

CABINET	AGENDA ITEM No. 3
22 MARCH 2010	PUBLIC REPORT

Cabinet Member(s) responsible:	Councillor Matthew Lee (Cabinet Member for Environment Capital and Culture)	
Contact Officer(s):	John Harrison – Executive Director of Strategic Resources	Tel. 452398

FUTURE DELIVERY OF THE CULTURE AND LEISURE SERVICES

R E C O M M E N D A T I O N S	
FROM : Councillor Matthew Lee (Cabinet Member for Environment Capital and Culture)	Deadline date : N/A
<ol style="list-style-type: none"> 1. Approve the transfer on behalf of the Council, to Peterborough Cultural & Leisure Trust Ltd (PCLT) of the services (existing and future) that fall within the scope of: <ul style="list-style-type: none"> • Arts Services (to include the Key Theatre and Art Gallery) • Heritage Services (to include Peterborough Museum), • Library Services (all services) • Sports Services (all services), 2. Delegate to the Executive Director of Strategic Resources the authority to enter into any agreements necessary to make the transfer of services under recommendation 1 effective. 3. Delegate authority to the Executive Director of Strategic Resources to agree a 25 year Funding & Management Agreement that will incorporate a five year indicative funding package that will be binding at the level agreed for the first year, but indicative only in subsequent years. 4. That the Employment Committee be asked to consider the transfer of staff engaged by the Council on the services to be transferred under recommendation 1 to Peterborough Cultural & Leisure Trust Ltd on a date anticipated to be 1st May 2010, subject to the completion of the PCLT Mobilisation Plan . 5. To support the application by the Peterborough Cultural & Leisure Trust Ltd for Admitted Body Status to the Cambridgeshire County Council pension fund and to the Council acting as guarantor in this agreement. 6. That in determining the above recommendations Cabinet has regard to the comments of the Strong and Supportive Communities Panel. 	

1. ORIGIN OF REPORT

- 1.1 This report has been requested by the Cabinet Member for Environment, Capital and Culture.

2. PURPOSE AND REASON FOR REPORT

- 2.1 To determine whether or not to transfer the delivery of cultural and leisure services to PCLT Ltd together with the transfer of staff , assets, and facilities currently used to deliver such services (through loan agreements, leases or licences).

If it is agreed that the services should transfer, this report proposes that Cabinet delegate authority to the Executive Director of Strategic Resources to finalise and complete all formal agreements necessary in order to affect the transfer to PCLT Ltd; including a 25 year Funding & Management Agreement that will incorporate a five year indicative funding package that will be binding at the level agreed for the first year, but indicative only in subsequent years (and can be reduced).

- 2.2 This report is for Cabinet to consider under its Terms of Reference No. 3.2.4 'to promote the Council's corporate and key strategies and Peterborough's Community Strategy and approve strategies and cross-cutting programmes not included within the Council's major policy and budget framework'.

3. HISTORY

- 3.1 Cabinet on 12 October 2009 determined that the services to be considered for transfer into a culture and leisure trust should be: Arts Services; Museum Services; Library Services; Sports Services.

Cabinet authorised a start on the process of establishing a limited liability company (or "Trust") which would apply for charitable status (also referred to as a non profit distributing organisation).

4. TIMESCALE

Is this a Major Policy Item/Statutory Plan?	NO
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5. THE COUNCIL OBJECTIVES

- 5.1 **Obtaining Best Value and continuous improvement**

The Audit Commission advocates the appraisal of options for delivering services systematically in an open and transparent way and testing the market to ensure that services are delivered as economically and efficiently as possible. The Council have carried out a series of Options Appraisals which have involved a rigorous examination of the alternative ways of delivering the Leisure and Culture Service, followed by a procurement process to test the market.

