



**Oversight and Governance**

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## Delegated Decisions

### Delegated Executive/Officer Decisions

Delegated Executive and Officer decisions are published and are available at the following link - <https://tinyurl.com/ms6umor>

Cabinet decisions subject to call-in are published at the following link - <http://tinyurl.com/yddrql6>

Notice of call-in for non-urgent decisions must be given to the Democratic Support Team by 4.30 pm on 21 October 2024. Please note – urgent decisions and non-key Council Officer decisions cannot be called in. Copies of the decisions together with background reports are available for viewing as follows:

- on the Council's Intranet Site at <https://modgov/mgDelegatedDecisions.aspx>
- on the Council's website at <https://tinyurl.com/jhnax4e>

The decisions detailed below may be implemented on 22 October 2024 if it is not called-in.

## **Delegated Decisions**

### **I. Councillor Tudor Evans OBE (Leader of the Council):**

Ia. Creation of Delt Subsidiary Company

**(Pages 1 - 8)**

# EXECUTIVE DECISION

## made by a Cabinet Member




### REPORT OF ACTION TAKEN UNDER DELEGATED AUTHORITY BY AN INDIVIDUAL CABINET MEMBER

Executive Decision Reference Number – L21 24/25

Decision	
1	<b>Title of decision:</b> Creation of Delt Subsidiary Company
2	<b>Decision maker (Cabinet member name and portfolio title):</b> Councillor Tudor Evans OBE, Leader of the Council
3	<b>Report author and contact details:</b> Peter Honeywell <a href="mailto:peter.honeywell@plymouth.gov.uk">peter.honeywell@plymouth.gov.uk</a> +441752305603
4	<b>Decision to be taken:</b> <ol style="list-style-type: none"> <li>1. To agree to the set up of a subsidiary company by Delt Shared Services Limited;</li> <li>2. To grant delegated authority (in consultation with the Head of Legal Services) to the Service Director for Finance as the nominated Council shareholder representative of the Company, to determine: <ol style="list-style-type: none"> <li>(a) all associated matters in connection with the setup of the subsidiary; and</li> <li>(b) other matters affecting the award of shareholder contracts to the company.</li> </ol> </li> </ol>
5	<b>Reasons for decision:</b> <ol style="list-style-type: none"> <li>1. To enable the Council to make a timely decision on reserved matters affecting the lawful procurement of contracts to the company</li> </ol>
6	<b>Alternative options considered and rejected:</b> <ol style="list-style-type: none"> <li>1. Grow the percentage of Delt's revenues from shareholder organisations. Neither PCC nor the ICB have further candidate services to transfer to Delt at this point, nor do they have a mechanism to increase spend on the existing services delivered by Delt.</li> <li>2. Exit commercial contracts sufficient to bring the percentage of total Delt revenue to below 20%. Break clauses on the contracts that are large enough to achieve the target percentage of revenue are too far into the future to resolve the problem in time.</li> <li>3. Route revenue from commercial contracts through one of the existing shareholders. This option was explored and rejected as the parties involved felt that it wouldn't allow them sufficient control of the services they receive from Delt.</li> </ol>
7	<b>Financial implications and risks:</b>

	Allowing Delt to recognise commercial revenue through a subsidiary will allow Delt to develop additional commercial new business and potentially benefit the Council through increased dividends in future.			
<b>8</b>	<b>Is the decision a Key Decision?</b> (please contact <a href="#">Democratic Support</a> for further advice)	<b>Yes</b>	<b>No</b>	<b>Per the Constitution, a key decision is one which:</b>
	Please type an X into the relevant boxes		X	in the case of <b>capital</b> projects and contract awards, results in a new commitment to spend and/or save in excess of <b>£3million</b> in total
			X	in the case of <b>revenue</b> projects when the decision involves entering into new commitments and/or making new savings in excess of <b>£1 million</b> annually
			X	is <b>significant</b> in terms of its effect on communities living or working in an area comprising <b>two or more</b> wards in the area of the local authority.
<b>If yes, date of publication of the notice in the <a href="#">Forward Plan of Key Decisions</a></b>				
<b>9</b>	<b>Please specify how this decision is linked to the Council's corporate plan/Plymouth Plan and/or the policy framework and/or the revenue/capital budget:</b>	<p>Delt was established as a cooperative joint venture with the local NHS and continues to evidence our commitment to joint working with the NHS on local health and social care integration.</p> <p>Delt has proven to provide effective and high quality support to aid the delivery of the Council's public services.</p> <p>Delt is also recognised and benchmarked as achieving cost effective services, spending the Council's money wisely.</p>		
<b>10</b>	<b>Please specify any direct environmental implications of the decision (carbon impact)</b>	There are no direct environmental implications of this decision.		
<b>Urgent decisions</b>				
<b>11</b>	<b>Is the decision urgent and to be implemented immediately in the interests of the Council or the public?</b> Please type an X into the relevant box	<b>Yes</b>		(If yes, please contact Democratic Support ( <a href="mailto:democraticsupport@plymouth.gov.uk">democraticsupport@plymouth.gov.uk</a> ) for advice)
		<b>No</b>	X	<b>(If no, go to section 13a)</b>
<b>12a</b>	<b>Reason for urgency:</b>			
<b>12b</b>	<b>Scrutiny Chair Signature:</b>		<b>Date</b>	

