

PERTH AND KINROSS COUNCIL

Strategic Policy and Resources Committee 2 December 2015

LEASE OF PERTH THEATRE/ PERTH CONCERT HALL

Report by Senior Depute Chief Executive (Equality, Community Planning and Public Service Reform) and Depute Chief Executive (Sustainability, Strategic and Entrepreneurial Development)

PURPOSE OF REPORT

Perth Concert Hall and Perth Theatre are operated by Horsecross Arts Limited on behalf of the Council. This report asks the Committee to approve new lease arrangements for both buildings, and recommended revised Health and Safety and repair and maintenance regimes for both buildings.

The Committee must be satisfied that leasing the buildings to Horsecross Arts at less than best reasonable consideration will deliver key community benefits, and this report also sets out the conclusions of appraisals carried out in line with the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and asks the Committee to approve these.

1 BACKGROUND / MAIN ISSUES

- 1.1 Perth Theatre and Perth Concert Hall are owned by the Council and operated on behalf of the Council by Horsecross Arts (HX). HX occupied and operated Perth Theatre in terms of a lease until January 2014 but has now vacated it whilst the building undergoes redevelopment which will complete in autumn 2017, when HX will re-occupy the Theatre. HX operates Perth Concert Hall under a licence, and it is now desirable to put a lease in place for this as well.
- 1.2 The Local Government (Scotland) Act 2003 requires the Council to make best use of public resources, including land and property, and to be open and transparent in transactions. The Local Government (Scotland) Act 1973 requires the Council to achieve best reasonable consideration when it sells or leases its land or buildings. The Disposal of Land by Local Authorities (Scotland) Regulations 2010 set out circumstances where a disposal by sale or lease for a figure less than the best consideration that can reasonably be obtained may be justified. The Regulations require Councils to undertake an appraisal of the proposed disposal to determine whether or not it is reasonable and will achieve any of the purposes set out in the Regulations.

2 PROPOSALS

Leases of Perth Theatre and Perth Concert Hall

- 2.1 Council officers have carried out an appraisal of the proposal to lease Perth Theatre and Perth Concert Hall, in line with the Regulations. This is at **Appendix 1**. The appraisal entails considering the alternative options for disposal of the buildings and any benefits which may be achieved by granting

leases to HX at less than best consideration, to determine whether leasing them to HX is reasonable and will achieve any of the purposes referred to in the Regulations for the whole or any part of Perth and Kinross or anyone living or present in the area. These purposes are:

- a) economic development or regeneration
- b) health
- c) social well-being or
- d) economic well-being

2.2 For the purposes of the appraisal, it is necessary to determine the 'best consideration' that can reasonably be obtained for the buildings, by commissioning a valuation report from a suitably qualified valuer (i.e. one who is a Registered Valuer and Member of the Royal Institution of Chartered Surveyors (MRICS)). The 'best consideration' value is set against the wider community benefits which would be gained if HX continued to occupy and operate the buildings on behalf of the Council. Disposal for sale was not considered as an option.

- The recommended option from the appraisal is disposal of the buildings for lease at less than best consideration, subject to:
- The Date of Entry to Perth Theatre will be a date to be agreed, subject to the wider construction programme in place for the building with an estimated completion date of October 2017.
- The Date of Entry to Perth Concert Hall will be no later than 31 March 2016.

Conditions of Lease

2.3 External legal and financial advice has been obtained to determine the most appropriate type of lease for Perth Theatre and Perth Concert Hall. This indicates that a clear apportionment of repair and maintenance responsibilities between the Council (as owner/landlord) and Horsecross Arts (as tenant) is required for the following reasons:

- Advice from external legal advisers who have assisted in the setting up of arms-length organisations to deliver services for local authorities is that the Council would be almost unique if it transferred properties under Full Repairing and Insuring (FRI) leases. Other councils have retained control of the buildings because they are important council assets, often iconic buildings and are widely used by the public and communities.
- The Council as owner/landlord has a key role in maintaining the buildings
- Whilst the Council can reclaim VAT on repair and maintenance works HX cannot.