6. KEY ISSUES FOR CONSIDERATION BY CABINET

- 6.1 **Loss of direct Council control**

In the proposed arrangements, the Council will lose direct "control" of the management of the services that would transfer to the Trust, but they would retain the strategic lead. An analogy might be that the Trust will steer the car, but the Council will decide the direction of travel. Whilst the Council will lose direct control, it will continue to have considerable influence over the Trust and the way it delivers the services. This will be achieved by the provisions within the various formal agreements and by the Councils representation on the Board of Director Trustees. The Council will be able to nominate two Director / Trustees onto a board of up to twelve.

6.2 Governance

The Trust are preparing to make an application to the Charity Commissioners for Charitable Status, and as soon as charitable status is granted the Trust will be governed by the regulatory regime of the Charity Commission and will be bound by duties embodied in Charity Law. This will provide the Council will considerable comfort regarding the governance of the Trust. In addition, the Council will require the Trust to demonstrate how they intend to manage resources prudently and in compliance with their Charitable Objects.

6.3 Independence of PCLT

As a key partner, the Council will have a strong relationship with the Trust and the contractual arrangements between us will set out the Services to be operated and how the arrangements will work in terms of financial support and monitoring etc. However, the Trust will be an independent Body, not subject to the control or undue influence of the Council. Trustees will have control over the way the company operates and will be accountable to the Charity Commissioners for maintaining their independence. Council will be asked however to nominate two representatives to the Trust Board.

6.4 Exit strategy

It is important to recognise that the intention is to create a long term partnership that is capable of delivering mutual benefits and continuous improvement. The Council will be entering into a partnership with the Trust that is intended to provide a sound foundation for the Leisure and Cultural Services to thrive under the management of an independent body that is viable and sustainable.

Approximately 40% of the Leisure Centres in England are now operated by Trusts, and an increasing number of local authorities are also transferring other Cultural Facilities and Services to Trusts in the way proposed in Peterborough. The vast majority of Trusts are operating effectively and many have had relationships with their "host Council" for well over fifteen years. That said, it is important to make sure that if the Trust fails the Council have arrangements in place to take back the Facilities and Services from the Trust. In drafting the various agreements, care has been taken to ensure that if the Trust fails, the Council will be in a position to either take over the running of the service again or appoint another operating partner. The important point to recognise is that the ownership of all of the assets remain with the Council. This includes the buildings and equipment . Assets which are on loan to the Council such as the Museum Collection will be loaned to the Trust for the duration of the arrangement. The Leases and the Funding and Management Agreement are "co-terminus" which means that if either of them are terminated the other will automatically be terminated also. Control of the assets would revert back to the Council, along with staff (under TUPE) and the service management responsibilities.

Under specific circumstances the Trust also have rights to terminate the agreement at certain points over the 25 year term.

6.5 Financial and management risk

The financial implications are considered later in this report. The details of the funding arrangements will be defined in the Funding and Management Agreement. The Trust will produce a detailed Business Plan that will set out their funding needs and the level of service they can offer for the funding available from the Council. Each year there will be a process through which the level of service and the requisite funding is agreed by both parties.

There is a risk that in the future the Council will not be in a position to provide sufficient funding to continue to provide the same level and range of services as at present. This risk would exist whether or not the services are transferred to the Trust. In such circumstances the formal agreements allow for changes to be agreed to the range of facilities and services

offered and the level of funding that follows – so that the Council is not encumbering itself financially as we approach a period of uncertainty for non statutory services such as leisure and culture.

The Trust will be required to deliver savings in order to meet the Medium Term Financial Plan, and may also be required to deliver more saving than the underlying 3% per annum saving that is factored into the indicative level of funding in the Council budgets. In many ways the Trust will be in a better position to deliver efficiencies because they may be able to attract grants from bodies that would not (or cannot) provide grants to statutory bodies such as the Council. By virtue of their charitable status, the Trust will obtain tax and other concessions such as relief from Business Rates (NNDR) which together amount to in excess of £300,000 per annum.

