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**REPRESENTATIONS ON  
BEHALF OF FORDWICH RESIDENTS  
AND FORDWICH TOWN COUNCIL**

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1. These representations on behalf of Fordwich residents are made in response to the publication of the Draft Canterbury District Local Plan 2020 to 2045 (“the Draft Local Plan”). We are instructed by James Smith Planning Law Services jointly and severally on behalf of the local residents listed in Annex 1 and the Fordwich Town Council (“FTC”). These representations are accompanied by a suite of FTC Topic Papers and should be read as a whole.
2. These representations touch first on issues concerning the soundness and legality of the Draft Local Plan as a whole before turning to address the Transport Strategy and the proposed Canterbury Eastern Bypass (“the Eastern Bypass”) or now called “Eastern Movement Corridor”. (“EMC”).

## **The Draft Local Plan**

### *Legal Background*

3. Section 19 of the Planning and Compulsory Purchase Act 2004 (“PCPA”) sets out requirements for the preparation of local development documents (the definition of which includes the Draft Local Plan). In *Norton St Philip Parish Council v Mendip DC* [2022] EWHC 3432 (Admin), Holgate J provided a useful summary of the relevant law<sup>1</sup>:

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<sup>1</sup>[10].

‘As part of the preparation of a development plan, s.19(5) of the PCPA 2004 requires the local planning authority to carry out an appraisal of the sustainability of the proposals in the plan and to prepare a report of the findings of that appraisal (a sustainability appraisal or "SA"). Section 19(5) integrates the requirements for Strategic Environmental Assessment ("SEA") and the preparation of an environmental report under the 2004 Regulations<sup>2</sup> (transposing Directive 2001/42/EC) with the statutory process under the PCPA 2004 for the preparation, examination and adoption of a development plan. In practice, a sustainability appraisal will be prepared under s.19(5) so as to satisfy the requirement in the 2004 Regulations for an "environmental report" (*Flaxby* at [26]). One of the purposes of the examination is to determine whether the requirements of s.19 of the PCPA 2004, and hence of the 2004 Regulations, have been met (s.20(5)(a)). It is well established that a breach of those Regulations is a potential ground of challenge under s.113.’

4. Regulation 5 of the 2004 Regulations requires there to be an environmental assessment, in accordance with Part 3 of the Regulations, during the preparation of the relevant plan and before its adoption. Regulation 12(2)(b) provides that an environmental assessment report shall ‘identify, describe and evaluate the likely significant effects on the environment of reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.’ Schedule 2, paragraph 8 of the 2004 Regulations (when read alongside regulation 12(3)) requires that an environmental report provide an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information.

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<sup>2</sup> The Environmental Assessment of Plans and Programmes Regulations 2004.

5. In R (*Friends of the Earth*) v *Forest of Dean DC* [2015] PTSR 1460 Hickinbottom J (as he then was) held in respect of Article 5(1), which is transposed in regulation 12(2)<sup>3</sup>:

‘Article 5(1) refers to “reasonable alternatives taking into account the objectives... of the plan or programme...”. “Reasonableness” in this context is informed by the objectives sought to be achieved. An option which does not achieve the objectives, even if it can properly be called an “alternative” to the preferred plan, is not a “reasonable alternative”. An option which will, or sensibly may, achieve the objectives is a “reasonable alternative”.’

6. In R (*Spurrier*) v *Secretary of State for Transport* [2019] JPL 1163, the Divisional Court set out the approach that should be taken in assessing alleged deficiencies in the environmental report. The case has subsequently been reversed, but not on the issue of alternatives<sup>4</sup>:

‘Where an authority fails to give any consideration at all to a matter which it is explicitly required by the SEA Directive to address, such as whether there are reasonable alternatives to the proposed policy, the court may conclude that there has been non-compliance with the Directive. Otherwise, decisions on the inclusion or non-inclusion in the environmental report of information on a particular subject, or the nature or level of detail of that information, or the nature or extent of the analysis carried out, are matters of judgment for the plan-making authority.’

7. Ouseley J in *Heard v Broadland District Council* [2012] Env LR 23 held that the preferred option and alternatives under consideration must be assessed to the same level of detail<sup>5</sup>:

‘the aim of the directive, which may affect which alternatives it is reasonable to select, is more obviously met by, and it is best interpreted

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<sup>3</sup> [40].

<sup>4</sup> [434].

<sup>5</sup> [71].

as requiring, an equal examination of the alternatives which it is reasonable to select for examination alongside whatever, even at the outset, may be the preferred option.’

8. A local planning authority can adopt an iterative process of plan-making ‘to reject alternatives at an early stage of the process and, *provided that there is no change of circumstances*, to decide that it is unnecessary to revisit them (emphasis added).<sup>6</sup> This reasoning was cited with approval in *Heard*, where Ouseley J held that ‘while options can be rejected as the plan moves through successive stages, and do not necessarily require to be re-examined at each stage, a description of what alternatives were examined and why had to be available for consideration at each stage, even if only be referenced back to earlier documents, *so long as the reasons there given remained sound* (emphasis added).<sup>7</sup>
9. Regulation 13(1) provides that ‘Every draft plan or programme for which an environmental report has been prepared in accordance with regulation 12 and its accompanying environmental report shall be made available for the purposes of consultation in accordance with the following provisions of this regulation.’ The consultees include those who are likely to be affected by the adoption of the local plan. Article 6(2) of the SEA Directive requires there to be an ‘early and effective opportunity’ for consultees to express an opinion on a proposed plan.
10. Finally, section 20 PCPA 2004 requires the authority to submit every development plan document to the Secretary of State for independent examination. One of the purposes of the examination is to determine whether the development plan document is ‘sound’ (section 20(5)(b)).

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<sup>6</sup> *Save Historic Newmarket Ltd v Forest Heath DC* [2011] JPL 1233, [16].

<sup>7</sup> [12].

Paragraph 35 of the National Planning Policy Framework 2021 (“NPPF”) states that plans are ‘sound’ if they are:

- (a) Positively prepared - providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs; and is informed by agreements with other authorities;
- (b) Justified - an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;
- (c) Effective - deliverable over the plan period and based on effective joint working on cross-boundary strategic matters; and
- (d) Consistent with national policy - enabling the delivery of sustainable development in accordance with the policies in the NPPF and other statements of national planning policy, where relevant.

*Policy SS3: Objectively Assessed Need (“OAN”)*

11. The Development Topic Paper (October 2022) states that six spatial growth options were considered at the ‘options’ consultation stage before it was decided to use a ‘blend’ of the growth options in order to meet the District’s objectively assessed housing need (“OAN”). The Development Topic Paper then states that, following the revision of affordability ratios in March 2022, the local housing need figure is now 1,252 homes per year, creating a total of 31,300 new homes over the plan period. This development strategy is set out in Policy SS3 of the Draft Local Plan.
12. The Sustainability Appraisal 2022 (“SA”) sets out 14 SA objectives against which to assess the Draft Local Plan; these objectives include promoting the sustainable use of land, conserving and enhancing landscapes and preserving the District’s historic environment. These objectives closely resemble the

Draft Local Plan's 'Strategic Objectives'<sup>8</sup>, which also refer to 'sustainable growth of rural communities', capitalising 'on our rich and distinctive heritage and culture' and protecting and enhancing 'our rich environment and valued landscapes.'

13. Paragraph 5.3.2 of the Sustainability Appraisal 2022 ("SA") states, 'the preferred housing growth option of 1,252 dwellings per annum (dpa), as set out in Policy SS3 of the Draft Local Plan, and the reasonable alternatives identified by the Council have been appraised. The Council has identified the following options for a housing growth figure in the District over the plan period (2020 to 2045):
  - Preferred Option- Local Housing Need is 1,252 dwelling per annum (dpa) (31,300 dwellings over the LP period 2020-2045)
  - Alternative option 10% increase...
  - Alternative option 20% increase...
  
14. What is clear from this assessment of 'alternatives' is that not meeting OAN was never considered an option and was never assessed. The table that follows paragraph 5.3.2 shows the same negative effects for all three options for the following SA Objectives, which are closely aligned with the objectives that the Draft Local Plan is seeking to meet:
  - a) Air quality
  - b) Geology
  - c) Water
  - d) Flood risk
  - e) Waste management
  - f) Heritage

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<sup>8</sup> Page 7 of the Draft Local Plan.

g) Sustainable communities

15. The table following paragraph 5.3.2 is just a summary. The significant adverse impacts of meeting OAN for the Draft Local Plan's objectives are explored in more detail in Appendix E to the SA.
16. Despite the acknowledged negative effects on the Draft Local Plan's objectives associated with meeting the Council's OAN, at no point did the Council ever consider attempting to mitigate or decrease these negative effects by not meeting the OAN. The Council failed to consider the reasonable alternative of not meeting the OAN (something widely adopted elsewhere by other local planning authorities), despite the fact that this approach would have helped achieve many of the Council's stated objectives in the Draft Local Plan and in the SA concerning (e.g.) conserving landscapes, conserving the historic environment and promoting the sustainable use of land, which are also objectives of the NPPF. The Council also unlawfully fettered its discretion in its blinkered approach.
17. It is apparent that the Council effectively assumed that there is a legal requirement to meet OAN. This was also reflected in responses given by the leadership of CCC, who expressed a fear that CCC would be attacked at the examination in public by silks (KC's) employed by property developers<sup>9</sup>. This is of course incorrect and fundamentally misguided. Paragraph 11b NPPF explicitly allows for development plans not to meet OAN where the application of policies in the NPPF that protect areas or assets of particular importance provide a strong reason not to, or where any adverse impacts would significantly and demonstrably outweigh the benefits of meeting OAN. To give just one example, as recently as 14 October 2022 the

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<sup>9</sup> As recently as 17 January 2023 of the Joint Transportation Board.



