

WIRRAL COUNCIL

CABINET

5 NOVEMBER 2015

SUBJECT:	DESIGNATION OF A NEIGHBOURHOOD PLANNING FORUM FOR BIRKENHEAD AND TRANMERE
WARDS AFFECTED:	BIRKENHEAD AND TRANMERE AND ROCK FERRY (THE DESIGNATED AREA ADJOINS THE WARDS OF PRENTON AND OXTON)
REPORT OF:	STRATEGIC DIRECTOR FOR REGENERATION AND THE ENVIRONMENT
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR PAT HACKETT - ECONOMY
KEY DECISION	YES

1.0 EXECUTIVE SUMMARY

- 1.1 In March 2015 the Birkenhead and Tranmere Neighbourhood Planning Forum applied to the Council to be formally designated as a statutory neighbourhood forum for a proposed neighbourhood area based on the Electoral Ward of Birkenhead and Tranmere. Public consultation took place in accordance with a Delegated Decision published on 7 May 2015, to comply with national regulations.
- 1.2 The applications were considered by Cabinet on 27 July 2015 (Minute 44 refers). Cabinet resolved to refuse the application for the neighbourhood area as originally submitted and to designate a smaller area, to the south and east of Borough Road. Cabinet also resolved to ask the Forum to confirm whether it would still be willing to act in relation to the smaller area and to confirm if it was still able to meet the the conditions for designation set out in Section 61F of the Town and Country Planning Act 1990 (as amended), before the Forum could be formally designated as the statutory neighbourhood planning forum for the smaller designated area.
- 1.3 As the Forum has now provided the necessary information, this report recommends that the Birkenhead and Tranmere Neighbourhood Planning Forum is formally designated as the statutory neighbourhood planning forum for the Neighbourhood Area for Birkenhead and Tranmere shown in Appendix 1 to this report.
- 1.4 If designated, the Forum will only be endorsed as a qualifying body for the purposes of neighbourhood planning within the Neighbourhood Area designated by the Council on 27 July 2015 and not within the wider area of the operation of the Forum, which falls outside this designation.

2.0 BACKGROUND

- 2.1 The Localism Act 2011 and accompanying regulations allow communities to have more control over planning and development within their area. Using these new powers, community groups can apply to the Council to be designated as a neighbourhood forum, to allow them to develop land-use planning proposals for a defined neighbourhood area, which can include the preparation of a statutory neighbourhood development plan and neighbourhood development orders.

- 2.2 A previous Delegated Report (published on 7 May 2015) considered the original application submitted to the Council by the Birkenhead and Tranmere Neighbourhood Planning Forum to establish a neighbourhood forum and a neighbourhood area for Birkenhead and Tranmere. The Delegated Report concluded that the application documents complied with the relevant statutory requirements and were appropriate for publication for statutory public consultation, which took place between 20 May and 3 July 2015.
- 2.3 Cabinet considered the applications on 27 July 2015 (Minute 44 refers) and resolved to refuse the application for the neighbourhood area as originally submitted and to designate a smaller, predominantly residential neighbourhood area, to the south and east of Borough Road.
- 2.4 A copy of the boundary to the Neighbourhood Area designated by Cabinet on 27 July 2015 is attached at Appendix 1 to this report.
- 2.5 The decision to designate the accompanying neighbourhood forum was deferred, to allow the Forum to confirm whether it was still willing to act in relation to the smaller area and to confirm that it was still able to meet the conditions for designation set out in Section 61F of the Town and Country Planning Act 1990 (as amended).

Designation of a Neighbourhood Forum

- 2.6 The requirements for designating a neighbourhood forum are set out in national legislation.
- 2.7 To qualify, a forum must be established for the express purpose of promoting or improving the social, economic and environmental wellbeing of an area that consists of or includes the neighbourhood area concerned; the membership of the forum must be open to individuals who live in, who work in or are elected to represent the neighbourhood area; the membership must include a minimum of 21 individuals, each of whom lives in, works in or is elected to represent the neighbourhood area; and the forum must have a written constitution.
- 2.8 When deciding whether to designate a neighbourhood forum for a neighbourhood area, the Council must have regard to the desirability of designating an organisation which has secured, or taken reasonable steps to attempt to secure, that its membership includes at least one person who lives in the area, one person who works there and one person who has been elected to represent the area; whose membership is drawn from different places in the neighbourhood area concerned and from different sections of the community in that area; and whose purpose reflects (in general terms) the character of that area.
- 2.9 The forum is not, however, required to have a member from each membership category in order to be designated.
- 2.10 Only one body can be designated as a neighbourhood forum for each neighbourhood area and the Council can only withdraw the designation of a neighbourhood forum if the body no longer meets the conditions by reference to

which it was designated or no longer meets any other criteria to which the authority were required to have regard in making their decision to designate.

