



Oversight and Governance

Chief Executive's Department

Plymouth City Council

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Delegated Decisions

Delegated Executive/Officer Decisions

Delegated Executive and Officer decisions are published every week as required 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 Unit by 4.30pm on Thursday 25 March 2021. 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 Friday 26 March 2021 if they are not called-in.

Delegated Decisions

1. Councillor Evans OBE - The Leader:

- 1.1. The Box Budget - DCMS/ Arts Council England Covid Kickstart Grant Award **(Pages 1 - 6)**

2. Councillor Kate Taylor - Cabinet Member for Health & Adult Social Care:

- 2.1. Creation of a Local Authority Trading Company for Care Services **(Pages 7 - 34)**

EXECUTIVE DECISION

made by a Cabinet Member




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

Executive Decision Reference Number – L47 20/21

Decision				
1	Title of decision: The Box - DCMS/ Arts Council England Covid Kickstart Grant Award			
2	Decision maker (Cabinet member name and portfolio title): Cllr Tudor Evans OBE, Leader of the Council			
3	Report author and contact details: Caroline Cozens, Strategic Projects Manager, 01752 305628			
4	Decision to be taken: <ul style="list-style-type: none"> To approves the briefing note To accept the DCMS / Arts Council England (ACE) Covid Grant of £932,600 for The Box. Allocate £765,334 into the capital programme, funded by the above grant. 			
5	Reasons for decision: <p>The Box Construction, fit out and original May 2020 opening was impacted by COVID19 and the first UK lockdown. This created a series of additional costs to complete the project. Plymouth City Council has been successful in being awarded a grant from the DCMS/ Arts Council to cover the full amount of these additional project costs.</p>			
6	Alternative options considered and rejected: <p>There was no way to avoid these costs to complete the agreed project programme and scope. COVID safe systems of work were implemented and we experienced delays in materials, supply chain challenges and problems with labour availability - lengthening the project. If we had been unsuccessful in securing this grant we would have needed to meet these costs from PCC budgets and extend capital borrowing.</p>			
7	Financial implications: <p>The latest approved budget for The Box is £46.838m. This Covid grant of £932,600 is covers capital and revenue expenditure as well as lost income (sponsorship). These costs have been already been incurred and are fully funded by the grant award.</p>			
8	Is the decision a Key Decision? (please contact Democratic Support for further advice)	Yes	No	Per the Constitution, a key decision is one which:
			x	in the case of capital projects and contract awards, results in a new

				commitment to spend and/or save in excess of £3million in total
			x	in the case of revenue projects when the decision involves entering into new commitments and/or making new savings in excess of £1 million
			x	is significant in terms of its effect on communities living or working in an area comprising two or more wards in the area of the local authority.
	If yes, date of publication of the notice in the Forward Plan of Key Decisions		N/A	
9	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:		See previous The Box decisions and reports	
10	Please specify any direct environmental implications of the decision (carbon impact)		None for this grant	
Urgent decisions				
11	Is the decision urgent and to be implemented immediately in the interests of the Council or the public?	Yes		(If yes, please contact Democratic Support (democraticsupport@plymouth.gov.uk) for advice)
		No		(If no, go to section 13a)
12a	Reason for urgency:			
12b	Scrutiny Chair Signature:		Date	
	Scrutiny Committee name:			
	Print Name:			
Consultation				
13a	Are any other Cabinet members' portfolios affected by the decision?	Yes	yes	
		No		(If no go to section 14)
13b	Which other Cabinet member's portfolio is affected by the decision?	Cllr Pete Smith		

I3c	Date Cabinet member consulted	11 th February 2021						
I4	Has any Cabinet member declared a conflict of interest in relation to the decision?	Yes		If yes, please discuss with the Monitoring Officer				
		No	no					
I5	Which Corporate Management Team member has been consulted?	Name	Anthony Payne					
		Job title	Strategic Director for Place					
		Date consulted	30 th November 2020					
Sign-off								
I6	Sign off codes from the relevant departments consulted:	Democratic Support (mandatory)	DS118 20/21					
		Finance (mandatory)	pl.20.21.280					
		Legal (mandatory)	LS/36360/JP/170321.					
		Human Resources (if applicable)	N/A					
		Corporate property (if applicable)	N/A					
		Procurement (if applicable)	N/A					
Appendices								
I7	Ref.	Title of appendix						
	A	The Box - DCMS/ Arts Council England Covid Kickstart Grant Award						
Confidential/exempt information								
I8a	Do you need to include any confidential/exempt information?	Yes		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 I8b below. (Keep as much information as possible in the briefing report that will be in the public domain)				
		No	no					
		Exemption Paragraph Number						
		1	2	3	4	5	6	7

18b	Confidential/exempt briefing report title:							
Background Papers								
19	<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 1 of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.</p>							
Title of background paper(s)		Exemption Paragraph Number						
		1	2	3	4	5	6	7
The Box Capital Update 17th December 2019								
The Box Refinancing 15th October 2018								
Cabinet Member Signature								
20	<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 and those who do not. For further details please see the EIA attached.</p>							
Signature				Date of decision	18 March 2021			
Print Name	Councillor Tudor Evans OBE, Leader							

BRIEFING REPORT

The Box - DCMS/ Arts Council England Covid Kickstart Grant Award



The Box applied for and has been successfully awarded a grant from the DCMS / Arts Council England in direct relation to increased cost as a result of the COVID 19 pandemic.

The total funding awarded by the Arts Council in this grant is £932,600.

This is made up of Capital & Revenue costs as well as a substitution for income that will no longer be forthcoming, from sponsors.

