

CABINET MEETING:

October 2019

SECURING THE FUTURE OF THE NEW THEATRE

CULTURE & LEISURE (CLLR PETER BRADBURY)

AGENDA ITEM:

Appendices 1 – 5 are not for publication as they contain exempt information of the description contained in paragraphs 14 and 21 of Schedule 12A of the Local Government Act 1972.

PORTFOLIO: CULTURE & LEISURE

Reason for this Report

1. To present Cabinet with the outcome of the market process to secure a theatre operator to rent, operate and maintain the New Theatre.

Background

2. The New Theatre is one of Cardiff's most important cultural assets. The oldest surviving traditional theatre in the Welsh Capital, it is the sister venue to St David's Hall, the National Concert Hall of Wales. With a focus on live performances of drama, musicals, dance, children's shows and an annual pantomime season, the New Theatre presented 39 productions, 346 performances and sold over 203,000 tickets in 18/19. Based on the Arts Council England economic impact formula, the venue delivered £21m back to the local economy in 18/19.
3. The building is now over 110 years old and is in need of investment. Whilst essential maintenance works have been undertaken by the Council to ensure the building remains compliant and is able to be open to the public, there is a growing maintenance backlog including high priority works estimated at circa £350,000.
4. The operation of the New Theatre has required an annual Council subsidy of circa £500,000. On top of this, the Council also spends circa £200,000 per annum on Facilities Management directly related to operating the theatre including cleaning, utility costs and NNDR.

5. In 2015/16 the Council undertook a public procurement exercise to identify an external operator in an attempt to eliminate the operational subsidy and secure investment in to the building as part of a wider process involving St David's Hall. Following an 18 months procedure and detailed assessment, the Council decided not to proceed and to retain the operation of the building in-house, as the benefit of externalisation through that process was marginal. A key factor in the outcome of that process, provided as feedback from bidders, was the level of control the Council wished to retain over the on-going operation of the facility which limited the potential for the bidders to manage the facility commercially.
6. In November 2018, Cabinet considered a report on the future of Cardiff's heritage buildings. This report included proposals for the future operation and maintenance of the New Theatre as follows:

Cabinet is requested to provide authority for officers to explore the potential to rent the building to a theatre operator without subsidy.

In addition to the removal of subsidy there may be potential to secure a small rental income which could be ring-fenced to assist with on-going maintenance issues.
7. Cabinet 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.
8. 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.
9. The proposal formed part of the 19/20 Budget Consultation. 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. Support for this proposal was highest amongst the under 35s (66.5%), men (65.2%), those living in the 'Southern Arc' (65.0%) and the most deprived areas of the city (64.1%). These groups had visited the New Theatre the least over the past 12 months.
10. Where concerns were expressed these related to affordability, quality and variety of offer, lack of accountability and potential detriment to the city's cultural offer as a result of the programme being commercially led.

Issues

11. In February 2019, the Council placed a rolling advertisement in the Arts Professional publication. The advert invited 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. The advert attracted over 1,544 views.

12. A total of 8 expressions of interest were initially received, including some of the most influential promoters and venue operators in the industry. One respondent withdrew prior to the evaluation process leaving a final seven proposals to be considered. Expressions of interest were evaluated against an agreed set of criteria (as detailed below) by a multi-disciplinary team of property, legal and cultural venue officers:
 - Experience in operating similar theatres
 - Experience in repairing and maintaining historic buildings
 - Staff Management and Experience of TUPE
 - Financial lease terms
 - Repairing obligations
 - Planned Maintenance Programme
 - Financial Strength
 - Mobilisation timescale
 - Programming
13. All interested parties were invited for interview to present and discuss their proposals so that officers could further test assumptions and explore opportunities. Due to the high quality of the submissions, a further evaluation of the 7 interviews was undertaken. A shortlist of four final respondents were invited to submit full and final bids.
14. In addition to financial considerations, effective maintenance of the listed building and consideration of employees, it was important to understand intentions for the future theatre programming, especially given concerns expressed in the budget consultation. The evaluation team were encouraged by many of the proposals that sought to mirror the existing theatre offer and in many cases aspired to improve on it. Respondents were able to demonstrate a strong commitment to accessibility and dynamic pricing ensuring that the theatre remains accessible and affordable to current and future patrons.
15. It was clear from the evaluation process that the experience of existing staff at the theatre was recognised and valued and in all cases, over and above legislative TUPE considerations, there was a clear commitment to engage, retain and develop existing staff.

Outcome of the Evaluation

16. Four offers were short-listed for final evaluation with details attached at Confidential Appendices 1 and 2.
17. Two of the short-listed offers were subsequently discounted because they were based on a profit-share arrangement that provided no guarantees in terms of income and/or the removal of the current operating subsidy and therefore did not meet the Council's minimum requirement.

18. The remaining two offers were of a similar monetary value over the full term of the lease. Both offers commit to operating the theatre without subsidy from the Council, and both provide an index linked annual rent. Over the whole term of the 25 years lease, the bids are worth in the region of £25m to the Council based on the cumulative elimination of the current annual subsidy (and associated costs) and the cumulative rental income.
19. Both offers are from reputable theatre companies have an existing relationship with the New Theatre.
20. Both offers have committed to the retention and development of all existing staff through the TUPE process with pensions protected.
21. The key difference in the two offers is the strength of covenant underpinning the lease agreement with the preferred offer being able to provide a significant parental company guarantee.

