

Report of the Cabinet Member for Investment, Regeneration and Tourism

Cabinet – 20 January 2022

Cultural and Digital Hub at Swansea Grand Theatre; Management Agreement and Lease

Purpose:	To update on the terms of the Management Agreement, Tenancy and Lease arrangements with Race Council Cymru, for the Cultural and Digital Hub at Swansea Grand Theatre.
Policy Framework:	Well-being of Future Generation Act & Swansea Council Well-being Plan. Financial Procedure Rules
Consultation:	Access to Services, Finance, Legal.
Recommendation(s):	It is recommended that Cabinet:- :
	<ol style="list-style-type: none"> 1) Notes the terms of the final version of the Management Agreement with Race Council Cymru (RCC) outlined in the report and set out in Appendix A, and approves the current recommendation for fees and room rates as set out in Appendix B. 2) Approves the provision of additional funding as set out in the Financial Implications at paragraph 5. 3) Delegates authority to the Head of Property Services, to enter into a Tenancy at Will, and in consultation with the Chief Legal Officer and the Cabinet Member for Investment, Tourism and Regeneration to negotiate and agree the final terms of the lease with Race Council Cymru. 4) Delegates authority to the Chief Legal Officer to enter into the lease on behalf of the Council.
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1. Introduction

- 1.1 Cabinet, on the 19th March 2020, previously approved the Director of Place to oversee and approve the creation of all Heads of Terms and paperwork

relating to a new Management Agreement and Lease with Race Council Cymru (RCC). The approval was granted as part of agreeing a sustainable business strategy for the Grand theatre Swansea. This was borne from previous budget savings and the need to “commercialise” the assets including an agreement to lease the Arts Wing to a third party.

- 1.2 Following agreement to proceed with an Agreement and Lease, a Management Agreement is now in place. As a result of the collaboration between the Council and RCC, creating better understanding of ways of working considered necessary to the partnership’s success, approvals are now required for specific conditions which were not laid out in the original cabinet report.
- 1.3 The previous case for supporting the lease to RCC and adopting a diversification strategy still stands. It remains the case that we need to develop our community participation and diversify our audiences, through creating new programming strands to help us differentiate and sustain our offer in the city centre, develop talent, accessible and relevant programming, and attract new audiences.
- 1.4 To avoid any further ambiguity this report addresses the obligations of the Council and RCC as they currently stand and as set out in the Management Agreement attached in Appendix A.

2. Current Position and Management Agreement

- 2.1 RCC has entered into a Management Agreement with Swansea Council in order to deliver the Cultural and Digital Hub at Swansea Grand Theatre. The parts of the property that are to be let to RCC, of which they will have exclusive use, are shown outlined in red on the plan in Appendix F. Use of any other parts of the property are shared and the terms of use are covered in the Management Agreement. Further detailed and improved plans are in the process of being commissioned by colleagues in Property Services to ensure clarity prior to defining and finalising the exact terms of the Lease.
- 2.2 The Management Agreement contains a number of clauses, schedules, method statements and obligations for the shared spaces that entail short term financial obligations and medium to longer term new ways of working and deviation from normal Authority procedure. These now require visibility and approval from Cabinet for reasons set out in this report.
- 2.3 Previous Cabinet approval to proceed was on the basis of there being no financial implications for the Authority, save for the positive impact of greater ticket yield receipts and venue hire income via the partnership, rising to the value of £156k per annum. The Agreement has taken into account obligations and challenges in achieving this and includes commitments that now need visibility and approval.
- 2.4 The areas where the council will need to commit funding/resources are:-
 - the costs of a Creative Programmer role to support RCC for one year as described in **Schedule 3; Method Statement of RCC, page 6;**

