

# Penrith Neighbourhood Plan 2019-2032

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## Submission Version

A Report to Eden District Council on the Examination of the Penrith Neighbourhood Development Plan

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## Executive Summary

My examination has concluded that the Penrith Neighbourhood Area Plan should proceed to referendum, subject to the Plan being amended in line with my recommended modifications, which are required to ensure the plan meets the basic conditions. The more noteworthy include –

- That Policy 1 dealing with Sustainable Development in Penrith be deleted.
- Policy 2 should “encourage” rather than “require” applicants to demonstrate how they meet zero or low carbon targets and include climate change resilience measures.
- Policy 3 requiring 15% of predicted energy requirements to be from on-site renewable energy should apply to commercial development only.
- Policy 4 should specifically apply to development within or adjacent to the urban area.
- Policy 6 should clarify the specific requirements of High Quality New Homes.
- Delete Policies 8 and 9 regarding protecting Local Green Spaces and protecting Sport, Leisure and Recreational Facilities.
- Delete Policy 12 relating to traffic management.
- Policy 13 should require any contributions to town centre improvements to have to meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010.

The referendum area does not need to be extended beyond the plan area.

## Introduction

1. Neighbourhood planning is a process, introduced by the Localism Act 2011, which allows local communities to create the policies which will shape the places where they live and work. The Neighbourhood Plan provides the community with the opportunity to allocate land for particular purposes and to prepare the policies which will be used in the determination of planning applications in their area. Once a neighbourhood plan is made, it will form part of the statutory development plan alongside the adopted Eden Local Plan. Decision makers are required to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.
2. The neighbourhood plan making process has been undertaken under the supervision of Penrith Town Council. A steering group, the Penrith Neighbourhood Development Plan Group was appointed to undertake the plan's preparations on behalf of the Town Council.
3. This report is the outcome of my examination of the Submission Version of the Penrith Neighbourhood Plan. My report will make recommendations based on my findings on whether the Plan should go forward to a referendum. If the plan then receives the support of over 50% of those voting at the referendum, the Plan will be "made" by Eden District Council.

## The Examiner's Role

4. I was appointed by Eden District Council in November 2020, with the agreement of Penrith Town Council to conduct this examination.
5. In order for me to be appointed to this role, I am required to be appropriately experienced and qualified. I have over 43 years' experience as a planning practitioner, primarily working in local government, which included 8 years as a Head of Planning at a large unitary authority on the south coast, but latterly as an independent planning consultant and director of my neighbourhood planning consultancy, John Slater Planning Ltd. I am a Chartered Town Planner and a member of the Royal Town Planning Institute. I am independent of Eden District Council and Penrith Town Council and I can confirm that I have no interest in any land that is affected by the Neighbourhood Plan.
6. Under the terms of the neighbourhood planning legislation, I am required to make one of three possible recommendations:
  - That the plan should proceed to referendum on the basis that it meets all the legal requirements.
  - That the plan should proceed to referendum, if modified.

- That the plan should not proceed to referendum on the basis that it does not meet all the legal requirements
7. Furthermore, if I am to conclude that the Plan should proceed to referendum, I need to consider whether the area covered by the referendum should extend beyond the boundaries of the area covered by the Penrith Neighbourhood Plan area.
  8. In examining the Plan, the Independent Examiner is expected to address the following questions
    - Do the policies relate to the development and use of land for a Designated Neighbourhood Plan area in accordance with Section 38A of the Planning and Compulsory Purchase Act 2004?
    - Does the Neighbourhood Plan meet the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 - namely that it specifies the period to which it is to have effect? It must not relate to matters which are referred to as “excluded development” and also that it must not cover more than one Neighbourhood Plan area.
    - Has the Neighbourhood Plan been prepared for an area designated under Section 61G of the Localism Act and has been developed and submitted by a qualifying body?
  9. I am able to confirm that the Plan, if modified in accordance with my recommendations, does now only relate to the development and use of land, covering the area designated by Eden District Council, for the Penrith Neighbourhood Plan, on 6<sup>th</sup> September 2016.
  10. I can also confirm that it does specify the period over which the plan has effect, namely the period from 2019 up to 2032.
  11. I can confirm that the plan does not contain policies dealing with any “excluded development”.
  12. There are no other neighbourhood plans covering the area covered by the neighbourhood area designation.
  13. I am satisfied that Penrith Town Council as a parish council can act as a qualifying body under the terms of the legislation.

## **The Examination Process**

14. The presumption is that the neighbourhood plan will proceed by way of an examination of written evidence only. However, the Examiner can ask for a public hearing in order to hear oral evidence on matters which he or she wishes to explore further or if a person has a fair chance to put a case.
15. I am required to give reasons for each of my recommendations and also provide a summary of my main conclusions.
16. I carried out an unaccompanied visit to Penrith on the afternoon of 5<sup>th</sup> January 2021 and the morning of 6<sup>th</sup> January 2021. I spent the afternoon driving around Penrith and familiarised myself with the different areas of the town and saw some

of the new housing developments which are being built on the east side of the town. I also visited a small number of the proposed local green spaces and recreation areas before it became too dark. On the following morning, I walked from my hotel through the town centre and I was able to admire the New Squares development as well as the many small town centre shops, which regrettably, were mostly closed. I then visited all the identified sites referred to in Policies 8 and 9. I also went past Roundthorn Hotel to Beacon Hill and continued along the lanes to join the Salkeld Road. I then proceeded north out of Penrith on the A6 and visited Bowscar.

