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Planning Policy
Dudley Metropolitan Borough Council
Council House
Priory Road
Dudley
DY1 1HF

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Dear Policy team

Draft Dudley Local Plan Regulations 18 Consultation

Thank you for notifying us of this consultation and allowing us additional time to consider the plan and evidence base. The draft plan is supported by an evidence base that covers flood risk and other water management topics, but further steps are required to complete the evidence work for the plan to be found sound. Water quality and wastewater is a topic for Dudley that needs further attention both in terms of ensuring capacity exists to accommodate the growth proposals, and ensuring the policies protect and improve water quality.

The draft policies are very comprehensive and detailed. We can support these provided the amendments we outline to improve, clarify or strengthen are actioned. As a general observation, the policies tend to use ambiguous or unquantified qualifiers such as “where appropriate”, “where viability constraints allow”, “where possible/practical”, “support”, “if feasible”, “consider”, “usually”, “normally”, “suggest”, “encourage”, etc. Such terms, unless fully justified and defined can easily undermine the intention of the policy, opening opportunities for derogations, exceptions, or appeals. Please review the policies for relative strength of wording as this will help to ensure the policies drive the type of development that meet the objectives of the Local Plan.

We confirm we received your Duty to Co-operate letter dated 13 December 2023. We thank you for the offer to meet with Planning Policy Officers who are working on the production of the Draft Local Plan. Once you’ve had time to consider our response, we would we happy to arrange a meeting with you to discuss our response with you.

Evidence base

Flood Risk Sequential Test

The National Planning Policy Framework Paragraphs 167-171 sets out the requirement for Local Plans to apply the flood risk sequential test to the selection of growth areas and sites. We specifically highlight paragraph 168;

“*The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding*.”

We have briefly reviewed the Site Assessment Report and Sustainability Appraisal. Although flood risk is referenced in both these documents, there was no specific reference to the flood

risk sequential test, and it wasn't clear to what extent the aims of the sequential test have been applied or achieved.

The Site Assessment Report Methodology (2023) outlines page 5 (Diagram 1 Site Assessment and Selection Methodology) that Flood Risk Zone 3 is a 'gateway constraint.' Then the assessment applies a Red, Amber, Green categorisation. On page 12, although reference has been made to the Black Country Strategic Flood Risk Assessment (2020 and 2021 update), it would be difficult to determine an amber or red rating without consulting a Level 2 Strategic Flood Risk Assessment. The Level 2 SFRA will determine the overall deliverability of a site, it's ability to pass the Exceptions Test and whether the capacity of the site would be hindered by flood risk constraints or necessary mitigation measures.

The Sustainability Appraisal (SA) commentary (page 25) appraises the housing growth options are against SA Objective 5 'Climate Change Adaptation.' The comments focus on whether Options 1, 2 and 3 would result in a loss of open space or Green Infrastructure which would in turn exacerbate surface water flood risk or have adverse implications for adaptation. However, the growth options are not appraised as to whether they would meet the aims of the Sequential Test based on information supplied in the Council's SFRA. It's worth noting that although development design can lessen the effects of flood risk (a comment on page 25), applying the sequential test strategically to a Local Plan links in with the aims of NPPF paragraph 158, as follows;

Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures. Policies should support appropriate measures to ensure the future resilience of communities and infrastructure to climate change impacts, such as providing space for physical protection measures, or making provision for the possible future relocation of vulnerable development and infrastructure.

Applying the sequential test early in the selection of growth strategies and sites, will provide the best chance of district wide or catchment climate change resilience. It also means safer communities, less reliance on current flood risk and drainage infrastructure (and associated annual capital and maintenance investment) plus a decreased burden on emergency planners and emergency services. It makes sense to avoid flood risk where possible as an initial step which should inform spatial decisions and strategic policies.
Before the next consultation on the plan, the Council will need to provide evidence that the Sequential Test has been applied to the local plan. This can either be as part of the Sustainability Appraisal, or preferably a standalone document.

