

Report to: **Executive**  
Date: **26 January 2023**  
Title: **Modbury Neighbourhood Plan**  
Portfolio Area: **Place Making – Cllr Pearce**  
Wards Affected: **Charterlands**  
Urgent Decision: **Y** Approval and clearance obtained: **Y**

Date next steps can be taken: Immediately

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#### **RECOMMENDATIONS:**

##### **That the Executive:**

- 1. Approves the Modbury Neighbourhood Plan as modified to incorporate the modifications recommended by the examiner to proceed to referendum, using the designated plan area as the referendum area.**
- 2. Notes the attached Modbury Neighbourhood Plan, referendum version.**
- 3. Notes the attached examiners report and recommendations.**
- 4. Notes the attached District Council draft decision statement.**
- 5. Notes the attached summary of the examiner report with comments and recommendations from District Council Officers and Modbury Parish Council.**

##### **1. Executive summary**

- 1.1 Neighbourhood Plans are a community right introduced by the Localism Act 2011. They are the responsibility of Parish Councils or Neighbourhood forums if established.
- 1.2 The Modbury Neighbourhood plan area (plan area) was designated by the District Council in 2015.
- 1.3 In order to comply with the Neighbourhood Planning (General) Regulations 2012, following independent examination of a Neighbourhood Plan and receipt of the examiner's report, the District Council must consider the examiner's recommendations.

The District Council is under no obligation or statutory requirement to make examiner's recommended modification(s) or accept the examiner's recommendation. Notwithstanding the examiner's report, Council must be satisfied the Neighbourhood Plan meets the basic conditions and is compatible with the European Convention on Human Rights (ECMR) and other European Union Obligations Convention Rights, or would do so if modifications were made to it. The District Council, in making its decision, should have regard to the examiner's report and recommendations.

- 1.4 The Localism Act requires that the independent examiner consider whether the area for any referendum should extend beyond the neighbourhood area to which the draft plan or order relates. If a recommendation is made to extend the area the independent examiner must make a recommendation as to what the extended area should be.
- 1.5 The District Council is required to consider the referendum area, informed by the examiner's conclusions. If District Council decides to extend the referendum area beyond the plan area a map of the area must be published.
- 1.6 Where the Council is satisfied the Neighbourhood Plan meets the Basic Conditions and recommends the Neighbourhood Plan proceed to referendum under, Schedule 4B to the Town and Country Planning Act 1990, The Council must make arrangements for the referendum to take place.
- 1.7 Modbury Parish Council has accepted all modifications proposed by the examiner and amended the plan accordingly, this plan is attached at Appendix 1. Modbury Parish Council has written to the District Council requesting that the Plan now proceed to referendum (Appendix 4).
- 1.8 Following a successful referendum the Neighbourhood Plan is a material consideration in the determination of planning applications and Council is required to adopt the Neighbourhood Plan within a defined time period (8 weeks). Once 'made', or adopted, by the Local Planning Authority, the Neighbourhood Plan becomes part of the Development Plan for the District and is used alongside the Joint Local Plan to decide planning applications in the area they relate to.

## **2. Background**

- 2.1 The Modbury Neighbourhood Plan has been undertaken by Modbury Parish Council in accordance with the relevant legislation and regulations.
- 2.2 The Modbury Parish Neighbourhood Plan Area was designated on the 24 February 2015 under the Neighbourhood Planning Regulations 2012 (part 2 S6). The area covers the administrative boundaries of the Parish of Modbury.
- 2.3 Following the necessary community engagement, consultation (6 weeks public consultation, Regulation 14) and background work, including informal District Council Officers advice, a draft plan was submitted to South Hams District Council, in accordance with

- Regulation 15 of the Neighbourhood Planning (General) Regulations 2012 (Regulations).
- 2.4 The District Council formally consulted, under Regulation 16, on the draft plan 3 times; 3rd August to 14th September 2020, 5th October 2020 and 16th November 2020 which was extended till 21st December 2020. The plan then proceeded to examination but was later withdrawn (25<sup>th</sup> August 2021).
  - 2.5 The Plan was resubmitted to District Council and a re-consultation took place from 11<sup>th</sup> July till 22 August 2022, this period was extended to 12<sup>th</sup> September 2022.
  - 2.6 Following this consultation an independent examiner was appointed in accordance with Regulation 17.
  - 2.7 The examiner's report (Appendix 2) provided independent examination of the Neighbourhood Plan and process to develop the plan. Council Officers have provided feed-back and fact checking to the examiner on a draft examiner's report. Officer comments were taken into consideration and where required points of fact were amended. A summary of the examiner report with comments and recommendations from District Council Officers and Modbury Parish Council is provided at Appendix 4
  - 2.8 The examiner's report concludes that, subject to modifications, the plan meets the 'basic conditions' as set out in legislation, and is suitable to proceed to referendum.
  - 2.9 The basic conditions are set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004. The basic conditions are:
    - a. having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the order (or neighbourhood plan).
    - d. the making of the order (or neighbourhood plan) contributes to the achievement of sustainable development.
    - e. the making of the order (or neighbourhood plan) is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area).
    - f. the making of the order (or neighbourhood plan) does not breach, and is otherwise compatible with, EU obligations.
    - g. prescribed conditions are met in relation to the Order (or plan) and prescribed matters have been complied with in connection with the proposal for the order (or neighbourhood plan).
  - 2.10 Notwithstanding the examiner's report, Council must be satisfied the Neighbourhood Plan meets the basic conditions and is compatible with the European Convention on Human Rights (ECMR) and other European Union Obligations, or would do so if modifications were made to it.
  - 2.11 Council Officers have considered the Neighbourhood Plan and examiner's report with regard to the Basic Conditions, including conformity with the Local Plan and national policy. Officers accept the examiner's reasoning for modifications (appendix 5) and agree that the basic conditions have been satisfied. Officers confirm that the plan meets the necessary 'basic conditions', and with national policy and can proceed to referendum

