

Report to:	Service Director – Planning and Sustainable Development	
Date:	05/01/2018	
Title:	Feock Parish Neighbourhood Development Plan: Plan Proposal Decision – Post Examination Report Modifications and Referendum	
Portfolio Area:	Planning and Economy	
Divisions Affected:	Feock Parish	
Relevant Scrutiny Committee: Economic Growth and Development		
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Approval and clearance obtained:	Y	
For Cabinet and delegated executive decisions only		
Key decision?	N	
Published in advance on Cabinet Work Programme?	Y	
Urgency Procedure(s) used if 'N' to Work Programme?	N	
Date next steps can be taken	5 clear working days after decision is made.	

Recommendation:

The Feock Parish Neighbourhood Development Plan is modified according to the Examiner's recommendations (with minor amendments to ensure clarity), the Plan proposal decision is published and the Plan progresses to Referendum.

1. Executive Summary

The Feock Parish Neighbourhood Development Plan (the NDP) has been successful at Examination, with the Examiner recommending that the Plan

should proceed to referendum, subject to a number of recommended modifications.

The NDP has been modified in line with the Examiner's recommendations, with one minor amendment for clarity and the Council can now proceed to referendum on the making of the NDP.

The Local Planning Authority (LPA) is responsible for deciding what action to take in response to the Examiner's recommendation. Modification of a plan, contrary to the recommendations of the Examiner is rare, however, it is considered that the modifications proposed by the Examiner in relation to improving wildlife and greenspaces whilst technically correct, could result in unintended confusion regarding the intention of the policy. As a result, the Local Planning Authority has made a minor amendment to the ordering of the wording made as part of the Examiner's recommendation> This allows the policy wording meet the Basic Conditions required for Neighbourhood Plans as well as satisfying both the Steering Group and the LPA.

2. Purpose of Report

The Council as Local Planning Authority (LPA) is responsible for deciding what action to take in response to the Examiner's recommendation. This report details the recommendations and the modifications made to the NDP, which have been made with the involvement of the NDP Steering Group (the Group).

Cornwall Council, with the agreement of Feock Parish Council, appointed Mrs Barbara Maksymiw as Examiner. The Examination commenced on 12th September 2017, by means of written representations and by an initial assessment of the Neighbourhood Plan and accompanying documents. A site visit was carried out to the Neighbourhood Plan area.

21 Comments were submitted to the Examiner following the publication consultation. This includes 7 statutory consultation responses and 14 public responses.

Mrs Maksymiw supplied the final examination report on 11th December 2017. The report concluded that the Feock NDP could proceed to Referendum, subject to some recommended modifications to make the wording of policies and their application clearer and to ensure that the NDP meets the basic conditions. The main recommendations concern:

- Adding the plan period to the front cover
- Formatting the plan with paragraph numbering and clearly distinguishing policies in coloured boxes.
- Inserting a composite policies map into appendix 2
- Minor rewording to policies BIO1 and BIO2 and BIO3
- Rewording of policy HE1 to include reference to the Cornwall Local Plan
- Rewording of policy LS1 to include reference to the Cornwall Local Plan
- Minor amendment removing wording from policy LS2.
- Revised figure 15 key and annotations.
- Revised figure 1 with up to date settlement boundaries

- Revised figure 27 from the evidence document to remove a proposed cycleway
- Rewording policy H1
- Removed policy H4
- Minor amendments to policies SC1 and SC2

The full schedule of modification recommendations is included in a table in Appendix 2 Schedule of Modification Recommendations.

Feock Parish Council agrees with Cornwall Council that all the modifications should be made to the Neighbourhood Plan and supporting documents.

Mrs Maksymiw's overall Recommendation is that the Neighbourhood Plan, as amended following the recommendations set out in the examination report, be submitted to a Referendum and that the referendum area should be the same as, and not extend beyond, the NDP area. The full Examination report is attached as Appendix 1.

