

# Strategic Planning, Transport & Sustainability Committee

9<sup>th</sup> June 2015

Is the final decision on the recommendations in this report to be made at this meeting? **Yes/No**

## Neighbourhood Planning: Changes to decision making arrangements

<b>Final Decision-Maker</b>	SPT&S Committee
<b>Lead Director or Head of Service</b>	Rob Jarman, Head of Planning & Development
<b>Lead Officer and Report Author</b>	Jillian Barr, Principal Planning Officer (Spatial Policy) Rachel Elliott, Planning Officer (Spatial Policy)
<b>Classification</b>	Non-exempt
<b>Wards affected</b>	All Wards

### This report makes the following recommendations to the final decision-maker:

1. That the Committee considers and approves the revised decision making arrangements framework for Neighbourhood Planning set out in paragraph 4.2 of this Report.

### This report relates to the following corporate priorities:

- Keeping Maidstone Borough an attractive place for all
- Securing a successful economy for Maidstone Borough

### Timetable

<b>Meeting</b>	<b>Date</b>
Policy and Resources Committee	n/a
Council	n/a
Other Committee	SPT&S Committee 9 <sup>th</sup> June 2015

# Neighbourhood Planning: Changes to decision making arrangements

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The purpose of this Report is to recommend a revised internal decision making framework for Neighbourhood Planning.
- 1.2 The revised framework is necessary to ensure that the Council is able to effectively support Neighbourhood Planning groups through the Neighbourhood Development Plan preparation process. The amended decision making framework will assist officers to make timely comments during key stages of consultation.
- 1.3 The revised framework takes account of the change in governance arrangements to a committee system, which is required to provide clarity for those using the framework.

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## 2. INTRODUCTION AND BACKGROUND

- 2.1 The Localism Act 2011 (the Act) empowers local communities to take responsibility for the preparation of aspects of planning policy for their area through a Neighbourhood Plan. The National Planning Policy Framework (NPPF) states that “Neighbourhood Planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need”<sup>1</sup>.
- 2.2 Crucially, a Neighbourhood Plan becomes part of the Development Plan once it has officially been “made”. It will have statutory weight in the council’s decision making process for planning applications. Planning legislation requires that decisions should be made in accordance with the development plan unless material considerations indicate otherwise<sup>2</sup>. There is a duty on the council to provide advice or assistance to those preparing Neighbourhood Plans<sup>3</sup>. Advice and guidance on the preparation of neighbourhood plans is available on the council’s website.
- 2.3 Emerging plans, including emerging Neighbourhood Plans, may be given weight in the determination of planning applications. The degree of weight that

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<sup>1</sup> Paragraph 183

<sup>2</sup> Planning & Compulsory Purchase Act 2004 section 38(6).

<sup>3</sup> Town and County Planning Act 1990 Schedule 4B

may be given will be dependent on how far advanced the plan is, the extent and nature of objections to the plan and its consistency with the NPPF.

2.4 In overview, the steps in the preparation of a Neighbourhood Plan are as follows:

Stage	Regulation <sup>4</sup>
Designation of the Neighbourhood Area. This is the area which the plan will cover	Regulation 5,6,7
Neighbourhood group prepares a draft plan	
Neighbourhood group undertakes 6 week public consultation on the draft plan, with publicity co-ordinated by Maidstone Borough Council.	Regulation 14
Neighbourhood group submits the finalised plan to Maidstone Borough Council. Maidstone Borough Council issues a decision notice to confirm whether the legal requirements have been met.	Regulation 15
Maidstone Borough Council co-ordinates formal public consultation on the plan for at least 6 weeks.	Regulation 16
Examination carried out by an Independent Examiner and funded by Maidstone Borough Council	Regulation 17
Based on Examiner's report, Maidstone Borough Council determines whether to approve/reject the plan with/without modifications.	Regulation 18
Referendum organised and funded by Maidstone Borough Council held in the Neighbourhood Area and, if the outcome is positive, the Neighbourhood Plan is officially "made".	Regulation 19,20

2.5 The various duties and responsibilities placed on Maidstone Borough Council by the Regulations can be summarised as follows:

- Providing technical advice and support to those preparing Neighbourhood Plans;
- Checking that the plan meets all the technical and legal requirements;
- Publicising the Plan and receiving representations;
- Organising and funding the examination including appointing an examiner;
- Organising and funding the referendum.