17. Following my site visits, I prepared a document seeking clarification on a number of matters, which I sent to both the Town Council and Eden District Council, entitled Initial Comments of the Independent Examiner, dated 8<sup>th</sup> January 2021. I indicated that I felt it necessary to call for a hearing to allow me to explore a number of specific issues.
18. Unfortunately, due to the restrictions imposed, as a result of the COVID 19 outbreak, the submission of oral representations could only be conducted, “virtually” via “teleconferencing” The Secretary of State had issued PPG advice that these would be appropriate for neighbourhood plan examinations, where needed. The video conference took place on 9<sup>th</sup> February 2021.
19. Following the hearing, I issued a Post Hearing Note dated 10<sup>th</sup> February 2021. This covered a range of matters, most of which had been raised during the virtual hearing. I requested information as to the scale of responses to individual topics raised during the plan’s consultations, revised mapping of the Policy 8 and 9 sites, the exploration of a jointly acceptable policy on Beacon Hill, and informing the District Council that I believed that it was its responsibility to screen the plan under the Habitats Regulations. It also sought clarification from the Town Council as to the circumstances where applicants would be expected to contribute to town centre improvements.
20. I was advised that a preliminary meeting took place on 4<sup>th</sup> March 2021. Following that meeting the landowner’s proposals were considered at a further meeting of Penrith Town Council held on 12<sup>th</sup> April 2021. The Town Council’s planning consultant was asked to prepare an alternative policy with a view to it going to the Town Council’s Planning Committee on 7<sup>th</sup> June 2021 before being shared with Lowther Estates and with the intention of it being referred to the Full Town Council.
21. On 1<sup>st</sup> June 2021 I received an unsolicited email from the Friends of The Beacon and on 4<sup>th</sup> June an email from the Keep Penrith Special Campaign Group. I asked that their letters be placed on the respective websites.
22. On 19<sup>th</sup> July 2021 a virtual meeting took place between the Town Council and Lowther Estates where the Town Council rejected the policy put forward by the landowners. On 27<sup>th</sup> July the Full Council met and considered a report which put forward the Town Council’s own preferred policy. It also received representations on behalf of the Friends of Penrith Beacon and Keep Penrith Special.

23. On 9<sup>th</sup> August 2021 I received a letter on behalf of the landowners confirming that from their perspective, it had not been possible to arrive at a mutually agreed form of wording for an alternative policy.
24. Accordingly on 19<sup>th</sup> August 2021, I issued my Further Comments of the Independent Examiner document which asked for the Town Council's perspective on the outcome of the discussions and also following the July changes to the NPPF, asking Eden District Council to contact the parties who submitted comments at Regulation 16 whether they wished to comment on the implications of the NPPF changes for this examination.
25. On 31<sup>st</sup> August 2021 I received the response from the Town Council in response to the other matters that I had raised in the Post Hearing Note.
26. The consultation for the NPPF changes was held between 14<sup>th</sup> September and 6<sup>th</sup> October 2021 and I received the replies on 8<sup>th</sup> October 2021 along with comments from the Friends of the Beacon and Keep Penrith Special Group.
27. The responses to my Further Comments document were submitted to me on 18<sup>th</sup> October 2021.
28. At that stage, I began to prepare my initial draft of this report. I considered carefully the comments that I had received. It did seem to me that there was the possibility of drafting a policy which would offer the protection to the majority of the Beacon which clearly the Town Council was considering, alongside its proposed improvements to public access and informal recreational facilities, could actually be delivered by a policy which also supported limited tourism accommodation that would accord with Eden Local Plan Policy EC4, which already covered the Beacon. I therefore drafted a proposed modification to the plan which would have satisfied both aspirations, through the inclusion of a policy, which I considered met the test of the basic conditions.
29. However, I was conscious that introducing this new policy at the examination stage, it would not have been the subject of any public consultation and there had not been an opportunity for the public and stakeholders to express their views on my draft policy. Accordingly I prepared a document entitled "Consultation on Proposed Policy on Beacon Hill" dated 1<sup>st</sup> December 2021 which set out my thinking, by including an extract from my draft report, alongside a proposed policy for Beacon Hill.
30. This was the subject to a four-week consultation that was organised by Eden District Council which ran from 7<sup>th</sup> January 2022 until 4<sup>th</sup> February 2022. At the start of the consultation, the Town Council questioned the officers at Eden District Council whether I had the legal power to propose such a modification. In response, I produced a Clarification Note dated 10<sup>th</sup> January 2022 which explained the legislative basis that would allow a modification of the plan to ensure that it met the basic conditions. The District Council sought its own legal advice and this agreed with my conclusions.
31. By the conclusion of the public consultation, a total of 573 responses were received, along with 55 individual responses and these were forwarded to me by

Eden District Council on 2<sup>nd</sup> March 2022. I will discuss the results of that consultation in the relevant section of this report.

32. All the relevant documents have been placed on Eden District Council's website.

## **The Consultation Process**

33. The first public consultation exercise had the tagline "Talk about Penrith", to seek the views of residents and businesses on a range of issues affecting the town. This was launched at a public event held on 15<sup>th</sup> March 2017 and the first face-to-face consultations took place in the town centre a few days later on 18<sup>th</sup> March. A second event was held on 1<sup>st</sup> April 2017 at Penrith Parish Centre. At these events of public were able to comment on which green spaces were important to them and what non-designated heritage assets were valued.

34. This initial consultation helped to identify key issues and objectives for the neighbourhood plan. This was supplemented by a housing needs survey which was circulated in the period May to July 2018.

35. The group published a Preferred Options Draft Plan which it consulted upon during the period June and July 2018. This produced 70 individual responses.

