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| <b>CABINET</b>           | <b>AGENDA ITEM No. 7</b> |
| <b>18 SEPTEMBER 2023</b> | <b>PUBLIC REPORT</b>     |

|                                |   |                              |
|--------------------------------|---|------------------------------|
| Report of:                     | Adrian Chapman, Executive Director – Place and Economy  |                              |
| Cabinet Member(s) responsible: | Cllr Steve Allen – Deputy Leader and Cabinet Member for Housing and Communities                                       |                              |
| Contact Officer(s):            | Rob Hill: Service Director for Housing and Communities<br>Jamie Fenton: Partnership Manager, Culture, Sport & Leisure | 07815 558081<br>07976 382756 |

**LEISURE, HERITAGE AND LIBRARY SERVICES CONTRACT AWARD**

| RECOMMENDATIONS   |               |
|---|---------------|
| FROM – Adrian Chapman   | Deadline date |
| It is recommended that the Cabinet:   |               |
| <ol style="list-style-type: none"> <li>1. Authorises the Council to commission Leisure services from Peterborough Limited (“P-Ltd”) and the sub-contracting of such services by P-Ltd to its wholly owned subsidiary company limited by guarantee (“CLG”) (subject to all necessary approvals being obtained and steps being completed, as required under Cabinet decision MAR23/CAB/104) until 31<sup>st</sup> March 2029 rather than 31<sup>st</sup> March 2024 as approved by Cabinet on 23 March 2023.</li> <li>2. Subject to the Council in its capacity as trustee of the Peterborough Museum and Art Gallery obtaining all necessary consents, authorises the Council in its capacity as local authority to commission heritage and library services (specifically, Peterborough Museum and Art Gallery, Flag Fen, and Libraries), up to the available budget of £1.4m, from P-Ltd and the sub-contracting of such services by P-Ltd to CLG until 31st March 2029.</li> <li>3. Delegates authority to the Executive Director for Place and Economy, in consultation with the Director for Legal and Governance and the Deputy Leader and Cabinet Member for Housing and Communities (following receipt of the necessary approvals and steps referred to in recommendation 1 and following receipt of any necessary consents referred to in recommendation 2) to take all necessary steps to protect the interests of the Council and implement the decision in recommendations 1 and 2 including negotiating and entering into all documentation reasonably required to give effect to this recommendation.</li> </ol> |               |

**1. ORIGIN OF REPORT**

- 1.1 This report is presented to the Cabinet following an extended period of review into the future operational management of the services. It expands upon and supplements Cabinet decision MAR23/CAB/104 to establish a not-for-profit subsidiary of P-Ltd for the operation of Leisure Service (approved March 2023, linked in Background Documents below).

**2. PURPOSE AND REASON FOR REPORT**

- 2.1 In March 2023 Cabinet approval was granted (subject to the undertaking of due diligence on, and receipt by the Council of satisfactory, legal, financial, procurement and taxation advice) to establish a not-for profit subsidiary of Peterborough Limited (P-Ltd) to operate the Council’s Leisure Services until 31 March 2024. The proposal was that the Council’s contractual relationship would continue to be with P-Ltd and P-Ltd would then sub-contract to the

subsidiary. The approved recommendation also required officers to seek satisfactory legal, financial, procurement, and taxation advice, which has now been supplied.

This report seeks to extend the time period for the award of a contract to P-Ltd from 31 March 2024 to the 31 March 2029 in relation to leisure services (which P-Ltd would then sub-contract to the subsidiary), allowing the realisation of benefits which other operators in the market have, namely, National Non-Domestic Rates (NNDR) and Value Added Tax (VAT).

2.2 The report also sets out a recommendation to award a contract to P-Ltd (and utilise the same P-Ltd Subsidiary by sub-contracting) until 31 March 2029 for the operation of Heritage and Library Services, thus extending the benefits it offers to reduce operational costs and allow the Council to maintain delivery and secure best value. This recommendation is subject to obtaining all necessary consents in respect of Peterborough Museum and Art Gallery of which the Council is a corporate trustee.

2.3 This report is for Cabinet to consider under its Terms of Reference No. 3.2.1 and 3.2.5

To take collective responsibility for the delivery of all strategic Executive functions within the Council's Major Policy and Budget Framework and lead the Council's overall improvement programmes to deliver excellent services.

