A: Changes to the Draft Island Planning Strategy as a result of Corporate Scrutiny Committee recommendations of 12 March 2024

On 12 March 2024, Corporate Scrutiny Committee resolved the following:

'That the Cabinet Member for Planning, Coastal Protection and Flooding reconsiders the timeliness of signing off Section 106 agreements and aspects relating to the use of council owned sites for socially affordable homes for rent.'

The following changes are proposed to address these two points:

1. Addition of the following sentence within Appendix 3 of the Draft IPS (Site specific requirements) to all IOW Council owned allocations (HA002, HA031 (part), HA037, HA044, HA080 & HA084):

'As the site is owned by the Isle of Wight Council, the council should seek to bring forward the land through an appropriate council housing delivery vehicle that maximises the number of social homes affordable to island residents.'

2. Revision to paragraph 6.38 that supports policy G5 'Ensuring planning permissions are delivered' to read (new text underlined):

6.38 To help ensure that proposals for development are implemented in a timely manner, the council will consider imposing a planning condition providing that development must begin within a timescale shorter than the relevant default period, where this would expedite the development without threatening its deliverability or viability. Any delays will take account of the preparation of S106 legal agreements. The local planning authority considers that where a planning obligation, such as a Section 106 agreement, is required it should be completed in a timely manner. Should Planning Committee resolve to approve a planning application and the obligation has not been completed within six months of the resolution, the decision may be referred back to Planning Committee for reconsideration.

B: Changes to the Draft Island Planning Strategy as a result of Full Council 20 March 2024

On 20 March 2024, Full Council resolved the following:

'That the DIPS is returned to cabinet with a request that cabinet considers the matters set out below and returns the DIPS not later than the end of April to Full Council with the said matters included in a revised DIPS or alternatively cabinet shall inform Full Council of the reasons why the said matters are in its opinion unsuitable to be included in a revised version of the DIPS.'

The table below sets out (a) the five matters agreed in the Full Council motion, (b) comments/requests for clarification sent to Cllr Spink on 21 March 2024, (c) further clarifications provided by Cllr Spink on 2 April 2024, (d) commentary from Michael Bedford KC (further advice was sought following the Full Council motion, a copy of which is attached as Annex A to this Appendix) and (e) any proposed changes to the Draft IPS.

(a) Matters to be discussed	(b) Comment / clarification request to Cllr Spink	(c) Further clarification from Cllr Spink (2.4.24)	(d) Commentary from Michael Bedford advice (2.4.24)	(e) Agreed change or reason why unsuitable
i). Paragraph 6.15 is amended as in red below, The location of a potential development site within a settlement boundary is the first test in establishing the suitability of a site, in principle, for development. Once this principle is established more detailed issues covered by other policies in the Island Planning Strategy such as design, density and potential impact on the surrounding area and the environment are considered. If, on the planning balance, the development proposal is unacceptable in relation to these detailed issues it will be refused. Therefore, in this respect, both a sites allocation in this Plan together with due consideration by the Planning Committee of other relevant policies (within this Plan and the NPPF) shall be	For the avoidance of doubt the whole draft is not accepted in current form and will be considered. We will revert via cabinet process with comment or drafting options.	**Overview:** **The proposed amendments represent the democratic will of Full Council, including the Executive Leader and the Cabinet Member for Planning, both of whom accepted the amendment to their motion and voted in support. In the circumstances cabinet should accept the amendments.** **The comments below are made in light of the above.** **Para 6.15 DIPS** If para 6.15 is not amended the principle of development re allocated sites will be determined by the allocation process and the adoption of the DIPS. At the last meeting of Cabinet, the Leader, in the presence of the Cabinet Member for Planning, said that it was not the intention of the council to restrict planning committee in this	*Extract paragraph 23:* *'…the first element is saying that the decision maker (i.e. the Planning Committee) dealing with a proposal on an allocated site will also need to give "due consideration" to other relevant policies, both in the IPS and in the NPPF, before granting permission.* *This is an unnecessary change in relation to the policies of the IPS because Policy H2(d) already requires that, for allocated housing sites, proposals must show how the development will be delivered in accordance with "all other relevant policy requirements set out in this plan".'* *Extract paragraph 26:* *'The suggested wording is also inappropriate in so far as it suggests that the fact that a site is allocated "shall not alone constitute a material consideration".*	**Proposed change (new text *in red*):** Following further correspondence with Cllr Lilley on behalf of the Liberal Democrat group, paragraph 6.15 is proposed to be replaced with the wording below for clarity: *6.15: It is important to set out that any planning application submitted including those on allocated sites, should consider all relevant policies of the Development Plan, the NPPF and any relevant legislation. While the plan has sought to avoid a lot of cross-referencing within policies, it is acknowledged that many of the policies in the plan are interlinked and therefore no one policy should be considered in isolation. If, on the planning balance, the development*

required in order for planning permission to be given i.e. a sites allocation in this plan shall not alone constitute a material consideration in the decision of whether to give planning permission.		way. He further stated that that planning committee should be the decision maker.	*Clearly, the allocation has to be a material consideration, because that is the very purpose of a site allocation policy.'*	*proposal, including all allocated sites, is unacceptable it will be refused.*
ii). Windfall sites should only be 'allowed' in wider rural area if they qualify with policy re rural exception, infill, first home exception, self and custom build, or new homes sites.	The statement provided is not considered contentious. It is believed this is sufficiently covered within the draft IPS P1.10 and 1.11 already confirms that all planning applications will be determined in accordance with the development plan unless material considerations state otherwise, as per section 38 (6) of the planning and compulsory purchase act "*If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise*."	The DIPS treats windfall sites in a category of their own. Development in the wider rural area should be limited to the categories specified in the proposed amendment.	*Paragraph 31:* *'Policy G2 does not refer to self-build and custom-build dwellings outside of settlement boundaries but Policy H10 does make provision for such development "if they meet a specific local need that has been identified." Irrespective of responding to Full Council's concerns, it would be sensible to address this apparent inconsistency of approach, presumably by adding a reference to Policy H10 as one of the exceptions listed in Policy G2.'* *Extract paragraph 32:* *'…it is not easy to see what further restriction Full Council wishes to see because any windfall site in the wider rural area (i.e. outside of the settlement boundaries) will already have to satisfy the local need requirement and the criteria set out in the listed exceptions policies.'*	**Proposed change (additional text *in red*):** **Policy G2** proposed wording addition in red to link to 'windfall sites'. Further revision for consistency to include reference to policy H10. *Outside the defined settlement boundaries, including at Sustainable Rural Settlements, proposals for housing development, which includes windfall sites, will only be supported if they meet a specific local need that has been identified and they accord with either H4 - Infill Opportunities outside Settlement Boundaries, H6 Housing in the Countryside, H7 Rural & First Home Exception Sites, H9 New Housing on Previously Developed Land or H10 Self and Custom Build.*
iii). Para 7.78 DIPS should be deleted as inconsistent	Could you clarify what you consider the inconsistency with the definition of rural	The NPPF glossary describes rural exception sites as: "**Small sites** (my	*Paragraph 40:*	**No proposed deletion. Minor word addition *in red* to 7.78 for clarity.**

