

**Report of Director of City Development**

**Report to Executive Board**

**Date: 11 February 2015**

**Subject: Grand Theatre and Opera House Ltd – Future Operation and Governance Options Appraisal Outcomes**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): All	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: 10.4 (3) Appendix number: B	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

**Summary of main issues**

- 1 Leeds Grand Theatre and Opera House Ltd (LGTOH) is a company limited by guarantee and is a registered charity with no share capital. Although a separate entity to the Council, LGTOH is a wholly owned company of the Council and is classed as a controlled company (as defined in the Local Government and Housing Act 1989) in view of the control over the Board. Currently the Articles of Association allow for up to nine Board Members of whom a minimum must be five elected members. LGTOH owns and manages the City Varieties and the Hyde Park Picture House and manages the Leeds Grand Theatre under a lease from the Council dated 10 June 2009 for 99 years from 18 September 2006.
- 2 The Grand Theatre is a receiving theatre (i.e. it does not generally produce its own shows) that enjoys a national reputation and forms a major component of the City's cultural infrastructure. Opera North as its resident company, contributes to the reputation of the theatre and delivers a regular income stream through its rent.
- 3 The City Varieties is also a receiving theatre and has of late enjoyed significant capital investment. The Hyde Park Picture House is the City's only art-house cinema.
- 4 On the back of the company reporting significant annual deficits in recent years, in July 2014, Executive Board considered the current financial performance of

LGTOH. This included the potential options for its future governance arrangements to maximise both the quality of cultural output and financial sustainability.

- 5 In order for the Council to consider a potential new governance and management operation to meet its objectives above, Executive Board in July 2014, gave approval to a range of governance options. These included but were not limited to:
  - a. Retaining the status quo;
  - b. Bringing in-house to be managed by specialist LCC staff;
  - c. Moving to a single independent trust status with larger board and independent Chair;
  - d. Procuring a commercial operator.
6. Approval was given for the Chief Officer Culture and Sport to commence further detailed work on the proposals, including the consultation with stakeholders, with a view to submitting further recommendations to Executive Board. To enable the option appraisal to take account of all of the current theatre industry, financial and legal issues at hand, the Council procured *Festivals and Events International* to provide specialist industry advice and undertake the assessment of potential future operation and governance options for LGTOH.
- 7 This report presents the assessment and outcome of the options appraisal for LGTOH, as undertaken by Festivals and Events International Limited; and on this basis presents recommendations for the future operation and governance of LGTOH which will sustain its significant position as custodian of some of the city's most important cultural assets. LGTOH has undergone changes throughout its illustrious history. The further developments proposed below would not only allow it to continue to thrive in a new operating environment but will maintain its strong historical links with the Council
- 8 Since Executive Board requested the Council to review the governance and management operations, trustees and staff of LGTOH, supported by Council officers, have also made strenuous efforts to improve its financial position. This work has seen some very significant improvements and the latest financial reports indicate the potential for a break-even position for the current financial year. Despite this positive progress a number of longer term financial issues are still to be fully resolved including the significant maintenance investment needed.
- 9 Consequently, this report concludes that the recommendation for the company to move to an independent trust is progressed. This would create a vehicle to empower the Trustees, the Chief Executive and the Senior Management Team to forge ahead and operate as efficiently as possible. LGTOH's mission has always been to provide the very best theatre experience for its audiences, its visiting companies and valued partners. This recommendation will deliver the autonomy the theatre requires to continue to make this a reality.
- 10 Whilst embarking upon this course of action it is essential that the council provides its backing and assistance during the transition to ensure that the three venues continue to grow and flourish as cultural asset of the city and continues to maintain a positive and productive relationship thereafter.

