

Cornwall Council

Report to: **Cabinet Member for Planning**

Date: **18 August 2016**

Title: **Rame Peninsula Neighbourhood Development Plan – 2016 to 2030 - Legal Compliance Report**

Portfolio Area: **Planning**

Divisions Affected: **Rame Peninsula**

Relevant Scrutiny Committee: **Scrutiny Management Committee**

Key Decision:	N	Approval and clearance obtained:	Y
Urgent Decision:	N	Date next steps can be taken:	5 working days after substantive decision
Appropriate pre-decision notification given where an executive Decision?			N

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Recommendations to Portfolio Holder:

1. That the Rame Peninsula Neighbourhood Development Plan is agreed to be Legally Compliant and should be publicised for consultation prior to being taken forward to Examination.

1. Executive summary

Under the Town and Country Planning Act 1990 (as amended), the Council has a statutory duty to assist communities in the preparation of neighbourhood development plans and orders and to take plans through a process of examination and referendum.

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The Localism Act 2011 (Part 6 chapter 3) sets out the Local Planning Authority (LPA) responsibilities as:

1. Designating the area of the NDP
2. Advising or assisting communities in the preparation of a neighbourhood plan
3. Checking a submitted plan meets the legal requirements
4. Arranging for the independent examination of the plan
5. Determining whether the neighbourhood plan meets the basic conditions and other legal requirements
6. Subject to the results of the referendum/s bringing the plan into force

This report deals with stage 3 of the process – checking that a submitted plan meets the legal requirements.

Rame Peninsula Neighbourhood Development Plan (NDP) was submitted to Cornwall Council, on 12th July 2016 by the Rame Peninsula Neighbourhood Plan Parish Cluster Steering Group. The plan was accompanied by a Basic Conditions Statement, a Consultation Statement, a Sustainability Appraisal, and the Screening Opinion decision as evidence of compliance with European Environmental legislation included in the Basic Conditions Statement, as required by the Neighbourhood Planning (General) Regulations 2012. A supplementary evidence base document was also submitted.

The Plan has been checked against the Neighbourhood Planning (General) Regulations 2012 (hereafter referred to as 'the Regulations') and found to be legally compliant. Appendix 1 is a table which details each stage of plan preparation, the relevant regulations and legislation at each stage, how the plan has met the Regulations and whether or not it is compliant. Having carried out the checks, officer opinion is that the Rame Peninsula NDP is legally compliant.

2. Background

The Council has a statutory duty to assist communities in the preparation of neighbourhood development plans and orders and to take plans through a process of examination and referendum.

The Plan has been through the statutory stages of area designation and pre-submission draft consultation. The area designation applications of the whole of the parish area of Antony, Maker with Rame, Millbrook, Shevioc and St John (The Rame Peninsula) were correctly made by the Parish Council's, publicised by Cornwall Council in accordance with Regulation 6 and designated by Portfolio Holder decision on 8 February 2013. The decision was publicised in accordance with Regulation 7.

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Several stages of consultation and public engagement have been carried out during plan preparation (as detailed in the Consultation Statement) and the statutory pre-submission consultation was carried out from 16 November 2015 until 28 January 2016. It was publicised and the relevant consultation bodies were contacted in accordance with Regulation 14 of the 2012 regulations. The Rame Peninsula Parish Cluster NDP steering group have detailed the comments received and their responses in the Consultation Statement submitted with the Plan. The current required stage is for the Local Planning Authority (LPA) to consider the Plan, determine whether it is legally compliant and, if so, notify the Parish Councils of its decision and progress the Plan by starting the 6 week consultation period and starting to make arrangements for the examination

The LPA must consider:

1. Whether the Parish Councils are authorised to act
2. Whether the proposal and accompanying documents
 - a. comply with the rules for submission to the LPA
 - b. meet the 'definition of an NDP' and
 - c. meet the 'scope of NDP provisions', and
3. Whether the Parish Councils have undertaken the correct procedures in relation to consultation and publicity

1. Millbrook Parish Council is the qualifying body authorised to progress a neighbourhood plan. They have made the correct application for the designation of the neighbourhood area and are authorised to act.

2a. The plan proposal and accompanying documents comply with the rules for submission, in that they include a map identifying the area, a consultation statement, a basic conditions statement and information to enable appropriate environmental assessments. In this regard a screening opinion was sought from Cornwall Council at an early stage of plan drafting and rescreened during the Pre-Submission Consultation stage of the Neighbourhood Planning Process. Cornwall Council consulted the statutory bodies, Historic England, Natural England and the Environment Agency. The consultation bodies concluded that a Habitats Regulation Assessment (HRA) and a Strategic Environment Assessment (SEA) would not be required and Cornwall Council issued a screening opinion to that effect.

The steering group carried out a Sustainability Appraisal in November 2014 and the document was formally submitted with the plan proposal.

2b. The 'definition of an NDP' is: "A plan which sets out policies (however expressed) in relation to the development use and of land in the whole or any part of a particular neighbourhood area specified in

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the plan" The Rame Peninsula NDP contains policies which relate to the development and use of land within the St John, Millbrook and Antony ("Maker with Rame, St John, Millbrook, SheviocK and Antony Parishes" and therefore meets the definition.

2c.The 'Scope of NDP provisions' are:

- The NDP must specify the period for which it is to have effect
- It cannot include provision about development that is 'excluded development'
- It cannot relate to more than one Neighbourhood area or repeat an existing planning permission

The Rame Peninsula NDP specifies the plan period as 2016 to 2030 (from adoption.)