	£	
Capital Expenditure	610,334	Prologation costs in relation to final build, fit out and professional fees
Revenue Expenditure	167,266	Extension of lease, additional recant costs and specialist PP&E equipment
	777,600	
Reduction of Income from Sponsors	155,000	Potential sponsors unable to support The Box
Total	932,600	

The total budget for The Box is:

	Approved Budget	ACE Covid Grant	Latest Position
	£m	£m	£m
Capital	42.917	0.610	43.527
Revenue (one- off)	3.921	0.167	4.089
Total	46.838	0.777	47.616

The funding for The Box is as follows:

	Approved Income	ACE Covid Grant	Latest Position
	£m	£m	£m
Heritage Lottery Fund	15.773		15.773
Arts Council – Main Grant	4.175		4.175

Arts Council – Small Capital Award	0.380		0.380
Arts Council – COVID Award		0.933	0.933
Coastal Communities	2.000		2.000
Other Grants & Contributions	1.284	(0.155)	1.129
PCC Contributions	23.226		23.226
Total	46.838	0.778	47.616

Decisions required:

- To approve the briefing note
- To accept the DCMS / Arts Council England (ACE) Covid Grant of £932,600 for The Box.
- Allocate £765,334 into the capital programme, funded by the above grant.

EXECUTIVE DECISION

made by a Cabinet Member



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

Executive Decision Reference Number – HASC02 20/21

Decision	
1	Title of decision: Creation of a Local Authority Trading Company for Care Services
2	Decision maker Councillor Kate Taylor
3	Report author and contact details: Gary Walbridge Tel: 305253; Mob 07876397210; Email: gary.walbridge@plymouth.gov.uk
4	<p>Decision to be taken:</p> <p>The Leader has authorised Cllr Taylor to deal with matters related to the company formation and appointment of member representatives. Accordingly, Cllr Taylor makes the following decisions:</p> <ul style="list-style-type: none"> • To approve the business case for establishing a Local Authority Trading Company (LATC) for care services to be able to respond to market failure events. • To approve the setting up of a Local Authority Trading Company for care services • To approve the appointment of David Northey, Head of Integrated Finance and Gary Walbridge, Head of Adult Social Care and Retained Functions as Directors of the Local Authority Trading Company • To approve Craig McArdle, Strategic Director for People to act as member representative for the Local Authority Trading Company and to exercise all voting rights on behalf of the Council as member of the company subject to Key Decisions (as defined by the Council's Constitution) being reserved to the Leader/ Cabinet) and take any necessary action to protect, safeguard and effectively manage the Council's interest in the Local Authority Trading Company. • To delegate authority to Craig McArdle, Strategic Director for People and Director of Adult Social Care to make decisions in consultation with the relevant portfolio holder to award care services to the Local Authority Trading Company.
5	<p>Reasons for decision:</p> <p>Over the past 2 years there have been a number of occasions where homecare sector service providers have failed or advised PCC at very short notice that they can no longer deliver their contracted service provision. Time is of the essence in these circumstances and there is rarely time for market development activities or to run a standard procurement exercise.</p> <p>The difficulty that PCC had in sourcing alternative provision on these occasions highlights the fragility of the Adult Care market in Plymouth. Where alternative providers cannot be sourced from the existing market in sufficient time (or at all), the only options currently available to PCC are for an in-house service transfer or to close the service down. An LATC would provide a third potentially more cost effective response to service failure which could provide either short or longer term solutions to stabilise the market, protect services and assure quality standards.</p>

6	<p>Alternative options considered and rejected:</p> <p>Other options available would be to establish one of the following vehicles.</p> <ul style="list-style-type: none"> • Company Limited by Shares • Mutual • Charity • Social Enterprise • Limited Liability Partnership 																
7	<p>Financial implications:</p> <p>The initial set-up costs are estimated to be in the range of £88K. This is principally related to costs of ensuring the LATC has access to the necessary systems and other arrangements to be provided via a series of service level agreements with the council.</p>																
8	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 40%;">Is the decision a Key Decision? (please contact Democratic Support for further advice)</th> <th style="width: 10%;">Yes</th> <th style="width: 10%;">No</th> <th style="width: 40%;">Per the Constitution, a key decision is one which:</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td style="text-align: center;">x</td> <td>in the case of capital projects and contract awards, results in a new commitment to spend and/or save in excess of £3million in total</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">x</td> <td>in the case of revenue projects when the decision involves entering into new commitments and/or making new savings in excess of £1 million</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">x</td> <td>is significant in terms of its effect on communities living or working in an area comprising two or more wards in the area of the local authority.</td> </tr> </tbody> </table> <p>If yes, date of publication of the notice in the Forward Plan of Key Decisions</p>	Is the decision a Key Decision? (please contact Democratic Support for further advice)	Yes	No	Per the Constitution, a key decision is one which:			x	in the case of capital projects and contract awards, results in a new commitment to spend and/or save in excess of £3million in total			x	in the case of revenue projects when the decision involves entering into new commitments and/or making new savings in excess of £1 million			x	is significant in terms of its effect on communities living or working in an area comprising two or more wards in the area of the local authority.
Is the decision a Key Decision? (please contact Democratic Support for further advice)	Yes	No	Per the Constitution, a key decision is one which:														
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		x	in the case of revenue projects when the decision involves entering into new commitments and/or making new savings in excess of £1 million														
		x	is significant in terms of its effect on communities living or working in an area comprising two or more wards in the area of the local authority.														
9	<p>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:</p> <p>The aim of the decision is to ensure we provide continuity of high quality and safe personalised care and so supports the objectives of Caring Plymouth: "We will promote a fairer, more equal city by investing in communities, putting citizens at the heart of decision-making, promoting independence and reducing health and social inequality."</p> <p>The decision also supports our statutory responsibilities as set out in the Care Act 2014 - Market Failure Responsibilities: The Care Act gives local authorities clear legal responsibilities where a care provider fails. It makes it clear that local authorities have a duty to ensure that the needs of people continue to be met should their care provider become unable to continue to provide care because of business failure, no matter what type of care they are receiving. Local authorities have responsibilities to all people receiving care, regardless of whether they or the local authority pay for that care, or whether it is funded in any other way. This decision provides a mechanism to ensure this responsibility is met.</p>																

