

# Milton Abbot, Chillaton and Kelly (MACK) Neighbourhood Plan 2021 - 2034

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## **Submission Version**

A Report to West Devon Borough Council on the Examination of the MACK Neighbourhood Development Plan

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## Executive Summary

My examination has concluded that the MACK Neighbourhood 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 –

- Amending the policy on “environmental considerations” to one of “encouragement” and replace reference to “government environmental targets” with “mitigation and adaptation to climate change and the move to a low carbon future”.
- Setting different tests for considering proposals to non-designated heritage assets compared to designated heritage assets.
- Updating the “promoting employment” policy to reference the new Class E uses and allow consideration for the relocation of employment development to alternative premises within the local area rather than the plan area.
- Remove reference to new employment development having to be located on previously developed land or within settlement boundaries.
- Removing requirement on applicants to submit information regarding the transport implications of their proposals and placing the onus on decision-makers to assess the implications of a proposal on local infrastructure.
- The community facilities requiring protection should be listed in the policy.
- Clarification that reliance on on-street parking to satisfy parking requirements for new development will not be supported and remove reference to infiltration test on impervious surfaces.
- Delete the policy regarding Class Q conversions.
- Removing the reference to minimum space standards and to replace the need for major housing schemes to provide a “demonstrable return to the community” to planning obligations having to meet the 3 tests set by Regulation 122 of the CIL Regulations and remove reference to proposals not affecting the outlook from existing properties.
- Restricting the amenity space requirements of a minimum of 60 m<sup>2</sup> to terraced properties only.
- Re-writing the settlement boundary policy to make clear how proposals within and outside the settlement boundary will be considered.

- The capacity of Site E should be “*around 20 units*” as opposed to “a *maximum of 20 units*”.

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 Plymouth and South West Devon Joint Local Plan 2014-2034. 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 led by Milton Abbot Grouped Parish Council. A MACK Plan Committee was appointed to undertake the plan preparation made up of both parish councillors and local volunteers. Milton Abbot Grouped Parish Council is a “qualifying body” under the Neighbourhood Planning legislation.
3. This report is the outcome of my examination of the Submission Version of the MACK 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 West Devon Borough Council.

## The Examiner’s Role

4. I was initially appointed by West Devon Borough Council in late September 2021, with the agreement of Milton Abbot Grouped Parish Council, to conduct this examination. My role is known as an Independent Examiner. My selection has been facilitated by the Neighbourhood Planning Independent Examiner Referral Service (NPIERS) which is administered by the Royal Institute of Chartered Surveyors (RICS).
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 John Slater Planning Ltd. I am a Chartered Town Planner and a member of the Royal Town Planning

Institute. I am independent of both West Devon Borough Council and Milton Abbot Grouped Parish 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 MACK Neighbourhood Plan area.
8. In examining the Plan, the Independent Examiner is expected to address the following questions
  - a. 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?
  - b. 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.
  - c. Has the Neighbourhood Plan been prepared for an area designated under Section 61G of the Localism Act and has it been developed and submitted by a qualifying body?
9. I am able to confirm that the Plan does relate only to the development and use of land, covering the area designated by West Devon Borough Council, for the MACK Neighbourhood Plan, on 6<sup>th</sup> November 2014, if it is modified in accordance with my recommendations.
10. The end date of the plan is the same as that used by the Joint Local Plan. The plan period is 2021 to 2034.
11. I can confirm that the plan does not cover any “excluded development”.
12. There are no other neighbourhood plans covering the area covered by the neighbourhood area designation.
13. The Milton Abbot Grouped Parish Council, as a parish council, is capable of being a qualifying body under the terms of the legislation. The plan area also includes the neighbouring Parish of Kelly which I understand does not have a Parish Council but there is instead a Parish Meeting. A neighbourhood plan can cover more than one parish, but there can only be one Qualifying Body for the plan area. However, the inclusion of all or a part of another parish area can only be included, if approved by that area’s parish council. The legislation does not

provide for a scenario where part of the plan area is covered by a parish meeting rather than a parish council. My concern was that at the time the plan was being prepared, it appears that Kelly Parish Meeting did not have the legal powers to agree to its parish's inclusion in the MACK plan area and could not agree that Milton Abbot Group Parish Council could act as the Qualifying Body.

14. Accordingly in view of my concerns I asked the Borough Council to seek legal advice on my interpretation of the legislation. The Head of Legal Services at West Devon Borough Council set out in a letter dated 20<sup>th</sup> January 2022, his reasons for agreeing with my concerns.

“Given that parish meetings are not parish councils, they do not have the same functions as parish councils. Insofar as neighbourhood planning is concerned, a parish meeting cannot be a Qualifying Body, nor can it give consent for all or part of its parish to be included in the neighbourhood plan of an adjoining parish council. In such circumstances, Kelly Parish Meeting cannot be a Qualifying Body and cannot therefore make a neighbourhood plan for its area. Neither can it consent to Milton Abbot Group Parish Council including within its neighbourhood plan, land within Kelly Parish.”

15. He did helpfully come up with a strategy to deal with this situation.

“However, under section 109 of the Local Government Act 1972, the Borough Council can, on the application of a parish meeting, make an order to confer any of the functions of a parish council, on the parish meeting. On this basis, I understand that Kelly Parish Meeting will be applying to the Borough Council for an order granting the Parish Meeting the power to consent under section 61F of the Town and Country Planning Act 1990 to the whole of its parish being included in the MACK Plan.”

