

John Slater Planning Ltd

# Lazonby Neighbourhood Plan 2014-2029

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## Submission Version

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

John Slater BA (Hons), DMS, MRTPI

John Slater Planning Ltd

[johnslaterplanning@gmail.com](mailto:johnslaterplanning@gmail.com)

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## Executive Summary

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

- The deletion of Policy D1 – General Development Principles because it is not a practical basis for decision-making.
- Rewording of Policy D2 to make it clear that there is a general presumption in favour of the development of brownfield sites, and a presumption against greenfield site development, unless supported by other policies of the development plan.
- Removing reference to mature trees in Policy D5 and instead referring to trees that contribute to the amenity of the area.
- Supporting the proposal to designate 11 areas as Local Green Space, but refining the wording of policy.
- Amalgamating two elements of policies which deal with new recreational facilities in the village.
- Removing reference to proposed and historic footpaths.
- Requiring development close to any future cycle network to contribute to the improvement of that network.
- Deleting the proposed housing allocation site at Hesket Park and The Meadows, but retaining all other housing allocations.
- Amending the threshold for windfall development on greenfield sites inside the village boundary, to 5 houses or sites under 0.2 ha.
- Removing the restriction on the occupation of converted rural buildings to only farmworkers and also removing the requirement that only buildings in a “sustainable location” are allowed to be converted to residential use.
- Removing the Infrastructure policy as it is too onerous and is not backed up by evidence which justifies the policy.

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

## Introduction

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

## The Examiner’s Role

4. I was formally appointed by Eden District Council in July 2018, with the agreement of Lazonby Parish Council, to conduct this examination. My role is known as an Independent Examiner. My selection has been facilitated by the Neighbourhood Planning Independent Examiner Referral Service which is administered by the Royal Institute of Chartered Surveyors (RICS)
5. In order for me to be appointed to this role, I am required to be appropriately experienced and qualified. I have over 40 years’ experience as a planning practitioner, primarily working in local government, which included 8 years as a Head of Planning at a large unitary authority on the south coast, but latterly as an independent planning consultant. I am a Chartered Town Planner and a member of the Royal Town Planning Institute. I am independent of both Eden District Council and Lazonby Parish Council and I can confirm that I have no interest in any land that is affected by the Neighbourhood Plan.
6. Under the terms of the neighbourhood planning legislation I am required to make one of three possible recommendations:

- That the plan should proceed to referendum on the basis that it meets all the legal requirements.
  - That the plan should proceed to referendum if modified
  - That the plan should not proceed to referendum on the basis that it does not meet all the legal requirements.
7. Furthermore, if I am to conclude that the Plan should proceed to referendum, I need to consider whether the area covered by the referendum should extend beyond the boundaries of the area covered by the Lazonby Neighbourhood Plan area.
  8. In examining the Plan, the Independent Examiner is expected to address the following questions
    - a. Do the policies relate to the development and use of land for a Designated Neighbourhood Plan area in accordance with Section 38A of the Planning and Compulsory Purchase Act 2004?
    - b. Does the Neighbourhood Plan meet the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 namely that it specifies the period to which it is to have effect? It must not relate to matters which are referred to as “excluded development” and also that it must not cover more than one Neighbourhood Plan area.
    - c. Has the Neighbourhood Plan been prepared for an area designated under Section 61G of the Localism Act and has been developed and submitted by a qualifying body.
  9. I am able to confirm that the Plan does relate only to the development and use of land, covering the area designated by Eden District Council, for the Lazonby Neighbourhood Plan, on 18<sup>th</sup> September 2014, if modified in accordance with my recommendations.
  10. I can also confirm that it does specify the period over which the plan has effect namely the period from 2014 up to 2029.
  11. I can confirm that the plan does not cover any “excluded development”.
  12. There are no other neighbourhood plans covering the area covered by the Plan designation.
  13. Lazonby Parish Council as a parish council is a qualifying body under the terms of the legislation.

## **The Examination Process**

14. The presumption is that the neighbourhood plan will proceed by way of an examination of written evidence only. However, the Examiner can ask for a public hearing in order to hear oral evidence on matters which he or she wishes to explore further or if a person has a fair chance to put a case.
15. I am required to give reasons for each of my recommendations and also provide a summary of my main conclusions.

16. I am satisfied that I am in a position to properly examine the plan without the need for a hearing.
17. I carried out an unaccompanied visit to Lazonby and the surrounding countryside on 20<sup>th</sup> August 2018. This enabled me to familiarise myself with the village and the surrounding countryside. I also visited High Hesket and Kirkoswald.
18. Following my site visit I had a number of matters on which I wished to receive further information, not just from the Parish Council and the District Council, but also from Cumbria Country Council regarding school capacity and access arrangements to Hesket Park and also from Hesket Parish Council regarding their objections to the Hesket Park proposals. That request was set out in a document entitled *Initial Comments of the Independent Examiner* dated 22<sup>nd</sup> August 2018. I received a comprehensive response in a document, sent to me by Eden District Council, on 18<sup>th</sup> October 2018.

