

LECKHAMPTON WITH WARDEN HILL NEIGHBOURHOOD DEVELOPMENT PLAN (REG 16 CONSULTATION)

Response on behalf of Miller Homes

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REPORT

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1 INTRODUCTION

- 1.1 RPS has been instructed by Miller Homes (“MH”) to prepare a response to the submission (Regulation 15) version of the Leckhampton with Warden Hill Neighbourhood Plan (‘LWHNP’) issued for consultation by Cheltenham Borough Council (‘CBC’) in accordance with Regulation 16 of the Neighbourhood Planning (General) Regulations (“the Regulations”).
- 1.2 MH has an interest in Land South of Shurdington Road, Leckhampton (‘the Site’) allocated for residential development under Policy MD4 of the Cheltenham Plan (‘CP’) adopted in July 2020 and which is located within the LWHNP area. The LWHNP has been submitted to CBC by Leckhampton with Warden Hill Parish Council (‘LWHPC’).
- 1.3 On 27 February 2024, the Secretary of State for Levelling Up, Housing and Communities (“SoS”) granted planning permission for 350 homes and associated development at the Site (Appeal Reference APP/B1605/W/22/3309156) (“the Appeal Decision”/“the Shurdington Road Appeal”). The SoS identified that the Appeal proposal was in accordance with Policy MD4 (DL15) and the development plan in all respects (DL32) (**Appendix A**).
- 1.4 MH has engaged with the LWHNP process consistently since 2021, given its major interest in the Site. At each stage, RPS’ representations have identified how various policies do not meet the basic conditions and in a number of respects failed to have proper regard to the strategic context set by MD4 and the Cheltenham Local Plan, and therefore required deletion and/or significant amendment.
- 1.5 The original consultation on the LWHNP under Regulation 14 was carried out between September and November 2021. RPS submitted representations to that consultation on MH’s behalf and objected to wording of various draft policies which would have implications for any planning applications brought forward in relation to the Site. Following this consultation, LWHPC decided in April 2022 to republish the draft LWHNDP for a second Regulation 14 consultation. It was stated that this was in order to make the plan more concise and readable, and also to update the evidence base underpinning the consultation. The consultation ran between November 2022 and January 2023.
- 1.6 Unfortunately, LWHNP failed correctly to notify MH or RPS, despite our representations to the original LWHNDP.. LWHPC stated they contacted MH as part of this process, but they used out of date contact details previously supplied to them by MH. As a result, MH were not in a position to submit representations within the allotted time period. RPS contacted the Parish Council and following discussions with LWHPC, it was agreed that MH would be given a further period of time until 11th April 2023 to submit a response to this consultation, which forms the basis of the representations presented here. These representations were duly made within the time limits prescribed and were accompanied by Counsel’s Opinion. A copy of these representations is appended to this submission (**Appendix B**).
- 1.7 It is a matter of public record that the Parish Council opposed the allocation of the site Policy MD4 in the Cheltenham Local Plan and the more recent planning application which has now been

granted on appeal. However, since the commencement of this Regulation 15 consultation, the grant of planning permission for 350 homes and associated development on the land which covers part of site allocation Policy MD4, has confirmed that development will now come forward across the Site in accordance with the Application. A more detailed summary of the application process is provided in section 5 of this submission. Given the nature of the SoS and Inspector's findings in the decision, this planning permission is now a highly relevant consideration (in addition to the allocation under Policy MD4) in the assessment of whether the LWHNP meets the basic conditions in its current form and the necessary amendments/deletions that are required to the policy text.

- 1.8 We have also appended a Technical Note by HDA who have been working for MH on the site for over a decade (**Appendix C**). The technical note on landscape matters considers the draft LWHNP policies and the supporting evidence base, as well site-specific analysis relating to the Site. This comments upon the evidence relied upon by LWHPC and is appended to the submission. This is also referred to in the main representations as necessary.
- 1.9 MH formally requests that the examination of the LWHNP takes place via a hearing and not via written representations, on the basis that it is necessary to ensure adequate examination of certain issues and to allow MH a fair chance to put forward its case (as per Paragraph 9(2) of Schedule 4B TCPA 1990).

2 NATIONAL POLICY FRAMEWORK FOR NEIGHBOURHOOD PLANNING

- 2.1 This section highlights the key elements of national policy and practice guidance that the Parish Council as the Qualifying body should have had regard to in the preparation of the LWHNP.

The Basic Conditions

- 2.2 Paragraph 37 of the National Planning Policy Framework (December 2023) explains that:

“Neighbourhood plans must meet certain ‘basic conditions’ and other legal requirements before they can come into force. These are tested through an independent examination before the neighbourhood plan may proceed to referendum.”

- 2.3 The basic conditions are set out in Paragraph 8(2) of Schedule 4b of the Town and Country Planning Act 1990 (as amended) and supported by the Neighbourhood Plan chapter of the PPG. They are as follows:

(2) A draft order meets the basic conditions if—

(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order;

(b) having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order;

(c) having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order;

(d) the making of the order contributes to the achievement of sustainable development;

(e) the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);

(f) the making of the order does not breach, and is otherwise compatible with, EU obligations; and

(g) prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.

- 2.4 The Neighbourhood Plan chapter of the Planning Policy Guidance (PPG) is extensive and is a mandatory material consideration under Basic Condition 8(2)(a). Both the NPPF and the PPG make clear that particular caution should be applied where a qualifying body seeks to introduce any policy which conflicts or impacts upon a strategic site allocated in the adopted development plan, thereby giving rise to a conflict with basic condition 8(2)(e) as well as 8(2)(a) and (d). These references (non-exhaustively) are set out below.

Key NPPF and PPG Provisions in Respect of Strategic Allocations/Policies and Sustainable Development

- 2.5 Paragraph 13 of the NPPF explains the key role that neighbourhood plans play in achieving the presumption, stating:

“The application of the presumption has implications for the way communities engage in neighbourhood planning. Neighbourhood plans should support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies.” (RPS emphasis)

2.6 Paragraph 18 makes clear that neighbourhood plans can only contain non-strategic policies. Paragraph 28 makes clear that those non-strategic policies, but cannot conflict with the strategic policies:

2.7 Importantly, paragraph 29 explains that neighbourhood plans cannot contain any policy content which would undermine the strategic policies::

*“Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, **direct and help to deliver sustainable development**, by influencing local planning decisions as part of the statutory development plan. **Neighbourhood plans should not promote less development than set out in the strategic policies for the area or undermine those strategic policies.**” (RPS emphasis)*

2.8 In short, neighbourhood plans cannot contain any policy content which would ensure that less , development is delivered that provided for under those strategic policies. For this reason, policy content which affects the area within a major strategic allocation should be strictly limited.

2.9 The NPPF and the PPG further explain that a neighbourhood plan must be supported by sufficient and proportionate evidence. This applies with particular force for any land within a strategic allocation. NPPF 31 makes clear that:

“The preparation and review of all policies should be underpinned by relevant and up-to-date evidence. This should be adequate and proportionate, focused tightly on supporting and justifying the policies concerned, and take into account relevant market signals.” (RPS emphasis)

2.10 NPPF 16(a) and 16(d) and the PPG both state that policies must be clear and supported by sufficient and appropriate evidence. If they are not clear and robustly evidenced, they will not contribute to the achievement of sustainable development and will be inconsistent with national planning policy:

“How should the policies in a neighbourhood plan be drafted?”

*A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and **supported by appropriate evidence**. It should be distinct to reflect and respond to the unique characteristics and planning context of the **specific** neighbourhood area for which it has been prepared.” (RPS emphasis)*

2.11 Consequently, ensuring the policies brought forward through the LWHNP are clearly evidenced and justified will help support the objective of contributing to the achievement of sustainable

development, in accordance with paragraph 16(a) of the NPPF. This is particularly important in areas where housing delivery has fallen short of planned requirements over a significant period, notably in Cheltenham Borough (as explained in the section 4 of this submission).

3 DEVELOPMENT PLAN CONTEXT

- 3.1 The Basic Conditions Statement (BCS) submitted by LWHPC as part of this consultation (responses to which are set out in sections 5 and 6 of this submission) makes reference to a number of strategic and non-strategic policies of relevance to the LWHNP.
- 3.2 RPS wishes to draw the Examiner's attention to a number of strategic policies and non-strategic policies which have not been properly taken into account by the authors of the LWHNP in clear breach of basic conditions 8(2)(a), (d) and (e). They have largely been glossed over or simply ignored. This notably includes the strategic Policies SP1 and SP2, and Policy MD4. These policies have significant implications for the scope and remit of the LWHNP and should have been integrated into its content, thereby directing a very different approach to land within the Site / Policy MD4 area.

Strategic Policies

- 3.3 Those strategic policies of relevance to the LWHNP are set out in the *Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031* (JCS).
- 3.4 **Policy SP1 (The Need for Development)** sets out the overall strategy concerning the amount of development required across the three authority areas. Policy SP2 sets out the distribution of new development. Together, these essentially policies provide the spatial strategy for the JCS area. For Cheltenham, Policy SP1 establishes a housing requirement for at least 10,917 dwellings to be built during the plan period.
- 3.5 Paragraph 3.1.18 of the JCS makes clear that district-level plans will provide more detailed and locally specific planning policies as well as local site allocations and will deliver the individual district capacities identified through the JCS in accordance with the spatial strategy. This objective has been taken forward through the preparation and adoption of the Cheltenham Plan (CP), which allocates a number of housing sites to meet the residual needs of the town, adopted in July 2020. Furthermore, the JCS (same paragraph) recognises that neighbourhood plans must be in conformity with strategic policies of the development plan and can have an important role in identifying sites and policies to guide development at the local level.
- 3.6 **Policy SP2 (Distribution of development)** sets out the distribution of new development. Criteria 1 focuses growth at Cheltenham to support its economic role as one of two principal providers of jobs, services and housing (alongside Gloucester). Criteria 3 of the policy makes clear that, to meet the needs of Cheltenham Borough, the JCS will make provision for new homes and that this will be provided within the Cheltenham Borough administrative boundary (and other locations outside the town boundary). This reflects the urban-focused economic vision and support for urban regeneration for the JCS area (paragraph 3.2.5).
- 3.7 Paragraph 3.2.8 of the JCS then reiterates the position quoted above, that further development sites would need to be identified through District plans. However, the JCS (at paragraph 3.2.9) recognised that there was insufficient land inside the existing urban boundaries of Gloucester and

Cheltenham to meet their needs in full and that, as result, land was required outside their administrative boundaries (within Tewkesbury borough).