Level 2 Strategic Flood Risk Assessment
The Black Country Councils Level 1 SFRA (2020) recommends (section 10.3.1) that a Level 2 SFRA should be undertaken to further inform the site allocations and development of local plan policies. It also enables the Council to address paragraphs 169 and 170 of the NPPF which relate to the Exceptions Test. The Level 2 assists with part (b) of the Exceptions Test, in demonstrating that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall. The Level 2 SFRA assesses the site-specific risks informing the Councils determination on the overall deliverability and acceptability of the site allocation, and what capacity of development will be possible within the site boundary. It will need to demonstrate that any potential mitigation measures could protect the site and would not increase flood risk elsewhere taking account of the revised climate change guidance. This may require the running of new or additional flood models in line with the EAs flood modelling guidance.

The Council will need to ensure this is considered and demonstrated prior to the next iteration of the Local Plan. The SFRA consultants will need to screen sites requiring a Level 2 Assessment. There are 11 site allocations which have significant fluvial flooding present on the site and 8 sites with smaller amounts of fluvial flooding on-site. We will email you separately a list of sites we think would potentially require a Level 2 Assessment for your information.

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Black Country Councils Water Cycle Study Phase 1 Scoping (2020)
Since the Phase 1 was published, Severn Trent Water and South Staffordshire Water have been preparing and are in an advanced stage of developing their new and latest Water Resources Management Plan (WRMP24) and Drainage and Wastewater Management Plans. The data and assumptions relied on in respect of available water supplies, sustainable abstraction, and impact of sustainability reductions to licences, wastewater capacity and climate change data have now changed. The study should be updated to reflect these latest plans and the water companies approached again for their input. The Council will need to be confident that the Dudley Local Plan chosen growth strategy (and strategic sites) both in terms of distribution and timing can be adequately served by both water resources and wastewater infrastructure and considering the wider cross-boundary service needs of the neighbouring districts.

- **Water resources**

There are no significant concerns regarding the assessment and conclusions reached regarding water resources. However, for awareness, some of our plans and strategies have been updated. Our West Midlands Abstraction Licencing Strategies (ALS) have been updated since 2020. The Tame Anker and Mease ALS was updated and republished in June 2022, Worcestershire Middle Severn ALS in July 2022, and Staffordshire Trent Valley ALS in July 2021. Whilst the outcomes on water availability designations have not changed, some of the assessment points (e.g. Worcestershire Middle Severn ALS) and Common End Date (CED) (Staffordshire Trent Valley ALS) have changed.
The River Basin Management Plans have also been updated with a 2022 online version and has water efficiency as a key measure. As of July 2021, Severn Trent Water and South Staffs Water are now classified as operating in seriously water stressed areas (excluding Chester Water Resource Zone). Having said that we support the recommendations on water efficiency for new developments which have informed your draft Policy xxxxx. Whilst our plans and strategies have been updated, the primary reason for reviewing the study is to consider the latest water company plans as stated above.

- **Water quality and wastewater**

Dudley is currently served by Gospel End Wastewater Treatment Works (WwTW), Lower Gornall WwTW (due to be closed and flows transferred to Roundhill) and Roundhill WwTW. Whilst these WwTW are deemed to have headroom capacity, Figure 7.16 showing the summary map of headroom based on quality assessment suggests there is limited headroom capacity. Further work is required and is recommended by the Phase 1 to undertake a Phase 2 Outline Study (page 95). This would be a water quality assessment of how the proposed development in the draft local plan could impact the receiving waterbodies from increased discharges. We strongly recommend this is taken forward. We would not be able to accept a scenario where increased discharges would risk deterioration of waterbodies given our duties under The Water Environment (Water Framework Directive) Regulations 2017. Similarly, local authorities must, when exercising their duties, have regard to River Basin Management Plans under section 33 of this legislation.

Black Country Waste Study Update 2023
Our Waste Data Interrogators (WDIs) are updated annually, and the latest data is the 2022 dataset (for calendar year 2021) is now available. References in this study to 2021 WDI presumably refers to the 2020 data. We recommend checking the latest data and revising figures or clarifying accordingly.

