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**SPECIAL URGENCY PROVISIONS RELATING TO KEY DECISION (S)
(STANDING ORDER 54(7) REGULATION 11 AGREEMENT)**

OPEN

Exempt Information Category: N/A

Report Title:

Orchard Theatre Temporary Structure

Date of Cabinet Meeting or Date of Officer Decision under Delegated Authority: 12 October 2023

Originator (Name and Directorate): Caroline Hicks Ext: 3405

Details of any Member/Officer interest known:

A. Key Decision(s) Proposed:

Please see attached report for details of key decision(s) to be taken by the Cabinet or an Officer under delegated authority

B. Reasons for Special Urgency (i.e. why proposed decision(s) cannot reasonably be deferred by the Cabinet or an Officer under delegated authority to allow for advance publication of the proposals)

In order to allow the Council, utilising a waiver under standing order 13, to award the contract to an experienced contractor selected through a competitive dialogue process to ensure a temporary venue can be operational by the end of November.

Signed:

Dated: 12.10.2023

Title: Director of Housing and Public Protection

c. I, Councillor.....**STEALEY**....., Chairman of Scrutiny/ agree that the taking of the key decision(s) as outlined in A. cannot reasonably be deferred for the reasons detailed in B.

Signed:

Dated: 12/10/2023

E. Copies to be Distributed Following the agreement referred to in D.above

- Originating Officer (for confirmation);
- Democratic Services (to action quarterly reports on Special Urgency Decisions in accordance with Standing Order 54(9));
- Management Team (for confirmation of D.);
- Democratic Services to:
 - receive confirmation of D.; and
 - include Special Urgency Form as an Appendix to the report to the Cabinet (if applicable); and
 - report Special Urgency Form to the next scheduled meeting of the Scrutiny/Crime and Disorder (Overview and Scrutiny) Committee [refer to D.] in accordance with Standing Order 54(7)(c).

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**GENERAL ASSEMBLY OF THE COUNCIL & CHIEF OFFICER
STANDING ORDER 38 & REGULATION 11 REPORT
12 October 2023**

**Orchard Theatre Temporary Structure for duration of RAAC Plank
Removal, Roof Replacement and associated works.**

1. SUMMARY

- 1.1 This is a key decision as it involves the Council committing to spend of over £500,000.
- 1.2 Following a routine inspection of the Reinforced Autoclave Aerated Concrete (RAAC) planks to the Orchard Theatre roof on the 04th September 2023, the Structural Consultant completing the Survey recommended immediate closure of the building. This was due to evidence that the RAAC planks had deteriorated and the area could not remain safe for users. A separate report regarding the works required has already been reported under a Regulation 11 report.
- 1.3 This report outlines the need to provide an alternative venue in Dartford for the provision of as much of the planned theatre programme as possible for the duration of the works on the theatre itself in order to mitigate the impact of a long term closure of the town's primary cultural attraction on staff, the local economy and Dartford residents.

2. RECOMMENDATION TO GENERAL ASSEMBLY OF THE COUNCIL

- 2.1 That Budgetary Provision of £1.5 million using the Finance Stability and Capital Projects reserve is agreed under urgency powers using Standing Order 38

3. RECOMMENDATION TO CHIEF OFFICER

- 3.1 That urgency provisions relating to key decision(s) (standing order 54(7) regulation 11 agreement) be used to allow the Council, utilising a waiver under Standing Order 13, to move the works compound currently located on Hythe Street and to award a contract to the successful bidder to erect a temporary theatre structure to be located on that site.

4. Background and Discussion

- 4.1 The presence of RAAC planking in the Orchard Theatre roof was first identified during routine structural inspections in advance of potentially installing solar panels on the roof as part of DBC's ongoing decarbonisation programme. On discovery of RAAC a specialist consultant surveyor was appointed to inform the Council's approach to the issue. The consultant advised that a programme of regular inspections should be carried out at least annually and to make plans for replacement in the medium term. In order to have absolute confidence The Council commissioned new surveys every 3-6 months with the previous report in April re-iterating the same position.
- 4.2 The Council and Trafalgar Theatres had been working together to identify other improvements to the building which could be implemented alongside roof replacement works during a planned closure.

