

Report of Asset Management and Regeneration

Report to The Director of City Development

Date: 9 September 2016

Subject: Proposed Novation, Letter of Intent, Proposed Maintenance Works, Leeds Grand Theatre

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): City and Hunslet	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Are there implications for equality and diversity and cohesion and integration?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-In?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: 10.4 (3) Appendix number: 1	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

Summary of main issues

1. The proposed maintenance works to Leeds Grand Theatre (the Theatre) are consistent with the Best Council Plan in terms of promoting sustainable and inclusive economic growth by maximising the impact of our cultural infrastructure and employment opportunities for local residents. The Theatre forms a major component of the City's cultural infrastructure. In order to make a compelling proposal to be European Capital of Culture in 2023, the City needs to work to ensure the cultural infrastructure across the city is fit for purpose, that our cultural organisations are resilient and sustainable and that Leeds builds its reputation as a great place to live, work and visit.
2. As part of the Leeds Grand Theatre and Opera House Limited's (the Company's) preparation to restructure to become a fully independent Charitable Trust and, in adherence to UK legislative requirements, the Company has sought to develop a comprehensive capital programme to identify outstanding capital works which did not form part of the earlier major refurbishment project. Representatives of the Theatre have identified the need to undertake maintenance works to the building as part of good asset management practice to ensure the long term future of the historic building.
3. This report seeks approval for the City Council to become the employer for the proposed maintenance works at the Theatre and enter into a Novation Agreement whereby the City Council will assume all rights, obligations and liabilities arising from the Letter of Intent dated 10 May 2016 and supplemental Letters of Intent dated 20 May 2016, 30 June 2016 and 8 September 2016 between Leeds Grand Theatre and

Opera House Ltd and Fabrite Engineering Ltd (Fabrite), the preferred contractor for the proposed works, which are attached at Appendix 1 to the report.

Recommendation

4. The Director of City Development is requested to:
 - (i) Approve the City Council to become the employer and enter into a Novation Agreement with Leeds Grand Theatre and Opera House Ltd and Fabrite Engineering Ltd whereby the City Council will assume on or about 14 September 2016 all rights, obligations and liabilities arising from the Letters of Intent agreed between Leeds Grand Theatre and Opera House Ltd and Fabrite Engineering Ltd for the proposed maintenance works at Leeds Grant Theatre.

1 Purpose of this report

- 1.1 The purpose of this report is to seek approval to the City Council to become the employer and enter into a Novation Agreement with the Company and Fabrite whereby the Council will assume on or about 14 September 2016 all rights, obligations and liabilities arising from the Letters of Intent agreed between the Company and Fabrite for the proposed maintenance works at the Theatre.

2 Background information

- 2.1 The Theatre is a receiving theatre that enjoys a national reputation and forms a key component of the City's cultural infrastructure. The Theatre is a Grade II* Listed Building, seating 1,550 at full capacity. The building is owned by the City Council and leased to the Company for a period of 99 years from September 2006. The Theatre benefitted from the Transformation Programme completed in 2008, which updated operational areas of the building.
- 2.2 As part of the Company's preparation to restructure to become a fully independent Charitable Trust, the Company has sought to develop a comprehensive capital programme to identify outstanding capital works which did not form part of the Transformation Programme.
- 2.3 From earlier reports to approve a Waiver of the Council's Contract Procedure Rules to appoint consultants/contractor without the need to invite competitive tenders for such services/works and, the approval of an injection of funding into the Capital Programme and Authority to Spend, the Director of City Development is aware of the nature and scope of maintenance works that need to be undertaken at the Theatre.

3 Main issues

- 3.1 The City Council's Chief Officer for Culture and Sport approved a fully funded injection into the Capital Programme and Authority to Spend on the proposed maintenance works to the Theatre. In approving the injection into the Capital Programme and Authority to Spend the Council has accepted that in all probability, the work which is required to be carried out is the responsibility of the Council, but that in accepting that, the Council has advised the Company that it is undertaking

such works without prejudice to any future liability for maintenance/repair works at the Theatre.

- 3.2 To ensure that the proposed works are delivered efficiently, on programme and within budget, it should be noted that the Chief Officer for Culture and Sport has approved a Waiver of the Council's Contract Procedure Rules to allow the Council to appoint the preferred contractor retained by the Company to deliver the works on site without the need to invite competitive tenders for the required works.
- 3.3 Prior to the Council accepting responsibility for the proposed works, it was considered that the responsibility for undertaking the works rested with the Company and, as such, the Company retained Fabrite via a Letter of Intent dated 10 May 2016 to progress the development of the scheme proposals for the proposed works. Supplemental Letters of Intent were issued by the Company to Fabrite on 20 May 2016, 30 June 2016 and 8 September 2016, the details of which are contained in Appendix 1 of the report.
- 3.4 As the contract between the Council and Fabrite is not yet in a form to be agreed, it is proposed that the City Council enter into a Novation Agreement with both the Company and Fabrite on or about 14 September 2016 (the effective date), whereby on this date the Council will assume all rights, obligations and liabilities arising from the Letters of Intent agreed between the Company and Fabrite for the proposed works at the Theatre. The Director of City Development should note that the Company will retain all contractual rights and liabilities prior to the effective date.
- 3.5 The key terms of the proposed Novation Agreement are as follows;
 - Leeds City Council shall act as employer for the project (defined as re-roofing and remedial works at Leeds Grand Theatre and Opera House).
 - The Company transfers all its' rights and obligations under the Letter of Intent to the City Council.
 - The City Council will perform the Letter of Intent and be bound by its terms in every way as if the City Council were the original party to it in place of the Company.
 - The Company is released from all claims arising under or in connection with the Letter of Intent including without limitation, claims for negligence, except that nothing in the Agreement shall effect or prejudice any claim or demand that relates to matters before the date the Novation Agreement becomes effective.
 - The City Council agrees to indemnify the Company against any losses, damages or costs the Company suffers or incurs under or in connection with the Letter of Intent as a result the Council's failure to perform or satisfy its assumed obligations under the Letter of Intent.
 - The Company agrees to indemnify the City Council against any losses, damages or costs the Council suffers or incurs under or in connection with the Letter of Intent as a result of the Company's failure to perform or satisfy its obligations

