



Report No: **55/2007** Public Agenda Item: **Yes**

Title: **Establishment of a Parish Council for Brixham**

Wards Affected: **Berry Head-with-Furzeham and St Mary's-with-Summercombe**

To: **Council** On: **1 March 2007**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

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## **1. What we are trying to achieve**

- 1.1 To ensure that a parish council for Brixham is established on 1 April 2007 in accordance with the relevant statutory requirements.

## **2. Recommendation(s) for decision**

- 2.1 **That pursuant to the direction of the Secretary of State, the order for the creation of the Brixham Parish Council (as set out in Appendix 1) be made to enable the new body to be established on the 1<sup>st</sup> April 2007; and**
- 2.2 **That a shadow parish council be established comprising the elected councillors for the district wards of Berry Head-with-Furzeham and St Mary's-with-Summercombe to consider all matters in relation to the creation of the parish council, such shadow body to be in place up to the ordinary day of elections on 3 May 2007.**

## **3. Key points and reasons for recommendations**

- 3.1 The Department for Communities and Local Government notified the Council on 5 December 2006 that the Secretary of State had made an order (The Torbay (Parish) Order 2006)) for the establishment of a parish council for Brixham. On 5 February 2007 the Electoral Commission advised that they had made their order in relation to the electoral arrangements.
- 3.2 Under Section 16 of the Local Government and Rating Act 1997, the Council is now required to make an order for the creation of a parish council as directed by the Secretary of State.
- 3.3 The order made by the Secretary of State stipulates that until the new councillors for the parish council are elected the new parish shall be represented by the councillors for the district wards of Berry Head-with-Furzeham and St

Mary's-with-Summercombe. To this end, it is proposed that a shadow parish council be established comprising the five Torbay councillors representing the two Brixham wards to consider all matters in relation to the new local council.

- 3.4 Members are asked to note that the order made by the Secretary of State requires the new council to be set up as a parish council. However, under Section 245 (6) of the Local Government Act 1972, the newly formed council, at its first meeting, can decide on whether it should be created as a parish or town council. Parish and town councils both have the same powers and duties, but a town council can choose to elect a "town mayor" and "deputy town mayor" instead of a chairman and vice-chairman.
- 3.5 At the last meeting of council held on 14 December 2006, Members requested that the next report presented to them on the parish council should identify the functions and responsibilities of the new body. Whilst these are largely for the local council to determine, there are a number of activities that it will be required by law to undertake. For example, it will have the responsibility for the management of the allotments within the Brixham area.
- 3.6 A fuller explanation of the roles and responsibilities of the new local council is set out in the supporting information.

**Paul Lucas**  
**Strategic Director (Performance)**

## Supporting information to Report 55/2007

### A1. Introduction and history

- A1.1 At the meeting of Council held on 7 February 2006, Members agreed to set up a Working Party to consider all matters in relation to the formation of a parish council for Brixham. The Working Party has met on a number of occasions to progress the establishment of the parish council and made recommendations on a range of matters. The proposals have been developed in conjunction with the Brixham Parish Council Set-up Team who have been directly involved in the discussions.
- A1.2 **Legal Orders.** At the last meeting of Council, Members received Report 380/2006 which detailed the process for creating the parish council and explained that its establishment was dependent on the making of various legal orders.
- A1.3 A letter has been received from the Department of Communities and Local Government advising that an order has now been made by the Secretary of State to create a new parish council for Brixham. Despite earlier concerns that the Electoral Commission would not be in a position to make their order in relation to the electoral arrangements, notification has been received from the Commission confirming that their order has now been made.
- A1.4 To enable the parish council to be established from 1 April 2007, the Council will be required, as directed by the Secretary, to make its own order under section 16 of the Local Government and Rating Act 1997. This order is set out at Appendix 1 of this report.
- A1.5 The order made by the Secretary of State provides that the five district ward councillors for the Brixham area should represent the new parish up to the date of the ordinary elections. It is therefore proposed that a shadow parish council be created comprising those councillors to consider all matters pertaining to the new local council. This will take the place of the Brixham Parish Council Working Party.
- A1.6 **Powers and Duties.** Parish and town councils have a limited number of duties which include the duty to provide and manage allotments. The responsibility for allotments in Brixham will transfer to the new council once it has been created. It is likely, however, that the allotments will continue to be administered and maintained by Torbay Council in the short term until the new council is in a position to assume full responsibility for their management.
- A1.7 Local councils do have a wide range of powers should they decide to use them and may, with the agreement of the relevant unitary/district council, carry out functions normally undertaken by those councils. If for example the parish council expressed a wish to undertake all street cleaning in the Brixham area, then this could only happen with the consent of Torbay Council. In the event that Torbay Council decided to transfer a service then an appropriate budget adjustment would need to be made to reflect that transfer. Initially the parish council's role with respect to direct service provision will be limited to the provision of allotments, but might evolve and include other services at a later date.