Worthing Local Plan was found to be sound despite not meeting the borough's OAN.

18. The requirement to consider not meeting OAN as a reasonable alternative is strengthened by the Government's proposed changes to the NPPF, contained in the draft text that is currently undergoing consultation. Paragraph 11b is amended so that building at densities significantly out of character with the local area is considered an adverse impact that may justify not meeting OAN. Furthermore, paragraph 35(a) now reads as follows: 'Plans are 'sound' if they are:
  - (a) Positively Prepared- providing a strategy which seeks to meet the area's objectively assessed needs so far as possible, taking into account the policies in this Framework.'
19. Paragraph 61 has also been amended so that the standard method is only an advisory starting point for establishing a housing requirement for the local area, and exceptional circumstances in the local area may justify using an alternative method.
20. The Consultation Paper that accompanies the revised NPPF makes it explicit that the purpose of these changes is to make it easier for local authorities not to meet OAN when it is justified by local circumstances:

'These changes are designed to support local authorities to set local housing requirements that respond to demographic and affordability pressures while being realistic given local constraints. Being clearer about how local constraints can be taken into account and taking a more proportionate approach to local plan examination is intended to speed up plan-making... The purpose of these changes is to provide more certainty that authorities can propose a plan with a housing requirement that is below their local housing need figure, so long as proposals are evidenced, the plan makes appropriate and effective use of land, and where all other reasonable options to meet housing need have been considered.'

21. Furthermore, the Levelling Up and Regeneration Bill places an emphasis on local communities being actively involved in the plan-making process. The aim of the Government's reforms of the planning system is to stop imposing figures on local authorities on a top-down basis without having regard for local opinion or circumstances. This approach strengthens the need to consider alternatives to the OAN, not just attempting to meet OAN without any thought.
  
22. In response to the Government's change of policy direction, Mole Valley District has sought to remove all Green Belt sites from its draft local plan, even though the draft local plan is currently undergoing examination.<sup>10</sup> To give one other example, in light of the proposed changes to the NPPF, South Staffordshire Council has paused the progression of its emerging local plan until its queries about changes in national policy have been answered.<sup>11</sup> The Draft Local Plan for Canterbury District Council is at an early stage, and the Council must consider whether the blinkered approach to meeting OAN is still appropriate. Given the proposed changes to national policy, there is a duty for the Council to reassess whether the interests of the District are best served by meeting OAN.
  
23. Even before the proposed changes to the NPPF there was a legal requirement for the Council to consider not meeting OAN when there are local constraints and circumstances which mean that there are significant adverse effects on the Draft Local Plan's objectives associated with meeting

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<sup>10</sup> <https://news.molevalley.gov.uk/2023/01/17/seeking-agreement-to-remove-green-belt-sites-from-draft-local-plan/#:~:text=At%20an%20Extraordinary%20Council%20meeting,Local%20Plan%2C%20Future%20Mole%20Valley>

<sup>11</sup> <https://www.sstaffs.gov.uk/news/news.cfm/current/1/item/136521>

OAN. That requirement is now even stronger, as the revised NPPF is designed to make it easier for local authorities to produce plans that do not meet OAN. By not considering the option of not meeting OAN, the Council has not considered a reasonable alternative and has erred in law.

24. The failure to consider not meeting OAN also means that the Council has produced a plan that is not sound, as it is impossible to say that Policy SS3 of the Draft Local Plan is ‘justified’ when the evidence base has not considered such an obvious alternative.
25. Further, pages F14-F15 of Appendix F to the SA make it clear that the preferred option is based on an assumption that housing could be delivered over the plan period at a far higher rate than in the past; the Draft Local Plan is aiming to provide 1,252dpa when the highest completion rate seen in recent years was less than half of that, 602dpa. The Draft Local Plan as currently drafted is therefore not effective because it is not deliverable. In the midst of inflation, economic turmoil and decreasing housing prices, it is extremely unlikely that the Council will be able to deliver housing at more than double its previous rate.

*Policy SS3: Evolution of the Spatial Strategy*

26. Paragraphs 5.6.2-5.6.3 of the SA explain that to develop the spatial strategy, the Council ran an ‘issues’ consultation in 2020 and a ‘Draft district vision and Local Plan’ options consultation in 2021; six spatial strategy options were presented in the 2021 consultation. Paragraph 5.6.7 states that through these processes a blend of growth options was selected as the preferred option.

27. Paragraph 5.6.41 then states as follows: ‘The Draft Options SA Report set out the reasoning for Council’s (*sic*) rejection of the options considered at that stage. The preferred option at this stage provides an iteration of the previous preferred option and the reasoning for the change in spatial strategy to include a new free-standing community is set out above.’
28. The Development Topic Paper explains that in 2021 the Housing Needs Assessment identified a need for 1,120 homes per year, creating a total need for 22,400 homes over the plan period of 2020-2045. The current OAN, however, now stands at 1,252 homes per year, creating a total of 31,300 homes over the plan period of 2020-2045. It is this OAN that Policy SS3 seeks to meet.
29. Between the first issues and options consultation in 2021 and the issuing of the Draft Local Plan in November 2022 the housing requirement figure for the plan period rose by 8,900 homes (at a rate of 132 extra homes per year). Despite this significant increase and change in circumstances, the spatial strategy that had been decided upon in 2021 was not re-examined or reassessed. The Council picked a preferred option on the basis of a certain amount of housing that needed to be provided and then proceeded to continue with this option, despite the fact that the OAN had changed significantly.
30. This approach represents a failure to consider reasonable alternatives. In light of the significant change in circumstances regarding the OAN, the Council was required to reconsider whether its preferred strategic growth option was still the most appropriate.
31. Further, the Council’s failure to reconsider its initial spatial growth strategy despite the significant increase in OAN also means that the Draft Local Plan

is not sound. The Draft Local Plan cannot be considered to be based on proportionate evidence when the evidence for the spatial strategy is predominantly concerned with a housing requirement figure that is no longer relevant and is far lower than the current housing requirement figure.

*Policy DS17: Habitats Regulations*

32. The Draft Local Plan's approach to habitats of international importance is set out in policy DS17. Paragraphs 2.8.6-2.8.7 of the Habitats Regulations Assessment state as follows:

'The broader context of the 'People Over Wind' case suggest that the judgment is principally focused on those instances where specific measures are included or relied upon to avoid or mitigate a specific effect that has been identified, and which would otherwise be significant... Therefore, the screening does not take account of specific measures that are included in response to a specific identified effect on a European site, and which are intended to avoid or reduce that effect. However, generic policy safeguards that would be included regardless of the presence of European sites are essentially just 'the plan' and are not considered to be 'mitigation' unless there is a specific effect or pathway that they are intended or relied on to obviate.'

33. This approach is legally flawed, and there is no case law or other guidance cited in support of this approach. There is no distinction in *People Over Wind* between 'specific' mitigation measures and 'generic' mitigation measures. The judgment is clear that at the screening stage it is impermissible to take any mitigation measures into account: 'the answer to the question referred is that Article 6(3) of the Habitats Directive must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the

measures intended to avoid or reduce the harmful effects of the plan or project on that site.<sup>12</sup>

34. By including ‘generic’ mitigation measures at the screening stage, the assessment undertaken on behalf of the Council has erred in law.
35. Furthermore, no assessment has been made of the currently proposed route of the EMC nor of the alternatives; the currently proposed route cuts through areas known to provide habitats for great crested newts- both the species and its habitats are protected under law (see Landscape and Ecology FTC Topic Paper No. 8)

### **Policies SS4, C11 and C16: Transport Strategy**

#### *Failure to Consider Reasonable Alternatives*

36. The Draft Local Plan’s transport strategy is set out in Policy SS4. The bedrock of Policy SS4 is the Canterbury Circulation Plan (“the Zoning Scheme”), which would segregate Canterbury into zones between which cars would not be allowed to drive. Policy C11 is entitled ‘East Canterbury-strategic development area’ and provides for a so-called ‘Eastern Movement Corridor’, which will allegedly decrease congestion in the city centre and help implement the Zoning Scheme. Policy C16 is entitled ‘Canterbury Eastern Movement Corridor’ and provides slightly more detail on the proposed Eastern Movement Corridor.
37. As a preliminary point, in a meeting on 17 January 2023 of the Joint Transportation Board, it rapidly became clear that the entire transport

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<sup>12</sup> *People Over Wind & Sweetman v Coillte Teoranta* (C/323-17), [40].

strategy contained within the Draft Local Plan was dictated by the perceived need to meet OAN. Officers stated that a ‘bold’ strategy such as the Zoning Scheme was needed if the housing numbers were going to be met. As discussed above, this approach fails to consider that adverse impacts such as traffic impacts can justify not meeting OAN. The transport strategy cannot be excused as a necessary ‘bold’ step when less extreme measures (more consistent with the Council’s avowed objectives) have not even been considered because of the mistaken conviction that OAN is a target that must be met in all circumstances. This irrational position was articulated at the Joint Transportation Board as an irrational fear that KC’s employed by developers would attack the Council if OAN were not met.