with definition of rural exception sites.	exception sites with the paragraph IPS 7.78 is? What is the outcome that you are seeking with the deletion of the supporting paragraph please?	emphasis) used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. A proportion of market homes may be allowed on the site at the local planning authority's discretion, for example where essential to enable the delivery of affordable units without grant funding". Paragraph 7.78 DIPS allows for large developments to be treated as rural exception sites. This would, for example, allow more developments of similar size to Burt Close, Shalfleet, (70 houses i.e. 7x definition of a major development). This is contrary to the DIPS, para 82 NPPF, and the wishes of the Parish Council and residents. The outcome that I am seeking is for rural exception sites on the Island to comply with the DIPS, para 82 NPPF, and the wishes of the Parish Council and residents.	*I note that the NPPF definition of a rural exception site has chosen not to specify a quantitative limit for what will be a "small site", whether by site area or by dwelling capacity. The IPS glossary (understandably) takes the same approach. This would suggest it is a matter for judgment, depending on the particular local context.* *Paragraph 43:* *In addition, para 7.78 of the reasoned justification does not override the policy requirement that a rural exception site needs to be proportionate to the scale of the settlement or rural area in question. It also refers to sites of "up to 20 dwellings in total" rather than using that figure as a minimum threshold below which any and every site would be a "small site". I would accept that a scheme for 20 or so dwellings might be disproportionate to some of the smaller settlements within Policy G2, such as Wellow or Newchurch.* *To reflect this, and to avoid it being suggested that para 7.78 is seeking to oust or supplant the test in Policy H7, it would be open to the Council to add the word*	Paragraph 7.78: 'For the purposes of this policy the council considers small sites to be *generally* sites with a net gain of up to 20 dwellings in total (including market housing). In circumstances where there is a significant specific local need that has been identified and lack of supply of affordable housing, this figure could be increased if the proposal was proportionate to the scale of the settlement or rural area it was serving. Where this is proposed the council strongly advocates the use of its pre-application advice service, to ensure that all parties are clear about the issues at the earliest possible point in the process.'

			"generally" to the first sentence, so that it reads "…the council considers small sites to be generally sites with a net gain of…". However, such an addition could be seen as strictly unnecessary, given the existing reference to "up to 20 dwellings".	
iv). Allocated sites that are not policy compliant, or are contrary to a neighbourhood plan, or inconsistent with NPPF e.g. 'best and most versatile' agricultural land, should be removed from the DIPS.	Which proposed allocated sites in the IPS do you consider are contrary to neighbourhood plan, or inconsistent with NPPF? For each identified, how do you consider them contrary to the neighbourhood plan, or inconsistent with NPPF? Have you alternative allocation in mind to replace them?	Please indicate agreement in principle with the following submission: Allocated sites should be policy, neighbourhood plan and NPPF compliant. Once the above is agreed I will assist as requested; however, if the allocation process has been properly carried out (which may, or may not, be the case) the information requested should already be known by those asking the question.	*Extract paragraph 44: However, no specific sites have been identified, which makes it difficult to engage with this concern, other than at a high level.* *Extract paragraph 45: As already discussed, site allocations establish the principle of development but do not override other relevant IPS policies.* *Extract paragraph 46: I note that there are some 'made' Neighbourhood Plans covering some of the settlements on the Island. I have not reviewed those Neighbourhood Plans and so do not know whether any of the allocations are inconsistent with them.* *Even if that were to be the case, the legal position is that where two parts of the development plan conflict, priority is to be given to the most recent part of*	**No proposed change.**

			the development plan: s.38(5) PCPA 2004. Thus, an allocation in the IPS would prevail over any earlier policies in a Neighbourhood Plan. *Extract paragraph 47:* *'Whilst some NPPF policies set out strict tests…..other policies simply require matters to be brought into account (such as where there may be a loss of best and most versatile agricultural land, which would need to be "recognised", as explained in para 180(b) of the NPPF). I assume those policies have already been considered by the Council in selecting its proposed allocations. For the most part, they call for a planning balance to be drawn across a range of relevant factors rather than a prescriptive preclusion of particular sites or developments. Unless the Council now considers that it cannot justify an allocation, having regard to relevant policies in the NPPF, I see no good reason to remove those allocations.'*	
v). 'local need' should not be ID [identified] by use of the IoW Housing Needs Assessment as to do so would be inconsistent with policy and NPPF.	Can you please set out why this is inconsistent with: 1. the policy (and which policy) and 2. NPPF for our consideration	The DIPS seeks to concentrate the majority of the housing number assessed by the standard method within settlement boundaries. Although development in the 'wider	*Extract paragraph 52:* *'If the concern is not so much with the approach in Policy AFF1, but relates to reliance on the most recent LHNA (which was undertaken in 2022) as one*	**No proposed change.** The IPS glossary contains the following definition, which Cllr Spink has previously requested:

		rural area' may be counted against the housing requirement, development is only supported where there is shown to be an 'identified specific local need' (i.e. a local community need within the parish in which the application site is situated). The housing need assessments produced by 'Hearn' are based on the figure produced by the standard method and do not establish an additional need of the local community within the parish).	*of the data sources that Policy H5 identifies can be used to inform an alternative mix of affordable housing to the target mix in Policy H5 (which is 80% for social / affordable rent and 20% for other affordable housing products), I am not aware of any reason why the LHNA should not be used for this purpose.* *The LHNA was carried out for the Council by consultants using relevant guidance in the NPPF and the PPG to look at the nature and extent of affordable housing needs. In the absence of any specific criticisms of the contents of the LHNA, I see no reason why the Council should not use it to help make decisions arising under Policy H5.'*	**Specific local need that has been identified** - a local community need within the Parish in which the application land is sited that has been identified by a local housing needs assessment and/or surveys. Policy AFF1 contains the following text: Where local data is available for a settlement in a parish level housing needs survey, the make-up of the on-site affordable housing is expected to fully take this into account to help inform the type and mix of affordable homes secured through policies H5 and H8. Where this is not available it is expected that undertaking a local housing survey will be explored in agreement with the council and parish, town or community council and with the agreement of all parties, could be funded by the developer
		Additional Points for Consideration. G2 DIPS includes Calbourne, Shalfleet, and Wellow as 'sustainable rural settlements'. Planning applications in the above areas have been		**No proposed change** These 'additional points for consideration' did not form part of the Full Council motion agreed on 20 March 2024 and therefore have not been considered.

		found by the IoW Planning Authority, and by the Planning Inspector, not to be sustainable. Accordingly, it is wrong in principle for these areas to be listed as sustainable rural settlements. The Cabinet Member's report for Full Council was, and is, misleading for the reasons set out below. Paragraphs 59-64 refer to 'exceptional circumstances' and rely on the Advice of KC, and 'demographic work', both of which were commissioned by the council. No reference is made, however, to the existence or contents of the Advice obtained by the local West Wight Community, which severely criticised the 'Council's Advice and Demographic report'. Reports for Full Council should be balanced and fair, thus enabling a reasoned decision to be taken. It is wrong for Full Council only to be informed of one possible view.		

RE THE ISLAND PLANNING STRATEGY LOCAL PLAN

FURTHER ADVICE (4)

INTRODUCTION

1. I am asked to advise the Isle of Wight Council ("the Council") on some further matters concerning the preparation of the Island Planning Strategy Local Plan ("the IPS"). The IPS, as prepared by the Council's Cabinet, was presented to Full Council at its meeting on 20 March 2024 with a recommendation from Cabinet that the IPS be approved for publication under Regulation 19 of the Local Planning (England) Regulations 2012 (SI 2012/767), for representations to be made, as a prelude to its submission for independent examination.

2. However, Full Council raised some issues that they required Cabinet to consider and then make changes to the IPS or, if Cabinet considered the changes (or any of them) to be unsuitable for inclusion in the IPS, to explain why no such changes were being proposed, prior to the IPS being further considered by Full Council no later than the end of April 2024.

3. At the present time, there are no published draft Minutes of the Full Council decision, but I have been provided with officers' understanding of the issues that Full Council has raised.

4. Full Council was also provided at its meeting on 20 March 2024 with an Advice Note dated 15 February 2024 from Lambert Smith Hampton ("the LSH Advice Note") on housing need matters, in the light of changes made to the National Planning Policy Framework ("NPPF") with regard to guidance on when it may be appropriate to depart from the Standard Method to calculate an area's Local Housing Need ("LHN"). I am asked to advise on whether the LSH Advice Note provides an adequate basis to support the conclusions

expressed in my Further Advice (3) dated 27 December 2023 that the changes to the NPPF did not justify changing the Council's approach to the identification of LHN for the purposes of the IPS.

RELEVANT CONTEXT

5. The Council's current Local Plan is the Island Plan Core Strategy, which was adopted in March 2012, shortly before the publication of the first version of the NPPF. The Core Strategy has a plan period to 31 March 2027. Since 2018 the Council has been working on the preparation of the IPS to replace the Core Strategy. The Council's most recent Local Development Scheme ("LDS"), which was updated in February 2024, envisages that the IPS will be submitted for independent examination in August 2024, which would potentially allow it to be adopted by October 2025. However, that timetable assumed that Full Council would have endorsed the IPS (as recommended by Cabinet) at its meeting on 20 March 2024. The fact that this did not happen may cause some slippage in the timetable to adoption.

6. Paragraph 15 of the NPPF expects that *"The planning system should be genuinely plan-led"* and that *"Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for meeting housing needs and addressing other economic, social and environmental priorities; and a platform for local people to shape their surroundings."* Whilst the issue of whether a development plan is up-to-date (or not) is not simply (or even mainly) a matter of chronology, it is almost inevitable that a plan prepared well over a decade ago is unlikely to fully reflect the Island's current needs or to address the issues facing the Island in a way that reflects current policy aims and ambitions. It is also the case that the lack of a 5 year housing land supply on the Island in recent years (or failure to meet the Housing Delivery Test) has meant that the Council has not been able to apply all of the policies of the Core Strategy and many have been displaced by the NPPF's presumption in favour of sustainable development (as set out in para 11 of the NPPF). There is therefore merit in the Council achieving an up-to-date new Local Plan as soon as practicable so that a policy framework can be put in place that will

allow decisions to be genuinely plan-led, addressing current needs and priorities, and reflecting local aspirations.

7. In order for the IPS to be adopted, it will need to undergo independent examination, and the examining Inspector will need to conclude that the contents of the IPS are *"sound"* (or that the IPS can be modified so as to ensure that it is *"sound"*). Soundness will be tested by the Inspector having regard to the tests set out in paragraph 35 of the NPPF. These address whether the IPS is positively prepared, justified, effective, and consistent with national policy.

