

Report to:	<b>Service Director – Planning and Sustainable Development</b>	
Date:	<b>18<sup>th</sup> August 2017</b>	
Title:	<b>Withiel Neighbourhood Development Plan - 2015 to 2030 - Legal Compliance and Examination Stage</b>	
Portfolio Area:	<b>Planning and Economy</b>	
Divisions Affected:	<b>Lanivet and Blisland</b>	
Relevant Scrutiny Committee: <b>Economic Growth and Development Overview and Scrutiny Committee</b>		
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Approval and clearance obtained:	<b>Y</b>	
<b>For Cabinet and delegated executive decisions only</b>		
Key decision? ( $\geq$ £500k in value or significant effect on communities in two or more electoral divisions)	<b>N</b>	
Published in advance on Cabinet Work Programme?	<b>N/A</b>	
Urgency Procedure(s) used if ‘N’ to Work Programme?	<b>N/A</b>	
Date next steps can be taken	<b>5 clear working days after decision</b>	

**Recommendations:**

1. The Withiel Neighbourhood Development Plan is agreed to be Legally Compliant and should be publicised under Regulation 16 of the Town and Country Planning (General) Regulations 2012 and taken forward to Examination.

**1. Executive Summary**

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 Withiel Neighbourhood Development Plan (Withiel NDP) was submitted to Cornwall Council, with the endorsement of Withiel Parish Council, on 31<sup>st</sup> July 2017. The Plan was accompanied by a Basic Conditions Statement, a Consultation Statement, a Design guide and evidence of compliance with European Environmental legislation, as required by the Neighbourhood Planning (General) Regulations 2012.

Under The Localism Act (2011), the Council is required upon submission of a Neighbourhood Plan to check that it meets the legal requirements for those plans before it can progress to formal consultation, examination and referendum.

The Plan has been checked against the Neighbourhood Planning (General) Regulations 2012 (hereafter referred to as 'the Regulations') and found to be legally compliant providing the parish council consult the statutory consultee National Grid . The organisation was not consulted as part of the six week Pre-submission consultation carried out by Withiel NDP Steering Group, however they have been consulted on 23<sup>rd</sup> August 2017 and the six week consultation period expires on 6<sup>th</sup> October 2017, thus any responses by National Grid will be taken into account during the publicity period and be brought to the attention of the Inspector at the examination. Withiel Parish Council will pass any response received by National Grid to Cornwall Council to submit to the independent examiner after the statutory six week consultation period held by Cornwall Council. Withiel Parish Council have been made aware of this . Appendix 1 to this report 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 Withiel NDP is legally compliant providing the National Grid are consulted on the Plan for a six week period. .

## **2. Purpose of Report**

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 Neighbourhood Development Plan (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.

The Plan has been through the statutory stages of area designation and pre-submission draft consultation. The area designation application was correctly made by Withiel Parish Council, publicised by Cornwall Council and designated by Portfolio Holder decision on 30<sup>th</sup> April 2015.

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 1<sup>st</sup> August 2016 until 16<sup>th</sup> September 2016. It was publicised and the relevant consultation bodies were contacted in accordance with Regulation 14 of the Regulations. The Withiel NDP Steering Group have summarised 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 Withiel Parish Council of its decision and progress the Plan by starting the 6 week consultation period and making arrangements for the examination.

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

In respect of these questions:

1. Withiel 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 based on the Steering Group submitting a draft emerging policies statement. Cornwall Council consulted the statutory bodies, Historic England, Natural England and the Environment Agency. The consultation bodies concluded that a Strategic Environment Assessment (SEA) and Habitat Regulations Assessment (HRA) are not required. Cornwall Council issued a screening opinion to that effect on 27 January 2017.

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 the plan". The Withiel NDP contains policies which relate to the development and use of land within Withiel Parish and therefore meets that definition.

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

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

The Withiel NDP specifies the plan period as 2015 - 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; and
- 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 carried out pre-submission statutory consultation, and relevant statutory consultees were contacted as part of the pre-submission consultation. Withiel Parish Council has also undertaken community consultation throughout the process, as detailed in the Consultation Statement. However it is noted that National Grid were not initially consulted and a six week consultation process with National Grid will take place between 23<sup>rd</sup> August and 6<sup>th</sup> October 2017 and the Council will be required to confirm that this has taken place prior to the publication period expiring under regulation 16 and prior to submission of a plan proposal to examination. This will ensure that any recommendations/comments from National Grid are taken into account. The qualifying body do not think it is necessary to carry out a further six week pre-submission consultation and publicity period under paragraph 14, because the National Grid have been given the opportunity to be consulted on the plan proposal for six weeks and the response will be given to the independent examiner once appointed when carrying out the examination of the Plan.

The Withiel NDP is therefore considered to comply with the criteria and legislation for a neighbourhood plan (providing the National Grid are consulted for a six week period and this is demonstrated to the Council) and should be taken forward.

If the Withiel NDP is endorsed as compliant, Cornwall 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.

### **3. Benefits for Customers/Residents**

Neighbourhood Planning was put into place by the Localism Act 2011 to enable communities to have a direct say in how their area is planned by creating a formal planning document that will, on making (adoption), form part of the statutory development plan for the area covered.