To make decisions on actions relating to the awarding, assigning and termination of contracts over £500k, and waiving or granting exemptions to Contract Regulations where contracts are over £500k, with the exception any time-critical, operational, or routine decision, which may be determined by the relevant portfolio holder

**3. TIMESCALES**

|   |     |  |                   |
|---|-----|--|-------------------|
| Is this a Major Policy Item/Statutory Plan? | YES | If yes, date for Cabinet meeting   | 18 September 2023 |
| Date for relevant Council meeting           | N/A | Date for submission to Government Dept. ( <i>Please specify which Government Dept.</i> ) | 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 company. This means that the company is a separate entity from the Council but is subject to Council control and requires a Council appointed board and relies on the Council for guidance and input on strategic matters or important issues of policy.

4.2 Since September 2020, P-Ltd have operated Leisure services on behalf of the Council, as authorised by Cabinet decision AUG20/CMDN/22 (linked below).

Since May 2022 P-Ltd have also delivered Heritage and Library Services on a temporary basis for the Council.

They have, in this period, been able to buck national trends and successfully recover services post pandemic. Highlights include:

- Gym Memberships having returned to pre-pandemic levels (national averages have achieved 70-80%).
- Library opening hours having increased without extra costs through the introduction of self-serve technology.

- Flag Fen seeing the best visitor figures ever in one month on site, with one event becoming the most successful ever held at Flag Fen, attracting more than 300 re-enactors and over 1,500 visitors all paying an enhanced admission fee.
- A new volunteer scheme at the Museum having delivered operating efficiencies, with 526 volunteer hours being logged in April and May alone.

4.3 In January this year, a Council Project team was established to review options for the delivery arrangements for Leisure Services. A soft market testing exercise was undertaken which included exploration of options for Heritage and Library Services, and a summary of the findings can be seen at section 9.2.

4.4 As referred to in section 2.1, in March 2023 (MAR23/CAB/104), Cabinet approval was given to establish a not-for profit subsidiary of P-Ltd to operate Leisure Services until 31 March 2024. The necessary advice has been obtained and reviewed in relation to the creation of the subsidiary and the provision of leisure services. The intention is that, as part of the exercise of the delegated officer decision pursuant to the March 2023 Cabinet decision, the relevant officer(s) will confirm receipt of such advice and confirm that it is satisfactory for the purposes of the Cabinet decision MAR23/CAB/104. This will be documented separately within the Officer's Decision Notice in that regard to allow the subsidiary to be created.

Officers have undertaken an exploration of extending the subsidiary provision to include the operation of the following services:

- Libraries and Archive Services (Central, Bretton, Orton, Werrington, Hampton, Dogsthorpe, Eye, Thorney, Stanground, Woodson and Mobile Library Services)
- Heritage Services – Flag Fen, Peterborough Museum and Art Gallery

As a result, this report recommends the award of contract(s) until 31 March 2029, subject to break clause(s), to P-Ltd (and the sub-contracting by P-Ltd of such contracts to the Subsidiary) for the delivery of all Council Leisure, Heritage, and Library Services subject to obtaining the necessary consent.

For completeness, the leisure services already described in the March 2023 Cabinet report are:

- Bushfield Leisure Centre
- Jack Hunt Swimming Pool
- Hampton Library and Leisure Centre
- Regional Fitness and Swimming Centre plus Athletics Track
- Vivacity Premier Fitness
- Werrington Leisure Centre
- Swimming Academy
- Health and Wellbeing service
- Disability sports
- Holiday and schools programme

4.5 If approved, this will allow the Council to provide a sustainable, cost-effective model to operate these services, and allow the Council and the subsidiary to develop, with key stakeholders, a strategic long-term plan for the development of each of its respective areas of operation.

4.6 Specifically in relation to the Peterborough Museum and Art Gallery (P-MAG), the Council is the sole Trustee for the P-MAG Charity (registered number 311798). The Charity has responsibility for the artifacts at the museum, Flag Fen, and the actual buildings themselves.

External legal advice is being sought on the implications of the recommendations set out in this report in relation to the Council's role as Trustee of the P-MAG Charity, and on the Charity itself as well as the steps needed for any approval to be obtained and subsequently obtained.

Recommendation 2 is subject to that advice being considered, as set out in that recommendation.

- 4.7 It is important to note that, should the recommendations set out in this report be agreed, the Council will retain its role as commissioner of services, including setting the strategic direction for services under contract. This is important in order to ensure that services being delivered on our behalf meet the needs of our population and conform to our overall corporate strategy.