### **The Consultation Process**

19. The original idea of preparing a neighbourhood plan, arose in October 2013, following residents' concerns within the village, regarding a planning application in Scour Lane for 48 homes.
20. An initial public meeting was held on 4<sup>th</sup> December 2013, with a follow-up meeting held on 11 March 2014. Once the parish was designated by the District Council, as a neighbourhood area, on 18<sup>th</sup> September 2014, a Steering Group was recruited at a public meeting held in November 2014. The first meeting of the Steering Group took place on 29<sup>th</sup> January 2015. They initiated the preparation of the questionnaire which was distributed to every household in the parish at the end of February 2015. 81 completed questionnaires were returned, a 20% response rate. The results were presented to a public meeting and a full analysis is set out in the Consultation Statement.
21. The Steering Group then prepared a summary of a draft plan, which was distributed, in the form of a leaflet, delivered to every household. This invited residents to a drop-in event to be held on 16<sup>th</sup> January 2016, which invited comments on the draft proposals. There was a separate consultation with statutory consultees.
22. In November 2016, a leaflet summarising the next version of the draft plan was distributed around the parish. All the documents to accompany the plan were also put into the public domain in January 2017 and a follow up meeting was held on 11<sup>th</sup> February 2017 attended by 47 residents, who were able to make comments.
23. All this activity led to the preparation of a Pre - Submission version of the plan which was the subject of a formal public consultation – known as the Regulation 14 consultation, which ran from 17<sup>th</sup> July 2017 to 27<sup>th</sup> August 2017. However, it subsequently transpired that not all the statutory consultees were consulted, as required by the Neighbourhood Planning (General) Regulations 2012, so there was a

separate six-week consultation for the statutory bodies not previously consulted and this ran from 19<sup>th</sup> February to 22<sup>nd</sup> April 2018.

24. I understand that Hesketh Parish Council was consulted at the Regulation 14 stage, when the proposal for Hesketh Park was for 35 dwellings, but they do not appear to have responded at that stage.

### **Regulation 16 Consultation**

25. I have had regard, in carrying out this examination, to all the comments made during the period of final consultation, which took place over a 6-week period, between 28<sup>th</sup> May 2018 and 10<sup>th</sup> July 2018. This consultation was organised by Eden District Council, prior to the plan being passed to me for its examination. That stage is known as the Regulation 16 Consultation.
26. In total, 11 individual responses were received. These came from Natural England, United Utilities, Gladman Developments Ltd, Highways England, Historic England, Hesketh Parish Council, Penrith Town Council, The Coal Authority, Network Rail, National Grid and Savills on behalf of Lazonby Estate Settlement 2000.
27. I have carefully read all the correspondence and I will refer to the representations where it is relevant to my considerations and conclusions in respect of specific policies or the plan as a whole.

### **The Basic Conditions**

28. The Neighbourhood Planning Examination process is different to a Local Plan Examination, in that the test is not one of "soundness". The Neighbourhood Plan is tested against what is known as the Basic Conditions which are set down in legislation. It will be against these criteria that my examination must focus.
29. The six questions which constitute the basic conditions test, seek to establish that the Neighbourhood Plan: -
- Has had regard to the national policies and advice contained in the guidance issued by the Secretary of State and it is appropriate to make the Plan?
  - Will the making of the Plan contribute to the achievement of sustainable development?
  - Will the making of the Plan be in general conformity with the strategic policies set out in the Development Plan for the area?
  - The making of the Plan does not breach or is otherwise incompatible with EU obligations or human rights legislation?

- Whether prescribed conditions are met and prescribed matters have been complied with?
- Whether the making of the Plan will have a significant effect upon a European site or a European offshore marine site, either alone or in combination with other plans and projects?

30. During the course of this examination the Government issued a revised National Planning Policy Framework. However, in accordance with the stipulation of Paragraph 214 of the 2018 NPPF, this examination has been carried out applying the policies in the 2012 version of the Framework.

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

31. To meet the basic conditions test, the Neighbourhood Plan is required to be in general conformity with the strategic policies of the Development Plan, which in this case is the Eden Local Plan, which was recently adopted on 11th October 2018. The Development Plan also includes the Cumbria Minerals and Waste Local Plan 2015-2030 adopted on 6<sup>th</sup> September 2017, but that document is not relevant to the examination of this neighbourhood plan.
32. The Eden Local Plan categorises Lazonby village as “a Key Hub” in the Settlement Hierarchy, as set out in Policy LS1. The relevant policy is Policy RUR1 which sets out an overall target of 871 dwellings to be provided across 13 key hubs of which the target for Lazonby is set at 106 new units. Policy RUR 3 deals with the reuse of existing buildings in rural areas and Policy RUR4 addresses the issue of agricultural diversification. Policy DEV 1 sets out the general approach to new development.
33. I discuss conformity with relevant policies in the neighbourhood plan in the main body of this report and in particular in the Plan Overview section.

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

34. Eden District Council prepared a Screening Report, dated July 2017 which concluded, having consulted with the three statutory consultees, that there were unlikely to be any significant effects arising from the Plan and a full Strategic Environmental Assessment (SEA) as required by EU Directive 2001/42/EC which is enshrined into UK law by the “Environmental Assessment of Plans and Programmes Regulations 2004”, would not be required.
35. The District Council, as competent authority, also at the same time, issued a screening opinion under the Habitat Regulations. The assessment concluded that

the Plan would not likely have a significant effect on the River Eden & Tributaries SAC, North Pennines Moor SAC and SPA, Moor House Upper Teesdale SAC, Cumbrian Marsh Fritillary Site SAC, Tarn Moss SAC and the Lake District High Fells SAC, which are the nearest European protected sites, either alone or in combination with other plans.

