

# WESTMORLAND AND FURNESS COUNCIL

## Cabinet

<b>Report Title</b>	Penrith Neighbourhood Development Plan (further consultation required prior to referendum)
<b>Date of Meeting</b>	14 November 2023
<b>Report Author</b>	Gareth Candlin: Assistant Director Inclusive and Green Growth
<b>Director</b>	Angela Jones: Director of Thriving Places
<b>Lead Cabinet Member</b>	Virginia Taylor – Cabinet Member for Sustainable Communities and Localities
<b>Why is this a key decision?</b>	<ol style="list-style-type: none"><li>1. Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates. For these purposes, savings and expenditure are "significant" if they are equal to or greater than £500,000 and/or <b>NO</b></li><li>2. Is likely to be significant in terms of its effects on communities living or working in an area comprising one or more wards in the area of the Council <b>NO</b></li></ol>
<b>Wards Affected</b>	Penrith North Penrith South
<b>Identify exempt information and exemption category</b>	<p>In accordance with Section 100B(2) of the Local Government Act 1972, copies of Appendix H to this report are excluded from inspection by members of the public as the report contains information as described in Schedule 12A of the Act, as amended by the Local Government (Access to Information) (Variation) Order 2006, as follows:-</p> <p><i>Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings (Paragraph 5)</i></p> <p>In all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p>
<b>Reasons for urgency (only where applicable)</b>	N/A

<b>Appendices (if any)</b>	Appendix A – Examiner’s Report Appendix B – Penrith Neighbourhood Development Plan - as amended Appendix C – Decision Statement and Schedule of Modifications Appendix D - Habitat Regulations Assessment Screening Opinion (May 2021) Appendix E - Representations from Penrith Town Council Appendix F – Questionnaire forming the public consultation on Policy 8 Appendix G – Equality Impact Assessment Appendix H – Confidential Extract from Kings Counsel Opinion on Examiners Report
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## 1 Executive Summary

- 1.1 The draft Penrith Neighbourhood Development Plan (PNDP) is a neighbourhood plan being prepared by Penrith Town Council (PTC). The PNDP covers Penrith Parish area which includes the town and some surrounding countryside. It contains local planning policies and land allocations.
- 1.2 The plan has been examined by an Independent Examiner. This report seeks approval to progress the plan through a further round of consultation, prior to being subject to a referendum and finally Made (adopted by Council). This means:
- (i) Approval of the majority of the Independent Examiner’s recommendations as follows - **The rewording of policy text in respect of policies** 2: Environmentally Sustainable Design, 3: Energy Use and Reducing Carbon Emissions, 4: Accessibility and Social Inclusion, 5: Conservation Areas in Penrith, 6: High Quality New Homes, 7: Housing Types and Mix, and 13: Penrith Town Centre Improvements, **as recommended by the Examiner.**
    - **The deletion of policies** 1: Sustainable Development in Penrith and 12: Traffic Management, **as recommended by the Examiner.**
    - **The retention in full of Policies** 10: Protecting and Enhancing Health and Community Facilities, 11: Walking and cycling and 14: Shopfront Design as originally proposed by Penrith Town Council (PTC), **as recommended by the Examiner.**
  - (ii) In the light of legal advice and further evidence submitted by Penrith Town Council, not accepting some of the Examiner’s recommendations as follows:
    - **The retention of policies** 8: Identifying and Protecting Local Green Space and 9: Protecting and Enhancing Sport, Leisure and Recreational Facilities, **contrary to the Examiner’s recommendation that both policies be deleted.** The exception to

this is to agree the deletion of The Beacon within Policy 8 as a Local Green Space, as it fails to meet the test of it '*not constituting an extensive tract of land,*' **as recommended by the Examiner.**

- (iii) Approval, following consultation, to submit the amended plan to referendum, despite differing from the Examiners recommendations in respect of polices 8 and 9.

## **2 Recommendations**

2.1 For the reasons set out in this report, Cabinet is recommended to agree that:

- (i) The proposed amendments to the plan identified in Appendix C – Decision Statement and Schedule of Modifications be supported and approve the amended Penrith Neighbourhood Development Plan for consultation for a period of not less than 6 weeks;
- (ii) Authorise the Director of Thriving Places in consultation with the Portfolio Holder, to make any minor changes and corrections to the plan that may be necessary, following the consultation;
- (iii) In the event of no substantive further changes being needed following the consultation, Authorise the Director of Thriving Places in consultation with the Portfolio Holder, to approve the plan as amended, which would then be subject to public referendum;

