

**HUNTINGDONSHIRE DISTRICT COUNCIL**

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| <b>Title/Subject Matter:</b> | Establishment of a process following the receipt of an Examiner's report into a neighbourhood plan                                  |
| <b>Meeting/Date:</b>         | Overview and Scrutiny Panel (Environmental Wellbeing) -<br>10 <sup>th</sup> November 2015<br>Cabinet 19 <sup>th</sup> November 2015 |
| <b>Executive Portfolio:</b>  | Strategic Housing and Planning  |
| <b>Report by:</b>            | Planning Policy Team Leader   |
| <b>Ward(s) affected:</b>     | All   |

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**Executive Summary:**

This report sets out the options upon receipt of an Examiner's report into a neighbourhood plan, proposes a process to determine whether a neighbourhood plan progresses to referendum, and sets out the procedures for conducting a referendum.

**Recommendations:**

It is recommended that:

Overview and Scrutiny Panel (Environmental Wellbeing) makes comments to Cabinet on this report

and that Cabinet:

1. Agree the process for determining whether a Neighbourhood Plan progresses to referendum as set out in this report; and
2. Notes the requirements of the Regulation in relation to referendums (as summarised in this report and set out in the briefing note on the role of the local planning authority in arranging the referendum prepared by the Planning Advisory Service and Local Government Association in Appendix 1).

## **1. WHAT IS THIS REPORT ABOUT?**

- 1.1 This report sets out the options upon receipt of an Examiner's report into a neighbourhood plan, proposes a process to determine whether a neighbourhood plan progresses to referendum, and sets out the procedures for conducting a referendum.
- 1.2 A separate paper is being prepared to meet the key action in the 2015/16 Corporate Plan to set out our 'community planning' offer, which will include but will not be restricted to neighbourhood plans.

## **2. WHY IS THIS REPORT NECESSARY**

- 2.1 The report is necessary to agree the process following receipt of an Examiner's report, progression to referendum and how that referendum is to be carried out.
- 2.2 Following examination the Examiner's report is sent to the local planning authority and the town/parish council preparing the neighbourhood plan. The examiner is required to set out one of three options:
- a) That the neighbourhood plan proceeds to referendum as submitted;
  - b) That the neighbourhood plan is modified by the local planning authority to meet the basic conditions and the modified version proceeds to referendum; or
  - c) That the neighbourhood plan does not proceed to referendum as it fails to meet the basic conditions or legislative requirements and cannot be modified to do so.
- 2.3 Following the examination and receipt of the Examiner's Report the local planning authority has limited options:
- 1. Act upon the Examiner's report and progress the neighbourhood plan to referendum – where the Examiner either recommends the plan meets the basic conditions without need for modifications or can meet the basic conditions subject to modifications;
  - 2. Propose to take a decision substantially different from the Examiner's recommendation which is wholly or partly as a result of new evidence or a different view taken by the local planning authority about a particular fact – in which case the local planning authority must notify all those identified in the consultation statement of the town/ parish council and invite representations on the alternative decision and where necessary as a result of these representations the local planning authority must reopen the examination
  - 3. Decide not to progress the neighbourhood plan in light of the Examiner's report – this is only permissible where c) in paragraph 2.2 above is the case.
- 2.4 As any Neighbourhood Plan which passes its referendum will form part of the statutory development plan for Huntingdonshire it is considered appropriate to prepare a report for Cabinet for any neighbourhood plan containing a recommendation on which of the above decisions is appropriate in the particular circumstances, and for Cabinet to resolve which of the options set out in paragraph 2.3 should be followed. The report to Cabinet would be supplemented with a draft Decision Statement setting out any modifications

considered by the Examiner as necessary to enable the submission neighbourhood plan to meet the required basic conditions.

### **3. WHAT ACTIONS WILL BE TAKEN**

- 3.1 The Cabinet report following receipt of the Examiner's report into any neighbourhood plan will recommend one of the three decisions set out above in paragraph 2.3.
- 3.2 Where the recommendation is 1) *Act upon the Examiner's report and progress the neighbourhood plan to referendum*, then arrangements will be made to conduct the referendum in accordance with Regulations and using the guidance set out in the PAS and Local Government Association: Briefing note on Referendums of Neighbourhood Development Plans reproduced as Appendix A.
- 3.3 Where the recommendation is 2) *Propose to take a decision substantially different from the Examiner's recommendation which is wholly or partly as a result of new evidence or a different view taken by the local planning authority about a particular fact*, then discussions will be held with the relevant town or parish council on the alternative decision proposed. Once appropriate modifications are agreed, consultation will be carried out with all parties identified in the neighbourhood plan's statement of consultation and representations invited. Where representations substantially support the alternative modification the neighbourhood plan will be taken forward to referendum. Where the representations indicate a substantial variation in opinion over the alternative modification, the examination will be reopened and the Examiner invited to consider the representations on the alternative modification and determine whether it would meet the basic conditions. After this, a further Cabinet report would be prepared indicating whether the recommendation had altered to that of 'Act upon the Examiner's Report' enabling progression to referendum.
- 3.4 Where the recommendation is 3) *Decide not to progress the neighbourhood plan in light of the Examiner's report as it fails to meet the basic conditions or legislative requirements and cannot be modified to do so*, further discussions will be held with the town/parish council to identify how the District Council can support them through the process of preparing a replacement neighbourhood plan should they wish to do so.
- 3.5 Once the decision is made to proceed to a referendum there are clear Regulations to be followed, the main stages of which are set out below.
- 3.6 The Regulations set out the information to be made available at least 28 working days before the date of the referendum which includes the draft Neighbourhood Plan and the Examiner's Report and where this should be displayed. The town/parish council will be expected to compile an updated version of the Plan incorporating the necessary modification(s) where there are any. The town/parish council will be expected to promote the referendum. Regulations set out the restrictions on publication of promotional material and advertisements and restrictions on referendum expenses.
- 3.7 The Regulations also require publication of a notice of the poll at least 7 days beforehand detailing the times and locations of polling stations and the description of those entitled to vote. They specify that provision must be made for postal ballot papers and official poll cards must be issued. A person is entitled to vote in the neighbourhood plan referendum if they meet the

