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Date: Tuesday, 07 July 2020

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Dear Member

CABINET - TUESDAY, 14 JULY 2020

I am now able to enclose, for consideration at the Tuesday, 14 July 2020 meeting of the Cabinet, the following reports that were unavailable when the agenda was printed.

Agenda No	Item	Page
6.	Budget Monitoring 2020/21 - Period Two	(Pages 157 - 168)
13.	Local Development Scheme	(Pages 169 - 176)
14.	Amendment to boundaries of Occombe Farm Local Nature Reserve	(Pages 177 - 200)

Yours sincerely

Lisa Antrobus
Clerk

Meeting: Cabinet

14th July

Overview & Scrutiny Board

22nd July

Wards Affected: All Wards

Report Title: Budget Monitoring 2020/21 – Period Two (May 2020)

Is the decision a key decision? No

When does the decision need to be implemented? n/a

Cabinet Lead Contact Details: Darren Cowell, Cabinet Member for Finance
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1. Purpose and Introduction

- 1.1. This report provides a high level budget summary of the Council's forecasted revenue position for the financial year 2020/21. This report is based on figures as at the end of Period 2, 31st May 2020 taking into account the financial impact of Covid19. There are no material changes in expenditure and service income arising in June that would materially impact on this report however the MHCLG funding announced on the 2nd July has been incorporated.
- 1.2. The Council's **Revenue** budget remains under significant pressure. The total financial pressures faced total £18.7m before use of specific reserves and government funding.
- 1.3. The main pressures are due to the Covid-19 pandemic and the financial impact of the changes to service delivery required and changes in behaviour of the general public.
- 1.4. After taking into account
 - 1.4.1. Government grant support of £10.3m
 - 1.4.2. Estimated income reimbursement of £1.8m
 - 1.4.3. Utilising service specific reserves of £0.9m
 - 1.4.4. Underspend from normal, non-Covid-19 activities of £0.9m
- 1.5. **The Council is forecasting an overall overspend on its revenue budget at Period 2 of £4.8m.**
- 1.6. At this stage there are no significant reductions or closure of services proposed.
- 1.7. The report also outlines the budget virements actioned to re-establish a new 2020/21 budget in light of the financial pressures and grant income received.
- 1.8. As part of the mitigating actions some expenditure restrictions have been introduced in the year, however at this stage there are no significant reductions or closure of services proposed.

2. Recommendation (s) / Proposed Decision

2.1. That the Overview & Scrutiny Board notes the latest position for the Council's revenue outturn position and mitigating action identified and make any comments and/or recommendations to the Cabinet.

2.2. That the Overview & Scrutiny Board notes the budget virements in section 7 and make any other comments and/or recommendations to the Cabinet.

3. Grant Support

3.1. As of 2nd July the Government has announced 3 tranches of un-ringfenced funding for Local Authorities

Tranche	Date	Total Funding (£m)	Torbay Share (£m)
1	19-Mar	1,600	5.372
2	18-Apr	1,600	3.765
3	02-Jul	500	1.177*
	Total	3,700	10.313

3.2. Note: at the time of writing this report the individual Local Authority allocations announced as part of Tranche 3 have not been confirmed. This figure of £1.2m estimate assumed that Tranche 3 is allocated on the same basis as Tranche 2 which is linked to population.

3.3. The Government has announced on 2nd July additional support a new scheme that will reimburse councils for lost income. Where losses are more than 5% of a council's planned income from sales, fees and charges, the government will cover them for 75p in every pound lost in excess of the 5%. More details of how this scheme will be made available by the Government in due course however it is currently expected that rent, interest and "commercial" income will be excluded and only income directly raised by the Council is included.

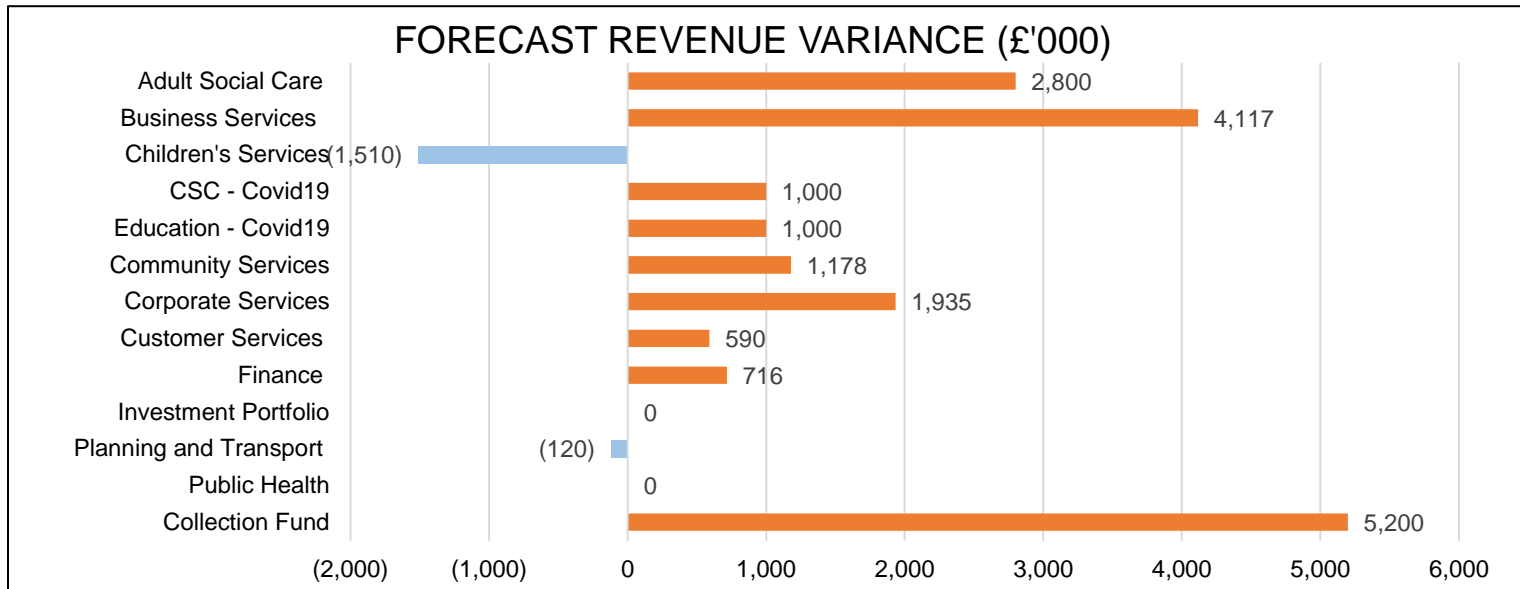
3.4. In addition to the (estimated) £10.3m of un-ring fenced "COVID" grant and the Income reimbursement Grant, Central Government have issued a number of other grants related to COVID.

3.5. Under Financial Regulations (5.5) "The Chief Finance Officer, in consultation with the Leader of the Council, to determine the allocation and expenditure of any new revenue grant monies that are received during the year". Therefore these grants will be applied to the purpose specified and will be included in the 2020/21 budget monitoring. These are listed below:

Grant	£000's	Purpose
Infection Control	2,748	To support ASC providers with infection control measures. Funding will be passported to suppliers (via ICO)
Opening High Streets	121	To support opening of high streets. Spend is being managed by the TDA.
Food Grant	TBA	Torbay share of £63m yet to be announced
Test and Trace	886	To support the mitigation and management of local outbreaks of COVID.
Hardship Fund	1,611	To support Council Tax Support scheme claimants. All working age claimants' council tax bills have been reduced by £150 and the balance is to be used for the discretionary hardship fund.
Business Grants	47,490	Funding to support the Business Grant and Discretionary Business Grant scheme under guidance by BEIS. Note: Torbay is acting as "agent" here so this funding will not form part of budget.
Transport Access	41	Grant to support development of alternative travel to public transport
Business Improvement District (BID) support	25	Support to BID companies to cover the equivalent of core operational costs for three months.
Coronavirus Rough Sleeping Contingency Fund	12	Support for Covid19 impact on homelessness
Substance Dependence treatment	TBA	Torbay share of £16m yet to be announced
Emergency Accommodation support	TBA	Torbay share of £105m yet to be announced.