8. Thus, whilst the Council has a wide discretion in formulating the contents of the IPS, and for many planning issues there may be a number of different ways in which a desirable objective can be achieved, so allowing scope for different planning judgments on those issues, the contents of the IPS will need to meet the soundness tests to the satisfaction of the independent examining Inspector if it is to be successfully adopted. In assessing potential changes to the current draft of the IPS it is therefore necessary to consider whether those changes would improve (or would hinder) the prospects of the IPS being found to be sound. Changes that would make it harder to satisfy one or more of the soundness tests will be difficult to justify, given the timescale and resource implications of the IPS being found to be unsound and unable to be adopted.

9. Regulation 8 of the LPER 2012 draws a distinction between the *"policies"* of a local plan and the *"reasoned justification"* for those policies. Regulation 8(2) LPER 2012 requires that a local plan *"must contain a reasoned justification of the policies contained in it."* The LPER 2012 do not prescribe how the distinction between policies and their reasoned justification should be shown in a local plan, but it is conventional to set out the policies themselves in one form (such as in upper case text or in text boxes) and the reasoned justification in a different form (such as supporting paragraphs of narrative, either preceding or following the policy to which they relate. The IPS adopts the approach of having the policies in text boxes (with each policy having an

alphabetic and numeric reference followed by a title) followed by paragraphs of text to explain the purpose of and context for the policy.

10. The LPER 2012 do not generally define the content of what can be included in a *"policy"*, but Regulation 2(1) LPER 2012 does give a specific definition of a *"site allocation policy"*, which means *"a policy which allocates a site for a particular use or development".* Regulation 5(1)(b)(iv) LPER 2012 also explains the purpose of a site allocation policy and of a development management policy, which is that they *"are intended to guide the determination of applications for planning permission."* There is no definition of a development management policy, but it is clear that it is a policy that will apply to the decision-making stage on individual planning applications.

11. The IPS includes some site allocation policies in relation to specific sites for housing and employment development, including in Policies H2, KPS1 and KPS2.

12. S.19(1B) and s.19(1C) Planning & Compulsory Purchase Act 2004 require a local planning authority to identify its strategic priorities for the development and use of land in its area and to have policies to address those priorities in its development plan documents. Such policies are generally referred to as strategic policies and the IPS has chosen to use a positive tick mark to indicate which of its policies are strategic policies.

13. The Court of Appeal held in R (Cherkley Campaign Ltd) v Mole Valley District Council [2014] EWCA Civ 567 (per Richards LJ at paras 16 and 17) that the reasoned justification in a local plan is not part of a policy, that it cannot contain policy or *"trump"* policy, and it cannot contain requirements or criteria that are not to be found in the policy itself (or if such text is included it cannot be applied so as to prevent a proposal which accords with the policy from being in accordance with the development plan). Its purpose is to explain the policies and it may therefore be relevant to the proper interpretation of a policy. Thus, if a local planning authority wishes to set out criteria or requirements that are intended to be used to guide the determination of

planning applications, those matters should be set out in a policy and not relegated to the reasoned justification.

14. Having regard to these matters of general context, I now turn to the specific issues raised in my Instructions.

ASSESSMENT: ALLOCATED SITES AND SETTLEMENT BOUNDARIES

15. Policy G2 of the IPS is a strategic policy concerned with *"Priority Locations for Housing Development and Growth".* It identifies that *"The focus for sustainable housing growth is within the settlement boundaries of the island's Primary and Secondary settlements and the Rural Service Centres".* These settlements and centres are identified by name. Policy G2 also provides:

"Outside the defined settlement boundaries, including at Sustainable Rural Settlements, proposals for housing development will only be supported if they meet a specific local need that has been identified and they accord with either H4- Infill Opportunities outside Settlement Boundaries, H6- Housing in the Countryside, H7 Rural & First Home Exception Sites or H9 New Housing on Previously Developed Land."

16. Policy G2 also lists the Sustainable Rural Settlements by name. Policy G2 deals with *"Development proposals for non-allocated sites"* by requiring that they:

"1. Be located within the settlement boundaries of the Primary Settlements, Secondary Settlements and Rural Service Centres (as shown on the Policies Map); and

2. Clearly contribute to delivering the Island's identified housing need, economic aspirations or achieving Island-wide regeneration aspirations; and

3. Make as much use as possible of previously developed land in line with H9; and

4. Deliver all policy requirements of the Island Planning Strategy."

17. The draft submission Policies Map has not yet been published but I assume it will delineate the settlement boundaries for each of the Primary Settlements, Secondary Settlements, and Rural Service Centres. It appears from the supporting text in para 6.14 of the IPS that the allocated sites have been incorporated into the settlement boundaries of the settlements to which they relate.

18. Policy H2 is a non-strategic policy which addresses *"Sites Allocated for Housing".* It provides:

"The sites listed in Appendices 1 and 2, and shown on the Policies Map, are allocated for residential or residential-led mixed use development. Proposals for these sites should demonstrate how they will deliver an appropriately phased development in accordance with:

a) site specific allocation Policies KPS1 & KPS2;
b) where relevant, the site specific allocation requirements set out in Appendix 3;
c) the generic allocation requirements set out in Policy H3;
d) all other relevant policy requirements set out in this plan.

The yield identified in Appendices 1 and 2 are for indicative purposes only and the final number of homes or other development provided will be determined through the planning application process. Not every allocation has site specific requirements, and these sites will be expected to deliver a scheme that aligns with Policy H3."

19. Policy KPS1 is concerned with the former prison site at Camp Hill and Policy KPS2 is concerned with a site at Newport Harbour. Policy H3 sets out general requirements for residential or housing-led mixed use developments.

20. Para 6.15 of the supporting text states:

"The location of a potential development site within a settlement boundary is the first test in establishing the suitability of a site, in principle, for development. Once this principle is established more detailed issues covered by other policies in the Island Planning Strategy such as design, density and potential impact on the surrounding area and the environment are considered. If, on the planning balance, the development proposal is unacceptable in relation to these detailed issues it will be refused."

21. I understand that Full Council wishes Cabinet to consider supplementing this text with the following:

"Therefore, in this respect, both a sites allocation in this Plan together with due consideration by the Planning Committee of other relevant policies (within this Plan and the NPPF) shall be required in order for planning permission to be given i.e. a sites allocation in this plan shall not alone constitute a material consideration in the decision of whether to give planning permission."