## 5. CORPORATE PRIORITIES

- 5.1 The provision of the services described in this report contribute across many of the Council's priorities, most notably:
- i. Our Places and Communities:
    - especially relating to improving health and wellbeing, providing local jobs, and providing community spaces.
  - i. Prevention, Independence, and Resilience:
    - for example, programmes to support foster families, activities for children, and provision of inclusive activities and short breaks.

The recommendations in this report however focus on the structure and model of delivery, which contributes directly to:

- iii. Sustainable Future City Council
  - in the short term, by moving to a cost neutral model for leisure services, and then to a reinvestment model where additional services to support the above objectives can be provided.

## 6. CONSULTATION

- 6.1 This recommendation has been considered by:
- Corporate Leadership Team – July and August 2023
  - Cabinet Policy Forum (CPF) – September 2023

Consultation has been completed with the following bodies:

- Peterborough Museum Society
- Regional Museums Development Manager
- Arts Council England
- Historic England
- Department for Digital, Culture, Media, and Sport

Discussions with Arts Council England and Historic England were especially productive, with both organisations expressing a strong desire to support the strengthening and sustainability of services contained in this report as part of the Council's strategic relationship with them.

## 7. ANTICIPATED OUTCOMES OR IMPACT

- 7.1 If the recommendation to award contract(s) until 31 March 2029 to P-Ltd (to be sub-contracted to P-Ltd.'s subsidiary) is approved, Leisure, Heritage and Library Services will be delivered via P-Ltd.'s subsidiary company until 31 March 2029.

## 8. REASON FOR THE RECOMMENDATION

- 8.1 As set out in this report, the provision of services by P-Ltd via a Not-for-Profit Company limited by guarantee (CLG) is the recommended option because of the following reasons:
- It is able to successfully administer "Vivacity Leisure" services.
  - It can continue to benefit from economies of scale provided by P-Ltd.
  - It has low additional administration costs.
  - It can be in the same VAT group as P-Ltd to enable corporate services to support and recharge at cost without introducing new costs.

- The vision of the new entity and that of the Client are aligned and delivered.
- It will enable continued focus on other existing core business which P-Ltd has.

In addition, it also provides a swift implementation option, given the most potential to reduce any deficit in 2023/24.

## 9. ALTERNATIVE OPTIONS CONSIDERED / OPTIONS ANALYSIS

9.1 The project team have explored a number of options in relation to the future management arrangements of leisure, heritage, and library services, specifically:

1. Transferring services to a commercial operator.
2. Establishing a new, separate legal entity – such as a joint venture or trust – into which services would transfer.
3. Moving the current management arrangements with Peterborough Ltd onto a more stable footing, based on longer term contract underpinned by a clearly defined service specification.

These options are explored in more detail below.

### 9.2 Transferring services to a commercial operator. (DISCOUNTED)

The soft market testing exercise which took place during February revealed strong interest from the commercial sector to bid for our leisure services, with some respondents also confirming that they would consider taking our heritage and library services too.

The general expectation was for a 10-year contract to enable the operator to invest in and transform services where necessary. The most favoured financial model was based on either a profit share arrangement between the operator and the Council, or a management fee payable by the Council to the operator. All respondents expected the Council to share the risks on utility costs and building repairs and maintenance.

It is likely that a full tender exercise would take between 12 and 18 months to conclude and given the fact that a significant subsidy is likely to be required this option is unlikely to result in a more sustainable financial option. It is also noted that the Council would most likely have less control and influence over future development of these services if they were to become commercially driven, and therefore have less ability to align them with our corporate aspiration to develop in the interests of the City and its residents.

### 9.3 Establishing a new, separate legal entity: (DISCOUNTED)

This option was discounted relatively early in the review process, primarily for two key reasons:

- The financial benefits from either formalising the current arrangement with Peterborough Ltd, or transferring services to a commercial operator, are at least the same as those that might be gained from establishing a new legal entity,
- Creating a new legal entity will take a significant amount of time, effort and cost, and the financial benefits we need to realise need to occur as swiftly as possible.

### 9.4 Moving the current arrangements with Peterborough Ltd onto a more stable footing, based on contract(s) until 31 March 2029 (sub-contracted to the subsidiary), underpinned by a clearly defined service specification.: (RECOMMENDED OPTION)

The primary financial benefit with this option is realised through the relief obtained from NNDR and VAT relief on income generated. The model could be established in-year, which means there will likely be some in-year financial benefit as well as guaranteeing a full year financial benefit from April 2024 onwards.

