

**Storey Institute  
12 September 2012**

**Report of Chief Executive**

**PURPOSE OF REPORT**

To provide an update on the current position regarding the operation of the Storey and seek direction on the future use of the building.

This report is public.

**RECOMMENDATIONS**

- (1) That the current position be noted.
- (2) That subject to the outcome of the liquidation process for SCIC Ltd and assuming that the headlease be forfeit, or otherwise terminated, Council indicates its preferred direction for the Storey Institute.
- (3) That Officers be authorised to investigate the removal of the restrictive covenant and to develop proposals in support of (2) above.
- (4) That it be noted that future decisions regarding the Storey Institute will be taken by Cabinet, subject to them being in accordance with the direction set under (2) above and the existing budget framework.

**1 Introduction**

- 1.1 At its meeting on 18 July 2012 Council considered an item of urgent business on the Storey Creative Industries Centre, further to the call-in of Cabinet's earlier decision on this matter. It was resolved:
  - That the Council withdraws support for the SCIC Ltd by seeking forfeiture of the headlease from the company (which would have ceased trading in some way) and requests a report back on all future options for the building.

## **2 Recent Events**

- 2.1 Subsequent to the above, on 15 August the Council learned that the company was to cease trading later that day and that the Board had commenced proceedings to put the company into voluntary liquidation. (Liquidation of the company would allow forfeiture proceedings to commence, in line with the resolution of Council.)
- 2.2 Clarification was sought on whether the building was to close, but it became evident that arrangements were being made to keep the building open, at least to some degree. Details of the arrangements were received from the sub-tenants on 16 August.
- 2.3 Following the company's decision to cease trading, on 17 August Council Officers met with sub-tenants, primarily to share information on the current position. There were still some uncertainties around utility connections and insurance matters and these have been clarified as far as possible. In effect, sub-tenants have taken on various responsibilities so that the building can remain open for the short term, pending the outcome of the liquidation process and the Council setting out its intentions regarding the future of the building.
- 2.4 The sub-tenants indicated that whilst the current interim arrangements could probably be maintained until around mid-October time, they could not be maintained indefinitely. They requested that Council makes a decision about the building's future as soon as possible, so that in turn they can take whatever decisions might be necessary for their own business interests. The sub-tenants stated that they would very much like to see the Storey remain as a creative industries centre and they would expect new lease terms and conditions to apply.
- 2.5 Regarding the company, a creditors' meeting has now been arranged for 04 September and it is reasonable to assume that a Liquidator will be appointed. There is no indication that any other outcome should be expected. This will enable the Council to commence forfeiture proceedings in respect of the lease, although it may be that the Liquidator may seek to disclaim or surrender the lease. Each of these scenarios would have different legal implications for the sub-tenants, although broadly they would have rights to remain in the building.

## **3 Future Direction and Context**

- 3.1 In view of recent events, direction is sought from Council regarding the future for the building.
- 3.2 In considering the way forward, firstly it is perhaps worthwhile to recap on the discussions and decisions taken between 2006 to 2008, in deciding whether to develop the Storey as a Creative Industries Centre. Various reports are referred to as background documents for this report and are available to Councillors as a package on request. The decision-making was far from straightforward, disposal of the building was actively considered and each of the options considered carried significant risks.
- 3.3 Despite recent difficulties, it is also true to say that the Council has achieved what it set out to do in the medium term:
  - restore and convert the Storey Institute;
  - create a workspace and 'hub' for the creative industries sector.

- 3.4 Whilst clearly the management company itself has not proved financially sustainable and the venture has cost the Council more than it originally envisaged, this in itself does not determine the viability prospects for any Creative Industries Centre operation going forward.
- 3.5 It is understood that the building currently provides a base for around 10 organisations, although this is set to reduce as some of the larger companies move out. Although exact occupancy details have not been confirmed, it is known that the building is currently under-utilised in terms of rental space and under-performing financially. The Council has other workspace vacant and whilst those premises may not have the same features and character as the Storey, overall it means that there is scope to strengthen the performance of the Council's property portfolio.
- 3.6 Furthermore the Storey would require capital investment (as well as ongoing maintenance) to allow it to be fully utilised. The building is being assessed as part of the municipal buildings' conditions survey, which is due to be completed in November and reported through to Cabinet in January.
- 3.7 Looking to the future, the redevelopment of Lancaster Castle now presents new opportunities for the Storey, beyond those that may have existed previously.
- 3.8 Strategically, the building could make a significantly larger contribution to the Council's regeneration priorities than it has in recent times and it could work in financial terms. In order to achieve this, however, it is not necessary for the building to remain as a Creative Industries Centre or stay under the Council's control - the private and other sectors could have a role.