## Recommendations

Executive Board is recommended to:

- i) Recommend to the LGTOH Board that it restructures to become a fully independent charitable trust;
- ii) Note that, once established, the fully independent charitable trust may decide to contract a commercial operator to run Leeds Grand Theatre and/or City Varieties, (subject to agreement to any requirements imposed upon it by Arts Council England, The National Heritage Memorial Fund or the Charity Commission) or may decide to retain this function in-house.
- iii) Approve the reduction of Member representation on the new board to a maximum of 3, which would be a condition of any future grants to the new trust, and/or a condition of any other financial contribution to the operation of LGTOH that the Council may make;
- iv) Support the principle that the Board of LGTOH moves immediately to appoint an interim full-time Chief Executive to lead the process of change and development that will flow from the changes to governance, including the responsibility for managing the recruitment of an independent chair, to continue the progress made in turning around the current deficit-generating business model and developing a capital refurbishment plan with other stakeholders as per 3.7.3;
- v) Agree that any rental income, net of costs, from The Swan public house from 1 April 2015 is formally hypothecated from City Development to the benefit of City Varieties in recognition that the existence of The Swan significantly limits City Varieties capacity to raise income from secondary spend;
- vi) Agree that any decision to separate governance arrangements for Hyde Park Picture House be held in abeyance for further consideration by the independent trust in consultation with the council, the local community and friends groups
- vii) Note its thanks to the staff, Trustees of LGTOH and the council officers involved for their work to improve the financial performance of the company. That the Director of City Development and the Deputy Chief Executive be authorised to take the lead on behalf of the Council in the implementation of these changes under their respective schemes of delegation
- viii) That the Director of City Development, on behalf of the Council, be authorised to enter into discussions and agree necessary documentation with Arts Council England and the National Heritage Memorial Fund with regard to changes necessary to the existing arrangements to enable LGTOH to become a fully independent charitable trust.

## **1 Purpose of this report**

- 1.1 The purpose of the report is to seek Executive Board approval for the next phase in the development of LGTOH.

## **2 Background information**

- 2.1 LGTOH is a company limited by guarantee and is a registered charity. It is a wholly owned company of the company of the Council and is classed as a controlled company (as defined in the Local Government and Housing Act 1989) in view of the control over the Board. Currently the Articles of Association allow for up to nine Board Members of whom a minimum must be five elected members. The Board of Trustees currently comprises five elected Members of Leeds City Council, three independent trustees and the Theatre Director. The Chair of the Board is an elected Member and in recent times this role has been filled by the (incumbent) Executive Member for Digital & Creative Technologies, Culture & Skills or its previous equivalent. LGTOH owns and manages the City Varieties and the Hyde Park Picture House and manages the Leeds Grand Theatre under a lease from the Council dated 10 June 2009 for 99 years from 18 September 2006.
- 2.2 Although it has evolved historically and had some previous benefits, the dual role of Executive Member and chair of LGTOH also has the clear potential for perceived conflict of interest in a number of scenarios, and particularly whilst the Council remains a significant funder which is likely to be the case.

## **2.3 The Grand Theatre**

- 2.3.1 The Grand Theatre is a receiving theatre (i.e. it does not generally produce its own shows) that enjoys a national reputation and forms a major component of the City's cultural infrastructure. It is a Grade II\* Listed Building seating 1,550 at full capacity, owned by Leeds City Council and leased to LGTOH. The theatre is home to Opera North and is regularly visited by Northern Ballet. The theatre was the recipient of major refurbishment completed in 2006 incorporating a completely re-seated and re-raked stalls area, an enlarged orchestra pit, air cooling installed, backstage technical facilities dramatically improved and developed new rehearsal rooms for use by Opera North to the south of the theatre accessible via bridge and at street level.
- 2.3.2 A second phase of transformation included structural improvements and further refurbishment of the theatre and the development of the Howard Assembly Room for use by Opera North under a lease from the Council of similar length to the lease granted to LGTOH, providing a performance space used for recitals, concerts, chamber operas, educational work and other events.
- 2.3.3 Following the successful Transformation project and reopening, the theatre now works with top national and international promoters.
- 2.3.4 Opera North fulfils a vital role in providing the performance, rehearsal and administration space that makes its work possible. It occupies the theatre for a variable number of weeks up to a maximum 23, under a residency agreement that runs until 2035.

