

Cabinet Member Decision Note

HQ Theatre Covid-19 Response

To: Cabinet Member for Commercialisation, Education and Skills

Date: 3rd February 2021

Author: Corporate Director of Finance and Assets and Director of Strategic Development

Wards: Central and Eastcott

Parishes Affected: Central Swindon South

1. Purpose and Reasons

- 1.1 This report is necessary for the Cabinet Member for Commercialisation, Education and Skills to consider the Wyvern Theatre Limited (WT)'s financial position and how it is proposing to manage the current ongoing closure because of Covid-19. This report fully considers the financial implications for Swindon Borough Council and recommends making contractual payments to assist towards re-opening.
- 1.2 WT is a special purpose vehicle owned by HQ Theatres (HQ) and is contracted by Swindon Borough Council (SBC) to deliver the management and operation of both the Wyvern Theatre and the Swindon Arts Centre, through a single contract. This report covers the financial challenge to the operation of Swindon's Theatres and the Council's proposed response to the continued impact of Covid-19.
- 1.3 The delivery of the management contract for the Wyvern Theatre and Swindon Arts Centre, supports the Swindon Borough Council Priority 3 – 'Ensure clean and safe streets and improve our public spaces and local culture', and the delivery of Pledge 16 - 'Deliver a Programme of Work to ensure that residents, visitors and businesses feel that Swindon's Town Centre is a safe place to live, work, visit and do business'.

2. Recommended Action to be Authorised by a Cabinet Member Under Delegated Powers

It is recommended that:

- 2.1 That the Director of Strategic Development be authorised to approve, and the Corporate Director of Finance and Assets, to provide, monthly contractual payments to Wyvern Theatre Ltd for the 2020/21 financial year as per the current contract along with retaining and planning to re-open the Wyvern and Arts Centre detail, as set out in Option 1 in the body of the report.

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3. Detail

HQ Theatres Contract - Background

- 3.1 The management contract for the Wyvern Theatre was awarded to Wyvern Theatre Limited (WT)/ HQ Theatres (HQ) following a comprehensive tendering process. The contract period was for ten years from 28th March 2004 to 27th March 2014. The contract was subsequently extended to March 2024, and the management of the Arts Centre was added to the contract from 27th March 2014.
- 3.2 The Council's requirements for the management and operation of the facilities (the Wyvern Theatre and Swindon Arts Centre) are set out in the Management Agreement entered into between SBC and WT dated 24th June 2014. This agreement requires WT to manage these two named sites and provide the services detailed in the Management Agreement.
- 3.3 Swindon Borough Council provides an annual contractual payment for the delivery of the management contract for the Wyvern Theatre and Swindon Arts Centre. This is budgeted at £315,000 for 2020/21 and to date payments of £145,017 have been made, which leaves a balance of £169,983. This underspend has been forecast within the corporate budget monitoring process and therefore any approval to make further payments will reduce the reported underspend.

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- 3.4 When England went into Lockdown due to Covid-19 on the 23rd March 2020, Swindon Theatres closed its doors to customers and had no choice but to cancel all planned performances. This case remains, and there are no indications that Theatres will be able to re-open full to customers in the near future, and there will be further delays following Lockdown 3 (5th January 2021). The commercial viability of the regional theatre business model with any form of social distancing in place is still largely untenable.
- 3.5 Upon eventual reopening, if a form of social distancing still needs to be maintained, cultural venues will have to put a limited number of tickets on sale to reduce audience numbers. There will be a requirement to sell all tickets online to facilitate track and trace systems; to place social distancing markers in areas where queues are likely to form; to increase deep cleaning of auditoriums; to schedule sufficient time between performances; to reduce capacity to enable safe distancing and to ensure artists and their teams also observe social distancing wherever possible. Some of this is logistically possible but not economically viable. In order to break even the Swindon Theatres has
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Further information on the subject of this report can be obtained from Claire Andrews, Heritage & Cultural Services Manager, Direct Dial 07824 497298, candrews@swindon.gov.uk.

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to sell a minimum 59% capacity and with any form of social distancing in place, it would only be able to operate at around 30% capacity, and would therefore not be economically viable.

