

TORQUAY NEIGHBOURHOOD PLAN TO 2030

Torquay Neighbourhood Plan Examination,
A Report to Torbay Council

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1. Summary

- 1 Subject to the modifications that are recommended within this Report in order to enable the Neighbourhood Plan to meet the basic conditions, I confirm that:
 - having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the neighbourhood plan;
 - the making of the neighbourhood plan contributes to the achievement of sustainable development;
 - the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
 - the making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union (EU) obligations; and
 - the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.

- 2 Taking the above into account, I find that the Torquay Neighbourhood Plan meets the basic conditions¹ and I recommend to Torbay Council that, subject to modifications, it proceeds to Referendum.

¹ It is confirmed in Chapter 3 of this Report that the Torquay Neighbourhood Plan meets the requirements of Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990.

2. Introduction

The Neighbourhood Plan

- 3 This Report provides the findings of the examination into the Torquay Neighbourhood Plan (referred to as the Neighbourhood Plan) prepared by Torquay Neighbourhood Forum.
- 4 As above, the Report recommends that the Neighbourhood Plan should go forward to a Referendum. Were a Referendum to be held and were more than 50% of votes to be in favour of the Neighbourhood Plan, then the Plan would be formally *made* by Torbay Council. The Neighbourhood Plan would then form part of the development plan and as such, it would be used to determine planning applications and guide planning decisions in the Torquay Neighbourhood Area.
- 5 Neighbourhood planning provides communities with the power to establish their own policies to shape future development in and around where they live and work.

“Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.” (Paragraph 183, National Planning Policy Framework)

- 6 As confirmed in Paragraph 2.2 of the Basic Conditions Statement, submitted alongside the Neighbourhood Plan, Torquay Neighbourhood Forum is the *Qualifying Body*, ultimately responsible for the Neighbourhood Plan. The Neighbourhood Plan relates only to the designated Torquay Neighbourhood Area and there is no other neighbourhood plan in place in the Torquay Neighbourhood Area.
- 7 All of the above meets with the aims and purposes of neighbourhood planning, as set out in the Localism Act (2011), the National Planning Policy Framework (2012) and Planning Practice Guidance (2014).

Role of the Independent Examiner

- 8 I was appointed by Torbay Council, with the consent of the Qualifying Body, to conduct the examination of the Torquay Neighbourhood Plan and to provide this Report.
- 9 As an Independent Neighbourhood Plan Examiner, I am independent of the Qualifying Body and the Local Authority. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I possess appropriate qualifications and experience.
- 10 I am a chartered town planner and have more than five years' direct experience as an Independent Examiner of Neighbourhood Plans. I also have more than twenty five years' land, planning and development experience, gained across the public, private, partnership and community sectors.
- 11 As the Independent Examiner, I must make one of the following recommendations:
- that the Neighbourhood Plan should proceed to Referendum, on the basis that it meets all legal requirements;
 - that the Neighbourhood Plan, as modified, should proceed to Referendum;
 - that the Neighbourhood Plan does not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.
- 12 If recommending that the Neighbourhood Plan should go forward to Referendum, I must then consider whether the Referendum Area should extend beyond the Torquay Neighbourhood Area to which the Plan relates.
- 13 Where modifications are recommended, they are presented as bullet points and highlighted in **bold print**, with any proposed new wording in *italics*.

Neighbourhood Plan Period

- 14 A neighbourhood plan must specify the period during which it is to have effect. The front cover of the Neighbourhood Plan provides some indication of this:

"The Community's Plan to 2030 and beyond."

- 15 However, the above phrase is potentially confusing. The Neighbourhood Plan period is precisely that. It does not include a period of time *"beyond"* the plan period. In addition, neither the Neighbourhood Plan nor the Basic Conditions Statement submitted alongside it, are entirely clear in respect of the plan period. The Neighbourhood Plan states that it:

"...covers the period from now until 2030."

- 16 However, *"now"* is not defined.
- 17 Helpfully, elsewhere the Neighbourhood Plan refers to the document having been developed in parallel with the Torbay Local Plan, which covers the period 2012-2030. I also note that the proposed allocation of housing sites in the Neighbourhood Plan aims to meet the strategic growth target between the period 2012 and 2030.
- 18 With regards to all of the above, for the purposes of precision and clarity, I recommend:

- **On page 4 of the Neighbourhood Plan, under *"What time period does the Plan cover?"* change to *"..., in common with the Local Plan, covers the period from 2012 to 2030. The development..."* Also, update other time period references to take this into account - for example, on the front cover.**

- 19 Taking the above into account, the Neighbourhood Plan meets the requirements in respect of specifying the period during which it is to have effect.

Public Hearing

- 20 According to the legislation, *when the Examiner considers it necessary* to ensure adequate examination of an issue, or to ensure that a person has a fair chance to put a case, then a public hearing must be held.
- 21 However, the legislation establishes that it is a general rule that neighbourhood plan examinations should be held without a public hearing – by written representations only.
- 22 Further to consideration of the information submitted, I confirmed to Torbay Council that I considered it necessary to hold a Public Hearing, to consider matters in more detail.
- 23 Matters considered at the public hearing have informed this Report.
- 24 The public hearing was advertised by Public Notice and was held at the Imperial Hotel, Torquay on Monday 14th May, 2018. Torbay Council, Torquay Neighbourhood Forum, Natural England, Torbay Development Agency and a local resident were all invited to speak and members of the public were welcome to attend. Natural England did not take up its invitation to speak.
- 25 Prior to the public hearing, there was a request to speak from a party that had not been invited to do so. This request was turned down. I note that whilst it is not unusual for such requests to be made, the public hearing is held at the Examiner's discretion.
- 26 Notwithstanding the fact that the Hearing took place, I confirm that *all* representations have been considered during my examination of the Torquay Neighbourhood Plan. This is the case, whether or not people who made representations took part in the Hearing. It may well be that other people who had submitted a representation in respect of the Neighbourhood Plan would have liked to speak at a public hearing, but were not invited to do so.

3. Basic Conditions and Development Plan Status

Basic Conditions

27 It is the role of the Independent Examiner to consider whether a neighbourhood plan meets the “basic conditions.” These were *set out in law*² following the Localism Act 2011. A neighbourhood plan meets the basic conditions if:

- having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the neighbourhood plan;
- the making of the neighbourhood plan contributes to the achievement of sustainable development;
- the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- the making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union (EU) obligations; and
- the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.³
- An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention rights.⁴

28 In examining the Plan, I am also required, under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990, to check whether:

- the policies relate to the development and use of land for a designated Neighbourhood Area in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act (PCPA) 2004;

² Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990.

³ Prescribed for the purposes of paragraph 8(2) (g) of Schedule 4B to the 1990 Act by Regulation 32 The Neighbourhood Planning (General) Regulations 2012 and defined in the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007.

⁴ The Convention rights has the same meaning as in the Human Rights Act 1998.

- the Neighbourhood Plan meets the requirements of Section 38B of the 2004 PCPA (the Plan must specify the period to which it has effect, must not include provision about development that is excluded development, and must not relate to more than one Neighbourhood Area);
- the Neighbourhood Plan has been prepared for an area that has been designated under Section 61G of the Localism Act and has been developed and submitted for examination by a qualifying body.

29 Subject to the content of this Report, I am satisfied that these three points have been met.

30 In line with legislative requirements, a Basic Conditions Statement was submitted alongside the Neighbourhood Plan. This sets out how, in the qualifying body's opinion, the Neighbourhood Plan meets the basic conditions.

European Convention on Human Rights (ECHR) Obligations

- 31 I am satisfied that the Neighbourhood Plan has regard to fundamental rights and freedoms guaranteed under the ECHR and complies with the Human Rights Act 1998 and there is no substantive evidence to the contrary.
- 32 In the above regard, I note that Information has been submitted to demonstrate that people were provided with a range of opportunities to engage with plan-making in different places and at different times. Representations have been made to the Plan, some of which have resulted in changes and the Consultation Statement submitted alongside the Neighbourhood Plan provides a summary of responses and shows the outcome of comments.

European Union (EU) Obligations

- 33 There is no legal requirement for a neighbourhood plan to have a sustainability appraisal⁵. However, in some limited circumstances, where a neighbourhood plan is likely to have significant environmental effects, it may require a Strategic Environmental Assessment.
- 34 In this regard, national advice states:
- "Draft neighbourhood plan proposals should be assessed to determine whether the plan is likely to have significant environmental effects."*
(Planning Practice Guidance⁶)
- 35 National advice then goes on to state⁷ that the draft plan:
- "...must be assessed (screened) at an early stage of the plan's preparation..."*
- 36 The Torquay Neighbourhood Plan seeks to allocate land for development and taking this into account, it was considered that there may be significant environmental effects arising as a result of the Neighbourhood Plan and that consequently, a Strategic Environmental Assessment (SEA) was required.

⁵ Paragraph 026, Ref: 11-027-20150209, Planning Practice Guidance.

⁶ Paragraph 027, *ibid*.

⁷ Planning Practice Guidance Reference ID: 11-028-20150209.

- 37 A Sustainability Appraisal, incorporating SEA Directive requirements, was subsequently carried out and submitted to Torbay Council alongside the Neighbourhood Plan.
- 38 The first stage of the Sustainability Appraisal comprised a Scoping Report. This was consulted upon over a five week period between December 2014 and January 2015. Comments received, including those from statutory consultees, Natural England, Historic England and the Environment Agency, were taken into account, leading to a number of amendments.
- 39 The Sustainability Appraisal was subsequently consulted upon during the draft consultation on the Neighbourhood Plan, during a six week period between July and September 2017 and the responses resulted in a number of amendments to the document.

- 40 The Sustainability Appraisal concluded that:

“...the Torquay Neighbourhood Plan will generally have a positive effect on sustainability in Torquay...The SA process has identified opportunities to enhance the positive effects and mitigate the negative effects. These opportunities have been addressed within the submitted Plan.”

- 41 A Habitats Regulations Assessment is required if the implementation of the Neighbourhood Plan may lead to likely significant effects on European sites.
- 42 A Habitats Regulations Assessment Screening Report was submitted alongside the Neighbourhood Plan. This identifies a total of 6 European sites within 20km of Torbay's boundaries, of which 2 sites, South Hams Special Area of Conservation (SAC) and Lyme Bay and Torbay Marine SAC, are located within Torbay's boundaries. The Screening Report found that the Neighbourhood Plan could have a likely significant effect on these two European sites, but concluded that:

“The quantum of growth in Torquay has been identified as having the potential to result in, or contribute to likely significant effects on the South Hams SAC and Lyme Bay and Torbay Marine SAC (category C). However, the Local Plan Policies NC1, W5 and ER2 put in place restrictions on development that could have negative impact on two international sites.”

43 Of the statutory consultees, only Natural England has raised any concerns in respect of European obligations. These appear a little unclear in the representation and Natural England were invited to appear at the Public Hearing to clarify and discuss the body's concerns. However, Natural England did not take up the invitation. Notwithstanding this, I note that the recommendations made in this Report result in the deletion of, or changes to, the Policies referred to by Natural England in its representation.

44 In addition to the above, national guidance establishes that the ultimate responsibility for determining whether a draft neighbourhood plan meets EU obligations lies with the local planning authority:

"It is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a neighbourhood plan proposal submitted to it have been met in order for the proposal to progress. The local planning authority must decide whether the draft neighbourhood plan is compatible with EU regulations" (Planning Practice Guidance⁸).

45 Torbay Council has not raised any objections in respect of the Neighbourhood Plan's compatibility with European regulations.

