

**Local Plan submission: Proposed Modifications (policies)**

**Summary:** This report provides a summary of the requested modifications and Council feedback in relation to soundness and legal issues raised by respondents to the consultation held previously on the proposed submission version of the Draft Local Plan

**Recommendations:** **Members of the Planning Policy & Built Heritage Working Party recommend to Cabinet that the Schedules of proposed modifications along with the Proposed Submission version of the Local Plan be submitted for independent examination.**

**To delegate minor amendments in the finalisation of the submission version & Schedules and associated documents to the Planning Policy Manager and Policy Team Leader.**

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| Cabinet Member(s)<br>Cllr Andrew Brown                                                                                                                                                                              | Ward(s) affected<br><br>All |
| All Members                                                                                                                                                                                                         | All Wards                   |
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**1. Introduction**

- 1.1 In October 2021 Members of the Planning Policy and Build Heritage Working Party, PPBHWP resolved that the Local Plan strategic policies section be agreed as the basis for undertaking the consultation and submission for examination to the Secretary of State in line with Regulation 19 – 22. of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) along with delegated authority for minor amendments to the Planning Policy Manager and Policy Team leader.
- 1.2 The Plan underwent public consultation at Regulation 19 Publication Stage between January and March 2022. Before submitting a Draft Plan the Local Authority must under Regulation 20 and 22 provide a summary of the main issues raised in those representations and supply a copy of the representations upon submission along with supporting documentation which in the opinion of the local planning authority is relevant to the preparation of the Local Plan.
- 1.3 The Regulation 19 consultation sought views around legal compliance and soundness of the proposed submission version of the Local Plan. The Council

received a total 697 representations from 190 respondents. A proportion of the responses received were not made using the prescribed consultation response form. A large number of these responses related to multiple topic areas, policies or sites in the Plan, or to other supporting documents and or included additional uploaded PDF documents. In order to review and respond to the representations, the Council undertook an exercise to split such comments and append them to the relevant section of the Plan on the consultation portal prior to review.

- 1.4 All the representations remain publically available through the Councils Planning Consultation portal and on submission this will be signposted to the appointed inspector. In addition, all the representations have been compiled into a specific PDF version. This Schedule of Representations, Schedule 1, details all of the representations received during the consultation period, in Local Plan section order and will also be made available at submission, as per the requirements of the regulation.
- 1.5 In advance of the December meeting (this meeting) and the January Working Party meeting, Members of the PPBHWP have received a copy of Schedule 1, (4.11.22)
- 1.6 It is not possible to make changes to the pre submission document at this stage in the Plan process as the Local Plan has been subject to consultation and the Plan is the intended submission document. Representations made at Regulation 19 stage are considered by the appointed Inspector who will determine if the Plan is legally compliant and sound, either as submitted or subject to modifications being made. Prior to formal submission for examination, the Authority may consider the representations and invite the Inspector to modify the Plan.
- 1.7 Officers have now reviewed the consultation feedback and any required and relevant modifications that have been put forward in relation to soundness, legal compliance along with those that add clarity, add consistency and are necessary for factual reasons. A summary of the requested modifications along with the Council's response in relation to each section of the Plan is attached as Schedule 3. Where a modification is accepted and proposed by officers these are transposed onto the attached Schedules 4 and 5 as proposed modifications.
- 1.8 Schedule 3 contains only a summary of the requested modification(s) and details a short and standardised response(s). At this stage it is not the intention of the schedules to formulate detailed rebuttals or reasoned arguments nor is it their purpose to summarise wider feedback in relation to areas of support or objection. The level of detail included is intended to be sufficient to ensure any proposed modifications are consistent with the Plan and provide Members with a level of context and consistency around their justification.
- 1.9 Both schedules, once finalised along with a tracked change version of the proposed submission version of the Plan will also form part of any submission documentation. It will be up to the Inspector to agree to any proposed modifications and the detail and reasoning for such changes will be discussed during the examination process. Overall, there is merit in agreeing to propose the recommended modifications for reason of clarity, consistency and fact at

this stage as it is beneficial to the overall examination process and brings clarity to the submitted Plan.