- 2.12 European Convention on Human Rights (ECMR) and other European Union Obligations are considered as the Neighbourhood Plan is required to take cognisance of the EU Strategic Environmental Assessment (SEA) Directive 2001/42/EC. District Council carried out a Strategic Environmental Assessment (SEA) screening exercise (June 2019) in consultation with relevant statutory bodies. It was the Council's opinion that a full SEA was not required for the Neighbourhood Plan as the plan's provisions will not undermine environmental, habitats or species considerations. The examiner was satisfied that the conclusion is still appropriate.
- 2.13 Council Officers remain satisfied there is no impact on European Convention on Human Rights (ECMR) and other European Union Obligations.
- 2.14 The examiner considered the plan area and the area to which the referendum should apply. The examiner was satisfied that the referendum area should be the same as the plan area, should the plan go to Referendum.
- 2.15 Officers recommend that the referendum area be the same as the plan area.
- 2.16 Where the Council is satisfied the Neighbourhood Plan meets the Basic Conditions and European Convention on Human Rights (ECMR) and other European Union Obligations the Neighbourhood Plan proceed to referendum under, Schedule 4B to the Town and Country Planning Act 1990. Following the determination Council must make arrangements for the referendum to take place, including advertising a decision statement (Appendix 3).

### **3. Outcomes/outputs**

- 3.1 Should the Council agree to proceeding to referendum, Officers recommend that the referendum area be the same as the plan area. Council would need to hold the referendum within 56 days of a decision notice being advertised by Council. Notice of the referendum would need to be advertised 28 days prior to the referendum being held.
- 3.2 If passed at referendum the Modbury Neighbourhood Plan will become a part of the Development Plan and will be used as a material consideration in determining planning applications in the Modbury area.
- 3.3 Following a successful referendum, the Council is required to adopt the Neighbourhood Plan within a defined time period (8 weeks). Once 'made', or adopted, by the Local Planning Authority, the Neighbourhood Plan becomes part of the Development Plan for the District and are used alongside the Local Plan (Joint Local Plan) to decide planning applications in the area they relate to.
- 3.3 A successful outcome for this Neighbourhood Plan will provide encouragement to the many other Parishes who are currently working on Neighbourhood Plans.

#### 4. Options available and consideration of risk

- 4.1 Given the view of Council Officers and their recommendation that the neighbourhood plan meets the relevant conditions it is considered the Neighbourhood Plan should continue through the process as a proposed.
- 4.2 If the Executive does not agree, then the a options are to propose such modifications as the Executive considers would enable the plan as modified to meet the relevant conditions and therefore still proceed to referendum; or to agree to the plan not being made.
- 4.3 in terms of the Risk this relates to the potential for challenge through a Judicial Review to the Executive’s decision that the plan does or does not meet the Basic Conditions or is compatible with the European Convention on Human Rights

#### 5. Proposed Way Forward

- 5.1 It is recommended that the Executive approves the Modbury Neighbourhood Plan to proceed to referendum.

#### 6. Implications

Implications	Relevant to proposals Y/N	Details are set out in this report.
Legal/Governance	Y	The decision to proceed to referendum for a Neighbourhood Plan is the responsibility of the Council and/or it’s Executive. The Modbury Neighbourhood Plan has followed the procedure in the Neighbourhood Planning (General) Regulations 2012 and a referendum can be held in accordance with the Neighbourhood Planning (Referendums) Regulations 2012. Following a referendum the Council is required to ‘make’ the Neighbourhood Plan and must do so within 8 weeks of the date of the referendum.
Financial implications to include reference to value for money	N	There are no financial implications. Neighbourhood Plans are supported through Government grants program. There is an internal cost recovery system for referendums.
Risk	Y	There is a risk of legal challenge on the Neighbourhood Plan referendum process.
Supporting Corporate Strategy	Y	The Council’s role in the Neighbourhood Plan process is a statutory duty. Neighbourhood Plans assist in delivering key themes in the Better Lives for All 2021, including; Adapting & mitigating climate change and increasing biodiversity;

		Protecting, conserving and enhancing or built and natural environment; Stimulating a thriving economy.
Climate Change - Carbon / Biodiversity Impact	Y	The Modbury Neighbourhood Plan aligns with the Joint Local Plan and contains policies aimed at mitigating the effects of Climate Change and impacts upon Biodiversity.
<b>Comprehensive Impact Assessment Implications</b>		
Equality and Diversity	Y	The Neighbourhood Plan has assessed Equality and Diversity implications as part of its background evidence.
Safeguarding	N	None
Community Safety, Crime and Disorder	N	No direct implications.
Health, Safety and Wellbeing	Y	Positive outcomes are anticipated from the making of the Neighbourhood Plan.
Other implications	N	none

### **Supporting Information**

#### **Appendices:**

- Appendix 1: Modbury Neighbourhood Plan - referendum version
- Appendix 2: Examiners report
- Appendix 3: SHDC referendum decision statement
- Appendix 4: Modbury Parish Council letter to SHDC
- Appendix 5: Summary of proposed modifications to the Modbury Neighbourhood Plan

#### **Background Papers:**

Background documents to the Modbury Neighbourhood Plan on line at: -  
<https://www.neighbourhoodplanning.swdevon.gov.uk/modbury>