

**PROPOSED SOUTH DOWNS NATIONAL PARK  
RE-OPENED INQUIRY**

**WEST SUSSEX COUNTY COUNCIL: RESPONSE TO CLOSING SUBMISSIONS  
ON BEHALF OF HAMPSHIRE COUNTY COUNCIL**

**1 Introduction**

- 1.1 This document responds to the closing submissions made on behalf of Hampshire County Council (“HCC”). The main points of the HCC submissions are already addressed in the closing submissions by the Council (“WSCC”), but for completeness we set out below a further rebuttal of the HCC case.
- 1.2 Before doing so, it is necessary to record our dismay with the tone of the HCC submissions, in particular the personalised attack on Ms Hankinson. Submissions will of course seek to criticise (however wrongly) the evidential basis of the case advanced by an opposing party, but the attempts to characterise the approach of Ms Hankinson as “lacking in professionalism” and “lacking in objectivity” descend into little more than abuse which is both unjustified and unbecoming. The ill-judged nature of this attack is refuted by the history of Ms Hankinson’s participation in the previous session of this inquiry and at the New Forest inquiry. HCC (and NE) conveniently forget how her evidence has been endorsed by two Inspectors, two Assessors and (in the case of the New Forest) the Secretary of State, none of whom have regarded her general approach as “extraordinary” or “surprising”. If those words are to be used in this case, they more accurately describe HCC’s attempt to undermine the integrity of a consummately professional witness whose evidence has been able to withstand similarly ill-conceived insults by the Countryside Agency.
- 1.2 HCC restate their two claims in the introduction to their submissions: first, that the SDNP Assessor's report is 'fundamentally flawed'; and, secondly, that the Inspector relied on the Assessor (*HCC closing, para 1 and 2*).
- 1.3 In relation to the Assessor's report itself, WSCC only disagree with the Assessor's 'quality' assessments of the Rother valley and A3 corridor. However, the Assessor’s findings go much further and he fully took into account law, guidance, policy and precedent in his review. HCC have failed to demonstrate that his findings in relation to the inherent character of the Weald and the Downs, or his conclusions from those findings, are flawed. Indeed, the approach taken by the Assessor is vindicated by NE's approach to designation in the North-West (*CD#34, Table 2*) and by NE's own

assessment of the natural beauty and recreational characteristics of parts of the Weald (1330/2/2, Annex 5).

- 1.4 Further, it is clear that the Inspector, whilst taking into account the Assessor's findings, came to his own independent judgement as to the qualities of the land required to meet the NP criteria; and as to those areas within the PSDNP that met those criteria (*e.g. at IR Part 2, p23, para 2.19*).

## **2 Topic 5: AONB**

- 2.1 WSCC agree with HCC and NE that the current areas of AONB excluded from the SDNP should remain AONB (*HCC closing para 7*).

## **3 HCC Issue (a) 'Has the law changed?'**

*(HCC closing paras 8-14)*

- 3.1 HCC submit (contrary to NE) that NERC widens the law (*HCC closing para 8*). WSCC has always accepted that NERC has changed the law, but the important point is that the changes do not have any effect on the judgments that have been reached in this case. It is wrong, as the HCC submissions imply, to equate a change in the law with a need to alter findings that were reached before the law was changed.

## **4 HCC Issue (b): 'Current legal test for a new National Park'**

*(HCC closing paras 15-22)*

- 4.1 HCC are putting a new emphasis, which did not appear in their evidence, on 'a new National Park'. They appear to do so to try and emphasise that National Park designation has entered a brave new world which must involve revising the conclusions that were reached before NERC. As WSCC has explained in evidence and submissions, this simply does not follow in this case. NE have not themselves distinguished between the criteria as used in designation of the new SDNP and in the designation of extensions to the North-West National Park (*CD#34, CD#37*). Their evidence identifies that they are using essentially the same approach (*CD#37 para 3.1.1; CD#36 para 4.2.4*).
- 4.2 HCC are completely wrong to submit that because it must "in the opinion of NE" be "especially desirable" to designate the tract as a National Park for the specified s. 5 (1) purposes, this opinion should only be disregarded if it is shown to be *Wednesbury* unreasonable, that is, an opinion which no reasonable body in the position of NE could not have reached. This is one of the legal tests that would apply to the final decision of the Secretary of State on whether to confirm the designation. It is not the test that is to be applied by the Inspector when reaching his own views on the designation and the objections to it. He must simply reach his own judgment on all the evidence before him. There is no legal obligation to attach any particular weight to the evidence of NE.

