

**Meeting:** Cabinet

**Date:** 27<sup>th</sup> September 2022

**Wards affected:** St Peters with St Mary

**Report Title:** Lease Surrender & Renewal – Shoalstone Seawater Pool, Brixham.

**When does the decision need to be implemented?** As soon as possible

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## 1. Purpose of Report

- 1.1 To propose that Torbay Council to enter into a new long lease agreement with the existing tenant, which will permit further investment and access to funding to undertake significant and immediate repairs. The new lease will provide additional security of tenure over that already in existence under the current agreement.

## 2. Reason for Proposal and its benefits

- 2.1 We want Torbay and its residents to thrive and have a good quality of life with access to excellent schools, affordable housing and great local amenities. We will promote good mental and physical health by providing early help.
- 2.2 Torbay can offer an unrivalled quality of life for individuals and families – its natural environment, clean air, climate, location, excellent schools, growing arts and cultural sector and wide range of outdoor activities and facilities means that Torbay can provide everyone with the opportunity to live a healthy and fulfilled life.
- 2.3 The proposal in this report will help the Council to deliver this ambition by allowing the current tenant to obtain a long leasehold interest in the facility that will open opportunities to seek major grant funding to undertake immediate repairs. In addition, it will allow the tenant to invest in the wider facility in the longer term and be able to grant a legal agreement with

Shoalstone Seawater Pool CIO (Community Interest Organisation) to manage and operate the facility.

### 3. Recommendation(s) / Proposed Decision

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- 3.1 That the Chief Executive, in consultation with the Director of Finance and Cabinet Member for Economic Regeneration, Tourism and Housing, be authorised to agree terms and enter into a new lease of 125 years, that will replace the existing agreement and provide the tenant, Brixham Town Council with security of tenure to allow a sub-lease to be granted to Shoalstone Seawater Pool CIO that will facilitate access to funding to undertake immediate repairs and improvement to the facilities.

### Appendices

Appendix 1: Shoalstone Seawater Pool Site Plan – EM3864

### Background Documents

None

# Supporting Information

## 1. Introduction

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- 1.1 The Tenant, Brixham Town Council occupy the premises under a 40-year lease granted in April 2015. This tenancy incorporates the seawater pool, car park, former putting green, shelter and the WC block. The rent payable under this agreement is a nominal £1 per annum.
- 1.2 In 2014, Brixham Town Council set up Shoalstone Pool Community Interest Company to operate the swimming pool and wider facilities on a day-to-day basis. In 2020, it became increasingly apparent to Brixham Town Council and the CIC that the pool and surrounds were gradually deteriorating and without access to substantial funding, the necessary investment needed in the pool would not happen, which would result in the facility not lasting beyond the length of the lease granted. To this end Shoalstone Pool CIC, commissioned a 10-year strategy titled, From Surviving to Thriving.
- 1.3 A key finding from the strategy was the need to establish a Community Interest Organisation. It was apparent the charitable status of the CIO would open more opportunities for funding which the CIC precluded. Late in 2021, Shoalstone Pool CIC successfully applied to become a Community Interest Organisation. This is now in place and is called the Shoalstone Seawater Pool CIO.
- 1.4 The current 2014 lease agreement places the repairing and maintenance responsibility of the asset on the tenant, although this is limited by reference to a schedule of condition. The repair and maintenance of the sea wall is retained by the Council. However, other than an obligation to inspect any damage to the sea wall reported by the Tenant, the Council is under no obligation to carry out any repairs. The lease permits the Council to bring the lease to an end at any time, if it considers it is not cost effective to comply with its obligations to maintain the sea wall.
- 1.5 With the knowledge of this provision, Brixham Town Council and the CIO are aware if a catastrophic failure in the sea wall was to occur it is likely the Council would implement the break clause to bring the lease to an end. As a consequence, the pool would close, probably indefinitely.
- 1.6 To help prevent an event such as this occurring, in December 2020, John Grimes Partnership were commissioned by the CIC, to undertake a visual inspection of the sea walls and terraces. One of the main areas of concern highlighted was the northwest corner of the pool, where the pool wall is narrow and structurally slender and therefore weak. In Feb 2022, further instruction was issued to John Grimes Partnership by Shoalstone Seawater Pool CIO to consider the implementation of a long-term stabilising design to reinstate confidence back into the northwest wall. Further inspections as part of this work identified a significant number of immediate repairs that are required to the sea wall.