		Plymouth Plan- HEA3– supporting adults with health and social care needs		
		By ensuring continuity of care from quality service provision preventing harm, safeguarding and ensure residents and families are consulted and treated with dignity and respect.		
10	Please specify any direct environmental implications of the decision (carbon impact)			
Urgent decisions				
11	Is the decision urgent and to be implemented immediately in the interests of the Council or the public?	Yes		(If yes, please contact Democratic Support (democraticsupport@plymouth.gov.uk) for advice)
		No	x	(If no, go to section 13a)
12a	Reason for urgency:			
12b	Scrutiny Chair Signature:		Date	
	Scrutiny Committee name:			
	Print Name:			
Consultation				
13a	Are any other Cabinet members' portfolios affected by the decision?	Yes		
		No	x	(If no go to section 14)
13b	Which other Cabinet member's portfolio is affected by the decision?			
13c	Date Cabinet member consulted			
14	Has any Cabinet member declared a conflict of interest in relation to the decision?	Yes		If yes, please discuss with the Monitoring Officer
		No	x	
15	Which Corporate Management Team member has been consulted?	Name	Craig McArdle	
		Job title	Strategic Director for People	
		Date consulted	15 March 2021	
Sign-off				

16	Sign off codes from the relevant departments consulted:	Democratic Support (mandatory)	DS114 20/21
		Finance (mandatory)	djn.20.21.274
		Legal (mandatory)	lt/36343/120321
		Human Resources (if applicable)	
		Corporate property (if applicable)	
		Procurement (if applicable)	

Appendices

17	Ref.	Title of appendix
	A	Briefing report for publication (<i>mandatory</i>) Business Case for Creation of a Local Authority Trading Company for Care Services. See Annex I below.
	B	Equalities Impact Assessment (<i>where required</i>) Attached

Confidential/exempt information

18a	Do you need to include any confidential/exempt information?	Yes		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 18b below. (Keep as much information as possible in the briefing report that will be in the public domain)				
		No	x					
		Exemption Paragraph Number						
		1	2	3	4	5	6	7
18b	Confidential/exempt briefing report title:							

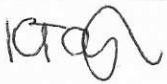
Background Papers

19	<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>
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Title of background paper(s)	Exemption Paragraph Number						
	1	2	3	4	5	6	7

Cabinet Member Signature

20 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 and those who do not. For further details please see the EIA attached.

Signature		Date of decision	17 MARCH 2021
Print Name	KATE TAYLOR		

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EQUALITY IMPACT ASSESSMENT



STAGE I: WHAT IS BEING ASSESSED AND BY WHOM?

What is being assessed - including a brief description of aims and objectives?

This EIA assesses a decision to set up a Local Authority Trading Company (LATC) to deliver home care services in Plymouth for Adults 18 years of age and over. This LATC could provide a new option when responding to events that involve the withdrawal, cessation, failure, or likely failure of external adult care services.

Over the past 2 years there have been a number of occasions where homecare sector service providers have failed or advised Plymouth City Council at very short notice that they can no longer deliver their contracted care service provision. Time is of the essence in these circumstances and there is rarely time for market development activities or to run a standard procurement exercise.

The Care Act gives local authorities clear legal responsibilities where a care provider fails. It makes it clear that local authorities have a duty to ensure that the needs of people continue to be met should their care provider become unable to continue to provide care because of business failure, no matter what type of care they are receiving. Local authorities have responsibilities to all people receiving care, regardless of whether they or the local authority pay for that care, or whether it is funded in any other way.

This LATC provides a mechanism to ensure this responsibility is met and will help to avoid the difficulties experienced over recent years by offering a third suitable alternative to the existing in-house and other market solutions.

The strategic objectives of the proposals in this business case are:

1. To provide high quality care services that promote independent living.
2. To increase the options available to the council in order that it can support the care market and mitigate risks of market failure.
3. To be in a position to respond to provider failure if asked to do so, including developing short-notice response and “turnaround” services.

Author

Sandra Stanton

Department and service

Strategic Co-operative Commissioning

Date of assessment	8 th March 2021
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STAGE 2: EVIDENCE AND IMPACT

Protected characteristics (Equality Act)	Evidence and information (e.g. data and feedback)	Any adverse impact See guidance on how to make judgement	Actions	Timescale and who is responsible
Age	<p>The average age in Plymouth (39 years) is about the same as the rest of England (39.3 years) but less than the South West (41.6 years).</p> <p>ONS projects a rise in the percentage of the Plymouth 65+ population from 17.9 per cent in 2016 to 22.7 per cent by 2034. An ageing population suggests an increasing need for care and support services and also an increasing burden placed on the working age population (Plymouth Plan, 2019).</p> <p>Older people are less likely to use modern technology than younger people, which can also impact upon social isolation as well as being a potential barrier in the workplace. Over 90 per cent of men and 81 per cent of women use the internet frequently at aged</p>	<p>No adverse impact.</p> <p>Where an external adult's (18+) care provider notifies the Council of a service withdrawal, cessation, failure and a decision to use the LATC is made all individuals currently receiving care or staff directly involved in providing this care will be supported.</p>		