	<b>Scrutiny Committee name:</b>			
	<b>Print Name:</b>			
<b>Consultation</b>				
<b>I3a</b>	<b>Are any other Cabinet members' portfolios affected by the decision?</b> Please type an X into the relevant box	<b>Yes</b>	X	
		<b>No</b>		<b>(If no go to section I4)</b>
<b>I3b</b>	<b>Which other Cabinet member's portfolio is affected by the decision?</b>	Councillor Sue Dann (Cabinet Member for Customer Services, Sport, Leisure and HR OD)		
<b>I3c</b>	<b>Date Cabinet member consulted</b>	19/08/24		
<b>I4</b>	<b>Has any Cabinet member declared a conflict of interest in relation to the decision?</b> Please type an X into the relevant box	<b>Yes</b>		If yes, please discuss with the Monitoring Officer
		<b>No</b>		
<b>I5</b>	<b>Which Corporate Management Team member has been consulted?</b>	<b>Name</b>	David Northey	
		<b>Job title</b>	Service Director for Finance	
		<b>Date consulted</b>	15/08/24	
<b>Sign-off</b>				
<b>I6</b>	<b>Sign off codes from the relevant departments consulted:</b>	<b>Democratic Support (mandatory)</b>	DS61 24/25	
		<b>Finance (mandatory)</b>	DJN.24.25.107	
		<b>Legal (mandatory)</b>	LS/00003610/5/LB/11/10/24	
		<b>Procurement (if applicable)</b>		
		<b>Corporate property (decisions involving Council owned land or facilities) (if applicable)</b>		
		<b>Human Resources (if applicable)</b>		
<b>Appendices</b>				
<b>I7</b>	<b>Ref.</b>	<b>Title of appendix</b>		
	A	Briefing report		
<b>Confidential/exempt information</b>				
<b>I8a</b>		<b>Yes</b>		

	<p><b>Do you need to include any confidential/exempt information?</b> Please type an X into the relevant box</p>	<p><b>No</b></p>	<p>X</p>	<p>If yes, prepare a second, confidential ('Part II') briefing report and indicate why it is not for publication by virtue of Part I of Schedule 12A of the Local Government Act 1972 by ticking the relevant box in <b>18b</b> below.</p> <p>(Keep as much information as possible in the briefing report that will be in the public domain)</p>				
		<b>Exemption Paragraph Number</b>						
		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>
<b>18b</b>	<b>Confidential/exempt briefing report title:</b>							
<b>Background Papers</b>								
<b>19</b>	<p>Please list all unpublished, background papers relevant to the decision in the table below.</p> <p>Background papers are <u>unpublished</u> works, relied on to a material extent in preparing the report, which disclose facts or matters on which the report or an important part of the work is based. If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part I of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.</p>							
<b>Title of background paper(s)</b>		<b>Exemption Paragraph Number</b>						
		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>
<b>Cabinet Member Signature</b>								
<b>20</b>	<p>I agree the decision and confirm that it is not contrary to the Council's policy and budget framework, Corporate Plan or Budget. In taking this decision I have given due regard to the Council's duty to promote equality of opportunity, eliminate unlawful discrimination and promote good relations between people who share protected characteristics under the Equalities Act (2010) and those who do not. For further details please see the EIA attached.</p>							
<b>Signature</b>		<b>Date of decision</b>	14 October 2024					
<b>Print Name</b>	Cllr Tudor Evans OBE, Leader of Plymouth City Council							

# Creation of Delt Subsidiary Company

## Background Briefing Report



### 1. Background

Delt Shared Services Ltd was set up to be what is commonly known as a 'Teckal' organisation. In accordance with current procurement law, this status enables local authority controlled companies to be directly awarded contacts by their local authority shareholders.

It is an exemption to the usual requirements that local authority contracts over certain values must be subject to open competition. Part of the requirements for this exemption is that shareholder activity / business undertaken by the company must amount to least 80% of the company's total business, usually assessed as an average over a consecutive three year period.

Remaining compliant with this exemption is important to the Council as a shareholder of Delt, as non-compliance could lead to the Council being successfully challenged for awarding a contract direct to Delt. This risk of challenge generally increases with the value of the contract.