- 2.3.5 LGTOH and Opera North are both in receipt of significant funding from the authorities arts@leeds grant scheme.
- 2.3.6 As part of the grant funding to enable the major refurbishment to take place Arts Council England and The National Heritage Memorial Fund took legal charges over LGTOH's leasehold interest in the Leeds Grand Theatre and entered into grant agreements with the Council regarding the future use of the theatre and the constitution of LGTOH to protect the funding.
- 2.3.7 The lease to the LGTOH requires LGTOH to establish a reserve fund and make regular payments to the fund for the purposes of maintaining the theatre in good and tenable repair and condition. This includes the roof and structure, scenery bridge and get in lift, air handling, and the heating system etc. The amount of the reserve fund is referable to LGTOH's annual turnover and the estimated annual repair costs as reasonably required by and in accordance with an agreed planned maintenance schedule with the Council. No such reserve fund has been agreed with the Council to date and repairs to the roof are required.

## **2.4 The City Varieties**

- 2.4.1 The City Varieties is also a receiving theatre (i.e. it does not generally produce its own shows) and is a Grade II\* listed music hall built in 1865. It is owned by the LGTOH. The original interior is largely unaltered and is a rare surviving example of the Victorian era music halls of the 1850s/1860s. The theatre achieved national fame as the venue for the BBC television programme 'The Good Old Days'. The venue still presents live 'Good Old Days' music hall events as well as pantomimes and a regular programme of stand –up comedy and music concerts.
- 2.4.2 The venue was granted Heritage Lottery funds (HLF) to support a major £9.2m refurbishment and restoration which was completed in September 2011. Again, as part of the grant funding the National Heritage Memorial Fund entered into a grant agreement with the Council and LGTOH (which also covered the Swan PH) regarding the future use of both properties and the constitution of LGTOH to protect the funding.

## **2.5 The Hyde Park Picture House**

- 2.5.1 The Hyde Park Picture House is the City's only art-house cinema and is owned by the LGTOH. It was opened on 7 November 1914 and, now in its centenary year, is one of the oldest cinemas in the country. As a Grade II listed building, it still boasts many original features including nine operational gas lights and a decorated Edwardian balcony. The cinema has a small stage, with a piano alongside, which is regularly used during live musical accompaniments. It has two 35mm film projectors which are regularly used, particularly during Leeds International Film Festival, when the cinema operates as a main venue. It is the only gas lit cinema remaining in use in the UK. The cinema is open every day and screens a wide variety of films, with a focus on specialised cinema including independent, art house, classic and foreign language.

- 2.6 Members will recall that In July 2014, Executive Board received a report into the financial performance of LGTOH which documented its recent financial performance, noting that it has run a deficit-generating business model for a number of years, reliant on its own reserves or more recently additional investment from the Council to balance its books. LGTOH no longer holds any unrestricted reserves. Against this background Executive Board expressed serious concern about the position and therefore resolved that:-
- i) the current financial performance of Leeds Grand Theatre and Opera House Trust Ltd and the potential options for future governance arrangements be noted;
  - ii) that approval be given for the Chief Officer Culture and Sport to commence further detailed work on the proposals, including the consultation outlined with the various stakeholders, with a view to submitting further recommendations to Executive Board later in the year.
- 2.7 In order for the Council to consider potential new future operation and governance arrangements, a range of governance options were identified. Although not exclusive these were:-
- a. Retain the status quo;
  - b. Bring in-house to be managed by specialist LCC staff;
  - c. Move to a single independent trust status with larger board and independent Chair;
  - d. Procure a commercial operator.
- 2.8 In considering the future direction of the LGTOH, a key factor that informed the option appraisal was the balance struck between the financial and cultural objectives of the organisation. On that basis it was proposed that, as a wholly owned company of the Council, the Council's objectives were:
- i) for LGTOH to operate within its available resources, including the Council's grant and to take a commercial approach to its operation.
  - ii) to continue to provide a quality and balanced programme of events and, where possible, to broaden the scope of the existing programme to enhance its national reputation.

### **3 Main issues**

- 3.1 In recognising that the option appraisal needs to take account of all of the current theatre industry, financial and legal issues at hand, the Council procured specialist advice to assist with the process and to ensure that any recommendations were fully informed, independent and suitably robust.
- 3.2 The outcome of the procurement was that Festivals and Events International Limited (FEI) were appointed to undertake the future operation and governance options appraisal of the LGTOH on behalf of the Council.
- 3.3 Festivals and Events International Limited (FEI) is a leading UK expert on cultural venues, festivals and major events, cultural programmes and development, with

significant experience in organisational development and business planning, commercial strategies and fundraising, programme design, technical delivery and production. The company have undertaken similar work on behalf of Cambridge City Council, Kent County Council and Thanet District Council for the future operation of their cultural assets including the Cambridge Corn Exchange, Cambridge Guildhall, Cambridge Folk Festival, Margate's Winter Garden and Dreamland Cinema.