16. Having received that advice, the Kelly Parish Meeting did make an application to West Devon Borough Council for an order granting the Parish Meeting the power to consent under Section 61F of the Town and Country Planning Act 1990 to the agree to the whole of the parish being considered in the MACK Plan.

17. That application was duly considered by the Full Council of West Devon Borough Council on 15<sup>th</sup> February 2022 and it granted delegated authority to the Head of Legal Services to issue the necessary Order. The Order was made the same day and Kelly Parish Meeting at its meeting held on 2<sup>nd</sup> March 2022 exercised those powers and agreed that Kelly Parish can be included within the MACK Plan.

## **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 am satisfied that I am in a position to properly examine the plan without the need for a hearing.
17. I carried out an unaccompanied visit to the plan area on 16<sup>th</sup> November 2021. I first visited Chillaton, before driving through to Milton Abbot where I parked up behind the Church and village playground and I spent over an hour in the village noting the proposed settlement boundary, as well each of the possible alternative allocation sites. I then drove down towards the River Tamar and was able to appreciate the countryside at the western and southern side of the plan area. I also made a stop in Kelly. I then returned to Chillaton and made a point of identifying each of the possible allocation sites. I then climbed up to Brent Tor Church, from which I had a panoramic view across the plan area.
18. Following my initial site visit and my preliminary assessment of the plan, I had a number of matters on which I wished to receive further information, both from the Plan Committee and the Borough Council. That request was set out in a document entitled *Initial Comments of the Independent Examiner* dated 9<sup>th</sup> November 2021. I received a combined response, on 26<sup>th</sup> November 2021.
19. All documents have been placed on the respective websites.

## The Consultation Process

20. A Steering Group was first recruited in September 2014 following the distribution of leaflets across the two parishes and it arranged the first public meeting which was held on 9<sup>th</sup> October 2014 at Milton Abbot Village Hall.
21. The early work of the plan team was publicised through a newsletter, as well as the parish magazine, via a newly created website and through the team's attendance at the Chillaton Tractor Run and Fete held in June 2015.
22. In 2017, a questionnaire was distributed to all houses in the plan area. This produced 184 responses, a 39% response rate.
23. A new Steering Group, the MACK Plan Team was formed in January 2019 and its activities were advertised through the newsletter, and through attendance at the Milton Abbot Village Hall Open Day and in June 2019 and the Kelly Flower and Vegetable Show that September. A business survey was conducted in 2019/20 which received 9 responses.
24. A Housing Needs Assessment was commissioned from AECOM in 2019. A housing survey form was distributed to all householders in January 2020 and a drop in event was held on 25<sup>th</sup> January 2020 in Milton Abbot Village Hall, Kelly Village Hall and The Old Smithy, Chillaton. That generated 103 responses which equated to a 25% response rate.
25. The arrival of the Covid 19 pandemic meant that future public events could not be held, but the MACK Plan Team used a combination of its newsletters, and the website to give public information on the progress of the plan.

26. In March 2020, a Call for Sites was issued which yielded a total of 10 sites, six in Milton Abbot and four in Chillaton. These were assessed by AECOM in a Site Assessment Report issued in November 2020.
27. All this work culminated in the preparation of the Pre-Submission version of the neighbourhood plan, which was the subject of an 8 ½ week consultation period which commenced on 23<sup>rd</sup> December 2020 and ran through to 20<sup>th</sup> February 2021. That is known as the Regulation 14 Consultation and it generated 104 comments, which are set out in the Appendix C of the Consultation Statement entitled Schedule of Comments, Responses and Regulation 14 Plan Changes.
28. Overall, I am happy that the MACK Team has actively sought, through the life of the plan, to seek the views of residents and other stakeholders, which have helped to shape the plan.

## **Regulation 16 Consultation**

29. 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 16<sup>th</sup> August 2021 to 27<sup>th</sup> September 2021. This consultation was organised by West Devon Borough Council, prior to the plan being passed to me for its examination. That stage is known as the Regulation 16 Consultation.
30. In total, 17 responses were received from Natural England, Devon County Council, West Devon Borough Council, Highways England, Historic England, Devon Countryside Access Forum, The Coal Authority, Savills on behalf of the Hardicott Estate and 10 local residents. Three of these representations, namely from WDBC, Devon County Council and Natural England were received after the deadline for comments, but I have used my discretion to take these into consideration
31. 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**

32. 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.
33. 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?

34. As the plan was prepared against the provisions of the 2019 version of the National Planning Policy Framework, I offered the MACK Plan Team and the Borough Council an opportunity to highlight whether any changes introduced by the July 2021 version of the Framework were material to my consideration of the basic condition in terms of whether the plan has had regard to the most up to date expression of Secretary of State policy. I have had regard to the comments submitted by both parties in my conclusions.

## **Compliance with the Development Plan**

35. To meet the basic conditions test, the Neighbourhood Plan is required to be in general conformity with the strategic policies of the Development Plan, which in this case is the now adopted Plymouth and South West Devon Joint Local Plan 2014 -2034, prepared by Plymouth City Council, West Devon Borough Council and West Devon Borough Council. The plan's overarching spatial strategy is set out in Policies SPT1 and SPT2 and refers to sustainable rural communities. The plan proposes a minimum of 26,700 new homes to be built in the period 2014 – 34, with at least 7,700 required to be provided within the Thriving Towns and Villages policy area.