22. This additional wording appears to focus on site allocations rather than on any unallocated sites, albeit both categories are dealt with by Policy G2. By setting out what *"shall be required"* before a positive planning decision can be made and specifying what *"shall not alone"* be considered when making planning decisions, it is clearly seeking to impose additional requirements on the operation of Policy G2. This is not a proper purpose for text within the reasoned justification, having regard to the Cherkley case. Thus, if the additional text were to come forward, that would need to be done by making additions to Policy G2 itself.

23. However, turning to the substance of the two changes sought, the first element is saying that the decision maker (i.e. the Planning Committee) dealing with a proposal on an allocated site will also need to give *"due consideration"* to other relevant policies, both in the IPS and in the NPPF, before granting permission. This is an unnecessary change in relation to the

policies of the IPS because Policy H2(d) already requires that, for allocated housing sites, proposals must show how the development will be delivered in accordance with *"all other relevant policy requirements set out in this plan".* Whilst there is no similar direct reference to the NPPF, Policy G1 does state that *"Planning applications that accord with the policies in the Island Planning Strategy (and, where relevant, with policies in neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise."* Not only does this reflect the statutory presumption in s.38(6) PCPA 2004, its reference to other material considerations is clearly wide enough to embrace the NPPF. Para 2 of the NPPF states that it is a material consideration to be taken into account when making planning decisions.

24. Thus, properly understood, Policy G2 already requires (in conjunction with Policies H2 and G1) the decision maker to base a decision concerning an allocated site on not only the fact of the allocation but also on the requirements of other IPS policies and any relevant policies in the NPPF. The IPS clearly has to be read as a whole. The first element of the change sought is therefore unnecessary. The second element of the change sought is effectively the converse of the first element. It is also unnecessary because it obviously follows that if other policies have to be satisfied, the site allocation will not be the only consideration when making an individual decision.

25. Whilst the suggested text does not appear to be directed at non-allocated sites, it is also to be noted that, for such sites, Policy G2(4) already requires that they *"Deliver all policy requirements of the Island Planning Strategy".* This ensures that merely being located within a settlement boundary will not suffice for a non-allocated site and all other policy requirements will need to be addressed.

26. The suggested wording is also inappropriate in so far as it suggests that the fact that a site is allocated *"shall not alone constitute a material consideration".* Clearly, the allocation has to be a material consideration, because that is the very purpose of a site allocation policy. It is to *"guide"* (but not dictate) the determination of planning applications, in accordance with

Regulation 5 LPER 2012. If by this additional wording is meant that the allocation shall not be the *"only"* material consideration, this would not be a particular problem in itself but I repeat the point that such wording is unnecessary because that position is already set out in the policies themselves.

27. If it was desired to add anything to the reasoned justification to make that point quite clear, this could be done by adding words such as *"(see in particular Policy H2(d) as regards allocated sites and Policy G2(4) as regards non-allocated sites)"* after the words *"are considered"* in the second sentence of para 6.15 of the reasoned justification. However, such an addition would only be for the avoidance of doubt because para 1.11 of the reasoned justification is already explicit that:

"It is important to set out that any planning application submitted should consider all relevant policies of the Island Planning Strategy. While the plan has sought to avoid a lot of cross-referencing within policies, it is acknowledged that many of the policies in the plan are interlinked and therefore no one policy should be considered in isolation."

28. I therefore consider that there is no need to add any further wording to this part of the IPS to explain the stance that is taken in relation to site allocations. It would not be appropriate to add the suggested wording to the reasoned justification because they are concerned with requirements for decision-making under the IPS and those requirements are already articulated in the policies themselves.

ASSESSMENT: WINDFALL SITES

29. Full Council wishes Cabinet to consider restricting windfall sites in the wider rural area to cases which satisfy IPS policies on rural exceptions, infills, first homes, self/custom build, and new homes. The glossary to the IPS defines *"Windfall sites"* as *"Sites of under 10 units not specifically identified in the development plan".* It is unclear whether Full Council had the 10 unit limit in

mind or was concerned with all non-allocated sites (other than sites with planning permission, which would be existing commitments). I have therefore assumed that the concern does not only apply to windfall sites of under 10 units but to all sizes of site. I have assumed that the wider rural area is intended to be a reference to all parts of the IPS area that lie outside of settlement boundaries.

30. As noted above, Policy G2 sets out clear restrictions on housing development outside of settlement boundaries. Such development, regardless of size, has to satisfy two criteria: (i) the development must meet *"a specific local need that has been identified"* and (ii) the development must satisfy one of the exceptions in Policies H4, H6, H7, or H9. These cover infill opportunities (Policy H4), single homes (a) for rural workers, (b) re-using a rural building, (c) re-using a heritage asset, or (d) providing exceptional design (Policy H6), development of rural exception sites or First Homes exception sites (Policy H7), or development of housing on previously developed land, meeting specified criteria where the site is outside of settlement boundaries (Policy H9). The glossary to the IPS defines a specific local need that has been identified as *"a local community need within the Parish in which the application land is sited that has been identified by a local housing needs assessment and/or surveys."*

31. Policy G2 does not refer to self-build and custom-build dwellings outside of settlement boundaries but Policy H10 does make provision for such development *"if they meet a specific local need that has been identified."* Irrespective of responding to Full Council's concerns, it would be sensible to address this apparent inconsistency of approach, presumably by adding a reference to Policy H10 as one of the exceptions listed in Policy G2.

32. If this was done, it is not easy to see what further restriction Full Council wishes to see because any windfall site in the wider rural area (i.e. outside of the settlement boundaries) will already have to satisfy the local need requirement and the criteria set out in the listed exceptions policies.

33. If the concern is that only windfall sites of less than 10 units should be permitted to come forward via this route (so applying the *"windfall"* definition in the IPS glossary), it is hard to see how this would be a justified ceiling. Policy G2 already requires that a specific local need is identified for the development and the glossary explains how that is to be done at parish level. If a local housing need assessment or survey shows that the scale of local need is for 10 units or more, it is difficult to see what the planning rationale would be for limiting the proposal to no more than 9 units, having regard to the safeguards already built into the listed exceptions policies.

