

Leeds Grand Theatre Waiver Report

Date: 18th March 2024

Report of: Asset Management and Regeneration
Report to: Chief Officer Operations and Active Leeds

Will the decision be open for call in? Yes No
Does the report contain confidential or exempt information? Yes No
Appendix A is confidential under Access to Information
10.4(3)

Brief summary

The proposed maintenance works to Leeds Grand Theatre (the Theatre) are consistent with the Best Council Plan in terms of promoting sustainable and inclusive economic growth by maximising the impact of our cultural infrastructure and employment opportunities for local residents. The Theatre is a Grade II* Listed Building, which enjoys a national reputation and is regularly visited by 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 is the freehold owner of the Theatre and Leeds Grand Theatre and Opera House Limited (LGT) is 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.

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 approval to waive the Council's Contract Procedure Rules (CPRs) 8.1 and 8.2 to appoint JBH Developments Ltd (the Consultant) directly to undertake project management consultancy services for the sum of up to £35,000.

Further approval is required under this report to waive CPR 9.1 and 9.2 respectively, to appoint Stone Technical Services Group Ltd (the Contractor) to undertake the urgent repair works recommended by the Consultant for the estimated sum of £1.676 million.

Both direct appointments to the Consultant and the Contractor recommended have been made for technical reasons with each having relevant experience working with listed buildings with significant structural issues, that are also live performing events venues.

Following approval from the Chief Officer for Operations and Active Leeds an Early Works Underwriting Agreement (EWUA) to the sum of £500,000 is being entered into with the Contractor with agreements for project manager and quantity surveyor services due to the urgent nature of the works. This sum will be deducted from the headline figures quoted.

Recommendations

a) The Chief Officer for Operations and Active Leeds is recommended to:

- I. approve the waiver of CPR 8.1 and 8.2 to directly appoint the Consultant to provide project management consultancy services for the urgent repair works required at the Theatre for the sum of up to £35,000.
- II. approve the waiver of CPR 9.1 and 9.2 to authorise the Council to directly appoint the Contractor to carry out the design and delivery of the urgent repair works to the Theatre for an estimated sum £1.676 million.

b) This is on the grounds that the Consultant and the Contractor need to be experienced with working on listed buildings with significant structural issues and which are also live performing events venues. The figures quoted are inclusive of up to £500,000 works carried out under an Early Works and Undertaking Agreement approved by the Director of City Development on 14th March 2024 to enable urgent works to commence and minimise risk exposure.

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, 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. 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 To ensure that the proposed works are delivered efficiently, both on programme and within budget, it is considered that both the Consultant previously appointed by LGT to develop design proposals for the works and the due to their specialist experience in live theatre environments the preferred Contractor was identified to undertake the works remaining best placed to assume responsibility for the design and delivery of the works on site. It is proposed an NEC4 Professional Service contract (NEC4 PSC) would be in place between the Council and the Consultant. Both the Consultant and preferred Contractor have a detailed knowledge and understanding of similar projects and, are best equipped to ensure that the works are fully coordinated with all interface issues between the respective works being addressed through the design phase and, with the preferred contractor prior to and whilst works progress on site. It is proposed that the Council will enter into an NEC4 PSC with the Contractor for the design element and an NEC4 Engineering and Construction Contract for the works.
- 4 The immediate priorities identified by LGT for which funding totalling £1.7m exclusive of VAT, but inclusive of fees and contingencies for expenditure in 2023/24 (£440,000) and 2024/25 (£1.26m) was approved at Full Council on 21st February 2024:
 - The paint frame and bowing wall fronting onto Harrison Street: The proposed work involves stabilising the existing paint frame floor and attaching this floor to the external

elevation and stage wall internally. A frame at a higher level will also be attached to stabilise the bowing wall to prevent collapse onto the vehicle get in lift and Harrison Street below. Cost estimated at £400,000 (rounded).

- The repair/replacement of 3no. roof areas currently experiencing severe rainwater ingress with consequential damage to structural infrastructure below. The proposed works involve a complete roof strip, replacement of rotten timbers, with new roof coverings, The cost of the works is estimated at £950,000 (rounded). These roofing works do not include the roof area over the main auditorium which was replaced in August 2017 but do impact on public circulation and staff areas below.
- Structural works to the front of the theatre building including provision of new roof trusses and structural intervention to stabilise the roof turrets fronting over the theatre's main entrance on New Briggate, along with repairing the ceiling to the Emerald Grand Hall. The works to the turrets involve re-tensioning the wrought iron trusses supporting the roof and for such trusses to be reset onto padstones, along with strengthening the timber trusses in this area of the building which support the main entrance roof. In addition, structural work around the arched windows to the Emerald Grand Hall which are showing signs of stress and cracking will be undertaken which in turn will help stabilise the Grand Hall ceiling. LGT have advised that netting has had to be installed to capture any falling masonry.
- The Consultant will undertake the project management and quantity surveyor function for these legacy repair works required.