- 3.6 The £1.57billion Cultural Recovery Fund (CRF) is designed to secure theatre and cultural assets until spring 2021 when they once again hope to begin to become viable. The Council is not aware of this fund or its objectives having changed since the new government restrictions on 5th January 2021 WT applied for a grant via the CRF to secure and protect the workforce and to continue to deploy the Business Continuity Plan until such time it can reopen. WT successfully secured £218,560. The plan set out in the application focused on remaining in hibernation, protecting the workforce and planning for a spring 2021 reopening. In order to demonstrate commercial viability on reopening WT was obliged to provide a detailed cash flow model, which set out all income and expenses. It is understood that in the CRF grant application, WT has included SBC contractual payment as income, but the Council continuing to provide its annual contract payment in full does not appear to be a condition of receiving the grant.
- 3.7 Officers requested further financial information from HQ to enable an assessment of its financial position and to understand the on-going costs that were still being incurred. This has been received and shows that only 4 staff members are still being paid outside of furlough arrangements, being the Theatre Director, two Technical and building management staff and the Marketing Manager. Only one of these is full time (the Technical & Buildings Manager), the others work between 2 and 4 days per week.
- 3.8 Other significant costs still being incurred by HQ include buildings critical maintenance contracts (lift etc.), and central overheads such as payroll & finance and utilities. The cash flow forecast provided by HQ for the 2020/21 financial year shows costs increasing significantly through January to March 2021 but this will be completely dependent on the date for planned re-opening which is completely dependent on Covid restrictions changing.
- 3.9 The recent public announcement of the Swindon Cultural Quarter project signifies the Council's commitment to invest in culture to support the regeneration of the town centre. It is a progressive plan for Swindon, and a new theatre offer is central to it. A new theatre could potentially deliver an annual revenue stream for the Council with the ability to possibly providing a source of modest profit share income to the Council. As part of the current detailed work being undertaken by the appointed consultants on the Cultural Quarter, this position will be fully scoped and understood.
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- 3.10 Information relating to HQ Theatre's finances is considered exempt under paragraph 3, Schedule 12A, Local Government Act 1972 and is attached at Appendix One. This Appendix will not be made public.

HQ Theatres Proposed Options

- 3.11 In recognition of the wider financial pressures faced by Swindon Borough Council, and request to continue with annual contractual payments for WT, Swindon Borough has the following options: -
- 3.11.1 **Option 1 (Recommended option)** – Provide monthly payments in line with outcomes agreed with the Director of Strategic Development around preparations for re-opening in the spring of 2021/ when legally permitted. The Corporate Director of Finance and Assets is calculating on monthly basis the proportion of contract being delivered that is to be funded, which at the end of the financial year will not exceed the total contracted amount. This would enable the Council to manage risk and to monitor and manage outcomes as the impact of a relaxation in Covid restrictions becomes clearer. These payments would be subject to monthly reviews of performance, progress and spend against the prevailing Covid situation enabling further clarity around HQ's finances to be sought as the situation changes. This position would be reviewed fully in March 2021, when a further decision on 2021/22 payments would be made in light of the prevailing Covid situation at that time.
- 3.11.2 **Option 2 – Provide the unpaid balance of the total** annual payment in full **for 20/21 (£169,983)**. It should be noted that the continuation of the annual contractual payment will support WT to implement its business plans to manage the impact of Covid, but it cannot provide any guarantees over the long term for WT operations. HQ can only currently deliver part of the current contract, as it is not permitted to open, but under this option, it would be paid for the whole contract. Future payments would need to be reviewed at the end of the financial year and a further decision taken on 2021/22 payments in light of the prevailing Covid situation at that time.
- 3.11.3 **Option 3** – No further annual contractual payments for 2020/21 until the situation around the potential to re-open the Theatre is clearer. This option would be likely to impact on Swindon's wider reputation with funding bodies and the viability of HQ. It could leave Swindon without a theatre offer as it could increase the risk of HQ Theatres deciding to terminate its contract immediately, returning the assets in breach of the agreements. It is for HQ Theatres to
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consider how not delivering the contract might affect its reputation and future relationship with the Council.

3.11.4 **Option 4** – Close the Wyvern Theatre and Arts Centre and focus all efforts on the development of a new Theatre under the plans for the Cultural Quarter. This would leave Swindon without a Theatre for potentially some years, during which time there is a risk we would lose audiences to other towns and cities. Swindon audiences would need to be rebuilt once a new theatre is open. There may also be some costs that the Council would need to incur on the building even if mothballed.

4. Alternative Options

4.1 These are outlined above in the body of the report.

5. Consultation

5.1 The following Opposition Spokespersons / Ward Members have been consulted on the recommendations of the report and their responses are also summarised below:

Consultees: Cllr Pajak, Cllr Donachie, Cllr Wright, Cllr Ali, Cllr A Shaikh, Cllr Dixon, Cllr I Shaikh.

