

Report to	Planning Committee
Date	10 November 2022
By	Director of Planning
Title of Report	Making of the Lyminster & Crossbush Neighbourhood Development Plan
Purpose of Report	To make the Lyminster & Crossbush Neighbourhood Development Plan part of the South Downs National Park Authority's (SDNPA) statutory Development Plan

Decision

Recommendation: The Committee is recommended to:

- 1. Note the outcome of the Lyminster & Crossbush Neighbourhood Development Plan Referendum;**
 - 2. Agree to make the Lyminster & Crossbush Neighbourhood Development Plan part of the Development Plan for that part of the Parish within the South Downs National Park.**
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1. Introduction and Summary

- 1.1** Lyminster & Crossbush Parish Council is the 'qualifying body' with the responsibility for preparing the Lyminster & Crossbush Neighbourhood Development Plan (LCNDP).
- 1.2** The Lyminster & Crossbush Neighbourhood Area (Appendix 1) was designated by the SDNPA on the 03 January 2019 and by Arun District Council (ADC) on the 15 March 2019. The neighbourhood area is partially within the National Park, with the settlement of Lyminster outside the National Park. ADC are the lead Local Planning Authority for the neighbourhood plan.
- 1.3** Following independent Examination, the Lyminster & Crossbush NDP has been subject to community Referendum on 11 October 2022 with 87% of those that voted, voting yes.
- 1.4** The Lyminster & Crossbush NDP is now part of the Development Plan and the SDNPA are required to take a decision to formally 'Make' the Neighbourhood Plan within eight weeks of a successful Referendum, unless to do so would breach, or would otherwise be incompatible with any EU obligation or any of the Conventions Rights (within the meaning of the Human Rights Act 1998).

2. Lyminster & Crossbush Neighbourhood Development Plan 2020-2031

- 2.1** The parish of Lyminster and Crossbush covers around 590ha of mainly arable farmland on the coastal plain in Arun District. The village of Lyminster forms the principal settlement along with the smaller settlement of Crossbush.
- 2.2** The Lyminster and Crossbush NDP allocates one site for seven new homes at Land East of Lyminster Road (outside the SDNP). The LCNDP contains a series of policies addressing

local issues including development on agricultural land and dark night skies. A list of non-designated heritage assets are included in the LCNDP. The neighbourhood plan also designates three Local Green Spaces (in Lyminster).

- 2.3 The SDNPA provided comments on the draft LCNDP at Regulation 14 and Regulation 16 consultation stages. These comments were supportive of objective 3 of the LCNDP to promote better connectivity between the settlements of the parish to the National Park. The comments also highlighted the importance of paragraph 176 of the NPPF on development proposals in the setting of the National Park.

Referendum results

- 2.4 The referendum took place on Tuesday 11 October 2022 with the following results:

Turn out = 39%

Votes & % in favour = 106 (87%)

Votes & % against = 16 (13%)

3. Making of the Lyminster & Crossbush Neighbourhood Development Plan

- 3.1 The enactment of the Neighbourhood Planning Act 2017 means that a Neighbourhood Plan automatically becomes part of the Development Plan following a successful referendum. However, the Local Planning Authority (LPA) has a statutory duty to 'make' a neighbourhood plan, within eight weeks of a referendum, if more than half of those voting have voted in favour of the plan. The LPA is not subject to this duty if (and only if) the making of the plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention Rights (within the meaning of the Human Rights Act 1998)
- 3.2 The Examiner concluded that the LCNDP with modifications met these legislative obligations/rights. No information has subsequently arisen to suggest the making of the LCNDP would be in breach with or incompatible with the legislation.
- 3.3 The LCNDP is now part of the Development Plan for that part of the parish of Lyminster and Crossbush located within the SDNP along with the South Downs Local Plan and the relevant Minerals & Waste plans. The LCNDP is consistent with the South Downs Local Plan.
- 3.4 Arun District Council are taking the decision of making the LCNDP at full Council on 9 November 2022.

