

**Capital Scheme No:**  
**03611/PH1/000**

**Parent Scheme No:**  
03611 / 000 / 000

**DCR Clearance No.**

**Design & Cost Report**

**REPORT OF** JOINT REPORT OF THE DIRECTOR OF LEARNING AND LEISURE AND DIRECTOR OF DEVELOPMENT

**REPORT TO** EXECUTIVE BOARD  
**DATE** 16 AUGUST 2006

**SUBJECT :** LEEDS GRAND THEATRE REFURBISHMENT WORKS

**Electoral Wards Affected :**

City and Hunslet

**Specific Implications For :**

Ethnic Minorities   
Women   
Disabled People

Executive   
Function

Eligible for Call In

Not eligible for Call In   
*(Details contained within the report)*

**EXECUTIVE SUMMARY**

The report advises the Executive Board of the current anticipated budget shortfall of £1.788m on the Phase 1 refurbishment works to the Leeds Grand Theatre, which is due for completion on 17 September 2006. The report details a number of areas that have contributed to the anticipated budget shortfall including the unforeseen, but extensive presence of asbestos throughout the building, additional health and safety requirements relating to fire suppression systems, additional mitigation costs to seek to ensure the theatre is completed by 17 September 2006 and additional making good works, particularly in the front of house areas of the theatre.

A proposed approach to be pursued to address the anticipated shortfall is detailed in the report, which involves the Council authorising additional expenditure of £1,788,447.

The report advises Executive Board that if the request for additional funding from Arts Council England (ACE) is unsuccessful, that the City Council as employer under the Phase 1 building contract will be responsible for any budget shortfall on the project.

The report seeks to establish a budget provision totalling around £9.1m for Phase 2 and a scope of works considered to be realistically achievable, involving works primarily to the front of house (public) and backstage areas, improvements to the facades of the buildings and the renovation of the Assembly Rooms.

<b>ORIGINATORS NAME:</b> Chris Coulson	<b>DATE:</b> 7th August 2006
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The report summarises and seeks authority to conclude negotiations with the Leeds Grand Theatre Company for their new lease of the Leeds Grand Theatre following completion of the Phase 1 works and the arrangements to be concluded with Opera North and ACE relating to the new rehearsal rooms.

## **1.0 THE PURPOSE OF THE REPORT**

**1.1** The purpose of the report is to:

- (i) Update members as to the latest position in respect to Phase 1 of Leeds Grand Theatre refurbishment scheme.
- (ii) Make proposals for the development of Phase 2 of the refurbishment of the Leeds Grand Theatre, including identifying the funding streams that are potentially available, to include the funding of the identified overspend on Phase 1 from these streams. The report also seeks approval in principle to the Council using its prudential borrowing powers to be funded by reducing the Council's grants to the Leeds Grand Theatre and Opera House Ltd and to Opera North. The report outlines the potential scope of works that could be undertaken within the proposed funding package, with the intention of bringing a further report to the Executive Board with finalised proposals prior to entering into a works contract.
- (iii) Approve the Heads of Terms that have been provisionally agreed with the Leeds Grand Theatre Company for the lease of the Leeds Grand Theatre.

## **2.0 BACKGROUND**

**2.1** The City Council owns the Leeds Grand Theatre building and the adjoining Assembly Rooms. In March 2000, the City Council's Executive Board agreed to a request from Opera North for the Council to support the preparation and submission of a bid to the (ACE) for grant aid for the proposed refurbishment of the Leeds Grand Theatre and adjacent Assembly Rooms and new build development to provide new headquarters and rehearsal space for use by Opera North.

**2.2** In January 2005, Executive Board was advised that it was intended to undertake the proposed theatre refurbishment and new build works in two phases, with the Phase 1 works costing an estimated £20.610 m and comprising:

- DDA Compliance works.
- Health and Safety works.
- New seating in the theatre stalls, with refurbished seating elsewhere in the auditorium, combined with improved ventilation systems in the theatre auditorium.
- Provision of a lift to the Front of House.
- Development of new production rehearsal rooms, scenery bridge and vehicle get in lift.
- Extended fly tower and provision of a new flying system.
- Reconfigured Orchestra Pit.
- Shell works to provide new music coaching rooms.

**2.3** Members were advised that whilst the Phase 1 works detailed in paragraph 2.2 would conserve the theatre complex, making it fully accessible for the benefit of all, the proposed scope of works would not make provision for a full refurbishment of the

Grand Theatre. Large areas of the theatre complex including much of the front of house, decoration in the theatre auditorium, the building's services (mechanical and electrical services) and backstage areas would remain untouched by the Phase 1 works. It was noted that the proposed Phase 2 scope of works would seek to deliver the visible improvements to the building, particularly, in the public areas of the theatre complex by renovating the Assembly Rooms, undertaking fabric repairs/restoration work to the exterior of the buildings, restoration works to the theatre's front of house areas and undertaking improvements to the backstage areas and dressing rooms.