4. 2020/ 21 Revenue Budget Summary Position

4.1. The below graph shows a visual breakdown, highlighting budget variance for each service,



5. Service Budgets

5.1. The budget position for each service is shown in the table below:

Torbay Council Revenue	Budget	Outturn	Variance
Period 2 2020/21	£000s	£000's	£000's
1. Adult Social Care	39,876	42,676	2,800
2. Business Services	13,220	17,337	4,117
3. Children's Services	46,940	45,430	(1,510)
3a. CSC - Covid19	0	1,000	1,000
3b. Education - Covid19	0	1,000	1,000
4. Community Services	1,641	2,819	1,178
5. Corporate Services	4,008	5,943	1,935
6. Customer Services	2,667	3,257	590
7. Finance	(5,249)	(4,533)	716
8. Investment Portfolio	(4,641)	(4,641)	0
9. Planning and Transport	7,049	6,929	(120)
10. Public Health	10,357	10,357	0
11. Collection Fund	0	5,200	5,200
Revenue total	115,868	132,774	16,906

5.2. A narrative of the position and main variances in each service area is as follows;

1. Adult Social Care – Overspend £2.8m

Whilst the majority of this budget is spent against a fixed contract with the ICO the council is expecting to provide £2.5m of support to Adult Social Care providers to ensure the provision of care is maintained throughout this pandemic.

£250k of grants are being given to the Community and Voluntary sector who have been supporting the community response to Covid-19.

2. Business Services – Overspend £4.1m

Due to the Government lockdown and resultant changes in public behaviour Car Parking income is expected to have a £2.5m short fall in income due to the ongoing significant reduction in the use of car parks. From 1st April to 31st May income was down £1m compared to 2019/20 levels. This represents a significant pressure as we continue into the summer period where off street parking income last year was between £115k - £175k per week.

There are additional income pressures across the service including:

- Harbours shortfall on income £250k due to reduced visiting vessels and fish tolls
- Events & Torre Abbey £220k due to changes to the events schedules and opening restrictions.
- Beach Services £80k

There is also £500k of forecast spend associated with providing financial support to leisure and conference centres, comprising of £400k for the RICC and £100k for Clennon Valley.

These figures are based on assumed recovery and a gradual return to “normal operations” between now and the winter.

Cabinet recently considered the Economic Response Plan (Previously called COVID Economic Recovery Plan). At this stage a provision of £200k has been set aside to the support this plan in 2020/21 which is in addition to the use of the £121k of the Opening High Streets grant.

3. Children's Services – Underspend £1.5m

Within Children's social care there is a forecast underspend of £1.8m due to savings on the Placements budget. This is due to the significant reduction in residential placements since Q3 of 2019/20, namely a reduction from 44 placements to 27 placements. The other historic pressure in Children's social care has been agency staff which has reduced by 17 since the start of the financial year.

3a. Children's Social Care (CSC) – Covid19 – Pressure £1m

There are concerns that cases of neglect and child abuse will have gone unreported during the lockdown as social isolation means children and families have significantly reduced contact with people outside of their home. As a result there could be an

additional £1m of costs associated with safeguarding children as referrals from Schools, NHS and members of the public increase as lockdown eases. As a result there may be an increase in the LAC population due to lockdown.

3b. Education – Covid19 – Pressure £1m

Due to social distancing restrictions there are significant implications on the current home to school travel arrangements for children with Special Educational Needs (SEN). Before lockdown this service cost £54k per week on transporting 454 children “door to door”. With the requirement to comply with social distancing restrictions the weekly costs could increase significantly, costing the Council an additional £1m for the remainder of this financial year. This forecast cost will change depending on future social distancing guidance.

4. Community Services – Overspend £1.2m

The main pressure within Community Services is the cost of providing temporary accommodation which is forecast to be £938k. This additional cost is as a result of providing accommodation to an additional 141 people as part of the “Everyone In” initiative. This is very slightly offset by the £12k Coronavirus (COVID-19) Rough Sleeping Contingency Fund received from Central Government.

There are some expected shortfalls in income associated with the Food safety and licensing of £150k due to restrictions on the work the team were able to undertake due to lockdown restrictions.

5. Corporate Services – Overspend £1.9m

There are costs of £932k associated with the Temporary mortuary facility that has been set up by the Council. The facility has been in place since April, and a decision is to be taken imminently as to the future of the site.

The costs of the emergency response for the financial year including the Shielding Hub which has been set up to provide support for individuals on the Governments shielding list, additional communication with the community, purchase of PPE, and additional bandwidth for homeworking is forecast to cost £400k. The Shielding Hub has provided a range of support for the community and includes a contact centre as well as the provision of food parcels and PPE.

Within legal services there are ongoing costs associated with Agency Staff of £309k, predominantly as a result of the support for Adult Safeguarding. There are ongoing efforts to recruit to permanent staff including a review of market supplements and a grow our own approach. Recharges and income associated with Legal work is forecasting a shortfall of £200k based on historic levels of income achievement.

There is an income shortfall of £158k associated with the Print service, as per previous years. There is a tender evaluation ongoing for this service which may mitigate this position depending on the success of this exercise.

The Registrars service is forecasting a shortfall of £100k in income due to social distancing restrictions on the registration of Births and Marriages.

6. Customer Services – Overspend £0.6m

Housing benefit pressures are forecast of £400k due to the demand for financial support for individuals and households and the resultant subsidy due.

There are £200k of additional staff costs associated with the increased demand within customer services associated with the delivery of the £47.5m business support grants, increased caseload for council tax support scheme and extended weekend operations of the call centre.

7. Finance – Overspend £716k

Within finance there are pressures associated with the NNDR rate retention pool which is expected to be down £653k due to a predicted downturn in rates collection across the Devon-wide pool resulting in less funding re-distributed across the pool.

£300k of contingencies for shortfall in income have been released to mitigate budget shortfalls.

There is an impact on interest receipts from the reduction in bank base rate from 0.75% to 0.1% however this is forecast to be offset by compensation savings elsewhere in the treasury management budgets.

Due to the significantly increased activity in the Revenues & Benefits function additional resources (£100k) have been approved to support the team in administering the Collection Fund.

8. Investment Properties – Breakeven £0k

There are pressures associated with investment property income which will be offset by use of the investment fund reserve which is set up as part of every investment property purchase. The purpose of this reserve is to meet temporary income shortfalls on investment properties across the portfolio. The in year shortfall from these properties is still an evolving position, however the year end shortfall, to be funded from the reserve, could be up to £0.9m.

9. Planning & Transport – Underspend £120k

A reduced contribution for concessionary fares of £200k is forecast which offsets a COVID related pressure associated with land charges income.

10. Public Health – On budget

The majority of Public Health activity is funded by the ring-fenced grant. As a result there are no material variances within this service as the Covid19 costs have been shown elsewhere.

11. Collection Fund - Under recovery £5.2m

The collection fund which is expected to have a £5.2m shortfall as a result of Covid19. These pressures are due to shortfalls in the collection of Business Rates & Council Tax income and increased demand for support under the Council Tax Support Scheme.

Under the collection fund accounting rules any shortfall on the collection fund is carried forward to the following financial year to be funded. On the 2nd July the Government announced that Council's will be able to repay Council and business rates tax deficits over three years instead of one. This change results in the £5.2m forecast shortfall being a £1.73m shortfall in funding for each of the following three years.

6. Mitigating actions

- 6.1. The Council is estimating to receive £10.3m of un-ring fenced "COVID" grant to support expenditure and lost income.
- 6.2. After taking into account the Government grant support of £10.3m and utilising service specific reserves of £0.9m, and the £0.9m revenue underspend from normal (non-covid19) operations, the Council is forecasting an overall budget overspend as at Period 2 of £4.8m.
- 6.3. As mentioned earlier in the report the Collection Fund shortfall of £5.2m will impact on three years from 2021/22 budget. However the Council's clear view that, despite the new option to smooth the deficit, that this shortfall, as COVID related, should be funded by MHCLG. It is still possible that MHCLG may share some of the 2020/21 losses in collection.
- 6.4. The financial impact on 2020/21 is constantly evolving and forecasts will be updated as more "actuals" are known. The underlying assumptions are updated linked to service pressures and revised Government guidance and funding announcements.
- 6.5. The financial impact for the Council will depend on the level of recovery in Torbay. This recovery is in terms of both the local economic recovery and collection of Council Tax and NNDR which is vital to deliver local public services.
- 6.6. A moratorium on non-essential spend remains in place. The Chief Finance Officer has arranged additional scrutiny in order to monitor and challenge all orders and contracts placed by officers across the Council.
- 6.7. The Chief Finance officer with the support of the senior management team has reviewed a number of sources of funding that could be applied to mitigate any in year shortfall, however any use of these resources would result in an "opportunity cost" in relation to the original intention for the funding.
- 6.8. **The Council does fully recognise and appreciate that MHCLG has provided three tranches of funding which is welcomed, however the Council's clear view is that the totality of the financial impact of Covid19 should be funded by MHCLG and should not be a cost to the local taxpayer or result in a detrimental impact on service provision for residents.**
- 6.9. In addition to supporting any national or regional lobbying for more Covid19 related funding the Council is also making its case for funding wherever it can. The Council's

Chief Executive and Chief Finance Officer have already had meetings with MHCLG to encourage additional funding to be allocated.

