

MEETING OF THE COUNCIL

YOU ARE HEREBY SUMMONED TO ATTEND
an **EXTRAORDINARY** meeting of the
BOROUGH COUNCIL OF WELLINGBOROUGH
to be held on

TUESDAY 31 MAY 2016 at 7pm
in the Council Chamber, Swanspool House, Wellingborough
for the purpose of transacting the following business.

(Please note that prayers will be said by the Mayor's Chaplain prior to the commencement of the meeting.
You may leave the room during prayers if you wish to do so.)

1. Apologies for absence.
2. Declarations of interest.
3. Report on the Castle.
4. *Exempt appendix – which is subject to legal privilege (E3 and E5).

20 May 2016

John T Campbell
Chief Executive

- * The public and press are likely to be excluded from the meeting during consideration of this item in accordance with section 100A of the Local Government Act, 1972, on the grounds that it involves the likely disclosure of exempt information of the description shown in Part 1 of Schedule 12A to the Act.

Further information:

If you have any questions regarding this agenda, please contact Carol Mundy, Democratic Services Officer, on 01933 231 521 or cmundy@wellingborough.gov.uk

Requests to address the council meeting:

If you wish to speak at the council meeting in relation to an agenda item, you must register your request no later than **5pm on the day before the meeting**.

You can do this by:

- Completing the form on the council's website at www.wellingborough.gov.uk/speakersform; or
- Completing the form at Swanspool House reception; or
- contacting Carol Mundy by telephone or email, as detailed above.

Prior to the meeting, your request will be put to the mayor or chairman of the council meeting who will need to be satisfied that what you wish to say is relevant to the public agenda for the meeting.

The following conditions apply:

- maximum time limit for addressing the meeting is three minutes;
- where a number of people wish to speak on the same subject to express similar views, the chairman may require these views to be put by a spokesperson.

Membership of the Council:

The Mayor, Councillor M Waters, Deputy Mayor, Councillor B Graves and Councillors Abram, Allebone, Anslow, Aslam, Bailey, Beirne, Bell, Bone, Carr, Ekins, Emerson, Francis, Gough, Griffiths, Hallam, Harrington, Henley, G Lawman, L Lawman, Lloyd, Maguire, Morrall, Partridge-Underwood, Patel, Scanlon, Scarborough, Simmons, Skittrall, Stevenson, Walia, Ward, V Waters, Watts and York. (36)



Extraordinary Council meeting

31 May 2016

Report of Head of Resources

THE CASTLE**1 Purpose of report**

This report has been drafted following the decision of the council on 22 March 2016 to terminate the contract with The Castle Wellingborough Limited. It is now necessary for members to consider the future of the facility.

2 Executive summary

The council decided to terminate the contract with The Castle Wellingborough Limited on 22 March 2016 for the reasons outlined previously and in the report below. The notice of termination was hand delivered to The Castle on 6 April and the company appointed an Administrator on 13 April, who is now solely responsible for running The Castle Wellingborough Limited (in administration). A detailed timeline is set out in the appendix.

The Administrator has to report to creditors in early June. As the council is the owner of the property it is important that the Administrator is given advice on what would be an acceptable solution for the future of the building and site, along with council policies and procedures that must be adhered to, before that report is published.

3 Appendices

Legal implications (exempt).

4 Proposed action:

The Council is invited to RESOLVE:

- 4.1 to authorise officers to arrange either a new contract (including a licence to occupy) or a new lease – in compliance with procurement and other relevant legislation - for a specified number of years (to be determined, but not to exceed the end date of the terminated contract with TCW - 2021);
- 4.2 that any organisation interested in undertaking this arrangement must, in accordance with the principles of the previous contract, be able to demonstrate a sound business plan;
- 4.3 that any contract or lease will include a clause requiring a specified level of community involvement and consultation to enable the provision of community theatre/arts education;

- 4.4 to agree to provide revenue funding for community arts services, within current budgets, constituting a payment in return for services, over the period of the contract/lease, at a level to be determined. Such service agreement would be procured in accordance with the council's voluntary and community funding process. Contract procedure rules, as specified in the constitution would have to be observed. Award of the service agreement would be subject to the operator's ability to demonstrate a business case for the provision of community theatre, arts and education in accordance with a specification provided by the council. The successful contractor may be the new tenant/contractor responsible for The Castle or another organisation working with the new tenant/contractor.
- 4.5 to commit capital finance up to but not exceeding £250,000 to make essential improvements to The Castle in its current configuration, following receipt of a condition survey;
- 4.6 to receive a further report to consider the long term future of The Castle theatre, its potential development and its place within the town centre as a whole.

