has submitted its plan where there are clearly major differences between the two authorities over the approach to modelling (and – so it now seems – the local highways authority: see below). That is a paradigm failure of the DtC. Setting out issues to be addressed following submission of the plan rather than the progress made to address them prior to submission is entirely inadequate: see the Sevenoaks decision at para. 32

d. **Major issues are still unresolved with TMBC in relation to flooding and infrastructure provision** (including secondary school provision). The SoCG with TMBC does not show that there has been any effective joint working on these issues. To the contrary, TMBC has raised substantives concerns over these issues in its Reg 19 response and those concerns are still not addressed. The SoCG merely records (at **CD 3.132bii para. 5.12, CD 3.132bii**) that:

> "*Both authorities will continue the discussions and collaborative working on the strategic cross boundary implications of the proposed growth at Tudeley and Paddock Wood, noting the TMBC concerns, and working to address these including where necessary key infrastructure providers and statutory consultees".*

e. **No evidence of joint working with Maidstone Borough Council regarding housing need.** The assertion by TWBC (see DtC Topic Paper) that Maidstone's housing market does not extend into Tunbridge Wells to the south is highly questionable. The eastern area of TWBC (including Cranbrook, whose grammar school is a strong attractor) is much more closely connected to Maidstone than it is to T Wells. It is irrational to assert that the two garden settlements proposed at Reg 18 stage did not give rise to any strategic cross boundary matters with Maidstone Borough Council (see **DtC 3.132a p.48**) on a site that is on the boundary with Maidstone; and would extend the settlement up to the boundary line. In particular, there is no evidence of any active and on-going discussions at all seeking to explore the possibility of Maidstone BC taking some of the unmet need from T Wells throughout the formulation of the Draft LP. The correspondence between the two authorities in late 2020 (see post-submission core document **3.152b**) is not sufficient evidence of joint

working and again raises the question of why this formal request was made so late in the process.

f. **No evidence of joint working with Ashford BC regarding housing need**. The DtC 3.132 3a p.1 asserts that: "*It is recognised by both parties that they are in different housing market areas at this time*". There is no evidence of any real attempt to see if Ashford BC could meet some of T Wells need beyond the token and late request made on 6 October 2020. (see Post-submission Core Document **3.152a)**. In particular there was no request back in 2017/2018 at a time when it was clear that a significant amount of GB land might need to be released for T Wells to meet its own need.

Failure to co-operate with KCC Highways (this addresses MIQs Q10 - 11).

19. The DtC Paper described the current position with KCC in the following terms:

> *"It is agreed that the evolving TWBC transport evidence base is seeking to identify and mitigate the impacts of the Local Plan on the highway and transport network. That work continues and both parties are committed to completing this in a timely fashion ahead of the Local Plan Examination" (CD3.132a page 72)*

20. This "agreement to seek agreement later" indicates in itself a failure to co-operate ahead of submission. Worse still, however, there are clear points of substantive disagreement with KCC Highways over the sufficiency of the sensitivity modelling undertaken since the Reg 19 consultation. The DtC Paper states that "*both KCC and TWBC agree to continue to work together over the coming weeks and months on the recent sensitivity testing and proposed mitigation measures and will seek to update the position prior to the Local Plan Examination in a further SoCG*".[2] Therefore at the point of submission whatever co-operation had been taking place had not been effective, because the SoCG by the Council's own admission is incomplete and issues which are key to the deliverability of the strategic sites are still to be addressed. Yet despite these deficiencies and lack of agreement with KCC over the mitigation measures, the Council nonetheless decided to submit the plan for examination. That is a flawed approach and a clear failure in plan preparation (which ends at the point of submission).

21. Those references above to the Council's own evidence base on the DtC are tantamount to an admission that the evidence base is not complete, and the plan as submitted has not been based on sufficient evidence on a key constraint to development at Tudeley and Paddock Wood, namely the impact on the transport network both westwards to Tonbridge and around Colts

[2] D3.132a p.72

Hill and Five Oak Green. As will be explored in later matters at this examination, this was an issue which clearly posed the greatest risk to delivery of the New Settlement Strategy, and which should have been exhaustively analysed at the point when this strategy was first alighted upon before the Reg 18 publication. Yet it seems to be an issue which is still – nearly three years on - not properly addressed with the key statutory organisation with which there is a legal duty to co-operate even at this very late stage after submission of the plan.

22. This gap in the evidence cannot be filled by providing a further SoCG after submission, particularly on such a fundamental issue as highways mitigation. Consultation has been carried out on the basis of the information that was published at the time and the examination's role is to test the soundness of the plan and evidence base as submitted (see above in relation to what the TMBC Inspectors held at para.9).

