**HBF Response to Matters Issues and Question for Amber Valley Local Plan**

Overarching Concerns in light of new information about Brun Lane strategic allocation at, Mackworth.

HBF have some significant concerns about both the soundness and legal compliance of the Plan in light of the new information about the strategic site at Brun Lane, Mackworth (EIP Library Council Document AV8 and AV8a).

It would seem from the letter from the site owner that a significant communication failure and/or error has occurred that now means the draft Amber Valley Local Plan submitted to the Inspectors is completely undeliverable.

If the Council’s response to the Reg 19 comments from the landowner is correct, HBF would question if the need to remove one of the key strategic sites delivering half the housing planned for housing requirement is so significant that the Examination needs to be paused?  We would be of the view that the Plan probably now needs to be completely redrafted, including a full green belt review and/or a new Reg 19 consultation undertaken. It may even be that the Council decide the best course of action is for the Plan to be withdrawn.

The new information undermines the settlement strategy, settlement approach, housing numbers etc. and we would question whether it is possible for the plan to be made sound in its current form, especially without a full Green Belt review and further public consultation on new housing sites, a review of SA etc.

These concerns are fundamental and may impact on the current plans for the EIP hearing sessions.

HBF had intended to rely on our Reg 19 written representations with regards this EIP, and as such had not requested to participate in the hearings. Had this new information been made available to potential participants earlier, we may have requested to appear in person. Indeed, in light of the extent and range of our concerns, if the Examination is not paused, we would suggest that the nature of some of our concerns, as set out in these MIQs, could be best addressed though attendance at future EIP sessions.

We have not responded to all questions only those of relevance to our members and previous Reg 19 representations. For clarity, where we have no comments we have either not included that question, or marked the part of the sub-question with a – dash.

**Matter 1a – Legal Compliance**

**Issue 1: Has the Council complied with the duty to co-operate and other relevant procedural and legal requirements in the preparation of the Local Plan.**

**1.1 In preparing the plan did the Council engage constructively, actively and on an on-going basis with neighbouring authorities and other relevant organisations on cross-boundary issues, in respect of the Duty to Co-operate?**

**[Note: this question concerns the engagement undertaken by the Council during the preparation of the plan and does not directly relate to the content of the plan and whether or not it is sound which is considered under other Matters]**

HBF have some significant concerns about the soundness and legal compliance of the Plan in light of the new information about the strategic site at Brun Lane, Mackworth.

It would seem from the letter from the site owner that a significant communication failure and/or error has occurred that now means the draft Plan as submitted to the Inspectors is completely undeliverable.

If the Council’s response to the Reg 19 comments from the landowner is correct, HBF would question if the need to remove one of the key strategic sites delivering half the housing planned for housing requirement is so significant that the Examination needs to be paused?  We would be of the view that the Plan probably now needs to be completely redrafted, including a full green belt review and/or a new Reg 19 consultation undertaken. It may even be that the Council decide the best course of action is for the Plan to be withdrawn.

We would anticipate that a new, or amended Plan without the Brun Lane, Mackworth allocation, may raise different issues for the neighbouring authorities under the Duty to Cooperate, so at this stage it is not possible to conclude that the Duty to Cooperate has been met.

**1.2 Has the plan been prepared in accordance with the adopted Local Development Scheme (24 January 2024 – 24 January 2027)?**

For Council to respond to, but as detailed above HBF would suggest that the new information about the non-availability of the key strategic site results in significant changes needing to be made to the Plan. HBF would suspect these are so significant further public consultation is needed, as such the LDS will need to be amended to reflect this.

**1.3 Has consultation on the plan been carried out in accordance with the Council’s Statement of Community Involvement (June 2022) and the requirements of the 2004 Act (as amended) and the 2012 Regulations?**

It would seem from the letter from the site owner that a significant communication failure and/or error has occurred during the Reg 19 consultation process that now means the Plan submitted is undeliverable. If the Council’s response to the Reg 19 comments from the landowner are as stated in the landowners’ response, this would lead HBF to question the effectiveness and robustness of the consultation process.

Indeed, some of our own comments have not been fully understood or properly considered. For example, HBF raised some concerns about M4(2) and M4(3) in our response to the Reg 19 consultation. Although the Council has summarised both points, but has then only responded to the points made regards our M4(2) comments, leaving the M4(3) comments un-responded to. This suggests a lack of understanding, a lack of care, or both. HBF would question if this is good enough to comply with the process and policy requirements of good plan-making.

**1.4 Does the Sustainability Appraisal (SA) provide a comprehensive and robust basis to inform the strategy and contents of the plan, particularly in terms of:**

**(a) Its assessment of the likely effects of the plan’s policies and allocations?**

**(b) Its consideration of reasonable alternatives, including the eight spatial strategy options? Does it capture all reasonable alternative site options put forward in the plan preparation process? Can these be compared on a like for like basis?**

If the information about the non-availability of the Mackworth site is correct, HBF believe that additional work including a significant refresh/update or even possibly a whole new Sustainability Appraisal of the new/revised plan will be needed. A Plan that is now without the its largest housing allocation is a different Plan to that submitted to PINS. This new information undermines the settlement strategy, settlement approach, housing numbers etc. HBF we would question whether it is possible for the plan to be made sound in its current form through just main modifications, especially without a full Green Belt review and further public consultation on new housing site(s), which would in themselves also likely require new SA work.

These concerns are fundamental and impact on the current plans for the EIP hearing sessions.

**(c) Its explanation of why the preferred strategy and policies were selected?**

This issue is likely to need revisiting now the Mackworth site in unavailable.

**(d) Its assessment of the amount of development that would arise as a result of the provisions in the plan?**

This issue is likely to need revisiting now the Mackworth site in unavailable. Without the inclusion of this site the Plan will have a significant housing shortfall.