#### **4 Options for the Future**

- 4.1 A number of broad options are set out below. Fully developed and costed proposals would be worked up and reported back to Cabinet, with referral on to Council as need be. All options would require clawback, restrictive covenant, the rights of existing sub-tenants, VAT and various other matters to be addressed.
- 4.2 It is reiterated that only a direction is being sought from Council at this stage, rather than a detailed decision. It is perfectly acceptable for Council to take this approach. Full information and any value for money matters would be reported subsequently, to inform final decision-making. Council's preferred way forward (and the outcome of the liquidation process) will inform decisions regarding the Visitor Information Centre, at least in the short term.
- 4.3 Irrespective of the direction chosen, it does make sense to seek removal of the restrictive covenant to give the building as wider use as possible and this is reflected in the recommendations.

#### **4.4 Option 1: Seek to continue operating as a Creative Industries Centre**

- 4.4.1 The aim would be to retain the Centre's current core function, albeit on different terms and conditions for sub-tenants (and it may also require some widening of the tenant base to ensure fuller occupancy – a looser definition of “creative industry”). It would involve appraisal of whether the operation should be managed in-house or

externally, drawing on lessons learned from recent experience. The financial and any other operational objectives would also need to be appraised in due course (for example, what level of return would be acceptable and whether it represented value for money). It would also factor in how the current offer and usage could be improved, whilst retaining the building's core function.

Advantages	Disadvantages	Risks
<p>Would allow creative industries centre to continue and develop, with spin off economic and community benefits.</p> <p>Allows tenants to remain (subject to satisfactory lease terms being in force).</p> <p>Secures a medium term use for the building but still provides opportunity for review, in due course.</p> <p>Retains control over use of building.</p>	<p>Major work and risks involved in setting up management arrangements – this should not be underestimated and it would have an adverse impact on other tasks and council priorities.</p> <p>Risks of ownership (and future investment needs) remain with Council.</p> <p>No rationalisation of property portfolio, although widening of core function / tenant base may assist with this in other ways.</p>	<p>Ongoing exposure in terms of managing the property in-house or procuring suitable external manager (drawing on recent experience).</p> <p>Stakeholder relationships may break down and agreement may not be reached on suitable operating model / lease terms; this aspect may have greater adverse reputational impact on the Council.</p> <p>Still the risk that the operation proves financially unviable.</p> <p>Residual clawback risks would remain.</p>

#### 4.5 Option 2: Seek to sell the building

- 4.5.1 This would involve winding up the creative industries centre, obtaining vacant possession, giving sub-tenants appropriate time to relocate, and addressing all clawback and restrictive covenant matters etc. These factors would affect timescales for achieving any sale and clearly once sold, the Council would have no further involvement or control over the building. Its future sale may generate a significant capital receipt, which could be used to protect or progress other corporate priorities but there is no guarantee; this would be subject to the clawback position being addressed in a satisfactory manner (or the sale being deferred for a period to manage this). Future development of the Castle area would have a positive impact on sale prospects, in what would otherwise be a very depressed market. Disposal could be on either an open market or restricted basis; these and other details would be considered in due course.
- 4.5.2 Strategically, if the Council had no clear or affordable use for building in support of progressing its corporate priorities and wished to have no involvement in its future, and/or wished to focus on capital income generation, then this would be the appropriate option to pursue.

Advantages	Disadvantages	Risks
<p>Rationalises Council's property portfolio and transfers future maintenance/investment needs.</p> <p>Avoids the need to set up management arrangements and other work involved, as well as the risks attached in taking on the running of the facility.</p> <p>Allows future owner to establish use / take responsibility for building; transfers associated risks. (May still link with Castle developments.)</p> <p>Potential to generate significant capital income from sale, subject to clawback etc and timing.</p>	<p>Loss of creative industries centre and any spin off benefits for the local economy or community.</p> <p>Disruptions for existing tenants, although time should be available for managed closure and alternative workspace should be available.</p> <p>Likely short to medium term operational implications and difficulties, subject to reaction of current tenancy base, until such time the council is able to gain vacant possession.</p> <p>Building would be empty (or virtually so) for a period at least.</p> <p>No control over use of building, once sold.</p>	<p>Risk that clawback and covenant matters could not be managed satisfactorily, meaning that in worst case, it could take considerable time to dispose of building, or sale could result in little or no income being retained by Council. This would exacerbate the various financial, reputational and operational risks that exist whichever option is chosen.</p>

#### 4.6 **Option 3: Seek redevelopment of the Storey to complement future redevelopment of Lancaster Castle**

4.6.1 Nothing would be ruled in or out under this option, as long as it fitted with wider regeneration aims and sound asset / financial management. It could still involve consideration of future disposal, or mixed use development. The two most important issues to note are:

- the Council could have active involvement or significant control or influence over future development to fit with its corporate priorities; but
- whilst this option would allow some time for sub-tenants to remain, this would be on an interim basis only, at least until the nature of future redevelopment was clearer. Although it is possible that future redevelopment could incorporate some workspace, it would be inadvisable to make this a requirement at this early stage.