36. I did question the LPA as to whether it felt that there was a need to rescreen the Plan in the light of the “Sweetman Ruling” and they concluded that the mitigation measures proposed in their original screening, to prevent any adverse impact on the River Eden SAC, i.e. appropriate construction working practices and surface water drainage systems, were integral to the developments and are not “measures intended to avoid or reduce the harmful effects of the plan or projects on that site” and accordingly reaffirmed that, in its opinion as the Competent Authority, an Appropriate Assessment was not required.
37. I am satisfied that the basic conditions regarding compliance with European legislation are met. I am also content that the plan has no conflict with the Human Rights Act.

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

38. My examination of this neighbourhood plan has concentrated on two principal issues, namely the proposed housing allocation at Heskett Park which is well away from the settlement of Lazonby and is close to the adjoining parish of Heskett. My concern was partially prompted following the receipt of an objection from Heskett Parish Council at the Regulation 16 stage and also from my site visit. The second issue was the proposed restriction on the size of developments that could come forward on greenfield sites within the village boundary of Lazonby.

### **Heskett Park**

39. My consideration of this proposed allocation begins with the Eden Local Plan. Whilst the neighbourhood plan area covers the whole of the parish of Lazonby, the Local Plan’s overarching Locational Strategy Policy LS1, seeks to direct new development in rural areas, to what it describes as “Key Hub Settlements” which it says “will be the focus for development to sustain local services appropriate to the scale of the village and its hinterland, including new houses”. The policy then goes on to say that new housing developments within Key Hubs, on single sites will be supported so long as the size of that development does not increase the size of the village by more than 10%.
40. It is important to recognise that this strategic policy is directed at individual settlements, the actual village, rather than a parish, which appears to be the interpretation advocated by the plan’s steering group in their response to my Initial

Comments. I believe that the response misinterprets the objective of the local plan's spatial strategy which only countenances developments outside of settlements that are 100% affordable housing.

41. The Local Plan states that 871 new homes should be provided across the district in Key Hubs and, in the accompanying table, it sets out a target of 106 new homes for the village of Lazonby, of which 58 homes are either already completed or are committed. That figure of 106 also assumes 32 new units are to be delivered through windfall developments and 16 units by way of allocations. It is worth noting that the Neighbourhood Plan is proposing a much higher level of development than as sought by the Local Plan.
42. In my view the allocation of 25 houses to the Hesket Park site would not be providing for the needs for Lazonby, as acknowledged by the parish, because the site would be closer to the Key Hub of Hesket. As such I consider that this allocation would actually be more likely to be making more of a contribution to meeting the housing allocations required of Hesket (both High and Low Hesket) who jointly have a target of 70 units. Having said that the site is over a kilometre from the local primary school with the hamlet of Old Town in the intervening gap.
43. I do not consider that the Hesket Park development would, in any way, help to sustain the viability of services in Lazonby, as aspired to in Policy LS1 of the Local Plan as residents would be unlikely to use the Lazonby School or using the local shop in Lazonby or recreational facilities. It is acknowledged by all parties that any residents of a housing development at Hesket Park would send their young children to the local primary school in High Hesket, which the County Council advise me is already at capacity, before the demands are placed on it by Hesket's targets.
44. To follow the logic of the neighbourhood plan, this would be effectively transferring the impact of the housing requirements from Lazonby Village to Hesket Parish particularly with regard to the primary school.
45. I have noted the case being made, that Hesket Park is previously developed land. However, the Glossary to the 2012 NPPF defines *previously developed land* as "land which is or was occupied by a permanent structure". My reading of the situation, is that the only permanent structure on the allocation site is the large green storage building on the road frontage. I do not consider that mobile homes are permanent structures. Their installation does not constitute operational development, it is a use of the land. This is a view that is shared by Eden District Council. Furthermore, I do not consider that the whole of the mobile home site can be, in any way, considered to be part of the curtilage of the storage building.
46. My conclusion on this matter would have been different had there been actual buildings on the site, rather than mobile homes and pitches, which are covered by the Caravan Sites and Control of Development Act 1960. If this had been the case, I would have agreed with the interpretation offered by the local planning authority in their response to my Initial Comments.

47. I do not consider that the fact that there has historically been a bungalow and a restaurant on the land, is of relevance to my conclusions on this point, as I saw no evidence of those historical structures when I drove around the site. The site's authorised use is as a park for the stationing of mobile homes for holiday use (with 2 units being covered by personal and temporary consents for unencumbered residential use).
48. I appreciate the argument advanced by the Eden planners in their response, that the proposed allocation would have a closer relationship with Old Town, but is outside that settlement. In that case, I consider that the approach in Policy LS1 is that it is covered as "Other Rural Areas (Outside the Key Hubs and Small Villages and Hamlets)", where the policy is to restrict development to the reuse of traditional buildings or the provision of affordable housing. The comments of the Council's Affordable Housing Officer are that the scale of the site is not suitable site for purely affordable housing. The proposal is for a housing use with the usual 30% affordable content.
49. My overall conclusion on the proposed allocation of HS1 is that this is not a sustainable location for what is a significant residential development, and my view is that this allocation does not meet the basic condition of general conformity with the strategic policies in the Eden Local Plan. This would be a sizable development which is not related to the settlement hierarchy in the district and, in view of its location away from either of the Key Hubs, I will not be recommending that the site be retained as a residential allocation. It may well be that a planning application based on the redevelopment of the storage building and its immediate curtilage could be supported on the basis of that being the redevelopment of a brownfield site and therefore in line with the provisions of Policy D2 and paragraph 55 of the NPPF (2012). Such a proposal can be dealt with in a straight forward manner through the development management process rather than through the neighbourhood plan.
50. The deletion of this site will not affect the ability of the plan to deliver (along with commitments and completions already made) to the target for Lazonby village as set out in Policy RUR1 of the recently adopted Local Plan.

