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| EXTRAORDINARY CABINET | AGENDA ITEM No. 6 |
| 23 MARCH 2023 | |

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| Report of: | Rob Hill – Acting Service Director Communities | |
| Cabinet Member(s) responsible: | Cllr Steve Allen – Deputy Leader, Cabinet member for Communications, Culture and Communities | |
| Contact Officer(s): | Rob Hill – Acting Service Director Communities | Contact Officer(s): |

SUBSIDIARY PROPOSAL: LEISURE SERVICES

| RECOMMENDATIONS | |
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| FROM: <i>Acting Service Director Communities</i> | Deadline date: <i>March 2023</i> |
| <p>It is recommended that Cabinet:</p> <ol style="list-style-type: none"> Subject to the undertaking of due diligence on and receipt by the Council of satisfactory legal, financial, procurement and taxation advice in connection with the proposed delivery structure, approves that Peterborough Limited establishes a not-for-profit company limited by guarantee as a wholly owned subsidiary to deliver the Council’s leisure services on an interim basis until 31 March 2024. Approves the amendment of Peterborough Limited’s Articles of Association, accounting and reporting practises as may be necessary to affect the decision in recommendation 1, and the adoption of a further Peterborough Limited reserved matter, namely that Cabinet must approve the alteration of any matter reserved to Peterborough Limited in relation to any subsidiary. Following receipt and approval by the Executive Director of Corporate Services of the satisfactory legal, financial, procurement and taxation advice referred to in Recommendation 1 approves the delegation of authority to the Executive Director of Corporate Services, in consultation with the Director of Governance, the Executive Director for Place and Economy, and the Cabinet Member for Communication, Culture and Communities, to take all necessary steps to protect the interests of the Council and effect the decision in Recommendations 1 and 2, including negotiating and entering into agreements. | |

1. ORIGIN OF REPORT

- This report is presented to Cabinet following a review of possible operating options by Peterborough Limited relating to its delivery of leisure services on behalf of the Council. Peterborough Limited’s report is set out in Appendix 1.

2. PURPOSE AND REASON FOR REPORT

- The purpose of this report is to present recommendations to Cabinet following Peterborough Limited’s review of options relating to the company structure operated by Peterborough Limited for the delivery of leisure services, to ensure that the delivery of the leisure services achieves best value for money.
- This report is for Cabinet to consider under its Terms of Reference No. 3.2.17, ‘*Cabinet will be responsible for the following functions in relation to the Council’s companies, partnership and charities: (a) The establishment of any new company, partnership or charity*’

- 2.3 There is an exempt appendix (Appendix 1) attached to this report that is NOT FOR PUBLICATION by reason of paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972 because it contains commercial information relating to the business affairs of Peterborough Limited. The public interest test has been applied to the information contained within these exempt appendices and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it

3. **TIMESCALES**

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| Is this a Major Policy Item/Statutory Plan? | NO | If yes, date for Cabinet meeting | N/A |
|---|-----------|----------------------------------|------------|

