

Cornwall Council

Report to: **Cabinet Member for Planning**
Date: **21 January 2015**
Title: **Roseland Neighbourhood Plan Legal Compliance Report**
Portfolio Area: **Planning**
Divisions Affected: **Roseland**
Relevant Scrutiny Committee: **Scrutiny Management Committee**

Key Decision: **N** Approval and clearance obtained: **Y**

Urgent Decision: **N** Date next steps can be taken:

Appropriate pre-decision notification given where an executive Decision? **Y /N**

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Recommendations to Portfolio Holder:

1. The Roseland Neighbourhood Plan is agreed to be Legally Compliant and should be publicised and 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.

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

1. Designating the area of the NDP

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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.

Roseland Neighbourhood Development Plan (NDP) is the second draft neighbourhood plan to be published in Cornwall and was submitted to Cornwall Council, with the endorsement of St Just in Roseland, Veryan, Gerrans, Philleigh and Ruan Lanihorne Parish Council (St Just in Roseland has been chosen by the other parishes to act as the qualifying body and is hereinafter referred to as the “the Parish Council”), on 5 December 2014. The plan was accompanied by a Basic Conditions Statement and a Consultation Statement, and evidence of compliance with European Environmental legislation, as required by the Neighbourhood Planning (General) Regulations 2012.

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 with 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 Roseland 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 application was correctly made by the Parish Council, publicised by Cornwall Council and designated by portfolio holder decision on 2 September 2013.

Several stages of consultation and public engagement have been carried out during plan preparation (as detailed in the Consultation Statement) and the statutory 6 week pre-submission consultation as carried out from 3 August to 14 September 2014. It was publicised and the relevant consultation bodies were contacted in accordance with Regulation 14 of the Regulations. The Roseland NDP steering group has

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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 Council of its decision and progress the plan by starting the 6 week consultation and starting to make arrangements for the examination. It was agreed at Environment and Heritage PAC in April that legal compliance checks would be reported to PAC and agreed by Portfolio Holder Decision, to ensure Member endorsement of a neighbourhood plan prior to publication by Cornwall Council.

The LPA must consider:

1. whether the parish council is 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 council has undertaken the correct procedures in relation to consultation and publicity

1. The Parish Council is the qualifying body authorised to progress a neighbourhood plan. They have made the correct application for the designation of their 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. Cornwall Council consulted the statutory bodies, English Heritage, Natural England and the Environment Agency, who all concluded that Strategic Environmental Assessment (SEA) and Habitats Regulation Assessment (HRA) would not be required.

2b. The 'definition of an NDP' is: "A plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan"¹ The Roseland plan contains 34 policies which relate to the development and use of land within the parishes of St Just in Roseland, Veryan, Gerrans, Pilleigh and Ruan Lanihorne 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

¹ 2004 Planning and Compulsory Purchase Act as amended by Localism Act Section 38 A (2)

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- 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 Roseland Plan specifies the plan period as 2014 – 2030.

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 Parish Council has undertaken the correct procedure for pre-submission statutory consultation and have also undertaken broad and extensive community consultation throughout the process, as detailed in the Consultation Statement.

The Roseland 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 Roseland NDP is endorsed as compliant, the Council can commence the regulatory stages required to progress the plan through examination and referendum and 'make' the plan so that it forms part of the adopted policy framework for planning decision making in Cornwall.

This will further our objective to support Localism for our communities. The Roseland NDP and its process may also be used as a template which can help other communities in their plan preparation.

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.

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4. Options available and consideration of risk

The Roseland NDP has been assessed against the Regulations' and is found to be legally compliant; the Council, therefore has a duty to support and progress the plan.

A further 6 week consultation will be carried out, to add to the previous community and stakeholder consultation carried out by the NDP steering group, so the plan will be well publicised. Previous consultation showed support from the community for the themes and policies in the plan and the plan was developed from these community views. Statutory consultees were generally supportive of the plan and where they have made suggestions for amendments to strengthen the plan these have been made where possible.

5. Proposed Way Forward

If PAC agrees that the Roseland NDP proposal is legally compliant, the next steps in the process of 'making' the Roseland Neighbourhood Development Plan are:

- LPA notify the Parish Council of their decision on the plan's legal compliance.
- The LPA publicise the NDP proposal
- The LPA appoint an examiner, with the consent of the Parish Council
- Following successful examination the Council holds a referendum
- Following successful referendum (simple majority) the plan is 'made' – i.e. adopted by Cornwall Council as part of the Planning Policy framework

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	See main body of report Relevant legislation: Town and Country Planning Act 1990 (as amended) Planning and Compulsory Purchase Act 2004 Localism Act 2011 Neighbourhood Planning (General) Regulations 2012.
Financial	Y	There are costs associated with the examination and referendum. The estimated costs for the Roseland examination are £5,000 and £7,654 for the referendum. Grants are made from central government to the LPA with £5,000 available at submission and

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		£10,000 on successful examination. These grants are currently provided until 31March 2015 and will be used to fund the estimated costs.
Risk	Y	Failure to progress the plan proposal would risk customer dissatisfaction, given our commitment to support communities in the production of neighbourhood plans.
Comprehensive Impact Assessment Implications		
Equality and Diversity	Y	The plan has to contribute to sustainable development. Supplementary documents produced by the steering group include an Equality and Inclusivity Assessment and a Sustainability Appraisal checklist. Equality and Diversity
Safeguarding	N	You need to set out what the Safeguarding implications are. You can do this by copying and pasting relevant information from the CIA or use the CIA to inform this Implication Safeguarding
Information Management	N	You need to set out what the Information Management implications are. You can do this by copying and pasting relevant information from the CIA or use the CIA to inform this Implication Information Management
Community Safety, Crime and Disorder	N	<ul style="list-style-type: none"> Is there any potential positive or negative impact on crime and disorder reduction? <p>You need to set out what the Community Safety, Crime and Disorder implications are. You can do this by copying and pasting relevant information from the CIA or use the CIA to inform this Implication Community Safety, Crime and Disorder</p>
Health, Safety and Wellbeing	N	You need to set out what the Health, Safety and Wellbeing implications are. You can do this by copying and pasting relevant information from the CIA or use the CIA to inform this Implication Health, Safety and Wellbeing
Other implications		Committee Report Template- Other Implications

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Supporting Information

Appendices:

Appendix 1 - Roseland Neighbourhood Development plan Legal Compliance Checklist
Appendix 2 - Roseland Neighbourhood Development Plan 2013-2030
Appendix 3 - Roseland Neighbourhood Development Plan Basic Conditions Statement
Appendix 4 - Roseland Neighbourhood Development Plan Consultation Statement

Background Papers:

None

Approval and clearance of report

All reports:

Final report sign offs	This report has been cleared by OR not significant/not required	Date
Legal (if significant/required)	Virginia Meldrum	13 Jan 2015
Finance Required for all reports	Andy Brown, Assistant Head of Finance	14 Jan 2015

Cabinet/individual decision reports:

Final report sign offs	This report has been cleared by	Date
Head of Service	Phil Mason	16 Jan 2015
Corporate Director	Michael Crich	20 Jan 2015