### **Scale of development within the village boundary**

51. Turning now to the second substantive matter, the scale of development that the plan allows within the village boundary. The text in Section 7.1 of the neighbourhood plan points to there being a general consensus within the community, accepting small scale development within the village. The plan's glossary defines *small development* as development of up to 5 residential units or development on the site having any area of less than 0.2 ha. Therefore, a scheme of seven units would still be considered a small development, so long as the site area is under the 0.2 ha threshold. However, that "general consensus" is not

translated into the wording of Policy H1, which refers to “the development of single dwellings will also be supported on sites not allocated in this plan that are either within the settlement boundary...”. It then goes to establish two provisos, either proposals that are within the settlement boundary or meet the conditions in Policy B2 – conversions of rural buildings.

52. However, the approach to housing within the neighbourhood plan appears further confused, as Policy D2 allows windfall developments within the village boundary for up to 3 dwellings. The final paragraph of Policy D2 as submitted, which deals with the development of greenfield sites anywhere in the plan area, also permits any “development which meets the policy requirements outlined within... the development plan, including the Eden Local Plan.” Therefore, there is a scenario whereby a single site could come forward on greenfield land within the village boundary under Local Plan Policy LS1, which increases the size of the village by up to 10% and that would be supported irrespective of the 5-year housing supply. In the case of Lazonby Village that could allow the development of around 30 units (bearing in mind the number of households in the parish amounted to 432 in 2011.)
53. It is the neighbourhood plan that has drawn the settlement boundary around the village and I do wonder as to why it has chosen to draw the boundary so as to include within the village boundary, a number of fields which are larger than the 0.2 ha and which now would offer opportunities for “rounding off” despite the text referring to a “buffer area” although there may be reasons why the land may not be suitable for development due to other constraints. I do not accept the argument that these areas offer a supply of developable land beyond the plan period, as a future review could have reassessed the alignment of the boundary, based on the housing needs at that time.
54. I am very aware of the desire expressed within the village for the issues of the “eyesore sites” and the redevelopment of brownfield sites” should take precedence over the development of greenfield sites. However, the plan is looking for windfall development to contribute 32 dwellings over the plan period.
55. I do not consider that the plan is being consistent. It recognises the role that small developments of up to 5 dwellings or developments on sites under 0.2 ha can play but then seeks to limit that development to 3 units by Policy H1 (as the Parish proposed I amend the wording to, in their response to my Initial Comments). It would be inconsistent with national policy, if development took place that did not make the most efficient use of developable land, in built-up areas. I share the concerns of the District Council about proposals coming forward for smaller number of larger units on sites which are capable of delivering more housing, including schemes which could contribute to affordable housing, so long as the site area does not exceed the threshold of 0.2 ha. I will change the figure in Policy H1 to up to and including 5 houses, in order that it makes efficient use of land and the capacity will also be contingent on the specifics of the site in any event.

## Other Matters

56. My examination has concentrated on the wording of the policies themselves, rather than the supporting text, as these will be used to determine planning applications. It is beyond my role as examiner to be making editorial changes to the Plan's supporting text, as these are not required to ensure the plan meets the basic conditions. There may be changes necessary to the supporting text and policy justifications, which are needed in the light of my recommendations, so that the plan reads as a coherent planning document. That is a matter for the Parish Council to discuss with Eden planners when preparing the Referendum Version of the Plan.
57. However, there are some subject areas, where the mapping appears to be misleading or covers matters or makes designations that should not be included in a neighbourhood plan. In this respect, Figures 7 and 8 both show "LNP designations in the parish" and includes historic and proposed footpaths. These are not neighbourhood plan designations and should be removed from the document as it implies the plan is granting a status to rights of ways that it cannot give. That is a matter covered by separate legislation. Similarly, the plan is not designating Open Access Land. These should be removed from the Map. I appreciate that these are matters that are of importance to the village and can and should be a subject that the Parish Council, in association with the County Council's Rights of Way Officer can pursue. It is important that the neighbourhood plan is a document that will be used to determine planning applications.
58. Equally Tables 3 and 4 deal with existing and *historic* rights of way as well as a *proposed* right of way. These are issues that fall outside the remit of a neighbourhood plan and including disputed matters in what will be part of the development plan, is likely to be misleading and implies a status that cannot be given. In that respect, I support the representations made by Savills, on behalf of the major land owners, whose land is affected. In the interest of clarity, I propose that Tables 3 and 4 be removed from the plan.