- 3.4 FEI undertook extensive consultation with over 50 stakeholders between November and December 2014 regarding the future governance and operation of LGTOH. During the consultation FEI maintained the Council's objectives as highlighted in 2.7 at the forefront of their assessment and in addition took into account the current financial position of LGTOH and the imperative for change, the aspirations for the cultural life of the City and the inclusion of a learning programme. The full report by FEI is included as Appendix A with the exception of the report on soft-market testing which is included as confidential appendix B.
- 3.5 On reviewing the range of governance options as identified by the Council, FEI identified two further options. Therefore six main options for the future governance and operation of LGTOH were considered. These were:-
- Retain the status quo – the structure, governance and operational arrangements do not change
  - Bring in house– the Council takes over the direct management and operation of all three venues
  - Procure a commercial operator – the management transfers to a private company under a management agreement and/or a 25 year lease;
  - Transfer to independent trust status (Independent charitable company) - LGTOH board membership changes so as to become fully independent of the Council with no change in property ownership
  - Opera North Merger – LGTOH and Opera North Limited combine into one legal entity
  - Construction of a "Super-trust" covering a range of venues in Leeds and West Yorkshire
- 3.6 An analysis was undertaken for each of the six options, considering the complex set of individual strengths, weaknesses, opportunities and threats that exist for each. Following this analysis and conversations with stakeholders, the latter two options were discounted at an early stage. In order to ensure a rigorous and fair assessment, the remaining four options were then appraised against twenty eight individual criteria set against thematic areas of financial sustainability, commercial operation, quality and balance of programme, cultural profile, organisational issues and risk.
- 3.7 The result of this work by FEI was a clear overall preference for the creation of an Independent trust and it is this model which is proposed. The preference is

maintained even when some changes in relative weighting are applied to the criteria agreed by Executive Board, An independent trust could then have the freedom to sub-contract the operation of each venue to a commercial organisation should it so wish. The FEI report suggested that a commercial sub-contract would be the recommended route but a final decision will lie with any new trust in consultation with the council in its capacity as a funder. It is, therefore, proposed that the commercial option is held in abeyance at this time.

- 3.8 Should Members agree to the trust becoming independent of the council, then it is important that the council consults in detail with LGTOH to identify the most seamless and effective means of implementing this change based on the options available.
- 3.9 It is recognised that the recent work undertaken by the company, with the support of council officers, has helped to project a break-even position for 2014/15. However, this improvement needs to be considered in the context of a year that has included a very strong programme and the financial challenges the company faces going forward.
- 3.10 In considering the recommendations of FEI, it is important to acknowledge that the LGTOH has operated at a significant deficit in recent years and the conclusion is, therefore, that a change is needed in the governance of the company that empowers the Trustees and its officers to make the changes necessary to facilitate a long-term sustainable future. This will include the need to replenish its unrestricted reserves and work with the council to address future capital investment needs. Members are also asked to note that LGTOH still needs to raise £568k as part of its agreed contribution to the refurbishment of the City Varieties, which is a further pressure that the company will need to address. Although, in light of an underspend on the scheme, this could be reduced to £365k.
- 3.11 There are also a number of key issues that were highlighted by FEI that require consideration regardless of which future model is chosen. In addition to changes in governance these are the recruitment of a fulltime interim Chief Executive, turning around the deficit-generating business model and further improvements in financial management, particularly in respect of financial forward planning and modelling. These critical issues are listed in more detail below.

### **3.12 Requirement for a Full-Time CEO**

An organisation the size and complexity of LGTOH requires a full time, experienced theatre manager as its Chief Officer. Without a focused leader able to consider and implement radical changes to the business, LGTOH is unlikely to be able to achieve the turnaround it requires and begin to generate a consistent annual surplus. LGTOH have tried to recruit a CEO previously but have been unsuccessful to date. In the current circumstances there is significant merit in considering an Interim Chief Executive, whilst the governance changes recommended in this report are being planned and implemented. On the basis that the Members are minded to approve the recommendation for an interim CEO, in addition to providing a focus for continual improvement in the company's

performance, this proposal will also help to aid recruitment and retention in the company.