It does not provide for any 'Excluded development' which is defined as
a) A 'county matter' (schedule 1 of 1990 ACT) i.e. relating to minerals

b) Any operation or class of operation relating to waste development Development that falls within Annex 1 to Council Directive 85/337/EEC i.e. Oil refineries, power stations, radioactive waste disposal, iron and steel smelting, asbestos operations, chemical installations, motorways, airports, ports and toxic and dangerous waste disposal.

c) Development consisting wholly or partly of a national infrastructure project

It relates only to one Neighbourhood area and does not repeat an existing planning permission.

3. The Rame Peninsula NDP Steering Group, on behalf of Millbrook Parish Council has undertaken the correct procedure for pre-submission statutory consultation and community consultation throughout the process, as detailed in the Consultation Statement.

The Rame Peninsula NDP is therefore considered to comply with the criteria and legislation for a Neighbourhood plan and should be taken forward.

3. Outcomes/outputs

If the Rame Peninsula NDP is endorsed as compliant, Cornwall Council can commence the regulatory stages required to progress the plan to examination and referendum and 'make' the plan so that it forms part of the 'development plan' and policy framework for planning decision making in Cornwall. In order to do this, the Council must also consider

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whether the plan as currently proposed would be deliverable and provide sufficient spatial direction for the plan area.

Production of Neighbourhood plans is a stated objective in the Policy and Delivery Team Plan. It supports the objectives of the Cornwall Local Plan, which relies on Neighbourhood Plans to provide the policy framework for delivery of development, particularly in rural areas.

4. Options available and consideration of risk

A significant proposition of the land identified in Policy 8 safeguarding land for a future bypass (either within or beyond the NDP period), is currently owned by the Ministry of Defence (MOD). A letter dated 17th December 2015, from the MOD objects to any MOD land being included in the draft policy as the land is defined as Core for operational purposes and there is an enduring defence requirement for the land. A copy of the letter is included in the Consultation Statement.

Cornwall Council will notify the Examiner that the bypass is not in the Council's Transport Work Programme but the decision whether to remove the allocation will be made by the independent examiner undertaking the Examination of the Rame Peninsula NDP.

5. Proposed Way Forward

If the Rame Peninsula NDP proposal is agreed to be legally compliant, the next steps in the process of 'making' the Rame Peninsula Neighbourhood Plan are:

- LPA notify the Millbrook Parish Council of its decision on the Plan's legal compliance.
- The LPA publicise the NDP proposal
- The LPA appoint an examiner, with the consent of the Parish Councils
- Following successful Examination the Council holds a Referendum
- Following successful Referendum (simple majority) the plan is 'made' i.e. adopted by Cornwall Council and becomes part of the statutory development plan.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	See main body of report which sets out the relevant legislation, i.e. Town and Country Planning Act 1990 (as amended)

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		<p>Planning and Compulsory Purchase Act 2004 Localism Act 2011 and the Neighbourhood Planning (General) Regulations 2012.</p> <p>At this stage the Council considers whether or the draft Plan meets the statutory requirements and that a basic condition statement has been submitted but it is not required to consider whether the draft Plan meets the basic conditions. It is only after independent examination and receipt of the examiner's report that the Council comes to its formal view as to whether the draft Plan meets the basic conditions.</p>
Financial	Y	<p>There are costs associated with the examination and referendum. The estimated costs for the Rame Peninsula examination are £10,000 and in the region of £10,000 for the referendum.</p> <p>Financial support from Central Government has been reviewed and updated for the financial year 2016/17. LPA's are able to claim, from Central Government, a grant of £20,000 once a date is set for a referendum following a successful examination. These grants are currently provided until 31 March 2017 and will be used to fund the associated costs.</p> <p>The value of the grant is fixed, irrelevant of the actual examination and referendum costs, so for smaller neighbourhood plans the grant is usually in excess of the costs incurred. This is retained by the Service to cover the cost of the larger towns, where the costs are higher. The current budget is sufficient to accommodate the Rame Peninsula costs.</p> <p>During the financial year, if the accumulated costs for the neighbourhood plans exceed the grants received, then the Planning Service will have to identify funding from elsewhere within their approved budget to fund any deficit.</p>
Risk	Y	<p>Failure to progress the plan proposal would risk customer dissatisfaction, given our commitment to support communities in the production of neighbourhood plans.</p>

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Comprehensive Impact Assessment Implications		
Equality and Diversity	Y	The plan covers the Maker with Rame, Millbrook, Sheviock, Antony and St John Parish areas and its aim is to meet the needs of all the community. The plan has to contribute to sustainable development and be compliant with European Human Rights legislation. The examiner must consider the Basic Condition whether the NDP does not breach and is otherwise is compatible with EU obligations and human rights requirements, when the Plan is taken to examination after the statutory six week consultation period.
Safeguarding	N	None
Information Management	N	None
Community Safety, Crime and Disorder	N	None
Health, Safety and Wellbeing	N	None
Other implications		None

Supporting Information

Appendices:

Rame Peninsula Neighbourhood Development Plan Legal Compliance Checklist – Appendix 1
Rame Peninsula Neighbourhood Development Plan – Appendix 2
Rame Peninsula Neighbourhood Development Plan Basic Conditions Statement – Appendix 3
Rame Peninsula Neighbourhood Development Plan Consultation Statement – Appendix 4
Rame Peninsula Neighbourhood Development Plan Sustainability Appraisal – Appendix 5
Rame Peninsula Neighbourhood Development Plan Evidence Summary – Appendix 6

Background Papers:

None

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All reports:

Final report sign offs	This report has been cleared by OR not significant/not required	Date
Legal (if significant/required)	Elizabeth Dunstan	20.09.2016
Finance Required for all reports	Leah Thomas	14.09.2016
Equality and Diversity	N/A	

Cabinet/individual decision reports:

Final report sign offs	This report has been cleared by	Date
Head of Service	Phil Mason	21/09/16
Corporate Director	Paul Masters	23.9.16