4. Planning Committee

- 4.1 The LCNDP has not previously been presented to Planning Committee, and all SDNPA responses to the plan during its preparation have been dealt with through delegated powers by officers. Members have been updated on the plan through the half yearly Update to Planning Committee.

5. Next Steps

- 5.1 The Neighbourhood Planning Regulations 2012 (as amended) require LPAs to publish a statement setting out their decision to make a NDP and reasons for making that decision. This statement should be published as soon as practical after the decision is taken to make the NDP. This report forms that SDNPA Regulation 19 'Decision Statements' for this NDP.
- 5.2 Following the 'making' of the LCNDP, copies of the NDP's will be made available to the Development Management teams at the South Downs National Park Authority and Arun District Council respectively. The policies maps will also be entered onto the relevant electronic mapping systems.

6. Other implications

Implication	Yes*/No
Will further decisions be required by another committee/full authority?	No
Does the proposal raise any Resource implications?	<p>As Arun District Council is the lead authority for the SNDP; the SDNPA has not incurred any direct costs, only officer time, relating to this plan, and SDNPA are not eligible to apply for New Burdens funding for this NDP.</p> <p>Once a NDP is made, a parish council is entitled to 25% of Community Infrastructure Levy (CIL) collected from development within the neighbourhood area, as opposed to the capped 15% share where there is no NDP. The Parish Council can choose how it wishes to spend these funds on a wide range of matters which support the development of the area.</p>
Have you taken regard of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010?	Yes, the qualifying body prepared a Consultation Statement to support the submission version of the NDP, setting out how all sections of the local community (people who live, work or carry out business in the neighbourhood area), including hard to reach groups, have been engaged in the plan's production.
Are there any Human Rights implications arising from the proposal?	None
Are there any Crime & Disorder implications arising from the proposal?	None
Are there any Health & Safety implications arising from the proposal?	None
Are there any Sustainability implications based on the 5 principles set out in the SDNPA Sustainability Strategy?	<p>The qualifying body with responsibility for preparing the neighbourhood plan must demonstrate how its plan will contribute to the achievement of sustainable development. This is set out in the Basic Conditions Statement. The examiner who assessed the plan considered that it met the requirements if a number of modifications were made. Please note that the sustainability objectives used by qualifying bodies may not be the same as used by the SDNPA, but they will follow similar themes.</p> <p>Strategic Environmental Assessment</p> <p>ADC and SDNPA determined that an environmental assessment of the LCNDP was required. A copy of the full Environmental Assessment can be found here.</p>

7. Risks Associated with the Proposed Decision

Risk	Likelihood	Impact	Mitigation
A legal challenge to a NDP can be launched by way of judicial review within six weeks of the LPA publishing a decision to make the NDP.	Low	Medium	Officers at SDNPA are satisfied the LCNDP meets the legal requirements. Given that it has been through the correct statutory process, including Examination and Referendum, the Authority is obliged to “make” the plan unless making the plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention Rights (within the meaning of the Human Rights Act 1998)