2.4 In June 2005, Executive Board was advised that ACE had confirmed a grant of £13.5m towards the cost of the Phase 1 works and that ACE was holding a further allocation of £1.5m for future commitment to the Phase 2 works. Executive Board authorised that a contract could be concluded with Laing O'Rourke, the preferred participating contractor for the Phase 1 works. A total budget provision of £20.610m was identified to be available to cover construction costs, fees, closure costs (Leeds Grand Theatre and Opera North) and property transactions.

2.5 The funding profile for the Phase 1 works identified in June 2005 may be summarised as follows:

Arts Council England (ACE)	£13.500m
Leeds City Council (1)	£ 5.000m
Opera North/Leeds Grand Theatre Development Trust	£ 1.210m
Leeds Grand Theatre (2)	£ 0.400m
Yorkshire Forward	£ 0.500m
<b>Total</b>	<b>£20.610m</b>

Note

- (1) Inclusive of the former Leeds City Development Company gift aid of £2.5m to Opera North to purchase Premier House and the adjacent car park site
- (2) The contribution of £0.4m from the Company was a net contribution and was exclusive of a £100,000 grant paid to the Opera North and Leeds Grand Theatre Development Trust.

2.6 Executive Board, at its meeting in June 2005, was also advised that in an effort to mitigate cost/programme risks to the Council for the Phase 1 works, that the design team and the mechanical and electrical (M&E) sub-contractor had carried out preliminary investigations into the services and systems in areas of the theatre affected by the Phase 1 works, but which for budgetary reasons were excluded from the project. The investigations subsequently revealed the need to undertake additional M&E works costing in excess of £1m which were not included within the Phase 1 scope of works and which could not be funded from the Phase 1 budget. Executive Board, at its meeting in December 2005, authorised further expenditure totalling £1.075m on additional M&E works, to be incorporated in the Phase 1 contract, with the Leeds Grand Theatre and Opera House Ltd agreeing to fund the City Council's costs for borrowing £672,000, by way of a reduced annual grant from the Council. This included £577,000 for expenditure on the additional M&E works and the balance (£95,000) to be spent by the Grand Theatre Board of Management as

it determined as 'client direct works' on the refurbishment of the theatre. This element (£95,000) has been excluded from the Phase 1 figures.

### 3.0. CURRENT POSITION

#### A. Phase 1 Works

##### Programme

- 3.1 The contractor started on site on 15 August 2005 and it is envisaged that works to the new rehearsal rooms will be complete by 14 August 2006, with works to the theatre complete by 17 September 2006. It is proposed that the theatre will reopen to the public on 7 October 2006 with a performance by Opera North. Members of the Executive Board should note that the contractor has been granted a five (5) week extension of time for works in the theatre, which is reflected in the revised practical completion dated of 17 September 2006. The programme also incorporates the inclusion of the additional M&E works referred to in paragraph 2.6 above.

##### Costs/Budget

- 3.2 At the time of report preparation, the Council's retained design team advises that the anticipated final cost for the Phase 1 works is £23,419,447, which is £1,716,447 in excess of the budget of £21,703,000, (inclusive of the provision of £1,075,000 for the additional M&E works). Members of Executive Board should note that the anticipated final cost of £23,419,477 includes £717,000 costs in terms of advance warnings and unapproved estimates which may or may not ultimately be incurred but excludes an additional £72,000 that has been added as a contingency sum to meet any further unforeseen costs that may arise prior to practical completion of the phase 1 works (see paragraph 7.1 below), giving a total anticipated budget shortfall of £1,788,447. An updated cost statement will be presented to the meeting.
- 3.3 Although the approved estimates provided for contingencies, this has not proved sufficient. The retained design team has advised that the projected cost increase has arisen for a number of reasons, but primarily to address health and safety and discovery issues within the theatre that only became apparent once the theatre was closed and works started on site; mitigation/delay recovery measures implemented with respect to works on the rehearsal rooms and theatre to ensure the building works would be completed on programme and making good and final clean works to ensure, as far as is practically achievable within the Phase 1 works, that the theatre is made good to a standard that is "no worse than before the start of construction". The following outlines the key areas where project cost increases have occurred;
- (i) **Asbestos:** Prior to works starting on site a number of partial type 2 asbestos surveys had been undertaken in the theatre and the need for a type 3 (fully intrusive) asbestos survey had been identified. However, the type 3 survey could not be carried out whilst the theatre remained occupied and open to the public.

Once the theatre closed, a type 3 asbestos survey was undertaken which revealed further asbestos contamination. However, it became apparent that a type 3 survey does not necessarily reveal all contamination, since it is based on opening up and testing sample areas of each surface that appear typical. The problem encountered was that the coverings on the theatre walls concealed contamination (principally in textured coatings) which only became apparent during the course of work on services and demolitions in areas that had previously been surveyed. As a consequence of the

significantly increased presence of asbestos, works on site had to be halted, delays incurred and new working practices had to be introduced at a significant extra cost to the project.