## **3 Background**

### ***Neighbourhood Plans – What are they?***

- 3.1 A neighbourhood plan is a plan that ultimately forms part of the Development Plan. It is prepared by a Neighbourhood Planning Body. This is the Parish or Town Council(s) where one exists. In this case the PNDP has been prepared by Penrith Town Council (PTC) who is the Neighbourhood Planning Body.
- 3.2 A neighbourhood plan has to meet the following 'basic conditions' which are:
- Having regard to national planning policies and guidance;
  - Contributing to sustainable development;
  - Being in general conformity with the strategic policies of the Local Plan
  - Being compatible with, EU obligations or human rights legislation; and
  - Meeting the requirements of Regulation 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017 (compliance with this requirement is demonstrated at Appendix D).
- 3.3 The plan is subject to an Independent Examination, which may require amendments to the plan following the Examiners Final Report, before proceeding to referendum.

- 3.4 Subject to a majority vote in favour at referendum, the plan is Made (adopted by Council). It is not for the Council to decide either for or against adoption after referendum.
- 3.5 Once Made (adopted by Council), it has equivalent weight in decision making to the Local Plan as part of the Development Plan.

***Neighbourhood Plans: What is the Local Planning Authority's role?***

- 3.6 The Local Planning Authority's role is:
- (i) To approve the Neighbourhood Plan area and the Neighbourhood Planning Body (in a parished area this will be a parish or town council);
  - (ii) To advise and support the Neighbourhood Planning body;
  - (iii) To publicise and carry out consultation on the submitted plan;
  - (iv) To organise (and fund) the independent examination;
  - (v) To decide what changes should be made to the plan in response to the Examiner's final report;
  - (vi) To notify representors and consultees of any proposed changes which differ from the examiner's report (which is the forthcoming consultation);
  - (vii) To approve the Neighbourhood Plan for referendum (with any minor changes that may be necessary);
  - (viii) To carry out and fund the referendum, supported by Government grant funding to a maximum of £20,000.
  - (ix) In the event of a majority vote in favour at referendum, the Plan is Made (adopted by Council).

***The Penrith Neighbourhood Development Plan***

- 3.7 Appendix B is an amended version of the submitted PNDP, which takes into the changes proposed by the Examiner (where Officers agree with these) and the further changes proposed by the Council (as a consequence of Officers disagreeing with the Examiner's recommendation that policies 8 and 9 be deleted).
- 3.8 Penrith parish was approved as a Neighbourhood Planning Area in September 2016. Penrith Town Council consulted on the draft PNDP between February 2019 and March 2020.

The draft PNDP was submitted to Eden District Council [EDC] in August 2020. At that stage, the plan incorporated the following policies:

- **Policy 1: Sustainable Development in Penrith** - Requirement for sustainable development including climate and social economic resilience, flood prevention, use of active transport, walking and cycle links, rainwater harvesting, energy efficiency, utilising recycled building materials, protection and creation of new green spaces together with the provision of adequate infrastructure;

- **Policy 2: Environmentally Sustainable Design** - Requirements for environmentally sustainable design promoting local distinctiveness, for major development to have a renewable energy statement demonstrating zero or low carbon targets, adopting water recycling, high standards of thermal insulation, and sustainable design features;
- **Policy 3: Energy Use and Reducing Carbon Emissions** - Requirement for major development to meet 15% of its energy requirement from on-site renewable energy generation or storage;
- **Policy 4: Accessibility and Social Inclusion** – Requirement to meet the needs of all groups and sections of the community to ensure routes are welcoming, overlooked and safe with homes being flexible and adaptable;
- **Policy 5: Conservation Areas in Penrith** - Identification of design requirements in new development to ensure the enhancement and acknowledgement of important views within or affecting the setting of the two Conservation Areas;
- **Policy 6: High Quality New Homes** – introducing criteria for new housing – including materials, visual impact, social infrastructure, visual and landscape character, access to local facilities and parking standards;
- **Policy 7: Housing Types and Mix** - Requirements for a range of house types including bungalows to meet local needs identifies in housing needs surveys;
- **Policy 8: Identifying and Protecting Local Green Space** - The identification of 35 Local Green Spaces, including a substantial area on Beacon Hill, with a high-level protective designation consistent with national protection for Green Belts;
- **Policy 9: Protecting and Enhancing Sport, Leisure and Recreational Facilities** - The identification and protection of 23 recreational open spaces and the town's leisure centre, to be protected in accordance with Eden local plan 2014-2032 Policy COM2 – Protection of Open Space, Sport, Leisure and Recreational Facilities;
- **Policy 10: Protecting and Enhancing Health and Community Facilities** - The protection of community facilities subject to specified criteria and support for new or improved community facilities on four identified housing estates;
- **Policy 11: Walking and cycling** – Provision and enhancement of, and design requirements for, new pedestrian and cycle links in new development;
- **Policy 12: Traffic Management** - Promotion of a new route around town to divert through traffic, improve traffic calming and maintain traffic flows, provide for traffic impact mitigation and safety measures;

- **Policy 13: Penrith Town Centre Improvements** - Promotion of measures and secure contributions to enhance the town centre including building design, planting, walking and cycling routes, public realm and signage; and
- **Policy 14: Shopfront Design** - Requirements for shopfront design to maintain the quality, character and distinctiveness within the town centre.