- 6.10. The Chief Financial Officer and his team are closely monitoring the Council's cash flow. At this stage there are no concerns about cash flow for the remainder of the financial year.
- 6.11. The Council's Chief Finance Officer has a requirement in certain situations to issue a "section 114 notice" to the Council under the Local Government Finance Act 1988. This states "that the chief finance officer of a relevant authority shall make a report under this section if it appears to them that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure".
- 6.12. Clearly this has been a relevant consideration with the current financial pressures. However CIPFA have now issued a statement to encourage councils to consider the exceptional circumstances and to consult with MHCLG prior to such action. At this stage Torbay is not considering issuing such a notice but will continue to both lobby for additional funding and continue to consider options for mitigating the financial impact in 2020/21 and in future years.

7. Revised Budget

- 7.1. In order to re-establish a baseline budget to allow more accurate ongoing monitoring as per financial regulations, the 2020/21 budget has been revised by the use of budget "virements" to reflect the updated financial forecast including the (estimated) allocation of the £10.3m COVID grant and other grant receipts.
- 7.2. The budget adjustments take into account the financial impact of Covid19 on the service due to the additional cost pressures or income shortfalls experienced this year.
- 7.3. The revised budget is intended to be flexible as there are still a wide range of unknowns about how long Torbay will experience the financial impact of Covid19, and whether there will be additional grant funding from Government.

Torbay Council Revenue Period 2 2020/21	Budget £000s	Budget Adjustments £000s	Revised Budget £000s	Outturn £000's	Revised Variance £000's
1. Adult Social Care	39,876	2,800	42,676	42,676	0
2. Business Services	13,220	4,037	17,257	17,337	80
3. Children's Services	46,940	0	46,940	45,430	(1,510)
3a. CSC - Covid19	0	1,000	1,000	1,000	0
3b. Education - Covid19	0	1,000	1,000	1,000	0
4. Community Services	1,641	1,178	2,819	2,819	0
5. Corporate Services	4,008	1,268	5,276	5,943	667
6. Customer Services	2,667	190	2,857	3,257	400
7. Finance	(5,249)	1,016	(4,233)	(4,533)	(300)
8. Investment Portfolio	(4,641)	0	(4,641)	(4,641)	0
9. Planning and Transport	7,049	80	7,129	6,929	(200)
10. Public Health	10,357	0	10,357	10,357	0
11. Collection Fund	0	5,200	5,200	5,200	0
12. MHCLG Grant	0	(10,313)	(10,313)	(10,313)	0
13. Estimated MHCLG Income reimbursement grant.	0	(1,789)	(1,789)	(1,789)	0
14. New Funding/Mitigation required	0	(5,667)	(5,667)	0	5,667
Revenue total	115,868	0	115,868	120,672	4,804

7.4. As mentioned in section 2, row 12 MHCLG Grant is made up of £9.137m of known funding and £1.117m of estimated funding.

7.5. Row 13 is also an estimated reimbursement. This figure is based on income shortfalls totaling £3.2m. The press release on the 2nd July stated "Where losses are more than 5% of a council's planned income from sales, fees and charges, the government will cover them for 75p in every pound lost"

7.6. Subject to specific guidance on the sales, fees and charges that are in scope for this exercise Torbay's reimbursement is currently estimated at £1.8m.

- 7.7. After applying the MHCLG grants, the Council is left with a Covid19 financial deficit of £5.7m. In the absence of further grant funding from Central Government the Council has to identify how it will meet this deficit.
- 7.8. The revised budget is intended to be flexible as there are still a wide range of unknowns about how long Torbay will experience the financial impact of Covid19, and whether there will be additional grant funding from Government.

8. Medium Term Resource Plan

- 8.1. The current revenue position will rely on further use of the Councils reserves if there is no additional financial support from Central Government. Any use of reserves will need to be repaid in future years to ensure the Council has sufficient reserve levels.
- 8.2. A robust medium term resource plan is crucial to ensuring that future funding gaps for 2021/ 22 and 2022/23 are addressed. The need for future financial planning is compounded by the risks associated with the Fair Funding Formula which is not anticipated to provide any respite in addressing Torbay's financial pressure. In April MHCLG announced the deferral to 2021/22 of the proposed changes to the NNDR retention system and funding formula.
- 8.3. The timing and impact of any Spending Review and/or Emergency Budgets for 2021/22 and future years is still unknown.
- 8.4. The financial impact of Covid19 in future years is still being assessed. A number of the spending pressures seen in 2020/21 could reoccur in 2021/22 such as home to school transport and housing. In addition if the economy is impacted as predicted a number of income sources will continue to be affected such as rental income, car park receipts, council tax and NNDR collection.

9. Capital Plan

- 9.1. As this report is based on the first two periods of the financial year a full update on the capital plan has not been included. Members received an update on capital grants as part of the 2019/20 outturn report presented in June and members will be aware of any recommendations by both council and cabinet that would impact on the capital plan such as the revised approval for the Harbour View hotel development and the approval of a solar farm.
- 9.2. The Council has not borrowed any funds for capital projects in 2020/21.

10. Risks & Sensitivity

10.1 There are a number of financial risks facing the Council as shown below:

Risk	Impact	Mitigation
Continued loss of income	High	Recovery meetings have been convened by the Chief Finance Officer for all the Council's main areas of income. Each group is tasked with developing an action plan to influence income where possible
Collection Fund shortfall	High	Additional resources allocated to support the Revenues & Benefits team.
Fair Funding Formula	High	Development of a robust MTRP to address the expected impact on Torbay's funding.
Identification, and achievement, of savings for 2021/22 to 2022/23 per Medium Term Resource Plan	High	Finance colleagues are working with the transformation team coordinate the implementation of potential transformation savings. Senior Leadership Team and Cabinet will need to consider options for future years.
Delivery of Children's Services cost reduction plan	High	Weekly meetings have been convened to monitor the current rate of delivery against the identified actions from the recovery plan.
Unable to recruit staff and need to use agency staff.	High	Recruitment & retention of Social Work staff, particularly in safeguarding is one of the core priorities for the Senior management team within Children's Services.
Additional demand and cost pressures for services particularly in children's social care	High	2020/21 Budget monitoring, use of service performance data and recovery plan.
Delivery of approved savings for 2020/21	Medium	Further to regular budget monitoring for all budget holders, the Council's Senior Leadership Team receive monthly updates on the 2019/20 position including a savings tracker for each of the approved savings.
Investment Property Income changes	Medium	This has been increased from Low to Medium due to the economic impact of Covid19. There are ongoing discussions with tenants about recovery plans

Meeting: Cabinet

Date: 14th July 2020

Wards Affected: All

Report Title: Local Plan Review

Is the decision a key decision? No

When does the decision need to be implemented? ASAP

Cabinet Member Contact Details: Cllr Mike Morey, Cabinet Member for Infrastructure, Environment and Culture, mike.morey@torbay.gov.uk

Supporting Officer Contact Details: Adam Luscombe, Service Management Strategy and Project Management, adam.luscombe@torbay.gov.uk

1. Proposal and Introduction

1.1 It is necessary to carry out a review of the Torbay Local Plan 2012-2030, and in this respect the scope of the review needs to be determined. It is proposed to establish a Working Party to support the scoping of the review as well as the work thereafter in undertaking the review. The Working Party will ensure that all political groups on the Council are represented, and the Working Party will also guide Officers in ensuring that there is good engagement with all interested parties, including Neighbourhood Forums, to inform decisions. In this respect it is proposed that a Local Plan Stakeholder Engagement Group be established, to ensure that there is a structured approach to engagement.

2. Reason for Proposal and associated financial commitments

2.1 The Town and Country Planning (Local Planning) (England) Regulations 2012 require that Local Plans are reviewed at least every five years. The Torbay Local Plan (2012-2030) was adopted in December 2015 and so a review is due before December 2020.

2.2 The same Regulations also require that the Statement of Community Involvement is reviewed.

2.3 There is a distinction to be made between a review and an update. The Local Authority is required to consider whether to revise the document following the review, or if it decides not to revise the document, to publish the reasons for considering that no revisions are necessary.

2.4 In order to support the initial scoping of the Review, and the Review itself, it is proposed to establish a Working Party to ensure that all political groups on the Council are involved in this work, and for the Working Party to assist in guiding

Officers to ensure that there is good engagement with all interested parties, including Neighbourhood Forums, to inform decisions. In this respect it is proposed that a Local Plan Stakeholder Engagement Group be established.