- (ii) **Groundworks:** Excavation on the new build rehearsal room site revealed contaminated ground and unforeseen ground conditions. Initial trial pits were undertaken during scheme design, supplemented by further trial trenches during the pre construction stage of the project in an attempt to establish a ground profile. Regrettably, neither of these investigations revealed lack of rock and soft spots. The design of the foundations of the rehearsal rooms was modified on site in an attempt to mitigate the cost and programme impact on the project.
- (iii) **Drencher/Sprinkler System:** At the design stage of the project, the design team based their calculations and proposed installations on advice received from the water authority. Subsequent water pressure tests on site in early 2006 revealed that the pressure had fallen below previously advised levels and because of the likelihood that the pressure could be reduced even further, it was necessary to enhance the system supplying water to the sprinklers in the fly tower and the drencher system serving the safety curtain. This entailed installing a water tank and pumps into the works at a very late juncture in the construction programme and at a significant additional cost to the project.
- (iv) **Mitigation/Delay Recovery Measures:** The problems encountered with the existing fabric and building services have led to additional works, which have increased the scale of the project above that originally envisaged. The increased scope of work could not be contained within the original contract programme. The contractor has already been granted a five week extension of time, with practical completion now scheduled for 17 September 2006. Whilst the design team and the contractor have worked together through re-sequencing works and design modifications to mitigate further delays to the programme, it has been necessary to instruct weekend/out of hours working (as appropriate) to reduce the risk of further programme delays. The Leeds Grand Theatre/Opera North Project Board, when authorising such essential mitigation/delay recovery measures, recognised the additional cost implications to the project, but felt that such action represented value for money when compared to the cost that any extension of time would have incurred.
- (v) **Making Good Works:** As Executive Board has previously been advised, the scope of the Phase 1 works is limited and excludes the refurbishment of front of house areas and backstage accommodation. However, works in Phase 1 namely to the fly tower, new lifts and auditorium, combined with general construction access, has inevitably affected these areas. At tender stage, the extent of making good that would be necessary could only be estimated and subsequently, the provisional sums in the contract have proved to be inadequate.

The extent of making good has also increased because of additional works undertaken to address the presence of asbestos and other problems with the existing fabric discovered during the course of construction. The inclusion of the additional M&E works has only added to the complexity of the problem. As a consequence, the Leeds Grand Theatre and Opera North Project Board have authorised additional essential making good works to be undertaken, with the aim being to ensure as far as practical and, giving due regard to the nature of works proposed under Phase 2, that the theatre is left in a condition that is no worse than before the start of construction. Clearly, areas of the theatre affected by the Phase 1 works will look incomplete pending the start and completion of the proposed Phase 2 works.

- 3.4 Executive Board should note that as soon as significant cost increases were identified the Project Board gave detailed consideration to the potential of reducing specifications/omitting areas of work from the project altogether in order to contain the project in budget. The options considered by the Project Board ranged from omitting the vehicle get in lift or the comfort cooling in the theatre auditorium through to omitting improvements to the orchestra pit or reducing the seating specification.
- 3.5 The Project Board concluded that there was little real opportunity to reduce the scope of works/specifications given that there had already been extensive value engineering to identify cost savings and that given the stage in the construction programme considerable abortive and reinstatement costs would be incurred in order to restore parts of the building to its original condition. The Project Board was also conscious that if major scope omissions were pursued, there was a real danger that such action would not deliver the scheme that ACE had agreed to support and, as such, the ACE grant could be put at risk.
- 3.6 In order to address the forecast budget shortfall of £ 1,788,447 for the Phase 1 works, the Leeds Grand Theatre and Opera North Project Board has supported the following proposals:
- (i) That the City Council bring forward £ 1,294,881 Leeds City Council funding from the Phase 2 scheme to contribute to the projected budget shortfall.
  - (ii) That the Opera North and Leeds Grand Theatre Development Trust contribute an additional £150,000 towards the Phase 1 project costs. Members of Executive Board should note that the Trust has confirmed its willingness to make available the additional £150,000.
  - (iii) That the Leeds Grand Theatre and Opera House Ltd contribute a further £43,566 towards the cost of the Phase 1 works.
  - (iv) That ACE be requested to provide £300,000 towards the projected shortfall. Executive Board should note that ACE has indicated a willingness to consider such a request for funding, though their contribution would be sourced from their £1.5m allocated to the Phase 2 works, thus reducing their base contribution to the Phase 2 works to £1.2m. An application for an additional £300,000 grant towards the Phase 1 project costs has been submitted to ACE and their response is currently awaited. Executive Board should, however, note that if ACE determine it is not prepared to contribute to the anticipated budget shortfall, then the City Council, as employer under the building works contract, will be responsible for any cost overruns that occur on the project which cannot be contained within the project budget or funded from third parties.
- 3.7 Taking the funding sources outlined in paragraphs 3.6 above into account, the details of the funding package being established for the Phase 2 works are contained below.