## The Neighbourhood Development Plan Policies

### Policy D1: General Development Principles

59. Effectively, this policy requires development to comply with other policies in the plan. That is unnecessary as under planning law, under Section 38(1) of the Planning and Compulsory Purchase Act 2004, all planning applications must be determined in accordance with the development plan, unless material circumstances indicate otherwise. As written, the policy ignores the role the Local Plan plays and implies that applications in the neighbourhood plan area only need to comply with the Lazonby Neighbourhood Plan.
60. Equally I do not consider that the second part of the policy provides the necessary clarity as to what an applicant is expected to demonstrate, when it

refers to “a sustainable approach to economic, social and environmental development of the parish in the long term.” This is not practical basis for decision making and fails to comply with the Secretary of State’s advice as to how a neighbourhood plan policy should be drafted. The Planning Practice Guidance states that a policy should be “....clear and unambiguous. It should be drafted with sufficient clarity that the decision maker can apply it consistently and with confidence when determining planning applications.”

61. The Local Plan already contains an overarching policy, dealing with General Development Principles. Policy DEV1 refers to the securing of development that “*improves* economic social and environmental conditions in the area”. It also indicates that proposals that are in line with both the neighbourhood plan and the local plan “will be approved”. This policy applies to development within the plan area already and provides a tangible expression of the overarching development principles that can be used in the determination of all planning applications.
62. As I consider that the policy does not meet basic conditions relating to Secretary of State advice, I propose that the policy be deleted, allowing decision-makers to rely upon Policy DEV1 of the Eden Local Plan.

#### ***Recommendation***

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

#### **Policy D2: Greenfield Sites**

63. There are elements of the policy that are not worded so as to be capable of being used to determine planning applications. For example, “The plan supports Eden District Council’s sequential approach to land use development”. That is a statement which sets out the background to the policy and should be part of the supporting justification. To state that “applicants coming forward... will be encouraged”. The policy should be worded in a positive manner stating that “planning applications will be approved...”
64. In terms of the policy, the policy is seeking to include a presumption in favour of the redevelopment of previously developed land i.e. brownfield sites whether they are within or outside of the village boundary. The policy then presumes against the development of greenfield sites apart from those which are allocated in the plan. The plan then allows development “in exceptional circumstances” and where there is an “absence of any suitable alternative sites”. That will always be part of the planning balance requiring an assessment as to whether material circumstances dictate other than determination in accordance with the development plan.
65. I do not consider that it is appropriate or accurate to consider all other land apart from Hesketh Park and The Princes (Eden Valley Mineral) Water Company sites as greenfield sites. There may be other sites within the plan area that meet the definition of brownfield land. I will recommend the rationalising of the policy so as to presume against the development of greenfield sites which are not covered by

other policies in the plan e.g. allocation sites, or for development which is supported by policies in the Local Plan such as agricultural buildings.

***Recommendation***

***Replace the policy with: -***

***“Proposals involving the redevelopment of previously developed land on all sites within the plan area, will be approved, subject to compliance with other policies in the development plan.***

***Proposals for the development of greenfield sites, other than as permitted by policies in this plan or the Eden Local Plan, will not be approved.”***

***Retitle the policy – “Greenfield and Brownfield sites”***

### **Policy D3: Design of New Development**

66. I commend the Steering Group for producing an excellent design guide which is capable of being the basis for consideration of design in the parish. I do not necessarily consider that the threshold for departing from the requirements of the design guide, should be “justification of exceptional circumstances”. I believe that if the applicant does not choose to follow that guidance, then it is a matter from the decision maker to assess as to whether that departure is justified.

***Recommendation***

***The second sentence of the policy should be deleted.***

### **Policy D4: Landscaping and New Development**

67. I have no comments on this policy.

### **Policy D5: Trees**

68. A neighbourhood plan policy cannot require a planning application to be accompanied by any particular document. That is the role of the Local Validation Requirements document that is prepared on the districtwide basis by the local planning authority and which needs to be regularly reviewed. The requirements for tree surveys etc. are already in place.

69. However, the aspirations of the policy can be achieved by rewording of the policy to require proposal to demonstrate the existing trees and hedges can be protected.

70. Furthermore, I have noted that the definition of mature trees in the glossary refers to “any tree that has reached one third of its expected height”. I do not know how a layman would know if a particular tree has reached that point. I consider that it is more important that the policy should only relate to those trees that positively

impact on the amenity of the plan area, rather the policy providing blanket protection to every tree in the parish.

***Recommendation***

***Delete “mature” and “(see Glossary)” and replace “of amenity value” with “that contribute to the amenity of the area” in the first sentence.***

***Replace the second and third sentence by “Any planning application for development that could affect any such trees or hedges will be expected to demonstrate how the trees, hedges and their roots will be protected during the construction and how the developer will integrate these trees and/ or hedges into the scheme, including incorporating appropriate new planting.”***