3.8 In this context, it is critical that all opportunities to deliver sustainable development that meet the housing needs of Cheltenham and that are consistent with the spatial strategy are not fettered by unduly restrictive or prescriptive policies brought forward through the neighbourhood planning process. Regrettably, this is exactly the approach being pursued through the LWHNP process in respect of development on allocated land at Leckhampton (MD4). This is wholly unjustified and in breach of the basic conditions. This is of particular significance given the housing issues affecting Cheltenham as outlined in the next section of this submission.

3.9 The JCS also contains a number of over-arching sustainable development policies. NPPF 16(f) makes clear that duplication of policy content is to be avoided, including between plans at different levels (Local Plan and neighbourhood plan) **Policy SD4 (Design Requirements)** states that (in criteria i):

“New development should respond positively to, and respect the character of, the site and its surroundings, enhancing local distinctiveness, and addressing the urban structure and grain of the locality in terms of street pattern, layout, mass and form. It should be of a scale, type, density and materials appropriate to the site and its setting. Design should establish a strong sense of place using streetscapes and buildings to create attractive and comfortable places to live, and having appropriate regard to the historic environment” (RPS emphasis)

3.10 And also **SD4(vii)** states:

“It should:

- *Be well integrated with the movement network within and beyond the development itself.*
- *Provide safe and legible connections to the existing walking, cycling and public transport networks;*
- *Ensure accessibility to local services for pedestrians and cyclists and those using public transport.*
- *Ensure links to green infrastructure...” (RPS emphasis)*

3.11 Whilst the need for good design is appropriate, it is nonetheless important that such criteria are not applied or treated mechanistically as ‘absolute’ requirements but should be read in their proper context and meaning. The design criteria in Policy SD4 are clearly written to ‘encourage’ rather than ‘require’ or ‘prescribe’ a particular action and should be treated as such in the setting of policy at the neighbourhood plan level.

3.12 **Policy SD6 (Landscape)** will seek to protect landscape character for its own intrinsic beauty and for its benefit to economic, environmental and social well-being, and will have ‘regard to’ local distinctiveness and historic character and specifies the need for ‘appropriate mitigation measures’ in relation to landscape impacts. Whilst clearly important, the policy does not ‘require’ or ‘prescribe’

the protection of landscape character as part of new development, but that this should be 'sought' as part of a development proposal, and so should not be treated as such in its implementation. Furthermore, the policy does not identify specifically any areas of Cheltenham (beyond the Cotswolds AONB) that are designated as 'valued landscapes'.

- 3.13 **Policy SD7 (Cotswolds AONB)** requires all development proposals in or within the setting of the Cotswolds AONB to conserve and, where appropriate, enhance its landscape, scenic beauty, wildlife, cultural heritage and other special qualities. Paragraph 4.7.3 of the JCS makes clear that proposals likely to affect the setting of the AONB must fully consider any potential impacts.
- 3.14 **Policy SD8 (Historic Environment)** development should make a positive contribution to local character and distinctiveness, having regard to valued and distinctive elements of the historic environment. Designated and undesignated heritage assets and their settings will be conserved and enhanced as appropriate to their significance, and for their important contribution to local character, distinctiveness and sense of place.
- 3.15 **Policy SD10 (Residential Development)** makes clear that new housing will be planned in order to deliver the scale and distribution of housing development set out in Policies SP1 and SP2. Furthermore, housing development will be permitted at sites allocated for housing through the development plan, including Strategic Allocations and allocations in district and *neighbourhood plans*.
- 3.16 **Policy SD12 (Affordable Housing)** seeks to deliver new affordable housing on all sites of 10 or more dwellings. The JCS has determined that there is a need for 638 affordable houses per year across the JCS area (paragraph 4.12.6), which reflects the unaffordability of housing in areas including Cheltenham.
- 3.17 **Policy INF3 (Green Infrastructure)** seeks the retention and enhancement of the green infrastructure network of local and strategic importance (Criteria 1). Criteria 2 of the policy also encourages the creation of new green infrastructure assets, specified as publicly accessible green space or outdoor space for sports and recreation, where a need is created from new residential development in accordance with **Policy INF4 (Social and Community Infrastructure)**. Furthermore, existing green infrastructure will be protected in a manner that reflects its contribution to ecosystem services (including biodiversity, landscape / townscape quality, the historic environment, public access, recreation and play) and the connectivity of the green infrastructure network (Criteria 3).

Other relevant policies

Policy MD4 Leckhampton

- 3.18 Policy MD4 of the Cheltenham Plan (CP) adopted in July 2020 is the key policy of relevance to the LWHNP area. The site allocation has been carefully considered at examination and now forms a key strategic policy within the development plan for the purposes of paragraph 8(2)(e) of Schedule

4B TCPA 1990. A full extract of the policy and site allocation policies map to which it relates are appended to this submission (**Appendix D**).

- 3.19 The site allocation is listed in Table 3 of the CP as a 'mixed use' development site and provision is made for approximately 350 homes (and a secondary school) to be delivered on land at Leckhampton. The school has now been delivered early on a separate parcel of land adjacent to the allocation site and so not is required as part of the future delivery of the housing element.
- 3.20 As indicated above, outline planning application was granted for 350 dwellings has received planning permission by the Secretary of State on 27 February 2024, thereby confirming how part of Policy MD4 will now be delivered.
- 3.21 Policy MD4 sets out six detailed site-specific criteria to guide development through the planning application process and these are the key policy requirements.
- 3.22 The policy's "Site Description" section also references elements of the JCS examination Inspector's comments, specifically highlighting the '*Note of Recommendations from 21 July 2016*' and which relates specifically to the extent of the site allocation boundary. A full copy of this note is appended to this submission (**Appendix E**).
- 3.23 Policy MD4 also refers to '*JCS's examination's consideration and findings related to this site*' and that these are '*fully taken into account*'. The various notes from JCS Inspector that relate to this site actually relate to a much larger site allocation proposed through the JCS process, but which was not formally allocated through in the JCS. The extent of this site is appended to this submission (**Appendix F**).
- 3.24 In addition, Policy MD4 also highlights '*an extensive planning history related to the earlier, larger proposal (13/01605/OUT); the Inspector's and Secretary of State's findings in this appeal*' which should also be reflected in any future scheme on the MD4 allocation site.
- 3.25 The references to the JCS Inspector's findings and the 2016 planning appeal are to be specifically addressed as part of any planning application on the site. The policy does not state that this information should inform the process of preparing any neighbourhood plan, including the LWHNP. LWHPC has attempted to use material relating to the JCS findings and the 2016 planning appeal decisions to justify and inform their approach to the draft policies in the LWHNP now submitted for examination. However, in every case, they have misunderstood or misapplied the nature of these references and in certain cases made reference to other, older documents which are not relevant at all.
- 3.26 LWHPC has submitted extracts from those various findings under Annex 6 of the consultation submission documents. These extracts are taken from the following six reports:
 - *Inspector's Interim Report – EXAM 232, Gloucester, Cheltenham and Tewkesbury Joint Core Strategy - Inspector Ord, 31st May 2016*

- *Inspector's Preliminary Findings on Green Belt Release Spatial Strategy and Strategic Allocations - EXAM 146, Gloucester, Cheltenham and Tewkesbury Joint Core Strategy – Inspector Ord, 18th Dec. 2015*
- *Report to the Secretary of State for Communities and Local Government by P W Clark MA MRTPI MCMI. Inquiry held on 22 - 25 September and 29 September – 2 October 2015. Land at Kidnappers Lane Leckhampton, Cheltenham. File Ref: APP/B1605/W/14/3001717, 11 January 2016 AND Secretary of State covering letter, Julian Pitt, APP/B1605/W/14/3001717, 5 May 2016.*
- *Cheltenham Borough Local Plan Second Review 1991-2011 Inspector's Report, pp 187, DP527 8 March 2005 David Asher BA DipTP MRTPI*
- *Tewkesbury Borough Council Local Plan To 2011 Report of Public Local Inquiry Into Objections PINSM/G1630/429/5 December 2003 - Mary Travers Ba(Hons) DipTP MRTPI - The Planning Inspectorate*
- *Cheltenham Borough Local Plan Inquiry (1993) - Inspector's Report*

3.27 The first three extracts are related to the JCS examination and the 2016 appeal, however they do not represent the final Inspector's Report or appeal decision. RPS does not agree that the fourth, fifth and sixth documents are relevant as these are not referred to in Policy MD4. They do not relate to either the JCS examination or the 2016 planning appeal nor the most recent appeal and relate to previous district plans that pre-date the current, adopted development plan and have been superseded by later events. These documents have been incorrectly relied upon by LWHPC. They have no bearing on development within the MD4 area.