### **3.12 Deficit-generating Business Model**

There is an urgent need to bring the operation into a position of generating a consistent trading surplus and to generate an appropriate level of reserves to cover business risks and capital investment requirements. The implications of running a negative reserve are serious and demands further attention. There is limited opportunity for secondary spend specifically at each venue and the loss of one bar space within the City Varieties Music Hall following the redevelopment project as well as the revenue from the Swan Public House not being included within the venue's business model are important factors. An interim Chief Executive would require a turnaround period, potentially up to two years, to reconfigure the business model into one that is consistently surplus generating.

### **3.13 Financial Management**

One of the most significant issues for the LGTOH has been the lack of an effective financial management function, although there have been recent important improvements to this situation with increased engagement by the senior management team, the appointment of a more senior financial manager and a significant level of support provided by LCC. LGTOH is unlikely to achieve the turnaround it requires or generate regular surpluses without focused financial forward planning and modelling. Whichever future operation and governance option is chosen, a new board will require sound financial information to inform its decision making.

### **3.14 Capital refurbishment plan**

There needs to be a methodical and rigorous planning cycle in place to identify forthcoming capital and refurbishment expenditure, and particularly in light of the obligations in the lease to LGTOH of the Grand Theatre. A reliable capital budget must be fed into the overall revenue model assumptions so that an appropriate designated capital fund can be built up from trading surpluses. The revenue budget should contain appropriate maintenance budgets and reserves should be established to fund one off emergency repairs and small scale capital works. Executive Board should also note the £391k of restricted reserves currently held which could be utilised for smaller enhancements and improvements. It is unlikely that large scale capital works could be funded without either borrowing or significant fund raising.

### **3.15** Notwithstanding the substantive proposals outlined in this report, members of Executive Board should note that the council will remain as the owner of the freehold of the Grand Theatre and as such maybe required to support capital investment into the building over and above its strict legal liabilities under the terms of the current lease with LGTOH. In the determination of this report a number of stakeholders have noted the success and value of the Hyde Park Picture House but also that it sits somewhat anomalously with the two receiving theatres under a single governance arrangement. Although a full, stand-alone options appraisal has not been carried out on the venue it would appear that

either a social enterprise or incorporation with other council run venues (in particular linking with Leeds International Film Festival) would be options worth serious consideration, assuming that practical issues including any legal considerations can be addressed.

- 3.16 Linked to any specific capital works at the Grand Theatre, Members are asked to note that the council is currently developing its plans to bring forward its vacant shop units on Upper Briggate. Bringing these shops back into use will add to the vibrancy on Upper Briggate and therefore be complementary to a successful Grand Theatre.
- 3.17 LGTOHT and its three venues hold an important place in the cultural and civic life of Leeds. Assuming the recommendation to form an independent trust is accepted, the retention of three local authority representatives on its Board would serve to reflect and build on that history whilst nevertheless bring the benefits of full independence.
- 3.18 The business model for the majority of theatres includes benefits from secondary spend, including both bar and catering income. As part of the analysis it has been noted that City Varieties experience limitations in maximising this kind of income, most notably because of the presence of The Swan Public house which is owned by the authority and for which the authority receives income in terms of rent. The Swan effectively benefits from the secondary spend of customers at City Varieties. The recommendation in this report therefore proposes that the net income from the Swan is directed to City Varieties from 1<sup>st</sup> April 2015
- 3.19 A number of consultees noted the strong learning programme delivered by LGTOH and the option for City Varieties in particular to be a centre of education and training. This option is one which can be pursued in whichever governance arrangement is agreed.
- 3.19 The potential exists to consider the future governance of Hyde Park Picture House and to determine if its best fit remains as part of LGTOH. However, in recognition of the substantive changes proposed in this this determination could be held in abeyance for further consideration by the independent trust in consultation with the council, the local community and friends groups.
- 3.20 The FEI team also noted that staff and trustees engaged positively with the review and approached it in an open manner despite the inevitable uncertainty which such work can create for staff. This view is also held by officers of the council who have worked with LGTOH staff in the last few months.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The report completed included consultation with over 50 individuals including elected members, Trustees and staff of LGTOH, senior officers of the council, Arts Council England and Opera North. FEI also completed initial soft market testing with commercial providers.