## **B Phase 2 Works**

### **Budget Provision**

- 3.8 The current assumed composition for the funding envelope for Phase 2 may be summarised as follows:

- (i) **Leeds City Council:** The City Council's Executive Board at its meeting in February 2006 agreed to provide an additional £1m, and increased the overall contribution to £3.5m. Phase 1 approvals of £ 1.581m are already in place, and when this approval of £1.295m is added, this increases the overall contribution on Phase 1 to £2.876m. This leaves a balance of £ 0.624m available for Phase 2.
- (ii) **ACE:** ACE to be requested to provide an additional grant of £1m to the Phase 2 project. ACE has advised that the City Council would need to pursue a formal application to secure an additional award of £1m. The application process is currently being discussed with ACE with a view to submitting an application by November 2006 and securing a decision in January 2007.
- (iii) **Opera North and Leeds Grand Theatre Development Trust:** The Trust has successfully raised their contribution to Phase 1 and their fundraising target for the Phase 2 works is £3m, with £1.6m net secured/pledged to date. The Trust's £3m target no longer assumes income from the £1 ticket levy operated at the Grand Theatre. The Trust has a number of other funding applications on going, and it will be necessary to review the position on their fundraising prior to entering into any works contracts, and if necessary seek appropriate guarantees for any identified shortfalls.
- (iv) **Opera North:** The Board of Opera North has resolved to request the Council to utilise its prudential borrowing powers for up to £0.5m, subject to satisfactory terms being agreed, to progress Phase 2 of the capital project. The cost of the borrowing will be funded by the Council by reducing its annual grant to Opera North (around £35,000 per annum at forecast interest rates) for a period of 25 years.
- (v) **Leeds Grand Theatre and Opera House Ltd:** The Leeds Grand Theatre Board of Management at its meeting on 11 April 2006 agreed to support the City Council in undertaking prudential borrowing of £1m, to be funded by a reduction in the Council's annual grant to the Company (around £70,000 per annum at forecast interest rates) for a period of 25 years. Members of Executive Board should note that in reaching this decision, the Grand Theatre's Board of Management has sought an assurance from the Council to the effect that "In anticipation of the Board of the Leeds Grand Theatre and Opera House Ltd using all reasonable endeavours to operate within its annual grant funding from the City Council and its other sources of income, the Council recognises its commitment to the on-going operation of the Company. Should at any time the Company go into cumulative deficit, such that its going concern is brought into question, then the Council working with the Board, will ensure that it meets its statutory obligations and duties. The Council will also work with the Board to monitor the finances of the Company and the Board will be responsible for providing the Council with a report on its financial position of a quarterly basis".

Executive Board should also note that given the on-going commitment to proceed for four (4) years with the £1 ticket levy and, the Development Trust's statement that its £3m target excludes income from such a levy, then a further £800,000 may be available towards the cost of the Phase 2 works.

- (vi) **Heritage Lottery Fund:** The City Council will submit a bid to the HLF for up to a maximum of £1m towards the cost of restoring the Assembly Rooms, works to the building facades and the theatre's front of house areas. The grant application if successful will not only contribute to the conservation and restoration of the historic theatre complex, but will also be combined with proposals that will seek to maximise public access to the buildings, so as to ensure that everyone can learn about, have access to and enjoy the heritage and architectural environment of such buildings. It is

programmed to submit the bid to the HLF in December 2006, with a decision on the bid being made in June 2007.

3.9 In summary a funding package totalling around £9.124m and comprising the following potential contributions may be identified for the Phase 2 works:

ACE	£2.200m
LCC	£0.624m
ON/LGT Development Trust	£3.000m
Opera North	£0.500m
Leeds Grand Theatre	£1.000m
Ticket Levy	£0.800m
HLF	£1.000m
<b>Total</b>	<b>£9.124m</b>

3.10 Assuming the forecast budget shortfall for Phase 1 remains as detailed in paragraph 3.2 above, a scope of works may be progressed for Phase 2 which would deliver: -

- Restoration of the Assembly Rooms
- Restoration/improvements to the facade of the Grand Theatre and Assembly Rooms
- Improvements/restoration to the theatre's front of house areas
- Fit out of the music rooms
- Pedestrian bridge over Harrison Street between the theatre and Opera North's offices
- Refurbishment to the backstage/dressing room areas
- Fit out works in the theatre

3.11 Members of Executive Board should note that the budget provision for the Phase 2 scope of works detailed in paragraph 3.9 above makes no provision for any future theatre closure costs that may be required to facilitate the proposed Phase 2 works. Also, the proposed scope of works represents a mathematical assessment of the works that may be progressed based on Stage D costings updated for inflation and a significantly increased contingency to reflect the knowledge gained and the condition of the building complex under the Phase 1 works. The estimated cost of the works will need to be checked and substantiated by the design team as part of the HLF bid preparation, as will the allowance made for professional fees to progress the scheme proposals through to completion. It should also be noted that if the forecast overspend on Phase 1 increases beyond the figure quoted in this report, a reduction in the Phase 2 budget and hence the scope of works would result, unless new additional funds are identified.