Agreeing this model is likely to impact significantly on the financial profile of services. Calculations show that the combined benefits of NNDR and VAT relief, coupled with the continued drive towards operational efficiency and commercialisation being led by Peterborough Ltd, would result in leisure services being able to be delivered at zero cost to the Council and a significant reduction in the cost of Heritage and Library Services.

This option would be subject to various steps being undertaken, including:

- The relevant actions required under or associated with Cabinet decision MAR23/CAB/104 being completed, including:
  - Approval of the relevant advice as being satisfactory for the purposes of the March 2023 Cabinet report;
  - Amendment to Peterborough Ltd.'s Articles and reserved matters in accordance with the legal advice obtained;
  - The incorporation of the subsidiary.
- Appropriate documentation being put in place between the Council and P-Ltd (and between P-Ltd and the subsidiary and/or PMAG, as appropriate) to formalise the arrangements, including necessary property documentation.
- Consideration of the Council's obligations as trustee of PMAG, to ensure that the Council is acting in accordance with its duties in that regard.

It should be noted that, as set out in 4.6, further advice is awaited in terms of the implications for the Council's role as Trustee of P-MAG; and recommendation 2 is subject to the Council obtaining any necessary consents required in that regard.

## 10. IMPLICATIONS

### 10.1 Financial Implications

10.1.1 The table below details the agreed budget available for leisure, heritage and library services, and the resultant pressure. These figures include all costs, including back-office services and Peterborough Ltd.'s overheads.

| <b>Post Subsidiary Financial Model</b> | <b>Current Cost £m</b> | <b>Net Savings £m</b> | <b>New Net Cost £m</b> | <b>Budget £m</b> | <b>Pressure/ (saving) £m</b> |
|--|------------------------|-----------------------|------------------------|------------------|------------------------------|
| Leisure                                | 1.47                   | 1.47                  | 0                      | 0                | 0                            |
| Libraries                              | 1.29                   | 0.21                  | 1.08                   | 1.29             | (0.21)                       |
| Heritage                               | 0.97                   | 0.08                  | 0.89                   | 0.11             | 0.78                         |
| <b>Total</b>                           | <b>3.73</b>            | <b>1.76</b>           | <b>1.97</b>            | <b>1.40</b>      | <b>0.57</b>                  |

10.1.2 As can be seen, if approved, this recommendation will:

- Remove 100% of the cost of Leisure Services to achieve a net zero position, based on realising the benefits of NNDR and VAT relief
- Reduce the costs of Heritage and Library Services, based on realising the benefits of NNDR and VAT relief:
  - Libraries cost reduction circa 16%
  - Heritage cost reduction circa 9.1%

In total, the resulting impact will reduce the combined cost of services by circa 53% compared to continuing with the current arrangements. A small pressure will remain (15% of allocated budget), and it is proposed this will be mitigated through service efficiencies that will be presented to a future Cabinet for consideration and subject to a separate report.

## 10.2 Legal Implications

### 10.2.1 Legal procurement implications

P-Ltd is a limited company, wholly owned by the Council. P-Ltd was formed as a “Teckal” compliant company, in order that contracts for works, services and goods, awarded by the Council to P-Ltd are exempt from the requirement to carry out a competitive procurement exercise, in accordance with regulation 12 of the Public Contracts Regulations 2015 (PCR).

A decision was made by Cabinet (MAR23/CAB/104, linked below) to approve P-Ltd.'s proposal to incorporate a subsidiary, not-for-profit company, limited by guarantee, to sub-contract the leisure services to that subsidiary until 31 March 2024, in order to achieve certain benefits, as set out in that report. The decision was made 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.”*

External legal/procurement advice was received, and, in summary, it states that:

The Council’s contract with P-Ltd for leisure services is likely to amount to a concession contract under the Concession Contracts Regulations 2016 (CCR), and this can be directly awarded by the Council to P-Ltd, without competition (relying on the ‘Teckal’ exemption within regulation 17 of the CCR) provided that:

- i. There are some suggested amendments to P-Ltd.'s Articles (to incorporate changes which were previously approved in governance reports, but which were not adopted, together with additional amendments to give the Council a more granular level of control over P-Ltd, thereby strengthening the ‘Teckal’ exemption);
- ii. The rest of the Teckal conditions need to be satisfied (i.e., more than 80% of P-Ltd.'s activities are carried out in performance of tasks which the Council entrusts to P-Ltd and that there is no direct private capital participation in P-Ltd);
- iii. The Council operates P-Ltd in accordance with P-Ltd.'s Articles (i.e., the Council does not allow P-Ltd to operate with wider freedoms than those in its Articles, but instead it is managed as per the Articles)