- 4.1.2 The Sustainable Economy and Culture Scrutiny Board has conducted a working-group inquiry which operated in broadly the same time frame as the work of FEI, and FEI attended one of the working-group meetings to present its interim findings and to further hear the views of members on these matters. The full report of the Scrutiny working group is presented as Appendix C.
- 4.1.3 The scrutiny report has a close alignment with the recommendations presented in this report, and also with the conclusions reached by FEI. This adds to the body of evidence which supports the proposed way forward.
- 4.1.4 To summarise, the scrutiny report makes recommendations in support of: the recruitment of an interim chief executive; resolution of issues around responsibilities for capital works, the importance of ensuring the requirements of other stakeholders are met and the need to review the dual role of LGTOH Chair and Executive Member. All these recommendations are harmonious with the recommendations presented elsewhere in this document.
- 4.1.5 The Scrutiny report also believes that the options of an independent trust or a commercial operator, or possibly a combination of the two, would be the preferred outcome. However it notes the importance of resolving issues around capital responsibilities and stakeholder requirements before a final decision is made
- 4.1.6 The scrutiny report makes a number of other comments as per Appendix C.
- 4.1.7 Further consultation is evidenced by the range of FEI consultees, as listed in Appendix A.

## **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 The recommendations of this report relate to the governance of LGTOH. A screening document (attached as an appendix D) has been completed and concludes that there are no specific implications for equality and diversity, nor for cohesion and integration.

## **4.3 Council policies and City Priorities**

- 4.3.1 At Leeds Grand Theatre, the resident company Opera North is a major employer and the Theatre fulfils a vital role in providing the performance, rehearsal (and in the case of Opera North, some administrative) space that makes their work possible. The Theatre is essentially a 'Number One Receiving House' in the UK and as such makes a huge contribution to the well-being of the creative sector.
- 4.3.2 When businesses look to locate to the north, the cultural hub of the Leeds Grand Theatre and City Varieties together with resident artistic companies such as Opera North and Northern Ballet is a significant magnet. The rarity of the Hyde Park Picture House is a further attraction whilst also ensuring that its artistic film output is of benefit to the academic quarter of the city.

### 4.3.3 Best Council Plan 2014-2017

Through the Best Council Plan objective of 'Promoting sustainable and inclusive economic growth' this project supports the Best Council Priority of maximising the impact of our cultural infrastructure.

In addition through the Best Council Plan of 'Becoming a more efficient and enterprising Council' this project will support the following Best Council Priority of improving our organisational design developing our people and working with partners to effect change by:-

- Improving how we are organised and making the best use of our assets; and;
- Becoming more enterprising;

## 4.4 Resources and value for money

4.4.1 The Council budgeted grant to the company for 2014/15 is £200k. Subject to ratification this will reduce to £180k in 2015/16 as part of the 18.7% reduction in the arts@leeds grant programme.

4.4.2 The Council may need to offer further financial assistance in order to support any governance change within the organisation over and above the level of its current grant to the company. Moreover, any of the options set out above could have implications for the level of the Council's on-going grant to the company which would need to be considered as part of the appraisal of the options, but also in the context of the Council's priorities. To enable the option appraisal to take account of all of the current theatre industry and legal issues at hand, the Council may need to procure specialist advice to assist with the process to ensure that any future recommendations are suitably robust.

4.4.3 As part of the process of approving the LGTOH accounts the Council fully funded the 2013/14 deficit and gave further assurances that it would provide financially support to the Theatre for the next two financial years in order for the Company to remain a going concern.

4.4.4 The salary for the proposed interim CEO has been included within the budget planning of the LGTOH for 2015/16 so would not be an additional call on the Council's finance.

## 4.5 Legal Implications, Access to Information and Call In

4.5.1 Legal advice will be needed with regard to any changes that may be introduced, both for the Council and LGTOH who will need independent legal advice. This relates specifically to LGTOH's constitution and the requirements of the Charity Commission and Companies Act legislation. However, it is felt that the Council does have the powers to initiate this initial company restructure should it be deemed appropriate.

