

Hazlitt Arts Centre Options

Final Decision-Maker	Economic Regeneration and Leisure Committee
Lead Head of Service	John Foster, Head of Regeneration and Economic Development
Lead Officer and Report Author	Mike Evans, Leisure Manager
Classification	<p>Public report (with Exempt Appendix) Exempt Appendix – The information contained within the appendix is considered exempt under the following paragraph of Part I of Schedule 12A to the Local Government Act 1972:-</p> <p>3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information)</p> <p>5 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings</p> <p>Public Interest Test The public interest test falls in favour of withholding this information so as not to jeopardise the Council's commercial position</p>
Wards affected	All wards

Executive Summary

A report exploring the Hazlitt Theatre contract options available to the Council and proposing recommendations for how the Council should manage the contract, which cannot be performed by the operator because of the ongoing Covid-19 restrictions.

Purpose of Report

Decision

This report makes the following recommendations to this Committee:

1. That the Council continues to pay its agreed contract fee to Parkwood Leisure for the provision of services at the Hazlitt Arts Centre.
2. That officers continue to monitor Parkwood Leisure's performance with respect to the delivery of the requirements of the Hazlitt Arts Centre Services Contract as defined by the Key Performance Indicators and make further recommendations in April 2021.

Timetable	
<i>Meeting</i>	<i>Date</i>
Economic Regeneration and Leisure Committee	19 January 2021

Hazlitt Arts Centre Options

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>Accepting the recommendations ensures the Council is in a position to resume the fulfilment of these strategic objectives when Covid-19 restrictions are lifted.</p>	Leisure Manager
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>Accepting the recommendations ensures the Council is in a position to resume the fulfilment of these cross-cutting objectives when Covid-19 restrictions are lifted.</p>	Leisure Manager
Risk Management	Refer to paragraphs 5.1 and 5.2 of the report	Leisure Manager
Financial	Accepting the recommendations will result in continued budgetary pressures in line with the Medium Term Financial Strategy forecasts	Head of Finance
Staffing	The recommendations will be delivered with the current staffing.	Head of Regeneration and Economic Development

Legal	Acting on the recommendations is within the Council's powers as set out in the Hazlitt Theatre services agreement. External legal advice has been obtained on the contract.	Team Leader, Contracts and Commissioning
Privacy and Data Protection	Accepting the recommendations will increase the volume of data held by the council. We will hold that data in line with our retention schedules.	Policy and Information Team
Equalities	The decision could result in a change of service, therefore an equalities impact assessment has been completed.	Policy & Information Manager
Public Health	The closure of the Hazlitt Arts Centre has severely affected the health and wellbeing of the theatre staff and its regular patrons. The effects of this will continue until it can re-open.	Public Health Officer
Crime and Disorder	The recommendation will not impact on crime and disorder.	Leisure Manager
Procurement	On accepting the recommendations, the council will conduct further discussions with Parkwood Leisure in line with procurement law and UK PPN 04/20 principles. We will complete those exercises in line with financial procedure rules.	Head of Regeneration and Economic Development

2. INTRODUCTION AND BACKGROUND

2.1 The contribution that the Hazlitt Arts Centre makes to the borough is being reviewed by the Council because of its sustained closure since March 2020 and the ongoing financial difficulties the Council is facing. The Council is currently forecasting a gap in its 2021/2022 budget of £1.6m. The Council is forecasting it will take three to four years to deliver savings to cover the budget gap and it remains the case that the Council needs to continue planning for a significant reduction in resources over the next three years.

The issues in this report are presented to the Economic Regeneration and Leisure Committee (ERL) following the decision of Policy and Resources Committee on 25 November to substitute the four resolutions of the ERL Committee on 12 November 2020 with the following:

- That the matter be deferred until the ERL Committee meets on 19 January 2021, so as to allow greater clarity on issues such as external

sources of funding and Covid-19-related developments and to facilitate further Member and Stakeholder engagement in determining the best method of retaining the Hazlitt for years to come.