5 All the works noted above will be undertaken whilst the Theatre remains operational for performances and open to the public.

6 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?

7 Given the need to maintain the development programme and the need to minimise the Council's risk exposure, it is not considered practical 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, as such would more than likely increase the Council's risk exposure by delaying the start of the works possibly into early 2025, with consequential cost implications to both the Council and LGT.

8 If the Chief Officer for Active Leeds and Operations is minded to approve the Waiver of Contract Procedure Rules to appoint the preferred Contractor and Consultant without the need to invite competitive tenders for the works and services, it should be noted that further reports will be presented for approval detailing the provisional terms and conditions that have been agreed with consultant for their design input to the project and, the preferred contractor to progress the works on site.

9 If the proposed action is not approved, there will be a continuing risk to staff and members of the public with consequential risk to the operation of the Theatre.

10 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.

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

Health and Wellbeing

Inclusive Growth

Zero Carbon

11 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.

12 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

13 The Council's Strategic Investment Board at its meeting on 19th December 2023 was advised as to the proposed works and the importance of them being undertaken as soon as possible so as not to adversely impact on the operation of the theatre and to ensure public safety given water ingress means that the building issues will continue to worsen until this is resolved.

14 The Council's Procurement and Legal teams within Procurement and Commercial Services has been consulted with regards to this proposal.

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

What are the resource implications?

16 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. Owing to the health and safety and business critical implications of the urgent repair works, it is proposed that the works to the paint frame floor and bowing wall be undertaken by the Council this financial year (cost £440,000), with the remaining works estimated at £1.26m progressed as early as possible in 2024/25. Pending the works being progressed, LGT will continue to monitor the bowing wall for movement and will continue the mitigation measures in place in the theatre to manage and control the risks to LGT staff and the public.

17 On 14th March 2024 the Director of City Development approved the Council entering into an Early Works Underwriting Agreement (EWUA) with the Contractor and agreements for project manager and quantity surveyor services during the early works up to the sum of £500,000. The EWUA enables the Council to instruct the Contractor to commence the critical enabling works required on the Theatre site ahead of the approval of this Key Decision.

18 Further details of the cost of the works and the value of the contract to be entered into with the Contractor is detailed in Appendix A of the report which is Exempt/Confidential under Access to

Information Procedure Rules 10.4 (iii) because this information is commercially sensitive relating to contracts which have not yet been entered into.

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

- 19 The Theatre is a Grade II* listed building that remains open and fully operational. As such, only a limited amount of intrusive survey work has been possible before work commences on site. For this reason, a level of client contingency commensurate with the risks that may only become apparent once works are on site has been included in the project cost plan by the Consultant.
- 20 There is a risk that the start of the proposed works may be delayed such that they are not completed by the end of the year/early 2025. This risk cannot be completely mitigated as there are several time critical actions to be addressed in order to meet the timetable for completion of the works.
- 21 There is a risk that the contractor's price for the works will exceed the budget estimate for the individual work packages. The risk cannot be completely mitigated and if it did occur, the scheme proposals would be reviewed to achieve a budget compliant scope of works.
- 22 There is a risk that the level of project contingency in the budget (ranging from 10% to 15% for each work package referred in paragraph 3) may not address the unknown risks that only become apparent once works commence on site. This risk cannot be completely mitigated as regard has to be given that the contractor will be working in a live theatre environment. Whilst there can be no guarantee that the unknown risks can be managed with the project contingency sum, the intention will be to put in place a robust change control process during the works period.
- 23 In addition to the construction risks associated directly with the proposed works, should a business critical incident occur that forces the closure of the Theatre at short notice, then dependent upon the duration of any such closure, in addition to the potentially significant compensation payable by LGT to visiting companies (not covered by business critical insurance) many of the jobs of the 235 people directly employed by LGT and many of the casual staff would be at risk. 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 SEN support and 60% of pupils study in areas of the city experiencing low progression to higher education.

What are the legal implications?

- 24 In accordance with CPR 9.7, any decision to waive the CPR's must be determined as a Significant Operational Decision at a minimum, however owing to the value of the appointment to the Contractor here, this decision is designated as a Key Decision and as such will subject to a call-in. There are no grounds for keeping the contents of the report confidential under the Access to Information Rules (with the exception of Appendix A as detailed in paragraph 27 below).
- 25 The Appendix is Exempt/Confidential under Access to Information Procedure Rules 10.4 (3). The public interest in maintaining the exemption in relation to the confidential Appendix outweighs the public interest in disclosing the information and financial details which, if disclosed would adversely affect the business of the Council and the business affairs of a number of individual companies.

