

Business Case for the Creation of a Charitable Incorporated Organisation to deliver the Plymouth Sound National Marine Park (PSNMP)



Executive Summary

In 2018 a conference was held in Plymouth to discuss the city's ambitions to establish the UK's first National marine Park. In 2019 the park was declared by the then leader and a process was set in train to create the UK's first National Marine Park. In 2022 PCC appointed an Interim CEO to turn ambition into delivery. As part of this process there is a need to create an entity that is able to support the delivery of the collective ambition of the many and lead the development of the National Marine Park in Plymouth and beyond across the UK. The establishment of the entity is the first step in creating a robust governance structure for the NMP. This is a trailblazing project and as the first of its kind there is no roadmap to follow.

The proposal to use a Charitable Incorporate Organisation (CIO) as the funding vehicle has arisen from a substantial amount of debate. Other models are available (as set out in Appendix 1) but from discussions it is clear that the priority has to be a funding vehicle that is flexible but robust, transparent but with suitable rigour and regulation. The CIO model fulfils this. There are two types of CIO's - a foundation model and an association model. In the foundation model, the voting members and charity trustees are one and the same. In the association model, there is 'open membership' so members who are not trustees can vote. We have opted for the foundation model for the CIO.

This paper sets out the progress in creating the UK's first National Marine Park and the journey to deciding to recommend a CIO as the first part of the governance delivery.

Background

The Plymouth Sound National Marine Park was declared by Cllr Tudor Evans, the then Leader of the City Council in September 2019. The proposal had been subject to consultation both across the city and beyond. The initiative has cross party support in the City and both leaders sit on the Board of the National Marine Park.

In 2022 an Interim Chief Executive was appointed to lead on the development of the National Marine Park, the first of its kind in the UK. It is a non-statutory entity and as such does not directly attract government funding. The CEO is funded for two years, ending in March 2024 through a project underspend arising from Covid-19.

The role for the CEO is to develop the NMP to the point where it can be an entity in its own right working with the City Council to an agreed Delivery Strategy that integrates the terrestrial and marine elements of the city in a able manner. The NMP isn't a project, it is a movement for change that recognises the vital role of the sea and the coastline to the city. The NMP is using a sustainability approach for delivery defined

as an approach that recognises the importance of the economy, the environment and the people of Plymouth in ensuring the long term success of the city through the NMP.

Alignment with the Plymouth Plan.

Any new initiative in the city needs to align with the Plymouth Plan. This section evidences how the National Marine Park will not only deliver part of the Plymouth Plan but also deliver a far broader and non-statutory agenda that positions Plymouth as Britain’s Ocean City but with ambitions to be the leading city in the UK innovating and driving towards real sustainability.

The table below explains how the work of the NMP aligns with the Plymouth Plan.

ORK STREAM Sustainable Development Goal alignment	BLUE/GREEN ECONOMY SDG5,SDG8,SDG9,SDG10,SDG11,SDG17	MARINE SCIENCE & CITIZENSHIP SDG3,SDG4,SDG6,SDG9,SDG13,SDG14	PLACEMAKING SDG3,SDG5,SDG10	NATURE RECOVERY SDG3,SDG4,SDG6,SDG9,SDG11,SDG13,SDG14,SDG15	COMMUNICATION SDG9
Plymouth Plan Delivery	GRO1, GR06,GR07,INT1,INT05	HEA04,GR02,	HEA06,HEA07,INT04,INT05	GR06,GR07,GR09	
	BLUE CARBON	DATA (BASELINE & LONG TERM)	CULTURE PLAN	HABITAT RESTORATION & CREATION	INTERNATIONAL RECOGNITION
	MARINE TECH (OCEANSGATE ETC)	INNOVATION	HORIZONS PROJECT	CLIMATE RESILIENCE	CIVIC PRIDE
	NET ZERO PORTS (PORT STRATEGY)	RESEARCH CLUSTER (MRP)	ENJOYMENT	WATER QUALITY	SCIENTIFIC EXCELLENCE
	CURRENT & FUTURE JOBS	MARINE CITIZENSHIP	EVENTS	SPECIES REINTRODUCTION	SECTOR CELEBRATION
	CRUISES	FORMAL AND NONFORMAL ED	WELLBEING	ACCESS	VISITORS
	HMNB		VISITORS	INNS	LOCALS
	FISHING		OPERATIONAL OVERSIGHT		NMP DIGITAL
	MARINE FARMING		SPORT&RECREATION		
ENGAGE	MAJOR EVENTS (SAILGP)				
	GROWTH BOARD	MRP	DESTINATION PLYMOUTH	TECF	DESTINATION PLYMOUTH
	HMNB		PLYMOUTH CULTURE	OCT	PCC EVENTS
	LA'S			BLUE	PWP
				DWT	UoP
				LA'S	
				LNP	
				SWCPA	
DELIVER THROUGH	ECONOMIC DEVELOPMENT TEAM	MRP	EVENTS TEAM	PCC - STREET SERVICES	NMP ANNUAL REPORT
	FREEPORT	SKILLS BOARD	CULTURE PARTNERSHIP	LNRS - SPI	
	PORTS & HARBOURS	CITY COLLEGE			
	SMARTSOUND	SCIENCE PARK			

