

PLYMOUTH CITY COUNCIL

Subject: Theatre Royal Regeneration Project
Committee: Cabinet
Date: 11th September 2012
Cabinet Member/s: Councillor Mark Lowry & Councillor Peter Smith
CMT Member: Anthony Payne
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Ref: Theatre Royal
Key Decision: Yes
Part: Part I

Purpose of the report:

This report provides Plymouth City Council the exciting opportunity to facilitate £5 million of external grant funding into a total £7 million regeneration scheme of one of Plymouth's most important physical assets, economic and cultural drivers – Theatre Royal Plymouth. Without the Council's intervention which will be on a cost neutral basis, this major capital investment simply will not proceed and the associated physical improvements, economic, social and cultural benefits to the City will be lost.

The freehold of the Theatre Royal Plymouth (built in 1982) is owned by the Council and the property is let to the operator; Theatre Royal Plymouth Ltd (TRP Ltd). As a centre of artistic excellence, the Theatre Royal is a cultural hub serving both Plymouth and the South West region. It has received national critical acclaim for both its artistic and community outreach programme work and is recognised as one of the most successful regional producing theatres in the UK. Research by the University of Sheffield on the UK theatre sector demonstrated that Theatre Royal Plymouth has the third highest economic impact of all theatres in the UK after the National Theatre and RSC, in leveraging in an annual £26 million benefit to the Plymouth City economy. As a result of the importance of the theatre to the city, and the viability gap of running such an operation, the Council currently provides revenue grant support of £665,000 per annum and leases the theatre premises on a peppercorn rental.

The Theatre Royal Regeneration Project will renovate an ageing Council asset by the refurbishment and redevelopment of the public areas making it fit for purpose for the next 30 years and in particular will:

- Create a third auditorium in the existing basement, allowing the theatre to develop its city centre outreach work for young people and community groups with overall targets for year one set at achieving 3,600 new attendances by young people of which 50% will be young people identified as vulnerable, at risk, or living in areas of the city with high levels of deprivation.
- Replace the existing aluminium cladding and windows dramatically improving the building's appearance and environmental performance to Building Research Establishment Environmental Assessment Method (BREEAM) very good, by reducing carbon emissions.
- Provide an extension to the main entrance area improving physical access by the removal of steps to the premises.

- Renovations and improvements to existing front of house areas including new catering facilities.
- Completely transform and modernise the existing exterior of the building and adjoining public realm areas acting as a catalyst to promote the regeneration of the west end of the City Centre and overall visitor offer.

The total cost of the above works is estimated at circa £7 million and £5 million of this amount has provisionally been allocated by Arts Council England (ACE) subject to the ability of TRP Ltd to demonstrate £2 million of match funding and the restructuring of the current leasing arrangements to meet ACE security of funding requirements. It is in these areas that the Council can act as enabling partner on a cost neutral basis and the following report sets out how.

Corporate Plan 2012 – 2015:

Deliver Growth:

The redevelopment and refurbishment project will ensure that Plymouth Theatre Royal maintains its position as one of the most successful and best attended regional producing theatres. Research by the University of Sheffield on the UK theatre sector demonstrated that Theatre Royal Plymouth has the third highest economic impact of all theatres in the UK after the National Theatre and RSC, in leveraging in an annual £26 million benefit to the Plymouth City economy. The successful delivery of the Theatre Royal Regeneration Project will serve to maintain and enhance this important economic benefit to the city.

Raise Aspirations:

The creation of a third auditorium in the existing basement dedicated to supporting the theatre's wide ranging community programme will also play a key role in raising aspirations within the city particularly in relation to culture and the arts.

Provide Value for Communities:

The Council acting as an enabler for the Theatre Royal Regeneration Project will reduce the Council's current external repair liabilities in respect of the Theatre's aluminium cladding and also lever in £5million of external grant monies for the overall benefit of the city. The improvement of the exterior of the Theatre building along with adjoining public realm areas will lift the west end of the city centre and enhance the overall visitor offer.

Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land

The current level of revenue funding to TRP Ltd of £665,000 per annum forms part of the Council's existing budget and MTFP. However, use of future years allocations up to and including 2014/15 requires Cabinet authorisation.

Subject to the above, payment of the three year revenue provision from 2012/13 to 2014/15 can be withheld and allocated to Council procured capital works on the theatre to an equivalent total value of £1,995,000 to act as match funding in relation to the grant application to ACE.

