

**NFNPA/PC 299/19**

## **NEW FOREST NATIONAL PARK AUTHORITY**

### **PLANNING COMMITTEE MEETING – 20 AUGUST 2019**

#### **HYTHE AND DIBDEN NEIGHBOURHOOD PLAN - EXAMINER'S REPORT**

**Report by:** David Illsley, Policy Manager

#### **Summary:**

Following the final period of consultation on the draft Hythe and Dibden Neighbourhood Plan held in Spring 2019, the draft Plan, supporting information and representations received were subject to independent examination. The examination was undertaken by a suitably qualified person and at the end of June 2019 the Examiner's Report was received. In this Report the Examiner concluded that subject to a number of modifications, the draft Plan meets the 'basic conditions' and should proceed to Referendum.

Under the relevant regulations the Authority must decide what action to take in response to the Examiner's Report and publish a 'decision statement'. This paper provides details of the Examiner's recommendations and the Authority's proposed responses. The Planning Committee is being asked to make a recommendation to the full Authority meeting on 29 August 2019. New Forest District Council are going through the same process for the part of the parish within their jurisdiction and once both authorities have agreed their responses to the Examiner's Report the revised Neighbourhood Plan will proceed to Referendum.

#### **Recommendation:**

**Members note the recommendations made in the Examiner's Report (Annex 1) into the draft Hythe and Dibden Neighbourhood Plan; and endorse the proposed responses highlighted in this report. The views of the Planning Committee will be reported to the full Authority meeting on 29 August 2019 where a formal decision will be made.**

#### **1. Introduction**

- 1.1 Neighbourhood Plans were introduced by the *Localism Act 2011* to give communities direct power to shape the development of their local area. Neighbourhood Plans are planning documents that, once adopted, form part of the statutory 'development plan'. In July 2015 Hythe and Dibden Parish Council applied to the National Park Authority and New Forest District Council for the whole of the parish to be designated as a 'Neighbourhood Area'. Around a third of the Parish lies within the National Park and the designation was confirmed in December 2015.
- 1.2 Work on the emerging Hythe and Dibden Neighbourhood Plan has been overseen by a steering group of parish councillors and community representatives. The Parish Council undertook an initial public consultation in 2016 to inform the preparation of the Plan. In Summer 2018 the Parish Council published their draft Neighbourhood Plan and this was considered at the Authority's July 2018 Planning Committee meeting (report NFNPA PC 270/18). In December 2018 the Parish Council published their revised draft Neighbourhood Plan which was similarly considered at the Authority's January 2019 Planning Committee (report NFNPA PC 282/19). Finally, following the submission of the draft Neighbourhood Plan to the two local planning authorities in early 2019, the Plan was subject to a final 6-week public consultation between March and April 2019.

## 2. Independent Examination and the Examiner's Report

- 2.1 During the final 6-week public consultation held on the draft Neighbourhood Plan, representations were received from 11 organisations and individuals. These included representations from the National Park Authority, based on matters identified in NFNPA PC 270/18 and NFNPA PC 282/19. In these representations the Authority raised objections to the publication of maps of potential development sites in the National Park; and sought clarification of the purpose of the proposed 'buffer zone' at Dibden Bay.
- 2.2 All of the representations made during this final consultation and various supporting documents (including a Consultation Statement and a Basic Conditions Statement) were submitted to the independent Examiner<sup>1</sup> for their consideration. The examination was dealt with by written representations. The Examiner is required to assess whether the Plan meets the Basic Conditions and legal tests. The Examiner is then required to produce a Report recommending either:
- (a) the Neighbourhood Plan proceeds to a referendum without modifications; or
  - (b) that modifications are made and that the modified Neighbourhood Plan then proceeds to referendum; or
  - (c) that the Neighbourhood Plan does not proceed to a referendum as it does not meet the necessary legal requirements.
- 2.3 The Examiner's *Report on the Hythe and Dibden Neighbourhood Development Plan 2018 - 2026* (June 2019) is provided in Annex 1. The main findings are set out in the 'Executive Summary' on page 3, with the key recommendation being that, once modified, the Plan proceeds to Referendum on the basis that it meets the Basic Conditions and the relevant legal requirements. This is a positive recommendation and reflects the hard work the Parish Council have put into the preparation of the draft Plan.
- 2.4 Where necessary the Examiner has recommended modifications to the Plan in order that it meets the Basic Conditions and other legal requirements. These are listed in the Appendix to the Examiner's Report (pages 26 – 28) and it is common for modifications to be required to draft Neighbourhood Plans following independent examination.