**[Note: This question focusses on the legal compliance of the SA in broad terms. The implications of the SA for the soundness of the plan are considered under other Matters.]**

See above

**1.5 Is the Habitats Regulations Assessment (January 2024) adequate and does the plan include all the recommendations identified in the assessment as necessary to ensure compliance with the Habitats Regulations? Is it robust and convincing in its conclusion that the plan will have no likely significant effects on the integrity of any European sites?**

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**1.6 Does the plan include policies to address the strategic priorities for the development and use of land in Amber Valley?**

In our Reg 19 response HBF set our view that the housing requirement in Amber Valley should be higher and the reasons behind this request (see for example our response to Policy SS2 Spatial Strategy for Housing and Economic Growth ). These issues remain outstanding, but furthermore. in light of the recent information around the non-availability of the Mackworth site our concerns on the Plan’s inability to meet the housing needs of its area have increased significantly.

In our reg 19 response HBF were pleased to see that the Council is following the requirements of the NPPF and setting their housing requirement using the standard method and planning to make a contribution towards meeting the housing needs of Derby City. The new information about the Mackworth site impacts significantly on Housing Land Supply within the Plan, which in turn further underlines our concerns and underlines the reasoning behind our previous support for the strategy and approach to housing in the Plan, albeit in our view the Reg 19 Plan could have done more to support housing delivery in Amber Valley. In light of recent developments, we would wish to be consulted and able to respond to how the Council intends to resolve this issue.

**1.7 Does the plan include policies designed to ensure that the development and use of land in Amber Valley contributes to the mitigation of, and adaptation to, climate**

**change?**

HBF have concerns about some of the specific climate change policies these are dealt with elsewhere in our MIQ response and our Reg 19 representations, in particular Policy EN1 on Climate Change.

**1.8 How have issues of equality been addressed in the Local Plan?**

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**1.9 Does the plan comply with all other relevant legal requirements, including in the 2004 Act (as amended) and the 2012 Regulations?**

No. See concerned listed previously in response to this matter above.

**Matter 1b - Overarching Matters**

**1.10 Is the plan period (2022 – 2040) justified, effective and consistent with national policy? If so, should the requirements/timescales for review of the plan be set out in policy?**

No. As set out in our Reg 19 response HBF would suggest that the Plan period needs to be extended. HBF recognise that this would necessitate a need for an update to the evidence base to ensure that it reflected the longer plan period. Para 22 of the NPPF requires that ‘strategic policies should look ahead over a minimum 15-year period from adoption’. HBF are unclear that the current Plan, especially following the loss of the key strategic site at Mackworth, does this.

**1.11 How have ‘made’ and emerging Neighbourhood Plans been taken into account in the plan-making process? Where is this evident?**

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**1.12 Does the policies map correctly illustrate geographically the application of policies in the Plan?**

The policies map will need updating to remove the undeliverable Mackworth site, and in time it will also need updating include any replacement alternative allocations. Ideally this work would follow a comprehensive green belt review and new/revised SA.

**Matter 2 – Vision & Objectives, Spatial Strategy & Location of New Development, and the Site Selection Process (Policies SS1, SS2 and SS3, SS8, SS9)**

**Issue 2 – Are the provisions of the plan in relation to the Spatial Strategy & Location of New Development justified and consistent with national policy?**

**This matter focusses on the broad spatial distribution of new development and on the process by which proposed development sites have been selected for inclusion in the plan (Policies SS1, SS2, SS3). The merits of individual site allocations are considered under Matters 4, 5 and 9).**

**2.1 Is the proposed spatial strategy and the distribution of development (as set out in policy SS2) supported by robust and up to date evidence and otherwise soundly based? In particular:**

**a) Does it reflect the vision and objectives of the plan?**

**b) To what degree is the spatial framework in Policy SS2 based on the settlement hierarchy in SS3?**

**c) Would the pattern of development proposed meet the needs of larger settlements in the district?**

**d) Does policy SS2 allow sufficient development in Key Villages and Other Villages and Settlements to comply with para 79 of the Framework?**

**e) Is the allocation of strategic sites justified and soundly based? What factors were taken into account in selecting the location of these sites?**

**2.2 What is the evidential basis for the settlement hierarchy in policy SS3? Does this accurately reflect the pattern of settlements across the district? Is this up to date? How does this inform the development strategy? What other factors influenced the strategy, such as physical and environmental constraints?**

**2.3 What other spatial strategies and distributions of growth were considered during plan preparation, and why were they discounted? Where is the evidence for this? Were alternative approaches tested in the Sustainability Appraisal work?**

**2.4 How were the proportions of development proposed for each settlement arrived at? Is the approach taken in relation to a “windfall allowance” in each Parish a sound one? How will this be delivered? How will this inform the Neighbourhood Planning process?**

**2.5 Have the sites allocated for development in the plan been appraised and selected in comparison with possible alternatives using a robust and objective process?**

**2.6 Are policies SS1, SS2 and SS3 otherwise justified and consistent with national policy? Are there any omissions in the policies and are they sufficiently flexible?**

HBF are concerned that the unavailability of a key strategic allocation at Mackworth changes the nature of the Plan, its spatial development and housing land supply position. As such, we would wish to understand the Council’s proposed response to this new set of circumstances before we would be in a position to provide a full answer the questions above 2.1 to 2.6 above. This further demonstrates our view further public consultation is needed on a revised Amber Valley Local Plan.

HBF would continue to support a higher housing requirement and additional housing allocations to ensure that Amber Valley can meet its own need in full in a way that is deliverable and make a greater contribution to meeting the needs of Derby. In HBF’s view the unmet needs of Derby and the current housing crisis create the exceptional circumstances that justify a full Green Belt review as part of the Amber Valley Plan.

The failure of such a significant part of the proposed housing land supply, does not alter our view in this matter, as the housing requirement needs to be established before housing land supply considerations are factored into the Plan. However, if the Council were to propose that Plan should proceed as currently drafted simply minus the proposed allocation at Mackworth, HBF would wish to provide further detailed comments on this issue.

At Reg 19 sateg HBF observed that although we do not comment on individual site allocations, we would expect that the spatial distribution of sites follows a logical hierarchy, provide an appropriate development pattern and support sustainable development within all market areas. HBF considers that the Council’s proposed approach to the distribution of housing should ensure the availability of a sufficient supply of deliverable and developable land to deliver the housing requirement. We remain unclear that the Plan as currently drafted achieves this.