### ***The Examination***

- 3.9 The Examination of the PNDP commenced in November 2020 with a one-day Hearing taking place via MS Teams video on 9 February 2021. Mr John Slater BA (Hons), DMS, MRTPI was appointed as the Examiner by Eden District Council with the agreement of Penrith Town Council.
- 3.10 The examination is described in full in the Examiner’s Report (Appendix A) A major issue at the examination was the proposed inclusion of a substantial area at Beacon Hill, Penrith as Local Green Space. Government policy is that these should not constitute an extensive tract of land and the rationale for identifying local open space and recreational open space more generally. The examination process included consultation on a specific policy on Beacon Hill.
- 3.11 The Examination closed on 2 March 2021 with the Examiner’s Final Report received by Eden District Council on 29 March 2022 (Appendix A). The Examiner’s report concluded that the Plan should proceed to referendum subject to a number of modifications set out in Appendix A, the principal ones being:
- **The deletion of Policy 1 - Sustainable Development in Penrith** – due to issues of alignment with national and local policy
  - **The amendment of Policy 2 - Environmentally Sustainable Design** – to “*encourage*” not “*require*” applicants to demonstrate how they meet zero or low carbon targets–
  - **The amendment of Policy 3 - Energy Use and Reducing Carbon Emissions** – to require on-site renewable energy for commercial development only
  - **The amendment of Policy 4 – Accessibility and Social Inclusion** – to apply requirements for cycling and walking accessibility only to development within or adjacent to the urban area
  - **The deletion of Policies 8 and 9: Identifying and Protecting Local Green Space and Policy 9: Protecting and Enhancing Sport, Leisure and Recreational Facilities** – “*The identification of the local green spaces based on the town council’s criteria, has not had proper regard to the Secretary of State’s criteria and I conclude that both Policies eight and nine do not meet the basic conditions having regard to his policy and advice,*” –
  - **The deletion of Policy 12 - Traffic Management**
- 3.12 Although the Examiner’s report carries considerable weight, but it is not binding. The local planning authority has the final responsibility for determining whether the plan meets the basic conditions, whether any

modifications are necessary and should be consulted on, and consequently whether to proceed to the referendum stage.

### ***Post-Examination***

- 3.13 Although Penrith Town Council accepted most of the Examiner's recommendations, they had major concerns about the proposed deletion of policies 8 and 9 in their entirety with these considered fundamental to the purpose of the Neighbourhood Plan (see Appendix E). In considering these concerns, Eden District Council decided to work with Penrith Town Council to explore ways of resolving the issue. To that end Counsel's opinion was sought on the deletion of policies 8 and 9 in December 2022.
- 3.14 The key point of the legal opinion was that there were concerns about the way in which the Examiner had reached his recommendation and it was open to the Council to take a different view to the Examiner if non-deletion was necessary to ensure that the plan met the basic conditions.
- 3.15 Penrith Town Council therefore, in agreement with Eden District Council Officers, undertook a further round of public consultation in January and February 2023 on the 34 sites identified within Policy 8 (with the exception of site PN14: Beacon Hill). This was to clarify whether residents considered each of the individual spaces to be 'demonstrably special' as required by the criteria for Local Green Space designation in the National Planning Policy Framework (para 102). A total of 111 responses were received. A copy of the questionnaire is attached at Appendix F.
- 3.16 The representations received in response to the consultation provided sufficient evidence that each Policy 8 site met the national policy criteria. It is therefore justifiable to retain Policy 8 (excluding site PN14: Beacon Hill) as it has been proven, through additional consultation, that the Policy does indeed have regard to national planning policies and advice contained in guidance issued by the Secretary of State and therefore meets this basic condition, which was of concern to the Examiner. The rationale for the recommended deletion of Policy 9 is unclear. These are active open space sites, not local green spaces as defined in national policy, and all the identified sites have demonstrable recreational value and merit protection in general conformity with the strategic policies of the development plan (i.e. the adopted Eden Local Plan), namely policy COM2. Policy 9 should therefore be retained within the PNDP.