46 In undertaking the work that it has, Torbay Council has considered the Neighbourhood Plan's compatibility with EU regulations in detail. The Neighbourhood Plan seeks to allocate development land in addition to that allocated/identified in the Torbay Local Plan (2015) and Torbay Council recognises that these new allocations were subject to further Sustainability Appraisal as part of the Neighbourhood Plan's preparation. Torbay Council has stated that, on the basis of the supporting evidence and its own assessment, it supports the allocation of these sites.

47 A very late representation was submitted, during the examination of the Neighbourhood Plan, in respect of the Habitats Regulations Assessment process. Taking into account Planning Practice Guidance, as referenced above, I note that Torbay Council's response to this representation was as set out below. I am also mindful of Torbay Council's submission in respect of the Edginswell Future Growth Area having been rigorously and appropriately examined through the Local Plan process.

⁸ Planning Practice Guidance Reference ID: 11-031-20150209.

“The Council, as competent authority under the Habitats Regulations is empowered to require the Qualifying Bodies to provide sufficient information to enable it to be satisfied in HRA terms. We have therefore reviewed the associated Neighbourhood Plan HRAs, and...considers that the Assessment and Mitigation Measures set out in the (Neighbourhood Plan)...HRA ‘Screening Stages’ substantively meet the requirements...this could be made clearer through a minor re-formatting to set out the same in an ‘Appropriate Assessment Stage.’ Given that the information provided is sufficient to make the assessment, the LPA is prepared to make the minor amendments to formatting before making the plan. This would, in terms of the Council (as competent authority), meet the HRA regulations.”

- 48 Taking all of the above, I am satisfied that the Neighbourhood Plan meets the basic conditions in respect of European obligations.

4. Background Documents and the Torquay Neighbourhood Area

Background Documents

49 In undertaking this examination, I have considered various information in addition to the Torquay Neighbourhood Plan. This has included (but is not limited to) the following main documents and information:

- National Planning Policy Framework (referred to in this Report as “the Framework”) (2012)
- Planning Practice Guidance (2014)
- Town and Country Planning Act 1990 (as amended)
- The Localism Act (2011)
- The Neighbourhood Plan Regulations (2012) (as amended)
- The Torbay Local Plan 2012-2030 (2015)
- Basic Conditions Statement
- Consultation Statement
- Sustainability Appraisal
- Sustainability Appraisal Scoping Report
- Habitats Regulations Assessment Scoping Report

Also:

- Representations received

50 In addition, I spent an unaccompanied day visiting the Torquay Neighbourhood Area.

Torquay Neighbourhood Area

- 51 There is no plan clearly identifying the boundary of the Torquay Neighbourhood Area within the Neighbourhood Plan. A set of plans accompanying the Neighbourhood Plan has been provided, although the boundary area colour appears to be different to that shown in the key, which is confusing.
- 52 Appendix 1 of the Basic Conditions Statement provides a very clear plan showing the Neighbourhood Area boundary. For clarity and precision, I recommend:
- **Provide the plan showing the Neighbourhood Area boundary, in Appendix 1 of the Basic Conditions Statement, within the Neighbourhood Plan itself.**
- 53 Torbay Council originally designated the Torquay Neighbourhood Area in December 2012. Five years after this designation, the Neighbourhood Forum's status as a Qualifying Body was renewed when re-designated by Torbay Council on 7th December 2017.
- 54 This satisfies a requirement in line with the purposes of preparing a Neighbourhood Development Plan under section 61G (1) of the Town and Country Planning Act 1990 (as amended).

5. Public Consultation

Introduction

- 55 As land use plans, the policies of neighbourhood plans form part of the basis for planning and development control decisions. Legislation requires the production of neighbourhood plans to be supported by public consultation.
- 56 Successful public consultation enables a neighbourhood plan to reflect the needs, views and priorities of the local community. It can create a sense of public ownership, help achieve consensus and provide the foundations for a 'Yes' vote at Referendum.

Torquay Neighbourhood Plan Consultation

- 57 A Consultation Statement was submitted to Torbay Council alongside the Neighbourhood Plan. The information within it sets out who was consulted and how, together with the outcome of the consultation, as required by the neighbourhood planning *regulations*⁹.
- 58 Taking the information provided into account, there is evidence to demonstrate that the Neighbourhood Plan comprises a "*shared vision*" for the Torbay Neighbourhood Area, having regard to Paragraph 183 of the National Planning Policy Framework.
- 59 Torquay Neighbourhood Forum formed in 2012 and since its formation, has held regular minuted meetings, open to the public. A Steering Group was established and early work was facilitated by workshops by the Princes Foundation in 2012, culminating in a public consultation event at the end of that year, which was attended by almost 300 people.
- 60 Exhibitions were then held at various locations between January and March 2013, including a stand at a Tourism Event and there were visits to two schools, to gather feedback, in April of that year. An initial draft plan was consulted upon during 2014.

⁹Neighbourhood Planning (General) Regulations 2012 (as amended).

- 61 A second draft plan was then produced and this underwent public consultation during March and April 2016. Comments were considered and the prior to the creation of a second draft plan, the document underwent a Health Check Report in January 2017. A second Regulation 14 Consultation then took place during August and September 2017.
- 62 The Consultation Report confirms that plan-makers engaged with Torbay Council during the process. In this regard, I note that, whilst the Local Planning Authority considered the final version of the Neighbourhood Plan capable of reaching Referendum, subject to modification, it submitted a very large number of objections and recommended changes to the document, including the deletion of Policies.
- 63 I referred to the basic conditions during the Public Hearing and as noted earlier in this Report, whilst neighbourhood planning affords communities the ability to plan for themselves, it does so within the context of the basic conditions.
- 64 In the case of the Torquay Neighbourhood Plan as submitted, many Policies fail to have regard to national policy and advice, are not in general conformity with the strategic policies of the Torbay Local Plan (2015), and/or do not contribute to the achievement of sustainable development. These are matters considered on a Policy-by-Policy basis later in this Report.
- 65 It is also worthy of note that the Torquay Neighbourhood Plan attempts to take on an extremely large task – not just by covering a significant and wide-ranging geographical area with a very large (in neighbourhood planning terms) population, but also by covering a wide and complex range of matters within a Neighbourhood Plan containing 57 Policies.
- 66 With regards to this, I drew attention at the Public Hearing to the enormous commitment and dedication of plan-makers who, together, devoted thousands of hours of voluntary time to the Torquay Neighbourhood Plan, all with the single main aim of making Torquay a better place for this and future generations.
- 67 However, whilst the commitment of plan-makers is beyond dispute, the scale and complexity of the project taken on has, in respect of parts of the Neighbourhood Plan, proven to comprise a near-impossible task for a volunteer force.

- 68 However, notwithstanding the above, the Consultation Report provides evidence to demonstrate that public consultation comprised part of the overall plan-making process, that matters raised were considered and that the reporting process was transparent. In addition, consultation was well-publicised. As well as via meetings and the distribution of material, information was readily available via a dedicated website, through social media and via articles in the local press.
- 69 Taking all of the above into account, the consultation process met statutory requirements.

6. The Neighbourhood Plan – Introductory Section

70 For clarity and precision, and having regard to recommendations later in this Report, I recommend:

- **Foreword, first sentence, change to “Our Plan forms part of the statutory development plan for Torbay and provides a...”**
- **Foreword, delete third para, second column (“We have...”) and replace with “The Neighbourhood Plan supports sustainable housing growth through the provision of housing land and does so in general conformity with the Local Plan.”**
- **Foreword, delete final paragraph of second column (“Major Greenfield...”)**

71 It is not the purpose of a neighbourhood plan to “inform” a District-wide Local Plan, nor to state what the purpose of other Neighbourhood Plans might be. I also note that the Torbay Local Plan 2015 does not simply provide a “big picture.” I recommend:

- **Page 4, second para, delete second sentence (“More than...”)**
- **Page 4, second para, delete last sentence (“The Torbay...”)**

72 I set out the basic conditions earlier in this Report and for precision, I recommend:

- **Page 4, third para, delete and replace with “The Neighbourhood Plan has to have regard to national policy and advice, be compatible with European legislation and be in general conformity with the strategic policies of the Local Plan.”**

73 I make a recommendation in respect of the plan period, referred to on page 4, earlier in this Report.

- 74 Part of the Vision and Aspirations Section reads as though it comprises a Policy requirement, which it does not and it also refers to matters not addressed by either strategic or Neighbourhood Plan Policies. I recommend:
- **Page 4, first column, last para, change to “...of life, it is important that the beauty of the town and its setting are respected. There have...”**
- 75 The Glossary contains subjective definitions and leaves matters open to question and interpretation. As such, it presents considerable scope for confusion and detracts from the clarity and precision of the Neighbourhood Plan . I recommend:
- **Page 7, delete Glossary.**
- 76 For precision, having regard to the basic conditions, I recommend:
- **Page 8, change to “...Neighbourhood Plan, which are in general conformity with the strategic policies of the Torbay Local Plan and have regard to the National...These Policies will form part of the development plan and be used to...”**
- 77 There have been numerous representations made in respect of the “Community Aspirations” contained in the Neighbourhood Plan. Amongst other things, Community Aspirations provide an excellent way to capture non-land use planning matters that arise during the plan-making process. However, they have no land use planning policy status. I am concerned that, as set out, the Community Aspirations in the Neighbourhood Plan are worded in such a manner that they could easily be confused with the document's Policies.
- 78 I consider Community Aspirations later in this Report, but for clarity and precision in respect of the references on pages 8 and 9, I recommend:
- **Page 8, last para, change to “The Neighbourhood Plan also identifies a number of Community Aspirations. Whilst these are not Neighbourhood Plan Policies and have no land use planning policy status, their inclusion in the Neighbourhood Plan is intended to capture some of the aims and aspirations of communities in Torquay, as identified through the plan-making process.”**
 - **Page 9, delete para commencing “The Plan contains either...”**

7. The Neighbourhood Plan – Neighbourhood Plan Policies

79 I note that the Policy numbering in the Neighbourhood Plan appears very similar to that of the Torbay Local Plan 2012-2030 (referred to in this Report as the Local Plan). To avoid any confusion, I recommend a simple change:

- **Add the suffix “T” to all Neighbourhood Plan Policy numbers. For example, Policy S1 would become Policy TS1. I have used this form of numbering below.”**

80 The paragraph on page 9 entitled “*Local Plan*” is confusing and includes incorrect information. To some degree, it also repeats information already provided. The heading “*National Planning Policy*” that follows is also confusing and unnecessary. I recommend:

- **Delete “Local Plan” and text below it on page 9.**
- **Delete heading “National Planning Policy” on page 9**

General Policies and Aspirations

Policy TS1 – Sustainable Development

- 81 As set out above, it is a requirement that the Neighbourhood Plan contributes to the achievement of sustainable development. Sustainable development is recognised as the “*golden thread*” running through national planning policy and the planning system is “*plan-led*,” such that applications for development are considered against the relevant development plan policies in place at the time.
- 82 Consequently, the inclusion of Policy TS1 as a Policy in support of sustainable development provides an opportunity to present a positive, sustainable framework for development. However, the Neighbourhood Plan does not have the power to determine planning applications, or to direct the Local Planning Authority in respect of when planning applications will be “*approved*” or “*refused*.”
- 83 As set out, Policy TS1 appears to direct the Local Planning Authority and whilst this approach is, to some degree, mitigated by reference to “*material planning considerations*,” this simply results in Policy TS1 appearing as a very general statement, as opposed to setting out land use planning policy.
- 84 Essentially, Policy TS1 states that planning permission will be granted – which is not something that the Neighbourhood Plan can determine – unless it is refused and that such determination will depend on the circumstances associated with the proposal.
- 85 As such, Policy TS1 appears vague and does not have regard to Paragraph 154 of the Framework, which states that:

“Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan.”