3.28 Furthermore, Annex 6 does not include any references to more recent Inspector's findings and reports since May 2016. This is misleading. Three separate reports have been issued since then and which are relevant to the preparation of the LWHNP. These are:

- *Note of Recommendations made at the hearing session on 21 July 2016 – (referred to only briefly in Appendix 2 of the LWHNP)*
- *Report on the examination into the Gloucester Cheltenham and Tewkesbury Joint Core Strategy Date 26 October 2017; and*
- *Report on the Examination of the Cheltenham Plan 2011-2031, Date: 17 March 2020*

3.29 It is unclear why these more recent documents have not been referenced by the LWHPC in its Inspector's summary (Annex 6) given their obvious relevance to the neighbourhood planning process in Leckhampton and Warden Hill parish. The only logical conclusion is that these were not considered supportive of LWHPC's approach and were therefore dismissed from consideration. However, these more recent findings are relevant to the MD4 allocation site through the policies of the LWHNP they and should have been referenced. For example, the CP Inspector states in her final report:

“63...With regard to the [larger] land east of Farm Lane, within CBC, the [JCS] Inspector considered that it should be removed from the JCS as a strategic site primarily in view of its proximity to the AONB and its landscape and visual sensitivity.

64. In her final report on the JCS the Inspector indicated that a reduced local allocation could be brought forward in the CP together with an area of Local Green Space (LGS) in Leckhampton. I address the allocation of LGS below. For the residential component, the JCS Inspector stated in her interim report that an allocation in the order of 200 dwellings might be reasonable. However, she did go on to state in her final report that this was “only an approximation and intended to indicate a scale below the strategic threshold for the JCS. The final figures should be based on a full assessment of the area to provide the evidence base to underpin an appropriate allocation.”

...

70. Through the relocation of the school to land south of Kidnappers Lane, land is released within the original Policy MD5 allocation for alternative use. It is proposed through MM024 to increase the level of residential provision back to the figure of 350 dwellings which was considered at the Preferred Options stage and tested through SA at that time.

71. The provision of 350 dwellings within the original Policy MD5 site together with an extension to the south to provide a site for a secondary school has been the subject of full public consultation as part of the MMs consultation. It has also been the subject of further sustainability appraisal. I have considered the many representations made concerning the increase in housing numbers and the location of the new secondary school proposed at Leckhampton.

72. The level of housing as now proposed is less than 50% of the site for 764 dwellings considered by the Inspector at the JCS examination. The impact on the landscape and natural environment has been the subject of considerable evidence from both the developers of the housing site and from GCC. I accept that there would be a significant change in the character of the area in the vicinity of the proposals. However, residential development would be primarily concentrated in the area which both I and the JCS Inspector consider to be most able to accommodate it, and careful siting of the school buildings and playing fields south of Kidnappers Lane would ensure that its impact is mitigated through careful design and landscape treatment.

74. The NPPF seeks to boost significantly the supply of housing. The importance of meeting the need for educational facilities and providing a choice of school facilities is also stated in the NPPF. In the circumstances of the CP, I consider that the proposed modification to Policy MD5 in MM024 is fully justified and would ensure that the plan complies with national and JCS policies in these respects.

75. In conclusion on this housing issue, having regard to the modifications proposed to Policies H1 and H2, and the changes to be made to site specific policies to address detailed

issues relating to the deliverability and criteria for the development of individual allocations, I am satisfied that the CP as modified identifies a supply of housing land in accordance with the requirements of JCS Policy SP1 and is sound.”

- 3.30 It can be seen that the CP Inspector had considered issues relating to landscape (and other matters) and whilst concluding that ‘*significant change in the character of the area in the vicinity*’ would occur, the Inspector nonetheless was able to recommend an increase, not a decrease, in the allocation under Policy MD4. This is broadly consistent with the JCS Inspector’s finding that there was potential for an allocation on land towards the north of the site which should be brought forward through the Cheltenham Plan. This is exactly what has now happened. Furthermore, the CP Inspector did not recommend any modification to Policy MD4 to modify the proposed site allocation boundary to exclude any particular parcels of land within the proposed boundary, or recommend any criteria specifically excluding or precluding development on any sub-parcels within the proposed allocation boundary. If the Inspector was minded to do this, they would have done so. No such exclusion is justified now. This is important given the approach in the LWHNP which is to seek to limit development on certain sub-parcels within the allocation (referred to as ‘R2’ and ‘R3’/ ‘Area 6’ and ‘Area 7’).

Policy GI1 Local Green Space

- 3.31 Paragraphs 105-107 of the NPPF make provision for local communities to identify green areas of particular importance to those communities, where development will not be permitted except in very special circumstances. These Local Green Spaces (LGS) can be designated through a local plan or through neighbourhood plans. The LGS designation will be an addition to the current protections for green spaces set out in the Cheltenham Plan, Joint Core Strategy (JCS).
- 3.32 The policy states:
- “Development will not be permitted within a Local Green Space, designated either within the Cheltenham Plan or an approved Neighbourhood Plan, unless there are very special circumstances which outweigh the harm to the Local Green Space. Particular attention will be paid to the views of the local community in assessing any development proposals that affect a designated Local Green Space.”*
- 3.33 The policy wording clearly relates solely to those parts of the Borough that are designated as LGS. This aligns with national policy which allows local communities to ‘*protect green areas of particular importance to them*’ (para 105). There is nothing in national or local policy which permits policies for LGSs to seek to influence development on non-LGS land. A significant area of land (comprising 26.4 hectares) has been designated as LGS (known as ‘Leckhampton Fields’) under Policy GI1 of the CP, which is 5 hectares greater in size than the allocation site. The boundaries of the two designated sites are contiguous with one another, but do not overlap. In this regard, it is clear that both these policies are clearly separate in nature (as they cover different areas of land) and so do not seek to impinge on one another in terms of their implementation.

4 HOUSING ISSUES

- 4.1 In considering basic conditions 8(2)(a) and (e) it is important to consider recent housing delivery performance in the borough since 2011, and the current land supply position.
- 4.2 LWHNP has failed to identify a housing requirement or make any specific site allocations for the purposes of NPPF 67-68. However, wider housing land supply matters are of obvious relevance to the LWHNP and the draft policies contained therein, given the need for neighbourhood plans to support (and not undermine) the delivery of the strategic policies. As Policy MD4 confirms, this is an important location for delivering Cheltenham's wider housing needs.
- 4.3 RPS has identified three important housing issues that should have been considered in the framing of the policies in the LWHNP. These are:
- Past housing delivery (since 2011)
 - Housing Delivery Test
 - Housing Land Supply
- 4.4 We address each one in turn below.

Past housing delivery in Cheltenham (since 2011)

- 4.5 Since 2011, housing delivery in Cheltenham has fallen significantly short of the housing requirement set out in current development plan. RPS draws on two datasets to show the extent of the shortfall; net additional supply (Live Table 122) based on annual housing returns submitted to Government by the competent authority (Cheltenham Borough Council), and figures set out in the Residential Land Monitoring Report (up to 2020, as more recent data is not available on Council website).
- 4.6 The adopted housing requirement for Cheltenham is set out in Policy SD1 of the Joint Core Strategy (JCS) for Gloucester, Cheltenham and Tewkesbury 2011-2031. The requirement for Cheltenham is 10,917 dwellings over the plan period; this equates to 545.85 dwellings per annum. The pro-rata requirement to date (2023) is 6,550. The table below summarises the number of net new homes (after losses) that have been delivered against the requirement in Cheltenham between 2011 and 2023. A full schedule of figures is appended to this response (**Appendix G**).

Table 4-1 Housing Requirement and Completions (net) in Cheltenham: 2011-23

	Net Completions (RLA)	Net additional supply (Live Table 122)
Total delivery 2011-23	4,315	4,074
JCS housing requirement (2011-23)	6,550	6,550
Difference	-2,235	-2,476

Source: RLA; Live Table 122; RPS

4.7 It can be seen that, depending on which data source is used, net completions in Cheltenham range between 4,074 and 4,315 dwellings since 2011. Whichever dataset is used, it is evident that housing delivery has fallen significantly below the required level of homes (both market and affordable) needed in Cheltenham during the JCS period¹.

Housing Delivery Test

4.8 Another separate assessment of housing delivery is the Housing Delivery Test (HDT) issued annually by Government. This measures past delivery against the requirement over a three-year period. The latest score for Cheltenham is summarised below.

Table 4-2 Housing Delivery Test scores: Cheltenham

	Total number of homes required	Total number of homes delivered	Housing Delivery Test: 2022 measurement
2019-22	1,049	1,046	99.7%
2018-21	1,046	1,629	156%

Source: DLUHC, HDT

4.9 It can be seen that the delivery score for Cheltenham has now fallen just below the 100% threshold (even though the DLUHC outputs shows 100%) compared to the relatively healthy position just one year earlier and represents a significant worsening in housing delivery performance in Cheltenham.

Housing Land Supply

- 4.10 Cheltenham Borough Council issued an updated housing land supply statement² in November 2023. The statement now shows a 4.84-year supply of deliverable land in the borough (base date 1 April 2023), which equates to a deliverable shortfall of 92 dwellings.
- 4.11 Nonetheless, when applying the current methodology for calculating land supply using the revised NPPF (December 2023) no buffer is applicable. Consequently, the 5% buffer included in the Borough Council’s calculation is removed. This is because the HDT score is higher than the 85% threshold needed to trigger a buffer (if applicable, the appropriate buffer is now 20% only).

¹ It should be noted that the two strategic allocations identified in the JCS to meet Cheltenham’s need (but which are allocated in Tewkesbury borough) at West Cheltenham and North-West Cheltenham have delivered zero (0) homes as at April 2023¹ and so have not contributed any completions to date.