- 2.11 If an application to designate a neighbourhood forum is refused, the Council must publish a refusal statement setting out the decision and their reasons for making that decision, which can be subject to challenge in the courts.

3.0 THE PROPOSED NEIGHBOURHOOD FORUM

- 3.1 Subject to the boundary of the neighbourhood area, the Cabinet Report for 27 July 2015 concluded that the original application for the neighbourhood forum would have met the relevant statutory requirements for neighbourhood planning (Minute 44, paragraph 4.7 refers).

- 3.2 The Cabinet resolution to designate a smaller neighbourhood area has, however, required the Forum to revise its constitution - to only allow statutory neighbourhood planning to take place within the designated Neighbourhood Area shown in Appendix 1 - and has required the Forum to re-confirm that it can still demonstrate a qualifying membership of sufficient size to comply with statutory requirements.

- 3.3 The Forum has therefore submitted a revised application letter and a revised constitution.

Revised Application Letter

- 3.4 The revised application letter is attached at Appendix 2 to this report.
- 3.5 The revised application letter shows that the Forum has made significant efforts to attempt to secure a representative qualifying membership, including at least one individual from each of the sub-groups identified in Section 61F(5) of the 1990 Act and from different places and different sections of the community within the area and to ensure that its object reflects the character of the area.
- 3.6 Membership has increased since the original application was submitted in March 2015. The Forum currently has 43 members, 28 of whom live in, work in or are elected to represent the designated Neighbourhood Area shown in Appendix 1, which exceeds the minimum of 21 individuals required to establish a qualifying body for the designated Neighbourhood Area. Twenty-one of these qualifying members live in the designated Neighbourhood Area; five work in the designated Neighbourhood Area; and two are Ward Councillors elected to represent the Neighbourhood Area, which has been verified as correct by Council Officers.
- 3.7 The revised application letter also sets out the profile of Forum members as a whole and concludes that the Forum's membership is broadly representative of the population of the designated Neighbourhood Area.

Revised Constitution

- 3.8 The revised constitution is attached at Appendix 3 to this report.

- 3.9 The constitution now distinguishes between the wider area of the operation of the Forum (the 'area of benefit' defined in Clause 3 of the revised constitution - which continues to reflect the Birkenhead and Tranmere Ward boundary) and the Neighbourhood Area designated by Cabinet on 27 July 2015 (as defined in Clause 4 of the revised constitution).
- 3.10 Clause 5 of the revised constitution now provides for two classes of membership: to separate members who will be eligible to vote for actions to be undertaken within the designated Neighbourhood Area shown in Appendix 1 (with 'enhanced membership', as defined in Clause 5(b) of the revised Constitution), from members who will only be able to vote on actions to be undertaken within the wider 'area of benefit' (with 'standard membership', as defined in Clause 5(a) of the revised constitution).
- 3.11 Clause 9(k) and Clause 11(a) will then ensure that only those qualified for 'enhanced membership' (who live in, work in or have been elected to represent the Neighbourhood Area), will be involved in any decisions related to statutory neighbourhood planning within the designated Neighbourhood Area shown in Appendix 1, reinforced by a new duty on the Honorary Secretary in Clause 9(c).
- 3.12 In terms of the more general provisions, the object of the Forum, as set out in Clause 2 of the revised constitution, remains: "to promote or improve social, economic and environmental well-being" within its wider 'area of benefit', which includes the Neighbourhood Area shown in Appendix 1.
- 3.13 The revised constitution will continue to commit the Forum to engaging with the Council and with any other statutory agency, business or civil society organisation with an interest in the area, to collaborate for mutual benefit (Clause 2(a)); to engage with the local community to publicise and promote the work of the Forum (Clause 6(d)); and to work collaboratively on the preparation of neighbourhood planning proposals (Clause 11(d) refers).
- 3.14 Clause 5 of the revised constitution will ensure that membership will continue to remain open to anyone who lives in, works in or has been elected to represent the Neighbourhood Area shown in Appendix 1; Clause 11(b) will ensure that all neighbourhood planning consultations will be open to anyone who lives or works in or has an interest in the Neighbourhood Area, whether members of the Forum or not; and Clause 11(c) that the Forum will seek to involve everyone who lives, works or carries on business in the designated Neighbourhood Area.

