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Date

Dear Sir/ Madam

## **SWALE LOCAL PLAN**

1. Thank you for consulting with the Home Builders Federation (HBF) on the Swale Local Plan.
2. HBF is the principal representative body of the house-building industry in England and Wales. Our representations reflect the views of our membership, which include multi-national PLC's, regional developers and small, local builders. In any one year, our members account for over 80% of all new "for sale" market housing built in England and Wales as well as a large proportion of newly built affordable housing.

### **Question 2: Do you have any comments on section 2 of the draft local plan which will inform the plan's progression**

#### NPPF consultation

3. The Council will need to give consideration to the new NPPF when it is published later this year as based on the timetable on page 20 it may well have been published prior to the regulation 19 consultation and submission of the Swale Local Plan for examination. HBF recognise this will have no weight until it is formally adopted but once adopted the Council will need to give weight to this iteration of the Framework.
4. On the basis of paragraph 4 and 8 in Annex A of the draft NPPF, this local plan, which the Council propose to submit under the current plan making process, will be examined under the NPPF24. However, it is also notable that in relation to decision making Annex A also states that from the date the new NPPF is published local plan policies that are "*...any way inconsistent with national decision making policies in this Framework should be given very limited weight, except where they have been examined and adopted against this Framework*". Therefore, should this new iteration of the NPPF be adopted unchanged the Council will need to have regard to national policies for decision making given that any inconsistency would effectively render many of the development management policies proposed in this consultation that are not consistent with the new Framework redundant as soon as the local plan is adopted.
5. It is clear from the draft NPPF and the decision to establish national decision making policies that the Government are seeking to limit the number of development management policies in local plans that look to gold plate policies and go beyond national standards which place significant burdens on applicants as well as their own officers. As such, when the final version of the NPPF is published any policies which are inconsistent with the

new framework should be deleted in order to avoid unnecessary and length discussions on an application by application basis as to the weight that should be attached to the policies in the adopted local plan.

Plan period

6. In paragraph 2.1.7 of the local plan the Council state that the plan period will be 2027 to 2042. HBF do not consider this to be a sound approach as it will mean the plan period not starting in the year in which the housing needs assessment is undertaken. Local plans are meant to look forward at what needs to be delivered with past delivery being taken into account through the standard method. This is clear from paragraph 2a-006 notes that the most recent year is used with regard to housing stock and requires the affordability adjustment is the five year average in the year the assessment is undertaken. This adjustment is to reflect the price signals in the market and ensure that housing needs are responding to these signals, which suggests that the starting point for any plan should be the year to which the assessment is undertaken not the year in which the Council expects to adopt the local plan. As such it is neither logical nor consistent with national policy for the plan period to start in 2027. It should start in 2026, the year in which the assessment is calculated.
7. The plan period is also inconsistent with paragraph 22 of the NPPF which requires plan to look ahead for at least 15 years from the point of adoption. If the plan is adopted at the end of 2027 this will mean that the plan has less than 15 years to run from it adoption. There will also be some uncertainty as to whether a plan submitted in December 2026 will be adopted 12 months later given the number of plans that are expected to be submitted later this year. As such HBF would suggest that an extra year is added to the plan period to ensure that it is consistent with paragraph 22 of the NPPF.

**Question 4: Is the vision positive, clear, realistic and ambitious and does it identify the right priorities for Swale?**

8. The opening sentence stating that development will come forward to meet “... *imposed Government targets*”. This is not a positive statement and fails to recognise that there is a significant needs for new homes both in Swale and across the country. The Council should be setting out a positive vision for development recognising that more residential development is needed meet the needs of families and young people and provide the affordable required to address the Council’s self-declared affordable housing emergency. The vision must be amended to provide positive vision recognising that development at the scale being proposed by the Government brings significant benefits to Swale’s residents.

**Question 8: Do you support or object to Policy G1? What would you add, remove or amend to support it further or to remove your objection?**

9. It is not clear why this policy is necessary as it just states development must accord with policies in the local plan and then broadly reiterates the requirements of specific policies in the local plan. HBF would recommend it is deleted as it is unnecessary. However, if it is maintained certain elements would need to be deleted as they are unsound.

