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**SECURING THE FUTURE OF THE NEW THEATRE: PRE-DECISION SCRUTINY**

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*Appendix A and Appendices 1, 2, 3, 4 and 5 of the Cabinet Report at Appendix B are not for publication as they contain exempt information of the description contained in paragraphs 14 and 21 of Schedule 12A of the Local Government Act 1972. It is viewed that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.*

**Purpose of the Report**

1. To give Members background information to aid the scrutiny of the draft report to Cabinet regarding the New Theatre, which is due to be considered by Cabinet at their meeting on 10 October 2019.
2. Members should note that **Appendix A and Appendices 1, 2, 3, 4 and 5** of the Cabinet report at **Appendix B** are exempt from publication. Members are requested to keep this information confidential, in line with their responsibilities as set out in the Members Code of Conduct and the Cardiff Undertaking for Councillors.

**Scope of Scrutiny**

3. At their meeting on 10 October 2019, the Cabinet will consider a report that presents the outcome of the market process to secure a theatre operator to rent, operate and maintain the New Theatre. The report seeks Cabinet approval for the recommended tenant.
4. During this scrutiny, Members have the opportunity to explore:
  - i) Undertake pre-decision scrutiny of the report to Cabinet on New Theatre - *attached as Appendix B*
  - ii) Explore with witnesses key factors shaping future plans and any

risks to the Council

- iii) Gain an understanding of the next steps and timelines involved, and
- iv) Test the recommendations to Cabinet.

### **Structure of the meeting**

5. The Chair will move that this item be considered in two parts: an open session, where Members will be able to ask questions on the issues and papers that are in the public domain; and a closed session, where members of the public will be excluded, where Members can ask questions that pertain to **Appendix A and Appendices 1, 2, 3, 4 and 5 of Appendix B**.
6. Members will hear from Councillor Peter Bradbury (Cabinet Member – Culture & Leisure), Neil Hanratty (Director of Economic Development) and Kathryn Richards (Head of Culture, Venues, Tourism & Events). There will be a presentation taking Members through the proposals and recommendations to Cabinet, followed by Members questions.
7. Members will then be able to decide what comments, observations or recommendations they wish to pass on to the Cabinet for their consideration prior to making their decisions.

### **Background**

8. At over 110 years old, the New Theatre is the oldest traditional theatre in Cardiff, with a growing maintenance backlog, including high priority works estimated at circa £350,000. The operation of the New Theatre requires an annual Council subsidy as well as facilities management costs, including cleaning, utility costs and NNDR. However, it is estimated that in 2018/19, the New Theatre delivered £21m back to the local economy<sup>1</sup>.
9. In 2015/16, the Council undertook a public procurement exercise covering the New Theatre and St David's Hall. This found that the benefit of externalisation

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<sup>1</sup> Cited in report to Cabinet

through that process was marginal and the Council decided not to proceed. In November 2018, Cabinet considered a report on the future of Cardiff's heritage buildings and authorised officers to explore the potential to rent the building to a theatre operator without subsidy and to return to a future meeting of Cabinet for final consideration and decision on the outcome of that process.

10. In February 2019, Cabinet approved the Budget Report which included a savings proposal for £404,000 relating to the New Theatre as follows:

*'Secure a private theatre tenant for the New Theatre building to develop and sustain the current theatre offer in the city.'*

### **Issues identified in report to Cabinet**

11. The draft report to Cabinet entitled '*Securing the Future of the New Theatre*' is attached at **Appendix B** and has **five** appendices:

- **Confidential Appendix 1** – Evaluation Matrix
- **Confidential Appendix 2** – Outcome of the Evaluation Process
- **Confidential Appendix 3** – Due diligence
- **Confidential Appendix 4** – Risks and Implications
- **Confidential Appendix 5** – Draft Heads of Terms

12. The report states that the Council has advertised in the Arts Professional publication, seeking expressions of interest from theatre/arts organisations to consider a 25-year lease to secure investment into the building and to ensure its long-term future as a theatre. Links to the advert and the expression of interest form were also placed on the Council's website.

13. The expressions of interest were evaluated against an agreed set of criteria, detailed in the report to Cabinet, by a multi-disciplinary team of property, legal and cultural venue officers, and interested parties were invited to interviews. A shortlist of four final respondents were invited to submit full and final bids, details are in Confidential Appendix 1 and 2.