- marketing support from the Grand theatre marketing team, to advise on and oversee compliance with branding and cross promotional strategies, with the staffing cost to be borne by the council as described in **Part 1A General; 1.19 Marketing and Publicity, 1.19.2 page 9**. As the commitment is for 'support' there is currently no figure/ time assigned, so will need further collaboration to agree the inputs to outputs;
- 2.5 As part of the collaboration and partnership approach, RCC obtained capital funding for conversion of the previous spaces in the Arts Wing into community learning/digital space, via a £250,000 grant from Welsh Government and further grants from Arts Council Wales, retaining responsibility for these.
 - 2.6 The Management Agreement outlines a new governance structure for the shared spaces, partnership arrangements, performance management and ethos of the overall management of the Hub, with representation from senior management and officers of the Council, RCC and elected members including the Cabinet Member for Investment, Tourism and Regeneration. **The governance structures are described in page 2 of Schedule 3; RCC's Method Statement, in Appendix A Management Agreement.** The top tier is intended to take on leadership and decision making for ensuring performance meets the terms of the Agreement with respect to access; financial returns; programming; commercial strategies and promotional activity along with establishing pricing tariffs for hires, ticket prices and other sales for all Hub activity and shared spaces.
 - 2.7 Governance and decision making for the Auditorium/main house will remain with the Council and whilst subject to 'cross-over' activity, is part of a separate agreement with a new resident production team. Equally the Foyer, Grand Circle bar, catering generally, and Malthouse areas are subject to a separate agreement with Gower Brewery.
 - 2.8 As part of its programming remit RCC has agreed to enter into Producer Agreements to safeguard the Council's remit and main house ambitions, establishing the Arts Wing as a space for developing new work and talent, in particular from the BAME community. It's essential to our future brand and ethos that cross working, integration and collaboration is threaded through all our partnerships – commercially and artistically. It is therefore intended to assign a portion of our Arts Council grants and commissioning funding to RCC for this purpose, the values of which are set out in paragraph 5 Financial Implications.
 - 2.9 RCC retain the right to establish its own development programme, community use and ticket sales, although these will be via the Council's box office and form part of our income generating /payment agreement. **The details of which are outlined in Part 1.D clause 1.20.1 p.17 of the Agreement, and also described in Schedule 3, 'Method Statement' as presented by RCC, pages 6/7.**
 - 2.10 The Agreement obliges RCC to use our hire booking system Artifax, which entails sharing ticket sales information, hires and marketing information. This requires the Council to enter into a Data Processing Agreement with RCC in order that they may act as our agent/ contractor in promoting and

achieving hires and sales via our systems. Approval is also required for us to enter into this arrangement in line with GDPR requirements. **The obligations are set out in Clause 17 onwards of the main Agreement; the Council's WiFi policy appended to the Agreement and Schedule 6: Schedule of Processing, Personal Data and Data Subjects.**

- 2.11 As outlined in the appended Agreement, RCC effectively undertakes a contractor role under the Management Agreement to provide programming and other services to the community from the Hub. In return for its capital investment and delivery of receipts, this will be at no additional charge for the workspace – although community hires will be subject to an agreed rate tariff. Attention is drawn to the proposal to allow some free use to bring new organisations into the venue for the first time as part of a business development strategy. **The details of this are found on page 9 of Schedule 3; RCC's Method statement.**
- 2.12 Approval is also sought for a new pricing tariff for the shared spaces, for the first year of operation, subject to annual review, as set out in Appendix B.
- 2.13 How these compare to current rates is also set out in Appendix B. This comparison table is included for reference only, and subject to Cabinet approvals as described in 2.15.
- 2.14 Whilst slightly lower in some areas to current rates, the proposal assumes an increase in the number of hires by previous non-users, BAME groups, and a more realistic rate to others, as the offer is more attractive. These changes would also apply to historic resident users, following a period of consultation, who have benefited from a lower tariff due to the 'resident nature' of the hires. As the previous Cabinet report asserted there would be no impact on previous resident groups, Cabinet are asked to endorse the universal approach as set out in this Schedule.
- 2.15 As these rates are presented outside of normal fees and charges' review and annual budget setting, the implementation of these requires express approval as does the process for annual review and decision making resting with the partnership governance. The Management Committee will closely scrutinise and monitor the impact of these charges and submit further recommendations if and when needed as part of Performance and Financial Monitoring and if it appears the Council is incurring losses as a result, as part of annual budget setting. **Part 1.D p17 of Performance Standards also sets out the process for presenting or agreeing change in clause 1.20.6.**
- 2.16 It remains the case as per the previous Cabinet report that RCC will bring its wide range of community partners to the Hub to present activities, training for diversity awareness and provide support for those in need of digital inclusion, language and employability skills, and those experiencing racism, hate crime and exclusion as a result of their protected characteristics.
- 2.17 These new ways of working, changes to personnel, process and procedures, lend themselves to us establishing a process to build trust,

shared vision and understanding, in line with the details set out in 3 below. Therefore we will also undertake to appoint a specialist in organisational development, funded through the ACW grant previously assigned to 22/23. The funding requirements arising from the above are set out in the financial implications section.

