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## Report of the Director of Learning and Leisure

### Executive Board

Date: 20 September 2006

Subject: Future Governance of Leeds Grand Theatre and Opera House Ltd

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#### Electoral Wards Affected:

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

(Details contained in the report)

### Executive Summary

Leeds Grand Theatre and Opera House Ltd is a company with responsibility for three of the city's important cultural institutions; Grand Theatre, City Varieties and The Hyde Park Picture House. The Council wishes to support the company to become fit for purpose so it can deliver a high quality product in today's competitive environment.

A fundamental review has taken place of the governance arrangements, as requested by Executive Board, exploring options for improvement.

The outcome of the review is to recommend that the Board moves to a more independent method of operation. There are a number of ways of doing this which are outlined, however most require detailed and time intensive discussions with various stakeholders including the Charity Commission.

This report therefore recommends a transitional Board which can be implemented immediately. This board would comprise individuals representing a defined skills mix with 5 Councillors and 4 independent members representing business and the community. This report also suggests the appointment of a vice chair from amongst the external board members to facilitate this more independent working .

This transitional Board would be tasked to oversee the development of Phase II of the building work and implement any further changes and developments to the board deemed necessary.

## **1.0 Purpose of This Report**

This report assesses a wide range of options, identifying the key benefits and challenges of each, and recommending the immediate implementation of a transitional board. The roles, responsibilities, skills and processes of this Board are defined and proposed as the basis for both the transitional and any future Boards. These are presented for approval in the form of a Board Manual which will provide a framework of good governance.

## **2.0 Background Information**

### **2.1. Executive Board Review Request**

On the 17<sup>th</sup> May 2006 Executive Board requested “a fundamental review of the governance arrangements [of Leeds Grand Theatre and Opera House Ltd] which are in place at Leeds Grand Theatre and Opera House Ltd, to assess a range of options ... to ensure governance arrangements are fit for purpose”. The scope of the review was defined as;

- Options regarding the legal form for the company and any implications for cross funding between the companies (see 3 and appendix 1)
- Board membership and structures (see 3 and appendix 1)
- Roles, responsibilities and skills of board members (see 5 and Board manual)
- Office structures (roles and responsibilities) to support the Board (see 5)
- Accountability arrangements with the Council (see 5)
- Support requirements necessary for the Board (see Board manual)

### **2.2. Charitable Status**

The Grand Theatre and Opera House Ltd as a wholly owned company of Leeds City Council, is a controlled company as defined in the 1989 Local Government Housing Act. The Grand Theatre is a registered charity covered by the rules and regulations of the Charity Commission. The Articles of Association of Leeds Grand Theatre allow for up to nine Boards members of whom a minimum must be five elected members. There is therefore provision within these articles to make modest changes. For more fundamental change approval would be required from The Charity Commission.

### **2.3. Relationship with Leeds City Council**

The Council provides a number of significant services to the company usually free of charge. These include;

- Senior financial support
- Creditors and payroll services
- Advice on VAT, legal and property matters
- Secretarial services and committee rooms
- Advice from Arts and Events team
- Interest free cash flow
- Admission to the West Yorkshire Pension Fund and potential related liabilities

The company uses Council systems to pay its staff and suppliers with payments being made from the Council's bank account. The Company uses its own bank accounts to receive cash from its trading activities. All bank accounts are controlled by the Council. The company reimburses the Council on a monthly basis, giving the company an interest free loan of up to £400,000 in any month. The company receives bank interest on its cash balances. There is no charge by the Council for the use of its cash in this way. When the company went from deficit funding to grant funding in 1997 the beneficial cash flow advantage of this

mechanism was discussed by the Council and felt to be a gift in kind along with the grant. The grant is not paid to the company in strict cash terms. It is netted off against the reimbursements.

## 2.4. Finance

Currently the City Council provides a grant to the company of approximately £300,000 pa.

The table below shows the financial performance of the three venues. The Grand Theatre venue consistently generates trading surpluses and the City Varieties and Hyde Park Picture House are both trading with deficits.

Financial year ending 31 <sup>st</sup> March	Leeds Grand Theatre	City Varieties	Hyde Park Picture House	Company total	LCC Grant	Net trading position	Company reserves
	£	£	£	£	£	£	£
2001	73,647	(210,433)	(43,800)	(180,586)	297,000	116,414	836,827
2002	97,777	(188,154)	(36,742)	(127,119)	297,000	169,881	1,006,708
2003	98,128	(163,156)	(82,080)	(147,108)	324,420	177,312	1,184,020
2004	34,890	(221,100)	(79,747)	(265,957)	310,000	44,043	1,228,063
2005	(18,674)	(182,736)	(65,409)	(266,819)	304,425	37,606	1,265,669
2006	(876,703)	(188,136)	(12,229)	(1,077,068)	304,425	(772,643)	493,026

### Key points:

- Grand Theatre has only required subsidy from combined resources of accumulated reserves and annual grant in the last two year financial years, which for 2005/06 coincides with the theatre closure.
- Annual revenue grant of circa £300,000 per annum over these six years is primarily to cover City Varieties and Hyde Park Picture House deficits.