6.6 Existing Council liabilities

The Council and the Trust will enter into a Transfer Agreement that defines how the existing Council liabilities will be dealt with. The essence of the agreement is that each party will be responsible for their own liabilities, and this will be achieved by a reconciliation at the date of the Service Transfer. For example, the Council will need to pay for goods and services up to the transfer and the Trust will pay afterwards. Stock purchased by the Council that will be sold by the Trust will be purchased by the Trust at an agreed price.

6.7 Consideration to future services.

Both parties will be striving to deliver better services to people who live and work in Peterborough. Over the 25 year life of the agreement it may be desirable to transfer other Leisure / Cultural buildings or services to the Trust, subject to terms being agreed. The procurement process and the formal agreements have been structured so as to provide opportunities for the Council to transfer the management of additional services or facilities to the Trust and in certain circumstances, it would not be necessary to invest in costly and time consuming procurement processes.

7. THE FORMATION OF PETERBOROUGH CULTURAL AND LEISURE TRUST

7.1 At its meeting on the 12 October 2009 Cabinet agreed to the formation of a Shadow Board as part of the process of establishing a not-for-profit distributing organisation (a 'trust'). This has now been achieved. In order to recruit Trustees a public advert was placed in the Evening Telegraph on the 30 October 2009, at the same time a web page was established and a poster put up in the Council's cultural services facilities. Formal interviews were held on the 1 and 3 December.

7.2 Six people have now accepted offers to be part of the Board of Trustees and , they are:

- Mr Richard Astle
- Mr Chris Mardell
- Mr Paul Simmons
- Mrs Shelagh Smith (Chair)
- The Very Reverend Charles Taylor
- Mrs Estalla Todisco

7.3 The "shadow" Trust Board (at that time not incorporated) held its first meeting on the 16 December 2009 and met again on 18 January 2010. At this meeting it was decided to form the Peterborough Cultural and Leisure Trust into a registered company.

The Peterborough Cultural and Leisure Trust Business Plan

- 7.4 At its meeting on the 12 October 2009 Cabinet also determined that the transfer of assets to any trust formed would be subject to the agreement of a Business Plan (To follow).
- 7.5 The Business Plan starts by setting out a clear mission statement for the Trust: *“To deliver inspiring culture and leisure services which enrich the lives of residents and visitors to Peterborough”*. It then sets out strategic aims and the values through which the trust will work over the next five years.
- 7.6 The Business Plan then proposes a range of services which broadly reflect the existing range of services , including Arts, Heritage, Libraries and Sports.
- 7.7 The governance and staffing structures are set out as is a section on financial planning; this section on resources is pulled together by a look at how the trust will work in partnership with others.
- 7.8 Looking forward as the business plan undergoes its final drafting stage, the driving question for officers will be ‘how can we best use public resources to provide even better cultural opportunities both now and as the City grows?’
- 7.9 Finally the document moves on to performance monitoring and reporting before concluding with a strategic risk assessment for the Trust.

8. CONSULTATION

At its meeting on the 12 October 2009 Cabinet requested that consultation with staff be undertaken on the proposal to transfer services to a trust.

- 8.1 Engagement with staff has been ongoing.

The first a series of eight meetings in September 2009 was aimed at providing staff with early background information, alerting people to Members wishes to undertake a strategic review of the optimum structures for supporting the delivery of cultural services. The second series (eleven meetings) was held in October 2009. These were specifically consultation events to gauge the opinions of staff on the proposal to establish a Culture and Leisure Trust.

- 8.2 The main ‘feelings’ emerging from the first series of meetings were ones of apprehension, doubt that the process would take place at all, and, for some, a touch of optimism. By the second series of meetings the overall picture was much more positive with many staff stating they were excited at the potential for new freedoms and the ability to be agile in meeting customer needs. The ‘straw poll’ question of ‘how are you feeling about the process?’ was, for a significant majority of people answered positively.
- 8.3 Three meetings have already been held with Trade Union representatives, including a “pre-issue” briefing on the recently issued question and answer document arising from staff communication meetings. Further consultation meetings are planned over the next few months in order to comply with our obligations under TUPE.
- 8.4 The Employment Committee will receive a report and recommendations at its meeting on 22 March 2010.