5 Background

- 5.1 The council entered into a contract with The Castle (Wellingborough) Ltd (TCW) – a charity – to provide a range of specified services at the theatre following a procurement process in 2010. The contract with The Castle (Wellingborough) commenced on 1 April 2011 for a period of ten years, but a decision was made to terminate that contract on 22 March 2016. A letter notifying TCW formally of that decision was delivered to The Castle on 30 March 2016, followed by the formal termination notice on 6 April 2016.
- 5.2 When TCW entered into the contract commencing in 2011 it was on the understanding by both sides that the company would retain the pension liability which had increased during the period of TCW's previous contract with the council for the provision for services at the theatre. This was known and accepted at the outset as an ongoing liability for the company. The council has no liability for the deficit and on admission of TCW to the pension fund did not provide any guarantees for its repayment.
- 5.3 Members arrived at the decision to terminate the 2011 contract because of their concern about the liquidity of the company. A significant creditor liability had grown over a four year period, and which the company had no apparent means of settling. This liability was in addition to the pension liability which had been in place at the time the contract was signed.
- 5.4 The decision to terminate was therefore based on the fact that – after receiving extensive evidence and advice - the council considered that TCW was in such severe financial difficulties that the following clause of the contract would apply - Schedule 6, Part 4, Paragraph 4.1.11: "*the Castle being in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, an administrator, or administrative receiver, or which entitle the court to make a winding-up order.*" The contract was therefore terminated under that provision by way of a notice dated 6 April 2016.

- 5.5 At the time of making the decision the council stated that it required an exit management plan to be put in place by TCW to end by no later than 30 September 2016 (as provided in Schedule 6, part 6 of the contract). In order to ensure an effective handover post-termination the council requested that TCW work with officers of the council to agree an exit management plan which could enable the facility to continue trading.
- 5.6 In addition to this, members asked TCW to prioritise the payment of local creditors if it could legally do so, after TCW had received the first half year contract fee due to them on 1 April 2016.
- 5.7 The implementation of the recommendation to pay local creditors was, however, affected by the decision, made by the TCW's board, to appoint an Administrator under paragraph 3(1) of Schedule B1 to the Insolvency Act 1986. A more detailed timeline in relation to the appointment of the Administrator is included in the appendix.
- 5.8 The Administrator's objective and statutory purpose, in accordance with the Act, has been explained to the council as "achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first going into administration)".
- 5.9 The Administrator agreed to meet officers on the day after he was officially appointed (13 April) where he outlined his role, powers and next steps.
- 5.10 His focus was on setting out his proposals for achieving the objective outlined in 5.8 above within the statutory period of eight weeks (ie. by 8 June 2016). These proposals were required to inform creditors of events leading up to administration, what actions have been taken whilst in office, and how the Administrator proposed to achieve the statutory purpose – as outlined above.
- 5.11 Since his appointment the Administrator has taken over the running of the business, which is now known as The Castle Wellingborough Limited (in administration) - TCWIA. He has been negotiating with the relevant bank's merchant services division to release income (ticket sales) for productions which have already taken place and could keep the venue trading in the short term.
- 5.12 In order to assist the Administrator in keeping The Castle open the council approved a short term loan to TCWIA in April 2016 which would assist the organisation with cash flow issues, and to enable them to pay salaries/wages. This was repaid in full, and on time, on 20 May 2016.
- 5.13 The Administrator is conscious that the report which he must produce by statute cannot contain any meaningful proposals until he understands the council's decision in relation to The Castle's future.
- 5.14 The Administrator has stated verbally several times that he does not agree that the contract has been validly terminated but has not to date given any clear legal justification for this position. Clarification has been sought.

