

**Meeting: Council**

**Date: 19 June 2019**

**Wards Affected:** Barton with Watcombe, Cockington with Chelston, Ellacombe, Shiphay, St Marychurch, Tormohun, Wellswood

**Report Title:** Torquay Neighbourhood Plan Adoption

**Is the decision a key decision?** Yes

**When does the decision need to be implemented?** On or before 26 June 2019

**Executive Lead Contact Details:** Cabinet Member for Infrastructure, Environment and Culture – Councillor Morey, [mike.morey@torbay.gov.uk](mailto:mike.morey@torbay.gov.uk)

**Supporting Officer Contact Details:** Andrew England, Assistant Director Planning and Transport, 01803 208848, [andrew.england@torbay.gov.uk](mailto:andrew.england@torbay.gov.uk)

---

## 1. Proposal and Introduction

- 1.1 The Torquay Neighbourhood Plan (the Plan) was considered by Full Council on Thursday 15<sup>th</sup> November 2018 following an independent public examination. The Council agreed that the Decision Statement (considered with the Plan) shall be adopted and published and that the Plan, with Modifications agreed by that Council set out in the Decision Statement, be submitted to a Referendum.
- 1.2 That Referendum was held on Thursday 2<sup>nd</sup> May 2019 and the Returning Officer announced on Friday 3<sup>rd</sup> May 2019 that the result was:

Yes	14,062 (87%)
No	2,103 (13%)
Turn-out	33.5%

Therefore more than half of those voting voted in favour of the plan and accordingly the Plan has become part of the Development Plan, alongside the Local Plan. Council must now consider whether to Make (adopt) the Plan.

- 1.3 Linked with the making of Neighbourhood Plans is a change in the proportion of Community Infrastructure Levy (CIL).

## 2. Reason for Proposal

- 2.1 The Plan has been through the relevant statutory process including:
- Area designation
  - Pre-submission consultation
  - Submission
  - Publication consultation

- Independent Examination
- Plan Proposal decision
- Referendum

The next stage is to 'make' the plan as part of the Development Plan for Torbay.

- 2.2 In accordance with the Planning and Compulsory Purchase Act 2004 Council are required to make (which means to adopt) a Neighbourhood Development Plan if more than half of those voting at a Referendum have voted in favour of the Plan, and if so, must make the Plan as soon as reasonably practicable after the Referendum is held but no longer than eight weeks.
- 2.3 Planning law indicates that planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. All explanatory and justification text will be a material consideration.
- 2.4 Council can only decide to refuse the Plan at this stage if it considers that the making of the Plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).
- 2.5 Since the decision was made by Council in November 2018 to approve the Plan with modifications in accordance with the decision statement, the policy document and maps were updated to reflect the agreed changes.
- 2.6 At this stage of the process, no further changes are permitted to the Plan beyond correcting typographical errors and clarifying the version of the Plan for consideration, in this case removing references to Referendum and inserting adopted with the relevant date. The final version of the Plan, as agreed with the Neighbourhood Forum, is in Appendix 1.
- 2.7 Following Council's decision in November 2018, it was necessary to ensure that the changes were compatible with the Habitats Directive. This required further consultation with Natural England. The final Habitats Regulations Assessment (HRA) (including Appropriate Assessment) (March 2019), as prepared by Council officers and agreed by Natural England, is included in Appendix 2. Further documents relating to this are available on the Council's website, linked under Background Documents.
- 2.8 Natural England are satisfied that the proposals meet the Directive and do not raise any objections. In any case, the Local Authority remains responsible for ensuring compliance as the competent authority and hence members considering the matter in this report.
- 2.9 The Appendix 2 HRA states that it relates to the Referendum version of the Torquay Neighbourhood Plan. As the Referendum version of the plan was approved by the community, and there have been no substantive changes from the Referendum version to the final version in Appendix 1 (as noted in para 2.6) the existing HRA remains both relevant and appropriate.
- 2.10 The Council has a duty to support communities who are preparing Neighbourhood Plans. The Regulations detail the Council's responsibilities. The Plan has been independently examined and agreed by Council to meet the Basic Conditions; it has been endorsed by the community at Referendum and has otherwise complied

with all the legal requirements of plan production. It is considered that the Plan meets European legislation and is compatible with the European Convention on Human Rights within the meaning of the Human Rights Act 1998.

- 2.11 There are a number of approaches to the Meaningful (Neighbourhood) Portion of Community Infrastructure Levy (CIL) that could be implemented. What is fixed is that, when made, each of the Plan areas will be due 25% of CIL receipts arising from permissions granted after the Neighbourhood Plans have come into force. Without Plans the areas were due 15%. Within the Brixham Town Council administrative area, this funding will be managed by them, transferred from Torbay Council to the Town Council at appropriate times. Outside of their administrative area, and within the Paignton and Torquay Neighbourhood Areas Torbay Council will remain responsible but must spend the funding in consultation with the community.