2.4 It is therefore proposed to prepare a draft Lease for Perth Theatre and Perth Concert Hall based on the Heads of Terms set out in **Appendix 2**. Key principles will include:

- A 30 year lease term, to satisfy key funders' requirements (Creative Scotland, Heritage Lottery Fund and the Gannochy Trust) for Perth Theatre
- An assumption of £1pa rent payable in line with the findings of the Disposal Appraisal

2.5 A separate Property Agreement will set out the respective Health and Safety responsibilities for the Council as owner/landlord and Horsecross Arts as tenant.

2.6 These proposals are contingent on the Council approving the additional allocation of revenue for maintenance as part of the 2016/17 budget decisions in February 2016. However, it is important to progress preparation of the leases in the meantime.

3 CONCLUSION AND RECOMMENDATIONS

3.1 It is recommended that the Committee:

- Considers the appraisals and assessments for disposal by lease of Perth Theatre and Perth Concert Hall set out at Appendix 1 and agrees to the recommendation that granting leases at a nominal rent is reasonable and will deliver the purposes and benefits referred to in the appraisals.
- Approves the draft Heads of Terms for lease of Perth Theatre and Perth Concert Hall to Horsecross Arts Limited set out at Appendix 2

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1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

Strategic Implications	Yes / None
Community Plan / Single Outcome Agreement	YES
Corporate Plan	YES
Resource Implications	
Financial	YES
Workforce	
Asset Management (land, property, IST)	YES
Assessments	
Equality Impact Assessment	YES
Strategic Environmental Assessment	YES
Sustainability (community, economic, environmental)	
Legal and Governance	YES
Risk	
Consultation	
Internal	YES
External	
Communication	
Communications Plan	

1. Strategic Implications

Community Plan / Single Outcome Agreement

- 1.1 The proposals support the delivery of the Perth and Kinross Community Plan aim for a vibrant and successful area by supporting a local Community group seeking to retain a surplus Council asset as a community facility.

Corporate Plan

- 1.2 The Council's Corporate Plan 2013 – 2018 lays out five outcome focussed strategic objectives which provide clear strategic direction, inform decisions at a corporate and service level and shape resources allocation. They are as follows:
- i) Giving every child the best start in life
 - ii) Developing educated, responsible and informed citizens
 - iii) Promoting a prosperous, inclusive and sustainable economy
 - iv) Supporting people to lead independent, healthy and active lives
 - v) Creating a safe and sustainable place for future generations.
- 1.3 This report relates to ii), and iii) above.

2. Resource Implications

Financial

- 2.1 There are financial implications to this report. Perth and Kinross Council in recent years has financially assisted HX to maintain Perth Theatre and Perth Concert Hall, with £43,000 (recurring) revenue allocated within existing Environment Services budgets to assist HX in maintaining the Concert Hall. The proposed Conditions of Lease oblige the Council to full maintenance and repairing responsibilities to be undertaken directly by Property Services and, as stated in 2.6 of the report, Council will be asked to consider and approve the revenue consequences of this as part of the 2016/17 budget process.
- 2.2 Over time separate additional capital funding will be required to address cyclical replacement of large items, and these will be prioritised and considered within the Council's wider capital programme requirements, as for all Council buildings.

Asset Management (land, property, IT)

- 2.2 Property Services and Estates have contributed to the preparation of this report. The disposal appraisals were completed with input from the Assessment Officer, Legal and Estates.

3. Assessments

Equality Impact Assessment

- 3.1 Under the Equality Act 2010, the Council is required to eliminate discrimination, advance equality of opportunity, and foster good relations between equality groups. Carrying out Equality Impact Assessments for plans and policies allows the Council to demonstrate that it is meeting these duties.
- 3.2 This section should reflect that the proposals have been considered under the Corporate Equalities Impact Assessment process (EqIA) with the following outcome:

- (i) Assessed as **not relevant** for the purposes of EqIA

Strategic Environmental Assessment

- 3.3 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals.
- 3.4 The proposals have been considered under the Act and no further action is required as it does not qualify as a PPS as defined by the Act and is therefore exempt.

Legal and Governance

- 3.5 The Head of Legal Services has been consulted in the preparation of this Report. Officers from Legal Services have participated in officer working groups.