A1.8 The budget for the parish council has been set at £212,000, the majority of which will be needed to meet the initial set-up and running costs. A sum of £50,000 has been included in the budget for grants and projects and can be used for such purposes where it can be demonstrated it is in the interests of all or some of the inhabitants in the Brixham area. It cannot be predicted with any certainty the type of activities that may be undertaken but may include the following:

- Grants to local groups
- Floral displays
- Christmas decorations
- Crime prevention measures
- Preserving heritage
- Developing and promoting local arts and entertainment

A summary of the list of powers and duties of local councils is set out in Appendix 2.

A1.9 It is likely that the new parish council will wish to develop its own Strategic Plan for which it will need to allocate funding to meet the cost of producing that document. Indeed, many of the larger local councils in Devon have developed such plans. The council will need to consider putting in place many new policies and procedures to ensure that the new body is run effectively. It will be required to prepare a Freedom of Information scheme and may wish to give early consideration to the development of a communications strategy.

A1.10 Brixham Parish Council will have an important role in relation to planning applications as it has a right to be consulted on all applications for development in the Brixham area. The council will be recommended to establish a planning committee to consider applications and make recommendations to Torbay Council as appropriate. A local protocol has been developed on the consultation arrangements with Brixham Parish Council in connection with planning applications relating to the Brixham area. This appears elsewhere on the agenda.

A1.11 The parish council is required by law to convene a minimum of four meetings of the Council a year. In reality it is likely that the council will need to meet on a more frequent basis. The inaugural meeting of the council has been arranged for 17 May 2007 and a draft agenda was presented to the Brixham Parish Council Working Party on 22 February 2007. The council will also be required to hold an annual Parish Council meeting involving members of the public. Usually local councils take this opportunity to report what they have done and intend to do as well as listening to the views of local people.

## **A2. Risk assessment of preferred option**

### **A2.1 Outline of significant key risks**

A2.1.1 The Council has a statutory obligation to make the necessary preparations for the establishment of the new parish council. To this end, a project plan was prepared to ensure all of the relevant issues would be addressed in advance of the date of the formation of the parish council on 1 April 2007. The Working Party has considered most of the key issues and a budget has been approved.

A2.1.2 There was concern expressed at the last meeting of Council that the parish council might not be created given that the Electoral Commission was not prepared to give a guarantee that their order would be made by 1 April 2007. The Commission has, however, now confirmed that it has made its order.

**(Note: A full risk assessment of the proposals is available from the report author.)**

### **A3. Other Options**

A3.1 Do nothing. This is not an option as the Council would be in breach of its statutory obligations.

### **A4. Summary of resource implications**

A4.1 There are no direct financial implications for the Council associated with the creation of the parish council as the costs of establishing and running that body will be met entirely through the parish council budget.

### **A5. What impact will there be on equalities, environmental sustainability and crime and disorder?**

A5.1 The proposals are consistent with the policies in relation to equalities, environmental sustainability and crime and disorder.

### **A6. Consultation and Customer Focus**

A6.1 The Council consulted widely on its draft proposals in relation to the establishment of the parish council, which were submitted to the Secretary of State in November 2005.

A6.2 The Brixham Parish Council Set-up Team, a representative group of the local community, is now the main means through which consultation is undertaken on matters in relation to the creation of the new parish council. Members of the Set-up Team also have had direct input into the discussions on the proposals before the Working Party for consideration. A public participation session is held at the end of each meeting of the Working Party during which members of the public may put questions to the Chairman and the leader of the Set-up Team.

### **A7. Are there any implications for other Business Units?**

A7.1 Representatives from the Finance and Policy and Performance Business Units are members of the officer group that was formed to assist with the preparations for the parish council.

## **Appendices**

Appendix 1 Draft Torbay Council (Parish Council) Order 2007

Appendix 2 List of duties and powers of parish/town councils

### **Background Papers:**

The following documents/files were used to compile this report:

Local Government and Rating Act 1997 and associated guidance.