- 86 Further to the above, the supporting text to Policy TS1 contains a large quantity of incorrect information. For example, it is suggested that every Policy in the Neighbourhood Plan prioritises the provision of affordable housing, that the Neighbourhood Plan will become part of the Local Plan and that Torbay Council will monitor the Neighbourhood Plan to ensure that the aspirations of the community are met. There is no evidence to support any of these suggestions.
- 87 Taking the above into account, I recommend:
- **Delete Policy TS1 and the related supporting text above and below it (“The following policy incorporates...used to prepare the original Plan”)**

Policy TS2 – Definitions of Greenfield and Brownfield Land

- 88 Brownfield land is defined in the National Planning Policy Framework (the Framework). As set out above, the Neighbourhood Plan must have regard to national policy.
- 89 Policy TS2 seeks to re-define brownfield land. It does so in a manner that results in a definition different to and in conflict with, that set out in national policy.
- 90 No clear justification is provided for this conflict with national policy. In addition, there is no substantive evidence to demonstrate that the impacts of the change to the definition, as proposed, have been tested in respect of the Policies of the Development Plan as a whole. There is nothing, for example, to demonstrate that the departure from national policy, as proposed, would not prevent the delivery of sustainable development within the Neighbourhood Area. Consequently, I cannot conclude that Policy TS2 contributes to the achievement of sustainable development and meets the basic conditions.
- 91 I recommend:
- **Delete Policy TS2**
 - **Delete the heading “Greenfield and Brownfield Land” and the supporting text below it**
 - **Delete the heading “Glossary of definitions” and the sentence below it**

Policy TS3 - Master Plans

- 92 Area-wide Master Plans can take the form of Supplementary Planning Documents, providing guidance and material planning considerations to be taken into account when a planning application is determined.
- 93 However, in the absence of any evidence, it is not clear how the Neighbourhood Plan can require the Local Planning Authority to not accept, or determine, a planning application for development if *“the usage of that site is significantly different to that identified within the adopted Master Plan SPD or significantly different to the identified use within the Neighbourhood Plan.”*
- 94 Notwithstanding the lawfulness of such an approach, no evidence is presented to demonstrate that preventing such an application for development being made, accepted or determined by the Local Planning Authority would meet the basic conditions.
- 95 Whilst I note that Torbay Council has recommended its replacement with a supportive planning policy, I am mindful that Policy TS3 is a negatively worded Policy and it is not the role of examination to replace Policies that do not meet the basic conditions with fundamentally different Policies.
- 96 I also note that Policy TS3 appears confusing when considered against the supporting text, which states that Supplementary Planning Documents must be *“kept up to date to reflect viability.”* No evidence has been presented to demonstrate, for example, that any mechanism exists to ensure that relevant Supplementary Planning Documents can be revised and adopted *“to reflect”* changes in respect of viability.
- 97 Taking the above into account, I recommend:
- **Delete Policy TS3**
 - **Delete supporting text above Policy TS3**

Policy TS4 – Community led planning

- 98 Planning applications are determined by the Local Planning Authority. Occasionally, planning decisions made by the Local Planning Authority are “called in” for determination by the Secretary of State.
- 99 Section 38(6) of the Town and Country Planning Act sets out the basis upon which planning applications must be assessed. No evidence has been presented in support of Policy TS4’s different approach to that set out by statute, in respect of the proposed requirement that planning applications in the Neighbourhood Area “*must be in general compliance with any representation*” from the community.
- 100 Similarly, whilst I recognise that it may comprise good practice, the Neighbourhood Plan cannot require applicants to consult with Community Partnerships (other than in the circumstance that they are required to do so by law).
- 101 However, Policy TS4 does seek to encourage community engagement and such an approach has regard to Paragraphs 188-190 of the Framework, which highlight the advantages of early engagement and consultation. Taking this and the above into account, I recommend:
- **Policy TS4, change to: “*Policy TS1 – Community Engagement. Early engagement with the relevant Community Partnership in respect of all proposals for major development, new housing or business proposals on non-allocated, greenfield land, will be supported.*”**
 - **Change supporting text above Policy to “...Localism Act, *community involvement at an early stage in the planning of new development is encouraged. The Community...*”**
 - **Delete last sentence of supporting text above Policy**

Housing

Policy TH1 – Housing Allocations

- 102 As set out, Policy H1 of the Neighbourhood Plan is confusing.
- 103 Whilst it is meant to comprise a housing allocation Policy, it simply refers to a Table that does not form part of the Neighbourhood Plan, as well as to various (unclear) maps, which are printed separately to the Neighbourhood Plan, which together, list and show a range of sites allocated for housing development. These include sites that have already been allocated in the Local Plan. It is not the role of the Neighbourhood Plan to allocate land for residential development that has already been allocated for residential development.
- 104 In addition to the above, Policy H1 seeks to impose a new kind of statutory requirement upon the Local Planning Authority, such that any changes to the Local Plan in respect of housing numbers must be subject to the community agreeing to produce a revised Neighbourhood Plan in parallel. No evidence has been presented to demonstrate that such an approach would have regard to national policy or advice, or would contribute to the achievement of sustainable development. Rather, it could place a significant hurdle in the way of the Local Planning Authority fulfilling its statutory duty.
- 105 Notwithstanding the above, Policy H1 seeks to provide for the delivery of at least 3979 dwellings in the Neighbourhood Area during the plan period. This element of the Policy has regard to Local Plan Policy SDT1 (“Torquay”), which requires the delivery of around 3,955 homes during the plan period.
- 106 The land allocated by the Neighbourhood Plan (as opposed to that already allocated by the Local Plan) has largely been drawn from sites identified by the Local Plan as being suitable for residential development. Further allocations have emerged through a transparent assessment process. In this regard, I am mindful that Torbay Council has not raised any concerns with the land allocated for residential development and has stated that the allocations support:

“...the growth strategy of the Torbay Local Plan. This is supported and welcomed.”

- 107 Taking the above into account and subject to the other recommendations in this Report, I am satisfied that, in respect of housing growth, the Neighbourhood Plan does not promote less development than set out in the Local Plan and nor does it undermine the Local Plan's strategic policies.
- 108 The supporting text to Policy H1 states that the Neighbourhood Plan prioritises the residential development of brownfield land residential development in the Town Centre. However, and having regard to the recommendations contained in this Report, I note that this is not something that is reflected by the Policies of the Neighbourhood Plan in a way that meets the basic conditions.
- 109 I also note that the Neighbourhood Plan relies on a significant number of windfall sites coming forward. This is something that I have been mindful of when examining other relevant Policies, with particular regard to the requirement for the Neighbourhood Plan to contribute to the achievement of sustainable development.
- 110 A representation has been submitted to confirm that the "Kwik Fit" site, NP5, will not be available for residential development during the plan period and this is a matter taken into account in the recommendations below.
- 111 Taking all of the above into account, I recommend:
- **Policy TH1, delete and replace with "*The Torbay Local Plan allocates sites within Future Growth Areas for residential development. The Neighbourhood Plan allocates further sites for residential development, as shown on Table 2 below, with the approximate number of houses to be delivered on each site shown alongside.***
- The Plan shown below identifies the general location of these sites. Site specific plans, clearly identifying site boundaries, are provided in the Appendices to this Plan. For clarity, the Appendices also set out (in a Table and on Plans) all of the housing allocations in Torquay during the plan period. These include the allocations contained in the Torbay Local Plan."*

- **Provide new Table 2 below the Policy - listing the sites allocated in the Neighbourhood Plan, with the number of dwellings alongside.**
- **Provide a new Neighbourhood Area-wide plan showing the location of the allocated sites (the sites allocated in the Neighbourhood Plan, not the Local Plan. Sites currently shown in purple and orange). This only needs to link the names of the sites with their location, rather than show the site boundaries. For clarity, the new plan should link with the new Table 1, for example, via numbering.**
- **Delete any reference to the “Kwik Fit” site**
- **Ensure that the Policies Maps are clearly labelled and that the Key clearly distinguishes between the sites allocated in the Neighbourhood Plan and those allocated in the Local Plan. Ensure that the precise boundaries of each (Neighbourhood Plan) allocation are clearly identifiable.**
- **Page 12, supporting text, delete the last sentence of the fourth para (“The Neighbourhood Plan therefore...”)**
- **Page 12, last para, delete rest of para after “...housing supply by source.”**

Policy TH2 – Designing out crime

112 Paragraph 58 of the Framework requires development to:

“...create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.”

113 Policy TH2 seeks to reduce the risk and fear of crime and in this respect, it has regard to national policy.

114 However, as worded, the Policy appears vague and ambiguous. It is not clear, for example, how the design of any new residential development, which might for example comprise a single flat or house, can “*minimise opportunities for crime, fear of crime and antisocial behaviour proportionate to the scale of development,*” how this might be judged, who by and to what effect. Neither Policy TH2, nor its supporting text, provides any information or detail in this regard.

115 Consequently, Policy TH2 does not have regard to national planning advice¹⁰ which requires that:

“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”

116 Further to the above, it is not clear, in the absence of any relevant information, as to why designing out crime should only apply to residential development. Taking this and all of the above into account, I recommend:

- **Change Policy TH2 to “*New development should provide for a safe environment and consider opportunities to prevent crime or the fear of crime from undermining quality of life or community cohesion.*”**

¹⁰ Planning Policy Guidance, Paragraph: 042 Reference ID: 41-042-20140306.

Policy TH3 – Future Growth Area Viability Exclusions

117 Paragraph 173 of the Framework requires:

“...careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable.”

118 Local Plan Policy H2, *“Affordable Housing,”* ensures that viability can be taken into account in respect of the delivery of affordable housing and Local Plan Policy SS7, *“Infrastructure, phasing and delivery of development,”* recognises that developer contributions will relate to viability.

119 Policy TH3 states that:

“Viability arguments shall not be a planning consideration for the Edginswell Growth Area...if that viability is based on the cost to the developer of the land at a date after the end of consultation following submission of this Plan.”

120 The cost of land is a valid development cost and no substantive evidence has been provided to the contrary. Consequently, Policy TH3 is in direct conflict with, and does not have regard to, national policy. Furthermore, Policy TH3 places a significant obstacle in the way of development coming forward and does not contribute to the achievement of sustainable development.

