

OVERVIEW AND SCRUTINY BOARD

A meeting of **Overview and Scrutiny Board** will be held on

Thursday, 16 October 2014

commencing at **5.00 pm**

The meeting will be held in the The Riviera International Centre, Chestnut Avenue, Torquay, Devon, TQ2 5LZ

Members of the Board

Councillor Thomas (J) (Chairman)

Councillor Bent
Councillor Darling (Vice-Chair)
Councillor Davies
Councillor Hytche

Councillor Kingscote
Councillor Pentney
Councillor Stockman
Councillor Tyerman

Co-opted Members of the Board

Penny Burnside, Diocese of Exeter

Working for a healthy, prosperous and happy Bay

For information relating to this meeting or to request a copy in another format or language please contact:

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01803 207063

Email: scrutiny@torbay.gov.uk

OVERVIEW AND SCRUTINY BOARD AGENDA

1. Apologies

To receive apologies for absence, including notifications of any changes to the membership of the Committee.

2. Declarations of Interest

- a) To receive declarations of non pecuniary interests in respect of items on this agenda

For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

- b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda

For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(Please Note: If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)

3. Urgent Items

To consider any other items that the Chairman decides are urgent.

4. Proposed Covenant protecting Churston Golf Course from development

(Pages 1 - 17)

The above decision was called-in by Councillors Morey, Ellery, Darling, Tyerman, Doggett, Davies, Cowell, Parrott and Brooksbank on 7 October 2014.

The reasons for the call-in are:

That insufficient time was allowed to explore the implications and consequences of agreeing to the implementation of a covenant on Churston Golf Course and that the consequences of the Mayor implementing his decision could result in the council acting illegally, the local tax payer becoming liable to legal costs and damages that could easily exceed £100,000, the Local Plan becoming void and opening up Greenfield sites for inappropriate development across Torbay and therefore we request that the Overview and Scrutiny Board carry out a detailed investigation into seeking

answers to the attached questions, assisted by the Executive Head of Commercial Services and other relevant officers.

Supporting Documents

Record of Decision

Report considered by the Mayor and Council

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REASON FOR CALL-IN:

That insufficient time was allowed to explore the implications and consequences of agreeing to the implementation of a covenant on Churston Golf Course and that the consequences of the Mayor implementing his decision could result in the council acting illegally, the local tax payer becoming liable to legal costs and damages that could easily exceed £100,000, the Local Plan becoming void and opening up Greenfield sites for inappropriate development across Torbay and therefore we request that the Overview and Scrutiny Board carry out a detailed investigation into seeking answers to the following questions, assisted by the Executive Head of Commercial Services and other relevant officers.

1. Is the proposed covenant legal or legally advisable as it could result in existing leaseholders to claim compensation e.g. Churston Golf Course, TCCT and others in due course which are likely be affected, as the retrospective imposition of restrictive covenants was not envisaged when the tenants originally entered into the terms of the lease?
2. Barclays Bank appears to have first charge over the 999 year lease, signed by the Golf Club. Are there any other parties who have charges over the land? What are the consequences of the proposed Churston Covenant on this land and, specifically, is any liability likely to fall on the Council if Churston Golf Club default on its borrowings (as a result of the introduction of the Churston Covenant)?
3. What is the likely impact of agreeing to the Churston Covenant on current progress with the Local Plan?
4. What is the potential impact, of agreeing to the Churston Covenant, on the Council's 5 year supply of housing land? If the Council does not have a 5 year housing land supply, what are the consequences?
5. Does the Churston Covenant result in any change to the financial value of land comprising Churston Golf Course? If so, how much is the change in value and what is the potential loss of other benefits?
6. Will the decision deter future investment into the Bay as proposals concerning council owned land (housing or otherwise) will carry the added risk of a covenant being granted after considerable development costs have been incurred for those sites?
7. If similar petitions, to that put forward by Churston & Galmpton Community Partnership, are received in relation to other Council assets will they result in any change to the financial value of those assets? If so, how much is the likely change in value for each asset? If this precedent is applied the other Council owned sites identified within the Local Plan and, in particular, the next five year's land supply for housing, what is the potential loss of capital receipt to the Council for each of these sites?
8. Was the petition legally made, what is the detailed wording of the petition and does the proposed covenant accord with the requirements of the petition?