² Cheltenham Five Year Housing Land Supply Position Statement as of 31 March 2023 Published 1 November 2023

- 4.12 When the 5% buffer is removed and applying the Borough Council's site assumptions the supply position increases slightly, to 5.08 years³. This equates to an excess of just 43 dwellings; representing a very marginal supply position. The revised assessment on which this figure is based, notably the sources of supply relied upon, has not been tested at appeal .
- 4.13 Taken together, RPS submit that the significant under-performance in the delivery of homes in Cheltenham since 2011, and the current precarious nature of the land supply position, are relevant considerations that should be recognised and taken into account in the framing of policies taken forward in the LWHNP, in line with national policy which seeks to boost significantly the supply of housing.
- 4.14 In this context, it is crucial that the LWHNP genuinely supports the delivery of the strategic policies and other plan policies, including Policy MD4 (Leckhampton) and does not put barriers in place to the delivery of sites duly allocated through the development plan process.

³ Housing Land Requirement is revised down 2,795 to 2,735 dwellings, whilst supply remains at 2,778. Thus 2,778/2,735 equates to 5.08 years supply.

5 PLANNING APPEAL BY MILLER HOMES IN RESPECT OF LAND SOUTH OF SHURDINGTON ROAD, LECKHAMPTON, CHELTENHAM (REF. 20/01788/FULL)

- 5.1 This section of the submission provides a brief commentary on the recent planning appeal pertaining to land allocated for development under Policy MD4 of the Cheltenham Plan. The appeal decision post-dates the publication of the LWHNDP and represents new evidence that should be put before the Examiner. As explained in this submission, the findings of the Planning Inspectorate and Secretary of State on the 27 February 2024 are of direct relevance to the examination of the LWHNDP as they deal with matters relating to transport and access, green infrastructure and valued landscapes as they relate to Leckhampton, all of which form key elements of the draft policies put forward in the LWHNDP.
- 5.2 Following an extensive pre-application consultation process a full planning application was submitted in October 2020 for a development comprising the erection of 350 dwellings together with associated open space, cycleways, footpaths, landscaping, access roads and other associated infrastructure on Land South of A46 Shurdington Road, Cheltenham. The application was determined under reference number 20/01788/FUL and was refused against Officer Recommendations by Members of Cheltenham Borough Council Planning Committee at a meeting on 21st April 2022. A site location plan (**Appendix H**) and outline planning layout (**Appendix I**) are appended to this submission for the Examiner's reference.
- 5.3 The Council's only reason for refusal (RfR) cited a failure to adequately address the Council's Emergency declaration by making the fullest contribution possible to the mitigation of, and adaption to, climate change and the transition to a low-carbon economy. The one reason for refusal is set out below:

"Cheltenham Borough Council has declared a 'Climate Emergency' and is committed to becoming a net zero carbon council and borough by 2030. Strategic Objective 6 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (Adopted 2017) ('JCS') sets out the requirement to ensure that new developments "Make the fullest contribution possible to the mitigation of, and adaption to, climate change and the transition to a low-carbon economy" through a number of measures including, the production and consumption of renewable energy and the decentralisation of energy generation, and by encouraging and facilitating low and zero carbon development.

Additionally, the need to achieve sustainable development is highlighted throughout the National Planning Policy Framework 2021 ('NPPF') which at paragraph 8c) sets out that, from an environmental objective, opportunities should be taken to "mitigating and adapting to climate change, including moving to a low carbon economy".

The proposed development, as a result of the installation of gas boilers throughout, would fail to take full account of the opportunities available to move towards low carbon technologies such as heat pumps, and would be at odds with both local and national plans to achieve net

zero targets. In addition, the proposed development, as a result of the installation of gas boilers throughout, would fail to take full account of the opportunities available to move towards low carbon technologies such as heat pumps, and would be at odds with both local and national plans to achieve net zero targets.

In addition, the proposed development, by virtue of the orientation of some of the dwellings, would fail to maximise the potential to incorporate solar pv panels and further reduce reliance on less sustainable forms of technology therefore not being adaptable to climate change contrary to the requirements of Policy SD3 of the JCS.

As such, the proposed development would be contrary to Strategic Objective 6 and Policy SD3 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (Adopted 2017), and paragraph 8c) and sections 2, 12 and 14 of the National Planning Policy Framework 2021."

- 5.4 The Applicant, Miller Homes Ltd, subsequently appealed the decision, which was submitted in October 2022. This appeal, like the application, was subject to a Secretary of State Recovery. The appeal was heard at a one-day hearing held at Cheltenham Municipal Offices on 4th July 2023 and the Inspector's report was sent to the Secretary of State (SoS) on 11th October 2023. The Appellant was advised that a decision would be issued by the SoS by the 10 January 2024, however, a letter issued on 9th January advised that a decision would now not be issued until Thursday 7 March 2024. This was some 72 weeks following submission of the appeal and 3 years, 5 months following submission of the application.
- 5.5 During the course of the appeal, the Appellant updated its Energy and Sustainability Statement to confirm that solar PV panels would be provided on all units and no gas boilers would be installed in the development. As a result, the Council confirmed at the hearing that these measures addressed the RfR and it no longer raised objection to the proposals.
- 5.6 During the appeal hearing, the Appellant drew attention to the package of benefits associated with the proposal, including the delivery of 140 affordable units (40%) and the delivery of 350 dwellings in an authority with a woefully poor housing delivery record and its consistency with the Cheltenham Local Plan, as advised in the Officer Report (**Appendix L**). The Inspector and Secretary of State both endorsed these benefits and the consistency with the development plan: see notably DL25, DL29 and DL34.
- 5.7 On 27 February 2024, the Secretary of State issued his decision letter for the recovered application, which also included a copy of the Inspector's recommendation and their decision letter. The full decision letter is appended to this submission (**Appendix A**). The Secretary of State agreed with the Inspector's recommendation that the appeal should be allowed, and that planning permission should be granted. We would draw particular attention to DL15 (citing MD4), DL25 (housing benefits very significant and to be attributed substantial weight) and DL31 (compliance with the adopted development plan for the purposes of section 38(6) PCPA 2004). The Secretary

of State also accorded very limited weight to the Neighbourhood Plan, noting the objections to its policies (including LWH4): DL13-14.

5.8 Now that permission has been granted the policies of the LWHNP cannot be introduced in any way that would undermine the implementation of development on this strategic site as approved by the Secretary of State.

5.9

6 RESPONSE TO THE BASIC CONDITIONS STATEMENT

- 6.1 A Basic Conditions Statement ('BCS') has been submitted by LWHPC as required by the Neighbourhood Planning Regulations. Paragraph 9 of the BCS claims:

"The Neighbourhood Plan has been prepared having regard to national policies, in particular those set out in the National Planning Policy Framework (NPPF 2023) and the National Planning Practice Guidance (NPPG) suite. It is contended that the neighbourhood plan accords with the core Planning Principles at the heart of the NPPF."

- 6.2 The BCS has been structured largely by policy and considers each draft policy against each criteria. Nonetheless, this section of the submission provides an over-arching response to the BCS, in light of the housing issues highlighted in the previous section. The response here focuses on three of the basic conditions criteria; (a) having regard to national policies and advice contained in guidance issued by the Secretary of State; (b) contribution to the achievement of sustainable development; and (d) general conformity with the strategic policies contained in the development plan.
- 6.3 The next section (section 5) provides more detailed response on the basic conditions statement in respect of individual draft policies in the LWHNP.

a) Having regard to national policies and advice

- 6.4 Paragraph 9 of the BCS states:

"The Neighbourhood Plan has been prepared having regard to national policies, in particular those set out in the National Planning Policy Framework (NPPF 2023) and the National Planning Practice Guidance (NPPG) suite. It is contended that the neighbourhood plan accords with the core Planning Principles at the heart of the NPPF." (RPS emphasis)

- 6.5 The BCS (Table 1) makes reference at various points to certain elements of national planning policy, largely those aspects of national policy LWHPC consider most relevant to the draft policies. However, basic condition (a) is not expressed so as to relate solely to the specific policies proposed, but simply whether the LWHNP has had 'regard to' national policy and advice.
- 6.6 Notably, NPPF paragraph 13 advises that neighbourhood plans should support the delivery of strategic policies contained in local plans and should shape and direct development that is outside of these strategic policies, in the context of the application of the presumption (in favour of sustainable development) in plan-making terms. Crucially, NPPF paragraph 29 advises that neighbourhood plans should not promote less development than set out in the strategic policies for the area or undermine those strategic policies. These aspects of national policy are not referred to or reflected on in the BCS (or the LWHNP).
- 6.7 Furthermore, the LWHNP largely ignores those housing issues affecting the area, as identified in the previous section, which are currently impacting on the delivery of housing across the Borough. It is incumbent on the LWHNP to have 'regard to' national policy and advice as it relates to the

provision of housing, notably NPPF paragraph 60 and the Government's objective to significantly boost the supply of housing, and paragraph 11a which requires all to seek to meet the development need of their area (in this case, Leckhampton with Warden Hill Parish). Again, these aspects of national policy are not referred to or reflected on in the BCS (or the LWHNP).