<u>Draft Local Plan policies</u>

Policy DLP6 Infrastructure Provision
The supporting paragraph 6.20 provides a list of types of infrastructure it includes within the ‘definition of infrastructure.’ Whilst we support sustainable drainage and biodiversity net gain, we request that flood risk infrastructure and wastewater infrastructure is added to this list. This would also be aligned to the aims of Policy 20 of the NPPF.

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The Black Country Councils Level 1 SFRA (2020) lists the flood defence assets for Dudley on page 66 (Table 6-1) and other assets start page 82 onwards. Page 65 explains that developers should not assume that any defence, asset or watercourse is being or will continue to be maintained throughout the lifetime of a development. The Environment Agency has permissive powers to maintain and improve Main Rivers, however, there is no legal duty and improvements are prioritised based on flood risk. The ultimate responsibility for maintaining watercourses rests with the landowner. We would expect that where future proposals are reliant on an existing flood defence asset that developers would engage early with us and ensure the Flood Risk Assessment takes account of this asset (level of protection/condition/residual risk) within the assessment. Ensuring a safe development for the lifetime (as may require developer contributions and/or physical works, repairs, refurbishments to the flood defence).

In addition, flood risk infrastructure takes the form of strategic flood risk management infrastructure to address fluvial flooding. We are aware of four community flood risk management schemes affecting Dudley which would potentially benefit from partnership funding.

- Halesowen, River Stour, Property Level Protection Scheme
- Illey Brook Flood Alleviation Scheme, Halesowen
- Wordsley and Lye Stourbridge Property Level Protection Scheme
- Wordsley Brook Flood Alleviation Scheme Stourbridge

The points above also link in with draft Policy DLP45 Flood Risk.

Similarly, the Black Country Councils Water Cycle Study Phase 1 Scoping (2020) has set the context for water resources and wastewater and recommends a Phase 2 study to further investigate the capacity of wastewater treatment works and the network (on receipt of preferred list of sites from the Council). It's possible that Policy DLP6 will also be reliant on the delivery of infrastructure from Severn Trent where limited capacity currently exists, whether this is upgrades to the sewer network or receiving wastewater treatment works and development will need to be phased accordingly. Policy DLP6 needs to capture this scenario.

Policy DLP32 Nature Recovery Network and Biodiversity Net Gain
We welcome the policy and its requirements for achieving Biodiversity Net Gain (BNG) as part of developments in Dudley. The Severn River Basin Management Plan is a key evidence base to identify ways in which water-related habitats and biodiversity can be created and enhanced for water bodies across the district. The BNG guidance refers to RBMPs as an important source of information for achieving BNG for the water environment. BNG plans will be expected to include water-related biodiversity credits where the watercourse metric is required for a planning application. River restoration, de-culverting, removal of redundant structures from main rivers, creating wildlife-rich corridors to buffer watercourses and sensitive native planting are all likely to be elements that can contribute to an applicant's biodiversity gain plan and achieve credits. Therefore, we would welcome some acknowledgement of this in the policy justification for context.

We are likely to support the production of the Local Nature Recovery Strategy so that the priorities for nature recovery capture the water environment opportunities.

Policy DLP39 Design Quality
Part 3 of policy requires new residential development including conversions and houses in multiple occupation to meet water efficiency standards of 110 litres per person per day as set out in G2 Building Regulations. We support this given that as of July 2021, Severn Trent and South Staffs are now classed as operating in areas of serious water stress. We agree that this change in water stress classification adds further weight to the tighter limit and will be enforced through the building regulations system.

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Both South Staffs Water and Severn Trent Water have water efficiency proposals in their draft Water Resource Management Plans to help meet future demand for water. This policy along with other supporting policies (e.g. DLP47) require the efficient use of water will therefore support the water companies' programmes.

We support the policies requirement for major development to contribute to the greening of Dudley by optimising the use of multi-functional green infrastructure for urban cooling and local flood risk management.

Policy DLP45 Flood Risk
We strongly support the policy, and particularly welcome the requirements from section 10 to 15 of the policy which cover watercourses and flood mitigation. Point 15 is positive where it requires developments to seek wider betterment, contribute to a reduction in overall flood risk and provide partnership funding toward wider community schemes.