TRP Ltd have confirmed that any shortfall in their operational costs during this period will be met from a combination of existing reserves and fund raising.

In procuring works to the theatre which are the Council's area of responsibility under the leasing arrangements, VAT can be recovered by the Council.

It has been agreed that the arrangement will be cost neutral to the Council in terms of the project management of the capital works together with any unsupported borrowing costs in respect of the early advancement of the 2014/15 revenue grant allocation. Therefore, these costs will be met from within the Councils £1,995,000 contribution.

The granting of a new lease on the terms proposed will clearly provide a 30 year asset transfer of the theatre premises to TRP Ltd and the Council will only have restricted rights to obtain possession within this time period, for example in the event of tenant default of the terms and provisions within the lease. The current lease to be surrendered is a protected business tenancy under the Landlord and Tenant Act 1954 and TRP Ltd would have an automatic right to renewal on the expiry of the existing lease in 2027 unless the Council wished to redevelop the site or use the building for its own occupation or in other limited circumstances set out in the 1954 Act. In practice therefore, the surrendering of the existing protected lease and the granting of a new lease albeit for a longer term has little impact on the Council's ability to obtain possession of the premises. In any event, it is extremely unlikely that the Council would wish to obtain possession, TRP Ltd have successfully managed the Theatre Royal since 2002 and in not granting the new lease the proposed regeneration project would not proceed and the Council would be placing the future sustainability of the Theatre Royal at significant risk.

In the Council acting as an enabler to the Theatre Royal Regeneration Project (on a cost neutral basis) a £7million investment will be made into this Council owned asset. In addition, this investment will mitigate the Council's current external repair liabilities in respect of the aluminium cladding for a further circa 30 year period.

Other Implications: e.g. Child Poverty, Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:

The improvement of the exterior of the theatre building and the adjoining public realm will help lift civic pride and promote community safety in the area.

TRP Ltd will continue to operate and manage the Theatre Royal premises including health and safety matters.

The environmental performance of the building will be improved to BREEAM *very good*, by the reduction of carbon emissions.

Improvement of physical access to the theatre building will promote equality.

The creation of a third auditorium dedicated to supporting the theatre's wide ranging community programme will aid in promoting diversity and community cohesion.

Recommendations & Reasons for recommended action:

Conditional on TRP Ltd successfully obtaining grant funding from ACE up to the sum of £5 million (outcome to be advised in early November 2012) it is therefore recommended that Cabinet approve:

1. To accept a surrender of the existing lease and simultaneously;
2. Grant a new lease for a 30 year term at a peppercorn rental (on the basis of promoting the economic and social wellbeing of the City under Section 2 of the Local Government Act 2000) on similar terms to the lease surrendered.

3. To grant a comprehensive licence to alter in respect of the proposed major alteration works.
4. To incorporate in the new lease a right to assign the leasehold interest to ACE or to a performing arts organisation as directed by ACE.
5. To grant consent to a legal charge to be placed on the leasehold interest of the property in favour of ACE.

Reason for 1-5 above: To meet Arts Council England funding requirements to enable up to £5 million of grant funding on a major capital project for Plymouth.

6. To confirm revenue support allocation to TRP Ltd at the current level of £665,000 per annum up to and including financial year 2014/15.
7. To recommend to Council the inclusion of a new capital scheme up to the value of £1,995,000. The scheme to be funded from the withholding of PCC revenue contributions approved in 6. above for a 3 year period (equating to £1,995,000), making the capital works cost neutral to the Council.

Reason for 6-7 above: To provide match funding in order to secure grant of up to £5million from Arts Council England, delivered as a tax efficient parcel of works under the Council's 2013/14 capital programme.

Alternative options considered and reasons for recommended action:

Alternative options include the following:

1. Granting new 30 year lease to TRP Ltd in accordance with ACE funding requirements.

Whilst satisfying ACE security of funding requirements, the above would leave TRP Ltd unable to demonstrate the level of match funding required by ACE, in this event the project would not proceed.

2. Granting new lease to TRP Ltd in accordance with ACE funding requirements and permitting the conversion of confirmed 3 year revenue allocation to capital as match funding for direct delivery by TRP Ltd.

