

Setting up a trading company – LMG Exhibitions Ltd – to support the delivery of Leeds Museums & Galleries' new five-year strategy

Date: 14/09/2022

Report of: Head of Service, Leeds Museums & Galleries

Report to: Chief Officer, Culture & Economy

Will the decision be open for call in?

Yes No

See paragraph 19 below in legal implications.

Does the report contain confidential or exempt information?

Yes No

What is this report about?

Including how it contributes to the city's and council's ambitions

- This report is about seeking authorisation to set up a trading company in order to support the delivery of the new Leeds Museums & Galleries (LMG) Strategy, *Deepening Connections, Widening Impact*.
- The five-year strategy, approved by the Executive Board on 16 March 2022, has six main outcomes about financial and environmental sustainability, audience experience and engagement, learning, the use and management of collections and heritage assets, diversity, and international working.
- LMG manages nine sites in and around Leeds with a collection of some 1.3 million objects. It is the largest local authority run collection outside of London with four designated collections of national significance: decorative art, fine art, natural sciences, and industrial collections. Pre-Covid the nine venues (Leeds Art Gallery, Leeds City Museum, Leeds Discovery Centre, Leeds Industrial Museum, Thwaite Watermill, Kirkstall Abbey, Abbey House Museum, Lotherton Hall, and Temple Newsam House) welcomed almost 1.7 million visitors and over 49,000 schoolchildren. The service's websites attract over 3.5 million page views per annum, and LMG have 300,000 followers on social media. The service contributes at least £24 million a year to the local economy.
- The strategy focuses on how these sites and collections will be managed in order to support the Best City Ambition as well as Leeds City Council Culture Strategy, Let's Create, Arts Council England (ACE)'s 10-year strategy. As a Band 3 National Portfolio Organisation, LMG currently receives £1.6million from ACE and a clear strategy is crucial to safeguard that funding particularly as LMG applies for another 3-year period in April 2022.
- In order to support the delivery of all outcomes, particularly outcome 1 on sustainability, a recent commercial review recommended setting up a trading company.

- As well as helping the service better deliver cultural services through nine sites and digital channels, for example through trading activities such as retail, catering, and functions and events, having a trading company will also allow LMG to be eligible to begin claiming Museums & Galleries Exhibitions Tax Relief (MGETR).
- This relief is only claimable by 'qualifying companies' who are either a charitable company or a company wholly owned by a charity or a local authority.
- By setting up a trading company, LMG Exhibitions Ltd, the local authority will be able to claim between an estimated total of £275,000 and £563,000 for financial years 2022-23, and 2023-24, depending on the impact on the Council's wider tax profile, particularly the 5% VAT exemption limit. MGETR claims will need to be considered as part of LCC's overall tax forecasts and strategy. Key stakeholders from Finance will be engaged as part of the claims process.
- Once established, the local authority can begin reclaiming so it is important to do this as soon as possible since retrospective claims are not valid. External advisers, RSM have said that in order to claim MGETR the accounting period for the proposed trading company can be no less than 6 months. Incorporating the new legal entity as at 30th September will allow the exhibition company to have a year-end date aligned with Leeds City Council, 31st March. This would make recharges between LCC and the company easier since they could be absorbed into existing year end processes within the finance team.
- 25% of the sum realised through tax relief will be reinvested in Leeds Museums & Galleries in the following financial year and the amount needed to make each claim will also be recouped from the proceeds of the claim.
- The trading company will have a clear purpose: to support the delivery of Leeds Museums & Galleries' strategy. There will be no transfer of assets into the company and decision making will be in line with the Council's Decision Making procedures.
- Three company directors will be needed. Initially, these will be Martin Farrington, Director of City Development, Eve Roodhouse, Chief Officer – Culture & Economy, and David Hopes, Head of Service, Leeds Museums & Galleries.
- The creation of a trading company and claiming the relief will contribute to the Best City Ambition by allowing the museums service to better stimulate local **inclusive economic growth** through an enhanced visitor offer at the museum.
- These changes will also facilitate local employment and thereby help to combat inequality in Leeds.
- Through an enhanced visitor experience these changes will also improve the **health and wellbeing** of visitors and local people.
- Reinvestment in exhibitions, particularly through more sustainable practice and by advocating for greater environmental responsibility, may also help the Council achieve its **net carbon zero** target by 2030.