10. With regard to part 3, the Council should be aware supplementary planning documents and guidance and not planning policy. The Council can state that all development should have regard to supplementary guidance, but it cannot seek to give them the status of a local plan policy. This distinction must be recognised in G1.
11. The Council should delete part 4 which requires a statement demonstrating the degree to which a development meet the TCPAs health homes principles. Development must provide evidence as to how it meets national and local planning policy which have been assessed as being sound. When taken together these policies should ensure that development delivers against both national and local objectives without the need for further statements relating to principles put forward by the TCPA.

**Question 10: Do you support or object to Policy GD1? What would you add, remove or amend to support it further or to remove your objection?**

12. There is a potential for conflict in the approach being set out by the Council that should be addressed in the local plan. For example, there is a strong focus on high quality design that respects the local character of the area (part 2 and 8) whilst also required development to minimise energy consumption. The Council must recognise that it is not always possible to resolve both of these matters. Minimising energy consumption and the provision of renewable technologies can require the use of materials that are not in keeping with the character of the area. The use of solar panels on roofs or materials that are lower in embodied carbon may not be in keeping with the character of the area but will be necessary to reduce carbon emissions. The Council must be clear that it will take a flexible approach to decision making with regard to local design principles, or other policies, where there is a conflict.
13. HBF would also recommend that the reference to robust material s is removed from part 8 as there is no agreed definition as to what robust would constitute with regard to building materials and this could prevent developers from using new materials and design processes that speed up delivery or reduce embodied carbon.
14. Finally, it is not clear why part 10 of the policy includes refence to the approval of new postal addresses and why this needs to be included as a policy in the local plan.

**Question 16: Do you support or object to Policy H1? What would you add, remove or amend to support it further or to remove your objection?**

15. With regard to need for affordable housing the Strategic Housing Market Assessment is now 6 years old and will need to be updated to ensure that any requirements in H1 are justified by evidence of need.
16. The Council are proposing a variable affordable housing rate of 10% for brownfield sites and 30% for green field sites. While HBF welcome the decision to include a variable rate given the clear viability challenges facing brownfield sites in Swale we are concerned that the 30% requirement may well be challenging on some green-field sites. It is notable that the viability testing of the specific allocations shows that these are either unviable

or marginal. The Council will need to work with the promoters of any strategic site to ensure that the costs being placed on these developments does not make the undeliverable.

17. HBF support the inclusion of a cascade mechanism in this policy. At present there are difficulties in finding RSLs to acquire section 106 plots and in such circumstances, there must be a clear mechanism for addressing this situation.
18. Part 3 sets out that in exceptional circumstances the council will consider varying the affordable housing requirement on the basis of viability. Firstly, HBF would consider the use of the term exceptional to be consistent with national policy. Paragraph 59 of the NPPF states that there will be particular circumstances that justify the need for a viability assessment but makes no comment that these will be exceptional. HBF would therefore recommend that exceptional is deleted from part 3. Secondly part 3 states the any variation will need to be in accordance with an SPD that is still to be published. Again, an applicant will need to have regard to this guidance, but the local plan cannot require accordance with guidance. Such an approach would seek to give the weight of a local plan policy to an unwritten document which is not consistent with legislation on plan making.