36. Policy TTV 1 establishes a hierarchy of sustainable settlements, including what are described as “sustainable villages”, where development will be supported and is expected to meet locally identified needs and which sustain limited services and amenities. These are differentiated from “smaller villages, hamlets and the countryside” where development will only be permitted to support the principle of sustainable development and sustainable communities. Milton Abbot is identified as one of the sustainable villages, whilst Chillaton is not included.

37. Policy TTV 2 supports reinforcing the sustainable settlements hierarchy and in particular by locating housing where it will enhance or maintain the vitality of

rural communities, delivers affordable housing, supports the growth and expansion of rural businesses and the diversification of agriculture, the delivery of sustainable rural tourism and leisure development as well as the retention and enhancement of rural services and community facilities.

38. Policy TTV 25 seeks the provision of approximately 550 houses across the sustainable villages and Milton Abbot is shown as being able to accommodate *around* 20 dwellings (JLP Figure 5.8).
39. Development in the countryside areas is covered by the Policy TTV 26 and Policy TTV 27 and includes offering support for exception sites, in cases where there is a proven need for affordable housing. Policy DEV 8 sets requirements for affordable housing and Policy DEV 9 establishes the need for the delivery of a range and mix of houses to meet local needs. Policy DEV10 sets high expectations in terms of design for new housing. Policy DEV 15 supports the provision of local jobs and the diversification of the rural community and Policy DEV 18 seeks to protect facilities of local community importance, such as public houses.
40. Policy DEV 21 is the policy for protecting the historic environment and Policy DEV 23 requires proposals to protect the landscape generally whilst enhanced measures are offered through Policy DEV 25 which establishes the highest level of protection to the Tamar Valley AONB.
41. I had asked the Borough Council what it considered to be the strategic policies but its response was (notwithstanding the advice in paragraph 21 of the NPPF), that it has not published a list of strategic policies, but it is content that the MACK plan is in general conformity with the Joint Local Plan. However, that is not the basic condition test which I have to consider, which is the matter of general conformity with the *strategic* policies in the Local Plan.
42. I have therefore had to come to my own view as to what are the strategic policies. In doing so, I have had regard to the Secretary of State advice set out in Paragraphs 75, 76 and 77 of the Neighbourhood Planning chapter of the Planning Practice Guidance. I have decided that I will treat all the policies in the Joint Local Plan which I have referred to in this section, as strategic in nature.
43. My overall conclusion is that I am satisfied that the policies in the neighbourhood plan are in general conformity with the strategic policies in the adopted Joint Local Plan.

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

44. Following the advice offered by officers from West Devon Borough Council, the MACK Plan Team voluntarily decided, without seeking a formal Screening opinion, 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 be produced.

45. This Strategic Environmental Assessment report, was commissioned by AECOM, on behalf of the MACK Plan Team and this has been submitted with the examination documentation. I am satisfied that it is an objective assessment, including considering reasonable alternative delivery strategies and it considered 3 site options for the delivery of 20 houses. These sites had previously been identified as deliverable options, whilst 7 other sites had been discounted.
46. I am satisfied that the SEA produced does meet the requirements of the Regulations.
47. The Borough Council, as competent authority, had also indicated that a Habitat Regulations Assessment, would be required and AECOM was commissioned by the MACK Plan Team to carry out this assessment. This assessment looked at the possible impact on water quality, water level and recreation pressure on a number of European protected sites. It concluded that the Joint Local Plan provides adequate protection in terms of the impact of development within the plan area, on water quality on the Plymouth Sound and Estuaries SAC and Tamar Estuaries Complex SPA, alongside policies in the plan. It concluded that Environmental Agency discharge consents as well as protective policies in both the Joint Local Plan and the neighbourhood plan would prevent adverse impacts on water quality on the Dartmoor SAC.
48. The HRA assessment determined that the impact on water levels would not have any adverse effects on the Dartmoor SAC and the Plymouth Sound and Estuaries SAC or the Tamar Estuaries Complex SAC. Finally, it also concluded that the plan would not have any adverse impacts on the Plymouth Sound and Estuaries SAC, Tamar Estuaries Complex SAC, Dartmoor SAC and South Dartmoor SAC through increased recreational pressure arising from the plan.
49. 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**

50. I must congratulate the MACK Plan Team on the quality of this neighbourhood plan. It is a comprehensive, well written and presented plan, which is backed up by a sound evidence base. For someone who does know the area, it paints a clear picture of the area and the challenges which it faces and equally it will be a document that residents will recognise accurately describes their part of West Devon.
51. The neighbourhood plan will sit comfortably alongside the adopted Joint Local Plan, adding locally distinctive policies which reflect the unique characteristics of the joint parishes.

