

Local Development Framework Panel		Agenda Item: 6
Meeting Date	19 May 2016	
Report Title	Faversham Creek Neighbourhood Plan – Examiner’s Report and next steps	
Cabinet Member	Cllr Lewin, Cabinet Member for Planning	
SMT Lead	Kathryn Carr, Director of Regeneration	
Head of Service	James Freeman, Head of Development Services	
Lead Officer	James Freeman, Head of Development Services	
Key Decision	Yes	
Classification	Open	
Forward Plan	Reference number: N/A	
Recommendations	<ol style="list-style-type: none"> 1. Agree to accept the modifications to the Faversham Creek Neighbourhood Plan as set out in the Examiner’s Report (Appendix I); 2. Agree that the Neighbourhood Plan meets the basic conditions and complies with the provision made by or under Sections 38A and 38B of the Planning and Compulsory Act 2004; 3. Agree to publicise the decision to accept the Examiner’s recommendations; and 4. Approve the organisation of a local referendum to cover the Faversham Town Council area. 	

1 Purpose of Report and Executive Summary

- 1.1 The purpose of this report is to formally receive the report of the Independent Examination into the Faversham Creek Neighbourhood Development Plan, to endorse and make the recommended minor modifications to the Plan, to agree to publicise the Council’s decision (a decision statement), and to approve the organisation of a local referendum.
- 1.2 The Faversham Creek Neighbourhood Plan has been subject to an independent examination, and the Borough Council has now received the Report of the Examination into the Faversham Creek Neighbourhood Plan by the Independent Examiner (see Appendix I).
- 1.3 The Borough Council’s role is to ensure that the process and procedures have been followed, and that the Neighbourhood Plan is in general conformity with the Local Plan.

2 Background

- 2.1 Faversham Town Council has been undertaking work on the Neighbourhood Plan since October 2011. They were part of the Government's Neighbourhood Planning Vanguard Scheme, and Swale BC was awarded £20k to assist with the development of the Faversham Creek Neighbourhood Plan.
- 2.2 The request by Faversham Town Council that land at Faversham Creek be designated as a Neighbourhood Plan area was confirmed on 20 February 2014, by Swale BC, under Part 2 of the Neighbourhood Planning (General) Regulations 2012.
- 2.3 The six week regulation 16 consultation took place across May/June 2014, and the Neighbourhood Plan was submitted to SBC in November 2014.
- 2.4 The Council, in consultation with Faversham Town Council, appointed Timothy Jones, Barrister, FCI Arb, as the Independent Examiner. He decided that a Public Hearing was required. This was held between 5 and 7 October 2015.
- 2.5 On 4 April 2016 Swale BC received the Independent Examiner's Report on the Faversham Creek Neighbourhood Plan. The report concluded that with some modifications, the Plan should proceed to referendum, the referendum area being the town of Faversham.

The Examiner's Report

- 2.6 The Examiner had to:
 - decide whether the Plan complied with the provisions set out in the Act with regard to whether the correct process had been followed (Sections 38A and 38B of the Planning and Compulsory Act 2004);
 - decide whether the Plan met the 'Basic Conditions' contained in the Act; and
 - make recommendations as to whether the Plan should be submitted to referendum.
- 2.7 The Examiner said that he: "...considers the Draft NP to have a clear structure, being sensibly divided into seven appropriate sections". He also commends it for being "...well written, logical, clear, appropriately concise and intelligible to a reasonably intelligent lay reader with no expertise in town and country planning." This is testament to the hard work and dedication of all of the Neighbourhood Plan Steering Group, and the consultant who prepared the Plan.
- 2.8 The Examiner recommended 27 modifications to the Faversham Creek Neighbourhood Plan. The most significant modifications are the addition of an Archaeology Policy in the Creek-wide section, and changes to the site-specific policy for site 5, Swan Quay.

- 2.9 The Examiner states clearly in his report that: “My recommended modifications are those that I consider need to be made to secure that the Draft NDP meets these basic conditions, to meet the statutory requirement to specify a plan period and to correct errors.” (Paragraph 39, Examiner’s Report.)
- 2.10 This means that unless Swale BC amends the draft Plan in order to reflect the Examiner’s recommendations, the Plan would not meet the ‘basic conditions’ and the legal requirements and could not proceed to referendum.
- 2.11 Swale BC, as the local planning authority, must now consider whether to accept the Examiner’s recommendations. Officers are content with the modifications suggested, and agree with the Examiner that they make the Neighbourhood Plan acceptable in terms of meeting the basic conditions and the statutory requirements. As set out earlier, if Swale BC do not accept these modifications, the Plan cannot proceed to referendum.
- 2.12 If Swale BC decides to accept the Examiner’s recommendations it must then publish its decision, called a Decision Statement. This must be sent to Faversham Town Council, and to anyone who has asked to be notified of progress of the Neighbourhood Plan. Swale BC must then organise and hold the referendum.

