

Appendix 1: Supporting Information and Impact Assessment

Section 1: Background Information	
1.	<p>What is the proposal / issue?</p> <p>As outlined in the main report, the three Neighbourhood Forums have applied to renew both their “designated” status as Forums and the areas covered. Applications were received by Paignton on 15th August, Brixham Peninsula on 4th September and Torquay Neighbourhood Forum on 6th September. Note that they were advertised between 6th October 2017 and 20th November 2017. This delay was to consider if it was possible to advertise the Forum renewal at the same time as the Submitted Plans. In the end it was considered more appropriate to advertise the two matters separately.</p> <p>Forums are approved for five years, and the procedure for designating a Forum is set out in Reg 8 and an area in Reg 5 of the Neighbourhood Planning (General) Regulations 2012.</p>
2.	<p>What is the current situation?</p> <p>Torbay has three Neighbourhood Forums and areas, one each for Torquay, Paignton and Brixham Peninsula (which includes Brixham, Galmpton, Broadsands and Churston).</p> <p>Forums were approved by full Council on 6 December 2012. The Minute of this decision is as follows:</p> <p><i>“It was proposed by Councillor Thomas (D) and seconded by Councillor Morey:</i></p> <p><i>(i) that the Neighbourhood Plan areas and forums of Torquay, Paignton and Brixham, and their constitutions, be approved subject to the Executive Head for Spatial Planning (in consultation with the Group Leaders and Executive Lead for Strategic Planning, Housing and Energy) being able to withdraw this approval with immediate effect in respect of any Forum in the event of any of the following applying to that Forum;</i></p> <p><i>(a) the Forum is not able to demonstrate that they have at least 21 members who live or work in the area, or are elected councillors;</i></p> <p><i>(b) the Forum is not acting in accordance with its constitution; and</i></p> <p><i>(c) the Forum has failed to comply with a reasonable direction of the Executive Head, Spatial Planning within a reasonable period from such direction being made;</i></p>

(ii) that all Neighbourhood Forums be instructed that the Council may choose not to advertise a submitted plan or put it forward for examination, if the matters referred to in paragraph 3.9 of the submitted report and (i) above are not addressed to the satisfaction of the Executive Head for Spatial Planning in consultation with the Group Leaders and Executive Lead for Strategic Planning Housing and Energy; and

(iii) that Local Councillors should take a lead role in ensuring each Neighbourhood Forum meets the terms of its constitution, the requirements of the Localism Act and National Planning Policy Framework and meets or exceeds the requirements of the new Local Plan.

On being put to the vote, the motion was declared carried (unanimous)".

3. What options have been considered?

The matter of Forum renewal was reported to the Council's Senior Leadership Team (SLT) on 24th October and 21st November and PDDG on 6th November 2017.

The meetings considered the options of approving or refusing to approve the Forum designations. The option of approving the Forums with conditions has also been considered. This report also considers the case for changing the boundaries to separate Churston, Galmpton and Broadsands into a separate area or part of Paignton.

Option 1

The case for Approving Forums (re-designating). This is the Executive's Recommendation

In response to the PDDG meeting on 6th November, the Forums have been invited to submit a case to renew their status and area. (see Appendix 2)

The Case for (re) designating Forums

- All three Forums have submitted Plan proposals. This represents a huge amount of effort by unpaid volunteers as well as a significant commitment in terms of Council staff time.
- It is not the role of the Forum designation to consider the content of the Neighbourhood Plan proposals – which are assessed against “basic conditions” by an Independent Examiner. Nevertheless, Torquay and Brixham Peninsula's submitted plans do make site allocations (subject to examination) sufficient to meet the Local Plan requirement. Paignton's submitted plan sets out why it considers that further allocations are not needed at present.
- The Localism Act is written permissively i.e. Forums should be approved unless they fail to meet the specified conditions. This could be seen as a “presumption in favour” of approving Forum status and areas. The Localism

Act is still in force and the role of neighbourhood planning was reinforced by the Neighbourhood Planning Act 2017.