38. The first transport modelling for the Draft Local Plan was undertaken in May 2021 (“the May 2021 Report”). The May 2021 Report assessed the following five options for the Draft Local Plan:
- Option 1: Existing Local Plan strategy
  - Option 2: Coast with improved public transport
  - Option 3: City with SWECO only- regarding signalisation of Ring Road junctions
  - Option 4: City with SWECO and relief roads
  - Option 5: City with Ghent and relief roads- regarding pedestrian and bikers friendly plans with reduced speed limits
39. The Council, based on the May 2021 Report, chose option 5 as the preferred option, which has become Policy SS4 in the Draft Local Plan. The May 2021 Report noted the following with regard to option 5:

- a) For journey times into Canterbury City Centre: ‘Options 3 & 5 result in severely affected journey times around the City Centre with an 50% increase.’<sup>13</sup>
  - b) For queue lengths into Canterbury City Centre: ‘Options 3, 4 and 5 share highest overall queue lengths.’<sup>14</sup>
  - c) For the wider area network performance: ‘The Option 5 blockers scheme restricts not only City Centre area, but also roads crossing existing developments, affecting the journey times the most; around 50% in AM, and around 40% in PM.’<sup>15</sup> This is compared to changes for the other options that range from 5% to 20%.
  - d) Option 5 (along with option 4) is ranked the worst for public transport access to key centres across the district.
  - e) Overall summary for option 5: ‘Overall access to City Centre is challenging’ and ‘intensive longer distance traffic rerouting occurs based on new bypass roads, also increasing slightly A2 traffic around Canterbury.’<sup>16</sup>
40. The benefits of option 5 according to the May 2021 Report were an increase in active travel and a subsequent improvement in air quality in Canterbury City Centre. This was based on a ‘modal shift’ away from car use, the idea that if journeys by car became more difficult into Canterbury City Centre then people would instead start walking or cycling instead.<sup>17</sup>
41. There are two points to make about the May 2021 Report. First, the May 2021 Report identified significant disadvantages associated with option 5. The May 2021 Report concluded that there was no ‘stand out’ option and

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<sup>13</sup> Page 61.

<sup>14</sup> Page 62.

<sup>15</sup> Page 75.

<sup>16</sup> Pages 100-101.

<sup>17</sup> Page 93.



that there were advantages and disadvantages associated with each option. Unsurprisingly, the May 2021 Report concluded for option 5 that making it more difficult to access Canterbury City Centre by car would increase journey times by car and would also result in increased journey times by car in the rest of the district, as traffic is rerouted away from the City Centre.

42. Second, the Council's preference for option 5 was based on an assumption that there would be a modal shift away from car use. This was just an assumption. In the May 2021 Report, there is no reference to any data or analysis showing that car use would in fact decrease. Section 9 is entitled 'Likelihood of Mode Shift'; the first sentence of this section openly states 'The model used in this project is highway based only and therefore cannot be used in its present form to quantify mode shift from car to sustainable modes.'<sup>18</sup> The following one-page analysis (which concludes that option 5 is the most likely to lead to a mode shift) is impressionistic, with no data or attempt to quantify a likely mode shift. It is just assumed that if you make it more difficult to travel by car then people will decide to start cycling instead. There is no evidence to show that this would actually happen as opposed to (for example) people leaving earlier in their cars in order to adapt to the longer travel times. There is no sound evidence base for the very foundation of the proposed transportation strategy.
43. In July 2022, an updated assessment was undertaken ("the July 2022 Report"). The July 2022 Report was commissioned in light of the Council's identification of a preferred strategic growth option and the extension of the forecast year to 2045. As already discussed, the housing need requirement figure rose considerably between 2021 and 2022. Despite this, the July 2022 Report only assessed option 5 again. There were significant disadvantages associated with option 5, in particular the increase in traffic in areas of the

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<sup>18</sup> Page 93.

district outside the City Centre. These disadvantages only increased due to the fact that the Council was now seeking to provide a higher number of homes. Despite this, the other alternative options were not assessed again. The Council picked option 5 at an early stage and decided to stick with it, despite significant changes in circumstances. In addition, the July 2022 Report included for the first time at Appendix B a ‘Propensity to Cycle Analysis’ (which will be discussed in more detail below).

44. Further transport modelling was produced in a report dated 11 October 2022 (“the October 2022 Report”). The October 2022 Report was produced to reflect updated development allocations and (for the first time) the Eastern Bypass was placed in its current proposed position. In the May 2021 Report and the July 2022 Report the Eastern Bypass was modelled as going through the Chequer’s Wood and Old Park SSSI (“SSSI”). Despite this significant realignment of the Draft Local Plan’s most significant infrastructure project (a change which, as discussed in more detail below, meant that the Eastern Bypass became significantly longer than originally envisaged), only option 5 was assessed again. Following a significant change in circumstances, the Council failed to reconsider its original choice.
45. The October 2022 Report also reproduced the ‘Propensity to Cycle Analysis’ at Appendix B. This states that ‘In the absence of cyclists representation in local demand and assignment models, it has not been possible to forecast the impact of the proposed cycle interventions on cycle demand and mode shares.’<sup>19</sup> [underlining added] The note then states, ‘Please note that these are off-the-shelf PCT scenarios, which show potential cycling levels that could be achieved under certain conditions and are not to be considered as cycle demand forecasts.’<sup>20</sup> [underlining added] These admissions whilst

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<sup>19</sup> Page 53.

<sup>20</sup> Page 54.

entirely correct are astonishing given the bizarre approach the Council has subsequently adopted. The approach is plainly unsound and legally irrational. The Council is basing its entire Transport Strategy on the assumption that there will be a modal shift away from car use when there is no sound evidence base at all to support that assumption. This approach is particularly strange given that at a meeting of the Joint Transportation Board, a KCC Officer openly admitted that the previous local plan had also promised modal shift, which has not materialised. Furthermore, page 11 of the Climate Change, Carbon Emissions and Air Quality Strategic Overview notes that the rural nature of the District would make any modal shift to public transport and active travel challenging.

46. Appendix B then continues to analyse what would happen in four scenarios:
  1. 2011 census- Number of cyclists observed in the 2011 census
  2. Government Target (equality)- Doubling of national cycling levels
  3. Government Target (near market)- Doubling of national cycling levels, accounting for various sociodemographic and geographical characteristics
  4. Go Dutch- This scenario represents what would happen if English and Welsh people were as likely as Dutch people to cycle a given trip
47. The Appendix then proceeds to illustrate what would happen in each of the four scenarios and (unsurprisingly given that each scenario assumes at least roughly a doubling of the number of cyclists) a significant reduction in car trips is shown. This analysis is referred to in the Transport Topic Paper (October 2022) as 'A cycle propensity study and technical note' which provides 'an analysis of the *potential* mode shift to cycling due to proposed

Local Plan interventions.<sup>21</sup> There is, however, no consideration or analysis of how likely it is that the residents of Canterbury will suddenly decide to emulate their Dutch counterparts. The benefits of option 5 are presumed without any evidential basis whatsoever, still less one that could be considered sound. There is little or no hope that key aspects of the strategy will be effective, which was essentially conceded at the meeting of the Joint Transportation Board on 17 January 2023, where instead of defending the Transport Strategy Officers focused on the need for something ‘bold’ and asked for other suggestions. Contrary to the approach of CCC senior officers “bold” is not of itself a sound basis for preparing a plan – charging across open ground at an enemy machine gun with nothing but fixed bayonets is undoubtedly bold, but it is also likely to be stupid and costly.

48. The entire transport strategy as embodied in policy SS4 is therefore fundamentally flawed. As the May 2021 Report makes abundantly clear, there are significant disadvantages associated with option 5 compared to the other options. The only reason to select option 5 over the other options would be to increase active travel into the city centre. There is, however, no evidence whatsoever to show that this will actually happen. The transport strategy is not ‘sound’, as it is not based on proportionate evidence.
49. Further, once the Council decided that option 5 was the preferred option in 2021, this opinion was not reassessed in light of significant changes, including a much greater OAN and a relocation of the main infrastructure project proposed in the Draft Local Plan. These failings represent a failure to consider reasonable alternatives; once there had been such significant changes the Council was under a duty to reassess the original options appraised in the May 2021 Report.

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<sup>21</sup> Page 4.

*Policy SS1: Carbon Emissions*

50. Given the Council's stated intent to reduce air pollution, it is surprising to learn that of all the transport options assessed, option 5 would produce the highest carbon emissions.<sup>22</sup> This assessment does not take account of any modal shift that might be produced by option 5, but (as already discussed) there is no evidence showing that any modal shift would actually occur. Indeed, the Council's own assessments of potential carbon emissions are open about this fact. The 'Summary of Options' document states that 'the level of uncertainty in this approach is high and the analysis is indicative.'<sup>23</sup> The Road Transport Options assessment goes even further, saying that 'the transport model is therefore inadequate to accurately reflect this option (option 5).'<sup>24</sup> The same document goes on to recommend that 'a much more detailed and comprehensive multimodal study is required to develop and evaluate option 5.'<sup>25</sup> No such study has been produced.
51. Overall, the Council has therefore chosen the transport option with the highest output of carbon emissions based on an assumption (and nothing more than an assumption) that a modal shift will follow. The potential for congestion and traffic throughout the District to worsen, for air pollution to become worse, is real. This is directly contrary to the Draft Local Plan's aim in Policy SS1 to decrease carbon use.
52. Furthermore, there is nothing in the documents on carbon emissions which discusses the different potential routes for the Eastern Bypass. The route currently proposed in Policy C11 of the Draft Local Plan is considerably

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<sup>22</sup> Local Plan 2040: Road Transport Options Carbon Emissions, page 7.