**Policy D6: Protection and Provision of Open Space, Land of Amenity Value and Local Green Space**

71. I had some concerns regarding this policy as submitted. I was concerned that it was not prescriptive enough as to which areas were to be designated as local green space, as it refers to green spaces “such as Will Pool”. It is the purpose of the neighbourhood plan policy to actually designate areas of local green space. I have now received clarification as to which sites are identified and the Parish Council has put forward the suggested rewording the policy. However, I will not just be referring to the sites, as shown on a particular map, but propose that they be designated in the wording of the policy.
72. To ensure that the policy is in line with Secretary of State advice, the protection against development on these sites should be qualified, to “other than in very special circumstances”.
73. I also sought clarification as to how each area is considered to be important to local community, having regard to the criteria set out in paragraph 77 of the NPPF (2012). Whilst there is only limited additional evidence provided I am satisfied that the areas qualify as Local Greens Space and are “demonstrably special to the community”.
74. Figure 8 refers to Site 7 as being “a proposed green space”. I am satisfied that this area of riverbank does already meet the requirements and does not need to be differentiated from other existing local green spaces. The table provided to me in response to my Initial Comments needs to be incorporated into the neighbourhood plan.
75. Finally, I felt that it would be clearer to differentiate the protection of existing open spaces from the policy covering open space etc. in new development. The Parish Council concurred with that view and this is now to be removed from Policy D6 which can now be retitled Local Green Space.

**Recommendations**

**Replace the policy with**

**“The following areas are designated as Local Green Space as shown on Map 8: -**

- **Will Pool**
- **Old Post Office/ Old School / Croglin Designs Land**
- **Land adjacent to the Parish Church**
- **Brooklyn Green Area**
- **Sports Field**
- **Bateman’s Lane**
- **Riverside, Car Park and Picnic site**
- **Coronation Gardens**
- **Community Park**
- **Swimming Pool**
- **Scaur Close Green**

**Development on these sites will not be permitted other than in very special circumstances”**

**Amend Figure 8 by removing Proposed Local Green Space and colour it as Local Green Space**

**Remove Local Green Space and Proposed Green Space from Figure 7**

**Replace Table 1 with the amended Table 1 from the LPC response to my Initial Comments but with the columns entitled “Acts of Maintenance” and “Structures on land and / or leased” removed.**

**Retitle policy Local Green Space**

**Policy D7: New Recreation and Play Areas**

76. This policy is an amalgamation of the second part of Policy D6 and the proposed Policy D7. I have no other comments to make in this regard other than to accept the proposal from the Parish Council in their response to my initial comments.

**Recommendation**

**Replace the policy with: -**

**“New recreation, amenity and play areas for the whole community will be encouraged in any new development proposals (see Policy D6 for existing green spaces). Developments of 10, or more, dwellings, or of sites of 0.5 ha, or greater, will be expected to provide an area of public open space in line with the indicative quantity standards (hectares per 1000 population) set out in relation to Policy COM3 of the Eden Local Plan, with details to be agreed to the satisfaction of the Parish Council, as a part of any proposals that are submitted. The space need not be within the proposal site boundary, but should be in proximity to it.**

***As a part of this policy the following proposals have been incorporated within the plan.***

***1) Improvements to the current Sports Field (Fig 8, 5) area to include a hard surface area for netball, basketball and tennis as well as all-weather pitches to allow football and cricket to take place.***

***2) A new recreation area at the top of the village to be part of a potential further housing development on Scaur Lane (see Fig 8)."***

### **Policy D8: Footpaths**

77. As I have previously pointed out, this policy strays into areas that do not relate to the matters that can be covered by a neighbourhood plan but are covered by their own separate legislation, which is not administered by the Local Planning Authority, but rather by the County Councils as Highway Authority.

78. I can understand the aspirations of the local community to want to use the neighbourhood plan to propose new additional rights of way and their desire can be incorporated within a community aspirations section of the plan, rather than being a planning policy, that will be used for the determination of planning applications. I have also paid due regards to the representations submitted on behalf of the landowners affected by the "historic footpaths" as noted on Figure 7. I recommend that these routes be removed as they have no status in the development plan and their inclusion causes uncertainty to landowners and their tenants and potentially to future users of the neighbourhood plan, who may assume the route has a status, that is not established in law.

79. I do, however, consider that it is appropriate for the planning policy to require new development to have regard to existing rights of ways which are either within or adjacent to development sites and impose an expectation that the schemes will, where relevant, protect and or enhance the amenities and enjoyment by users of that right-of-way. I propose that Tables 3 and 4 should also be removed from the document.

### ***Recommendations***

***Delete the first paragraph from the policy.***

***Delete Tables 3 and 4 from the plan.***

***Remove from Figure 7, the two Historic Footpaths shown as 10 and 6.***

### **Policy D9: Cycleways**

80. I have sought clarification from the Parish Council of its intentions regarding this policy, as I was concerned that the wording regarding "the legibility" of the network was somewhat unclear. In its response, it pointed out that there is no cycleway network in the parish, but that there is a desire to create one. Figure 7 describes the proposed Lazonby Cycleway which is a route that appears to be

entirely on roads. As such the designation is not likely to fall within the remit of a planning application. This aspiration can be included within the development plan document but not as policy for “the use and development of land”. It is perhaps a question of signage and publicity and that should be a matter for the Highway Authority.

81. I concur with the aspiration that if there are any developments that can connect with a cycle network then the opportunity should be taken, in line with national advice. I will be recommending suitable wording, although any planning obligation would have to meet the three tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010, which are repeated in Paragraph 204 of the NPPF (2012).

