



**TORBAY COUNCIL**

**LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007**

**COMMUNITY GOVERNANCE REVIEW OF TORBAY**

**TERMS OF REFERENCE**

**1. INTRODUCTION**

- 1.1 Torbay Council ('the Council') has resolved to undertake a community governance review ('the review') of the whole area of Torbay.
- 1.2 The review will consider whether any changes should be made to existing community governance arrangements within Torbay, including whether new parishes should be created in all areas that are currently unparished and if so, whether new town or parish councils should be created for those areas and the electoral arrangements for those councils.
- 1.3 In undertaking this review the Council will have regard to the Guidance on Community Governance Reviews issued in March 2010 by the Secretary of State for Communities and Local Government and will comply with Part 4 of the Local Government and Public Involvement in Health Act 2007 ('the 2007 Act'), the relevant parts of the Local Government Act 1972 and regulations issued under those acts.
- 1.4 These terms of reference set out information including the reasons for the review, its projected process and timescale, the matters that it will address and principles that the Council considers should guide the review. The terms of reference will be published on the Council's website and in hard copy and will be made available at the Council offices and at other venues within the area under review.
- 1.5 Town and parish councils<sup>1</sup> are the most local tier of government in England. They are democratically elected and can play an important role in representing their local community, delivering services to meet local needs and promoting community wellbeing. They are a statutory consultee on planning applications. They may

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<sup>1</sup> **Note re: terminology:** A principal (i.e. unitary or district) council may, following a community governance review create, abolish, or alter the area of, any parish within its area and may establish a parish council to serve a newly-created parish. A parish council serving an urban area may be called a town council. There is no difference between a parish council and a town council in terms of powers or duties. Brixham is currently the only parished part of Torbay and has a town council. It is anticipated that any parish councils established for Torquay and Paignton would also be called town councils.

exercise a variety of powers and duties including the delivery of a number of specific local services and may also enter into discussions with the principal council (i.e. Torbay Council) about the transfer of services, budgets and assets subject to mutual agreement. Town and parish and town councils are funded principally through an annual precept – an additional amount added to the Council Tax in their area.

### **Reasons for the review**

- 1.6 The Council is undertaking the review at this time because it considers that the establishment of town or parish councils, which have the ability to raise income through the precept mechanism that is not currently subject to capping rules, could allow for the provision of local services that Torbay Council may be unable to sustain in the future due to resource and demand pressures particularly in the statutory services of Children's and Adult Services. Town or parish councils may also promote community engagement and effective local government.
- 1.7 In addition, Government guidance states that it is good practice for principal councils to conduct a community governance review every 10-15 years, except in areas with very low populations. No such review has been undertaken in Torbay since the establishment of Brixham Town Council in May 2007.

### **Community governance reviews**

- 1.8 A community governance review is a review of the whole or part of a principal council's area to consider one or more of the following:
- Creating, merging, altering or abolishing parishes;
  - The naming of parishes and the style of new parishes;
  - Whether a town or parish council should be established for a new parish area;
  - The electoral arrangements for parishes (the ordinary year of election; council size; the number of councillors to be elected to the council, and parish warding); and/or
  - Grouping parishes under a common parish council or de-grouping parishes.
- 1.9 In accordance with the 2007 Act the Council will have regard to the need to secure community governance within the area under review which:-
- Is reflective of the identities and interests of the community in that area;
  - Provides for effective and convenient local government; and
  - Takes into account any other arrangements for the purposes of community representation or community engagement in the area.
- 1.10 The Council's principle reason for undertaking the review is set out in paragraph 1.6 above, however in accordance with Government guidance, when considering the above criteria the Council will take into account the impact of community governance arrangements on community cohesion and the size, population and boundaries of a local community or parish; and will seek to make recommendations

that bring about improved community engagement, better local democracy and result in more effective and convenient delivery of local services.