- 6.8 Despite these national policy stipulations, what is clear is that national housing policy, or the implications of it for the LWHNP, has effectively been ignored in the BCS and in particular under criteria (a). This is important because, as will be explained in the next section of this submission in relation to draft Policy LWH4 (and arguably draft Policy LWH5), the LWHNP is not only ignoring national policy but is actually working against the significant boosting of housing supply. It will be shown that the LWHNP seeks to insert local policies that would reduce or restrict the developable area of a site allocation (MD4) adopted through the Cheltenham Borough Plan.
- 6.9 On these grounds, the LWHNP clearly has had no regard for national policy and the requirement that neighbourhood plans must not promote less development than currently proposed in the development plan. The LWHNP does not meet the basic conditions under criteria (a).

d) Contributes to the achievement of sustainable development

- 6.10 Paragraph 11 of the BCS asserts the NDP will:
- '...serve an economic, social and environmental objective and seeks to balance them....'* (RPS emphasis)
- 6.11 Table 2 of the BCS provides the detailed of the sustainability assessment carried out by the LWHPC.
- 6.12 RPS disputes this assertion, largely because housing is only referred to once (in the context of home-working) in relation to this criteria, but which forms a key element of the 'social' objective of sustainability more generally. In particular, NPPF paragraph 8b states:
- "b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being;"* (RPS emphasis)
- 6.13 It cannot be said in reasonable terms that any assessment of the contribution towards or achievement of sustainable development is acceptable without any meaningful consideration of the benefits to be gained from facilitating and supporting the delivery of new homes for local communities. The only logical conclusion to draw here is that the LWHPC sees no role for the LWHNP in supporting this aspect of social sustainability.
- 6.14 Again, this is important because, as will be explained in the next section of this submission in relation to draft Policy LWH4 (and arguably draft Policy LWH5), the LWHNP is working against the achievement of sustainable development by seeking to reduce or restrict the developable area of a

site allocation (MD4) adopted through the Cheltenham Borough Plan. The BCS is not 'balanced' and thus the LWHNP does not meet the basic conditions under criteria (d).

e) General conformity with the strategic policies in the development plan

- 6.15 Paragraph 13 of the BCS asserts that: "...*The Leckhampton with Warden Hill Neighbourhood Plan adds local detail in support of the higher tier policies and does not conflict with or undermine them...*". (RPS emphasis)
- 6.16 RPS disputes this assertion in the strongest terms. Table 3 of the BCS provides an assessment of 'general conformity' of the draft policies under this criteria. At no point in the assessment does the BCS recognise the overall development needs of the area and that these needs are to be met through 'district plans', including the Cheltenham Plan (under JCS Policy SD1) and that part of those development needs will be met within the administrative boundary of Cheltenham (under JCS Policy SD2). Similarly, there is no recognition that the MD4 site will help to address the housing problems (notably, the affordability of housing) through the provision of affordable housing or how the LDWHNP will support its delivery. This again demonstrates the scant regard to addressing housing-related needs of the Borough as a whole, evidenced by a neighbourhood planning process that has sought to limit and restrict the delivery of an allocated site identified within the LWHNP area.
- 6.17 By contrast, the assessment under this criteria (e) are full of references to strategic policies on green infrastructure and valued landscapes which, whilst important, should nonetheless be balanced alongside those strategic policies and related district plan policies that seek to promote the development needs of local communities. The lack of any meaningful consideration of those strategic policies relating to housing further supports the contention that the LWHNP seeks to restrict and thus undermines the delivery of those strategic policies, contrary to what the BCS claims. In overall terms, it cannot be said that the LWHNP is in general conformity with the strategic policies of the development plan, including the housing requirements of Cheltenham. The BCS thus is flawed and thus the LWHNP does not meet the basic conditions under criteria (e).

7 ASSESSMENT OF SPECIFIC POLICIES AGAINST THE BASIC CONDITIONS

- 7.1 This section of this submission concentrates on the pre-submission draft policies LWH2, LWH3, LWH4 and LWH5 of the LWHNP and whether they meet the basic conditions under paragraph 9 of Schedule 4B of the Town and Country Planning Act 1990. RPS takes each policy in turn. In preparing the submissions, RPS also reflects on the LWHPC's consultation responses to the previous representations submitted on behalf of Miller Homes as part of the pre-submission (Regulation 14) consultation in 2023. The LWHPC's Consultation Responses are set out in Annex 1 of the LWHNP.
- 7.2 We shall refer to the Inspector's and Secretary of State's findings at a number of points. These are highly material considerations as findings of a parallel statutory process, similar to the situation in *R(Stonegate Homes) v Horsham BC* [2016] EWHC 2512 (Admin) (**Appendix J**). In that case, the decision to send a Neighbourhood Plan to referendum was quashed on various grounds including a failure by the plan-makers correctly to have regard to earlier findings of an Inspector at appeal in respect of various matters relating to transport and sustainability, as part of the assessment of reasonable alternatives in the SEA process (see [47]-[78]) and a lack of evidential foundation for conclusions (see [80]-[84]). It was identified that the s78 Inspector's findings were relevant to the neighbourhood plan process. The situation in the instant case is different in that the Neighbourhood Plan was prepared before the decision – but the core point remains the same, the Inspector and Secretary of State have made a number of findings on technical and environmental matters that make clear that there should be no policy constraint within the Application Site of the kinds that are requested for deletion below.
- 7.3 A parallel point is that the Appeal Proposal has been identified as in accordance with the strategic policy MD4 by the Secretary of State. It is therefore now even clearer that there should be no constraint on the delivery of this strategic allocation of the kinds proposed in the LWNP and identified below. As was noted at Regulation 14 stage, the policy content affecting land within the Site should have been strictly limited. Whilst the Parish Council have made attempts to qualify the wording, this still does not reflect NPPF 13 and 29 and the PPG and therefore continues to breach the basic conditions 8(2)(a), (d) and (e).

Policy LWH2 Transport Plan, Walking and Cycling

- 7.4 The draft policy is presented in two sub-sections; Transport Plan and Walking and Cycling Community Priorities. This broadly follows the same approach as the pre-submission version of the policy.

Transport Plan

- 7.5 The first paragraph of the draft policy states:

“Leckhampton with Warden Hill Parish Council will seek to work with all those with a role in creating, managing and responding to traffic growth in the local environment of Leckhampton with Warden Hill to actively promote sustainable transport measures set out in the Transport Plan in Appendix 1 including:

- The development of better walking and cycling connections and cycle racks at key destinations*
- Improved traffic management including lower speed limits.*
- Reallocation of priority on highways to cyclists and pedestrians.*
- Support for the retention of key local facilities serving local people on foot.*
- Better provision and distribution of public transport routes, services and stops.” (RPS emphasis)*

- 7.6 As stated in paragraph 54 of Annex 1, LWHPC has correctly recognised that they cannot impose a “requirement” on any applicant, especially when they have not carried out any assessment work of their own. Nonetheless, it is essential that the text of policies is as clear as possible, to meet the expectations of national policy (paragraph 16), which states:

“(d) contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals...

(f) serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area (including policies in this Framework, where relevant).” (RPS emphasis)

- 7.7 The addition of the text to the effect that the LWHPC will “seek to work with” does not remove the difficulties identified before. It simply renders the proposed modified policy unclear, in a manner that would cause confusion in respect of future applications.

- 7.8 That is because the text also does not actually serve any clear planning purpose – these are simply aspirations. In accordance with standard neighbourhood plan practice, where Parish Council want to record an aspiration, this needs to be taken outside of the policy text and ideally placed in an Annexe (e.g. “Community Aspirations”), such that it will have no effect for the purposes of s38(6) of the Planning and Compulsory Purchase Act 2004. The policy continues to breach NPPF 16(d) and (f).

- 7.9 The policy text also continues to duplicate Policy SD4(vii) of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (“JCS”). There has been no change to the five sustainable transport measures. The same ambiguity remains. Again, this would threaten delivery of the MD4 allocation, which is wholly contrary to paragraphs 16 and 29 of the NPPF, and so **breaches basic condition 8(2)(a)**.

- 7.10 Furthermore, the draft policy text under the transport plan sub-section (and Appendix 1 of the LWHNP) pre-dates and does not take into account of the transport infrastructure provision secured

under the planning permission now granted on the MD4 allocation, and on which the Secretary of State and Planning Inspector concluded, at paragraph 21 of the decision letter, that:

“21. For the reasons set out in IR121-126 the Secretary of State agrees with regards the site location there are currently reasonable alternatives available to the private car (IR125). As such he finds no conflict with the Framework, which promotes the active management of patterns of growth to focus on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. He agrees with the Inspector that the proposed development would be in an accessible location and there would be no conflict with JCS Policy INF1 (IR126).” (RPS emphasis)

- 7.11 Any such referencing to sustainable transport measures in the policy should be indicative only and must be in accordance with, and no more onerous than, the transport infrastructure provision secured through the MD4 application.
- 7.12 On this basis, the appropriate course of action remains the deletion of this component from the policy text.

Walking and Cycling Community Priorities

- 7.13 The second sub-section of the policy refers to ‘*key walking and cycling routes within the Neighbourhood Area*’. the draft policy lists six such priorities (a to f).
- 7.14 As stated in representations made at the pre-submission stage, the policy text duplicates Policy SD4(vii) in seeking to promote integration and accessibility and should be deleted on this basis alone. Furthermore, there is no expression within the policy text to explain that the authors of the LWHNP had engaged with the actual proposals being delivered through the planning application, listed within the RPS submissions. This remains the case.
- 7.15 Given the existence of the MD4 allocation (which has made provision for routes within the Site) the LWHNP cannot require the approval of any application to be made dependent on the provision of so-called “community priorities”. That is correctly accepted by LWHPC at paragraph 58 of their consultation response. However, simply saying that these will be “supported” does not fully address this defect.
- 7.16 Similarly, the text of the consultation response at paragraph 58 raises more concerns that it resolves. It is expressly accepted that the wording “*identifies community priorities in a general way*” without reference to either funding or delivery. There has been no technical assessment or consideration of financial implications. The objective is purely aspirational and not a matter that can properly be placed within policy wording.
- 7.17 Furthermore, Figure 10 of the LWHNP illustrates seven priorities for ‘*Improved walking and cycling connections*’ within the LWHNP area. It is not clear how these priorities are related to the six key walking and cycling routes listed in Policy LWH2, or what their status is intended to be in policy terms. Any such referencing to new or improved ‘routes’ in the policy and shown (by the arrows)

on Figure 10 should be 'indicative' and must be in accordance with and no more onerous than the transport infrastructure provision secured through the MD4 application.