### **3. Recommendation(s) / Proposed Decision**

- 3.1 That, following the outcome of the Referendum held on 2<sup>nd</sup> May 2019:
- 3.1.1 the Torquay Neighbourhood Plan Habitats Regulations Assessment (Appropriate Assessment) set out in Appendix 2 to the submitted report be approved;
  - 3.1.2 the Torquay Neighbourhood Plan set out in Appendix 1 to the submitted report is made, with this report and the record of this meeting collectively forming the required Decision Statement, in accordance with s.38A(4) of the Planning and Compulsory Purchase Act 2004 (as amended) and the Neighbourhood Planning (General) Regulations 2012 (as amended).

### **Appendices**

Appendix 1: Torquay Neighbourhood Plan

Appendix 2: Torquay Neighbourhood Plan Habitats Regulations Assessment (Appropriate Assessment)

### **Background Documents**

Further documents relating to the Neighbourhood Plan, including the submission, consultation and examination, as well as the Habitats Regulations Assessment (Appropriate Assessment) are available to view at [www.torbay.gov.uk/torquay-np](http://www.torbay.gov.uk/torquay-np)

<b>Section 1: Background Information</b>	

1.	<p><b>What is the proposal / issue?</b></p> <p>The matter for consideration is whether the Council should make (or adopt) the Neighbourhood Plan as part of the Development Plan for Torbay, or whether there are reasons (in accordance with legislation) not to do so.</p>
2.	<p><b>What is the current situation?</b></p> <p>In November 2018, Council approved the Torquay, Paignton and Brixham Peninsula Neighbourhood Plans for Referendum.</p> <p>Those Referendums were held on 2<sup>nd</sup> May 2019 at which all three were supported by more than 50% of those voting.</p> <p>The next step for Council is to confirm the making (or adoption) of the Plans into the Development Plan for Torbay. This decision must be made, in accordance with the Neighbourhood Planning Regulations unless the making of the plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).</p>
3.	<p><b>What options have been considered?</b></p> <p>Options in relation to the content of the Plans were considered in November 2018. At this stage the only option is whether or not to make the Neighbourhood Plan.</p> <p>Discussions with Natural England following the November 2018 Council decision were positive and the completed Habitats Regulations Assessment (Appropriate Assessment) is provided with this report. This assessment confirms that the Plans, as put to Referendum and supported by the community, are not in breach and are not incompatible with relevant EU obligations.</p> <p>Officers are satisfied that the Plans are also not in breach or otherwise incompatible with other EU obligations or any of the Convention rights.</p>
4.	<p><b>How does this proposal support the ambitions, principles and delivery of the Corporate Plan?</b></p> <p>The Neighbourhood Plan is in general conformity with the Local Plan and both set out various policies which support the Ambition, Principles and Targeted Actions of the Corporate Plan.</p>
5.	<p><b>How does this proposal contribute towards the Council's responsibilities as corporate parents?</b></p>

	<p>Various policies set out within the Neighbourhood Plan seek to positively address this.</p>
6.	<p><b>How does this proposal tackle deprivation?</b></p> <p>Various policies set out within the Neighbourhood Plan seek to positively address this.</p>
7.	<p><b>How does this proposal tackle inequalities?</b></p> <p>Various policies set out within the Neighbourhood Plan seek to positively address this.</p>
8.	<p><b>How does the proposal impact on people with learning disabilities?</b></p> <p>Various policies set out within the Neighbourhood Plan seek to positively address health and wellbeing.</p>
9.	<p><b>Who will be affected by this proposal and who do you need to consult with?</b></p> <p>All residents, employees, and visitors in Torbay will be affected by Neighbourhood Planning as it will impact directly on the 'Place'.</p>
10.	<p><b>How will you propose to consult?</b></p> <p>Consultations have been completed (firstly by the Neighbourhood Forums and secondly by the Council), prior to the Referendum.</p>

## Section 2: Implications and Impact Assessment

### 11. What are the financial and legal implications?

The direct financial implication of making the Neighbourhood Plan will be in respect of the Community Infrastructure Levy (CIL). All receipts for development in the Neighbourhood Area, in relation to applications approved after the making of the Plan, will contribute 25% rather than the existing 15%. This funding will need to be spent in consultation with the community.

The Plan forms part of the statutory Development Plan. The Council is required by law to make planning decisions in accordance with the Development Plan unless material considerations indicate otherwise. For clarity, any decisions that are then appealed by applicants will be for the Council to defend and any costs associated with this will lie with the Council.