Also, clearly the non-availability of the Mackworth site impacts on how the settlement hierarchy is being utilised in the Plan and the distribution of housing across Amber Valley. Without a full understanding of how the Council intends to address this issue, it is difficult to offer a full response that considers the implications of the options, or options, the Council could/would/should consider to address this new issue in an effort to make the Plan sound. As such HBF believe additional work and further consultation is needed.

**2.7 Are policies SS8 – Green Belt and SS9 - Countryside consistent with national policy and otherwise soundly based? Would the implementation of policies within the plan lead to the removal of land from the Green Belt ? If so, what is the reasoned justification for this ?**

At Reg 19 stage, HBF was of the view that an increased housing requirement (for the reasons listed elsewhere in our response), the unmet needs of Derby and the current housing crisis create the exceptional circumstances that justify a full Green Belt review as part of the Amber Valley Local Plan. The new information about the undeliverability of the Mackworth site, only adds to this justification and the need for a full and comprehensive Green Belt review.

**2.8 Do the vision and objectives of the plan adequately address matters of climate change and air quality?**

HBF have commented on issues of climate change elsewhere within our representations, they are not repeated here**.**

**2.9 Are the Council’s proposed modifications to the policies necessary for soundness?**

HBF would assume that further significant Modifications will need to be made to the Plan to address to address the undeliverability of the Mackworth site, as such it is difficult to respond to this question without seeing the revised Plan as a whole.

**Matter 3 – The Housing Requirement (Policy SS2)**

**Issue 3 - Is the identified housing requirement in Policy SS2, justified and consistent with national policy?**

**3.1 Is the Plan period 2022 to 2040 justified and consistent with national policy which requires strategic policies to look at least 15 years ahead from adoption?**

As we have previously stated, HBF believe the Plan period should be extended.

**3.2 Is the housing requirement of 6,564 homes during the 2022-2040 period (policy SS2) justified by the Council’s evidence? Are the assumptions of the 2022 Housing Needs Assessment and 2023 Addendum (ED24 and ED25) soundly based, particularly in relation to:**

**a) Identifying a baseline figure;**

**b) Forecasts for economic growth, alignment of jobs and workers and assumptions of housing requirements arising from economic growth.**

HBF Reg 19 concerns about the housing requirement remain. In our view additional housing is also needed to support the growth ambitions of the area. In addition, the new government is committed to the delivery of 1.5 million homes over the term of this Parliament and in order to deliver this is proposing to plan for 370,000 new dwelling per year nationally. This adds further weight to the HBF’s support for a higher housing figure for Amber Valley.

**3.3 In relation to Affordable Housing Needs, is the identified need for 401 dpa been based on robust, up-to-date information? How has this been considered in the overall housing requirement? Based on the thresholds and requirements in Policy H5, will affordable housing needs be met?**

HBF is concerned that that affordable housing targets are unrealistic and have not been proven to be viable through robust viability testing. Our request for ‘subject to viability’ to be added to the policy has been dismissed by the Council even though this is necessary for the plan to comply with national guidance, be effective and deliverable and therefore sound. HBF would suggest that due to the viability challenges in Amber Valley, additional open market housing is required if the affordable housing need is to be met in full.

**3.4 In relation to addressing Derby’s unmet housing need, what approach has been taken by the Council? How is this reflected in the Housing Requirement for the Borough? Is the Council’s approach soundly based and supported by up-to-date evidence?**

HBF agree that the Council should be making a contribution to meeting Derby’s unmet need, we would support such a contribution being higher. Clearly the loss of the strategic site at Mackworth is a significant issue that could undermine the ability of Amber Valley to meet its own needs, and undermine its ability to make the contribution to housing needs of Derby as it had been intending to. As such HBF believe a full review of the implications of the loss of this site to the whole Plan is needed and further public consultation on any proposed revisions is required. There may also be Duty to Coopertae issues arising from this error.

**3.5 Should there be a housing requirement for designated neighbourhood areas in Policy SS2? (paragraphs 66 & 67 in the NPPF) If so, what should this be?**

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**Matter 4 – Strategic Growth Sites (Policies HGS1, SGS1 and SGS2)**

**Issue 4 – Are the proposed strategic allocations justified, effective, developable, deliverable, in line with national policy and otherwise soundly based?**

**Note: This matter focusses on the merits of the individual strategic growth sites, the process for selecting site allocations is dealt with in Matter 2.**

**Policy SG1 – Brun Lane Mackworth**

HBF do not comment on individual sites, however a site clearly cannot be allocated in a Local Plan, and form a key part of the housing supply, if it is no longer available for development.

**4.1 Why was the site selected as a strategic site? What evidence supports the allocation**

**in terms of:**

**• Size**

**• Capacity**

**• Layout**

**• Infrastructure requirements**

**• Assessment of the effects of development and necessary mitigations**

**• Delivery**

**• Viability**

**4.2 How has development of other land in the vicinity, including that outside the Borough, been taken account of in relation to the cumulative effects of development? How has this informed the development of the scheme?.**

**4.3 What role does the concept plan play? What evidence has been used to develop it? What constraints have been identified and how are these addressed?**

**4.4 Does the policy provide sufficient information on site specific constraints and requirements such as the physical and social infrastructure that may be required as part of the development?**

**4.5 Does policy SG1 provide clear direction as to how a decision maker should react to a development proposal? Are there any necessary modifications to the policy?**

HBF do not comment on individual sites. As it now clear that this site is now longer available for development, and so cannot be allocated in a Local Plan, and form a key part of the housing supply, this policy will need to be deleted in full. HBF would wish to comment in detail on any proposed new allocations and other policy changes required to address this issue. We believe significant further work will need to be undertaken be the Council and public consultation on any proposed replacement/revisions is needed.

**Policy SG2 – Land North of Derby Road, Denby (Cinderhill)**

**4.6 Why was the site selected as a strategic site? What evidence supports the allocation**

**in terms of:**

**• Size**

**• Capacity**

**• Layout**

**• Infrastructure requirements**

**• Assessment of the effects of development and necessary mitigations**

**• Delivery**

**• Viability**

**4.7 Does the policy provide sufficient information on site specific constraints and requirements such as the physical and social infrastructure that may be required as part of the development?**

**4.8 Does policy SG2 provide clear direction as to how a decision maker should react to a development proposal? Are there any necessary modifications to the policy?**

HBF do not comment on individual sites.