3. Benefits for Customers/Residents

The Neighbourhood Plan is an opportunity for the local community to influence placemaking and planning decisions in their local area. The Cornwall Local Plan supports the production of neighbourhood plans and the spatial strategy requires development proposals to 'assist the creation of resilient and cohesive communities' and as part of this 'Support[ing] the delivery of made Neighbourhood Plans and other community based initiatives that help to make communities more resilient.' (Cornwall Local Plan, Policy 2 – Spatial Strategy.)

Residents of the Neighbourhood Plan Area, Feock Parish, have had the opportunity to be involved in the research for and writing of the NDP and through the consultation and engagement associated with the NDP's development have been able to contribute their ideas and views.

For applicants, agents and developers wishing to submit proposals in the area, the NDP adds extra detail to the strategic policies for the area, so that applicants will have information about community expectations when preparing an application and can tailor their proposal accordingly.

4. Relevant Previous Decisions

The preparation and making of a Neighbourhood Development Plan is governed by Schedule 4B to the Town and Country Planning Act 1990 as amended and The Neighbourhood Planning (General) Regulations 2012 as amended (2012 Regulations) as follows

NDP Area Designation – Portfolio Holder Decision 13th December 2013

The first regulatory stage of the NDPs – the Parish Council submit an application and a map to notify of their intention to produce a neighbourhood plan.

Legal Compliance: Portfolio Holder Decision 28th June 2017

After the Parish Council submit their plan, the LPA carries out a legal compliance check and publishes the plan for Regulation 16 'publication' consultation

All previous reports and versions of the Plan are available on the Cornwall Council website on a page dedicated to Feock Neighbourhood Development Plan.

5. Consultation and Engagement

The first statutory round of consultation occurs at area designation stage. Feock Parish Council submitted an application and map to designate their Neighbourhood Area on 01st June 2013. Cornwall Council consulted residents and other interested stakeholders on the designation between 13th June 2013 and 25th July 2013. Copies of the application letter and statement that explains how the Parish Council and Neighbourhood Area met the conditions of Section 61G(2) of the Town and Country Planning Act 1990 (the 1990 Act), were made available to view at Circuit House, St Clement Street, Truro during the six week consultation period. The Cornwall Council then formally designated the Neighbourhood Area.

After this notification that a Parish Council is preparing a NDP and until the point that the NDP is submitted to Cornwall Council the responsibility for consultation and engagement on the NDP falls to the qualifying body, which is Feock Parish Council. This process is tested for compliance at the independent examination and the Qualifying Body is required to submit a Consultation Statement, which evidences that the Regulations have been complied with.

The Consultation Statement contains:

- (a) details of the persons and bodies who were consulted about the proposed Neighbourhood Development Plan;
- (b) explains how they were consulted, which included presentations at public events, an online and paper survey, use of Facebook and a section on the parish website for the plan, newsletters, posters and face to face interviews.
- (c) summarises the main issues and concerns raised by the persons consulted; and
- (d) describes how these issues and concerns have been considered and, where relevant, addressed in the proposed Neighbourhood Development Plan.

The next statutory consultation stage is the pre-submission consultation on the draft Plan, (which was carried out by the Parish Council, in compliance with Regulation 14 of the 2012 Regulations) the representations on which have to be received not less than 6 weeks from the date on which the plan proposal is first publicised at this stage. The statutory pre-submission consultation was held from 01st February 2016 to 14th March 2016 where the 'Consultation Bodies', as set out in Schedule 1 of the Regulations are consulted. Any comments submitted during this consultation must be summarised and included in the Consultation Statement, with a note of what action was taken in response.

Once the Plan is submitted and judged to be legally compliant, Cornwall Council publicises the draft NDP in the next round of statutory consultation, (in accordance with Regulation 16 of the 2012 Regulations) the representations on which have to be received not less than 6 weeks from the date on which the plan proposal is first publicised at this stage. The statutory consultation by Cornwall Council was held from 29th June 2017 to 10th August 2017.