### **Proposal**

- 3.17 The Town and Country Planning Act 1990 ["the 1990 Act"], as amended makes provisions for the making of neighbourhood development orders (its provisions also apply to neighbourhood development plans). Paragraph 12 of Schedule 4B of the 1990 Act requires the local planning authority to consider each of the recommendations made in the Examiner's report (and the reasons for them) and to decide what action to take in response to each recommendation. It also allows the local planning authority to make modifications that need to be made to ensure the draft neighbourhood development plan meets the basic conditions.
- 3.18 Each of the recommendations made in the Examiner's report have been considered, together with the reasons for them and what implications the

modifications would have on the Neighbourhood Plan. The Decision Statement, (Appendix C), sets out the Council's view on each of the modifications proposed, including those relating to Policies 8 and 9.

- 3.19 Officers propose that all of the Examiner's recommendations are accepted with the exception of those that relate to Policies 8 and 9. Contrary to the Examiner's recommendation that these two policies be deleted (for the reasons previously set out), Officers consider that Policy 8 as modified (through the deletion of Beacon Hill) meets the Basic Conditions, in light of evidence garnered through additional public consultation in January – February 2023. Policy 9 is to be retained in full, unaltered, as Officers are of the view that the policy is in general conformity with the strategic policies of the development plan.
- 3.20 The Council's approach is in line with advice received from senior Counsel in December 2022.

### **The Next Steps**

- 3.12 The Neighbourhood Planning (General) Regulations 2012 (as amended) states that a local planning authority must publish what action will be taken in response to the recommendations of the Examiner. This is known as a 'Decision Statement' (Appendix C). This outlines how the Neighbourhood Plan is proposed to be modified in response to the Examiner's report and the reasoning for such changes. The Decision Statement confirms that the modifications proposed by the Examiner (with the exception of his recommendation in respect of Policies 8 and 9) have been clearly justified and accepted by officers.
- 3.22 The Decision Statement also confirms that the Penrith Neighbourhood Plan, as revised, meets the basic conditions and that the Plan can now proceed to a further round of public consultation (in accordance with Schedule 4B paragraph 13 of the Town and Country Planning Act 1990), which is necessary due to the retention of Policies 8 and 9 (with the exception of site PN14: Beacon Hill) and then potentially to referendum. Should Members have an alternative view they would need good planning reasons to progress on an alternative basis.
- 3.23 Subject to a positive vote at referendum (more than 50% of the votes cast are in favour of the Plan), the Plan will be 'made' (adopted by Council). It is not for the council to decide for or against adoption based on the merits of the Neighbourhood Plan.

## **4. Link to Council Plan Priorities: (People, Climate, Communities, Economy and Culture, Customers, Workforce)**

- 4.1 The PNDP has listened to and responds to the needs of its customers and communities. It reflects the collective view of residents of Penrith that have engaged with the Plan-making process in developing a range of policies addressing relevant issues within their NDP area. It also supports the economic and cultural aspirations of the Penrith Neighbourhood Area.
- 4.2 The PNDP supports the Council's aspirations to become carbon net zero, protecting against climate change and enhancing biodiversity through sustainable development.



## 5 Consultation Outcomes

- 5.1 The portfolio holder has been kept up to date with progress of the PNDP as well as the ward members that sat on the Eden District Council Planning Policy Members' Working Group. Penrith Town Council have been kept involved in the progress of the Plan throughout its Examination and post-Examination in discussions with Officers. It is considered that no formal prior consultation is required.

