

	<b>URGENT REPORT TO THE LEADER</b>  <b>13 DECEMBER 2013</b>
	<b>Key Decision</b> <b>Yes</b>  <b>Forward Plan Ref No</b> <b>N/A</b>
<b>Corporate Priority:</b>  <b>Aim 2: Prosperous</b> <b>Aim 4: Quality environment</b>	<b>Decision</b> <b>The Leader of the Council</b>  <b>13 December 2013</b>  <b>Deadline for call-in</b> <b>Due to the urgency of this decision there is no provision for call in – approved by the Mayor on 9 December 2013 (The reason for urgency is because the contract with the current operator ends on 31 December 2013)</b>  <b>Implementation Date</b> <b>13 December 2013</b>

**REPORT OF: DIRECTOR OF BUSINESS SUPPORT – 13/447**

**WARDS AFFECTED: CASTLE**

**SUBJECT: FUTURIST THEATRE**

**RECOMMENDATION (S):**

The Leader is asked to consider:-

- (i) the implications of both renewing/and not renewing terms with Mr Stead as operator of the Futurist Theatre for the 2014 calendar year.
- (ii) note the discussions held with Sheffield International Venues (SIV), the operator of the Scarborough Spa Complex and Whitby Pavilion, about the potential operation of the Futurist Theatre during 2014.

The Leader is recommended to:

- (iii) reject the option to enter into a management arrangement with Mr Stead for operation of the Futurist Theatre for the 2014 calendar year due to the lack of viability demonstrated at this time;

and approve either:

#### **Option A**

- (iv) an increase in the direct contribution payable to Mr Stead for operating the Futurist Theatre for the 2014 calendar year from £80,000 to £180,000.
- (v) instruct Officers to bring forward recommendations to address this unbudgeted growth within the Financial Strategy.
- (vi) note the risk of a potential need to increase the maintenance cost budget for the Futurist Theatre if this option is proposed, or

#### **Option B**

- (vii) do not agree to increase the direct contribution to Mr Stead from £80,000 to £180,000 for the operation of the Futurist Theatre for the 2014 calendar year;
- (viii) note that Mr Stead's lease as operator of the Futurist Theatre expires on 31 December 2013;
- (ix) the temporary closure of the Futurist Theatre at the expiry of Mr Stead's current operators contract (31 December 2013);
- (x) authorise Officers to make arrangements to board up the Futurist Theatre, with the frontage being done in a tasteful and sensitive manner;
- (xi) approve a budget of £5,000 from the Capital Development Reserve to carry out the boarding up exercise;
- (xii) the Council to continue to maintain the empty Futurist Theatre (to a minimum standard) for a period of 3 months, to provide time to flush out any potential operators, accepting that these potential operators will need to demonstrate a valid business case and funding.
- (xiii) should no suitable offer be accepted within the 3 month period, Officers be instructed to make arrangements to formally close the Futurist Theatre.
- (xiv) approve a further budget of £20,000 to undertake the works to close the Futurist Theatre, to be funded from the Capital Development Reserve.
- (xv) further reports regarding any expressions of interest will be presented to the Leader prior to any formal closure of the Futurist Theatre.

- (xvi) instruct officers to develop a mechanism to evaluate any business plans / proposals for operating the Futurist Theatre.

### **REASON FOR RECOMMENDATION (S):**

- Mr Stead's operator agreement expires on 31 December 2013.
- The integrity of the building needs to be protected if it is vacant.
- Additional budget is required to close and secure the building.
- To provide an opportunity for alternate operators to come forward and demonstrate their ability to operate the Futurist Theatre.
- To bring the matter to a conclusion.
- The Council cannot sustain/justify the increased contribution payments required to keep the theatre open.