4. **BACKGROUND AND KEY ISSUES**

- 4.1 Peterborough Limited (P-Ltd) is wholly owned by Peterborough City Council and was formed as a Teckal compliant Local Authority Trading Company (LATCo) in 2019. This means that the company is autonomous from the Council but is subject to certain restrictions. Certain decisions are also reserved to the Council.
- 4.2 On 1 October 2020 leisure services operated by Vivacity Leisure Trust were transferred into P-Ltd as part of a holding arrangement following the early termination of the contract between the Council and Vivacity Leisure Trust. These services have continued to be operated by P-Ltd under the Vivacity brand and comprise the following:
- Reginal Pool and Fitness Centre
 - Lido
 - Vivacity Premier Fitness (VPF)
 - Hampton Leisure Centre
 - Bushfield Leisure Centre
 - Werrington Leisure Centre
 - Jack Hunt Pool
 - Swim Academy/School
 - Health and Wellbeing Services
 - Disability/Inclusive Sport and Leisure
- 4.3 The Council and P-Ltd have entered into an agreement for P-Ltd to deliver leisure services until 31 March 2024 (subject to 6 months termination at any time). This interim arrangement allows leisure services to operate whilst the Council undertakes a formal review of services which seeks to identify a long-term operator.
- 4.4 P-Ltd currently requires a financial subsidy [from the Council] to deliver leisure services on behalf of the Council. As part of the Council's work to achieve a balanced budget, it is necessary to secure a delivery model which removes the need for a Council subsidy, and which instead delivers leisure services in their entirety at no cost to the Council.
- 4.5 P-Ltd.'s company structure means that leisure services are delivered by P-Ltd under a 'limited by shares' company model which does not have the benefits of VAT exemption and National Non-Domestic Rates (NNDR) relief. National research suggests that other leisure operators are able to achieve these benefits through alternative company structures.

P-Ltd has therefore considered alternative arrangements which more closely align to those used more widely across the market, with five options being considered:

- Option 1 - business as usual
- Option 2 - not for profit company limited by guarantee
- Option 3 – registered charitable company limited by guarantee
- Option 4 - charitable incorporated organisation

- Option 5 - community benefit society

An analysis of possible company structure options is set out in exempt Appendix 1.

- 4.6 P-Ltd recommends the option of a Not for Profit Company limited by Guarantee (CLG), but before any alternative company structure is established, the Council must conduct its own diligence on the options and their respective risks and benefits to the Council and confirm the suitability or otherwise of P-Ltd's proposal through the receipt of satisfactory legal, financial, procurement and taxation advice as noted in Recommendation 1.
- 4.7 As noted in Recommendation 1, the leisure services will be delivered by P-Ltd as an interim arrangement until March 2024. Separately, the long-term options for the delivery of leisure services are being considered as part of a transformation project.

5. CORPORATE PRIORITIES

- 5.1 The provision of leisure services in Peterborough directly contributes to the Council's 'Our Places and Communities' priority, particularly as they relate to improving health and wellbeing, providing local jobs, and the provision of community spaces.

Leisure services also contribute towards the 'Prevention, Independence and Resilience' priority, including current delivery which supports foster families, activities for children, and provision of inclusive activities and short breaks.

In addition, as this review focuses on achieving best value for money it also contributes to achieving a 'Sustainable Future City Council,' by moving towards a cost neutral model of leisure services delivery.

The proposal will not have any impact on carbon emissions / environmental impact.

6. CONSULTATION

- 6.1 This recommendation has been considered by the Corporate Leader Team (CLT) and Cabinet Policy Forum (CPF).

7. ANTICIPATED OUTCOMES OR IMPACT

- 7.1 If the recommendation is approved, then it is anticipated that leisure services will achieve revenue savings / reduce service costs.

8. REASON FOR THE RECOMMENDATION

- 8.1 As set out above and in Appendix A, a not-for-profit company limited by guarantee is P-Ltd's preferred option in principle, but this is subject to further due diligence on the part of the Council and receipt of advice in accordance with Recommendation 1.

The Council will then be able to assess which option will enable P-Ltd to continue to deliver leisure services on behalf of the Council in the most cost-effective way

This report does not impact on the separate work which is being carried out to explore long-term delivery options for the leisure services.

9. ALTERNATIVE OPTIONS CONSIDERED

- 9.1 Alternative options set out within Appendix 1 - Exempted Section Not for Publication Business Case

10. IMPLICATIONS

Financial Implications

10.1 The financial implications for Peterborough City Council approving Peterborough Ltd setting up a Not-for-Profit Company Limited by Guarantee are as follows:

- Set up and administration costs will be incurred by Peterborough Ltd, which forms part of Peterborough City Council's consolidated group accounts. There is no direct budgetary impact on Peterborough City Council service budgets.
- As Peterborough Limited and the proposed subsidiary are proposed to operate within the same VAT group, an indemnity may be required to indemnify the subsidiary company from any VAT liabilities of Peterborough Ltd.
- There will be a cost to the Council in connection with obtaining legal, financial, procurement and taxation advice in accordance with Recommendation 1.

