

Leeds Grand Theatre – Early Works Contract

Date: 4th March 2024

Report of: Asset Management and Regeneration

Report to: Director of City Development

Will the decision be open for call in?

Yes No

Does the report contain confidential or exempt information?

Yes No

Brief Summary

The proposed repair works required at 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 is a Grade II* Listed Building, which enjoys a national reputation and is regularly used by Opera North and Northern Ballet. The Theatre forms a major component of the city's cultural infrastructure. Leeds City Council (the Council) 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.

The Council are the freehold owner of the Theatre and Leeds Grand Theatre and Opera House Limited (LGT) are the Tenant under the lease dated September 2006 (the Lease). LGT have previously approached the Council for assistance with legacy repair costs relating to the condition of the Theatre, the Council acknowledges this view and understanding the cultural importance of the Grand Theatre is exercising its discretion to undertake these works to maintain continuity of the Theatre's operation.

LGT request that the Council fund those immediate priority works that have health and safety implications for staff and the public and business critical works that if they were to fail would result in the temporary closure of the Theatre. A business-critical failure would place significant financial liability on LGT to cover any lost income for visiting companies (in a standard commercial week generating circa £1m of income, some 85% would be due to the visiting company). LGT advise that their business-critical insurance would not cover this essential maintenance as they are pre-existing problems.

This report seeks to approve an Early Works and Underwriting Agreement (EWUA) up to the value of £500,000 Stone Technical Services Group Limited (the Contractor) and associated design and management consultants. This is due to urgent nature health and safety implications of the Theatre repairs. The EWUA will enable the Council to instruct the Contractor to commence the critical enabling works ahead of the approval of the Key Decision. It is proposed the time period the EWUA will cover will be from 18th March 2024 until 30th April 2024 ("the Early Works Period").

The Council will also require Project Manager and Quantity Surveyor services during the Early Works Period. This appointment will be governed under an Administrative Decision.

Recommendations

The Director of City Development is recommended to approve the Council entering into an EWUA with the Contractor and agreements for project manager and quantity surveyor services during the early works up to the sum of £500,000. This is due to urgent nature health and safety implications of the Theatre repairs. The EWUA will enable the Council to instruct the Contractor to commence the critical enabling works required on the Theatre site ahead of the approval of the Key Decision.

What is this report about?

- 1 LGT have previously approached the Council for assistance with legacy repair costs relating to the condition of the Theatre. It has been determined by the Council's Technical Advisor that these urgent repair works most likely predated the Lease, meaning these are legacy repair issues which are the Council's responsibility to remedy. The Council acknowledges this view and understanding the cultural importance of the Theatre is exercising its discretion to undertake these works to maintain continuity. On 7th February 2024 Executive Board approved

the injection of £1.7m into the Council's capital programme for the delivery of these works and this was approved by Full Council on 21st February 2024.

- 2 The Council proposes to fund those immediate priority works that have health and safety implications for staff and the public and business critical works that if they were to occur would result in the temporary closure of the theatre. A business-critical failure would place significant financial liability on LGT to cover any lost income for visiting companies (in a standard commercial week generating circa £1m of income, some 85% would be due to the visiting company). LGT advise that their business-critical insurance would not cover them for the number of known problems.
- 3 LGT have advised that due to schedules at the Theatre, the enabling works need to commence the week commencing 18th March 2024, as the most invasive works can take place then whilst there are no productions planned. Further works can then continue when performances begin again, as the proposed Contractor has significant experience in dealing with live theatre environments. Any delays to the works commencing will have an impact on LGT's schedules and potentially lead to cancellations with visiting companies. This would have a financial implication to LGT and potentially the Council, acting as Landlord. Therefore, it is now business critical that these enabling works are commenced on the 18th March 2024, to ensure the target activity programme is met.
- 4 Planning and Listed Building applications for the proposed paint frame/bowing wall works were submitted on 17th August 2023 and listed building consent to carry out essential works was obtained and determined in December 2023.

What impact will this proposal have?

- 5 Given the need to maintain the development programme and the need to minimise the Council's financial risk exposure, it is considered that in order to meet the programme whilst the standard Key Decision has been published for the Main Works entering into early works agreements will enable the overarching programme to remain on track and works to commence as early as 18th March 2024.
- 6 Given the nature of the proposed works, to either appoint other consultants to assume design responsibility for such works, or to seek to procure another specialist contractor to undertake the works, would more than likely increase the Council's risk exposure by delaying the start of the works possibly into early 2025, with consequential reputational, cost and health and safety implications to both the Council and LGT.
- 7 If the proposed action is not approved, there is a significant risk of an unplanned closure of the theatre with an inevitable impact on the operation of the Theatre, with major financial impacts as a result.
- 8 It is not considered feasible to appoint NPS Leeds, procure other consultants via a mini competition from the YORconsult Framework or seek to procure a contractor from the YORbuild Framework, as this would significantly impact on the programme, add cost to the Council and adversely impact the operational arrangements of LGT.
- 9 Should the report be approved, then work will immediately commence by Officers in Procurement and Commercial Services (PACS) to award the EWUA to the Contractor. It will also then allow the Contractor to mobilise for a start on site on 18th March 2024, ahead of the

Key Decision and expiry of the Call-In period on 28th March 2024, ensuring the target activity programme is met.