Key Advantages	Disadvantages	Risks
<p>Would maximise regeneration opportunities linked to Castle development, with the Council determining the future of the building, working with other key stakeholders.</p> <p>Informed decisions could then be made in context of regeneration aims, and sound asset management and financial planning.</p> <p>Would still be opportunities for significant financial benefits, subject to clawback etc and timing.</p>	<p>Loss of existing creative industries centre over time.</p> <p>Disruptions for existing tenants, although time would be available to help manage this.</p> <p>Lengthens period of uncertainty over future use of building.</p> <p>Likely short to medium term operational implications and difficulties subject to reaction of current tenancy base, until such time the council is able to gain vacant possession.</p> <p>Building would be empty (or virtually so) for a period at least.</p>	<p>At a strategic level, there is some risk that an acceptable future alternative use of the building could not be agreed or secured and this would exacerbate the various substantial financial, reputational and operational risks that exist whichever option is chosen.</p> <p>Risk that clawback and covenant matters could not be managed satisfactorily, meaning that in worst case, it could take considerable time to take advantage of the opportunities arising from redevelopment of the Castle.</p>

## 5 Details of Consultation

- 5.1 Another meeting is to due to take place with sub-tenants prior to the Council meeting, to share this report. Sub-tenants have been asked (either collectively or individually) to put forward any statements they wish to make to Council, in order that Members can take these into account in their decision-making. Any such statements will be circulated prior to the meeting.

## 6 Officer Preferred Option

- 6.1 On balance and given the exceptional opportunities that redevelopment of the Castle presents, Option 3 is the Officer preferred option.
- 6.2 Ultimately the way forward comes down to priorities, some of which may conflict, but it may be useful for Council to consider the questions below in reaching a decision on its preferred direction:
- Is current use the best way of using the building in future?
  - How important is tourism development (linked to the Castle), when compared with other aspects of regeneration?
  - How important is capital income?
  - Is there other workspace available for creative industries?
  - How important is it for the Council to have control over or involvement in what happens to the building in future? Is it best placed to manage and resource any such input?

- What direction would be in the best interests of taxpayers, rather than any specific stakeholders?

## 7 Conclusion

- 7.1 In view of recent events, Council now needs to set out its preferred direction for the Storey Institute. In doing so, Council is advised to consider not just the existing use of the building, but wider regeneration prospects surrounding the future redevelopment of Lancaster Castle, as well as asset management and financial objectives. Undoubtedly there are many opportunities and risks surrounding the way forward.

### **RELATIONSHIP TO POLICY FRAMEWORK**

The future of the Storey should be considered in context of the Council's regeneration priorities, as well as its core values of providing value for money, drawing on medium term financial and property strategies.

### **CONCLUSION OF IMPACT ASSESSMENT**

**(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

It is considered that there is no such direct impact arising.

### **FINANCIAL IMPLICATIONS**

The financial / value for money implications of options would be assessed and reported back in due course, prior to any firm decisions being taken.

In terms of potential sale proceeds, a full revaluation of the building will be undertaken as part of appraising Council's preferred way forward.

In developing the Creative Industries Centre, the Council received a total of around £3.5M of external funding from a number of organisations.

### **SECTION 151 OFFICER'S COMMENTS**

The s151 Officer has contributed to this report.

### **LEGAL IMPLICATIONS**

The Court upon application can discharge or modify a restrictive covenant. Under the legislation a covenant is obsolete, and will be removed where it is no longer possible for it to serve its original purpose, by changes in the character of the property, or the neighbourhood, or other circumstances of the case which the court may deem material.

The particular nature of the transfer of the Storey to Council would suggest that the land is held under the terms of a charitable trust and Counsel's opinion obtained some years ago advised that the trust cannot be dissolved and must be followed, unless there are grounds for applying for a cy-pres scheme as set out in section 13 of the Charities Act 1993. (A cy-pres scheme is created when the benefit of the trust are transferred to another property and releasing the incumbent property from the trust)

In these circumstances the process for removing the covenant are complex and would require specialist legal advice to establish whether such an application would succeed for

the purposes of the Council's proposals.

**MONITORING OFFICER'S COMMENTS**

The Monitoring Officer has been consulted and her comments are incorporated in the report.

**BACKGROUND PAPERS**

Reports and Minutes of:

Cabinet 10 October 2006

Cabinet 24 October 2006

Cabinet 05 June 2007

Council 20 June 2007

**Contact Officer:** Mark Cullinan

**Telephone:** 01524 582011

**E-mail:** [chiefexecutive@lancaster.gov.uk](mailto:chiefexecutive@lancaster.gov.uk)

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