### **HIGHLIGHTED RISKS:**

- A decision on the operation of the Futurist Theatre is not taken in time and the operator agreement expires, with the operator walking away.
- The building is in serious state of disrepair. Should the decision be taken to continue to operate the Futurist Theatre, the Council is at risk of major repairs costs.
- Non occupation of the Futurist Theatre over the winter months will severely impact upon the condition of the building.
- The current operator will remove his equipment from the Futurist Theatre making it more difficult for other operators to run the venue in 2014 without investment.
- Over 4,000 objectors have voiced their opinion of support for maintaining the operation of the Futurist Theatre – adverse publicity will be received if the venue is closed.
- A boarded up building may be seen as a blight in this prime location.

## **1. INTRODUCTION**

- 1.1 Several reports have been presented to Overview and Scrutiny, Cabinet and Council meetings about the future of the Futurist Theatre
- 1.2 An extract of the minutes presented to the July Cabinet (13/276) are as follows:

*The Cabinet considered a report by the Director of Business Support (Reference 13/276) in respect of the redevelopment of the Town Hall and wider development site. Members were reminded that the Wafer Hadley report presented to the Cabinet the previous month had concluded inter alia that the Futurist would not be fit for purpose without considerable investment, the competition for theatre and entertainment had grown considerably within the market place since 2010, the product supply and market for a redeveloped theatre had not been established and could not be guaranteed, and the Council could not justify additional revenue or capital subsidy for the Futurist against the severe budgetary pressures on its frontline services. The Wafer Hadley report was the latest advice commissioned as part of a robust and transparent process of review of the theatre's fabric and operation which also included an exhaustive scrutiny review and several consultants' reports. The report before Members now called for a conclusion to this review process and an acceptance that the Futurist Theatre was no longer sustainable, thereby opening the way for officers, in conjunction with partners, to undertake soft market testing on the redevelopment of the wider site. The proposal was also to retain the Homes and Communities Agency as a key development and investment partner in the site, and to report back to the Cabinet on the revised terms of the Joint Venture with the HCA.*

*After the questions and responses, the Chairman then opened up the report for discussion. **He also reported a communication from the Theatre Trust which requested that, in the event that the Futurist Theatre was demolished, the Council endeavor to keep the theatre open until the new development commenced. In discussing the report, Cabinet Members endorsed this view.** The Director of Business Support was happy to pursue the suggestion of a service level agreement and open book policy in his future negotiations with the current operator, although neither could be guaranteed in light of the exceptional circumstances around the theatre's operation. He also referred to the deteriorating condition of the theatre's roof which had benefited from ongoing repairs but would require significant expenditure to replace.*

- 1.3 This report specifically refers to the actions taken by Officers during negotiations with the current operator together with proposed actions in an attempt to keep the Futurist Theatre open until the new development commences.

## **2. CORPORATE AIMS/PRIORITIES AND THE COMMUNITY PLAN**

- 2.1 The outcome of this report relates directly to Corporate Aim 2 – 'Prosperous' and Corporate Aim 4 – 'Quality Environments'

## **3. BACKGROUND AND ISSUES**

- 3.1 The present operator of the Futurist Theatre is Mr Stead who has operated the Theatre for many years.

- 3.2 The condition of the building has become a major factor in the Futurist Theatre's demise and has reached a point of requiring significant capital investment. It has been reported to Cabinet that the Futurist Theatre is no longer a sustainable attraction.
- 3.3 The budget for operating the Futurist theatre in 2012 was £92,000 including a direct payment to the operator of £60,000.
- 3.4 The budget for operating the Futurist theatre in 2013 is £108,000 including a direct payment to the operator of £80,000

#### **4. CONSULTATION**

- 4.1 Consultation regarding the future of the Futurist Theatre has been extensive. It has included a special task review by the Overview and Scrutiny Committee and several reports to Cabinet.