4.5.2 If Members are minded to approve the recommendations contained in the report, it should be noted that there are a number of existing legal agreements in place

between LGTOH and third parties in addition to the Council, namely, Arts Council England, The National Heritage Memorial Fund, Opera North and other commercial organisations the implications of which will need to be considered in greater detail to inform the process. The Council will need to be involved in these discussions.

- 4.5.3 The information contained in Appendix B is exempt under Access to Information Rule 10.4 (3) as it contains information relating to the financial or business affairs of any particular person (including the authority holding that information). It is considered that the public interest in maintaining the content of Appendix B as exempt outweighs the public interest in disclosing the information as this appendix contains soft-market testing.

## **4.6 Risk Management**

- 4.6.1 The main risk with embarking on this change to LGTOH's governance structure is that stakeholders and partners feel inadequately consulted. Any further detailed investigations into possible governance models will be inherently mindful of this and will consult widely with stakeholders, partners and funders.

## **5 Conclusions**

- 5.1 The LGTOH represents a significant part of Leeds' cultural infrastructure. Accordingly the difficult financial operating conditions caused Executive Board to express serious concern.
- 5.2 The recent significant improvements to the company's financial performance demonstrate the degree to which a more efficient operation can be maintained. However, the company needs to sustain this in future years, replenish its resources and address capital investment needs.
- 5.3 Consequently, this report concludes that the recommendation for the company to move to an independent trust is progressed. This would create a vehicle to empower the Trustees and its officers to continue to develop the theatre's operations so that the company can thrive in an environment where the council's own resources will continue to be limited for the foreseeable future. In promoting this change it is vital that the council gives its full and sustained support for LGTOH during the transition to ensure that the theatres continue to develop and grow as cultural assets of the city.

## **6 Recommendations**

- 6.1 Executive Board is recommended to:

- i) Recommend to the LGTOH Board that it restructures to become a fully independent charitable trust;
- ii) Note that, once established, the fully independent charitable trust may decide to contract a commercial operator to run Leeds Grand Theatre and/or City Varieties, (subject to agreement to any requirements imposed upon it by Arts Council England, The National Heritage Memorial Fund or the Charity Commission) or may decide to retain this function in-house.

- iii) Approve the reduction of Member representation on the new board to a maximum of 3, which would be a condition of any future grants to the new trust, and/or a condition of any other financial contribution to the operation of LGTOH that the Council may make;
- iv) Support the principle that the Board of LGTOH moves immediately to appoint an interim full-time Chief Executive to lead the process of change and development that will flow from the changes to governance, including the responsibility for managing the recruitment of an independent chair, to continue the progress made in turning around the current deficit-generating business model and developing a capital refurbishment plan with other stakeholders as per 3.7.3;
- v) Agree that any rental income, net of costs, from The Swan public house from 1 April 2015 is formally hypothecated from City Development to the benefit of City Varieties in recognition that the existence of The Swan significantly limits City Varieties capacity to raise income from secondary spend;
- vi) Agree that any decision to separate governance arrangements for Hyde Park Picture House be held in abeyance for further consideration by the independent trust in consultation with the council, the local community and friends groups
- vii) Note its thanks to the staff, Trustees of LGTOH and the council officers involved for their work to improve the financial performance of the company. That the Director of City Development and the Deputy Chief Executive be authorised to take the lead on behalf of the Council in the implementation of these changes under their respective schemes of delegation
- viii) That the Director of City Development, on behalf of the Council, be authorised to enter into discussions and agree necessary documentation with Arts Council England and the National Heritage Memorial Fund with regard to changes necessary to the existing arrangements to enable LGTOH to become a fully independent charitable trust.

## **7 Background documents<sup>1</sup>**

7.1 None

## **8 Appendices**

8.1 Appendix A - FEI report

8.2 Appendix B - FEI Soft Market Tendering (confidential under Access to Information Rule 10.4(3))

8.3 Appendix C – Sustainable Economy and Culture Scrutiny Board Inquiry

8.4 Appendix D - Equality Impact Assessment

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.