under the terms of the Letter of Intent before the date the Novation Agreement becomes effective.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 The Executive Member for Regeneration, Transport and Planning has been consulted on the principle of the City Council assuming responsibility for the proposed works and, has previously supported the Waiver of Contract Procedure Rules to appoint Fabrite without inviting competitive tenders and, the injection of funding into the Capital Programme and Authority to Spend on the proposed works at the Theatre.
- 4.1.2 The Council's Projects, Programmes and Procurement Unit (PP&P Unit) has been consulted and is supportive of the recommendation contained in the report.
- 4.1.3 The Company and Fabrite have been consulted and have confirmed that they are prepared to enter into a Novation Agreement as detailed in the report.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 There is no expected impact on the protected equality characteristics and, therefore, it is not applicable for an EIA or screening form to be completed at this time.

4.3 Council Policies and City Priorities

- 4.3.1 Investment in the Theatre will aid the Council's bid to become European Capital of Culture 2023. The Theatre contributes to both a strong economy and to a compassionate city by both making Leeds a more attractive place to invest but also a better place to live.
- 4.3.2 The proposed works to the Theatre will contribute to the Best Council Plan objective of 'Promoting Sustainable and Inclusive Economic Growth' and the Best Council priority of maximising the impact of our cultural infrastructure.

4.4 Resources and Value for Money

- 4.4.1 The supplemental Letter of Intent issued by the Company to Fabrite on 8 September 2016, the details of which are contained in Appendix 1 of the report, advises the maximum sum payable to Fabrite under the Letters of Intent. Having regard to payments made by the Company to Fabrite at the date of report preparation, the balance payable by the City Council following completion of the Novation Agreement will be funded from Capital Scheme No. 32549/000/000.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The Council's PP&P Unit has been consulted and has advised that a report needs to be presented to the Director of City Development for approval to pay the balance due to Fabrite under the Letters of Intent and enter into a Novation Agreement with the Company and Fabrite and, that such a decision is a Significant Operational Decision

under Article 13.5.b of the Council's Constitution and is, therefore, not subject to Call In.

4.5.2 The Council's legal advisor, h/w Keeble Hawson has advised that the name change with regard to the employer in the Letters of Intent between the Company and Fabrite can be addressed by way of a Novation Agreement between the parties.

4.5.3 The information in Appendix 1 of this report has been identified as Exempt/Confidential because it contains information relating to the financial and business affairs of the Council and a number of third party organisations. It is considered that the public interest in treating this information as confidential outweighs the public interest in disclosing it by reason of the fact that it contains information and financial details which, if disclosed, would adversely affect the business of the Council and third parties. Appendix 1 of the report should be treated as exempt under Rule 10.4(3) of the Access to Information Procedure Rules.

4.6 Risk Management

4.6.1 There is a risk that given the level of design development work undertaken as at the date of report preparation, that the proposed budget may prove insufficient for the cost of the proposed works. This risk cannot be completely mitigated, but the joint approach working with representatives of the Theatre and specialist consultants/contractor will seek to ensure that the cost of the proposed works is contained within the budget available.

4.6.2 There is a risk that the City Council and Fabrite may fail to agree the terms of the building contract for the works. This risk can not be completely mitigated, but both parties remain confident that a contract will be completed in the next 2-3 weeks

4.6.3 The Theatre is an historic listed building that remains open and fully operational. As such, only a limited amount of intrusive survey work has been possible before work commenced on site. For this reason, it is proposed to include a level of client contingency commensurate with the risks that may be only become apparent once works are on site.

5 Conclusion

5.1 The documentation already in place (the Letter of Intent and its supplements) to progress the proposed works at the Theatre has been issued by the Company to Fabrite. As the City Council has determined to assume responsibility for the proposed works, this documentation needs to be revised so as to accurately reflect the Council as the employer of Fabrite moving forward, whilst at the same time enabling the works to progress whilst the formal contract is put in place. It is considered that the best way to address the change in employer in favour of the City Council is by way of a Novation Agreement between the Council, the Company and Fabrite.

6 Recommendation

6.1 The Director of City Development is requested to:

- (i) Approve the City Council to become the employer and enter into a Novation Agreement with Leeds Grand Theatre and Opera House Ltd and Fabrite Engineering Ltd, whereby the City Council will assume on or about 14 September 2016 all rights, obligations and liabilities arising from the Letters of Intent agreed between Leeds Grand Theatre and Opera House Ltd and Fabrite Engineering Ltd for the proposed maintenance works at Leeds Grant Theatre.

7 Background documents¹

7.1 None.

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