<sup>23</sup> Page 2.

<sup>24</sup> Page 8.

<sup>25</sup> Page 8.

longer than any of the other options, yet the greater production of greenhouse gas emissions has not been considered or taken into account.

53. The Draft Local Plan's transport strategy in policy SS4 is therefore unsound, as there is no supporting evidence justifying the selection of the transport option with the highest carbon emissions. Likewise, the selection of the Eastern Route is legally flawed because it has not properly assessed the harms and benefits of each of the options. One of the main harms of the Eastern Route, the greater carbon emissions it would produce, has been completely ignored.

*Policies SS4, C11 and C16: Eastern Bypass*

54. The Eastern Bypass (now referred to in the Draft Local Plan as an "Eastern Movement Corridor") is a cornerstone of the Council's Transport Strategy in policy SS4. The flaws with the Transport Strategy also mean that the current proposal for the Eastern Bypass is inherently flawed as well from the outset. In addition, however, there are further legal errors associated with the Eastern Bypass when considered in isolation.
55. A feasibility study for the Eastern Bypass was first undertaken in December 2017 ("the December 2017 Report"). This assessed the Eastern Bypass going through the SSSI ("the Original Route"). In the summary of next steps, the December 2017 Report recommended the following:
  - a) Assessing the impact on the SSSI;
  - b) Assessing the impact of overhead power cables;
  - c) Confirming the extent of the existing landfill at Sturry Road;
  - d) Undertaking a surface water drainage strategy;
  - e) Conducting a desktop archaeological study;
  - f) Undertaking traffic modelling;

- g) Investigating the construction of a new railway bridge;
  - h) Consulting with statutory undertakers to determine the extent of diverting utilities equipment; and
  - i) Confirming the extent of land ownerships.
56. The December 2017 Report did not, therefore, state or recommend that it was impossible to build the Eastern Bypass according to the Original Route. As a preliminary feasibility study, it recommended further work that would have to be done to justify the Original Route.
57. The Council then commissioned a further feasibility study in November 2021 (“the Feasibility Study”). The Feasibility Study undertook a feasibility assessment of two further alternative routes, one to the West (“the Western Route”) and one to the East, going just south of Fordwich (“the Eastern Route”).
58. The Feasibility Study notes a number of significant constraints for the Eastern Route:
- a) The Eastern Route crosses through the Conservation Area associated with Fordwich;
  - b) The Eastern Route crosses through Ancient and Semi Natural Woodland at Moat Rough;
  - c) The Eastern Route is in close proximity to Flood Zone 3 in places;
  - d) The Eastern Route intersects several overhead electrical cables; and
  - e) Space for a new roundabout to provide a link with the A257 Littlebourne Road is constrained.
59. The Feasibility Study also notes that there are constraints associated with the Western Route. These include the fact that the earthworks associated with the bypass encroach into the SSSI in some places. Clearly, this impact on the

SSSI would be less than the impact of the Original Route going through the centre of the SSSI. The Feasibility Study recommends that this impact needs to be considered in consultation with Natural England.

60. The Feasibility Study is explicit throughout that further work and more detailed design will have to be undertaken to develop the scheme proposals.

For example:

- (a) ‘The assessment is based upon limited information gathered or produced during the assessment process’<sup>26</sup>;
- (b) ‘this report identifies potential environmental and engineering constraints for the proposed alternative routes to enable the Client to make an informed decision regarding further detailed design investigations and suitability of the proposed bypass routes’<sup>27</sup>;
- (c) On ecology: ‘Impact assessments for the proposed routes will still need to be undertaken and a significant compensation package to include land purchased purely for compensatory habitat creation and landscaping treatment will be required’<sup>28</sup>; and
- (d) On ecology: ‘In addition to an assessment of the SSSI, a preliminary ecological walkover should be undertaken for the scheme as a whole to identify any significant wildlife and/or features that may be present along either route so that appropriate measures can be put in place as part of schemes future design stages’<sup>29</sup>.

61. The Feasibility Study, which is extremely brief and deals with issues at a high level of detail, cannot form the basis of the Council’s decision as to where to locate the Eastern Bypass. There is, however, no other evidence supporting the decision to opt for the Eastern Route in the Draft Local Plan.

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<sup>26</sup> Paragraph 1.1.2.

<sup>27</sup> Paragraph 1.2.1.

<sup>28</sup> Paragraph 3.1.6.

<sup>29</sup> Paragraph 6.1.4.



62. In response to an FOI/EIR request made on behalf of Fordwich Town Council (and yet to be fully answered by CCC or KCC,) regarding the assessment of alternative routes for the Eastern Bypass (please see FTC Topic Paper 7 – Consultation) the Council stated that it has prepared ‘environmental and sustainability assessment of reasonable alternatives and these are published as part of the current draft Local Plan consultation.’ This is a highly misleading and inaccurate statement. In the SA, the Eastern Bypass is mentioned exactly once, at paragraph 5.8.20, where it is simply asserted that the proposed ‘Eastern Movement Corridor’ is likely to reduce congestion in the city centre but is also likely to increase vehicle use outside the city centre. Apart from this brief mention, policies C11 and C16 of the Draft Local Plan which provide for the Eastern Bypass are discussed in two other places. First, paragraph 5.8.14 states that for the new infrastructure, there is uncertainty ‘depending on the specific route and detailed design’. Second, paragraph 5.8.19 notes that new infrastructure could provide economic benefits. There is no assessment of reasonable alternatives for the location of the Eastern Bypass within the SA and no proper or lawful assessment of the preferred option. It is apparent that the preferred option was simply a line drawn on a map by Ruth Gouldie. No evidence has been produced by CCC to demonstrate a rationale or evidence base as to how these routes were arrived<sup>30</sup>.
63. There is therefore no evidence base and no justification for the location of the Eastern Bypass, still less, one which is sound or which has been demonstrated would be effective. In light of the serious concerns and issues raised within this consultation response (see further below), this amounts to a legal failure to consider reasonable alternatives. It also means that policies

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<sup>30</sup> This includes at the previously postponed meeting with FTC members with offices in late January 2023.

C11 and C16 providing for the location of the Eastern Bypass are not sound, as they are not supported by evidence.

64. A fundamental problem with the Council's approach to the Eastern Bypass is that it is apparent that it is based upon a predetermination that there is an absolute legal prohibition on building within an SSSI. For example, (but not only) in response to the FOI/EIR request, the Council stated that 'the Eastern option is the only identified route that would avoid the SSSI and connect with the proposed roundabout on the A28'. The Council cannot, however, escape its legal obligation to assess reasonable alternatives by asserting that any impact on an SSSI is always impermissible. That this has been CCC's approach has been confirmed orally by CCC officers<sup>31</sup>. The SSSI is not the only material consideration and examining it as such is legally flawed and represents a fetter of discretion. Indeed its status is less than the ancient woodland which the currently preferred route would destroy. In any event no lawful assessment has been done of the preferred or alternative routes by CCC.
  
65. Rather, the Council is required to assess alternatives by weighing the benefits and harms of each alternative. It has conspicuously failed to do so. In particular, the harms associated with the currently preferred Eastern Route identified below have not been properly considered. Furthermore, the Western Route appears to have been discounted because there is the potential for some impact on the SSSI, but that impact on the SSSI has not been determined. The Council has simply failed to assess reasonable alternatives because it has not carried out a balancing exercise for each alternative, instead deciding to go for one option purely because it has the least impact on the SSSI without considering any other factors.

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<sup>31</sup> Meeting of 17 January 2023 of the Joint Transportation Board (CCC/KCC).

66. Finally, in a meeting of 17 January 2023 of the Joint Transportation Board, Richard Moore (CCC Head of Transportation and Environment) stated that the EMC would not be built for at least 10-15 years – indeed there is doubt whether it would ever be built. In that time (if policy SS3 of the Draft Local Plan is followed), between 12,520 and 18,780 homes will be built. This would significantly increase traffic and congestion, yet no transport mitigation will be in place during this period. This is planning to fail. It is not effective and unsound.
67. Despite this, the short-term effects of following option 5 without the Eastern Bypass in place have not even been considered still less lawfully assessed in either the transport modelling or the SA. The modelling and assessment assume that the mitigation is in place immediately, which is conceded by CCC not to be the case. We pause to observe that the consultation process does not make this clear, which in itself represents a major flaw in the consultation process. In any event, the evidence base does not demonstrate that the proposed mitigation would be effective if it was only implemented after 10-15 years.
68. These representations conclude with a discussion of the substantive problems associated with the location of the Eastern Bypass. These are divided into a number of headings. The fact that there are so many fundamental problems with the currently preferred route of the EMC demonstrates that the Council has erred in law by not assessing reasonable alternatives; these points are also, however, free-standing in the sense that they demonstrate that policies C11 and C16 in the Draft Local Plan providing for the location of the Eastern Bypass are not sound because they are not justified by evidence.

69. The following discussion of each issue is a brief summary, and there is a more detailed FTC topic paper addressing each issue.