52. A neighbourhood plan is a document whose primary role is to be used to determine planning applications and it is clear that the plan document understands that some issues fall outside planning policy, but are important to residents in setting out their vision for the area. The plan has clearly differentiated between what are the neighbourhood plan policies and what the plan describes as community actions. The approach taken is in line with good practice advice as promoted by the Secretary of State. I have only examined the planning policies and I am not required to assess the non-planning aspects against the legal tests.
53. The Joint Local Plan leaves the issue of site allocations in the smaller sustainable villages and the wider rural areas, to neighbourhood plans and I am satisfied that this plan has approached the issue of site identification and allocation in an objective manner, assessing various sites against objective criteria, following a call for sites, yet giving the community the determining voice in the choice of housing sites. At the same time, it is setting out the type of housing that is required within this rural area, yet falling within the parameters set by the Joint Local Plan. The Housing Needs Assessment which was commissioned provides a basis for identifying the type and tenure of housing which is needed and equally the plan recognises that affordable housing will, ordinarily, only be delivered from developments on the larger sites, of over 10 units. If the plan had identified a number of smaller sites, it is likely that opportunities for more affordable homes would not be available. The designation of settlement boundaries offers opportunities for further development to come forward as windfall, subject to compliance with development plan policies.
54. Whilst there may be some debate as to whether allocation sites should have been made in Chillaton, I am satisfied that the level of community facilities available in Milton Abbot e.g. a primary school with capacity to accept additional pupils, in the location where they can walk to school is, I feel, the determining factor and this is recognised by the different positions of the two villages within the settlement hierarchy.
55. The plan has tried to push the boundaries as to what can be achieved by a planning policy. For example, it seeks to require a level of community planning benefits that goes beyond what can be sought by a planning obligation. It also seeks to introduce planning policy considerations on development which does not require the submission of a planning application, as in the case of Class Q residential conversions. The plan also seeks to establish expectations which aim to bring forward changes in environmental requirements for new development or introduce such requirements through land use policy. Whilst the plan may wish to prevent installation of gas boilers with immediate effect, the Government has indicated the changes to the Building Regulations will be introduced to be effective from 2025. Whilst the MACK Plan Team and the community may have views as to whether this is too slow, there is no specific

- justification for introducing a different time frame for introducing new technical requirements within the MACK plan area compared to the rest of the country.
56. The plan has also sought to be more restrictive in terms of limiting employment development to brownfield sites and within settlement boundaries. National policy sets out a less restrictive approach which recognises that well designed new buildings for rural businesses can be allowed to take place in the countryside and this can be done sympathetically without adversely affecting either the AONB or the intrinsic beauty of the countryside.
  57. My overall assessment is that the policies in the plan address the three strands of sustainable development. It identifies land to meet the housing requirements for the area, both in the short and medium term and seeks to ensure that the housing is the type that meets requirements of the community, whilst protecting the AONB and its setting, as well as the intrinsic character of the wider countryside. The plan contains policies that will protect the area's heritage and its community assets at the same time as protecting and encouraging economic development. Overall, my assessment is that the neighbourhood plan will meet the basic condition of assisting the delivery of sustainable development.
  58. My recommendations have concentrated 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, so that the plan will still be read as a coherent planning document.
  59. Following the publication of this report, I would urge the MACK Plan Team and West Devon 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.

## **The Neighbourhood Development Plan Policies**

### **Policy 4-1: Biodiversity**

60. I have no comment to make on this policy which meets the basic conditions.

### **Policy 4-2: Environmental Considerations**

61. There is a divergence between what the policy says, namely "All new properties in the MACK plan area should be constructed in a manner that supports Government environmental targets" and the supporting text which states that "we must strongly encourage pre-empting the impending publication of more stringent building regulations".
62. The Secretary of State in a Written Ministerial Statement to the House of Commons dated 25<sup>th</sup> March 2015 stated that neighbourhood plans should not set any "additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings." The Borough Council has suggested that the policy should be amended to refer to the plan

“supports and encourages all new development.....”. This amended approach has been accepted by the MACK Plan Team.

63. However, even though the policy would only “encourage,” nevertheless the policy would still lack clarity by referring to, but not defining which “Government environmental targets” it is referring to and is not explicit as to which targets an applicant would be expected to comply with. Whilst I understand the overall objective of the policy, I propose to replace “Governments environmental targets” with reference to “mitigating and adapting to climate change and the move to a low carbon future.”

#### **Recommendation**

**Replace “should” with “are encouraged to” and also replace “Government environmental targets” with “mitigation and adaption to climate change and the move to a low carbon future.”**

#### **Policy 5-1: Protecting Our Heritage**

64. This policy refers to “designated and non-designated assets as *identified* within Appendix 2-3 A/B”. However, that document does not identify any non-designated heritage assets. The associated Community Action refers to the possibility of the Parish Council “creating a definitive register of non-designated heritage assets”. It is appropriate for the policy to refer to non-designated structures, but the weight given to these is different to the weight which should be applied to designated assets, as the NPPF, in paragraph 203, refers to the impact on the significance of the asset must be weighed against the scale of any harm or loss to the significance. That is a slightly different test to those which apply to designated heritage assets, where the test set out in paragraph 199 of the Framework requires that “great weight should be given to the asset’s conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to it significance”.
65. I therefore propose to differentiate between the tests which will be used to assess proposals affecting designated and possible future non-designated heritage assets. The MACK Plan Team referred me to footnote 68 of the NPPF to justify its stance, but that footnote only refers to “non-designated heritage assets of *archaeological interest*”, not all non-designated heritage assets.

