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# SUPPLEMENTARY AGENDA

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## CABINET

TUESDAY, 1 OCTOBER 2024 AT 2.00 PM

COUNCIL CHAMBER - THE GUILDHALL, PORTSMOUTH

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## Membership

Councillor Steve Pitt (Chair), Councillor Dave Ashmore (Cabinet Member), Councillor Chris Attwell (Cabinet Member), Councillor Kimberly Barrett (Cabinet Member), Councillor Peter Candlish (Cabinet Member), Councillor Suzy Horton (Cabinet Member), Councillor Lee Hunt (Cabinet Member), Councillor Hugh Mason (Cabinet Member) and Councillor Matthew Winnington (Cabinet Member)  
Councillor Darren Sanders (Vice-Chair)

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(NB This supplementary agenda should be retained for future reference with the main agenda and minutes of this meeting).

## SUPPLEMENTARY AGENDA

### 5 Portico Shipping Ltd Review (Pages 5 - 6)

This supplementary agenda contains revised Legal comments for the report.

#### Purpose

As required by Full Council, Cabinet is required to undertake a periodic strategic review of the options for the use of the Portico site and therefore the continued operations of Portico Shipping Ltd (Portico).

**RECOMMENDED that Cabinet recommends that Full Council:**

**1.1 The Council approves Portico's investment requirement of £20m over the next 10 years, to deliver an overall return at today's value (net present value) of £4.4m during the period 2024/25 to 2033/34, and agrees to finance this, as follows (subject to recommendations 2.2.2, 2.2.3, 2.2.4 and 2.2.5 below):**

- £1.9m funded from Portico's existing loan facility;
- £13.6m funded from an increase in Portico's loan facility; and
- £4.5m funded directly through the direct acquisition by the Council of equipment and lease to Portico on commercial terms.

**1.2 That the Council's Authorised Limit (the maximum amount of borrowing permitted by the Council) and the Operational Boundary (the maximum amount of borrowing that is expected) approved by Full Council on 13 February 2024 is increased to accommodate the phasing of Portico's £20m investment requirement.**

**RECOMMENDED that the Cabinet approves that:**

**2.1 The Council retain Portico and that the amended budget (Section 6, Option 1) is adopted as the Council's preferred option.**

**2.2 Updated subsidy control advice is gained by the Council.**

**2.3 The Council loan is provided on terms and at a rate consistent with subsidy control legislation.**

**2.4 Any draw down on the loan facility by Portico is subject to the following:**

- i) **A rolling annual review of the 20 Year Business Plan demonstrating the continuing viability of Portico and that the continued operation of Portico continues to deliver the best financial return compared with all other viable alternatives**
- ii) **The Capital Investment is necessary either for the sustainability of existing income streams or for the generation of additional income.**
- iii) **Any proposed Capital Investment itself represents the most favourable return when assessed against the balance of:**
  - **The financial return on a Net Present Value basis and over the whole life of the asset created versus other potential options for the same outcome.**
  - **The relative risk of each alternative option.**
- iv) **Approval by the S151 Officer.**

**2.5 Continued parent company support and the availability of the loan facility is subject to the annual review by the Company Advisory Board, and approval of a satisfactory Budget and 3 Year Business Plan, which must demonstrate to the shareholders satisfaction that:**

- **The assumptions that underpin the 3 Year Business Plan are robust with a more than reasonable chance of being achievable.**
- **That the 3 Year Business Plan is prepared to illustrate the financial effect of reasonable optimistic and reasonable pessimistic scenarios, in order that the shareholder is aware of the reasonable range of risk**

**associated with the "Base Case" Business Plan.**

- **Recognising the exposure of the company to cyclical trade factors and adverse weather, that the overall 3 to 5 Year financial results of the Company provide an overall net return to the Shareholder over the period taking into account all returns received by the Shareholder through rents, dues and all other income elements of services provided by the Shareholder (including the Portsmouth International Port (PIP)).**