## 3. National Park Authority response to the Examiner's recommendations

- 3.1 Under Neighbourhood Planning (General) Regulations 2012 (as amended), it is the responsibility of the local planning authority to ensure the Plan meets the basic conditions and to determine whether it proceeds to referendum, with or without modifications. The local authority is also responsible for deciding whether the voting area should be the neighbourhood area or should include other areas too.
- 3.2 It is also the role of the local planning authority to decide what action to take in response to the Examiner's recommendations. National guidance indicates that if the local planning authority can make modifications to the Plan to meet the basic conditions and allow it to proceed to Referendum, they should do so. Modifications will normally follow the Examiner's recommendations and clear justification would be required for departing from the Examiner's recommendations. Set out below are the Examiner's recommendations and the Authority's proposed responses. This table will form the basis of a 'Decision Statement' that will be considered at the full Authority meeting on 29 August. The Parish Council's agreement to extending the date for the publication of the 'Decision Statement' to early September is appreciated.

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<sup>1</sup> The independent Examiner was appointed by New Forest District Council and the National Park Authority, with the agreement of Hythe and Dibden Parish Council.

Examiner’s Recommendation	Examiner’s Justification	Proposed Response
Set out the Plan-period on the cover page	Paragraph 3.1 states that the Plan covers the period to 2026 and this should be clearly set out on the cover page.	Accept modification
Delete all the action points from Chapter 8  Remove Chapter 9 from the Plan and include as an annex or companion document to the Plan, with additional text to clearly identify that the actions listed deal with non-land use matters	In the interests of clarity, all actions should be deleted from Chapter 8. Chapter 9 should be taken out of the Plan and included instead as an annex or companion document. Whilst wider community aspirations can be included in a Neighbourhood Plan, actions dealing with non-land use matters should be clearly identifiable. The actions currently have undue prominence.	Accept modification.  Action points deleted from Chapter 8. Chapter 9 removed from the main part of the Plan and included as an annex, with wording added to confirm the actions relate to non-land use matters.
Serious consideration should be given to the deletion of <i>Report B – Future community aspirations</i> – or at the very least it should be separated from the Neighbourhood Plan and renamed to make it clear it is an informal ‘wish list’ and has no statutory effect.	By publishing Report B at the same time as the Neighbourhood Plan, there is the potential for confusion as it could be seen to imply some sort of status (i.e. that the submitted Plan is, in effect, Report A). Report B has the potential to cause confusion and to encourage speculative proposals. The Examiner shares the concerns of the NFNPA raised in their representations.	It is noted that the amendments to Report B are ‘suggestions’, rather than required modifications.  It is proposed to retain Report B but emphasise it does not have development plan status.
Delete the word ‘ <i>economically</i> ’ from Policy H2	There is no need to qualify the policy by including the word ‘ <i>economically</i> ’, which could be used as an argument about increased building costs to unreasonably defeat the objective of the policy.	Accept modification
In Policy ENV2 add the words “ <i>in new development</i> ” after “ <i>sought</i> ”	As drafted the policy does not read as a land use policy and it is unclear what is meant by, “ <i>opportunities will be sought.</i> ”	Accept modification
Reword Policy WEL2	Subject to some minor re-wording and deletion of the word “current”, the policy is considered to have regard to national policy and be in general conformity with the higher order plans for the area	Accept modification

Delete Policy C2 and its supporting text at paragraph 8.66	Policy C2 does not have the clarity required for a land use planning policy. It is unclear and ambiguous.	Accept modification
Reword Policy T5	Subject to minor re-wording, Policy T5 regarding new footpaths and cycleways has regard to national policy.	Accept modification
Reword Policy T6	Subject to minor re-wording in the interests of clarity and to avoid ambiguity, Policy T6 is in general conformity with strategic policy	Accept modification
Reword Policy F1	Flooding is a significant concern to local residents and it is reasonable to retain Policy F1, subject to its rewording along the lines proposed by the Environment Agency.	Accept modification
Reword Policy F2	Policy F2 should be modified as suggested by the Environment Agency to comply with national policy and to clarify the need to have regard to the New Forest SFRA	Accept modification
Delete references to sustainably managed economic growth as part of the proposed ‘Buffer Zone; particularly in part c) of Policy BZ2; objective 9.4 and paragraph 8.74  Delete paragraph 8.82	The implication in Policy BZ2 (c) that economic growth might be allowed in the Buffer Zone conflicts with the expectation that the Zone will be kept as mainly undeveloped open land. Share the NFNPA’s concerns as to the potential for conflict between environmental protection and the policy objective to support “ <i>sustainably managed economic growth</i> ”.	Accept modification
Delete the second sentence of Policy BZ3 and replace it with the Examiner’s recommended wording.	The second sentence of Policy BZ2 should be modified to indicate that the Buffer Zone will need to extend significantly beyond the operational port boundary to fulfil its functional objectives.	Accept modification