36. All this activity culminated with the preparation of the Pre-Submission version of the neighbourhood plan which was the subject of an eight week consultation, known as the Regulation 14 consultation, which ran from 4<sup>th</sup> February to 1<sup>st</sup> April 2019. A summary version of that draft plan was prepared but unfortunately, it omitted the policy on shopfront and a further round of publicity was given to cover that omission. This Reg 14 consultation was publicised through a range of publicity and other media outlets including on the website and letter sent to businesses in the town centre, correspondence with statutory undertakers and community groups, dropping events, social media and by Eden's local magazine. In total, 93 people attended the drop-in sessions and 290 questionnaires were returned, 253 from residents and 32 from businesses and five from community groups. These are fully set out in a document on the Town Council's website, which both records the comments made and the resultant changes made to the plan as a result of consultation responses.

37. I am satisfied that the Town Council has actively sought the views of local residents and other stakeholders and their input has helped shape the plan.

## **Regulation 16 Consultation**

38. I have had regard, in carrying out this examination, to all the comments made during the period of final consultation which took place over a 6-week period, between 23<sup>rd</sup> September 2020 and 4<sup>th</sup> November 2020. This consultation was organised by Eden District Council, prior to the plan being passed to me for its examination. That stage is known as the Regulation 16 Consultation.

39. In total, 36 responses were received, from Natural England, Cumbria Police and Crime Commissioners Office and Cumbria Constabulary, Sports England, Friends of the Lake District, National Grid, Environment Agency, Rotary Club of Penrith, The Coal Authority, Historic England, Eden District Council, Penrith Tennis Court, Cumbria County Council, Homes England, Brougham Parish Council, Penrith and the Borders Liberal Democrats, United Utilities, Persimmon Homes Lancashire and Stantec on behalf of the Lowther Estate Trust and from 5 local residents and 2 County Councillors. It should be noted that some parties submitted more than one representation.
40. I have carefully read all the correspondence and I will refer to the representations where it is relevant to my considerations and conclusions in respect of specific policies or the plan as a whole.

### **The Basic Conditions**

41. The Neighbourhood Planning Examination process is different to a Local Plan Examination, in that the test is not one of “soundness”. The Neighbourhood Plan is tested against what is known as the Basic Conditions which are set down in legislation. It will be against these criteria that my examination must focus.
42. The five questions, which seek to establish that the Neighbourhood Plan meets the basic conditions test, are: -
- Is it appropriate to make the Plan having regard to the national policies and advice contained in the guidance issued by the Secretary of State?
  - Will the making of the Plan contribute to the achievement of sustainable development?
  - Will the making of the Plan be in general conformity with the strategic policies set out in the Development Plan for the area?
  - Will the making of the Plan breach or be otherwise incompatible with EU obligations or human rights legislation?
  - Will the making of the Plan breach the requirements of Regulation 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017?

43. The plan had been submitted at the time of the 2019 version of the National Planning Policy Framework. In July 2021 the Secretary of State published a revised NPPF and it is against the policies in that document that the examination will have regard to.

### **Compliance with the Development Plan**

44. For the purpose of this neighbourhood plan, the overarching strategic policy context is provided by the Eden Local Plan, 2014 - 32 which was adopted on

11<sup>th</sup> October 2018. That contains the strategic policies of the development plan, for the consideration of one of the above basic conditions.

45. The overall spatial strategy is set out in Policy LS1 – Locational Strategy which highlights that in Penrith this allows sustainable development appropriate to a larger town and in particular it refers to improvements in town centre facilities and the public realm, development of strategic employment areas and the provision of large-scale housing development to the east and north of the town. Policies for the areas outside the urban area are much more restrictive and encourage only the reuse traditional buildings, affordable housing and rural exception sites. Penrith is required, in the local plan, to provide 50% of the houses in the district which equates to 2,178 dwellings out of a district target of 4,356 dwellings which as set out in the table in Policy LS2 and that identifies that there is a residual requirement of 835 dwellings to be provided in the town over the plan period.
46. Specific policy for Penrith is set out in Policy PEN 1–A Town Plan for Penrith. This states that the main locations for housing are at Carleton to the east and at Salkeld Road, White Ox Farm and Raiselands Farm to the north. The policy identifies 10 sites to meet the Penrith allocation with the sites to the east expected to deliver homes in the short to medium term. Policy PEN2 requires masterplans to be provided for the remaining strategic sites to the north and east and all developers are required to work with the infrastructure providers to look at the funding of the physical and social infrastructure needed in the town to accommodate the new development proposed.
47. Other policies relevant to the neighbourhood plan include Policy DEV5 dealing with the design of new development and Policy HS 1- Affordable Housing which requires 30% provision on schemes of 10 units or more or 1000 m<sup>2</sup> of floor space and with no contributions expected on site below that threshold. Policy HS4 deals with housing type and mix and Policy HS5 addresses the need for accessible and adaptable homes.
48. Policy EC4 refers to tourist accommodation and facilities and is of importance in terms of the policies for Beacon Fell which allows subject to conditions, both large scale and small scale tourism development.
49. Policy ENV5 sets requirements for environmentally sustainable design. Finally of particular relevance is Policy COM 2 which seeks to protect open space, sport, leisure and recreation facilities and this sets out that any development proposal that results in the loss of open space, sport, leisure, allotments, recreational and cultural spaces, will not be allowed unless the benefits and development outweighs the loss.
50. My overall conclusion is that the neighbourhood plan, apart from where I have noted in the commentary on individual policies, is in general conformity with these strategic policies in the Eden District Plan.