- 1.7 Shoalstone Seawater Pool CIO aims, and objectives are clear in that they wish to repair the damage to ensure longevity in the life of the pool. They have been quoted £400,000 to £500,000 and are fully aware that any grant funding they can raise will not be enough and there will be a need for them to crowdfund. They are also aware none of this can be done until they are in possession of a much longer lease beyond the 32 years remaining under the existing lease.
- 1.8 The proposal therefore is to surrender the 2014 lease and, in its place, obtain a new 125-year lease from the Council.
- 1.9 The 2014 lease excludes several associated assets within the wider footprint of Shoalstone Pool, which would be beneficial to Shoalstone Seawater CIO. This includes a small kiosk on the west side of the pool, currently leased out to a 3<sup>rd</sup> party, and the overflow car park which is situated on the south side of Berry Head Road opposite the main car park. These assets produce a small amount of revenue that would supplement the income received by the CIO. The intention therefore is to include these additional assets within the demise granted under the new lease.
- 1.10 The 2014 lease places a range of constraints and conditions on the tenant which requires the Council's consent to amend or implement. The tenant therefore is seeking a lease with minimal conditions attached. This would be beneficial to the Council in it would reduce future management time on an asset where it would retain minimal control. It is the intention therefore to grant a 'bare' lease to the tenant.

## 2. Options under consideration

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- 2.1 The tenant has approached the Council on a number of occasions over the last couple of years seeking a longer term of occupation. It is now clear without a significantly longer lease the tenant or Shoalstone Seawater Pool CIO is not able to seek grant funding of the magnitude needed to be able to undertake the significant works of repair needed on the sea walls. The Council is nevertheless under no obligation to consider a change in the lease arrangement.
- 2.2 The alternative would be for the Council to reject the proposal with the existing arrangements continuing as they have done since 2014. This would limit the ability of the tenant to secure grants. The Tenant and Shoalstone Seawater CIO have made it clear they want to invest in the facility to safeguard and promote the Shoalstone Seawater Pool, for the health, enjoyment and pleasure of the people of Brixham, residents and visitors, today and for future generations.

## 3. Financial Opportunities and Implications

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- 3.1 Given the existing terms, including a nominal rent of £1 per annum there is no proposal to set a market rent in the new agreement. As a consequence, there are no financial

opportunities or implications in the new proposal, save for the loss of revenue the Council receives from the small kiosk situated on the west side of the Pool. This equates to £2,750p.a.

## 4. Legal Implications

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- 4.1 The proposed new lease will be formalised and documented by Torbay Council Legal Services. The existing 2014 lease will be extinguished on completion of the new lease by way of a Deed of Surrender.

## 5. Engagement and Consultation

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- 5.1 No engagement or consultation is planned.

## 6. Purchasing or Hiring of Goods and/or Services

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- 6.1 Not applicable.

## 7. Tackling Climate Change

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- 7.1 The Council is aiming to become carbon neutral and will manage its land and buildings and guide future decision making towards creating a carbon neutral estate by 2030. This decision will indirectly result in a Torbay Council asset being repaired and safeguarded against the effects of rising sea levels.

## 8. Associated Risks

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- 8.1 There is not an immediate risk if the Council does not implement the decision. However, there are secondary risks as it is likely the tenant would be unable to obtain the necessary grant funding to undertake all the required repairs to the sea wall now or in the future. This may increase the risk of failure in the sea wall infrastructure which ultimately could lead to the loss of the facility.
- 8.2 If this event were to occur it is likely that reputational damage would be suffered by Torbay Council.

## 9. Equality Impacts - Identify the potential positive and negative impacts on specific groups

	Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
Older or younger people			There is no differential impact.
People with caring Responsibilities			There is no differential impact.
People with a disability			There is no differential impact.
Women or men			There is no differential impact.
People who are black or from a minority ethnic background (BME) (Please note Gypsies / Roma are within this community)			There is no differential impact.
Religion or belief (including lack of belief)			There is no differential impact.
People who are lesbian, gay or bisexual			There is no differential impact.
People who are transgendered			There is no differential impact.
People who are in a marriage or civil partnership			There is no differential impact.
Women who are pregnant / on maternity leave			There is no differential impact.
Socio-economic impacts (Including impact on child poverty issues and deprivation)	The granting of a long leasehold and any subsequent investment in the site is likely to have a positive impact on locality.		
Public Health impacts (How will your proposal impact on the general health of the population of Torbay)	The granting of a long leasehold and any subsequent investment in the site is likely to have a positive impact on public health and wellbeing.		

## 10. Cumulative Council Impact

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10.1 None.

## 11. Cumulative Community Impacts

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11.1 None.