**Matter 5 – Housing Growth Sites**

**(Policy HSGS1)**

**Issue 5 – Are the proposed housing growth sites justified, effective, developable, deliverable, in line with national policy and otherwise soundly based?**

**Note: This matter focusses on the merits of individual housing growth sites, the process for selecting the sites is dealt with in Matter 2.**

**5.1 Do the sites allocated for residential development provide an appropriate range of sites in terms of their type and size?**

**5.2 Is each site allocated as a housing growth site sound? In particular:**

**a) Have the site constraints, indicative yield, development mix and viability considerations been adequately considered?**

**b) Is there evidence that the development of the allocations is viable and developable during the plan period?**

**5.3 Does the policy provide sufficient information on site specific constraints and requirements such as the physical and social infrastructure that may be required as part of the development?**

HBF do not comment on individual sites, however we would reiterate that we would expect the Plan as a whole to provide for appropriate development pattern that supports sustainable development within all market areas, and to provide a housing distribution that ensures the availability of a sufficient supply of deliverable and developable land to deliver the housing requirement, including compliance with the 10% small site requirement, ideally via site allocations. More detail on this issue can be found in our Reg 19 response and is not repeated here.

**Matter 6 - Housing Land Supply**

**(Policy SS2, Appendix 1 Summary of Housing Land Requirement & Supply as at 1 April 2022 and Appendix 2 Local Plan 2022-2040 - Housing Trajectory)**

**Issue 6 - Does the Plan provide an appropriate supply of deliverable and developable sites to meet identified needs and align with national policy?**

**Note: This Matter focusses on the overall supply of land for housing. The merits of individual site allocations are considered under Matters 4 and 5, although our consideration of this issue will also be informed by detailed discussion of the deliverability of the specific site allocations in Matters 4 and 5.**

**In the light of Matter 3, we will reach a conclusion on whether or not the objectively assessed need for housing of 6,564 dwellings for the 2022-2040 period is justified.**

**However, without prejudice to that, these questions work on the assumption that 6,564 dwellings is a soundly based housing requirement figure.**

**6.1 Are the assumptions that have been made to inform the trajectory justified in relation to the delivery of housing sites, in particular in relation to:**

**a) lead in times for grant of full permissions, outline and reserved matters and conditions discharge?**

**b) site opening up and preparation, and dwelling build out rates?**

**6.2 Is there a reasonable prospect that a total of 4,603 new dwellings will be provided by 31/03/40 on large sites that had planning permission at 31/03/22?**

**6.3 Is there a reasonable prospect that the total of 2,363 new dwellings to be delivered through local plan allocations will be provided by 31/03/40?**

**6.4 Is there compelling evidence to justify a windfall allowance of 2,070 over the plan period and to demonstrate that they will provide a reliable source of supply?**

**6.5 Has appropriate consideration been given to non-implementation lapse rates?**

**6.6 Overall, is there convincing evidence that:**

**a) Having regard to assumptions about commitments, allocations and windfalls the housing requirement across Amber Valley between 2022 and 2040 is likely to be met?**

**b) A 5 year supply of deliverable housing land will exist on adoption?**

**c) An ongoing 5 year supply of deliverable or developable housing land is likely to exist throughout the plan period?**

HBF would question many of the assumptions implied by the Councils approach. However, we are most concerned about the fact that that the non-availability of the Mackworth site is a fundamental change to the Housing Land Supply of this proposed Plan, as such we believe further work is needed which makes it difficult to respond in detail to these questions at this time. We suggest further work and further public consultation is needed to address this new information, if the Plan is to find a way forward so it can be found sound.

**Matter 7 – Housing Policies**

**(Policies H1 – H8)**

**Issue 7- Does the Plan set out positively prepared housing policies which are justified, effective and consistent with national policy?**

**7.1 a) In terms of the types of development permitted is Policy H1 sufficiently flexible to allow the necessary amount of housing development given the level of “windfall development” anticipated in the housing trajectory?**

**b) Is the first part of the policy sufficiently clear regarding the criteria against which proposals would be assessed?**

**c) Is the approach taken of permitting housing development on land adjacent to urban areas and key villages justified and consistent with national policy and policies in neighbourhood plans? In the absence of defined settlement boundaries would the policy be effective? Are the criteria in this part of the policy sufficiently clear and would they be effective?**

**7.2 a) Is Policy H2 sufficiently clear regarding the criteria against which proposals within Other Villages and Settlements would be assessed? Is it sufficiently clear what would constitute “infilling of small gaps”?**

**b) Is the approach taken in Policy H2 of permitting housing development on land adjacent to urban areas and key villages justified and consistent with national policy? In the absence of defined settlement boundaries would the policy be effective? Are the criteria in this part of the policy sufficiently clear and would they be effective?**

**7.3 In the absence of defined settlement boundaries and the approach in Policy H1 and H2 is it sufficiently clear where this policy would operate? Is there consistency between this policy and Policy SS8 for sites that are in both the Green Belt and the open countryside? Is it justified to allow the conversion of existing dwellings to create additional dwellings but not the replacement of a dwelling if it creates additional dwellings?**

**7.4 a) Does Policy H4 provide an effective framework for ensuring an appropriate mix of housing will be delivered over the plan period? Would it ensure the needs for specialist housing will be met over the plan period? Will the criteria ensure such housing is provided in appropriate locations?**

HBF comments made in response to Reg 19 on the issue raised in Questions 7.1 to 7.4 remain of concern.

 **b) Are the requirements relating to the provision of homes that comply with M4(3) of the building regulations justified by evidence relating to need and viability and are they consistent with national policy?**

As we highlighted in our Reg 19 response, the Council have sought to differentiate between accessible and adaptable housing, but to do this effectively and in line with national policy and practice this should be done with explicit reference to the relevant parts of Building Regulations- Part a) and part b) of M4(3) technical standards. The Councils response to our Reg 19 comments only address one elements of our comments made in response to M4(2) but do not address the matter of M4(3). This creates the impression that full consideration has not been given to all of the responses made, which could perhaps indicate why the issue with the Mackworth site has arisen. This further highlights our concern about the plan-making process and whether the Council has fully undertaken all the tasks required of it in preparing this Plan.