- 7.18 For all these reasons, Policy LWH2 **remains in breach of basic conditions 8(2)(a), (d) and (e)** and at the present time, the only appropriate course of action would be its deletion.

Policy LWH3 Managing and enhancing Local Green Space

- 7.19 The second paragraph of draft policy LWH3 states:

“Landscaping, planting, biodiversity mitigation and net gain, and pedestrian/cycle access proposals associated with proposals for new development on sites adjoining the Local Green Space should have regard to the history, landscape and rural nature of the Local Green Space and to management and improvement objectives developed for the Leckhampton Fields Local Green Space.” (RPS emphasis)

- 7.20 RPS has previously requested, through the pre-submission (Regulation 14) consultation process, that this policy be deleted from the LWHNP. The policy has been retained in the pre-submission version of the LWHNP, unchanged.

- 7.21 For reference, the LWHPC's Regulation 15 consultation response (paras 62-67 at Annex 1) on this matter is provided, below:

“62. Response - Under the NPPF, Local Green Space is designated according to criteria set out in para 102. Subsection (b) says that the green space should be demonstrably special to a local community and hold a particular local significance, recreational value, tranquillity or richness of wildlife. The mechanism set out in the NPPF for the management and control of development within Local Green Space is set out in paragraph 103 where it says policies for managing development with a Local Green Space should be consistent with those for Green Belts.

63. Counsel Opinion provided in support of Miller Homes response to the Regulation 14 NDP consultation refers to the Lochailort Investments Limited challenge to Mendip District Council over the making of the Norton St Phillip NDP. In this case, NDP policy sought to protect Local Green Space from all development. The key ruling in the case established that it is possible (in principle) to deviate from NPPF policies, provided that the approach is justified in the NDP. The NDP had not done this and it was on this ground only that the NDP was quashed. The legal position in relation to this ruling has therefore been overstated.

64. The reasons for designating Local Green Space are not the same as the reasons for designating Green Belt. The purpose of Local Green Space is not the same as the purpose of Green Belts. Managing development solely in accordance with Green Belt policies is not ‘job done’ when it comes to Local Green Space – Green Belt around towns and cities is often poor quality. Demonstrably, Local Green Space is used by the local community and its value has led it to be designated as such. Ensuring the value of Local Green Space is retained and where possible enhanced can be a key local concern and within scope of NDPs.

65. *The Leckhampton Local Green Space is intertwined with the Leckhampton Valued Landscape, identified and considered extensively in the formulation of the Joint Core Strategy and the Cheltenham Plan. The designation of the Local Green Space in the Cheltenham Plan 2020 sought to protect what is considered to be a central part of the Valued Landscape. What happens within the Local Green Space and adjacent to it is therefore important to the function and role of the Local Green Space and of Valued Landscape.*

66. *Adopted Cheltenham Plan policy MD4 identifies the Local Green Space as a constraint. It sets out site specific requirements for a layout and form that respects the existing rural and urban characteristics of the vicinity.*

67. *Policy GI1 of the Cheltenham Plan (below) has already designated the Local Green Space and says that the views of the local community should be paid particular attention in relation to proposals for development which affect Local Green Space. Policy LWH3 of the Draft NDP simply links these requirements to management principles set locally for the management of the Local Green Space and asked applicants to have regard to these in formulating development proposals. Given the requirements of Adopted policy MD4, the objective of seeking complementary/reinforcing approaches with adjacent developments should not be controversial.*

- 7.22 The LWHPC's response simply compounds the errors in its approach to the Court of Appeal's quashing of the neighbourhood plan decision in *Lochailort Investments v Mendip DC* [2020] EWCA Civ 1259. A copy of the full Court of Appeal judgment is appended to this submission (**Appendix J**).
- 7.23 The consultation response paragraph 63 does not correctly reflect the facts in that case. As stated before, the basis for quashing the wording which went beyond the NPPF requiring development to "enhance[e] the original use and reasons for the designation of the space." The Court of Appeal found this wording to be inconsistent with national policy [33] and the Examiner's approval of such a policy as unlawful. The consultation response paragraph 63 treats the error as an absence of explanation or justification. That is not correct, the error here is about how the policy seeks to impose requirements and constraints on land falling entirely outside the LGS.
- 7.24 The fundamental point is that the NPPF observes a very sharp distinction between land within a Green Belt and land outside it. The same applies to an LGS policy. An LGS policy, consistent with Green Belt policy, can explain what kind of development is supported and not supported within the LGS area and set a Very Special Circumstances test. It cannot seek to extend any kind of LGS or Green Belt constraint to land beyond the boundary of the LGS. That includes any requirement to "manage or improve" and the even more vague "have regard to history, landscape and rural nature" requirements.

- 7.25 The consultation response paragraph 64 is incorrect to suggest that there is any NPPF requirement to “enhance” Green Belt by actions outside of that boundary. The same position applies to an LGS.
- 7.26 Moreover, the requirement in the text is unclear regarding “...*have regard to history, landscape and rural nature...*”. That wording has not been altered following the pre-submission consultation process. The wording remains opaque and transgresses paragraph 16d of the NPPF on the need for clear and unambiguous policy drafting. The same applies to the “...*management and improvement objectives...*”. That lack of clarity risks the policy becoming unacceptably restrictive on the delivery of the strategic policies.
- 7.27 The situation is in effect very similar to the *Lochailort* attempt to “*enhance[e] the original use and reasons for the designation of the space.*”, i.e. to impose an additional requirement to “improve” land outside the LGS.
- 7.28 The consultation response paragraph 65 reference to Leckhampton ‘Valued Landscape’ does not take the position any further. Valued Landscapes have their own national policy framework, and it is impermissible to seek to duplicate or overlay that with the LGS proposed text. For the reasons set out further below, LWH5 is not consistent with the basic conditions and should be deleted.
- 7.29 The consultation response paragraph 66 reference the adopted Cheltenham Plan Policy MD4 is also in error. The policy wording merely refers to the LGS as a “Constraint”. That simply denotes that there is an area in which LGS policy (i.e. Policy GI1 and very special circumstances) will apply. It does not create any policy foundation for a more detailed Neighbourhood Plan text on land outside the LGS area. The same is true for “*take account of landscape impacts, highways issues and green space*”. That wording is expressly open. It does not state that there should be any requirement in respect of any specific LGS.
- 7.30 Paragraph 67 reference to Policy GI1 of the Cheltenham Plan is also mistaken. The wording “Development proposals that affect a designated Local Green Space” only refers to development within the LGS boundary. LWHPC’s approach that this was intended to cover land beyond that area is a misinterpretation of the text. Any such reliance on this interpretation would amount to a legal error.
- 7.31 The position remains that *Lochailort* requires LGS policies to be approached in a restrictive manner. The suggested extension of the policy effect onto adjacent land has no foundation in national policy and would be unlawful in a very similar manner to that in *Lochailort*.
- 7.32 The Basic Conditions Statement (BCS) identifies JCS Policy INF3 (Green Infrastructure) as the strategic policy (alongside CP Policy GI1) that is relevant to draft Policy LWH3. Part 1 of JCS Policy INF3 relates to the ‘*green infrastructure network of local and strategic importance*’. The land comprising the MD4 site allocation is not designated as part of any designated GI network (it is allocated for residential development. This follows the preparation and examination of both the Joint Core Strategy and Cheltenham Plan. Yet, draft Policy LWH3 seeks to influence the design and layout of proposals on the allocated site ‘adjoining’, but outside, the adopted LGS. Part 4 of

Policy INF3 specifically relates to the ‘*creation, retention or replacement of [GI] assets within a scheme*’; it does not cross-over to consideration of land that is outside the boundary of a scheme. For these reasons alone, and for the other reasons set out above, the draft policy is not in general conformity with the strategic policies of the development plan, and so fails the basic conditions.

7.33 Chapter 4 of the report prepared by HDA, appended to this submission (**Appendix C**) provides further support to the conclusions drawn above on draft Policy LWH3 and its failure to meet the basic conditions. In particular, HDA point out (at paragraph 4.7 of their report) that the management and enhancement of the LGS is not solely the responsibility of the LWHNP and would more likely rest with CBC or the landowners, again making the inclusion of this policy redundant.

7.34 Similarly, the Shurdington Road appeal Inspector concluded, at paragraph 115 of her decision, that ‘*no harm*’ would be caused to the Leckhampton Fields LGS from development on the MD4 allocation, stating:

“115. Part of the appeal site extends into the neighbouring LGS beyond the allocation in Policy MD4. However, this area would be developed as the community orchard and allotments. The area would therefore still operate as LGS. Consequently, there would be no harm caused and no conflict with Policy GI1 of the CP.” (RPS emphasis)

7.35 Clearly, this appeal decision demonstrates that the development plan policies provide sufficient protection to allow the LGS to ‘*still operate*’ as an LGS without the need for a duplicate, and wholly unjustified, policy in the LWHNP. This again brings into question the justification for another LGS policy.

7.36 For the reasons above, **Policy LWH3 breaches basic conditions 8(2)(a), (d) and (e).** The only appropriate and lawful response is the deletion of the whole policy from the LWHNP.

Policy LWH4 Green Infrastructure

7.37 The draft policy states:

“The roles and functions of existing green infrastructure identified in Figure 12 and Appendix 2 should be positively considered in new proposals for development. Where feasible, new development should contribute through onsite provision to the maintenance and enhancement of local green infrastructure roles and functions.

Future objectives for the maintenance and improvement of Leckhampton with Warden Hill Neighbourhood Plan Area green infrastructure should also be supported through developer contributions where appropriate.”