4.0 CONCLUSIONS

- 4.1 In the light of the information submitted, it is considered that the application submitted by the Birkenhead and Tranmere Neighbourhood Forum, as revised, will meet the statutory requirements to be formally designated as the qualifying body for the designated Neighbourhood Area shown in Appendix 1 to this report.

5.0 RELEVANT RISKS

- 5.1 As compliance with the national neighbourhood planning regulations is not discretionary, the principal risks to the Council are legal and financial, dependent on the continued availability of Government grants.

- 5.2 A decision not to designate the Birkenhead and Tranmere Neighbourhood Planning Forum could be subject to legal challenge.
- 5.3 Potentially abortive costs at independent examination and local referendum could be mitigated by working in partnership with the Birkenhead and Tranmere Neighbourhood Planning Forum, to maximise the potential success of their neighbourhood planning proposals.
- 5.4 An alternative body could apply to the Council to be allowed to develop land-use planning proposals within the Forum's wider 'area of benefit'. If such a body met the statutory requirements for designation, the Council would not be able to refuse such a designation, providing the proposed neighbourhood area was outside the Neighbourhood Area designated by the Council on 27 July 2015.

6.0 OTHER OPTIONS CONSIDERED

- 6.1 The Council must deal with applications as submitted.
- 6.2 The option of amending the constitution of the Forum to only apply to the smaller designated Neighbourhood Area shown in Appendix 1 was discounted by the Forum following correspondence with representatives from the Department for Communities and Local Government.
- 6.3 The Forum has made it clear that it wishes to continue to operate outside the neighbourhood planning process within the wider 'area of benefit' defined in Clause 3 of the revised constitution.
- 6.4 The potential availability of alternative planning powers will be a matter to be considered by the Forum in consultation with the Council as their neighbourhood planning proposals are prepared.

7.0 CONSULTATION

- 7.1 The original application for designation has been publicised in accordance with national regulations.
- 7.2 The application documents were published on the Council's website on 20 May 2015 and public consultation took place between 20 May and 3 July 2015. The consultation was advertised through public notices in the local free press on 20 May, 27 May and 24 June 2015 and through a news item on the Community Action Wirral website, on 20 May 2015. Notification was also sent to:
- Ward Councillors for Birkenhead and Tranmere; Oxton; and Rock Ferry;
 - 1,240 contacts on the Council's Local Plan contacts database (856 by e-mail and 384 by letter, including consultation bodies listed in Schedule 1 of the Neighbourhood Planning (General) Regulations 2012);
 - 3,059 local businesses, through the weekly broadcast issued by Business Wirral and the Wirral Chamber of Commerce on 20 May and 29 May 2015;
 - 7,913 contacts from the Council's previous budget option consultations;
 - the Member of Parliament for Birkenhead; and
 - 60 Birkenhead Constituency Area Committee contacts.

- 7.3 Paper copies of the application documents were placed for public inspection at Birkenhead Central Library and at the North Annexe of Wallasey Town Hall.
- 7.4 Fourteen responses were submitted, one of which indicated that the organisation had no comment to make on the application, which were reported to Cabinet on 27 July 2015. None were made with regard to the proposed constitution of the Forum.
- 7.5 Any subsequent proposals by the Birkenhead and Tranmere Neighbourhood Planning Forum within the designated Neighbourhood Area shown in Appendix 1 will need to be subject to statutory public involvement, independent examination and local referendum before they can be formally approved.

8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 8.1 The constitution of the proposed Birkenhead and Tranmere Neighbourhood Planning Forum will ensure that any other willing local group or individual will also be able to contribute to the content of any emerging neighbourhood planning proposals.