#### *Viability testing*

19. As set out later on in our comments HBF are also concerned that the costs relating to policy C2 on net zero carbon homes and B1 on biodiversity net gains have also been underestimated and the cost of these policies will be higher potentially impacting on viability of development in Swale. These higher costs will need to be tested in the Whole Plan Viability Assessment (WPVA).
20. In addition to specific policy costs HBF are also concerned as to how the approach in WPVA in relation to older people's housing. Paragraph 9.13 sets out the typology tested with regard to unit sizes but the additional costs facing older people's housing has not been factored into the assessment. Turning to the size of the units in the typologies HBF would suggest that in relation to sheltered/retirement housing the unit sizes are too small. These have evolved in recent years with the National Space Standards and M4(2) requirements and allow for additional storage and circulation space to facilitate downsizing. These should be amended to 55m<sup>2</sup> for a one bedroomed unit and 75m<sup>2</sup> for a two bedroomed unit. For extra care schemes the one bedroomed unit should be 60m<sup>2</sup> and the 2 bedroomed unit 80m<sup>2</sup>. HBF would also recommend that the density of the sites is modelled at 100 dpa. Typically, retirement accommodation consists of 45 dwelling on site area of around 0.45 to 0.5 hectares, and we would recommend the viability assessment test a scheme of 50 units for sheltered housing and a scheme of 40 units should be modelled for extra care, both on a site of 0.5 hectares.
21. The WPVA should also ensure that the higher costs relating to marketing compared to those for standard market housing is taken into account. The viability assessment notes that 6% was suggested but that no rationale was provided as to why. The reason for this is that retirement housing takes longer to sell than other residential development requiring full time sales staff to be on site longer than would be required on a standard residential development and other marketing and advertising costs to be over a longer time period. It is not clear from the assessment as to when sales actually start on retirement housing. There should be at least 18 months between

the build commencing and the first sale as retirement development are not phased with units only sold once the development is complete.

22. The WPVA will need include empty property costs in relation to older people's housing. As outlined above it takes much longer to sell out a retirement scheme and as such the empty property costs are higher. HBF recommends that a standard allowance of £5,000 per unit is assumed as a typical average empty property cost – to cover Council Tax liability on unsold units and service charges. For extra care facilities this increases to £10,000 to reflect higher costs particularly in maintaining care, communal and catering facilities, staff and services and reflecting a slower sales rate than Retirement Living.

**Question 18: Do you support or object to Policy H2? What would you add, remove or amend to support it further or to remove your objection?**

23. HBF are broadly supportive of this policy which seeks to support delivery from SME house builders. Alongside this the Council will also need to ensure it actually allocates small sites to support this sector as required by paragraph 73 of the NPPF. As set out in our responses to questions 52 and 81 on policies C2 and B2 we do not consider it sound to require standards above those set out in building regulations or other legislation. As such parts 5 and 6 should be deleted.

**Question 22: Do you support or object to Policy H4? What would you add, remove or amend to support it further or to remove your objection?**

24. The Council evidence on housing needs from the Self Build register is that since 2016 there has been an expressed need for 162 plots – around 16 per year. However, more evidence must be provided as to how many self-build plots have come forward over the last 10 year and whether windfall is largely meeting needs for plots in Swale. The fact that the demand for plots appears to be waning would suggest that those looking to find a plot either have done so and there is little need for plots to be provided on development sites of 20 or more homes. If the Council are to have such a policy, it must be justified and at present this is not the case.
25. If there is demand for self-build homes, then the Council must first consider alternative options for providing self-build plots it has considered before placing the burden of meeting these needs on house builders. PPG sets in paragraph 57-025 that planning authorities should not only use planning policies to meet needs but also whether they could use their own land to meet those needs, how have they engaged directly with landowners to try and bring forward specific sites for self-build. It is essential that these mechanism are considered prior to setting requirements in local plans for plot delivery on larger sites.
26. The Council also needs to consider the difficulties in providing self-build plots on new housing developments and how there are coordinated with the development of a wider site. At any one time, there are often multiple contractors and large machinery operating on-site and therefore from both a practical and health and safety perspective, it is difficult to envisage the development of single plots by individuals operating alongside this construction activity. It may also be the case that it is unfeasible to provide self-build plots on sites taking into

account topography and access and the degree to which self-build and the rest of the site can be developed separately. HBF would therefore recommend that in part 2 of the policy that where developer can show that provision of plots is either unfeasible or unviable then they will not need to be provided.