### 2. The Problem

Delt has been successful in securing work from non-shareholders and without substantial support from the shareholders. The following table outlines the value of the shareholder and non shareholder activity of the company since 2021/22 and projected figures over the coming couple of years. It will be noted from the table that the ratio between shareholder and non shareholder business activity of the company has significantly increased since 2023. If the situation continues, from 2025 the shareholder contracts for services which the company would otherwise supply, will need to be competitively procured by the shareholder. The situation also opens up the risk of existing shareholder contracts being open to legal challenge.

#### Teckal Income Analysis – No Change

Year	Shareholder Income	3 <sup>rd</sup> Party Income	3 <sup>rd</sup> Party %	3 <sup>rd</sup> Party Limit	Variance	3 Yr Av	Teckal Compliance
2021/22	17,658	1,685	8.7%	4,415	2,730		✓
2022/23	18,759	4,277	18.7%	4,645	368		✓
2023/24	20,354	5,516	21.3%	5,089	(428)	890	✓
2024/25	20,942	5,716	21.4%	5,236	(481)	(180)	✗
2025/26	21,402	5,887	21.6%	5,351	(537)	(482)	✗
2026/27	21,850	6,028	21.6%	5,463	(566)	(528)	✗

All values in £000's. Numbers in *Italics* are forecast as at June 2024

With the renewal of the Council's existing contract with Delt in 2024 for a further 10 years, it is in the company's and shareholders' interests (particularly the Council's) to remove any potential grounds for successful procurement law challenge prior to the new contract being entered into.

### **3. The Options**

There are a number of alternative solutions to this problem:

#### **1. New legal entity**

Creation of an additional legal entity, that was not bound by Teckal. This has been achieved successfully in a number of similar entities, including Corserv, the Cornwall Council Trading company which operates a mix of Teckal and non Teckal companies. In this option, some or all of our existing non-shareholder work would be transferred (novation or assignment) to the NewCo. As a separate entity that is not required to be Teckal compliant, this company can undertake an unlimited amount of work for non-shareholders without issue. Legal and Financial analysis of this option has highlighted the risk of subsidy as an important consideration. The full cost of services delivered by the subsidiary company must be charged to their customers to avoid questions being raised about subsidy.

This option has the least impact on existing customers and shareholders, though the establishment of a new subsidiary of Delt would require an executive decision by the Council as a shareholder of Delt.

#### **2. Increase Shareholder turnover**

Increasing the amount of income from Shareholders (either existing or new) increases the Teckal limit by 20% of that income. Such increases could be achieved in a number of ways including:

- New contracts from new shareholders
- Increase in value of existing contracts from existing shareholders
- Transfer of additional services from existing shareholders
- Novation of additional contracts from existing shareholders

There are no new shareholders that could join the company in time to resolve the risk of procurement challenge. Equally, at present there are no additional services that the Council could buy from Delt or additional budgets that could be spent on existing services. The NHS are in a similar position. For this reason this option is not currently viable as a way forward to resolve the risk.

#### **3. Route some 3<sup>rd</sup> party turnover through an existing shareholder**

The option of routing some commercially contracted income via an existing shareholder has been explored and recently rejected. Some of Delt's commercial income is from a local NHS health provider. The option to route this income via the NHS shareholder was explored and ultimately rejected as the provider wanted a more direct relationship with Delt. No other option for routing revenue via a shareholder has been identified and therefore this option is not currently seen as viable way forward to resolve the risk.

#### **4. Exit existing 3<sup>rd</sup> party contracts**

Contractual break points have been considered by Delt to understand what might be possible. However, there are no options that could realise sufficient change in the percentage of commercial revenues fast enough to mitigate the risk. It is also recognised that exiting a contract could also create issues for clients currently reliant on Delt for services. For these reasons this option is not currently seen as viable way forward to resolve the risk.



#### **4. Options Analysis**

As described above only Option 1 offers a way forward that can effectively mitigate the risk as required by the Council. For this reason this option is the recommended way forward.

The recommended option will require a new company board to be established to oversee the subsidiary. It is proposed that the existing Delt board hold future meetings in 2 parts to consider the existing Delt company matters and then meet to consider matters related to the subsidiary.

Whilst the set up of the subsidiary company will help address the procurement requirements, the shareholders and the company appreciate they also need to ensure on going compliance with subsidy law requirements. In the latter regard the shareholders need to also ensure that any financial support they provide to the company and / or the subsidiary (directly or indirectly), does not place either company in an unlawful advantageous position when competing for further non- shareholder service contracts. The request to grant an officer delegation to address such matters, including arrangements to set up the subsidiary (e.g. approval of company documentation) will enable all matters to be resolved in a timely manner in the interests of the Council.

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