Similarly, P-Ltd.'s proposed contract with its subsidiary for leisure services will also amount to a concession contract under the CCR, and can be directly awarded by P-Ltd to its subsidiary, without competition (relying on the ‘Teckal’ exemption within regulation 17 of the CCR) provided that:

- i. The subsidiary’s Articles mirror P-Ltd.'s (save in relation to the subsidiary being a company limited by guarantee);
- ii. The rest of the Teckal conditions need to be satisfied (i.e., more than 80% of the subsidiary's activities are carried out in performance of tasks which P-Ltd entrusts to the subsidiary and that there is no direct private capital participation in the subsidiary);
- iii. The subsidiary is operated in accordance with its Articles.

The external legal advice also recommends that a formalised concession contract should be put in place between the Council and P-Ltd in relation to the leisure services (rather than the existing heads of terms document), with a sub-contract between P-Ltd and the subsidiary then being put in place on a ‘back-to-back’ basis.

The advice will also apply equally to the proposed contract with P-Ltd (and the sub-contracting by P-Ltd to its subsidiary) until 31 March 2029 in relation to leisure, heritage, and libraries. Although the details of the proposed arrangements have not been confirmed yet (and therefore whether the arrangements are likely to amount to ‘public services contracts’ for the purposes of the PCR or ‘concession contracts’ under the CCR), irrespective of such categorisation (whether the arrangements amount to public services contracts or concession contracts), provided that P-Ltd is operated as a Teckal company as detailed above, the award of leisure, heritage and library services to P-Ltd is exempt from the requirement to carry out a competitive exercise under Regulation 12 of the PCR (if the arrangements amount to public services

contracts) and also under Regulation 17 CCR (if the arrangements amount to concession contracts). Contracting with P-Ltd therefore offers a compliant procurement solution. Likewise, provided that the subsidiary is operated as a Teckal company, P-Ltd.'s sub-contract(s) with its subsidiary in that regard will also be exempt from the requirement to carry out a competitive exercise.

If this option is chosen, appropriate arrangements should be formalised with P-Ltd in relation to the service provision and also in relation to any occupation by P-Ltd of Council properties (and also between P-Ltd and its subsidiary).

#### 10.2.2 Employee implications:

There will be consideration by Human Resources of any impact on employees as a result of this proposal once the detail of the structure is known. However, it should be noted that no PCC employees will be affected by these proposals, as all staff are employed via P-Ltd.

#### Subsidy Control:

If applicable, there will be consideration of any subsidy control law as a result of this proposal once the detail of the proposed arrangements is known.

#### The Council as trustee of PMAG:

There will be consideration of the Council's obligations and duties as trustee of PMAG in implementing the proposed arrangements.

### 10.3 **Equalities Implications**

The proposals set out in this report represent organisational management changes only, as opposed to any changes in service design or delivery. Any proposed impacts on services linked to the financial implications set out in 10.2 will be subject to a separate report.

There are therefore no equalities implications as a result of this report.

### 10.4 **Procurement Implications**

Whilst interest from external suppliers was shown for leisure and heritage services, as indicated by recent soft market testing and market engagement, any move to externally tender leisure, heritage, and library services, but particularly leisure services, at this time would bring with it significant risks.

There are risks associated to any management fee charged by a supplier due to the fact that extensive investment in the current facilities is needed to upgrade equipment and management software in order to compete with other Leisure providers competing for membership numbers in some cases in close proximity to current leisure services locations.

Such upgrades and improvements will need careful planning both in terms of finance arrangements and implementation. It was made clear by the market that these issues would need to be funded and managed by the Council.

Additionally, to run the tender and successfully implement the solution would likely take 18 months and would lead to further pressure on existing budgets.

## 11. **BACKGROUND DOCUMENTS**

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

### 11.1 Cabinet Meeting, 23<sup>rd</sup> March 2023. Item 6

[Agenda for Cabinet on Thursday 23rd March, 2023, 11.00 am | Peterborough City Council](#)  
[Transfer of Services from Vivacity to Peterborough Limited and City College Peterborough - AUG20/CMDN/22](#)  
<https://democracy.peterborough.gov.uk/ieDecisionDetails.aspx?ID=1758>



**12. APPENDICES**

12.1 None

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