27. Finally, as with policies on self-build in other local plans the Council will need set out what happens should the development not be able to sell these plots. HBF recommend that the policy state after a 6-month marketing period any plots not sold revert back to the developer to be build out and sold as market housing.
28. In conclusion, HBF does not consider this policy to be justified or effective at present. Without further evidence the HBF would suggest that the requirement in this policy has not been robustly justified. We would also suggest that the Council consider allocating specific sites for self-builders which are more likely to meet the needs of those households as well as avoiding the potentially harmful impacts of mixing the delivery of self-build units alongside commercial housebuilding.

**Question 52: Do you support or object to Policy C2? What would you add, remove or amend to support it further or to remove your objection?**

29. HBF do not consider this policy to be consistent with national policy, and it should be deleted. As set out above while very little weight can be attached to the current consultation on the NPPF careful attention will need to be given to the outcomes of the consultation and the final document that is adopted. With regard to standards related to carbon emission and energy efficiency standards consideration will need to be given to PM13 which states that other than standards for accessibility, water efficiency and nationally described space standards local plans should not cover matters already addressed in building regulations. In addition, it is also notable that the latest consultation on the NPPF proposes to amend the Planning and Energy Act 2008 in relation to the setting of local energy efficiency standards that go beyond building regulations to make clear that local plans should not set higher energy efficiency standards for residential development. Once adopted the NPPF would also replace the 2023 Written Ministerial Statement (WMS) 'Planning – Local Energy Efficiency Standards Update'. As such If PM13 remains this policy would be inconsistent with national policy from the point at which the new NPPF is adopted with limited weight being given to these policies with decision making. In such a situation HBF would suggest that these policies are deleted.
30. However, at present the Planning and Energy Act 2008 and the WMS allow local planning authorities to set standards that are higher than building regulations, with the WMS noting that "*Compared to varied local standards nationally applied standards provide much-needed clarity and consistency for businesses, large and small, to invest and prepare to build net-zero ready homes*" and that local standards can "*add further costs to building new homes by adding complexity and undermining economies of scale*". After setting out these concerns, the 2023 WMS does go on to state that any standard that goes beyond building regulations should be rejected at examination unless the LPA does not have a well-reasoned and robustly costed rationale that ensures:
  - That development remains viable, and the impact on housing supply and affordability is considered in accordance with the National Planning Policy Framework.

- The additional requirement is expressed as a percentage uplift of a dwelling's Target Emissions Rate (TER) calculated using a specified version of the Standard Assessment Procedure (SAP).
31. HBF does not consider the approach set out in this policy to be consistent with the WMS nor that the implications of such a policy have been properly assessed in the supporting evidence base. Our detailed points are set out below.
  32. The approach proposed by the Councils based on energy use is inconsistent with the approach set out in the WMS and as such is unsound. The intention of the WMS and the Planning and Energy Act was to enable local authorities to go beyond building regulations but not to set wholly new standards. This was noted in by Justice Lieven's decision which referred to statement by the Minister at the time where the minister confirmed that councils "*can go further and faster than building regulations, but within the national framework*" and that the intention was for "*... local authorities, in setting energy efficiency standards, to choose only those standards that have been set out or referred to in regulations made by the Secretary of State, or which are set out or endorsed in national policies or guidance issued by the Secretary of State. That approach was taken with a view to avoiding the fragmentation of building standards, which could lead to different standards applying in different areas of the country ...*".
  33. It should also be noted that the Government have considered as part of consultation on the Future Homes Standard whether it was appropriate to use a delivered energy metric such as the one being proposed in the policy position paper and have concluded that these do not offer any additional benefits to those being taken forward by Government. Therefore, if the Council are to require standards above those set out in building regulations they must be expressed as a percentage of the target emission rate and not as an energy use target in order to avoid fragmentation of the standards with different requirements being set in different areas which it must be recognised was not only an expectation of the WMS but also of the legislation that permits council to adopt higher standards in local plan in the first place. HBF are aware that planning inspectors examining other local plans have considered it to be justified to depart from the national policy, but we do not consider there to be a justification for departing from either the WMS or the Planning and Energy Act (2008) in setting a wholly different standard to that required by Building Regulations which places an unreasonable burden on developers to assess performance against a wholly different performance standard.
  34. With regard to viability of achieving this policy are set out in the WPVA as being 8% above current building regulations. HBF consider these to be too low. The expected cost of meeting this policy can be seen in the Future Homes Hub Ready for Zero report which is based on the actual costs experienced by house builders in delivering homes to higher energy standards rather than theoretical costing exercises. The various specifications and costs considered are summarised in Figure 8 of this report and indicates that in order to deliver standards above the FHS on a three bedroomed end of terrace house (specifications CS3, CS4 and CS5 in the FHH report) would be around 15-19% higher than the 2021 Building Regs, around £17,000 to £22,000 more per unit, and significantly higher than the Council's evidence suggests would be the cost of achieving this policy Given that there is still