4.3 This submission is yet another example of those in support of the NE position forgetting that it is not the purpose of this inquiry to rubber-stamp the conclusions of NE. It is part of the statutory procedure which allows those conclusions to be challenged and for judgments to be reached on the conflicting evidence before the tribunal. Independent Assessors and Inspectors do not have to follow the NE line; otherwise the whole public inquiry process would be pointless. Nor do they have to apply the legal test of “reasonableness” that is employed by the courts. They simply have to ask whether they agree with the NE approach. The NFNP designation has demonstrated that NE's opinion is not necessarily the right one. Indeed NE themselves, in their recent evidence and closing, seem to be suggesting that they doubted their own 'natural beauty' evidence to the NFNP (*NE closing 1330/0/29, para 105*); and have changed their evidence in relation to the PSDNP (*WSCC Closing submissions, paras 27-33; paras 56-59; paras 111-116*). If the 'opinion of NE' has such a substantial degree of fluidity, then that must lessen the weight to be given to such opinion.

## 5 **HCC Issue (c): 'Current policy test for a new National Park'**

(*HCC closing, paras 23-26*)

5.1 HCC have failed to distinguish between the NE new **policy** (*CD46*); and their '**approach** to defining National Park boundaries' (*CD83*). This latter was neither a 'policy statement' nor was it 'approved' by the Minister as HCC claim (*HCC closing para 24*). The Secretary of State has rejected *CD83* Criterion 2b, 'variety' (*HCC closing para 25(d)*), in accepting the reasoning of the NF Assessor and Inspector and confirming the designation of the NFNP (*CD203, CD204*). WSCC have already made submissions on the approach to the NE policy.

## 6 **HCC Issue (d): 'characteristic natural beauty'**

(*HCC closing para 27-35*)

6.1 It is not only the SD Assessor and WSCC that consider 'characteristic natural beauty' to be part of the application of the natural beauty criterion for National Park designation (*HCC closing para 27*). It was also supported by NE's predecessor the Countryside Commission, and the Inspector, at Dartmoor; by the NF Assessor and Inspector, and by the Secretary of State in designating the NFNP.

6.2 WSCC have addressed this issue in their closing submissions. (*WSCC Closing submissions, paras 3-26*).

6.3 HCC claim that the NFNP Assessor did not reject the CA's new policy criteria 2b (*HCC closing para 33*). The NFNP Assessor in her review of the 'Landscape assessment for the NFNP' referred to the then-CA Criterion 2b: 'differing landscape character' (*CD204, Appendix 1, p 26, para 2.44*). She immediately responded to this (*in paras 2.45 and 2.46*) with 'Whatever the diversity and quality of landscape character, two elements must be met for NFNP status... the critical test for boundary making is the presence of New Forest character **and** outstanding natural beauty...'

*(Assessor's emphasis)*. There cannot be a clearer rejection of the concept that 'Areas to be included may be of differing landscape character' (*CD83, Criterion 2b*).

- 6.4 HCC (and others) may protest that the NFNP Assessor and Inspector 'misunderstood' the Dartmoor Inspector's report (*HCC closing para 34*). However, the Secretary of State fully accepted their reasoning in confirming the NFNP; and that reasoning was soundly based on the consistency of the Dartmoor Inspector's report with precedent and subsequent guidance, such as Dower and CA Guidance (*CD57*).

**7 HCC Issue (e): NP/AONB 'natural beauty'**

*(HCC para 36-39)*

- 7.1 WSCC have rebutted the claim that NP and AONB natural beauty are the same (*WSCC Closing Submissions, paras 34-55*).

**8 HCC Issue (f): 'Relative wildness' and 'getting away from it all'**

*(HCC closing para 40)*

- 8.1 Contrary to HCC's claim, 'relative wildness' continues to be an 'important' part of NE's new policy (*CD46 and NE closing para 11*).

- 8.2 Contrary to HCC's claim, the ability to 'get away from it all' continues to be a key factor that the Government finds distinguishes National Parks in terms of the 'essence of National Parks' being "the striking quality and remoteness of much of their scenery, the harmony between man and nature it displays, and the opportunities it offers for suitable forms of recreation" (*CD#21, 20<sup>th</sup> March 2006: Column 51, third to last para*).