9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

- 9.1 The costs associated with the designation of the Forum can be met from existing resources in Regeneration and Planning.
- 9.2 An un-ring-fenced grant of £5,000 is available to the Council from the Department of Communities and Local Government, to cover these costs, if the designation of the neighbourhood forum is confirmed before the end of 2015/16.
- 9.3 Future grants of up to £25,000, which are currently available to help councils with costs associated with publishing a submitted draft Neighbourhood Plan, arranging an independent examination and holding a local referendum, may not be available during 2016/17.
- 9.4 Following designation, the proposed Forum will be responsible for drawing up Neighbourhood Planning proposals in line with national regulations.
- 9.5 Any additional resources to support the proposed Forum and the later stages of the neighbourhood planning process, including publishing a draft Plan, arranging an independent examination and holding a local referendum, will need to be met from resources held by the Strategic Director for Regeneration and the Environment, less any available grant monies.
- 9.6 Recent local experience suggests that an independent examination could cost between £10,000 and £15,000, depending on the nature of the proposals to be contained within any proposed Neighbourhood Plan.
- 9.7 A local referendum of registered electors within the area applied for is currently expected to cost up to £10,000.

10.0 LEGAL IMPLICATIONS

- 10.1 If designated, the Forum will only be endorsed as a qualifying body for the purposes of taking decisions on neighbourhood planning within the designated Neighbourhood

Area shown in Appendix 1 and not within the wider 'area of benefit' falling outside this designation.

- 10.2 The Council has a legal duty to support local communities in their preparation of statutory neighbourhood planning proposals and must accept and publish proposals for designation that comply with the requirements of the Localism Act.
- 10.2 The Council can only refuse to designate a forum where it does not meet the prescribed conditions of the Act and must publish the reasons for refusing any application.
- 10.3 When considering whether to designate a neighbourhood forum, the Council must have regard to the desirability of designating an organisation or body which has secured or taken reasonable steps to attempt to secure that its membership: contains at least one individual who lives in the area, one individual who works in the area and one individual who is an Elected Member for that area; is drawn from different places and from different sections of the community within the area concerned; and that the purpose of that organisation or body reflects, in general terms, the character of that area.
- 10.4 The Council may only designate one organisation or body as the neighbourhood forum for each neighbourhood area and neighbourhood areas are not allowed to overlap each other. Once designated, no other organisation or body may be designated for that neighbourhood area until that designation expires or is withdrawn.
- 10.5 As soon as possible after designating a neighbourhood forum the Council must publish the name of the neighbourhood forum; a copy of the written constitution of the neighbourhood forum; the name of the neighbourhood area to which the designation relates; and contact details for at least one member of the neighbourhood forum, on their website and in such other manner as they consider is likely to bring the designation to the attention of people who live, work or carry on business in the neighbourhood area.
- 10.6 Following designation, the neighbourhood planning forum will be responsible for the preparation of a draft plan, in line with national regulations which provide for statutory public involvement and for submitting the draft plan to the Council for publication and examination by an independent person with appropriate qualifications and experience.
- 10.7 The Council must make a proposed neighbourhood plan part of the statutory Development Plan for Wirral, if it passes the examination and is supported by a majority of those voting in a local referendum.
- 10.8 The designation of a forum will initially last for five years. Once designated, the Council will only be able to withdraw the designation of the forum, if the forum no longer meets the statutory conditions for designation.
- 10.9 Any local referendum will need to comply with the Neighbourhood Planning (Referendums) Regulations 2012 (SI 2012 No. 2031) (as amended).

- 10.10 The proposal to give neighbourhood forums which have a neighbourhood development plan that has passed referendum, the right to begin the process to create a new town and parish council, without the requirement to submit a supporting petition, was announced in January 2015.
- 10.11 A duty to spend a proportion of any Community Infrastructure Levy receipts in neighbourhood areas with a neighbourhood plan in place, came into force in 25 April 2013.

11.0 EQUALITIES IMPLICATIONS

- 11.1 An updated equalities impact review can be viewed at: <http://www.bit.ly/regenEIA> (under the heading “Regeneration and Planning”)
- 11.2 The constitution, object and open membership of the proposed neighbourhood planning forum should have positive equalities implications. A new equalities impact assessment will, however, need to be prepared once any final neighbourhood planning proposals have been prepared.

