



## Report of Technical Asset Management

### Report to the Director of City Development

**Date: 12 February 2018**

**Subject: Proposed Grant Agreement with Arts Council England and an Agreement with West Yorkshire Playhouse for the Reconfiguration and Refurbishment of the West Yorkshire Playhouse Building**

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

### Summary of main issues

1. Leeds is an ambitious city which has experienced significant post-recession economic growth. The success of capital investments in cultural venues ranging from the refurbishment of the Leeds Grand Theatre and the City Varieties, the development of new headquarters for Northern Ballet and, the proposed works to the West Yorkshire Playhouse emphasise the importance of continued investment in the cultural fabric of the city.
2. The Council's Executive Board at its meeting in July 2015 agreed to act as lead in the management, procurement and delivery for the proposed reconfiguration and refurbishment works (the proposed works) at West Yorkshire Playhouse (the Playhouse) and in doing so, to be the applicant to and if successful, the recipient of a grant award from Arts Council England (ACE) towards the cost of the proposed works.
3. The City Council with support from the Playhouse submitted a Stage 1 application to ACE in August 2015 for a grant award towards the cost of developing the design proposals for the proposed works. In January 2016, ACE confirmed a Development Grant of up to £300,000 towards the costs of developing an Agreed Development Plan and, to invite the Council to make a Stage 2 application for the Capital Project as set out in its Stage 1 application.

4. In August 2017, the City Council submitted a Stage 2 application to ACE for a grant of £6.333m (rounded) toward the cost of the proposed works. In December 2017, the Council was advised by ACE that it had been successful with its Stage 2 application and confirmed a grant of £6.333m toward the estimated £14m project cost.
5. This report seeks approval to enter into a Grant Agreement with ACE for receipt of a grant of £6.333m towards the cost of delivering the proposed works on ACE's standard terms and conditions which are summarised in the report; to enter into an Agreement with the Playhouse to address amongst other things the funding arrangements between the Council and the Playhouse and, to ensure the Playhouse's adherence to the relevant terms of the ACE Stage 2 Grant Agreement and, an Access Licence Agreement with the Playhouse to allow the Council, its consultants/contractor to access the theatre building to undertake the proposed works.

### **Recommendation**

6. The Director of City Development is recommended to;
    - (i) Authorise the City Council entering into a Stage 2 Grant Funding Agreement with Arts Council England on terms summarised in the report, for a grant of £6.333m towards the cost of reconfiguring and refurbishing the West Yorkshire Playhouse building.
    - (ii) Authorise the City Council entering into an Agreement with the West Yorkshire Playhouse that incorporates the issues detailed in the report.
    - (iii) Authorise the City Council entering an Access Licence Agreement with the West Yorkshire Playhouse to allow the Council, its consultants/contractor to access the theatre building to undertake the proposed works.
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## **1 Purpose of this report**

- 1.1 The purpose of this report is to seek the Director of City Development's approval to enter into a Stage 2 Grant Agreement with ACE for receipt of a grant of £6.333m towards the cost of reconfiguring and refurbishing the Playhouse and, to enter into a Licence Access Agreement and Development Agreement with the Playhouse that addresses the key issues detailed in the report below.

## **2 Background information**

- 2.1 The Council's Executive Board at its meeting in July 2015 agreed as owner of the Playhouse building to act as lead in the management, procurement and delivery for the proposed works at the Playhouse and in doing so, to be the applicant to and if successful, the recipient of a grant award from ACE towards the cost of the proposed works to the Playhouse.
- 2.2 In August 2015, the City Council submitted an application to ACE for the proposed refurbishment of the Playhouse. The proposed works seek to re-orientate the theatre towards the city by creating a new extension and high impact entrance fronting onto St. Peters Street. In addition, new performance and community

spaces would be opened, along with a reconfiguration back of house areas to facilitate new commercial spaces and improved access. A refurbishment of the two current auditoria is also proposed, with investment in both outdated theatre equipment and, in plant and machinery of the Playhouse building itself. The extension of the public areas and increasing disabled access and routes into and through the building are proposed to create a porous, open and welcoming destination to underpin both the Council's and the Playhouse's commitment to greater engagement with Leeds' communities and the city.