- 2.5 As part of this the Working Party will assist in guiding a consultation on housing need. Paragraph 33 of the National Planning Policy Framework makes it clear that “Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they are likely to require earlier review if local housing need is expected to change significantly in the near future.”
- 2.6 Since the Local Plan was adopted the Government has introduced a standard methodology for the assessment of local housing need. This figure differs from the existing Local Plan. However, the existing Local Plan proposed housing and jobs growth, with neither having been delivered at the speed expected. As such it is necessary for a review to consider housing need before a decision is taken about whether to revise the Local Plan.

3. Recommendation(s) / Proposed Decision

- 3.1 That the Cabinet appoint a non-decision making Local Plan Working Party with the following terms of reference and membership:

Terms of Reference:

To support the Local Planning Authority’s review of the Torbay Local Plan 2012-2030 and any other associated documents as may be deemed appropriate by the Assistant Director of Planning, Housing and Climate Emergency.

Membership:

Politically balanced - 4 Conservatives, 3 Liberal Democrats, 2 Independents and of those members to include the Cabinet Member for Instructure, Environment and Culture, Cabinet Member for Economic Regeneration, Tourism and Housing

- 3.2 That, in consultation with Local Plan Working Party, the Assistant Director of Planning, Housing and Climate Emergency be given delegated authority to agree the content of documents for consultation during the review.
- 3.3 That a separate Local Plan Stakeholder Engagement Group be formed to support the Local Plan Working Party. The terms of reference of that Engagement Group shall be determined by the Assistant Director of Planning, Housing and Climate Emergency in consultation with Local Plan Working Party.
- 3.4 That, following the review but before December 2020, a recommendation is brought to Cabinet on whether or not to revise the Torbay Local Plan 2021-2030.
- 3.5 If a revision is recommended, that there shall be a scope and programme for the update of the Local Plan accompanying the recommendation.
- 3.6 That every effort shall be made by all involved in the process to ensure efficiency and to deliver the review (and update if required) as soon as practicable to ensure Torbay and its community has an up-to-date Local Plan in place wherever possible.

Background Documents

The Torbay Local Plan 2012-2030 (www.torbay.gov.uk/localplan)

The Town and Country Planning (Local Planning) (England) Regulations 2012

(www.legislation.gov.uk/uksi/2012/767/introduction)

Planning and Compulsory Purchase Act 2004

(www.legislation.gov.uk/ukpga/2004/5/introduction)

National Planning Policy Framework (www.gov.uk/government/publications/national-planning-policy-framework--2)

Section 1: Background Information

1.	<p>What is the proposal / issue?</p> <p>It is proposed that a Local Plan Working Party and Stakeholder Engagement Group are formed to support the review of the Torbay Local Plan 2012-2030 (the Local Plan).</p>
2.	<p>What is the current situation?</p> <p>The Local Plan was adopted at full Council on 10th December 2015.</p> <p>In accordance with the Planning and Compulsory Purchase Act 2004 and The Town and Country Planning Regulations 2012, the Local Planning Authority is required to review the Local Plan at least every five years, and therefore not later than 10th December 2020.</p> <p>Since adoption of the Local Plan, the Government have introduced a standard methodology for assessing local housing need. However, the jobs and housing growth planned for in the Local Plan have not materialised at the rate expected and, as such, it is important to consider all options for future local housing need before determining the outcome. If the local housing need figure has changed significantly then it is necessary to update the relevant strategic policies.</p> <p>There has also been a revised National Planning Policy Framework (NPPF) published in 2019 and it will be necessary to ensure that the Local Plan remains in accordance with the NPPF.</p> <p>Reviews should take into account changing circumstances affecting the area, or any relevant changes in national policy.</p>
3.	<p>What options have been considered?</p> <p>Options are constrained by the legislation.</p> <p>Knowing that the Government has introduced a revised local housing need figure, it would be appropriate as an alternative option to consider that appropriate justification for a revision and to decide that now. However, the alternative option has been recommended as it will consider more fully, whether that figure, and other aspects of the plan, are appropriate for Torbay and whether it does or does not need to be updated.</p>
4.	<p>What is the relationship with the priorities within the Partnership Memorandum and the Council's Principles?</p> <p>The review will check whether the Local Plan accords with the Partnership Memorandum and the Council's Principles.</p>

<p>5.</p>	<p>How does this proposal/issue contribute towards the Council’s responsibilities as corporate parents?</p> <p>The review will check whether the Local Plan contribute towards the Council’s responsibilities as corporate parents.</p>
<p>6.</p>	<p>How does this proposal/issue tackle poverty, deprivation and vulnerability?</p> <p>The review will check whether the Local Plan addresses the latest evidence around poverty, deprivation and vulnerability.</p>
<p>7.</p>	<p>How does the proposal/issue impact on people with learning disabilities?</p> <p>Any consultation as part of the review will be carried out using methods that are fully accessible to all.</p> <p>The review will check that the Local Plan has a positive impact on, and addressing the needs of, those with learning disabilities wherever possible.</p>
<p>8.</p>	<p>Who will be affected by this proposal and who do you need to consult with? How will the Council engage with the community? How can the Council empower the community?</p> <p>No consultation is required directly as part of this decision.</p> <p>The recommendation is for a Stakeholder Engagement Group to be formed to support the review, with the Working Party setting the terms of reference and agreeing the membership of the group.</p> <p>The recommendation is also for the Working Party to agree consultation documents that are necessary to carry out the review. This is expected to initially include a local housing need consultation.</p> <p>The Local Plan impacts on a wide variety of stakeholders.</p>

Section 2: Implications and Impact Assessment

9.	<p>What are the financial and legal implications?</p> <p>The Local Plan has a budgeted reserve allocation. The review is likely to necessitate an evidence base update which will be kept to a minimum but further evidence will be necessary if a revision is recommended.</p> <p>Reviews at least every five years are a legal requirement for all local plans (Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012).</p>
10.	<p>What are the risks?</p> <p>The key risk is that the Local Plan is found to be 'out of date'. To avoid this, the Council must ensure that the Plan complies with Government policy and is founded on robust evidence and follow all statutory and local requirements, including on public consultation.</p>
11.	<p>Public Services Value (Social Value) Act 2012</p> <p>Though currently unknown, any procurement necessary to support evidence gathering, public engagement or other aspects of the review shall be considered for how it might improve the economic, social and environmental well-being to Torbay.</p>
12.	<p>What evidence / data / research have you gathered in relation to this proposal?</p> <p>The legislative requirements in relation to Local Plans are known, alongside the updates to Government policy on local housing need. Additionally local monitoring data allows us to evidence that local housing and jobs growth has not been delivered as expected.</p>
13.	<p>What are key findings from the consultation you have carried out?</p> <p>Public consultation to follow.</p>
14.	<p>Amendments to Proposal / Mitigating Actions</p> <p>Not Applicable.</p>

Equality Impacts

15.	Identify the potential positive and negative impacts on specific groups			
	Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact	
Older or younger people	This decision should have a positive impact on this group as the review will ensure the Local Plan addresses key issues.			
People with caring Responsibilities	This decision should have a positive impact on this group as the review will ensure the Local Plan addresses key issues.			
People with a disability	This decision should have a positive impact on this group as the review will ensure the Local Plan addresses key issues.			
Women or men	This decision should have a positive impact on this group as the review will ensure the Local Plan addresses key issues.			
People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>	This decision should have a positive impact on this group as the review will ensure the Local Plan addresses key issues.			
Religion or belief (including lack of belief)	This decision should have a positive impact on this group as the review will ensure the Local Plan addresses key issues.			
People who are lesbian, gay or bisexual	This decision should have a positive impact on this group as the review will ensure the Local Plan addresses key issues.			

	People who are transgendered	This decision should have a positive impact on this group as the review will ensure the Local Plan addresses key issues.		
	People who are in a marriage or civil partnership	This decision should have a positive impact on this group as the review will ensure the Local Plan addresses key issues.		
	Women who are pregnant / on maternity leave	This decision should have a positive impact on this group as the review will ensure the Local Plan addresses key issues.		
	Socio-economic impacts (Including impact on child poverty issues and deprivation)	This decision should have a positive impact on this group as the review will ensure the Local Plan addresses key issues.		
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)	This decision should have a positive impact on this group as the review will ensure the Local Plan addresses key issues.		
16.	Cumulative Impacts – Council wide (proposed changes elsewhere which might worsen the impacts identified above)	The review will need to be supported by colleagues across the Council, particularly but not exclusively across the Place directorate.		
17.	Cumulative Impacts – Other public services (proposed changes elsewhere which might worsen the impacts identified above)	The review will need to be supported by colleagues from other public services to ensure the Local Plan meets their needs but also does not conflict with their service provision.		