3.3 Although it is legally the responsibility of the local planning authority to modify the draft Plan following consideration of the Examiner’s Report, it is best practice to discuss the modifications with the Parish Council, who have the option of withdrawing the revised Plan if they are unhappy with the changes proposed. The Authority, New Forest District Council and Hythe and Dibden Parish Council therefore met in July 2019 to discuss the modifications and there is a shared agreement that the revisions now proposed to the Plan (see Annex 2) are an appropriate response to the Examiner’s recommendations.

#### 4. Conclusions and the next stages

4.1 The Examiner's Report recognises and commends the hard work put into the production of the Plan by the Neighbourhood Planning Group and the Parish Council (paragraph 5.4, Annex 1). The Authority echoes this recognition and is keen to support the final stages in the Plan-making process – as set out below. The Examiner's Report also supports the main representations made by the Authority on the draft Plan (relating to the status of Report B – Future Community Aspirations; and the purposes of the proposed buffer zone at Dibden Bay) and has recommended modifications accordingly.

*(i) Referral to the full Authority meeting*

4.2 The Neighbourhood Planning Regulations require a decision from the Authority on what action it will take in response to each recommendation made in the Examiner's Report. The Authority's Scheme of Delegation does not currently include provision for this decision to be delegated in full to the Planning Committee (or officers). This paper therefore aims to establish the position of the Planning Committee, which will then be reported to the full Authority meeting on 29 August 2019. The full Authority meeting will be asked to formally agree a 'Decision Statement', setting out the modifications that will be made to the Neighbourhood Plan in response to the Examiner's recommendations.

4.3 It should be noted that New Forest District Council are also going through the same process, with their response to the Examiner's Report being considered at a Cabinet meeting on 4 September; and then at the full Council meeting on 9 September 2019.

*(ii) Local Referendum*

4.4 The Examiner concluded that, once modified, the Neighbourhood Plan should proceed to Referendum. The Examiner considered whether the referendum area should extend beyond the designated area and concluded it should not (see paragraph 5.3, Annex 1). This conclusion is supported by the two planning authorities and the Parish Council.

4.5 As the 'relevant council' as defined in the Town and Country Planning Act 1990, it is the responsibility of New Forest District Council to make arrangements for the local referendum to take place. The Government's National Planning Practice Guidance (NPPG) resource provides coverage of the referendum process and confirms that a person is entitled to vote if, at the time of the referendum, they meet the eligibility criteria to vote in a local election for the area and if they live in the referendum area.

*(iii) Adoption as part of the 'development plan' for the National Park*

4.6 If the majority of those who vote in the Referendum are in favour of the draft Hythe and Dibden Neighbourhood Plan 2018 – 2026, then the Plan must be 'made' by the National Park Authority and District Council within eight weeks of the referendum.

4.7 The Neighbourhood Plan will then become part of the statutory 'development plan' for the part of the National Park within the parish of Hythe and Dibden; forming the basis of planning decisions in that area. The formal 'making' of the Neighbourhood Plan after the local referendum would be completed at a full National Park Authority meeting.

## RECOMMENDATION

Members note the recommendations made in the Examiner's Report (Annex 1) into the draft Hythe and Dibden Neighbourhood Plan; and endorse the proposed responses highlighted in this report. The views of the Planning Committee will be reported to the full Authority meeting on 29 August 2019 where a formal decision will be made.

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**Papers:** **NFNPA/PC 299/19** – cover paper

**Annex 1** – Examiner's Report on the Hythe & Dibden Neighbourhood Development Plan 2018 – 2026

**Annex 2** – Revised Hythe & Dibden Neighbourhood Development Plan (September 2019)

**Equality Impact Assessment:** No impacts have been identified.