



**Brighton & Hove  
City Council**

**Proposed Submission City Plan Part 2  
Brighton & Hove Development Plan April  
2020**

**Hearing Session: 5<sup>th</sup> November 2021 (PM)**

**Statement in Response to Matter 16:  
Environment and Energy DM37-DM46**

**BY  
BRIGHTON & HOVE CITY COUNCIL**

## List of Abbreviations

AQMA – Air Quality Management Area  
BREEAM - Building Research Establishment's Environmental Assessment Method  
CP8 – CPP1 Policy CP8 Sustainable Buildings  
CP9 – CPP1 Policy Sustainable Transport  
CP10 – CPP1 Policy CP10 Biodiversity  
CPP1 - City Plan Part 1  
CPP2 – City Plan Part 2  
CSH – Code for Sustainable Homes  
ESCC – East Sussex County Council  
EPC - Energy Performance Certificate  
FBS – Future Building Standards  
FHS – Future Homes Standards  
GIS – Geographical Information Systems  
LCZs – Low and zero carbon energy technologies  
LGS – Local Green Space  
LNP – Local Nature Partnership  
LPAs - Local Planning Authorities  
LWSI – Local Wildlife Sites Initiative  
MCZ – Marine Conservation Zone  
NPPF - National Planning Policy Framework  
PAN – Planning Advice Note  
SOS – Sussex Ornithological Society  
WMS – Written Ministerial Statement

## DM37 Green infrastructure and nature conservation

**Q1. Does the policy approach to biodiversity net gain and the mitigation hierarchy accord with NPPF paragraph 180, which sets out the mitigation hierarchy (avoid, mitigate, compensate)? Are modifications necessary to address this?**

1. The council has proposed to address representations made by Natural England (212) and ESCC Ecologist (254) by amendments as set out in MM45, MM46 and MM66 in BHCC02 (Revised Schedule of Modifications). This will ensure DM37 accords with NPPF paragraph 180. See also response to question 2. It is proposed that MM46 is revised (see highlighted text) as follows:

MM 46	Policy DM37 p.110	<p><b>DM37 Green infrastructure and nature conservation</b> <i>Nature Conservation section. Amend first two bullet points to read:</i></p> <ul style="list-style-type: none"> <li>• <u>accordance with the mitigation hierarchy requirements of the NPPF*(link to footnote);</u></li> <li>• <u>an additional measurable</u> net gain in biodiversity is achieved;</li> </ul> <p><i>Footnote to read:</i></p> <p>The “mitigation hierarchy” is set out in <u>the NPPF paragraph 180,</u> the Biodiversity – code of practice for Planning and Development and the British standard for Biodiversity management (BS42020) 2013. In essence it seeks avoidance of harm; then mitigation; then compensation alongside new benefits for wildlife.</p>	To accord with the NPPF.
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**Q2. Does the policy appropriately set out the requirements for internationally designated sites, including the Habitats Regulations requirements, nationally and locally protected sites so as to be justified, effective and consistent with national policy, with particular regard to biodiversity net gain and the mitigation hierarchy?**

2. The council has proposed to address representations by Natural England (212) on Parts A, B and C of the policy, as well as representations submitted by various representors on Part C, by modifications in MM50, MM51, MM53, MM55 and MM67 (BHCC02). It is proposed to revise MM50, MM51 and MM55 as set out in the following table (see highlighted text for additional wording). The council considers that the policy together with these proposed modifications accords with the NPPF and all relevant requirements. Justification for the policy wording proposed in Part C(i) of MM55 can be found in MM67 and in the response to Matter 7 question 2.