## **Compliance with European and Human Rights Legislation**

51. Penrith Town Council issued a Screening Opinion, in a report dated January 2019, which concluded that a full strategic environmental assessment, as required by EU Directive 2001/42/EC, which is enshrined into UK law by the “Environmental Assessment of Plans and Programmes Regulations 2004”, would not be required. The 3 statutory consultees agreed with that conclusion
52. It appears that the Town Council carried out its own HRA screening in the same report as the SEA screening, which concluded that an assessment under the Conservation of Habitat and Species Regulations would not be required. The District Council issued a statement in its response to my Initial Comments document dated 26<sup>th</sup> January 2021 that it agreed with that screening opinion.
53. However, under the terms of the above regulations, it is the District Council rather than Penrith Town Council that is the competent authority, which is required to screen the neighbourhood plan. I raised this issue with the District Council in my Post Hearing document and subsequently it commissioned the Greater Manchester Ecology Unit to undertake that screening of the neighbourhood plan on its behalf. This report also considered the neighbourhood plan in terms of the impact on the nearest European protected sites, which is the River Eden SAC and it concluded that there were no likely significant impacts and the plan could be screened out.
54. I am satisfied that the basic conditions regarding compliance with European legislation, including the newly introduced basic condition regarding compliance with the Habitat Regulations, are met. I am also content that the plan has no conflict with the Human Rights Act.

## **The Neighbourhood Plan: An Overview**

55. I must firstly commend the Town Council on taking the lead and preparing a neighbourhood plan for the whole town. The plan is not seeking to make housing or employment allocations as that has already been done by the Eden Local Plan. The plan is however seeking to drive its own local agenda, particularly when it comes to expectation as to whether development within the town should meet higher sustainability standards. However, there are limits on what can be achieved by neighbourhood plan and this is set out clearly by the Secretary of State. His position is that it is the local plan, rather than neighbourhood plans that can set higher standards and furthermore the key driver for addressing climate change by reducing the carbon footprint of new development as well as driving higher energy standards is being taken forward at a national level, by such measures as the building regulations.

56. I know that some members of the Steering Group will be disappointed by my conclusions, but during the hearing there was an appreciation that the planning permission could not necessarily be refused, if the higher standards were not being delivered. I sensed that the Town Council wished to be seen to be driving higher standards, but it had an expectation that in reality, decision makers would “water down the expectations in the planning balance”. That undermines the importance of the role neighbourhood plans can play in the management of development, as the expectation is always that the determination of planning application should be in accordance with the development plan unless material circumstances dictate otherwise. That is why the role of the examination is important to assess the plan against the basic conditions which include but the plan has had regard to Secretary of State policy and advice.
57. The other area where I have had to make significant changes from the submitted plan relates to the treatment of green spaces within the town. I am afraid that the approach taken to identify what are to be local green spaces, which has been confirmed was based on the function of the green space, is at variance with the approach advocated by the Secretary of State which seeks to reserve the local green space designation to the open spaces which are particularly valued by the local community, having particular significance.
58. Having regard to the extent of the changes that I have to recommend, did lead me to consider whether the plan as a whole should be allowed to proceed to referendum, as some of the changes, it could be argued, go to the heart of the plan. However, I have concluded that there are significant benefits in allowing the plan to proceed to referendum and I will be recommending the subject to the modifications, a number of which are significant, the plan does proceed. I have through my modifications been able to retain some of the ambition of the Town Council by changing specific requirements to a policy which offers encouragement to the attainment of these high standards.
59. My recommendations have concentrated particularly on the wording of the actual policies against which planning applications will be considered. It is beyond my remit as examiner, to comprehensively recommend all editorial changes to the supporting text. These changes are likely as a result of my recommendations, in order that the plan will still read as a coherent planning document.
60. Following the publication of this report, I would urge the Town Council and Eden planners to work closely together to incorporate the appropriate changes which will ensure that the text of the Referendum Version of the neighbourhood plan matches the policy, once amended in line with my recommendations. There will also need to be editorial matters to resolve such as policy numbering, as a consequence of my recommended changes.

## The Neighbourhood Development Plan Policies

### Policy 1: Sustainable Development in Penrith

61. This policy seeks to place the issue of the sustainability of new development at the heart of decision-making of planning applications within Penrith. The policy seeks to apply to all development proposals and are expected to incorporate sustainable development principles and measures. This requires the development to build in resilience to allow development to be adaptable to meet the challenges of climate and socio-economic change. It then sets out nine criteria which should be met, “where practical”.
62. However, in my view, the policy only offers a partial view of what the NPPF identifies as the key elements of sustainable development. For example, it does not cover the economic thread of sustainable development, such as supporting growth, innovation and improved productivity. Similarly, the policy does not address the need to provide a “sufficient number or range of homes to meet the needs of the present and future generations.”
63. As such this policy, offers only a restrictive picture of what constitutes sustainable development and by concentrating only with these particular policies, the decisionmaker is not being asked to consider other elements that are equally as important components of sustainable development.
64. At the hearing there was a discussion as to whether the neighbourhood plan was intended to take precedence over the non-strategic local plan policies on the basis of it being a more recently approved document. The Town Council’s response was that its intention was the neighbourhood plan would be complimentary to the policies in the local plan and it was not intended that the policy should supersede the policies in the Eden Local Plan.
65. As the NPPF states, “Neighbourhood plans offer the community the ability to develop a shared vision for their area” and allowing them to shape direct and deliver sustainable development “by influencing local planning decisions as part of the statutory development plan”. The NPPF, in paragraph 28, suggests that non-strategic policies can set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities, establishing design principles and conserving and enhancing the natural and historic environment and setting out other development management policies.
66. In my experience it is quite usual for the neighbourhood plan policy to provide an additional local dimension to a local plan policy. Indeed, it is a requirement that a neighbourhood plan should support the strategic policies in the local plan.
67. However, I am also conscious that the Secretary of State, in paragraph 16f) of the NPPF, states that plans should “avoid unnecessary duplication of policies that apply to particular area”.
68. I have carefully reviewed each of the elements contained within the policy and my conclusion is that the local plan is actually providing the same or greater

levels of detail as to what is expected from a development, compared to the “criteria” which is set out in the Policy1. In particular, I am satisfied that the Eden Local Plan in Policies DEV3, DEV4, DEV5, ENV4 and ENV5, which already apply to development taking place within Penrith, provide clear guidance to decisionmaker as to how a planning application is to be considered, apart from two elements.