#### **Recommendations**

**In the first paragraph, delete “both” and also “and non – designated”  
Add a final paragraph “Proposals that affect any non - designated heritage assets will be considered in terms of the significance of the asset against the scale of any loss or harm to that significance”**

#### **Policy 6-1: Promoting Employment**

66. Following the publication of the Town and Country Planning (Use Classes) (Amendment) Order 2020, Class B1 has now been subsumed within the new Class E which covers commercial, business and service uses. The MACK Plan Team has agreed that it would be appropriate for the policy to include reference

- to Use Class E premises. Reference to the inclusion of leisure and retail as alternative uses may not be necessary as they are uses which also fall within the Use Class E. However, I do not need to recommend a change to reflect this.
67. The Borough Council does not believe that alternative facilities should have to be restricted to sites within the plan area. I agree that the objective of retaining local employment can still be achieved by referring to the “local area” rather than the plan area.
68. The second part of the policy deals with proposals for the construction of new buildings and it requires that they should be located either on previously developed land or within the settlement boundary. The definition of previously developed land in the NPPF excludes land that is or was last used by agricultural buildings. Therefore, the policy would not allow, for example, proposals coming forward as part of a farm diversification project. I consider that the policy would not accord with the Secretary of State’s approach set out in paragraph 85 with the NPPF. The MACK Plan Team referred me to a policy used in the Bigbury Neighbourhood Plan, a plan for which I was the examiner. However, that policy did allow for the construction of new buildings away from existing settlements, which this policy would not. Furthermore, the Bigbury Neighbourhood Plan has a specific policy supporting farm diversification.
69. I will therefore be recommending a modification of this part of the policy to ensure that it has regard to Secretary of State policy and advice, which will remove reference to the limitations of being on previously developed land and/or within settlement boundaries.

### **Recommendations**

***Replace “B1” with “E”***

***In the first bullet point replace “MACK Plan” with “local”***

***In 6-1b) after “surroundings” insert “and should not cause harm to the AONB” and delete the second sentence of the policy.***

### **Policy 7-1: Sustaining Local Infrastructure**

69. A neighbourhood planning policy cannot dictate what information is to be provided within a planning application. This is the role of the local validation list as established in the Town and Country Planning (Development Management Procedure) Order 2015.
70. I consider that for the policy to be workable it will have to place the onus on the decision maker to address the matters set out in the policy as part of the decision-making process, rather than placing the onus on the applicant.

#### **Recommendation**

***At the end of the first sentence add “ensure”***

***In the first bullet, delete all text up to “WDBC Highways”***

***In the second bullet, delete the first sentence and in the second sentence replace “should” with “is to”***

***In the third bullet, delete the text up to “demonstrate”***

***At the start of the fourth bullet, insert “That”***

## Policy 7-2: Community Facilities

71. I appreciate the community's desire to retain its existing community facilities. I consider that the most difficult aspect of the policy is whether the Chichester Arms at Chillaton can still be classed as a "community facility" as it has stood empty for the last couple of years. This is a not unusual situation, with more and more public houses closing down in recent years, even before the COVID pandemic struck. The MACK Plan Team have pointed out that it is still registered as a business, and attracts business rates. I note that there has been some interest in a possible conversion to a pub/restaurant but I cannot place much weight to that, as I do not know how serious that interest was and why it failed. I am aware that unlike some other uses, the conversion of public houses to residential use cannot be carried out under permitted development powers.
72. I have considered that the community's desire to seek to retain the premises as a community facility, can be supported by its inclusion but solely on the basis that the policy contains a mechanism which could allow for the loss of such facilities if it can be demonstrated that the use is "demonstrably unviable and/or surplus to the community's requirements". Without that caveat, the property could stand empty and its condition could further deteriorate, into the future. I note that the Policy DEV 18 of the Joint Local Plan also includes reference to the loss of services of local community importance "where there is no reasonable prospect of the business or community use continuing". I am satisfied that this caveat provides sufficient flexibility for a compelling case to be made as to why the community's expectations that the public house use will be reinstated can be tested, rather than to perpetuate what is clearly an unsatisfactory position from all points of view.
73. I believe that it would assist the usability of the policy, if the list of the community Facilities, as set out as bullet points in paragraph 7.3.1 of the plan, is inserted into the policy itself.

### **Recommendation**

***In a), after "loss of" insert "the following" and insert the list of the 13 community and recreational facilities from paragraph 7.3.1, at the end of part a) of the policy.***

## Policy 8.1: Parking

74. The first paragraph of the policy merely repeats what is already part of the development plan covering the plan area. There is no value in a neighbourhood plan policy merely duplicating local plan policy. It is contrary to Secretary of State policy.
75. In terms of the remaining policy, I consider that this is a locally distinctive policy. Whilst a planning policy cannot prevent on street parking, as that is a matter which could only be achieved by a traffic regulation order, the wording can clarify that development that relies upon on street parking as a way of achieving parking standards requirements, would not be viewed favourably.

76. I do not consider that it should be necessary for applicants to have to complete infiltration test to demonstrate the suitability of the use of permeable parking. Such an approach could encourage the use of impermeable surfaces, which would not need to be the subject to any test and that would potentially increase surface water run-off. I am reinforced in my view, by the condition attached to permitted development rights issued by Class F of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 which grants planning permission for the provision of hard surfaces within a dwelling house over 5 m<sup>2</sup> in area, if the surface is made of porous material or it requires the provision of measures to direct run-off to a permeable or porous area within the site. There is no requirement for most hard surfaces to be subject to an infiltration test.
77. I questioned the reference to the loss of public car parking with the MACK Plan Team as I was unclear whether it was referring to loss of car parks, which I had not seen on my site visit and I was advised that the reference was to the loss of on street parking and also at ensuring that sufficient off-street parking is provided which can be achieved by adherence to parking standards. I do not consider the parking proposal could actually control the use of off - street parking unless it necessitated the loss of on street capacity, in order to achieve a vehicular access to off street parking, which the policy is encouraging. I will recommend that this part of the policy be deleted.