### **Responsibility for the review**

- 1.11 As the relevant principal authority, Torbay Council is responsible for conducting any community governance review within its electoral area and for deciding whether to give effect to the recommendations of the review.
- 1.12 In accordance with regulations issued under the Local Government Act 2000, functions relating to Community Governance Reviews are not to be the responsibility of an authority's executive.
- 1.13 The management of the review will be the responsibility of a project manager appointed by the Director of Corporate Services. The review will be overseen by the Community Governance Review Working Party to which Councillors are appointed by the Council. The Council itself will agree the draft and final recommendations and make any Reorganisation of Community Governance Order.

## **2. CONSULTATION**

- 2.1 In coming to its recommendations in the review, the Council will take account of the views of local people and stakeholders. Legislation requires the Council to consult the local government electors for the area under review and any other person or body who appears to have an interest in the review, and to take the representations that are received into account by judging them against the criteria in the 2007 Act.
- 2.2 In order to promote community engagement and transparency in the Community Governance review, the Council will:-
  - Publish these terms of reference;
  - Publicise the review as widely as possible using electronic means including social media and seek to engage the local media in reporting the issues under review;
  - Consult residents, business organisations, community groups, other local organisations, political parties and elected representatives for the areas under review and Brixham Town Council;
  - Make key documents available at the Council offices and at other venues in the areas under review;
  - Accept submissions by post or via e-mail or the Council's website;
  - Take into account representations received in connection with the review; and
  - Publicise the draft and final recommendations and the outcome of the review.
- 2.3 The Council will consider each matter under review on its merits and on the basis of the information and evidence provided during the course of the review.

### 3. THE TIMETABLE FOR THE REVIEW

3.1 Publication of these terms of reference formally begins the review, which must then be completed within twelve months.

<b>Indicative timetable for the Community Governance Review of Torbay</b>	
<b>Action/stage of process</b>	<b>Proposed dates</b>
<b>Preparation phase</b>	
Consultation on draft terms of reference; preparation of maps, electorate forecasts, consultation materials etc.	Wednesday 21 November 2018 to 31 December 2018
Publication of terms of reference	By Monday 14 January 2019 <i>(formal start of review)</i>
<b>First stage consultation – initial submissions</b>	
Initial submissions invited:- publicity campaign, meetings etc	Monday 14 January 2019 to Friday 15 March 2019
Deadline for initial submissions	Friday 15 March 2019
Consideration of initial submissions/ preparation of draft recommendations	Monday 18 March 2019 to Friday 24 May 2019
Council to agree draft recommendations and process for second stage consultation	w/b 17 June 2019
<b>Second stage consultation – submissions on draft recommendations</b> (NB the dates below may be subject to review following the Council’s decisions on the process to be followed for the second stage consultation which could include the holding of a poll)	
Publication of draft recommendations	Monday 24 June 2019
Submissions invited on draft recommendations:- publicity campaign, meetings etc	Monday 24 June 2019 to Friday 16 August 2019
Deadline for second stage consultation responses	Friday 16 August 2019
Consideration of responses to second stage consultation/ preparation of final recommendations	Monday 19 August 2019 to Friday 30 August 2019
Council to agree final recommendations	19 September 2019
<b>Decisions &amp; implementation</b>	
Publication of final recommendations	Monday 23 September 2019 <i>(formal end of review)</i>

Council Meeting to decide whether to give effect to the final recommendations and to make Reorganisation Order	w/b 14 or 21 October 2019
Revised electoral register published incorporating any amendments	1 December 2019
Order takes effect – implementation of any changes for financial and administrative purposes.	No later than 1 April 2020
Elections to new town or parish councils (if any)	7 May 2020 (term of office would run until May 2023)

#### **4. ISSUES FOR CONSIDERATION IN THE REVIEW**

4.1 The map at Appendix A shows the existing town council arrangements within Torbay and the boundaries of the wards (revised with effect from May 2019) of Torbay Council across the whole authority including the currently unparished area.

##### **Parish areas and town or parish councils**

4.2 The review will consider whether any changes should be made to the parish arrangements within Torbay, including:-

- whether there is a need to alter any existing parish boundaries or abolish any existing parish;
- whether or not a new parish or parishes should be created in areas that are currently unparished – either two new parishes, for Torquay and Paignton respectively as initially discussed by the Council, or any other arrangements for some or all of the area; and
- in the event that a new parish or parishes are created, whether they should have a town council.

