

**TITLE OF REPORT: Public Sector PLC**

**REPORT OF: Mike Barker, Strategic Director, Corporate Services and Governance**  
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### **Purpose of the Report**

- 1 To inform Cabinet of discussions held with Public Sector PLC (“PSP”) and to seek Cabinet approval to enter into an arrangement with the company to maximise opportunities for revenue generation and capital realisation.

### **Background**

2. Officers have been in dialogue for some time with PSP who are interested in working with Gateshead because of the Council’s pro-active and innovative approach and profile in the North East.
3. PSP emerged in 1997, encouraged by the then Government, to develop relationships between the public and private sector founded on cultural exchange, trust and equality of relationship, rather than the traditional relationships based strictly on contract
4. PSP is a funding joint venture underwritten and supported by William Pears and Winston investment groups. However, it is not a Local Asset Backed Vehicle and therefore not an outsourcing model where services are simply bought from and provided by the private sector. PSP prefer to label its approach as “insourcing” in that it works with a local authority, bringing finance, skills and resources, but also utilising, and enhancing if necessary, in-house resources in order to facilitate a project.
5. Property projects are usually developed through the establishment of a Limited Liability Partnership (“LLP”) between the Council and PSP. Fuller details of the legal, governance, and financial background are set out in Appendix 1. The LLP forms the basis for a “Relational Partnering” approach whereby the parties are able to explore potential property projects in advance of any contractual commitment. The model does not require any prior property commitment and there is no exclusivity granted to PSP. It is therefore an additional option for the public sector and only used when outcomes are as good as or better than the alternatives.
6. Projects are evaluated through a structured 4 stage process which is set out at Appendix 2.
7. When developing a project all set-up and feasibility costs are met by PSP. This could include funding and support for in-house resources. There is therefore no risk to set up the LLP although staff resources to support any potential

project would need to be assessed. Delivery risks would be assessed on a project by project basis. However, the governance arrangements ensure that projects only proceed with unanimous approval. The LLP would be a commercial entity and capable of taking risks that a local authority might not. The LLP sits outside of the Council and does not carry balance sheet risks for it. Additionally any individual project would require Cabinet approval before it is proceeded with.

8. PSP currently has established LLPs with Dudley, Dorset, Southend, Bolton, Scarborough, Warwick, Cheshire West and Chester, Southampton, South Staffordshire, Daventry and the Isle of Wight. 6 other local authorities are in legal discussions. PSP are keen that Gateshead could form the basis of presence in the North-East.
9. PSP and the individual LLPs are developing a range of property based projects with the different authorities. In some areas, they have addressed the Council's investment and ground rent portfolios which would be an ideal area within Gateshead to assess, on the basis that it could offer real potential to effect and indeed generate income and investment. However, once the relationship with PSP is established it could explore any other potential property based projects. Projects at other councils include regeneration (town centre mixed use development in Bolton), speculative industrial development (Southend) and wholesale Council HQ re-location (Warwick). The key to the individual approach is that each partnership has a locally set agenda and strategy related to the objectives of the local authority, its assets and aspirations. In Gateshead the approach should enhance the strategy of maximising growth and reducing costs contributing to a prosperous Gateshead, bringing other socio-economic benefits to the Borough.

### **Current Position**

10. Officers have spoken with representatives from other local authorities identified above who have been positive about the relationship with PSP and the progress on their particular projects.
11. Officers from Corporate Services and Governance have reviewed the legal documents in place with other local authorities and can see no legal impediment as to why the Council cannot work with PLP should the decision be made for it to do so.

### **Proposal**

12. It is therefore proposed that the Council progress to a more formal relationship with PSP with the intention of entering into a LLP which will enable the two organisations to set up a project to initially consider the viability of investment in the Council's tenanted non-residential property (TNRP) through the use of the partnership and to further explore other property based projects as the relationship develops.

### **Recommendation**

13. It is recommended that Cabinet approve the entering into a limited liability partnership with PSP

For the following reason:

- To enable the Council to best maximise its property assets in order to further the Council Plan and policy objectives.