Appendix 1 to Report 55/2007

**Local Government and Rating Act 1997**  
**Torbay Council (Brixham Parish Council) Order 2007**

Made the        day of                2007

Torbay Council having been directed by the Secretary of State for Communities and Local Government in article 3 of the Torbay (Parish) Order 2006, and in exercise of powers conferred on it by section 16 of the Local Government and Rating Act 1997 and of all other powers enabling in that behalf, hereby makes the following order:

1. This order shall be referred to as the Torbay Council (Brixham Parish Council) Order 2007.
2. It shall come into force on the day after the day on which it was made.
3. The Council hereby establishes a parish council ("the Parish Council") for the Parish of Brixham.
4. The Parish Council shall be constituted with twelve councillors ("the Parish Councillors").
5. The twelve parish councillors shall be divided between two wards as follows:

<b>Name of Ward</b>	<b>Number of parish councillors</b>
Berry Head-with-Furzeham	7
St. Mary's-with-Summercombe	5

6. The ward boundaries for the parish council shall be coterminous with those Torbay Council district wards for Brixham.
7. The Parish Councillors shall be elected on the third day of May 2007. They will come into office on the fourth day after such election.
8. Subsequent elections to the Parish Council shall be held on the ordinary day of election of Parish Councillors in 2011 and every fourth year thereafter, or as statute otherwise dictates.
9. The annual meeting of the Parish Council shall be held on or within fourteen days after the day upon which the first newly elected Parish Councillors take office and shall be convened by the Head of Paid Service of Torbay Council (or in the absence of such person, the Monitoring Officer of Torbay Council).
10. For the purposes of article 3 of the Local Government Finance (Miscellaneous) Provisions (England) Order 1995 (SI 1995/161) and Regulation 3 of the Local Government Finance (New Parishes) Government Regulations 1998 (SI 1998/119) as amended, the sum of £212,000 is specified in relation to the Parish Council as its revenue budget for the financial year 2007 to 2008.
11. For the purposes of section 83(4) of the Local Government Act 1972 the Assistant Director (Democratic Services) of Torbay Council (or in the absence of such person, the Monitoring Officer of Torbay Council) shall act as the proper officer for the purposes of that section and the taking of the initial declarations of acceptance of office.

12. Pursuant to the terms of the Local Government (Parishes and Parish Councils) regulations 1999 all land held or used by Torbay Council for the purposes of the Allotments Acts 1908 to 1950 or any other land held by that Council and used for those purposes shall from the first day of April 2007 transfer to and vest in the Parish.

Given under the Common Seal of Torbay Council on the day above mentioned.

THE COMMON SEAL  
OF TORBAY COUNCIL  
was hereunto affixed in  
the presence of

Director of Law and Support



**Appendix 2 to Report 55/2007**

**Powers and duties of parish councils**

(this is not an exhaustive list)

<b>Function</b>	<b>Powers &amp; Duties</b>	<b>Statutory Provisions</b>
Access land	Power to enforce byelaws made by another authority	Countryside and Rights of Way Act 2000, s. 17
Allotments	Duty to provide allotments (if there is demand). Power to improve and adapt land for allotments, and to let grazing rights	Small Holdings & Allotments Act 1908, ss. 23, 26, and 42
Baths and washhouses	Powers relating to provision of public baths, washhouses and bathing huts	Public Health Act 1936, ss. 221 - 223 and 225 - 227
Burial grounds, cemeteries and crematoria	Power to acquire and maintain Power to provide Power to agree to maintain monuments and memorials Power to contribute towards expenses of cemeteries	Open Spaces Act 1906, Ss 9 and 10; Local Government Act 1972, s. 214; Parish Councils and Burial Authorities (Miscellaneous Provisions) Act 1970, s. 1 Local Government Act 1972, s. 214(6)
Bus shelters	Power to provide and maintain shelters	Local Government (Miscellaneous Provisions) Act 1953, s. 4
Bye-laws	Power to make bye-laws in regard to pleasure grounds Cycle parks Baths and washhouses Open spaces and burial grounds Mortuaries and post-mortem rooms Public Conveniences	Public Health Act 1875, s. 164 Road Traffic Regulation Act 1984, s.57(7) Public Health Act 1936, s.223 Open Spaces Act 1906, ss.15 and 12 Public Health Act 1936, s.198 Public Health Act 1936, s. 87
Clocks	Power to provide public clocks	Parish Councils Act 1957, s.2
Closed churchyards	Powers as to maintenance	Local Government Act 1972, s.215
Commons	Power for parish council to contribute to expense relating to scheme for the regulation and management of a common	Commons Act 1899, s.5
Common pastures	Powers in relation to providing common pasture	Smallholdings and Allotments Act 1908, s.34
Conference facilities	Power to provide and encourage the use of facilities	Local Government Act 1972, s.144
Community centres	Power to provide and equip buildings for use of clubs having athletic, social or recreational objectives	Local Government (Miscellaneous Provisions) Act 1976 s.19
Crime prevention	Powers to install and maintain equipment and establish and maintain a scheme for detection or prevention of crime	Local Government and Rating Act 1997, s.31
Drainage	Power to deal with ponds and ditches	Public Health Act 1936, s.260
Entertainment and the arts	Provision of entertainment and support of the arts	Local Government Act 1972, s.145
Financial assistance	Duty to require information	Local Government Act 1972, s.137A
General powers	Power to incur expenditure for certain purposes	Local Government Act 1972, s. 137
Gifts	Power to accept	Local Government Act 1972, s.139

