Purpose

To consider proposals put forward by the Kingston Theatre Trust in their three year plan ‘the New Deal 2009-2011’ designed to achieve financial security for the Rose Theatre, in return for a range of specific services and facilities to be provided to the Council by the Theatre Trust. The report also considers the significant costs which would have to be met by the Council should the Theatre Trust be unable to continue financially, and addresses a number of residual issues including the working capital loans made to the Theatre Trust, equipment lease costs and the rental payments due from the Theatre Trust to the Limited Liability Partnership.

Action proposed by the Leader of the Council:

The Executive is requested to:

1. subject to the Strategic Director of Finance carrying out appropriate due diligence checks, to approve the New Deal package of financial support to the Rose Theatre (Kingston Theatre Trust) in exchange for agreed community benefits and services, at £600,000 per year, beginning in January 2009, of which £150,000 plus VAT be assigned each year to the Kingston Theatre Limited Liability Partnership to enable Kingston Theatre Trust to meet its rent payment to the Limited Liability Partnership due on 1 January 2009 and six monthly thereafter;

2. agree that the proportion of the financial support for the financial year 2008/09 (£150,000) be financed from the Town Centres Strategies Reserve;

3. agree that the financial support for the financial year 2009/10 and subsequent years be provided for as part of the medium term service and financial planning and budget setting process;

4. authorise the Strategic Director of Finance and the Strategic Director of Learning and Children’s Services to enter into a Funding Agreement with the Kingston Theatre Trust on the basis of the proposals set out in paras 19-22 of this report and to authorise the suspension of Contract Standing Orders, having noted and endorsed the exclusion of the EU procurement rules;

5. approve the repayment of the two working capital loans made to Kingston Theatre Trust totalling £1.8 million, over 100 years in instalments of £18,000, waive the Council’s right to interest in respect of the first (interest bearing) loan and write off the interest accrued to date of approximately £160,000, and in consequence approve the consolidation of the two loans into a new loan agreement;

6. authorise the Strategic Director of Finance to transfer the repayments from Kingston Theatre Trust in respect of the equipment lease to the Repairs and Renewals Fund as
detailed in paragraphs 41 and 42 below;

7. authorise the Limited Liability Partnership to grant Kingston Theatre Trust an extension of the previous rent free period to 31 December 2008, with rent becoming due half yearly in advance, beginning on 1 January 2009, as detailed in paragraph 51 below; and

8. approve the appointment of the Head of Financial Services as the Council’s Board member on the Kingston Theatre Limited Liability Partnership with effect from 1 January 2009.

**Reason for action proposed**

1. To improve the ability of KTT to attract additional external funding for the Rose Theatre.
2. To provide the necessary certainty of funding for the Rose Theatre to develop its programme of cultural activities and events and continue to provide social and economic benefits to the Town Centre.
3. To secure the viability of the LLP in the medium term

**BACKGROUND**

1. The Council’s long held aspiration to bring about a Theatre in Kingston was realised when the Rose Theatre opened in January 2008. In the eleven months since then the Theatre has already made a significant contribution to the achievement of the hoped for cultural, economic and social benefits. The Theatre has broadened the evening and night time ‘offer’ to visitors to the Town Centre and, as a result, has had a positive impact on the local economy.

2. However, the Rose Theatre is a new business seeking to establish itself in the post credit crunch world. In common with many businesses it is facing difficulties. In particular, it needs a sustained source of income beyond what it receives from the Box Office.

3. In response to a deteriorating financial situation, the Kingston Theatre Trust has put forward what it has called its ‘New Deal’ proposal, further details of which are set out later in this report. Basically this proposes a Funding Agreement under which the Council would make an annual contribution of £600,000 to the Theatre Trust in return for specified services and benefits. This annual contribution, together with a contribution from the University, will enable the Rose to achieve financial resilience and also provide a platform to lever in further funding from organisations such as the Arts Council England.

4. The decision the Council faces is whether to invest further funds in the Theatre. On the one hand, the view could be taken that the Theatre is no different from any other business in the Borough and should not receive what could be perceived as special treatment. The alternative and stronger argument, however, is that the Theatre is pivotal to the achievement of the Council’s goals for widening the Kingston offer beyond retail and clubs. In addition, as also explained later in the report, if the Theatre were to close the Council would have to meet significant additional costs in any event. Perhaps most importantly, if the Council does not exhibit confidence in Kingston’s future as a place to live, work, do business and invest why should anybody else?
5. Later paragraphs of this report also address a number of residual issues relating to the Theatre now that the fitting out project is complete. These include the position on the loans made by the Council to the Theatre Trust, equipment lease costs and the rental payments due from the Theatre Trust to the Limited Liability Partnership.

**KINGSTON THEATRE TRUST’S NEW DEAL PROPOSAL**

6. On 14 October the new Chair of the Kingston Theatre Trust, Antony Simonds-Gooding, wrote to the Royal Borough enclosing the Theatre Trusts three year plan ‘The New Deal, 2009-2011’. The plan is designed to put the Rose Theatre on to a firm financial footing by entering into new partnerships with the Theatre’s four main stakeholders – The Arts Council England, Kingston University, the Royal Borough and the local business community.

