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## Growth and Communities

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### BY EMAIL ONLY

Dear Louise,

### Re: Capel Parish Neighbourhood Plan (2022-2038) - Regulation 14 Consultation

Thank you for consulting Kent County Council (hereafter referred to as the County Council) on the Capel Parish Neighbourhood Plan, in accordance with the Neighbourhood Planning (General) Regulations 2012.

The County Council has reviewed the Neighbourhood Plan and for ease of reference, has provided comments structured under the chapter headings and policies used within the document.

### Chapter 2 About Capel

*Paragraphs 2.4-2.11*

Heritage Conservation: The County Council is supportive of the draft Neighbourhood Plan and, in particular, welcomes the thoughtful approach it has taken to Capel's heritage. The County Council has made some detailed comments but these should be considered in light of the general support of the heritage conservation related material within this Neighbourhood Plan.

The brief review of Capel's heritage begins in the post medieval period with mention of Capel's oast houses. Oast houses only date from the 16<sup>th</sup> century and, as the text notes, Capel's history is far older than this. The County Council would suggest that the short paragraph below is included which recognises the antiquity of Capel's heritage:

*Capel sits in an ancient landscape and includes heritage assets dating back to prehistory, in particular Castle Hill hillfort, a scheduled monument. In the south of the parish, in the area of*

*the High Weald AONB, the landscape shows strong continuity from the past and has been described as one of the best surviving medieval landscapes in northern Europe.*

The County Council also considers that this section could benefit from some re-organisation. It starts with post medieval oast houses and then discusses medieval Domesday and related ownership matters. It might be clearer to progress chronologically through time.

#### *Paragraph 2.11*

Sustainable Urban Drainage Systems (SuDS): The County Council, as Lead Local Flood Authority, welcomes the recognition of flood risk as an issue for the parish. The County Council also supports the Vision for Capel and the Neighbourhood Plan's objectives to accommodate flood risk and the impacts climate change will have on it.

However, the County Council has concerns with the wording of paragraph 2.11 which states "*the railway embankment has undoubtedly contributed to flooding in Five Oak Green in recent years*", with further similar references in paragraphs 6.18 and 6.24. Recent flooding has been associated with a number of causes, including the culvert between Five Oak Green Road and Finches Farmhouse. The Alders Stream emerges from the culvert near Finches Farmhouse and is open for approximately 50m before passing under the railway line. The County Council is not aware that Finches Farmhouse has flooded in all the events listed, which it would have done if the railway and its embankment were the cause of flood risk. The railway embankment may impede the flow of flood water to the north, but this is only in extreme floods. Smaller floods tend to focus around the highway as the local low points and not the properties that back on to the railway embankment - this is certainly the case for the flood in 2020. The County Council would recommend that this sentence is amended and reference to the railway embankment is removed.

#### *Paragraph 2.19*

Public Rights of Way (PRoW): As a general statement, the County Council is keen to ensure its interests are represented with respect to its statutory duty to protect and improve PRoW in the county. It should be noted that PRoW is the generic term for Public Footpaths, Public Bridleways, Restricted Byways, and Byways Open to All Traffic. The County Council is committed to working in partnership with local and neighbouring authorities, councils and others to achieve the aims contained within the County Council [Rights of Way Improvement Plan](#) (ROWIP) and the County Council '[Framing Kent's Future](#)' strategy for 2022-2026. The County Council intends for people to enjoy, amongst others, a high quality of life with opportunities for an active and healthy lifestyle, improved environments for people and wildlife, and the availability of sustainable transport choices.

The County Council is encouraged that local residents value opportunities to access their local landscape, such as with the series of published local walks as referred to on page 14. It is, however, regrettable that there are various difficulties and hazards that face walkers and cyclists, and presumably also equestrians (as referred to in Appendix E). It is hoped this Neighbourhood Plan will be able to effectively assist in improving access for the benefit and enjoyment of future residents through consideration of the points raised within this response in respect of PRoW.