- 5.15 He has also made other assertions in relation to the legal relationship between TCWIA, The Castle and the council. Detailed information in relation to the Administrator's views and the legal advice received by the council are included in the exempt appendix (which is subject to legal privilege and cannot be discussed in public).
- 5.16 At the same time as discussions have taken place between the Administrator and the council, both have also had separate discussions with a range of parties who have expressed an interest in being involved in The Castle's future. The Administrator has stated that he has received seven expressions of interest for taking over the business operations and two who are interested in the acquisition of the freehold. Council officers are not privy to the details of the interested parties.
- 5.17 Officers have had discussions with businesses, charities and community groups who either want to run the facility or work with others who will run it. All discussions with officers have positively acknowledged that a range of skills will be required to make the venue a success, and a willingness to work with others, potentially under an "umbrella" management company.
- 5.18 One of the key issues for the council, as built into the original contract with TCW, was the need to reduce revenue contributions for the services provided by The Castle. This remains the case and any proposed alternative delivery solution which follows the exit management plan would need to achieve this.

6 Discussion

- 6.1 The original intention was to provide a report to members so that they could consider the future of The Castle at the end of June when all the options could be fully investigated. The Administrator has to make proposals to creditors before then, so a decision on the council's stance is needed before 8 June in order to inform this.
- 6.2 If members would like to see the operation of a theatre/arts presence continue on The Castle site a decision on how that can be achieved needs to be made, which could potentially be consistent with any solution offered by the Administrator. At the time of writing, the Administrator's recommendation is not known, so a principle would need to be established by the council, with detailed negotiation between officers and all other parties involved following that decision.
- 6.3 It is proposed that the council seek to procure two solutions to the immediate future of The Castle: a commercial approach alongside a specified community involvement. A longer term plan can then be considered in due course.
- 6.4 **Commercial:** Because there has been insufficient time to consider the longer term development of the site it would be reasonable to offer a contract to provide services (including a licence to occupy), or a new lease which may allow The Castle to keep its doors open and which would be long enough to be attractive, but flexible enough to enable a redevelopment/improvement of the premises to take place in the future if required.

- 6.5 It has become clear that the venue needs to be run on a commercial basis, with strict financial controls and business planning in place. For this reason it would be ideal if interest was expressed by one or more established businesses with a successful track record and proven business model.
- 6.6 The council could look at incentives to encourage such interest, perhaps by a rent-free period and agreed improvements to the fabric of the building, as well as fixtures and fittings. This is usual when the council considers a new lease on an investment property. A survey has been commissioned to identify areas of priority work which would make the venue a more attractive prospect and highlight any areas of refurbishment or essential maintenance.
- 6.7 Given the need to ensure financial sustainability, any organisations interested in becoming involved will need to develop a sound business plan. Officers would need to undertake due diligence on all proposals to ensure the council's position could be protected and the best possible outcome secured.
- 6.8 Any new contract or lease would have to follow council procedures as specified in the constitution, particularly if procurement and contract regulations apply, as is the case for the award of a contract. A lease would not need to comply with procurement legislation, but would have to be at market value so as to avoid state aid implications. This may mean that the level of rent could be prohibitive to a financial sustainable business plan but it might be possible to identify an exemption to this, although this will have implications for how both the contract/lease are structured and documented.
- 6.9 **Community:** There is a strongly expressed aspiration from the local community to provide facilities which enable local groups to explore theatre and arts education/performance. It would be possible to make community involvement a condition of the lease/contract.
- 6.10 Members may wish to approach this concept as part of the voluntary and community funding arrangements, and provide some funding, based on a specifications and key outcomes to enable this. Further details on how this might work are included in the appendix, but would provide an opportunity for a contractor or community group to apply for funding from the council in order to meet a set of specified outcomes.
- 6.11 It is recommended that the two elements – business and community – work together to provide both a joint commercial and community perspective. Any commercial organisation interested in operating The Castle can be asked to demonstrate how it will develop relationships with community groups so that all can benefit.
- 6.12 **The longer term:** If a short term solution can be found, members will then have time to consider the longer term future of The Castle. Further understanding of the requirements for the area have been provided by the emerging Local Plan; the borough is expanding, and the town in particular, so it may be beneficial to include the site in a wider redevelopment of the town centre to reflect the growing needs of local people.