- 26 The value of the procurement proposed to the Consultant (£35,000) is deemed an Intermediate Value Procurement, which is governed by the Council's Contract Procedure Rules (CPR), specifically CPR 8.1 which requires competition for procurements of this value, in the absence of an internal service provider or framework and CPR 8.2 details competition as three written quotes. However, CPR 8.3 can be used to waive the procurement requirements of CPR 8.1 and 8.2, in situations where "*genuinely no competition such that only a particular organisation or provider can meet the Council's specific requirements (e.g., when commissioning a unique product or service).*" This report clearly details why the urgent repair works are required to the Theatre.
- 27 In accordance with CPR 8.7 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.
- 28 The value of the procurement proposed to the Contractor (£1.676 million) is deemed a High Value Procurement, which is governed by the Council's Contract Procedure Rules (CPR), specifically CPR 9.1 which 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 tenders. The value of the works proposed is below the UK Public Procurement threshold for works, as such CPR 9.3 does not apply. However, CPR 9.4 states that any decision to waive CPR 9.1 or 9.2 by a relevant Director / Chief Officer, must be made in accordance with CPR 27.
- 29 CPR 27.1 sets out that waivers of the CPRs are only permitted in very exceptional circumstances. The Delegated Decision must demonstrate clearly the exceptionality of the circumstances and evidence that waiving the particular rule(s) represents value for money or is in the Council's/public's best interests. 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. These repairs are now urgent and are required to meet health and safety requirements and the waiver is being requested on this basis. In this instance LGT's appointed Consultant and preferred Contractor already have considerable technical knowledge of historic listed buildings and undertaking works in an occupied building. Therefore, to do otherwise has the potential to have cost and programme implications for the Council.
- 30 It is proposed that a design consultant, MC Consulting Ltd, will be directly appointed outside of this waiver report to the value of £23,556.03. Similar to the Consultant and Contractor, MJC Consulting Ltd have had significant experience in design for theatre environments and therefore the direct award will be covered by CPR 7, and CPR 7.2 which allow direct award as it is considered best value.
- 31 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 essential conservation repair which is required to be carried out is the responsibility of the Council, but that in accepting that, the Chief Officer for Operations and Active Leeds should note that the Council is undertaking such works without prejudice to any future liability for maintenance/repair works at the Theatre.
- 32 Although there is no overriding legal obstacle preventing the proposed Waiver of Contracts Procedure Rules, the above comments should be noted. In making a final decision, the Chief

Officer for Operations and Active Leeds should be satisfied that the course of action proposed represents best value for money to the City Council.

- 33 If the Chief Officer for Operations and Active Leeds is minded to approve this Waiver, it should be noted that the precise mechanism for contracting with LGT's design team and preferred contractor has yet to be determined (in some instances it is likely to be by way of novation of an existing contract with LGT to the Council) and will be discussed in detail with officers from the Council's Procurement and Contract Services (PACS).
- 34 On 14th March 2024, the Director of City Development approved the Council to enter into an Early Works Underwriting Agreement (EWUA) with the Contractor and agreements for project manager and quantity surveyor services during the early works up to the sum of £500,000 which is expected to be signed by all parties on 20th March 2024. This is due to the aforementioned urgent nature health and safety implications of the Theatre repairs. The EWUA enables the Council to instruct the Contractor to commence the critical enabling works required on the Theatre site ahead of the approval of this Key Decision.

Options, timescales and measuring success

What other options were considered?

- 35 Given the need to maintain the development programme and the need to minimise the Council's risk exposure, it is not considered practical given the nature of the proposed works to either appoint other design consultants to assume design responsibility for such works, or to seek to procure another specialist contractor to undertake the works, as such would more than likely increase the Council's risk exposure by delaying the start of the works possibly into early 2025, with consequential cost implications to both the Council and LGT.
- 36 It is not considered feasible to appoint NPS Leeds, procure other design 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.

How will success be measured?

- 37 The delivery of the proposed works in a safe and timely manner resulting in a safe operational theatre building open to the public.

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

- 38 It is proposed that the works to the paint frame floor and bowing wall be undertaken by the Council in this financial year (cost £440,000), with the remaining works estimated at £1.26m progressed as early as possible in 2024/25. Christopher Capitano is responsible for the delivery and project management of the works.

Appendices

- Appendix A – Confidential under Access to Information procedure 10.4 (3) Contractor quotes for the works

Background papers

- None.