**Matter 16:**  
**Statement by Brighton & Hove City Council**  
**4<sup>th</sup> October 2021**

MM 50	Policy DM37 p.111	<p><b><i>Policy DM37 Green Infrastructure and Nature Conservation</i></b> <i>Amend Part A. Internationally protected sites to read:</i></p> <p><u>All development must comply with the Conservation of Habitats and Species Regulations (as amended) (link to new footnote).</u> Development likely to have significant effects on an international site (either individually or in combination with other plans or projects) and which would affect the integrity of the site <del>will be subject to Habitat Regulations Assessment and will not be permitted unless the council is satisfied that:</del></p> <ul style="list-style-type: none"> <li>i) There is no alternative solution (which can be adequately demonstrated by the developer); <u>and</u></li> <li>ii) There are imperative reasons of overriding public health or public safety for the development; and</li> <li>iii) Adequate compensatory provision is secured.</li> </ul> <p><i>New footnote to read:</i> <u>The Conservation of Habitats and Species Regulations 2017 (as amended)</u></p>	To better reflect and accord with the Habitats and Species Regulations.
MM 51	Policy DM37 p.111	<p><b><i>Policy DM37 Green Infrastructure and Nature Conservation</i></b> <i>Amend Part B. Nationally protected sites to read:</i></p> <p>Development proposals should avoid impacts on nationally protected sites (<i>link to new footnote</i>). Development proposals likely to have an adverse effect on the site's notified special interest features will not be permitted, <b>unless the only exception is if:</b></p> <ul style="list-style-type: none"> <li>i) the benefits of the development, at this site, clearly outweigh <u>both</u> the likely impact to notified features on the site and any broader impacts on the network of nationally protected sites; and</li> <li>ii) the <del>loss impacts</del> <u>can be mitigated in accordance with the mitigation hierarchy; through on or off-site habitat creation to achieve a net gain in biodiversity/ geodiversity.</u></li> </ul> <p><i>Footnote to read: Development likely to have a significant effect on nationally protected sites will be required to assess the impact by means of an Environmental Impact Assessment.</i></p> <p><i>NB: This modification is proposed to replace MM51 (BHCC02)</i></p>	To better accord with the NPPF paragraph 180 and to reflect Natural England's concerns that biodiversity net gain is not applicable to statutory designations.
MM 55	Policy DM37 p.112	<p><b><i>Policy DM37 Green Infrastructure and Nature Conservation</i></b> <i>Move and amend the following section of the final paragraph from page 112 to follow the new proposed section heading entitled "Designated Sites" on page 111 and prior to existing paragraph that reads "Proposals for development within a designated site of importance to nature conservation..."</i></p> <p><del>...Where proposals are liable to cause direct or indirect harm impact to a designated sites, they must provide:</del></p>	To better accord with NPPF paragraph 180 and improve effectiveness of policy.

		<p>a) evidence to demonstrate that the objectives of the designation and integrity of the area will not be undermined;</p> <p>b) funded management plans that secure the long term protection and enhancement of remaining features<sup>72</sup>; and</p> <p>c) up-to-date information about the biodiversity/geodiversity which may be affected, <del>and how loss can be mitigated to achieve measurable net gains.</del></p>	
		<i>NB: This modification is proposed to replace MM55 (BHCC02)</i>	

**Q3. In relation to the nature conservation requirements, is the term priority species and habitats clear and unambiguous?**

3. Representations from the RSPB (154) and SOS (228) proposed an additional reference to measures for swifts and bees within this section of the policy. However, it was considered too detailed to refer to species within this section. Discussions were held with the County Ecologist to ascertain whether the wording “priority species” would cover these species; this guided the council to amend the wording from “priority” to “notable and protected” as proposed in MM47 to ensure wider coverage of species. Footnote 79, policy DM37, provides further explanation of the legislative framework.

**Q4. Should the policy include a specific net gain target? If so would this be justified by the evidence?**

4. No, as the approach to biodiversity net gain is established in CPP1 Policy CP10. The council is aware of the LNP (Local Nature Partnership) aspiration for a 20% target and has committed to working with the LNP to bring forward evidence to support this target in MM66. The CPP1 review will provide a mechanism to consider the inclusion of a specific target.

**Q5. What was the methodology used to identify the LWS (appendix 3)? Is it robust and is each justified by the evidence? How were the boundaries defined?**

5. The methodology accords with Defra guidance<sup>1</sup>, is considered robust, and justifies the LWS designations. The methodology, as described in sections 3.2 and 4 of the ED10 LWS Review 2017, Updated 2020, included steering group approval of the site selection criteria (ED10 Appendix 1) and sites for survey; site surveys undertaken by an ecologist; landowner consultation; survey review against the pre-agreed selection criteria undertaken by selection panels; and recommendations for designation by selection panels in 2013 (ED10 Appendix 3). Boundaries were defined through this process; survey forms included maps of each survey site, which were digitised onto GIS.

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<sup>1</sup> Defra, 2006. Local Sites. Guidance on their identification, Selection and Management.