23. The position with KCC Highways is clearly as unsatisfactory as the position with TMBC. There has not been effective co-operation with either of these two organisations over a key strategic matter – namely the highways impact of the strategic development at Tudeley and Paddock Wood/East Capel. On this basis alone the Council has clearly failed to meet its DtC.

Conclusion on DtC

24. On the face of the evidence as submitted by TWBC it cannot possibly be concluded that the DtC has been met. In particular, there are fundamental and systemic failures in how:

    a. the Council engaged with all neighbouring authorities in respect of the need to avoid GB release in T Wells' area; and

    b. regarding critical highways issues and associated impacts which go to the very feasibility of the Council's chosen growth strategy.

25. For these reasons the Inspector is respectfully requested to pause the examination before all parties incur further wasted costs and expense in dealing with the Stage 2 matters and issues.

PART 2: ISSUE 3: SUSTAINABILITY APPRAISAL

Summary of SC's position

26. Save Capel's position is that there are two fundamental issues with the SA which cannot be rectified at this post-submission stage, because they go to the principle of the growth strategy selected by the Council and therefore the soundness of that strategy:

27. First, the Council through the SA process has not considered as reasonable alternatives other strategies which avoid releasing land from the Green Belt (which the Inspector has rightly identified as a key question). a corollary of that, the SA has not considered reasonable alternatives to the New Settlement Strategy (either adequately or at all).

    a. The fatal, systemic flaw in the way the plan-making process was approached by the Council was its failure to include at the start of the process – i.e., by the Issues and Options stage – a "No Green Belt Release Option". That omission was astonishing given the weight to be attached to GB policy in national policy and the strictness of the exceptional circumstances test. Critically for the consideration of this Matter (which is to assess legal compliance) the failure of the Council to do so has fatal consequences for both the SA process and the Draft Plan itself. It meant that the Council unilaterally set itself on a course from the beginning which only ever had one outcome – namely a strategy requiring significant GB release - and that no serious attempt was made to consider whether or not any other authority could accommodate its need (which is precisely the point made above in relation to the failures in the DtC). Equally, an option of not meeting OAN was never seriously entertained. That is entirely contrary to what the SA process requires – which is an assessment of reasonable alternatives.

    b. Critically, for the purposes of assessing legal compliance and the adequacy of the SA, that meant that the Council's approach to Issues and Options precluded any other growth strategy ever being considered as a true reasonable alternative, i.e. it meant that what would otherwise have been reasonable growth options were ruled out at too early a stage (between Issues and Options and Reg 18) when choosing the development strategy encompassed by Policies STR1, SS1 and SS3 which removes (in relation to Paddock Wood and Tudeley Village, 148 and 182 ha from the Metropolitan GB, which amounts to 4.5% of the total MGB in the Borough).

c. None of this can be repaired by a last ditch attempt at Reg 19 to include "No GB release" as an option. Reliance on this is no doubt likely to be the refrain of the Council at examination. But any reliance on the inclusion of this option at Reg 19 is to ignore what the SA process is meant to be: essentially an iterative process. A last minute inclusion of a token "No Green Belt Release" option in 2021 – only inevitably to dismiss it - only serves to highlight that it was not assessed as a reasonable alternative as part of the SA process. Put another way, by the time the plan reached Reg 19, TWBC had unreasonably engineered (or – putting it more neutrally – created) the conditions in which "No GB Release" was never a serious contender (not least by the lack of any formal request or serious engagement with other authorities over the preceding 4 years to meet some of TWBC's own need).

28. Second, alternatives to Paddock Wood expansion and a new settlement at Tudeley were arbitrarily ruled out as reasonable alternatives and not subject to appraisal through the SA. In particular, there are (1) clear inconsistencies in the SA regarding the application of AONB and GB reasons for excluding from any consideration at all alternatives expansion nearer to T Wells and (2) clear inconsistencies in how other options which would avoid GB release entirely (including near Horsmonden and Frittenden) have been ruled out on highways grounds, yet nonetheless the New Settlement Strategy has been preferred where unresolved, and fundamental, highways issues remain.

29. Related to the above, Save Capel has identified in its Reg 19 Representation how the scoring system and analysis is opaque, inadequate, and inconsistently applied (paras 2.36 – 2.53), and has set out its assessment of the SA scoring in the "Alternative Sites" Appendix 8. In certain cases, scores have been awarded which are not just wrong, but are completely unjustifiable. As addressed in detail in response to Question 11 below, there are further, additional flaws which render the SA legally inadequate and non-compliant with the SEA Regs .