7.38 RPS submitted representations at the pre-submission stage which sought to delete this policy. The draft policy has been retained and remains largely unchanged from the version consulted on at the pre-submission (Regulation 14) stage.

7.39 The LWHPC’s consultation response to these representations stated:

“82. Response - Policy MD4 of the Cheltenham Plan establishes the capacity of the allocation site as approximately 350 dwellings. The NDP does not dispute this. Policy MD4 also states that the layout and form of development on the site will need to address a number of key landscape and heritage considerations. The considerations are set out in reference to the Joint Core Strategy examination findings and previous appeal decisions on a larger scheme. Policy MD4 also sets out site specific requirements for a layout and form that respects the existing rural and urban characteristics of the vicinity.

83. In this context, it is clear that any planning application for the development of Cheltenham Plan Allocation Site MD4 must interpret and address complex and interwoven requirements set out in multiple documents published over a significant period of time. Equally, the preparation of a NDP provides an opportunity for the local community to establish which parts of its area have important local green infrastructure functions. Prior to development, these are what they are, regardless of their allocation.

84. The NDP takes the view that some areas within the allocation site MD4 perform green infrastructure functions. Indeed, it would be highly unlikely that an undeveloped area within the Leckhampton Fields Valued Landscape did not have these prior to development.

85. Three areas with green infrastructure functions have been identified by the NDP in Appendix 3 of the Draft NDP.

- Area 6 provides habitat connections through field boundary hedgerows and is affected by flood risk. This is not inconsistent with the previously submitted planning application for the development of MD4.
- Area 17 contains tree and field boundary hedgerow habitats. This is not inconsistent with the previously submitted planning application for the development of MD4.
- Area 7 contains wooded areas that are nationally recognised as important habitats and all the accompanying hedges provide connected habitats for a variety of species providing important biodiversity.

86. The policy seeks to protect the green infrastructure functions of identified areas including those above within strategic development. This is not inconsistent with Policy MD4 which requires layout and form to have regard to landscape and visual sensitivities within and surrounding the site. The identification of specific parcels within MD4 as having some green infrastructure value which should be noted and given due regard is therefore not inconsistent with policy MD4 and provides a local, non-strategic policy on the part that land within the allocation plays in meeting green infrastructure requirements in the Neighbourhood Area.”
(RPS emphasis)

- 7.40 The LWHNP and the consultation response continue to fail to address paragraphs 13 and 29 of the NPPF, and the clear emphasis that neighbourhood plans should “*shape and direct development that is outside of these strategic policies*”.

- 7.41 In practice, once a strategic designation is in place with a fixed quantum of development, then there are very significant limits on what a neighbourhood plan qualifying body can do to limit that development. The LWHPC's generalised assertion that the designation of Areas 6 and 17 (but not Area 7), identified on Figure 12 and in Appendix 2 of the LWHNP, as green infrastructure is "*not inconsistent with the previously submitted planning application for the development of MD4*" is not the correct approach. The neighbourhood planning exercise needs to consider more than simply "an absence of inconsistency".
- 7.42 In this context, the planning application and any landowner cannot be required to make "*onsite provision to the maintenance and enhancement of local green infrastructure roles and functions*" within such areas, in a manner that has (a) not been assessed either technically or in terms of viability; nor (b) properly assessed in respect of its impact on the development area, including questions of built form and access. No evidence has been provided on what the impact on the deliverability of Policy MD4 is likely to be as a result of the introduction of Policy LWH4 (and the other LWHNP policies) to demonstrate that deliverability of Policy MD4 is not undermined, as required by paragraph 34 of the NPPF. Seeking to limit development on an allocated site is also contrary to the achievement of sustainable development, which includes significantly boosting the supply of homes. This is a major flaw in the LWHNP.
- 7.43 The LWHPC also fail to squarely address that Area 7 has been specifically identified as appropriate for development through the Policy MD4 allocation. This was also recognised by the Shurdington Road (MH) appeal Inspector. It is not for the LWHNP 'after the event' to second-guess that (as in the case of *R(Stonegate Homes) v Horsham BC* [2016] EWHC 2512 (Admin) referred to above and also in Counsel's Opinion attached to the Regulation 14 representations) and to simply to state that these are "*important habitats*" and "*important biodiversity*" is not a proper application of either national policy or the basic conditions. The Shurdington Road appeal Inspector has considered the relationship between the land denoted as 'Area 7' (otherwise referred to as 'R2' and 'R3' parcels) and Policy MD4. At paragraph 109-110 of the decision letter, the Inspector concluded:

"109. I appreciate the Parish Council's reliance on the JCS Inspectors Note of Recommendations 21 July 2016 where the Inspector very specifically excluded fields R2 and R3 from the area they considered acceptable for development. Fields R2 & R3 are within an area of medium sensitivity, the development of which the Inspector considered would impact on the AONB [35]. However, the situation has moved on since that time, both in respect of the development plan position and the position on the ground.

110. The CP Inspector was satisfied, based on the evidence before them at that time, that development on the allocation would be on less sensitive land [38]. I accept that the site description for Policy MD4 refers to taking account of the JCS examination's considerations and findings [25]. However, in my view if the CP Inspector had considered that part of the allocation could not be built upon then it would have been removed from the allocation at that

time. The description also states that the site boundaries are based upon the JCS Inspector's comments in her Note of Recommendations from 21 July 2016." (RPS emphasis)

- 7.44 Considerations have also moved on since the JCS Inspector issued their interim findings in 2016, now over seven years ago. However, LWHPC has ignored the passage of time, notably it has not given any consideration, as addressed above, to more recent findings of the CP Inspector issued in 2020 (the relevant parts of which RPS has highlighted in section 3 of this submission). This does not represent a 'balanced' approach that has been informed by all relevant information, another example of the flawed approach taken in the preparation of the LWHNP policies.
- 7.45 The Basic Conditions Statement (BCS) also identifies JCS Policy INF3 as the policy of relevance to draft Policy LWH4. To reiterate, JCS Policy INF3 relates to '*existing green infrastructure network of local and strategic importance*'. The land comprising the MD4 site allocation is not designated as part of any designated GI network (it is allocated for residential development). This follows the preparation and examination of both the Joint Core Strategy and Cheltenham Plan. Had those plan processes concluded that the allocation site should be so designated, they would have done so. Yet, draft Policy LWH4 seeks to influence the design and layout of proposals on the allocated site by designating land as green infrastructure (Figure 12 and Appendix 2 - Areas 6, 7 and 17) within the Policy MD4 allocation boundary that has already been allocated for development in the Cheltenham Plan. For these reasons alone, and for the other reasons set out above, the draft policy is not in general conformity with the strategic policies of the development plan, and so fails the basic conditions.
- 7.46 HDA provides further analysis (at chapter 5 of their report) which supports the concerns outlined above regarding Policy LWH4 and those areas specifically identified as 'green infrastructure' in the LWHNP. HDA rightly highlight, at paragraph 5.2, that the proper mechanism for positively considering the retention and provision of new green infrastructure is through the planning application process and the implementation of Policy MD4 in the CP. To introduce a second level of control and regulation through LWH4 is unnecessary, making the inclusion of areas 6, 7 and 17 as shown on Figure 12 of the LWHNP superfluous.
- 7.47 HDA also highlight, at paragraphs 5.3-5.4 of their report, that green infrastructure matters were considered by the Shurdington Road appeal Inspector, who recognised in their decision letter that these areas (parcels R2 and R3 / Area 7) '*...are part of an allocation for housing (Policy MD4 of the CP)...*' and that '*...the degree of containment means that they are not prominent in local views...*' [116] and that '*...the proposal has taken onboard the JCS Inspector's finding as required by Policy MD4 as this was a key concern of that Inspector at that time...*' [117]. It is clearly the case that the *roles and functions of existing green infrastructure* can be adequately considered within the planning application process for sites allocated for housing in development plan, without the need for a further, additional layer of unnecessary policy.
- 7.48 HDA also highlight (at paragraph 5.5) that, as stated at paragraph 159 of the LWHNP the bulleted list of "*...a number of components which together have the potential to make up an important network of habitats, open spaces, green corridors and wildlife habitats...*" is already "*...covered by*

general policy protections in adopted local plans...". Thus, by its own admission, Policy LWH4 of the LWHNP is not necessary for inclusion.

- 7.49 For the reasons above, **draft Policy LWH4 and each of Areas 6, 17 and 7 should be deleted from Appendix 2 of the LWHNP as their inclusion is in breach of basic conditions 8(2)(a), (d) and (e).**

Policy LWH5 Conserving and enhancing Valued Landscapes

- 7.50 The wording for draft Policy LWH5 is provided in full below:

POLICY LWH5 – Conserving and Enhancing Valued Landscape

In conjunction with Policy LWH3 and LWH4 of this Neighbourhood Plan, where appropriate, new developments within the Neighbourhood Plan Area should satisfy the following principles to:

- a) Preserve essential features of Valued Landscape within the Neighbourhood Area, including layout of public roads, rights of way, the field pattern, vegetated character of highways.*
- b) Maintain and enhance the contribution of Valued Landscape within the Neighbourhood Area to the setting of the Cotswold AONB. Ensure new development does not significantly reduce the visual link between the Local Green Space and the Cotswold Escarpment.*
- c) Incorporate landscape and ecological improvement proposals to protect, maintain and enhance the landscape and wildlife value of watercourses, hedgerows and trees.*
- d) Focus on opportunities for biodiversity net gain from new development on improvements and extensions to priority habitats including orchards and semi-improved grasslands*
- e) Provide a sufficient level of green infrastructure to maintain the strategic role of green infrastructure in providing a green setting for Valued Landscape.*
- f) Complement management principles for the Leckhampton Local Green Space in the provision of external landscaping, planting and biodiversity enhancement, where relevant.*
- g) Consider opportunities for provision of educational signage and interpretation to improve understanding about the history and character of the Neighbourhood Area (RPS emphasis)*

- 7.51 RPS made representations on the draft policy on valued landscapes at the pre-submission (Regulation 14) consultation stage in 2023. Despite this submission, the draft policy remains largely unchanged.