### 12. What are the risks?

There is a risk of legal challenge if the decision is not implemented given the outcome of the Referendum which is, subject to the EU obligations and Convention rights, binding on the Council.

Council can only decide to refuse the Plan at this stage if it considers that the making of the Plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).

### 13. Public Services Value (Social Value) Act 2012

Not applicable.

### 14. What evidence / data / research have you gathered in relation to this proposal?

The Neighbourhood Forum gathered data, alongside that gathered for the Local Plan, to support the content of the Neighbourhood Plan.

### 15. What are key findings from the consultation you have carried out?

The outcome of the Referendum on 2<sup>nd</sup> May 2019 was:

Yes	14,062 (87%)
No	2,103 (13%)
Turn-out	33.5%

Earlier consultations provided various responses which were considered between the submission consultation, through independent examination, and the November 2018 Council meeting.

<b>16.</b>	<b>Amendments to Proposal / Mitigating Actions</b>  No substantive changes have been made since the November 2018 Council meeting. Minor typographical and formatting errors have been corrected in agreement with the Neighbourhood Forum. References to the 'Referendum Version' have also been removed or updated to ensure the Plan set out in Appendix 1 is the final version for adoption.

## Equality Impacts

<p><b>17.</b></p>	<p><b>Identify the potential positive and negative impacts on specific groups</b>            The Torquay Neighbourhood Plan has been subject to Sustainability Appraisal throughout its evolution. In particular, Sustainability Appraisal reports accompanied the consultation and submission versions of the plan. Details of the latest report can be found here - <a href="https://www.torbay.gov.uk/media/10356/sa-report-submission.pdf">https://www.torbay.gov.uk/media/10356/sa-report-submission.pdf</a> . The Sustainability Appraisal process, has provided useful information and evidence to support further consideration of how the Torquay Neighbourhood Plan is likely to impact upon equality issues arising from the Equality Act 2010.</p>		
	<p><b>Positive Impact</b></p>	<p><b>Negative Impact &amp; Mitigating Actions</b></p>	<p><b>Neutral Impact</b></p>
<p>Older or younger people</p>	<p>The Torquay Neighbourhood Plan contains various policies and community aspirations that specifically support the needs of older and younger people, particularly those relating to housing (TH) and health &amp; wellbeing (THW).</p>		
<p>People with caring Responsibilities</p>			<p>No differential impact</p>
<p>People with a disability</p>	<p>The Torquay Neighbourhood Plan contains various policies and community aspirations that specifically support the needs of people with a disability, in particular those policies relating to the environment (TE) and health &amp; wellbeing (THW).</p>		
<p>Women or men</p>			<p>No differential impact</p>
<p>People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i></p>			<p>No differential impact</p>



Religion or belief (including lack of belief)			No differential impact
People who are lesbian, gay or bisexual			No differential impact
People who are transgendered			No differential impact
People who are in a marriage or civil partnership			No differential impact
Women who are pregnant / on maternity leave			No differential impact
Socio-economic impacts (Including impact on child poverty issues and deprivation)	The Torquay Neighbourhood Plan contains various policies and community aspirations that specifically support address socio-economic impacts, including in particular those policies relating to housing (TH), health & wellbeing (THW), employment (TJ)		
Public Health impacts (How will your proposal impact on the general health of the population of Torbay)	The Torquay Neighbourhood Plan contains various policies and community aspirations that specifically support address public health impacts but in particular those policies relating to health & wellbeing (THW)		
<b>18. Cumulative Impacts – Council wide</b> (proposed changes elsewhere which might worsen the impacts identified above)	The Torquay Neighbourhood Plan sets out a planning framework for sustainable development in Torbay which will become part of the development plan alongside the Torbay Local Plan 2012-2030, including the provision of homes and jobs, the protection and enhancement of the environment and biodiversity. The plan also is compatible with corporate priorities in terms of securing a prosperous and healthy Torbay. Where changes are made in Council wide policy, those with spatial implications, including all Council-led development, have to be in accordance with the policies of the adopted development plan. As a		

		consequence, the development management process should help to reinforce the positive impacts of development and ensure mitigation of any harmful effects.
<b>19.</b>	<b>Cumulative Impacts – Other public services</b> (proposed changes elsewhere which might worsen the impacts identified above)	The Torquay Neighbourhood Plan sets out a planning framework for sustainable development in Torbay which will become part of the development plan alongside the Torbay Local Plan 2012-2030, including the provision of homes and jobs, the protection and enhancement of the environment and biodiversity. Where changes are made across other public services, those with spatial implications similarly have to be in accordance with the policies of the adopted development plan. As a consequence, the development management process should help to reinforce the positive impacts of development and ensure mitigation of any harmful effects.