Legal principles applicable to assessing the legal adequacy of a Sustainability Appraisal of a local plan

30. Regulation 12(1) – (3) of the SEA Regs provide:

> *"(1) Where an environmental assessment is required by any provision of Part 2 of these Regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.*

> *(2) The report shall identify, describe and evaluate the likely significant effects on the environment of–*
>
> *(a) implementing the plan or programme; and*
> *(b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.*
>
> *(3) The report shall include such of the information referred to in Schedule 2 to these Regulations as may reasonably be required, taking account of–*
>
> *(a) current knowledge and methods of assessment;*
> *(b) the contents and level of detail in the plan or programme;*
> *(c) the stage of the plan or programme in the decision-making process; and*
> *(d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment."*

31. In Flaxby Park Limited v Harrogate Borough Council [2020] EWHC 3204 (Admin), Holgate J summarised the applicable principles when assessing whether a local planning authority has complied with the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004 ("the 2004 Regulations") when undertaking strategic environmental assessment ("SEA"), and in particular the adequacy of the environmental report prepared as part of the SEA as required by Regulation 12 (i.e. what is referred to in plan-making as a sustainability report).

32. SC acknowledges the key principles identified in Flaxby confirming that there is a wide discretion given to a local planning authority in deciding what information *"may reasonably be required*", taking into account current knowledge and methods of assessment, the contents and level of detail in the plan, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at other levels in that process in order to avoid duplication of assessment. It accepts that this gives the local planning authority a wide range of autonomous judgment on the adequacy of the information provided (*Plan B Earth v Secretary of State for Transport* [2020] PTSR 1446 cited in *Flaxby* at [136]).

33. However, notwithstanding that discretion, at examination it is entirely open to an inspector to ask whether, for instance, there has been comparable or equal treatment of alternatives or between alternatives (or a lack of equivalence). Indeed, *Flaxby* is a case where the Inspector specifically asked the LPA to consider alternatives which had not been addressed as part of the SA. Despite finding that the LPA's approach up to that point had not been unlawful, Holgate J found that this was a decision the Inspector was entitled to reach.

(1) Failure to consider reasonable alternatives to new settlement growth

34. The critical question is why Option 5 (New Settlement Growth) identified at the Issues and Options stage was selected and brought forward as the preferred Option 3 at Reg 18 Stage, and whether or not SA properly informed that decision, because it was from that point that the strategic direction for the Plan was in substance determined. For the reasons below it is clear that SA has not properly informed that decision.

35. That is because the SA at that point only considered the possibility of meeting all the Borough's needs. There is no consideration of whether some part of the need should be met elsewhere. There were various permutations that all should have been considered from the outset of the SA process (and remain unassessed even in the latest Reg 19 SA). The following were all reasonable alternatives which should have been assessed:
    a. Meeting all need on sites beyond the Green Belt
    b. Limited GB release in order to meet part of the need
    c. Strategic GB release in order to meet a greater part of the need
    d. Meeting as much of the need as possible on sites outside the GB and seeking to meet the balance through the DtC.

36. Scrutiny of what happened at the Issues and Options stage is thus critical: this is because, by the time of the Reg 18 consultation SA, the strategic release of appropriate land from the GB has become a new strategic objective (i.e., it is no longer an option). Yet nowhere in the earlier SA work is there any discussion of alternatives which do not involve this. Nor is whether or not GB release is necessary and/or the extent of GB release included as one of the criteria/objectives against which sites are scored.

37. Set out below are more detailed failures of the SA process, several of which are symptomatic of that root failure in the SA process.

Issues and Options SA

38. The Issues and Options SA (Final Report) was published in May 2019 (**CD 3.7b**), shortly before the Reg 18 Consultation which commenced in September 2019. It is therefore an important document, as it was at this stage in the SA process that the decision was made to take the New Settlement Growth Option forward.

39. It remains entirely unclear how that particular SA Report could provide any rational basis for deciding that Growth Strategy 5 (GS5) was the appropriate strategy to take forward, because it clearly had not been subjected to a proper or adequate appraisal as of May 2019:

    a. The SA identified 6 unknowns in relation to GS5: see page 25. That is three times as many unknowns as for instance the A21 Growth Corridor Option which was the public choice at consultation, and indeed any other of the other options other than having no plan at all (Option 6).

    b. Furthermore, it assumed that the settlement was to be positioned outside the Green Belt (GB): see summary on page 25. However, the Council immediately proceeded to consult on a Preferred Option that entailed a significant GB release. That is dealt with in more detail below.

    c. Finally, the scorings were applied on (1) the basis that a new settlement would be in a location with existing sustainable transport options or that those options would be provided as part of the development, and (2) the assumption that developing further away from the town of Tunbridge Wells would help prevent further deterioration of existing poor air quality. However, the settlement options ultimately selected at Reg 18 (and confirmed at Reg 19) do not have existing sustainable transport options: the reality is of course that most future residents would drive to Paddock Wood or Tonbridge to access employment and services, or commute via the rail links there. Tudeley is further away from Tunbridge Wells, but it is directly adjacent to Tonbridge. The Issues and Options SA (and indeed the Reg 18 SA) fails to give any proper consideration of whether Tudeley would worsen air quality in Tonbridge, and so the option ultimately chosen by the Council in the Draft LP is contrary to its own previous criteria applied in the SA.

