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Date: Friday, 21 September 2012

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Dear Member

**COUNCIL - THURSDAY, 27 SEPTEMBER 2012**

I am now able to enclose, for consideration at the Thursday, 27 September 2012 meeting of the Council, the following reports that were unavailable when the agenda was printed.

<b>Agenda No</b>	<b>Item</b>	<b>Page</b>
10.	<b>Covenant Protecting Paignton Green Against Development - Mayoral Decision</b>	(Pages 99 - 104)
13.	<b>Constitution Amendments</b>	(Pages 105 - 111)

Yours sincerely

June Gurry  
Clerk

# Agenda Item 10



Title: **Covenant Protecting Paignton Green Against Development**

Public Agenda Item: **Yes**

Wards Affected: **All Wards in Paignton**

To: **Mayor** On: **27 September 2012**

Key Decision: **Yes**

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

Contact Officer: **Anthony Butler**

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## 1. What we are trying to achieve

- 1.1 To protect the area of Paignton Green shown edged red on the attached plan ('the Covenant Land') from future development without first obtaining the consent of a majority of the residents of Paignton who vote in a referendum on the development proposals.
- 1.2 To allow the present uses of Paignton Green to continue as well as new uses provided that any structure required for such uses is only on a temporary basis (6 months or less).

## 2. Recommendation(s) for decision

**That the Council enters into a deed covenanting with the residents of Paignton as follows:-**

**"Torbay Council covenants with all inhabitants of the wards of Blatchcombe, Clifton with Maidenway, Goodrington with Roselands, Preston and Roundham with Hyde ("the Paignton Wards") that for a period of 100 years beginning on the date of this deed it will not on the land shown edged red on the plan attached erect or permit the erection of any permanent structure without any such proposal first obtaining the majority of votes in a referendum of the persons who at the day of the referendum would be entitled to vote as electors at an election of councillors for any of the Paignton Wards and are registered as local government electors at an**

**address within the Paignton Wards. For the purposes of this covenant 'permanent structure' shall mean any structure intended to remain on the land for a period greater than 6 months. This covenant shall not apply to the installation, construction or renewal (whether by statutory undertakers or otherwise) of any media for the supply or removal, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media"**

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

- 3.1 An application was made in 2010 to register the undeveloped portions of Paignton North, Middle and South Green as town or village green ('the Application Land')
- 3.2 The application was refused on the basis that it failed as a matter of law however councillors across all parties were keen that Paignton Green should be protected for future generations to continue using the green for the uses it is currently put to and similar uses
- 3.3 Although the Council could have voluntarily registered Paignton Green as town or village green such registration would bring into question some of the present uses as they are not consistent with lawful uses of a town or village green
- 3.4 By entering into the deed of covenant with the residents of the present Paignton Wards the Council will be unable to carry out substantial development of the green without first obtaining the consent of the majority of those residents taking part in a referendum on the proposals
- 3.5 The land affected by the covenant shall be that shown edged red on the plan attached to this report. The covenant will not affect the sites of the cinema, crazy golf course or the children's play park.
- 3.6 The most significant risk to the Council of entering into the proposed covenant is that should any substantial development be considered desirable over the next 100 years a referendum would have to be undertaken and a majority of votes in such a referendum would have to be in favour of the development before it could take place