The Referendum

- 2.13 The Counting Officer (Returning Officer) of Swale BC is responsible for making arrangements for the referendum to take place. The referendum will be for residents only, and the Examiner confirmed that the area to be covered by the referendum will be the Town of Faversham, i.e. the Faversham Town Council area.
- 2.14 At least 28 working days before the referendum, the Council must ensure the relevant statements and documents are published on our website.
- 2.15 If more than half of those voting are in favour of the Neighbourhood Plan, Swale BC must bring it into force as soon as reasonably practical.
- 2.16 Planning officers are currently working closely with colleagues in Democratic Services to make arrangements for the referendum. Given the current workload of the latter team, with the Police and Crime Commissioner elections in May and the EU Referendum in June, and that school holidays are best avoided for any ballot, the earliest time that a referendum could be held would be September/October 2016.

3 Proposals

- 3.1 In the light of the above, it is therefore recommended that Members:
- (i) agree to accept the modifications to the Faversham Creek Neighbourhood Plan as set out in the Examiner's Report (Appendix I);
 - (ii) agree that the Neighbourhood Plan meets the basic conditions and complies with the provision made by or under Sections 38A and 38B of the Planning and Compulsory Act 2004;
 - (iii) agree to publicise the decision to accept the Examiner's recommendations; and
 - (iv) approve the organisation of a local referendum to cover the Faversham Town Council area.

4 Alternative Options

- 4.1 Swale BC could decide that it is not satisfied that the Plan, with the Independent Examiner's modifications, meets the legal requirements and basic conditions, and so refuse to pursue the Plan further. However, there is no evidence to justify such an action, and it would result in all the good work done to date being negated. As such this option is not recommended.
- 4.2 Swale BC could propose to make a change to the Plan that differs from the Examiner's recommendations. However, even a modest change to the detail of the Examiner's recommendations, raises the risk that the Plan would not meet the 'basic conditions', and so it could not proceed to referendum and/or it would raise the risk of a legal challenge.
- 4.3 The Plan will only meet the legal requirements and 'basic conditions' if the Examiner's recommendations are accepted. Consequently, the recommendations in paragraph 3.11 are the most appropriate way forward.

5 Consultation Undertaken or Proposed

- 5.1 Extensive consultation has taken place throughout both the development of the Neighbourhood Plan, and at the statutory stages. The Examiner stated in his report that: "FTC took public consultation seriously and that sufficient consultation resulted from this approach....I also note that a particularly substantial number of local residents made representations in respect of the Plan. If there had been any failure in consultation, I would have been satisfied that it would not have caused substantial prejudice. The consultation met the requirements of the Neighbourhood Planning (General) Regulations 2012 ("the General Regulations")." (Para.6, Examination Report.)

6 Implications

Issue	Implications
Corporate Plan	This supports the Council's corporate priorities of a borough and a community to be proud of.
Financial, Resource and Property	<p>Undertaking the referendum will have both financial and resource implications for the Council. However, the Council can now apply for a £20,000 grant from DCLG due to the successful completion of the neighbourhood planning examination. This money is intended to support both the examination and referendum stage.</p> <p>Democratic Service's estimate that a stand-alone election for the Neighbourhood Plan will cost around £23,000 to administer. There is money allocated in the Planning Policy budget to meet the shortfall from the DCLG grant.</p>
Legal and Statutory	<p>The process of accepting the Examiner's Report and moving forward to a referendum is set out in Schedule 4B to the Town and Country Planning Act 1990, and complies with the provisions made by or under Sections 38A and 38B of the Planning and Compulsory Act 2004, and in the Localism Act 2011.</p> <p>The rules covering all aspects of organising and conducting the polls are in the Neighbourhood Planning (Referendum) Regulations 2012 (as amended by the Neighbourhood Planning (Referendum) (Amendment) Regulations 2013 and 2014) and the Neighbourhood Planning (Prescribed Dates) Regulations 2012.</p>
Crime and Disorder	None.
Sustainability	The submitted Neighbourhood Plan was subject to both a Sustainability Appraisal and a Habitat Regulations Assessment. These were published alongside the submission Neighbourhood Plan, and were subject to consultation and discussion at the Examination.
Health and Wellbeing	None.
Risk Management and Health and Safety	None.
Equality and Diversity	<p>Paragraph 38 of the Examiner's Report states that: <i>"I welcome the recognition of the need to comply with legislation designed to benefit disabled people and the references in policy to access for disabled people. This shows a recognition of duties under the Equality Act 2010, the principle of equality inherent in EU law and the human rights of disabled people."</i></p>

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Report of the Examination into the Faversham Creek Neighbourhood Plan by the Independent Examiner
- Appendix II: Recommended Modifications table

8 Background Papers

8.1 The following background papers are provided (as hyperlinks):

- the neighbourhood plan proposal (including a map of the area to which the plan relates);
- the consultation statement; and
- the basic conditions statement.