There are four flood risk management schemes affecting Dudley which would potentially benefit from partnership funding.

- Halesowen, River Stour, Property Level Protection Scheme
- Illey Brook Flood Alleviation Scheme, Halesowen
- Wordsley and Lye Stourbridge Property Level Protection Scheme
- Wordsley Brook Flood Alleviation Scheme Stourbridge

Policy DLP47 Renewable and Low Carbon Energy and BREEAM Standards
We support Policy DLP47 which requires the achievement of full credits for water efficiency. However, we recommend that for non-residential development over 1000sqm, BREEAM 'excellent' standards for water consumption should be met when water resources are under pressure. As of July 2021, Severn Trent and South Staffs are now classed as operating in areas of serious water stress. The policy requires this standard from 2029 but we think there is sufficient evidence and reason to aim for this standard now. This would also align more with the aims of paragraph 158 of the NPPF where it states 'Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity, etc.'

Policy DLP48 Water Quality and Groundwater Source Protection Zones
The executive summary on water quality for the Black Country Councils Water Cycle Study Phase 1 Scoping (2020) states:

The increased discharges at the WwTWs, serving growth across the Black Country area, have the potential to impact the downstream water quality of receiving waterbodies. Further assessment of the impact upon water quality should be undertaken, as part of a Phase 2 Outline study. In particular, consideration should be paid to those which already have a 'poor' or 'bad' status and are forecast for increased growth.

This policy should be reviewed once the Phase 2 Water Cycle Study has been completed and has established (a) whether Dudley's growth can be accommodated by the wastewater network/treatment plants without risking water quality and (b) policy recommendations on potential mitigation measures that may be required to alleviate any risks. Water quality of surface water bodies is related to and potentially impacted by discharges from wastewater treatment works and the capacity of the sewer network. Therefore, we would strongly

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encourage the Council to ensure the WCS evidence base informs this policy to ensure water quality remains a priority for the district.

We do welcome the reference to the hierarchy for foul drainage, and that proposals will not be permitted if they result in unacceptable risk to the quality or quantity of a waterbody. The policy could be improved by requiring proposals to consider how they can improve water quality as well as mitigate, as follows:

Strategies to help mitigate the impact of development on water quality and improve water quality will be required at planning application stage.

There are recommendations in the Black Country Councils Water Cycle Study Phase 1 Scoping (2020), page 117, as follows:

Runoff from development sites should be managed through implementation of a SuDS scheme with a focus on treating water quality of surface runoff from roads and driveways Opportunities exist for these SuDS schemes to offer multiple benefits of flood risk reduction, amenity value and biodiversity. SuDS for a single site could be demonstrated to have limited impact, but it is the cumulative impact of all development across the catchment (combined with the potential effects of climate change) that should be taken into account. For this reason, SuDS should be considered on sites that do not have a direct pathway to a SSSI.

This outlines that it's the cumulative impact of all development across a catchment that has an impact on designated sites, habitats and waterbodies. Carefully designed SuDs that improve water quality as well as controlling runoff rates and deliver multiple benefits, as well as the separation of combined sewers are ways of improving water quality for Dudley. There could be cross-reference to Policies DLP45 Flood Risk and DLP46 Sustainable Drainage and surface water management. Policy DLP46 doesn't specifically reference improving water quality as a key aim which could be amended to strengthen the plan overall.

Paragraph 12.59 refers to the Water Framework Directive and the objective for no deterioration. We think this section could be improved by summarising the current classification of waterbodies in Dudley and reasons for not achieving good as further context/evidence. The WFD surface waterbodies crossing Dudley have the following names and classification status:

- Stour (Worcs) source to conf Smestow Bk (GB109054044750) – status 'poor.'
- Bobs-Holbeche Bk source to conf Smestow Bk (GB109054044830) – status 'poor.'
- Birmingham to Wolverhampton Canal, Wolverhampton Level (GB70410516) – status 'moderate.'
- Stourbridge Canal (GB70910519) – status 'moderate.'
- Dudley Canals (GB70910535) – status 'moderate.'