significant uncertainty as to the cost of delivering the standards being proposed the Council will need ensure that the costs relating to the policy are increased.

35. However, in addition to considering viability the Council will also need to provide evidence as to the potential impact on the affordability of new homes and the ability of the development industry to meet these standard when the plan is adopted. To start, HBF would not disagree that the proposed standards are technically feasible. However, HBF are concerned as to the impact these requirements will have on the rates at which sites can deliver new homes on all types of sites. Given that the standards proposed are higher than those proposed by Government in the Future Homes Standard and will require higher levels of fabric efficiency, which in turn will require new skills and materials that may not be readily available, HBF are concerned this could slow delivery in the short to medium term as supply chains are developed.
36. It has been recognised by the FHH that to deliver higher standards will require phased transitional arrangements to enable a steady build-up of skills and ensure quality. The FHH also notes in 'Ready for Zero' that even if a short transition period between current standards and those similar to the Councils are proposing that this would "... create a high risk of quality problems, inflated costs and, potentially, stalled build programmes." However, HBF could find no evidence that the Council has considered whether its proposed standard will impact on the rate at which new homes can be built. The Council will need to speak directly to a range of housebuilders operating in Reading to understand the impact of its policy on the rate at which homes will be delivered on its allocated sites. Without any consideration of delivery then the Council's decision to go beyond what is required by building regulations is clearly unjustified
37. While HBF understands the desire for LPAs to go further it must be recognised that current policy outlines that even where development can viably implement higher standards this must be within a consistent technical framework and approach to assessing building performance against those technical standards. Indeed, this has long been the case in planning policy with paragraph 159b of the NPPF stating that "*Any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards*".
38. If the Councils have the evidence to show that the policy is deliverable, they will need to ensure that all other policies in the local plan are consistent with delivering the levels of embodied carbon being proposed. The most energy efficient design will inevitably lead to less variety in the built form in order to reduce the surface area of the building. This will need to be reflected in design policies and any design codes that are produced to ensure that development is not refused for seeking to meet energy efficiency standards but, for example, not being designed in the character of the local area.
39. With regard to embodied carbon the policy requires an assessment be undertaken as to the total embodied carbon emitted as part of the A1 to A5 stages set out in the RICS assessment methodology and for the developer to demonstrate what actions will be undertaken to reduce these. Firstly, it must be noted that there is nothing in NPPF to support policies that require developers to undertake whole life carbon assessments. These are onerous assessments and there can be significant inconsistencies in the outcome of any assessment depending on the

materials used. While the RICS methodology is probably the most appropriate for assessing carbon inputs it must be remembered that not all products will have Environmental Product Declaration (EPD) making it difficult for consistent assessments to be undertaken across the developments. To avoid decision makers seeking to compare outcomes between developments as to reducing levels of embodied carbon HBF would suggest that the requirement for a whole life carbon assessment be deleted.