6. In 2017, the East Sussex Technical Panel reviewed the 2013 decisions. This included review of all surveys, maps and assessment of sites against both Brighton & Hove and Sussex selection criteria (ED10 Appendix 5). During the process, boundaries were further defined with any changes assessed to ensure new areas merited designation and/or that areas were removed where appropriate, (ED10 Appendix 5). Sites that did not have sufficient survey information were retained as candidate sites, pending further survey.
7. Consultation on sites proposed for designation, as well as those proposed for de-selection, was undertaken with site owners concurrently with consultation on the draft CPP2. Representations submitted were considered by the Sussex LWSI, Further actions taken included additional surveys, leading to some boundaries being redefined or deletion of sites. Final approval, including consideration of any representations and evidence submitted by site owners, was given by the Sussex LWSI Technical Panel.

**Q6. Are other modifications required to ensure that the policy is justified, effective and consistent with national policy and to ensure that it is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals?**

8. Modifications MM45 to MM70 (BHCC02) have been proposed to address representations, improve effectiveness and ensure accordance with the NPPF. Further modifications are proposed in response to questions 1 and 2 above. In addition, the following modification is proposed:

MM ##	Policy DM37 page 110	<p><b><i>Policy DM37 Green Infrastructure and Nature Conservation</i></b>  <i>Amend bullet point list under Nature Conservation section to read:</i></p> <ul style="list-style-type: none"> <li>• <u>ancient woodland and irreplaceable habitats are protected</u></li> <li>• that appropriate and long-term management of new or existing habitats is secured <u>and opportunities to connect habitats are secured</u> to ensure a network of nature recovery<sup>67</sup>; and</li> </ul>	To better accord with NPPF and to address ongoing discussions with Natural England
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## DM38 Local Green Spaces

**Q1. What is the justification for each of the local green spaces designated? What methodology was used to assess land for designation and is it robust? Would each accord with the criteria set out in NPPF paragraphs 101 and 102? How were the boundaries defined? Is there any justification for amending the boundaries?**

9. The process which led to the identification of the LGS sites in DM38 is set out in Paragraphs 4.12-4.14 of ED21a Urban Fringe Assessment (UFA) 2014 and restated in Chapter 3 of ED24 UFA 2021 Update. Section 5 of TP04 LGS Topic Paper sets out the Council's methodology used for assessing sites in relation to the criteria listed in NPPF paragraphs 101 and 102<sup>2</sup>. Appendix 1 of TP04 sets out the Council's site level assessment of the four sites in DM38 and the other candidate sites proposed by consultees at the Regulation 18 and 19 consultation stages. All four LGS proposed in DM38 have well defined boundaries as explained in Section 6 and Appendix 1 of TP04, therefore the Council does not see any justification for amending the boundaries.

**Q2. Overall, would the methodology used accord with the purpose of local green spaces which allows communities to identify and protect green areas of particular importance to them through local and neighbourhood plans?**

10. Yes, as set out in TP04 Section 6, the four LGS sites proposed are important green spaces with particular value for the city as a whole. All are subject to multiple open space, environmental and heritage designations and are well used by their local communities. The LGS designations have received support from the majority of respondents at each stage of CPP2 consultation with no objections to the proposed DM38 designations at Regulation 19 stage.

**Q3. Is there justification for any other local green spaces that would meet the criteria set out in national policy and guidance?**

11. No, the Council considers there is insufficient justification to designate additional LGS sites at this stage. Strong representations have been made for the designation of Whitehawk Hill as LGS and these arguments are reviewed in detail in TP04 and ED24. However, the Council considers that Whitehawk Hill does not fully satisfy the NPPF and NPPG criteria in that it covers an extensive area of the urban fringe without clearly definable boundaries.

12. Several smaller sites have also been proposed and these have been reviewed individually in TP04 Appendix 1. The Council considers there is

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<sup>2</sup> Referenced in the TP04 Local Green Space Topic Paper as Paragraphs 99 and 100 in the previous February 2019 version of the NPPF.

insufficient evidence that these sites have demonstrably special qualities relative to other potential sites, and there is limited information on their value to local communities. To demonstrate this would require more comprehensive assessment of all potential sites in the city and further local community consultation. This would be beyond the current scope of CPP2. However, Paragraph 2.295 states that there may be scope for further sites to be designated through the preparation of neighbourhood plans subject to meeting NPPF criteria.

**Q4. Any future development on the designated local green spaces would be subject to general green belt restrictions as set out in NPPF paragraphs 147-151. In this regard, what implications would designation have on the operational needs of Hollingbury Park and any necessary highway access routes encroaching on Benfield Valley? Would either be a limitation to designation?**

13.No, it is not considered that the restrictions on development in NPPF Paragraphs 147-151 would limit the proposed LGS designations. Paragraph 149 allows for new development related to outdoor sport and recreation and the extension and replacement of existing buildings, whilst Paragraph 150 allows for local transport infrastructure which can demonstrate a requirement for a Green Belt location. Such developments are required to preserve the openness of the Green Belt and not conflict with the purposes of including land within it. Such restrictions would not unduly constrain the existing or potential future uses within the proposed LGS and these would continue to be focused on outdoor leisure and recreation.