TIM SLANEY

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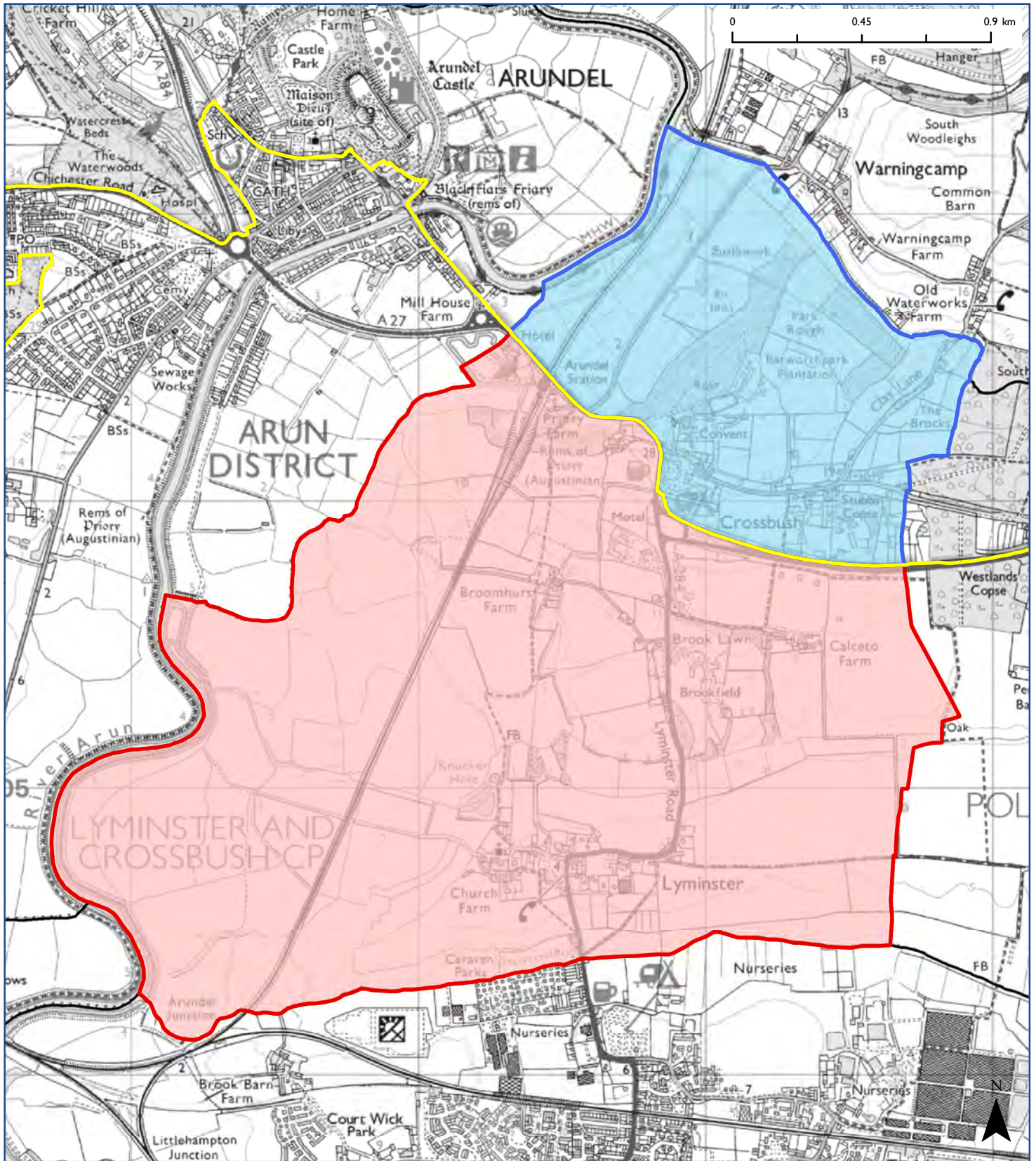
Appendices
 1. Lyminster & Crossbush Neighbourhood Area
 2. Lyminster & Crossbush NDP Examiner’s Report

SDNPA Consultees Director of Planning; Monitoring Officer; Legal Services,

External Consultees None

Background Documents
[Lyminster & Crossbush NDP Referendum Version](#)
[Lyminster & Crossbush NDP Decision Statement](#)

Designated Neighbourhood Area: Lyminster and Crossbush CP



Designated Neighbourhood Area

- In SDNPA
- Out of SDNPA

Other parish boundary

South Downs National Park Boundary

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Scale at A4 1:18,500

LYMINSTER AND CROSSBUSH NEIGHBOURHOOD PLAN 2020-2031

SUBMISSION VERSION

REPORT OF EXAMINATION

By

Christopher Lockhart-Mummery QC

Independent Examiner

July 2022

SUMMARY

I was appointed in July 2022 to undertake the examination of the Lyminster and Crossbush Neighbourhood Plan 2020-2031.

The neighbourhood area was designated by the Lyminster and Crossbush Parish Council in . The northern part of the neighbourhood area falls within the South Downs National Park, the remainder in the area of Arun District Council. The neighbourhood area coincides with the area of the Lyminster and Crossbush Parish.