9. Does the granting of a covenant, primarily in response of a petition, create a legal precedent and if the council has a duty to act consistently, what are wider implications of such a decision for Mayor Oliver and future Administrations?

10. As the decision is predicated on the strength of a single petition, can officers provide a breakdown of postcodes recorded and have officers checked the petition for duplication or erroneous entries etc? If so, can members be informed of their findings?

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Appendix 1

Record of Decisions

Petition requesting a covenant protecting Churston Golf Course from development

Decision Taker

Mayor on Thursday, 25 September 2014

Decision

That the Council enters into a deed covenanting with the residents of Churston & Galmpton ward in the following terms;

‘Torbay Council covenants with all inhabitants of the ward of Churston and Galmpton that for a period of 100 years beginning on the date of this deed it will not on the land, shown edged in red on the plan attached to the submitted report, known to be Churston Golf Course, allow any development of Churston Golf Course without any such proposal first obtaining the majority of votes in a referendum of the persons who at the day of the referendum would be entitled to vote as electors at an election of Councillors for the Churston and Galmpton Ward and are registered as local government electors at an address within this Ward. For the purposes of this covenant ‘development’ shall not include any development permitted under the terms of the lease between The Council of the Borough of Torbay and Churston Golf Club Limited dated 3 April 2003. Nothing contained or implied in this Deed shall prejudice or affect the exercise by the Council of its regulatory functions under the Town and Country Planning Act 1990 or any other statute or statutory instrument.’

The Covenant would be appropriately registered with the Land Registry.

Reason for the Decision

To respond to the petition requesting the Council to enter into a covenant to not allow development of Churston Golf Course. By entering into the deed of covenant with the residents of Churston and Galmpton ward, no development, other than that already permitted by the lease dated 3 April 2003, will be able to take place on Churston Golf Course without first obtaining consent of the majority of those residents taking part in a referendum on the development proposals.

Implementation

This decision will come into force and may be implemented on Wednesday 8 October 2014 unless the call-in procedure is triggered (as set out in the Standing Orders in relation to Overview and Scrutiny).

Information

A petition has been received requesting the Council to enter into a covenant to not allow development of Churston Golf Course without first obtaining the agreement of the majority of the residents of the Churston and Galmpton ward. The wording of the petition is set out below:

‘In 2012, Torbay Council made a covenant with the residents of Paignton promising not

to allow any development of Paignton Green without the agreement of the majority of residents. In July 2014, the Council then covenanted with the residents of St Marychurch promising not to allow any development of Babbacombe downs the agreement of the majority of residents.

The residents of Churston and Galmpton ask to be treated equally.

The Golf Course is highly valued by the community and as it provides the Green Wedge between Paignton and Brixham, contributes materially to the character of the area, and acts as an important wildlife corridor.

As freehold land owner, Torbay Council is asked to covenant with the residents of Churston and Galmpton not to allow development of Churston Golf Course without first obtaining the agreement of the majority of the residents of the ward at a referendum.'

The submitted report set out the implications of the proposed covenant.

The Mayor considered the recommendation of the Council made on 25 September 2014 and his decision is set out above.

Alternative Options considered and rejected at the time of the decision

Alternative options are set out in the submitted report. The Council also recommended to the Mayor that the decision be deferred to allow further investigation by the Place Policy Development Group.

Is this a Key Decision?

No

Does the call-in procedure apply?