7. The document acknowledges that because of funding difficulties, every aspect of the Rose’s activity for the last eighteen months has been hampered. This has made planning impossible and created a vicious spiral, with negative effects on leverage, capacity, development, hire, marketing and box office receipts. In recent weeks this has, of course, been exacerbated by the broader problems in the economy as a whole. The plan points out that a state of permanent crisis is not sustainable, neither for staff nor for the stakeholders.

8. From a comparison with six other theatres the New Deal plan concludes that theatres in Britain cannot operate without public funding (usually a mixture of Arts Council and local authority); none of the comparators rely on development income alone to supplement the box office; and box office income is rarely responsible for more than 50% of total income. This analysis shows that the Rose’s need for financial support is common to all theatres in Britain with artistic, educational or community ambitions. From this analysis the Theatre Trust has concluded that the Rose can only survive if it can secure comparable levels of support and is looking to the four chief stakeholders to help. In effect the plan is to offer a new kind of partnership, based on a clear contract of agreed services which would be closely managed and have an appropriate level of stakeholder involvement.

9. The Theatre Trust considers that the Rose offers a unique fusion between three groups that have been traditionally separated, namely, artists, community and academia. Under the new deal the Theatre Trust will offer

- A continuous programme of high quality drama, consisting both of home produced work and visits from the best national and international companies. It will be accompanied by an ambitious programme of audience engagement: talks, workshops, platforms, events etc.

- A fully integrated education and learning programme. The Theatre Trust will work with Kingston University on a wider range of initiatives and give them continuous access to the building. The education programme will also include work in schools, executive training and other events.

- A robust embrace of the local community to include numerous opportunities for participation and involvement. The intention is that the Rose will be a cultural centre of which Kingston can be proud and which the people of the town can regard as their own.
10. The New Deal goes on to set out the proposals for working in partnership with each of the four main stakeholders. So far as the Council is concerned the plan acknowledges that RBK is perhaps the Theatre Trust’s most important partner having led the project from inception through to completion.

**Potential Benefits for RBK**

11. The proposed arrangements take into account many of the key policy aims of the Council: the Community Plan, Cultural Strategy and Children & Young People’s Plan.

12. The Council’s policy is to provide a wide range of opportunities for people of all ages to engage in leisure and cultural activities.

13. In the consultation for the draft Community Plan residents wanted the Council and its partners to:

- provide more affordable and accessible leisure facilities;
- more emphasis to ensure inclusion, i.e. access to all services (housing, education, health, leisure services etc.) for all people, and in particular ensuring all services are affordable and are accessible for disabled people, all age groups and people with language barriers.

14. There are 10 objectives in the Community Plan recently approved by the Council. Objective 10 is to “encourage people to take an active part in the social and cultural life of the community”. Some specific aims in the Community Plan which support this activity include:

<table>
<thead>
<tr>
<th>Some specific aims we are working towards</th>
<th>What success will look like</th>
</tr>
</thead>
</table>
| Build the strength and capacity of the local voluntary sector to create an environment for a thriving third sector | • More organisations supported and active;  
• An increased approval rating from third sector organisations for the role of the local statutory bodies in their area in influencing their success |
| Encourage all residents to get involved in a range of activities including sports, leisure, culture and the arts | • More people participating;  
• More volunteers;  
• 100% young people participating in 5 hours cultural activities per week |
| Facilitate more inclusive and accessible inter cultural activities and community participation across the borough and use the Rose Theatre in Kingston town centre as a catalyst to diversify the day time and night time economy | • An increase and broader range of arts and cultural activities including festivals and performance events;  
• Increase in resident satisfaction with theatre and related cultural activities;  
• Attainment of Civic Trust Purple Flag |
Some specific aims we are working towards | What success will look like
--- | ---
Work with people from a diverse range of backgrounds and organisations including schools, colleges and the University to tackle deprivation and discrimination to build integration and cohesion | Increased numbers of people who feel they get on well together and belong

15. Kingston’s Cultural Strategy, published in 2008, identifies the key role the Rose Theatre will play and also identifies a key objective as “using the opportunity to develop the proposed Kingston International Youth Festival in partnership with Rose of Kingston “. Another key objective of the Cultural Strategy is the promotion of reading.

16. Kingston’s Children and Young People’s Plan 2006-2010 includes as a key objective to “Improve outcomes by increasing participation in cultural activities for all children and young people through provision of a range of high quality cultural opportunities”.

17. Kingston successfully completed a Local Public Service Agreement in 2006 aimed at improving arts/ cultural opportunities for young people. Sustaining this development through use of the associated reward grant provides opportunities to develop youth performing arts participation and to improve delivery against NI 11, engagement in the arts, and NI 110 Young people’s participation in positive activities, in the National Indicator set. The Rose Theatre is central to the delivery of these objectives.

18. The delivery of a new range of cultural activities with strong priorities towards increasing participation amongst children and families, and providing access to the whole community including those with disabilities, will require a new agreement between RBK, the Rose Theatre, the broader community, schools and the University.