### **DM39 Development on the Seafront**

**Q1. In requiring proposals that generate a need for enhanced coastal defences to accord with the relevant Shoreline Management Plan and Coastal Strategy Study, would the policy be justified and effective?**

14.DM39a) is justified as the coastal frontage of the city is considered at risk from tidal flooding<sup>3</sup>. CPP1 Policies SA1 and CP11 set out the overarching approach to flood risk and maintaining coastal defences. The council's policies for coastal management and coastal defence works are set out in the Shoreline Management Plan and coastal defence strategies<sup>4</sup>. To improve effectiveness the following Main Modification is proposed:

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<sup>3</sup> ED13a Strategic Flood Risk Assessment Level 1 and Level 2 Screening -October 2018

<sup>4</sup> OD54 Beachy Head to Selsey Bill Shoreline Management Plan 2006; OD55 Brighton Marina to Saltdean Strategy 2001 and OD56 Brighton Marina to River Adur Strategy 2014 or updates.



MM ##	Policy DM39  page 119	<p><b>Policy DM39 Development on the Seafront</b></p> <p><i>Amend part a) of policy to read:</i></p> <p>a) <del>accord with</del> <u>be consistent with</u> the relevant Shoreline Management Plan and Coastal Strategy Study<sup>1</sup>;</p> <p>include new footnote: <u>Beachy Head to Selsey Bill Shoreline Management Plan 2006; Brighton Marina to Saltdean Strategy 2001 and Brighton Marina to River Adur Strategy 2014 or their updates.</u></p>	For clarity
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**Q2. Does the policy provide appropriate safeguards against development that would be likely to have an adverse impact on designated sites, such as Beachy Head West Marine Conservation Zone (MCZ)? Is reference to an MCZ assessment necessary?**

15. To provide appropriate safeguards, it is suggested that main modification MM70 to the last paragraph of DM39 (MM70) could be amended to add reference to MCZ assessment (highlighted text):

MM70	Policy DM39  page 119	<p><b>Policy DM39 Development on the Seafront</b></p> <p><i>Amend last paragraph of policy to read:</i></p> <p>All developments providing sea-based activities or with a potential impact upon the marine environment should <del>have appropriate regard to the Beachy Head West Marine Conservation Zone</del> and be in accordance with the South Marine Plans. <u>Development that would be likely to have an adverse impact on designated sites including the Beachy Head West Marine Conservation Zone will need to accord with DM37 Green Infrastructure and Nature Conservation which requires the impact to be assessed through a MCZ Assessment.</u></p>	For clarity and better accord with NPPF
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16. In addition, along with the related modification MM69 to Policy DM37, it is proposed that MM52 could be further amended as follows (see highlighted text):

MM52	Policy DM37 page 112	<p><b>Policy DM37 Green Infrastructure and Nature Conservation</b></p> <p><i>Move the first paragraph of page 112 and place as a footnote linked to the first sentence of Part B. Nationally protected sites.</i></p> <p><i>Footnote to read:</i></p> <p><u>Development likely to have a significant effect on nationally protected sites will be required to assess the impact by means of an Environmental Impact Assessment. Development likely to have a significant effect on the MCZ will be required to assess the impact by means of a Marine Conservation Zone Assessment.</u></p>	Unnecessarily as policy text
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**Q3. Does the policy and supporting text, in encouraging enhancements to sea defences provide appropriate protection for nature conservation?**

17. The second paragraph of DM39 requires proposals to be ‘*designed to avoid adverse impacts from and on the coastal and marine environment in accordance with Policy DM37...*’. The council has proposed modification MM71 (BHCC02) to provide further clarification to the supporting text.

