

# CABINET

Agenda Item: 08

**Ward:** All

**Portfolio:** Planning and Growth

Cllr Nigel Woollcombe Adams

**Report Author(s):**

**Meeting Date:** 10<sup>th</sup> April 2017

**SUBJECT:** **Amendment to the Scheme of Delegation for Neighbourhood Planning**

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	Seen by:	Name	Date
<b>Report Sign off</b>	Chief Executive/ Deputy Chief Executive(s)	Tracy Aarons	27/03/17
	Legal	Martin Evans	23/03/17
	Finance	Paul Deal	23/03/17
	Group Manager	Ian Bowen	26/03/17
	Portfolio Holder	Cllr Nigel Woollcombe Adams	23/03/17
	Ward Member(s)	N/A	
	<b>Summary:</b>	<p>The Council has a statutory duty to support Neighbourhood Plans pursuant to <a href="#">Section 61G(5) of the Town and Country Planning Act 1990 as applied to Neighbourhood Plans by Section 38A of the Planning and Compulsory Purchase Act 2004</a>) and the <a href="#">Neighbourhood Planning (General) Regulations 2012</a>.</p> <p>Further to the recent imposition of deadlines to “make” the Plan it is proposed that the Scheme of Delegation is amended to allow Cabinet to execute this function.</p>	
<b>Recommendation:</b>	<p>That Cabinet recommend that Full Council approves the proposed amendment to the scheme of delegation to allow the Cabinet to “make” Neighbourhood Plans.</p>		
<b>Direct and/or indirect impact on service delivery to our customers and communities:</b>	<p>Neighbourhood Planning enables communities to have more influence in planning the development of their area.</p>		
<b>Contribution to Corporate Priorities:</b>	<p>Neighbourhood Plans present an opportunity for communities to develop local planning policies which support economic development and growth and improve the health and wellbeing of the residents and communities of Mendip.</p>		
<b>Legal Implications:</b>	<p>The Council has a statutory duty to support Neighbourhood Plans pursuant to <a href="#">Section 61G(5) of the Town and Country Planning Act 1990 as applied to Neighbourhood Plans by Section 38A of the Planning and Compulsory Purchase Act 2004</a>), the <a href="#">Neighbourhood Planning (General) (Amendment) Regulations 2015</a> and the <a href="#">Neighbourhood Planning (General) and Development</a></p>		

	<p><a href="#">Management Procedure (Amendment) Regulations 2016</a>, which amend the <a href="#">Neighbourhood Planning (General) Regulations 2012</a>.</p> <p>Neighbourhood Planning is an executive function under the terms of the Local Government Act 2000.</p>
<b>Financial Implications:</b>	<p>DCLG have confirmed the arrangements for claiming financial support for neighbourhood planning in 2017/18. From April 2017, local planning authorities (LPAs) will be able to claim as follows:</p> <ul style="list-style-type: none"> <li>• <b>For all areas:</b> LPAs can claim £20,000 once they have set a date for a referendum following a successful examination where a neighbourhood plan has not previously been made for that area.</li> </ul> <p>Additional funding is available in certain circumstances:</p> <ul style="list-style-type: none"> <li>• <b>Area designation:</b> LPAs can claim £5,000 for the first five neighbourhood areas designated only. The limit of five areas applies to the total number of areas designated in the LPA (i.e. it includes areas designated in previous years).</li> <li>• <b>Neighbourhood Development Orders and Community Right to Build Orders:</b> LPAs can claim £20,000 in relation to NDOs and/or CRtBOs for each neighbourhood planning area per year. The claim can be made once the date for the referendum on an Order has been set.</li> <li>• <b>Modification of a neighbourhood plan that is in force:</b> LPAs will be able to claim £10,000 once they have set a date for a referendum following a successful examination for a modified neighbourhood plan, when a plan is already in force for that area.</li> </ul> <p>These payments are made in recognition of officer time supporting and advising the community in taking forward a neighbourhood plan, along with the actual costs of examination and referendum.</p>
<b>Impact on Service Plans:</b>	Supporting Neighbourhood Planning is a statutory requirement and incorporated within the Service Plan.
<b>Value for Money:</b>	A scheme of delegation will aim to ensure that the Council's duties in relation to Neighbourhood Plans are exercised efficiently. It will also allow the timely receipt of DCLG payments (see above) intended to reimburse for officer time, some of which will have already been used in supporting the development of the Neighbourhood Plan.
<b>Equalities Implications:</b>	Public participation must inform a Neighbourhood Plan's production and consultation undertaken in line with the appropriate statutory regulations.
<b>Risk Assessment and Adverse Impact on</b>	A scheme of delegation to ensure Neighbourhood Plans are processed in a timely manner ensures that the Council's duties are exercised efficiently. Not having an appropriate scheme of delegation may put the Council at risk of not meeting the

