

Hearing Statement

Examination of The Horsham District Local Plan
2023 – 2040)

Prepared by Savills on behalf of Crest Nicholson
Plc Nicholson Plc

**Matter 3 – Climate Change and Water (including
Water Neutrality)**



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1. Introduction

- 1.1. This Hearing Statement has prepared by Savills, on behalf of Crest Nicholson Plc (Crest) in response to the Inspector's 'Matters, Issues and Questions' with specific regard to Matter 3: Climate Change and Water.
- 1.2. As set out in its Regulation 19 representations, Crest obtained an allocation for the new neighbourhood at Kilnwood Vale in 2009 and obtained hybrid planning permission for it in October 2011. It now has an existing community with circa 1,400 homes built and/or occupied alongside a new primary school, parks, open spaces and transport infrastructure. Kilnwood Vale is included in the settlement hierarchy within the draft HDLP as a 'Small town/Large village'.
- 1.3. Crest has actively and positively promoted 'Land West of Kilnwood Vale' (LWKV) for circa 10 years. LWKV (site ref: SA291) was one of sites included within the published Regulation 18 Public Consultation for the HDPL in March 2020 and subsequently, was recommended for inclusion as a draft allocation within the Regulation 19 Draft Horsham Local Plan within the officer's report to Cabinet in July 2021 which was approved by Cabinet. Within Appendix 6 of the July 2021 Cabinet Report (Site Assessment Summary), officers provided detail on the site's suitability for housing development concluding at that time that LWKV should be allocated for circa 350 new homes.
- 1.4. The LPA's position is that Water Neutrality has restricted the level of growth that can be accommodated within the district and over the plan period, and limited the ability of HDC to allocate sites sufficient to meet identified housing needs, or address any unmet need from other authorities over the Local Plan period. It is on this basis that the Council concludes that LWKV cannot be allocated at this time, with the LPA concluding that it is prioritising sites with existing services and facilities.
- 1.5. Crest's representations to the Regulation 19 Draft Horsham Local Plan firmly dispute the omission of LWKV on the grounds of water neutrality.
- 1.6. Crest maintains that Draft Strategic Policy 9: Water Neutrality is not justified as it is inconsistent with national policies as it fails to account of the principles lying behind paragraph 194 of the NPPF and the R (An Taisce) and Sizewell C cases. The policy should therefore be removed from the Local Plan.

2. Response to MIQs – Matter 3: Climate Change and Water

Matter 3, Issue 2 – Whether the approach to water neutrality and flooding is justified, effective, consistent with national policy and positively prepared?

Q1. Is Strategic Policy 9: Water Neutrality sound?

a) Is the geographical application of this policy accurately identified on the submission Policies Map?

2.1. No. The Policies Map does not show the geographical boundary of the Sussex North Water Resource Zone (SNWRZ) and should be modified to include this as this is necessary given that Strategic Policy 9 refers to the SNWRZ.

b) Is the restriction for residential development of 85 litres of mains supplied water per person per day justified and effective?

2.2. No. As stated in Paragraph 128 of the National Planning Policy Framework (NPPF), planning policies must take into account the viability of development. HDC's Viability Assessment (2023) states that £2,000.00 per dwelling will be required to achieve a reduction in water use to 85 litres per day (l/p/d). This is an additional cost in an already difficult market for development, with construction costs rising exponentially and other mandatory and local policy requirements stretching viability in some cases too far, meaning fewer houses and affordable houses built to meet OANs. There is no evidential basis for the £2,000.00 per dwelling figure, or any other figure.

2.3. The Water Neutrality Study: Part A states that achieving 85 l/p/d relies not only on specialist fittings, but also on changing behaviours. Ofwat's 2018 study which Part A relies upon also states that shifting behaviours is a difficult and long process, even with technology acting as an incentive. It can be seen that an immediate change from an average usage of 135 l/p/d to 85 l/p/d is unrealistic and unachievable.

2.4. The requirement for developments to be water efficient is an entirely different prospect to achieving water neutrality and should be framed as such within Strategic Policy 9, taking account of Building Regulations.

c) Is it clear how this policy would be applied to non-domestic buildings?