- 1.10 Modification are classified as minor and main. Minor modifications are considered clarifications and corrections to address factual points raised during the Proposed Submission consultation. Main Modifications are those which are necessary for the Plan to be found sound and/or materially affect the policies. If agreed by the Inspector, it is likely that the main modifications will be subject to an additional consultation as directed by the inspector following the Local Plan examination. It is possible that further modifications will be proposed during the examination and therefore this list is subject to change and why, following examination, the Plan will require full Council approval for adoption in line with the constitution.
- 1.11 The majority of modifications are considered minor in nature and consist of typing corrections, punctuation and factual updates. A number of others bring clarity to the policies and supporting text and help address issues raised in interpretation and the intent of the policies. Only one main modification is proposed and that is, to ensure the Plan address Nutrient Neutrality. Where responses sought modification in particular policies and sections covering policy areas which are covered adequately in the Plan elsewhere, no modifications are proposed as proposals will be assessed against the Local Plan and any relevant Neighbourhood Plan as a whole.
- 1.12 In March of this year, Natural England issued revised guidance on nutrient neutrality across two catchments within North Norfolk. This advice has significant implications for residential and other development in the District and wider region. Without satisfactory addressing this issue in relation to the Conservation of Habitats and Species Regulations 2017 (as amended) the issue raises a significant soundness and legal hurdle. As Members are aware work is underway to evaluate the extents of the issue and to develop a cross boundary strategic approach to enable development to take place. Delivery of effective mitigation will however take time and will need to be provided to the satisfaction of Natural England. A main modification is therefore raised in relation to the inclusion of this requirement in the Plan which will be tested through examination. The Greater Norwich Authorities are leading the way on this, through their current examination. An allowance for the costs associated with the mitigation have already been included in the Plan wide viability assessment.
- 1.13 The updated LDS timetable anticipates submission toward March/April of next year of the pre submission Plan, accompanied by the required statutory supporting documents including the Sustainability Appraisal, Habitat Regulation Assessment, LDS and Statement of Community Involvement, SCI and Duty to Co – operate Statement. In addition, the submission will need to be accompanied by all the supporting evidence, up to date background papers and the consultation documents from previous stages including schedules 1- 5 which detail the Regulation 19 feedback.
- 1.14 Depending on how the submitted Draft Plan advances, and the pace of national policy change it may be necessary to propose further substantive modifications at the examination and/or add additional consultation stages to the overall timetable which would introduce significant delay and risks. It's currently anticipated that submission to the proposed timeline would accord

with any transitional arrangements, should substantive changes to national policy be brought in, in the near future.

- 1.15 If it transpires, that there is a need for further modification(s) due to legislative change, ahead of the examination, officers in conjunction with the portfolio holder will bring the detail to establish the Council's intentions.

## **2. Regulation 19 key Challenges**

- 2.1 The modifications proposed address matters of clarity and interpretation and bring further consistency across the Plan. Many respondents took the opportunity to express their support and or areas of objection for the Plan. The key areas of challenge are broadly cover below.

- 2.2 Key issues raised in relation to the Plan:

- Excessive (onerous) and on the other and inadequate approach to addressing climate change;
- The overall approach to setting the housing allowance, the deviation from the standard methodology, Plan end date, additional allocations/ reliance on large strategic sites and a high proportion of windfall;
- The Distribution of growth and in particular the approach to the small growth settlements;
- Unduly prescriptive and on the other hand, inadequate requirements for infrastructure and validation requirements;
- Environmental protection, including Nutrient neutrality;
- Controls on second home ownership;
- Restrictive / prescriptive nature of employment and tourism policies.

- 2.3 Climate Change: Some representations seek to challenge the direction of travel and sought lower standards and alignment with the minimum requirements of Building Regulations in relation to carbon reduction, rather than the progressive requirement contained in the policy. This was not uniform, and others argue that the approach should go further and quicker.