Paragraph 2.19 states “*There is a well-maintained network of footpaths and bridleways around the parish...*” and the acknowledgement of the County Council’s work to protect and enhance the PRow network is welcomed. However, the statement is incorrect in that there are only 3 bridleways (and one Public Byway) within the parish and these are disparate and do not provide a useable network for off-road cycling or equestrian use. The County Council would also refer to the need to correct the reference to a footway over Postern Lane railway bridge on page 158; the path is a Public Footpath, not a footway.

### **Chapter 3 A Vision for Capel**

PRow: The Neighbourhood Plan's underlying principles (page 17), Vision (page 18), and Objectives (pages 18-19), allow opportunities for maintaining and enhancing the local PRow network, which will make a significant contribution in delivering the Neighbourhood Plan's overall aims and much more. For example, the PRow network can enhance community connectivity and cohesion; improve local environments by reducing local traffic congestion and improving air quality; support personal health and well-being of individuals and groups; and support local economies, whether in providing passing trade such as with a cafe, or larger supply businesses as with cycle users. PRow should, therefore, be given positive regard in this and all development plans. Objective 5 (page 19) is welcomed but it is unclear as to how such a strategy will be established and this should be addressed.

In reference to the value of the PRow network, the Neighbourhood Plan makes only a few specific references to PRow albeit it mentions the ambition for improving walking and cycling. Increasing recognition of the PRow network and including the term within the Plan's Glossary, would be advantageous for raising its profile and highlighting the benefits an improved PRow network will deliver for residents.

#### *The Vision for the Neighbourhood Plan*

Heritage Conservation: The County Council welcomes the inclusion of the reference to “*protected heritage*” in paragraph 3.3.

### **Chapter 6 Character, Heritage and Design**

#### *Measures to Mitigate Flooding – major developments*

SuDS: The County Council, as Lead Local Flood Authority, would query the need for the requirement in Section 6.34, as this is already reflected in planning policy and guidance. Should the Parish Council wish to include this section within the Neighbourhood Plan, then it is recommended that it may also wish to consider development on brownfield land, where the accepted standard is for development proposals to ideally achieve the equivalent greenfield run off rate for the site prior to any development. If this is unachievable, then a 50% reduction to the existing discharge rate should be demonstrated.

### *Character of the Built Environment*

Heritage Conservation: In reference to paragraph 6.5, the County Council welcomes reference to the Historic Landscape Characterisation. This provides essential time-depth to the consideration of landscape matters and should be considered alongside the Landscape Character Assessment.

### *The individual settlements*

Heritage Conservation: In consideration of paragraph 6.11, in addition to the design principles mentioned, the Neighbourhood Plan could usefully reference the [Kent Farmsteads Guidance](#) which provides a methodology for assessing the historic settlement pattern of farmsteads in Kent, and its corresponding suitability for additional development.

### *Policy C5 Mitigating the Impact of Flooding*

SuDS: The County Council, as Lead Local Flood Authority, requests clarification on who will conduct the analysis requested in paragraph C of Policy C5, to ensure that there is sufficient capacity in the local sewerage system for planning proposals. The Sewerage undertaker has a duty to accept new connections and will make its own assessment of the impacts on capacity. This would, therefore, not be able to be controlled through a neighbourhood plan.

The County Council, although supportive of paragraphs E and F of Policy C5, would query their necessity as there are planning policy requirements reflective of these paragraphs already in place. It is therefore recommended that these paragraphs are removed.

The County Council, as Lead Local Flood Authority, recommends that the Neighbourhood Plan should seek to ensure that development in the parish reduces flood risk offsite. This could be provided in a similar way to flood policies within the Paddock Wood Neighbourhood Plan.

Heritage Conservation: SuDS may have both direct and indirect impacts on the historic environment. Direct impacts could include damage to known heritage assets, for example if a historic drainage ditch is widened and deepened as part of SuDS works. Alternatively, they may directly impact on unknown assets such as when SuDS works damage buried archaeological remains. Indirect impacts are when the ground conditions are changed by SuDS works, thereby impacting on heritage assets. For example, using an area for water storage, or improving an area's drainage can change the moisture level in the local environment. Archaeological remains in particular are highly vulnerable to changing moisture levels which can accelerate the decay of organic remains and alter the chemical constituency of the soils. Historic buildings are often more vulnerable than modern buildings to flood damage to their foundations.