How does this proposal impact the three pillars of the Best City Ambition?

Health and Wellbeing

Inclusive Growth

Zero Carbon

10 The Theatre contributes to both a strong economy and to a compassionate city by making Leeds a more attractive place to invest and also a better place to live, supporting people's wellbeing.

11 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 maximizing the impact of our cultural infrastructure.

What consultation and engagement has taken place?

Wards affected: Little London and Woodhouse

Have ward members been consulted?

Yes

No

12 The Executive Member for Economy, Culture and Education, and ward members for the Little London and Woodhouse ward were consulted in early February 2024 regarding the critical works and have not objected to the recommendations contained in the forthcoming Waiver report.

What are the resource implications?

13 Funding totalling £1.7m has been injected into the Capital Programme with expenditure proposed in 2024/25 and 2025/26 and was approved at Full Council on 21st February 2024.

14 The EWUA will commit funding up to the value of £500,000, ahead of the Key Decision.

What are the key risks and how are they being managed?

15 There is a risk that the works not being started on 18th March 2024, means that intrusive works are delayed and as such require the closure of the Theatre at short notice. As a consequence, this leads to productions by visiting companies being cancelled, leading to LGT being liable to compensation claims from the companies.

16 In addition, there is a risk that many of the jobs of the 235 people directly employed by LGT and many of the casual staff would be at risk should the works impact on the Theatre's schedules. A closure of the theatre would also impact on LGT's Learning and Engagement programme of work with young people. 64% of LGT's school partners have above average free school meals entitlement, 57% have above average pupil need for Special Educational Need support and 60% of pupils study in areas of the city experiencing low progression to higher education.

17 Given the Theatre is a Grade II* listed building that remains open and fully operational, only a limited amount of intrusive survey work has been possible before work commences on site. For this reason, further issues may be identified once the urgent remedial works commence on the Theatre and if these arise discussions will need to take place with LGT to find a solution this may lead to additional cost.

18 There is a risk any further delays to the Waiver report being signed off may also lead to a deterioration in the Theatre building and cause a health and safety incident which will reputationally and financially effect the Council.

What are the legal implications?

- 19 The proposed spend under the EWUA to the Contractor is deemed a High Value Procurement under the Council's Contract Procedure Rules (CPR) which are governed under CPR 9. CPR 9.1 requires competition for procurements of this value, in the absence of an internal service provider or framework and CPR 9.2 details competition as four written quotes. However, CPR 9.4 can be used to waive the procurement requirements of CPR 9.1 and 9.2, however any decision to waive CPR 9.1 and 9.2 needs to be approved by the relevant Director and be in accordance with CPR 27.
- 20 Therefore, decision to enter into a EWUA would be deemed a Significant Operational Decision, in accordance with CPR 27.2, as any decision to waiver the CPR must be determined as a Significant Operational Decision at a minimum. The decision is however not subject to a call in and there are no grounds for keeping the contents of the report confidential under the Access to Information Rules.
- 21 The EWUA has been produced with the support of Procurement and Procurement Legal.
- 22 The value of the EWUA proposed here is below the works threshold for the UK Public Procurement. Therefore, we are not subject to the full parameters of The Public Contracts Regulations 2015 presently.
- 23 Advice has been sought from the Commercial Property Team in Legal Services as to the terms of the lease and they have confirmed that, in all probability, the emergency conservation repair which is required to be carried out is the responsibility of the Council, but that in accepting that, the Director of City Development should note that the Council is undertaking such works without prejudice to any future liability for maintenance/repair works at the Theatre.
- 24 In accordance with CPR 9.8 the details of this award must be published on the Council's E-tendering System and Contracts Finder, to ensure compliance with data transparency legislation.
- 25 These comments should be noted by the Director for City Development and in making the final decision and should be satisfied that doing so represents best value for the Council.

Options, timescales and measuring success

What other options were considered?

- 26 Delaying these enabling works until the publication of the waiver report and Key Decision in accordance with the normal key decision timetable of 28 days, would mean that urgent health and safety works would not be able to take place in the timescales needed.
- 27 A letter of comfort was proposed to LGT, however following discussions with Legal Officers in PACS, it was felt an EWUA directly with the Contractor would give both the Council and LGT greater certainty from a contractual perspective.

How will success be measured?

- 28 The delivery of the proposed works in a safe and timely manner resulting in a safe operational theatre building remaining open to the public will constitute a successful outcome.

What is the timetable and who will be responsible for implementation?

- 29 Subject to approval to enter into EWUA with the Contractor, it is proposed that Officers in PACS will oversee the agreement of contracts between both parties. It is expected this will take place in mid-March 2024 to enable works to start on site on 18th March 2024. The main appointment

of the Contractor under a JCT Intermediate Building Contract with Contractor's Design contract form is anticipated to take place in April 2024, following approval under the Key Decision.

Appendices

- N/A

Background papers

- N/A