#### **5. ASSESSMENT**

- 5.1 Following the July 2013 Cabinet report the Director of Business Support has on two separate occasions held discussions with Mr Stead regarding the potential for him to operate the Futurist Theatre during 2014.
- 5.2 On the first occasion Mr Stead stated that it was too early for him to consider whether he would be prepared to continue as operator and he would reconsider his position at a later date.
- 5.3 It was explained that he was being given the first refusal to operate the Futurist Theatre during 2014, however failing agreement the Council would have to look at other options.
- 5.4 During the second discussion Mr Stead stated that he could not continue to operate the venue for the same level of funding contribution (£80,000) as he was not prepared to operate at a loss. He cited the following issues in reaching his decision:
- the on-going uncertainty around the future of the Futurist Theatre make it difficult to book acts which affects the operating viability;
  - the increased cost of operating the building;
  - the lack of maintenance to the building – the roof constantly leaks;
  - the limited toilet facilities;
  - the inadequate heating system – even when on full the building remains cold.
- 5.5 Mr Stead also highlighted potential difficulties with the film productions, not only the fact that people are cold, even though the heating is on, but also that

there will be a move towards digital film production that will require investment or some films will be difficult to attract to the ageing venue. However, Mr Stead has acknowledged that the present film equipment may serve a further twelve month period.

- 5.6 In conclusion, Mr Stead indicated that he would consider operating the Futurist Theatre for the 2014 calendar year but he would not do so at a financial loss to himself. The options he proposed were for the Council to either:
- (a) increase the direct contribution to a level of £180,000 (an increase of £100,000), or
  - (b) enter into a management arrangement with him where the Council would take the full risk and reward for operations. The management arrangement would involve the TUPE transfer of some staff and a management fee payment to Mr Stead, although no specific detail was provided.

## **5.7 Sheffield International Venues**

Sheffield International Venues (SIV) currently manage the Scarborough Spa Complex and Whitby Pavilion under agreement on behalf of the Council. The prospect of SIV operating the Futurist Theatre has been considered by their Board, and whilst they are always willing to assist the Council, they have no ambition to operate the Futurist Theatre at this point in time.

## **6. FINANCIAL POSITION**

- 6.1 The Council faces severe funding reductions and is required to identify savings of £5.00 million over the next two financial years. The Futurist Theatre has been deemed no longer financially viable/sustainable and Members have approved that the future of the site lies in the redevelopment partnership with the Homes and Community Agency.
- 6.2 It has been reported to Members on several occasions that the Futurist Theatre requires significant capital investment to address the maintenance backlog. The roof in particular is in poor condition resulting in water ingress, however due to its fragility it is not possible to access the roof to undertake effective repairs.
- 6.3 Any decision to operate the Futurist Theatre during 2014, whether it is with the present operator or another, is a short term solution without the maintenance investment. Even if Members accept the short term nature of this decision it still carries risk, namely:
- (a) a failure of a property element giving rise to a significant maintenance cost; and

- (b) the building becomes inoperable due to the inability to fund such maintenance costs, and the Council may become liable to pay damages to the operator and/or performing acts.

### **Management Arrangement**

- 6.4 If the Council enters into a management arrangement with Mr Stead, the Council would become responsible for all operating costs but also benefit from the income generated (a risk/reward model). The level of fee expected by Mr Stead is unknown, as is the number of Futurist Theatre staff that would be subject to a TUPE transfer to the Council.
- 6.5 Officers have not had an opportunity to conduct a financial appraisal of previous year's income and expenditure, nor projections for the 2014 calendar year.
- 6.6 At this stage there are too many unknown variables to consider the management arrangement as a viable option for the Council.

### **Longer Term**

- 6.7 A decision to operate the Futurist Theatre during 2014, whether through an operator or management arrangement, is a short term option as without significant maintenance investment Officers cannot guarantee the operational integrity of the building. In fact, as already identified within this report there is a risk of building failure during 2014.
- 6.8 These options can only be considered as 'putting off the inevitable'; the closure of the Futurist Theatre.
- 6.9 If the current operator does not renew his lease, then in accordance with Members wishes, Officers will endeavour to identify an alternate operator.
- 6.10 It is proposed that for a period of 3 months the Council will maintain the Futurist Theatre, to a minimum standard, to provide time for an alternate operator to come forward. During this period, in order to protect the building from vandalism, the external of the premise will be 'boarded up', with the frontage being in a tasteful and sensitive manner, reflecting the prime location it occupies.
- 6.11 Any prospective new operator will during that 3 month period need to demonstrate the viability of their proposal with a valid business plan and evidence of necessary funding.
- 6.12 If, during this 3 month period, no viable alternate operator is identified then the building will need to be closed and the wet systems shut-down.