Legal Services have advised throughout on the legal implications of the proposal, including the requirements of the Disposal Regulations referred to in this Report and the duty to achieve Best Value.

4. Consultation

Internal

- 4.1 The Director (Education & Children's Services), the Director (Environment), the Head of Finance and the Head of Legal Services have been consulted in the preparation of this report.

External

- 4.2 External legal and financial advice has been obtained in the preparation of this report.

5. APPENDICES

Appendix 1 Appraisal Report Oct 2015.

Appendix 2 Draft Heads of Terms – Perth Theatre and Perth Concert Hall

ASSESSMENT OF A PROPOSAL TO DISPOSE OF LAND FOR LESS THAN BEST CONSIDERATION THAT CAN REASONABLY BE OBTAINED

PERTH CONCERT HALL

Under Best Value obligations, local authorities are expected to demonstrate sound governance at a strategic, financial and operational level. They also have a duty to achieve best reasonable consideration when they sell or lease their land or buildings, unless a case can be made in terms of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 that other benefits can be delivered by a sale or lease for less than best reasonable consideration and that these benefits justify any loss of purely financial consideration. This paper **confirms** the appropriateness of the proposed disposal of **Perth Concert Hall** in line with the Regulations.

Perth Concert Hall is a contemporary Concert Hall completed in 2005. The site on which it sits extends to 0.84 acres within Mill Street which is a designated regeneration area within Perth city centre. Perth Concert Hall attracts 116,000 attendances per year. The Hall has been a local asset and source of civic pride for over 10 years. The site is currently occupied by Horsecross Arts Limited, which delivers cultural services on behalf of the Council under a Service Level Agreement. Horsecross Arts Limited currently occupies the Concert Hall in terms of a Licence to Occupy, which is continuing by tacit relocation and which the proposed lease will replace.

Horsecross Arts Limited is a limited company with charitable status, founded in 2005. Perth and Kinross Council is its sole member. Horsecross Arts Limited was established from the foundations of the Perth Theatre Repertory Company, one of the oldest theatre repertories in Scotland.

The charitable objects of Horsecross Arts are:

- To advance education by the encouragement of the performing arts by means of production, presentation, collection, exhibition, collaboration, education and training in the performing arts; and
- To run arts development and arts education programmes in theatre, music and new media public art in Perth and elsewhere which will promote and encourage creativity, skills development, social and personal development, social inclusion and lifelong learning but only as long as such activities are regarded as charitable in law.

Governance is via an independent Board of Trustees. The organisation is core funded by Perth and Kinross Council and Creative Scotland. Other funding sources are: earned income and miscellaneous grants from other Trusts and Foundations. Copies of Horsecross Arts Limited Accounts are available within Perth and Kinross Council.

The Perth Concert Hall will be used by Horsecross Arts for fulfilment of the organisation's charitable objects as outlined above. Additionally it is used as a

conference venue within Perth which contributes to business tourism growth. Use of the building for this purpose is not permitted to outweigh the fulfilment by Horsecross Arts of its core charitable objects.

In reviewing this property for disposal a valuation was undertaken by a suitably qualified valuer who is a chartered member of the Royal Institution of Chartered Surveyors and is an RICS Registered Valuer. The valuer has taken into account the requirements of the latest edition of the RICS Valuation Standards ("The Red Book") which in this case is the RICS Valuation - Professional Standards 2014.

The market rent valuation is £187,000 per annum.

Horsecross Arts has occupied and operated the Concert Hall since 2005 when the building opened. Since the building opened, significant economic and community benefits have been derived from it, including a significant contribution to social well-being through the regeneration of the local area. There is no policy intention on the part of the Council to alter use of the building and, as stated in Perth and Kinross Council report 15/295, no legal requirement on the Council to re-tender the service of operating the Hall to alternative providers at this stage.

There has been statutory consultation with local people and service users on the use of the building via the statutory planning process when the Hall was developed and built. Previously there was wider ongoing consultation with local people and service users, as well as wider stakeholders, on plans to develop a Concert Hall on the site. Horsecross Arts carries out regular community engagement and participation activity to involve local people and service users in programming decisions about use of the building. The Hall is regularly used for wider community events, including concerts and performances by local schools, community choirs and orchestras.