#### **Recommendations**

**Delete the first paragraph**

**In the first bullet, after “on-road parking” insert “to satisfy its parking requirements”**

**Delete the third bullet and the final paragraph**

#### **Policy 9 –1: Affordable Housing**

78. I propose to qualify what the policy means by “appropriate housing” by referring to Joint Local Plan Policy DEV8 which requires 30% affordable housing to be provided on sites of 11 units or more.
79. The use of financial contributions in lieu of on-site provision must be robustly justified.
80. I will not be recommending that the policy should at this stage refer to First Homes as neither of the MACK Plan Team nor the Borough Council has devised a position regarding this form of affordable housing.

#### **Recommendation**

**At the end of the first paragraph, insert “which is required to provide affordable housing in accordance with Local Plan policy”**

#### **Policy 9-2: Q Class Development for Residential Purposes**

81. The Town and Country Planning (General Permitted Development) Order 2015 as amended, grants planning permission for certain classes of development

subject to various conditions being met. Class Q grants planning permission for the conversion of farm buildings so long as it meets various requirements including that it should have been last used for agricultural purposes.

82. The structural soundness of the building was a prerequisite for such conversions, according to the Planning Practice Guidance that was initially issued in the period up to 2018. At that point, the advice which referenced the structural conditions was removed and the advice now requires the building to be capable of conversion to residential use and that is the determining factor, not the question of structural soundness, as to whether a building has permitted development rights.
83. Therefore, if a building does not pass the test of being *capable of conversion*, then it will not be covered by Class Q. That would also be the case if the last use was not agricultural. There have been various judicial judgements on these issues as to whether permitted rights exist based on different scenarios.
84. It appears to me that the MACK Plan is actually seeking to introduce a local dimension to a Statutory Instrument, which was approved by Parliament and which already applies to the plan area. If a proposal meets the test which allows planning permission to be granted by the Order, then there is no need for a planning application to be submitted, and so there would be no proposal against which this plan policy would then be considered.
85. Accordingly, I do not believe the policy meets the test set in the legislation of being a policy to be used to determine a planning application, as if a proposal meets all the tests set by Class Q, then planning permission is already in place by virtue of the GDPO.
86. Reference to the Bigbury Neighbourhood Plan policy is irrelevant as their policy applies to building conversions where a planning application is required to be submitted. It does not purport to cover permitted development.

### **Recommendation**

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

### **Policy 9-3: Housing Design and Density**

87. Guidance on the use of density policies is set out in paragraphs 124 and 125 of the Framework and I particularly highlight the circumstances set out in paragraph 124 b) which refers to maintaining an area's prevailing character and setting.
88. The third bullet point refers to development supporting *basic lifestyle needs*. It goes on to strongly encourage the use of a minimum space standards. I sought to clarify with the MACK Plan Team whether it was intending to refer to the Government's Technical Housing Standards, as the policy as submitted refers to those issued by the RIBA. However, these technical standards can only be imposed through a local plan policy, having been subject to viability testing, and they cannot be introduced through a policy in a neighbourhood plan. These standards actually are required to be applied in this area through Joint Local Plan Policy DEV 10.

89. As this neighbourhood plan policy would be one of encouragement and the Local Plan imposes a requirement to meet the national technical standards could create a conflict between the provisions of the local plan and the neighbourhood plans. This would be counterproductive to what the policy is seeking to achieve and I will therefore be recommending this part of the policy be deleted.
90. The next bullet point expects development of 10 units or more to “present a demonstrable return for the community in terms of delivering village green spaces and / or additional community amenities, where appropriate”. I consider that it is appropriate for schemes of that scale to be providing some form of green communal green space. However, the reference to “*village green spaces*” could lead to a misunderstanding as they would not necessarily be a village green in the accepted sense of the term, but rather it should seek an appropriate amount of green space to serve the development. The reference to “additional community amenities” could only be sought if the contribution would pass the three tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 which requires that any contribution is: -
- necessary to make the scheme acceptable in planning terms
  - directly related to the development
  - and is fairly and reasonably related in scale and kind to the development.
91. I am satisfied that any development of up to 10 units will by its nature help maintain the sustainability of the settlement, by the new residents using the facilities such as the village public house and the local primary school. As such I believe it will help maintain or enhance the sense of community.
92. The threshold of “adverse” effects on existing properties could prevent the delivery of what would otherwise be sustainable development, as in the case of say a marginal impact on the amenities of an existing property could trigger a call for planning permission to be refused, especially if it was affecting a resident’s private view over the land outside their ownership. I will recommend the reference to “outlook of existing property” be removed as views from people’s houses are essentially a private, rather than public benefit and it is not the purpose of planning policy to protect private views.