### *Recommendation*

***Reword the policy as follows: -***

***Any proposed residential development, which will be in close proximity to any future cycle network will be expected to connect to that network and where appropriate, will be expected to contribute to improvements to the cycle network and safe cycle parking provision.***

### **Policy H1: Housing Development**

82. If a proposal meets the requirements set out in the development plan, then it is not necessary for the development proposals to be “supplemented as necessary through up-to-date housing need surveys”. However, I can see that should housing needs in the parish change over the lifetime of the plan, if evidenced by an up-to-date survey, then there are grounds which can allow development to be approved, say on an exception site basis. I will therefore propose that the wording be amended so the two requirements are alternatives, rather than as an additional requirement.
83. I will also amend the limits of the single unit to follow the definition of small development which is five units for development or sites of up to 0.2 ha.
84. I believe that the threshold for considering the adverse impact on existing neighbours is set too low. This would allow any small adverse impact to be the basis for preventing the building of new homes. I will be recommending the insertion of “significant”, in terms of the assessing the threshold of an adverse impact.
85. In terms of the allocated sites, for the reasons I have previously rehearsed in the Plan Overview section, I am recommending that Site HS 1, Heskett Park be removed as an allocation. I also note that the proposed allocation Site HS 2 – The Meadows has not only received planning permission but that the site has been completed and occupied for two years. The numbers will count against the target of 106 for the village set out in the Local Plan and I have been advised that

the figure for completions in the table attached to Policy RUR 1 already recognises the 48 houses that have been completed as part of this development. To include it again would be double counting.

86. I have no other comments to make in respect of the other allocations other than to incorporate the recommendations of Natural England in terms of measures to prevent harm to the River Eden from any development.

### **Recommendations**

***In a) delete “statutory” and replace “and” with “or”.***

***In b) replace “Supplemented as necessary: with “As demonstrated”, insert “an” before “up to date” and replace “surveys” with “survey”***

***In the second paragraph, replace “single” with “up to 5” and add at the end “or are on greenfield sites of no more than 0.2 ha within the village boundary”.***

***In 2) insert” significant” before “adverse”***

***In the Site Allocation Table remove Sites HS1 and HS2 and amend subsequent plans.***

***Insert in the Comments and Constraints column against each remaining allocations a reference to the need for the developer to submit a Construction Method Statement and Surface Water Drainage Plan to mitigate any adverse impacts on the River Eden and Tributaries SSSI.***

### **Policy H2: Affordable Housing**

87. National advice is that applicants should not be required to enter into a planning obligation, if the matter can be covered by planning condition. In most cases, however, affordable housing contributions and related requirements to be delivered by a housing development, are included within a planning obligation. Policy HS1 of the Eden Local Plan states that “planning permission will be linked to an agreement that any affordable housing delivered will remain affordable in perpetuity and occupancy will be restricted to those in the locality as defined in Appendix 5 – Local Connection Criteria for Affordable Housing”.

88. Planning Practice Guidance refers to affordable housing being provided by planning obligations, in terms of contributions or thresholds for delivery. I therefore propose, to avoid confusion, to remove reference to control being exercised by planning conditions. These are primarily matters that are dealt with through planning negotiations to secure planning agreements, which by their nature require the consent of all parties with an interest in the land. It will also mean that the neighbourhood plan policy will be consistent with Policy HS1 of the Eden Local Plan.

***Recommendation***

***In the first sentence remove “conditions attached to the planning permission, or a separate”.***

***Delete the final sentence.***

**Policy H3: Housing for the Elderly and Sheltered Housing**

89. This policy is in two parts. Firstly, it allows for either the redevelopment of Eden Court or its extension onto the adjacent land, which is a greenfield site within the village boundary. The proposal also supports “new accommodation that complies with other policies in the plan”. I consider that it is important for elderly residents that they should be able to access local services and so the presumption is that they should be within or adjacent to the village boundary rather than new developments in more remote areas of the plan area. It is important that all proposals also have regard to policies in the local plan where it is relevant and that cover other matters not addressed in the neighbourhood plan. Throughout the plan, I will be recommending that reference is made to the policies in the development plan.

***Recommendation***

***In the final sentence replace “this” by “the development”***

**Policy B1: New Business Premises Development**

90. I have no comments to make on this policy which meets the basic conditions, apart from referring to conformity with other policies that are in the development plan.

***Recommendation***

***At the end of the first sentence, replace “this” by “the development”.***

**Policy B2: Farm Diversification and Buildings Outside Current Settlement Areas**

91. I do not think that the objectives of the third proviso - “if the buildings are for tourism purposes, clear evidence for the use can be provided” is sufficiently clear as to what the policy is requiring. I do not understand what evidence is being sought, is it demand information or market intelligence? I do not consider that evidence is necessary as the plan acknowledges that there is limited tourism activity in the plan area. I will recommend that this element of the policy be deleted.

92. Beyond that I consider that plan meets the basic conditions.

***Recommendation***

***Delete proviso 3)***

### **Policy B3: Café and A3 premises**

93. I have no comments to make on this policy, which clearly seeks to address what the community feels it is a deficiency in the village.

### **Policy B4: New Tourism Development**

94. This is a policy that encourages new tourism development. I have no comments to make other than to refer to other policies “in the development plan.”