**Question 56: Do you support or object to Policy C4? What would you add, remove or amend to support it further or to remove your objection?**

40. As mentioned in our comments on policy C2 this policy is wholly inconsistent with policy PM13 of the draft NPPF. If this policy remains unchanged when the new NPPF is adopted, then it will need to be deleted.
41. However, on the basis of current policy HBF also have a number of concerns with this policy. Firstly, it is not clear how decision makers can adequately assess how a building can be designed to be adapted to future unknown scenarios and support disassembly and material reuse at the end of its life – which could be somewhere between 60 and 200 years depending on the building. Given the uncertainty as to how this policy will be delivered and eventually monitored, we do not consider it to be effective.
42. With regard to parts 3 and 4 which relate to measuring embodied carbon and the level of embodied carbon that will be permitted HBF are concerned that there remains significant uncertainty as to the outputs from such testing for it to be reliably used as a decision-making tool in a local plan. While there are an increasing number of products with EPC ratings there remain significant gaps in test with those undertaking such assessments having to use generic figures for some products that may or may not reflect the level of embodied carbon. This was a concern raised by AECOM in their report for MHCLG titled “*The practical, technical and economic impacts of measuring and reducing embodied carbon in new buildings*”<sup>1</sup>. This report notes the lack of consistency between assessment methodologies and the inability to compare data and develop consistent standards. The report also noted that there are large gaps in the availability of both product specific EPDs and generic data with one third of materials and products sampled in the UK lacking UK based EPDs.
43. Such a policy also fails to take into account of the fact that at the point of planning it is not always known where products will be sourced. Sometimes it may need to be necessary to change suppliers to avoid delays in construction and this can have significant on embodied carbon if such products have to be purchased from a different supplier. Therefore, on the basis that is not possible to accurately and consistently measure the level of embodied carbon in a building at present a fixed target should not be applied.
44. Meeting a fixed target can also be made impossible by other policies in the local plan or indeed building regulations. For example, the requirement for new homes to have solar panels and heat pumps in the Future Homes

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<sup>1</sup> <https://www.gov.uk/government/publications/consideration-of-embodied-carbon-in-new-buildings/the-practical-technical-and-economic-impacts-of-measuring-and-reducing-embodied-carbon-in-new-buildings-executive-summary>

Standard will lead to much higher embodied carbon due to the materials used in the construction of these and where the majority of this equipment is produced. For example, the embodied carbon a solar panel will be significantly higher than a tile from a UK manufacturer. There may also be issue with regard to low embodied carbon materials and policies related to design. A policy may require a specific type of brick which is a higher embodied carbon than a lower carbon alternative making it impossible to meet a specific standard.

45. Finally, there is no evidence provided as to how much this will cost and no assessment as to its impact in the WPVA. The Council will need to consider the per sqm cost differential of delivering a home to this level of embodied carbon. Without a clear a comprehensive examination of the impact on viability of this policy it cannot be considered to be justified.
46. Without consistent data on embodied carbon or a fixed methodology for assessment of embodied carbon it is too early to start setting fixed requirements in planning policy for embodied carbon means such policies are not effective. However, HBF recognises that it is important to reduce embodied carbon, and we would therefore suggest that a policy that supports development to show how they have looked to reduce embodied carbon in their buildings would be more appropriate and consistent with current policy. This will ensure that embodied carbon is reduced without compromising the ability of all housebuilders to deliver new homes.

**Question 69 Do you support or object to Policy C10? What would you add, remove or amend to support it further or to remove your objection?**

47. In considering this policy the starting must be the legal responsibilities of water companies to connect new development to the water and waste water networks. it is the legal responsibility of water companies to ensure a supply of water for new development and that it should not be for house builders and other developers to address the failings of water companies to upgrade infrastructure to increase supply and prevent the huge loss of water from leaks. It is therefore not sound for the council to ask developers to show that there is capacity. HBF does not consider this to be necessary as the capacity of the water supply infrastructure to be a land use planning matter for consideration on an application-by-application basis as Water companies are subject to statutory duties under S37 and 94 of the Water Industry Act 1991 (WIA 1991). Section 37 of the Act, set out below, imposes a statutory duty on all water companies to provide and maintain adequate infrastructure and potable water supplies.