69. The first area where the criterion in Policy 1, which is not covered by the strategic policies in the local plan, is the requirement for schemes to demonstrate that the design includes measures to minimise energy use and consumption. However, the Secretary of State in a Written Ministerial Statement to the House of Commons, dated 25<sup>th</sup> March 2015, states that neighbourhood plans should not set “any additional local technical standards or requirements relating to the construction, internal layout and performance of new dwellings.” There was some debate at the hearing as to how relevant that 2015 Statement is, but I am satisfied that this remains the current policy advice from the Secretary of State, as the statement, unlike others, has not been revoked and is also still referred to in the advice in the Planning Practice Guidance which was issued in 2019. Reference was made to recent statements made in the Government’s response to the Future Homes Standard consultation, but that relates to matters primarily covered by the Building Regulations. I therefore believe that the inclusion of the criteria raising expectations regarding energy use and consumption, within a neighbourhood plan, would not be in accordance with the Secretary of State advice and as such would not meet the basic condition.
70. The other area relates to the use of “use of .... healthy products (e.g. by avoiding toxic or carcinogenic materials) that employ low energy output and are, wherever possible, sourced locally”. The sources of materials within a development is not a matter that is within the control of the planning system and certainly would not be subject of planning control.
71. To give an example of the more detailed policy requirements which are set out in local plan policy, the final criterion of the policy requiring “protection and enhancement of the local identity, character and environmental distinctiveness of the town by way of sympathetic use of building styles, layouts, materials and landscaping” is actually dealt with on a more comprehensive basis by Policy DEV5 which sets out ten criteria and refers to the design principles in the Eden Design Guide.
72. Whilst I understand that the Town Council wishes to make a strong statement regarding its expectations for development within the town, I am satisfied that the strategic policies within the local plan, which apply to the town, actually provide the same or greater level of detail as to how planning applications are to be considered in terms of the delivery of sustainable development.
73. I am therefore recommending that Policy 1 should be deleted, but that the neighbourhood plan document within the supporting text can highlight these

issues and signpost the decision maker to the respective policies in the local plan.

***Recommendation***

***That the policy be deleted.***

**Policy 2: Environmentally Sustainable Design**

74. I consider that the overall thrust of this policy will ensure that the plan delivers sustainable development. The second element of the policy requires major developments to prepare a renewable energy strategy with zero or low carbon targets and include climate change resilience measures.
75. The Eden Local Plan already dictates under what circumstances a Renewable Energy Strategy will be required and how it should show the predicted energy demands of the proposed development and the degree to which the development meets current energy-efficient standards. This policy goes further and requires a statement to show how the development will meet zero or low carbon targets. I do not consider that imposing these extra requirements through a neighbourhood plan, in respect of residential schemes, would be in accordance with the requirements set out in the aforementioned Written Ministerial Statement. Such requirements are not affected, in the case of commercial schemes.
76. However, I am conscious that, as admitted during the hearing, that the effect of the additional costs of meeting the enhanced standards have not been tested as to effects on scheme's viability, which is something that would be required of a local plan policy, according to the Planning Practice Guidance (Paragraph: 009 Reference ID: 6-009-20150327).
77. I fear that by imposing this requirement at a local level could result in employment generating development choosing not to locate to Penrith, which could undermine the strategic employment policies in the Eden Local Plan as it could be more expensive to be building in Penrith compared to other areas of Eden District or the wider North West.
78. I acknowledge the desire of the Town Council to require higher energy efficiency/ sustainability standards in the town, but I believe that the policy is too onerous. I will be recommending that the emphasis of the policy should be changed, so that the meeting of the higher standards will be encouraged, but that the requirements of the Local Plan policy should remain the determining test. The support for the higher standards was acknowledged during the hearing's discussions, as being the best that could be achieved and it would mean that a planning application could not be refused, on the grounds of not meeting the zero or low carbon targets.
79. The final element of Policy 2 is a policy that encourages development to be at the forefront of contemporary, sustainable building design. I consider that this part of the policy is consistent with the Secretary of State's aspirations as set out in paragraph 134b) of the NPPF. This introduces an evidence-based methodology to assess application seeking approval based, on being the

proposal offering an innovative sustainable design solution, rather than being a policy which imposes these technical standards on other proposals.

#### **Recommendation**

***In 2., after “Renewable Energy Statement”, replace “shall” with “will be encouraged to” and at the start of the second sentence, delete “As a minimum, for” and replace with “for commercial building schemes which meet” and at the end, replace “should be achieved” with “will be supported”.***

***In 3. set out the requirements i. to v. as a list***

### **Policy 3: Energy and Reducing Carbon Emissions**

80. This policy is proposing more stringent policy requirements on developers than is required by Policy ENV5 of the Eden Local Plan, which does not set a threshold for the percentage of total energy predicted requirements. As previously mentioned, the setting of these standards within the neighbourhood plan, would be contrary to the Secretary of State’s policy as set out in the previously mentioned Written Ministerial Statement. I will therefore be recommending the restriction of the policy’s remit to commercial development only.

81. I am satisfied that the policy’s caveats, regarding practicality and viability, will allow economic development not to be discouraged from investing in Penrith.

#### **Recommendation**

***After “major” insert “commercial” and delete “10 dwellings”***

### **Policy 4: Accessibility and Social Inclusion**

82. The policy is intended to apply to all development taking place within the plan area. There could be some schemes, such as those taking place within the wider rural areas, where it will be unreasonable for the policy’s accessibility requirements to be insisted upon. I would therefore recommend that the provisions of the first element of the policy should be limited to the urban area.