**2.6 The Council keeps under review the returns that would reasonably be expected to be achieved from alternative uses of the site, undertaking a formal review at the earlier of every 5 years or an expectation that the financial performance set out in recommendation 2.1.1 above is unlikely to be achieved.**

**2.7 Portico is restructured, to include the creation of subsidiary companies and a holding company, as recommended by the independent review, to enable the business to remain competitive, and meet market needs.**

**2.8 It is noted that the Portico operation provides additional volumes for pilotage and towage which supports the need for a dedicated service for both aiding PIP cruise and ferry.**

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# Agenda Item 5

- 9.1 It is necessary to consider whether the terms on which the Council is providing financial assistance for Portico involves the provision of a subsidy. If there were a subsidy, various steps would be required under the Subsidy Control Act 2022 to ensure that the subsidy was lawful. The subsidy control rules are the UK's equivalent to the State aid rules.
- 9.2 A subsidy arises when financial assistance (in any form whatever) is provided by a public authority from public resources and this results in one or more enterprises receiving a specific economic advantage which either does, or could, have an effect on competition or investment within the UK or on trade or investment between the UK and somewhere outside the UK.
- 9.3 The Council is required to have regard to the statutory guidance (see section 79(6) of the Subsidy Control Act 2022) when giving a subsidy. The statutory guidance also contains useful information and guidance on how to go about demonstrating that financial assistance is not a subsidy.
- 9.4 It will be possible for the Council to follow a 'no subsidy' approach for its investment in Portico if it is satisfied that the investment is in line with normal market conditions, and so in accordance with the so-called Commercial Market Operator principle (CMO Principle). If the Council's investment complies with the CMO Principle, there will be no economic advantage for Portico and therefore no subsidy. The CMO Principle is the UK equivalent to the Market Economy Investor Principle under EU State aid law.
- 9.5 In order to conclude that the CMO Principle is satisfied, the Council must be satisfied that its overall investment in Portico (taking into account both its existing investment and the proposed further investment outlined at 2.4 above) based on Portico's Business Plan, is an investment which a commercial market operator in an equivalent position to the Council and driven only by commercial objectives would be willing to make. The measures in place and set out in this report seek to demonstrate that the Council adheres to the CMO Principle when making decisions regarding its financial support for Portico and when keeping that investment under review. These steps are in accordance with the external legal advice which the Council has received in relation to subsidy control compliance.
- 9.6 Investment proposals relying on the CMO Principle justification should ideally be supported by at least one independent report from a reputable source confirming that the terms and conditions would be acceptable to a market investor. The Council has commissioned an independent expert assessment of the proposed investment in Portico, which supports a conclusion that a private investor in the Council's position would be willing to make an equivalent investment based upon Portico's Business Plan and the wider circumstances (including the indirect benefits generated for Portsmouth International Port as a result of Portico's business at the Port).

- 9.7 It is considered likely that the CMO Principle, based on the proposals set out in this report and the outcome of the Council's financial evaluation, would be satisfied. This conclusion has been reached on the basis that the continued investment in Portico is forecast to generate a significantly better return on investment for the Council than any of the alternative investment options considered (as explained further in Exempt Appendix A).
- 9.8 However, the Council must ensure that:
- Conditions are attached to the loan facility to enable it to check that the Business Plan is on track.
  - It continually reviews the progress of the implementation of the Business Plan to check that it continues to present an attractive investment that a rational private investor in the Council's position would be prepared to make.
  - It puts in place adequate regular reporting controls to facilitate such reviews.
  - It regularly reviews its investment and re-visits the alternative options.
- 9.9 In addition to the above it is recommended that the proposed strategy and loan facilitation proposals together with the structuring of Portico (new companies and officers) be scrutinised by reference to independent legal review principally focussing upon establishing that the proposals of this report are fully compliant with current legislation.