3.0 Initial Terms

- 3.1 It remains the case as set out in the previous Cabinet report that the Tenancy at Will or lease, will align with the Management Agreement. The Council will negotiate directly with RCC for these, the term being initially for two years, with the option to extend for a further three years, to ensure that any final agreement falls within the category of a short tenancy. In these circumstances S.123 Local Government Act 1972 and the requirement to achieve the best consideration that can be reasonably obtained does not apply.
- 3.2 The relationship will include funding from the Council, to RCC, for a period of one year, in order that they may fulfil their performance obligations to the Council, after which they will be self-sustaining.
- 3.3 It is proposed to utilise the Economic Recovery Fund awarded to Cultural Services for Creative and Festival Programming, cultural strategy and recovery, alongside the remaining grant awarded by Arts Council Wales, for the recovery of the Grand and all its programming activity and partnerships.

4. Integrated Assessment Implications

- 4.1 The Council is subject to the Equality Act (Public Sector Equality Duty and the socio-economic duty), the Well-being of Future Generations (Wales) Act 2015 and the Welsh Language (Wales) Measure, and must in the exercise of their functions, have due regard to the need to:
 - Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Acts.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
 - Deliver better outcomes for those people who experience socio-economic disadvantage
 - Consider opportunities for people to use the Welsh language
 - Treat the Welsh language no less favourably than English.
 - Ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.
- 4.1.1 The Well-being of Future Generations (Wales) Act 2015 mandates that public bodies in Wales must carry out sustainable development. Sustainable development means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the 'well-being goals'.

4.1.2 Our Integrated Impact Assessment (IIA) process ensures we have paid due regard to the above. It also takes into account other key issues and priorities, such as poverty and social exclusion, community cohesion, carers, the United Nations Convention on the Rights of the Child (UNCRC) and Welsh language.

4.2 An IIA screening form was completed for the Community Cultural and Digital Hub (Appendix D). The impacts are assessed as positive – with medium to high impact as the ability for the Grand to reopen and present relevant, engaging activities for all its communities is a positive thing. In particular those with protected characteristics will be supported to access and participate in the arts, progressing through the offer to build skills and confidence, and overall supporting wellbeing and opportunity in the city.

This will be monitored carefully and mitigations put in place if the diversity and access is compromised, or the offer is not developing in the way the programme is intended to ie. to increase audiences and create a sustainable model. In the event of partnership failure, the service will still be owned by the council and subject to the usual process of assessment and service planning.

5. Financial Implications

5.1 The proposals entail financial support for one year to RCC, on reopening of the theatre, identified as the costs for a Creative Programmer at £27,000; pro rata staff time support for their marketing plan; and programming and events funding – amounting in total to no more than £152k.

5.2 The organisational development remit will be undertaken by a specialist consultancy in such matters and funded from the monies rolled forward from the ACW grant for recovery, 21/22, at £15,000.

5.3 The budget available to us for these purposes includes an allocation from the Economic Recovery Fund for the arts and cultural recovery programme to support the venues' recovery and sustainability and elements of the grant from Arts Council Wales Cultural Recovery Fund.

5.4 There are no additional funding requirement outside of the use of resources already allocated for these purposes as identified in 5.2 but this funding was not previously identified within the original cabinet report hence the need for a further decision.

6. Legal Implications

6.1 The Local Government Act 1972 section 123 gives a local authority the power to dispose of land held by it in any manner it wishes if the local authority achieves the best consideration that can reasonably be obtained. This applies to all disposals except where the disposal is for a short tenancy (the grant of a term not exceeding seven years, or the assignment of a term which has not more than seven years to run), or the local authority has the consent of the Welsh Ministers.

- 6.2 Welsh Ministers have issued a general consent for disposals of land under section 123 for less than best consideration. This allows a local authority to dispose of land for less than best consideration if it considers that the disposal will contribute to the promotion or improvement of the economic, social or environmental well-being of its area and the extent of the undervalued is no more than £2m.
- 6.3 The Lease will be granted for a term not exceeding seven years and will need to exclude security of tenure in accordance with the Landlord and Tenant Act 1954. If the Lease is not excluded from LTA 1954 the Council will be bound to grant a new tenancy as a matter of contract.
- 6.4 Given that the Lease is to be excluded from LTA 1954 and is for a term not exceeding seven years, S123 LGA 1972 is not applicable nor will the consent of Welsh Ministers be required for the disposal at less than best consideration.
- 6.5 Under the Council's constitution the responsibility of determining in what manner the land will be disposed of in order to obtain best consideration lies with the Head of Property Services.

Background Papers: None

Appendices:

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| Appendix A | RCC Management Agreement |
| Appendix B | Rates/ fees and charges comparison data |
| Appendix C | Integrated Impact Assessment |
| Appendix D | Original Equalities Impact Assessment |
| Appendix E | Proposed RCC Lease Demise Plan |