Yes

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

None

Published

30 September 2014

Signed: _____
Mayor of Torbay

Date: 30 September 2014

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Appendix 2



Meeting: Council

Date: 25th September 2014

Wards Affected: Churston and Galmpton

Report Title: Petition regarding Churston Golf Club

Is the decision a key decision? No

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

Executive Lead Contact Details: Cllr Derek Mills

Supporting Officer Contact Details: Charles Uzzell, Director of Place. Email Charles.uzzell@torbay.gov.uk Telephone 01803 201201

1. Purpose and Introduction

- 1.1 A petition has been received by the Council, with sufficient signatures as to trigger a debate at the Council meeting.
- 1.2 The petition requests that a Covenant is entered into not to allow development of Churston Golf Course without first obtaining the agreement of the majority of the residents of the ward at a referendum.
- 1.3 In furtherance of the petition, Churston, Galmpton and Broadsands Community Partnership have proposed a form of words for the petition.
- 1.4 There are significant implications of the proposed covenant in respect of the new Local Plan, the details of which are set out in this report.

2. Proposed Decision

That the Mayor be recommended as follows;

- 2.1 That the Council does not enter into a deed of Covenant in respect of Churston Golf Course.

Alternative decision

- 2.2 If the Mayor does not accept this recommendation, the proposed wording of a covenant would need to be amended so that the Council entered into a deed covenanting with the residents of Churston & Galmpton ward in the following terms;

“Torbay Council covenants with all inhabitants of the ward of Churston and Galmpton that for a period of 100 years beginning on the date of this deed it will not on the land shown edged in red on the plan attached, known to be Churston Golf Course, allow any development of Churston Golf Course without any such proposal first obtaining the majority of votes in a referendum of the persons who at the day of the referendum would be entitled to vote as electors at an election of Councillors for the Churston and Galmpton Ward and are registered as local government electors at an address within this Ward. For the purposes of this covenant ‘development’ shall not include any development permitted under the terms of the lease between The Council of the Borough of Torbay and Churston Golf Club Limited dated 3 April 2003. Nothing contained or implied in this Deed shall prejudice or affect the exercise by the Council of its regulatory functions under the Town and Country Planning Act 1990 or any other statute or statutory instrument.”

The Covenant would be appropriately registered with the Land Registry.

3. Reason for Decision

- 3.1 The land at Churston Golf Club is subject to a 999 year lease, entered into in 2003. The lease has a specific user clause that limits the use of the land as either a golf club or agricultural land. To amend this user clause would need political agreement which safeguards the land from inappropriate development. Additionally any development proposed would require planning permission which provides further protection from inappropriate development of the area.
- 3.2 The proposed covenant has significant implications in respect of the Local Plan.
- 3.2 The proposed covenant would result in additional costs to the Council of undertaking referendums.
- 3.3 The proposed covenant has significant implications in respect of the Council’s future income and ability to fund the Capital Programme.

Supporting Information

A1. Legal implications

- A1.1.1 The Council can legally enter into a covenant not to develop its land, provided

the Covenant is not inconsistent with;

- (a) Any statutory, charitable or trust purpose for which the land is held,
- (b) Any statutory restrictions on the disposal of an interest in the land,
- (c) Any prior obligation assumed by and enforceable against the Authority.

The Churston, Galmpton and Broadsands Community Partnership have proposed the following wording for a Covenant following the petition that was undertaken, as follows;

“Torbay Council covenants with the people of the current electoral ward of Churston and Galmpton (identified edged blue on the plan attached) that for a period of 100 years beginning on the date of this deed on the land variously known as Churston Golf Course (identified edged red on the plan attached) it will not:

- (a.) Allow any development of Churston Golf Course.***

For this purpose “development” shall be defined as any deviation from the Permitted User clause at para 1.12 of a lease between The Council of the Borough of Torbay and Churston Golf Club Limited dated 3 April 2003 or any matter within that lease or otherwise for which the consent of the Freeholder owner is required for any reason.

In broad terms this permitted user clause provides for the use of the land as either a golf course complying with minimum standards on the land or as agriculture. Hence for example only use of the land for housing, industry or for a road would constitute development.

- (b.) Sell or otherwise dispose of Churston Golf Course or sell or otherwise dispose of its rights as Freeholder owner; or***

- (c.) Allow any land owned freehold by The Council of the Borough of Torbay to be used to facilitate any development of any permanent structures on Churston Golf Course.***

without any such proposal first obtaining the majority of votes in a referendum of the persons who at the day of the referendum would be entitled to vote as electors at an election of councillors for Churston and Galmpton Ward and are registered as local government electors at an address within this Ward.”