### **Recommendations**

#### **Delete the third bullet**

**Amend the fourth bullet by deleting “present a demonstrable return for the community in terms of delivering village green” and replacing it with “will provide appropriate areas of open” and replace “where appropriate” with “which are necessary to make the development acceptable, and which are related to the development and are fairly and reasonably related in scale and kind to the development”**

**In the final bullet, insert “significantly” before “adversely affect” and replace all the text after “amenity” with “of neighbouring properties”**

### Policy 9-4: Amenity Space

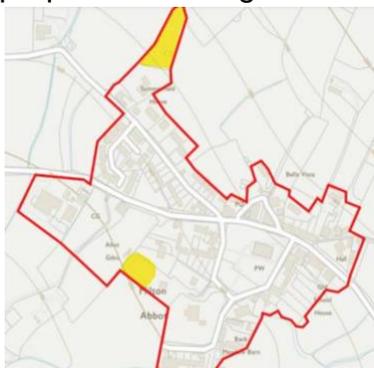
93. This policy seeks to respond to locally raised concerns regarding the size of rear private gardens. It is seeking a minimum requirement of 60 m<sup>2</sup> where feasible, whilst the Supplementary Planning Document, which already sets standards for amenity space across the district, refers to a minimum standard of 50 m<sup>2</sup> in respect of terraced houses. That document already requires a higher level of provision in respect of detached and semi-detached properties than is being sought by the neighbourhood plan, so I believe that the policy should only seek to impose the higher standard in respect of terraced houses.

#### Recommendation

***In the second bullet, after “10.5 but” insert “terraced houses should”***

### Policy 9 -5: Settlement Boundaries

94. The question of the drawing settlement boundaries around towns and villages were discussed at the Local Plan Inquiry. The Borough Council had proposed in an evidence document entitled “Thriving Towns and Villages Settlement Boundary Topic Paper” that there should be a settlement boundary around Milton Abbot. However, the Inspector concluded that it should be left to neighbourhood plans to draw such boundaries where required. The plan has drawn a boundary that is essentially based on the boundary which was being proposed by the Borough Council in its Topic Paper but with two exceptions which are shown highlighted in yellow on the attached plan, Summerfield House and the Vicarage Lawn. It also included land which will accommodate the proposed housing allocation to the western side of the village



95. This discrepancy has been highlighted by Natural England who are concerned regarding the possible impact of any development being deemed acceptable in principle within the enlarged area which could have an adverse impact on the River Tamar Area of Outstanding Natural Beauty, which essentially lies to the south and west of the village of Milton Abbot.

96. I asked the MACK Plan Team to prepare a document which sets out the methodology for the drawing of the boundary and in the cases of the added land, I am satisfied that proper justification has been made for the inclusion of the full curtilage of these existing dwellings. Subject to the application of normal planning policies which covers such issues as impact on the Conservation Area

- and adjacent listed buildings, I do not see any fundamental objections based on the impact on the setting of the AONB to challenge the boundary as proposed.
97. My reading of the policy itself is that it is essentially a justification for having a policy. In my view, that will be better located within the supporting text. My recommendations will propose that the policy refers to the map where the boundary is defined and the policy needs to identify how proposals which fall inside and outside of the boundary will be considered. I will recommend accordingly.

### Recommendation

***Replace the policy with***

***“Within the settlement boundary, as shown on the Settlement Boundary Map, there will be a presumption in favour of housing development, subject to compliance with other development plan policies.***

***Outside the settlement boundary there will be a presumption against residential development unless the proposal meets the requirements of Local Plan Policy TTV26 or Policy TTV 27”***

### Policy 9–6: Housing Allocation

98. The Joint Local Plan includes Milton Abbot within the category of small villages which are called “Sustainable Villages” and which should each be allocating “around 20 dwellings” as set out in Figure 5.8. Together they will contribute to the provision of “in the order of 550 homes” as required by Policy TTV 25.
99. As written, if a planning application came forward for say five executive dwellings on the allocation site, it will comply with the policy as it is setting the maximum level of development on the allocation site.
100. In view of the level of need identified in the Housing Needs Assessment and the fact that affordable housing is only required on sites of more than 10 units, plus the fact that it is the only site the neighbourhood plan is allocating for the period up to 2034, as well as the expectation of the Local Plan, it is my view that to make best use of developable land, it would be more appropriate that the policy should require the provision of “**around 20 dwellings**”. This is the wording used in the Joint Local Plan in Figure 5.8.
101. When I had offered the Parish Council a chance to “factcheck” my draft report, a normal process for examination reports, intended to identify any factual inaccuracies, but explicitly not an opportunity to challenge the examiner’s conclusions, I was somewhat surprised to receive a letter, dated 4<sup>th</sup> February 2022 from the Chairman of the MACK Plan Committee which, very respectfully, sought to persuade me to amend my recommendation, so that the policy would read:
- “Provision will be made for the development of the full JLP housing allocation of 20 dwellings and no more or less on MA Site E, with the following conditions.”**
102. He quoted the following reasons for making this request.