### Policy Context

1. The proposal supports the overall vision for Gateshead as set out in Vision 2030 and the Council Plan. In particular managing resources.
2. The proposals as set out in this report also accord with the provisions of the Corporate Asset Strategy and Management Plan 2015 – 2020. In particular, maximising assets.

### Background

3. Officers were approached by PSP some time ago, who expressed an interest in working with the Council because of its pro-active and innovative approach.
4. In its 2013 publication “Relational Partnering”, PSP say that “it delivers funding to enhance the value of public services and its property portfolios and can and does reduce the costs of maintenance of council land and buildings. PSP also affords the additional opportunity for public sector staff from council workforces to supply resources to unlock this value”.
5. Projects are evaluated through a structured 4 stage process which is set out at Appendix 2. Benefits of the approach are considered to be:
  - A relationship is developed with no commitment or risk from the outset allowing potential transformation of property, land and regeneration activities. The only prior commitment is simply to agree to establish a table around which innovations and new ideas can be generated;
  - Ideas are developed jointly bringing together the strengths of the public and private sector;
  - The public sector may have ideas already but neither the means or resources to test commercial feasibility; and
  - Barriers can be brought down and a new integrated culture emerge, taking away suspicion and obstacles that could exist under a traditional approach

The evaluation process contains a comparability test with all assumptions independently tested by CIPFA.

6. Having considered a number of property options and having regard to the workstreams in the Change Programme it is considered that a suitable project for consideration would be the Council’s Tenanted Non-operational Portfolio as the Council has already agreed to invest in the portfolio and PSP have already worked with other councils with regard to their investment and ground rent portfolios.

### Legal Implications

7. The overarching General Power of Competence (Localism Act 2011 Section 1) is considered to provide the power to enter into the proposed arrangements.

8. It is not considered that setting up the LLP or, if this route is chosen for any project, providing it with assets, constitutes a procurement or state aid under European Union Law. The Council, by creating the LLP, is not purchasing services, and assets are provided at market value. Once established the LLP is not considered to be a contracting authority within the definitions set out in the Procurement Regulations. Transactions between the local authority and the LLP are considered to be transfers of land and so not subject to the procurement rules.
9. It is a requirement of Section 123 of the Local Government Act 1972 that any disposal of land is at the best consideration reasonably obtainable (except with the Secretary of State's consent, which is unlikely to be relevant here). The LLP arrangement is designed to secure that the Council receives full, or even enhanced, value for property committed to a project.
10. The arrangements should satisfy the Best Value requirements of Part 1 of the Local Government Act 1999 in that the evaluation process is designed to demonstrate whether or not a proposal delivers best value. If a proposal is not an improvement in these terms it will not be proceeded with.
11. PSP has provided legal advice from Anthony Collins Solicitors and Rhodri Williams QC giving assurance on the relevant legal issues including
  - Vires
  - Procurement
  - State Aid
  - Best Value and Best Consideration

However, any legal issues raised during project assessment will be fully evaluated and addressed.

### **Governance**

12. A Limited Liability Partnership is a corporate entity in which two or more partners agree to go into partnership with a view to making a profit. LLPs are regulated by legislation in the same way as for a company; an LLP must file annual accounts and details of membership with Companies House. In an LLP the members have the benefit of limited liability – that is, protection from personal liability for any debts or claims made against the LLP, provided they act within the powers of the constitution of the LLP.
13. To enter into this proposed LLP it will be necessary to enter into a binding partnership agreement with PSP. This partnership agreement and the more detailed operating agreement which sits beneath it, commits both parties to a number of obligations in terms of establishing management and decision making structures, but it does not commit the Council to make any financial commitment to the LLP.
14. The normal term of the partnership is 10 years, but the agreement enables either partner to terminate the partnership at any time on 12 months' notice.
15. The inception of the LLP model will facilitate an LLP Partnership Board which ensures an equal standing of the two partners within the relationship, i.e. 50/50

decision making ability. Should either party not wish to pursue a project, it will not be pursued.