When SuDS are planned it is important that the potential impact on the historic environment is fully considered and any unavoidable damage is mitigated. This is best secured by early consideration of the local historic environment following consultation with the Kent Historic Environment Record (HER) and by taking relevant expert advice. The County Council has recently produced advice for SuDS and the historic environment. It provides information

about the potential impact of SuDS on the historic environment, the range of mitigation measures available and how developers should proceed if their schemes are believed likely to impact on heritage assets. It is requested that this is considered in future drafts of this section.

#### *Policy C6: Conserving Heritage Assets*

Heritage Conservation: To ensure clarity, the text within paragraph 6.37 should be re-worded “140 listed **building entries**”.

In reference to paragraphs 6.40 – 6.42, the County Council welcomes the list of non-designated heritage assets and in particular the inclusion of archaeological sites. The County Council would further welcome the explanation that archaeological sites can be heritage assets. It should also be noted that Bloomeries in the area are iron production sites, usually fuelled by charcoal. The text currently suggests they are sites for the burning of charcoal and it could usefully be amended to ensure clarity.

## **Chapter 7 Environment and Green Space**

#### *Policy C7: Green and blue infrastructure and delivering biodiversity net gain*

Biodiversity: The County Council recommends that the wording of this policy is amended to the following:

*“A. Development proposals should be designed to create, conserve, enhance and manage green spaces and connect chains of green and blue infrastructure, as identified on the Policies Maps, with the aim of delivering a measurable net environmental benefit (where net gain involves a post development increase in biodiversity units of 10%) for local people and wildlife. **All development (unless exempted<sup>1</sup>) will be required to provide a minimum biodiversity net gain of 10%, calculated using the Defra biodiversity metric (or as amended) and evidenced within a biodiversity gain plan submitted as part of the planning application. Smaller sites may instead be able to make use of the Small Sites Metric published by Natural England.***

*~~Subject to their scale, nature and location, proposals for development must be supported by a biodiversity appraisal, which must demonstrate how negative impacts would be minimised and biodiversity net gain achieved.~~*

*B. ~~The appraisal biodiversity gain plan should demonstrate that where significant harm cannot be avoided, proposed development and other changes should adequately mitigate or, as a last resort, compensate for the harm. The appraisal must demonstrate a measurable biodiversity net gain of 10% by utilising the Defra biodiversity metric (or as amended).~~ **Where adherence to the mitigation hierarchy and a minimum 10% biodiversity net***

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<sup>1</sup> Some exemptions for very small sites will apply. These will be in line with outcomes of the biodiversity net gain consultation (unless or until changes come into force through further legislation/guidance). The list of exempted sites are available [here](#).

**gain is not demonstrated, permission for planning or for change of use should be refused”.**

It is also advised that paragraph D mentions local wildlife sites and other designated sites.

*Policy C8: Managing the environmental impact of development*

Biodiversity: The County Council proposes the following amendments to this policy, and considers that it could have a stronger focus on protected and priority species and habitats.

*“Development proposals should maintain and where practicable enhance the natural environment, landscape features and the rural character and setting of the neighbourhood area.*

**Ecological Impact Assessment:**

- i. Unless adequately justified as a result of the small-scale nature and limited potential impacts of the proposal, all proposals for development will be supported by an Ecological Impact Assessment (EclA) carried out in accordance with the latest [Chartered Institute of Ecology and Environmental Management \(CIEEM\) best practice guidelines](#).*
- ii. Proposals for development will be expected to apply the mitigation hierarchy including, firstly, demonstrably attempting to avoid impacts to habitats of ecological value.*
- iii. The assessment will include particular regard to the safeguarding of protected and priority species as well as the retention and enhancement of protected and priority habitats. Where loss cannot be avoided, mitigation measures should be applied and, where mitigation cannot address the impacts, compensation will be required.”*

The County Council also recommends that paragraph iii makes reference to the [Kent Biodiversity Strategy](#) or the Natural Environment and Rural Communities Act 2006 for the safeguarding of protected and priority species.