The Reg 18 SA

40. Less than four months later the Reg 18 SA was published for consultation in September 2019 (**CD3.11**) which made it clear that GS5 was the preferred option. However, at that stage it was also now clear that GS5 would entail strategic sites at Tudeley and Paddock Wood and therefore significant GB release, or development elsewhere in the AONB: see Figure 5 of the garden settlement options on page 37.

41. However, the SA did not:

    a. revisit those Growth Strategies or subject them to further sustainability appraisal despite further information being available: put simply, the 6 "unknowns" in the previous SA in relation to GS5 could have been revisited but were not.

    b. specifically assess an option not entailing GB release, even though that is precisely what the Issues and Options SA (Final Report) had assumed in relation to the settlement strategy (i.e., that any new settlement would not be a GB site). This is the same manifestation of the flaw set out above in relation to the Issues and Options Stage: a Growth Strategy premised on new strategic settlement(s) at a site not in the GB has resulted in an objective in the Plan to bring forward specific settlements in the GB.

42. Instead, the Council at this stage was entirely focussed on refinements to its New Settlement Growth Strategy: the only new work in the Reg 18 SA was to consider (1) Growth Strategy 7 and 8 and (2) "*alternatives to specific key elements of its preferred strategy*". Critically, there was no updated comparative assessment of the SA findings in relation to the other growth strategies in light of the new information available.

43. The sole indication put forward in the Reg 18 SA for choosing GS5 is a "*a slight preference for Growth Strategy 5*" (**CD3.11) para 6.1.5**) recorded in the Issues and Options SA, rather than any proper updated analysis of how GS5 performed in sustainability terms against the SA objectives relative to the other Growth Strategies, once it was apparent that this option would involve GB release: that is, the assumptions regarding GS5 (namely no GB release) in the Issues and Options Stage were no longer valid.

44. All of this means a decision was taken in principle to proceed with GS5 in preference to other Growth Strategies when those strategies remained as reasonable alternatives and had not been ruled out. There was therefore a legal duty to consider and revisit them as reasonable alternatives at Regulation 18, yet they were not.

45. Put simply, the Council had in substance already adopted tunnel vision in relation to a Garden Settlement Strategy as the solution and failed to take a step back and consider its Growth Strategy approach in principle once it was clear what that strategy really entailed.

46. This is a fundamental flaw in the SA and in the way the SA was taken into account in the Council's decision making.

47. This is not merely a procedural flaw (and Save Capel acknowledges the essentially procedural aspects of the SA process) which could be rectified at Reg 19. It goes to the principle of whether the SA properly informed the selection of the Growth Strategy (in accordance with the Council's legal duty under section 19(5) PCPA 2004). It clearly did not.

Reg 19 SA.

48. The Planning Practice Guidance on SA/SEA is also clear that one of the requirements of sustainability appraisal is that it needs to:

> *"…provide conclusions on the reasons the rejected options are not being taken forward and the reasons for selecting the preferred approach in light of the alternatives."* (Paragraph: 018 Reference ID: 11-018-2014030).

49. The Reg 19 SA Report (**CD3.130a**) therefore needs to identify the reasons why the preferred option was selected. It fails to do so.

(1) Confusion at the heart of the Plan regarding the Plan's objectives in relation to the GB

50. The requirement to show the reasons for selecting the preferred approach (which is ultimately a decision for the Council and not the SA) entails not just an assessment of how the various alternatives score against the SA objectives, but also the consideration of how those options perform against the Local Plan objectives.

51. The Reg 19 SA fails in this regard because the Draft LP now includes an express objective for GB protection, so as only to release GB where the strict tests (derived from national policy) are met.(see page 42 of the Draft LP **CD 3.58).** This contrasts to the Reg 18 SA in which the strategic release of the GB was an objective of the LP (see page 18 of the Reg 18 Plan: **CD3.9).**

52. That change is significant, and betrays confusion in the Council's decision-making (and in the SA process which purported to inform it):

    a. First, there is no comparison in the Reg 19 SA of the various growth options against that LP objective, and no significance is attached to the substantial loss of the GB. It is hard to see how that can possibly meet the requirement to set out the reasons for selection of the preferred strategy.

b. Second, the change in objectives between Reg 18 and Reg 19 entrenches an out-and-out conflict between LP objective 9 and LP Objective 3 (which remained as an objective "*to establish garden settlements*")[3]. This irreconcilable conflict between the Draft LP's own objectives will no doubt be heavily scrutinised at Stage 2 of this examination; for instance, it raises the question as to whether a new settlement would ever have become an objective if protecting the GB had been recognised as an objective at the outset. But it is also relevant when assessing the adequacy of the SA under this Matter; because the SA should have demonstrated how protecting the GB has informed the decision to select the "New Settlement" Growth Strategy. The SA's inadequate explanations of the reasons for choosing the selected growth strategy elevates the unsoundness of the LP's growth strategy selection into a fundamental legal flaw.