## **C. Operational Arrangements**

3.12 In May 2002, Executive Board was advised that ACE had indicated that there needed to be a more integrated operational structure between Leeds Grand Theatre and Opera North regarding their future occupancy of the theatre building post completion of the refurbishment works. Executive Board authorised officers to commence negotiations with both organisations regarding the property arrangements to be concluded between the parties for their future occupation of the properties and, to report back on the outcome of these negotiations. The following summarises the current position regarding the negotiations relating to the property agreements to be



concluded for the occupation of the respective properties following completion of the Phase 1 works.

**Leeds Grand Theatre:**

3.13 Terms have been provisionally agreed with the Leeds Grand Theatre Board of Management for the Company's lease of the Grand Theatre and Executive Board is requested to approve the Heads of Terms for the Company's lease of the property on the basis detailed below:

(i) Demise:- As detailed in plan No. 1 attached. The lease will include the current theatre ticket office, the adjacent retail unit at 42 New Briggate and also the new Scenery Bridge linking the theatre to the adjacent rehearsal rooms and, the vehicle get in lift on Harrison Street.

(ii) Term:-99 years

(iii) Rent:- Peppercorn

(iv) Use:- The premises to be used as a theatre only, with associated licensed bar and ticket office

(v) Repairs:- The tenant to be responsible for maintaining and insuring the whole of the premises. The tenant will be required to establish and maintain a reserve fund and a planned maintenance schedule.

(vi) Sub-Letting:- The tenant shall grant a sub lease to Opera North for designated areas of the premises for a term of 25 years, at a peppercorn rental.

The tenant shall, at the request of the City Council, grant a sub lease to the City Council of the retail unit, 42 New Briggate, Leeds for a term of 25 years at a peppercorn rent. The Council shall be permitted to sub let the retail unit. A break clause will be included in favour of the Grand Theatre Company and will permit the Company to terminate the Council's lease at any time after the third anniversary of the term, providing:

(i) the Company has sufficient funding to convert 42 New Briggate to an improved box office facility.

(ii) the company has served 12 months prior written notice upon the Council of its intention to break the sub lease.

All sub-lettings to be contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954.

(xi) Alienation:- The tenant will not be permitted to assign, sub-let, charge (other than the ACE legal charge referred to later in this report) or, part with possession of the whole or any part of the theatre. However, in the event of the tenant's insolvency and Arts Council England seeking to exercise their power of sale under the charge referred to below in relation to the theatre, the Council will consent to the assignment of the lease in such circumstances to another theatre company acceptable to the Council, such consent not to be unreasonably withheld or delayed.

- 3.15 Members of Executive Board should note that the Grand Theatre Company's lease of the theatre will also refer to a residency agreement to be concluded between the Company and Opera North. The residency agreement will seek to set out the working arrangements for the building on a day-to-day basis, detailing how the two parties will operate together in the theatre.
- 3.16 The restriction on use (see 3.13(iv)) to theatre only, with associated licensed bar and ticket office, might be argued not to constitute the most valuable use of the property. In such circumstances, the granting of a lease at a peppercorn to the Grand Theatre Company would constitute a less than best disposal. The Council is able to grant such a lease using the following powers:
- 3.17 The General Disposal Consent (England) 2003 allows local authorities to dispose of any interest in land at less than the best consideration that can reasonably be obtainable subject to the following conditions:
- (i) the authority must be of the opinion that the disposal is likely to contribute to the promotion or improvement of the economic, social or environmental well-being of its area or people living or working there; and
  - (ii) the difference between the unrestricted value of the land ( basically the unrestricted market value of the land ignoring any conditions voluntarily imposed by the authority which might constrain its use) and the actual consideration for the disposal must not exceed £2m
- 3.18 If these conditions were not met in any particular case, the Council could still apply to the Secretary of State for a specific consent.
- 3.19 The specific consent of the Secretary of State therefore is not required for a disposal of land at less than best consideration provided that the authority decides it is likely that the disposal will help to secure the promotion or improvement of the economic social or environmental well being of its area and the amount of the "discount" in value does not exceed £2m. The lease terms are specifically designed to protect the Council's investment in the fabric and future use of the theatre for the cultural benefits of the residents of the City of Leeds and to protect the theatre's heritage.
- 3.20 Notwithstanding this the voluntary imposed conditions upon use might under normal circumstances be argued to constitute a disposal for less than best consideration. The Director of Development has carried out a valuation of the building drawing upon information about other listed theatre buildings in the United Kingdom and their likely conversion costs for alternative use. The conclusion from this exercise is that the value of the Grand Theatre buildings is unlikely to be positive because of the high cost of conversion and the need to protect/mothball the many key features of the listed building. As such, therefore, the grant of a lease at a peppercorn to the Grand Theatre Company would constitute a disposal for best consideration.