Meeting: Cabinet

Date: 14 July 2020

Wards Affected: Preston and Blatchcombe

Report Title: Amendment to boundaries of Ocombe Farm Local Nature Reserve

Is the decision a key decision? No

When does the decision need to be implemented? Immediately

Cabinet Member Contact Details: Councillor Swithin Long - Cabinet Member for Economic Regeneration, Tourism and Housing, Swithin.Long@torbay.gov.uk

Director/Assistant Director Contact Details: Kevin Mowat – Director of Place, 01803 208433, Kevin.Mowat@torbay.gov.uk

1. Purpose of Report

- 1.1 On 20 September 2019 Cabinet approval was sought for de-registration of Preston Down Road as a Local Nature Reserve. At this time the Cabinet confirmed:

“That the land at Preston Down Road, shown on Plan EM3172 attached at Appendix 1 to the submitted report, be de-registered as a Local Nature Reserve (LNR) as the land no longer meets the requirements to be designated as a LNR and to enable housing to be developed on the site.”
- 1.2 Subsequent to obtaining Cabinet approval, the Council was required to consult with Natural England (‘NE’) prior to formalising the de-registration. NE was formally notified on 13 January 2020. A letter of response, dated 9 June 2020 has been received which concludes that “Natural England accept that the land proposed for de-declaration appears to have very limited environmental value”.
- 1.3 It is necessary for the Natural England response to be considered by Cabinet, prior to the final steps in the de-registration process.

2. Reason for Proposal

- 2.1 PDR was designated as part of the larger Ocombe Farm LNR at the request of TCCT in order to support it in applying for additional grant funding to improve the site. It is not evident whether this funding was ever forthcoming, however, as is evidenced at Appendix 2 none of the species or habitats present at the PDR site warrant its designation as a LNR.
- 2.2 Consent to designation of the LNR was granted on the basis that there would be no financial or conservation burden on the Council and that TCCT would be responsible for its management. This situation has since changed. As from 31

March 2020 the Council is responsible for management of the PDR.

- 2.3 PDR is no longer managed as a nature reserve. A suite of ecological surveys has been undertaken and confirm that none of the habitats or species present at the PDR warrant categorisation as part of a LNR and that there are no grounds to support the ongoing designation of PDR as part of a LNR.
- 2.4 If land within a LNR ceases to be managed as a nature reserve, it is the duty of the local authority to make a declaration of the fact.
- 2.5 The proposals contained in this report will not result in any financial commitments for the Council.

3. Recommendation(s) / Proposed Decision

- 3.1 That Cabinet notes that the land comprising 4.06 ha at Preston Down Road, Paignton and shown edged red on the plan at Appendix 1 is no longer managed as a nature reserve and does not contain habitats or species that warrant its designation as part of a Local Nature Reserve and, as a result, approves the making of a formal declaration removing the PDR land from the Occombe Farm Local Nature Reserve designation.

Appendices

Appendix 1: Plan of land at Preston Down Road

Appendix 2: Evidence to support de-registration of the site as a Local Nature Reserve

Appendix 3: Cabinet Paper, dated 20 September 2019

Appendix 4: Cabinet Record of Decision, dated 15 October 2019.

Appendix 5: Email from Natural England, dated 31 January 2020.

Appendix 6: Letter from Natural England, dated 9 June 2020.

Background Documents

Torbay Local Plan: <https://www.torbay.gov.uk/media/6836/lp-2012to2030.pdf>

Supporting Information:

1. Background:

- 1.1. The Council owns the freehold of 4.06 hectares (10.03 acres) of land at PDR as shown verged red at Appendix 1.
- 1.2. PDR was designated as a LNR in 2005 at the request of TCCT, on the basis that there would be no financial or conservation burden on the Council and that TCCT would be responsible for its management.
- 1.3. The former lease to TCCT was surrendered on 28 February 2019 and the Council is now responsible for management of PDR.
- 1.4. PDR is not managed as a nature reserve. There are no grounds to support the ongoing designation of PDR as a LNR.
- 1.5. If land within a LNR ceases to be managed as a nature reserve, it is the duty of the local authority to make a declaration of the fact.
- 1.6. Natural England has been consulted and has confirmed that “the land proposed for de-declaration appears to have very limited environmental value”.
- 1.7. Following this consultation response, consent is sought to confirm the earlier decision of Cabinet to de-register PDR as a LNR as none of the habitats or species present at the site warrant designation as a LNR and the land is not managed as a nature reserve.

2. Alternative Options:

- 2.1 The alternative option would be for PDR to remain designated as a LNR. If the LNR designation were to remain the land would have to be managed solely for a conservation purpose, or a conservation/recreation purpose. Bearing in mind that ecological surveys have shown that the site is of very limited ecological value this is not considered to be a reasonable course of action.
- 2.2 Retention of the LNR designation on this area of land may result in the Council breaching the terms of the LRF grant and would also make it more difficult for the Council to meet its future housing land supply targets and putting the Council at risk of unfavourable developments on alternative sites.

3. Contribution to delivery of Council's priorities:

- 3.1 This Council's ambition is:
 - We want Torbay and its residents to thrive.
 - We want Torbay to be a place where we have turned the tide on poverty and tackled inequalities; where our children and older people will have high aspirations and where there are quality jobs, good pay and affordable housing for our residents.

- We want Torbay to be the premier resort in the UK, with a vibrant arts and cultural offer for our residents and visitors to enjoy; where our built and natural environment is celebrated and where we play our part in addressing the climate change emergency.

3.2 The proposals in this report will support:

- Thriving people. De-registration of the land as a LNR will facilitate release of the land for residential development thereby helping to address an identified shortfall in housing need in Torbay, including the provision of new affordable homes.
- Thriving economy. Bringing the site forwards for residential development will provide a mix of new homes for local residents, to encourage people to live and work within Torbay, thereby working towards a more prosperous Torbay.
- Council fit for the future. The site is contiguous with existing residential areas thereby providing sustainable growth of the urban environment within Torbay and ensuring Torbay remains an attractive and safe place to live and visit. The development of the site will also enable the Council to utilise its resources to best effect.
- The Council's responsibilities as corporate parents.

4. Financial Implications:

4.1 There are no financial implications of de-registration of PDR as a LNR.

5. Legal Implications:

5.1 There are no legal implications of de-registration of PDR as a LNR.

6. Consultation:

6.1 Briefings on the wider proposals for PDR have been held with the Cabinet and Group leaders and briefings with all political groups will take place throughout the process and as part of the planning process the community will be fully consulted on the detail of any development proposed.

6.3 Whilst the Natural England consultation response references the potential need for there to be wider consultation on the proposal for de-registration, Officers do not believe this to be necessary. This is because the National Parks and Access to the Countryside Act 1949 (as amended as recently as 2006) clearly stipulates the consultation process that the local authority must carry out, which is to consult with NE (only). The Court of Appeal has held where Parliament has decided who should be consulted prior to the making of a particular administrative decision, the idea that a simultaneous common-law duty to consult more widely was highly unlikely to exist (*R (Hillingdon LBC) v Lord Chancellor* [2008] EWHC 2683 (Admin)). As such, whilst considering the legal position, recognising the advice from NE and the fact that ecological surveys have shown that the site is of very limited ecological value, wider public consultation is not considered to be a necessary course of action.

- 6.4 In terms of the procedure that the Council must follow for formal de-registration, legal advice has been obtained which confirms that the next steps are:
- a) The Council is to draw up a formal declaration and de-declaration document accompanied by the LNR map at a scale which accurately shows the LNR boundary.
 - b) The formal document is signed according to the Council's scheme of delegation.
 - c) The local authority shall formally notify Natural England of the LNR amendment of boundaries in writing and send them a copy of the signed legal document, together with a map.
 - d) Natural England will then update the LNR Records.

7. Risks:

- 1.1. If the LNR designation were to remain the land would have to be managed solely for a conservation purpose, or a conservation/recreation purpose.
- 1.2. Retention of the LNR designation on this area of land may result in the Council breaching the terms of the LRF grant.
- 1.3. Retention of the LNR designation would make it more difficult for the Council to meet its future housing land supply targets putting Torbay at risk of unfavourable developments on alternative sites.