**DM40 Protection of the environment and health-pollution and nuisance and DM41 Polluted and hazardous substances and land stability**

**Q1. Does policy DM40 provide appropriate protection from light pollution of all kinds? In this regard would it accord with NPPF paragraph 185C, which aims to limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation?**

18. To better accord with NPPF paragraph 185c the Council has proposed modifications to the policy and supporting text (see MM72 and MM73 BHCC02). It is proposed that MM72 is further revised (see highlighted text) as follows to ensure full accordance:

MM 72	Policy DM40 Page 123	<p><b>Policy DM40 Protection of the environment and health-pollution and nuisance</b></p> <p><i>Amend criteria (g) to read:</i></p> <p>g) ensure <del>outdoor</del> lighting is well designed; low impact; efficient; the minimum necessary with an appropriate balance between intensity, fittings, height and structures; and, not cause unacceptable detriment to <u>health and amenity</u>, public &amp; highway</p>	To better accord with the NPPF.
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		<p>safety, biodiversity, in particular priority habitats and species, the night sky and the South Downs National Park International Dark Sky Reserve.</p> <p><i>(nb this modification would replace MM72 (BHCC02).</i></p>	
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**Q2. Should the policy refer to the lower pollution levels from some motorised forms of transport such as electric cars and very modern diesel vehicles, so as to support their use? In its absence would the policy be effective and consistent with national policy?**

19. The policy is considered effective and consistent with NPPF paragraphs 104d and 186 and does not require a specific reference to lower polluting vehicles. The policy complements CPP1 Policy CP9 and CPP2 transport policies which seek to reduce car-based travel, improve air quality, and promote sustainable and low/zero carbon travel. This reflects the council's ambitions towards sustainable travel, and tackling climate change and air pollution, as set out in OD58 Air Quality Action Plan. Support for use of lower-polluting vehicles is provided in Part 3 of CP9, through measures which promote alternative fuel use; DM36 Part 3 through requirements for low emission vehicle infrastructure; and DM40 paragraph 2.309 through references to remedial measures in areas of poor air quality.

20. A modification to paragraph 2.305 is proposed to reflect the revised AQMA 2020 designation.

MM ##	Supporting text to Policy DM40, para 2.305 page 123	<p><b><i>Policy DM40 Protection of the environment and health-pollution and nuisance</i></b></p> <p><i>Amend supporting text paragraph 2.305 to read:</i></p> <p><del>Two</del> Six Air Quality Management Areas (AQMAs) are currently designated within the city; <del>one</del> covering the city centre, <u>Rottingdean, South West Portslade, Sackville Road-Old Shoreham Road, South Road-Preston Road, and Eastern Road (Hospital).</u> <del>and Portslade,</del> and a second smaller area that includes Rottingdean High Street and its junction with the A259.</p>	To reflect new designation
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**Q3. Does policy DM41 reflect the complex and iterative nature of site investigations so as to provide appropriate flexibility and accord with national policy?**

21. DM41 requires desk top survey and, where appropriate, a site investigation; which accords with NPPF paragraph 183b and PPG paragraph 33-007). The iterative process is recognised in paragraph 2.317 through reference to phased conditions. Paragraph 2.319 acknowledges there may be cases where additional flexibility can be provided through the

ability to grant permission subject to conditions requiring site investigation in cases where contamination risk is not high.

**Q4. Would the detailed policy wording ensure that the policies are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals?**

22. The council proposes further modifications to DM40 and DM41 to improve clarity.

MM ##	Policy DM40 page 122	<p><b>DM40 Protection of the environment and health-pollution and nuisance</b></p> <p><i>Amend and combine criteria (e) and (f) to read:</i></p> <p>(e) <del>particular regard must be given to demonstrate</del> the impacts of emissions from transport, flues, fixed plant, and, heat and power systems <del>have been considered.</del>; (f) <del>+</del> New biomass combustion and CHP plants associated with major developments will not be acceptable in or near an Air Quality Management Area and sensitive receptors such as the Royal Sussex County Hospital due to the need to comply with nitrogen dioxide limits; and</p>	To improve clarity
MM ##	Policy DM41 page 126	<p><b>DM41 Polluted and hazardous substances and land stability</b></p> <p><i>Amend first sentence of policy to read:</i></p> <p><del>Development proposals must ensure that</del> <u>Planning permission will be granted for developments that can demonstrate they do not prejudice health, safety, natural capital and the quality of the city's environment.</u></p>	To improve clarity

**DM42 Protecting the water environment and DM43 Sustainable drainage**

**Q1. Should the policy set a water efficiency target of 100 litres per person per day by 2040?**

23. No, as CPP1 Policy CP8 requires the optional water efficiency target of 110 litres per person per day. The council is aware of the 'Target 100'; the draft Greater Brighton Water Plan 2020 (OD67) sets an objective to adopt a region-wide target of 100 litres per person per day by 2040. The CPP1 review will be the appropriate mechanism to consider the appropriateness of requiring a further enhanced water efficiency target.