121 The Policy does not meet the basic conditions and I recommend:

- **Delete Policy TH3**
- **Delete the three paragraphs of text above Policy TH3 (“Government Viability...policies”)**

Policy TH4 – Affordable homes from Greenfield developments

- 122 Local Plan Policy H2, referred to above, determines how much affordable housing will be sought on development sites.
- 123 Policy TH4 commences by placing a requirement on the Local Planning Authority in respect of how an application for development will be determined. As noted earlier in this Report, this is a matter beyond the scope of the Neighbourhood Plan.
- 124 The approach to affordable housing set out in Policy TH4 is less detailed and less clear than that set out in Local Plan Policy H2, *“Affordable Housing.”* Consequently, rather than provide local detail to a strategic policy, Policy TH4 runs the risk of detracting from the clarity of the development plan. It introduces an affordable housing requirement different to that set out in Local Plan Policy H2, without substantive evidence to justify the approach set out.
- 125 Further to the above, no evidence has been presented to demonstrate that the requirements of the Policy, such as the sale of *“affordable sites”* for self-build construction, or the building of *“the same number of affordable units on a Brownfield site”* comprise viable or deliverable options, having regard to Paragraph 173 of the Framework, referred to earlier in this Report.
- 126 Part of the supporting text on page 14 reads as though it comprises a Policy requirement, which it does not. Further, there is no evidence that the Neighbourhood Plan provides for *“positive policy statements for affordable homes on Greenfield sites.”*
- 127 I recommend:
- **Delete Policy TH4**
 - **Page 14, last sentence of fourth para, change to *“Over the plan period, we aim to positively address this issue by increasing the supply of affordable housing.”***
 - **Delete last two paras, first column, page 14 (*“To achieve...communities.”*)**

Policy TH5 – Affordable housing occupancy restrictions

- 128 During the Public Hearing it was noted that the Devon Home Choice Register provides for a cascade mechanism, such that occupancy from areas surrounding development is prioritised.
- 129 Policy TH5 goes considerably further than this by demanding that all new affordable housing is limited to housing at least one occupant who has lived in Torbay for not less than five years. Such an approach is restrictive and conflicts significantly with the Neighbourhood Plan's stated aim of providing positive policy statements for affordable housing.
- 130 In this regard, I am mindful that Torbay Development Agency has expressed concerns that the approach set out could potentially prevent key workers from moving to the area and that there is no substantive evidence, in support of the Policy, to the contrary.
- 131 Taking the above into account, I consider that Policy TH5 would fail to contribute to the achievement of sustainable development.
- 132 The Community Aspiration above Policy TH5 appears to set out a "*planning policy target*." No detail is provided in respect of how or why this comprises an aspiration. It is not supported by any Policy requirements and consequently, the Community Aspiration appears highly confusing.
- 133 I recommend:
- **Delete Policy TH5**
 - **Delete the sentence of supporting text above Policy TH5**
 - **Delete the Community Aspiration above Policy TH5**

Policy TH6 – Sustainable later life homes

- 134 Policy H6 seeks to direct the Local Planning Authority by stating that any retirement or assisted living development would be refused if it failed to be within an “*easy walk*” of community hub facilities.
- 135 The approach set out would fail to provide for the balanced consideration of a proposal, taking into account both the potential harm and potential benefits that might arise. Consequently, the Policy could prevent development that is sustainable from coming forward and in this way, it fails to contribute to the achievement of sustainable development.
- 136 Further to the above, the Neighbourhood Plan requires “*community hubs*” to include a doctor’s surgery or pharmacy and a post office. Such a requirement appears restrictive, not least given the closure of many post offices in recent years and there is no substantive evidence to demonstrate that all residential allocations within the Neighbourhood Area are within “*easy walking distance*” of such community hubs. This indicates a further risk to the Policy’s contribution to the achievement of sustainable development.
- 137 In addition to all of the above, the Neighbourhood Plan considers an “*easy walk*” to comprise not more than 400 metres and “*considerably less,*” dependent upon the presence of roads and gradients. In the absence of any evidence to the contrary, it appears that such a short distance would severely restrict opportunities for the provision of later life homes – the delivery of which the Neighbourhood Plan seeks to support.
- 138 In the above regard, I am mindful that whilst the Institute of Highways and Transportation, in its guidance document, “*Providing for Journeys on Foot,*” states that 800 metres comprises a reasonable walking distance, no substantive evidence is provided to support the contention that restricting retirement or assisted care development to locations that may be “*considerably less*” than 400 metres from a post office, amongst other things, would contribute to the achievement of sustainable development.
- 139 Taking all of the above into account, Policy TH6 does not meet the basic conditions and I recommend:
- **Delete Policy TH6**

Policy TH7 – Retirement and assisted living

- 140 Policy TH7 seeks to establish a presumption in favour of the change of use of any tourist accommodation in Babbacombe, outside the CTIA, to retirement or assisted living development.
- 141 This proposed presumption is not supported by any evidence to demonstrate that it would, in all circumstances, be appropriate to change the use of any such tourist accommodation to retirement or assisted living development. There is no substantive evidence, for example, to demonstrate how modern requirements relating to the care and retirement needs of older people would automatically be met by the change of use of any tourist accommodation in Babbacombe.
- 142 Consequently, in the absence of evidence to the contrary, I am concerned that the Policy could result in a presumption in favour of inappropriate development and that this would not contribute to the achievement of sustainable development.
- 143 The Policy is not in general conformity with Local Plan Policy H6, "*Housing for people in need of care,*" which seeks to ensure the provision of appropriate accommodation to meet needs. It does not meet the basic conditions.
- 144 I recommend:
- **Delete Policy TH7**
 - **Delete supporting text on page 15, headed "Homes for an ageing population"**

Community Infrastructure Levy

145 The Community Infrastructure Levy section of the Neighbourhood Plan does not contain any Policies. Rather than be presented as three separate boxes, which could be confused with Policies, and rather than contain language which could also be confused with Policy requirements, I recommend:

- **Page 16, remove the boxes around the three separate “Community Aspirations” and retain one heading, at the beginning of the section, “Community Aspiration” (delete the other two headings)**
- **Remove the bold font from text**
- **Change from the eleventh line of text to the end of the section “...within that area, *the community would like to see development where CIL contributions are not sought, but S106 contributions are, provide the equivalent amount of money to that from the normally...contribution be provided for the community’s own spend decisions.***

The community would also like to see the reduced CIL...Area be reviewed and adapted to reflect changes in economic regeneration.”

146 In making the above recommendations, I note that these relate to local aspirations and that any payment of Community Infrastructure Levy is subject to the appropriate tests and regulations.

Torquay Gateway (including the Edginswell Future Growth Area)

Policy TH8 – Prioritisation of Town Centre redevelopment and Brownfield sites

- 147 The Edginswell Future Growth Area is allocated for development in the adopted Local Plan. Local Plan Policy SDT3, "*Torquay Gateway*," identifies land at Edginswell Future Growth Area for the delivery of around 550 new homes. The Policy does not seek to prevent the delivery of these homes until after 2025.
- 148 Policy TH8 seeks to prevent the delivery of residential development at the Edginswell Future Growth Area until after 2025, unless more than 75% of "*homes designated on other sites have been granted permission and the net increase in jobs in Torbay or Torquay meets or exceeds...jobs growth trend ambitions...*"
- 149 This places a significant and major restriction on the delivery of the Torbay Local Plan, contrary to Local Plan Policy SDT3.
- 150 Further, it does so without any substantive evidence to demonstrate that the delivery of sustainable growth will not be unduly hindered or prevented. Rather, Policy TH8 serves to delay the development of allocated land at Edginswell on the basis of planning permissions elsewhere, regardless of delivery, as well as subject to employment growth – which, itself, would seem to relate directly to the development of the Edginswell Growth Area (which provides for mixed use development, including employment).
- 151 Consequently, the Policy is not in general conformity with the strategic policies of the Local Plan and it does not contribute to the achievement of sustainable development.
- 152 I note that the Policy also seeks to impose a provision that would limit occupation of housing unless all infrastructure identified in a Master Plan "*is complete.*" There is an absence of substantive information demonstrating that such a requirement has regard to Paragraph 173 of the Framework in respect of viability and delivery.
- 153 Taking all of the above into account, I recommend:

- **Delete Policy TH8**

Policy TH9 – Homes for Torbay residents

- 154 Policy TH9 seeks to impose a requirement for all homes sold in Edginswell Future Growth Area to be the “*purchaser’s sole residency.*”
- 155 No evidence is provided to demonstrate that such an onerous and restrictive Policy, that goes well beyond national and local policy requirements, would provide for the delivery of sustainable development. In the absence of such evidence, the Policy would appear to be so restrictive as to have a significant impact on a wide range of matters, including, for example, the provision of private rented housing.
- 156 No indication of the impact that the proposed approach might have on the housing market or affordability has been provided.
- 157 Whilst I note that the St Ives Neighbourhood Plan in Cornwall includes a restrictive Policy in respect of second homes, that is a Policy that was supported by substantive evidence in relation to a specific local issue. Policy TH9 is not supported by any such substantive evidence and as presented, it appears as an unjustified and restrictive Policy that would fail to contribute to the achievement of sustainable development.
- 158 I recommend:

- **Delete Policy TH9**

Policy TH10 – Gateway sustainable community planning

159 National policy requires that development that is sustainable should come forward without delay.

160 Policy TH10 seeks to direct the Local Planning Authority in respect of the granting of planning permission. Furthermore, it does so in a manner that would actively restrict the delivery of housing on land allocated in the adopted Local Plan.

161 Policy TH10 is not in general conformity with the Local Plan and does not contribute to the achievement of sustainable development.

162 I recommend:

- **Delete Policy TH10**
- **Pages 16, 17 and 18, delete the “Torquay Gateway (including the Edginswell Future Growth Area)” section of the Neighbourhood Plan**

Homes from former Tourism properties

163 The inclusion of this section of text in the Housing Chapter is confusing. It relates directly to other Policies elsewhere in the Neighbourhood Plan and largely comprises a list of those Policies. As such, this part of the Housing Chapter serves to detract from the clarity of this part of the document. I recommend:

- **Page 18, delete the “Homes from former Tourism properties” section, including the list of Policies**

Design and quality of development

Policy TH11

- 164 Paragraph 50 of the Framework promotes the delivery of a wide choice of high quality homes.
- 165 Policy TH11 seeks to prevent *“the development of an existing residential property that does not provide accommodation with a separate bedroom.”*
- 166 As such, the Policy appears imprecise and ambiguous to the point that it would serve to prevent various household extensions, without justification and contrary to the provisions of national and local policy.
- 167 In addition to the above, Policy TH11 could serve to prevent the delivery of a wide choice of housing, contrary to national policy, as set out in Chapter 6 of the Framework, *“Delivering a wide choice of high quality homes.”*
- 168 In this regard, I am mindful of Torbay Development Agency's comment that the Policy would, for example, place an obstacle in the way of the delivery of studio apartments, which may, in turn, prevent younger workers from accessing the Torquay housing market. In the absence of substantive evidence to the contrary, this could run counter to the Neighbourhood Plan's aspiration to support employment growth.
- 169 Taking the above into account, I recommend:

- **Delete Policy TH11**

Policy TH12 – HMO's

170 Policy TH12 seeks to impose a requirement upon the Local Planning Authority in respect of the determination of planning applications. In doing so, the Policy requires that all HMO proposals must demonstrate that such housing supports the growth of the economy of Torquay and provides accommodation for a resident manager to live on site.

171 As stated earlier, Paragraph 173 of the Framework requires that plans be deliverable and that careful attention is paid to viability. No substantive evidence has been provided to demonstrate that the requirements of Policy TH12 are viable and deliverable.

The Policy does not meet the basic conditions and I recommend:

- **Delete Policy TH12**
- **Delete the two paras of supporting text above Policies TH11 and TH12**

Policy TH13 – Established architecture

172 Paragraph 58 of the Framework states that planning policies should aim to ensure that developments:

“...respond to local character...and reflect the identity of local surroundings...”

173 Subject to the recommendation below, Policy TH13 seeks to ensure that development respects local character and in this way, it has regard to national policy.

174 A requirement that development *“must not have an adverse impact”* fails to provide for the balanced consideration of development proposals, such that benefits can be weighed against harm. Consequently, as worded, Policy TH13 could prevent development that is sustainable from coming forward and it does not contribute to the achievement of sustainable development.

175 Further to the above, in the absence of evidence, it is not clear how any development can *“be in a character, scale, bulk and design sympathetic to the established surrounding architecture.”* It is not entirely clear what established surrounding architecture comprises and consequently, this part of the Policy is ambiguous and open to interpretation.

176 Further to the above, *“development”* can be very wide ranging – it can include, for example, ATM machines, shop signs and essential telecommunications infrastructure. In the absence of any substantive evidence, it is not clear how such development might meet the requirements of the Policy, as set out and again, this could result in the Policy failing to contribute to the achievement of sustainable development.