12.0 CARBON REDUCTION IMPLICATIONS

- 12.1 It is a legal requirement that neighbourhood planning proposals must contribute towards the achievement of sustainable development.

13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

- 13.1 If designated, the Birkenhead and Tranmere Neighbourhood Planning Forum would become the statutory Neighbourhood Planning Forum for the designated Neighbourhood Area shown in Appendix 1, for five years from designation or until the designation is withdrawn and no other organisation or body may be designated as the Neighbourhood Forum for the Area until the designation expires or is withdrawn.
- 13.2 Once designated, the Forum will be responsible for the preparation of draft neighbourhood planning proposals in line with national regulations including national policy and will become a consultee on planning applications within the designated Neighbourhood Area shown in Appendix 1.
- 13.3 Subject to passing independent examination and a majority vote in a local referendum, any Neighbourhood Development Plan would become part of the Council’s statutory Development Plan alongside the Unitary Development Plan, the Joint Waste Local Plan for Merseyside and Halton and, once adopted, the emerging Core Strategy Local Plan and must be used in the determination of individual planning applications.
- 13.4 The Forum must demonstrate that their final proposals will meet the basic conditions set out in national legislation. The Forum must have regard to national policy and guidance and their proposals must be in general conformity with the Council’s strategic land use planning policies, which include the Council’s Unitary Development Plan, the joint Waste Local Plan for Merseyside and Halton and, once adopted, the emerging Core Strategy Local Plan.

14.0 RECOMMENDATIONS

- (1) That the Birkenhead and Tranmere Neighbourhood Planning Forum is formally designated as the statutory neighbourhood planning forum for the Neighbourhood Area of Birkenhead and Tranmere shown in Appendix 1 to this report, subject to the revised constitution attached at Appendix 3 to this report; and
- (2) That the designation and the associated documents are published in accordance with Regulation 10 of the Neighbourhood Planning (General) Regulations 2012.

15.0 REASONS FOR RECOMMENDATIONS

- 15.1 To fulfil the Council's statutory duties for the administration of an application to establish a statutory neighbourhood planning forum for Birkenhead and Tranmere.

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APPENDICES

Appendix 1 – Designated Neighbourhood Area for Birkenhead and Tranmere
Appendix 2 – Revised Application Letter
Appendix 3 – Revised Constitution

REFERENCE MATERIAL

[Localism Act 2011](#) (Part 6, Chapter 3 and Schedules 9 to 12 refer)
[The Neighbourhood Planning \(General\) Regulations 2012 \(2012, No. 637\)](#),
Regulations 5 to 10 refer
[The Neighbourhood Planning \(General\) \(Amendment\) Regulations 2015 \(2015, No. 20\)](#), Regulation 2 refers
[National Planning Policy Framework \(CLG, March 2012\)](#), paragraphs 183 to 185 refer
[National Planning Practice Guidance](#) (CLG, [Neighbourhood Planning](#) pages refer)
The Council's adopted Unitary Development Plan can be viewed at
<http://www.wirral.gov.uk/my-services/environment-and-planning/planning/local-development-framework/unitary-development-plan>
The Proposed Submission Draft Core Strategy Local Plan can be viewed at
<http://www.wirral.gov.uk/my-services/environment-and-planning/planning/local-development-framework/core-strategy-development-plan>
Further background information can be viewed on the Forum's website at
<http://batnpf.org/>

A copy of the Council's Delegated Decision to publicise the original application can be viewed at <http://democracy.wirral.gov.uk/ieDecisionDetails.aspx?ID=2952>

A copy of the 27 July 2015 Cabinet Report (Minute 44) can be viewed at
<http://democracy.wirral.gov.uk/ieListDocuments.aspx?CId=121&MId=5361&Ver=4>

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Delegated Decision - Application for the Designation of a Neighbourhood Planning Forum and a Neighbourhood Planning Area for Birkenhead and Tranmere (approval of statutory public consultation)	7 May 2015
Cabinet Decision - Designation of a Neighbourhood Planning Forum and Neighbourhood Planning Area for Birkenhead and Tranmere.	27 July 2015