- The Forums have a recognised role in commenting on planning proposals and other policies, including the Council's wider plans and strategies. Paignton Neighbourhood Forum has made representations on a number of corporate strategies and planning proposals, in line with this purpose. In some instances their views have been upheld by wider Council (e.g. Parkfield School).
- Torquay and Brixham Peninsula Forums have been less active in commenting on broader strategies, but have made comments on planning applications of significance in their area.
- Whilst there are disagreements between the Forums and the LPA's officers and TDA, this is part of the democratic process. The contents of Neighbourhood Plans will be tested by an independent examiner and the LPA or TDA (on behalf of the Council's landholding and wider development agency) are able to make representations to the examiner, and powers under Reg 17A- 18 in considering his/her report.
- Refusing to designate one or more Forums could result in legal challenge if it was considered to be perverse or irrational; or a decision could be vitiated if not made on the basis of correct legal considerations (i.e. Schedule 9 Section 61F of the Localism Act 2011, inserted into the Town and Country Planning Act 1990). Conversely, there can be little doubt that it would be lawful to re-designate forums and areas.
- Not designating Forums would still require the submitted Neighbourhood Plans to be examined, and there will be no designated body to consider Modifications etc. A plan brought forward by the Council may struggle to receive support at referendum. There will be outstanding financial issues in terms of funding awarded to each of the Neighbourhood Forums.
- The Council will need to bring forward a site allocations document. However strategic issues are also likely to arise, which will require an early review of the Local Plan.

Option 2

The case for allowing the Neighbourhood Forum status to lapse

- The Council could choose to let the Neighbourhood Forum status for the three Forums lapse in December 2017 and continue to work with the Forums on a voluntary basis until the Neighbourhood Plan approval process has been completed. Once the Plans have been through the process the Council could then take a decision on whether or not to renew the Forum status at that time.
- This gives support to the Forums in terms of recognising the good work they have done in producing the Neighbourhood Plans and allows them to consider and react to any proposed changes during the examination/approval process.
- This would enable the Council to consider the future role and involvement of the Forums after the Neighbourhood Plans have been completed and any changes in legislation that may be in force at the time.

- This would reduce the amount of officer time required to formally consult the Forums on other planning issues as their role would just be in respect of the emerging Neighbourhood Plans.

The case against re-designating Forums and/or areas

- As the above has set out there are differences of opinion between the views of the Neighbourhood Forums and those of Council officers.

The Localism Act indicates that local planning authorities must, considering Forum designation, have regard to the desirability of designating an organisation or body:

Which has secured (or taken reasonable steps to attempt to secure) that its membership includes at least one individual falling within each of individuals that live in the area, work in the area or are elected members in the area concerned.

Whose membership is drawn from different places in the neighbourhood area concerned and from different sections of the community in that area, and

Whose purpose reflects (in general terms) the character of that area

The main reason the Council (as LPA) could have for refusing to re-designate Forums is that their actions are not representative of the community or its general purpose does not reflect the character of the area in that its actions were contradictory to its purpose of being “*established for the express purposes of promoting or improving the social economic and environmental well being of the area*” Any refusal to approve a request for Forum status must be ‘reasonable’ (in the ‘*Wednesbury*’ sense) in that it must not be perverse or irrational. Council officers and the Forums have different interpretations of the meaning of this ‘general purpose’ definition.

- As a separate but related issue, the Planning Practice Guidance has been published since the approval of areas in 2012. 41-033-20140306 (published in 2014) sets out considerations that “could” be taken into account when deciding neighbourhood area boundaries. It suggests (inter alia) that electoral ward boundaries, with an average population of 5,500 people, may be a useful starting point for discussions on the appropriate size of neighbourhood areas. The PPG is not law, but it does represent advice that was not available in 2012, the neighbourhood areas were envisaged to be significantly smaller than Torbay’s.
- The main source of tension between the Forums and Council can be summarised as over the growth agenda, and its consequences for various elements of the community. In this aspect, different factors apply to the three Forums. As set out below.

- **Torquay and Brixham Peninsula Forums** have submitted Plans that do make sufficient site allocations which (subject to testing at Examination) do meet the housing requirements specified in the Local Plan. However, both Plans do contain policies that would have a more restrictive impact on development than are set out in the Local Plan alone. For example Policies H8 and H9 of the Torquay Neighbourhood Plan impose phasing restrictions on greenfield development at Edginswell. Policy BH9 of the Brixham Peninsula Plan introduces criteria for exceptions sites, and E3 defines settlement gaps. Both Plans propose a network of Local Green Spaces, which is wider than supported by the TDA. These statements are made without prejudice to whether the Plans are in general conformity with the Local Plan or NPPF (which is a “basic conditions” matter). With regard to Local Greenspaces, an Examiner will have to consider the conformity of proposals with paragraph 77 of the NPPF, rather than the Council’s interests as a landowner. As noted above, these Forums have been less active than Paignton in commenting on wider corporate strategies. They have made representations on planning applications (e.g. Torquay Pavilion) and they have a legally recognised right to do so.