- 2.2 The Hazlitt Arts Centre is the name given to the buildings that comprise the Hazlitt Theatre main auditorium, the Exchange Studio, the Fourth Wall and the Graham Clarke Exhibition Gallery. They are situated on Earl Street with entrances also in Market Buildings and in Rose Yard. They comprise the spaces leased to Parkwood Theatres and the majority of them are situated on the first floor above retail units and restaurants. The arts centre is commonly referred to as the Hazlitt Theatre. Any references in this report to the Hazlitt Theatre are references to the Hazlitt Arts Centre, unless expressly stated otherwise and a more specific part of the building is being referred to.
- 2.3 The Council is the freeholder of the Hazlitt Arts Centre. The Council sold a long lease on the buildings to a third-party property company who has, in turn, sub-leased the Hazlitt Arts Centre footprint back to the Council and leased the ground floor units to other retail and restaurant tenants.
- 2.4 The Council's 125-year lease for the Hazlitt Arts Centre expires in 2116 (95 years time). The Council's lease covenants that the Council will "not use the Demised Premises or any part or parts thereof for any purpose other than as a theatre and as a venue for other forms of public entertainment meetings and private functions and purposes ancillary thereto."
- 2.5 The Council leases the Hazlitt Arts Centre to Parkwood Leisure and contracts them to deliver services from it. Prior to tendering for an operator, the Hazlitt Arts Centre cost the Council approximately £600,000 per year. The contract began in 2013 with a decreasing annual subsidy paid by the Council to Parkwood Leisure over the first two years of the contract in 2013/14 and 2014/2015. From 2015/2016 onwards the contract has a fixed annual sum for all remaining years although that sum is subject to annual inflation. In 2020/2021 the annual contract fee is £244,893. The venue achieves an operational surplus and from that surplus Parkwood Leisure takes its costs and profit.
- 2.6 The contract includes a general review in 2023, which provides both parties with an opportunity to assess and evaluate performance and future ambitions.

This report goes on to consider each of the issues set out in the resolution of P&R on the 25th November 2020.

External Funding Available to the Hazlitt Arts Centre

- 2.7 As reported to ERL and P&R in autumn 2020, the application by Parkwood Leisure to the first Culture Recovery Fund (CRF) for the Hazlitt Theatre was unsuccessful. The fund does not have an appeals process but Parkwood Theatres, with the help of Helen Grant MP, have been pursuing a re-evaluation of the Arts Council's decision who administer the CRF. At the time of writing there is no available update or outcome of this.

- 2.8 Officers have had discussions with Arts Council representatives and Helen Grant MP at which future funding opportunities were discussed. Since that meeting the Arts Council has announced a second round of the Culture Recovery Fund. Councils can apply for this funding, which is to be used to support reactivation costs in arts and cultural venues to make them sustainable for future operations. Only costs incurred between April 2021 and June 2021 are relevant for any funding bid meaning the fund is limited in terms of its ability to provide sustainable relief against the Council's contract payments to Parkwood for the medium term.
- 2.9 Opportunities to bid opened on 6 January and will close on 26 January. With negotiations with Parkwood ongoing, a pragmatic decision has been made, due to the tight timescales, to work with Parkwood Leisure on a joint bid to the second round of the Culture Recovery Fund. If successful the bid will mitigate expenditure at the venue between the period April 2021 to June 2021, which will be of benefit to both parties.
- 2.10 The Arts Council also runs a project grants scheme, which makes grants of up to £100,000 available to regional cultural projects. The Council could make an application to this fund to cover specific projects that take place at the Hazlitt Arts Centre. This fund is open all year round and will be of great benefit to future work at the Hazlitt. The Council will consider a future bid. At present efforts are best directed to the Culture Recovery Fund and the resolving the ongoing impact of Covid-19.

Covid-19 Related Developments

- 2.11 The ERL meeting on 12 November 2020 and the P&R meeting on 25 November were held during the second lockdown. Since those meetings, at the start of December, Maidstone was placed into Tier 3 where the restrictions on live theatre continued. The only permitted activities at the Hazlitt Arts Centre which the public could attend were dance groups for under 18 participants. Parkwood Theatres made plans to resume these activities but the move to Tier 4 announced on 19 December meant that under-18 dance activities also had to cease. A third National Lockdown was then announced starting on the 5th January which will continue to at least the middle of February.
- 2.12 The Furlough scheme, previously extended to the end of December 2020, has now been extended to the end of April 2021.
- 2.13 In December 2020 two vaccines were approved for use in the UK. An LGA webinar on the vaccination programme and how it would be rolled out to communities in the UK informed the Council that the clinically vulnerable population will not be fully vaccinated until the end of May 2021. The government has a target of vaccinating the first groups of vulnerable citizens by the end of February 2021, at a rate of 2 million jabs per week. The exact dates of who will be vaccinated by when are not yet known by the Council but it is expected that everyone in the UK will be vaccinated by the end of 2021.