Whilst meeting the security and match funding requirements of ACE in order to deliver the project, the above scenario would mean that TRP Ltd would be liable to pay VAT on the PCC match funded £1,995,000 parcel of construction works. This is not a tax efficient method of procuring the works and the financial benefits derived from PCC procuring the works can be utilised to further enhance the proposed scheme and addition to covering PCC's costs including unsupported borrowing for year 3 funding allocation if required.

The proposed option enables TRP Ltd to secure the ACE funding to facilitate the delivery of the regeneration project in the most tax efficient manner available.

Background papers:

Lease of Theatre Royal Plymouth dated 30th September 2002
Theatre Royal Property File held in the Economic Development Service
District Valuer – Market Value Report for Theatre Royal dated 17th July 2012

Sign off:

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Originating SMT Member: David Draffan											
Have you consulted the Cabinet Member(s) named on the report? Yes											

I. Introduction

- I.1** The freehold of the Theatre Royal Plymouth is owned by the Council and the property is let at a peppercorn rental to Theatre Royal Plymouth Ltd (TRP Ltd) on a 25 year lease dated 30th September 2002 expiring on the 29th September 2027. The lease is protected under Part 2 of the Landlord and Tenant Act 1954 which means that upon the expiry of the term TRP Ltd as tenant has an automatic right to renewal on the same terms as the current lease, which includes a tenant only option to break the lease every 3 years and repairing liabilities restricted to internal areas only. The Council is liable 'to keep the reinforced concrete core of the building together with any other exterior walls and the roof in good repair and condition'.
- I.2** TRP Ltd is a registered charity whose aim is to promote, maintain, improve & advance education particularly by the production & encouragement of the arts; including drama, mime, dance, singing and music. The Theatre Royal Plymouth is the UK's largest and best attended regional producing theatre in the UK. The Theatre is one of Plymouth's jewels and makes an invaluable contribution to education, culture and the arts within the City in addition to the associated economic benefits of a major regional visitor attraction. As a result of the cultural and economic importance of the theatre, and the viability gap of running such an operation, the Council currently provides revenue grant support of £665,000 per annum and leases the theatre premises on a peppercorn rental.

2. Proposal

- 2.1** TRP Ltd obtained planning permission in February 2012 for the Theatre Royal Regeneration Project which will renovate an ageing Council asset by the refurbishment and redevelopment of the public areas making it fit for purpose for the next 30 years and in particular will:
- Create a third auditorium in the existing basement, allowing the theatre to develop its city centre outreach work for young people and community groups with overall targets for year one set at achieving 3,600 new attendances by young people of which 50% will be young people identified as vulnerable, at risk, or living in areas of the city with high levels of deprivation.
 - Replace the existing aluminium cladding and windows dramatically improving the building's appearance and environmental performance to Building Research Establishment Environmental Assessment Method (BREEAM) very good, by reducing carbon emissions.
 - Provide an extension to the main entrance area improving physical access by the removal of steps to the premises.
 - Renovations and improvements to existing front of house areas including new catering facilities.
 - Completely transform and modernise the existing exterior of the building and adjoining public realm areas acting as a catalyst to promote the regeneration of the west end of the City Centre and overall visitor offer.
- 2.2** The total cost of the above works is estimated at circa £7 million and £5 million of this amount has provisionally been allocated by Arts Council England (ACE) subject to the ability of TRP Ltd to demonstrate £2 million of match funding.
- 2.3** In order to enable the proposed scheme TRP Ltd has requested the following:

- 1 That the Council accept a surrender of their existing lease and grant a new 30 year lease at a peppercorn rental which meets the funding requirements of ACE.
- 2 That the Council as landlord grants consent to the proposed alterations to the existing Theatre Royal building as shown on the attached plans.
- 3 That the Council ceases the revenue support to the Theatre for a three year period and undertakes capital works to the equivalent value i.e. £1,995,000 in lieu of the grant payment. The circa £2 million capital works will count as match funding to lever in the £5 million grant funding from ACE and is also a more tax efficient mechanism to procure some of the proposed works as TRP Ltd is unable to reclaim VAT on construction costs.

2.4 Without the Council's intervention to facilitate the above, TRP Ltd will be unable to meet the funding requirements of ACE and this major capital investment project for the City will not proceed.

3. Risk

3.1 The following risks and mitigation measures have been identified in connection with the above proposal:

- 1 TRP Ltd revenue viability as a result of the three year suspension of the revenue support grant from PCC to fund the £2 million capital works.