	50 but this drops to a third of men and 14 per cent of women by age 80 (GEO, 2016).			
Disability	<p>A total of 31,164 people (from 28.5 per cent of households) declared themselves as having a long-term health problem or disability (national figure 25.7 per cent of households), compared with the total number of people with disabilities in UK 11.6m (2011 Census).</p> <p>10 per cent of our population have their day-today activities limited a lot by a long-term health problem or disability (2011 Census). National evidence suggests a substantially higher proportion of individuals who live in families with disabled members live in poverty, compared to individuals who live in families where no one is disabled.</p> <p>Disabled people also are significantly less likely to live in households with access to the internet than non-disabled people.</p>	<p>No adverse impact.</p> <p>Where an external adult's (18+) care provider notifies the Council of a service withdrawal, cessation, failure and a decision to use the LATC is made all individuals currently receiving care or staff directly involved in providing this care will be supported.</p> <p>Assessment of the way in which care services are delivered would need to ensure an individual's needs were met.</p>		
Faith/religion or belief	Christianity is the biggest faith in the city with more than 58% of the population	No adverse impact.		

	<p>(148,917). 32.9 per cent (84,326) of the Plymouth population stated they had no religion (2011 Census). Those who identified as Muslim was just under 1 per cent while Hindu, Buddhist, Jewish or Sikh combined totalled less than 1 per cent (2011 Census). Data shows that 32.9 per cent of the Plymouth population stated they had no religion. 0.5 per cent of the population had a current religion that was not Christian, Islam, Buddhism, Hinduism, Judaism, or Sikh such as Paganism or Spiritualism.</p>	<p>Where an external adult's (18+) care provider notifies the Council of a service withdrawal, cessation, failure and a decision to use the LATC is made all individuals currently receiving care or staff directly involved in providing this care will be supported. Assessment of the way in which care services are delivered would also need to ensure an individual's faith/religion or belief were met when stated.</p>		
<p>Gender - including marriage, pregnancy and maternity</p>	<p>50.2 per cent of our population are women and 49.8 per cent are men.</p>	<p>No adverse impact. Where an external adult's (18+) care provider notifies the Council of a service withdrawal, cessation, failure and a decision to use the LATC is made all individuals currently receiving care or staff directly involved in providing this care will be supported.</p>		
<p>Gender reassignment</p>	<p>There are no official estimates for gender reassignment at</p>	<p>No adverse impact.</p>		

	<p>either national or local level. However, in a study founded by the Home Office, the Gender Identity Research and Education Society (GIREs) estimate that between 300,000 and 500,000 people aged 16 or over in the UK are experiencing some degree of gender variance.</p>	<p>Where an external adult's (18+) care provider notifies the Council of a service withdrawal, cessation, failure and a decision to use the LATC is made all individuals currently receiving care or staff directly involved in providing this care will be supported.</p>		
Race	<p>92.9 per cent of Plymouth's population identify themselves as White British.</p> <p>7.1 per cent identify themselves as Black, Asian or Minority Ethnic (BAME) with White Other (2.7 per cent), Chinese (0.5 per cent) and Other Asian (0.5 per cent) the most common ethnic groups.</p> <p>Recent census data suggests we have at least 43 main languages spoken in the city, showing Polish, Chinese and Kurdish as the top three.</p> <p>Plymouth is a refugee dispersal location under the Vulnerable Persons Resettlement Scheme.</p>	<p>No adverse impact.</p> <p>Where an external adult's (18+) care provider notifies the Council of a service withdrawal, cessation, failure and a decision to use the LATC is made all individuals currently receiving care or staff directly involved in providing this care will be supported.</p>		
Sexual orientation - including civil partnership	<p>There are no official estimates for sexual orientation at a local level. There is no precise local data on sexual orientation in Plymouth, but based on the ONS Annual Population Survey 2017 estimates, approximately</p>	<p>No adverse impact.</p> <p>Where an external adult's (18+) care provider notifies the Council of a service withdrawal, cessation, failure and a decision to use the LATC is made all individuals</p>		

	1.7 per cent of the UK population is lesbian, gay or bisexual (LGB) . This would mean that there are approximately 3,649 LGB people in the city (Plymouth Report, 2019).	currently receiving care or staff directly involved in providing this care will be supported.		
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STAGE 3: ARE THERE ANY IMPLICATIONS FOR THE FOLLOWING? IF SO, PLEASE RECORD ACTIONS TO BE TAKEN

Local priorities	Implications	Timescale and who is responsible
We have set one overarching objective to celebrate diversity and ensure that Plymouth is a welcoming city.	No known implications.	
Pay equality for women, and staff with disabilities in our workforce.	<p>This decision sets up an independent LATC that will be responsible for ensuring compliance with all legal responsibilities and duties.</p> <p>It is anticipated that when needed the LATC is needed it will need to use the legal framework of TUPE transferring staff on existing terms and conditions. This is considered to protect their rights at the point of transfer and will ensure staff employment is maintained and that the people they support continue to receive this.</p> <p>Due diligence will be required during and post this TUPE process to ensure the LATC is able to fully understand the employment terms and operational procedures used by the organisation. This diligence will need to indicate if any potential issues arise along with suggested remedial/corrective action.</p>	The LATC will need to complete this due diligence in a reasonable timeframe after any TUPE transfer.
Supporting our workforce through the implementation of Our People Strategy 2020 – 2024	This decision sets up an independent LATC and will therefore not be bound by this strategy.	
Supporting victims of hate crime so they feel confident to report incidents, and working with, and	No known implications.	

through our partner organisations to achieve positive outcomes.		
Plymouth is a city where people from different backgrounds get along well.	No known implications.	
Human rights Please refer to guidance	This decision sets up an independent LATC that will be responsible for ensuring compliance with all legal responsibilities and duties.	