2.5. No it is not and this clarity is required in order that employment uses and key social, education and community infrastructure and facilities, that sit alongside new homes to create sustainable communities, can also be brought forward.

d) Is the approach to water off setting justified and effective? Has any further progress been made on implementing the Sussex North Offsetting Water Scheme? When realistically is it likely to be in place? Will it be effective?

2.6. No. It is Crest's firmly held view that water offsetting is not required as the adverse effect on protected sites caused by groundwater abstraction as identified by Natural England (NE) in its position statement.

- 2.6.1. The concept of water neutrality and offsetting solutions have seemingly evolved with little regard to the regulatory controls already in place and exercised by the Environment Agency (EA). Ofwat and DEFRA conduct the Water Resources Management Plan (WRMP) review every five years, to ensure a sustainable water supply. The 2024 WRMP will apply over the period 2025 – 2030 and is currently the subject of consultation. The WRMP is subject to HRA/AA under the Habitat Regulations.
- 2.6.2. NE's concern is limited to the potential effects of licenced groundwater abstraction at Hardham. The EA is undertaking a Sustainability Study of the licence to establish what, if any, groundwater abstraction at Hardham can be excluded from a likelihood of adverse effects on the integrity of the protected site. This is to report in March 2025 and will inform what, if any, exercise of the EA's powers under S.52 of the Water Resources Act 1991 is required. It might be that the Sustainability Review will conclude that the licence will need to be revoked, or amended to a new limit, or it might not need to be amended.
- 2.7. No reasonable amount of reduction in **water use** can reduce or stop abstraction from Hardham. **Only the statutory regulators** of water licencing, the EA, and the statutory water provider, who are both duty bound to operate under the Habitat regulations 2017, can reduce or cease abstraction at Hardham. In the interim, the Secretary of State has recently allowed an appeal at Kilnwood Vale which requires that water neutrality is required prior to occupation of development, on the basis that the development is policy compliant in all other respects, which does enable, in principle, developments to commence in advance of mitigation to achieve water neutrality.
- 2.8. In evidence that the LPA provided for the recent Kilnwood Vale appeal, the LPA stated that the SNOWS offsetting scheme would be operational by the end of 2024 and credits accessible within two years. In terms of its effectiveness, in the Water Neutrality Study: Part C Mitigation Strategy (November 2023) it is stated that the priority of access to offsetting delivered through the LPA-led Offsetting Scheme (SNOWS) should be given to sites allocated in Local Plans and/or identified in the associated, published Local Plan housing trajectories. In evidence presented at the recent Kilnwood Vale appeal, the LPA stated that application prioritisation system testing had been completed, but that priority of access to SNOWS credits is yet to be finalised.
- 2.9. Under Strategic Policy 9 (Water Neutrality) section 5.35 of the draft Local Plan states that, in recognising that offsetting capacity in SNOWS will be limited, access will be managed by the authorities to ensure that there is sufficient capacity in SNOWS to demonstrate water neutrality in schemes that are approved.
- 2.10. It is clear that the Council envisages a hierarchical approach in allocating SNOWS to schemes. Without any guidance as to what this process is, it is impossible to say whether the approach to water offsetting is justified. At the very least, access to SNOWS should be provided to sites that are on balance acceptable and would be granted planning consent in the absence of SNOWS. It seems unreasonable at least to withhold access to water (or water credits) to prevent development that is otherwise acceptable.
- 2.11. Given the dire housing land supply position that currently exists within Horsham and the acute need for housing within the district, it would be reasonable to expect that applications for housing development on allocated sites would be given first priority access to SNOWS where they are policy compliant schemes. However, the Council has recently indicated that this is not the case and has stated that the recently consented scheme at Kilnwood Vale to deliver 280 new homes would not be prioritised, despite being on

a longstanding allocated site, within both the existing and emerging Local plan and a key part of the Council's housing trajectories.