- 2.4 Some respondents seek to challenge the approach to onshore wind energy and argue that it is too restrictive given the climate emergency, while other respondents consider that the policy approach is not restrictive enough, requesting that such proposals are assessed on a case-by-case basis.

- 2.5 In relation to Biodiversity – some respondents sought further clarification about the threshold of development that would be required to provide Biodiversity Net Gain, with some requiring all development to be included over and above emerging national policy/guidance.

- 2.6 In relation to mitigation and adaptation to climate change, some respondents raised concerns that the policies, along with those that sought control over tourism development, were too restrictive and would limit opportunities, particularly for phased rollback within the Coastal Change Management Area (CCMA) and that extending rollback applications to the 50 year risk area may still not provide a viable or feasible approach to relocation for commercial/ tourist uses.

- 2.7 Housing Allowance: Representations seek to challenge the approach to the housing target making the case that the target has either been set too high, or too low. The development industry in particular objects to the Authorities departure from the standard approach, that the NPPF requires Local Authorities to follow when establishing housing need and questions if the departure from the standard methodology is based on “exceptional” circumstances. The components of expected future supply are also challenged with arguments made that the plan relies too heavily on windfall developments, more sites should be allocated, and the delivery expectations are too optimistic. To address this it is argued that the Plan should allocate more land, identify reserve sites and include a larger buffer or contingency, should identified sites not deliver. A case is made to extend the Plan period to cover a longer period and increase the allocations. Others argue the opposite and make the case for higher windfall allowances and fewer allocations and do not accept that there is a need for so much housing growth
- 2.8 Distribution of Growth: There is broad support, or at least little substantive objection, for the focus of growth in towns although some argue that this could go further and thus avoid the need to develop in the smaller villages. Both Wells and Holt Town Councils make the case for additional development and are concerned that needs, particularly for affordable homes, will not be met. The approach to growth in Small Growth Villages (allowing 6% growth on small unallocated sites, but through a criteria based approach) is subject to multiple representations arguing either that it is not required, would be unsustainable and does not address local needs, or alternatively that the approach lacks certainty of delivery and should be replaced with specific site allocations. Other respondents sought additional development opportunities for smaller settlements to allow infill and rounding off development. The practical implementation of the policy is also questioned. The lack of controls over second home ownership is cited as a reason not to build in villages as there is a concern that such developments would simply be purchased by second homeowners. It is argued that the lack of supporting infrastructure makes small villages unsuitable and unsustainable locations for development.
- 2.9 The Plan however is supported by the distribution of growth background paper which explains the methodology to justify settlement selection and also explains the rationale for the indicative housing delivery apportioned to Small Growth Villages, in line with Paras. 69a and 79 of the NPPF. The approach seeks a fair and equitable distribution through delivery of growth in each identified Small Growth Village and provides a modest amount of growth to support local services and address needs.
- 2.10 Infrastructure provision and viability: Several objections were received from developers and agents who seek to challenge the perceived prescriptive nature of the infrastructure requirements and open-ended nature around financial contributions. The need to supply upfront information in order to support proposals and or justify a departure from policy was also put forward. This was particularly true in relation to minimum space standards, and the requirement for accessible and adaptable homes, where the need for such standards was also challenged. This though was not universal and some developers/ housing associations confirmed that the standards were already being met while others sought higher targets. The cumulative impact of the policies on the viability of developed was questioned. Others seek to challenge the overall level of growth citing the lack of appropriate infrastructure as reasoned justification.