**9 'The 2004/05 case for exclusion of the western Weald'**

*(HCC closing paras 41-52)*

- 9.1 The WSCC/CDC case in principle for excluding the Wealden parts of the PSDNP was not 'based' only on 'characteristic natural beauty' or 'different natural beauty' (*HCC closing para 42*). The western Weald failed the CA's wildness and 'markedly superior recreational experience' policy test for the recreational criterion, largely because of its inherent character (*1881/2698/1 section 4.8; para 4.10.5; paras 9.3.4 to 9.3.6*).

- 9.2 HCC's closing suggests that David Carman's 'assessment of the western Weald' is superior because it is longer than Ms Hankinson's (*HCC closing para 43*). This assertion is wrong. Ms Hankinson's assessment was based on a careful and comprehensive description and assessment of the landscapes of the PSDNP (*1881/2698/1/1 pp 9 to 37 and 65 to 72 and Appendices A to G and M to Q; on the HCC 'bean-counting' basis, this is about 170 paragraphs of descriptive and assessment text; reference to 7 published character assessments and to 21 plans and tables in Ms Hankinson's "in principle" evidence alone*).

- 9.3 The 2004 and 2008 Tranquillity Maps demonstrate the same: the western Weald is fragmented by urban areas and road corridors and is less continuously tranquil than the Downs to the immediate south. Ms Hankinson's 2004 analysis does not 'ignore' cultural heritage or ecological designations. Cultural heritage was taken into account (*1007/2/3 paras 2.5.3-2.5.5*) and ecological habitats and designations were mapped and referred to (*1881/2698/1/1 paras 3.4.4, 3.4.5, 4.4.3, and 1881/2698/1/3 Appendix M, Plan HDA5*), contrary to HCC's claims (*HCC closing para 44*).
- 9.4 HCC refer to the Assessor's reasoning (*HCC closing para 47-52*). The Assessor carried out a careful appraisal of the application of the statutory criteria for NPs; reviewed the PSDNP against those criteria, and rejected it for the many reasons summarised in WSCC's closing (*WSCC Closing Submissions, para 98*). It is, of course, unsurprising that the Assessor emphasised the need for 'wildness' (*HCC closing para 51*), when that is an important part of NE's policy for NP designation (*CD46*); is still part of NE policy (*1330/0/29 para 11*); and continues to be fundamental to NE's NP designation process in the North-West (*CD#34, Table 2*).
- 9.5 WSCC are astonished at HCC's implied criticism of the Assessor, in that he 'laid great emphasis on the need for wildness and the extent to which recreation could be enjoyed within the proposed NP' (*HCC closing para 51*). The evidence of all parties has considered whether the western Weald exhibits wildness, following NERC, and not even NE are suggesting that relative wildness somehow disappears from consideration because of the legislative changes referred to by HCC. The HCC submissions appear to be inconsistent with its own case. Moreover, as WSCC has pointed out, it is clear that the Assessor considered the future potential for recreation experiences within the SDNP, and has not just focussed on existing opportunities.
- 9.6 HCC also confuse the CA approach to the PSDNP designation with the evidence available to the Inspector (*HCC closing para 52*). The Inspector was, understandably, critical of the CA in the paragraph quoted by HCC. However, the Assessor and Inspector had substantial evidence **at the Inquiry** as to the landscape of the western Weald, in published documents (*IR Annex A p 36, para 5.1*), in evidence, including that of WSCC (*1881/2698/1/1 Sections 4, 6.3, 9.3; 1881/2698/1/2, Appendices A, B, D, F, G; 1881/2698/1/3 Plans HDA3, 4 Chart 1, Table 1, Plan HDA8*), and in their own extensive site visits.
- 10 'The current case of exclusion of the western Weald'**  
(*HCC closing para 53-65*)
- 10.1 HCC are incorrect to assert that Ms Hankinson's evidence has not taken account of new assessments, and was written on the basis of no change in law or policy (*HCC closing, paras 53, 54*). Ms Hankinson has reviewed the 2005 'Integrated Landscape Character Assessment' (*CD#14*). This document, Ms Hankinson's site visits and NE and HCC evidence all confirm that the landscapes of the Downs and Weald have not changed to any significant degree since 2004. Ms Hankinson's assessments then and

now are therefore the same. Ms Hankinson has also carefully reviewed her previous evidence against the changes in the law and concluded that those changes do not require alteration to her previous evidence (*1007/1/2; all text; conclusion at para 5.1*). There have been no changes in 'policy' (*HCC closing para 54*) since 2004; indeed NE continue to support their CD46 policy (*1330/0/29, para 11*), including the importance of a sense of relative wildness. NE's application of that policy and the statutory criteria in the North-West is very similar to that of Ms Hankinson and the SDNP Assessor and Inspector (*CD#34, Table 2*).