## **Rehearsal Rooms**

- 3.21 The site on Harrison Street, on which the new rehearsal rooms have been built is opposite the Grand Theatre stage door entrance and immediately adjacent to Premier House, a 1960's built office block. The freehold interest of the site and the adjacent Premier House office block was purchased by Opera North using gift aid money from the former Leeds City Development Company. The new build rehearsal rooms form an integral part of Premier House, with shared access and service facilities. Consequently, when construction of the new build rehearsal building is complete, the

building will be owned by Opera North. It has been provisionally agreed that Opera North will enter into a deed granting rights of support to the Council for the scenery bridge over Harrison Street linking the rehearsal rooms to the main theatre complex.

- 3.22 Executive Board should note that it is proposed and has been provisionally agreed with Opera North that the City Council will be granted a licence for a period of 99 years, at nil consideration, in order to permit the Council, or its nominees, to use the new build rehearsal space for up to 30 days per annum.
- 3.23 In recognition that, when complete the new rehearsal rooms will pass into the ownership of Opera North, Council officers have sought to protect the original Leeds City Development Company investment, which allowed Opera North to purchase Premier House and the adjacent site upon which the rehearsal rooms have been built. Given the conditions of the Grant Aid requiring a first legal charge in favour of ACE to secure repayment of grant aid (see later in this report), the Council has, therefore, provisionally agreed with ACE an arrangement to the effect that if ACE enforces its rights under the Legal Charge agreement (see below) to be concluded between Opera North and ACE on the Premier House/rehearsal rooms/new build site and sell, that the City Council would be entitled to payment of £2.5m (plus allowance for inflation) from the receipt, to recompense it for the equivalent level of investment provided to Opera North which enabled them to acquire the car park site in the first instance.

### **Legal Charges**

- 3.24 In accordance with standard practice, ACE is seeking a commitment to secure repayment of grant aid in the event of the theatre and the rehearsal rooms new build ceasing to be used for those purposes within a specified period of up to twenty years. The Grant Aid conditions provide for a legal charge in favour of ACE to the full value of its investment against the assets of the applicant receiving any capital award (£13.5m grant). In this instance, as there is in effect two end user beneficiaries to the award (the Grand Theatre Company and Opera North) and, the calculation of benefit to each party is complex, ACE proposes to split equally, the charge between the Grand Theatre Company and Opera North i.e. a fixed charge of £6.75m in each case.
- 3.25 With regard to the Grand Theatre Company, ACE propose to place a charge for £6.75m on the Company's leasehold interest that it will have in respect of the theatre building. It should be noted that the proposed charge is a fixed charge against the Company's leasehold interest in the theatre and, is not a floating charge against the rest of the company's assets.
- 3.26 Against this background, the City Council has agreed with ACE that it shall use its best endeavours to procure from the Grand Theatre Company a first registered fixed charge over the interest the Company will have in their leasehold interest in the theatre, but limited to its market value or £6.75m, whichever is the lower, subject to:
- (i) the Charity Commission granting consent to such a fixed charge (but only if the Company provides ACE with evidence that such Charity Commission consent is required) and
  - (ii) the Grand Theatre Company obtaining full independent advice on all relevant issues relating to the proposed charge, with the Company being permitted to refuse to consent to the grant of a charge if it receives either independent advice that the grant of a charge over the lease will of itself have a materially adverse effect on the balance sheet/solvency of the Company.

- 3.30 If the Company is unable to provide a charge to ACE, the company's liability as outlined above will fall and, ACE will rely upon the covenants and obligations of the Council under the Grant Aid condition as the freehold owner of the theatre for the repayment of that part of the grant identified as the responsibility of the Grand Theatre Company.

## **Assembly Rooms**

- 3.31 Whilst the refurbishment of the Assembly Rooms does not form part of the Phase 1 works and will only be addressed during Phase 2, Executive Board should note that upon completion of the Phase 2 works, it is proposed that the lease of the Assembly Rooms would be offered to Opera North at a peppercorn on terms similar to those provisionally agreed with the Grand Theatre Company for their occupancy of the theatre. As with the lease of the theatre building to the Grand Theatre Company this lease to Opera North would constitute a less than best disposal and will require the Council to utilise the General Disposal Consent (England) 2003 detailed in paragraphs 3.17 to 3.20. A report will be presented to the Director of Development in due course to approve the Heads of Terms using her delegated powers. Pending completion of works to the Assembly Rooms, both the Leeds Grand Theatre Company and Opera North have completed licence agreements for their continued occupation and access to the Assembly Rooms respectively.