16. The creation of an LLP Partnership Board which will typically consist of equal representation of Councillors and PSP nominees and will meet quarterly.
17. The Chair would be appointed from the Council representation and the Vice Chair from the PSP nominees. There needs to be equal voting by both parties for a proposal to proceed and without this the project would not proceed. There is no casting vote for the Chair; the total number of representatives on the LLP Board will make decisions in respect of asset related projects.
18. Prior to any projects being presented to the LLP Partnership Board, a report will be presented to Cabinet on proposed projects. This report will be written by an Operational Board of officers.
19. The Operational Board of officers will have an equal split of representation from the Council and PSP and the total number will need to be set as part of the final contractual arrangements, but is typically between 3-5 representatives from each party.
20. To assist with exchange of ideas PSP has also set up a Local Government Council Consortium Group which meets annually and is attended by LLP Councillor members. There is also a national Advisory Group of officers which meets at least bi-annually.

### **Finance Implications**

21. The costs of establishing the LLP are met by PSP. PSP also fund any initial review of initial property opportunities including information gathering and research although there will need to be an investment in internal resources.
22. The aim of the LLP is to generate value using Council assets which is over and above that which the Council is able to generate itself. The basic premise is value created (less costs) equals profit which is shared 50:50 between the public and private sectors. PSP state that the Council's existing asset value will be protected, and it is only the value achieved, above that base level, that will be shared, after deduction of associated costs.

### **Consultation**

23. In preparing this report, consultations have taken place with the Leader, Deputy Leader and other Cabinet members who have indicated their support to the proposal.

### **Alternative Options**

24. The Council continues to fund investment from its own resources which may not be sufficient to maximise the potential returns.

## **Implications of Recommended Option**

25. **Resources:**
- a) **Financial Implications** – The Strategic Director, Corporate Resources confirms that there are no immediate financial implications arising out of this report. If any project is taken forward then this would be subject to a further report to Cabinet at which time the financial implications will be addressed.
  - b) **Human Resources Implications** – There are no initial implications arising from this recommendation.
  - c) **Property Implications** - There are no immediate property implications arising out of this report. If any project is taken forward this will be the subject of a further report at which time the property implications will be highlighted.
26. **Risk Management Implication** – There are no additional risk management implication arising from this recommendation.
27. **Health Implications** - There are no implications arising from this recommendation.
28. **Equality and Diversity Implications** - There are no implications arising from this recommendation.
29. **Sustainability Implications** – Reducing the size of the property portfolio will assist the Council in meeting its objectives.
30. **Human Rights Implications** - There are no implications arising from this recommendation.
31. **Area and Ward Implications** – There are no implications arising from this recommendation.

## Appendix 2

### Process

Stage	What	Who	Outcome
<b>e1</b> Explore	Options Feasibility Outline ideas What if's	<ul style="list-style-type: none"> <li>• PSP prepare</li> <li>• Ops Board agree</li> <li>• Members Board approve</li> </ul>	<ul style="list-style-type: none"> <li>• Indication of viability</li> <li>• Approval or rejection of opportunity</li> </ul>
<b>e2</b> Examine	Initial appraisal Indicative layouts Site assembly options High level strategy Site valuations	<ul style="list-style-type: none"> <li>• PSP prepare</li> <li>• Ops Board agree</li> <li>• Members Board approve</li> <li>• Independent valuers</li> </ul>	<ul style="list-style-type: none"> <li>• Forecast returns</li> <li>• Agreed project strategy</li> <li>• Timetable for delivery</li> </ul>
<b>e3</b> Evaluate	Agreement to Success Criteria Demonstration of Value For Money	<ul style="list-style-type: none"> <li>• PSP prepare</li> <li>• ACS audit and report to Members Board</li> </ul>	<ul style="list-style-type: none"> <li>• Validation report demonstrates achievement of necessary tests</li> </ul>
<b>e4</b> Engage	Project delivery Disposal	<ul style="list-style-type: none"> <li>• PSP manage</li> <li>• Ops Board oversight of process</li> </ul>	<ul style="list-style-type: none"> <li>• Delivery of agreed works</li> <li>• Income from disposals</li> </ul>