## 2.5. Current Board process

The current Board is made up of Leeds City Councillors. There has been no audit of skills and it is very operationally focused. There is no delegation scheme to officers, resulting in Board meetings being required for insignificant and low level delivery decisions which should be the remit of the General Manager or Venues Managers. As a result decisions can often be very slow. Decisions need to be at a much more strategic level following principles of good governance outlined in the Board manual in appendix 3. There needs to be consistent And experienced Company Secretary support for example.

### 3.0 Options for future board arrangements

- 3.1 There are a range of possible options for the future governance of the company. Each option has been assessed on how well it;
- achieves the company's aims and objectives
  - delivers sound financial management and direction
  - ensures sustainable and well maintained buildings
  - enables dynamic and challenging programming
  - supports community engagement and a strong learning focus
  - delivers the funding agreement
  - delivers the charitable objectives
  - ensures clear parameters for decision making for the board and officers
  - maintains the service level agreement with Leeds City Council.
- 3.2 The benefits and challenges of each of the options considered are laid out in Appendix 1. In summary these options are;
- a) Status Quo
  - b) Implement in full current Articles of Association with 9 members, 5 of which are Councillors and 4 independent. All appointed to a skills matrix with new schemes of delegation and responsibilities. Vice Chair to be independent, 3 Council staff acting as advisors on finance, legal and culture matters.
  - c) Move to an independent trust where Councillors are in the minority. All appointed to a skills matrix with new schemes of delegation and responsibilities. Chair to be independent. No Council advisors.
  - d) Move to an independent trust for The Grand Theatre and another one for City Varieties and Picture House.
  - e) Move to an independent trust for The Grand Theatre, another one for City Varieties and find an alternative operator for Picture House.
  - f) Replace current charitable company with 3 charitable companies
  - g) Maintain a single Management Board as in a-c and have 3 separate venue sub Boards without elected member representation.
  - h) Find a commercial operator to run The Grand Theatre

### 4.0 Proposed Approach to create a Board 'fit for purpose'

#### 4.1. Immediate Action

The appraisal of the options available has indicated that;

**Option a** is not viable for the short medium or long term success of the Leeds Grand Theatre it does not ensure the Board is more strategic or assist in the positioning of the Theatre within the business sector as there is no drivers on the Board to deliver this. The Charity Commission has already identified concerns about the extent of the Council 's involvement which it would be unlikely to ignore.

**Option b** requires no change to the Articles of Association, it delivers the requirements outlined in 3.1. providing the best means for progressing the challenges for the group of theatres and can be implemented immediately.

All other options require time intensive negotiations with the Charity Commission. A further fundamental consideration with **Options c - h** must be that The Grand Theatre and City Varieties are about to embark on extensive refurbishment works with Leeds City Council as major funder. Therefore moving the company to a fully independent status at this time would not be prudent.

**Option d, e and f** have the additional concern in relation to the extent of the current cross-funding. This would need to be addressed before these options become viable.

Immediate implementation of **Option b** is therefore recommended as the best way forward to ensure a more independent operation. This will create a Board with five places for City Councillors, four places for independent members and with the advisory support of officers from legal services, finance and cultural policy. Board members will be matched against a skills matrix, the chair will be an Executive Member of Leeds City Council and the Vice Chair will be an independent member. Some additional provisions are required to embed the various terms of appointments for Board Members and for the role/position of Vice Chair. The Board would also need to agree a scheme of delegation to venue managers and other designated officers. It is proposed that this Board is transitional and that it should assess over the next two years, whether the other forms of governance detailed in Appendix 1 were more appropriate to sustain the long term viability of the Grand Theatre. This would allow time for the required negotiations with the Charity Commission (approximately one year), preparation of the necessary processes to appoint the new board (approximately 6 months) and then the implementation of a shadow board to ensure a smooth handover which will particularly vital as the building works will be coming to a close.