A Consultation Statement dated 2022 sets out the consultation which was undertaken. While the community response was disappointing, the level of consultation met the statutory requirements.

I decided that the statutory condition for holding a hearing did not exist, and the examination proceeded on the basis of the documents only.

My report reviews the NP. I find that it is well-researched, well-evidenced and clearly presented. I have recommended specific modifications in relation to Policy H1, Policy H4 and Policy LC3 as described in the report.

I have recommended a limited number of other modifications to ensure compliance with the basic conditions and other statutory requirements.

I recommend that, subject to those modifications being made, the NP can proceed to referendum. I find no reason why the referendum area should differ from the neighbourhood area.

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Introduction

1. I was appointed by Arun District Council (ADC) with the support of Lyminster and Crossbush Parish Council (LCPC), the qualifying body, to undertake the examination of the submission draft of the Lyminster and Crossbush Neighbourhood Plan 2020-2031 (the NP).
2. I am a Queen's Counsel with over 40 years' experience of planning law and practice. I am a member of the NPIERS Panel of Independent Examiners. I am independent of any local connections or interests, and have no conflicts of interest.

Lyminster and Crossbush Parish in Context

3. In ADC designated a neighbourhood area for the whole of the parish to enable LCPC to prepare the NP.
4. The map at paragraph 1.11 of the NP shows the parish and the neighbourhood area. Paragraphs 3.1.2-3.1.4 of the NP describe the parish in these terms:

3.1.2 The Parish covers around 590 hectares and is characterised as a lowland mixed agricultural landscape with settlement distributed along the corridor [of] the A284 Lyminster Road and around the Crossbush Junction of the A284 with the A27 and down Crossbush Lane.

Agricultural fields are typically bounded by hedgerows and hedgerow trees with tributaries of the River Arun generally flowing from east to west with the Black Ditch forming the southerly boundary of the Parish.

3.1.3 The Parish is located between Littlehampton to the south and the historic town of Arundel and the South Downs National Park to the north.

3.1.4 A new bypass is planned for the Parish which will travel to the east of the village of Lyminster before re-joining the existing road and then the A27 which will also be realigned to cross the Parish.

In terms of the history of the parish paragraphs 3.3.1-3.3.4 describe as follows:

3.3.1 The parish of Lyminster and Crossbush is located between the town of Littlehampton and the South Downs.

3.3.2 The two communities are joined by the A284 Lyminster Road and bisected by the A27.

3.3.3 Rural in nature they have a rich history going back to Anglo Saxon times centred around the beautiful St Mary Magdalene Church. The two communities have 17 listed buildings within its boundaries including the Grade I listed church all adding to the special character of the parish.

3.3.4 The village of Lyminster is also in a Conservation Area....

5. The Arun Local Plan 2011-2031 (ALP) was adopted in July 2018. Policy H SP1 provides for non-strategic housing allocations to be delivered by neighbourhood plans, and a Non-Strategic Site Allocations DPD. The allocation assigned to the NP was a minimum of 10 houses.
6. The northern section of the neighbourhood area falls within the area of the South Downs National Park (SDNP). The South Downs National Park Local Plan (NPLP) was adopted in July 2019. As one would expect, the policies of the NPLP place primacy on the preservation and enhancement of the natural beauty of the SDNP in relation to the rural areas.

The Structure of the NP

7. The NP is very clearly and logically presented. The Policies are clearly distinguished (by bold print) from the supporting text. The Figures are very clear and helpful. I have one (mild) criticism: I find it helpful for neighbourhood plans to have – perhaps below the content on page 2 – a paginated reference to each of the Policies, and for the purposes of clarity and easy navigation, I so **Recommend**. (Alternatively, paginated reference to the Policies could be indented within the existing chapter heading).

