

SHAREHOLDER CABINET COMMITTEE	AGENDA ITEM No. 4
4th November 2024	PUBLIC REPORT

Report of:	Neil McArthur, Director of Legal and Governance, and Monitoring Officer	
Cabinet Member(s) responsible:	Cllr Angus Ellis, Cabinet Member for Environment and Transport	
Contact Officer(s):	Tom Hennessy, Head of Economic Growth and Development	Tel. 07950960108

PETERBOROUGH MUSEUM AND ART GALLERY TRUST - PROPOSAL TO SEEK AMENDMENT TO THE CONSTITUTION

RECOMMENDATIONS	
FROM: Head of Economic Growth and Development in the role of Client Officer responsible for the Council as Trustee of the Peterborough Museum and Art Gallery	Deadline date: 4 November 2024
<p>It is recommended that the Committee:</p> <ul style="list-style-type: none"> (1) Recommends that Cabinet confirms the continuing appointment of Cllr Alan Dowson to represent the interests of Peterborough Museum and Art Gallery Trust to the Council (2) Recommends to Cabinet that the Charity Commission be invited to draw up a new Scheme for the management of the Peterborough Museum and Art Gallery Trust 	

1. ORIGIN OF REPORT

1.1 This report is submitted to the Shareholder Cabinet Committee following a referral from the Monitoring Officer.

2. PURPOSE AND REASON FOR REPORT

2.1 The purpose of this report is to provide information and obtain the recommendation of the Shareholder Cabinet Committee to Cabinet to decide on the above proposals.

2.2 This report is for the Shareholder Cabinet Committee to consider under section 3.3.2 of Part 3 of the Constitution, which provides that the Committee will oversee the relationships between the Council and its charities, and act as an advisory body to Cabinet.

3. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	
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4. BACKGROUND AND KEY ISSUES

- 4.1 Peterborough City Council is the sole Trustee for the Peterborough Museum and Art Gallery Trust (PMAG) under the terms of the 1968 Charity Commission Scheme, when PMAG was effectively transferred from a group of individuals to the Council.
- 4.2 In its role as Trustee, it must make decisions relating to the management of the Trust in the best interests of the Trust, and in doing so, ensure that it is fully transparent and independent of Council interests i.e. that there is no conflict with the Council's own interests and priorities.
- 4.3 Under the current Scheme, the Trust can make decisions with reference to a committee appointed by members of what is now the Peterborough Museum Society. This process appears to have become obsolete (although the Society still exists) and the committee has never been replaced.
- 4.4 Independent legal advice has been obtained from a Trusts' lawyer, who has advised that the oversight of PMAG is therefore "uncertain" and the powers of those acting on its behalf unclear. This clearly needs addressing as otherwise it leaves Trust unable to make decisions which are not open to challenge by the Charity Commission, members of the public, members of the Society, and potential external/partnership funders who would want to see clear lines of accountability before making any significant funding available.
- 4.5 It is therefore proposed that (i) Peterborough City Council, in its role as Trustee, take the necessary steps to put in place a new, modernised constitution, with clear decision making processes, for the future management of the Trust, as soon as possible; and (ii) a quote be obtained for legal fees for the purposes of instructing an external Trusts lawyer to advise in the process.
- 4.6 There are two potential options for this:
- a. To request that the Charity Commission draw up a new, modern Scheme for the management of the Trust, (note it is not possible to draw up a Scheme for the Charity Commission's approval if this route is taken, as they require that they draw it up themselves); or
 - b. To set up a Charitable Incorporated Organization (CIO) (this would be a separate legally incorporated body).
- 4.7 Option a. is recommended initially for the following reasons:
1. The Charity Commission's involvement from the outset will ensure a reliable, legal process for setting up a Scheme under which decisions can be taken, is immediately underway;
 2. The Scheme drawn up in this way will ensure that the new constitution and decision processes will stand up to scrutiny, be reliable and transparent and free of conflicts of interest;
 3. Any later decision to set up a CIO (see below) will then be transparent and bear scrutiny as it will be made under the new constitution.
- 4.8 However, there are some important points to note:
- Firstly, Peterborough City Council will have no control over how long the Charity Commission take to complete this work although it is anticipated by our Trusts' lawyer that this should usually be no longer than 6-8 months.
 - Secondly, the Charity Commission will create the Scheme that they feel is suitable and may or may not take into consideration all suggestions put forward by Peterborough City Council for inclusion.

Option b – the Charity Incorporated Organization (CIO)

There are compelling reasons why the Trust may wish to set up a CIO in the longer term, as this has the potential to open access to a wider range of funding options, being a separate body, independent of the Council. For now though, this alternative has been discounted for the reasons outlined below (see section 9).

5. CORPORATE PRIORITIES

The recommendation links to the following Corporate Priorities:

1. Our Places & Communities
 - Places and Safety - A Culture, Heritage and Leisure offering that meets the expectations of our residents, visitors and business and with a vigorous mission to promote our City's past and its' connection to the present and future
2. Sustainable Future City Council
 - How we Work - Provide robust and transparent governance and assurance across all our work
 - How we Serve - Create the right structures to support the delivery of our priorities
 - How we Enable - Maximise our assets, resources and capability to enable our priorities and plans

6. CONSULTATION

- 6.1 The recommendations in this paper have been discussed by CLT.

7. ANTICIPATED OUTCOMES OR IMPACT

- 7.1 It is anticipated that the creation of a new more modern Scheme by the Charity Commission will enable good, lawful governance and management of the Trust in keeping with modern Trust law requirements.

8. REASON FOR THE RECOMMENDATION

- 8.1 This recommendation is being made on the basis that it is considered to be a both reliable and effective way of establishing a clear governance structure for the management of the Peterborough Museum and Art Gallery Trust.

9. ALTERNATIVE OPTIONS CONSIDERED

- 9.1 The alternatives to this proposal would be to A) maintain the status quo, and B) establish a Charitable Incorporated Organisation (CIO) through which to manage the Trust.

A) This option has been discounted as the current Scheme does not provide sufficient clarity on the governance structures required to effectively manage the Trust in current times.

B) This option has been discounted because of:

- The inevitability of complex political discussions within and outside Council on the merits of a CIO vs Council continuing to act as Trustee and who should run it.
- The uncertainty as to how the Council makes a lawful decision on changing to a CIO.
- The fact that the management of the Trust could still be challenged during the period until a CIO is formed (i.e. the process will not already be under the supervision of the Charity Commission)

10. IMPLICATIONS

Financial Implications

- 10.1 Specialist legal advice will need to be obtained from an external Trusts Lawyer to act on behalf of the Trust in its dealings with the Charity Commission. This will be paid by the Council in the first instance, subject to satisfactory quotes being considered.

Legal Implications

- 10.2 The legal implications are set out above. In essence the aim of this report is to redraft the legal constitution and decision-making processes of the Peterborough Museum and Art Gallery Trust.

In addition, the appointment of Cllr Alan Dowson as the Cllr representing the interests of the Trusts to the Council, needs to be confirmed to ensure that there is an appropriate record of the governance arrangements in place. Whilst taking into considerations the constitutional issues raised, it will be necessary for Trust issues arising prior to the finalization of the new constitution to be represented and addressed.

Equalities Implications

- 10.3 NA

11. BACKGROUND DOCUMENTS

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

- 11.1 NA

12. APPENDICES

- 12.1 NA