Following assessment, the Council is satisfied that disposal for a nominal consideration (£1) is reasonable and that it will contribute to the purposes set out in the Regulations for the following reasons:

- Perth Concert Hall remains central to the regeneration of the Mill Street area and the social well-being of residents.
- Perth Concert Hall is central to the delivery of wider outcomes for culture determined by the Council, including economic regeneration and development and well-being via a strengthening of tourism markets through investment in cultural provision and provision of conference facilities which support business tourism.
- Disposal for alternative purposes is not considered desirable or practical given the high specification and specialist purpose of the building and the contribution of the building to the achievement of wider outcomes determined by the Council and within scope of the criteria which the Council is required to apply when disposing for less than best

consideration. Horsecross Arts has occupied and operated the building effectively since 2005 and there is no policy intention or legal requirement on the Council to re-tender this service to alternative providers.

- There is no known opposition to the disposal.
- The disposal complies with the European Commission's State aid rules.

The Heads of Terms for the Lease of Perth Concert Hall to Horsecross Arts Limited are attached.

ASSESSMENT OF A PROPOSAL TO DISPOSE OF LAND FOR LESS THAN BEST CONSIDERATION THAT CAN REASONABLY BE OBTAINED

PERTH THEATRE

Under Best Value obligations, local authorities are expected to demonstrate sound governance at a strategic, financial and operational level. They also have a duty to achieve best reasonable consideration when they sell or lease their land or buildings, unless a case can be made in terms of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 that other benefits can be delivered by a sale or lease for less than best reasonable consideration and that these benefits justify any loss of purely financial consideration. This paper **confirms** the appropriateness of the proposed disposal of **Perth Theatre** in line with the Regulations.

The building is an Edwardian theatre completed in 1901 with Grade 1 listed status. The site extends to 0.62 acres within Mill Street which is a designated regeneration area within Perth city centre. The Theatre has been closed temporarily since January 2014 and is currently undergoing redevelopment, a partnership project between Perth and Kinross Council and Horsecross Arts Limited. Prior to closure for redevelopment, Perth Theatre attracted 100,000 attendances per year and following redevelopment these are predicted to projected to increase to 157,500 by 2019/20. The Theatre has been a local asset and source of civic pride for over 100 years and one of the oldest theatres housing one of the oldest Repertory Theatre Companies in Scotland. The site is has been until recently occupied by Horsecross Arts Limited who have vacated the premises to allow redevelopment of the building. Occupation was by terms of a lease continuing by tacit relocation and which the proposed lease will replace.

Horsecross Arts Limited is a limited company with charitable status, founded in 2005. Perth and Kinross Council is its sole member. Horsecross Arts Limited was established from the foundations of the Perth Theatre Repertory Company, once of the oldest theatre repertories in Scotland.

The charitable objects of Horsecross Arts are:

- To advance education by the encouragement of the performing arts by means of production, presentation, collection, exhibition, collaboration, education and training in the performing arts; and
- To run arts development and arts education programmes in theatre, music and new media public art in Perth and elsewhere which will promote and encourage creativity, skills development, social and personal development, social inclusion and lifelong learning but only as long as such activities are regarded as charitable in law.

Governance is via an independent Board of Trustees. The organisation is core funded by Perth and Kinross Council and Creative Scotland. Other funding sources are: earned income and miscellaneous grants from other

Trusts and Foundations. Copies of Horsecross Arts Limited Accounts are available within Perth and Kinross Council.

Perth Theatre will be used by Horsecross Arts for fulfilment of the organisation's charitable objects as outlined above. Additionally it is used as a major conference venue within Perth which contributes to business tourism growth. Use of the building for this purpose is not permitted to outweigh the fulfilment by Horsecross Arts of its core charitable objects.

In reviewing this property for disposal a valuation was undertaken by a suitably qualified valuer who is a chartered member of the Royal Institution of Chartered Surveyors and is an RICS Registered Valuer. The valuer has taken into account the requirements of the latest edition of the RICS Valuation Standards ("The Red Book") which in this case is the RICS Valuation - Professional Standards 2014.

The rental market valuation is £70,000 per annum.