**For more detailed information on this proposal please refer to the supporting information attached.**

**Anne-Marie Bond  
Executive Head Commercial Services**

## Supporting information

### A1. Introduction and History

- A1.1 In 2011 the Council considered an application made under the Commons Act 2006, Section 15(2) in respect of the undeveloped portions of Paignton North, Middle and South Green ('the Application Land') to register the Application Land as town or village green
- A1.2 The application was refused on the basis that it failed as a matter of law. The report considered in refusing the application by the then Deputy Chief Executive under her delegated powers is available as a background document.
- A1.3 At the time the application to register the Application Land was refused members across all groups were of the view that the protection of Paignton Green from significant development in the future was desirable and following discussions with local residents the covenant set out in the recommendation was suggested.
- A1.4 As registration authority despite the fact that the application failed as a matter of law it was within the power of the Council to register the Application Land as town or village green. However, the implications of such registration would have been that some of the present uses of the green would be unlawful and therefore susceptible to legal challenge and that future uses of the green could be affected.
- A1.5 The most significant current activity that could have been affected is the annual waste management conference on Paignton Green. Advice was sought and received from leading counsel and it was considered that the conference in its current form would be unlawful were the land registered as town or village green. Crucially, once registered, as a town or village green, a green cannot be 'un-registered', nor can exemptions from the legislation be created or rules allowing certain activities be set.
- A1.6 If the land was registered as town or village greens, whether a matter is unlawful is always a matter of fact and degree. However, if a significant proportion of a town or village green is fenced off or otherwise, so that the public cannot access that part without payment, it is likely to be unlawful and therefore susceptible to a successful legal challenge.
- A1.7 There is currently no intention to develop any of the land edged red on the plan. The reason that the red edging does not run up to the boundary of the green is because the Council may wish or need to enclose the green and/or update the present boundary structures. If the red edging followed the actual boundary of the green, the Council would not be able to do so without a referendum approving such structures. Furthermore, if it is deemed desirable to provide sites for the delivery of the services provided by the tenants of the refreshment kiosks currently situated on Paignton Beach on environmental grounds then the Council is able to do so. The Council may also wish to place beach huts on the seaward boundary of the north and middle greens without having to go the expense of a referendum.
- A1.8 Should the Council wish to build a structure on any part of the land edged red on

the plan in the future it will be required to hold a referendum of the residents of the wards specified in the covenant with the majority of those voting, voting in favour of such structure or structures.

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

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

A2.1.1 Should the Council wish to build a structure on the Covenant Land that was intended to remain for a period of more than 6 months it would have to first carry out a referendum of the residents of Paignton. Even if the proposals were supported by the residents of Paignton the delay caused in carrying out the referendum could result in the funding or support for the proposals being withdrawn or the Council being overlooked for any funding even where the proposals would be for the benefit of Paignton and/or Torbay as a whole.

A2.1.2 The covenant is an absolute one, therefore any permanent structure (including a bench or other street furniture) would not be permitted without approval in a referendum. An exemption could be included in the covenant however this would need to be carefully worded and would not be in accordance with the 'absolute' nature of the covenant. Any land that members consider may be suitable for the erection of small but permanent structures may be better excluded from the Covenant Land.

A2.1.3 It is considered that the above risks are acceptable on the basis that they go to the purpose of the covenant; which is to stop any further development of Paignton Green without the consent of the residents of Paignton

### **A2.2 Remaining risks**

A2.2.1 Although a strip of land to the seaward side of the middle green is excluded from the Covenant Land until further proposals are developed officers do not know whether it will be possible to connect any new kiosks to the necessary services if they are built on this land.

## **A3. Other Options**

A3.1 To not enter into the deed of covenant

A3.2 To add exemptions (in addition to temporary structures) allowing certain types of development to take place on the Covenant Land

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

A4.1 Should any permanent development of the Covenant Land be proposed then it would be necessary to carry out a referendum which is likely to cost the Council in the region of £5,000. Any referendum would also create work pressures on Democratic Services. If a referendum could be held to coincide with local or national elections the costs and work pressures would however be reduced.