## **4.0 CONSULTATIONS**

- 4.1 A wide range of consultation was undertaken in the preparation of scheme designs for both phases 1 and 2 of the project. The organisations/bodies consulted included the Theatres Trust, English Heritage, Civic Trust, The Victorian Society, Fire Authority and statutory undertakers.
- 4.2 ACE has been consulted on the strategy to address the projected budget shortfall on Phase 1 and the assumed funding profile and scope of works for Phase 2.
- 4.3 The Leeds Grand Theatre and Opera House Ltd Board of Management have been consulted on the proposed funding strategy for phases 1 and 2, the proposed Phase 2 scope of works and the proposed operational arrangements for the building post completion of the Phase 1 works. Executive Board should note that the Board of Management do not support the inclusion of the pedestrian bridge over Harrison Street in the Phase 2 works, until such times as the adequacy of the Phase 2 assumed budget has been fully tested against the actual cost of the proposed works.
- 4.4 Opera North has been consulted and has indicated support on the proposed funding strategy for phases 1 and 2 of the project and, the proposed scope of works for phase 2 as detailed in paragraph 3.10 of the report above.
- 4.5 The Leeds Grand Theatre and Opera North Project Board have endorsed the proposed funding strategy for phases 1 and 2 of the project as detailed in the report.

## **5.0 PROGRAMME**

- 5.1 It is currently envisaged that works to the new rehearsal rooms will be complete by 14 August 2006, with works to the theatre complete by 17 September 2006.

5.2 The strategic programme for the Phase 2 works incorporating the decision making timescales for the respective third party funding organisations remains under discussion at this time and has yet to be determined.

## **6.0 CAPITAL FUNDING AND CASHFLOW Phase 1**

6.1 At the time of report preparation, the anticipated final cost for the Phase 1 works is £23,419,447, representing an anticipated overspend of £1,716,447 against a budget provision of £21,703,000, inclusive of the additional M&E works. In addition to this a contingency sum of £72,000 has been identified (see paragraph 7.1) in order to cover any unforeseen costs that may arise prior to practical completion of the phase 1 works. This brings the overall total estimate for overspend to £ 1,788,447. A funding package has been agreed as per paragraph 3.6 of this report to address the anticipated budget shortfall for phase 1..

6.2 In order to progress the proposed Phase 2 works, the City Council's retained design team and specialist consultants need to prepare the design proposals/costings and the business case for a bid to the HLF and, to secure a supplementary award from ACE. At this time, it has only been possible to estimate the fees the consultants will seek for undertaking the work which is estimated to be in the region of £175,000. Full details of the fees to be paid to the consultants will only become available on receipt of formal fee proposals from the respective consultants.

6.3 Given the uncertainty regarding a number of these funding streams, further work will be undertaken as part of the development of Phase 2 and reported to Executive Board prior to seeking authority to enter into a works contract.

Previous total Authority to Spend on this scheme	TOTAL £000's	TO MARCH 2006 £000's	FORECAST				
			2006/07 £000's	2007/08 £000's	2008/09 £000's	2009/10 £000's	2010 on £000's
Phase 1	18203.2	11666.4	6336.8	200.0			
Notional Contributions	3500.0	3500.0					
TOTALS	21703.2	15166.4	6336.8	200.0	0.0	0.0	0.0

Authority to Spend required for this Approval	TOTAL £000's	TO MARCH 2006 £000's	FORECAST				
			2006/07 £000's	2007/08 £000's	2008/09 £000's	2009/10 £000's	2010 on £000's
LAND (1)	0.0						
CONSTRUCTION (3)	1788.4		1788.4	0.0	0.0		
FURN & EQPT (5)	0.0						
DESIGN FEES (6)	0.0						
OTHER COSTS (7)	0.0						
TOTALS	1788.4	0.0	1788.4	0.0	0.0	0.0	0.0

Total overall Funding (As per latest Capital Programme)	TOTAL £000's	TO MARCH 2006 £000's	FORECAST				
			2006/07 £000's	2007/08 £000's	2008/09 £000's	2009/10 £000's	2010 on £000's
LCC Funding	1581.0	1409.9	150.3	20.8			
Leeds City Council AMG	417.0		417.0				
Unsupported Borrowing	577.0	577.0	0.0	0.0			
Arts Council Grant	13500.0	8133.6	5209.5	156.9			
Yorkshire Forward	500.0	500.0					
Leeds Grand Theatre	418.1	261.5	151.1	5.5			
Opera North	1210.1	784.4	408.9	16.8	0.0		
Heritage Lottery	0.0		0.0	0.0			
Notional Contribution	3500.0	3500.0					
Total Funding	21703.2	15166.4	6336.8	200.0	0.0	0.0	0.0
<b>Shortfall =</b>	<b>-1788.4</b>	<b>0.0</b>	<b>-1788.4</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
This will be funded as follows:-							
Injection Opera North	150.0		150.0				
Injection Grand Theatre	43.5		43.5				
B/F Arts Council From Phase 2	300.0		300.0				
B/F Leeds City Council fm Ph2	1294.9		1294.9				
<b>Balance =</b>	<b>0.0</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