- 7.52 LPHWC's consultation response (92) to the representation's states:

"92. Response - Lepus Consulting have reviewed the consultation response from Miller Homes and the Legal Opinion provided. They have prepared a Landscape Consultation Response which is set out in Appendix G. This concludes that the physical attributes of the Valued Landscape have been clearly defined and established. It also concludes that methodological approach adopted in

the Landscape Character Assessment is appropriate for consideration of the Valued Landscape with a neighbourhood plan context. For these reasons, the principal objections raised against Policy LWH5 are rejected.

- 7.53 The Basic Conditions Statement (BCS) identifies four strategic policies as relevant to draft Policy LWH5; these are, JCS Policy SD4, SD6, and SD7, alongside INF3. JCS Policy SD6, which deals with landscape matters specifically, ‘seeks to’ *protect landscape character*, and states that proposals will have ‘regard to the local distinctiveness and historic character of the *different landscapes in the JCS area*’. Policy SD7 clearly recognises that localities within the JCS area exhibit a variety of different landscape qualities. Furthermore, Policy SD7 also supports ‘*proposals for appropriate mitigation*’ as well as enhancement measures. By contrast, draft Policy LWH5 does not recognise the variety of landscape quality that exists even within the LWHNP area. This includes a complete lack of recognition that some land within the study area is already allocated for residential development (under Policy MD4) and which logically cannot form part of any valued landscape. This matter was highlighted by the Shurdington Road appeal Inspector, who stated [111]:

“111. The CP also designated much of the land to the south of the appeal site as Local Green Space ensuring that it is protected from development. While therefore the SoS found that the site formed a valued landscape at the time of the Bovis appeal, that predated the Local Plan [37]. The Local Green Space covers much of the land covered by the Bovis appeal and it is that I consider to be valued landscape at the current time.”

- 7.54 The draft policy also identifies eight separate criteria against which development anywhere in the LWHNP must adhere to in respect of valued landscapes, regardless of its status in the development plan, or its location. It is, in effect, a blanket policy that does not recognise the variety of landscape within the area. The draft policy also makes no allowance for ‘*appropriate mitigation measures*’, contrary to Policy SD7. For these reasons alone the draft Policy LWH5 is not in general conformity with the strategic policies of the development plan, and so fails the basic conditions.
- 7.55 In terms of the evidential basis for draft Policy LWH5, LWHPC’s response was in fact to commission a further ‘technical note’ from Lepus Consulting titled “Technical Note: Landscape consultation response” dated May 2023 (submitted as Appendix G of the LWNHNP). The note had two purposes:
- A response to the matters raised by HDA and set out in the RPS representations, and
 - It seeks to ‘confirm’ the approach taken to the *Landscape Character Assessment Update with and evaluation of Landscape Value*, by Lepus Consulting, dated September 2022
- 7.56 HDA has reviewed the technical note in support of their observations on draft Policy LWH5, which is provided in chapter 6 of their report. Paragraphs 6.5-6.8 of the HDA report highlight a number of flaws with the overall approach taken by Lepus in their assessment of the landscape value within the LWHNP area. Principally, HDA (at paragraph 6.5) highlights the ‘broad-brush’ approach

applied by Lepus based on considering the study area as a single large landscape character area, which does not reflect the variety in the quality of the landscape across the area. At paragraph 1.4.6 of the May 2023 technical note, Lepus maintain their view expressed in their 2022 LCA report that “...it would not be appropriate to sub-divide the study area into smaller assessment units which would erode the nature of this mosaic” of land uses....”.

- 7.57 It is important to note that the Shurdington Road (Miller Homes) Appeal Inspector heard a range of evidence on landscape matters, including the Lepus LCA Report dated September 2022. The Inspector concluded [113] (quoted at paragraph 6.8 of the HDA report):

“113. Part of the evidence for the NP is formed by a report by Lepus Consulting carried out using the LI TGN21 guidelines in September 2022 [68]. However, the report does not, in my view, undertake a detailed assessment of each of the areas of the wider study area rather finding the whole area has value. It was clear to me at my site visit that while much of the area displayed valued landscape characteristics, these were more apparent in some areas than others creating variety in the quality of the landscape across the area as found during the JCS and CP process.” (RPS emphasis)

- 7.58 The Appeal Inspector did not accept the view that the whole area (the Leckhampton study area) proffered by the Lepus LCA September 2022 report has value in landscape terms. The reasons given for why the Inspector did not agree with Lepus Consulting are broadly the same reasons put forward by HDA in the pre-submission (Regulation 14) consultation response submitted by RPS in 2023, which the LWHPC has ‘rejected’. The Shurdington Appeal Inspector’s findings on the 2022 Lepus report post-dates the Lepus May 2023 technical note. Furthermore, the May 2023 technical note does not however provide any additional landscape analysis, but simply seeks to reinforce the Lepus’ current approach that has since been discredited by the appeal Inspector at Shurdington Road. On this basis, RPS would contend that the robustness of the Lepus LCA September 2022 report, which in turn underpins the justification for Policy LWH5, must be brought into question. The landscape evidence relied upon by LWHPC is not robust or proportionate, which is a requirement of national policy.

- 7.59 Similarly, Policy MD4 has recognised that the land is to be extensively developed. Development can proceed up to the stated quantum across the Site. Its location will be controlled by the text of MD4 and the adopted development plan. It is not appropriate to insert a layer of neighbourhood plan policy requirements asserting “valued landscape” qualities, when the underlying assessment work for those is deficient methodologically and in terms of correctly interpreting the national policy requirements. The Shurdington appeal Inspector largely concurs with this view, stating:

“110. The CP Inspector was satisfied, based on the evidence before them at that time, that development on the allocation would be on less sensitive land [38]. I accept that the site description for Policy MD4 refers to taking account of the JCS examination’s considerations and findings [25]. However, in my view if the CP Inspector had considered that part of the allocation could not be built upon then it would have been removed from the allocation at that

time. The description also states that the site boundaries are based upon the JCS Inspector's comments in her Note of Recommendations from 21 July 2016.

111. The CP also designated much of the land to the south of the appeal site as Local Green Space ensuring that it is protected from development. While therefore the SoS found that the site formed a valued landscape at the time of the Bovis appeal, that predated the Local Plan [37]. The Local Green Space covers much of the land covered by the Bovis appeal and it is that I consider to be valued landscape at the current time. “ (RPS emphasis)

- 7.60 Neither LWHPC nor Lepus Consulting provide any credible evidence in support of the LWHNP that should dissuade the Examiner from concurring with the views of the CP Inspector or the Shurdington Road appeal Inspector on the extent of the valued landscape within the LWHNP area.
- 7.61 On this basis, **Policy LWH5, as drafted, fails the basic conditions 8(2)(a), (d), and (e)** because it wrongly assumes that parts of site allocation MD4 form part of the valued landscape within the LWHNP area. This is plainly not the case.
- 7.62 Again, the appropriate course of action is to modify the text to make clear that there are no valued landscapes within the Policy MD4 area or associated with it. If the LWHNP seeks to impose any such constraint on the allocation, contrary to paragraphs 13 and 29 of the NPPF then the whole policy would need to be deleted.

8 SUMMARY AND CONCLUSIONS

- 8.1 The representations set out here provide an assessment as to whether the Leckhampton with Warden Hill Neighbourhood Plan (LWHNP) meets the basic conditions under the Localism Act.
- 8.2 The key conclusion from the assessment is that the policies of the LWHNP, and thus the LWHNP as a whole, has failed to meet the basic conditions. The key points are summarised as follows:
- RPS contend that the significant under-performance in the delivery of homes in Cheltenham since 2011, and the current precarious nature of the land supply position, are relevant considerations that should be recognised and taken into account in the framing of policies taken forward in the LWHNP, in line with national policy which seeks to boost significantly the supply of housing. In this context, the LWHNDP should genuinely support the delivery of the strategic policies and other plan policies, including Policy MD4 (Leckhampton) and not put barriers in place to the delivery of those sites allocated to help meet the strategic policies (dealing with housing requirements) and which has been duly allocated through the development plan process. This unfortunately is not the case because the LWHNP seeks to apply additional restrictive criteria (in Policies LWH3, LWH4 and LWH5) that would limit the scope for delivering site allocation MD4, which clearly is an attempt to undermine the delivery of the strategic housing policies.
 - As a result, the LWHNP clearly has had no regard to national policy and the requirement that neighbourhood plans must not promote less development than currently proposed in the development plan. The LWHNP does not meet the basic conditions under criteria (a) and (d).
 - This also manifest in a lack of any meaningful consideration in the Basic Condition Statement as to those strategic policies relating to housing further supports the contention that the LWHNP seeks to restrict and thus undermines the delivery of those strategic policies, contrary to what the BCS claims. In overall terms, it cannot be said that the LWHNP is in general conformity with the strategic policies of the development plan, including the housing requirements of Cheltenham (even if there are no housing-related policies in the plan). The BCS thus is flawed and thus the LWHNP does not meet the basic conditions under criteria (e).
 - For the reasons set out in section 7 of this submission, Policy LWH2, LWH3, LWH4, and LWH5 have all breached the basic conditions. As part of the examination process, RPS recommends that the Examiner should delete these policies or, if minded to, should substantially redraft them in order that they can meet the basic conditions.
- 8.3 On this basis, MHL would request that the next stage in the examination process should involve a formal hearing on the matters addressed in this submission.