## **5.0 A Framework for Good Corporate Governance**

It is recommended that the new Board adopts good governance approaches. Using good practice guides from the Charity Commission, the Hub of Expertise on Governance and Leeds City Council a framework has been created around which all future planning and work of the Board should take place. This framework is encapsulated into a Board Manual Appendix 3. The key elements of good corporate governance are summarized below;

### **5.1 Clear Aims and Objectives**

A board needs to really understand what the company is there to achieve. Currently the Board of Leeds Grand Theatre and Opera House Ltd has identified its aims and objectives as to:-

- Present an eclectic programme of attractions on stage to appeal to the broad spectrum of the region's population
- Feature the highest artistic standards and quality of entertainment from drama, ballet, dance and musical companies and concerts promoted by the commercial sector, or supported by the arts Council and the regional Arts Councils;

- Provide a production and administrative base for its resident company Opera North, to present its annual series of operatic performances;
- Provide a theatrical home for Northern Ballet Theatre;
- Support, provide and maintain first class rehearsal, administrative and technical facilities for both its resident and visiting artistic companies cater for and provide hospitality facilities for artists, staff, audiences and sponsors alike;
- Make accessible both artistic work and physical facilities by keeping under review and implementing new pricing, education and diversity and equal opportunities policies for all sectors of the community including the young, unemployed, elderly, black and Asian minority groups, disabled and disadvantaged
- Train and empower staff and provide effective customer care programmes; access awareness and diversity programmes;
- Maintain the highest standards of Health and Safety for the public and personnel required to use , enjoy and work within the venue;
- Promote and market the programme with confidence to the community and maintain good relations with the external funding bodies, the media and the general public at large;
- Balance its annual budget by prudent management, financial control and direction of all its affairs

## 5.2 Clear responsibilities and arrangements for accountability

<b>The Board's basic responsibilities</b>		
<b>To focus on impact and outcomes</b>	To be clear and confident about why The Grand Theatre exists and what it aims to achieve. What are its values and beliefs which guide its work? In partnership with staff it is the board's role to decide the theatre's purpose and how it will achieve it.	<ul style="list-style-type: none"> <li>• Approve business and marketing plans</li> </ul>
<b>To ensure the Grand theatre is fit for purpose</b>	The structure policies and procedures of an effective charity enable it to achieve its mission and aims and deliver its services efficiently	<ul style="list-style-type: none"> <li>• Set goals for venues</li> <li>• Approve artistic policy and agree programming. Assess performance against programme</li> </ul>
<b>To ensure sound governance</b>	Ensure the right balance of skills and experience to run the charity effectively	<ul style="list-style-type: none"> <li>• Set boundaries between responsibilities of staff and board</li> <li>• Work to skills matrix</li> </ul>
<b>Maximises potential</b>	To be responsible for establishing plans and policies that will provide long term stability. The Board is trusted with responsibility to provide continuity of management, to set parameters within which staff can make day to day decisions	<ul style="list-style-type: none"> <li>• Appoint Manager</li> <li>• Set employment policies and code of conduct</li> <li>• Build relationship of mutual respect with staff</li> <li>• Strong financial strategy including fund raising</li> <li>• Review quarterly operational income/expenditure for current period and year to date against budget and forecast to year end</li> </ul>

		<ul style="list-style-type: none"> <li>• Review annual performance against budget</li> <li>• Analyze and approve future annual budget</li> </ul>
<b>Accountable and transparent</b>	Accountable to the public and other stakeholders in a way that is transparent and understandable	<ul style="list-style-type: none"> <li>• Comply with legal obligations</li> <li>• Clear about activities</li> <li>• Monitors performance</li> </ul>
<b>To establish and promote Leeds Grand Theatre's role in the community</b>	Building and promoting the identity of The Grand Theatre is one of the board's most important tasks. Board members are expected to inform and enthuse friends, acquaintances and strangers about the work of the Theatre. It has the responsibility to encourage the greatest possible involvement of the local community and look for opportunities to increase income.	<ul style="list-style-type: none"> <li>• Protect public interest</li> <li>• Review audience development, marketing and education strategies and targets</li> </ul>

For detailed information on responsibilities see The Board Manual

### **5.3 Clarity about Senior Officer roles**

Due to forthcoming changes in management of Leeds Grand Theatre the board should consider whether it wishes to replace the post as currently configured or whether the appointment of a Chief Executive may be more appropriate to take a significant leadership role across all three venues as well as a more particular focus on The Grand Theatre. This post would lead and provide a link between the Board, external stakeholders and the operational requirements of the company.

### **5.4 Ensure informed, transparent decision making and management of risk**

The Board needs to work within agreed schemes of delegation which clearly define what decisions the board is expected to make and as a result allows venue managers to make day to day decisions. The need to be mindful of risks and take decisions having considered and assessed real and potential risk.