34. The listed exceptions already include criteria which would regulate the scale of development coming forward. Policy H4 requires that *"the development is generally expected to be between one and three dwellings"* and that *"Any proposal which fails to respect the character of the area will be refused".* Policy H6 is limited to *"Single new homes in the countryside".* Policy H7 does not have a size limit but requires Rural Exception Sites to be *"proportionate to the scale of the settlement or rural area they are meeting an identified specific local need for"* and requires First Homes Exception Sites to be *"proportionate in size".* Policy H9 requires (on sites outside of settlement boundaries) that *"the scale and built form of any replacement reflects the scale and built form of existing buildings on site being replaced"* or if there are no buildings that the *"development does not detract from the character and setting of the area."* Policy H10 (assuming it is brought into the exceptions in Policy G2) also requires a specific local need to be identified, and whilst it does envisage that schemes of 10 or more units could come forward, it requires a cohesive design, via a plot passport or a design code, in such cases. The Council would be able to use these tools to resist development that was out of scale. In addition, Policy C1(c) requires all development to *"respect the character of the area"*, which provides a further safeguard against self-build/custom-build proposals that are of an excessive scale for their locality.

35. Consequently, I do not consider a specific numerical limit is a necessary restriction to be added to the policy approach to windfalls in the wider rural area. Any limit would run the risk of being arbitrary, especially in the context

that it would only apply in cases where there was specific local evidence of a higher level of need than that limit would allow and the development was not of a scale that it was out of character for the locality. Applying such a limit so as to exclude identified needs from being met in such circumstances would be likely to be regarded by an Inspector as not positively prepared, and not justified by the evidence, and so at risk of being found to be unsound.

ASSESSMENT: SIZE OF RURAL EXCEPTION SITES

36. As noted above, Policy H7 requires that Rural Exception Sites *"should be proportionate to the scale of the settlement or rural area they are meeting an identified specific local need for"* but no numeric limit is set by the Policy.

37. The glossary in the NPPF defines rural exception sites as *"Small sites used for affordable housing in perpetuity where sites would not normally be used for housing…"* but does not seek to circumscribe what might qualify as a *"small"* site. The IPS glossary uses the same definition.

38. Para 7.78 of the reasoned justification of the IPS, supporting Policy H7, states:

"For the purposes of this policy, the council considers small sites to be sites with a net gain of up to 20 dwellings in total (including market housing). In circumstances where there is a significant specific local need that has been identified and a lack of supply of affordable housing, this figure could be increased if the proposal was proportionate to the scale of the settlement or rural area it was serving. Where this is proposed the council strongly advocates the use of its pre-application advice service, to ensure that all parties are clear about the issues at the earliest possible point in the process."

39. Full Council has asked Cabinet to consider deleting para 7.78 of the reasoned justification on the basis that it is inconsistent with the definition of a rural exception site. I take it that Full Council's concern is that a scheme of 20 units

(or potentially more) is incapable of being consistent with the need for a *"small site".*

40. I note that the NPPF definition of a rural exception site has chosen not to specify a quantitative limit for what will be a *"small site"*, whether by site area or by dwelling capacity. The IPS glossary (understandably) takes the same approach. This would suggest it is a matter for judgment, depending on the particular local context.

41. Policy H7 applies to all land outside of settlement boundaries, being land where (in accordance with Policy G2) housing development would not normally be permitted (unless one or more of the exception policies is satisfied and there is a local need).

42. Thus, in principle, Policy H7 could (if there was evidenced local need identified) be applied to land outside of the settlement boundaries of a Rural Service Centre (such as Brading or Wroxall) or to land within or adjacent to a Sustainable Rural Settlement (such as Shalfleet or Whitwell), noting that Sustainable Rural Settlements do not have their own settlement boundaries. According to Census 2021, Brading has a population of 1,906 persons, Wroxall 1,709 persons, Shalfleet 661 persons and Whitwell 660 persons. Whilst it is a matter of planning judgment, even for the smaller of these settlements, a development of an additional 20 or so dwellings, which is likely to be achievable on a site of less than 1 hectare, could be reasonably regarded as a *"small site"*, noting the safeguard in Policy H7 that development would in any event need to be *"proportionate to the scale of the settlement".*

43. In addition, para 7.78 of the reasoned justification does not override the policy requirement that a rural exception site needs to be proportionate to the scale of the settlement or rural area in question. It also refers to sites of *"up to 20 dwellings in total"* rather than using that figure as a minimum threshold below which any and every site would be a *"small site"*. I would accept that a scheme for 20 or so dwellings might be disproportionate to some of the smaller settlements within Policy G2, such as Wellow or Newchurch. To

reflect this, and to avoid it being suggested that para 7.78 is seeking to oust or supplant the test in Policy H7, it would be open to the Council add to word *"generally"* to the first sentence, so that it reads *"…the council considers small sites to be generally sites with a net gain of…".* However, such an addition could be seen as strictly unnecessary, given the existing reference to *"up to 20 dwellings".*

ASSESSMENT: REMOVAL OF ALLOCATED SITES FROM THE IPS

44. Full Council has expressed a concern that some of the allocated sites are not compliant with IPS policies, or are contrary to neighbourhood plans, or are inconsistent with NPPF policies (such as on best and most versatile agricultural land), and that Cabinet should therefore consider their removal from the IPS. However, no specific sites have been identified, which makes it difficult to engage with this concern, other than at a high level.

45. As already discussed, site allocations establish the principle of development but do not override other relevant IPS policies. If there are development management policies that would make it difficult, in practice, to see how an allocated site could ever come forward in a way which satisfied their detailed criteria, that would be a matter that would bear on the principle of development, and it would not be desirable for the IPS to put forward such a position. An allocation which is unlikely to be achievable would not be an effective policy in terms of the soundness tests. However, policies which do not challenge the principle of the allocation, but which do seek to influence and regulate how the detailed development comes forward are not objectionable. It may well be that on some allocated sites, some parts of the site are not appropriate for built development because of environmental constraints, but unless those constraints throw into question the achievability of the allocation broadly in line with the capacity assumed in the Council's housing trajectory, this would not be a good reason for rejecting the allocation.