STAGE 4: PUBLICATION

Responsible Officer : Gary Walbridge

Date: 16th March 2021

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ANNEX I

Business Case for Creation of a Local Authority Trading Company for Care Services



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These costs would be met from within existing ASC budgets.	
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EXECUTIVE SUMMARY

This Business Case assesses the business and financial basis for the setting up of a Local Authority Trading Company (LATC) to deliver home care services in Plymouth.

It outlines the vision for a LATC to be established by Plymouth City Council, and seeks to demonstrate that the company could provide a new option to be assessed when responding to events that involve the withdrawal, cessation, failure, or likely failure of external adult care services.

This business case proposes that an LATC could offer a suitable alternative to the existing in-house and other market solutions, and importantly it would provide an option that could be assessed on a case-by-case basis as the need arises.

Services will be considered for delivery through the company on a case-by case basis but the LATC will be able to grow and develop if required, as well as undertaking services on a temporary basis where this is necessary to stabilise a service. While being in a position to pursue further commercial opportunities the company's primary focus will be on responding to the need to have in place the option of taking on adult care services where it is considered that there are no viable alternative options. For any service undertaken by the LATC the approach will involve: partnership working, service-user involvement, promotion of ethical employment methods and adding value to other existing services provided by external providers, rather than competing to win business from them.

In order to perform this function the LATC would need to directly employ care staff and would provide unregulated and regulated care services. This would include managing services through a service level agreement with the Council in the short and medium term. Based on the experience of the past few years there is likely to be a range of services that need solutions where the Council is in the position of having to secure an alternative provider. It is envisaged that the LATC would undertake a range of services but the scale, frequency, and extent of this is difficult to predict at this stage for the purposes of accurate business modelling.

PURPOSE OF THIS BUSINESS CASE

The purpose of this Business Case is to assess the case for setting up a LATC, wholly owned by Plymouth City Council. The company would be used initially to focus on services that are handed back by other providers or where there are no other feasible options (due to timing and/or absence of an alternative provider) other than the existing in-house service.

BACKGROUND

There is growing evidence that care providers are facing significant challenges, and for some services the care provider market is precarious. Social care pressures have a direct impact on the health service with people having to stay in hospital longer than necessary where social care cannot be provided. The government has responded to these concerns by introducing mostly time-limited funding measures intended to ensure local authorities work in a more joined up way with the NHS to reduce the impact of social care shortages on the health service.

Recent provider failures in the homecare and residential care sectors locally have highlighted the need for innovative solutions so that the council has a range of responses available to it where providers' services are failing or where providers face financial difficulties. There have been occasions when providers cannot be sourced in sufficient time (or at all) to take on a service and where the quality of care and safety of those receiving care needs to be protected while alternatives

are explored.

Where the council is required to act it needs a wider range of options to intervene, stabilise, and ensure continuity of care in order to safeguard services that would otherwise cease and/or have to be re-provided at a higher cost.

STRATEGIC OBJECTIVES

The strategic objectives of the proposals in this business case are:

1. To provide high quality care services that promote independent living.
2. To increase the options available to the council in order that it can support the care market and mitigate risks of market failure.
3. To be in a position to respond to provider failure if asked to do so, including developing short-notice response and “turnaround” services.

PROPOSAL AND ALTERNATIVES

Option 1 - Recommended Option:

Create a Local Authority Trading Company (LATC) owned by Plymouth City Council to respond to events that involve the withdrawal, cessation, failure, or likely failure of an adult care service.

A LATC would provide the option of transferring services to a trading company owned by the council, and while this would enable the service to continue to deliver care services it would operate under a different cost-benefit model using different assumptions about staffing costs, overheads, management etc. than an in-house service could, whilst still following and promoting ethical employment practices

The main focus of a new LATC would be on undertaking activity in order to safeguard services that would otherwise cease and/or have to be re-provided at a higher cost.

Given the nature of the services being delivered, the LATC would be a “not for profit” company. As such, it has been determined that the LATC would be a company limited by guarantee rather than a company limited by shares.

Option 2 - Alternative Delivery Vehicles

Other options available would be to establish one of the following vehicles.

- Company Limited by Shares
- Mutual
- Charity
- Social Enterprise
- Limited Liability Partnership

Each of these forms has its own merits, advantages and disadvantages. A detailed examination of the characteristics of each of these type of entities is set out in Appendix I. However In this case these alternative delivery vehicles are not favoured for the following reasons:

- There are already a wide variety of existing and potential external providers (charities, mutual and private companies) in the care market in Plymouth so to avoid duplication an option that retains direct influence over activities would be preferable given the need to ensure the “provider of last resort” responsibility can be fulfilled through the LATC if necessary.
- The services do not involve stewardship of community assets, such as land and buildings.
- Any “new entrant” to the local care market will have to ensure it does not operate at the detriment of existing satisfactory providers (in many sectors these are private providers).
- There is the potential to grow and develop services in the future so any vehicle must be flexible enough to adapt and change at speed.
- It is not intended that the company would be profit driven.

Option 3 - Do nothing

Current situation

At the moment there are a number of established processes that give rise to the need to intervene in the local care market. The three most common areas are set out below.