### *Archaeology*

70. The Pleistocene sands and gravels capping the high ground south of Fordwich (sometimes known as the ‘Fordwich Plateau’) contain some of the most important Palaeolithic archaeology in Britain. The Palaeolithic artefacts that have been recovered from these deposits include the ‘Fordwich Handaxes’, which likely represent the earliest evidence for the Acheulean stone tool industry in Britain and probably the earliest and most northern location for this industry. They are therefore of international scientific importance in their ability to help answer profound questions about the development of ancient humans, their movements, lifestyles, cultural traditions and cognitive development.
71. Almost all of our current knowledge about the Fordwich Handaxes comes from work done in the 1920s and 1930s. Unfortunately, the work was done so long ago it did not always record the precise contextual location of the finds. As a result, it is extremely difficult to conclusively date the handaxes without finding one *in situ*. There is ongoing archaeological work on the Fordwich Plateau, with both Cambridge University and Durham University recently excavating at the site.
72. The expert evidence submitted by objectors demonstrates that there is a high likelihood that such *in situ* finds should remain *in situ*. The proposed Eastern Bypass is entirely incompatible with the aim of discovering *in situ* finds and would cause substantial and irrecoverable harm (see e.g. FTC Archaeology Topic Paper No.4) – Indeed, of all the three routes set out in the Stantec

Report – the currently preferred route is by far the most damaging in terms of archaeology.

73. The Eastern Route would destroy an undisturbed Palaeolithic site of international importance. The Council has failed to acknowledge this or take it into consideration, rendering the evidence base for the Eastern Route fundamentally flawed.
74. The damage cannot be mitigated but even if it could no account has been made of the cost and the delay caused by such mitigation – this is contrary to the supposed rationale of the transport and housing strategy which should require the EMC to be in place before the vast housing supply with the CCC has embraced in meeting its full OAN.

#### *Heritage*

75. The entire town of Fordwich is a Conservation Area, an area that the Council has recognised as being of special architectural and historical interest.<sup>32</sup> The original size of the Fordwich Conservation Area was extended in 1993 expressly to recognise the wider character of Fordwich and the importance of the land included within the extended area in preserving the historic character of Fordwich. The Director of Planning of CCC reported why it was “desirable to preserve or enhance by their designation as conservation areas.”<sup>33</sup>
76. There are 23 listed heritage assets in Fordwich, including the Grade 1 listed Church of St Mary and Two Grade 2\* listed buildings. The currently preferred route would blast straight through the conservation area and is entirely inconsistent with its statutory protection – it would cause substantial

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<sup>32</sup> Section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

<sup>33</sup> Minutes of 1993 CCC Planning Committee.

harm so as to threaten the justification of the designation itself for this part of the Conservation Area.

77. Local planning authorities are under a duty to formulate and publish proposals for the preservation and enhancement of conservation areas.<sup>34</sup> Paragraph 190 NPPF states that plans should set out a positive strategy for the conservation and enjoyment of the historic environment. This strategy should take into account the desirability of sustaining and enhancing the significance of heritage assets. Policy SS2 of the Draft Local Plan states that the district's heritage assets will be preserved and enhanced and that new development should be responsive to the distinctive local character and history of the district. Policy DS26 also supports the preservation of the district's heritage assets. The Council's 'Heritage Strategy for Canterbury District' states that the Council is 'committed to ensuring heritage remains central to how we deliver our services, working across the organisation to collectively achieve our ambitions.'<sup>35</sup>
78. The plans for the Eastern Bypass ignore these requirements and are inconsistent with national policy, policy SS2 and policy DS26 of the Draft Local Plan. The Eastern Bypass would cut the historic parish of Fordwich in half by cutting across both Well Lane and Moat Lane. It would also cut through much of the Fordwich Conservation Area, and the Conservation Area as a coherent entity would cease to exist. In addition, many of the listed buildings in Fordwich lie to the south of the town, and the setting of these assets would be irremediably harmed by placing a busy bypass directly to the south of them.
79. 'Setting' is broadly defined in NPPF's glossary as:

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<sup>34</sup> Section 71 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

<sup>35</sup> Page 37.

“The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.”

80. The importance of considering the surroundings of an application site and not only the site itself has been repeatedly emphasised by the courts, see e.g. *James Hall v Bradford MDC* [2019] EWHC 2899 (Admin).<sup>36</sup> To give just one example for Fordwich, Fordwich House lies at the south end of Fordwich, with the old 17th-century walls extending along the western border. These walls can be seen when walking towards Fordwich from Canterbury along both National Cycle Route 1 and the former old goods route from St Martins Church. The Eastern Bypass would disrupt and destroy this setting. The Eastern Bypass’s impact on the setting of this heritage asset (along with all of Fordwich’s other heritage assets) has not been assessed and in breach of the statutory obligation on CCC in making decisions in respect of the plan (see e.g. The Planning (Listed Buildings and Conservation Areas) Act 1990, as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004, the 1990 Act requires local planning: “have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest” and:- “to pay special attention to the desirability of preserving or enhancing the character and appearance of conservation areas.”)
81. Heritage impacts have not been considered by the Council in deciding on the route for the Eastern Bypass. Despite the Council’s stated commitments

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<sup>36</sup> The court quashed a planning permission on the basis that the Council had failed to consider the impact of development on the setting of a heritage asset. In this case the Council had granted consent to demolish an old fire station and construct a food retail unit with parking. The site was adjacent to, but not within a conservation area. The court found that the development would affect the setting of a heritage asset.

to preserving heritage assets, heritage as a material consideration has been ignored. The failure to give any weight to the heritage value of Fordwich means that there is no adequate evidence justifying the location of the Eastern Bypass. It also means that the Eastern Bypass as proposed is not consistent with national policy or statutory obligations. (see further FTC Heritage Topic paper No.3). The heritage importance (as well as other importance see further below) of the ancient woodland which would be destroyed by the currently preferred route of the EMC has been ignored.

*Environment/ Ecology*

82. Policy SS1 of the Draft Local Plan states that ‘The network of green and blue infrastructure- including rivers, streams and ponds- in the district, which provides important habitats, valued landscapes and spaces for recreation and which supports our health and wellbeing, will be protected maintained and enhanced’. Policy SS1 also emphasises the importance of supporting the recovery of the Stodmarsh Nature Reserve and states that ‘Development across the district will need to incorporate measures to deliver a minimum 20% biodiversity net gain’. Policy DS21 aims to support 20% biodiversity net gain for new development as well.
83. The main justification for the change of route for the Eastern Bypass is that it will no longer go through the SSSI. This thinking ignores, however, the fact that the route past Fordwich will also have significant adverse effects on the environment and ecology which have been discounted at the outset when the decision on the route was made.
84. First (as noted as well by the Friends of Old Park & Chequers Wood) the Eastern Route would sever ecological connectivity between the SSSI and the Stodmarsh Nature Reserve (which both form part of the Lower Stour Wetlands Biodiversity Opportunity Area as set out in the Canterbury



Landscape Character Assessment and Biodiversity Appraisal (“the Landscape and Biodiversity Assessment”). The Eastern Route would go through character area F6 as defined in the Landscape and Biodiversity Assessment, which notes that “the river corridor within this LCA is the most downstream part of the LWS and an important aquatic and wetland habitat link into the Stodmarsh SSSI which abuts the eastern boundary of the LCA and the Stodmarsh NNR which lies further upstream to the east.”<sup>37</sup> The same page of the Landscape and Biodiversity Assessment notes that there are riverine UK species such as otter and water vole present in this part of the Stour, as well as a good variety of aquatic plants and invertebrates. The Landscape and Biodiversity Assessment concludes that a key aim is “To restore and create species-rich grassland and wetland habitat, as part of the wider network of the Lower Stour Wetlands BOA.”<sup>38</sup>

85. The Eastern Route would also go through character area G1 (Old Park), which also lies within the Lower Stour Wetlands BOA, and the aim for this area is likewise to protect and enhance acid grassland and woodland habitat as part of the wider network of habitat within the Lower Stour Wetlands BOA.<sup>39</sup> Finally, the Eastern Route would also go through character area H6 (Littlebourne Fruit Belt), for which the main aim is also to ‘protect and enhance woodland habitat and to create wetland habitat, as part of the wider network of wetland and coastal habitat within the Lower Stour Wetlands BOA.’<sup>40</sup>
86. The EMC would therefore go directly through areas that are crucial to the Lower Stour Wetlands, and this severance of ecological connectivity is directly contrary to Policy SS1 and the recommendations of the Landscape

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<sup>37</sup> Page 201.

<sup>38</sup> Page 203.

<sup>39</sup> Page 222.

<sup>40</sup> Page 268.

Assessment and Biodiversity Assessment, which was commissioned to form part of the Draft Local Plan's evidence base. Despite this, the impact of the Eastern Bypass on the connections between these sites has not been considered, let alone assessed. The Eastern Route would go against the objectives of Policies SS1 and DS21, in destroying green infrastructure, harming the Stodmarsh Reserve and imperilling the ability of development to deliver 20% BNG.

87. Second, the first field north of Stodmarsh Road that the EMC would cross is home to Great Crested Newts, which resulted in the Council refusing to grant planning permission for eco-homes on the site. Great Crested Newts are protected species, and the statutory protection afforded to them by section 9 of the Wildlife and Countryside Act 1981 etc. has not been taken into account, still less has there been a lawful HRA.
88. Third, the Eastern Bypass as proposed would not, in fact, avoid going through the SSSI in any event, as the Eastern Route still goes through the north-east corner of the SSSI. Even if the only material consideration were the SSSI (which it is not), the Eastern Route would not avoid adverse effects on the SSSI.
89. Fourth, paragraph 2.14 in the supporting text to Policy C11 on the East Canterbury strategic development area explains 'The SDA provides important opportunities to create large new areas of open spaces, with improved ecological connectivity to key natural assets such as Trenley Park Woods.' There is no explanation of how the construction of the Eastern Bypass as proposed can be compatible with this aim when the proposal is to place the busiest road in Canterbury alongside Trenley Park Wood and cut it off from wild spaces in the rest of the development area. Plainly, it is entirely inconsistent with this aim

90. The significant environmental and ecological effects of the Eastern Route are demonstrated by the fact that the Friends of Old Park & Chequers Wood also oppose the Eastern Route on environmental and ecological grounds. The fact that the Eastern Route would have less of an effect on the SSSI than the Original Route does not mean that it would automatically have less of an environmental effect. The environmental effects need to be assessed and considered; they have not been.
91. The Council has therefore failed properly to assess reasonable alternatives by not considering the ecological harms associated with the Eastern Route. This failure also means that the location of the proposed Eastern Bypass is not sound because it is not justified by evidence and is not consistent with national policy (see further the FTC Landscape and Ecology Topic Paper no. 8).