The waterbodies are unable to achieve good status for a variety of reasons (urban runoff, outfall discharges, physical modifications). The Black Country Councils Water Cycle Study Phase 1 Scoping (2020) will likely have information on this and there's also the Severn River Basin Management Plan (2022) and associated Catchment Data Explorer.

Policy DLP54 River Stour and its Tributaries

We support the requirements in this policy, particularly, sections 2a b and c (restoration of riverbank habitat, of in-channel habitat including removal of culverts, improving the water quality of discharges, and retaining or creating at least 10 metres Green Infrastructure either side of the Stour and its tributaries). Delivering the objectives of the Severn River Basin Management Plan 2022 will count as justification for these elements of the policy, as it will contribute toward enabling waterbodies within Dudley to achieve good ecological status or potential (which is the Water Framework Directive target).

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We would like to see the 'removal of weirs' including within this policy as part of 2b. Weirs within rivers are often no longer needed and their removal would greatly improve ecological connectivity and enhance the mobility for the majority of freshwater fish species including Salmon and Brown Trout. Weirs also stop the natural transportation of sediment and gravels, reducing the flow of water which effectively creates an impoundment upstream. Fish that would naturally be found in the Stour and tributaries are then replaced by fish species more suited to the localised conditions. The text could be amended to read:

b. enable the restoration of the in-channel habitat structure including the removal of culverts and weirs and improving the water quality of discharges into the watercourse.
This would also link in with other objectives in the Local Plan such as Policy DLP51 (particularly section 2a) and support the Environment Agency's partnership project 'Salmon in the Stour.'

Policy DLP75 Waste Infrastructure – Future Requirements
The Council should consider how the waste policies in the Local Plan support a circular economy. A circular economy will mitigate and enable adaptation to climate change with carbon emissions reduced and carbon conserved in both natural and built systems. It can provide employment and economic opportunities by maximising the locally available supply of recovered resources. If recovered resources are remanufactured this reduces reliance on importing limited and expensive raw materials, reduces energy and the need to 'dispose' of waste. It can also help protect and enhance the natural environment reducing climate impacts on plants, animals, and habitats. It can reduce long distance haulage of resources with consequential traffic and air quality impacts.

Part 2 (d) of the policy aims to ensure there is enough capacity and access for the municipal waste sites. We support this as a principle and add that a circular economy involves potentially expanding and rebranding Household Waste and Recycling Centres, into local Reuse, Recycling, Donation and Rental Centres. These centres ensure useful items can retain their value under a new owner and complements initiatives such as Freecycle and other social media platforms where items can be exchanged or sold on. A Wood Recycling Centre would be one example. It's worth noting a circular economy will probably require more infrastructure capacity and land take as processing waste needs space for bulking and storage of both inward and outward materials and accommodating multiple handling stages.
We agree access is important. Increasing access by bicycle to reduce driving would be another benefit. Such facilities could be co-located in or by retail parks or other centres so people can drop off unwanted items when shopping.

Part 2 (d) could be strengthened by supporting the waste hierarchy here, by emphasising recovery and recycling ahead of disposal and then only 'where necessary' disposing of waste. For example, the text could be changed as follows:

'Waste must be recovered or recycled or where necessary disposed of, in one of the nearest appropriate facilities…'
We support part 2 (d) of the policy. Traditional waste management facilities can come with some inevitable amenity impacts. Controlling the size of operations (such as through limited hours of operation and vehicle movements) helps address impacts on range of sensitive receptors. However, these impacts cannot always be eliminated. Suitably sized buffer zones can still be required to mitigate issues such as noise, odour, and dust.

Policy DLP76 Waste Sites
Whilst we support the principle of safeguarding existing waste sites, we recommend the Council consider also safeguarding the expansion of capacity at existing waste facilities, where appropriate, to accommodate waste growth.