The Plan proposal included a copy of a map and a statement which identifies the area to which the proposed Neighbourhood Development Plan relates; a Consultation Statement; the proposed Neighbourhood Development Plan and a statement explaining how the proposed Neighbourhood Development Plan meets the requirements of paragraph 8 of Schedule 4B to the 1990 Act (the Basic Conditions Statement).

Copies of the documents were available to view on the website, or through the Planning Register (planning application number PA17/000016/NDP) and hard copies were available from Feock Parish Council Offices, Carnon Downs Doctors Surgery and Truro One Stop Shop, Pydar House during the consultation period. The Council sent the Plan proposal and representations to the Independent Examiner on 12th September 2017 the Independent Examiner issued a report to the Council and the Feock Parish Council.

6. Financial Implications of the proposed course of action/decision

There are costs associated with the examination and referendum. The estimated costs for the Feock Parish NDP referendum are in the region of £5,800.

Local Planning Authorities are able to claim, from Central Government for the financial year 2017/18, a grant of £5,000 at submission (limited to first five neighbourhood areas designated in total) and 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 2018 and will be used to fund the associated costs.

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 occurred. 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 Feock Parish Neighbourhood Development Plan costs.

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.

7. Legal/Governance Implications of the proposed course of action/decision

The next stage of the Regulations requires the Council to:

- Decide what action to take in response to the recommendations of the Examiner

- Publish the decision and their reason for it
- Publish the Examiner's report

The Neighbourhood Planning (General) Regulations 2012 (as amended) requires in Regulation 18 for the Local Planning Authority to outline what action to take in response to the recommendations of an Examiner made in a report under paragraph 10 of Schedule 4B to the 1990 Act (as applied by Section 38A of the 2004 Act) in relation to the Neighbourhood Plan.

This report is the Council's decision on how to incorporate the Examiner's recommendations. The power to decide whether the Examiner's modifications are incorporated or not, lies with the Local Planning Authority. However the Examiner's report has been discussed in detail with the NDP Steering Group and the Neighbourhood Plan and the proposed modifications to the Plan in response to the Examiner's report have been developed with the Group's involvement. The Examiner's Recommendations are different to those made in respect of Local Plans. Whilst neither sets of recommendations are binding, instead of requiring 'soundness' Neighbourhood Plans must meet Basic Conditions, providing more scope for interpretation. Whereas the Inspector's recommendations on the Local Plan are necessary for soundness, the Examiner's recommendations are open to alternative modification as long as those modifications would still result in the plan meeting the Basic Conditions.

Having considered each of the recommendations made in the Examiner's report and the reasons for them, the Council, with the consent of Feock Parish Council has decided to accept the modifications to the draft Plan subject to the minor reordering of text proposed for bullet point 1 in BIO3 and retention of bullet point 3 to provide clarity of purpose for the policy. The modifications proposed in respect of bullet points 1 and 3 for BIO3 would then be amalgamated under bullet 1 to provide clarity of site choice (i.e. avoid designated sites and non-designated sites that have large areas of semi-natural habitat). This approach accords with Policy 23 of the Cornwall Local Plan and therefore will continue to meet the Basic Conditions for Neighbourhood Planning. In addition, it is not considered that bullet point 3 needs to be deleted as recommended as it provides useful guidance that networks of green should be retained whether possible on site, this is in accordance with Policy 25 of the Local Plan and therefore meets the Basic Conditions.

Appendix 2 outlines the alterations made to the draft Plan under paragraph 12(6) of Schedule 4B to the 1990 Act (as applied by Section 38A of 2004 Act) in response to each of the Examiner's recommendations. As the proposed divergence from the Examiner's modifications for BIO3 are minor and do not impact on the Basic Conditions it is not considered that they would comprise an alternative modification that would necessitate additional consultation under Regulation 17A of the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016. Amendments to these Policies will allow them to meet the Basic Conditions and therefore be retained in the Plan. The Council is satisfied that the Plan as modified meets the Basic Conditions set out in paragraph 8(2) of Schedule 4B of the Town And Country Planning Act 1990 and is compatible with the European Convention on Human Rights obligations.