*“S37 General duty to maintain water supply system etc. (1) It shall be the duty of every water undertaker to develop and maintain an efficient and economical system of water supply within its area and to ensure that all such arrangements have been made— (a) for providing supplies of water to premises in that area and for making such supplies available to persons who demand them; and (b) for maintaining, improving, and extending the water undertaker’s water mains and other pipes, as are necessary for securing that the undertaker is and continues to be able to meet its obligations under this Part. (2) The duty of a water undertaker under this section shall be enforceable under*

*section 18 above— (a) by the Secretary of State; or (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.”*

48. Consequently, it is inappropriate to include a policy in the local plan requiring a housebuilder, or other applicants for development, to assess the capacity or otherwise of the water company to provide water supply connections as they are an attempt to get applicants to do things for which they are not legally responsible. Rather it is the responsibility of water companies, working with local authorities and the Environment Agency, to plan for the future demand for water services relating to the development requirements proposed in local plans, not applicants. If the Council cannot show that there is sufficient infrastructure to meet the demands of the level of development set out in the local plan, then it cannot be considered to be deliverable. If this work shows that there is a need for increased capacity to meet needs, then it should be clearly set out that this is the case, and which proposed developments are affected and what the proposed solution is. It cannot be left solely to consideration at development management as is suggested by part 5 of this policy. As such HBF would consider part 5 of this policy to be unsound as it requires the developer to demonstrate capacity of infrastructure – a task that should have been undertaken as part of the plan making process.
49. Turning to water efficiency standards HBF does not consider part 9 and the requirement for a water standard of 100 lppd. It is recognised that in where there are exceptional pressures on water supply are inhibiting the delivery of new development in an area, the Government is supportive of introducing standards lower than those set out in Building Regulations – however this is not the case in Swale. The Council note that the area is in serious water stress but that is the test allowed for in PPG for applying the lower standard of 110 lppd. While [Natural England and Southern Water have advocated for stricter standards there is no justification for departing from the minimum standard that is currently allowed for in Building Regulations. HBF recommend that the 100 lppd in part 9 be amended to 110 lppd in order to be consistent with national policy.

**Question 75: Do you support or object to Policy B1? What would you add, remove or amend to support it further or to remove your objection?**

50. This policy requires all major development to deliver a 20% net gain in biodiversity, compared to the 10% required by the Environment Act 2021. Firstly, it should be noted that policy N1 in the draft NPPF states *“Development plans should only set local standards for biodiversity net gain which are in excess of the statutory net gain requirement where this is for specific site allocations and is fully justified and deliverable”*. This will mean that on adoption this policy would be inconsistent with national policy and be given very limited weight in decision making.
51. In considering the soundness of this policy against current policy it is necessary to consider paragraph 74-006-20240214 of PPG which states that:

*“... plan-makers should not seek a higher percentage than the statutory objective of 10% biodiversity net gain, either on an area-wide basis or for specific allocations for development unless justified. To justify such policies, they will need to be evidenced including as to local need for a higher percentage,*

*local opportunities for a higher percentage and any impacts on viability for development. Consideration will also need to be given to how the policy will be implemented”.*