## 6 Alternative Options Considered

- 6.1 **To accept the Examiners recommendations in full, which would include the deletion of Policies 8 and 9.** This would be contrary to one of the main aspirations of the PNDP which is to safeguard a large number of passive Policy 8 open space sites and active Policy 9 open space sites across the PNDP area. Senior Counsel's Opinion concurred with the view of Eden District Council's Officers in that the Examiner did not specifically comment on each of the individual Policy 8 sites and that if the 35 sites are rationally considered to be demonstrably special (and meet the other two tests for Local Green Space designation), they could be included in Policy 8.
- 6.2 The Examiner's concern over the methodology in establishing a hierarchy when considering how to protect open space was a key issue, as he considered that Policy 8 should not differentiate between passive and active uses, as the Town Council had done in its submitted Plan. He did not, however, explain why it should follow that both Policies 8 and 9 (and the individual sites) should be deleted, or consider the consequences of deleting both, compared to their retention in whole or in part. Whilst the Examiner was right to raise this concern, the deletion of both policies was not adequately explained.
- 6.3 The results from post-examination public consultation carried out by Penrith Town Council between 30 January and 28 February 2023, in respect of Policy 8 sites, confirmed that all the individual sites do meet the three criteria of paragraph 102 of the NPPF. Accordingly, each of the 34 sites within Policy 8 (with the exception of site PN14: Beacon Hill) can legitimately be retained within the PNPD.
- 6.4 Equally in reviewing each of the 23 no. Policy 9 sites, it is considered that they meet the requirements of a much simpler 'test' clarified in Paragraph 99 of the NPPF. Accordingly each of the sites can legitimately be retained within the PNPD.
- 6.5 Only the status of Policies 8 and 9 are in question in this report. It is open to the Council to consider whether deletion of both or either policies, in whole or in part, is necessary to ensure compliance with 'the basic conditions'. Having reviewed the evidence provided by Penrith Town Council following their recent public consultation, it is clear that each of the Policy 8 sites (with the exception of PN14: Beacon Hill) may be considered 'demonstrably special' in accord with the requirements of paragraph 102 of the NPPF and can be designated as Local Green Space within the PNPD. Having reviewed each of the Policy 9 sites it is considered that they pass the lesser test of paragraph 99 of the NPPF and may be retained contrary to the Examiners recommendation.

## **7. Financial Implications and risk**

- 7.1 Local Planning Authorities have a statutory duty to support the production of Neighbourhood Plans within their administrative area. Support for neighbourhood planning is met from existing budgets. The organisation of referendums is the responsibility of the electoral services team. Up to £20,000 is available to cover the cost of the referendum. If the referendum exceeds £20,000, any excess would be met from the existing budget within Thriving Places. There is no financial risk to the Council.

## **8 Legal and Governance Implications**

- 8.1 Once made the PNDP will form part of the statutory development plan and have weight in the determination of planning applications.
- 8.2 The Examiner's report confirms that subject to specified deletions and amendments to wording, he is satisfied that the Penrith Neighbourhood Plan has regard to the European Convention on Human Rights and complies with the Human Rights Act 1998 and that there is no substantive evidence to the contrary. The retention of Policy 8 (with the exception of the deletion of site PN14: Beacon Hill) and Policy 9 would have no impact on this aspect.
- 8.3 Counsels opinion was sought in relation to the total deletion of Policies 8 and 9 as requested by the Examiner. Counsel concluded after reviewing all of the papers that yes, it is reasonable to say that Penrith Town Council has provided a sound argument in their original or revised Statements lobbying the Council to reject the Examiner's recommendations and retain policies 8 and 9 (but with the removal of the Beacon as a green space within policy 8). An excerpt from the Counsel's opinion is attached as Appendix H

## **9. Human Resources Implications**

- 9.1 There are no direct HR implications arising from this report.

## **10. Equality and Diversity Implications (including the public sector equality duty, Armed Forces Families, Care Leavers and Health inequalities implications)**

- 10.1 A comprehensive Consultation Statement was submitted as part of the Draft Penrith Neighbourhood Development Plan in October 2020 and was prepared in accordance with The Neighbourhood Planning (General) Regulations 2012 (SI No. 637) Part 5 Paragraph 15 (2)<sup>1</sup> which defines a "consultation statement" as a document which: –

*(a) contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;*

*(b) explains how they were consulted;*

*(c) summarises the main issues and concerns raised by the persons consulted; and*

*(d) describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan."*

- 10.2 Penrith Town Council has always been explicit in its aim that the PNDP should be a plan for the town, developed by the residents and businesses of

the town. Every effort was made to involve the local community and other consultees in an open and meaningful way at every stage of its development.

- 10.3 In his Examination Report the Examiner outlined the various consultation stages undertaken and confirmed that he was satisfied that the Town Council had actively sought the views of local residents and other stakeholders and that their input had helped to shape PNDP.
- 10.4 A final round of consultation specifically dealing with public open space in relation to specific sites within Policy 8: Identifying and Protecting Local Green Space, was undertaken between 30 January and 29 February 2003. The consultation was promoted across the parish of Penrith in the local press, in a monthly magazine delivered free to all households in the parish area (the same area as covered by the Neighbourhood Development Plan, including both the rural and urban areas of the parish) and through the Town Council website and social media pages. A total of 114 responses were received specifically in relation to the previously identified sites and formed the basis of the Penrith Town Council submission to retain the specified sites in Policy 8 within the PNDP.
- 10.6 The Equality Impact Assessment is attached as Appendix G.

## **12. Background Documents**

None attached