9. REASONS FOR RECOMMENDATIONS

- 9.1 The reason for this recommendation is to improve service delivery and efficiency of leisure and cultural services in Peterborough.

10. ALTERNATIVE OPTIONS CONSIDERED

- 10.1 In July 2005 KPMG concluded a study which explored a range of options for the then Culture and Recreation Services section of the Council. This review covered in-house delivery, tendering for a commercial operator, a mixed approach to delivery of services and the formation of a trust. This study was followed up in October 2006 by a review by Deloitte which considered the same options. Both studies came to the same general conclusions, stating that the optimum way of delivering the kind of cultural services desired by Members was through a Trust. Both the KPMG study and the Deloitte study was reviewed by leading leisure trust solicitors Lawrence Graham, who concurred with the previous findings following a review of the services, and recommended that delivery through a locally established trust was most likely to deliver the best outcome in terms of economy, efficiency, and service development.
- 10.2 An evaluation of the option of including bereavement services within the scope of services that could transfer to a Trust concluded that this would not provide the best outcome, for the following reasons;
- whilst there are clear synergies between art, heritage, library and sport (each of these having a link to people's leisure interests and lifestyles) there is not a natural fit with bereavement services;
 - there are very limited financial benefits that would accrue as crematorium services are not considered to be charitable.

11. IMPLICATIONS

- 11.1 The Council's legal, financial, property, human resources, information technology and communications teams have played a key role in the development of the project to date and if the recommendations are accepted will continue to support the finalisation of the formal agreements and transfer arrangements . The following issues are pertinent to each of these disciplines.

12. LEGAL

- 12.1 The Council has both general powers (Section 2 of the Local Government Act 2000) and specific powers (Section 19(3) of the Local Government (Miscellaneous Provisions) Act 1976) to support the proposed initiative. Section 19(3) of the 1976 Act specifically permits the Council to provide indoor and outdoor leisure facilities and to contribute by way of a grant towards the costs incurred by a voluntary organisation providing such facilities (and so can be relied on to enable the Council to enter into a grant funding arrangement to a trust), it does not provide a sufficient legal basis for other aspects of the initiative - most particularly the promotion of the trust and the provision of any support services to a new trust.
- 12.2. It will, therefore, be necessary to rely on Section 2 of the 2000 Act in addition to Section 19 of the 1976 Act. The recent case of Risk Management Partners Ltd v. Brent London Borough Council and Others (2008) considered the extent and use of Section 2 powers.
- 12.3. Section 2 provides that a local authority has the power to do anything which it considers is likely to achieve any one or more of the following objects:
- the promotion or improvement of the economic well-being of their area;
 - the promotion or improvement of the social well-being of their area; and
 - the promotion or improvement of the environmental well-being of their area.

- 12.4. While Section 2 provides a robust statutory basis for the current proposals, it is essential that:
- the Council can demonstrate that its use of Section 2 powers in relation to this initiative is consistent with the objectives of the Sustainable Community Strategy;
 - the Council is satisfied that the initiative is likely to promote the well-being of its area or its inhabitants and specifically that it will promote one or more of the three objects in the 2000 Act; and
 - the primary purpose of the initiative is not to raise money and that the action is not explicitly prohibited on the face of other legislation.
- 12.5. In compliance with the Public Contract Regulations 2006 the Council published an advertisement giving other organisations from within the EU an opportunity to express an interest in providing its cultural and leisure services. Three pre-qualification questionnaires responses were received, including a response from Cultural Services on behalf of the Trust. Following consideration of the completed pre-qualification questionnaires the Council concluded (having sought the advice of legal Counsel in relation to the scores awarded in the evaluation process) that there was only one suitable organisation the Council would consider transferring the management of its cultural and leisure services to, that organisation being the Trust.
- 12.6. The transfer of the Council's cultural and leisure portfolio requires the satisfactory completion of several key agreements. These include: a transfer agreement (identifying transferring assets, assigned or retained contracts, employees); funding and management agreement; and a collections agreement (governing the loaning and management of the Council's museum collection to the new operator). These documents are currently being finalised.
- 12.7. The Council's Legal Services team will form a key part of the project team that effect the transfer of cultural and leisure services to the trust in addition to the specialist legal advice provided by Lawrence Graham solicitors bought in to support this process.