Recommendations

The Chief Officer, Culture & Economy is recommended to agree to the following:

- Set-up a trading company, LMG Exhibitions Ltd, with immediate effect (before 30th September 2022) to allow for a minimum six-month accounting period in the first year, should the council decide to reclaim tax relief for 2022/23.
- Begin claiming tax relief from the end of this financial year (2022-23), and thereafter on any viable claims. These will be considered as part of LCC's overall tax forecasts and strategy so that the Council does not exceed the 5% VAT exemption. Key stakeholders from Finance will be engaged as part of the claims process.
- Appoint company directors.
- Consider other ways of utilising the trading company to deliver trading activities, particularly retail, catering and events.
- Return the proceeds to the local authority (minus the costs of each claim), reinvesting 25% in new exhibitions through Leeds Museums and Galleries.

Why is the proposal being put forward?

1. Leeds Museums & Galleries is seeking to implement its five-year strategy and has been advised that a trading company would help make the delivery of services more effective and more efficient. Added to this, it would allow the service to become eligible to claim relief on expenditure associated with the production of new exhibitions.
2. Leeds Museums & Galleries (LMG), Leeds City Council's museums service, spends at least £874,000 annually on the creation of new publicly accessible exhibitions.
3. In April 2017, the UK Government introduced Museums & Galleries Exhibitions Tax relief (MGETR) which is designed to support organisations to create, and tour public facing exhibitions by helping them to recover some of their production costs
4. This would allow the Council to claim up to 45p in the pound reclaimed for expenditure on new exhibitions. This rate is applicable until April 2023.
5. This relief is only claimable by 'qualifying companies' who are either a charitable company or a company wholly owned by a charity or a local authority.
6. In order to qualify, Leeds Museums & Galleries would need to set up a trading company which will be called LMG Exhibitions Ltd.
7. Activity is only eligible from the time this company is established: retrospective claims are not possible.
8. A feasibility study and subsequent work by the LCC Finance team on the benefits of claiming MGETR has estimated that this could raise an additional total of £275,000 and £563,000 for financial years 2022-23 and 2023-24.
9. Given the financial benefits, this would allow LMG to reinvest in the quality of exhibitions which meet the scheme's criteria, whilst helping to alleviate the Council's financial challenge. 25% of the proceeds of tax relief would be reinvested in exhibitions activity.

What impact will this proposal have?

Wards Affected: All

Have ward members been consulted?

Yes

No

What consultation and engagement has taken place?

10. Consultation has taken place with colleagues in Finance and Legal services since March 2022, as well as colleagues in other local authorities and charitable trusts who have successfully claimed MGETR.
11. This includes the following individuals:
 - Keiron Dennett, Head of Procurement and Commercial Services
 - Marissa Earnshaw, Commercial Finance Manager
 - Alister Nicholl, Procurement and Commercial Manager
 - Sarah Bagley, Taxation Manager
 - Nikki Deol, Section Head – Property and Development, Legal Services
 - Paul Cox, Finance Business Manager
 - Yvonne Hardman, Head of Collections & Programmes
 - Jackie Reynolds, Head of Finance, Tyne & Wear Archives and Museums
 - Paul Rogers, Head of Finance, Yorkshire Sculpture Park
12. The Executive Board Member for Economy, Culture and Education, Councillor Jonathan Pryor, has also been consulted on various occasions, from 6th September 2021.

What are the resource implications?

13. The feasibility study cost £20,000 and this fee also covers the raising of year one claim (after which there will be a per claim cost estimated at £200). Staff time in LMG (with support from colleagues in Finance) to prepare each claim will be greater in preparing the first year claim and should be relatively straightforward after year one. A threshold will be set to ensure that resource invested is proportionate to the size of each claim.