(2) Further failures in the attempt to explain why the New Settlement Strategy (Option 13) was chosen

53. The attempt of the SA to explain why this strategy was ultimately selected (**CD3.130 paras 6.2.16** and **6.2.17** (pages 80 – 81) under the section entitled "*Distribution of Development*") appears confused and skewed primarily to justifying the inclusion of the strategic sites at Paddock Wood (including East Capel) and Tudeley, rather than objectively setting out the reasons for the selection of the preferred strategy. In particular:

a. Contrary to what is asserted at para. 6.2.18, the comparative assessment at Table 26 of the Reg 19 SA (**CD3.130a**) page 84 does not clearly indicate that the Pre-Submission LP is preferable to the alternatives identified. Growth Option 5 (Main Towns/Villages) performs equally well and there is no particular reason in SA terms why it has been rejected. As discussed above, a major omission is that nowhere is it acknowledged that this option avoids the significant GB release as is entailed in the preferred option (Growth Option 13).

b. The reasons for dismissal of Growth Options 7 and 8 are opaque and unclear. The SA merely says that "…*positive scores tend to be more common with Growth Strategy 3, and the advantages of the strategic sites is discussed in the commentary for Growth Strategy 3*" (para. 6.2.12). But there is no commentary for Growth Option 3 in Table 12 to explain the reasons for the dismissal of these options .

[3] Summarised in Table 8 of the 2021 SA at 5.3.1

c. The "*...objectives in forming a new growth strategy*" (cited at **CD 3.130a para. 6.2.16**) appear to be the real reasons for the rejection of GS5. Critically, they do not relate to the sustainability objectives assessed as part of the SA but are more identifiable as political objectives:

"*In conclusion, the objectives for forming a new growth strategy moving forward were to:*
• Meet the standard method need
• Include strategic sites as per Growth Strategy 3 (the DLP)
• Include less development at larger settlements of Cranbrook and Hawkhurst in the AONB
• Include reduced development at some smaller villages (especially Sissinghurst, Matfield and Hartley)
• Include more urban intensification, especially in RTW

54. The reference to inclusion of the strategic sites shows the real reason underlying the selection of the preferred strategy: a pre-determined political decision to progress with the Garden Settlement strategy regardless of GB considerations and - critically - regardless of what the SA process was actually indicating, which is that the justification for a garden settlement strategy in preference to a Main Town Strategy was far from compelling.

55. Specifically in relation to Tudeley Village, the following analysis is provided:

> *"6.2.14: The effect of removing Tudeley Village Strategic can be observed by comparing Growth Strategies 3 (DLP) and 4 (Main Town). Ignoring unknown scores, it can be seen that 8 objectives are improved by the distribution including a garden settlement, 3 are made worse and 3 objectives are the same."* (emphasis added)

56. It is far from clear why unknown scores in relation to Option 3 (which formed the basis of the Pre-Submission Draft LP) should have been ignored when attempting to justify the inclusion of Tudeley Village in particular.

57. All of this is highly relevant to the question as to whether exceptional circumstances exist. That will be explored in more detail in Matter 2, but for the purposes of this Matter and the question of legal compliance those references in the SA betray further fundamental flaws in the way the Council failed to make its decisions by basing them on the actual outcome of the SA process. That was unlawful.

(2) Failure to consider reasonable alternatives to Tudeley/Paddock Wood as strategic sites.

58. 13 Garden Settlement options were identified as potential sites in the Reg 18 SA. The only sites subject to sustainability appraisals as reasonable alternatives were Tudeley and Paddock Wood (including East Capel): **see Table 13 CD3.11 37 – 38.**

59. Save Capel submits that there has been a failure to consider reasonable alternatives, and/or an inconsistency in dismissal of certain sites as reasonable alternatives, in particular Horsmonden and Castle Hill.

(1) Horsmonden

60. Save Capel raised issues in consistency between taking forward Tudeley and Paddock Wood (including East Capel) as the preferred strategy yet failing to assess other sites, such as Horsmonden and Frittenden in its Reg 19 Statement. No adequate explanation has ever been provided for this.

61. The reasons for dismissal of Horsmonden are particularly opaque and inconsistent with selection of Tudeley and Paddock Wood (including East Capel). The SA includes the following as the reason for the dismissal of Horsmonden as a reasonable alternative:

> *2 More generally, the only main settlement within reach is Paddock Wood, access to which was considered to be difficult, along unclassified roads and through smaller settlements, to the extent that such substantial development would be unlikely to be supported by suitable transport infrastructure" (CD3.130a page 98).*

62. This reason was also used at the Reg 18 stage, which referred to severe access difficulties making this alternative viable.