#### ***Recommendation***

***Insert “development” before “plan”.***

### **Policy B5: Conversion of Redundant Buildings**

95. This policy seeks to restrict the occupation of redundant buildings in residential units converted to occupation only by local farm workers. The relevant Secretary of State policy is found in paragraph 55 of the NPPF (2012). This seeks to avoid isolated homes in the countryside, unless special circumstances exist and it gives four examples, including “meeting the essential needs for a rural worker (Note: not just farmworkers) to live at or near the place of work in the countryside.

96. Whilst I can see that a case can be made to allow accommodation for farmworkers’ housing, such workers have the ability to be granted planning permission for new homes in the countryside, where unrestricted homes would not ordinarily be allowed. The Secretary of State’s policy is clearly that the conversion of redundant buildings to residential use is not required to be restricted to a particular occupation. Equally national policy is not to restrict the conversion of buildings to sustainable locations, as the policy recognises that these can be isolated houses in locations where such buildings already stand. This policy as proposed, does not meet the basic conditions as it conflicts with the Secretary of State’s policy. As submitted, it could allow redundant buildings to stand empty, which is not a sustainable policy. It should also be noted that farms enjoy permitted development rights for the conversion of buildings for up to 5 small houses. This policy is also more restrictive than allowed by Policy RUR 3 of the Eden Local Plan.

#### ***Recommendation***

***Delete all of the first paragraph after “supported” in the second sentence and insert “where it will lead to an enhancement to the immediate setting.”***

### **Policy M1: Small-scale Renewable and Low Carbon Energy Schemes**

97. I have seen no evidence that justifies the requirement that “energy generating infrastructure and its installation complies with microgeneration certification scheme.” Whilst I am sure compliance is to be encouraged, being a nationally

recognised quality assurance scheme I have seen no justification to make that requirement obligatory – it would not be grounds for refusing a planning application. I propose to recommend that this requirement should be removed from the policy, but reference can be made to using the scheme is to be encouraged, in the supporting text.

98. I will also be recommending changes to the proviso 6, so as to require the imposition of a planning condition which requires the removal of the equipment rather than seeking an unreasonable expectation that “a scheme is agreed with EDC to remove the equipment, once no longer used, as soon as practical”.

#### *Recommendations*

**Delete proviso 5).**

**Delete all of proviso 6) up to “remove” and insert “The imposition of a planning condition requiring the removal of”.**

#### **Policy I1: Infrastructure Capacity**

99. I believe that it is over onerous to require all applicants to “demonstrate that there is sufficient capacity with existing infrastructure network to meet the demands of the development” irrespective of the size or type of proposed development. I consider that this can only be a matter that needs to be addressed in respect of the major developments. This policy has not been supported by specific evidence of inadequate infrastructure capacity in Lazonby. I consider that the recently adopted Local Plan Policy DEV4 – Infrastructure and Implementation, makes it clear that where development is dependent upon sufficient capacity being available in the existing infrastructure network to meet the needs of the new development, then this should be provided by the developer. I therefore propose to delete this particular policy, as it is overly onerous and has not been supported by any evidence. Concerns are already covered by the Local Plan.

#### *Recommendation*

**That the policy be deleted.**

#### **Policy I2: Parking and Traffic**

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

### **The Referendum Area**

101. If I am to recommend that the Plan progresses to its referendum stage, I am required to confirm whether the referendum should cover a larger area than the area covered by the Neighbourhood Plan. In this instance, I can confirm that the area of the Lazonby Neighbourhood Plan as designated by Eden District Council

on 18<sup>th</sup> September 2014, is the appropriate area for the referendum to be held and the area for the referendum does not need to be extended.

102. If I had recommended that Heskett Park allocation had been allowed to be retained, I would have recommended that the referendum area should have been extended to include High Heskett and Old Town, as these communities would have been impacted on the development and may not have had an opportunity to be consulted on the proposed allocations. It would have been unreasonable that residents of a village some kilometres away be allowed to vote on a substantial housing allocation, well away from their village, but the residents more closely affected by that development would not have that opportunity.

## Summary

103. I must congratulate the Steering Group and Lazonby Parish Council for preparing what is a locally distinct neighbourhood plan, which seeks to deliver on the expressed priorities of the residents of Lazonby. The plan has been examined against the backdrop of a recently adopted Eden Local Plan. The two plans will complement each other and will provide a sound basis for dealing with planning applications in the parish in the next few years.

104. I suspect the Parish Council may be disappointed that I have had to remove reference to the rights of way issues, which clearly was a reflection of views put forward by local residents. However, these are matters which are covered by separate legal procedures and it must always be remembered that the purpose of a neighbourhood plan is to write policies which are used for the determination of planning applications.

105. I appreciate any neighbourhood plan is a reflection of the wishes of the community and I have tried to retain as much of those aspirations as possible, but I have in a number of areas had to make recommendations for modifications which will ensure that the plan does meet the legal requirements – especially the basic conditions. Two of these have been in the forefront of my mind, namely the need to be in general conformity with the strategic policies in the Local Plan and also having regard to the Secretary of State policy and advice. Nevertheless, I believe that the plan that will emerge from this examination will be recognisable to the plan that was submitted.

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

John Slater Planning Ltd

**107. I am therefore delighted to recommend to Eden District Council that the Lazonby Neighbourhood Plan, as modified by my recommendations, should now proceed to referendum.**

JOHN SLATER BA(Hons), DMS, MRTPI

John Slater Planning Ltd

12<sup>th</sup> December 2018