#### *Ancient Woodland*

92. Ancient woodland is an area that has been wooded continuously since 1600. In the NPPF it is defined as an irreplaceable habitat. advice given jointly by Natural England and the Forestry Commission:

#### **“Ancient woodland**

Ancient woodland takes hundreds of years to establish and is defined as an irreplaceable habitat. It is a valuable natural asset important for:

- wildlife (which include rare and threatened species) - there is also [standing advice for protected species](#)
- soils
- carbon capture and storage
- contributing to the seed bank and genetic diversity
- recreation, health and wellbeing
- cultural, historical and landscape value.”[Underlining added]

93. Paragraph 180 NPPF states that permission for any proposal that result in the loss or deterioration of irreplaceable habitats such as ancient woodland should be refused unless there are wholly exceptional reasons. The Government Guidance on ancient woodland explains that it is a natural asset important for:

- Wildlife (which include rare and threatened species)
- Soils
- Carbon capture and storage
- Contributing to the seed bank and genetic diversity
- Recreation, health and wellbeing
- Cultural, historical and landscape value

94. In short, ancient woodland represents a high quality, high value habitat which benefits from a higher degree of protection than SSSI. Whilst according to NPPF paragraph 180 development resulting in the loss or deterioration of ancient woodland should only be permitted if there are ‘wholly exceptional’ reasons, the protection afforded to SSSIs is far lower; development affecting SSSIs should ‘not normally be permitted’.

95. The Eastern Route would go straight through ancient and semi-natural woodland in Trenley Park Woods, destroying this irreplaceable habitat. The Landscape and Biodiversity Assessment commissioned by the Council to form part of its evidence base for the Draft Local Plan described this habitat as priority habitat and explicitly recommended the protection and enhancement of this habitat.<sup>41</sup> The Council has not assessed the extent of this impact or taken it into consideration, rendering the evidence base relied upon for the location of the Eastern Bypass wholly inadequate. The destruction of

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<sup>41</sup> Canterbury Landscape Assessment and Biodiversity Appraisal 2020, page 229.

ancient woodland is also contrary to national policy. The currently preferred route will also slash through Sandpit Wood which is subject to a Tree Preservation Order as this wooded area is an important skyline feature as expressed by Canterbury City Council themselves, considering it to be of “high landscape value” and “form an important skyline feature.” (See also FTC Heritage and Landscape and Ecology Topic Papers No.s 3 and 8 respectively which further address the impact on the ancient woodland in and around Fordwich).

### *Viability*

96. The Eastern Route is by far the most expensive of the three options considered in the Feasibility Study (£91.7 to £103.6 million compared to £63 to £71.2 million for the Original Route and £73.8 to £83.4 million for the Western Route according to the Feasibility Study). These costings are based on the pro-rata additional costs only for the length of the route and do not take account of the differences in topography, nor the extra costs associated with building a bypass through sensitive, protected and often designated land. Furthermore, the Feasibility Report is based on 2021 costings and admits that it takes no account of inflation, despite the high rate of inflation in the UK throughout the past year. CCC has not taken not account the uplift in costs. A more realistic estimate is in the region of £300 at least.

97. The currently preferred route goes through sites of likely to be of high archaeological worth which have not been assessed by CCC and may well prevent the Eastern Bypass being built (see FTC Archaeology Topic Paper No. 4). Even if, however, the Eastern Route were chosen, the presence of highly sensitive and irreplaceable archaeological sites means that the costs of any necessary mitigation would greatly increase the cost of the Eastern

Bypass. There has been no assessment of the costs of or landscape impact of any such mitigation or in connection with other features which will be affected (see e.g. FTC Costing and Viability Topic paper. No 5). The need and extent of mitigation should be assessed at the very outset. The later the assessment the more expensive the mitigation will be and the more likely the need to fundamentally alter the proposed scheme.<sup>42</sup>

98. As stated below (and see Severance of Footpaths and Cycleways FTC Topic Paper No.2) there has also been no assessment of the cost of any mitigation to deal with the many paths and cycleways which will be severed by the currently preferred route of the Eastern Bypass.
99. It has been a chronic and historic failure of CCC that it has allowed housing development to take place without first securing proper sustainable transport infrastructure, often caving in to developer pleas of non-viability. There is every chance that the same thing will happen again.
100. There are therefore significant concerns that the Eastern Bypass is unviable. The prospect of some of the bypass being completed (at tremendous historical and environmental cost) before being abandoned is real. At best case it will be delayed 10-20 years meaning that the increased traffic and congestion caused by CCC misconceived housing strategy will not be abated. In light of these concerns, the proposals for the Eastern Bypass are not effective because it is not deliverable (see Costing and Viability FTC Topic Paper No.5).

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<sup>42</sup> See FTC Viability and Costing Topic Paper No.5 and the English Heritage paper on 'Mitigation of Construction Impact on Archaeological Remains' at <https://www.mola.org.uk/sites/default/files/downloads/Mitigation%20of%20construction%20impact%20A4.pdf>

### *Severance of Footpaths and Cycleways*

101. The Eastern Route directly affects three footpaths and a cycle track in Fordwich Parish. There is no indication in the plan as to how the proposed Eastern Bypass will allow continued use of these paths. It is obvious that there will have to be diversions, bridges, safe crossings, or underpasses to enable pedestrian use. These will inevitably negatively affect the enjoyment and utility of these well-used and historic rights of way. The routes affected are CC37 (route from Littlebourne to Stodmarsh Road), CB164 (runs parallel to Moat Lane along the edge of Westfield), CC23 (from Moat Lane by Fordwich House to St Martin's Church) and National Cycle Route 1 (from Fordwich Road by the bridge to Canterbury).
  
102. The proposed route would also cut across the ancient Augustine Way and sever a historic pilgrim path known as 'The Old Way' running from Bekesbourne to Canterbury. The Old Way is an ancient pilgrim route which runs from Southampton to Canterbury and cuts through Fordwich and has existed since at least *circa* 1360. (See further details in the FTC Footpath Severance Topic Paper No.2 and Heritage Topic Paper No.3).
  
103. Overall, a busy new road which cuts across these well-used and popular paths will inevitably severely damage their value for recreation and exercise. However sympathetically managed, the result must mean a degradation of their value to the wider community, contrary to the Draft Local Plan's stated intent to encourage active travel and to preserve heritage assets. It is also directly contrary to the encouragement of modal shift. Furthermore, there has been no allowance made for the additional costs in seeking to mitigate the harm (see FTC Viability and Costings Topic Paper No.5).

104. Once again, this impact has not been considered or assessed. There has been no genuine assessment of alternatives, and the evidence base for the Eastern Bypass is fundamentally flawed.

### *Transport*

105. The Eastern Route is by far the longest of the three options and therefore the least efficient in transport terms. Given that the Council's transport strategy will increase journey times throughout the district, the efficiency of the Eastern Bypass is crucial. The fact that the Eastern Route is by far the longest has been ignored.<sup>43</sup> The route was produced simply by the Transportation team leader Ruth Goldie without any evidence base having been produced.

106. The 'Zoning Scheme' as a whole is flawed. It is likely to discourage people from travelling into the City Centre when the City Centre is already dying, with less footfall and empty shops. The Zoning Scheme is also inappropriate for a city the size of Canterbury. The Ghent model cited is based on an area approaching 10 times that of Canterbury, with each zone having a selection of schools, supermarkets, doctors' surgeries and day-to-day infrastructure. This is far from the reality of Canterbury. To give just one example, some of the zones proposed do not have doctors' surgeries. The Council has not considered the situation of someone who lives in a zone without a doctor's surgery but needs to see a GP. It is worth noting that given the high degree of uncertainty associated with the proposal there has been no proper and lawful Equalities Impact Assessment assessing with any sense of reality the impact of the proposal upon protected classes of person, such as those with disability.

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<sup>43</sup> January 2023 meeting with FTC town councillors in answer to FTC Connolly's question that it looked like a child drew it.



107. Despite the fact that the Zoning Scheme is based on the example of Ghent, at a meeting of the Joint Transport Board on 17 January 2023 officers openly admitted never having been to Ghent or spoken to any planners or transport engineers from Ghent. Richard Moore (CCC, Head of Transportation and Environment) said that he had been to Ghent on holiday and that there had been no point contacting officers in Ghent because it was “completely different” to Canterbury; it has trams, an outer ring road and is much bigger. The same officer noted that even Oxford was in a much better position than Canterbury, as it has a better outer ring road and a 30% cycling mode share. The fact that Canterbury is particularly ill-suited to a zoning scheme has not (for some reason) discouraged the Council at all. No-one at the meeting could say where the idea of the ‘Ghent’ model had been derived or was not prepared to admit to it.

