

Brixham Town Council

Report No:	28-2020		
Report Type:	Public		
Title:	Shoalstone Pool CIC		
To:	Full Council	Date:	03.09.20
Contact Officer:	Town Clerk	Tracy Hallett	
Contact Details:	info@brixhamtowncouncil.gov.uk	01803 859678	

Purpose of Report

- a) To discuss and consider the application of a new Director for Shoalstone Pool CIC
- b) To discuss and consider a request from Shoalstone Pool CIC to change their status from CIC to CIO
- c) To discuss and consider requesting an asset transfer of Shoalstone complex

New Director for Shoalstone Pool CIC

In accordance with the management agreement between BTC and SPL paragraph 10.1. I write to inform you that we are fortunate enough to have Helen Barter volunteer to join us as a Director. She is a Brixham resident, works in Paignton, has been volunteering for several months, is very enthusiastic about the pool and is making a huge contribution.

Examples are she attends all the Directors meetings and takes a record of the meeting and produces minute, she has helped with pool cleans, she is helping me with Health and Safety, she has taken on responsibility for all the administration work connected with beach huts, has taken on role of volunteer co-ordinator and is working with Jessica on financial matters. She has produced a comprehensive report on the responses.

Shoalstone Pool CIC have requested that Brixham Town Council endorse her appointment.

Shoalstone Pool CIC Governance

The following is a Governance Briefing Note received from Shoalstone Pool CIC:

Background

The Shoalstone site belongs to Torbay Council (TC), leased to BTC, which has assigned the day to day management and operations of the pool and site to SPCIC.

Current income streams for SPCIC have been maximised (with the exception of rental income from the café, which remains problematic) but they only cover the cost of the season's operations. If we can secure investment for Shoalstone, we are confident we can succeed in our commitment to make a major contribution towards a thriving, successful Brixham that is attractive for residents and visitors.

This is outlined in the 10-year strategy for Shoalstone, 'Surviving to Thriving' which was developed in early Autumn 2019, widely consulted upon through the Autumn and Winter, finalised in April 2020 and welcomed by BTC. The strategy is with a volunteer graphic designer for a glossy makeover ready for online publication. The very first action point on our strategy timeline is to become a CIO, a governance change that we believe will open a wide variety of benefits and opportunities.

Barriers to success

- 1. SPCIC, as a CIC, is not eligible to apply for charitable funds. The pool and site require substantial capital investment, which either needs to come from Torbay Council, which seems unlikely, or to come from a major funding source such as the Heritage Lottery Fund.*
- 2. SPCIC's Directors are ambitious for Brixham and need to raise money for some paid capacity to secure the long-term future for Shoalstone. This is beyond the scope of the fundraising capacity of the Friends of Shoalstone Pool (FoSP) but, again, cannot be achieved while we remain a CIC. We are mindful of the complex Health and Safety requirements in running a swimming pool, and the need to ensure maintenance works do not impact adversely on the natural environment.*
- 3. Resolving the inevitable problems that arise is a slow and complex process, involving protracted negotiations that are often invisible to us and out of our control. For example, five years on we still have an unsigned lease for the café, we remain unable to fully realise the benefit for the community of leasing part of the site for the café and we are powerless, as the holders of the day to day management and operations of the site, to effect change.*

What do we want?

- 1. Dissolve the SPCIC and create a Charitable Incorporated Organisation (CIO). This will enable us to raise funds for necessary infrastructure works as well as essential operations and development capacity. We will want BTC to continue to nominate at least one Councillor to serve as a Trustee of the CIO (as happens now).*
- 2. Torbay Council to effect an asset transfer of the pool and site to BTC. We want the kiosk on the site to be included in the asset transfer. Torbay Council has shown a commitment to further strengthening its model of strong and effective town councils by devolving assets and responsibilities, thereby strengthening the local democratic mandate which, as Brixham residents, we welcome. Our work will be made much simpler if we can work alongside one council rather than two and some of the problems we face, with speed and complexity, will be resolved. We would like this asset transfer reviewed in 5 to 10 years to judge its success and potential.*
- 3. To agree with BTC a legal framework that will allow SPCIC/SPCIO to directly manage all matters relating to the leaseholder of the café and the kiosk.*

Differences between a Community Interest Company and a Charitable Incorporated Organisation

What is a CIC?

A Community Interest Company is designed for social enterprises that want to use their profits to help a community. According to GOV.UK, "A CIC is a special type of limited company which exists to benefit the community rather than private shareholders."

Can a CIC have charitable status?