<b>Function</b>	<b>Powers &amp; Duties</b>	<b>Statutory Provisions</b>
Highways	<p>Power to maintain footpaths and bridle-ways</p> <p>Power to light roads and public places</p> <p>Provision of litter bins</p> <p>Powers to provide parking places for bicycles and motor-cycles, and other vehicles</p> <p>Power to enter into agreement as to dedication and widening</p> <p>Power to provide roadside seats and shelters</p> <p>Consent of parish council required for ending maintenance of highway at public expense, or for stopping up or diversion of highway</p> <p>Power to complain to highway authority as to unlawful stopping up or obstruction of highway or unlawful encroachment on roadside wastes</p> <p>Power to provide traffic signs and other objects or devices warning of danger</p> <p>Power to plant trees and lay out grass verges etc. and to maintain them</p>	<p>Highways Act 1980, ss.43,50</p> <p>Parish Councils Act 1957, s.3;</p> <p>Highways Act 1980, s.301</p> <p>Litter Act 1983, ss.5,6</p> <p>Road Traffic Regulation Act 1984, ss.57,63</p> <p>Highways Act 1980, ss.30,72</p> <p>Parish Councils Act 1957, s.1</p> <p>Highways Act 1980, ss.47,116</p> <p>Highways Act 1980, s.130</p> <p>Road Traffic Regulation Act 1984, s.72</p> <p>Highways Act 1980, s.96</p>
Investments	Power to participate in schemes of collective investment	Trustee Investments Act 1961, s.11
Land	<p>Power to acquire by agreement, to appropriate, to dispose of</p> <p>Power to accept gifts of land</p>	<p>Local Government Act 1972, ss.124, 126, 127</p> <p>Local Government Act 1972, s.139</p>
Litter	Provision of receptacles	Litter Act 1983, ss.5,6
Lotteries	Powers to promote	Lotteries and Amusements Act 1976, s.7
Mortuaries and post mortem rooms	Powers to provide mortuaries and post mortem rooms	Public Health Act 1936, s.198
Open spaces	Power to acquire land and maintain	<p>Public Health Act 1875, s.164</p> <p>Open Spaces Act 1906, ss.9 and 10</p>
Parish documents	Powers to direct as to their custody	Local Government Act 1972, s.226
Public buildings and village hall	Power to provide buildings for public meetings and assemblies	Local Government Act 1972, s.133
Public conveniences	Powers relating to provision of public conveniences	Public Health Act 1936, s.87
Recreation	<p>Power to acquire land for or to provide public walks, pleasure grounds and open spaces and to manage and control them</p> <p>Power to provide gymnasiums, playing fields, holiday camps</p> <p>Provision of boating pools</p>	<p>(see Local Government Act 1972, Sched.14 para.27)</p> <p>Public Health Act 1875, s.164</p> <p>Public Health Acts Amendment Act 1890 s.44</p> <p>Open Spaces Act 1906, ss.9 and 10</p> <p>Local Government (Miscellaneous Provisions) Act 1976, s.19</p> <p>Public Health Act 1961, s.54</p>
Town and country planning	Right to be notified of planning applications	Town and Country Planning Act 1990, Sched.1, para.8
Tourism	Power to encourage visitors and provide conference and other facilities	Local Government Act 1972, s.144

<b>Function</b>	<b>Powers &amp; Duties</b>	<b>Statutory Provisions</b>
Traffic calming	Powers to contribute financially to traffic calming schemes	Highways Act 1980, s.274A
Transport	Powers in relation to car-sharing schemes, taxi fare concessions and information about transport Powers to make grants for bus services	Local Government and Rating Act 1997, s.26, 28 and 29 Transport Act 1985, s.106A
War memorials	Power to maintain, repair, protect and alter war memorials	War Memorials (Local Authorities' Powers) Act 1923, s.1; as extended by Local Government Act 1948, s.133
Water supply	Power to utilise well, spring or stream and to provide facilities for obtaining water from them	Public Health Act 1936, s.125