2.6 With respect to the technical and legal requirements, the Planning Advisory Service (PAS) has produced a useful checklist<sup>5</sup> for local authorities to use when checking whether the submitted plan has met its legal requirements (see Regulation 15 in the table above).

<sup>4</sup> Neighbourhood Planning (General) Regulations 2012 (SI/2012/637)

<sup>5</sup> A Guide for Councils: meeting your authority's legal requirements for Neighbourhood Development Plans, PAS (November 2013)

- 2.7 A Neighbourhood Plan must pass an examination before it can go forward to a referendum and thereafter be “made”. It is the examiner’s role to test whether the plan meets the specified ‘basic conditions’ that the plan:
- Has had regard to national policy and guidance from the Secretary of State;
  - Contributes to sustainable development;
  - Is in general conformity with the adopted strategic policies of the development plan for the area or any part of that area; and
  - Does not breach or is otherwise compatible with EU obligations (including the Strategic Environmental Assessment Directive).
- 2.8 The plan must also be a genuine land use plan with policies that relate to the development and use of land, and which are capable of being applied in the determination of planning applications.
- 2.9 Plans should also be supported by a proportionate evidence base. The evidence base supporting the emerging Local Plan is extensive and neighbourhood groups can make use of this evidence in determining how borough needs will be delivered at the local level.
- 2.10 The focus of the council’s advice to neighbourhood groups should relate to whether the emerging plan meets the basic conditions, and whether or not the process has been followed in accordance with the Regulations. This is where the council’s input can be of the greatest value as these are the matters which will determine the success of the plan at examination.

### **General conformity**

- 2.11 One of the basic conditions is that a Neighbourhood Plan must be in general conformity with the strategic policies of the development plan. For this borough, the development plan comprises:
- Saved policies of the adopted Maidstone Borough-wide Local Plan (2000)
  - Open Space DPD (2006); Affordable Housing DPD (2006) and
  - Saved policies in the adopted Kent Waste Plan and specific Kent minerals plans (KCC)
- 2.12 For clarity, the policies from these documents which are both strategic and have a degree of consistency with the NPPF have been identified and are listed on the council’s website. These are the policies with which a Neighbourhood Plan must be in general conformity.
- 2.13 It is not an absolute requirement for a Neighbourhood Plan to be in conformity with the emerging Local Plan. It is nonetheless clear that the emerging strategic policies and priorities, and importantly the substantial evidence which underpin them, are relevant to Neighbourhood Plans, particularly if the Neighbourhood Plan is to have a lifespan after the adoption of the Local Plan. A Neighbourhood

Plan which provides additional detail to help shape the development proposed in the emerging Local Plan could be particularly valuable.

## Decision-making process

2.14 The currently agreed framework is reproduced below:

<b>Stage</b>	<b>Description</b>	<b>Decision method</b>	<b>Decision taker</b>
<b>1</b>	Designation of the neighbourhood area (Regulations 6/7)	Internal consultation with ward members/ adjoining ward members	If officer view is to approve, and there is no contrary Member view, decision delegated to Officers. If officer and/or Member view is to refuse, refer decision to Cabinet Member*.
<b>2</b>	Designation of neighbourhood forum (if no Parish Council) (Regs 8/9/10)	Internal consultation with ward members/ adjoining ward members	If officer view is to approve, and there is no contrary Member view, decision delegated to Officers. If officer and/or Member view is to refuse, refer decision to Cabinet Member*.
<b>3</b>	Maidstone Borough Council consulted on draft Neighbourhood Plan/Neighbourhood Development Order/community right to build order (Reg 14/21)	Internal consultation with ward members/ adjoining ward members/Cabinet Member  [NB parish/forum is responsible for consulting neighbouring authorities, including adjoining parishes and KCC, on its plan/order]	Cabinet Member Report* to consider Maidstone Borough Council comments on draft plan/order