46. I note that there are some 'made' Neighbourhood Plans covering some of the settlements on the Island. I have not reviewed those Neighbourhood Plans

and so do not know whether any of the allocations are inconsistent with them. Even if that were to be the case, the legal position is that where two parts of the development plan conflict, priority is to be given to the most recent part of the development plan: s.38(5) PCPA 2004. Thus, an allocation in the IPS would prevail over any earlier policies in a Neighbourhood Plan. That said, it would be usual to expect any such conflicts to be identified during the preparation of the IPS so that a view can be taken on whether, as a matter of planning judgment, it is appropriate for the IPS to override the earlier Neighbourhood Plan. Regulation 8(5) LPER 2012 contains a mechanism to allow this to be done by identifying which policies of a new local plan are intended to supersede earlier policies of the development plan.

47. As regards any inconsistencies with the policies in the NPPF, it is obviously the case that the NPPF is not site-specific. It may have policies which apply to specific areas of land within the plan area (such as its policies for National Landscapes (previously AONBs) or its policies for the Heritage Coast). Other policies in the NPPF are more generic (such as its policies on heritage assets or on irreplaceable habitats). Whilst some NPPF policies set out strict tests (such as on the loss of irreplaceable habitats, which is only justified where there are *"wholly exceptional reasons"*, as explained in para 186(c) of the NPPF), other policies simply require matters to be brought into account (such as where there may be a loss of best and most versatile agricultural land, which would need to be *"recognised"*, as explained in para 180(b) of the NPPF). I assume those policies have already been considered by the Council in selecting its proposed allocations. For the most part, they call for a planning balance to be drawn across a range of relevant factors rather than a prescriptive preclusion of particular sites or developments. Unless the Council now considers that it cannot justify an allocation, having regard to relevant policies in the NPPF, I see no good reason to remove those allocations.

ASSESSMENT: THE IDENTIFICATION OF LOCAL NEED

48. Full Council has asked Cabinet to consider how local housing need is identified and has suggested that it should not be identified by use of the Local Housing Needs Assessment ("LHNA") because that would be inconsistent with policy and with the NPPF.

49. There is some uncertainty as to the extent of this concern. The concept of LHN has a particular meaning in the NPPF, much of which is related to the use of the Standard Method ("SM") (as set out in the Planning Practice Guidance ("PPG"). This issue is addressed in my initial Advice dated 22 December 2021, my Further Advice (2) dated 24 October 2022, and my Further Advice (3) dated 27 December 2023. To the extent that Full Council's concern is that the identification of LHN is inconsistent with the NPPF, this is misconceived. The Council has identified LHN by use of the SM, in line with the NPPF and the PPG.

50. The IPS does not, in fact, set out the scale of the current LHN (paras 3.15 and 7.59 report the position as at 2022 when the LHN was 665 dwellings per annum) but para 7.5 of the reasoned justification notes that it is a figure which the Council *"believes it is undeliverable by the island housing market… The plan therefore identifies a more island realistic housing requirement of 453 dwellings per annum which it believes is at the upper limits of what is deliverable by the island housing market across the whole plan period."* On a point of detail, it is likely that the LHN, derived by use of the SM, has increased slightly since my Further Advice (3) dated 27 December 2023, because new affordability ratios were published on 25 March 2024, which show worsening affordability on the Island in 2023 compared to 2022. This would not, however, change the rationale set out in para 7.5 of the IPS for setting the housing requirement below the level of LHN.

51. However, it does not appear that the calculation of the LHN is at the heart of Full Council's concern. The concern may relate more to the issue of affordable housing, where Policy AFF1 sets out a definition of affordable housing which expects greater discounts from market sales or market rents

than the minimum discounts referred to in the definition of affordable housing in the glossary of the NPPF. That definition is then used in the affordable housing policy (Policy H5). However, the NPPF definition of affordable housing does not set out maximum discounts. In relation to affordable housing for rent, it refers to a level *"at least 20% below local market rents".* In relation to discounted market sales housing, it refers to a discount of *"at least 20% below local market value".* In relation to other affordable routes to home ownership, it refers to *"a price equivalent to at least 20% below market value".* In all of these cases, the NPPF does not preclude greater discounts from being provided. Thus, if the Council has locally derived evidence which shows that greater discounts are required to make housing affordable to those persons on the Island who have a qualifying housing need, the NPPF does not preclude a policy definition that requires such greater discounts. The reasoned justification for Policy AFF1 (which precedes the Policy) suggests that the Council does have such local evidence. Whilst this is, no doubt, a matter that will be tested as part of the examination of the IPS, I see no reason why the Council should withdraw Policy AFF1 or its approach of seeking greater discounts for affordable housing. If affordable housing was only required to provide the lower discounts referred to in the NPPF definition and, if as a result such housing was not affordable to those with qualifying housing needs, then Policy H5 would not be effective because it would not deliver affordable housing to those in need, and a policy that was not effective would not be sound.

52. If the concern is not so much with the approach in Policy AFF1, but relates to reliance on the most recent LHNA (which was undertaken in 2022) as one of the data sources that Policy H5 identifies can be used to inform an alternative mix of affordable housing to the target mix in Policy H5 (which is 80% for social/affordable rent and 20% for other affordable housing products), I am not aware of any reason why the LHNA should not be used for this purpose. The LHNA was carried out for the Council by consultants using relevant guidance in the NPPF and the PPG to look at the nature and extent of affordable housing needs. In the absence of any specific criticisms of the contents of the LHNA, I see no reason why the Council should not use it to

help make decisions arising under Policy H5. The LHNA also presented figures on the LHN derived by use of the SM but (as the IPS explains) the LHN has not been used by the Council to set its housing requirement, so this aspect of the LHNA is of only background relevance.