83. In terms of the final requirements relating to social inclusion, I consider in the interest of clarity of which schemes need to provide public open space etc, the policy should only apply to major residential development.

#### **Recommendation**

***After “community”, replace “they” with “those that are within or are adjacent to the urban area”***

### **Policy 5: Conservation Areas in Penrith**

#### **A. Penrith Conservation Area**

84. My only concern regarding this policy is that the reference to key views and vistas from the green above Scaws Drive and from Beacon Fell towards the Lakeland Fells would be more appropriately located within the Penrith New Street Conservation Area section of this policy.

### ***Recommendation***

***In 7., delete ii.***

## **B. Penrith New Streets**

85. Apart from the issue of the key views, I have no comments to make on this part of the policy.

### ***Recommendation***

***Insert “5. Key views and vistas within and of the Conservation Area including the view of the Lakeland Fells from the green above Scaws Drive and from Beacon Edge.***

## **Policy 6: High Quality New Home**

86. In the interest of the clarity of the document I could be recommending that the title of the policy should refer to “High Quality New Homes”.

87. This policy sets out a number of considerations the planning applications will be judged against. However, a number of the criteria do not provide guidance as to whether proposal should be supported. In order to give guidance for a decision maker, I will propose setting out specific criteria against which a planning application will be judged. This includes a requirement that proposals should not have a detrimental impact on the visual and landscape character of the locality. The development should also be located so as to be capable, where possible, for residents to be able to access local facilities and services by a range of transport modes, as required by Policy 4. In the light of the provisions of paragraph 111 of the NPPF, it is only possible to refuse planning permission if there will be a severe residual cumulative impact on the road network.

88. Reference to social infrastructure should differentiate between social and green infrastructure which could cover green space and landscaping.

### ***Recommendations***

***Change title to “High Quality New Homes”***

***Replace 2. With “the extent to which the proposal conserves and enhances the visual and landscape character of the immediate vicinity of the site”.***

***Replace 3 “whether the location of the development allows access to local facilities and services by means other than the private car”.***

***Replace 5. with “whether the traffic generation resulting from the development will an unacceptable impact on highway safety or will have a severe residual cumulative impact on the road network”***

***In 6 after “social” add “and green”***

## **Policy 7: Housing Types and Mix**

89. The first part of the policy is essentially a requirement to comply with an existing local plan policy, which will already be covering the plan area. As such it is unnecessary. I will clarify the wording so that it is clear that the local need

set out in accordance with Local Plan Policy HS4, is as per the remainder of the policy.

### **Recommendation**

***After the first sentence insert “In the case of Penrith, the specific components of local housing needs are as follows.”***

## **Policy 8: Identifying and Protecting Local Green Space and Policy 9: Protecting and Enhancing Sport, Leisure and Recreation Facilities**

90. On my site visit, I visited each of the proposed local green space and public open spaces. The position regarding these green spaces is slightly complicated by the fact that the Eden Local Plan has already identified a number of the sites as public open space which are protected under the provisions of Policy COM2. The neighbourhood plan is proposing that a number of these areas of public open space should now be designated as local green space, which is the highest level of protection of green spaces available. That is entirely appropriate. Some of the existing site COM2 sites are retained as such, but in addition, the neighbourhood plan includes a number of new sites which are to be designated as public open space, so as to be protected by Local Plan Policy COM2. In addition, the plan is proposing to include new areas, which are not currently protected by the public open space, as local green spaces.
91. The COM2 sites are to be protected through Policy 9 of the neighbourhood plan. The interrelationship between the two policies means that it is sensible to refer to them both two together in this section of my report.
92. The criteria used by the Town Council to determine which sites are to be protected and by which route, were discussed during the hearing and I subsequently asked the Town Council to confirm what criteria was used. I was informed in Councillor Jackson’s letter, dated 24<sup>th</sup> August 2021, that the criteria used to designate local green spaces were those spaces identified as being “informal areas used by residents for unstructured play, gathering together and in some places are spaces which are maintained and planted by residents and community groups”. The criteria for being identified as COM2 sites include “more formal sports, leisure and recreation facilities with play equipment, including school playing fields.”
93. It appears to me that the Town Council has chosen to identify what are to be local green space, not based on the relative importance of the spaces to the local community, but rather the selection has been based on whether the spaces are used for passive or for active leisure pursuits such as sports ground or play areas.
94. The Secretary of State in the NPPF sets out a hierarchy, whereby the greatest level of protection is afforded to those green spaces that are designated as local green spaces, compared to those other facilities, which are covered by paragraph 99 of the Framework. That latter paragraph countenances the loss of such facilities, if one of the three conditions are met. The Secretary of State’s approach towards the protection of local green space requires that

green space would be protected for the lifetime of the plan and beyond and that development is managed consistent with policies in the Green Belt and in effect their loss will only be allowed, if there were very special circumstances.

95. I heard repeatedly, during the hearing, that the choice of the local green spaces was determined by the local knowledge of the town councillors based on responses from the local residents, but I am not convinced that the choices have been informed by a clear understanding of the different criteria set out in the framework for identifying local green spaces as opposed to other open spaces. Paragraph 102 of the NPPF requires that the identification and protection of green spaces should be given to those green spaces which hold a particular importance to the local community. I am not necessarily convinced that the town's residents would have placed greater importance on the protection of some sites, which are offered a higher level of protection via Policy 8, compared to some other sites which are protected as COM2 sites set out in Policy 9. I am sure that some of the Policy 9 sites would be considered to be demonstrably special to the local community, holding local significance because of their recreational value or other reasons. I am not satisfied that the Town Council has demonstrated that the town's community, places greater value on the protection of the areas of undeveloped informal open space around the Macadam Way housing estate, than it will say place protecting the grounds of Penrith Cricket club or indeed Castle Park, both of which are identified within Policy 9.

