



<b>INTERIM MANAGEMENT OF THE KEY THEATRE</b>
<b>COUNCILLOR STEVE ALLEN, DEPUTY LEADER AND CABINET MEMBER FOR HOUSING, CULTURE AND COMMUNITIES</b>
January 2022
<b>Deadline date:</b> N/A

Cabinet portfolio holder:	Cllr Steve Allen, Deputy Leader and Cabinet Member for Housing, Culture and Communities
Responsible Director:	Adrian Chapman, Service Director: Communities and Partnerships, Deputy Director: People and Communities
Is this a Key Decision?	YES Forward Plan Reference Number: KEY/14FEB2022/02
Is this decision eligible for call-in?	YES
Does this Public report have any annex that contains exempt information?	NO
Is this a project and if so has it been registered on Verto?	N/A

<b>RECOMMENDATIONS</b>
<p>The Cabinet Member is recommended to:</p> <ol style="list-style-type: none"> <li>1. Approve the award of a Lease to Selladoor Venue Development Ltd (operators of the New Theatre Peterborough) to operate the Key Theatre for a period of 5 years, with annual break clauses, from 1 February 2022.</li> </ol>

**1. PURPOSE OF THIS REPORT**

- 1.1 This report is for the Deputy Leader and Cabinet Member for Housing, Culture and Communities to consider exercising delegated authority under paragraph 3.4.3 of Part 3 of the constitution in accordance with the terms of their portfolio at paragraph (m).
- 1.2 With the approval of the Chairman of the Communities Scrutiny Committee, the urgency procedure and special urgency procedure have been invoked to suspend the requirement to publish notice of the decision for the full 28 days and to suspend the requirement for a 5-day consideration period. The decision will still be subject to call-in. These procedures have been invoked as the Council has worked hard to identify a temporary operator for the Key Theatre, and Selladoor (the current operator of the New Theatre) are the only

party immediately willing and able to fulfil this role. They are in a position, subject to successful lease negotiations, to take over from 1 February, meaning that all existing City Culture staff employed at the Key Theatre would subject to statutory consultation transfer under TUPE legislation resulting in no immediate redundancies, and pre-booked shows would be able to continue uninterrupted. The incumbent caterer Chalkboard Limited would become a sub-tenant of Selladoor. The arrangement with Selladoor will enable PCC to consider all options for the future of the premises and develop a viable business plan.

## 2. **TIMESCALES**

Is this a Major Policy Item/Statutory Plan?	<b>No</b>
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## 3. **BACKGROUND AND KEY ISSUES**

- 3.1 The Key Theatre has for many years offered a vibrancy to the cultural diversity of Peterborough. The theatre is owned and operated on behalf of the Council through City Culture Peterborough, a private limited company.
- 3.2 The recent pandemic has undoubtedly presented the operator with an understandably significant disruption to the running of the theatre. The costs of the disruption came with large financial impacts and despite receiving and reducing the financial losses with support from Arts Council England's Culture Recovery Funding, the Key Theatre is forecasting full year losses of at least £300,000.
- 3.3 As a consequence, the decision was taken on 16 December 2021 to propose the closure of the Key Theatre.
- 3.4 However, in light of the importance of the Key Theatre within the city, the Council has continued its discussions with potential specialist operators and has identified an organisation who is able to take on the management of the Key Theatre along with the staff group, with staff transferring under the TUPE Regulations 2006.
- 3.5 Selladoor Venue Development Ltd is part of the Selladoor Worldwide group ('Selladoor'), operators of Peterborough's New Theatre. They are in a position to take over the management of the Key Theatre from 1 February 2022, subject to the satisfactory conclusion of detailed negotiations. This means very limited, if any, disruption to existing programming. In addition, both the restaurant operator (Chalkboard) and the Key Youth Theatre will continue to operate from the Theatre at least for the next 12 months, with any subsequent changes needing to be agreed with the Council. This will be regulated by a lease between Selladoor Venue Development Ltd as Head Lessor and PCC as Freeholder with Chalkboard as sub-lessee subject to PCC's consent as freeholder. Having two of Peterborough's main theatres operated by a single organisation, at least initially, presents opportunities to rebuild the performing arts profile for the city, reduce management overheads for the Key Theatre, and prepare and present single programming to the public.
- 3.6 It is important to note that the process to award the lease has not been via the Council's ordinary routes. The process which has been followed reflects the urgency needed to take this decision and proceed with implementing a new operator for the Key Theatre, and this award is done so in accordance with Public Contracts Regulations 2015 Regulation 32 2. (c) which states,
- 3.6.1 "insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with."