In relation to the policy, changes are still needed to the wording of the policy to accurately reflect the provision of M4(3) a and M4(3) b. M4(3)a sets out standards for wheelchair adaptable housing, where M4(3)b relates to wheelchair accessible housing which can only be required on affordable housing where the Council has nomination rights. As such the Council can not and should not be seeking 5% of homes to meet M4(3)b in market housing.

HBF remains unclear if this matter has been accurately and fully considered in the Whole Plan Viability Assessment. There are cost implications resulting from any requirements for the provision of M43a and/or M43b requirements as both M4(3)a and M4(3)b impact on viability, with M4(3)b being considerably more expensive. The latest information from our members indicates that compliance with M4(3) b can be ten times more expensive that complying with the M4(3) a standard.

HBF also note that the requirements to meet Part M4(2) will be superseded by changes to residential Building Regulations. The Government response to ‘Raising accessibility standards for new homes’ states that the Government proposes to mandate the current M4(2) requirement in Building Regulations as a minimum for all new homes, with M4(1) applying in exceptional circumstances. This will be subject to a further consultation on the technical details and will be implemented in due course through the Building Regulations. There is therefore no need for this element of the proposed new policy.

 **c) Are the Council’s suggested modifications to the policy necessary for soundness?**

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**7.5 a) Does Policy H5 provide an effective framework for maximising the delivery of affordable housing over the plan period? Is there convincing evidence to show that affordable housing requirements, particularly on specialist older persons housing, would be viable?**

The Council’s own viability evidence indicates marginal viability for housing in many parts of Amber Valley. HBF’s concerns about viability can be found in our Reg 19 response and elsewhere in these MIQs, as such they are no repeated here.

 **b) Is it sufficiently clear regarding the approach to be taken for off-site and/or financial contributions in lieu of on-site provision?**

See above

**7.6 a) Does Policy H6 provide a clear and effective framework for considering viability at the planning application stage? In particular is it clear what circumstances would justify the need for a viability assessment at this stage and how an applicant would adequately demonstrate this?**

**b) Is the requirement for applicants to pay for an independent appraisal of the submitted viability assessment on behalf of the Council justified?**

**7.7 Does Policy H7 provide an effective framework to ensure the delivery of an adequate supply of custom and self-build plots over the plan period?**

No. HBF continue to consider it is unlikely that the provision of self and custom build plots on new housing developments can be co-ordinated with the development of the wider site. At any one time, there are often multiple contractors and large machinery operating on-site from both a practical and health and safety perspective, it is difficult to envisage the development of single plots by individuals operating alongside this construction activity. HBF also question is there is a mismatch between the kind of plots and locations that self-builders are looking for, and the kind of plots that would result from this policy.

HBF advocates for self and custom-build policies that encourage self and custom-build development by setting out where it will be supported in principle. HBF considers that Councils can play a key role in facilitating the provision of land as set in the PPG. This could be done, for example, by using the Councils’ own land for such purposes and/or allocating sites specifically for self and custom-build home builders- although this would need to be done through discussion and negotiation with landowners.

**Matter 8 – Environment Policies**

**(Policies EN1-EN15)**

**Issue 8- Does the Plan set out positively prepared policies in relation to climate change and the environment which are justified, effective and consistent with national policy?**

**8.1 Are the policies relating to climate change and the environment justified by appropriate available evidence, having regard to national guidance, and local context?**

**8.2 Do policies EN1 to EN15 provide clear direction as to how a decision maker should react to a development proposal? In particular:**

**8.2.1 a) In relation to Policy EN1 – Climate Change - Are the requirements of the Policy clear, and would they be effective? Are they supported by appropriate evidence of need and viability? Are the requirements of the policy reasonable and can they be appropriately and proportionately applied to all development?**

HBF concerns about viability have been detailed elsewhere in our Reg 19 response and these MIQs they are not repeated here, but do remain outstanding.

**b) Do the requirements of the Policy reflect guidance in paragraphs 153 and 154 of the National Planning Policy Framework, and are they in line with the Housing: Optional Technical Standards? What is the justification for setting the water efficiency requirement at 110ltrs per day? How is this supported by evidence?**

HBF’s views on this matter can be found in our Reg 19 response to Policy EN1 Climate Change, they are not repeated here, but remain outstanding.

**8.2.5 In relation to Policy EN8 – Biodiversity and EN9 – Biodiversity Gains – Are the requirements of the policy consistent with national policy? In relation to EN9(g) how would the requirement to use lower quality agricultural land be demonstrated?**

In HBF’s view the BNG policy wording is not consistent with national policy, for various reasons detailed below.

There is also significant confusion between policy EN8 and EN9 that needs resolving for the plan to be effective, deliverable and in compliance with national policy, all of which are required in order for the plan to be found sound**.**

HBF is concerned the policies are incorrect with parts of EN9 being inappropriate for inclusion within a BNG policy and if needed if retained at all these should be moved into policy EN8.

HBF note that although mandatory national BNG was introduced in the Environment Act 2021 the introduction of Biodoversty Net Gain for planning application did not come for large sites until Feb 12th 2024, and for small sites on 2nd April 2024.

HBF has been involved in a significant amount of work, being led by the Future Homes Hub, on BNG preparedness for some time, including feeding into the BNG Planning Practice Guidance and the DEFRA BNG Guidance. It is important for this policy to fully reflect all the new legislation, national policy and MHCLG and DEFRA guidance.

HBF note that this represents a lot of new information that the Council will need work though and consider the implications of, in order to ensure that any policy on Biodiversity Net Gain policy complies with the latest policy and guidance now that it has been published. It should also be noted that the PPG is clear that there is no need for individual Local Plans to repeat national BNG guidance.