177 No indication is provided of what *“significantly increase the density of properties in the immediate area”* actually means and consequently, this part of the Policy is imprecise, leaving it open to subjective interpretation. I am also mindful that, in the absence of substantive evidence, it is not clear how the Policy would support, for example, the Neighbourhood Plan's promotion of brownfield development, which may require an increase in density in order for it to be viable.

178 Taking all of the above into account, I recommend:

- **Policy TH13, change to *“Development should respect local character and reflect the identity of its surroundings.”***

Policy TH14 – Parking facilities

- 179 Local Plan Policy TA3 seeks to provide for appropriate car parking provision in keeping with guideline requirements. The guidelines set out estimated car parking requirements in detail.
- 180 Policy TH14 allows any car parking guidelines to be ignored, regardless of circumstances, if a development is within easy walking distance of a public car park. This approach is not in general conformity with the Local Plan and in the absence of substantive evidence to the contrary, it could result in support for inappropriate forms of development and fail to contribute to the achievement of sustainable development.
- 181 In making the recommendation below, I am also mindful that the Policy runs directly contrary to the community aims set out in the supporting text.
- 182 The final part of the Policy, in respect of the requirement for all major development to contribute to better pedestrian and cycle links, is not supported by any evidence in respect of viability or deliverability, having regard to Paragraph 173 of the Framework; and there is nothing to indicate that the requirement set out would, in all circumstances, be necessary to make development acceptable in planning terms, be directly related to development, or be fairly and reasonably related in scale and kind to development, having regard to Paragraph 204 of the Framework.
- 183 Policy TH14 does not meet the basic conditions. I recommend:
- **Delete Policy TH14**
 - **Delete supporting text above Policy TH14**

Policy TH15 – Sites excluded from development

184 Policy TH15 seeks to impose a requirement on the Local Planning Authority and attempts to simply prevent all forms of development in two locations.

185 Such an unduly restrictive approach is in direct conflict with national and local planning policy and actively prevents sustainable development.

186 I recommend:

- **Delete Policy TH15**
- **Delete the title “Sites excluded from development” and the two paras of text below it**

Policy TH16 – Protection of the historic built environment

187 Chapter 12 of the Framework, *“Conserving and enhancing the historic environment,”* recognises that the nation’s heritage assets are irreplaceable and sets out a clear, detailed approach to conserving them in a manner appropriate to their significance.

188 Policy TH16 ignores national policy and seeks to implement its own approach in respect of Listed Buildings and Conservation Areas. It appears as a muddled mixture of requirements, including a vague reference to allowing all changes that support a sustainable future for a Listed Building.

189 The resultant policy does not have regard to national policy and fails to contribute to the achievement of sustainable development. It fails to provide a decision maker with a clear indication of how to react to a development proposal, having regard to Paragraph 154 of the Framework, which states that:

“Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan.”

190 The significant departure from national policy suggested is not supported by any detailed justification.

191 I recommend:

- **Delete Policy TH16**
- **Delete title “Conservation of the historic built environment” and the para of text below it**

192 In making the above recommendation I am mindful that national and local planning policy provide for the conservation and enhancement of heritage assets in a manner appropriate to their significance.

Policy TH17 – Rural village buffer zones

193 Similarly to Policy TH15, Policy TH17 seeks to impose a requirement on the Local Planning Authority and would serve to prevent all forms of development within a specific area. Such a restrictive approach is not justified by the provision of substantive evidence, goes well beyond any local or national planning policy requirements and fails to contribute to the achievement of sustainable development.

194 Policy TH17 does not meet the basic conditions. I recommend:

- **Delete Policy TH17**

Policy TH18 – Rural Village Conservation Areas

- 195 Similarly to Policy TH16, Policy TH18 seeks to direct the Local Planning Authority and introduce an approach that fails to have regard to national policy in respect of heritage assets, as set out in Chapter 12 of the Framework.
- 196 Policy TH18 seeks to simply prevent various forms of development in the Maidencombe and Cockington Village Conservation Areas. Such an approach is in direct conflict with national policy, which provides for development which conserves heritage assets in a manner appropriate to their significance. There is no substantive evidence to justify the departure from national policy proposed.
- 197 Further to the above, Conservation Area Appraisals and Management Plans provide guidance. They do not provide the basis for permitting development which “*complies*” with them. As well as failing to have regard to national policy, such an approach runs the risk of failing to take into account relevant considerations and does not contribute to the achievement of sustainable development.
- 198 Policy TH18 does not meet the basic conditions. I recommend:
- **Delete Policy TH18**
 - **Delete the heading “Special protection for rural village environments” and the two paras of text below it.**

Policy TH19 – Maidencombe area

- 199 Policy TH19 refers to the "*Maidencombe Village Envelope*." Page 64 of the Neighbourhood Plan includes a plan entitled "*The defined Village Envelope*." However, this is entirely different to the Village Envelope for Maidencombe in the Local Plan. No substantive evidence has been provided in justification for this direct conflict with the Local Plan.
- 200 The first paragraph of Policy TH19 includes the phrase "*will be permitted*." Such an approach runs the risk of pre-determining planning applications without taking relevant factors into consideration and does not, therefore, contribute to the achievement of sustainable development.
- 201 In the absence of any justification, it is not clear why Policy TH19 seeks to prevent infill development and "*refurbishment of existing buildings*" – although it is not clear why refurbishment would, in all cases, require planning permission – in the Maidencombe Conservation Area. Such an approach does not have regard to national policy, as set out in Chapter 12 of the Framework, which does not seek to prevent development in Conservation Areas, but requires that heritage assets are conserved in a manner appropriate to their significance.
- 202 Policy TH19 c) requires that the amenity of property is not harmed. Notwithstanding that it is more appropriate for amenity to relate to occupiers rather than to property, simply requiring no harm to amenity prevents the balanced consideration of a proposal, whereby any harm arising is considered against benefits. The approach set out does not contribute to the achievement of sustainable development.
- 203 It is not clear, in the absence of any substantive evidence, how all development in Maidencombe can reinforce the landscape quality of the area and the character of the rural setting, as required by Policy TH19 d). Landscaping may not be relevant to some forms of development and by its very nature, development within the village boundary will be exactly that – rather than something that could necessarily reinforce the character of the setting of the village. This part of the Policy is unclear and does not provide a decision maker with a clear indication of how to react to a development proposal, having regard to Paragraph 154 of the Framework.

- 204 Policy 19 e) is imprecise. No indication of how cumulative impact will be measured, against what criteria and who will be the judge of this, is provided. Neither “*urban creep*” nor “*overdevelopment*” are defined and they consequently appear as ambiguous terms, open to wide interpretation.
- 205 Policy H19 2) seeks to pre-determine the planning application process and impose an obligation upon the Local Planning Authority. The Policy seeks to prevent the development of any “*buildings*” in part of the Neighbourhood Area without clear justification for such a significant departure from national and local policy.
- 206 Policy H19 3) goes way beyond the requirements of national and local planning policy and seeks to introduce a new approach to development control, imposing a requirement on the Local Planning Authority to “*deem permissible*” replacement dwellings and extensions. This part of the Policy does not have regard to national policy and does not contribute to the achievement of sustainable development.
- 207 Policy TH19 4) is in direct conflict with other parts of Policy TH19 and the Neighbourhood Plan. It imposes an obligation on the Local Planning Authority to refuse infill development. The Policy is imprecise and fails to provide a decision maker with a clear indication of how to react to a development proposal, having regard to Paragraph 154 of the Framework.
- 208 Part 5 of the Policy seeks to “*constrain*” any development to the footprints of post-1968 buildings. No justification is provided to support an approach that, in the absence of evidence to the contrary, would not contribute to the achievement of sustainable development.
- 209 Part 6 of the Policy seeks to prevent any planning application being made until an independent assessment has been provided. The Neighbourhood Plan cannot dictate the requirements of planning applications, which are prescribed by statute. Furthermore, no indication is provided of why an assessment would be relevant and necessary in the case of every planning application in the area; and no indication is provided of how such an independent assessment might be funded. Part 6 of the Policy fails to have regard to national policy in respect of deliverability and viability (Paragraph 173 of the Framework) and planning obligations (Paragraph 204 of the Framework).

210 Much of Policy TH19 fails to meet the basic conditions. I note earlier in this Report that national policy requires development to respect local character and taking this and all of the above into account, I recommend:

- **Delete Policy TH19 and replace with *“Proposals for development within Maidencombe Village Envelope must demonstrate that they respect local character and where appropriate, that they conserve or enhance heritage assets. To help achieve this, development should be of a scale, height, footprint and massing in keeping with its surroundings and design should draw from and appear in keeping with, local features.”***
- **Delete title “Special policies for Maidencombe” and the supporting text below it**
- **Replace “the defined Village Envelope” diagram on page 64 with a plan of the adopted Village Envelope, showing the precise adopted boundaries (taken directly from the Local Plan)**

Policy TH20 – Cockington Village and Country Park

- 211 The first two criteria of Policy TH20 seek to impose obligations on the Local Planning Authority in respect of the determination of planning applications. The Neighbourhood Plan cannot impose planning conditions, or require the Local Planning Authority to do so; and cannot simply circumvent the planning application process by ruling out development.
- 212 No evidence has been provided to demonstrate that a blanket presumption in favour of a change of use from commercial to residential development would, in all cases, contribute to the achievement of sustainable development.
- 213 Policy TH20 does not meet the basic conditions. I recommend:
- **Delete Policy TH20**
 - **Delete the heading “Special Policies for Cockington Village and Country Park” and the supporting text below it.**

Economy and Jobs

Policy TJ1 – Designated Employment Sites and minimum employment space

- 214 The first part of Policy TJ1 is unclear. It presents a list of 12 areas and states that they are "*Employment Sites.*" No indication is provided of what land use planning policy implications this has. For example, what kind of development might be supported at Torbay Hospital or any of the other sites? Consequently, the first part of the Policy does not provide a decision maker with a clear indication of how to react to a development proposal.
- 215 Whilst I note that Local Plan Policy SDT1 is supported by a reference to "*possible Neighbourhood Plan employment sites,*" simply providing a list in a Neighbourhood Plan does not, in itself, comprise a land use planning policy.
- 216 In making recommendations in respect of the above I am mindful that, together, national and local policy provide a positive planning policy framework for employment development.
- 217 The final paragraph of Policy TJ1 is unclear. It suggests (but it is not clear) that mixed use development should not come forward unless there is more than 37,200 square metres of employment space, presumably (as it is not made clear) within the Neighbourhood Area. No indication is provided of why there must be at least 37,200 square metres of employment; of how much employment space there is today; or of what would happen if there was not at least 37,200 square metres of employment space. Further, it is not clear why the Policy is only concerned with mixed use development.
- 218 Policy TJ1 would appear to seek to prevent mixed use development from coming forward in favour of, for example, retaining land allocated for employment, but not necessarily providing employment. It is not clear how such an approach would contribute to the achievement of sustainable development. The approach set out lacks detail. It is imprecise and unclear.

219 I recommend:

- **Delete Policy TJ1**
- **Delete the heading “Supporting existing and new business” and the supporting text below it.**
- **Delete the employment sites from the Policies Maps**

Policy TJ2 – Gateway Employment Sites

220 Policy TJ2 is a highly restrictive Policy, which seeks to limit development at Gateway Sites to “*permanent employment space.*” The Policy fails to have regard to Local Plan Policy SDT3 which supports mixed use across the Future Growth Area.