Although a CIC exists to help the public, they do not have "charitable purposes". What's important to note with a CIC is that although it looks like a charity, it is actually a company. This type of company was first introduced in 2005 under the Companies (Audit,

Investigations and Community Enterprise) Act 2004, as an easy way for social enterprises to have the foundations of a company, but with additional features that allow it to be used for the benefit of the community.

What are the advantages of a CIC over a charity?

There are many differences between a CIC and a charity, but at the core, a CIC is acknowledged as a funding body, and a body that can accept donations and grants, just like a charity. However, a CIC can also be funded by the sale of products and/or services sold as part of the company. Further, a director of a CIC can be paid and dividends can also be paid. There are differences with auditing and concessions too – a charity's company accounts have to be audited, and a charity is allowed tax concessions. Overall, a CIC benefits from an easier financial reporting process than a charity, while a charity benefits from tax breaks and relief.

What is a CIO?

Unlike a CIC, a Charitable Incorporated Organisation is a legal structure introduced for non-profit organisations and charities. With a CIC, you need to apply to Companies House when registering. However, with a CIO, you only need to register with the Charity Commission.

Is a CIO a limited company?

As one of the benefits of choosing this structure, a CIO offers separate legal personality and business is conducted in the company's name, along with limited liability – meaning that the company's members and trustees cannot be held personally responsible for its financial losses or debts.

What are the benefits of a CIO?

Alongside the benefits listed above, regarding limited liability and separate legal personality, a CIO is generally considered a more cost-effective and simpler structure than a company limited by guarantee. A CIO is particularly beneficial for smaller charities, or larger charities that want to establish a smaller wing, as they provide a registered number with the Charity Commission even if they have less than the £5,000 income needed to become a registered charity.

What are the different types of CIOs?

There are two different types of CIOs available: the Foundation CIO and the Association CIO. With a Foundation CIO, the only voting members are the trustees. The Association CIO, however, has a wider membership, so there are voting members other than the charity's trustees.

What does this mean for Brixham Town Council?

Brixham Town Council is currently a shareholder owning 100% of the shares.

There are two different types of CIOs:

- The foundation model, which is for charities who's only voting members will be the charity trustees;
- The association model, which is for charities that have a wider membership, including voting members other than the charity trustees.

In either case, Brixham Town Council will be one of several trustees and not the only shareholder.

Steps for Shoalstone Pool CIC to take

If Brixham Town Council vote to accept the change of Governance from CIC to CIO, it is likely that the formal change to a CIO will need a special resolution of the members of the CIC which is currently Brixham Town Council as the shareholder.

A general meeting of the CIC will need to be called by SPCIC following statutory procedures and formalities which includes a minimum 21 day notice for the relevant general meeting.

Asset Transfer of Shoalstone Complex

Prior to lockdown the Town Clerk had commenced discussions with Torbay Council for the asset transfer of the whole of Shoalstone complex to Brixham Town Council. This meant that the lease agreement for the overflow car park was put on hold. No further development has happened during lockdown.

The general census what that they may be open to discussions for the asset transfer of the pool and green areas, but not the car parks.

The kiosk is not currently included in the head lease. Torbay Council is the landlord of the kiosk who receive an income from their tenant.

Recommendations

1. To discuss and consider the application of a new Director for Shoalstone Pool CIC

It is recommended that Brixham Town Council formally accept the new Director to Shoalstone Pool CIC.

2. To discuss and consider a request from Shoalstone Pool CIC to change their status from CIC to CIO

It is recommended that in principle, Brixham Town Council agree to the change of status from CIC to CIO. However, it is believed that this will only work if the number of stakeholders of the site are reduced and therefore should be aligned with the asset transfer. (Please see below).

3. To discuss and consider requesting an asset transfer of Shoalstone complex

It is recommended that Brixham Town Council hold negotiations with Torbay Council to explore the asset transfer of the Shoalstone Pool complex in its entirety. This includes the pool, green, both car parks, the kiosk and surrounding area.

It is further recommended that items 2 and 3 above should be aligned because:

- a formal management agreement / lease with Shoalstone Pool CIC / CIO will need to be agreed by both parties. This will ensure that effective management controls are in place without adding additional liabilities to the Town Council
- Without the reduction in stakeholders, dissolving SPCIC to become SPCIO will have no benefit for their ambitions to apply for funding for necessary infrastructure works, essential operations and development.

A small working group has been formed which includes an Officer from BTC, Cllrs Haddock and Hoggart, Cllr Laurie (who is the Council representative on SPCIC) and two

representatives from SPCIC. It is recommended that they continue to meet the above actions on behalf of the Council.