1. Concerns identified through the ACS commissioning, market resilience and monitoring processes.
2. Concerns relating to care quality (including safeguarding).
3. Best value and financial appraisals of services and service providers.
4. Financial failure or a provider withdrawing from the market.

Depending on the urgency the current approach entails a cost-benefit and appraisal of the options available to the council to re-provide the service or maintain the service and replace the service provider. This can entail complex contractual and regulatory issues as well as all the practical matters related to the service quality and safety of those receiving care.

Where no external provider is available, or where there is insufficient time to source an alternative provider, the Council currently has no other option other than to take over the delivery of the service itself. For a large service this would put existing Council resources under additional strain and is unlikely to provide a value for money solution due to additional overheads, TUPE and pension liabilities.

PURPOSE AND SCOPE OF THE PROPOSED LATC

Over the past two years Strategic Commissioning adult care services have been faced with having to source alternative provision – sometimes at very short notice – for home care. The LATC will offer a potential alternative to existing in-house solutions which is currently the only option available when time and other constraints mean it is not possible to source a replacement external provider. Once a service has transferred to the LATC, and had time to settle in and stabilise, a full options appraisal will be carried out to consider long term future solutions for the service and the financial cost-benefit of continued use of the LATC compared to other market options.

Initially, the company would be formed with a view to being ready to quickly take over the delivery of services where the existing provider is unable or unwilling to continue delivering the service (this may be for financial reasons, concerns around quality of care, or because a provider is withdrawing from the market or service area). However, the LATC will be established in such a way as to enable further services to be included in the future. For example in the future it is anticipated that the LATC could look at opportunities to create a staff bank/locum service, – including supporting the Personal Assistant market – if it can be demonstrated that this would help support the council’s wider initiatives to attract local residents into the care workforce and retain and develop existing care workers.

The company will be focused on ensuring the council can fulfil its requirement to ensure safe care can continue to be provided when a provider is in difficulties or is no longer able to provide a service. The company will work to ensure that residents who need care and support are able to have the same choices and opportunities as everyone else.

The LATC will need to develop a strong values-based approach to the work and it would offer the same opportunities for co-production, involvement and engagement with staff, service users and residents as other options. Perhaps most importantly is the need to keep the initial approach as straightforward as possible to allow for a high degree of adaptability to absorb and/or develop new services. To allow for this flexibility a LATC is considered a good model for intervention.

LATC CREATION

Branding and Company Registration

A name and brand will be created for the company, as well as a communications plan. This will need to be subject to a formal check at Companies House to ensure it is available for use at the time the LATC is formed.

Governance

This Business Case assumes that the Council will use the provisions of section 1 of the Localism Act 2011 to establish the LATC as a wholly owned subsidiary company. The LATC’s Articles of Association will be prepared in accordance with this section and the general legal requirements. The LATC will be a separate legal entity from the Council and would be established in such a way as it would have the freedom and ability to pursue adult social care trading opportunities as necessary.

The LATC will be a company limited by guarantee and will be a wholly owned company of the Council.

The company shall be ‘teckal compliant’ meaning that the council can award contracts directly to the company without the council having to undertake a procurement exercise.

In the case of *Teckal* (C-107/98) the ECJ established an exemption from public procurement for the award of contracts by a public authority to a separate entity provided certain requirements were met. Those requirements were that:

- The contracting authority must exercise sufficient control over the separate entity (with the test applied being that the control should be similar to that which the contracting authority exercises over its own departments); and
- The separate legal entity must carry out the essential part of its activities for its owner authority/ies ("the essential activity test").

This exemption, widely known as the "Teckal exemption", was formally codified into the 2014 EU Procurement Directive (Article 12), and thereafter in UK law under the Public Contracts Regulations 2015 (Regulation 12), which also clarified that the requirement that the separate entity carried out the essential part of its activities for the owner authority meant that at least 80% of its activity must be for that authority. Regulation 12 also confirmed the principle established in case law that there can be more than one contracting authority owner.

The company's day to day governance will be managed by a Board of Directors. The Board of Directors is likely to consist of council officers who can bring commercial and other expertise to the company.

As the Council will be the sole member of the company it will have the ability to direct the directors to take or refrain from taking specified action. Furthermore, in order to comply with the 'teckal criteria' certain key matters will be reserved for consideration by the Council/its nominated representative.

A decision will be required by Cabinet or the Leader to appoint Directors to the company; and for an individual to act as member representative for the purpose of attendance at general meetings and dealing with reserved matters.

Staffing

The initial creation of the LATC will not involve the employment of staff, and will not require resource associated with terms and condition of employees and systems to support them. Services transferred or undertaken by the company will need staff and the associated office systems and infrastructure, and resource will be required to accommodate this and future requirements

It is assumed that TUPE (Transfer of Undertakings, Protection of Employment) regulations will apply to staff transferring from existing providers. In addition to any posts transferring to the LATC in the future, the recruitment of additional staff directly by the LATC is also envisaged; for example, if staff leave a service prior to, or after, it being transferred to the LATC.

It is assumed that the company's terms and conditions of employment may have to broadly reflect other private companies (save for staff protected by TUPE) operating in the home care sector. This is so that it would not undermine existing providers to the extent they are unable to provide adequate services. However the Company will promote Ethical Employment practices and look to act as an exemplar across the sector.

The LATC will not need to have admitted body status within the Local Government Pension Scheme (LGPS) as long as no PCC staff are TUPE'd into the company. However, a separate pension arrangement may need to be made for future employees and this will need to comply with pension regulations.