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

A5.1 None

**A6. Consultation and Customer Focus**

A6.1 No public consultation has been carried out on the proposal

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

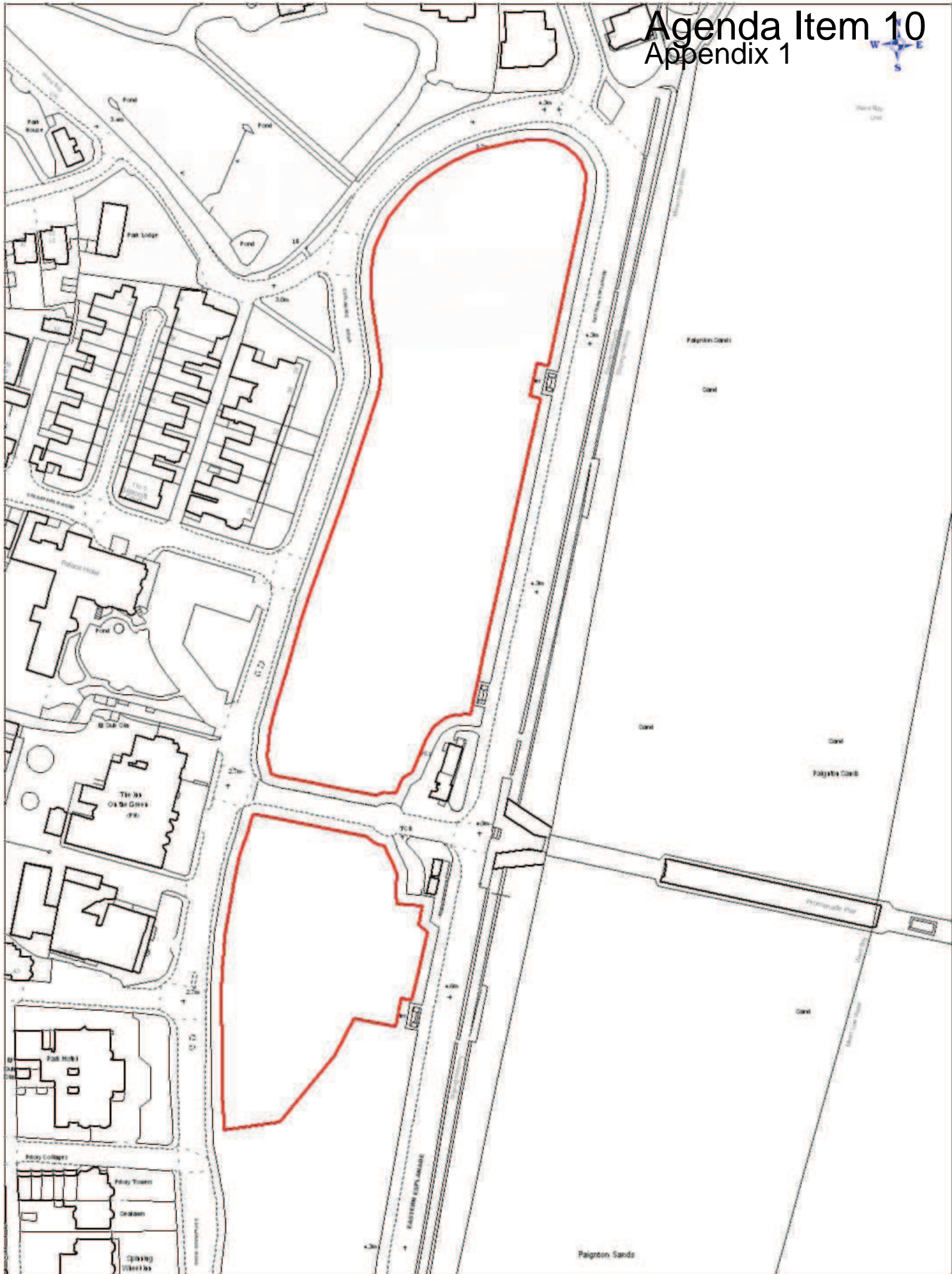
A7.1 See A4

**Appendices**

None

**Background Papers**

Report to the Deputy Chief Executive dated 12 May 2011



Title: Paignton Greens.

TORBAY DEVELOPMENT AGENCY - ASSET MANAGEMENT

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EM Plan No: EM2278b  
Asset No: P0253  
Date: 21st September 2012  
Scale: 1:1250



# Agenda Item 13



Title: **Constitution Amendments**

Public Agenda Item: **Yes**

Wards Affected: **All wards in Torbay**

To: **Council** On: **27 September 2012**

Key Decision: **No**

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

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## **1. What we are trying to achieve and the impact on our customers**

- 1.1 To consider proposed amendments to the Constitution relating to the Employment Committee terms of reference and responses to members questions within Standing Orders in relation to Council Meetings which could not be agreed by the Mayor and Group Leaders.

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

- 2.1 That the Monitoring Officer be requested to amend the Constitution (as set out at Appendix 1 and 2) to: a) remove the appointment of directors of Council controlled companies from the Employment Committee terms of reference and delegate this to the Chief Operating Officer to streamline the process; and b) update the requirement for written responses to members questions within Standing Orders in relation to Council meetings.

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

- 3.1 The Leadership Group (comprising the Mayor, Group Leaders, Deputy Leaders and Overview and Scrutiny Co-ordinator) met on 18 September 2012 to discuss the amendments suggested by the Monitoring Officer to the Constitution. Pursuant to paragraph 1.03 of the Constitution the Monitoring Officer is able to make amendments to it with the consent of the Mayor and Group Leaders. The amendments that were agreed by the Mayor and Group Leaders will be made to the Constitution however no agreement could be reached on the proposed change to the Employment Committee's terms of reference and Standing Orders in relation to Council meetings for responses to members' questions. Where



there is no consensus it is necessary for the proposed change to the Constitution to be agreed by full Council. The proposed amendments are attached at Appendix 1 and 2.