63. The sites at Tudeley and Paddock Wood also have clear access issues – particularly around Five Oak Green and Colts Hill which would have been self-evident. At the Reg 18 stage the detailed investigations into highways infrastructure required to mitigate the impact of the strategic sites at Tudeley and around Paddock Wood (which identified the need for, at the very least, a bypass around Colts Hill) had not been carried out. That work was only carried out by David Lock Associates in their Strategic Sites Masterplanning and Infrastructure Study, which was commissioned in 2020, after the Reg 18 stage (**CD 3.66a**). Yet the sites were still identified as the preferred strategy.

64. It is therefore far from clear how the Council could consistently rely on access issues to discount Horsmonden even as an alternative in 2019 without likewise carrying out further work as to what access solutions could have been identified.

65. Finally, it is entirely unclear why the impact on the setting of the AONB here was taken into account as a reason for exclusion of this option: see the SA page 88 which states that "*…landscape sensitivity would require further consideration because the site is adjacent to (although outside) the AONB.*" Yet Tudeley came forward as a strategic site, but Horsmonden was not even entertained as a reasonable alternative, despite Tudeley being literally adjacent to the AONB.

(2) Castle Hill.

66. The number of "options" for strategic sites at the Reg 19 Stage increased to 14 with the addition of Castle Hill. (Reg 19 SA **CD. 3.130(a)** page 90). The Reg 19 SA Report states the following in relation to Castle Hill **(CD3.130(a) page 90/ Table 27**):

> *"Submitted in the call for sites as site 49 or DPC 7. This site was originally considered as potential development site within Capel Parish in line with those described in Chapter 8 and was filtered out at the first stage assessment (see 8.1). This consideration was based on a potential residential yield of 488-976 dwellings. Since this time, the council has been informed of the potential for greater capacity on this site (up to 1,600 dwellings) and so the site now warrants consideration amongst the sites in this table as a potential garden settlement. To this end, the site is within the AONB and landscape impacts were considered too severe to warrant further consideration as a reasonable alternative".*

67. Save Capel queries this assessment and the basis on which the view was reached in landscape terms that the impact was too severe. In circumstances where landscape harm to the AONB was used as a reason to discount several other sites, with no differentiation between the potential sites as to the degree of that harm, it was unreasonable not to investigate further and actually assess what the level of harm to the AONB would actually be. Save Capel also seeks an explanation as to what extent the proposed commercial development in the immediately adjacent site, Kingstanding, was taken into account, especially as this site is both in the GB and the AONB and was granted outline planning permission on 12 March 2021.[4] The Castle Hill site could – and should – have been assessed as a reasonable alternative.

Summary to the answers to specific MIQs on the SA:

Question 4 and Question 5: Has the Council, through the Sustainability Appraisal, considered alternative strategies which avoid major development in the High Weald AONB and Green Belt altogether?

68. No. Alternative strategies for avoiding development in the Green Belt altogether were not assessed at Reg 18 stage, which compromised the reasonableness of this an alternative at a later

[4] Ref: 19/02267/OUT

stage (see above at para 27). Further, the arguments set out above concerning failure to consider alternative options to meeting need within Tunbridge Wells Borough should be read alongside Save Capel's representations on DtC, and in particular the representations made about the failure to seek to accommodate need in less constrained areas such as Maidstone and/or Ashford. Given the strategic importance of Green Belt, that option should have been, but was not included in the alternatives considered by the Council.

69. Whilst options were assessed at Reg 19 stage, this was too late to properly inform the selection of the preferred strategy. The reality is that this had already been determined at Reg 18.

Question 6: Does the SA adequately and robustly consider alternative distributions of development such as focussing growth towards existing settlements such as Tunbridge Wells, rather than relying on a new settlement?

70. No. See above at paras 26 - 29 and 35 - 52 in particular regarding the failure to consider options not to release GB, which would have inevitably led to alternative distributions of development within the Borough (and other neighbouring authorities being requested to meet some of the Council's housing need). Specifically, it remains entirely unclear why GS5 (Main Towns) in the Reg 19 SA has not been preferred (see Save Capel reg 19 representation at para 2.27 and paras 53 - 57 above).

Question 7. Having established the strategy, what reasonable alternatives has the Council considered through the Sustainability Appraisal to the new settlement proposed at Tudeley? Question 8: what was the justification for ruling out alternative options in locations such as Frittenden and Horsmonden on transport grounds, but not Tudeley Village

71. The SA has failed to assess reasonable alternatives: see page 89 – 90 SA which shows all other sites ruled out as non-starters (see Save Capel Rep at paras.2.30 – 2.33). The reasons for ruling out Horsmonden and Castle Hill in particular as reasonable alternatives are either inconsistent with the approach taken to Tudeley and Paddock Wood (including East Capel), or are self-evidently insufficient. Either these sites should have been subjected to full sustainability appraisal, or Tudeley and Paddock Wood should have been ruled out of consideration for the same reasons.