- 2.14 Since the P&R meeting on 25 November cases of Covid19 nationally have continued to rise. Maidstone consistently featured in the top 10 of most-affected boroughs in the UK with neighbouring boroughs occupying the top spot for a sustained period. At times in the last two months, the UK government has imposed additional measures and restrictions on Kent because of its infection rate.
- 2.15 At the time of writing the country is in its third national lockdown. The impact of Covid-19 is being felt in the NHS where hospitals are under severe pressure. Some county resilience forums (not Kent) have declared major emergencies because of the strain on hospitals and adult social care in their authority areas. Their infection rates are similar to those being experienced in Kent.
- 2.16 Kent schools have had their post-Christmas resumption dates postponed to help limit the spread of Covid-19. Consideration is being given to when face-to-face teaching in secondary school settings will recommence.
- 2.17 The impact of Tier 4 and the national lockdown restrictions on Parkwood and the HAC programme of activities and performances is significant. This will have a knock-on effect on programming and the need to reschedule performances once again. A great deal of uncertainty remains. The Government's timetable for the roll out vaccinations offers hope that social distancing restrictions may begin to ease in the spring, and performances may recommence. This is a significant change to the bleak and uncertain future faced in October and November 2020 when there was no reason to believe there could be any return to normality for short to medium term.

Member Engagement

- 2.18 Since the P&R meeting on 25 November, Council officers have had various meetings and conversations with the group leaders and the Chair and Vice Chair of ERL. These meetings have been used to keep councillors updated and to engage them in the process.
- 2.19 On 7 January, officers delivered a confidential briefing open to all Members to update them on the conversations with representatives from Parkwood Leisure, the information and ideas that have been exchanged, and the emerging options that are now included in this report. It was also open to members to put forward other options and to seek information which has been helpful in identifying what information is needed by the council's decision makers on these issues.

Stakeholder Engagement

- 2.20 Officers have had meetings and discussions with the Arts Council, Kent County Council and some local arts and cultural organisations.
- 2.21 Officers have conducted surveys with the user groups of the Hazlitt Arts Centre and other local arts and cultural groups who have the potential to use the venue, to collect and collate their thoughts and experiences on it. Nine responses were received from 21 groups who regularly use the Hazlitt.

Four responses were received from other local groups who do not use the Hazlitt.

- 2.22 The majority of the user groups value the venue and wish to see it continue to be available to them for their activities. For many it is the only venue in the borough that meets their technical requirements. The user groups comprise those who attend weekly and others who attend only once per year for productions. The majority of those who responded to the survey are happy with the venue and make repeat bookings.
- 2.23 The groups who do not use the theatre choose not to do so because the technical aspects or the size of the venue do not meet their needs, because its location does not suit them or because the building configuration does not suit.

Future Sustainability of the Hazlitt Arts Centre

- 2.24 At the time of the P&R meeting on 25 November 2020, Parkwood Theatres had not submitted their year 8 business plan to the council and their 2019 company accounts had not yet been filed (the deadline was December 2020). The Council has since reviewed these accounts and the 2020 management accounts and we can draw the conclusion that Parkwood Leisure and its family of companies are proving resilient during the Covid-19 pandemic.
- 2.25 The contract requires that the annual business plan is received in the July of each year, ready for an October implementation. In 2020 this was not achieved, however a first draft of the year 8 (October 2020 to September 2021) business plan was submitted to the Council on 9 December. The year 8 business plan models the best, medium and worst case scenarios for trading between October 2020 and September 2021. The different scenarios all involve remaining closed at the current time and resuming community activities and live theatre performances when they are allowed. The plan was written before the latest lockdown. However, because the theatre was already closed in Tier 4 the repercussions of the lockdown have not altered the business plan scenarios in any great way. The scenarios make different forecast assumptions on when restrictions may be lifted and when those services might resume. In all three scenarios the theatre is forecast to make a monthly deficit because of the impact of social distancing on audience sizes.
- 2.26 The year 8 business plan is based on the template from previous years, which has been effective at delivering services. In 2019 it achieved weekly opportunities for dance and youth theatre, access for community organisations, an annual pantomime which comprised 62 pantomime performances with an attendance of 91%, and 217 other performances with an average attendance of 44%.
- 2.27 The year 8 business plan makes some provision for new services and changes to the way services are delivered, for example offering an online broadcast of a Christmas show in 2020 when it was not possible for a live one to be delivered at the venue. A new educational arm to the business is

planned with development in the early stages. The plan currently includes no service delivery in outdoor open-air services, which may be possible in the summer of 2021 while indoor performances are still restricted. This continues to be discussed with Parkwood Leisure.