<b>Corporate Actions:</b>	requirements of the Regulations pursuant to <a href="#">Section 61G(5) of the Town and Country Planning Act 1990 as applied to Neighbourhood Plans by Section 38A of the Planning and Compulsory Purchase Act 2004</a> ) and the <a href="#">Neighbourhood Planning (General) Regulations 2012</a> .
<b>Scrutiny Recommendation (if any)</b>	None

## INTRODUCTION

The Council has a statutory duty to support Neighbourhood Plans. This includes designating Neighbourhood Areas, publicising submitted plan proposals along with arranging examination and public referendum.

The Council has already adopted a Scheme of Delegation to ensure that tasks and decisions relating to neighbourhood plans are carried out consistently and in a timely manner.

However, further to the adoption of the Scheme of Delegation at Full Council in 25th February 2016 further prescribed time periods have been introduced, including that Councils must now “make” a neighbourhood Plan with 8 weeks of a “yes” vote at Referendum.

Making a Neighbourhood Plan in Mendip is currently carried out by Full Council, but with the imposition of this 8 week deadline it is now felt that Cabinet would be better placed to carry out this duty to ensure that the necessary deadlines are met.

## BACKGROUND

### **The Role of the Local Planning Authority**

Neighbourhood Plans are produced by communities and lead by parish councils where they exist. The District Council’s responsibilities as the Local Planning Authority are largely technical in nature, for example advising on conformity with the Development Plan and checking that Plans have followed correct procedures. Neighbourhood Plans must be in general conformity with the Local Plan, but beyond this the Local Planning Authority are not mandated to provide a political steer on the content of an emerging Plan.

Members are of course encouraged to get involved with or comment upon emerging Neighbourhood Plans in their respective areas, but the responsibilities of the Local Planning Authority are limited to administering the regulatory stages and providing technical advice.

Timely decision taking is important particularly at the start and at the end of the process and certain decisions must be taken within prescribed time periods. These are set out in the [Neighbourhood Planning \(General\) \(Amendment\) Regulations 2015](#) and the [Neighbourhood Planning \(General\) and Development Management Procedure \(Amendment\) Regulations 2016](#), which amend the [Neighbourhood Planning \(General\) Regulations 2012](#).

Importantly, Councils must now “make” a neighbourhood plan (which brings the plan into full legal force) within 8 weeks of a “yes” vote at Referendum.

It is important to note that once a Plan has been supported by a majority of those voting following a referendum, the Council has no other option than to ‘make’ the Plan under Section 38A (A)(4) of the Planning and Compulsory Purchase Act 2004. The Council is not subject to this duty if (and only if) the making of the plan would breach, or otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).

Neighbourhood planning is an executive function under the terms of the Local Government Act 2000. Therefore it would be lawful for Cabinet to exercise this power without the need formal ratification from Full Council.

However, this will require a change to the current MDC Constitution which specifies that only Full Council can ‘make’ a Neighbourhood Plan (Article 18.3).