52. It is important to note that the starting point is that local plan should not seek a higher requirement. This is different to a permissive policy allowing local plans to seek a higher level of BNG where justified, and the HBF would argue that it should be considered a high bar with regard to the evidence required to justify such a policy. There must be a very clear and robust justification that the area is significantly worse than the country as whole and that this decline is directly related to the new development rather than, for example, the result of changes in agricultural practices or industrial pollution. It is not sufficiently robust to highlight declines in species that whilst an important issue is not necessarily as a result of new homes being built.
53. The Council state that the 20% is being proposed by Kent Nature Partnership because of Kent’s wonderful and rich biodiversity and the pressure placed on nature from the levels of growth being proposed. The HBF does not disagree that the UK has seen a loss in biodiversity not just in recent past but previous centuries and as such recognise the importance of ensuring that the outcome of new development in future is that there is a net gain in biodiversity. However, it is important to recognise that in recent years new residential development has not been the driver of declining biodiversity either locally or nationally and in particular over the last 50 years. The main drivers of declining biodiversity in England, as outlined in the State of Nature Report 2023 (State of Nature Partnership, 2023), as being “*Intensive management of agricultural land, largely driven by policies and incentives since World War II, has been identified as the most significant factor driving species’ population change in the UK*”. Therefore, whilst it is important for development to ensure that it improves the natural environment, the main driver of biodiversity is agricultural practices and not new residential development. HBF recognises the need to protect nature but that is achieved through other policies and not through BNG which has been legislated for to ensure development makes an appropriate construction to ensure there is a net gain in biodiversity from new development and not to address harm created by other industries.
54. The Council must also be able to show that the 20% net gain is viable and will not compromise the deliverability of sites or the local plan as a whole. The WPVA bases the cost assumptions for BNG on research commissioned by Kent County Council which suggests that the cost of delivering 20% will not be significantly more than the statutory 10% minimum. However, in considering the cost of delivering BNG must be recognised this will depend significantly on the type and extent of the different habitats found on site. Some sites will find it relatively simple to deliver 10% onsite, others will find it more difficult and require significantly higher levels of site delivery which increases costs significantly. Therefore, it is concerning that in referring to the research by Kent County Council the VA does not outline that the cost of off-site credits used in that study are based on the 2019 DEFRA Impact Assessment which assumed costs of these at £11,000. However, our members are experiencing costs of over £30,000 per unit with the cost varying based on the habitat type and the where the offsetting units are being delivered. Evidence on costs of off-site credits produced by Biodiversity Units UK<sup>2</sup> shows that in the

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<sup>2</sup> <https://www.biodiversityunits.com/signup>

south of England costs range from £25,000 for neutral grassland of medium distinctiveness up to £190,000 for the very high distinctiveness water courses.

1. In particular Careful consideration will need to be given as to the type of BNG that may be required on allocated sites, the level of on-site delivery that is possible and ensure that a viability assessments reflect the potential cost of delivering this habitat offsite. Given that any BNG required in addition to the statutory minimum is likely to require more offsetting, then the WPVA could be underestimating the cost of this policy.
2. Turing to part 2 of the policy which sets out that where offsite net gains should be delivered if they cannot be delivered on site. This approach is not consistent with national policy which places no specific requirements on development to deliver offsite gains adjacent to or in close proximity to the development site or in an area identified by the council. The incentive to deliver as close as possible to the site is already within the metric which includes a spatial multiplier which increases the amount of credits required the further, they are delivered from the site. Where credits are delivered is therefore not the responsibility of the decision maker when determining a planning application. What is the responsibility of the council is ensuring that there are sufficient locations where offsite credits are available within Swale that deliver the best outcomes in term so net gains. This will ensure that when a development must purchase credits locally, they are able to do so locally minimising cost and ensuring the benefits are seen locally.

**Question 81: Do you support or object to Policy B4? What would you add, remove or amend to support it further or to remove your objection?**

3. HBF does not support the use of countryside gaps in local plans. The Council suggest that these are necessary to maintain the character of settlements and prevent encroachment of erosion of rural areas. In addition, it is suggested that this is required to in order to meet NPPF requirements around contributing and enhancing the local environment. However, outside of Green Belt maintaining the separation settlements have no basis in national policy outside of Green Belt. As such it is not consistent with national policy to include a policy specific looking to maintain the separation of settlements and determine the suitable of development on such criteria. It is also the case that valued landscapes will be considered in policy B2 and as such there are already policies that seek to ensure that development does not impact negatively on these areas. The policy should therefore be deleted.

### **Future Engagement**

4. I trust that the Council will find these comments useful as it continues to progress its Local Plan. I would be happy to discuss these issues in greater detail or assist in facilitating discussions with the wider housebuilding industry.
5. The HBF would like to be kept informed of all forthcoming consultations upon the Local Plan and associated documents. Please use the contact details provided below for future correspondence.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mark Behrendt', with a stylized flourish at the end.

**Mark Behrendt**

**Regional Planning Manager – SE and E**

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