Accommodation

Additional office accommodation will not be required during company set up stage. On mobilization the LATC would either operate from a Plymouth City Council-owned property or rent its own premises, or a combination of both. The LATC would need to review its use of office accommodation on an ongoing basis to ensure premises are fit for purpose and cost-effective. The cost of office accommodation will need to be accounted for on the same basis as any other supplier even where this is within premises owned by the Council. It is not envisaged that the LATC would seek to acquire land or buildings.

Support functions

To minimize overheads the LATC would need to access the support functions listed below which would be provided under Services Level Agreements (SLA) with Plymouth City Council, DELT Shared Services Ltd. and Devon Audit Partnership. The provision of these functions will need to remain under review as scale of the LATC, whilst currently unknown, will be a factor.

Support Function	SLA includes
Operational	CQC registration and business processes
HR	CoreHR / Payroll / Recruitment / Travel & expenses / Staff Training e.g. induction, H&S, safeguarding / Pensions
ICT	Provision of ICT equipment and services and ICT support / Website / CoreHR
Finance	Transactional finance functions and financial controller activities / Funding and recharging / Tax / Bank account investment/working capital / Creating the budget / finance SLA processes / payment schedules
Legal Services	Legal advice and Support
Estates/Facilities Management	Accommodation & Facilities management
Audit	Audit advice and support
Communications	Marketing, website, stakeholder comms
Procurement	Procurement Advice & support, management of procurement activities
H&S	H&S Advice and support,
Risk	Insurance

Care Quality Commission

The LATC would need to register as a provider if it were to undertake regulated services and pay the necessary fees.

VALUE ANALYSIS – COST, BENEFITS & RISKS

Company Set Up Costs

In order to establish a LATC the Council would need to provide working capital, in a manner consistent with state-aid rules, in order for the LATC to commence trading. This would need to be in the form of share value and/or a loan on terms that comply with state aid rules to the LATC.

The initial set-up costs are estimated to be in the range of £88K and are detailed below. This is principally related to costs of ensuring the LATC has access to the necessary systems and other arrangements to be provided via a series of service level agreements with the council. The areas where costs will be incurred by the LATC are listed below.

Set up cost estimation

	£'s
Company Setup, Branding, Infrastructure and preparedness costs	62,999
Resources to implement business case	25,000
	87,999

BENEFITS OF THE LATC OPTION

The main rationale for pursuing the LATC model is driven by the need to have a cost effective model for practical service intervention and delivery that would not undermine existing providers or destabilise an already fragile care market. The following benefits of an LATC would be:

1. The creation of a LATC and its future development could help the Council respond to the challenges facing adult care services in a number of ways. These are set out below.
2. Demand for adult care services is forecast to rise considerably and the LATC will be able to be considered where there are gaps in market; the LATC will be a **“third option”** in addition to existing in-house provision and external providers.
3. A LATC will be able to offer the **option of responding to service failure** where existing providers withdraw services or are unable to continue provision due to care quality and/or financial issues, and where a practical option of enabling services to continue with staff transferring is needed.
4. A LATC will offer the **potential to attract future business** through purchasing via personal budgets including individual service funds (this is something not possible with existing in-house services).
5. The cost of care is an important consideration for local authorities and a LATC will enable the council to **compare market solutions** against the LATC and the cost of providing services in-house.
6. The LATC will have the potential to **offer an alternative route to respond to provider failure** and being Council-owned it will help meet the statutory responsibilities the council has

under the Care Act 2014.

7. Creation of a LATC will offer the council a wider range of options to intervene in the adult social care market to **achieve market stability** (this could be both short-term or for longer periods of time depending on the service) where providers withdraw or where the cost of care services is not felt to be good value for money; for example, following a formal best value assessment, or where services are not safe.
8. An LATC owned and largely controlled by the Council would be suited to take advantage of the Teckal exemption to the Public Procurement Regulation. Teckal removes the legal requirement for a public procurement to be carried out. This will save the time and costs associated with a procurement exercise and will give the Council greater control over service transfer so that **service continuity and services standards are maintained with as little disruption as possible.**
9. The LATC will act as an **exemplar care agency**, promoting ethical and inclusive employment practices, promoting cooperative principles and acting in the public interest.

KEY RISKS

Summary of Key Risks	Risk Description	Likelihood Score (1-5)	Impact Score (1-5)	Overall Risk Score	Mitigation
LATC is unable to offer cost-effective alternative.	Services likely to transfer to the LATC on an 'as-is' basis. Additional costs in the short term likely whilst the service is stabilised and a full commercial review is completed. Risk level will vary depending on the size of the service being transferred. Staff would TUPE, risk is back office costs.	3	3	9	Due diligence will be carried out to assess viability of delivery by the LATC. Commercial review of the service will be carried out soon after transfer to review options and identify the best vfm solution for the service moving forwards
LATC undermines existing provider market.	Existing providers may view the LATC as a competitor for new business	2	2	4	The LATC will not seek to compete against existing providers. Other market options considered before LATC transfer decision made. Good communication strategy to manage messages to the market.
LATC will not achieve service targets and outcomes.	Staff may choose to not TUPE over to the LATC, this will hinder ability to deliver services in the short term	3	3	9	SLA between PCC and the LATC and the LATC to be regulated and monitored in the same way as any other provider. Individual packages of care could be sourced with alternative providers who may not be able to take over the whole service but can pick up some care packages. Active intervention if service areas not performing.
LATC is unable to safeguard service users	To protect service users, there will need to be a rapid respond to market failure.	1	5	5	The LATC will be regulated by the CQC for any regulated activities it undertakes. PCC is already a CQC provider and will draw on this experience and expertise. Compliance with Plymouth City Council care standards will be a requirement set out in the SLA with the LATC
LATC runs at a loss	The LATC may be unable to deliver the service to the required level / standards within the available budget.	3	4	12	Due diligence will be carried out to assess viability of longer term delivery by the LATC where applicable. Full commercial review and forward planning once service transferred.