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- 4.3 Following a routine inspection of the Reinforced Autoclave Aerated Concrete (RAAC) planks to the Orchard Theatre roof on the 04th September 2023, the Structural Consultant completing the Survey recommended immediate closure of the building. This was due to evidence that the RAAC planks had deteriorated and the area could not remain safe for users.
- 4.4 The theatre is managed and operated, on behalf of the Council by Trafalgar Theatres under a management agreement with a profit share provision. This is a contractual position under which the Council is obliged to provide the theatre itself and Trafalgar Theatres is obliged to operate the building and provide a varied programme for the residents of Dartford.
- 4.5 It is estimated that the theatre could be closed for approximately 12 months with a potential for a significant loss in revenue/financial risk for both Trafalgar Theatres and the Council as well as causing an economic impact on the Town Centre and the public loss of service.

5. Effect of a year-long closure on Dartford

- 5.1 The Orchard Theatre Annual Report 2022-23 was presented to Scrutiny Committee on 11/07/2023 at item 10. This showed that in the year 2022-23 215,523 people attended the Orchard Theatre and 60.5% of those tickets were sold to Dartford residents. In the same year the Orchard Theatre generated an economic impact of £4.6m in the local economy, over and above any spend made within the venue itself. The Orchard Theatre Annual Report states *"This includes additional visitor spend in local restaurants, bars, shops, and other businesses; and the impact of venue and visiting company expenditure made locally. The theatre also generates significant social value through our outreach and Creative Learning programme which harmonises with DBC priorities."*
- 5.2 The various businesses across the town centre that rely on patrons attending the theatre were some of those most impacted by the pandemic and have taken time to recover over the past year. During the pandemic various government grants were available to support businesses during their forced closure and while the impacts were still heavy these grants allowed most to survive. The council has already heard from concerned businesses who saw an immediate effect on business on announcement of the theatre's closure.
- 5.3 In contrast to the various government lockdowns during the pandemic, the current situation is only affecting The Orchard Theatre and other local and regional theatres remain operational. Those with the means to travel do have the option of attending other venues for the duration of the closure but there is a risk that those who travel could change their usual visiting habits and carry on attending other theatres in the long term. The longer the closure the longer it will take to recover audience levels on reopening.
- 5.4 Trafalgar Theatres employ around 30 full time equivalent staff and over 100 casual staff to operate the venue. At the time of writing Trafalgar had successfully temporarily redeployed 26 members of staff elsewhere across their portfolio. These redeployments are only possible in the short term and cannot be guaranteed for the full length of closure of The Orchard Theatre.

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- 5.5 For the first month of closure (September) Trafalgar honoured the wages of the casual staff that had already been given shifts for that month but could not continue this arrangement further than the shifts that had already been allocated.
- 5.6 As described at 3.4, the Council has a contractual obligation to Trafalgar Theatres and vice versa. It is unclear from both sides what the legal position is in this scenario and where any liability lies. As such, officers for both organisations have agreed that it would be preferable to work together to mitigate the impacts of closure rather than enter a protracted legal argument.
- 5.7 The main disruption to the Orchard Theatre is in the main auditorium though the whole venue will be closed for the duration of the works. Officers have worked with the theatre team to enable the ongoing delivery of the Orchard Theatre's Community Engagement Programme through the Sports Hall on the Acacia site interruption. The current Community Programme comprises a variety of activities designed to engage with people of all ages, the weekly Ukulele session for example attracts up to 40 participants weekly and the choir up to 35. West End workshops which take place during school holidays host up to 60 young people a day as does the monthly cheerleader camp for the cast of Summer Youth Projects. Annually up to 300 performers engage with the rehearsals for the much looked forward to Community Performance. The volunteer led gardening club of 8 volunteers has recently indicated that they would want to support the theatre wherever it is located which can only serve to enhance the landscaping around the Sports Hall.
- 5.8 Looking ahead, the staff team has already processed grant funding applications to support a variety of new activities, these include; National Dance Day, World Mental Health Day, Chair-based exercises, a Festival of Cultural Food, World Book Day and a Ukulele Festival. Having a secure alternative base from which to deliver the Community Programme will of course inform positive consideration of those bids.