<b>Stage</b>	<b>Description</b>	<b>Decision method</b>	<b>Decision taker</b>
<b>4</b>	Maidstone Borough Council consulted on submission version of the Neighbourhood Plan (Reg 16)	Internal consultation with ward members/ adjoining ward members/Cabinet Member	Cabinet Member Report* to consider Maidstone Borough Council comments on submission draft plan.
<b>5</b>	Decision to approve/reject/ modify the plan/order post Examiners Report (Reg 18/25)	Cabinet Report	Cabinet*
<b>6</b>	Decision to adopt plan/order post Referendum (Reg 19/20/26/27)	Cabinet Report	Cabinet* then Full Council

\* subject to normal call in procedures.

2.15 Following the recent change to the Committee structure at Maidstone Borough Council, and continued experience of implementing the framework, it is now proposed that further changes are made to the way decisions are made at key stages in the Neighbourhood Planning process.

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### **3. AVAILABLE OPTIONS**

- 3.1 The council has statutory responsibilities for ensuring that Neighbourhood Plans have been properly prepared and that key criteria for Neighbourhood Plans have been complied with.
- 3.2 The option of revising the framework for decision making will provide clarity and an efficient, working system for officers dealing with Neighbourhood Planning, as well as the qualifying bodies preparing the Neighbourhood Plans. It will ensure that Maidstone Borough Council is able to make a timely response to the Regulation 14 consultation.
- 3.3 The “do nothing” option, is to leave the framework as previously agreed. This will mean that the framework for decision making is out of date. In addition, it could pose a possible risk of late submission of formal Maidstone Borough

Council comments to the Parish Council during their statutory 6 week Regulation 14 consultation.

#### 4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 The preferred option is to revise the framework for decision making to take into account the practical issues that have been highlighted through the implementation of the existing framework.
- 4.2 The recommended revised framework is set out below:

Stage	Description	Decision method	Decision taker
<b>1</b>	Designation of the neighbourhood area (Regulations 6/7)	Internal consultation with ward Councillors/ adjoining ward Councillors	If officer view is to approve, and there is no contrary Councillor view, decision delegated to Officers. If officer and/or ward Councillor view is to refuse, refer decision to SPT&S Committee.
<b>2</b>	Designation of neighbourhood forum (if no Parish Council) (Regs 8/9/10)	Internal consultation with ward Councillors/ adjoining ward Councillors	If officer view is to approve, and there is no contrary Councillor view, decision delegated to Officers. If officer and/or ward Councillor view is to refuse, refer decision to SPT&S Committee.
<b>3</b>	Maidstone Borough Council consulted on draft Neighbourhood Plan/Neighbourhood Development Order/community right to build order (Reg 14/21)	[NB parish council/ forum is responsible for consulting neighbouring authorities, including adjoining parishes and KCC, on its plan/order]	Delegated responsibility of Head of Planning.
<b>4</b>	Maidstone Borough Council consulted on submission version of the Neighbourhood Plan (Reg 16)	SPT&S Report	SPT&S Committee

<b>5</b>	Decision to approve/reject/modify the plan/order post Examiners Report (Reg 18/25)	SPT&S Report	SPT&S Committee
<b>6</b>	Adopt/Make plan post Referendum	Report to Full Council	Full Council