IMPLEMENTATION

Project Timeline

Business Case	
Scope requirements	Jan 21
Finalise business case	Jan 21
Formal Approval of Business Case	Mar21
Phase 1 – Establish Shell Company	
Set up Governance and company structure	Mar-May 21
Prepare operational facilities ICT and Support Function SLAs	Mar-May 21
Agree and set up HR processes	Mar-May 21
Agree and set up Finance processes	Mar-May 21
Set up communication channels and prepare marketing material	Mar-May 21
Design process for appraising and approving business transfer	Mar-May 21
Shell ready for mobilisation	Jun-2021
Phase 2 – Mobilisation – NB. Mobilisation will only commence if / when a need for the LATC arises.	
Gather information and assess case for business transfer into the LATC	Unknown
Case for business transfer agreed	TBA
Activate HR and Finance protocols	TBA
Recruit / TUPE staff	TBA
Staff induction & training	TBA
Distribute ICT, uniforms, ID passes etc	TBA
Commence delivery	TBA

Appendix I – Alternative Delivery Vehicles (ADV)

Entity	Legal Identity Separate from its members	Limited liability of members	Scope to obtain charitable status/tax benefits as a charity	Main potential sources of funding/income	Can it distribute profits?	Asset lock	Minimum number directors/members or equivalent	Typical use	Issues	Can it be a Co-operative?
Company Limited by Shares	Yes	yes - limited to unpaid amount on share (including premium)	No, but can be a trading subsidiary of a charity which covenants profits to parent trust/charity to obtain maximum tax advantage	Generating surpluses from trading activities or sale of assets or other income. Members own shares which they either purchase or may be given (eg through an employee share scheme). If the company is wound up, liability is for the amount unpaid on the shares.	Yes	No - but subject to maintenance of capital restrictions	At least 1 director (a natural person at least 16 years old) who may be the sole member. Members will decide the most important decisions regarding the company. Directors will carry out the day-to-day business.	Most common business structure and well recognised by banks and other commercial organisations as a trading vehicle.	Query use of vehicle for collaborative Teckal type venture or for social enterprise given it is set up to generate and distribute profits to investors. Permitted under trading powers and wellbeing/localism powers.	Yes
Private company limited by guarantee	Yes	yes - limited to the amount of their guarantee	yes, if it has charitable objects satisfactory to the Charity Commission	Fund raising/ grants/donations. Trading or other income-generating activities if permitted by its objects. Borrowing if income sufficient and constitution permits.	In principle yes, but companies limited by guarantee often have a prohibition on distributing profits in the articles of association	No specific requirement but provisions with such an effect could be included in memorandum and/or articles of association.	At least 1 director (a natural person at least 16 years old) who may be the sole member. A registered trust will usually have a number of trustee directors.	Proposals requiring the body to own land or other assets, enter into contracts, employ staff, hold a bank account and/or borrow money.	Recognised entity for a not for profit distributing enterprise where asset ownership and contracting envisaged, a degree of continuity is sought and/or there are benefits in limiting liability. Permitted under trading powers and	Yes

									localism/wellbeing etc.	
Community interest company (CIC)	Yes	yes - may either be limited by shares or guarantee	No	Similar to company limited by guarantee or other private company, but scope for raising equity and debt capital is restricted by their community interest objectives and limitations on dividends and interest payments.	Dividends paid by CICs are subject to limits set by the Secretary of State.	Articles must include an 'Asset Lock' as set out in the CIC Regulations 2005. Assets can only be transferred at full market value. Assets remaining on dissolution protected for the community	As for company limited by guarantee, shares or any other private company.	Intended for social enterprises that wish to use assets and profits for public benefits, with mandatory asset lock and controls on dividends to reassure potential participants, donors or investors.	Basically a limited company with an added 'overlay'. Doubtful whether additional costs and complexity justified by benefits over other forms. Permitted under trading powers but unlikely to be suited to public/public collaborative ventures.	Yes
Industrial & provident Society (IPS) for Community Benefit (BenCom)	Yes	yes - members' liability limited to the amount unpaid on shares	Cannot register as a charity but if meets charitable criteria it may benefit from 'exempt charity' status and obtain tax benefits	Equity investment, grants, fundraising, trade or other income-generating activities and borrowing dependent on constitution.	Generally it is a requirement of registration with the FSA that a BenCom should not distribute profits to members but retain them for the benefit of the community	Such provisions could be included in the BenCom's constitution.	Every IPS/BenCom must have a committee of management (sometimes called 'directors') and a secretary. Generally a minimum of three individuals plus a secretary.	BenComs are one of the two forms of IPS which can be registered under the 1965 Act and are organisations with social objects to run a trade or business for the benefit of	Organisations which conduct an industry, business or trade for the benefit of the community. There must be special reasons why they cannot register as a company. In practice they are used less frequently than companies though permitted under trading powers.	Yes

								the community.		
Limited Liability Partnership (LLP)	Yes	yes - limited to capital treatment	No	Generating surpluses from trading activities or sale of assets or other income.	Yes	No	The LLP owns the business and is liable for its own liabilities. Each member acts as an agent for the LL which will be responsible for all its members' actions. Members not liable (except where negligent) beyond the amount they have committed to contribute to the LLP.	Increasingly common business structure recognised by banks and other commercial organisations as a trading vehicle.	LLPs are first choice for professional partnerships elsewhere.	Yes