6 Potential mitigation measures for the impact of the closure

- 6.1 As referenced at 4.2 above, during the pandemic a range of government funded grants were in place to support businesses. There is an expectation from some of the business community that the Council could offer similar support to those business directly affected by the closure. Any such support would be discretionary but in order to outline how a support package might look Officers have referenced the most recent discretionary grant scheme overseen by the Council during Covid, the Omicron Hospitality and Leisure Grant (OHLG) scheme.
- 6.2 At this stage it's anticipated that in the region of 50 hospitality & leisure, accommodation, and some travel and tourism businesses could be affected. It is therefore important that any grant funding should support these businesses to offset the difficulties they might face.

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- 6.3 Whilst the awarding of grants would largely be at the Council's discretion, the criteria would be based on the criteria outlined by the Government during the pandemic, and this would have to be met by each business making an application. The scheme would also link in with the Council's corporate strategy for business recovery and growth.

The following grant rates could apply (based on OHLG)

1. Businesses occupying properties appearing on the local rating list with a rateable value of exactly £15,000 or under on 5 September 2023 could receive a payment of £2,667 per 3 months of theatre closure.
2. Businesses occupying hereditaments appearing on the local rating list with a rateable value over £15,000 and less than £51,000 on 5 September 2023 could receive a payment of £4,000 per 3 months of theatre closure.
3. Businesses occupying hereditaments appearing on the local rating list with a rateable value of exactly £51,000 or over on 5 September 2023 could receive a payment of £6,000 per 3 months of theatre closure.
4. If a business has no rateable value (RV) the Council could take account of the businesses level of fixed costs, the number of employees the business has and the consequent scale of theatre related losses, and awards will be limited to the smaller grant amount of £2667.

- 6.4 Based on the figures above such a discretionary grant scheme has the potential to cost between £533,400 and £1,200,000 for a year. At this stage there is no indication that there will be government funding coming forward to support the public sector dealing with the RAAC issue and so this such a grant scheme would be wholly funded by the Council.

- 6.5 This support would be withdrawn at the point of the theatre reopening but, as described in 4.3 above, it could take some time for audience numbers to recover which would pose a residual risk to these businesses.

- 6.6 While this potential mitigation measure would undoubtedly support the businesses affected by the closure it would not minimise the impact on residents, or reduce the risks of either the Council or Trafalgar Theatres in their contractual agreement. In that scenario it is likely that redundancies at the theatre would be unavoidable. This option is therefore not recommended.

7. Potential temporary venue

- 7.1 In the days and weeks following the closure of the theatre officers from both the Council and Trafalgar Theatres worked together to identify whether there is a temporary structure solution which most of the programme from the theatre could relocate to for the duration of the RAAC replacement works. This would need to be a venue which could accommodate a range of shows for around 1,000 audience members and, key to the commercial success of the venue, safeguard the annual pantomime. This would mean having a venue up and running by late November. Although a temporary venue might hold a novelty value for theatre-going residents, it would also need to offer a high quality visitor experience to protect the good reputation of the theatre.

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- 7.2 With the priority being to protect a range of programming in the main auditorium primarily, the brief did not include provision for theatre dining or some of the community/outreach work carried out by the theatre (see 4.7)
- 7.3 Given the emergency nature of our requirements officers ran a short informal competition with industry specialists identified through both theatre and local authority contacts. This identified 4 potential contractors with the capability to carry out the brief.
- 7.4 Two suitable sites in Council ownership were proposed and each of the four potential contractors was asked to submit a tender based on their preferred site and their ability to meet the brief given.
- 7.5 The sites proposed were part of the Acacia Car Park and the town centre works compound on Hythe Street (map at Appendix 1). All four contractors showed Hythe Street to be the preferred site in terms of proximity to services, setting and ease of access for customers. Hythe Street is currently being used as the works compound for the town centre improvement works and so use of the space would be dependent on moving the works compound to Acacia.
- 7.6 All four contractors submitted a bid and answered any supplementary questions raised through the process. Appendix 2 shows a precis of the four bids and highlights the preferred supplier (in terms of both cost and quality of bid). The cheapest bidder could not meet the brief and was eliminated from the process. The second cheapest contractor is therefore the preferred supplier on the basis of value for money to the Council, had suitable experience in this field and could offer a quality temporary theatre solution that meets our requirements in terms of quality and speed. The costs of the temporary venue and moving the compound are broken down at Appendix 3 and would be borne by the Council.
- 7.7 Trafalgar Theatres have carried out financial modelling on the programme that could be presented from the venue and have confirmed that, with the continuation of our contractual subsidy payments, they could continue to operate from such a venue.
- 7.8 In order for the contractor to meet the deadline of having a venue open by late November, and to allow the pantomime producer time to make the necessary technical changes to the show, the contract must be awarded by Friday 13 October 2023.
- 7.9 This option is recommended by officers as the investment made by the council would mitigate all the risks of the closure of the theatre whilst minimising the long term impact on the Orchard Theatre audiences. This option would also reduce the Council's exposure to risk of litigation should we not be able to supply a venue to Trafalgar Theatres.
8. Options available and suitability
- 8.1 Take no action
- The Council could take no further action other than to replace the theatre roof. This option is not recommended as it would damage the local economy, impact residents and could open the Council to legal challenge and financial risk related to the contract with Trafalgar Theatres.