The confirmation of Legal Compliance, formal consultation and Examination of the Plan will further our objective to support Localism for our communities. The Withiel 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 Planning Policy and Partnerships 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. Relevant Previous Decisions**

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 30<sup>th</sup> April 2015.

This is the second stage at which the Council must make a decision whether the Plan should proceed in accordance with The Neighbourhood Planning (General) Regulations 2012.

### **5. Consultation and Engagement**

The Plan has been through the statutory stages of area designation and pre-submission draft consultation as referenced above.

The NDP Regulations require that the Parish Council carries out a formal consultation process for a period of six weeks prior to the submission of the Neighbourhood Plan to the Council.

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 1<sup>st</sup> August until 16<sup>th</sup> September 2016. It was publicised and the relevant consultation bodies were contacted in accordance with Regulation 14 of the Regulations apart from one statutory organisation. The Withiel NDP Steering Group considered the comments received and made appropriate changes to their NDP to reflect those responses, further detail on the nature of those responses is included at Annex 2 of the consultation statement. The Consultation statement will be updated after the examination to reflect the response received from the National Grid with their consultation dates.

The confirmation of Legal Compliance of the Plan will lead to a further formal stage of consultation over six weeks with the community and statutory

consultation bodies. National Grid will have six weeks to respond to Withiel Parish Council between the dates stated above. The parish council will have another opportunity to respond to a six week statutory consultation held by Cornwall Council and details will be advertised when available. The statutory consultation will end after the consultation held by Withiel 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 Withiel NDP are £5,000 for examination and £3,000 for the referendum.

Central Government provides a grant to the LPA of £5,000 at submission (limited to first five neighbourhood areas designated in total) and £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 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 Withiel NDP costs.

During the financial year, if the accumulated costs for the neighbourhood plans exceed the grants received, then the Planning and Sustainable Development 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 Council has certain steps that it has to take in progressing a neighbourhood development plan. These are detailed in both the report and Legal Compliance Checklist. Relevant legislation comprises of:

- Town and Country Planning Act 1990 (as amended)
- Planning and Compulsory Purchase Act 2004
- Localism Act 2011
- Neighbourhood Planning (General) Regulations 2012.

Legal Compliance allows the Plan to progress to the next stage of consultation, but does not necessarily mean that the Plan will be adopted in the form currently submitted as this may change in accordance with the recommendations of the appointed examiner. The exact content of the Plan may be subject to potential alteration after the authorisation of the plan proposals stage and the Council may make representations on its content prior to examination.

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

Failure to progress the Plan proposal would risk customer dissatisfaction, given our commitment to support communities in the production of neighbourhood plans.

## **9. Comprehensive Impact Assessment Implications**

The Plan has to contribute to sustainable development and be compliant with any European obligations and the European Convention on Human Rights as enacted in the Human Rights Act 1998.

There are no policies that would have a detrimental impact on any groups with protected characteristics. The Council's appraisal has not identified any negative impacts.

## **10. Options available**

The Withiel NDP has been assessed against 'the Regulations' and is found to be legally compliant, the National Grid were consulted on 23rd August and their response is due by 6<sup>th</sup> October 2017; the Council, therefore has a duty to support and progress it.

In accordance with regulation 15 a further 6 week 'publication' consultation on the Withiel NDP will be carried out by the Council as LPA, to add to the previous community and stakeholder consultation carried out by the NDP Steering Group, so the Plan will be well publicised.

The community has had an opportunity to comment on the Plan and influence its development. Statutory consultees were supportive of the Plan and where they have made suggestions for amendments to strengthen the Plan these have been made where possible. The consultation process has followed the Regulations and there will be opportunity for further comments to be made during the publication: any further comments will be forwarded directly to the Examiner.

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

- LPA notify Withiel Parish Council of their decision on the Plan's legal compliance.
- The LPA publicise the NDP proposal which will incorporate the National Grid consultation response
- The LPA appoint an examiner, with the consent of Withiel Parish Council
- Following successful examination the Local Authority hold a referendum
- Following successful referendum (simple majority) the Plan is 'made' –i.e. adopted by Cornwall Council and will become part of the statutory development plan as defined by Section 38(6) of the Planning and Compulsory Purchase Act 2004.

## **11. Supporting Information (Appendices)**

- APP1. Withiel Neighbourhood Development Plan Legal Compliance Checklist
- APP2. Withiel Neighbourhood Development Plan Submission draft

APP3. Withiel Neighbourhood Development Plan Consultation Statement  
APP4. Withiel Neighbourhood Development Plan Basic Conditions Statement  
APP5. Withiel Neighbourhood Development Plan Design Guide

## 12. Background Papers

None

## 13. Approval and clearance

### All reports:

<b>Final report sign offs</b>	<b>This report has been cleared by (or mark not required if appropriate)</b>	<b>Date</b>
Governance/Legal (Required for <b>all</b> reports)	Jane Astbury	6 <sup>th</sup> September 2017
Finance (Required for <b>all</b> reports)	Leah Thomas	29 August 2017
Equality and Diversity (If required)		
Service Director (Required for <b>all</b> reports)	Steve Havers	7 September 2017
Strategic Director (If required)	N/A	