- 2.11 Environment: The Norfolk Coast Partnership provided supportive commentary around the stronger policy stance for the protection and enhancement of the Norfolk Coast AONB. Especially around the acknowledgement of its special qualities, nocturnal character, and the reference to siting, scale massing and design which is seen as an important element of the policy when considering the impact of large replacement homes and new development on the special qualities of the AONB. The partnership sought also to provide support for the acknowledgement of the AONB through policies EN2, E6 and E7 and are supportive that new touring and camping sites will continue to, not be permitted in the AONB.
- 2.12 Nutrient Neutrality – The requirement to address nutrient neutrality earlier in the year. In order to meet the legal requirements of the Habitat Regulations development proposals, which include an increase in overnight accommodation, in the identified zones will need to demonstrate nutrient neutrality. This will require the submission of sufficient information which compares the existing and proposed uses and allows the Local Planning Authority to conclude that no more nutrients will enter the designated watercourses than is currently the case.
- 2.12 Second homes: some respondents took the opportunity to raise the issue of building homes to meet the demand for second homes, sought further restrictions on the use of homes as holiday accommodation and challenged the Plan to put more emphasis on affordable housing provision.
- 2.13 The Plan is required by the NPPF to address all housing needs not just those arising from the existing local population. This includes addressing the needs of those moving into the area and those that require housing for sale or rent, whose needs are not met by the market. The Plan includes policies to support the delivery of the identified need for affordable homes, including those required for local people, through the allocation of development sites, lowering threshold sizes above which affordable homes should be provided, and the rural exceptions policy.
- 2.14 The Council has resolved that the “change of use” of primary residences to holiday accommodation does not require planning permission and is not a matter which can be controlled via Local Plan policy. The Authority is supportive of possible changes in national legislation to introduce the need for planning permission for such proposals. The Council has carefully considered the effectiveness of principle residence restrictions on new dwellings but does not currently consider that such restrictions are likely to be effective. These matters were fully considered at Overview and Scrutiny Committee, in July 2022 and set out in the Impact of Second Homes report. The Council supports further legislative changes to enable the retention of increased tax revenue collected by 2nd tier authorities and a request that all second and holiday homes require planning permission.
- 2.15 The Plan is required by the NPPF to address all housing needs not just those arising from the existing local population. This includes addressing the needs of those moving into the area and those that require housing for sale or rent, whose needs are not met by the market. The Plan includes policies to support the delivery of the identified need for affordable homes, including those required for local people, through the allocation of development sites,

lowering threshold sizes above which affordable homes should be provided, and the rural exceptions policy.

- 2.16 Employment: The main issues raised within the Economy section cover a number of matters. There are concerns that the approach seeks to direct employment generating use first to the employment sites and does not provide enough flexibility in terms of location. It is suggested that additional land should be found by making mixed residential and employment land allocations either, as integral or split sites. This ties in with the suggestion that the employment policies, E1 and E2 are too restrictive in the types of development considered acceptable on the designated areas, in particular by not supporting redevelopment of employment land through mixed-use proposals. Policy E6 has attracted significant challenge with several representations raising various concerns about its restrictive nature, considering it to be unduly onerous in the limits it imposes on the type of development permitted and within which locations. It is suggested that the policy should not limit new tourist accommodation to within the boundary of a selected settlement but should instead test the acceptability of the impact of development, including new development, or allow proposals to demonstrate benefits that could outweigh harmful impacts. Policy E8 is also challenged on its restrictive nature in relation to the locations in which new tourist attractions and extensions will be supported. It is suggested that the policy should allow for consideration of the specific merits of any proposed new development rather than inferring a blanket ban in the listed designated areas. Policy E9 is considered by some to be too protective of or too weighted towards tourism accommodation at the expense of permanent residential accommodation. The suggestion is that Policy E9 could better support or make it easier to change use from tourism accommodation to permanent residential use because of the high need for new homes. The policy is written to ensure that the current levels and variety of tourist accommodation is at least maintained. Arguments put forward, include the Plan has failed to promote development in Rural areas, as required by the NPPF. The suite of policies is supported by others especially those that acknowledge the special qualities of the AONB and wider landscape of North Norfolk.
- 2.17 Many of the challenges put forward here are linked to the coastal policies in relation to mitigation and adaptation to climate change, where some respondents raised further concerns that the policies were too restrictive and would limit opportunities for phased rollback within the Coastal Change Management Area (CCMA) and that extending rollback applications to the 50 year risk area may still not provide a viable or feasible approach to relocation for commercial/ tourist uses
- 2.18 SA/ HRA: Although some respondents questioned the conclusions of the SA report stating that it was not appropriate to conclude that some effects remain uncertain, Natural England have confirmed their general satisfaction with the methodology and baseline information used to inform the SA. Natural England also confirm they are satisfied that the Habitats Regulations Assessment (HRA) (Footprint Ecology, 9th December 2021) stating it has provided a robust **Explanation** assessment of the Regulation 19 stage of North Norfolk District Councils Draft Local Plan in accordance with the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended) and having regard to relevant case law. Natural England agrees with the conclusions made in the HRA and supports the mitigation measures suggested. Although, they go on to say that GIRAMS is considered to be the