8. Public Services Value (Social Value) Act 2012

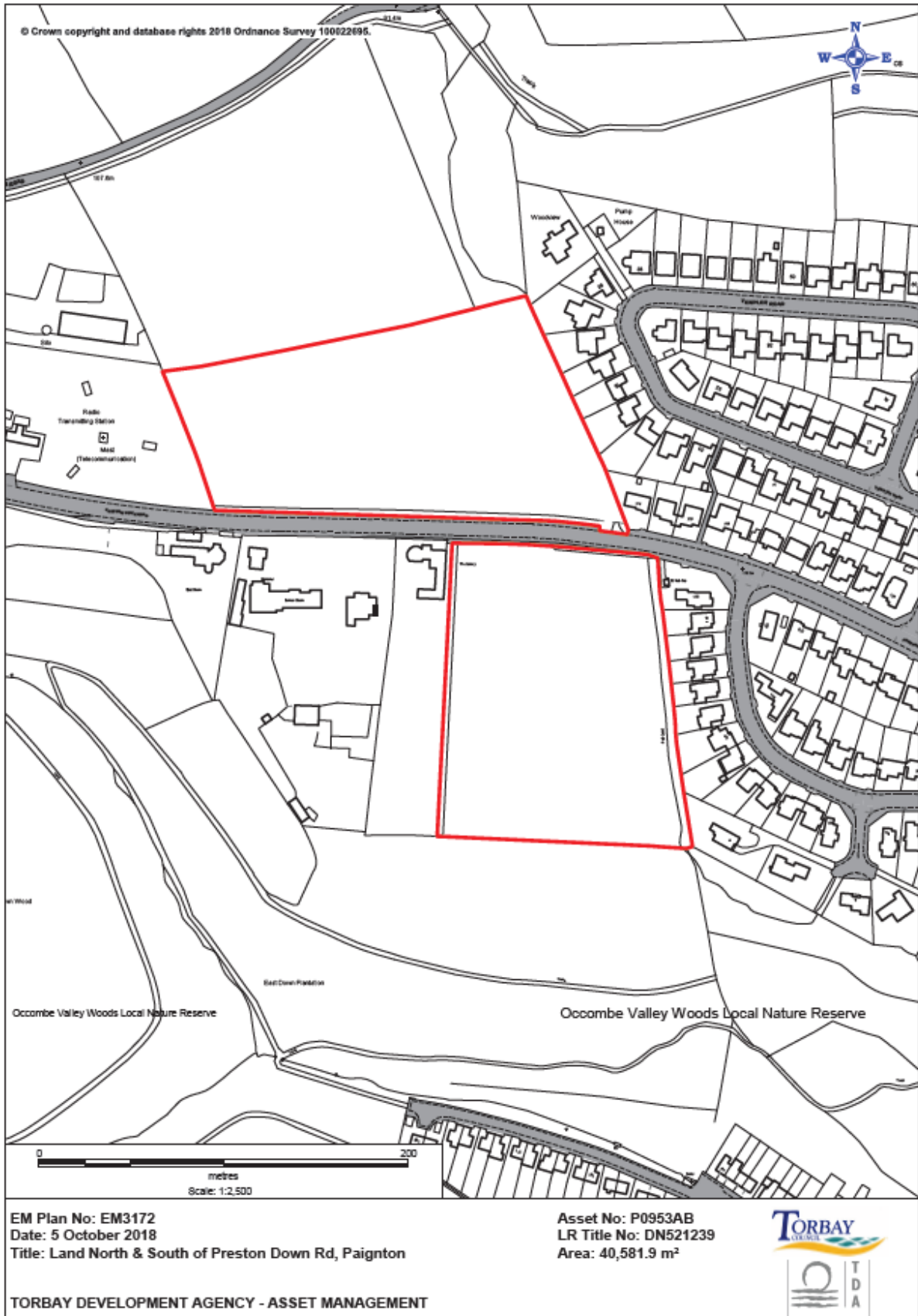
- 8.1 The Act does not apply to this decision because the proposal does not require the procurement of services or the provision of services together with the purchase or hire of goods or the carrying out of works.
- 8.1 Legal advice has been procured in accordance with the Council's protocol.

Equality Impacts

15.	Identify the potential positive and negative impacts on specific groups		
	Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
	Older or younger people		There is no differential impact
	People with caring Responsibilities		There is no differential impact
	People with a disability		There is no differential impact
	Women or men		There is no differential impact
	People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>		There is no differential impact
	Religion or belief (including lack of belief)		There is no differential impact
	People who are lesbian, gay or bisexual		There is no differential impact
	People who are transgendered		There is no differential impact
	People who are in a marriage or civil partnership		There is no differential impact
	Women who are pregnant / on maternity leave		There is no differential impact

	Socio-economic impacts (Including impact on child poverty issues and deprivation)			There is no differential impact
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)			There is no differential impact
16.	Cumulative Impacts – Council wide (proposed changes elsewhere which might worsen the impacts identified above)	None		
17.	Cumulative Impacts – Other public services (proposed changes elsewhere which might worsen the impacts identified above)	None		

Appendix 1: Plan of land at Preston Down Road



Appendix 5

Evidence to support de-registration of the site as a Local Nature Reserve

Habitats present of the site consist of predominantly arable and species-poor improved grassland with common weed species and grasses on field margins, bramble scrub and shrub species such as hazel and blackthorn. Habitats are all considered to be common and widespread. A summary of the habitats present is provided below.

1.0 Habitats

1.1 Field to the north of Preston Down Road

Arable field with oat crop at time of survey. Southern boundary consists of fence with narrow band of scrub and very narrow field margin containing common weed species such as pineapple weed, creeping buttercup, broadleaved dock, common field speedwell, pale smartweed, scarlet pimpernel and fat hen. Field maple with grassy vegetation beneath containing cock's-foot, timothy, rough meadow grass and bramble. Divided from road verge by a post and rail fence. Western boundary consists post and barbed fence. Northern boundary consists mature outgrown hedge with wide margin at the base. Ruderal vegetation including hogweed, broad-leave dock, lesser burdock, common nettle and rank grasses. Some hazel stools present and a number of large ash trees. Hawthorn, blackthorn, sycamore also present. Eastern boundary consists barbed fence on bank. Mature Oaks noted with other woody species such as blackthorn, elder, dog rose, bramble, hazel, dense bramble, ash, holly and ivy.

1.2 Field to south of Preston Down Road

Field predominantly consists of species-poor lolium seeded grassland with white clover. Site entrance consists hardcore/rubble with disturbed ground and weedy species such as knotgrass, pineapple weed, dandelion, broadleaved dock, greater plantain, creeping buttercup, perennial sow-thistle, creeping bent and Yorkshire fog. Eastern boundary consists a mature hedge with rank grassland and ruderal vegetation including hawthorn, prunus sp. Ash, English elm, blackthorn, bramble, goat's beard ivy, black bryony, common nettle, common bent, timothy and cock's-foot. Southern boundary consists of woodland edge separated by post and rail fence with scrub patches and overhanging trees. Sycamore, oak, hazel, ash, bramble, common knapweed, creeping thistle, timothy, Yorkshire fog, enchanter's nightshade, common nettle, hawthorn, dog rose. Western boundary consists a fence. Northern boundary consists a mature hedge with post and rail fence. Species consist of oak, field maple, ash, blackthorn, ivy and bramble.

2.0 Protected species surveys

2.1 Bat activity surveys

To date the observations of activity on site consist of predominantly Common Pipistrelle and Soprano pipistrelle using the site to commute and forage (along boundaries, particularly adjacent to woodland off site). Occasional passes by Myotis, Noctule, Greater & Lesser Horseshoe (4 passes in all surveys completed during 2018/19), Long-eared sp. and one recording of a barbastelle. Please note, these surveys are still underway and automated surveys have not been included within the summary.

2.2 Dormice

No observations of dormouse or their nests have been identified at the site during surveys to date.

2.3 Reptiles

Reptile surveys are currently underway.

2.4 Bird surveys

Garden and parkland species of birds identified on site including blue tit, goldfinch, house sparrow, blackbird, robin, dunnock, wood pigeon, wren and blackcap. Foraging and nesting in site boundaries.

3.0 Designation criteria in Devon of Local Nature Reserves

Devon Wildlife Trust criteria for designation of a Local Nature Reserve are based on scientific criteria such as the size, species diversity and rarity of communities represented and the presence of rare or notable species. Local Nature Reserve sites may also have particularly important social, educational, recreational, landscape, aesthetic or potential values.

It is our professional opinion that none of the habitats present at the site warrant categorisation as a Local Nature Reserve. It is also our professional opinion that the protected species identified on site do not occur in the numbers or frequency at the site to warrant its designation as a Local Nature Reserve.