108. At the same meeting of the Joint Transport Board on 17 January 2023, Mr Moore (presumably in a misguided effort to reassure everyone that they did not need to worry about the Zoning Scheme) said it would only be implemented late in the plan period and by then (in 20 years’ time) the location of supermarkets and doctors’ surgeries might change – who knows where they would be? Apart from this being an acknowledgement that the Zoning Scheme is based on a high degree of uncertainty, saying that the Zoning Scheme will not come forward for some time is not a defence. Rather, this statement appears to accept that the Zoning Scheme is something that will be harmful and that no-one wants, but which need not be a major concern because it will not be implemented for some time – but of course, the whole strategy of the Draft Local Plan (especially the commitment to deliver disproportionate levels of housing) is predicated on the fact that it will be effective and deliverable, neither of which is the actual case.

109. Mr Jagger, the former Director of Planning for CCC, has described the transport strategy in policy SS4 as ‘the most unwelcome and damaging plan for an historic town that I have seen in 50 years.’ Fordwich residents support this representation and fully endorse the criticisms made of the Zoning Scheme within it. The Draft Local Plan proposes the closure of all city centre car parks and their relocation to an inner ring road without making any site-specific proposals. The Draft Local Plan also envisages the provision of new park and ride sites when the Council cannot afford to keep the current existing sites in operation.
110. In meetings with the Council, it has become apparent that CCC assert that Kent County Council has not allowed the modelling or assessment of alternatives which CCC officers thought desirable. In a Council briefing on 11 January 2023, residents were told that an Ultra Low Emission Zone and a Congestion Zone were not even considered because (although apparently favoured by CCC officers) they would not be supported by Kent County Council. In a meeting of the Joint Transportation Board on 17 January 2023, an officer said that a one-way system ring road was not modelled because KCC would not support it. However, at the same meeting Alun Millard (KCC Highways and Transportation) did not confirm that was the case but insisted that KCC’s role was simply to “support” CCC. As with the rest of the Draft Local Plan, the Zoning Scheme has (for unclear reasons) been chosen and then the Council has proceeded without assessing other options, regardless of the fact that Canterbury is ill-suited to a Ghent-style zoning system. However, it is apparent that neither CCC nor KCC now wishes to take ownership responsibility for the transport strategy.
111. At a meeting of the Joint Transport Board on 17 January 2023 Richard Moore expressed the view that people did not have to worry about the that it would not be 10 years before the EMC and the ring round (which is not a

ring road because it would not form a ring) would come forward. But transport infrastructure (even one which is flawed) must come before housing development. Even on the Council's own case, the plan is a plan for failure. It will not address existing congestion still less will it add the traffic for thousands of houses each year to congestion for at least a decade.

112. It is evident that nowhere has the need to address the large volume of traffic going through Fordwich been addressed. Fordwich's value as a historic gap and its strategic importance, have not featured as a driving factor in the formulation of the plan. This also reflects *inter alia* the lack of early engagement with the FTC and residents of Fordwich.

#### *Loss of Agricultural Land*

113. Paragraph 174(b) of the NPPF states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services- including the economic and other benefits of the best and most versatile agricultural land. Best and most versatile land is defined as grades 1, 2 and 3a, with grade 1 being classified as 'excellent quality agricultural land'. The Planning Practice Guidance explains that 'Soil is an essential natural capital asset that provides important ecosystem services- for instance, as a growing medium for food, timber and other crops, as a store for carbon and water, as a reservoir of biodiversity and as a buffer against pollution.'<sup>44</sup> Paragraph 6.29 of the Draft Local Plan states that outside the settlement boundaries, the best quality agricultural land 'should be protected from loss through development other than in exceptional circumstances'.

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<sup>44</sup> Planning Practice Guidance, Paragraph: 002, Reference ID: 8-002-20190721.

114. The Feasibility Study notes that the Eastern Route will have an adverse effect on Grade 1 agricultural land and orchards. Again, this impact has not been quantified or assessed and has not been taken into account. The Council has failed to take this harm into consideration when assessing the possible locations for the Easter Bypass. The assessment of alternatives is therefore flawed, and the evidence base also fails to justify the location of the Easter Bypass. That loss of land is likely to be great given the need for wide parallel buffers to the road for various matter including any proposed landscape mitigation and mitigation for archaeology (if contrary to our submissions the Eastern Bypass is permitted to go through areas of archaeological significance (see further FTC Agriculture Land Loss and Severance Topic Paper No.6 ).

115. In addition to the simple loss of agricultural land per se, there is the additional loss caused by the severance of existing agricultural land holdings. Severance can affect the viability of farming individual fields, and it can also make access across farms much more costly and difficult. The consequences of this in terms of impact on the viability of such holdings has simply not been assessed. In addition, creating unviable agricultural land holdings increases the future pressure for such land to be redeveloped as housing – none of which has been acknowledged, still less even assessed. The Eastern Route has by far the most harmful implications of the three routes examined by Stantec (see further, the FTC Agricultural Land Loss and Severance Topic Paper No.6).

### *Landscape*

116. The NPPF emphasises the importance of conserving and enhancing the natural environment in section 15. Paragraph 174 in particular states that planning policies should contribute to and enhance the natural and local environment, in part by recognising the intrinsic character and beauty of the

countryside. The importance of landscape is also emphasised in policy SS2 of the Draft Local Plan.

117. The Landscape and Biodiversity Assessment carried out in October 2020 was commissioned to underpin the review of the Local Plan. The Landscape and Biodiversity Assessment divides the Canterbury landscape into a number of different profiles. The Eastern Route would start in F6 (Stour Valley- Sturry and Fordwich), exit F6 into the northern part of G1 (Old Park), then exit G1 into G2 (Trenley Park Woodlands) where it would head south before curving west after the A257, going through H6 (Littlebourne Fruit Belt) before finishing in H4 (Nackington Farmlands).
118. According to the Landscape and Biodiversity Assessment, F6 forms ‘a pastoral valley setting to Canterbury City, with views across the floodplain meadows.’ The Landscape and Biodiversity Assessment goes on to note the existence of the Fordwich Conservation Area, before stating that ‘The boundaries of the Conservation Areas extend to the west across the majority of the Stour Valley, despite these settlements occupying only a small proportion of the LCA in the east, indicating the important role that the Stour Valley landscape plays in providing a rural and historic setting’.<sup>45</sup> The Landscape and Biodiversity Assessment then explains that ‘The Stour Valley landscape plays an important role in separating the north-eastern edge of Canterbury City with Sturry and Fordwich to the east... the landscape adjacent to Sturry and Fordwich has largely escaped the pressures of the 20<sup>th</sup> and 21<sup>st</sup> centuries and the Stour retains its traditional character threading its way across low-lying pasture, with areas of quiet/tranquillity in places... At Fordwich the buildings diminish and there are attractive views across the meadows in the floodplain towards the city. The intrusive urban fringe

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<sup>45</sup> Page 201.

elements are lost behind groups of wetland trees, creating a tranquil, pastoral quality to the landscape.<sup>46</sup>

119. Under Key Sensitivities and Values for F6, the Landscape and Biodiversity Assessment lists the following:

- a) The wetland corridor that contains important habitats contributing towards biodiversity interest.
- b) The rural and historic setting the landscape provides to Sturry and Fordwich, forming part of their associated Conservation Areas.
- c) The role of the landscape in providing rural separation between Canterbury City and Sturry/Fordwich, where development is limited.
- d) The role of the landscape in contributing towards the valley setting of the historic city of Canterbury.

120. The Landscape and Biodiversity Assessment recommends under the heading of ‘Development Management’ that the local distinctiveness of historic buildings and their settings within Fordwich should be preserved. The Landscape and Biodiversity Assessment states in particular that ‘The open character of most marshland landscapes and flat valley floors accentuate the visual impact of many proposals over a wide distance as compared with more enclosed landscape types. Avoid proposals that can impinge on the remote undeveloped quality [of] the marshland landscape.’ [Underlining added]<sup>47</sup>

121. For G1 (Old Park) the Landscape and Biodiversity Assessment notes that this area contributes to the valley setting of historic Canterbury, provides a rural setting to the Fordwich Conservation Area and is a distinctive historic

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<sup>46</sup> Page 202.

<sup>47</sup> Page 204.

landscape with a ‘strong sense of place.’<sup>48</sup> The Landscape and Biodiversity Assessment recommends conserving the undeveloped character of the landscape and resisting ‘unsympathetic proposals’ that would interrupt currently open views towards Canterbury.<sup>49</sup>

122. Further east, for character area G2 (Trenley Park Woodlands), the Landscape and Biodiversity Assessment states that the ‘Complex of ancient woodland contributes towards providing a historic wooded landscape setting’ to settlements, including the Fordwich Conservation Area.<sup>50</sup> Under ‘Development Management’ the Landscape and Biodiversity Assessment recommends conserving ‘the undeveloped character of the landscape, avoiding the introduction of large scale or incongruous elements, and ensuring that it continues to play a role in providing a rural and wooded setting to the Fordwich, Littlebourne and Elbridge House Conservation Areas.’<sup>51</sup> The Landscape and Biodiversity Assessment also recommends resisting ‘proposals to increase access or develop within the woodland, ensuring that the sense of remoteness and tranquillity is retained from along PRoW’.<sup>52</sup>

123. As stated above the currently proposed route will slash through woods and trees which are protected by a TOP and assessed by CCC to be of “high landscape value” and important features of the sky line. There is no evidence of these factors having been assessed before the route was chosen.

124. In The Landscape Assessment of Kent from 2004, Pg 109 of Part 2, which seems to be the most recent such assessment.

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<sup>48</sup> Page 218, 220.