96. I am reinforced in my view that there has been a lack of understanding of the relative importance in two categories, based on the revised mapping which I was sent, following the request I made in my Post Hearing Note. I was asked for clarification by the Town Council on that what the maps should show and I responded on 18<sup>th</sup> February 2021 by stating that I expected the maps to show the following 3 categories:

*“-Local green spaces which are being designated by the NP. If they are already a COM 2 site then the LGS status “trumps” that as it is a higher level of protection - don’t show them as covered by both  
-Existing sites protected by COM2 in the Local Plan which are not being upgraded to LGS  
- New COM 2 sites being designated by the NP - no need to differentiate them between green space or leisure space as the extent of the protection is the same.”*

97. The plans that I have been sent, show in blue, not just the local green space sites but also sites which are also to be covered by Policy COM2. Therefore, it is not possible to identify from the maps, the sites which are proposed for the higher level of protection offered by Policy 8, compared to those remaining sites which are to be covered by Policy 9, which I had expected to be shown, alongside the new areas proposed for designation which are shaded purple. The plan only shows a small number of sites in red, which are COM2 sites, but the added sites do not differentiate whether they are protected by Policy 8 or Policy 9.

98. My conclusion is that the identification of the local green spaces based on the Town Council's criteria has not had proper regard to the Secretary of State criteria and I conclude that both Policy 8 and 9 does not meet the basic conditions of having regard to Secretary of State policy and advice.
99. Under this heading, I now wish to discuss the position with regard to Beacon Fell which was proposed to be designated as local green space by the submitted neighbourhood plan. That designation been the subject of an objection made at Regulation 16 stage, on behalf of the landowner, the Lowther Trust. The policy sought to designate the part of forest, which forms the backdrop to Penrith, as local green space. The landowners argued that the policy would be more restrictive than would be otherwise agreed by Eden Local Plan Local Plan Policy EC4, in that it would frustrate the landowner's aspirations to undertake small-scale tourism development. They also pointed out that the proposed designation did not meet one of the required criteria for the designation for local green space, as set out in the NPPF, in that, at 40 ha., the woodland constituted an extensive tract of land. I agree that the designation of the whole woodland, on the south western face of the hillside, which essentially forms the eastern flank of the town, is well within the scope of being an extensive tract of land. I would not have been able to recommend it met the Secretary of State criteria for being a local green space. However, I do recognise that it is valued and important resource to the town of Penrith.
100. During the hearing itself, I sensed that there could be scope for an accommodation of the Town Council's desire to protect the forest area, particularly for its landscape value. I heard that currently its recreational value is limited, due to their only being restricted public access via a permissive path into the forest. It appeared, during the debate, that there was scope for meaningful discussions to take place between the two parties which could allow some of the Councils aspirations for greater access and enhanced recreational uses, whilst allowing some limited tourism related uses.
101. I therefore suggested that rather than pursue the local green space designation which was doomed to fail, there was scope for further discussions on the possibility to allow development of a bespoke policy for Beacon Hill, which could protect the special character of the forest which is clearly valued by the residents but which would not prevent development, which currently meets policy requirements.
102. Following the issuing of my Post Hearing Note, I learnt that discussions had taken place between the landowners and Penrith Town Council, but rather than the topic being approached in a collaborative basis to achieve mutually acceptable outcomes, it is clear that the respective positions had become entrenched.
103. The Lowther Trust put forward a proposal which would have retained the western part of the proposed local green space, which would still have an area of 33.06 ha and the separate identification of an eastern part based on an arbitrary line through the woodland, showing a protected open space area with

an area of 9.59 ha. The landowners suggested a new policy, which included reference to the provision for small-scale tourism development, as defined by Eden Local Plan Policy EC4. They argue that the national planning policy framework for managing development in areas designated as local green space is that the development should be consistent with policies for managing development in the Green Belt. That raised the question, in my mind, as to whether the landowners wish to site tourist pods and lodges, falls within the scope of paragraph 149 b) of the Framework which refers to the “provision of appropriate facilities for... outdoor recreation”, and whether the siting of these units would preserve the openness of the land.

104. The landowners argue that their proposals will be in accordance with Local Plan Policy EC4 which refers to temporary accommodation (caravans, camping and chalet sites), where it meets the three criteria, including that the development is capable being of removed, without damage or material changes to the land on which it was sited and the units are screened by existing topography and vegetation. Therefore, the question of policy compliance with Policy EC4 depends on whether those pods are to be treated as temporary structures rather than as permanent buildings.
105. In my experience it is normal practice that these types of structure, which can be delivered on a lorry and assembled on site, are accepted as a change of use of land, rather than constituting operational development. They are not usually treated as permanent structures, such as the building of new holiday cottages as set out in an earlier section of Policy EC4. They tend to be covered by the provisions of the Caravan Sites and Control of Development Act 1960 and any services required to comply with a site license are normally classed as permitted development under Part 5 of Schedule 2 of the General Permitted Development order 2015. It is not unusual for such facilities to be accompanied by the provision of services and hardstandings.
106. The Town Council’s version of the proposed policy would only allow the provision of footpaths, interpretation boards, the construction of an open sided structure - capable for being used, for example, by a Forest School, a forest art or sculpture trail, cycle paths and a small parking area. It goes on to say explicitly that the policy should prevent “development proposals that would provide accommodation for overnight stays (e.g. chalets, pods or camping)”. However, that would mean that the policy would not be in accordance with the local plan policy, Policy EC4 which explicitly allows such facilities subject to the policy’s three criteria and which would bring additional economic benefits to the town by providing additional tourist accommodation, close to the town’s facilities and services. To explicitly rule out such uses would bring into question whether the policy would meet the basic condition of being in general conformity with strategic planning policy and indeed whether it would be likely to lead to less development being permitted than that allowed by the local plan.
107. It is evident to me that my attempt to find a way of providing enhanced public access alongside the limited tourist development that the existing Local Plan

policy allows, did not attract public support. Overwhelmingly, the public rejected my suggested wording of the bespoke policy. I read each and every representation made, and my “tallying up” was that there were only around 18 responses, out of over 600 replies which offered support to the bespoke policy and the reasoning set out in my draft report. That figure is based on my categorisation rather than the responder’s confirmation as to whether they were offering support, opposition or an observation.

