Provisional Recommendation:

The application is granted
Application Map
1. **Introduction:**

Cornwall Council has a duty under Section 4 of the Commons Act 2006 to keep a register of common land and a register of town and village greens. Cornwall Council also has a duty under paragraph 26 of the Commons Registration (England) Regulations 2014 to determine applications and proposals to amend the registers of common land and town and village greens, unless the registration authority has an interest in the outcome of the application or proposal such that there is unlikely to be confidence in the authority’s ability impartially to determine it.

Proposal No. 10 was made by the Commons Registration Authority seeking to register 0.283 hectares of land between Tresean and Cubert Commons in the parish of Cubert, as common land under Schedule 2.2 of the Commons Act 2006, as coloured orange on the attached plan.

This report examines the evidence for and against whether the proposal meets the statutory tests set out in Schedule 2.2 of the Commons Act 2006.

The report has been prepared to be presented to a delegated officer. The delegated decision is to consider whether to accept, refuse or refer the matter to an independent inspector to make a recommendation to accept or refuse the proposal.

2. **Background and Corporate Objectives:**

The legislative background is for the applicant to show that:
- The land was not at any time finally registered as common land or as a town or village green under the 1965 Act;
- Is land which is
  - Regulated by an Act made under the Commons Act 1876 (c.56) confirming a provisional order of the Inclosure Commissioners;
  - Subject to a scheme under the Metropolitan Commons Act 1866 (c.122) or the Commons Act 1899 (c.30);
  - Regulated as common land under a local or personal Act; or
  - Otherwise recognised or designated as common land by or under an enactment;
- and for the registration authority to comply with section 27 of the Commons Registration (England) Regulations 2014 – Method of determining applications and proposals.

3. **Decision and Supporting Information (Including Options):**

As Cornwall Council has no interest in the application land all parties can be confident that the registration authority can impartially determine the proposal, and there is no need to refer the proposal to the Planning Inspectorate for determination, as would otherwise be the case.
The options available to the registration authority are to:
i approve the proposal, in whole or in part;
ii reject the proposal; or
iii refer the proposal to an independent inspector to recommend accepting or refusing the application.

It is recommended that the available evidence is sufficient for the Council to approve the proposal. Regulation 27(7)(a) requires that a proposal cannot be accepted or refused without first offering the interested parties an opportunity to make oral representations.

4. **Contributions to Corporate Priorities:**

In determining the proposal the Council is performing its statutory duty set out in sections 6 to 17, 19 and 22 of the Commons Act 2006 to determine applications seeking to amend the registers of common land and of town and village greens.

5. **Financial Implications and Budget:**

The process of determining whether the proposal is accepted or refused is met from existing budgets.

The management of the land will continue to be the responsibility of the owner.

6. **Other Resourcing Implications:**

None.

7. **Legal Implications:**

Cornwall Council has a statutory duty set out in paragraph 26 of the Commons Registration (England) Regulations 2014 to determine applications and proposals to amend the registers of common land and town and village greens.

8. **Equality Impact Assessment:**

It is not considered that an Equality Impact Assessment is required or that there is likely to be any equality impact as a consequence of this decision.

9. **Significant risks:**

Should the Council make a decision which is opposed there may be a risk of judicial review. These costs can be significant and can represent a financial risk to the Council, though this should not allow this information
to influence the decision about whether the proposal should be accepted or refused, as such a decision should be based on the evidence before it.

10. **Consultation including Overview and Scrutiny Committee and Local Member Representation:**

10.1 **Overview and Scrutiny Consultation/Comments:**

As this is a regulatory matter and not a matter of strategic importance the Environment Overview and Scrutiny Committee has not been consulted.

10.2 **Local Division Member Comments:**

Councillor L Gorman was given Notice of the application, but has since resigned.

Councillor Maggie Vale has yet to be informed of the likely outcome of the application.

**Appendices:**

None

**Background Papers:**

All papers relating to this proposal [No. 10].
11. **BACKGROUND**

11.1 A Proposal was made on the 24th May 2016 by Cornwall Council for the registration of land as common land under Schedule 2.2 of the Commons Act 2006, for 0.283 hectares of land between Tresean and Cubert Commons (CL 316 and CL 117), Cubert in the County of Cornwall. The Proposal and map is shown as an appendix to this report.