## 7.0 RISK ASSESSMENT

7.1 There remains a risk that other unforeseen costs will arise that will contribute to the anticipated budget shortfall on Phase 1. Whilst this risk can not be eliminated completely, as at the date of report preparation, the project is approximately 8 weeks away from practical completion and, therefore, all discovery issues should have been identified and, any additional costs that may have to be incurred would primarily relate to the making good works to the theatre and ensuring works are completed on site by 17 September as programmed. In recognition that a risk remains an additional contingency allowance of around £72,000 has been incorporated into the forecast final cost of the Phase 1 works (see paragraph 6.1 above) It should be noted that if the additional contingency allowance is not required, then such funds would be held for expenditure on the proposed Phase 2 works.

7.2 There is a risk that the proposed Phase 2 scope of works as outlined in paragraph 3.10 above cannot be contained within the budget considered to be realistically

available to the project. It would be the intention to undertake as much pre-contract survey (intrusive) work as possible in the buildings, in order to establish both the condition of the fabric and existing services/systems, in an effort to mitigate cost risks to the Council. However, if it subsequently transpires after undertaking value management to reduce the scheme costs that the project can not be contained within budget, the Leeds Grand Theatre and Opera North Project Board would need to review the scope of works and reduce it accordingly.

- 7.3 There is a risk that the condition of the building fabric and services in the areas covered by the proposed Phase 2 works will be in as poor a condition as discovered under the Phase 1 contract. In an effort to mitigate the risk, the level of proposed project contingency provision has been increased to reflect the problems encountered elsewhere in the building as part of the Phase 1 works.
- 7.4 There is a risk that the Opera North and Leeds Grand Theatre Development Trust may not secure the balance (£1.4m net) of its £3m contribution to the proposed phase 2 budget. Whilst officers remain confident based on the Trust's proven track record to date and having regard to the fundraising strategy being pursued that the Trust will achieve its £3m fundraising target, the risk can not be completely eliminated. In order to mitigate the risk to the Council, officers will closely monitor the on-going fundraising campaign and will examine the Trust's accounts on a regular basis to gauge fundraising progress.
- 7.5 There is a risk that the HLF and supplementary ACE bids for funding may be rejected or not secure the level of funding sought for the Phase 2 works. Whilst the risk may be mitigated through Council officers working with the respective lottery bodies to ensure the best applications are made that meet the strategic objectives of each organisation, the risk can not be completely eliminated and, if it ultimately proved to be the case, the Grand Theatre Project Board would need to determine a reduced scope of works that could be delivered within the budget available.
- 7.6 Members of Executive Board should note that before any building contract for the works proposed under Phase 2 are let, Council officers will undertake a full risk assessment of progressing the works in advance of any element of the third party funding support being secured. If the risk exposure to the Council is considered manageable, it may be possible to recommend proceeding with the works with the Council cash flowing the costs until funding is secured. Alternatively, if the financial risk is considered unacceptable, the project may need to be delayed until funding is secured or a reduced scope of works is identified.

## **8.0 COMPLIANCE WITH COUNCIL POLICIES**

- 8.1 The Council's Corporate Plan identifies the need to maximise the potential facilities which improve the quality of life and which add to the attractiveness of the City and the region. Moreover, the Corporate Plan acknowledges the role of cultural attractions in promoting the economic prosperity and overall profile of the City.

## **9.0 RECOMMENDATIONS**

- 9.1 Executive Board is requested to:
- (i) Note the contents of the report;

- (ii) Authorise an injection of £193,566 into the Capital Programme to be funded by £ 150,000 from the Opera North Trust and £ 43,566 from Leeds Grand Theatre;
- (iii) Authorise the bringing forward of £300,000 Arts Council England grant from Phase 2 works into Phase 1, subject to the ACE formal approval which is currently being sought.
- (iv) Authorise the bringing forward of £1,294,881 of Leeds City Council funding from Phase 2 into Phase 1;
- (v) Authorise the incurring of additional expenditure of £1,788,447 on costs associated with the Phase 1 refurbishment works at Leeds Grand Theatre. (Capital Scheme Number 03611 / PH1 / 000)
- (vi) Note expenditure of £175,000 on fees on Phase 2 of the Grand Theatre (Capital Scheme Number 03611/PH2/000) to prepare and submit applications to the Heritage Lottery Fund and Arts Council England for grant aid towards the Phase 2 works involving the selective refurbishment of the Grand Theatre and the restoration of the Assembly Rooms.
- (vii) To note the potential funding of £ 9.124m as outlined in detail within paragraphs 3.8 and 3.9, and that a further report will be submitted to Executive Board when both costs and funding have been subject to further determination.
- (viii) Approve the Heads of Terms that have been provisionally agreed with the Leeds Grand Theatre and Opera House Ltd for their lease of the Leeds Grand Theatre.