

CABINET	AGENDA ITEM No. 5
21 September 2020	PUBLIC REPORT

Cabinet Member(s) responsible:	Councillor Marco Cereste, Cabinet Member for Waste, Street Scene and Environment	
Contact Officer(s):	Pete Carpenter, Service Director for Financial Services	Tel. 01733 452520

PETERBOROUGH LIMITED ARTICLES OF ASSOCIATION

R E C O M M E N D A T I O N S	
FROM: Pete Carpenter, Service Director for Financial Services and the Shareholder Cabinet Committee	Deadline date: N/A
<p>It is recommended that Cabinet approves:</p> <ol style="list-style-type: none"> 1. Alterations to Peterborough Limited’s (trading as Aragon Direct Services) Articles of Association (“Articles”) to allow inspection by the Council and its auditors of documents relating to Peterborough Limited and the supply of such documents as set out in Appendix A; 2. Alterations to the Reserved Matters, Appendix B to allow Peterborough Limited to swiftly pursue commercial opportunities. 	

1. ORIGIN OF REPORT

1.1 This report is submitted to Cabinet following: a referral from the S151 Finance Officer.

2. PURPOSE AND REASON FOR REPORT

2.1 The purpose of this report is to seek Cabinet’s approval to alter Peterborough Limited’s Articles of Association (Articles) and list of Reserved Matters.

2.2 This report is for Cabinet to consider under its Terms of Reference No. 3.2.12, ‘Cabinet will be responsible for the following functions in relation to the Council’s companies, partnership and charities (c) the determination of Articles of Association, and (i) approval of Business Plans’.

3. TIMESCALE .

Is this a Major Policy Item/Statutory Plan?	NO	If Yes, date for relevant Cabinet Meeting	N/A
---	-----------	---	------------

4. BACKGROUND

4.1 When Peterborough Limited was incorporated, it included a set of model articles of association (“Model Articles”) used for private companies to be adopted in its Articles. The Articles operate to set out its objectives and govern its relationship with the Council. Model Article 50 provides that “*except asauthorised by the directors or an ordinary resolution of the company, no person is entitled to inspect the company’s accounting or other records or documents merely by virtue of being a shareholder.*”

- 4.2 The Council requires the ability to access all information and documents relating to the business affairs of Peterborough Limited as reasonably required for the Council to make informed decision(s) within its purview as Peterborough Limited's owner. The alterations to Model Article 50 as set out in the draft at Annex A will give the Council such access and have been changed in consultation with Peterborough Limited.
- 4.3 An earlier Cabinet decision [DEC18/CAB/65] approved the alteration to the Articles to adopt a list of matters reserved to Cabinet to decide on ("Reserved Matters"). One of the powers in the Reserved Matters is Cabinet's power to alter the Articles.

5. CONSULTATION

- 5.1 Consultation will be undertaken with the board of directors of Peterborough Limited.

6. ANTICIPATED OUTCOMES

The anticipated outcomes of the changes to the Articles and the Reserved Matters are that the Council will have the ability to access material documents, and still retain control over strategic and policy decision(s) making in relation to the business affairs of Peterborough Limited.

7. REASONS FOR RECOMMENDATIONS

The Council requires the ability to access Peterborough Limited's documents regarding the business affairs of Peterborough Limited to enable the Council to make informed decisions as owner and ensure Peterborough Limited is fully accountable to the Council. Model Article 50 adopted in the Articles constrains the Council's ability to such access, unless authorised by Peterborough Limited.

The alterations to Model Article 50 as set out in Annex A give the Council such access, and will avoid the need for Peterborough Limited to obtain its directors' approvals or a resolution on a case by case basis where it chooses to authorise such access to the Council.

Furthermore, this alteration will align the Council's access to Peterborough Limited's documents with another Council company, NPS Peterborough Limited.

Alterations to Reserved Matters Appendix B to allow for Peterborough Limited to pursue commercial ventures swiftly whilst still ensuring Peterborough City Council are kept fully updated on any proposals.

8. ALTERNATIVE OPTIONS CONSIDERED

Not to amend Model Article 50. This would impede the Council from making informed decisions within its purview as owner of Peterborough Limited.

9. IMPLICATIONS

Financial Implications

- 9.1 That the Council will have full access to all the information required to discharge their functions in terms of validating spending to be included in monitoring, closure and budget reports.

Legal Implications

Alteration to the Articles

9.2.1 The Articles require Peterborough Limited's directors to keep written records of every unanimous or majority decision taken by the directors. The records include a statutory requirement to take minutes of all proceedings at its board of directors' meetings. Peterborough Limited's directors, company secretary, and its own auditors are permitted access to the minutes of board meetings.

9.2.1 The Council as a shareholder does not have a general right to inspect Peterborough Limited's minutes of board meetings, unless the right is expressly provided for in the Articles. The Articles do not entitle the Council to inspect its records or documents unless the inspection is authorised by its directors or on ordinary resolution by Peterborough Limited. The amendments to the Articles as set out in Annex A will expressly give the Council, and its auditor(s) access to records of Peterborough Limited's business affairs, including but not limited to its board minutes.

9.2.3 The Council's Operational Services Agreement ("OSA") with Peterborough Limited entitles the Council access to Peterborough Limited's books and records to monitor its accounting and performance matters for the provision of various services. The amendments to the Articles will work alongside the Council's contractual access rights under the OSA.

9.2.4 The Council relies on its power in the list of Reserved Matters to alter the Articles.

Equalities Implications

9.3 There are no implications.

Carbon Impact Assessment

9.4 There is no Carbon Impact arising from this recommendation.

10. BACKGROUND DOCUMENTS

10.1 Cabinet Decision DEC18/CAB/65

11. APPENDICES

11.1 Appendix A – Peterborough Limited's (trading as Aragon Direct Services) Articles of Association

11.2 Appendix B – Reserved Matters

This page is intentionally left blank