The Evolution of the NP

8. A full account is given in the Consultation Statement 2022 (CS). In April 2021 LCPC decided to send a leaflet to all households seeking views on the (then) draft NP. The CS rightly describes the response as “very poor but positive”. Further publicity was given on parish notice boards. Regulation 14 consultation was carried out over eight weeks from the 27 September – 19 November 2021. An open event was held on 19 October 2021. The NP was amended to take into account the regulation 14 responses. At its meeting on 19 April 2022 LCPC resolved to submit the NP (regulation 15).
9. As the above shows, the early consultation response was disappointing. However, I am satisfied that LCPC took reasonable steps to inform and engage residents, and that the level of consultation was adequate.
10. Regulation 16 consultation took place between 20 May and 1 July 2022. Seventeen representations were submitted within the consultation period. An eighteenth representation, from the Park Authority, was submitted on 5 July 2022. I have taken account of this late representation. In addition, a schedule of comments by ADC (authorised by the Group Head of Policy on 30 June 2022) was supplied. I have taken account of all these representations/comments. I respond (and respond only) in this report to those which (a) are directed to the statutory test (see below) and (b) cause me to make a **Recommendation**.

SEA and HRA

11. Largely as a result of the single housing allocation (see below) ADC determined that Strategic Environmental Assessment and Habitats Regulations Assessment were required.
12. An Environmental Report dated March 2022 was duly prepared by AECON Ltd. The report concluded that significant positive effects would occur, largely due to the provision of housing. Other positive effects, and a negative effect on

soil resources (neither described as “significant”) were identified. I am satisfied that the SEA met the relevant legal requirements.

13. An HRA Report was prepared in June 2021. The Report identified that consideration needed to be given to the Loss of Functionally Linked Land by reference to the Arun Valley SPA and Ramsar site. Again, this was due to the single housing allocation. It was concluded that the NP would not result in adverse effects on the SPA/Ramsar site either alone or in combination with other development in neighbouring parishes.
14. Again, I am satisfied that the HRA complied with the relevant requirements.

The Examination Process

15. I was appointed in July 2022. The examination formally commenced on 18 July 2022. I was supplied electronically with all relevant documents (and sent hard copies of key documents). I have carefully reviewed all the documents supplied.
16. The documents included all the regulation 16 representations, a very helpful schedule of those representations prepared by ADC, and ADC’s own Comments.
17. On 23 July I notified ADC that the statutory conditions for holding a hearing did not exist. Hence the examination proceeded on the basis of the documents only, and my visit to the area. On 19 July I supplied by Note 1 with three queries, two relating to housing (and environmental) policies and one relating to Local Green Spaces. I received responses on 22 July. I raised ancillary queries on 23 July and received a response on 25 July. I am most grateful for these responses which have informed my approach to certain of the Policies.
18. I carried out an unaccompanied visit to the area on 25 July.

Basic Conditions - General

19. Schedule 4B paragraph 8 to the Town and Country Planning Act 1990 provides that a neighbourhood plan meets the Basic Conditions if it meets those specified in paragraphs (a), (d), (e), and (f). One further basic condition has been prescribed under paragraph 8(2)(g), as follows:

“The making of the Neighbourhood Development Plan is not likely to have a significant effect on a European Site...or a European Off-shore marine site...either alone or in combination with other plans or projects”.

20. As the courts have frequently emphasised, as I do now, the role of a Neighbourhood Plan Examiner is tightly constrained. It is (apart from dealing with other statutory requirements referred to at paragraphs 22-26 below) confined to considering compliance with the basic conditions. The Examiner cannot consider anything else: paragraph 8(6). Therefore the Examiner is not able to consider whether – as would be the case for a local plan – the NP is “sound” (in accordance with paragraph 35 of the NPPF). Accordingly, the Examiner can only consider the content of the NP (the planning judgments made, the choices made, the views regarded as important etc.) insofar as those matters impact on the basic conditions. This inevitably limits, significantly, the extent to which it is proper to respond to what I might call wider “planning merits” points made by representors.
21. I address the criteria in the basic conditions where relevant as I assess, below, the contents of the NP.

Other statutory requirements

22. These are set out in the Town and Country Planning Act 1990 (as amended) and sections 38A-38C of the Planning and Compulsory Purchase Act 2004.
23. The NP was prepared and submitted for examination by a qualifying body: section 38A.