Options appraisal

Option 1: Do nothing

The funding for the NMP runs out in 2024. PCC has secured funding from National Lottery Heritage Fund for the Horizons Project but a condition of this funding is that PCC can evidence how the NMP will be sustainable in the long term. Establishing a CIO is the first step in ensuring this. Without a long term funding model NLHF will not release the money to deliver the Horizons project (circa £6m).

Option 2: PCC to directly fund NMP

PCC is under substantial pressure to reduce costs due to the energy crisis and the increased cost of living putting additional pressures on the budget. Opportunities to fund the NMP within PCC are constrained by the non-statutory nature of the NMP. Inevitably PCC must prioritise and secure funding for its statutory obligations and recent budget cuts make it considerably more difficult for PCC to fund non statutory work. Establishing a CIO does not preclude PCC from providing funds in the form of grants (subject to State Aid requirements) for NMP delivery. PCC will be an important partner in facilitating delivery of the NMP. Furthermore the purpose of the National Marine Park is to secure the widest possible engagement and ownership and this will be challenging if development of the NMP is constrained within the council.

Option 3: Create Community Interest Company (CIC)

A CIC conducts business for the benefit of the community. A CIC will secure most of its income from trading. It is envisaged that the NMP will secure funding from a broad and diverse range of sources, not just trading and therefore a CIO is a better model, especially as it will also operate a trading company alongside the CIO. This gives the CIO the opportunities of a CIC plus the benefits of being able to attract charitable funds in addition to trading income.

Recommended Option 4: Create a Charitable Incorporated Organisation (CIO)

This is the best option for the NMP. It will maximise the flexibility of the organisation to develop. It will sit alongside PCC and enable delivery. CIO's have a robust legal framework and governance structure. The CIO structure will be able to facilitate growth and partnerships whilst having the widest opportunity to secure funding from disparate sources. Establishing a trading arm alongside will enable the organisation to take advantage of commercial as well as philanthropic opportunities. The CIO model will support meeting the requirements of the National Lottery for a long term future for the NMP.

Purpose and Scope

A copy of the constitution is included with the Executive Decision as an appendix.

Governance

The governance of the NMP is, of necessity, multi-layered. This has yet to be formalised and will be brought back to Cabinet for approval. The CIO is one of the delivery vehicles but it must have its own Board of Trustees as this is a statutory requirement.

The objects of the CIO have been written to align with the ambitions for the NMP so there is a natural alignment in thinking between the two bodies. The trustees of the CIO will be members of the NMP Board.

Funding

The NMP will be funded through a wide range of sources, some philanthropic, some commercial, some project-based. The CIO is not seeking financial support from the council.

A funding strategy is currently being drafted and 2 pieces of work have been commissioned to support the development of the strategy. If the CIO were not to achieve the objective of securing funds to deliver projects then it would be closed down. A provisional sum will be retained from the NMP budget for this purpose. There is no ongoing liability should the National Marine Park not succeed.

Costs of financial reporting will be sought as part of any project funding therefore covered.

Financial risks

No funding has been requested from PCC. A small reserve has been established to enable the CIO to be closed down should the National Marine Park CIO fail.

Carbon footprint implications

The National Marine Park will support the delivery of PCC Net Zero policy. The work of the NMP in marine conservation and blue carbon will further support the role that Plymouth is playing in managing its carbon footprint.