- 2.12. For the reasons set out below, there is evidence of ample potable water supply available in the short to medium term to obviate the need for abstraction at Hardham, if cessation is required.
- 2.13. Whilst there is strong evidence that demonstrates the requirement for development to achieve water neutrality will fall away in the early part of the plan period, while there is still a requirement for development to achieve water neutrality, it is considered that the Council's justification and rationale for the prioritisation of sites to access SNOWS should be set out in the Local Plan in order that this is transparent and effective in terms of housing delivery.

e) Has achieving water neutrality been adequately assessed as part of the viability evidence and is this policy flexible enough to deal with changes in circumstances with regard to water neutrality?

- 2.14. No. The Council's viability assessment includes an allowance of £2,000.00 per dwelling. The Council applies the requirement for water neutrality to all developments that have not achieved full planning permission as of September 2021. This includes Kilnwood Vale, which has had outline planning permission since October 2011 and was consented based on viability considerations, which have been updated since the outline consent was granted, including evidence of abnormal costs associated with remediation and landform remodelling associated with the scheme and supported the case for Kilnwood Vale being zero rated for CIL by the LPA. There is simply no evidential basis for the £2,000.00 per dwelling figure for 'offsetting' water neutrality, or any other figure. In evidence presented by the LPA in the recent Kilnwood Vale appeal, the LPA stated that £2,000.00 per dwelling was "*unlikely to impact on the viability of developments in Horsham*". However, there is no evidence that £2,000.00 will be the figure. With the rising costs of construction, exacerbated by the inability of developers to commence construction due to the imposition of water neutrality since 2021, this assertion is not justified especially for developments where the viability of development was assessed and factored some years ago
- 2.15. The requirement for development within Horsham District to achieve 'water neutrality' originated from the NE position statement issued in September 2021, which stated that supplies from a groundwater abstraction source at Hardham cannot, with the necessary degree of certainty, conclude no adverse effect on the integrity of protected sites in the Arun Valley, advising that development must not add to this impact. NE suggested that one way of mitigating this impact would be through 'water neutrality', where the use of water in the supply area before the development is the same or lower after the development is in place.
- 2.16. Given that the problem identified by NE is the potential adverse effect on protected sites as a result of supply from groundwater abstraction at Hardham, it stands to reason that if groundwater abstraction ceases at Hardham, or it is shown that abstraction at Hardham can continue in accordance with the duties under the Habitats Regulations, the requirement for developments to achieve water neutrality falls away. The EA/SW Sustainability Study is due to report in April 2025; the EA has then undertaken to review the abstraction licences at Hardham in light of the Sustainable Study; that licence review under S.52 of the WIA is subject to its own HRA/AA; the WRMP 2024 is also expected to be come into force in 2025; in addition there is progressive delivery of alternative potable water sources through the WRMP, which is also subject to an HRA/AA.