- 3.7 The decision to direct award for the short term complies with HM Government's Procurement Policy Note 02/20: supplier relief due to coronavirus (COVID-19), where an expectation exists for Contracting Authorities to do all that is reasonably necessary and proportionate to prevent businesses or services closing due to the effects of the pandemic.
- 3.8 During the course of the arrangement with Selladoor, the Council will need to consider its longer-term relationship with the Key Theatre, with any proposals, including sale, being brought before the relevant scrutiny committee for consideration.

#### **4. CONSULTATION**

- 4.1 Informal expressions of interest were received from a number of independent providers shortly after the announcement proposing closure of the Key Theatre.
- 4.2 However, it was determined that only , Selladoor, were able and prepared to mobilise their operation to take over the management of the Key Theatre from 1 February 2022.
- 4.3 Consultation with City Culture staff is currently being undertaken, with the consultation due to close on the 24 January.
- 4.4 Legal Services, Procurement and Finance officers have been fully engaged and provided support throughout every stage of the procurement process.

#### **5. ANTICIPATED OUTCOMES OR IMPACT**

- 5.1 It is anticipated that the decision to award a lease to operate the Key Theatre is granted and the new operator transfers the staff following the TUPE Regulations 2006 and commences the management of the Key Theatre from 1 February 2022.
- 5.2 The outcome above should result in a minimum disruption for the staff as they would transfer to the employment of Selladoor on the same terms and conditions as they currently are on. There would be very limited impact to the theatregoers and population of Peterborough, however the positive impact would be the continuation of the Key Theatre as popular amenity for the city.

#### **6. REASON FOR THE RECOMMENDATION**

- 6.1 The recommendation to directly award a lease to Selladoor enables the continuation of the Key Theatre, this supports the staff currently employed to work at the Key Theatre and allows theatregoers to continue to access the Key Theatre.
- 6.2 The recommendation also removes some of the ongoing financial burden of the year-on-year losses incurred by the Key Theatre and supports the very challenging and significant financial challenges which the Council faces.
- 6.3 The recommendation is also compliant with the HM Government's Procurement Policy Note 02/20: supplier relief due to coronavirus (COVID-19), where an expectation exists for Contracting Authorities to do all that is reasonable and proportionate to prevent businesses or services closing due to the effects of the pandemic.

#### **7. ALTERNATIVE OPTIONS CONSIDERED**

- 7.1 Option 1: Continue to operate the Key Theatre – this option is rejected however due to the in-year and forecast future years' operating losses incurred by the theatre; given the

council's financial position, it is not possible to subsidise these losses, and in fact those losses need to be prevented as swiftly as possible.

Option 2: Close the Key Theatre - this option is rejected at this time, as an alternative option at no additional cost to the council has emerged.

## **8. IMPLICATIONS**

### **Financial Implications**

- 8.1 As part of the lease agreement with Selladoor, the Council will no longer receive the income from any subleases of the theatre premises. This includes the income currently received by the Council from Chalkboard.
- 8.2 As part of the lease agreement, the Council will be liable for any utility costs which exceed £50k. The current utility costs for the theatre are in line with this amount but the substantial global increase in energy costs experienced since November will materially impact that liability. The Council will seek to negotiate a clause in the lease to allow for annual inflation of the £50k cap.
- 8.3 Although the lessee is responsible for minor routine repairs and maintenance costs, the Council will continue to be liable for major works and any pre-existing defects of the building.
- 8.4 By entering into the lease with Selladoor, the Council will avoid the costs of staff redundancy and mothballing costs of the theatre, which include utility standing charges, security costs and the statutory services required for empty buildings such as fire alarm testing and legionella services.
- 8.5 By leasing the theatre, the Council is forgoing, for the minimum of one year if notice is served in six months' time, the opportunity for a Capital Receipt which could have been used to repay the Council's outstanding debt or to fund the capital programme where borrowing is required. This revised use of capital receipts is in accordance with the Council's Improvement Plan as approved at Full Council on 16 December 2021. Therefore, the delay in realising this capital receipt could impact on the timing of some of the schemes in the capital programme where Council funding is required.

### **Legal Implications**

- 8.6 The proposed arrangement with Selladoor is being proposed as a discretionary exercise of its 'wellbeing power' under s2(1) of the Local Government Act 2000 having regard to the cultural needs of its residents and not as a statutory obligation. The inclusion within the Headlease of a break option in favour of PCC and a prohibition against sub-letting without Freeholder consent will mitigate the potential for the lessee to stand in the way of any future plans the Council may develop for the property.

### **Equalities Implications**

- 8.7 Not applicable.

### **Carbon Impact Assessment**

- 8.8 The decision to enter into a lease with an operator for the Key Theatre will have no anticipated environmental impacts. However, if audience numbers increase, resulting in, for example, increased car usage and increased energy consumption, we will work closely with the operator to introduce schemes which mitigate these increases.

## **9. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED**

9.1 None

**10. BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985) and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

10.1 None

**11. APPENDICES**

11.1 None