221 I recommend:

- **Delete Policy TJ2**
- **Delete the supporting text above the Policy**

Policy TJ3 – Retention of existing purpose built B Class employment sites

- 222 Policy TJ3 does not define what “*existing trading estates*” or “*significant purpose built permanent employment sites*” are. The Policy is imprecise in this regard and consequently, it does not provide a decision maker with a clear indication of how to react to a development proposal.
- 223 Local Plan Policy SS5, “*Employment space,*” provides for the flexible use of employment land and it does not protect “*B class uses*” regardless of circumstances. As set out, Policy TJ3 simply seeks to prevent a change of use away from a “B” class, employment use. Such an approach would fail to provide for flexibility and in the absence of any evidence to the contrary, could serve to prevent sustainable development from coming forward. Consequently, the Policy would not be in general conformity with the Local Plan.
- 224 The Neighbourhood Plan cannot direct the Local Planning Authority to impose conditions.
- 225 Taking the above into account, I recommend:
- **Delete Policy TJ3**
 - **Delete the supporting text above the Policy**

Policy TJ4 – Home Based Enterprises

- 226 The Framework recognises a high quality communications infrastructure as being essential for sustainable economic growth.
- 227 In seeking to promote the provision of fibre optic superfast broadband to encourage home based employment, the Neighbourhood Plan has regard to national policy.
- 228 However, in the absence of any detail, it is not clear why, or how employment units provide for home-based enterprises. As set out, the term "*employment units*" appears as an ambiguous, undefined term.
- 229 In the absence of evidence to the contrary, there may be cases where it is not viable, deliverable or even possible to provide fibre optic superfast broadband connectivity and taking this and the above into account, I recommend:
- **Change Policy TJ4 to "Policy TJ1. "All new residential units should have fibre optic..."**

Policy TJ5 – Change of use for unsustainable businesses

230 Policy TJ5 is predicated on a “*presumption in favour*” of the change of use of employment uses. This is confusing, as it is in direct conflict with the overall aims and objectives of the Neighbourhood Plan.

231 In addition to the above, in seeking to adopt a presumption in favour of a change of use, the Policy runs the risk of supporting inappropriate forms of development and does not contribute to the achievement of sustainable development.

232 Further to the above, the profitability of a business is not a land use planning matter.

233 I recommend:

- **Delete Policy TJ5**
- **Delete the heading “Unsustainable businesses” and the supporting text below it**

234 I note that the above recommendation does not alter the fact that there is nothing to prevent a planning application in respect of the proposed change of use of land or property relating to a failing or failed business.

Policy TJ6 – Support for certain existing Employment Sites

235 As above, the Neighbourhood Plan cannot direct the Local Planning Authority to grant or refuse planning permission.

236 I recommend:

- **Delete Policy TJ6**
- **Delete the supporting text above the Policy**

Policy TJ7 – Commercial street scenes

237 As noted earlier in this Report, Chapter 12 of the Framework sets out national policy in respect of the conservation of heritage assets.

238 The requirements set out in Policy TJ7 in respect of development in Conservation Areas introduce a level of detail that conflicts directly with national policy, which requires that heritage assets be safeguarded in a manner appropriate to their significance. Notwithstanding that there is no national or local policy requirement for it to do so, there is no substantive evidence to demonstrate that it would be viable, deliverable, or even desirable for all development to retain historic facades and restore original features in all cases.

239 However, the overall aim of Policy TJ7, to ensure that development respects heritage, and consequently, does have regard to national policy and I recommend:

- **Change Policy JT7 to “Policy TJ2. *Development within Conservation Areas should conserve or enhance heritage assets and their settings.*”**

Policy TJ9 – Prevention of crime through design

240 No Policy J8 appears in the Neighbourhood Plan.

241 Policy TJ9 effectively repeats the provisions of Neighbourhood Plan Policy H2 (which is the subject of recommendations earlier in this Report).

242 I recommend:

- **Delete Policy TJ9**
- **Delete the supporting text above the Policy**

Tourism

243 The “*Community Aspiration*” set out on page 25 does not read as an aspiration but as a set of requirements stating what Torbay Council should do. The Neighbourhood Plan cannot impose obligations on Torbay Council and the “*Community Aspiration*” thus appears misleading and is not supported by evidence to demonstrate that all of the requirements set out are achievable. As such, the inclusion of this section detracts from the clarity of the Neighbourhood Plan. I recommend:

- **Delete the fourth para on page 25 (“Community...”)**
- **Delete the “Community Aspiration” (including all bullet points, associated heading and intro sentence)**

Policy TT1 – Limited period for Change of Use Tourism Properties within a CTIA

244 Policy TT1 supports the change of use of any “*current business*” to mixed use, residential, tourism, retail, café or restaurant use for a five year period.

245 No evidence is provided to demonstrate that such a blanket approach would not result in support for inappropriate development. As such, the Policy fails to contribute to the achievement of sustainable development.

246 Further to the above, even if it was the case (and I am not suggesting that it is) that such an approach might be appropriate in every circumstance, then it is not clear why the Policy seeks to impose a five year time limit. No substantive evidence has been provided to justify the Policy being time-limited. There is nothing for example, explaining why it would only be important to support change of use for part of the plan period. Such an approach could prevent sustainable development from coming forward and there is no substantive evidence to the contrary.

247 I recommend:

- **Delete Policy TT1**
- **Delete the two paras of text immediately above the Policy**

Policy TT2 – Change of use constraints within a CTIA

248 Policy TT2 seeks to enhance the character of the CTIA. As worded, the Policy is imprecise – no indication “ is provided of what an “*other established tourism area*” might be – and it runs the risk of pre-determining the planning application process through the inclusion of the phrase “*shall not be permitted.*”

249 However, the aims of the Policy in respect of the Core Tourism Investment Areas (CTIAs) appear to be in general conformity with Local Plan Policy TO1, “*Tourism, events and culture,*” which seeks to enhance the character of CTIAs.

250 Taking the above into account, I recommend:

- **Change Policy TT2 to “*Policy TT1. Change of use from tourism accommodation within a CTIA to HMO or student halls of residence or hostel type accommodation will not be supported.*”**
- **Change title of Policy TT2 to that shown above (“Change of...”)**

Policy TT3 – Change of Use of Tourism Properties outside CTIAs

- 251 The Neighbourhood Plan relies on windfall sites to provide for sustainable housing growth. To some degree, Policy TT3 provides for this, by supporting the change of use of tourist accommodation outside CTIAs to residential use.
- 252 However, as set out, Policy TT3 seeks to introduce various restrictions based upon the size and location of tourism properties without demonstrating the impact that this might have on the delivery of housing growth. Consequently, it is not possible to fully understand how the Policy might prevent necessary, sustainable development from coming forward.
- 253 Further to the above, I am mindful that Local Plan Policy TO2 already provides a positive and detailed policy framework in respect of the change of use of holiday accommodation.
- 254 I recommend:
- **Delete Policy TT3**

Policy TT4 – Change of use in Conservation Areas and Listed Buildings

255 In seeking to introduce a presumption in favour of the change of use of a Listed Building, Policy TT4 does not have regard to national policy in respect of safeguarding heritage assets in a manner appropriate to their significance, as set out in Chapter 12 of the Framework.

256 In addition to the above, the Policy refers to the retention of existing development – which is not something that necessarily requires planning permission. This introduces unnecessary confusion into the Neighbourhood Plan.

257 I recommend:

- **Delete Policy TT4**
- **Delete the supporting text above the Policy**

258 Pages 27 and 28 include “*Community Aspirations*” which read as though they comprise requirements to be imposed on Torbay Council. I recommend:

- **Page 27, take the first Community Aspiration out of the box and remove the bold font. Change wording to “*The Neighbourhood Forum would like to encourage Torbay Council to serve run-down sites within tourism areas with Section 215 notices...*”**
- **Page 27 take the second Community Aspiration out of the box and remove the bold font. Change wording to “Community Aspiration. *The community would like to see, and where possible will work towards enabling the following: * The harbour...*”**
- **Page 27/28 delete the third aspiration (“The primary...”) which reads as though it comprises a policy requirement, which it is not**

Policy TT5 – Change of use constraints on Babbacombe Downs CTIA

259 Local Plan Policy TO1, "*Tourism, events and culture,*" establishes that CTIAs comprise main areas for investment in tourism.

260 Policy TT5 promotes a change of use away from tourism uses and is not in general conformity with the Local Plan. Further, no evidence is provided to demonstrate that residential development can or will provide retail and/or cafes and restaurants, having regard to Paragraph 173 of the Framework. Also, the term "*heritage characteristics*" is not defined and leads the Policy to appear imprecise.

261 I recommend:

- **Delete Policy TT5**

Policy TT6 – Oddicombe Beach

262 No information is provided to establish precisely what the “*Oddicombe Beach area*” comprises.

263 The Policy does not define “*new facilities*” and it is not clear, in the absence of any substantive evidence, why the development of car parks and development within the footprints of existing buildings would comprise sustainable development.

264 Also, “*historic nature*” is not defined. It comprises an imprecise term and no indication is provided of how a development might complement the natural environment of the area.

265 The Policy is not precise and it fails to provide a decision maker with a clear indication of how to react to a development proposal.

266 I recommend:

- **Delete Policy TT6**

267 Pages 28 and 29 include two “*Community Aspirations for the Council.*” It is not the role of the Neighbourhood Plan to set out Community Aspirations to direct Torbay Council.

268 Page 29 sets out two “*Community Aspirations*” and these require an appropriate introduction to ensure that they are presented as aspirations. I recommend:

- **Page 28 and top of page 29, delete the two “Community Aspirations for the Council”**
- **Page 29, take the two Community Aspirations out of the boxes remove the bold font. Change wording after the first Community Aspiration title to “*The community would like to see, and where possible will work towards enabling the following: * Support positive...*”**
- **Change wording after the second Community Aspiration title to “*The community would like to see, and where possible will work towards enabling the following: *Create a gateway...*”**

Environment

Policy TE1 – Protection of SSSI

269 Sites of Special Scientific Interest (SSSIs) are protected by law. Also, Local Plan Policy NC1, "*Biodiversity and geodiversity*," establishes that development that would have an adverse impact on such sites will not normally be permitted.

270 Policy TE1 seeks to provide for specific forms of new development within SSSIs thus introducing an inflexible approach that is not in general conformity with the Local Plan.

271 I recommend:

- **Delete Policy TE1**
- **Delete last sentence of supporting text above Policy**

Policy TE2 – Protection of the Countryside and Undeveloped Coastal Areas

272 National policy supports a range of appropriate development outside urban areas and in taking this into account, Local Plan Policy C1, "*Countryside and the Rural Economy*," sets out the various kinds of development that may be permitted in the countryside

273 Policy TE2 seeks to preclude development that the Local Plan states may be permitted. Policy TE2 is not in general conformity with the Local Plan and no substantive evidence is provided to justify the conflict identified.

274 I recommend:

- **Delete Policy TE2**
- **Delete supporting text above Policy**

Policy TE3 – Tourism Accommodation on Greenfield sites

275 National policy supports:

“...sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors and which respect the character of the countryside.” (Paragraph 28, the Framework)

276 Policy TE3 seeks to impose a presumption against tourism development on greenfield site. This fails to have regard to national policy. No substantive evidence is provided to demonstrate that Policy TE3 contributes to the achievement of sustainable development.

- **Delete Policy TE3**
- **Delete supporting text**

Policy TE4 – Local Green Space

277 Local communities can identify areas of green space of particular importance to them for special protection. Paragraph 76 of the Framework states that:

“By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances.”

278 Consequently, Local Green Space is a restrictive and significant policy designation. The Framework requires the managing of development within Local Green Space to be consistent with policy for Green Belts. A Local Green Space designation therefore provides protection that is comparable to that for Green Belt land.

279 National policy establishes that:

“The Local Green Space designation will not be appropriate for most green areas or open space.” (Paragraph 77)

280 Thus, when identifying Local Green Space, plan-makers should demonstrate that the requirements for its designation are met in full. These requirements are that the green space is in reasonably close proximity to the community it serves; it is demonstrably special to a local community and holds a particular local significance; and it is local in character and is not an extensive tract of land. Furthermore, identifying Local Green Space must be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services.