- 6.13 This would need to be the subject of a further report, looking at the options available for The Castle and whether it could be complemented by the development of other sites in the town to provide a comprehensive larger scale scheme.
- 6.14 The council would need to consider whether it wished to redevelop The Castle and parts of the town centre and – if so – how it could be done. Options include the council undertaking the work itself, or working with one or more partners to deliver the redevelopment programme.
- 6.15 The benefit of taking the time to consider the development of the town as a whole is that any development can then be driven by members, after consultation with local people as to what facilities they would like to see in their town centre. There has not been time to do this within the current timetable, although a number of views have been expressed. Copies of feedback have not been included in this report so as not to make it unnecessarily lengthy, but they will be printed and placed in the members' room for information.

7 Legal powers and implications

- 7.1 Section 145 of the Local Government Act 1972 gives the Council the power to provide entertainments or facilities for entertainments itself or arrange for a third party organisation to do so and contribute towards the third party's expenses in so doing. This power is augmented by section 144 of the Local Government Act 1972, which empowers a local authority to encourage visitors to come to a local authority for recreation, health or conference purposes and to provide conference facilities.
- 7.2 Legal implications relating to the termination of the contract with TCW and options for the future have been set out in the exempt appendix.

8 Finance, risks and value for money implications

- 8.1 The council has provided financial support to the arts in Wellingborough via its theatre over the years (the council built and opened the theatre in 1995 – at a cost of £3.5m), and this service is still making a significant demand on the council's revenue budget despite the fact that the council's revenue funding has been reduced significantly in the last few years.
- 8.2 The current Castle budget for 2016-17 is split into contract fees of £186K and maintenance funding of £90k; a total of £276k for the year. If no further reductions were in place over the life of the contract this would have meant revenue spending in the region of £1.380m. If a reduction over the remaining life of the contract at 15% pa continued the total contract fee paid would have reduced to £870k. This would have amounted to a saving of £510k over the medium term. However, TCW stated that they could not absorb any further contract reductions.
- 8.3 Members will need to determine whether – The Castle being an important feature and attraction in the borough – they wish to continue to see this as a priority when allocating budget, or whether (like the leisure service) they would

wish – if possible - to see it as self-financing or with a significantly reduced level of funding allocated for specific purposes and outcomes.

- 8.4 Reductions in financial support from the council have been detailed in previous reports and were agreed with The Castle (Wellingborough) Ltd in line with the provisions in the contract under both Schedule 4 Financial Provisions and Schedule 5 Contract Monitoring and Review. It was agreed with TCW that the current revenue budget was to reduce by 15% pa, in line with the predicted fall in the council's overall funding from central government. This amounted to approximately £35k pa over the remaining term of the contract.
- 8.5 A number of key risks are associated with the future of The Castle. Some are immediate and arise from the current position of TCWIA. These are outlined in the paragraphs in the "Background" and "Discussion" sections above as well as in the appendix.
- 8.6 In addition, members may have to consider whether The Castle can be self-financing, both in the short term and the long term. Much of this will depend on the proposals from both commercial organisations and community groups. Such risks cannot be quantified until the level of interest in a lease or contract is known – and on what terms.
- 8.7 Any new arrangements will need to be fully reviewed to ensure that value for money is ensured and any future risks are fully identified, where possible to do so, at the outset. Mitigations for these risks, if practicable to do so, will be included in the terms and conditions of the new arrangements.

9 Implications for resources

- 9.1 The Castle has absorbed a large amount of officer time and will continue to do so. This is, however, a key asset in which the council has invested significantly over the years.

10 Implications for stronger and safer communities, and equalities

- 10.1 Actions to involve the community in both the short and long term future of The Castle give an opportunity to reflect the requirements of local people and provide a focus for community activity.

11 Author and contact officer

Bridget Gamble, Head of Resources

12 Consultees

Chief Executive

Liz Elliott, Head of Finance

Julie Thomas, Head of Planning and Local Development

Paul Burnett, Principal Property and Facilities Manager

Gill Chapman, Principal Community Support Manager

Geldards LLP, as legal advisers

13 Background papers

There are some exempt background papers containing privileged legal advice. Feedback and comments from people following the meeting on 22 March 2016 are exempt because they contain business details or personal views.