*Trees and woodland*

Biodiversity: The County Council notes that woodland is not the only priority habitat showing on national datasets as being present in the parish. Wood pasture and parkland, traditional orchards, and lowland meadows are also present according to the [Multi-agency Geographic Information for the Countryside](#) (MAGIC) website. These habitats receive consideration within planning policy and would benefit from specific reference within Policy C8. The County Council therefore proposes the following modifications to this policy:

- i. “There should be no unacceptable loss of, or damage to, existing trees or woodlands during or as a result of development. **Ancient woodland, priority woodland and veteran trees should be retained and protected within proposals.** If ~~veteran~~ or notable trees must be removed, they should be replaced*

*with trees of a similar potential size and native species elsewhere on the site, unless this is clearly not possible.*

- v. ***Any adverse impacts to ancient woodland and veteran trees are only acceptable where there are wholly exceptional reasons<sup>2</sup> and a suitable compensation strategy has been produced.***

It is also noted that veteran trees are currently protected in the National Planning Policy Framework (NPPF), paragraph 180. The County Council therefore recommends that there is stronger wording regarding ancient woodland and veteran trees in this policy:

- vii. ***“Retained All priority habitats woodland and mature trees must have a minimum buffer of complimentary habitat of 10m, and more if required (for instance ancient woodland or veteran trees require a minimum buffer of 15m).”***

Wildlife-friendly features:

- x. ***The provision of wildlife-friendly features such as hedgehog holes in new residential fencing, hedgehog houses, bird and bat boxes, insect hotels and log piles/hibernacula will be supported and bird and bat nesting boxes.”***

The County Council considers that the Neighbourhood Plan would benefit from clearer direction and statements on other priority habitats such as traditional orchards, wood pasture and parkland, and lowland meadows within the parish. These would be best addressed in a separate, appropriately headed section to avoid confusion.

The County Council also recognises that there is an opportunity to specify further details and add strength with regards to the provision of habitat features within the policy. For example, every new residential dwelling must include at least one bird or bat box and timber fencing without hedgehog holes should not be accepted. Additionally, wording could be included to state a preference for woodstone and integrated bird/bat boxes which will be more durable and more appropriate for development projects than wooden boxes. Hedgehog highways are recommended to have signs to indicate to new residential occupants the purpose of any holes in their fencing.

The County Council would draw attention to the mandatory Biodiversity Net Gain requirements coming into effect in November 2023 and April 2024, and the likely greater emphasis on providing all of the information relevant to Biodiversity Net Gain (and this includes management) upfront, prior to determination.

*Policy C9 Dark Skies*

In order to protect wildlife, it is suggested that reference is included within Policy C9 to the Institution of Lighting Professionals '[Bats and Artificial Lighting](#)' guidance. The County Council therefore recommends that the policy is amended to include the following text:

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<sup>2</sup> For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.



- iv. *“the guidance on lighting provided in the Institution of Lighting Professionals (ILP) Guidance Note GN01: The Reduction of Obtrusive Light (and any subsequent revisions) is adhered to. **Where appropriate, the ILP Guidance Note 8 Bats and artificial lighting (or subsequent revisions) should also be adhered to. Proposals should consider carefully, and provide details of, the light source and intensity being used, the luminaire design, height, and angle, as well as lux level contour plans where appropriate.**, adding ~~B~~baffles and cut-off shields **should be included** where required, and details of control mechanisms to dim or switch off lighting schemes when not required. Where appropriate, lights should be controlled by passive infrared detectors so that they only come on when needed.”*