281 Part of Policy TE4 seeks to designate 100 areas of Local Green Space. Whilst this might seem like a lot of areas, I note earlier in this Report that the Neighbourhood Area covers a wide and varied geographical area and that it is home to a lot of people. Further, there is no restriction on the number of areas of Local Green Space that a Neighbourhood Plan can designate.

- 282 With the exception of two sites, it has been demonstrated that each of the areas designated meet the requirements of the Framework, as set out above.
- 283 Whilst Torbay Development Agency objected to the designation of all areas of Local Green Space, no substantive evidence was provided in respect of the contention that all of the designations are not consistent with the local planning of sustainable development. I note earlier in this Report that Torbay Council supports and welcomes the housing land allocations in the Neighbourhood Plan, as they support the growth strategy for Torbay.
- 284 However, evidence has been submitted to demonstrate that the proposed designation at Nightingale Park (TLGSS11) would conflict with Local Plan designations for development and that the proposed Local Green Space at Newton Road (TLGSS6) could constrain the possible future delivery of Edginswell Station, next to the Future Growth Area.
- 285 The proposed designation at Nightingale Park is not in general conformity with the Local Plan and is inconsistent with the local planning of sustainable development. Designation of the site as a Local Green Space would place a significant obstacle in the way of delivering development promoted in the adopted Local Plan and no substantive evidence has been presented to the contrary. The designation does not meet the tests set out in the Framework.
- 286 Whilst there is uncertainty in respect of the development of a new railway station at Edginswell, I note that its delivery, were it to come to pass, would relate to an important Future Growth Area and could provide significant opportunities for sustainable patterns of movement. However, there is no substantive evidence before me to demonstrate that the designation of land at Newton Road as Local Green Space would necessarily restrict the scope for the creation of a successful new rail link. Furthermore, the delivery of a new railway station and related features may, in themselves, comprise very special circumstances – which the Local Green Space designation allows for. I take this into account in the recommendations below.
- 287 During the Public Hearing it was established that the boundary relating to the proposed Local Green Space at Teignmouth Road was incorrectly drawn and I make a recommendation in this regard below.

288 As worded, Policy TE4 does not have regard to Paragraph 76 of the Framework, which rules out development of Local Green Space other than in very special circumstances and I make a recommendation in this regard below. National policy does not refer to “*exceptional*” circumstances and again, I recommend changes to take account of this.

289 As above, the Local Green Space designation is very important. Given this, rather than append the list of areas of Local Green Space, I recommend that it be included, along with an indicative plan, within the Neighbourhood Plan itself. Given the number of deletions recommended in this Report, I note that the Local Green Space Policy will become one of, if not the, most important land use planning Policies in the Neighbourhood Plan and it is therefore important that it is clearly presented.

290 Also, some of the supporting text does not relate to Policy TE4 and taking this and all of the above into account, I recommend:

- **Change Policy TE4 to “*Policy TE1. The areas listed below, indicated on the accompanying plan and shown in detail on the Neighbourhood Plan Policies Maps, are designated as areas of Local Green Space, where development is ruled out, other than in very special circumstances.*”**

Very special circumstances may include the provision of a new railway station at Edginswell and the provision of a new structure providing a café, beach facilities and toilets at Hollicombe Park.”

- **Delete the Local Green Space at Nightingale Park**
- **Provide a Table showing the Map reference number (LGS1 to LGS99) and name of each Local Green Space (do not include “*Community Partnership*”) following the Policy**
- **Provide an indicative plan showing the location (not the boundary) of each site, linked to numbering in the Table above, following the Policy**
- **Retain the Local Green Space boundaries on the Policies Maps but change the references to relate to LGS1-LGS99**
- **Change the boundary of the Local Green Space at Teignmouth Road in accordance with the representation made by the landowner**

- **Supporting text, page 31, delete “The sites are listed...Maps 1 to 19.”**
- **Page 31, penultimate para, delete “rather indicative of a change to how these areas are managed in the future.” Policy TE4 does not refer to site management**
- **Page 32, delete the two paras of supporting text above the Policy, which are confusing and unnecessary**

Policy TE5 – Green Infrastructure Delivery Plan

291 The Torbay Green Infrastructure Delivery Plan 2010 provides guidance. It does not provide adopted planning Policies and it is unclear, in the absence of any evidence-based justification why all development must conform with this guidance, or how such an approach would meet the requirements of Paragraph 173 of the Framework in respect of deliverability and viability.

292 I recommend:

- **Delete Policy TE5**
- **Replace with a new *“Community Aspiration. The Neighbourhood Forum would like to highlight the importance to the community of the Torbay Green Infrastructure Delivery Plan 2010 and would like to see its provisions taken into account wherever possible.”***
- **Page 32, delete last sentence of supporting text (“There are many..”)**
- **Page 33 take the Community Aspiration out of the box and remove the bold font. After “Community Aspiration” add *“The community would like to see the following: * Improve...”***

Policy TE6 – Development on Established Woodland

- 293 National policy seeks to contribute to and enhance the natural environment and seeks to minimise impacts on biodiversity and provide net gains in biodiversity where possible.
- 294 Subject to the recommendations below, Policy TE6 is a positive Policy that seeks to protect woodland as a resource, having regard to national policy. As such the Policy contributes to the achievement of sustainable development.
- 295 The two Community Aspirations below Policy TE6 read as though they comprise Policy requirements, which they do not. I recommend:
- **Change Policy TE6 to “*Policy TE2. Development on established woodland will not be supported unless it is related to the sustainable management of that woodland and/or improved public access.*”**
 - **Below Policy TE6, delete the two Community Aspirations and the single para of supporting text located between them**

Policy TE7 – Green Corridors

296 Policy TE7 is confusingly worded. It appears to require all greenfield development to provide green corridors and green links to watercourses, agricultural land, woodland or hedgerows, wherever such exist on land within or bordering the site, and to link these to facilitate the movement of wildlife.

297 However, no substantive evidence is provided to demonstrate that the provisions of the Policy are viable and deliverable, having regard to Paragraphs 173 and 201 of the Framework, in respect of viability, deliverability, necessity and being directly and fairly related to development.

298 Further to the above, the phrase "*suitable and appropriate*" is vague and imprecise and does not provide a decision maker with a clear indication of how to react to a development proposal.

299 However, notwithstanding the above, part of the intention set out has regard to the Framework's promotion of biodiversity and I recommend:

- **Change Policy TE7 to "*Policy TE3. Greenfield development should, where deliverable and viable, support the provision and/or enhancement of green infrastructure through the provision of green corridors and/or links to existing green infrastructure, to facilitate the natural movement of wildlife.*"**
- **Delete the second sentence of the supporting text above Policy TE 7 ("To help...Plan")**

Policy TE8 – Protected species, habitats and biodiversity - general

300 Policy TE8 seeks to impose a requirement for any new housing or commercial development on an unallocated site to demonstrate “*no negative impact*” on any habitat. The Policy then goes on to conflict with itself by suggesting that development should provide “*mitigating arrangements.*”

301 Consequently, the Policy does not provide for the balanced consideration of a development proposal, whereby any harm arising can be considered against any benefits. It does not contribute to the achievement of sustainable development. Further, the conflict within the Policy leads it to appear unclear and results in a Policy which does not provide a decision maker with a clear indication of how to react to a development proposal.

302 I recommend:

- **Delete Policy TE8**

Policy TE9 – European Protected Species

- 303 Policy TE9 requires the submission of independent assessments without any indication of who might pay for such. This part of the Policy does not have regard to the Framework in respect of viability and deliverability. The Policy also seeks to direct the Local Planning Authority to impose conditions and this is something beyond the scope of the Neighbourhood Plan.
- 304 Further to the above, the Policy sets out requirements in respect of matters of detail without providing any detailed justification for such. For example, there is no indication of precisely why light levels from development must be below 0.5 lux or the precise locations within which these requirements would need to be met. The Policy also sets out a requirement for the provision of a protected buffer zone, but it does not provide any substantive evidence in respect of the precise boundaries of such.
- 305 There are also legal requirements in respect of European obligations and taking these and the above into account, I recommend:
- **Replace the text of Policy TE9 with “*Development within the Edginswell Future Growth Area or the Maidencombe area (including Sladnor Park) must have a Habitats Regulations Assessment as appropriate.*” (delete rest of Policy)**
 - **Supporting text, page 34, delete the last three paras (“A landscape...determined.”)**

Policy TE10 – Marine Management Planning

306 Marine Management Licensing Requirements and Regulations are not a land use planning matter.

307 I recommend:

- **Delete Policy TE10**
- **Delete supporting text above Policy**

Health and Wellbeing

Policy THW1 – Travel Plans

308 The Neighbourhood Plan cannot direct the Local Planning Authority to impose conditions, nor place obligations on Torbay Council and its Councillors.

309 I recommend:

- **Delete Policy THW1**

310 The first and fourth Community Aspirations on page 36 require an appropriate introduction and the second and third Community Aspirations read as though they comprise Policy requirements, which they do not. The first Community Aspiration on page 37 requires an appropriate introduction and the last one reads as though it comprises a Policy requirement, which it does not. I recommend:

- **Page 36, delete “Principles” after first Community Aspiration title and add, “*The community would like to see and where possible, encourage the following: * Provide...*”**
- **Delete the second and third Community Aspirations on page 36**
- **Change text after the title of the fourth Community Aspiration to “*The community would like to encourage and enable more...*”**
- **Remove the box and bold font from the Community Aspirations to be retained on pages 36 and 37**
- **Page 37, replace first sentence of text after first Community Aspiration title with “*The community would like to see and will seek to encourage the use of open space for recreation and play being promoted by the following principles: * Retain...*”**

Policy THW2 – Allotments

- 311 The Framework requires planning policies to plan positively for the provision and use of shared space and community facilities (Paragraph 70) and to some degree, Policy THW2 has regard to this by seeking to protect allotments.
- 312 However, no examples of any existing community food production areas are provided, so it is unclear how these can be protected. Furthermore, the definition provided would include all areas of food producing farmland and there is no evidence that the blanket protection of such would have regard to national policy or contribute to the achievement of sustainable development.
- 313 Neither national nor local policy requires the blanket protection of high quality agricultural land and the Neighbourhood Plan provides no substantive justification for limiting the use of land to agriculture or food production.
- 314 Policy THW2 seeks to prevent loss of existing allotments. This has regard to Paragraph 70 of the Framework. Whilst the approach set out in the recommendation below is more stringent than that in Local Plan Policy SC4, it is, I consider that, in this case, the strong local demand and community support for the approach justifies a slightly different approach in the Neighbourhood Area.
- 315 I recommend:
- **Change Policy THW2 to “*The change of use of existing allotments will not be supported.*” (Delete rest of Policy)**
 - **Change title of Policy to that set out above**
 - **Change supporting text above Policy to “*There is high demand for allotments and the Policy below supports their retention.*”**

Policy THW3 – Community Facilities

316 The Neighbourhood Plan considers that Community Hub Facilities include, as a minimum, a food shop, a Post Office and a Doctor's Surgery or Pharmacy. Policy THW3 requires all developments of more than 20 residential units to provide Community Hub Facilities, or for 50% of dwellings to be within 400 metres or less of such facilities.

317 No substantive evidence has been provided to justify the onerous requirements of Policy THW3. In the absence of information to the contrary, the Policy does not have regard to the Framework, in respect of viability and deliverability, or being necessary or fairly and reasonably related in scale and kind to development.

318 The local community partnership does not possess "*express consent*" powers, as referred to in the Community Aspiration below Policy THW3.

