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Transfer of Services from Vivacity to Peterborough Limited and City College Peterborough
<u>Councillor Steve Allen Cabinet Member for Housing, Culture and Recreation</u>
August 2020
<b>Deadline date: August 2020</b>

Cabinet Portfolio Holder:	Steve Allen - Cabinet Member for Housing, Culture and Recreation
Responsible Directors:	Adrian Chapman: Service Director Communities and Partnerships Peter Carpenter: Acting Corporate Director of Resources
Is this a Key Decision?	YES If yes has it been included on the Forward Plan: No
Is this decision eligible for call-in?	NO
Does this Public report have any annex that contains exempt information?	YES
Is this a project and if so has it been registered on Verto?	NO Verto number:

## RECOMMENDATIONS

The Cabinet Member is recommended to approve:

1. The transfer of services provided by Vivacity to Peterborough Limited and City College Peterborough;
2. The proposed client arrangements and the associated processes to re-open services;

3. The draft timetable and review process to transfer these services to their final delivery provider;
4. The financial remuneration package for Peterborough Limited and City College Peterborough to deliver services in this interim period.

## 1. PURPOSE OF THIS REPORT

1.1 This report is for Cllr Steve Allen to consider exercising delegated authority under paragraph 3.4.3 of Part 3 of the constitution in accordance with the terms of their portfolio at paragraph (d)

1.2 With the approval of the Chairman of Growth, Environment and Resources Scrutiny Committee, the urgency procedure, special urgency procedure, and waiver of call-in procedure have been invoked to suspend the requirement to publish notice of the decision for 28 days, to suspend the requirement to publish the decision for five days, and to suspend the three day call-in period.

This decision needs to follow special urgency procedures as outlined in the Councils Constitution because of the limited timescales to undertake the transfer of Leisure and Cultural services to the Council. Significant work has taken place since that date and the Report is the result of discussions with Vivacity and Partners to set out where these services will be delivered from the 17th September. The urgency of this decision is to ensure there is clarity with Members and the public on what is happening and what these interim arrangements are. This is not on the forward plan.

1.3 The attached appendix 1 is NOT FOR PUBLICATION in accordance with paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972 in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information). The public interest test has been applied to the information contained within the exempt annex and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it as to do so

## 2. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>	If yes, date for Cabinet meeting	
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Vivacity have served notice that they will cease to deliver the services contained in this report at midnight on the 16<sup>th</sup> September 2020, as such the recommendations of this report must be implemented before that date.

## 3. BACKGROUND AND KEY ISSUES

### Background

- 3.1 The Council entered into a Funding and Management Agreement dated 1st May 2010 ('the FMA') with Vivacity Cultural and Leisure Trust ('Vivacity') under which the assets, staff and responsibility for delivering cultural and leisure services transferred to Vivacity in return for grant payments by the Council. The 'Services' are defined in Schedule 1 of the FMA a copy of which is attached hereto as Annex 1.
- 3.2 On 18th June 2020 Vivacity served 90 Days' Notice of termination of the FMA, as provided for under clause 34.5 on the grounds that Regulations made under the Coronavirus Act 2020 constituted a force majeure which had persisted for more than 90 days preventing performance of the FMA services. Clause 32.1.4 of the FMA provides that at termination '.....the Services shall transfer from the Trust to the Council...'
- 3.3 The Council has the right under clause 34 of the FMA to nominate a new provider instead of operating the Services directly. Nominating City College Peterborough, a function of the Council, and Peterborough Limited respectively as providers of the Services presents an opportunity to restart the Services effectively and efficiently whilst considering the most appropriate model(s) of delivery in the future; taking into account the impact of Covid 19

#### **Services being Transferred**

- 3.4 The FMA sets out the services that are to transfer back from Vivacity, the detail of which is contained in Annex 1. In summary, the following services are transferring back to the City Council as per the FMA:
- Library Services;
  - Heritage and Arts Services;
  - Sports Services.
- 3.5 Any other services as notified by notices of change (Nocs) which has included the St Georges's Hydro Therapy Pool.
- 3.6 Library Services and Heritage and Arts Services will initially transfer back to City College Peterborough.
- 3.7 Sports Services will initially transfer back to Peterborough Limited.
- 3.8 Section 3.2 above set out that the predominant reason for the return of services was on the grounds that Regulations made under the Coronavirus Act 2020 constituted a force majeure which had persisted for more than 90 days preventing performance of the FMA services.
- 3.9 The Council, and the Country, are still in the grips of the COVID-19 epidemic and it is not clear how long this will carry on. We have seen that local lockdowns in the recent month have once again closed services and businesses locally. There is significant worry nationally as to the timing and magnitude of the next possible peak in COVID-19 infections.
- 3.10 As such legislation, restrictions on how services can be delivered, as well as available funding, is constantly changing and will continue to do so. This is especially the case for Libraries, Heritage, Arts and Sports Services.
- 3.11