**Q2. Does policy DM42 clearly express the need for development to ensure adequate waste water infrastructure at an appropriate time?**

24. Yes, the policy clearly requires that, where capacity assessments undertaken by the applicants show there is a need for new or improved

infrastructure, the occupation of development will be phased to align with the delivery of water or wastewater infrastructure. The wording of the policy and supporting text reflects wording requested by Southern Water<sup>5</sup>.

**Q3. In requiring sustainable drainage systems (SUDS) to be designed and located in accordance with the SUDS SPD, would policy DM43 be justified and effective?**

25. Given the evidence that the urban land use, steep topography and lack of watercourses make Brighton & Hove particularly susceptible to surface water flooding<sup>6</sup>, the SUDs SPD has been adopted to provide detailed technical guidance for applicants that is specific to the city. It is therefore considered justified to make reference to the SPD. However, in order to improve effectiveness the following Main Modification is proposed:

MM ##	Policy DM43 page 131	<p><b>Policy DM43 Sustainable Drainage</b> <i>Amend first sentence of third paragraph of policy to read:</i></p> <p>SuDS should be sensitively located and designed <u>from the outset</u>, in line with recognised best practice<sup>97</sup>, <u>the Urban Design Framework SPD</u> and <del>in accordance with</del> the Sustainable Drainage SPD to ensure that the quality of local water is not adversely affected;</p>	For clarity
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**Q4. Does policy DM43 and supporting text provide clear guidance that SUDS should be considered at an early stage in the design process, encouraging master planning where appropriate? Is reference to the emerging Urban Design Framework SPD necessary in this respect?**

26. Along with the proposed changes set out in response to Q3, the following proposed changes to the supporting text are proposed to add further clarity and reference to the Urban Design Framework SPD:

MM ##	Supporting text 2.333 to Policy DM43 page 132	<p><b>Policy DM43 Sustainable Drainage</b> <i>Amend paragraph 2.333 to read:</i></p> <p>2.333 The choice of appropriate sustainable drainage measures for a site/development should be informed by specific catchment and ground characteristics, and will require the early <u>design stage</u> consideration of a wide range of issues relating to the <u>design, location, management, long term adoption and maintenance of SuDS. A landscape-led approach to sustainable drainage techniques should be undertaken. Best practice and detailed guidance is set out in the South East Authorities Water People Places masterplanning guidance together</u></p>	For clarity
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<sup>5</sup> At Draft City Plan Part 2 Regulation 18 consultation stage – see CD18b

<sup>6</sup> ED13a Strategic Flood Risk Assessment Level 1 and Level 2 Screening -October 2018

		<u>with the Urban Design Framework SPD, the Sustainable Drainage SPD and the CIRIA (2015) guide for master planning sustainable drainage into developments.</u>	
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**Q5. Would policy DM43 and DM42, together provide appropriate safeguards for water quality and quantity?**

27. Yes, given the chalk aquifer and being within a ‘water stressed’ region, DM42 complements CPP1 Policy CP8<sup>7</sup> by specifically requiring development to protect and improve water quality. Development will not be permitted if it will have an unacceptable impact on the quality and potential yield of local water resources used for public water supplies. DM43 ensures that sustainable drainage is incorporated in all developments and that through its design and location local water quality is not adversely affected.

**DM44 Energy efficiency and renewables**

**Q1. Would the approach to energy efficiency and renewables accord with national policy, in particular the Written Ministerial Statement 2015 on nationally described standards? How would it interact with City Plan Part 1 policy CP8? Should it take into account the whole energy life cycle of development?**

28. DM44 accords with the Planning and Energy Act 2008 which allows LPAs to set local targets for energy efficiency and the 2015 WMS which sets an expectation that LPAs should not set energy efficiency standards for new homes higher than the energy requirements of the CSH Level 4, which is equivalent to a 19% improvement on the Part L 2013 standard<sup>8</sup>. The Government has clarified that the NPPF<sup>9</sup> does not prevent LPAs from using their existing powers under the Planning and Energy Act 2008 or other legislation where applicable to require energy efficiency standards above Building Regulations.

29. DM44 complements CP8 by applying the minimum standard of at least 19% improvement on carbon emissions to all development not just residential new build.

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<sup>7</sup> CPP1 Policy CP8 Sustainable Buildings aspires to water neutrality and appropriately sets out the optional water efficiency target of 110 l per day for new residential development (CP8.e) and requires water supplies to be safeguarded within Ground Water Source Protection Zones (CP8.l).