It is the HBF’s opinion that the Council should not deviate from the Government’s requirement for 10% biodiversity net gain as set out in the Environment Act. The Plan should provide certainty for developers and a clear BNG policy with a fixed 10% figure, rather than the policy including the phrase “at least 10%” would help to provide this.

Any requirements to go beyond 10% BNG needs to be clearly demonstrated with evidence including considering the implications of the policy approach as part of the whole plan viability appraisal. In particular, HBF would question how the viability of more than 10% BNG can be established when the market for off-site credits, and therefore the costs of delivering the 10% mandatory BNG system are still emerging.

HBF notes that the proposed policy wording and supporting text will need to reflect both that the Environment Act which requires 10% Biodiversity Net Gain, and the emerging policy, guidance and best practice on how Mandatory Biodiversity Net Gain will be implemented. There is an important policy distinction to made between the national mandatory requirements and any optional further requests from LPAs to go further and faster. In particular the 10% national target is non-negotiable from a viability perspective, but policies seeking over 10% can be challenged on viability grounds. This distinction needs to be recognised within the Local Plan.

HBF suggest particular care is needed in terminology to ensure the Amber Valley policy reflects the national policy and guidance. For example, on site and off-site biodiversity is referred to as units, and the statutory national credit system of last resort is referred to as credit. It is important for the wording of the policy to accurately reflect the legalisation and guidance.

It is for the BNG plan, which is approved after planning permission has been granted, to set out what happens if monitoring shows any BNG measure are ineffective. For large and complex sites where the development is phased, the guidance is clear that the 10% must be delivered at the end of the development, and this may not result in 10% BNG on each phase. Additional advice on phased development has been provided in the new BNG PPG. It would be helpful for the policy and/or the supporting text to Plan to refer to this.

As previously mentioned, the costs of BNG must also be considered as part of the whole plan viability assessment and should be specified as a single specific item, and not combined into a generic s106 costs item. There are significant additional costs associated with biodiversity net gain, which should be fully accounted for in the Council’s viability assessment, some of which remain unknown at this time. It is important that BNG does not prevent, delay or reduce housing delivery. The costs relate both the financial costs and also land take- which will impact on densities achievable if BNG is provided on site.

As BNG is still a new policy area and the market for off-site provision, and statutory credits are not yet known, any figure used for BNG costs will need to be kept under review as BNG implementation progresses and a greater understanding of actual costs become available. The Whole Plan Viability Assessment must clearly set out how it considered the implications of mandatory BNG and how it as arrived at using the most up to date BNG costs information available. There is a need for further additional flexibility in policies elsewhere in the Plan to reflect the non-negotiable nature of 10% BNG costs.

In relation to the policy wording on EN9 itself, in HBF’s view the wording of policy is incorrect, inconsistent ad incompatible with the national BNG advice and advice and Guidance. We have provided annotated comment to the policy (shown in grey italic text).

BNG will also impacts on the density of housing schemes that can be provided, as land used for on-site BNG is not available for housing. This may require larger and/or additional housing sites to be allocated.

**Policy EN9 Biodiversity Gains**

**Following application of the mitigation hierarchy, all development proposals should ensure opportunities are taken to retain, protect and enhance biodiversity and geodiversity features.**

***This wording is confusing in this policy. The mitigation hierarchy should be covered in EN8 to avoid any confusion. The mitigation hierarchy refers to here relates to the need ot avoid harm and impact on biodiversity in the first place, whereas the BNG hierarchy relates to the sequence for consider where BNG should be provided- firstly through on-site BNG units, the off-site BNG units and then, as a last resort, the purchase if government statutory credits***

**Development proposals (unless exempt) will be required to achieve at least 10% biodiversity net gain using the Government’s Biodiversity Metric. Net gain is expected to be provided on site but where it can be demonstrated that this would not be possible or desirable, it should be provided on one or more sites within the Borough (unless this is demonstrated not to be possible) that would deliver local priorities for biodiversity, having regard to the Derbyshire Natural Capital Strategy, the Local Nature Recovery Strategy for Derbyshire, the Lowland Derbyshire Biodiversity Action Plan (LBAP) (or its successors) and other locally identified priorities, or as a last resort, through national credits.**

***This wording is confusing and inaccurate. Natural England’s mandatory BNG Metric allows for progression down the BNG hierarchy sequence and consideration of where BNG should be provided- firstly through on-site BNG units, the off-site BNG units and then, as a last resort, the purchase if government statutory credits. BNG delivered further away from the site is already penalised through the metric calculations, and in summary more off-site BNG units are required if the BNG is delivered further away. It is therefore not appropriate for the Amber Valley Local Plan to seek to limit BNG only within its boundary. Whilst is may seek to identify and prioritise local important BNG opportunities through the LNRS, it cannot refuse development that needs to use off-site units outside of the district boundary, or resort to statutory credits, if these are the only options available and deliverable for a particular planning application. To suggest such restriction is possible is misleading and contrary to national policy.***

**Mitigation and or compensation required as a result of impacts upon ‘Habitat Sites’, other statutory designated sites or irreplaceable habitats will be required in addition to biodiversity net gain requirements.**

***Again, this wording is confusing is in location. This policy should restrict itself to the delivery of national mandatory BGN, with other biodiversity issues dealt with under policy EN8. The BNG guidance is clear that Irreplaceable habitats are outside the scope of BNG and any impacts cannot be compensated with through BNG units or credits.***

**The Borough Council will ensure that wherever possible, opportunities are taken in conjunction with development proposals to:-**

**a) extend or strengthen biodiversity interest,**

**b) contribute to the provision of coherent wildlife networks,**

**c) de-culvert/re-meander watercourses,**

**d) preserve, restore, re-create and manage habitats of principal importance and protect and assist the recovery of priority species of principal importance,**

**e) provide areas of natural greenspace, including trees and woods,**

**f) provide access to the natural environment,**

**g) make use of lower quality agricultural land in preference to the best and most versatile agricultural land (grades 1, 2 and 3a),**

**h) incorporate the provision of fish passes,**

**i) integrate nest boxes into the fabric of buildings with an eaves height of 5m or above, that are suitable for swifts, unless the fabric of the building cannot support an integrated solution and in those cases external boxes will be required, j) minimise soil disturbance and protect and enhance soils.**