Under Article 20.1.1, changes to the Constitution must normally be approved by Full Council, after consideration of the proposal by the Standards Committee, the Scrutiny Board or the Cabinet. Cabinet are therefore recommended to recommend that Full Council approves the proposed amendment to the scheme of delegation to allow the Cabinet to “make” Neighbourhood Plans.

## **PROPOSED AMENDMENT TO THE SCHEME OF DELEGATION**

### **Making a Neighbourhood Plan**

1. The decision to make a Neighbourhood Plan must be taken by the Cabinet in line with the Regulations.

## **RECOMMENDATION**

That Cabinet recommend that Full Council approves the proposed amendment to the scheme of delegation to allow the Cabinet to “make” Neighbourhood Plans.

## **REASONS FOR RECOMMENDATION**

To ensure that the Authority’s duty to “make” neighbourhood plans within 8 weeks of a successful referendum can be fulfilled successfully.

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**List of background Papers:** Schedule 9: Functions Related to Neighbourhood Plans, Neighbourhood Development Orders and Community Right to Build Orders

## SCHEDULE 9

### FUNCTIONS RELATED TO NEIGHBOURHOOD PLANS, NEIGHBOURHOOD DEVELOPMENT ORDERS AND COMMUNITY RIGHT TO BUILD ORDERS

<b>Neighbourhood plans</b>	
Decision to make a neighbourhood plan	Council
Determination of whether a neighbourhood plan – following examination – should go to public referendum	Cabinet - All functions relating to Neighbourhood Plans etc to go to the Group Manager
Establishment of area/s within which the referendum shall be held, taking into account the views of the independent examiner	Cabinet
Determination of applications for designation of neighbourhood plan areas relating to the area to be covered by a proposed neighbourhood plan <u>where the plan is not likely to impact on a significant number of people in two or more wards</u>	Group Manager Planning and Growth
Determination of applications for designation of neighbourhood plan areas relating to the area to be covered by a proposed neighbourhood plan <u>where the plan is likely to impact on a significant number of people in two or more wards</u>	Group Manager Planning and Growth in consultation with Portfolio Holder for Planning and Growth
Decisions in relation to provision of technical support and advice on emerging neighbourhood plans	Group Manager Planning and Growth
Submission of representations at Regulation 14 consultation and examination	Group Manager Planning and Growth
Determination of whether the Regulation 15 requirements have been met in relation to submission of a neighbourhood plan and specifically whether the requirements of the Habitats Regulations and the Environmental Impact Regulations have been met	Group Manager Planning and Growth
Identification and appointment of an appropriate person to examine the neighbourhood plan via the Neighbourhood Plan Independent Examiner Referral Service or other appropriate method, in conjunction with the qualifying body which submitted the plan pursuant to para 7 of Sch 4B Town and Country Planning Act 1990 as applied by S38A Planning and Compulsory Purchase Act 2004	Group Manager Planning and Growth
Decision to modify neighbourhood plan <u>except where the modification is required due to an error</u>	Group Manager Planning and Growth
Decision to modify neighbourhood plan <u>where the modification is required due to an error</u>	Group Manager Planning and Growth in consultation with Portfolio Holder for Planning and Growth

<b>Neighbourhood Development Orders</b>	
Decision to bring a neighbourhood development order into force	Council
Determination of whether a neighbourhood development order – following examination – should go to public referendum	Cabinet
Decision to designate neighbourhood development order area as business area	Group Manager Planning and Growth
Determination of whether pre submission requirements have been met in relation to a submitted neighbourhood development order	Group Manager Planning and Growth
Decision to amend boundary of area identified in submitted neighbourhood development order	Group Manager Planning and Growth
Identification and appointment of independent examiner	Group Manager Planning and Growth

<b>Community Right To Build Orders</b>	
Determination of an application for a Community Right To Build Order	Council
Determination of whether a community right to build order – following examination – should go to public referendum	Cabinet
Determination of whether pre application requirements have been met (and whether submitted order can be accepted) in relation to a submitted community right to build order	Group Manager Planning and Growth
Identification and appointment of independent examiner	Group Manager Planning and Growth