### 3 Main issues

#### Leeds City Council – Arts Council England Funding Agreement

- 3.1 In January 2016, ACE confirmed a Development Grant of up to £300,000 towards the costs of developing an Agreed Development Plan and, to invite the Council to make a Stage 2 application for the Capital Project as set out in its Stage 1 application in order to be assessed for a grant of up to £6.333m (rounded).
- 3.2 In December 2017, the Council was advised by ACE that it had been successful with its Stage 2 application and confirmed a grant of £6.333m toward the estimated £14m project cost. ACE's offer of a grant of up to £6.333m towards the costs of the proposed works is subject to their standard capital terms and conditions for large capital grants and, any additional conditions as determined by ACE. The Director of City Development should note that these terms and conditions are standard and ACE advise they are non-negotiable. The key terms and conditions of the grant agreement with ACE may be summarised as follows;
- (i) **The Grant;** The sum of up to £6,333,019. If the City Council spends less than the approved total cost, ACE will reduce, withhold or demand repayment of all or part of the Development Grant. Any reduction will be in proportion to their grant percentage.
  - (ii) **Purpose of Funding;** The grant is provided to assist the City Council to undertake work required to deliver the capital project as detailed in the Agreed Capital Project Plan attached as Appendix 1 to this report. ACE advises that it will not pay for any expenditure that is beyond the delivery of the Agreed Capital Project Plan.
  - (iii) **The Agreed Capital Project Plan;** The Council is required to deliver the project in accordance with the Agreed Capital Project Plan and is required to report on progress against the Plan.
  - (iv) **Payment Conditions;** The City Council will submit a Progress and Payment Request Form on a quarterly basis unless otherwise requested by ACE. The Council is required to submit the first Progress and Payment Request Form within 20 working days of accepting the Funding Agreement. The precise amount of grant to be paid will be determined following each key stage review.
  - (v) **Accepting the Offer;** The Council is required to confirm acceptance of the offer of the grant and the terms and conditions of its receipt by 1 March 2108, failing which the offer will lapse.

- (vi) **Publicity;** The Council will use ACE's branding and publicity guidelines and the lottery grant award logo at all times and will acknowledge the grant in press, marketing and communication materials.
- (vii) **Procurement;** The Council must meet the relevant UK and European legislation on procurement together with the provisions of the World Trade Organisation General Procurement Agreement and, must provide any information requested by ACE in order to satisfy them that it has done so.
- (viii) **Security;** The Council will be required to place a restriction on its title of the Playhouse property for the duration of the grant agreement (30 years).
- (ix) **The Term;** The term of the grant agreement will be for 30 years from the date the funding agreement commences.
- (x) **Termination of the Agreement;** If the Council breaches any of the terms and conditions of the Funding Agreement then ACE in its absolute discretion may withhold or demand repayment of all or part of the grant. The Council will be required to repay any grant requested immediately upon demand.

### **Leeds City Council – West Yorkshire Playhouse Agreement**

3.3 The City Council and the Playhouse have held discussions to conclude a legal agreement which seeks to address a range of issues (not exhaustive) for the successful delivery of the project and which may be summarised as follows;

- The Playhouse to comply with the obligations placed on the Council by ACE's Stage 2 grant award, supplying information that can only be provided by the Playhouse in a timely manner to allow the Council to comply with ACE's requirements.
- Make payment to the Council in the form of a grant the Playhouse's contribution toward the capital works, the precise drawdown mechanism to be agreed between the parties.
- Playhouse personnel and/or their agent to be able to attend progress meetings with the contractor, site inspections and snagging inspections, practical completion inspection etc. and to make representations at such meetings, but in the usual way the Council's Employer's Agent's decision in their professional discretion is final
- The governance of the project will continue via the West Yorkshire Playhouse Project Board established by the City Council, incorporating the Project Initiation Document/Project Execution Plan approved by the Board.
- That the capital budgets agreed for both the Playhouse project and the public realm works proposed for Gateway Court/Playhouse Square remain separate with no cross over in terms of expenditure.