319 I note that national policy supports the provision of community facilities and taking this and the above into account, I recommend:

- **Change Policy THW3 to "*The provision of new community facilities will be supported.*"**
- **Delete the supporting text above Policy TWH3, which reads as though it comprises a Policy, but does not**
- **Change title of Policy to that shown above**
- **Page 37 delete second Community Aspiration (last box on page "*No public right of way...*")**

Policy THW4 – Outside Space Provision

320 Local Plan Policy DE3, "*Development Amenity*," seeks to provide for and protect residential amenity.

321 Policy THW4 provides for minimum areas of outside space and is in general conformity with the Local Plan, other than it is unclear in respect of why open space standards for flats can be ignored if the flats are located near to green space or the coastline. The existence of green space and the coastline is not the same thing as accessible outside space and as set out, the Policy does not contribute to the achievement of sustainable development.

322 Taking the above into account, I recommend:

- **Policy THW4, delete "unless it is within an easy walk of a public access green space or the coastline."**
- **Supporting text above Policy, delete "or access to public green spaces or the coastline."**

Policy THW5 – Access to sustainable transport

323 Policy THW5 is a restrictive Policy. There is no substantive evidence to demonstrate that its provisions have been considered against all allocations for residential development in Torquay. Consequently, in the absence of evidence to the contrary, it cannot be concluded that Policy THW5 contributes to the achievement of sustainable development. Rather, the Policy appears to place a barrier in the way of the delivery of allocated development sites and prevents sustainable growth.

324 I recommend:

- **Delete Policy THW5**

Policy THW6 – Cycle Storage and Changing Facilities

325 Policy THW6 imposes a requirement without regard to the Framework in respect of viability and delivery. Also, the Policy includes a vague reference to “*where reasonably possible*” and thus, it does not provide a decision maker with a clear indication of how to react to a development proposal, having regard to Paragraph 154 of the Framework.

326 However, the provision of cycling facilities may serve to contribute to the promotion of sustainable transport modes, having regard to Chapter 4 of the Framework, “*Promoting sustainable transport.*”

327 I recommend:

- **Change Policy THW6 to “*The provision of secure cycle storage and showers for staff as part of employment development, will be supported.*”**

Sport and Leisure

Policy TSL1 – Alpine Ski Facility

328 Policy TSL1 is imprecise and confusing. The aim of the Policy, as set out in the supporting text, is to protect the Alpine Ski Facility. However, as set out the focus of the Policy is not the Facility itself.

329 The safeguarding of an important community sports facility has regard to Paragraph 73 of the Framework, which recognises the important contribution that opportunities for sport and recreation make to the health and well-being of communities.

330 I recommend:

- **Change Policy TSL1 to *“The loss of the Alpine Ski Facility will not be supported unless the facility is re-provided to the same, or a better standard, in an equally accessible location elsewhere in the Neighbourhood Area.”***

331 In respect of the Community Aspirations on page 39 and 40 I recommend:

- **Change fourth para of supporting text on page 39 to *“We would also like the Council to provide long term...”***
- **All Community Aspirations on pages 39 and 40, remove boxes and remove bold font**
- **Combine first two Community Aspirations (first column page 39) as *“The community would like to see Clubs working together to ensure their sustainability and would like the Council to provide long term leases at nominal rent for Council-owned facilities.”***
- **Change next Community Aspiration (second column page 39) to *“The Community would like there to be a single...usable length to 25m could provide an interim step.”* And the one after that to *“The Community would like there to be a regional standard athletics track at Nightingale Park at the Willows.”***

- **Page 40, change second Community Aspiration to *“The Community would like the Council to provide facilities and access to angling spots in conjunction with local clubs.”***
- **Change third Community Aspiration on page 40 to *“The Community would like there to be a new, purpose-built...track in an accessible location and existing facilities to be maintained to a safe standard.”***
- **Delete line of text in the second column at the top of page 40 as well as the line of text under “Water Sports” in the same column. Also delete the four headings that follow (re: horse riding, tennis, bowls, water sports). Combine the five Community Aspirations into the following: *“The Community would like there to be a good quality sustainable public access golf course in Torquay; horse riding opportunities in Torquay’s countryside; a tennis court with a range of public hire courts; and the provision of water sport opportunities.”***

Policy TSL2 – Sport and Leisure – Nightingale Park

332 Policy TSL2 is confusing and conflicts with itself. It requires not less than 50% of Nightingale Park to be used for a sports, leisure and recreational hub, but then seeks to limit any development to the provision of public access, changing facilities, landscaping and ancillary uses.

333 Notwithstanding the above, no substantive evidence is provided to justify the 50% figure, or the restriction on development uses. In any case, the Policy is not in general conformity with Local Plan Policy SC2, "*Sport, leisure and recreation*," which establishes a flexible approach to the provision of sports facilities.

334 I recommend:

- **Delete Policy TSL2**

Policy TSL3 – Sport and Leisure and Policy TSL4 – Sport and Leisure – Sports grounds and facilities

335 Policy TSL3 is imprecise, as it fails to set out precisely which areas it seeks to protect for the purposes of sport and leisure. It also seeks to direct the Local Planning Authority in respect of the determination of planning applications and is inflexible to the point that it is not in general conformity with Local Plan Policy SC2 (referred to in Policy TSL2, above).

336 However, the clear intent of the Policy is to protect sports facilities having regard to Paragraph 73 of the Framework.

337 Similarly to Policy TSL3, Policy TSL4 seeks to protect sports facilities, having regard to the Framework, but is worded in a way that directs the Local Planning Authority in respect of the determination of planning applications (and runs the risk of pre-determining the application process by doing so).

338 I recommend:

- **Combine Policies TSL3 and TSL4 to create a new Policy: “*Policy TSL2. The loss of the sports and recreational facilities at Torquay Valley of Sport, Torquay Sports Cluster and Upton Park (as shown on the plans below) and/or the loss of any other existing playing or sports fields will not be supported, unless replaced by equal or better facilities in equally or more easily accessible locations in the Neighbourhood Area.*”**
- **Provide a new plan, or plans, below the Policy showing the precise boundary of the sports and recreational facilities identified in the Policy (only) to be protected.**

Transport

Policy TTR1 – Access to Primary Schools

339 Policy TTR1 seeks to prevent all residential development of more than 20 units unless a new primary school will be constructed within “an easy walk” of 80% of homes, or it can be shown that there are sufficient school places available.

340 The Policy fails to have regard to national policy, which states that:

“The Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement...They should give great weight to the need to create, expand or alter schools...” (Paragraph 72, the Framework).

341 Policy TTR1 sets out an inflexible approach that fails to have regard to Paragraphs 173 and 204 of the Framework in respect of viability, deliverability and planning obligations. No substantive evidence is provided to demonstrate that the requirements of the Policy have been tested against the requirements of the adopted Local Plan and in the absence of such evidence, the Policy places a major obstacle in the way of providing for sustainable growth.

342 I recommend:

- **Delete Policy TTR1**
- **Delete heading and para of text above the Policy**

Policy TTR2 – Sustainable Communities

343 Policy TTR2 effectively repeats the requirements set out in Policy THW5. As a consequence, Policy TTR2 appears as a highly restrictive Policy. It is unsupported by substantive evidence to demonstrate that its provisions have been considered against all greenfield allocations for residential development in Torquay.

344 In the absence of evidence to the contrary, it cannot be concluded that Policy THW5 contributes to the achievement of sustainable development. Rather, the Policy places a barrier in the way of the delivery of allocated development sites and prevents sustainable growth.

345 I recommend:

- **Delete Policy TTR2**
- **Delete the para of supporting text above the Policy**

Policy TTR3 – Potential Park and Ride or Helipad Facility

346 Policy TTR3 seeks to direct the Local Planning Authority to impose conditions. Furthermore, the requirements set out are not supported by any substantive evidence to demonstrate that they are viable and deliverable, having regard to Paragraph 173 of the Framework. As an aside, I note that there is no substantive evidence to demonstrate that the requirements meet the relevant tests for planning conditions, set out in Paragraph 206 of the Framework.

347 I recommend:

- **Delete Policy TTR3**

348 A number of “*Community Aspirations*” are set out on pages 42 to 44. I recommend:

- **All Community Aspirations on pages 42 to 44, remove boxes and remove bold font**
- **Page 42, delete heading “Town centre and harbour area” and combine the two Community Aspirations. Underneath the Community Aspiration title add “*The community would like to see the following: * Entry...- a review of the traffic light system and better interconnection...*”**
- **Page 43, under first Community Aspiration heading add “*The community would like to see the following: * Clearer signage for entry into...*”**
- **Page 43, delete text under “Harbour area” which reads like a Policy requirement**
- **Page 43, second Community Aspiration, add “*The community would like to see: * The Strand...*”**
- **Page 43, top of second column, add “*The community would like to see a situation whereby: * Cars and Buses...*”**

- **Page 43 second column, change to “*The community would like to see the routes of buses...terrain being maintained...*”**
- **Delete para of text at end of Page 43 (“A potentially...adjoining sites.”**
- **Add to first Community Aspiration on Page 44, “*The community would like to encourage actions which: * Maximise...*”**
- **Delete the next two “Community Aspirations” which read as a combination of statements and Policy requirements.**
- **Delete last Community Aspiration, which seeks to place an obligation on Torbay Council (“The Hele...”)**

8. The Neighbourhood Plan: Other Matters

349 The remaining sections of the Neighbourhood Plan do not contain any Policies. They present many "*Community Aspirations*" the majority of which appear as Policy requirements, or statements that something will happen, without any evidence to demonstrate that this will be the case. As such, unlike the Community Aspirations recommended for retention in the main body of the Neighbourhood Plan and which relate to associated land use Policies, pages 45 to 72 appear to detract from the clarity and precision of the Neighbourhood Plan.

350 I recommend:

- **Delete pages 45 to 72**

351 In making the above recommendation, I note that some of the information provided might form the basis for future plans or documents and this is a matter for the Neighbourhood Forum to consider. However, the Community Partnership section is introduced by a statement that the information supports "*the overall development of Torquay,*" which is not the case.

352 Taking the above into account, I consider that simply moving the information, as set out, to the Appendices would result in a transfer of confusing and potentially misleading information from one place to another.

353 The Policies Maps should form part of the Neighbourhood Plan itself, rather than be appended.

354 I recommend:

- **Provide the Policies Maps at the end of (but within) the Neighbourhood Plan and ensure that these are referenced on the Contents page**

- **For clarity, the Key and Maps should show areas of Local Green Space, Neighbourhood Plan Housing Allocations, Local Plan Housing, Village Envelopes (as defined by the adopted Local Plan), CTIAs, and the Edginswell Future Growth Area. For clarity, the Key and Maps should show the Neighbourhood Area (but not Community Partnership Areas – which are not a land use policy matter)**

355 The recommendations made in this Report will have a subsequent impact on Contents, Tables, Plans and page/Policy numbering.

356 I recommend:

- **Update the Contents, Tables, Plans and page/Policy numbering, taking into account the recommendations contained in this Report.**

9. Referendum

357 I recommend to Torbay Council that, subject to the modifications proposed, **the Torquay Neighbourhood Plan should proceed to a Referendum.**

Referendum Area

358 I am required to consider whether the Referendum Area should be extended beyond the Torquay Neighbourhood Area.

359 I consider the Neighbourhood Area to be appropriate and there is no substantive evidence to demonstrate that this is not the case.

360 Consequently, I recommend that the Plan should proceed to a Referendum based on the Torquay Neighbourhood Area approved by Torbay Council and confirmed by public notice on the 7th December 2017.

Nigel McGurk, July 2018
Erimax – Land, Planning and Communities



EST. 2011