Date: 6 September 2019



Meeting: Cabinet

Date: 20 September 2019

Wards Affected: Preston and Blatchcombe

Report Title: De-Registration of Local Nature Reserve at Preston Down Road, Paignton

Is the decision a key decision? No

When does the decision need to be implemented? Immediately

Cabinet Member Contact Details: Councillor Swithin Long - Cabinet Member for Economic Regeneration, Tourism and Housing, Swithin.Long@torbay.gov.uk

Supporting Officer Contact Details: Anne-Marie Bond, Director of Corporate Services, anne-marie.bond@torbay.gov.uk, 01803 207160, and Kevin Mowat – Interim Director of Place, 01803 208433, Kevin.Mowat@torbay.gov.uk

1. Proposal and Introduction

- 1.1 Preston Down Road (PDR) was designated as part of the Ocombe Farm Local Nature Reserve (LNR) at the request of the then tenants, Torbay Coast and Countryside Trust (TCCT), at a meeting of the Executive on 22 February 2005 (Appendix 2).
- 1.2 The reason for requesting designation of PDR as a LNR was that TCCT hoped that these designations would, in the longer-term, allow it to attract further funding for conservation work in these areas.
- 1.3 The Executive consented to TCCT's request on the basis that the designations would not add any additional conservation burden on the Council and the TCCT would remain entirely responsible for their management (Appendix 4).
- 1.4 TCCT's Lease was terminated on 28 February 2019. They currently occupy the land under a Licence which shall expire on, or before, 31 March 2020 (Appendix 5). After this date the Council shall be responsible for the management of PDR.
- 1.5 A suite of ecological surveys has been undertaken by the Council's advisers, Tor Ecology, whom have confirmed that in their professional opinion none of the habitats or species present at the site warrant categorisation as a Local Nature Reserve (Appendix 6).
- 1.6 As TCCT no longer manages PDR as a LNR; there are no species or habitats present that warrant its designation as a LNR; and responsibility for management is soon to transfer back to the Council, approval is sought to de-register PDR as a LNR.

2. Reason for Proposal and associated financial commitments

- 2.1 Preston Down Road (PDR) was designated as a Local Nature Reserve (LNR) at the request of TCCT in order to support it in applying for additional grant funding to improve the site. It is not evident whether this funding was ever forthcoming, however, as is evidenced at Appendix 6 none of the species or habitats present at the site warrant its designation on ecology grounds as a LNR.
 - 2.2 Consent to designation of PDR as a LNR was granted on the basis that there would be no financial or conservation burden on the Council and that TCCT would be responsible for its management. This situation has since changed. As from 31 March 2020 the Council will be responsible for management of the site.
 - 2.3 PDR is identified for future housing need in the Local Plan and the Council is in receipt of a £1,100,000 grant from the Ministry of Housing Communities and Local Government's (MHCLG) Land Release Fund (LRF) to bring it forwards for residential development by March 2020. The de-registration of the site is required to bring the site forwards for residential development.
 - 2.4 The National Planning Policy Framework (NPPF) requires that local authorities maintain a supply of specific, deliverable sites sufficient to provide 5 years' worth of housing to meet their housing requirements. The Council can only demonstrate 3.3 year's supply of deliverable housing land (as published in the July consultation document) and therefore applications for new housing in Torbay must be considered against the Presumption in Favour of Sustainable Development.
 - 2.5 If PDR remains designated as a LNR the Council may be in breach of the terms of the LRF grant from MHCLG and will struggle to achieve NPPF targets putting it at risk of unfavourable developments being brought forwards on alternative sites.
 - 2.6 There are no grounds to support the ongoing designation of PDR as a LNR.
 - 2.7 The proposals contained in this report will not result in any financial commitments for the Council.
-

3. Recommendation(s) / Proposed Decision

- 3.1 That the land at Preston Down Road, shown on Plan EM3172 attached at Appendix 1 to the submitted report, be de-registered as a Local Planning Reserve (LNR) as the land no longer meets the requirements to be designated as a LNR and to enable housing to be developed on the site.

Appendices

Appendix 1: Plan of land at Preston Down Road

Appendix 2: Council Paper, dated 22 February 2005, detailing Proposal for Designation of Occombe Farm and Preston Down Road as a Local Nature Reserve

Appendix 3: Plan of Occombe Farm Proposed Local Nature Reserve (22 February 2005)

Appendix 4: Minutes of the Executive, dated 22 February 2005.

Appendix 5: Licence to Occupy Preston Down Road on a Short Term Basis granted by (1) Torbay Council, to (2) Torbay Coast and Countryside Trust, dated 28 February 2019.

Appendix 6: Evidence to support de-registration of the site as a Local Nature Reserve

Appendix 7: Preston Down Road Planning Statement, dated 25 June 2019

Background Documents

Torbay Local Plan: <https://www.torbay.gov.uk/media/6836/lp-2012to2030.pdf>

Section 1: Background Information

<p>1.</p>	<p>What is the proposal / issue?</p> <p>The Council owns the freehold of 4.06 hectares (10.03 acres) of land at PDR as shown verged red at Appendix 1.</p> <p>PDR is identified for future housing need in the Council's Adopted Local Plan (A Landscape for Success) 2012-30.</p> <p>The Council was awarded £1,100,000 of Land Release Fund (LRF) grant aid by the Ministry of Housing Communities and Local Government on 8 March 2018 for the purposes of securing early release of the land at PDR for residential development.</p> <p>Prior to the acceptance of the LRF Grant, the Elected Mayor and the Group Leaders were consulted on proposals for PDR and it was agreed to accept the grant to assist with bringing PDR forward for development.</p> <p>During the course of undertaking its due diligence to bring PDR forwards for development, the Council identified that PDR was designated as a LNR at TCCT's request on 22 February 2005 to assist it in applying for future grant aid to improve the site.</p> <p>The criteria for designation of a Local Nature Reserve within Torbay are outlined by Devon Wildlife Trust and are based on scientific criteria such as the size, species diversity and rarity of communities represented and the presence of rare or notable species. Local Nature Reserve sites may also have particularly important social, educational, recreational, landscape, aesthetic or potential values.</p> <p>The Council commissioned a comprehensive suite of ecology surveys in 2018 / 2019 which have confirmed that, in the Council's consultants' professional opinion, none of the habitats or species present at the site warrant designation as a LNR.</p> <p>Consent is now sought to de-register PDR as a LNR in order to release it for residential development in accordance with the Local Plan and the terms of the LRF grant.</p>
<p>2.</p>	<p>What is the current situation?</p> <p>The former lease to Torbay Coast and Countryside Trust (TCCT) was terminated in February 2019 and TCCT currently occupies the site under licence expiring in March 2020. After this date the Council will be responsible for the control and management of PDR.</p> <p>PDR is identified for future housing need in the Council's Adopted Local Plan and the Council is in receipt of £1,100,000 of Land Release Fund (LRF) grant aid to bring the site forwards for residential development.</p>

	In order to bring the site forwards for development PDR needs to be de-registered as a LNR.
3.	<p>What options have been considered?</p> <p>If PDR remains designated as a LNR the Council may be in breach of the terms of the LRF grant from MHCLG and will struggle to achieve NPPF targets putting it at risk of unfavourable developments being brought forwards on alternative sites.</p>
4.	<p>How does this proposal support the ambitions, principles and delivery of the Corporate Plan?</p> <p>Ambitions: Prosperous and Healthy Torbay</p> <p>Principles:</p> <ul style="list-style-type: none"> • Use reducing resources to best effect • Reduce demand through prevention and innovation • Integrated and joined up approach <p>Targeted actions:</p> <ul style="list-style-type: none"> • Working towards a more prosperous Torbay • Ensuring Torbay remains an attractive and safe place to live and visit
5.	<p>How does this proposal tackle deprivation?</p> <p>N/A</p>
6.	<p>How does this proposal tackle inequalities?</p> <p>N/A</p>
7.	<p>How does the proposal impact on people with learning disabilities?</p> <p>N/A</p>
8.	<p>Who will be affected by this proposal and who do you need to consult with?</p> <p>As part of the planning process the community will be fully consulted on the detail of any development proposed, however, there will be a benefit to the local community in terms of additional supply of good quality housing and an improved mix of units.</p>
9.	<p>How will you propose to consult?</p> <p>Briefings on proposals for PDR have been held with the Cabinet and Group leaders and briefings with all political groups will take place throughout the process.</p>

Section 2: Implications and Impact Assessment

10.	<p>What are the financial and legal implications?</p> <p>There are no financial and legal implications of de-registration of PDR as a LNR.</p>
11.	<p>What are the risks?</p> <p>If PDR remains designated as a LNR the Council may be in breach of the terms of the LRF grant from MHCLG and will struggle to achieve NPPF targets putting it at risk of unfavourable developments being brought forwards on alternative sites.</p>
12.	<p>Public Services Value (Social Value) Act 2012</p> <p>All works undertaken are in accordance with the Councils financial regulations and standing orders.</p> <p>Legal advice has been procured in accordance with the Council's protocol.</p>
13.	<p>What evidence / data / research have you gathered in relation to this proposal?</p> <p>Bringing PDR forwards for residential development will help protect more sensitive sites from development and will enable the Council to influence the location for growth of the Collaton St Mary and Paignton areas.</p>
14.	<p>What are key findings from the consultation you have carried out?</p> <p>The proposed development is fully compliant with Torbay's Housing Strategy 2015 – 2020 and the Planning Contributions and Affordable Housing SPD.</p>
15.	<p>Amendments to Proposal / Mitigating Actions</p> <p>N/A</p>