### **5.5 A Board whose members have aligned their skills to organisational need and who work within a code of conduct**

A high performing Board is made of up of board members who have a clear understanding of their role. They need to be committed to the company's aims, objective, policies and programmes, aware of individuals strengths and skills. They need to be loyal to Board decisions, independent, service the company as a whole not an interest group within it. They should be able to lead an area of work as well as work as part of a team.

The Board needs to be representative of the diverse community of Leeds and have an interest in and broad expertise in the arts. To be fit for purpose The Board need to be skilled in education and learning, property management and development, finance and fundraising, legal issues, human resources, public relations, marketing and communication, business management and administration and cultural policy.

In addition Board members also need to be accountable, think strategically, monitor and evaluate performance, develop policy, make decisions, network, work as a team.

It is recommended that all Board Members be appointed against a skill matrix (Appendix 2). All Councillors would be elected for 1 year with a potential of 5 further re-elections so sitting for a maximum of 6 years.

It is recommended that an advertisement should be placed, following processes described in the Board Manual (Appendix 3) for a further four independent Board members. Again these posts must fill the gaps in the skills matrix. Independent members would normally be elected for 3 years, but to enable a rota to be established so not all Board and members leave at the same time it is proposed 2 are elected for 2 years and 2 for three years. This will enable in years to come 1/3 of Board being replaced or re-elected each year. An independent member will take the Vice Chair. The Senior Manager of the company will work with the chair to set agendas and prepare papers.

The transitional Board must be able to cover the priority skills of Learning, Property Management, Finance or Legal.

Three officers from the Council will also advise the Board covering legal, financial and cultural policy issues and to help it continue to review its working as a more independent company.

## **6.0 What needs to happen next**

To bring about the changes suggested in this report the Leeds Grand Theatre Board will have to undertake the following actions as a priority with support and guidance from Council officers;

- Place advertisement for Independent members
- Start member selection process
- Set date for Current board to select independent members

The new Board will then have to ;

- Work to the new Board Manual
  - Review roles and responsibilities and aims and objectives
  - Establish scheme of delegation
- Seek replacement for current General manager considering value of a Chief Executive officer role
- Task the General Manager or replacement to represent board at Project Board for Phase 2 and report back
- Keep an active interest in Phase 2 including fundraising
- Consider the best option for the future governance of the company and initiate action to achieve it



## 7.0 Risk Analysis

There are a number of risks attached to introducing the proposed transitional Board which would make Leeds Grand Theatre and Opera House Board to a more accountable, independent organisation fit for purpose for the foreseeable future. The key risks in this process are:

- 7.1 Inadequate project management to enable the new board to function in a new way.** This will be mitigated by providing three senior level council officers who are experts in legal, financial and cultural policy issues. The Department of Learning and Leisure will run the initial advertisement and appointment process for the independent members and Council processes will be introduced with immediate effect to enable appropriate and rapid decision making. These can be extended, revised or adopted by the new board at a later date
- 7.2 The skills matrix is not used for all board members and the priorities are not met.** The skills approach to appointing board members is recommended as best practice by the Charity Commission. If Executive Board approve its introduction it will be used by Member Services for the appointment of Councillors to the Board and as part of the recruitment process for the independent members. The process recommended in the Board Manual follows an approach adopted by other leading companies
- 7.3 Size of board too small to represent adequately all the skills required for the complex mix of venues which make up the company.** The current Memo of Understanding allows for 9 members it is proposed to implement the new skills approach alongside the appointment of five Councillors and four Independent members. It will then be possible to see how well the skills required can be covered and the new board can consider increasing the size of the board to add more skills as part of its review of its future operation. In the first instance the skills identified have been prioritized in terms of need to ensure the Board can meet its basic requirements
- 7.4 Inability to recruit and retain independent members and lack of clarity of their role.** To mitigate this risk the roles and responsibilities of all members have been defined in the Board Manual. The Charity Commission also produce a number of very useful booklets and leaflets on their website. Prospective candidates for these posts will be sent either the leaflets or web addresses.
- 7.5 Delegated decision making arrangements not fully considered or implemented so board continue to take operational rather than strategic decisions.** The three council advisors will assist in the development and implementation of a scheme of delegation. Initial elements of this have already been introduced through a more rigorous decision making process. This process appears to be working well although some initial problems have been identified and resolved.

## 8.0 Recommendations

Executive Board is asked to approve;

- The establishment of a transitional Board of five City Councillors and four independent members all appointed using a skills matrix and nomination form. The independent members will be attracted through external advertisement. Three senior council officers representing Legal, Financial and cultural policy will advise the transitional board. The Chair to be an Executive Board member
- The adoption of the Board manual to guide future Board actions and maintain Good Governance principles