- 4.3 The only amendments that have been proposed to the Regulations 6 – 10 stages are to replace the references to “Cabinet” and replace with “SPT&S Committee”. This amendment is recommended to update the framework following the change the Committee system. These stages will be subject to a statutory consultation period, in which ward and adjoining ward Councillors will be asked for their comments. These comments will be logged on the Council’s consultation portal, and available on the website.
- 4.4 At the Regulation 14 stage it is recommended that the Council’s response to a draft Neighbourhood Plan becomes the delegated responsibility of the Head of Planning. The Regulation 14 consultation on a draft Neighbourhood Plan is carried out by the Neighbourhood Planning Group, with a statutory 6 week consultation period. The Council is only a consultee at this stage and the consultation draft Neighbourhood Plan may be received without notice. It is important that Maidstone Borough Council has its formal comments acknowledged at this early stage of the Plan.
- 4.5 Officers consider that 6 weeks will not be sufficient time in which to assess the plan, write formal comments, and obtain the approval of the SPT&S Committee. It is felt that if the existing framework is to be kept, Maidstone Borough Council may miss the opportunity to provide comments at this key stage within the time frame. If this were the case, Maidstone Borough Council comments may not be considered by the Neighbourhood Planning Group in revising their draft plan. It is therefore recommended that this stage be delegated to the Head of Planning.
- 4.6 Regulation 16 has simply been updated in line with the change to the Committee system at Maidstone Borough Council.
- 4.7 The Regulation 18 stage of the process is where Maidstone Borough Council comes to the decision about whether or not it agrees with the Examiner’s recommendations (either to be put forward for Referendum without any changes, to be put forward to referendum with suggested modifications or to refuse the Plan on the basis that it has failed to meet one or more of the Basic Conditions) and what action to take. It is the last opportunity the Council has to

input into the plan before referendum. The Cabinet Report has therefore been updated to be a report to the SPT&S Committee.

- 4.8 The Regulation 19 stage of the decision making framework relates to the making of a Neighbourhood Plan after referendum. This stage does not require a decision from the Council. The results of the referendum are binding. If a referendum results in more than half those voting (i.e 50% plus 1), voting in favour of the proposal the Neighbourhood Development Plan **must** be “made” as soon as reasonably practical. The Plan should be “Made” by Full Council, at which point it formally becomes part of the Development Plan for the Borough.

## 5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 The revised framework for decision making arrangements for Neighbourhood Planning is not subject to consultation.

## 6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 The Committee’s agreed response will form the basis of the new revised internal decision making framework for the Neighbourhood Planning process at Maidstone Borough Council. Officers and Councillors will follow the new framework in the making of Neighbourhood Plans. Once approved, the framework will be uploaded to the council’s website.

## 7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Impact on Corporate Priorities</b>		[Head of Service or Manager]
<b>Risk Management</b>	Updating the decision making process for neighbourhood planning ensures the council’s statutory duty is met, and provides for a timely input into the consultation stages of the plans.	[Head of Service or Manager]
<b>Financial</b>	Maidstone Borough Council is responsible for the costs of the Neighbourhood Plan examination and subsequent referendum (if required). The budget also provides for	[Section 151 Officer & Finance Team]

	<p>legal and consultancy advice as required. The council receives government grant funding in recognition of its duties relating to neighbourhood planning, although there is no certainty over the continuation of grants. At 1 April 2015 the balance of grant funding is £84,902. A further grant of £5,000 is due in May 2015. There is adequate budget to cover the council's responsibilities for neighbourhood plans at this time. Additionally, Maidstone Borough Council set aside £40,000 for direct funding to appropriate authorities undertaking neighbourhood planning (a maximum of £2,500 per appropriate authority). At 1 April 2015 there is a balance of £21,820 in this budget.</p>	
<b>Staffing</b>	<p>A significant amount of staff time is devoted to supporting the preparation of Neighbourhood Plans and to progressing the plans through the statutory processes. A new Principal Planning Officer post has been created to build resilience into the team to ensure the timely delivery of the local plan and neighbourhood plans.</p>	[Head of Service]
<b>Legal</b>	<p>The report sets out the requirements needed to comply with the legislative framework</p>	Kate Jardine, Team Leader (Planning), Mid Kent Legal Services
<b>Equality Impact Needs Assessment</b>		[Policy & Information Manager]
<b>Environmental/Sustainable Development</b>	<p>The implications are set out in the body of the report.</p>	[Head of Service or Manager]
<b>Community Safety</b>		[Head of Service or Manager]
<b>Human Rights Act</b>		[Head of Service or Manager]
<b>Procurement</b>		[Head of Service & Section 151 Officer]
<b>Asset Management</b>		[Head of Service & Manager]

## **8. REPORT APPENDICES**

None.

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## **9. BACKGROUND PAPERS**

None.