- Any delay in completing the public realm works does not cause delay to the Playhouse capital works
- The Council will pass the benefit of any Liquidated and Ascertained Damages arising from delays on the Playhouse project to the West Yorkshire Playhouse.
- The Council's contractor to be responsible for the payment of all utility bills relating to that part of the Playhouse building that forms within the contractor's control during the contract period.
- That the activities of the Playhouse in its retained areas do not cause undue delay/cost to the contractor undertaking the proposed works in the remainder of the theatre building.
- That appropriate insurance arrangements reflecting the areas of the Playhouse building and the Playhouse's retained area are concluded.
- The parties agree maintenance protocol of systems in the theatre building during the period of the proposed works.

3.4 The Director of City Development should also note that it is proposed that an Access Licence needs to be agreed with the Playhouse to allow the Council, its consultants/contractor to access and have possession of defined parts of the theatre building to undertake the proposed works. The proposed agreement will also need to allow the Council's contractor to both access and undertake works in the Playhouse's retained areas.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

4.1.1 The City Council's Executive Board at its meeting in July 2015, authorised that the Council would act as lead for the management and procurement of the construction works and, in doing so, would be the applicant to and if successful, the recipient of a grant award from ACE towards the cost of the proposed works to the Playhouse.

4.1.2 The Executive member for Economy and Culture has been consulted and is supportive of the recommendation contained in the report.

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

4.2.1 An Equality Impact Screening has been undertaken and there is no requirement for a full assessment. The Screening document was presented to Executive Board at its meeting in July 2015. Improved disabled access to the Playhouse and wider community engagement is integral to the development of the proposals.

### **4.3 Council Policies and City Priorities**

4.3.1 Investment in the Playhouse will contribute 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. The Playhouse contributes strongly to Child friendly

Leeds, most notably through its Youth theatre and First floor provision. It contributes to Leeds' ambition to be best city by 2030.

#### **4.4 Resources and Value for Money**

4.4.1 Executive Board at its meeting in July 2017 authorised an injection of £13.040m into Capital Scheme No. 32019 for the proposed works to the Playhouse building, subject to the Council's Stage 2 application to ACE being successful.

4.4.2 The Director of City Development should note that ACE can only guarantee future payments of the grant as long as funds from the National lottery are available. Should funding be suspended or stopped from the National Lottery, then ACE may have to reduce or stop the grant payments and ACE accepts no liability should this course of action need to be pursued.

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

4.5.1 The decision to authorise the Council to enter into a Funding Agreement with ACE for a grant of £6.333m towards the cost of the proposed works at the Playhouse is a Significant Operational Decision and is not subject to Call In.

4.5.2 Officers from the Council's Legal Section within Strategy and Resources have been involved in the discussions regarding the completion of the Funding Agreement with ACE, the Development Agreement and the Access Licence Agreement with the Playhouse.

#### **4.6 Risk Management**

4.6.1 There is a risk that ACE could terminate the funding agreement and reclaim all/part of the grant if the Council is in breach of the terms of the Agreement and, in particular, the Council makes significant changes to or does not follow the requirements of the Agreed Capital Project Plan. This risk is mitigated by Council officers working closely with ACE to provide them with all the monitoring information required as set out in the Grant Agreement.

4.6.2 There is a risk that the offer of the grant may be withdrawn if the Council fails to confirm acceptance of the agreement by 1 March 2018. This risk may be mitigated by securing early approval to enter into such an Agreement with ACE and to work with representatives of the Playhouse to ensure it can comply with all the terms and conditions of the Agreement.

### **5 Conclusion**

5.1 In light of Executive Board's decision that the Council will act as lead and assume responsibility for the management, procurement and delivery of the proposed works to the Playhouse and, in so doing, be the applicant and recipient of any grant award from ACE, the Council is the only party able to enter into such an agreement with ACE for the receipt of a grant towards the cost of the Agreed Capital Project Plan.

### **6 Recommendation**

6.1 The Director of City Development is recommended to;

- (i) Authorise the City Council entering into a Stage 2 Grant Funding Agreement with Arts Council England on terms summarised in the report, for a grant of £6.333m towards the cost of reconfiguring and refurbishing the West Yorkshire Playhouse building.
- (ii) Authorise the City Council entering into a Development Agreement with the West Yorkshire Playhouse that incorporates the issues detailed in the report.
- (iii) Authorise the City Council entering an Access Licence Agreement with the West Yorkshire Playhouse to allow the Council, its consultants/contractor to access the theatre building to undertake the proposed works.

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

7.1 None.

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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.