Vivacity staff relating to those services included in the FMA will transfer back to Peterborough Limited and City College Peterborough under TUPE transfer regulations. Human Resources staff from the Council, Vivacity, Peterborough Limited and City College Peterborough are facilitating this smooth transfer.

However, at the transfer date a number of Vivacity staff will still be under Furlough conditions. The Council and the new Service Providers will continue with that arrangement until that scheme stops in October or when services are re-opened, whichever ever happens first.

### **Client Arrangements and Associated Processes to Reopen Services**

- 3.12 Negotiations are in progress with Vivacity as part of the hand over process to start to re-open services. This will continue until the date of transfer. This work will be shared with the two new providers of services.
- 3.13 As part of the ongoing process, the Council Client side, Peterborough Limited and City College Peterborough will meet on an ongoing basis to review government legislative changes, both local and national, to agree the reopening of other services not initially open on the 16<sup>th</sup> September.
- 3.14 An agreement to open will need to take account of stakeholder and Customer safety as well as the financial constraints that the Council (as with other Councils) finds itself in due to COVID-19.

### **Timetable and Review Process to transfer these Services to their final delivery provider**

- 3.15 As part of the ongoing process service delivery will be reviewed between the Council and the two Service delivery organisations on a quarterly basis considering effectiveness, usage, COVID-19 compliance and value for money.
- 3.16 From this the Council will be able to build up a full understanding of Service delivery in the COVID-19 and post COVID-19 environment to assess the affordability of the Libraries, Heritage, Arts and Sports Services.
- 3.17 New specifications for the services can be set out from this data and an assessment made as whether to remain delivering via “in house” (Peterborough Limited and City College Peterborough) or by other service delivery mechanisms. It is expected that at least 4 quarters data will be required to come to this decision point – which will be September 2021. Service delivery should not change without approval from both the client and the new contractor.

### **Financial Remuneration Package**

- 3.18 The following table sets out the draft 2019/20 position for Vivacity. The Council are working with Vivacity to agree the position when services transfer to the Council on the 16<sup>th</sup> September. However, the profile will be significantly different to the table due to services not being provided over that time period as well as COVID-19 service delivery requirements going forward.

<b>2019/20 Position</b>	<b>£000</b>
PCC Income (FMA)	2,152
Other Fixed Income	59
Variable Income	8,632
<b>Total Income</b>	<b>10,843</b>
Employee costs	-6,345
Premises Costs	-385
Direct Overheads	-2,282
Service/Sales/Stock costs	-997
Other fixed costs	-317
Other variable costs	-627
<b>Total Costs</b>	<b>-10,952</b>
<b>Net Position</b>	<b>-109</b>

- 3.19 There has been significant ongoing negotiation between Leisure and Culture providers, Council and the Government for additional funding to be made available. Funding has now been made available by the Department of Digital, Media, Culture, and Leisure for Culture but nothing yet for sports.
- 3.20 The Secretary of State for Housing, Communities and Local Government announced in July that if services were provided “in house” by Councils, that they could apply for 75% of income loss (less the initial 5%) net of costs. It has also been confirmed that Council can furlough staff up to when the scheme ends in October.
- 3.21 It is clear that opening up services and then providing them to our customers will not generate the income that it did pre COVID-19 due to the changes in regulations.
- 3.22 As such, the Council, by providing these services “in-house” initially will ensure that in all conversations around service delivery that the overall financial position is always taken account of including taking full advantage of:
- The Income loss scheme;
  - The Job Retention Scheme (Furlough, including the Job Retention Scheme bonus);
  - Any further grants schemes that are made available by the Government to ensure that overall additional costs are minimised.
- 3.23 During the first 6 months of 2020/21 £1,291,542 of FMA payments were made to Vivacity, this amount is available in the second half of the year to aid in the delivery of services.
- 3.24 Both Peterborough Limited and City College Peterborough will require agreements in the interim period to ensure that they

- Have the cash resources to make payments
- Are recompensed on a cost plus basis

3.25 Both the Council and its new service providers, or indeed the Government, fully understand the implications of starting up and running these services up again or how much the new cost will be in 2020/21 or indeed in 2021/22. That is why it is so important to log all expenditure and income properly as well as have full reviews on a quarterly basis.