main mitigation measure for recreational disturbance, NE would also draw attention to site specific green infrastructure that may also reduce any likely significant effects from development proposals, as detailed in Policy CC11 of the Local Plan.

- 2.19 Anglian Water in its comments on the HRA confirm that they are updating the DWMP for 2025- 2030 and it will be subject to consultation over the next 18 months and finalised in 2023 ahead of agreement with regulators on investment in late 2023/early 2024. The planned investment by Anglian Water at Fakenham quoted at Para 6.12 of the HRA to provide for the level of growth in the Local Plan is confirmed to be dependent on the DWMP for 2025 to 2030 and beyond being confirmed by regulators through the Price Review (PR24) process. The current headroom at the Fakenham WRC would without that investment provide for four years of growth. The trajectory of the Plan however reflects the later delivery of the larger allocations in Fakenham which are projected to commence from 2032.

### **3 Recommendations**

- 3.1 Members of the Planning Policy & Built Heritage Working Party recommend to Cabinet that the Schedules of proposed modifications along with the Proposed Submission version of the Local Plan be submitted for independent examination.**

**To delegate minor amendments in the finalisation of the submission version & Schedules and associated documents to the Planning Policy Manager and Policy Team Leader.**

### **4 Legal Implications and Risks**

- 4.1 The Council must produce a Local Plan which complies with various regulatory and legal requirements and in determining its policy approaches must be justified and underpinned by up to date and proportionate evidence, be informed by appropriate sustainability appraisals and take account of and demonstrate how public feedback, national policy & guidance have been used to inform the production through the application of a consistent methodology.
- 4.2 The statutory process requires plan production to accord to the statutory requirements as set out in The Town and Country Planning (Local Planning), (England) Regulations 2012 (as amended). Failure to undertake Plan preparation in accordance with the regulations and NPPF is likely to render the plan 'unsound' at examination and result in the need to return to earlier stages. Substantial additional costs would be incurred.
- 4.3 There remains a residual risk of planning reform which, could undermine the production of the Plan to date through the proposed white paper along with further changes to the National Planning Policy Framework, either through incremental changes or substantive changes leading to wholesale replacement. Early submission reduces the risks associated with changes in government policy and puts the authority in a stronger position to take advantage of any subsequent transitional arrangements should they be introduced. If production is extended there remains an increased risk of early Plan review, further evidence gathering and substantial time and costs along



with increased pressure and challenge on the continued use of existing adopted policies.

## **5 Financial Implications and Risks**

- 5.1 Failure to undertake plan preparation in accordance with the regulations is likely to render challenge and result in less weight being given to the evidence documents and would result in further officer resources and associated costs.
- 5.2 This is an amendment to the timetable for the production of the North Norfolk's' Local Plan. The Local Plan and other planning documents are being produced from existing budgets.
- 5.3 If production is extended there remains an increased risk of early Plan review and substantial costs along with increased pressure and challenge on the continued use of existing adopted policies

Appendix 1 – Schedule 3

Appendix 2 – Schedule 4

Appendix 3 – Schedule 5