ASSESSMENT: THE LSH ADVICE NOTE

53. The LSH Advice Note (dated 15 February 2024) looks at a range of demographic data and market signals information subsequent to the publication of the 2014-based Sub National Population Projections ("SNPP") and the 2014-based Household Projections ("HHP"), which are used to inform the SM calculation of LHN, to see whether that material might demonstrate that there are *"exceptional circumstances"* to justify the use of an alternative approach to the identification of LHN. The LSH Advice Note concludes that the material does not provide evidence of *"exceptional circumstances".* The LSH Advice Note also goes on to consider, at a high level, whether an alternative approach, which took account of demographic trends and market signals, and also allowed for past under-delivery of housing on the Island, would be likely to result in a figure for LHN that was above or below the housing requirement in the IPS. Whilst that second exercise was high level and did not set out any detailed figures, it concluded that an alternative was likely to be higher than the IPS housing requirement.

54. I am aware that the LSH Advice Note has been criticised in an Advice dated 1 March 2024 from Mr Charles Streeten, an established planning barrister, on the basis that it takes too strict a view of what might amount to *"exceptional circumstances"*, does not consider the factors it discusses in combination to see whether collectively they amount to *"exceptional circumstances"*, and omits to consider certain other factors. Mr Streeten also expresses the view that some of those factors, including the proportion of residents aged over 65, the *"volatility"* of rates of net migration, the low cost of housing on the Island (both for sale and for rent), and potentially levels of overcrowding and levels of unmet affordable housing need, could constitute or contribute to the demonstration of *"exceptional circumstances".* Mr Streeten does not seek to

address what a LHN figure would be if derived by an alternative approach to the SM but he does recognise (at para 14 of his Advice) that it might be higher or lower than the SM figure.

55. In considering these criticisms, it is important not to lose sight of the fact that the presence of *"exceptional circumstances"* (if shown to be justified) is not an end in itself. Where there are shown to be *"exceptional circumstances"*, it is then permissible (in line with para 61 of the NPPF) to use an alternative approach to the SM to identify an area's LHN. However, that does not carry with it any implication that a LHN so derived will be lower than the LHN resulting from the SM. Nor does it carry any implication that a LHN so derived will be at a level that is similar to or lower than the housing requirement proposed in the IPS. In fairness, Mr Streeten recognises this point at para 13 of his Advice when he states *"…reliance on an alternative approach is only likely to make a difference if that alternative methodology justifies a LHN figure below approx. 450 [dwellings per annum]."*

56. I do not read the LSH Advice Note as seeking to apply a different test of *"exceptional circumstances"* to that set out in the NPPF. However, this is somewhat besides the point. What matters is whether, as a matter of planning judgment, formed initially by the Council in preparing the IPS but then potentially tested by an Inspector at examination of the IPS, the demographic data and market signals information presented in the LSH Advice Note demonstrate *"exceptional circumstances".* As the plan-making authority, it is for the Council to apply that test, having regard to the terms of the NPPF and the material presented by LSH.

57. I would agree with Mr Streeten that it is necessary to look at matters comprehensively and that a combination of unexceptional matters, when viewed individually, might collectively amount to *"exceptional circumstances".* I also agree that looking at absolute figures is relevant as well as looking at relative comparisons with other local authority areas. How they are evaluated, and whether any of the information is more (or less) important or weighty than any other element, is a matter for planning judgment.

58. With regard to the proportion of elderly residents, the LSH Advice Note shows (in Tables 4 and 5) that the Island does have a high proportion of residents aged over 65, albeit that some other areas on the South Coast, including the New Forest and Dorset, have higher proportions. The LSH Advice Note does not directly address how this factor might influence the scale of housing need (differently to what is already embedded in the SM), but I note that LSH were provided with a copy of my Further Advice (3), where I posed that question (at para 21) having set out my own views (at para 20). I have inferred from the fact that para 2.1.11 of the LSH Advice Note sets out that its purpose includes addressing the points raised in my Further Advice (3) that LSH are in general agreement with my view that the age structure of the Island's population is already adequately accounted for in the SM. However, it would be prudent to ask LSH to confirm that this is indeed their position.

59. With regard to the *"volatility"* in the levels of net migration on an annual basis (as shown in Table 8 and Figure 8 of the LSH Advice Note), the variance around the years affected by the Covid pandemic would not seem to be remarkable, given the disruption to 'normal' patterns of behaviour that occurred during those years. It would seem from Figure 6 that the 2014-based SNPP have assumed a 'flatter' pattern of net migration, of about 1,000 persons per annum, than has occurred in fact, and that even with the reduced levels of net migration during the pandemic affected years, actual net migration (as shown in Figure 8) has been somewhat higher than the SNPP projections. It is hard to see any reason why this divergence would point to a reduced LHN compared to the SM (let alone compared to the housing requirement in the IPS).

60. With regard to levels of affordability, Figure 12 shows that in general terms changes in affordability on the Island are following a similar pattern to changes in both the South East and in England. Whilst the Island is more affordable in absolute terms than some other areas, including some (but not all) coastal areas in the South East (as shown by Tables 12 and 13), its affordability ratio (relative to median earnings) is poor (and has recently

worsened in the latest ONS data for 2023). It is hard to see why a poor affordability ratio would point to a reduced LHN compared to the SM (let alone compared to the housing requirement in the IPS).

61. With regard to over-crowding and unmet affordable housing need, these are matters considered in more detail in the LHNA. Figure 14 of the LSH Advice Note shows that there is considerable unmet affordable housing need on the Island. It is hard to see why this would point to a reduced LHN compared to the SM (let alone compared to the housing requirement in the IPS).

62. Whilst the Council will need to form its own view on what are ultimately matters of planning judgment, it is my view that the LSH Advice Note does support the Council's approach of not seeking to pursue an argument that there are *"exceptional circumstances"* to justify departing from the SM in calculating the Island's LHN. Nor is there any reason to consider that an alternative exercise would produce a LHN that was lower than the SM figure or lower than the housing requirement in the IPS.

2 April 2024

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RE THE ISLAND PLANNING STRATEGY LOCAL PLAN

FURTHER ADVICE (4)

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