#### **4. CONSULTATION**

- 4.1 There has been consultation as this is a significant transfer including:
- Staff of Vivacity, Council Cabinet, The Board of Peterborough Limited, The Governors of City College Peterborough, Unions.

#### **5. ANTICIPATED OUTCOMES OR IMPACT**

- 5.1 Vivacity have served notice that they will cease to deliver the services contained in this report on the 16<sup>th</sup> September 2020, as such the Council have needed to make arrangements for the services to be delivered by other means from the 17<sup>th</sup> September onwards. This report sets out who will deliver what and also some of the issues that will need to be resolved as services start to run again.

#### **6. REASON FOR THE RECOMMENDATION**

- 6.1 The 4 Recommendations of this report ensure that the services are stabilised in the medium term, with information collected in that period ensuring that the Council makes the right decision for the long term delivery of the service.

#### **7. ALTERNATIVE OPTIONS CONSIDERED**

- 7.1 There were other options that could have been considered but were discounted quite early. The main reason for this was the fact that MHCLG have in July confirmed that they will reimburse lost income which would not be the case if 3rd Party contractors delivered the services. This was key to the intermediate decision for delivery of the service to be under "council control" for a year while information is gathered in the "post COVID-19" environment to decide the most appropriate delivery mechanism and level for the long term. As such the Council's view was that all the service was to remain intact over this period to maximise further contributions from the Government.

Other options considered/offered included:

- Giving parts of the service to other providers to run;
- Letting 3rd Parties deliver the Sports service (Charitable and Commercial);
- Setting up another Trust to deliver the services.

A full in house transfer was considered but bringing services into a PCC owned entity gives the services the flexibility to work towards an independent future in the long term and to give them the ability to access funding that may not be available to the Council itself.

#### **8. IMPLICATIONS**

##### **Financial Implications**

- 8.1 These are set out in sections 3.18 to 3.25. Because of COVID-19 and multiple changes to regulations it is not clear what the full costs are for these services given social distancing and other infection control measures now required. As such the Council will attempt to minimise costs by taking advantage of all the Government Schemes made available in July for self-delivered services.

### **Legal Implications**

- 8.2 Implementing this decision will:
1. Satisfy the Council's obligation under the FMA to take back the Service from Vivacity.
  2. Enable continued use of the Government Furlough Scheme and other assistance schemes.
  3. Enable transferring staff employment rights to be honoured with substantial disruption or additional expenses, particularly in respect of pension arrangements.
  4. Immediately comply with the Public Contract Regulations, whilst enabling the Services to be reshaped.

### **Human Resources Implications**

- 8.3 As at the time of writing this report, total of 490 employees are currently employed by Vivacity and will be affected by this exercise. Subject to approval, 142 of these employees will transfer to the council under the management of City College Peterborough and the remaining 348 will transfer to Peterborough limited in accordance with Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE). Detailed consideration will be given to the staffing and pension implications. The arrangements and consultation process for transferring staff will be undertaken as well as the preparation of a full staffing structure.

### **Equalities Implications**

- 8.3 The council is committed to the requirements of the Equality Act 2010 and the Public Sector Equality Duty. Employee data will be reviewed to ensure that there is limited or no detriment to individuals with a protected characteristic, as outlined in the Act. The transfer is subject to Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE) and therefore this will also be complied with.

## **9. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED**

- 9.1 There are none

## **10. Carbon Impact Assessment**

- 10.1 The Council will take over an existing service and so changes will be minimal in the short terms. However, there will be slight reductions in energy and environmental impacts initially as a number of services are not open due to COVID-19 restrictions and will be re-opened on a reduced customer basis. A review will take place over the next year to properly assess how to move forward for the benefit of the Service users and the environment bringing forward measures identified in the energy opportunity assessments as and when appropriate.

## **11. BACKGROUND DOCUMENTS**

11.1 Funding and Management Agreement dated 1st May 2010 ('the FMA') with Vivacity Cultural and Leisure Trust.

**12. APPENDICES**

12.1 Annex 1 – Schedule 1 of the FMA