Question 9. Does the SA adequately and robustly consider reasonable alternative strategies for the size and scale of development proposed at Tudeley Village and Paddock Wood, including land at East Capel? For example, does it consider smaller and/or larger forms of development as a way of meeting housing needs?

72. The SA does (for instance in Tudeley) consider three different scales of development. But it does not adequately and robustly consider reasonable alternative strategies for development because of the fundamental flaws identified above in relation to how GB release was considered.

Question 11: Are the scores and conclusions reached in the Sustainability Appraisal reasonable, sufficiently accurate, and robust to inform the submission version of the Local Plan?

73. No. In many cases scores are simply marked as "unknown" in relation to Growth Strategy Option 3 (the Reg 18 Plan) yet under Option 13 the same scores are completed. Since they are ultimately the same (or very similar) options it is not clear why – if those factors are known – they were not used specifically to assess the reasonableness of the inclusion of Tudeley Village (see para 60 above).

74. Furthermore, the detailed scoring criteria (i.e., the 62 sub-questions) have not been released or made public. There is no justification for not releasing that information, without sight of which it is impossible for this examination to assess how robust each of the subjective scoring assessments are. Save Capel have applied those 62 sub-questions to try to analyse how exactly they could possibly have supported the overall scoring results in the SA, but its analysis suggests that certain scores (and the conclusions which underpin them) are manifestly unreasonable. For example:

    a. In relation to Services, the "decision-aiding questions" (Appendix B) state that high weighting should be attached to whether the plan improves access to services and facilities in rural settlements. Accessibility by various modes of transport is relevant and it states that "*where services can only be reached by private car*" a strongly negative score should be applied. It is extremely hard to understand why Tudeley received such a strong positive score under this section, given the difficulties in access and the inevitable increase in private car use between Tudeley and Tonbridge.

b. In relation to climate change, again Appendix D suggests a negative score for development in excess of 500 houses. Why that score changed between Reg 18 and Reg 19 in relation to Tudeley is not properly explained (see page 83 and the comparison between Option 3 and Option 13) . Indeed, against the climate change SA objective it is wholly unclear how the score for Growth Strategy 13 could have been anything other than strongly negative.

PART 3: ISSUE 4: OTHER ASPECTS OF LEGAL COMPLIANCE

Consultation (Q1 – Q4)

75. Save Capel has set out in its Representation (see paras 2.6 – 2.10) concerns regarding how the Reg 19 Consultation was carried out in a period of lockdown restrictions (which ended in late June 2021). Rather waiting three months and applying the same arrangements that applied to the Regulation 18 consultation, the Council proceeded to commence with "virtual" consultation arrangements whilst the UK was still locked down (in early March 2021). It was entirely disproportionate to do so, given that three months of delay would not have adversely affected the validity of the evidence base, and in the context of a plan that had already taken four years to get to this stage. Save Capel has real concerns therefore that a significant proportion of the community would simply have been unaware of the consultation or unable to engage with it due to it being essentially internet-based.

76. Critically, the Statement of Community Involvement (dated October 2020) (**SC 3.55**) has not been followed, nor updated or reviewed prior to the Reg 19 consultation (it dates to October 2020 –five months before the consultation at Reg 19 commenced during which time a national lockdown was imposed. It does not set out how the consultation would actually take place during lockdown restrictions (it merely refers to the Council "endeavouring" to take steps to provide virtual arrangements for the consultation). The SCI is clearly a recycled document from the Reg 18 stage without proper consideration of what steps would be necessary during lockdown restrictions to maintain an effective consultation.

77. Therefore, as it stands the SCI was not followed, as the SCI sets out a series of measures, including public exhibitions, that the Council has said it would provide but which were not provided (see pages 14 – 17).

78. The SCI acknowledges the exceptional circumstances posed by the pandemic (see for example para. **3. 22**) but there has been no real attempt to analyse what alternative solutions would be effective. Merely stating what the Council would "endeavour to do" is insufficient. Entirely lacking was any clear strategy regarding how to ensure that any deviation from the proposed arrangements would be as effective as those initially proposed.

79. The Consultation Statement for Reg 19 (**CD3.134a**) acknowledges that the consultation procedures in the SCI were not followed (see para. 2.10). However, there is no analysis or explanation as to why the Council did not (a) update its SCI in the period or (b) consider postponing the consultation entirely after lockdown restrictions were lifted. Nor is there any analysis of the impact of not consulting in the "standard" way as used at Reg 18. Therefore, there is no evidence as to the relative level of engagement between Reg 18 and Reg 19 and the degree to which community engagement was affected by choosing to press ahead with the consultation during a period of lockdown. All of this calls into question the adequacy of the consultation and whether it is compliant with the consultation requirements of the Local Plan Regs.