The financial implications of P-Ltd subcontracting the operation of Leisure Services to the proposed subsidiary are as follows:

- The business case presented by Peterborough Ltd. sets out plans to account for VAT on qualifying transactions as an exempt supply, and to apply for charitable relief on NNDR liabilities. If achieved, these benefits would allow the net operating costs of leisure services to reduce towards a cost neutral position, consistent with the savings plans in the budget and Medium-Term Financial Plan. These benefits cannot be achieved if the services continue to be operated in the current structure.
- Assurance over the VAT and taxation arrangements and achievement of the proposed savings is subject to further due diligence in accordance with recommendation 1.

Legal Implications

10.2 When P-Ltd was established, the Council approved its Business Plan, which anticipated that in addition to the environmental services which it would initially deliver to the Council, there was scope that these could be expanded into other areas. The Business Plan is included at Appendix 2 - Exempted Section Not for Publication.

P-Ltd was set up as a wholly owned subsidiary of the Council, certain decisions were reserved to the Council as shareholder, to be determined by Cabinet or Cabinet Shareholder Committee as considered appropriate. The list of reserved matters was agreed by Cabinet on 21 September 2020: Cabinet Report Peterborough Limited Articles of Association [and reserved matters] - SEPT20/CAB/30 and include decisions relating to the setting up of any subsidiary, the amendment of Peterborough Limited's Articles of Association, and changes to accounting and reporting practises

Cabinet approval is therefore required in respect of the reserved matters which are referred to in Recommendations 1 and 2 above. In addition, Shareholder Cabinet Committee approval will be required to permit P-Ltd to enter into a contract with its subsidiary by which it will sub-contract the delivery of the Leisure Services, if that contract exceeds £25,000 ("a Material Contract") because this is not already provided for in the Business Plan.

Peterborough Limited is a "Teckal" compliant company (advice is detailed in KEY/11JUN18/04 – Link found in background documents) and thus is exempt from the requirement to compete with other companies under the Public Contracts Regulations 2015 ("PCR") for works, goods and services contracts awarded by the Council. As the PCR apply to contracting authorities and bodies governed by public law and it seems likely that the subsidiary will fall into the latter category, it will also be subject to the PCR.

Therefore, in order for Peterborough Limited to award a direct contract to its subsidiary, under the PCR it may only do so if it has "power of decisive influence over both strategic objectives and significant decisions of the body awarded the contract." The Council has established such "decisive influence" over Peterborough Limited by use of the reserved matters set out above. Before any sub-contracting arrangement between Peterborough Limited and its subsidiary is agreed by the Council, it is advisable for the Council to require such reserved matters to be mirrored as between

Peterborough Limited and its subsidiary and approve the further reserved matter as between itself and Peterborough Limited included in Recommendation 2 above.

The exercise of the delegation in Recommendation 3 will be subject to further governance report(s) in accordance with the Council's Constitution.

Equalities Implications

10.3 There are no negative equalities implications.

11. BACKGROUND DOCUMENTS

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

11.1 Cabinet Meeting, 11th June 2018. Item 6

<https://democracy.peterborough.gov.uk/ieListDocuments.aspx?CId=116&MId=4142>

Cabinet Meeting, 17th December 2018. Item 4.

<https://democracy.peterborough.gov.uk/ieListDocuments.aspx?CId=116&MId=4214>

Shareholder Committee Meeting, 2nd March 2020. Item 5.

<https://democracy.peterborough.gov.uk/ieListDocuments.aspx?CId=721&MId=4346&Ver=4>

12. APPENDICES

12.1 Appendix 1 - Exempted Section Not for Publication Business Case

Appendix 2 – Business Plan of Peterborough Limited

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