Paignton. The most fundamental point of difference between Paignton neighbourhood Forum and the LPA is that the submitted Plan does not make site allocations. The council as LPA has objected that Paignton Neighbourhood Plan is not in general conformity with the Local Plan, and does not meet national policy requirements. This could undermine the Council’s ability to demonstrate a five year housing supply. The Local Plan Inspector noted that *“if the Neighbourhood Plans are not in place soon the council is likely to find itself in a position where it no longer has a five year supply of housing land. The disadvantages of not having a five year supply should not be underestimated... (it would) seriously prejudice the way in which the Council is able to direct and control housing development in the public interest”*¹.

Paignton Neighbourhood Forum has submitted counter evidence that additional allocations are not at the present time needed because (inter alia) of the lack of new job creation in Torbay since 2012, the demographic profile of Torbay which is driven by inwards migration, and the disjunction between ONS population projections and the low rate of growth recorded in the 2011 Census. The Independent Examiner will need to consider these points as part of his or her considerations of the “basic conditions”.

Paignton Neighbourhood Forum has been the most active in making representations on planning applications as well as wider corporate strategies. As noted above Forums have a recognised role as a consultee on planning matters.

¹ Report on the Examination into Torbay Local Plan, Keith Holland, October 2015. Paragraphs 48- 57. <http://www.torbay.gov.uk/media/7598/ph24.pdf>

It is a reasonable statement that but Paignton in particular, and the other Forums to a lesser extent are promoting a more restrained growth agenda than envisaged by the Local Plan. This could be seen at odds with the Government's wish to "increase significantly the supply of housing".

Neighbourhood Forums were approved by Council for Torquay, Paignton and Brixham Peninsula on 6 December 2012. The Forums were approved conditionally as set out in Appendix 2. It will be noted that condition (iii) required Councillors to take a lead in ensuring Forums meet their legislative and local plan requirements. However, in the light of subsequent legal advice, it appears that the latitude to impose conditions on the Forums at designation is more limited than thought in

Option 3

Re-designate the Forums Subject to conditions

The scope to approve Forums with conditions has been considered.

In the light of legal advice, it would not be possible to designate the Forums with a "sunset clause" that they cease to exist when the Plans are made, unless the Forums volunteered this.

It may be possible to approve Neighbourhood Forums subject to additional safeguards, including requiring Forum to include Torbay Council or Brixham Town Council Codes of Conduct in their constitutions (which is an approach taken, for example, by Bath and North East Somerset). Such an approval would be without prejudice to the LPA's views on the substantive nature of the submitted Neighbourhood Plans.

Option 4

Amend the Forum Areas

Two representations have argued that the Forum area boundaries should be amended. One recommends that Paignton's area should include part of Livermead as well as part of the area within Brixham Peninsula. The second argues that Churston, Galmpton and Brixham should not be linked to Brixham. Another representation argued that the Forum areas are larger than envisaged in Planning Practice Guidance.

Because the Forums have submitted Plans, amending the boundaries would significantly complicate the Examination process and could lead to confusion over boundaries. However, the advice in the PPG is noted in the main report.

4.

How does this proposal support the ambitions and principles of the Corporate Plan 2015-19?

	<p>A decision on Forum designation must be made on meeting legal tests rather than consistence with the Corporate Plan per se.</p> <p>The Corporate Plan (p9) notes that some services may need to be provided differently, with greater community support and/or with integrated working with our partners". It seeks to <i>“work in partnership with the community and voluntary sector to build resilience and ensure they are equal partners on service design and delivery” (P10).</i></p> <p>Forums can (and have) been broadly supportive of Targeted Action 4: Ensuring Torbay remains an attractive and safe place to live and visit. The plan indicates (p7) that <i>“Torbay’s natural environment is a wonderful asset which we need to ensure is protected, by providing attractive and safe open spaces we can encourage our communities to make the most of where we live and promote healthier lifestyles”:</i> and Targeted Action 3 Targeted Action 3: Promoting healthy lifestyles across Torbay. <i>They have taken a strongly pro-town centre stance.</i></p> <p>There are more likely to be tensions with actions that fall under the remit of Targeted Action 2: Working towards a more prosperous Torbay, which seeks to capitalise on the investment in the South Devon Highway and build on its recent success. For example there could be disagreement with the Local Plan, Housing Strategy. Corporate Capital Plan and Corporate Asset management Plan (part of Action 4).</p> <p>Nevertheless, the Forums are likely to support Targeted Action 4 “Ensuring Torbay remains an attractive and safe place to live and visit” This could have a knock on effect on other objectives.</p>
<p>5.</p>	<p>Who will be affected by this proposal and who do you need to consult with?</p> <p>Whilst the Neighbourhood Plans will have a significant effect on people who live, work or visit Torbay; the issue of Forum and area designation is a relatively narrow one, relating to the legal criteria outlined above.</p> <p>Regulations 6 and 9 require Forum designations to be advertised on the Council’s website and in any other such manner as they consider is likely to bring the applications to the attention of people who live, work or carry out business in the area.</p>
<p>6.</p>	<p>How will you propose to consult?</p> <p>The applications for the three forum and area designations is available on the Council’s website at. http://www.torbay.gov.uk/council/policies/planning-policies/neighbourhood-plans/neighbourhood-forum-renewal/</p> <p>Interested bodies and individuals on the LPA’s database were notified by email “Newsflash” about both the forum status and submitted Plan consultations.</p> <p>The three Forums have also undertaken their own publicity on Forum/ area designation.</p>