13. FINANCIAL

- 13.1. The detailed financial arrangements will be reported to the Cabinet and will be set in the context of the approved budget for 2010/11 and the medium term financial plan to 2014/15 and the possible national funding scenario from 2011/12 onwards.
- 13.2. The initial proposal of the likely payment to the Trust was included in the draft budget considered at Cabinet on 14 December 2009 for consultation. This level was based upon the following:
- Current spend on leisure and culture
 - Plus investment proposals
 - Less an annual efficiency requirement (to mirror the efficiency requirement that the Government builds into the local government grant settlements)
 - Less a proportion of the savings from business rates
- 13.3. Whilst Trust status does allow for some cost savings (business rates and VAT) and provides greater flexibility in seeking additional funding, it also leads to additional costs. .
- 13.4. The majority of funding for the Trust will come through the payment provided by the Council. The Trust will also be able to generate income through fees and charges and charitable status is likely to enhance its ability to seek other forms of external funding and grants.

- 13.5. The Trust's business plan outlines a number of efficiency proposals that aim to ensure that the likely spend levels meet the likely resourcing levels.
- 13.6. These arrangements may also see benefit share arrangements to be developed, where the financial benefits of future efficiencies are shared between the Council and the Trust.
- 13.7. Both the Trust Business Plan and the Medium Term Financial Plan run for five years and the Trust will look for a funding commitment for at least this period.
- 13.8. There is also a need to create a "thin" client side function within the Council.
- 13.9. There will also be ongoing contractual arrangements between the Council and the Trust for the provision of some support services such as payroll and grounds maintenance. The length of such contracts will be subject to the council's costs remaining competitive with alternative private sector providers that the trust could purchase these from. The trust will also be recruiting directly to key areas such as finance.

14. Human Resources

- 14.1 The establishment of a trust as proposed will involve employees transferring under Transfer of Undertakings Protection of Employment Regulations 2006 (TUPE), thereby legally protecting their current contractual terms and conditions (pensions are dealt with below) and continuous service. To ensure a successful transfer under the relevant legislation, effective consultation with both Trade Union representatives and staff will be required; it is proposed that this should be for a period of approximately three months. Employee representatives and staff have already been made aware of the feasibility study currently being undertaken.
- 14.2 The Council engaged the Pensions Administering Authority (Cambridgeshire County Council) and the Pensions Actuary (Hymans Robertson) to review the options for transferring current employee pension provision from the Council to the Trust.
- 14.3 It is proposed that any Trust formed adopts Local Government Pension Scheme (LGPS) provision for the 112 employees potentially affected by the proposed transfer and who are currently in the scheme. This would be under "Community Admission Body" arrangements; the Council acting as guarantor of the pension scheme.
- 14.4 The Trust will need to agree pension arrangements post April 2010. The Trust has the option to allow new employees entry to the Local Government Pension Scheme (known as "open") or not (known as "closed"), or seek alternative pension provision via a third party provider.
- 14.5 The actuarial review, based on current market conditions, indicates the Employers Pension Contribution for adopting a "closed" scheme would be 20.9%; an "open" scheme would be 18.1% from April 2010. The Council rate for 2010/11 is 17.6%.
- 14.6 The "closed" scheme is more expensive, as the amount of potential contributions to the scheme is restricted over time; but does cap the pension liability of the Trust. Based on the existing employees likely to transfer to the Trust, the cost of a "closed" scheme would increase the Trusts employer costs by £82,000 per annum; an "open" scheme £12,000, compared with Council projected costs for 2010/2011.
- 14.7 If a "closed" scheme option is preferred, the Trust needs to identify alternative pension provision for new employees.