10.2 Ms Hankinson carefully reviewed the new evidence (*HCC closing para 55*) and concluded that it makes no substantive difference to the findings of the Assessor or Inspector.

10.3 In relation to HCC's more detailed critique of Ms Hankinson's evidence:

- Ms Hankinson did not previously claim degradation of the Weald; she reported upon a WSCC document (*1881/2698/1/1, paras 11.2.2, 11.2.3; HCC closing para 57*).
- MH did not claim that cultural heritage should not be either understood or taken into account (*HCC para 58*). She acknowledges that it should and identified that she and the Inspector had taken it into account (*1007/2/3, paras 2.5.3-2.5.5*);
- MH did not dismiss the SDILCA, nor the CD57 approach (*HCC para 59*). She reviewed the SDILCA and identified that it defines 'landscape character areas' rather than 'landscape character types'. She offered to explain the difference to the Inspector but confirmed that, whether they are described as types or areas, the landscapes of the Downs and Weald are both quite different from each other, and have not significantly changed since 2004;
- It is correct that the SDILCA is not an assessment of natural beauty nor of recreation (*HCC para 60*). Mr Griffith's selection of quotations from the SDILCA put to Ms Hankinson can equally be found in the assessments before the Assessor and Inspector in 2004 (*WSCC Closing Submissions, para 93 and footnote 92*). The Assessor and Inspector were fully able, using published and witness evidence and their own site visits, to establish the degree and continuity of elements such as relative wildness, tranquillity and remoteness across the landscapes of the PSDNP.
- It is wrong for HCC to claim any 'island' qualities for the western Weald (*HCC paras 61, 62*). It contains the substantial and busy settlements of Petersfield, Midhurst and Petworth and its Wealden landscapes are in absolute continuity with those to the north and west (*1881/2698/1/3, Appendix M, Plan HDA4*).
- NE, in finding 'a sense of relative wildness' important (*CD46*) have used the same criteria as Ms Hankinson in identifying the factors that contribute to that sense (*HCC para 63; CD#34, Table 2; 1881/2698/1/1, para 3.8.7*).

- The 2006 and 2004 tranquillity maps, albeit arising from different methodologies, give the same result; the same conclusions can be drawn (*HCC para 64*);
- Ms Hankinson's previous evidence on rights of way was that of the CA in their PSDNP Area of Search (*HCC para 64*). The HCC approach to the recreation criteria, of adding up only Open Access land and footpath densities, makes no contribution to meeting NE's new recreational policy of a 'markedly superior recreational experience' in which 'a sense of relative wildness is important' (*CD46*) because it fails to distinguish between the recreational opportunities of AONBs and NPs. This approach was rejected by the Inspector (*IR Part 2, p 29, para 2.40*).

10.4 WSCC and Ms Hankinson therefore strongly rebut HCC's direct criticism of Ms Hankinson (*HCC para 65*).

## 11 'The case for inclusion of the western Weald'

### 11.1 HCC evidence

(*HCC paras 66-78*)

11.1.1 WSCC do not dispute that the western Weald has natural beauty and is worthy of its AONB status. It is therefore not surprising that Mr Carman's assessment confirms this (*HCC para 68*). However, as HCC consider that the type of natural beauty for an AONB is identical to that for a NP (*HCC closing, Issue (e), paras 36-39*), then Mr Carman's 'natural beauty' analysis is of no additional assistance to the Inspector in designating a NP.

11.1.2 However, WSCC do dispute some of Mr Carman's conclusions:

- **Landscape quality:** the intactness of certain 'areas of land' (*1969/2/10 para 18*) within the Weald omits the obvious fragmentation of those areas by roads and towns, and hence the intactness of the 'extensive tract' for NP designation;
- **Rarity** is highlighted in HCC's closing (*HCC closing para 68*). However, Mr Carman's analysis of historic landscapes and cultural information fails to compare the occurrence of elements such as biodiversity, historic landscapes and parks within and beyond the western Weald. This cannot therefore be an assessment of 'rarity': HCC have provided no baseline for assessing how rare these elements are, compared with, say, the Weald generally. The only features with wider data are 'farmsteads' (*1969/2/10 p 44*); and this demonstrates that historic farmsteads are far from rare in the Weald as a whole.
- **Wildness:** Mr Carman's correlation of 'wildness' only with the presence of semi-natural habitats is also disputed. The NE new policy of 'a sense of relative wildness' (as compared with 'rugged and open') (*CD46*) clearly has a much wider meaning. NE define it as including 'remoteness', 'lack of roads and significant habitation', 'relative lack of human influences', 'uninterrupted

tracts of open land' and 'a sense of openness or exposure' at 'relatively high altitudes', as well as semi-natural vegetation or 're-wilding' (*CD#34, Table 2*).