14. Of the four final parties, two were discounted, as they provided no guarantees regarding removal of the current operating subsidy. The remaining two offers were of similar monetary value, committed to operating the theatre without subsidy, and are from reputable theatre companies, committed to retaining and developing all existing staff through the TUPE process with pensions protected.
15. The key difference in the two offers is the strength of covenant under-pinning the lease agreement with the preferred offer being able to provide a significant parental company guarantee.
16. The report to Cabinet states that the '*details of the financial and cultural standing and performance of the company making the preferred offer is provided in Confidential Appendix 3.*' The highlights from this are summarised at **Point 22** of **Appendix B**.
17. The **risks** to the Council are summarised at **Point 23** of **Appendix B** with Confidential Appendix 4 setting out some of the key risks and implications of the leased based approach and the preferred offer including information uncovered through the due diligence process.
18. The **Financial implications** are set out at **Points 27-30** of **Appendix B**, with **Legal** implications at **Points 31- 36** and **HR implications** at **Point 37**. Members are advised to ensure they have read these.

### **Proposed Recommendations to Cabinet**

19. The report to Cabinet contains the following recommendations:
  - (1) *Approve the selection of the recommended tenant.*
  - (2) *Delegate authority to the Director of Economic Development in consultation with the Cabinet Member for Culture and Leisure, the Monitoring Officer and the Section 151 officer to finalise a lease based on the Heads of Terms set out in Confidential Appendix 5.*

### **Appendix A**

20. At the last Committee meeting, 19 September 2019, during discussions about the work programme and this item coming for pre-decision scrutiny, Members

requested information on the income received from the pantomimes at the New Theatre, for the last five years. This has been provided, at **Appendix A**.

## **Previous Scrutiny**

21. At Committee in January 2019, Members received a copy of the Council's *Changes for Cardiff* budget consultation survey that highlighted a consultation budgetary proposal for the New Theatre and sought residents' views on this.

22. The consultation survey contained the following:

*New Theatre Cardiff has a vibrant and varied theatre scene, attracting a wide range of performances and audiences. Venues including the Millennium Centre, St David's Hall, the Sherman Theatre and Chapter Arts provide an array of entertainment choices. Cardiff Council wants to ensure that, as the capital city of Wales, we are able to ensure the continuation of high quality theatre productions in the city. An opportunity exists for the Council to secure a new private theatre tenant for the New Theatre building to develop the current theatre offer in the city. This proposal could secure savings of £404k to the Council. (CONSULT 7)*

- *Have you visited the New Theatre in the last 12 months?*
- *Have you visited a theatre elsewhere in Cardiff in the last 12 months?*
- *Do you support the proposal to secure a private tenant to develop and sustain the current theatre offer in the city?*

23. The consultation survey responses showed the following:

- Three in five respondents (59.2%) support the proposal to secure a private tenant for the New Theatre to develop and sustain the current theatre offer in the city.
- Almost two-thirds of respondents (64.7%) supported the principle of reducing the subsidy of entertainment and art events.

24. At Committee in February 2019, Members undertook pre-decision scrutiny of the Budgetary Proposals for 2019/20, which included a savings proposal, at Line 7, for £404,000 from the New Theatre.
25. As part of the papers for the meeting in February 2019, Members received a hyperlink to the Equality Impact Assessment undertaken for this savings proposal; this stated that *'any positive/negative impact will be considered and evaluated as part of the lease negotiations.'*
26. Following budget scrutiny, the Chair, Councillor Howells, wrote to Councillor Weaver (Cabinet Member – Finance) stating:
- 'Members note the double-pronged approach being taken to the New Theatre, Line 7, seeking expressions of interest from private companies at the same time as tightly managing operations to control spend. Members are clear that they wish to scrutinise any new proposed operating model for the New Theatre and ask that officers liaise with scrutiny services to ensure that this happens at the appropriate time.'*<sup>2</sup>
27. Councillor Weaver's response letter, dated 22 February 2019, included the following:
- 'The request to scrutinise any new lease arrangements in respect of the New Theatre is noted and officers will liaise with scrutiny services to ensure this is programmed accordingly.'*

## **Way Forward**

28. Councillor Peter Bradbury (Cabinet Member – Culture & Leisure) will be invited to make a statement. Neil Hanratty (Director of Economic Development) and Kathryn Richards (Head of Culture, Venues, Tourism and Events) will attend to give a presentation and answer Members' questions on the proposals.
29. All Members are reminded of the need to maintain confidentiality with regard to the information provided in **Appendix A and Appendices 1, 2, 3, 4 and 5 of**

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<sup>2</sup> Letter from Cllr Howells, Chair to Cllr Weaver, Cabinet Member, dated 20 February 2019

**Appendix B.** Members will be invited to agree the meeting go into closed session to enable discussion of this information.

### **Legal Implications**

30. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters, there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

### **Financial Implications**

31. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters, there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

## **RECOMMENDATION**

The Committee is recommended to:

- i) Consider the information in this report, its appendices and the information presented at the meeting;
- ii) Determine whether they would like to make any comments, observations or recommendations to the Cabinet on this matter in time for its meeting on 10 October 2019; and
- iii) Decide the way forward for any future scrutiny of the issues discussed.

**DAVINA FIORE**

**Director of Governance & Legal Services**

**27 September 2019**