***Many of the items listed in the second half of the policy- swift boxes, fish passes, fall outside of the scope of the BNG metric and would not count as the creation of new habitats under the metric. Issues such as public access to the natural environment may be in direct conflict with the effective management of the new BNG habitat that has been created. As such the wording of the policy is confusing and unhelpful in this policy which should be about how the national requirements for Biodiversity Net Gain is to be implemented in Amber Valley.***

**Net gains shall be managed for a minimum of 30 years in accordance with an agreed maintenance scheme, with monitoring and reporting requirements to be agreed as part of the approved scheme.**

***The BNG Plan, which is technically approved after planning permission has been granted through the discharge of the BNG condition, is where the arrangement for the management and maintenance of new BNG habitat will be set out. This will also set out the start date for the 30 years, which the legislation and guidance require to be on completion of the development, this is a particularly important issue for phased development.***

In conclusion, HBF would suggest the first three paragraphs of this policy should renamed the Biodiversity Net Gain Policy and the second half the policy should be separated off, as it deals with other issues of biodiversity, and not biodoversty net gain. If there is a need for this second section to be retained it could be added to Policy EN8, however some of the wording may be unnecessary in policy and would be better accommodated in text, if it needs to be retained at all.

HBF suggest that there is also a need for this policy and supporting text to say more about how BNG will be considered in relation to applications in advance of the Local Nature Recovery Strategies. As the LNRS emerges it will be important for this Local Plan to be kept under review and further public consultation on the interaction between the two documents and/or changes to Local Plan policy and/or its implementation, to reflect the LNRS may be needed.

HBF would also encourage the Council to ensure the Local Plan fully considers the new BNG requirements in relation to site allocations. This is likely to require undertaking an assessment of the baseline to support the allocation to enable an understanding the BNG requirements for a site to be allocated and the impact this may have on viability and other policy requirements and considerations. It will be important to understand the BNG costs of mandatory BNG as this is non-negotiable and as such may impact on the viability of the site and its ability to deliver against other policy requirements such as affordable housing or other s106 asks.

If there is additional work to be done to resolve the challenges to the Plan’s soundness resulting from the non-availability of the Mackworth site, HBF would strongly suggest additional BNG work on current and the additional new housing allocations that will be needed, should be undertaken as part of this work.

HBF also notes that there seems to be significant potential for confusion around environmental hierarchy, and suggest particular care is needed to avoid any confusion between the well-established mitigation hierarchy and the new BNG hierarchy. The wording in this Plan is a clear example of just such confusion. There is a need for the policy wording and/or supporting text to be clearer about the differentiation between the mitigation hierarchy (which seeks to avoid harm in the first place, then mitigate and only then compensate it in relation to protected habitats) and the BNG delivery hierarchy (which prioritises on-site BNG delivery, then off-site units and finally allows for statutory credits). There seems to be significant potential for confusion between the two difference hierarchies. HBF therefore suggest that the Council should take particular care to explain how the requirements of the two-part BNG hierarchy work in different ways and that they seek to achieve different aims, and not confuse the two.

A Glossary including the terminology of the mandatory BNG system would greatly assist the effectiveness and soundness of the Plan. This could include for example mandatory BNG, BNG Plan, BNG statutory metric, small sites metric, post permission condition, on-site units, off-site units and statutory credits, LNRS etc. This would assist plan-users and make the plan more effective. This is a complex and new area of policy making and implementation, and it is essential that any new Local Plan is effective so that and BNG does not become a barrier to development.

**Matter 11 - Infrastructure and Delivery, and Monitoring**

**(Policies IN1-IN12 and Policy MR1)**

**Issue 11 – Does the Plan set out a positively prepared strategy and policies for infrastructure, delivery and monitoring which is justified, effective and consistent with national policy?**

**11.4 a) Does Policy IN12 provide an effective framework to ensure the delivery of the necessary infrastructure?**

As set out in our Reg 19 consultation HBF are concerned that because Section 106 contributions can only be sought to ensure a development mitigates its own impact, they cannot be required to address existing shortfalls. HBF would therefore request that policy makes specific reference to the CIL tests and sets out how the Council will assess the infrastructure requirements of an application at the time it is made.

**b) Are the policy’s requirements supported by up-to-date evidence? How will the requirements of the policy be kept up to date?**

It will therefore be essential for the Council to have robust and up-to-date evidence and calculate any developer contributions arising at the time a planning application is made. HBF would suggest that the evidence around infrastructure will need revisiting in light of the failure of the deliverability of the Plan that has been caused by the non-availability of the Mackworth site.

**c) Have the implications of the policy in relation to viability been appropriately tested? Are the assumptions in the Whole Plan Viability Assessment reasonable and up to date and do they adequately reflect the scale and cost of infrastructure requirements for development in the Borough?**

HBF have significant concerns about the viability appraisal. These are detailed in our Regulation 19 response, in particular in the section that details our comments on BNG.

HBF have concerned about some of the detail of the Viability Assessment prepared by Aspinall Verdi in Feb 2024, as it has not considered a number of key costs and requirements. For example, HBF information suggests that complying with the current new part L is costing £3500 per plot. The Future Homes Standard Part L in 2025 is anticipated to cost up to £7500+ per plot. There will also be the addition of the Building Safety Levy that is coming in pay for cladding. This will be a per plot basis around the UK, and initial values are around £1500- £2500 per plot. These costs appear to have not been considered in the viability appraisal.

Other factors that need to be taken into account include increasing costs of materials and labour due to inflation and the costs of mandatory BNG, which are still emerging as the off-site market is yet to be established. Although the initial price of statutory credits is now known this national fallback option has been deliberately highly priced to discourage their use. Whilst this intention is understandable, at present the lack of functioning local markets for off-site credits causes viability problems because HBF members experience to date suggests that any scheme that needs to rely on statutory credits becomes unviable. HBF have numerous concerns about the whole plan viability study, including the omission of some key policy costs. For example, an realistic and evidenced allowance for mandatory BNG needs to be includes within the viability assessment of the Local Plan.