11.1.3 Mr Carman's assessment of 'the recreational test' (*HCC closing para 69*) is also highly selective. It relates only to the occurrence of rights of way and Open Access land. As he accepted, this is clearly insufficient, (*para 10.3, final bullet, above*), and omits all of the tests now applied by NE (*CD#34, Table 2*), including the NERC test for potential enhancement.

11.1.4 Mr Carman's (and Ms Farmer's) conclusions on the Rother valley and A3 corridor (*HCC closing paras 71-78*) are also in conflict with Ms Farmer's detailed analysis of these areas. In relation to the recreational experience of these areas, and their potential for enhancement, Ms Farmer does not find the recreational criteria fully met at all (*1330/2/2, Annex 5, pp 4, 5, 6, 12, 13 for 'Relative wildness' and 'tranquillity'; pp 8, 9, 15, 16, 17 for recreational opportunities*).

## **11.2 New evidence**

(*HCC closing para 72-81*)

11.2.1 The NFNP Strategy produced prior to the NFNP designation, and the support of substantial bodies for inclusion of the Avon valley (*WSCC supplementary evidence on NE's "NFNP Factual Statement"*) did not lead the Inspector or Secretary of State to conclude that areas not meeting the statutory criteria should be included in the NFNP.

## **12 HCC Conclusions on Topic 6**

(*HCC closing para 84-89*)

12.1 HCC have misrepresented WSCC evidence. The WSCC case of exclusion of the Weald does not rely only on characteristic natural beauty and certainly was not seeking 'a rugged, wild, remote countryside uninfluenced by man'. Ms Hankinson assessed the PSDNP against the recreational experiences of the enjoyment of open countryside, most frequently by walking, open access land, rights of way, other recreational facilities such as country parks and wildlife sites, and wildness and remote feel (*1881/2698/1/1 Section 3.8*). Ms Hankinson's criteria for 'wildness and remote feel' closely parallel the current NE 'relative wildness' tests (*MH at 1881/2698/1/1 para 3.8.7; NE at CD#34, Table 2 'Relative wildness'*).

12.2 Ms Hankinson's Topic 6 evidence was not inaccurate or 'superficial' (*HCC closing para 85*). It was firmly based on her previous evidence (*scheduled at 1007/2/6, para 1.1.2*), updated by review of the Assessor and Inspector's reports and by more recent documents.

## **13 HCC Conclusion on Topic 3**

(*HCC closing para 90-99*)

- 13.1 WSCC have responded on the relative weight being requested by Defra in relation to the Inspector's 'indicative/possible' line and his 'reasoning and findings in his Report' (*HCC closing para 93; WSCC Closing Submissions, para124; CD#31, para 3*).
- 13.2 WSCC have also responded on the reasons for including the WSCC 2004 indicative Downs area boundary in Topic 6 evidence (*HCC Closing Submissions, para 126*).
- 13.3 Whether an individual dwelling is within or outwith the NP does not change the basis for boundary-setting (*HCC closing paras 95-97*). At the NFNP, the Inspector and Secretary of State confirmed a boundary line that did not follow the CA line, nor any one objector's line. Local residents went directly from being within a proposed National Park to being outside a designated National Park, without any requirement for further consultation.
- 13.4 The Inspector is able to designate his own line at this stage. The failure of NE properly to meet the Defra request might, alternatively, lead to a further boundary consideration. Delay of designation is not a reason for designating an unsatisfactory boundary, or one that includes land not meeting the statutory criteria for a National Park.

#### **14. Conclusions**

- 14.1 The HCC submissions completely fail to present a persuasive case to include the western Weald within any SDNP. HCC ask the Inspector to report to the Secretary of State that the judgments he reached in his previous report, following months of hearing evidence and undertaking site visits, were flawed. There is no reason why the Inspector should now write such a report. Those judgments were sound and remain so. The HCC case ought to be rejected.