**For more detailed information on this proposal please refer to the supporting information attached.**

**Anthony Butler  
Monitoring Officer**

## **Supporting information**

### **A1. Introduction and history**

A1.1 The Council's Constitution was formally adopted at the meeting of the Council held on 16 January 2002. A fundamental review of the Constitution took place in the light of the elected mayor system of governance which came into effect on 24 October 2005. Since that time the Constitution has been kept under review by the Monitoring Officer and updated to reflect changes in legislation and improved governance practice.

A1.2 The Leadership Group (attended by the Mayor and Councillors Darling, Excell, Morey, Pentney, Thomas (D) and Thomas (J) and Stockman) met on 18 September 2012 to discuss the latest amendments.

### **A2. Risk assessment**

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

A2.1.1 None.

### **A3. Other Options**

A3.1 None

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

A4.1 No significant resource implications.

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

A5.1 None

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

A6.1 The Leadership Group and Senior Officers were consulted on the amendments.

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

A7.1 No

## **Appendices**

- Appendix 1 Proposed amendments to the Employment Committee Terms of Reference and subsequent change to the Officer Scheme of Delegation
- Appendix 2 Proposed amendments to Council Standing Orders

## **Background Papers:**

None

Appendix 1

Schedule 4 – Terms of Reference

Overview and Scrutiny Board and Sub-committees, Regulatory and Other Committees, Area Committees and Other Bodies

Name of Committee and Terms of Reference	Membership
<p><b>Employment Committee:</b></p> <p><b>Terms of Reference:</b></p> <ol style="list-style-type: none"> <li>1. To make recommendations to Council on the appointment of the Head of Paid Service including the terms and conditions of his/her employment.</li> <li>2. To determine appointments to post of Commissioner or equivalent positions of the Council, including the terms and conditions of contracts, appointment procedures and arrangements.</li> <li>3. To consider applications for the position of Coroner and to recommend to Council the person to be appointed to that post.</li> <li>4. <del>To exercise the Council's powers of appointment (and removal) of Directors and Chief Executives for all companies in respect of which the Council has such powers.</del></li> <li>5. To hear and determine appeals in relation to disciplinary matters, in relation to dismissal.</li> <li>6. Draw up and recommend to Council <u>the annual pay policy in accordance with the Localism Act policy framework on pay for executive remuneration and severance</u></li> </ol>	<p>5 members of the Council</p>

Name of Committee and Terms of Reference	Membership
<p>as a whole.</p> <p>7. Working within the approved policy framework, agree the remuneration package for relevant senior executives, ensuring individuals are fairly but responsibly rewarded for their individual contribution.</p> <p>8. Report to taxpayers and the Council their decisions on behalf of the council through a report for publication by Council.</p> <p>9. Ensure that the relationship between senior executive pay and for employees below this level remains consistent and sensible.</p> <p>10. The Employment Committee will apply the necessary internal controls to allow it to comply with any audit enquiry.</p>	

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## Schedule 6 – Officer Scheme of Delegation

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### 1. General scheme of delegation to the Chief Executive and Commissioners

#### Delegations to the Chief Executive

- 1.22 In consultation with the Mayor and Leaders of all the political groups, to determine all appointments (or decide not to make appointments) to outside organisations (with the exception of appointments of Directors to companies which are reserved for the Appointments Committee) at any time after the general review of such appointments in accordance with the Protocol on Relations between the Mayor and Political Groups. Where consensus between the Mayor and the leaders of the all the political groups is not forthcoming, the Chief Executive may refer the matter to the Council for determination
- Executive

## Appendix 2

### Standing Orders – Council Meetings

#### A13. Questions by Members

#### A13.8 Responses

An answer to a question or a supplementary question may take the form of:

- (i) a direct oral answer; or
- (ii) where the desired information is in a publication of the Council or other published work, a reference to that publication; or
- ~~(iii)~~ Where the member to whom the question was asked is either absent and no other Member is able to respond, the question will be referred to the next meeting where the member is present. If the member asking the questions wishes a response prior to the next meeting, they may request a written answer from the member concerned.

Where a written response has been prepared by officers, the Governance Support Manager will make arrangements for these to be included on the Council's website as soon as practicable after the meeting at which the question was asked. ~~or considers that a reply cannot conveniently be given orally (or where the person asking the question so requests (even if an oral answer has already been given)), a written answer will be circulated later to all members of the Council within 15 clear working days. (NB. Recordings of all Council meetings are available from the Governance Support Team on request.)~~