Mitigation: Three year fund raising campaign by TRP Ltd formally commencing on 18th September 2012 to raise £1.5 million with the £500,000 balance already allocated by the Theatre's Board from general funds. The fund raising campaign is based on a similar strategy to that used in 2007 when £1.2 million was raised via trusts and foundations, corporate sponsorship and individual donations to refurbish the main auditorium. TRP Ltd will provide a copy of their fund raising strategy and revenue funding statement for the three year period concerned.

- 2 Cost overrun and project delay.

Mitigation: TRP Ltd have in place a project management team with a good track record of delivering projects on time and within budget. TRP Ltd will fully indemnify the Council against any claims and liabilities associated with the works contract. Loss of TRP Ltd trading income resulting from a delay in the contract will be dealt with via a liquidated damages provision.

- 3 PCC Financial Risk – that VAT is ultimately payable on the Council's proposed parcel of works.

Mitigation: The Council's finance team will obtain advice from HMRC on the VAT implications of the proposal. Options include requesting HMRC to issue a ruling under S33 of the VAT Act 1994 that VAT will not be payable, or electing to tax on the Theatre Royal site which would provide for any future VAT payments becoming due to be reclaimed.

- 4 Disposal of lease at below market value – The Local Government Act 1972 General Disposal Consent (England) 2003 permits disposals of land by local authorities at below market value in the circumstances of promoting the social and economic wellbeing of its residents provided that any undervalue does not exceed £2 million. As the proposals are likely to promote the social and

economic wellbeing of Plymouth residents, Legal Services have advised that it will be necessary to demonstrate that the proposed undervalue is less than the £2 million threshold or a request to the Secretary of State for consent to the proposed transaction will be required.

Mitigation: The District Valuer has been instructed to provide the necessary valuations and confirmed that the disposal at below market value falls within the £2 million threshold and is therefore permitted under the LGA 1972 General Disposal Consent (England) 2003.

4. Recommendation and Reasons

- 4.1** The economic and cultural benefits of the Theatre to the city of Plymouth are well established. Research by the University of Sheffield on the UK theatre sector demonstrated that Theatre Royal Plymouth has the third highest economic impact of all theatres in the UK after the National Theatre and RSC, in leveraging in an annual £26 million benefit to the Plymouth City economy.
- 4.2** The Theatre Royal Regeneration Project will renovate an ageing Council asset to make it fit for purpose for the next 30 years and in doing so will reduce the carbon footprint of the building (with a targeted BREEAM rating of *very good*), improve physical access by the removal of steps to the premises and completely transform the existing exterior of the building and adjoining public realm areas to lift the west end of the City Centre and overall visitor offer. The enhanced catering and retail facilities will also improve the future financial viability and long term sustainability of the Theatre.
- 4.3** It should also be noted that in acting as an enabler to the Theatre Royal Regeneration Project (on a cost neutral basis) a £7million investment will be made into Council owned asset and mitigate the Council's current external repair liabilities in respect of the aluminium cladding for a further circa 30 year period.
- 4.4** Conditional on TRP Ltd successfully obtaining grant funding from ACE up to the sum of £5 million (outcome to be advised in early November 2012) it is therefore recommended that Cabinet approve:

- 1** To accept a surrender of the existing lease and simultaneously;
- 2** Grant a new lease for a 30 year term at a peppercorn rental (on the basis of promoting the economic and social wellbeing of the City under Section 2 of the Local Government Act 2000) on similar terms to the lease surrendered.
- 3** To grant a comprehensive licence to alter in respect of the proposed major alteration works.
- 4** To incorporate in the new lease a right to assign the leasehold interest to ACE or to a performing arts organisation as directed by ACE.
- 5** To grant consent to a legal charge to be placed on the leasehold interest of the property in favour of ACE.

Reason for 1-5 above: To meet Arts Council England funding requirements to enable up to £5 million of grant funding on a major capital project for Plymouth.

- 6** To confirm revenue support allocation to TRP Ltd at the current level of £665,000 per annum up to and including financial year 2014/15.
- 7** To recommend to Council the inclusion of a new capital scheme up to the value of £1,995,000. The scheme to be funded from the withholding of PCC revenue contributions approved in 6. above for a 3 year period (equating to £1,995,000), making the capital works cost neutral to the Council.

Reason for 6-7 above: To provide match funding in order to secure grant of up to £5million from Arts Council England, delivered as a tax efficient parcel of works under the Council's 2013/14 capital programme.