Section 2: Implications and Impact Assessment

7.	<p>What are the financial and legal implications?</p> <p>Forum and area designation procedures are set out in the Neighbourhood Planning (General) Regulations 2012.</p> <p>The substantive criteria for considering forum and area applications is set out in Schedule 9 Section 61F of the Localism Act 2011, inserted into the Town and Country Planning Act 1990 after Section 61D.</p> <p>A decision not to designate Forums could be judicially reviewed if the Council considered matters it is not entitled to, or could be portrayed as behaving in a perverse or irrational way.</p> <p>There will be an ongoing resource implication in officer time in supporting the three Forums. However, since the neighbourhood plans have been submitted the cost of progressing the plans will be incurred irrespective of whether the Forums area renewed.</p>
8.	<p>What are the risks?</p> <p>See above. There is a risk of legal challenge if the Forum and area renewal process is not considered against the correct legal criteria.</p>
9.	<p>Public Services Value (Social Value) Act 2012</p> <p>Not applicable</p>
10.	<p>What evidence / data / research have you gathered in relation to this proposal?</p> <p>See main report.</p>
11.	<p>What are key findings from the consultation you have carried out?</p> <p>Consultation on the Forum and Area designations ran from 6th October – 20th November 2017. The overwhelming majority of representations were in favour of Forum renewal.</p> <p>A full breakdown of representations is contained at Appendix 3</p>
12.	<p>Amendments to Proposal / Mitigating Actions</p> <p>See discussion at section 3 above.</p>

	<p>It may be possible to approve Neighbourhood Forums subject to additional safeguards, including requiring Forum to include Torbay Council or Brixham Town Council Codes of Conduct in their constitutions (which is an approach taken, for example, by Bath and North East Somerset). Such an approval would be without prejudice to the LPA's views on the substantive nature of the Submitted Neighbourhood Plans.</p>
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Equality Impacts

13	Identify the potential positive and negative impacts on specific groups			
		Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
	Older or younger people	The demographic make-up of Forums tends to be older age groups, but are open to everyone.		The Forums all open to people of all age groups, ethnicities, sexual or gender orientation, and belief (or lack of).
	People with caring Responsibilities			No direct impact- see above
	People with a disability			No direct impact- see above
	Women or men			No direct impact- see above
	People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>			No direct impact-see above
	Religion or belief (including lack of belief)			No direct impact-see above
	People who are lesbian, gay or bisexual			No direct impact-see above
	People who are transgendered			No direct impact- see above

People who are in a marriage or civil partnership			No direct impact- see above
Women who are pregnant / on maternity leave			No direct impact –see above
Socio-economic impacts (Including impact on child poverty issues and deprivation)	See third column	See third column	The Forum designation should not be conflated with the content of Neighbourhood Plans. However the Forums are likely to promote higher environmental standards, and more robust policies on affordable home for local people. However they are likely to resist higher growth levels with the concomitant economic and financial benefits and impacts that this would bring.
Public Health impacts (How will your proposal impact on the general health of the population of Torbay)	See third column	See third column	The Forum designation should not be conflated with the content of Neighbourhood Plans. However the Forums are likely to promote higher environmental standards, and more robust policies on affordable home for local people. However they are likely to resist higher growth levels with the concomitant economic and financial benefits and impacts that this would bring.

14	Cumulative Impacts – Council wide (proposed changes elsewhere which might worsen the impacts identified above)	See main report- particularly section 4.
15	Cumulative Impacts – Other public services (proposed changes elsewhere which might worsen the impacts identified above)	No direct impact