## **Chapter 9 Transport and Movement**

PRoW: The County Council welcomes the suggestions within the Neighbourhood Plan to enhance the network, and particularly bullet point 4 of paragraph 9.20 that acknowledges upgrading of certain paths to bridleways. Given the terrain within the parish, the County Council considers a number of Public Footpaths could usefully be upgraded in status, so helping to alleviate the safety issues of cyclists and equestrians sharing road space with vehicles. It is recommended that Capel Parish Council identifies paths to upgrade and includes these in the Neighbourhood Plan's list of Non-Policy Actions to evidence demand when Tunbridge Wells Borough Council (TWBC) is preparing its Infrastructure Development Plan or should the County Council be seeking to improve access in the parish. The County Council recommends the list of Non-Policy Actions should be able to be added to by residents and kept under constant review to ensure its relevance. The list of projects could include those big and small - the bridleway projects in Figure 9.1 would be good examples, also a cycling link to the Pembury - Tonbridge cycle path (Appendix E); whereas residents' concerns can sometimes be overcome by laying a few metres of surfacing or replacing gates or other barriers that prove an inconvenience or even a barrier to public access.

In seeking to enhance the network as suggested above, the County Council strongly encourages joint working with the Parish Council to ensure consistency with standards around the county PRoW network and the various applicable statutory procedures. Accordingly, Objective 7 (page 19) and paragraph 9.19 are supported and the incorporation of the principle within Policy C14 is encouraged. Working with neighbouring parish councils may also advantageously improve access within the parish, enabling resources to be pooled to benefit residents of more than one parish - perhaps creation of a bridleway towards East Peckham/ Little Mill could help residents avoid use of the A228.

The County Council is encouraged to note the concept of Active Travel, which is a key policy for the County Council and within the emerging Tunbridge Wells Local Plan. The term, however, is not defined within the document, so it is recommended a definition is stated within the Glossary. This will ensure references are consistently interpreted so designers of future developments and the Borough Council give it due weight in preparing and determining future planning applications. The definition used by the County Council within its [Active Travel Strategy](#) is encouraged.



### *Policy C15: Mitigating vehicular impacts at highway hotspots*

Highways and Transportation: The County Council, as Local Highway Authority, has reviewed the Capel Neighbourhood Plan and supports the underlying principles and objectives relating to transport (extracts below). However, the Local Highway Authority is concerned about Policy C15 on page 92 (copy below) which seems very prescriptive, and does not seem appropriate or consistent with the NPPF.

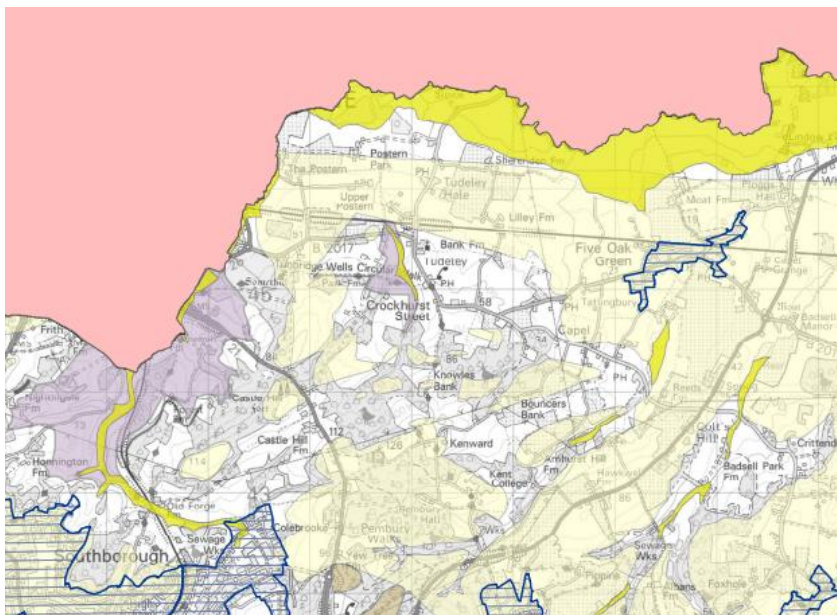
The County Council would therefore propose the following modifications:

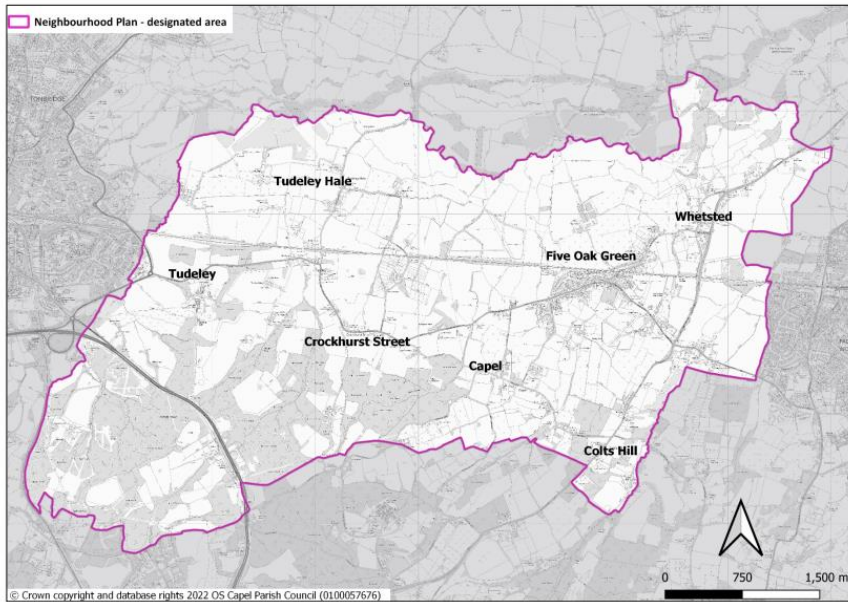
*“A. All Transport Assessments (for larger sites) or Transport Statements (for smaller sites) as required by paragraph 113 of the National Planning Policy Framework must address to the satisfaction of the highway authority **their** direct and cumulative transport impact. **Whilst the scope of each assessment will depend on the specific development proposal, it is requested that developers consider the following areas in their submissions**”*

### **Additional Commentary**

Minerals and Waste: The County Council, as Minerals and Waste Planning Authority, notes that the area has a number of safeguarded waste management sites that are safeguarded by Policy CSW 16: Safeguarding of Existing Waste Management Facilities of the [Kent Minerals and Waste Local Plan 2013-30](#) (Early Partial Review 2020). The Neighbourhood Plan does not propose development that either threatens the direct loss of these facilities or are within 250m of them, however, the County Council would still recommend that the Neighbourhood Plan makes reference to the fact that these facilities are safeguarded to fully inform what policy based constraints exist within the area.

There are three types of safeguarded land-won minerals within the area of the Neighbourhood Plan, as shown below on an extract from the Mineral Safeguarding Area (MSA) map for the TWBC area:



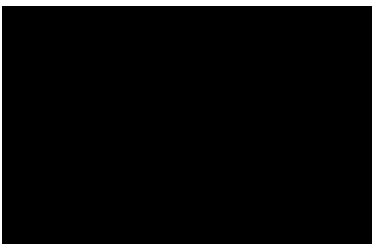


- Sub - Alluvial River Terrace Deposits
- Sandstone - Tunbridge Wells Sand Formation
- Sandstone - Ashdown Formation

Though the Neighbourhood Plan does acknowledge the Kent [Minerals and Waste Local Plan 2013-30](#) (Early Partial Review 2020), it does not define any of the MSAs with the widespread mineral safeguarded deposits that are present in the Neighbourhood Plan area. However, the Neighbourhood Plan is not proposing development in addition to those allocations within the emerging TWBC Local Plan. Therefore, although land-won mineral safeguarding considerations are not directly relevant, the Neighbourhood Plan could reference the relevant MSAs of the area and draw attention to this potential constraint if development is proposed beyond the allocations within the emerging TWBC Local Plan.

The County Council would welcome continued engagement as the Neighbourhood Plan progresses. If you require any further information or clarification on any matters raised above, please do not hesitate to contact me.

Yours sincerely



**Simon Jones**  
Corporate Director, Growth, Environment and Transport