eligibility criteria to vote in a local election for the area and if they live in the referendum area.

3.8 The Regulations set out the format of the Referendum Question as: 'Do you want Huntingdonshire District Council to use the neighbourhood plan for (XXX parish) to help it decide planning applications in the neighbourhood area?'

3.9 If the majority of those who vote in a referendum are in favour of the draft neighbourhood plan then the neighbourhood plan must be brought into legal force 'made' by the District Council as local planning authority. A report will be presented to Full Council at this stage. This should be done promptly following the announcement of the referendum result. The only circumstances where the District Council is not required to make the neighbourhood plan are where it considers that doing so would be incompatible with any EU or human rights obligations. When made, the plan will become part of the statutory development plan for the area.

#### **4. COMMENTS OF OVERVIEW & SCRUTINY PANEL**

4.1 The matter is being considered by the Overview and Scrutiny Panel (Environmental Wellbeing) on the 10<sup>th</sup> November and its comments will be conveyed to Cabinet.

#### **5. LINK TO THE CORPORATE PLAN**

5.1 Progressing any neighbourhood plan through to referendum links to the strategic objective 'To empower local communities'. It will help to achieve the action of working with parishes to complete neighbourhood and parish plans.

#### **6. LEGAL IMPLICATIONS**

6.1 Neighbourhood planning is part of the government's initiative to empower local communities to take forward planning proposals at a local level. The Localism Act (2011) and subsequent regulations confer specific functions on local planning authorities in relation to neighbourhood planning.

6.2 As with any planning decision there is a risk of legal challenge to the plan and/or judicial review of the council's decision to proceed with the referendum. This risk is managed by ensuring that the regulations are followed and that the Council's decision making process is clear and transparent.

#### **7. RESOURCE IMPLICATIONS**

7.1 The neighbourhood planning duties imposed on local planning authorities by the Localism Act 2011 have considerable implications for resources both in terms of staff time and costs for providing assistance to a town/parish council undertaking a neighbourhood plan, examination and referendum. In recognition of this the Department for Communities and Local Government has made grants of up to £30,000 available to local planning authorities for each neighbourhood plan. The payment of this Extra Burdens Grant is phased so that £5,000 is available when the neighbourhood area is designated, a further £5,000 when the plan is submitted to the District Council and publicised for statutory consultation. The final £20,000 is subject to successful examination (ie. that the Examiner recommends the plan proceeds to referendum, with or without the need for modifications).

- 7.2 The Extra Burdens Grant of £30,000 is expected, by government, to cover the costs of the examination and referendum. Staff resources to support production and examination of neighbourhood plans will come from the existing Planning Policy team, and there will be costs to Democratic Services in carrying out the referendum.

## **8. REASONS FOR THE RECOMMENDED DECISIONS**

- 8.1 The recommended decisions are intended to establish a clear process for responding to the Examiner's report on any neighbourhood plan and set out the procedures for conducting a referendum where this is recommended by the examiner.

## **9. RECOMMENDED DECISIONS**

- 9.1 It is recommended: that Overview and Scrutiny Panel (Environmental Wellbeing) makes comments to Cabinet on this report; and that Cabinet:
- 1 Agree the process for determining whether a Neighbourhood Plan progresses to referendum as set out in this report; and
  - 2 Notes the requirements of the Regulation in relation to referendums (as summarised in this report and set out in the briefing note on the role of the local planning authority in arranging the referendum prepared by the Planning Advisory Service and Local Government Association in Appendix 1).

## **10. LIST OF APPENDICES INCLUDED**

- 1) PAS and Local Government Association: Briefing note on Referendums of Neighbourhood Development Plans
- 2) Flowchart of Neighbourhood Plan process

## **BACKGROUND PAPERS**

Town and Country Planning Act 1990 (as amended)  
Planning and Compulsory Purchase Act 2004  
Localism Act 2011  
The Neighbourhood Planning (Referendums) Regulations 2012 (as amended)

## **CONTACT OFFICER**

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