What are the legal implications?

14. Setting up a new legal entity – a trading company – will entail new legal responsibilities such as liabilities for the finances of the business. However, in order to simplify the arrangement, LMG staff will not be transferred to the new trading company.
15. The creation of a new legal entity will assist with the Council's statutory responsibility to provide and maintain museums and art galleries across the city of Leeds in accordance with the Public Libraries and Museums Act 1964.
16. The Council will rely on the general trading powers in conjunction with its powers to carry out the activity in question. Both general trading powers require a local authority to trade through a company. Section 95 of the Local Government Act 2003 enables local authorities "to do for a

commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions” (i.e. anything they are empowered to do in legislation). The section 95 power can be limited by order and local authorities exercising it must have regard to guidance issued by the Secretary of State. Section 4 of the Localism Act 2011 enables the local authority to do for a commercial purpose anything that it is empowered to do under section 1 (the general power of competence). The section 4 power is therefore wider than the section 95 power.

17. The section 95 and section 4 trading powers require the local authority to use one of the following company structures:
 - a. Company limited by shares;
 - b. Company limited by guarantee;
 - c. Industrial and Provident Society;
 - d. An unlimited company;
 - e. Community Interest Company (CIC).

18. The new trading company will be a regulated company under the terms of the Local Authorities (Companies) Order 1995. Regulated companies are those classed as either being ‘controlled’ or ‘public sector influenced’ by a local authority. The new trading company will fall within the definition of a ‘controlled’ company and must therefore comply with a number of specific governance and accountability rules, including:
 - a. identifying the relevant local authority on business documents;
 - b. limiting Directors’ remuneration;
 - c. removing Directors who are disqualified as councillors;
 - d. prohibiting party political publicity;
 - e. requiring the provision of certain information to the local authority’s Members, officers and auditors.

19. Given the timeframe for the setting up of a trading company (this must be done by the end of September to allow for a minimum accounting period of six months for any tax relief claim) and in line with Executive and Decision Making Procedure Rule 3.1.3, agreement has been sought from the Executive Member for Economy, Culture and Education to proceed to take the Key Decision without complying with the requirement to publish the report and delegated decision notice 5 clear working days in advance of the decision being taken.

What are the key risks and how are they being managed?

20. There is a risk that the claim does not justify the expense of setting up a trading company and making a claim but this is being managed by employing a consultant with experience of making similar claims to advise on the scope of a potential claim and on guidance in setting up the trading company and the legal agreement between LMG Exhibitions Ltd and the local authority.

21. There is a risk that by charging the trading company for staffing costs the Council compromises its partial Value Added Tax (VAT) 5% exemption. This is being managed by looking at eligible activities at LMG sites that do not currently charge admission fee.

Does this proposal support the council’s 3 Key Pillars?

Inclusive Growth Health and Wellbeing Climate Emergency

22. Inclusive growth: tackling poverty, helping everyone benefit from the economy to their full potential. The enhanced visitor experience – made possible by reinvesting proceeds from each claim - will help stimulate the local economy and may lead to job growth both directly and indirectly.

23. Through an enhanced visitor experience these changes will also improve the **health and wellbeing** of visitors and local people.
24. Reinvestment in exhibitions, particularly through more sustainable practice and by advocating for greater environmental responsibility, may also help the Council achieve its **net carbon zero** target by 2030.

Options, timescales and measuring success

a) What other options were considered?

25. That the claim could be made by a charitable trust LMG wishes to set up next year (this will be the subject of a separate report). While this is still a possibility, the emphasis is on making activity eligible as soon as possible so a trading company is the preferred option.

b) How will success be measured?

26. By the size of the claim relative to the investment required to make activity eligible and to compile each claim.

c) What is the timetable for implementation?

27. To set up the trading company by the end of September and to make the first claim following the end of the financial year 2022-23, i.e. from April 2023.

Appendices

28. None.

Background papers

29. None.