APPENDIX I - ALTERNATIVE DELIVERY STRUCTURES

Name of Entity	Details	Trading Issues?	Procurement Issues?	Tax Advantages?	Legal Personality (i.e. is it a legal entity distinct from those who own and run it)?	Advantages	Disadvantages
Community Interest Company (CIC)	Usually set up as company limited by guarantee but can be limited by shares. CICs must produce an annual community interest company report with information relevant to CIC. The constitution must contain an asset-lock clause, which ensures that its assets can never be distributed to private individuals or companies. This legal structure is considered to be the most appropriate for social enterprises. Separate legal identity from members. Articles to incorporate requirements of CIC Regs 2005.	<p>None.</p> <p>Challenging to raise investment due to restrictions on dividends and interest payments. Need at least 1 director (natural person at least 18 years old).</p>	None	Yes – for investors only. Cannot obtain charitable status, therefore cannot access funds required by NMP	<p>Yes; it is an incorporated entity (registered at Companies House) and, as such, has a separate legal personality.</p> <p>The company itself enters into contracts and holds all assets.</p> <p>Members' liability is limited to amount of the guarantee (small) or the amount unpaid on shares (small).</p> <p>Liabilities of the company sit with the company itself although directors may be personally liable in limited</p>	<p>Freedom to trade (too much private and lose Teckal); able to pay Directors; retains benefit within the community; can bring in investment; not having to comply with company & charity law. Assets protected for the community. Basically a limited company with added "overlays".</p>	<p>No business rate relief; auditing the Community Interest statement; additional administrative costs; will not necessarily attract investors due to controls on payment of dividends.</p> <p>Cannot access the funding streams needed by the NMP</p>

					circumstances e.g. fraud.		
Mutual	A mutual is another terms which needs to be used carefully. It is not a specific form of legal entity and is used to describe any form of organisation which is owned by its members and run either for the benefit of its members or the wider community. It could be a company, Industrial and Provident Society, CIC, charity or unincorporated body.	None (dependent on structure)	Potentially – May not have trading history and good financial standing initially.	Possibly – dependent on legal structure	Possibly – dependent on legal structure	It is difficult to set out any specific advantages and disadvantages for Mutuals as they are not a specific legal entity. Mutuals should be regarded as member owned businesses which trade either for the benefit of their members or for the public benefit.	It is difficult to set out any specific advantages and disadvantages for Mutuals as they are not a specific legal entity. Mutuals should be regarded as member owned businesses which trade either for the benefit of their members or for the public benefit. To secure grant funding from trusts must be a suitable legal entity
Limited Company	Limited company. Either limited by guarantee or shares. Registered at Companies House – Legal Services can arrange. Cost not prohibitive under £500. Profits freely distributable to shareholders. Companies limited by guarantee often have restriction on distributing profits in Articles. Can include asset lock in Articles. Company limited by shares generally designed to deliver dividends to investors. Companies limited by guarantee usually no	Separate legal entity that can enter into contracts, rent or own property. Well established vehicle for commerce.	None.	No. Company subject to Corporation Tax and dividends subject to income tax.	Yes; it is an incorporated entity and, as such, has a separate legal personality. The company itself enters into contracts and holds all assets. Members' liability is limited to amount of the guarantee or the amount unpaid on shares. Liabilities of the company sit with the company itself although directors	Transparency; company status is respected by public and funders; limited liability for members and governing body; paid staff can be on the committee/board.	Company directors are still personally liable ; annual administrative requirements; risk of fines and imprisonment for Directors if company requirements are not followed. Cannot access trusts and foundations grants with a Company alone, must have a charity number.

	distribution of profits (prevented in Articles).				may be personally liable in limited circumstances.		
Charitable Incorporated Organisation (CIO)	Bespoke vehicle specifically for charities. Created by the Charities Act 2006. Expected to be available in early 2008. Will have a board and members. Two models available – either members as Trustees or a wider membership.	None -	Potentially – May not have trading history and good financial standing initially.	Yes, benefits from the same tax advantages as other charities	CIO's have a separate legal personality. The CIO itself will enter into contracts and hold all assets. Members will have either no liability or limited liability. Liabilities of the CIO will sit with the CIO itself although Trustees may be personally liable in limited circumstances.	No need to file with two separate regulators (Charity Commission and Company House) as regulated by Charity Commission only.	Once you create a CIO, you cannot convert to another type of entity – can only transfer assets to another charity or dissolve. Enables access to trust funding.