Paragraph 17.25 (f) and (g) outline that the Waste Site Impact Assessment should include consideration of how the occupiers of the new development could be affected, and how the

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waste site could be affected by the development. We suggest the word 'consider' should be replaced with 'assess.' Also, the action implied within (f) and (g) should be more robust, as should impacts on the occupiers of new development or waste site be identified, mitigation measures will need to be demonstrated. Environmental controls close to the pollution source such as walls, roofs, screens, are often preferable as permanent and more effective measures, supported by monitoring. Whereas active measures such as dust and odour suppression, road sweeping or vermin control must be continually maintained.

Policy DLP77 Preferred Areas for New Waste Facilities
The policy refers to the preferred location of new waste management facilities as shown on the Policies Map and Waste Key Diagram (Bloomfield Road/Budden Road, Coseley). This appears to be a shared development site with Sandwell Council who have also identified adjoining land in their draft Local Plan. We recommend the Councils consider a formal framework agreement to agree who is responsible for responding to amenity complaints and other regulatory issues depending on the nature of the activities allowed on site. This would help facilitate collaborative working between the Council Departments.

We note the Bloomfield Road/Budden Road site is located close to residential development. The waste facilities will need to be suitably designed and operated to minimise impacts, with an appropriately sized buffer zone that includes an additional "safety margin" to separate the source from sensitive receptors.

Policy DLP78 Locational Considerations for New Waste Facilities
The policy needs strengthening. Under Section 3 'Waste applications – supporting information' the word 'should' be used, as follows:

Planning applications for waste development (Note 1 below) should include a supporting statement that clearly describes the key characteristics of the development. It should also explain how the development aligns with the principles and preferred methods of managing waste in Policy DLP75.

Are there circumstances where a supporting statement would not be expected? We recommend this is replaced with the word 'must.' It would be essential to understand the key characteristics of the development and how the development aligns with the principles and preferred methods of managing waste in Policy DLP75.
In terms of monitoring, we recommend analysing waste arisings and capacity based on their respective position in the Waste Hierarchy would enable you to track the delivery of a circular economy and progress towards achieving the top levels of the Waste Hierarchy.

Policy DLP79 Resource Management and New Development
Regarding Section 1 (c) of the policy, new developments should allow for additional waste storage and segregation at source, including in homes and commercial premises, for example for food wastes and batteries. Accessibility considerations around handling waste are also a factor. It's important the space is designed so that the elderly, infirm or disabled residents can move bags or bins easily, especially when segregating waste. Building design can also help to minimise problems such as fly tipping in insecure communal areas.
The term 'significant' in section 2 is ambiguous and it would help if this was quantified or defined.

We are advocating the adoption of "Whole Life" plans (or "Passports"), for all buildings to reduce energy, conserve water, and control carbon emissions and waste, not only during construction but during use, maintenance, refurbishment and enlargement, repurposing and at end-of-life.

Please also consider the case for a 'derelict buildings strategy', so that useful structures containing embedded carbon are not abandoned and left to decay until they need demolition but are retained in a positive use for as long as possible. We recognise this will not be economic or practical in every case, e.g. retrofitting listed buildings, but the strategy would help to ensure viable buildings are re-used.

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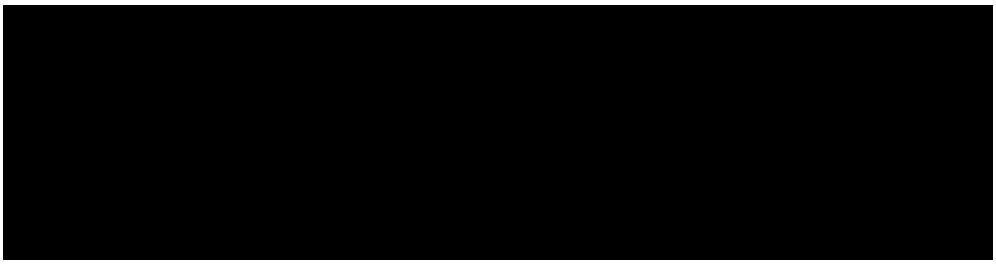
We trust this is of assistance, and we look forward to working with you to progress the plan.

Yours sincerely



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