- *“The MACK Plan committee accepted the target of 20 new homes from the outset and has gone to considerable lengths to successfully persuade a dubious public to accept rather than challenge this number. No small task given that these same residents have witnessed the neighbouring village of Lamerton being overrun with development that far exceeds its respective JLP indicative target.*
- *A hard limit of 20 with no creep in numbers has been a fundamental principle that has characterised and underpinned the development of the whole MACK Plan. It is what the residents have endorsed at Regulation 14 and Regulation 16 consultations.*
- *20 homes is the specific figure that has been used by statutory consultees in determining whether or not to agree to the development of this site - particularly in the case of Heritage England given the proximity of Lutyens cottages and back drop of the listed 16th century church, and by Natural England in connection with the Tamar Valley AONB.*
- *20 has also been the figure on which the SEA has assessed the impact of development in the MACK Plan area.*
- *In our discussions with the MA Site E landowner and his agent, it was clear that given the chance, they would aim for 30 houses. This is absolutely not what the residents have agreed to support and it is difficult to conceive of circumstances in which this community would not view an 11th hour increase in housing numbers as a betrayal of their trust by us.*
- *The figure of 20 homes as a maximum has been publicised from the outset, including to landowners and agents in the Call for Sites<sup>1</sup> and all site proposals have been developed and submitted on this basis.*
- *By stipulating 20 homes (no more and no less) for this site we have tried to avoid conflict with the JLP statement of around 20 homes for Milton Abbot as a whole, and we anticipate that windfall development will increase the overall contribution to the JLP during the period out to 2034.”*

103. I know that the MACK Plan Committee will be disappointed, but I am not persuaded by these arguments and my recommendation remains unchanged. The revised policy wording refers to Site E should be accommodating “the full JLP housing allocation of 20 dwellings”, when actually the JLP wording refers a housing allocation of “**around** 20 dwellings”- the wording which I am proposing.
104. I am not convinced that it would be appropriate to set a cap, at this stage, for the capacity of a site without the benefit of a masterplan, which will be required at application stage, illustrating how the site could be used efficiently and effectively and meeting the design expectations of the policy. This concern is reinforced by having no idea what the housing mix of the completed scheme would be. The plot size of a two-bedroom cottage is very different to a scheme of larger 4 and 5 bed units. By having a degree of flexibility in the capacity of the site, it will enable schemes coming forward which may be just below or just above the 20 units and will allow a scheme to be designed to take full advantage of the constraints and the opportunities the site offers, rather than imposing an absolute figure– “it has to be 20 and not a single unit more” approach. That would not constitute good planning or be sustainable development.
105. There has been no evidence presented that demonstrates that a scheme of say 22 homes, on this site, would be not acceptable, nor would it tip some threshold in terms of the capacity of village infrastructure.
106. Turning to the consideration of other possible housing sites, I place great weight on the fact that one of the purposes of neighbourhood plans is to allow the community to decide what sites should be developed. However, the choice of those sites must be subject to robust selection process. In this case I am satisfied with the site selection process which has been carried out by AECOM using objective criteria and its evidence-based approach which has delivered a rigorous appraisal of the sites. Equally I have no grounds for challenging the basis of the decision to allocate the principal site for the new development within Milton Abbot, a village that has been described as a sustainable village in the Local Plan, a status that is not given to Chillaton and which importantly in my mind enjoys the provision of a primary school within walking distance.
107. I appreciate paragraph 75 of the NPPF promotes sustainable development in rural areas, by choosing to locate residential development where it will maintain and enhance the viability of rural communities. It does say that where there are a group of small settlements, development in one village may support services in a village nearby. But I consider that Chillaton is a less sustainable location, which falls lower down the settlement hierarchy than Milton Abbot and has not been recognised as a sustainable village. I also note that there is no bus route between the two villages.
108. I am satisfied that the public have chosen Site E as its preferred location and indeed the settlement boundary has been drawn to include that site. That boundary has the consequence that Site B - the allotment site, is proposed to lie within the settlement boundary and where there will be a policy presumption in favour of it being developed as a windfall site. The MACK Plan team have

acknowledged this is the likely consequence of the drawing of the settlement boundary, but has pointed to possible heritage objections to its development. It is not necessary for me to address these matters as they essentially will have to be assessed at a development management stage where I am sure particular attention will be given to the scheme's impact on the Lutyens cottages.

109. During my site visit, I visited each of the alternative housing sites and I have carefully considered the representations submitted at Regulation 16, both for and against the sites, but none of them have led me to conclude that the community's choice of Site E does not meet the basic conditions.
110. It is unnecessary and inappropriate for a policy to refer to conditions being discussed and agreed by landowner. I will recommend that this part of the policy is removed but it could be referenced in the supporting text if desired.

### **Recommendation**

***In the first sentence replace "a maximum of" with "around" and delete the rest of the sentence after "Site E"***

### **The Referendum Area**

106. 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 MACK Neighbourhood Plan as designated by West Devon Borough Council on 6<sup>th</sup> November 2014, is the appropriate area for the referendum to be held and the area for the referendum does not need to be extended.

### **Summary**

107. I congratulate Milton Abbot Grouped Parish Council and the MACK Plan Team on seizing the opportunities presented by neighbourhood planning to allow the community to shape its planning policies and also to decide where new housing development in the parish should be located.
108. This is a locally distinct neighbourhood plan, which seeks to deliver on the expressed priorities of the residents of the plan area and will deliver on its vision. This plan will provide a sound basis for dealing with planning applications in the neighbourhood area in the coming years.
109. 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.

110. I am therefore delighted to recommend to West Devon Borough Council that the MACK Neighbourhood Plan, as modified by my recommendations, should now proceed to referendum.

JOHN SLATER BA(Hons), DMS, MRTPI  
John Slater Planning Ltd  
8<sup>th</sup> March 2022