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8.2 Introduce a discretionary grant scheme to support affected businesses

As described in section 5 of this report it would be possible to quickly introduce a grant scheme to support the local economy directly affected by the closure. This option is not recommended as it would mitigate the effects of closure for one affected group but wouldn't contribute to any cultural activity during the closure and the potential for legal challenge and financial risk related to the contract with Trafalgar Theatres remains.

8.3 Construct a temporary venue for the duration of the closure

As described in section 6 of this report. This option is recommended by officers as a slightly higher investment by the council than introducing a grant scheme would mitigate all the risks of the closure of the theatre whilst minimising the long term impact on the Orchard Theatre audiences. This option would also reduce the Council's exposure to risk of litigation should we not be able to supply a venue to Trafalgar Theatres.

9 Relationship to the Corporate Plan

- 9.1 This report relates to the Corporate Plan strategic aim;
To Reduce Overall Health Inequality In Dartford And To Provide For A Rich And Varied Quality Of Life.
And the key action;
Work with commercial and community groups to widen residents' access to culture and arts in the Town Centre.

10 Financial, legal, staffing, administrative implications & risk assessments

Financial Implications	There is not a reserve currently set for this purpose but it is proposed that the financial stability and capital projects reserve is used to fund this provision. Whilst the reserve is set against the pressures expected in the medium term financial plan and the need to fund capital projects, this part of it can be redirected for this purpose given the urgency of the project and the longer term nature of the reserve. Normally a project of this size requires a full competitive process following advertisement in the Find a Tender service as per the Public Contracts Regulations 2015. Regulation 32 of the PCR 2015 include extreme urgency provisions (reg 32.2c) which allow contracting authorities to award public supply contracts by a negotiated procedure without prior publication, i.e. without advertising. The use of this regulation does truncate the tender process and enables a supplier to be selected to supply the temporary structure. The Council believes it has met the necessary tests of this regulation and the Director of Growth and Community has kept a written justification that satisfies these tests. To depart from usual procedures the Council is also required to waive its own contract standing order which has been signed off by the relevant Directors.
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Legal Implications	Standing Order 38 covers the delegation to the Proper Officer (or other members of the Corporate Leadership Team) of routine and urgent matters. Delegations made from the GAC must be in made in consultation with the Mayor. Delegations from Cabinet must be made in consultation with the Cabinet Chairman or Vice-Chairman. Award of the contract to the successful bidder must be in compliance with Regulation 32.2 (c) of the Public Contract Regulations 2015 where contracting authorities may award public contracts by a negotiated procedure without prior publication, 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. Given the urgency, waiver of the Council's contract standing orders must be made in compliance with contract standing order 13. The erection and operating of the temporary theatre venue would need to comply with the relevant, planning, licensing and such other regulations governing the operation of a temporary theatre
Staffing Implications	Although no Dartford Borough Council staff are directly affected by the issues in the report, it should be noted that more than 20 full time staff are employed by Trafalgar Theatres at the venue and there are 120 casual staff on the payroll.
Administrative Implications	Project management resource has been built into the costs.
Risk Assessment	The impact of an extensive closure on the local economy and the cultural offer to residents need to also be considered. The Council is working collaboratively with the theatre operator but the extent of potential financial, staffing and business continuity risks for both organisations is not yet known.
Climate Change Impact	The proposed contractor has supplied extensive details on its climate change policies and journey to net zero.