<sup>8</sup> January 2021 Government response to Future Homes consultation at paragraph 2.40 indicates in the immediate term: ‘will not amend the Planning and Energy Act 2008, which means that local planning authorities will retain powers to set local energy efficiency standards for new homes’

<sup>9</sup> Government response to the draft NPPF consultation MHCLG, July 2018

30. CP8.2.i requires demonstration of how developments use materials that have low embodied carbon. Requiring applicants to undertake a whole energy life cycle of development would need to be considered through a review of CPP1. A methodology for establishing the embodied carbon in buildings would need to be prepared and consideration given to appropriate application (type and size of development). CPP1 review will be informed by the council's emerging Circular Economy Routemap, best practice and the council's current Whole Life Carbon Assessment pilot on a new build council homes project.

**Q2. In seeking to encourage all development to improve energy efficiency, would the policy be effective in meeting its aim to contribute towards a carbon neutral city by 2030? What is the evidence to support the standards encouraged and are they justified? What is the justification for the areas indicated where greater reductions in CO2 emissions would be encouraged (Low Carbon Opportunity Zones – Development Area 1-7, H2 allocations and industrial areas identified and safeguarded in CP3.3)?**

31. DM44 will contribute towards reducing CO2 emissions from the built environment. It will help achieve the council's carbon neutral city target by requiring a reduction in energy consumption and an increase in low and zero carbon (LZC) energy generation in those types of developments not covered by CPP1 Policy CP8. CP8.1 requires 19% carbon reduction improvements against Part L for new build residential and BREAM standards for new commercial buildings over 1000 sq. m/ 0.5ha. DM44 applies this to all development including conversions and changes of use.
32. The 19% reduction is the maximum carbon savings that can be sought under current national planning policy and will result in efficient buildings which reduce the demand for energy and deliver some additional renewable energy generation for the city (CP8 4.80).
33. ED11 CPP2 Energy Study provides the justification for the requirements set out in DM44.1; i.e the need to mitigate carbon emissions associated with all new development<sup>10</sup> and to meet local and national policy objectives for CO2 emissions reduction<sup>11</sup>.
34. The evidence to support the higher energy performance standards required in DM44.2 is set out in ED11 (section 3.3.3 -3.3.4) and the standards are justified in order to improve the energy efficiency of new and

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<sup>10</sup> Figure 3, page 30, Brighton & Hove CPP2 Energy Study 2018 ED11 indicates that the city's homes and workplaces are responsible for 70% of the city's carbon emissions.

<sup>11</sup> As summarised in paragraphs 2.336 of DM44, page 135 of SD01 Proposed Submission CPP2.

existing properties<sup>12</sup> and fuel poverty in the city<sup>13</sup>. Recent government consultations indicate the Government's commitment to tighten standards<sup>14</sup>. ED11 considered that applying the standards would not impact on viability (sections 5.6 and 7.2 pages 78 and 90).

35. Building Regulation 25A requires all new developments to assess the potential to incorporate LZC energy technologies. Opportunities for delivering LZC technologies exist across the city, but there are some locations which may be particularly suitable for increased levels of decentralised, LZC energy installations, or to make best use of resources and/or to mitigate adverse impacts. As described in DM44 (paragraph 2.352- 2.355) these are: Development Areas 1-7, H2 housing allocations in the urban fringe and CP3.3 industrial estates/ business parks. Further explanation and justification is set out in ED11 (section 5 and summarised in 5.4) which mapped opportunities and constraints for a range of LZCs (such as solar, air source heat pumps and wind turbines) and opportunities for enhanced district heat networks. CP8 and DM44 standards are expressed as a minimum to provide the flexibility/opportunity for developers to go further and therefore DM44.3 identifies areas of the city where opportunities exist to go beyond the minimum standards.

**Q3. Are Modifications to the policy and supporting text required to clarify the interrelationship with the standards encouraged for all new development and the Future Homes Standard and Future Buildings Standard? In light of those emerging standards would the policy be effective?**

36. Main Modifications MM74, MM754 and MM78 are proposed (BHCC02) to clarify the position of DM44.1 regarding the impending Future Homes and Building Standards (FHS, FBS)<sup>15</sup> and interim uplift in Part L which when brought into effect would supersede the 19% standard in DM44 and would be applied to all development as set out in the Government's response to the Future Homes Consultation.