Paragraphs (b) and (c) of this wording extend beyond the subject matter of the petition which was purely in respect of development of Churston Golf Course, and it is not recommended that these additional matters are considered for inclusion within the proposed covenant.

It is the legal view that paragraph (a) is too widely drafted, with some elements interfering with the terms of the Golf Club lease, which it is not possible to do without the Tenant's (Golf Club's) consent. The Council as Landlord of the golf club lease cannot unilaterally change any term of that lease without agreement from the Tenant. Therefore the effect of any proposed covenant cannot restrict the Permitted User clause or the Tenant's rights to make alterations in accordance with the lease. If it is considered desirable to enter into a Deed of Covenant it is proposed that the following wording is used;

“Torbay Council covenants with all inhabitants of the ward of Churston and Galmpton that for a period of 100 years beginning on the date of the deed it will not on the land shown edged in red on the plan attached, known to be Churston Golf Course, allow any development of Churston Golf Course without

any such proposal first obtaining the majority of votes in a referendum of the persons who at the day of the referendum would be entitled to vote as electors at an election of Councillors for the Churston and Galmpton Ward and are registered as local government electors at an address within this Ward. For the purposes of this covenant 'development' shall not include any development permitted under the terms of the lease between The Council of the Borough of Torbay and Churston Golf Club Limited dated 3 April 2003. Nothing contained or implied in this Deed shall prejudice or affect the exercise by the Council of its regulatory functions under the Town and Country Planning Act 1990 or any other statute or statutory instrument."

A1.2 Cost implications of a referendum

A1.2.1 To accede to the request would commit the Council to the costs of any referendum required under the terms of the Covenant. In addition to significant staffing implications within Governance Support, there would be a revenue cost of approximately £12,000 per referendum.

A1.3 Planning Implications of the proposed covenant

A1.3.1 It is the professional planning view that any decision to support the petition (and impose a 'no development' clause re Churston Golf Course) would result in the new Local Plan being unsound and undeliverable; would be contrary to a decision previously made by Development Management Committee; and would seriously undermine efforts to secure investment in the Bay.

A1.3.2 Every Council and their public sector partners are actively encouraged, by Government, to put forward their land for development. This Council is doing just that, as evidenced by the Local Plan. For example, the Council's land in Collaton St Mary, Preston Down Road, Edginswell, Barton, Torquay, Paignton and Brixham town centres provides the backbone for delivery of jobs, homes and infrastructure in the Bay over the next 20 plus years. The new Local Plan is currently being examined in detail by the Planning Inspectorate and is due for a formal hearing in mid November 2014. A key part of that process is for the Planning Inspectorate to be convinced that the new Local Plan is deliverable and sound. If a decision is made to impose a 'no development' requirement at Churston Golf Course this will in turn require the land at the 1st and 18th holes of the Golf Course to be withdrawn from the 5 year housing land supply. It is then foreseeable that the Planning Inspectorate will consider whether that approach could be applied to other Council owned land which supports the new Local Plan. The Planning Inspectorate will consider whether a precedent will have been set for communities to stop development by petition, rather than by very careful consideration of planning issues. It is the professional view that the Planning Inspectorate will consider the soundness and deliverability of the new Local Plan to be seriously undermined if a 'no development' clause is included for Churston Golf Course, and a foreseeable outcome would be that the Council will be asked to reconsider its new Local Plan and will not be allowed to

proceed with the Examination. The Council may have to withdraw the Local Plan from further examination and the impending Hearing. If that were to occur that would represent a very serious problem for the Council. The Council would be without an up to date Local Plan and would not have a 5 year housing land supply. 'Rogue' development is more likely on sites that provide less benefit and more harm to the Council and to the community, environment and the economy. The Council would need to amend its Local Plan, requiring further time, probably 9 -12 months and cost in the region of £50,000 - £75,000. The documents at Appendices 2 and 3 demonstrate the implications of accepting the proposed covenant. The appendices show the sites that would be lost from our current five year housing land supply, leaving less than an adequate supply of housing land. They also show the sites that would need to be withdrawn from the Local Plan, and indicate those sites that would need to take their place. Members will be aware of the sensitivities associated with all of the substitute sites.