Comments received: "I support option 1. Whilst I acknowledge the aspirations outlined in 3.9 I do not think they are relevant to the current crisis and need. I will be pleased to see the Wyvern reopened and wait and see if the Cultural Quarter becomes a reality. It has already been moved once, who knows what the future will deliver." Cllr Wright

6. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 6.1 The annual budget for payments to HQ Theatres is £315,000. Payments made to date amount to £145,017 and there is therefore the ability to provide further payments totalling £169,983. Corporate budget monitoring has forecast no further payments this financial year and therefore any decision to make further payments would result in a decrease in the reported savings.
- 6.2 Swindon Borough Council in accordance with Cabinet Office action note PPN 02/20, suspended the annual contractual payment and replaced funding with 'supplier relief' designed to support our contractors through immediate cost pressures during Covid-19.

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This supported suppliers with immediate costs where they were unable to deliver contractual arrangements. SBC has been informed that there are situations where annual contractual payments have continued to be paid to HQ Theatres by other Local Authorities during Covid-19. PPN 02/20 allows for local determination depending on local situations. The request put to Swindon Borough Council by HQ Theatres is that any annual contractual payments suspended due to Covid-19 are resumed in order to allow Wyvern Theatres to access the CRF grant and prepare for opening in April 2021/ when reopening is permitted. If no further contractual payments are made, HQ Theatres have informed the Council that it may have to hand all assets back to the Council that it is required to manage under the contract and lease arrangement if full contractual payments for 20/21 are not resumed, which would invoke a breach in contract. This would mean that the Council would have no theatre operator in place for when social distancing restrictions are eventually eased. Under current restrictions, only part of the contract can be delivered due to Covid-19 restrictions.

- 6.3 A further Cabinet Office Action Note relating to 'Recovery and Transition from COVID-19' (PPN 04/20) published in June 2020 set out the need for authorities work in partnership with suppliers to plan for an exit, moving from contractual relief to a "new, sustainable, operating model taking into account strategic and reprioritisation needs" and these transition plans should be ready to be implemented before the end of October 2020. Therefore it should be noted that the recommendation to continue with supplier relief beyond the end of October 2020 is proposed on the basis of the strategic interests of the Council. Therefore there is a risk for the Council that other 'at risk' suppliers who have not been granted similar supplier relief beyond October may use this as a justification to lobby for equal treatment and continued financial support.

Legal and Human Rights Implications

- 6.4 All legal and human rights considerations have been taken into account in preparing this report and it is considered that the proposals within this report are compatible with Convention Rights.
- 6.5 There is no intention to alter the current contract. If there were to be any changes, these would need to be agreed with a contract variation approved by the Chef Legal Officer.
- 6.6 The Chief Legal Officers will prepare and complete all legal documentation in order to protect the Councils interests.

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Climate Change Impact

- 6.7 The proposals would not bring a change in service delivery and Officers believe that there is no expected effect on the Council's carbon footprint.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

Crime and Disorder

- 6.8 It is not anticipated that the recommendations in this report would have any significant impact on staff, health, rural issues or crime and disorder.

Diversity Impact Assessment

- 6.9 No Diversity Impact Assessment has been carried out as the proposal relates specifically to funding rather than a policy change that would affect a service.

Risk Management

- 6.10 By considering options around subsidy and supplier relief during Covid-19, the Council is ensuring that the contract is delivered in a manner that is affordable to the public purse.
- 6.11 There is however the unknown of when theatres will be able to re-open as viable concerns. By maintaining payments, the Council would enable HQ to re-open as quickly and as comprehensively as the easing of restrictions permit. The cost of doing this must be weighed against the cost of Swindon losing its theatre operator.

7. Consultees

- 7.1 The Corporate Director of Finance and Assets (s151 officer) and Chief Legal Officer (Monitoring Officer) are consulted in respect of all reports

8. Background Papers

- 8.1 None.

9. Appendices

- 9.1 Appendix One: Information relating to HQ Theatre's finances. (This is considered exempt under paragraph 3, Schedule 12A, Local Government Act 1972)

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10. Declarations of Interest

- 10.1 Cabinet Members are reminded to consider whether they have any known interests in any of the matters referred to in this Decision Note. If such an interest exists this should be declared to the Monitoring Officer and they should take no part in the consideration of the Decision Note and should refer the Decision Note to the Leader of the Council instead for consideration.

11. Sign-off

- 11.1 The Cabinet Member is requested to respond with 5 days of the date of this report by 3rd February 2021.
- 11.2 The Cabinet Member is requested to indicate one of the following responses to the Recommendations set out in Section 2 of this report:
- 11.3 [to be signed electronically and redacted]

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