4.3 In considering the above, the review will have regard to current and projected patterns of population, development, community identity and linkages in the area under review; to the viability of potential parish areas and the delivery of local services.

4.4 The 2007 Act provides that where a new parish is created which has 1,000 or more electors, the principal council must recommend that the parish has a council. Where a new parish is created that has between 151 and 999 electors the principal council may decide whether or not it should have a council.

4.5 In relation to previously unparished areas, the 2007 Act requires a principal council in undertaking a review to take into account other (non-parish) forms of community governance that have been, or could be, made for the purpose of community representation or engagement in the area under review. These might include community partnerships/forums, area committees, residents' and tenants' associations, neighbourhood management programmes or community associations. In accordance with Government guidance the review will consider whether such

arrangements could be alternatives to, or stages towards, the establishment of town or parish councils. The Council notes however that the guidance also states ‘what sets parish councils apart from other kinds of governance is the fact they are a democratically elected tier of local government, independent of other council tiers and budgets, and possess specific powers’ and ‘their directly elected parish councillors represent local communities in a way that other bodies, however worthy, cannot since such organisations do not have representatives directly elected to those bodies’.

### **Names and style of parishes**

- 4.6 In the event that a new parish is proposed to be created, the review will make recommendations as to the geographical name of the new parish and as to whether or not it should be a parish council or have one of the alternative styles (community, neighbourhood or village). A council that is created as a parish council may decide that it shall have the status of a town council.
- 4.7 Where an existing parish is under review, the Council will make recommendations as to whether the geographical name of the parish should be changed, but it will be for the council to resolve whether the parish should have one of the alternative styles.

### **Electoral arrangements**

- 4.8 The review will consider what electoral arrangements should apply to any new town or parish council that is created and whether any changes should be made to the electoral arrangements of the existing town council<sup>2</sup>. ‘Electoral arrangements’ means:-
- The ordinary year in which elections are held;
  - The number of councillors to be elected to the council;
  - The division (or not) of the parish into wards for the purpose of electing councillors;
  - The number and boundaries of any such wards;
  - The number of councillors to be elected for any such ward; and
  - The name of any such ward.
- 4.9 In relation to the year of election, the ordinary election of parish councillors takes place in 2019 and at four-yearly intervals thereafter. If the review results in the establishment of a new town or parish council or councils to which it is appropriate to hold an election for councillors at an earlier date than the next scheduled ordinary elections, the Council may resolve to modify or exclude the application of sections

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<sup>2</sup> **Note:** The Local Government Boundary Commission for England (LGBCE) on 20 June 2018 made the Torbay Electoral Changes Order 2018 which included changes to the warding arrangements for Brixham Parish. If, following this review, the Council wishes to alter the electoral arrangements for a parish whose existing arrangements were put in place within the previous five years by an order made by the LGBCE, the consent of the LGBCE will be required.

16(3) and 90 of the Local Government Act 1972 to provide for the first election to be held in an earlier year and the terms of office of any newly elected town or parish councillors will be so reduced as to allow the electoral cycle to revert to the normal cycle in Torbay at the next ordinary elections.

- 4.10 In relation to the number of town or parish councillors, legislation provides that the number of councillors for each council shall not be fewer than five. There is no maximum number. Government guidance is that 'each area should be considered on its own merits, having regard to its population, geography and the pattern of communities'.
- 4.11 In relation to warding of a parish, the 2007 Act requires that in considering whether a parish should be divided into wards the Council should consider (i) whether the number, or distribution, of the local government electors for the parish would make a single election of councillors impracticable or inconvenient; and (ii) whether it is desirable that any area or areas of the parish should be separately represented on the council.