11 Details of Exempt Information Category - Not applicable

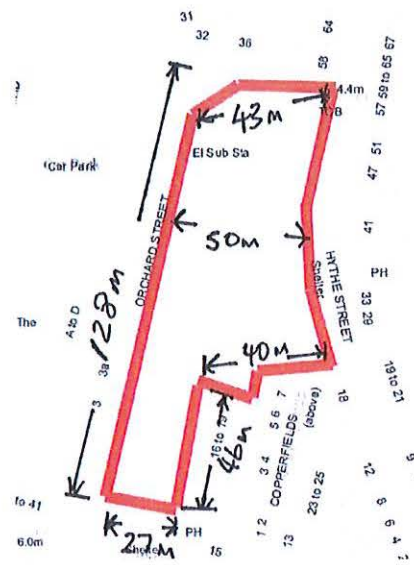
12 Appendices – Appendix 1 – Site map
Appendix 2 – Bid precis
Appendix 3 – Costs

BACKGROUND PAPERS

<u>Documents consulted</u>	<u>Date / File Ref</u>	<u>Report Author</u>	<u>Section and Directorate</u>	<u>Exempt Information Category</u>
None	N/A	Caroline Hicks	Director of Growth and Community	N/A

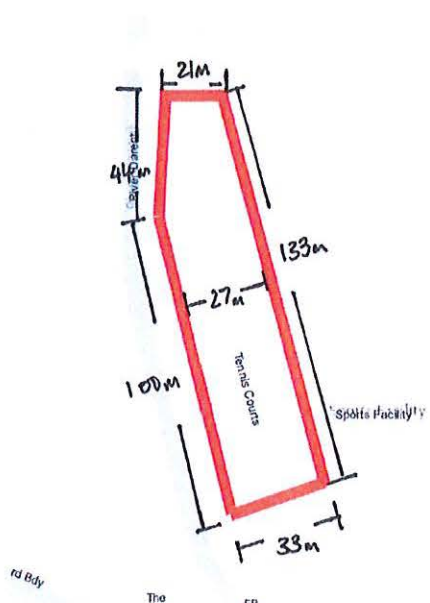
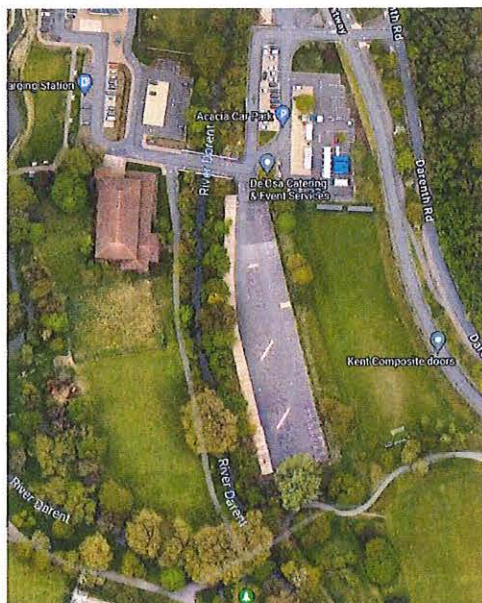
Appendix 1 – potential site plans

Between Hythe Street and Orchard Street:



Pros	Cons
Close to theatre	Currently used as a works compound so some materials will need to be cleared before use (time and financial implications)
Close to transport links and evening economy	Hard standing may be required
Entire site is securely fenced	
Car parking adjacent	

Acacia Car Park



Pros	Cons
Clear site	Not as close to transport links
Car Parking Adjacent	Not as close to evening economy
Potential to run services from adjacent Sports Hall	

Preferred supplier

Appendix 3 - project budget

Item	Cost (exc VAT)
Structure	£ 1,186,321.00
Cost of moving site compound	£ 125,000.00
Project Management	£ 25,000.00
Planning, licensing and other fees	£ 50,000.00
Contingency	£ 100,000.00
	£ 1,486,321.00