Equality Impacts

16.	Identify the potential positive and negative impacts on specific groups			
		Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
	Older or younger people			There is no differential impact
	People with caring Responsibilities			There is no differential impact
	People with a disability			There is no differential impact
	Women or men			There is no differential impact
	People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>			There is no differential impact
	Religion or belief (including lack of belief)			There is no differential impact
	People who are lesbian, gay or bisexual			There is no differential impact
	People who are transgendered			There is no differential impact
	People who are in a marriage or civil partnership			There is no differential impact
	Women who are pregnant / on maternity leave			There is no differential impact

	Socio-economic impacts (Including impact on child poverty issues and deprivation)		There is no differential impact
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)		There is no differential impact
17	Cumulative Impacts – Council wide (proposed changes elsewhere which might worsen the impacts identified above)	None	
18	Cumulative Impacts – Other public services (proposed changes elsewhere which might worsen the impacts identified above)	None	

Record of Decisions

De-Registration of Land at Preston Down Road, Paignton

Decision Taker

Cabinet on 15 October 2019

Decision

That the land at Preston Down Road, shown on Plan EM3172 attached at Appendix 1 to the submitted report, be de-registered as a Local Planning Reserve (LNR) as the land no longer meets the requirements to be designated as a LNR and to enable housing to be developed on the site.

Reason for the Decision

Preston Down Road was designated as a LNR at the request of TCCT in order to support it in applying for additional grant funding to improve the site. Consent to designation of Preston Down Road as a LNR was granted on the basis that there would be no financial or conservation burden on the Council and that TCCT would be responsible for its management. This situation has now changed, as from 31 March 2020 the Council will be responsible for management of the site.

The ecological surveys has evidenced that none of the species or habitats present at the site warrant its designation on ecological grounds as a LNR. The de-registration of the site is required to bring the site forward for residential development and will ensure the Council complies with the terms of the Land Release Fund grant received from the Ministry of Housing, Communities and Local Government.

Implementation

This decision will come into force and may be implemented on 28 October 2019 unless the call-in procedure is triggered (as set out in the Standing Orders in relation to Overview and Scrutiny).

Information

Preston Down Road was designated as part of the Occombe Farm Local Nature Reserve (LNR) at the request of the then tenants, Torbay Coast and Countryside Trust (TCCT). At the time the Executive consented to TCCT's request on the basis that the designations would not add any additional conservation burden on the Council and the TCCT would remain entirely responsible for their management. TCCT's lease was terminated on 28 February 2019 and they currently occupy the land under a licence which expires on, or before 31 March 2020.

A suite of ecological surveys has been undertaken by the Council's advisors, Tor Ecology, whom have confirmed that in their opinion none of the habitats or species present at the site warrant categorisation as a LNR.

Alternative Options considered and rejected at the time of the decision

An alternative option would be for Preston Down Road to remain designated as a LNR. If the LNR were to remain the Council may be in breach of the terms of the LRF grant and would

struggle to achieve the National Planning Policy Framework targets putting the Council at risk of unfavourable developments on alternative sites.

Is this a Key Decision?

No

Does the call-in procedure apply?

Yes

Declarations of interest (including details of any relevant dispensations issued by the Standards Committee)

None

Published

18 October 2019

Signed: _____ Date: _____
Leader of Torbay Council on behalf of the Cabinet

Date: 9th June 2020
Our Reference: 306009



NATURAL
ENGLAND

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Dear Claire,

Proposed De-Declaration of part of the Occombe Farm & Scadson Woods Local Nature Reserve (LNR)

Thank you for your notice of proposed de-declaration (your e-mail of 13th January) and further information that you provided on 30th April.

Natural England have considered your proposal and offer the following advice:

General advice on Local Nature Reserves, and of the roles and responsibilities of local authorities for LNRs, are set out in the Government's website <https://www.gov.uk/guidance/create-and-manage-local-nature-reserves#de-declaring-an-lnr> and, for further background, in Natural England's publication: Local Nature Reserves in England: A Guide to their selection and declaration.

The responsibility for providing Local Nature Reserves and decisions about their management, declaration and de-declaration rest with the local authority. Natural England is a statutory consultee regarding the local authority's decisions. These roles are set out in the National Parks and Access to the Countryside Act 1949.

Under Section 21 of the Act, local authorities have powers to:
'provide, or secure the provision of, nature reserves on any land in their area [...] as to which it appears to the council expedient that it should be managed as a nature reserve. [...] A local authority shall exercise their functions under this Part of this Act in consultation with Natural England.'

Natural England, in its role as statutory consultee can provide expert advice to the local authority to guide

the local authority in its powers and duties with respect to the Local Nature Reserve and wider natural environment.

However, ultimately decisions regarding Local Nature Reserves rest with the Local Authority. There is a clear separation in role between the local authority as decision maker and the role of Natural England as adviser.

The role of the local authority as decision maker in de-declarations is set out in Section 19 and 21 of the Act. Section 19 refers to the duty of a local authority that has declared a LNR, and that ceases to manage a part (or all) of the LNR as a nature reserve to 'make a declaration of that fact; and any such declaration shall be conclusive of the matters declared.'

The key questions to address regarding de-declaration are the necessity and reasons for the de-declaration. When consulting Natural England, local authorities are asked to set these out and demonstrate the reasonableness of their decision in de-declaring the LNR. They are asked to explain why the impacts on the LNR cannot be avoided or mitigated and why all or part of the LNR cannot continue to be managed for its statutory purpose. (The purpose of LNRs is set out in the LNR Guide at the link above).

The 1949 Act provides that if land within the LNR can no longer be managed for the purpose of the LNR or if the LNR is no longer under the control of the local authority then de-declaration would be required.

Whilst there is nothing that prevents the local authority from de-declaring an LNR and using the land for another purpose there are some strong steers in the National Planning Policy Framework that the local authority should be helping to achieve the Government's aims for biodiversity. The National Planning Policy Framework is clear that pursuing sustainable development includes moving from a net loss of biodiversity to achieving net gains for nature, and that a core principle for planning is that it should contribute to conserving and enhancing the natural environment and reducing pollution.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/2116950.pdf>

If LNR de-declaration is unavoidable, the local authority should consider declaring replacement LNR land which is at least equal to or higher value in terms of nature conservation, access and landscape than the area to be de-declared. Alternatively it may be possible where there are small partial de-declarations for improvements in the quality of the remaining LNR to be offered to counteract the loss in land area. The overall aim should be to achieve a net gain for nature.

The local authority is advised to consult partners and communities on their plans for the LNR.

Once a local authority has done all it can to avoid the need to de-declare part or all of the LNR, Natural England recommends that the following de-declaration process should be followed:

1. The management steering group for the LNR are consulted on the de-declaration early on and involved in discussion concerning the mitigation and compensation for any impacts on the nature conservation and recreation of the LNR that would result from the de-declaration. The agreed mitigation should be included in an updated management plan for the LNR.
2. The local authority/ management committee consults local people, users and other stakeholders regarding their views on the proposed de-declaration of part/all of the LNR and plans for mitigation and compensation, and considers and amends the plans as appropriate in light of the consultation findings. I.e. the local authority undertakes public consultation, in advance of the de-declaration to ensure that everyone knows what is going on and any concerns are addressed.
3. The local authority then writes formally to their contact in the Natural England Area Team to the inform them that it intends to make the LNR de-declaration.
4. The local authority draws up a formal de-declaration document (this need only be on one side of A4 paper) accompanied by the LNR map (at a scale which accurately shows the old and new LNR boundary).
5. The de-declaration should be agreed by the relevant local authority committees.
6. A public notice announcing the declaration should be placed in a local paper and copies of the de-

declaration and map made available for the public to inspect free of charge; A copy should be placed at the entrances to the LNR

7. The local authority should formally notify the Natural England Area Team of the LNR de-declaration in writing and send them a copy of the de-declaration, together with a map.
8. Natural England local contact then updates the LNR Spreadsheet and file accordingly.

Natural England accept that the land proposed for de-declaration appears to have very limited environmental value but LNRs also have an important role in promoting access to the countryside and open spaces and in encouraging open-air recreation. We advise that you consider any opportunities in the LNR to enhance people's contact with and experience of nature to compensate for any loss of land that is to be de-declared. The land proposed for de-declaration may provide important access routes from Preston Down Road both to the Occombe Valley Woods LNR (adjacent to the south), and to the Occombe Farm and Scadson Woods LNR; some public consultation might help you to establish how to enhance or maintain such access and should inform the future management of the land.

Please keep me informed of Torbay Council's final decision on this matter.

Yours sincerely



Phil Stocks
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