#### **Electorate forecasts**

- 4.12 When the Council comes to consider the electoral arrangements of the town or parish councils in its area, it is required to consider the number of local government electors in the area under review, and any change in that number or the distribution of the electors which is likely to occur in the period of five years beginning with the day when the review starts.
- 4.13 Current electorate figures for each of the wards in both the parished and unparished parts of Torbay will be made published as soon as possible after the publication by 1 February 2019 of the revised electoral register reflecting the amended wards and polling districts that will apply at elections to the unitary council from May 2019.
- 4.14 Electorate forecasts for January 2024, taking into account information on developments underway or planned based on extant planning permissions and the local development framework, will also be published to inform the consultation process as early as possible during the review.
- 4.15 Population estimates will be used to apportion assets where significant changes, including the creation of new parishes, are recommended.

#### **Service provision and council tax precept**

- 4.16 As part of the consultation process the Council will outline the services that it envisages could be provided by town or parish councils and/or any assets or liabilities that could be transferred to them.
- 4.17 The Council will make available information on the precept currently payable by council tax payers in the area served by Brixham Town Council and the services

currently provided by that council. It will also publish illustrative information on a range of services that might in future be transferred to or provided by the existing and/or any new town or parish councils together with estimated precept figures for a range of alternative levels of service provision.

### **Other matters**

- 4.18 The review will consider any other issues raised during the consultation process which are relevant to the review.
- 4.19 In the event that the review recommends the creation of any new council(s), the review will also consider what preparatory and transitional arrangements should apply to the establishment of that council or councils.

## **5. PRINCIPLES THAT WILL GUIDE THE REVIEW**

### **Parishes**

- 5.1 The Council is undertaking the review to consider the establishment of town or parish councils which have the ability to raise income through the precept mechanism that is not currently subject to capping rules, which could allow for the provision of local services that Torbay Council may be unable to sustain in the future due to resource and demand pressures particularly in the statutory services of Children's and Adult Services.
- 5.2 There is an evidence base from elsewhere which demonstrates that town or parish councils can play an important role in empowering and representing communities.
- 5.3 The Council notes the Government's continued commitment to town and parish councils and its guidance that it 'expects to see a trend in the creation, rather than the abolition, of parishes'.
- 5.4 It is important that within the review, that any creation of parishes should reflect distinctive and recognisable communities of interest, with their own sense of identity and that electors should be able to identify clearly with the parish in which they are resident. This information will therefore need to be gathered as part of the review.
- 5.5 The Council wishes to ensure that parishes should be viable as an administrative unit and should possess a precept that enables them effectively to promote the well-being of their residents and contribute to the provision of services in their area in an economic and efficient manner.

### **Boundaries**

- 5.6 The Council considers that the boundaries between parishes should reflect the distinct community identities of the respective areas. Wherever possible boundaries should follow areas of low population between settlements or pronounced physical



barriers (either natural or built) such as watercourses, marshland or moorland; parks, canals, railways or major roads. Appropriate information will therefore need to be gathered as part of the review.

- 5.7 The Council will give careful consideration both to traditional community identities and to any changes that have happened over time, for example population movements or new development, that may have led to a different community identity in an area.
- 5.8 Should a reorganisation of parish boundaries occur as a result of the review, the Council will aim to select boundaries that are and are likely to remain easily identifiable.

### **Names**

- 5.9 With regard to the geographical names of any town or parish councils or town wards established within Torbay, the Council believes that these should reflect existing local or historic place names and there will be a presumption in favour of names proposed by local interested parties.

### **The number of town or parish councillors**

- 5.10 When considering the number of councillors to be elected for any town or parish council, in addition to applying the statutory rules described above, the Council will have regard to:-
- the recommended guidance issued by the National Association of Local Councils (NALC) and indicative national data on representation published by the former Aston Business School;
  - existing levels of representation, the pattern of existing council sizes which have stood the test of time and the take-up of seats at elections; and
  - the desirability of a broadly equitable allocation of councillors to town and parish councils across Torbay, whilst acknowledging that local circumstances may on occasion merit variation.

### **Warding**

- 5.11 The Council notes Government guidance that 'there is likely to be a stronger case for the warding of urban parishes ... [where] ... community identity tends to focus on a locality ... [and] ... each locality is likely to have its own sense of identity'. The Council will however seek to secure that any warding arrangements should have relevance for the electorate, be in the interests of effective and convenient local government and not be wasteful of a town or parish council's resources.