24. It has been prepared for an area designated under section 61G of the 1990 Act.
25. The NP meets section 38A(2) in that it sets out policies in relation to the development and use of land in the neighbourhood area.
26. The NP meets the requirements of section 38B – it specifies the period for which it is to have effect (2020-2031), it does not include provisions about development which is excluded development, and does not relate to more than one neighbourhood area.

Assessment of NP

27. I congratulate LCPC for producing a plan which is well written, clearly presented, and easy to follow. The maps are likewise clear.
28. Some of the pagination on the Contents page does not match the text (for example, the Policies Map is on page 61 not page 59).
29. The extent of the SDNP is not shown on any of the maps. This is plainly an important matter needing clarification. I **Recommend** that (at least) the maps on page 7, page 10, page 60 and page 61 show this extent (perhaps by a line or pale wash so as not to obscure the contents of the maps – see, for example, the Map of Sites in the Site Assessment Report January 2021). An appropriate reference(s) should be made in the text (for example, paragraphs 2.5, 3.5.5).
30. There are several references in the NP to the Arun District Local Plan. I **Recommend** that these be corrected to the Arun Local Plan.
31. Paragraph 3.5.4 addresses Non-Designated Heritage Assets. It refers to a 2005 SPD issued by ADC. That SPD no longer exists and has been replaced by a Local List of Non-Designated Heritage Assets. This list contains all of the Areas of Character and Buildings or Structures of Character, and is updated when a new asset is identified. I **Recommend** that paragraph 3.5.4 is modified accordingly.

Housing policies

32. The NP proposes one housing allocation site, the site at Wolstanton, east of Lyminster Road. This is proposed for (variously) a minimum of 7 or 7, homes in Policy H1. In August 2020 a call for sites was undertaken. Five sites came forward, and all were evaluated alongside the ADC Housing and Economic Land Availability Assessment (HELAA) sites. The front runners became Site E (now the H1 site) and two sites in SDNP: Site C, North of Barrack Field, and Site G the Travis Perkins site (by Arundel Station).
33. Justifiable reasons, in my opinion, were given for the selection of the H1 allocation at this stage. Paragraph H1.6 acknowledges the community support for development of these sites, but they are not allocations. Their development would not count towards the ALP assignment of dwelling provision.
34. Policy H1 is presently split into two parts, apparently with the intention that one should applied to the specific allocation, and the other to any other development proposal. I find this confusing and unnecessary. It would not be appropriate to have what are, in essence, allocation criteria to a potential site or sites which are not allocations, and which would go “through the NP process at a later date”.
35. I also find the references to 7 and a minimum of 7 homes to lack clarity. I propose that the allocation should be for 7 homes (recognising that a detailed layout may show that somewhat more might be possible without creating a cramped development).
36. Policy H1 should therefore, in my opinion, contain a single set of criteria. I **Recommend** that the Policy should provide as follows:

Land east of Lyminster Road

The neighbourhood plan allocates the land shown on the Proposals Map for 7 dwellings.

Development proposals will be supported provided that the requirements set out below are met:

- a. **all mature trees and hedges on the northern and western boundaries must be retained and enhanced;**
 - b. **any potential impacts upon priority species and habitats must be fully assessed and mitigated to deliver at least a 10% net gain in biodiversity through the use of the Defra approved biodiversity metric, which should be delivered on-site. Where it is not possible to deliver biodiversity net gains on site, developers will be required to contribute to new or restoration projects off site to deliver overall net gains within Lyminster and Crossbush. These projects will be subject to an undertaking through S106 agreement that biodiversity management will be maintained for a minimum of thirty years.**
 - c. **vehicular access will be from Lyminster Road;**
 - d. **dwellings must be no more than two storeys and complement the topography of the site;**
 - e. **the design and layout of the development should demonstrate a sensitive approach to the settings of the non-designated heritage assets at Old Vicarage and Vicarage Cottage, Lyminster Road, including landscaping to boundaries, layout of gardens, buildings and public space and massing, form and materials of buildings; and**
 - f. **new development shall not be occupied until the noise attenuation barrier proposed as part of the Lyminster bypass has been erected.**
37. I further **Recommend** the deletion of paragraph H1.4 (which related to the deleted part of the Policy).
38. Policy H3 addresses Windfall Sites. I regard the Policy as appropriate, but for clarity and consistency **Recommend** that reference to non-designated heritage assets be included in paragraph (ii).
39. As set out in my Note 1, I raised concern as to Policy H4. It seems to be quite at odds with the strategy of the Plan. Policy H1 is the single housing allocation; Policy H3 provides for residential development of infill and