- 2.17. Strategic Policy 9 makes no allowance for this as the policy clearly asserts that “*all development within the Sussex North Water Resource Zone (WRZ) will need to demonstrate water neutrality through water efficient design and offsetting of any net additional water use of the development*”. It does not clearly consider the eventuality, indeed clear expectation, that water neutrality will be resolved over the plan period, despite strong evidence that this will happen in the early part of the plan period.
- 2.18. Crest Nicholson Plc provided evidence to the Inspector in the recent appeal concerning the non-determination of Phase 3DEFG of Kilnwood Vale, which identified alternative water sources that would be available in 2025/2026 to deploy by Southern Water, to more than make up for any shortfall that may arise from cessation of groundwater abstraction at Hardham. This includes Weir Wood reservoir which is required to be back in service by 31 March 2025 by statutory notice served on Southern Water by the Drinking Water Inspectorate under Reg 28(4) of the Water Supply Regulations 2016. Failure to comply with the notice engages enforcement action. As such, the Inspector concluded that there was no evidence to suggest the statutory notice will not be complied with and that the Secretary of State is also entitled to assume that the regime under the Water Supply Regulations will operate effectively (as per paragraph 194 of the NPPF). It may be noted that SW currently predicts Weir Wood being delivered by 2026. Whether that is acceptable is a matter for the regulators, but even so it indicates additional water supply in the early part of the Local Plan.
- 2.19. Weir Wood reservoir will have a peak deployable output of 13 ml/d so if revocation of the Hardham licence to abstract groundwater is assumed and only 5 ml/d would need to be found to make up for the loss in existing supply. This produces a worst case scenario deficit of 5.42 ml/d, rising to 7.59 ml/d at 2030. Weir Wood alone obviates the need for any reliance by Southern Water on Hardham groundwater abstraction. The Inspector confirmed in the Kilnwood appeal decision that, whilst there are other sources of supply that could be deployed and **there is reasonable certainty** of the outcome in the timing of Weir Wood becoming operational, which is anticipated to deliver 13 ml/d. Even though SW expects that this alternative supply of 13 ml/d will come forward in tranches from 2026, this is well in excess of the 5 ml/d that would need to be found in lieu of cessation of groundwater abstraction from Hardham (if, indeed, cessation is required as a result of the EA’s Sustainable Study).
- 2.20. The EA is the statutory body for issuing licences for water abstraction. Southern Water holds the licence for abstraction at Hardham and is the statutory undertaker for the provision of water for development within Horsham District. Both the EA as the regulator and Southern Water as the water provider, are bound by the Habitats Regulations. The EA has, under S.52 of the WIA, the power and duty to revise or revoke licences where it is found that there is the potential to have an adverse impact on protected sites. This is subject to HRA/AA under the Habitats Regulations. Southern Water has a continuing duty to reduce or revise its abstraction practices if it is found to have an adverse impact on protected sites under Regulation 9 of the Habitats Regulations.
- 2.21. The impact of groundwater abstraction on the Arun Valley sites is currently being investigated by the EA through a Sustainability Study, which is due to be published in 2025. This will establish if groundwater abstraction is having an adverse impact on the sites or not. If not, then there is no requirement for water neutrality. If there is an impact, then the Sustainability Study will establish if the current groundwater abstraction levels of 5 mega litres per day (ml/d), which is the maximum voluntary **reduced** abstraction

level currently, is a sustainable level of abstraction, or if it is not, then whether the abstraction licence needs to be revised, to reduce abstraction to a sustainable level or needs to cease entirely.

2.22. In addition to the Sustainability Study being conducted by the EA, Southern Water is currently preparing a revised WRMP (WRMP) under its duties set out in the Water Industries Act 1991, which includes reviewing sources, supply and practices of water supply with consideration of the Habitats Regulations in consultation with NE. Government Guidance¹ is clear that:

1. **WRMPs should** plan to meet the additional needs of new businesses and households.
2. **WRMPs must not** plan to service future growth in demand through unsustainable increases in abstraction under licences where change is necessary to prevent deterioration.
3. **WRMPs must** ensure they meet requirements for protected areas where abstractions interact with European Protected Sites.
4. **WRMPs must** deliver regulatory actions required to avoid deterioration.
5. **WRMPs must** meet the requirements for European site protected areas as soon as practicable.
6. **WRMPs must** take account of Conservation of Habitats and Species Regulations 2017 (and WRMPs are subject to Appropriate Assessment).

2.23. The consultation on the current draft WRMP is due to conclude on 4 December 2024. The above demonstrates that the WRMP is subject to an Appropriate Assessment under the Habitats Regulations and **is required** to plan to service future growth without unsustainable increases in abstraction.

2.24. The above evidence demonstrates that there is reasonable certainty that the requirement for water neutrality will fall away in the early part of the plan period and likely in 2025/2026 once alternative sources of supply are available, the Sustainability Study is concluded, and the WRMP published which will, in consultation with NE, ensure that groundwater abstraction is at a level that does not cause adverse effects on the Arun Valley sites, even if that level is zero. This scenario needs to be set out under Strategic Policy 9. The issue of development being required to be 'water efficient' by limiting the level of water usage per person per day is an entirely different prospect and should be framed appropriately to take account of Building Regulations and scheme viability.

¹ Water Resources Planning Guideline (England and Wales) Updated 14 April 2023

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