15. PROPERTY

15.1 Key to the successful delivery of agreed outcomes by the Trust is the management of the assets from which these services will be delivered.

15.2 In general the physical property assets fall into two categories:

Council owned properties:

It is proposed that these will be leased to the Trust on a 25 year basis, at a peppercorn rent. The Council will be the landlord and the Trust the tenant. The lease will establish key roles and responsibilities including the liability for maintenance.

Properties that are leased in by the Council:

Where practicable these will be sub-let to the Trust with the Council retaining the head lease. The lease will be as far as practicable the same as that for Council owned properties save for the rent which will be a peppercorn and the responsibilities as set out below.

However, due to conditions within the lease it may not be possible to sub-let. In these instances the Trust will, by means of a management agreement, manage the asset on behalf of the Council.

Tenant and Landlord responsibilities

The lease will establish liabilities for maintenance and repair of the physical assets. The lease imposes a legal responsibility on the Council to undertake certain works as and when they are necessary. The Council will lose a degree of flexibility regarding the management of the repair and maintenance obligations compared to the current situation were repairs can be scheduled without having to consider third party interests and the legal rights of a tenant.

In general responsibilities will be split into:

Landlords responsibilities - Planned

These priorities will be agreed with the Trust together with the impact of not undertaking the works for consideration by elected members as part of the budget process.

A three year rolling programme will be agreed and included within the Council's Medium Term Financial Strategy.

Landlords responsibilities – Unplanned

These are also works that are the responsibility of the landlord but for whatever reason they are not included within the forward plan. If not covered by insurance then the Landlord is obligated to cover expenditure up to £100,000 without reference to elected members.

Above this level they will be referred to Council in accordance with the constitution. The Landlord will develop a business case with the support of the Leisure Trust outlining the impact of not undertaking the works.

Tenants responsibilities

This will include both planned and unplanned work of a routine nature that is the responsibility of the tenant. It is anticipated the Trust will commission the Council to carry out these works using the services of Strategic Property unless they are of a minor nature. The tenant will be required to provide a Planned Maintenance Schedule to demonstrate that they have made adequate provision for maintenance works

Emergency works

The tenant will request these works as and when necessary to address issues as and when they arise. The initial response will be to address the issue. Ultimate responsibility will be determined after initial resolution.

15.3 Utilities

The cost of utilities for the services that would transfer amount to in excess of £800,000 per year which is a very significant proportion of the overall operating costs. The unit cost of gas and electricity can fluctuate significantly and an increase in cost would be a major issue for either the Council or the Trust. The proposal (yet to be agreed) is that the Council will transfer the current budget to the Trust, and that the Trust will then pay the bills. The Trust will be encouraged to manage the consumption so as to reduce the cost overall, and will be incentivised by being allowed to retain part of the saving that is achieved. However, the Council will make it clear that if consumption increases, the consequential increase in cost will have to be met by the Trust alone. This represents a risk transfer from the Council to the Trust. There may be other financial advantages that arise from the fact that a charity will be occupying the facilities and are responsible for the utility costs. Charities may be able to apply for some tax relief related to energy consumption. The Trust will be able to purchase utilities from the existing buying pool, but if they are able to purchase for less from an alternative supplier the impact on the cost of utilities to the rest of the Council will be considered as part of a Business Plan.

16. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

- i) Lawrence Graham report into the formation of a culture trust for Peterborough

APPENDICIES

To follow.