A1.3.3 The Local Plan has been developed in partnership with other organisations, including the Local Enterprise Partnership and adjoining Local Authorities under the Duty to Co—operate. Teignbridge District Council has supported the new Local Plan. If this covenant is agreed and a precedent is set for this to happen on other sites, this will quickly undermine our commitment to provide housing land to meet our own needs. In turn this could place strain on our current constructive working relationships with our neighbouring authorities. At this late stage in Torbay's plan making process, and following Teignbridge's recent adoption of its new Local Plan, it is considered very unlikely that Teignbridge would accept the need to provide housing in Teignbridge, to meet Torbay's needs. This could, in itself, lead to the Planning Inspectorate refusing to allow the Local Plan to proceed to a hearing.

A.1.4. Investment Risks

A1.4.1 The Council's proactive approach to securing development and investment in the Bay is welcomed by the development industry. There is a very real officer concern that investment 'pipelines' would start to run dry if the Council was seen as withdrawing from its commitments at a late stage. Indeed, the positive outcomes (such as Abbey Sands), in terms of achieving investment in the right place, of the right quality and at the right time, would be replaced by development of sites that the Council would not want to see coming forward, as there would not be a 5 year land supply. In addition to the harm caused by development of sensitive 'rogue' sites, the level of New Homes Bonus and monies from business rates is likely to decrease.

A.1.5 Risk of Precedent

A1.5.1 To accede to the request could encourage other similar applications and mean that the Council's ability to develop and/or sell its property may be compromised in the future. The Council has to act consistently in its approach

to such requests. The Council's entering into of Covenants at Babbacombe and Paignton Green can be differentiated from this request by virtue of the fact of their distinct nature and unfettered access to the public. If the Council were to agree to enter into this Covenant the Council may find itself in difficulties in resisting future requests.

A.1.6 Risks to Future Capital Programme and Other Income.

A1.6.1 Having regard to the risk of precedent summarised above, the Council needs to consider the potential financial implications of this decision. The Council will use the capital receipts that the sites in the local plan allocated for development would create to invest in capital projects such as schools, transport and regeneration schemes. If the development potential of these sites is substantially diminished their value will reduce accordingly. The Council currently has a capital receipts funding requirement of £2.1m in the current capital programme (we have spent capital that we need to replace by selling assets) and we will have to address future pressures for capital investment. If we do not have assets to fund capital projects the scale of investment we will be able to realise in schools, transport, regeneration and other much needed infrastructure will be limited

A1.6.2 There also be a negative impact on other income streams such as New Homes Bonus (NHB) and NNDR income. The Council received a total of £2.1m NHB grant in the current financial year. This grant relates directly to the number of homes built in the Bay. If we reduced certainty around which sites are available for development we can confidently expect to see a hiatus in development which will reduce our NHB income. NNDR could also be depressed on sites that would have created mixed use developments as the Council now gets to keep a proportion of the uplift in NNDR income. If sites that would have accommodated new commercial space are no longer available this source of income will also be lost.

A2 Possibilities and Options

A2.1 To take the action requested by the Petition, i.e to enter into a deed of covenant, either;

- In the form of words suggested by the Community Partnership,
- An amended form of words.

A2.2 Decline to enter into a Deed of Covenant as the land already has sufficient protections from the terms of the lease as well as the political and planning processes, and because of the impact upon the new Local Plan.

A2.3 Request further exploration of the matter with Officers and the community before a decision is taken.

A3 Fair Decision Making

A3.1 A petition with approximately 3,000 signatures has been submitted to the Council to trigger the Council debate.

A3.2 The proposal is due to be considered by the Community Partnership at its public meeting on 24 September 2014, and therefore the result of this will be known in advance of its consideration by Full Council.

A4. Public Services (Social Value) Act 2012

A4.1 The granting of a covenant in the terms proposed amounts to a disposal of the land, and therefore the requirements in respect of achieving best consideration apply.