- 2.28 At the time of writing, Parkwood Leisure is following their year 8 business plan described in 2.27. Services are currently not being delivered and there is no government contract guidance in place to address this situation. The last advice issued by government was the PPN 04/20 advice. That advice had an expiry date of 31 October 2020 and it advised councils to address contracts where “the basic commercial assumptions that underpinned the viability of the original contract can no longer be maintained.” For contracts where this is the case councils should be varying or terminating them.
- 2.29 Council officers are aware of the other common operating models for theatres and other venues in this sector. At present these have not been explored in any great detail because they do not help address the immediate issues at hand, which are detailed in paragraph 2.1.

3. AVAILABLE OPTIONS

- 3.1 In considering the range of options, coming to a conclusion and subsequently a decision about the best way forward the Council needs to balance all the issues at hand. The Hazlitt Arts Centre provides a venue which has and can in the future make a positive contribution to Maidstone as a thriving place. This venue is protected in terms of a covenant and cannot be used for any alternative purpose. The Council has a contract with an operator for delivery of services at this venue; the contract cannot be wholly performed by the operator, at a time when there is uncertainty in the economy and in the leisure and hospitality industry. The Council is contemporaneously managing its own significantly challenged financial position; the impact of the Covid19 pandemic is forecast to challenge the council’s financial position throughout the period of its Medium-Term Financial Strategy.
- 3.2 The options available to the Economic, Regeneration and Leisure Committee at this time are presented below. These have been constructed after discussion and negotiation with Parkwood Leisure. However, it should be highlighted that Parkwood Leisure is in contract and is not obliged to do anything other than follow the requirements set out in the contract.
- 3.3 **Option 1 – Follow the Parkwood Leisure year 8 business plan**
The business plan scenarios forecast that community activities and live theatre will return to the Hazlitt Arts Centre at some point between January 2021 and September 2021. Social distancing restrictions on audience sizes will hamper the profitability of every performance and the theatre is forecast to make a monthly deficit until social distancing restrictions are fully lifted. This option will require the council to pay its full contract subsidy, which does not address the issues described in paragraph 3.1. However, if the roll out of the vaccine goes smoothly there is a greater

prospect that near normal services could be resumed by the summer this year.

3.4 However significant uncertainties remain; these include prevalence of Covid-19 and variants of Covid-19 including as restrictions are varied in their severity and level of freedom for movement etc, the pace and effectiveness of the roll out of vaccinations and seasonality impacts. It is therefore recommended that if this option is taken forward that it would be prudent to monitor the situation closely and not make decisions that in the short to medium term hinder the Council's ability to revisit the other options set out in this report.

3.5 In addition, Parkwood Leisure has agreed to set up an advisory forum to work more closely with Members on the future direction of the entertainment programme, including the identification of project opportunities such as audience development. Parkwood Leisure have also agreed to attend ERL Committee before the start of each year's programme to present their proposals for the year to come and seek Member feedback. **This option is recommended.**

3.6 **Option 2 – Follow an interim contract arrangement**

Through discussion with Parkwood Leisure, officers from both parties have endeavoured to identify an interim contract arrangement that has the potential to suit both organisations. The detail of this option is included in the Exempt Appendix. This interim contract arrangement acceptable to Parkwood Leisure does not fully address the current situation from the Council's perspective and **this option is not recommended.**

3.7 **Option 3 – Follow the Council's alternative proposal for the period of January 2021 to September 2021.**

The Parkwood Leisure business plan identifies that re-opening under social distancing restrictions will create a monthly deficit throughout 2021. The Council has proposed removing the contract requirement for the theatre to re-open immediately and instead facilitate an extended closure, managed by Parkwood Leisure, and enabling it to re-open at a later date when there is more certainty (and avoid the need to continually reschedule performances) and re-opening does not immediately generate losses. In such a seasonal industry, resuming services in winter 2021 enables the recovery to begin at the most profitable time.

Parkwood Leisure does not agree with this approach. The losses set out in their business plan are reduced from ticket sales when performances recommence. If staff are returned from furlough, and no performances are programmed, their losses will be higher. If staff are made redundant at the end of furlough to mitigate these losses, there will be redundancy costs, and challenges to re-employ staff after a few months of closure when it is commercially viable to reopen. Parkwood Leisure would support this option if the Council provides a greater monthly subsidy and an indemnity to Parkwood Leisure. **This option is not recommended.**

3.8 **Option 4 – Continue to pay the full subsidy and seek a future rebate**

The Council has discussed the possibility of a rebate from Parkwood Leisure in future years in return for the Council's continued support during the pandemic. This option would see the Council continue to pay Parkwood Leisure their normal monthly management fee while they are unable to provide services from the venue. In return Parkwood Leisure would accept a reduced monthly management fee in future years when profits have returned. Parkwood Leisure are not in favour of this approach as they cannot be sure how profitable future years will be and so cannot offer this to the Council, so **it cannot be recommended.**