Overview of the Preferred Offer

22. Details of the financial and cultural standing and performance of the company making the preferred offer is provided in Confidential Appendix 3. The key highlights of their offer are set out below:
 - 25 year lease with no rent free period or breaks
 - No requirement for an operational subsidy from the Council
 - Rent of £6.75m over the term of the lease (and subject to RPI growth)
 - Parental guarantee
 - Council to retain responsibility for the maintenance and repair of the roof and external structure
 - Operator to have responsibility for the maintenance and repair of all other aspects of the building including plant and machinery
 - Commitment to invest £2.7m in the building over the term of the lease including a comprehensive refresh of front of house areas, bars and kiosks.
 - Commitment to maintain and enhance the mix of week-long musicals, drama and ballet
 - Commitment to grow the programme from 335 performances in year 1 to 359 by year 3 and thereafter.
 - Existing staff structure to be retained and all costs associated with staff transfer and the protection of pensions to be covered.
 - Good existing union relations
 - Commitment to retain the existing volunteer programme
23. More detailed information and due diligence on the preferred offer and the alternative offer is attached as Confidential Appendix 3.

Risks

24. In considering a lease agreement Members will need to be mindful of the risks and implications associated with this form of contract. In particular,

Members need to consider the ability of the tenant to fulfil the agreement over the full term of the lease. Members also need to be clear that the lease based approach effectively removes Council control over the operation of the theatre including programming. Obligations placed on the tenant through the lease are predominantly property related including only a high-level control of use in accordance with planning use classes.

25. Confidential Appendix 4 sets 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.

Reason for Recommendations

26. To secure the future maintenance and financial sustainability of The New Theatre as a vibrant, successful Theatre for the residents of and visitors to Cardiff.

Financial Implications

27. The report proposes the lease of the New Theatre building and will result in income received to the Council as highlighted in the confidential Appendix over a twenty five year period. Subject to completion of legal agreements and detailed terms, the recommended provider will be responsible for all associated costs and income required for all operations in relation to the theatre.
28. The heads of terms indicate that as part of the lease the Council will receive annual rental income and together with the transfer of operations this will allow the Council to effectively achieve all approved revenue budgeted savings targets in connection with the theatre. In addition it will allow for the consideration of opportunities in retaining any surplus income into a earmarked reserve to contribute towards the future investment (e.g. maintenance of the fabric of the building) in the facility and linked operations that remain a Council responsibility.
29. The recommendation assumes the transfer of the majority of staff under TUPE regulations. This and any pension fund responsibilities will need to be set out in an agreement as part of completion of the lease.
30. The timing of the transfer, staff consultation and exact detail of the contractual agreement will have an impact on the achievability of savings for 2019/20 and any ongoing liabilities for the Council and therefore will need to be reviewed accordingly as part of the finalisation of the contractual terms. This will include any impact on any other venues operated by the Council.

Legal Implications

31. The Council has a legal obligation to obtain the best consideration reasonably obtainable from its property leases pursuant to section 123 of the Local Government Act 1972
32. The decision about these recommendations has to be made in the context of the Council's public sector equality duties. The Council also has to satisfy its public sector duties under the Equality Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties, Councils must in making decisions have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. The Protected characteristics are: age, gender reassignment, sex, race – including ethnic or national origin, colour or nationality, disability, pregnancy and maternity, marriage and civil partnership, sexual orientation, religion or belief – including lack of belief. If the recommendations in the report are accepted and when any alternative options are considered, the Council will have to consider further the equalities implication and an Equality Impact Assessment may need to be completed.
33. The Well-Being of Future Generations (Wales) Act 2015 ("the Act") places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales – a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.
34. In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2018-21:

<http://cmsprd.cardiff.gov.uk/ENG/Your-Council/Strategies-plans-and-policies/Corporate-Plan/Documents/Corporate%20Plan%202018-21.pdf>

The well being duty also requires the Council to act in accordance with 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without comprising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrates approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them

35. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below:

<http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

36. The Council has to be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards when making any policy decisions and consider the impact upon the Welsh language, the report and Equality Impact Assessment deals with all these obligations. The Council has to consider the Well-being of Future Guidance (Wales) Act 2015 and how this strategy may improve the social, economic, environmental and cultural well-being of Wales.

HR Implications

37. The report sets out that the proposed tenant will mirror the existing theatre offer. The consequences of this are that the Transfer of Undertaking of employment (TUPE) legislation is likely to apply and that a number of staff will transfer to the new organisation. A process of consultation with trade unions and employees must take place in advance of the TUPE transfer. In the event that TUPE applies, the new organisation will be required protect the terms and conditions of employment of the staff who transfer. In addition, in accordance with the Welsh Government's Code of Practice on Workforce Matters, the new organisation will also need to apply those terms and conditions to any new employees who are delivering the New Theatre offer.

RECOMMENDATIONS

Cabinet is recommended to:

- (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.

SENIOR RESPONSIBLE OFFICER	Neil Hanratty Director of Economic Development
	Date

The following appendices are attached:

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

The following background papers have been taken into account

- November 2018 Cabinet Report – Securing the future of Cardiff's Heritage Buildings
- February 19 Cabinet Report – Budget Report

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