A5. Risks

A5.1 Should the Council wish to see development on this land, it would have to first carry out a referendum of the residents of Churston and Galmpton. Even if the proposals were supported the delay in carrying out the referendum could result in the development opportunity being lost.

A5.2 The covenant is an absolute one, therefore any development would not be permitted without approval in a referendum.

A5.3 To accede to the request would commit the Council to the costs of any referendum required under the terms of the Covenant. In addition to significant staffing implications within Governance Support, there would be a revenue cost of approximately £12,000 per referendum.

A5.2 To accede to the request could have significant implications in respect of the Local Plan.

A5.3 To accede to the request could encourage other similar applications and mean that the Council's ability to develop and/or sell its property may be compromised in the future. The Council has to act consistently in its approach to such requests. The Council's entering into of Covenants at Babbacombe and Paignton Green can be differentiated from this request by virtue of the fact of their unfettered access to the public. If the Council were to agree to enter into this Covenant the Council may find itself in difficulties in resisting future requests.

Appendices –

1. Plan showing the land comprising of Churston Golf Course
2. Planning Implications of the Churston Covenant
3. Substitute sites



A Coastal path
B Subject golf course.

Plan No: EM1112
Asset No: B326

Scale Not determined

Title: Churston Golf Course
Date: 7 February 2003

DIRECTORATE Highways & Estates Management
ENVIRONMENT SERVICES
Plan Prepared By: Property Records Officer, Roebuck House, Abay Road, Torquay, TQ2 5TF (01803) 207925



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Appendix 4

Planning implications of the Churston Covenant

Council owned sites that may no longer be in the Council's 5 year housing land supply	
1. Oldway Mansion / Gardens, Paignton	
2. Great Parks, Paignton	
3. Kings Ash House, Paignton	
4. Churston Golf Club, Churston	
5. Hatchcombe Lane, Torquay	
<p>Comment: The loss of these sites represents around 16% of the 5 year land supply for the Bay. This would mean that the Council would not have a 5 year land supply, which leads to 'open season' for developers. It's notable that Countryside Zone designation cannot be used as a reason to refuse planning applications for new homes, when there is not a 5 year supply of housing land.</p>	
Council owned sites that may no longer feature in the new Local Plan	
1. Little Blagdon Farm, Collaton St Mary (which is likely to result in the whole masterplan being undeliverable)	
2. Preston Down Road, Paignton	
3. Great Parks, Phase 2 (which is likely to undermine delivery of the whole masterplan area)	
4. Torquay Town Centre sites (e.g. Pavilion)	
5. Paignton Town Centre Sites (e.g. part Queens Park; masterplan identified sites)	
6. Grange Road sites, Paignton	
<p>Comment: This is likely to lead to the loss of about 1000 homes from those sites identified / indicated in the new Local Plan. This will not only result in the new Local Plan being withdrawn, but the Council will not secure capital receipts (and other benefits) from the sale / development of its land.</p>	
Sites that would necessarily be considered / used to substitute the loss of Council owned sites	
1. Land south of White Rock (which could have impact on AONB)	
2. Car Parks across the Bay	
3. Copythorne Road, Brixham	
4. Mathill Road, Brixham	
5. Manor Farm, Galmpton	
6. Sandringham Gardens, Paignton	
7. Brockenbury, Churston	
8. Nutbush Lane, Torquay	
9. St Mary's, Brixham	
10. Torquay Golf Club	
11. Enlarged Wall Park, Brixham	
12. Yalberton Holiday Park, Paignton	
<p>Comment: All these sites were identified in the Strategic Housing Land Availability Assessment, but were not included in the new Local Plan due to their sensitivity. It would be necessary to bring some / all of them forward to make up the 1000 + shortfall in homes. It is worth noting that the loss of land at Churston Golf Course (132 units) represents around 16% of the overall allocation (800) for Brixham Peninsula in the new Local Plan. There would be a need to ensure that number was made up quickly, particularly in/around Brixham, which is likely to be on land / in areas that are far more sensitive – in planning terms – than Churston Golf Course (1st & 18th)</p>	