<sup>49</sup> Page 223.

<sup>50</sup> Page 226.

<sup>51</sup> Page 229.

<sup>52</sup> Page 229.

## “NORTH KENT FRUIT BELT

...

West of Littlebourne, running down to the Great Stour and the outskirts of Canterbury is the ghost of a park that used to stretch from St Augustine's Abbey on the eastern outskirts of Canterbury to the small port at Fordwich. This area is still known as Old Park and much of the land remains open.

In this area too are the woodlands at Trenleypark Wood, east of Fordwich, which have been identified with one of the parks listed as 'Wickham' in the Domesday Book and which may represent the oldest emparked lan in England. By Henry VI's reign it had already been disparked, however. These woodlands, associated with a stream and its adjoining carr, are a large ancient woodland complex on the ridges and valleys to the east of Canterbury. Although a mix of chestnut coppice, conifer plantation and richer coppice with standards, it has a rich and varied ground flora.

The setting of Canterbury is an area of high landscape value because of its attractive valley side topography, views to the cathedral and rural character. The Pilgrim's Way approaches Canterbury within this character area. Pressure for development beyond the urban confines of Canterbury into this landscape are acute.

The road capabilities around Canterbury are often stretched to meet the needs of an excessive volume of traffic. This problem



has formerly resulted in proposals being made for alternative new vehicular routes around Canterbury, but traffic congestion may now have to be addressed in more innovative ways."

125. The EMC's current preferred route is contrary to this assessment and as proposed would also go through area H6 (Littlebourne Fruit Belt), which likewise plays a role in the separation of Canterbury from outside villages. The Landscape and Biodiversity Assessment recommends that any proposals for highway upgrades should 'retain the rural character of the lanes.'<sup>53</sup>
126. The Landscape and Biodiversity Assessment commissioned to form part of the Draft Local Plan's evidence base recognises the sensitivity and importance of the landscape outside Fordwich, which provides a historic setting to Canterbury, and which has remained relatively tranquil and undeveloped. The landscape is particularly sensitive to intrusive development because it is flat and development can be seen from a long distance away. Despite these findings and despite the explicit recommendations to avoid proposals that would impinge on the undeveloped quality of this landscape, the Council has not assessed the impact of the Eastern Bypass on the landscape outside Fordwich.
127. The landscape impact compared to other options has simply not been considered. Given that all the quotations taken above have come from the Council's own Landscape and Biodiversity Assessment and given that it is inevitable that the Eastern Bypass will have a significant negative adverse impact on the landscape outside Fordwich, this failure is baffling. It is yet another example of the Council failing to properly assess alternatives and failing to take a material consideration into account. These failures render

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<sup>53</sup> Page 269.

the proposed location of the Eastern Bypass unsound and legally flawed. (See further, the FTC Landscape and Ecology Topic Paper No.8).

128. Rather than putting a bypass through the Fordwich land in accordance with the underlying evidence the land in question forms an important strategic gap between the sprawl of Canterbury and maintaining the historic setting of Canterbury and preventing the merging of Canterbury with Sturry and Fordwich. It is therefore proposed that the area be designated a protected strategic gap. FTC is happy to discuss with CCC where this should be precisely situated but it should include the Fordwich Conservation Area and adjacent wetlands.

#### **DRAFT FORDWICH STRATEGIC/GREEN GAP POLICY**

*The Council will promote the preservation of the Fordwich gap. It will resist development proposals which conflict with the purposes of the Strategic Gap. The purposes of the Fordwich Strategic Gap designation are:*

- (1) to maintain the 'separate identity of settlements' of Fordwich and its setting from the City of Canterbury and historic view points thereby aiming to prevent their individual character and sense of place from being lost beneath continuous and anonymous urban sprawl and built development (which for the avoidance of doubt includes roads); and*
- (2) to keep land open and undeveloped and provide opportunities for positive provision of green infrastructure.*

#### *Flooding*

129. Paragraph 152 NPPF states that the planning system should support the transition to a low carbon future in a changing climate, taking full account

of flood risk. Paragraph 153 states that plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications of flood risk. Paragraph 161 NPPF provides as follows:

‘All plans should apply a sequential, risk-based approach to the location of development- taking into account all sources of flood risk and the current and future impacts of climate change- so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by-

(a) applying the sequential test and then, if necessary, the exception test as set out below.’

130. The sequential test aims to steer new development to areas with the lowest risk of flooding by stipulating that development should not be permitted if there are reasonably available alternative sites. If the sequential test is passed then it is necessary to pass the exception test, which requires that the wider sustainability benefits would outweigh the risk of flood harm and that the development will be safe for its lifetime.
131. The Feasibility Study notes that the Eastern Route is in close proximity to Flood Zone 3 (the highest flood zone). In particular, the Eastern Route passes through Flood Zone 3 as it approaches the Sturry Road northwards. It is obvious that the extensive construction works necessary for a 7.3m wide bypass will exacerbate flood risk in the area (see further FTC Flooding Topic Paper No. 1).
132. Despite this, there is no evidence that the Council has taken this factor into account or sought to avoid the flood risk by considering reasonable alternatives. Paragraph 6.48 of the Draft Local Plan states that ‘Many parts of the district are at risk of flooding, and the impacts of climate change are expected to increase this risk over the period of the Local Plan. New development should be appropriately located to avoid increasing the risk of

flooding, and where proposals come forward in areas of existing risk, specific assessments will be required'. No such specific assessment has been undertaken.

133. Further, neither the sequential test nor the exception test as provided for in the NPPF has been applied. The Council has failed to consider reasonable alternatives, and the current proposals for the Eastern Bypass are not sound because they are not based on evidence and are inconsistent with national policy, which places a strong emphasis on decreasing flood risk.

*Requirement for "Early and Effective Consultation"*

134. Article 6(2) of the SEA Directive requires there to be an 'early and effective' opportunity for consultees to have input into an environmental report<sup>54</sup>. The plan should develop in parallel in public consultation (see e.g. *Re Seaport Investments* [2007] NIQB 62). This has plainly not happened in this case. (see further FTC Consultation Topic Paper No.7)
135. Prior to the publication of the Draft Local Plan in November 2022, the Original Route for the Eastern Bypass went through the SSSI. It was only upon publication of the Draft Local Plan in November 2022 that the residents of Fordwich became aware that the new proposal was to put the Eastern Bypass directly to the south of Fordwich. This is despite the fact that the preliminary feasibility study which assessed two alternative routes for the Eastern Bypass was written in November 2021.
136. There was therefore a year between the Feasibility Study being commissioned and the local residents being made aware that the new proposal was to place the Eastern Bypass next to Fordwich. In this time, the

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<sup>54</sup> This directive was transposed into the law of England & Wales by The Environmental Assessment of Plans and Programmes Regulations 2004 (Statutory Instrument 2004 No.1633) ('the England Regulations').

Council has not consulted the residents of Fordwich, and the residents have consequently been unable to make representations about the proposal at a formative stage. A key aspect of meaningful consultation is that the consultation takes place at an early stage such that the consultation response is capable of influencing the final outcome. In contrast, the Council in this case has failed to make its intentions known and has then given the residents of Fordwich just two months (over the Christmas period) to make representations concerning the Draft Local Plan. After persistent requests from residents, the consultation period was extended to 13 February 2023 (further detail contained in FTC Consultation Topic Paper No.6).

137. Given the number of substantive issues raised by the Eastern Bypass and given that the Council should have raised the proposal much earlier, two months to respond is insufficient. The extra month (granted less than a week before the original deadline) whilst welcome is not sufficient to address this shortcoming for the local residents. The Council's approach does not represent the early and effective consultation which is required for local plans.
138. As set out above the Council has approach key matters with a closed mind (e.g. the requirement to meet OAN in policy SS3, the Transportation Strategy in policy SS4, and preconditioned selection of the Eastern Route in order to avoid impact on the SSSI in policies C11 and C16). In addition to being in breach of the SEA Directives and Regulations and the Aarhus Convention, such an approach is in breach of the common law legal requirement of a public consultation process, as the results of consultation must be conscientiously taken into account (see *R v Brent London Borough Council, ex parte Gunning* (1985) 84 LGR and the "Sedley principles").

## CONCLUSION

139. In light of the above and the FTC Topic Papers, the Draft Local Plan and associated policies are legally flawed and not sound.
140. There has been a failure to comply with the common law requirements of consultation and the requirements of the SEA Regulations and Habitats Regulations.
141. The spatial strategy is driven by the misconception that OAN must be met at all costs even when the extremely negative effects are obvious to everyone.
142. The transportation strategy is not supported by any evidence beyond a baseless hope that there will be a 'modal shift' once the Draft Local Plan succeeds in worsening traffic throughout the District. It is not effective. It will lead to an increase in GHG and traffic congestion.
143. The current proposed location of the EMC is not supported by any evidence and is not based on a genuine consideration of alternatives or lawful EA.
144. The Council cannot lawfully continue with the current version of the Draft Local Plan, and if it persists in doing so will only waste further time and resources.
145. Without prejudice to the foregoing, in any event, the evidence which presently exists demonstrates that of all the routes so far suggested by the CCC (see e.g. Stantec Report) the currently proposed Fordwich route for the EMC is by far the worst in environmental, heritage and other terms.
146. Furthermore, the area west of Fordwich should be designated a strategic/green gap protective policy (see suggested wording above). The plan should take steps in its early stages to restrict the traffic in particular heavy good vehicles, passing through Fordwich.

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