The costs of BNG should have been considered as part of the planning obligations and should be specified as a single specific item. There are significant additional costs associated with biodiversity net gain, which should be fully accounted for in the Council’s viability assessment, some of which are unknown at this time. It is important that BNG does not prevent, delay or reduce housing delivery. As this is an emerging policy area and the market for off-site provision, and statutory credits are not yet known, any figure used for BNG costs will need to be kept under review as BNG implementation progresses and a greater understanding of actual costs become available. The Whole Plan Viability Assessment should clearly set out how it considered the implications of mandatory BNG and how it arrived at the most up to date BNG costs information available to use.

At a very basic level viability can be improved by reducing costs or increasing values. Sometimes, therefore changing the type of affordable housing provided can help to improve viability of a specific site, and the plan should recognise this. In this situation there could be a change of the percentages of different types of affordable housing provided, but the headline figure of how much affordable housing is provided would remain the same. Flexibility in the policy is important to allow for these kind of considerations.

The geographical distribution of development may impact on the Plan’s ability to deliver affordable housing where it is most needed. HBF notes that the level of open-market housing provided may also impact on the amount of affordable housing that can be developed.

It will be also be important to understand if there any geographically specific viability considerations, such as whether higher levels of open-market housing are required in particular areas in order to secure increased delivery of affordable housing in that location in a way that remains viable. Similarly, brownfield city centre sites tend to be most suited for apartments or retirement living. There will therefore be a need to include green fields allocations which are more likely to deliver family housing and a higher percentage of affordable housing, in order to provide flexibility in the housing land supply and ensure a range of housing types and tenures is provided. This adds further weight to the need to consider Green Belt release(s).

HBF does not comment on individual sites, other than to say the Plan should provide for a wide range of deliverable and developable sites across the area in order to provide competition and choice and a buffer to ensure that housing needs are met in full. The soundness of strategic and non-strategic site allocations, whether brownfield or greenfield, will be tested in due course at the Local Plan Examination. We do note however that the Amber Valley Local Plan Viability Assessment included site specific viability assessments for the Mackworth Site which is now not aviabale., and a different level of detail was provided for the two different strategic sites.

HBF is very concerned that the Council’s own evidence highlights the viability challenges facing Amber Valley. Para 5.39 and 5.40 of the Aspinall Verdi Study conclude in the lower value areas “Typologies A, B, C and E are not viable for plan making purposes with 40% affordable housing and a non-housing s106 contribution of £12,500 per unit.” And “Typologies D, F, G, H and I are marginally viable for plan making purposes with 40% affordable housing and a non-housing s106 contribution of £12,500 per unit.”

In relation to medium value zones para 5.49 and 5.50 says “Typologies J, K, M, O, P and R are viable for plan making purposes with 40% affordable housing and a non-housing s106 contribution of £12,500 per unit. These schemes range between 10 and 200 units on greenfield land”, but that “Typologies L, N, and Q are marginally viable for plan making purposes with 40% affordable housing and a non-housing s106 contribution of £12,500 per unit. These schemes range between 15 and 150 units on brownfield land.”

Even in the highest value areas the whole plan viability assessment concludes in para 5.54 and 5.55 that “Typologies S, T, V, X, Y, Z and AA are viable for plan making purposes with 40% affordable housing and a non-housing s106 contribution of £12,500 per unit. These schemes range between 10 and 200 units on greenfield land and a 150-unit scheme (Z) on brownfield land” but that “Typologies U, and W are marginally viable for plan making purposes with 40% affordable housing and a non-housing s106 contribution of £12,500 per unit. These schemes range between 15 and 60 units on brownfield land.”

Despite these findings the report recommends that schemes in the higher value zone should deliver 40% affordable housing on greenfield and brownfield land (para 5.56) medium value zone should deliver 30% affordable housing (para 5.51) and schemes in the lower value zone should deliver 10% affordable housing on brownfield sites ranging between 10 – 19 dwellings and 20% on all other sites.

However, in HBF’s view the assumptions that underpin the viability appraisal and the subsequent policy recommendations are woefully inadequate. In our experience an allowance of £12,500 for s106 agreements does not include many of the elements, we have listed preciously in our responses and indeed more recent information on the costs of BNG in practice have found some HBF members are encountering costs higher than £12,500 on a per dwelling basis, just for the costs of BNG credits itself.

In light of the HBF’s significant concerns about the Submission version of this Plan in light of the non-availability of the Mackworth Site, HBF would suggest as a minimum that if the EIP is to continue, time must allowed for additional work to be undertaken to consider the wider issues of soundness around housing issues, including those affecting the spatial strategy and housing land supply. If this is the way forward then HBF would suggest that the opportunity should then also be taken to update the whole viability assessment to giving full consideration to the inclusion of the missing and inaccurate factors we have identified.

**d) Is the requirement to fund mitigation to address landscape or heritage harm consistent with national policy and other policies in the plan?**

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**e) Is the policy sufficiently flexible?**

HBF would welcome greater flexibility to ensure development remain deliverable

**f) Are there any omissions from the proposed policy and supporting text?**

 See comment above and below, and in our Reg 19 response which are not repeated here.

**11.5 In relation to policy MR1, is the plan sufficiently clear as to how its implementation will be monitored? Are the defined circumstances in which a review would be triggered appropriate? Would the policy be effective?**

HBF suggests that both the wording and the intention of the policy is inadequate, ineffective and unclear. As we explained in our Regulation 19 response the inclusion of policies within a Local Plan that merely triggers a review of the Local Plan if monitoring shows housing delivery is not occurring as expected. Such a policy does nothing to address the housing crisis or undersupply of homes. There are other more effective and immediate measures that could be introduced into policy that would enable the Council to address housing under deliver, much more quickly than would be possible through the production of another plan, or plan review.

HBF continues to recommend that an appropriate monitoring framework needs to be included within the Plan which sets out the monitoring indicators along with the relevant policies, the data source and where they will be reported. This should also include the targets that the Plan is hoping to achieve and actions to be taken if the targets are not met. The monitoring framework within the Plan should more details as to how the plan will actually be monitored, and identify when, why and how actions will be taken to address any issues identified.