The Plan has been screened for Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) and the Screening Opinion was that SEA and HRA were not required. A Comprehensive Impact Assessment (CIA) was undertaken at the Legal Compliance Check stage.

The Examiner confirmed in her report that she was satisfied that the NDP was compliant with European and Human Rights Legislation.

8. Risk Implications of the proposed course of action/decision

Failure to take the Plan forward to referendum would risk customer dissatisfaction and would be a failure of the Council's duty to support communities in the production of neighbourhood plans.

9. Comprehensive Impact Assessment Implications

The Equality Act 2010 places a duty on all public authorities to have regard to the need to eliminate discrimination, to advance equality of opportunity, and to foster good relations between persons who have a "protected characteristic" and those who do not. The protected characteristics are Age, Disability, Gender Re-assignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion and Belief, Sex, Sexual Orientation and in Cornwall an additional characteristic, Cornish Status.

The NDP has been developed to be in general conformity with the Cornwall Local Plan, which was subject to Examination in Public and found to be sound. The Cornwall Local Plan provides for the objectively assessed need for housing to meet the needs of all the community, against which the conformity of the NDP has been tested.

The Cornwall Local Plan has been subject to Comprehensive Impact Assessment. This concluded that the current and future businesses and residents of, and visitors to, Cornwall will be affected by the land use policies in terms of provision of jobs, homes, infrastructure, access to services and the protection of the environment. The Policies' objectives are to plan for the needs of the whole community now and in the future, the Plan period is to 2030. In addition, where evidence demonstrates a need, a number of protected characteristic groups are positively planned for with specific provision made for older people and the disabled.

The housing and affordable housing targets aim to ensure appropriate housing is available to meet local needs over the Plan period. Failing to provide sufficient housing will impact most on disadvantaged groups.

A CIA of the NDP was carried out as part of the Legal Compliance Check. It concluded that the NDP provides a strategy for the development of the Neighbourhood Area, and a range of policies, which will result in positive benefits for the local community. The key positive impacts are promoting sustainable development, protecting the built and natural environment, providing employment and housing to meet local need and promoting community engagement and involvement in planning.

10. Options available

Cornwall Council has a duty to support communities who are preparing neighbourhood plans. The 2012 Regulations detail the Council's responsibilities. The NDP has been independently examined and found to meet the Basic Conditions subject to the recommended Modifications. The Examiner has recommended that the NDP should proceed to Referendum.

The Council is required to make a decision as to what action it proposes to take in response to each recommendation as detailed in the Examiner's Report by 15th January 2018 being the date as prescribed in Regulation 17A of the 2012 Regulations. It is not clear as to what the outcome will be if that date is missed but it is clear that the Council's reputation would be damaged.

Failure to take the NDP forward to referendum would risk customer dissatisfaction and would be a failure of the Council's duty as set out above.

11. Supporting Information (Appendices)

Appendix 1: Feock NDP Examination Report

Appendix 2: Feock NDP Recommended Modifications Table

Appendix 3: Feock NDP modified after examination

Appendix 4: Feock NDP Consultation Statement modified after examination

Appendix 5: Feock NDP Basic Conditions Statement modified after examination

Appendix 6: Feock NDP Appendices

Appendix 7: Feock NDP Delivery Strategy

Appendix 8: Feock NDP Evidence Base

12. Background Papers

None.

13. Approval and clearance

All reports:

Final report sign offs	This report has been cleared by (or mark not required if appropriate)	Date
Governance/Legal (Required for all reports)		

Finance (Required for all reports)		
Equality and Diversity (If required)	N/A	
On behalf of Service Director (Required for all reports)		
Strategic Director (If required)		