redevelopment sites within the Lyminster Village envelope; Policy EH1 would resist residential development outside the village envelope. All this makes, as it seems to me, a justified and coherent strategy, which would resist greenfield residential development outside the Village envelope, i.e. in attractive countryside. But Policy H4 expressly contemplates such development.

40. I indicated in Note 1 that I was minded to recommend deletion of Policy H4. I am not persuaded by the responses to Note 1. For the reasons given above, I therefore **Recommend** the deletion of Policy H4 and its accompanying text.
41. Policy EH1, Village envelope, refers to Map D which shows the Lyminster Village envelope, together with the proposed extension to accommodate the housing allocation. Paragraph EH1.2 refers to Map E as showing this extension. This reference is plainly redundant and this paragraph should be deleted.
42. Policy EH2 addresses Development on Agricultural Land. I **Recommend** that the reference to “from” in the second line be corrected to “for”, and in line three that the word “fertile” be changed to “versatile”.
43. Policy EH3 addresses Flooding, drainage and new development. I **Recommend** that in line 2 environment agency be corrected to Environment Agency. I further **Recommend** that Policy EH3c be corrected as follows:

All development proposals must demonstrate that sewage infrastructure cannot release into, or be infiltrated by, surface water.
44. Policy EH6 addresses Non-Designated Heritage Assets. ADC raised queries on page 3 of its Comments document. For purposes of clarity, I **Recommend** that these queries be addressed and any appropriate changes made.
45. Policy EH7 addresses the Conservation Area. I **Recommend** that three clerical errors be corrected: references to “their” should be corrected to “its”, and the final reference to page 23 be corrected to page 21.

46. In Policy EH9 the reference to “neighbourhood area” should be changed to “neighbourhood plan area”.
47. Policy GA3 addresses Parking and New Development. In response to the representation from West Sussex County Council, the final reference in paragraph GA3.3 to “the WSCC SPD” should be corrected to “WSCC Guidance”.
48. Policy LC1 relates to Independent Living. I **Recommend** two minor changes. First, the reference in the second line to Village envelopes should be corrected to the Village envelope. Consistent with the comment of ADC, the following should be added to the end of the Policy: **as well as being compliant with other policies in this plan.**
49. For the reason given by ADC, (that a proposal cannot make a financial contribution through CIL to allotments) or anything else)) the reference to “All the community Infrastructure Levy” should be deleted.
50. Policy LC3 designates the three areas listed in Schedule A and shown on Map A as Local Green Spaces (LGS). The evidence in Schedule A shows, in my view, clear justification for the three designations in accordance with NPPF criteria.
51. However, neither the policy, nor the ALP, provides a development management policy for such spaces. Green Belt policy in the NPPF paragraphs 149-150 seems quite inconsistent with local circumstances. I therefore **Recommend** a simple policy to add to the existing LC3:
Development, other than that entirely ancillary to the use of the land as an open area, will only be permitted in exceptional circumstances.

Conclusion

52. I have found that the NP is well-researched, well-evidenced and clearly presented. I have recommended specific modifications to Policies H1, H4 and LC3. I have further recommended a limited number of other modifications to ensure compliance with the Basic Conditions.
53. Should it be necessary for further minor changes of a purely ancillary nature to be made, I consider that such a course would be appropriate and lawful.
54. I have considered whether the referendum area should be any different to the neighbourhood area and see no reason to so recommend.
55. I therefore **Recommend** that, subject to the modifications in this report, the NP should proceed to Referendum.

Christopher Lockhart-Mummery QC

Examiner

July 2022