Inadequate responses to consultation

80. Part 2 of the Consultation Statement (**CD3.134b**) does not contain any adequate answers to the points raised by Save Capel, Capel Parish Council, Friends of Tudeley and others in relation to the flaws in how the Council alleges it has met its DtC, the SA and the selection of the growth strategy (see page 21, and 45). Those responses either simply refer to the SA, recite the mantra that "*the SCI acknowledges that it may be difficult to find solutions for all*", or merely contend that "*opportunities to meet development needs without Green Belt releases have been properly investigated*" (without any reference to where that is evidenced). Whether they were properly investigated is addressed in Issue 1 and 3, but the failure to provide an adequate response to Save Capel's Representations concerning the selection of the Growth Strategy and the flaws in the SA constitutes a self-standing breach of its legal duty to consult under the Local Plan Regs and the PCPA 2004.

Equalities Impact Assessment/breach of s.149 EA 2010 (Q5)

81. Similar deficiencies arise in relation to the Equalities Impact Assessment (EqIA) (**CD3.135)** dated October 2021. In order to satisfy the "due regard" Public Sector Equality duty under section 149 of the Equalities Act 2010 ("the PSED"), the Authority had to ensure it had sufficient information on the impact of the plan on those with protected characteristics. Stage

3 of the EqIA (page 9) fails to address the impact of the lockdown during the Reg 19 consultation on the ability of the Council to gather sufficient information. That is a real concern. To satisfy the PSED the Council needs to show that sufficient information is gathered as part of the exercise of engagement with vulnerable groups: see for example Hurley Moore v Secretary of State for Business, Innovation and Skills [2012] EWHC 201 (Admin) at [89]. It is hard to see how that duty of inquiry has been satisfied absent any analysis of the impact of the lockdown on those groups in terms of their ability to respond to the consultation.

Climate Change/ Air Quality / Biodiversity (Q6)

82. Section 19 (1A) PCPA requires local planning authorities to include in their Local Plans "*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*".

83. Save Capel's representation at para.3.44 - 3.50 sets out its specific concerns with Policy STR7 and how it cannot be said that this policy does properly contribute to these objectives. In particular, its topic paper at Appendix 10 explained how T Wells' target for carbon neutrality by 2030 is hopelessly unrealistic given the level of construction planned to take place at Capel with the construction of 4900 homes (around 392,000 metric tonnes of carbon).[5] In addition to the failure to comply with the substance of section 19(1A) PCPA 2004, all of this calls into question whether the Council has properly had regard to the provisions of the Climate Change Act 2008 and the legally binding targets to reduce greenhouse gas emissions by 2050.

Air Quality

84. Furthermore, given the level of uncertainty and lack of agreement with both the Highways Authority and TMBC regarding highways impacts and air pollution issues caused by the increase in traffic flows into Tonbridge, for the purposes of the examination of this particular issue under Matter, there is clearly insufficient evidence that the Council (and indeed TMBC) will be able to comply with its duties in respect of air quality set out in the Air Quality Directive.

[5] See the article by Professor Berners-Lee in The Guardian: : https://www.theguardian.com/environment/green-living-blog/2010/oct/14/carbon-footprint-house. The typical carbon footprint produced by building a new, two-bedroom house is 80 tonnes (most houses in green field sites will be bigger) - even by building to a carbon neutral standard

Biodiversity.

85. The impacts on biodiversity caused by the proposed growth at the Capel sites are set out in Appendix 12 to Save Capel's Regulation 19 statement.

86. Regardless of whether or not the SA adequately assessed biodiversity issues, that was in the context of a different statutory regime prior to the new duty to conserve and enhance set out in the Environment Act 2021 (EA 2021). Save Capel has raised with the Inspector the issue of how the plan could be said to meet the new enhanced duties in EA 2021 with respect to biodiversity (when such measures come into force). There is no evidence as to how these new duties will be complied with if they come into force prior to adoption.

87. There is a separate issue as to how the mandatory 10% biodiversity net gain requirements will affect the assumptions regarding viability that have informed the masterplanning work carried out by David Lock Associates – which in turn have a knock on impact on the deliverability of infrastructure and therefore the principle of the Growth Strategy.

88. Save Capel reserves the right to address both of these issues further once the position of the Council is explained in relation to how (1) it has "future proofed" the plan in relation to the new provisions of EA 2021, and (2) where (and how) its evidence base has been updated to reflect the impact of the new provisions on its assumptions regarding the viability of the chosen growth strategy.

SAVE CAPEL

13 FEBRUARY 2022

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