Horsecross Arts occupied and operated Perth Theatre from 2005 when Horsecross was established until 2014 when the building closed for redevelopment. Prior to that Perth Theatre Repertory Company, from which Horsecross Arts was formed, had occupied and operated the Theatre since it opened in 1901. Since the building opened, significant economic and community benefits have been derived from it. There is no policy intention on the part of the Council to alter use of the building and, as stated in Perth and Kinross Council report 15/295, no legal requirement on the Council to re-tender the service of operating the Theatre to alternative providers at this stage.

There has been statutory consultation with local people and service users on the ongoing use of the building as a live Theatre via the statutory planning process for the current redevelopment project. There has been wider ongoing consultation with local people and service users, as well as wider stakeholders, on the Transform Perth Theatre project since 2008 when the project was initiated. There is currently a community engagement, education and participation programme in place to involve local people and service users in the detailed use of the building once capital redevelopment is complete in autumn 2017.

Following assessment, the Council is satisfied that disposal for a nominal consideration (£1) is reasonable and that it will contribute to the purposes set out in the Regulations for the following reasons:

- Perth Theatre is central to the regeneration of the Mill Street area and the social well-being of residents
- Perth Theatre is central to the delivery of wider outcomes for culture determined by the Council, including economic well-being via a strengthening of tourism markets through investment in cultural provision.

- Disposal for alternative purposes is not considered desirable or practical given the listed status of the building and the contribution of the building to achievement of wider outcomes determined by the Council and within scope of the criteria which the Council is required to apply when disposing for less than best consideration. It is considered that the continued operation of the Theatre by Horsecross Arts will ensure continued delivery of wider economic and community benefits aligned with the strategic policy aims set out in the Corporate Plan, Community Plan and City Plan.
- There is no known opposition to the disposal.
- The disposal complies with the European Commission's State aid rules.

The Heads of Terms for the Lease of Perth Theatre to Horsecross Arts Limited are attached.

Draft Heads of Terms for leases of Perth Theatre and Perth Concert Hall

1. Lease term – 30 years.
2. Rent - £1 per annum if asked, (subject to valuation of the leased subjects and Committee approval of appraisal in terms of The Disposal of Land by Local Authorities (S) Regulations 2010).
3. Tenant to pay all rates and outgoings.
4. Tenant to pay for all utilities.
5. Tenant to carry out minor internal and external decoration only
6. Tenant to keep leased subjects clean and remove refuse.
7. Tenant to provide fire fighting equipment.
8. Tenant to ensure that floors and all conduits (sewers, drains, pipes, wires, cables etc. and all other a conducting media) are not overloaded.
9. Tenant to use the leased subjects as a [Theatre]/[Concert Hall/Theatre] with associated offices, workshops, studios, rehearsal facilities, conference facilities, meeting rooms, restaurant, bars, merchandising and sale outlet and other facilities ancillary to the advancement of education by encouragement of the performing arts by means of production, presentation, collection, exhibition, collaboration, education and training in performing arts or for such other purposes as may from time to time be approved by the Council as Landlord.
10. Tenant not to assign, sub-let or grant securities over the leased subjects without the consent of the Council as Landlord.
11. Landlord to insure the leased subjects with Tenant paying the premiums .Tenant to obtain public liability insurance including occupiers liability insurance.
12. Tenant to be responsible for minor maintenance works as defined in the Property Agreement (PA) to be entered into between the Council and the Trust.
13. Repair and Maintenance: Council as Landlord to be responsible for all maintenance and repair works (other than minor maintenance works) required to keep the leased subjects in good repair and condition and fit for the purpose for which they are intended to be used and as defined in the PA.
14. Property Agreement to be entered into between Landlord and Tenant incorporating Schedule of Maintenance Responsibilities, to ensure clarity of respective roles of Landlord and Tenant and to set standards as regards maintenance, including maintenance of theatrical equipment; inspection of buildings, theatrical and other equipment and services; monitoring of condition of leased subjects, responsibilities for health and safety;
15. Tenant not to carry out alterations to the leased subjects without the prior consent of the Landlord and all necessary statutory and other consents.
16. Such other terms and conditions as the Head of Property, the Head of Planning and Regeneration and the Head of Legal Services consider appropriate.