37. The FHS and FBS recommendations have yet to be implemented or consolidated into Building Regulations. It is understood they will come into effect in 2025 and interim standards will come into force from June 2022. However, transitional arrangements mean that developments could

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<sup>12</sup> ED11 at section 3.3.3 -3.3.4 shows there is lower energy performance in existing buildings than in new buildings in the city. In existing buildings, 57% of non-domestic properties, and 74% of dwellings achieve a 'D' rating or above. Of these dwellings, the majority have a 'potential' to achieve a 'C' or 'B' rating with some relatively straightforward cost effective energy efficiency improvements.

<sup>13</sup> In Brighton & Hove fuel poverty was estimated to affect 11.9% of households, higher than national and regional averages.

<sup>14</sup> BEIS, March 2021 [The Non-Domestic Private Rented Sector Minimum Energy Efficiency Standards Implementation of the EPC B Future Target](#) and BEIS, September 2020 [Improving the Energy Performance of Privately Rented Homes in England and Wales](#)

<sup>15</sup> The Future Homes Standard: 2019 Consultation on changes to Part L (conservation of fuel and power) and Part F (ventilation) of the Building Regulations for new dwellings, January 2021



continue to be built under current regulations until June 2023. Therefore DM44 should be retained, with appropriate future proofing to ensure it remains effective as proposed in the MMs until the FBS and FHS come into force.

**Q4. In considering City Plan Part 1 policy CP8 and this policy, does the Plan provide appropriate support for energy efficiency retrofitting?**

38. Yes, CP8 recognises that to deliver significant carbon savings, emissions associated with the existing building stock must be addressed in addition to setting standards for new development (paragraph 4.82). Appropriate support for energy efficiency retrofitting is provided in CP8.f which applies to all development including extensions and changes of use and requires improvement to the sustainability of existing buildings, making the most effective use of land, and re-using existing buildings (paragraph 4.89).

39. DM44 complements CP8. Given the importance of addressing energy consumption from domestic and non-domestic buildings, the council considers opportunities to improve the performance of existing and new developments should be taken in advance of the Government targets. DM44.2.i requires a minimum Energy Performance Certificate (EPC) rating of 'C' for conversions and changes of use of existing buildings to residential and non-residential use. Achieving EPC 'C' will require basic energy efficiency retrofitting measures such as loft/wall insulation, double glazing, improved heating systems and will help to achieve government Minimum Energy Efficiency Standards.

40. The council's PAN08 and PAN09<sup>16</sup> provide advice on retrofitting issues for houses in conservation areas and external wall insulation.

**Q5. Are Modifications required to ensure that the policy is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals?**

41. The first sentence of the policy could be improved by the following proposed modification:

MM ##	Policy DM44  Page 134	<p><b><i>Policy DM44 Energy Efficiencies and Renewables</i></b></p> <p><i>Amend first sentence of policy to read:</i></p> <p>The council will <del>encourage</del> <u>require</u> all development to improve energy efficiency and achieve greater reductions in CO2 emissions in order to contribute towards Brighton &amp; Hove's ambition to become a carbon neutral city by 2030. The following standards of</p>	For clarity
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<sup>16</sup> PAN08 External wall insulation December 2016) and PAN09 Householder guidance on energy efficiency for historic houses in Conservation Areas (December 2016)

		energy efficiency and energy performance will be required unless...	
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## **DM45 Community energy and DM46 Heating and cooling network infrastructure**

**Q1. Paragraph 2.367 refers to low carbon opportunity zones. What is their purpose? How have these been identified and is the approach taken robust and justified by the evidence?**

42. See response to DM44 Q2.

**Q2. Would the policies, together, accord with NPPF paragraphs 155 and 156, which together, require Plans to support the use and supply of renewable and low carbon energy and heat and for local planning authorities to support community led initiatives for the same?**

43. Yes, together with CP8, DM45 and 46 are considered to accord with NPPF paragraphs 155 and 156.

44. DM45 provides support for community led initiatives for renewable and low carbon energy. There is an active community energy sector in the city.

45. The opportunities for renewable energy, low carbon energy and heat in the city were considered in the preparation of CPP1 (CP8.d and 4.81- 4.83). Opportunities for district heating and decentralised energy schemes are identified within certain Development Areas in CPP1. Opportunities were considered further through ED11 and reflected in DM44.3. DM46 seeks to ensure that low-carbon heat network infrastructure and communal heating systems are incorporated into new development where appropriate to support wider low-carbon heat network development within the city. DM46 will ensure that heat network infrastructure is constructed to a high quality. The council's current Carbon Neutral 2030 programme and recently approved OD73a Greater Brighton Energy Plan and OD73b Greater Brighton Energy Plan projects will inform the CPP1 review.