- 5.12 In reaching conclusions on the boundaries between any wards, the Council will have regard to community identity and interests and will consider whether any particular ties or linkages might be broken by the drawing of particular ward boundaries. The Council will also have regard to guidance by the Local Government Boundary Commission for England (LGBCE) that the principal council ward boundaries should not split an unwarded parish and that no parish ward should be split by such a boundary.
- 5.13 When deciding the number of councillors to be elected for any ward, the Council will take into account the view of the LGBCE that it is not in the interests of effective and convenient local government, either for voters or councillors, to have significant differences in levels of representation.

## **6. COMPLETION OF THE REVIEW AND IMPLEMENTATION OF ANY DECISIONS**

- 6.1 The review will be completed when the Council publishes its final recommendations. The Council will take steps to inform interested parties of the recommendations and outcome of the review. In accordance with Government guidance the Council will issue maps to illustrate each recommendation at a scale not smaller than 1:10,000.
- 6.2 If the review results in any changes to community governance, at the conclusion of the review the Council will make a Reorganisation of Community Governance Order. Copies of this order, the map(s) that show the effects of the order in detail, and the document(s) which set out the reasons for the Council's decisions (including where it has decided to make no change following the review) will be deposited at the Council's offices, published on its website, and provided to the clerk of any council affected.
- 6.3 In accordance with legislation, copies of any order and associated maps will be deposited with the Secretary of State and the LGBCE. Prints of the maps will also be supplied to Ordnance Survey, the Registrar General, the Land Registry, the Valuation Office Agency, the Boundary Commission for England and the Audit Commission.
- 6.4 Subject to the final recommendations of the review, the provisions of any order will take effect for financial and administrative purposes no later than 1 April following the adoption of the order. Any revised electoral arrangements for a new or existing town or parish council will come into effect in accordance with the provisions of these terms of reference.

## **7. CONSEQUENTIAL MATTERS**

- 7.1 A reorganisation order may cover any consequential matters that appear to the Council to be necessary or proper to give effect to the order. These may include the transfer and management or custody of property, the setting of precepts for new parishes, provision with respect to the transfer of any functions, property, rights and liabilities and/or provision for the transfer of staff, compensation for loss of office, pensions and other staffing matters.

- 7.2 In these matters, the Council will be guided by the relevant regulations issued following the 2007 Act. In particular, the Council notes that the regulations regarding the transfer of property, rights and liabilities require that any apportionments shall use the population of the area as estimated by the proper officer of the Council as an appropriate proportion.
- 7.3 In relation to the establishment of a precept for any new town or parish council, the Council will comply with the requirements of the Local Government Finance (New Parishes) Regulations 2008, which sets that the principal council sets the precept for the new parish council for their first year, and requires the Reorganisation Order to include the budget requirement for the first year of the parish/town council.

#### **Principal area boundaries**

- 7.4 Any changes made to town or parish ward boundaries as a result of this review will not automatically change the corresponding principal council ward boundaries.
- 7.5 In the event of a reorganisation order making such a change the Council may recommend the LGBCE that the principal council ward boundaries are realigned to coincide with the revised town or parish ward boundaries and it would be for the LGBCE to decide if and when these related alterations should be made.
- 7.6 The LGBCE would require evidence that the Council has consulted on the recommendations as part of the review. The Council will therefore seek to include any such draft recommendations for consultation at the earliest possible opportunity should they appear desirable.

**Date of publication of these terms of reference: 14 January 2019.**

#### **Contact details for the review**

Enquiries regarding the review process and/or comments on the matters set out in these terms of reference should be directed to:

**Community Governance Review  
c/o Governance Support,  
Torbay Council,  
Town Hall  
Castle Circus  
Torquay  
TQ1 3DR**

**E-mail:** [engagement@torbay.gov.uk](mailto:engagement@torbay.gov.uk)

# APPENDIX 'A'

The map below shows the existing Brixham Town Council Boundaries and Wards together with the Torbay Council Wards (revised with effect from May 2019).