11.2 Paragraph 16 of the Commons Registration Regulations 2014 requires a proposal to be made in accordance with, amongst other things, Schedule 4 of the Regulations. Section 14 of Schedule 4 of the Regulations refers to applications or proposals made under Schedule 2, complying with paragraphs (2) and (3) if applicable of the 2006 Act.

11.3 The following describes where the proposal meets and does not meet the legislative requirements for registration as common land.

**LEGISLATIVE REQUIREMENTS**

**Schedule 2(2)(a) of the 2006 Act**

12 ‘The land was not at any time finally registered as common land or as a town or village green under the 1965 Act.’

It is confirmed that none of the land was at any time finally registered as common land or as a town or village green under the Commons Registration Act 1965.

**Schedule 2(2)(b) of the 2006 Act**

13 ‘Is land which is:
- Regulated by an Act made under the Commons Act 1876 (c.56) confirming a provisional order of the Inclosure Commissioners; or
- Subject to a scheme under the Metropolitan Commons Act 1866 (c.122) or the Commons Act 1899 (c.30); or
- Regulated as common land under a local or personal Act; or
- Otherwise recognised or designated as common land by or under an enactment.’

It is claimed the land is common land by virtue that it is recognised or designated as common land under the 1846 Tithe Map for the parish of Cubert, made under the Tithe Commutation Act 1836. It is further claimed that the land falls within parcel No. 644, described as part of Tresean Common.
14 **Defra’s Guidance**

“Commons registration authorities – correct mistakes” – states:

“As any land in an application or a proposal under the Commons Act 2006, Schedule 2, paragraphs 2 or 3 must still be legally recognised as a common or a green by the relevant piece of law – the legislation that created that particular common or green can’t have been revoked.”

Whilst the Tithe Commutation Act 1836 has been amended, it has not been revoked.
The Council is of the view that land marked as common land by virtue of the Tithe Commutation Act 1836 and the associated 1840 Tithe Award is sufficient for the purposes of paragraph 2 of Schedule 2 to the Commons Act 2006.

**Schedule 2(2)(c) of the 2006 Act**

15 ‘Is land to which this Part applies.’

It is confirmed that the proposal land is land to which this Part of the 2006 Act relates.

**Schedule 2(2)(d) of the 2006 Act**

16 ‘satisfies such other conditions as regulations may specify.’

**Regulation 18 (Making a proposal) of the 2014 Regulations**

16a ‘Before taking any other steps under this Part in relation to a proposal, a registration authority must prepare a statement in writing describing the proposal and explaining the justification for it.’

The registration authority prepared and published such a written statement on 24 May 2016.

16b **Regulation 22(2-5) of the 2014 Regulations**

*Registration authority’s duty to publicise proposal*

It is confirmed the registration authority has complied with the legislation concerning publicity of the proposal.
17 Method of Determining Application

The Commons Regulations (England) Regulations 2014 states that:

27(1) The determining authority must, in determining any application or proposal, take into account:
(d) any oral representations made by any person in accordance with paragraph (7)
27(6) Paragraph (7) applies in relation to any application which the determining authority decides to determine without holding a public inquiry or hearing in accordance with regulation 32.
27(7) the determining authority:
(a) May not refuse an application without first offering the applicant an opportunity to make oral representations; and
(b) May not grant or refuse an application without first offering any person (other than the applicant) for whom the grant or refusal would represent a determination of that person’s civil rights an opportunity to make oral representations.

The Registration Authority should now proceed to share the contents of this preliminary decision with the interested parties and local member and ask whether any party wishes to make oral representations.

18 Decision

On the balance of probabilities the criteria for the registration of the land as common land have been satisfied, and the proposal is granted.

Name: Mike Eastwood
Title: Countryside Access Team Leader
Date: 6 March 2017
21 Supporting Information

Proposal 10 and written statement

22 Background Papers:

The Commons Act 2006:

The Commons Registration (England) Regulations 2014:

Guidance to commons registration authorities and the Planning Inspectorate for the pioneer implementation (version 2.0, December 2014) (Defra)
(Scroll down to heading: Pioneer documents including guidance and statutory instruments)