108. It is clear that the over whelming desire of the residents is to seek to prevent any development on the Beacon taking place. The Neighbourhood Plan seeks to do that through the designation as Local Green Space, which will mean that development is managed in a way consistent with Green Belt policy.
109. I therefore will not be recommending the bespoke policy, I had initially drafted and consulted upon, should proceed. It is clear that it does not have the support of the Town Council and the other organisations, who clearly value the woodland, nor does it have the support of the general public. The purpose of the consultation was to gauge whether there was support for a pragmatic, compromise solution and clearly there is not. Nevertheless, it was a worthwhile exercise.
110. In the absence of public support for the proposed bespoke policy which I felt did meet the basic conditions, I now need to look at whether the identified land at The Beacon (PN15) should be protected as Local Green Space, as proposed by the Regulation 15 submission version of the plan and whether it would meet the basic conditions. That was the position I indicated earlier in the examination, I would be forced to take if agreement could not be reached and appears to be the position still accepted by the Town Council.
111. My conclusion on this matter, is that whilst the protection of the woodland meets the requirements of paragraphs 102 a) and b) of the NPPF for designation as local green space, it would still fail the third test, as set out in Paragraph 102 c) as it is, in my opinion, an extensive tract of land, and therefore does not meet the basic condition of having regard to Secretary of State policy and advice, regarding local green space designation. It would be necessary for a local green space to meet each of the three criteria and as such it should not be designated as a local green space. Equally I do not consider that there are compelling grounds for seeking to depart from the national policy tests in terms of the Beacon.
112. In conclusion, I will therefore be recommending that the two policies, Policies 8 and 9 be deleted, as I do not believe, as currently proposed, they are compatible with the Secretary of State’s policy and advice regarding local green space. The Town Council, as part of any future review of the neighbourhood plan, can revisit the question of which areas are to be designated as local green space, based on the relative importance to the community of the facilities, rather than differentiating them based on whether they are used as active or passive open spaces.

### ***Recommendation***

#### ***Delete Policies 8 and 9***

### **Policy 10: Protecting and Enhancing Health and Community Facilities**

113. I have no comments to make on this policy in terms of the basic conditions.

### **Policy 11: Walking and Cycling**

114. Again, I have no comments to make on this policy in terms of the basic conditions.

### **Policy 12: Traffic Management**

115. I do not consider this is a policy which can be used with confidence by decisionmaker. It is too vague and non-specific. Neighbourhood plan policy is required by law, to be a policy which relates to the use and development of land and which can be used to determine a planning application. Issues relating to traffic flows and existing congestion are matters which are covered by highway legislation and which are the responsibility of the Highway Authority rather than the Local Planning Authority.

116. I find the policy regarding support for a new route, without any idea of a route would be unworkable as a tool of development management. I recommend that the policy be deleted as a planning policy but the intention can be included with the neighbourhood plan, for example as a community aspiration.

### ***Recommendation***

#### ***That the policy be deleted.***

### **Policy 13: Penrith Town Centre Improvements**

117. I have no concerns regarding the aspirations of policy. However, any proposals seeking a planning obligation to either provide the services directly or to seek contribution to their provision, will be required, by law, to meet the three tests that are in Regulation 122 of the Community Infrastructure Levy Regulations 2010 namely, that the obligation: -

- is necessary to make the development acceptable in planning terms and
- is directly related to the development
- and is fairly reasonable related in scale and kind to that development

118. I note the requirement is caveated by the use of “where appropriate” but I consider to be more explicit to include reference to the three tests, so that the decision maker knows that contributions can only be sought when these tests are satisfied.

### ***Recommendation***

***Replace in the first Paragraph “Where appropriate” with “Where the following three tests are met, namely that the contribution is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly reasonable related in scale and kind to that development”***

## Policy 14 Shopfront Design

119. I have no comments to make on this policy.

## The Referendum Area

120. If I am to recommend that the Plan progresses to its referendum stage, I am required to confirm whether the referendum should cover a larger area than the area covered by the Neighbourhood Plan. In this instance, I can confirm that the area of the Penrith Neighbourhood Plan as designated by Eden District Council on 6<sup>th</sup> September 2016 is the appropriate area for the referendum to be held and the area for the referendum does not need to be extended

## Summary

121. I congratulate Penrith Town Council on reaching this important stage in the preparation of the neighbourhood plan. I appreciate that a lot of hard work has gone into its production and the Town Council can be proud of the final document. It is a plan that concentrates on a range of key issues that are clearly important to the local community. The plan will, in conjunction with the Eden Local Plan, provide a sound basis for determining planning applications in Penrith into the future.

122. I appreciate that the Town Council will be disappointed with some of my key recommendations but these modifications are required to ensure that the plan does meet the basic conditions tests.

123. To conclude, I can confirm that my overall conclusions are that the Plan, if amended in line with my recommendations, meets all the statutory requirements including the basic conditions test and that it is appropriate, if successful at referendum, that the Plan, as amended, be made.

124. I am therefore delighted to recommend to Eden District Council that the Penrith Neighbourhood Plan, as modified by my recommendations, should proceed, in due course, to referendum.

JOHN SLATER BA(Hons), DMS, MRTPI

John Slater Planning Ltd

29<sup>th</sup> March 2022