## 7. IMPLICATIONS

### (a) Policy

7.1 There are no policy implications as a result of this report.

### (b) Legal

7.2 The current operator's lease expires on 31 December 2013. If the lease is renewed then this will be formally documented. In the same manner if a lease with a new operator is entered into that will also be formally documented.

7.3 Depending on the level of management fee requested an exemption may be required from the Contract Procedure Rules.

7.4 If the Council were to offer a further lease or management arrangement there may be EU Procurement implications which would need to be carefully considered.

### (c) Financial

7.5 The financial implications of each option, where known and quantifiable, are identified within the body of the report.

### (d) Staffing

7.6 If the management arrangement is accepted then a, currently unknown, number of Futurist Theatre staff would TUPE transfer to the Council. This option may ultimately expose the Council to redundancy costs, which cannot be currently quantified.

*Nicholas Edwards*

**Nick Edwards**  
**Director of Business Support**

Risk Matrix

<b>Risk Ref</b>	<b>Date</b>	<b>Risk</b>	<b>Consequences</b>	<b>Mitigation</b>	<b>Current Risk Score</b>	<b>Target Score</b>	<b>Service Unit Manager/ Responsible Officer</b>	<b>Action Plan</b>
1	Dec – 2013	A decision on the operation of the Futurist Theatre is not taken in time and the operator agreement expires, with the operator walking away	No operator No plan for the Theatre Adverse publicity	This report and actions detailed within	A3	A3	Director of Business Support	
2	Dec – 2013	The building is in serious state of disrepair. Should the decision be taken to continue to operate the Futurist Theatre, the Council is at risk of major repairs costs.	Increased cost of maintenance (unknown but potentially significant) Consequential loss due to disruption / cancellation of shows Consequential loss to operator Adverse publicity		D4	D3	Director of Business Support	Increase maintenance budget  Mitigate consequential loss through Council Reserves.
3	Dec – 2013	Non occupation of the Futurist Theatre over the winter months will severely impact upon the condition of the building	Reduces the likelihood of ever re-using the building again Increases the prospect of early demolition Vandalism Poor visual appearance in prime location	Protect the building as appropriate Undertake regular inspections Tastefully board the frontage of the closed Theatre	E3	E3	Director of Business Support	

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4	Dec – 2013	The current operator will remove his equipment from the Futurist Theatre making it more difficult for other operators to run the venue in 2014 without investment	Limited alternative operators Increased cost to facilitate a new operator		E3	E3	Director of Business Support	Options within this report
5	Dec – 2013	Over 4,000 objectors have voiced their opinion of support for maintaining the operation of the Futurist Theatre – adverse publicity will be received if the venue is closed	Adverse publicity	Comprehensive consultation	E3	E3	Director of Business Support	
6	Dec – 2013	A boarded up building may be seen as a blight in this prime location	Adverse publicity	Tastefully board up the frontage of the Theatre	C2	C2	Director of Business Support	

**Glossary of Terms**

Risk	An event which may prevent the Council achieving its objectives
Consequences	The outcome if the risk materialised
Mitigation	The processes and procedures that are in place to reduce the risk
Current Risk Score	The likelihood and impact score with the current mitigation measures in place
Corporate Objectives	An assessment of the Corporate Objectives that are affected by the risk identified.
Target Risk Score	The likelihood and impact score that the Council is aiming to achieve
Service Unit Manager	The Service Unit or Officer responsible for managing the risk
Action Plan	The proposed actions to be implemented in order to reduce the risk to the target score

**Risk Scoring**

Impact	5					
	4					
	3					
	2					
	1					
		A	B	C	D	E
	Likelihood					

Likelihood:

- A = Very Low
- B = Not Likely
- C = Likely
- D = Very Likely
- E = Almost Certain

Impact:

- 1 = Low
- 2 = Minor
- 3 = Medium
- 4 = Major
- 5 = Disaster