3.9 **Option 5 – Terminate the contract through negotiation**

The discussions with Parkwood Leisure representatives to explore options further have identified that the two organisations do not have a lot of common ground. Negotiating a termination will not be a straight-forward task and is likely to become protracted. **This option is not recommended.**

3.10 **Option 6 – Terminate under the contract**

The PPN 04/20 guidance, although no longer in force, advised that where the basic commercial assumptions that underpinned the viability of the original contract could no longer be maintained, the contract should be varied or terminated. Discussions with Parkwood Leisure have identified some potential variations in 3.4, 3.5 and 3.6, however they are not suitable to one or either party. More information is provided in the Exempt Appendix. **This option is not recommended.**

3.11 The changes to the tiered restrictions, the current lockdown and the news of a vaccine roll out mean things could look very differently in three months. At the current time the Council needs to gather more information and make further assessments on the suitability of option 6. This means the recommended option at the current time is the one at paragraph 3.3.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 The Council recognises that it is not the fault of Parkwood Theatres that services cannot be delivered under the contract. However, the question this report seeks to address is how long should the Council accept non-performance of services before termination becomes the more favourable option. Councillors' response to the termination option as proposed in November 2020 indicates that there is a high tolerance level for non-performance of services because of the need to protect activity at the theatre and to ensure the theatre is a feature of the town centre's economic recovery.
- 4.2 At the current time, with the level of tolerance established, Council officers can continue to monitor the situation and make further assessments and recommendations to Members. The further assessments can weigh up the tolerance threshold against the termination threshold.
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5. RISK

- 5.1 The risks associated with this proposal, including the risks if the council does not act as recommended, have been considered in line with the council's Risk Management Framework. That consideration is shown in this report at paragraphs 3.3 – 3.8, 4.1 and in the Exempt Appendix. The option in paragraph 3.3 is rated as "RED". However, we are satisfied that the further responses to those risks shown at paragraph 4.1 and 4.2 are sufficient to bring the impact and likelihood within acceptable levels. We will continue to monitor these risks as per the Policy.
- 5.2 The Council is likely to face a lot of media speculation around this issue and decisions and it could cause reputational damage. The Council's Communications Team works closely with the Leisure Team to manage enquiries on this subject. The Council has a responsibility to manage its reputation when presenting options, it also has a responsibility to operate a balanced budget and to achieve value for money for all residents.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

2.30 A summary of the previous decisions is presented below:

Decision of P&R Committee, 16 September 2020

The Economic Regeneration and Leisure Committee review the contribution of the Hazlitt to the town centre economy and consider options for its sustainability, with the findings to be reported to this Committee,

Decision of ERL Committee, 12 November 2020

1. It be recognised that subsidy paid to Parkwood Leisure to operate the Hazlitt Theatre is not sustainable under the Council's new Medium-Term Financial Strategy.
2. The Council should seek to reduce its monthly expenditure on the Hazlitt Theatre complex to a maximum of £8,630, that being the amount it would cost for the Council to mothball the building.
3. The Head of Regeneration and Economic Development enter into discussions with Parkwood Leisure and terminate the Hazlitt Theatre contract; and
4. Alternative uses, in the short and medium term, be looked into.

Decision of P&R Committee, 25 November 2020

That the four resolutions of the ERL committee on 12 November 2020 concerning the Hazlitt be substituted with a resolution:

- That the matter be deferred until the ERL Committee meets on 19 January 2021, so as to allow greater clarity on issues such as external sources of funding and Covid-19-related developments and to facilitate

further Member and Stakeholder engagement in determining the best method of retaining the Hazlitt for years to come.

2.31 Officers are required to:

- Provide greater clarity on issues such as external sources of funding than was provided to the ERLC on 12th November
- Provide greater clarity on the impact of Covid-19-related developments
- Facilitate further member & stakeholder engagement in determining the best method of retaining the Hazlitt for years to come
- Consider options to ensure the sustainability of the Hazlitt Arts Centre.
- Report to the ERL Committee in January 2021

6.1 The consultation and engagement that has taken place in the writing of this report is detailed in paragraphs 2.7, 2.8, and 2.18 – 2.23.

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 Once agreed, officers will communicate the outcomes to Parkwood Leisure and continue to work in partnership with them.
- 7.2 Officers will continue to monitor the contract performance in line with the restrictions caused by the Covid-19 pandemic.

8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Exempt Appendix 1

9. BACKGROUND PAPERS

- None