19. Key elements of the new arrangement would include:

Children, young people and families

- The International Festival of Youth Theatre – the first festival running from 3-12 July 2009 – provision of the Rose Theatre as the key venue for this festival, with all the spaces in the theatre being given over to youth cultural activities. It is anticipated this event will grow to two and then three weeks in subsequent years.

- Hosting a Youth Theatre in the Rose Theatre, providing it with the space to enable the development of future cultural talent. This will provide an outlet for creative talent coming through schools and youth service activity, and create high quality content for the Youth Theatre festival and other events. Provision of the space for 60 Youth Theatre session activities.

- 6 days per annum of Educational activities co-ordinated by Kingston Music and Arts Service e.g. Music Primary and Secondary School Music and Dance festivals, Education conference.
Kingston Readers Festival: 2 daytime children’s events organised in partnership with Kingston Libraries. Author events to encourage reading.

Summer Uni (summer youth cultural activities programme): Workshops, including Carnival workshops, plus final show. 6 sessions using Theatre spaces (gallery etc.) plus the main auditorium for the final show.

Kingston Carnival - Sunday use of the Theatre spaces from 8am to 5pm for set up, dressing spaces, cafe for performers.

Matinee performances of family/children’s events specifically targeted at Primary Schools, with free tickets for children to subsequent performances if accompanied by a paying adult to broaden participation and provide opportunities for the whole community to access the Theatre - this will be available to all primary school aged children (11,709 in January 2008).

An arts education programme aimed at secondary schools, with matinee tickets linked to the education programme, with reduced price family tickets available for subsequent performances - this will be available to all secondary school aged young people (9,682 in January 2008).

Providing space and educational programmes for children and young people with disabilities through Bedelsford, Dysart and St Philips Schools, offered and costed in as part of Bespoke programme.

Schools Christmas events for extended school clusters - 4 half days in the main auditorium following the model of the successful 2007 North Kingston schools cluster concert.

Bespoke programme (spoken word programme for young people, businesses, people with disabilities and skills for life training participants) – linkage with adult education programmes designed to build confidence and techniques for adults who are unemployed and/or have basic skills communications needs.

Libraries outreach activity – Books for Boys and Summer Reading Challenge, Rhyme Times using the Theatre spaces to delivery the Cultural Strategy commitment to promote reading skills and to improve links between library users and the Rose Theatre.

Outreach activity in schools, youth venues and community venues as part of the education programme, to overcome access barriers and to promote events and performances at the Rose.

Community engagement

20. The Theatre has a key role in supporting a broad range of community events to meet strategic priorities and community needs. The range of activities and events which it is proposed to support would include
• Voluntary Sector Forum/ KVA Use of the main auditorium and cafe for a major annual voluntary sector event (e.g. Volunteer event+ AGM) plus 4 uses of the smaller gallery/ spaces for voluntary sector events.
• Use of the main auditorium and rehearsal areas for the Community Play (a play developed over two weekends by volunteers on similar lines to the Don Juan event).
• Festival of the Voice main event.
• Three day conference & events in March 2009 to support community cohesion, in partnership with the police, voluntary and community sector organisations, Kingston Racial Equality Council, MeWe and the Youth Service to deliver the Home Office Prevent commitment.
• Three events in the Thinkin Kingston Festival.
• 4 further full days to be specified by the Council (e.g. Youth Awards, Sports Awards, 100% School attendance awards).
• A programme of cultural events with a world music/ performance theme on a Sunday each month with the hire costs of the theatre being met to enable reasonable price structures and to enable a combination of international artistes and local performing groups and artistes to ‘break through’ to larger audiences. Examples of the type of events to be presented in this programme would be Global Arts Kingston (strategically funded), Sparkle and the 2008 Martha Tillotson event in support of the Green Fair/ Paint the Town Green.
• Events/ space dedicated for community groups – eg regular cultural cafe sessions for day care centre users/ community library users event.
• Package deals at reduced prices for community groups to access matinee and weekday evening performances at a group rate.

21. Provision of the theatre space for these events at no cost to the hirers will enable tickets to be priced to encourage new audiences into the theatre.

Corporate usage

22. The Council also hires the theatre spaces for corporate training events and meetings, and these activities will be included in the package.

Ensuring outcomes are delivered

23. To ensure that value for money is achieved from this investment in increased educational and community based cultural activity, rigorous procedures will be introduced to monitor and review outcomes against targets to be set out in the Funding Agreement. These targets will focus on the educational and community participation outcomes, not on the core artistic programme of the Rose, which would remain the responsibility of Kingston Theatre Trust.

RBK’s Position in Relation to the New Deal

24. The Rose Theatre is of great importance in delivering the objectives of the Community Plan, the Cultural Strategy, the Children and Young People’s Plan and the Council’s After Dark Strategy. In particular it has been seen as a practical step in changing the expectations and experience of Kingston after dark. It is also encourages further growth in the day time economy by increasing the range of attractions available during the day. It is already bearing fruit in terms of the range
of cafes and restaurants which have been drawn into that part of the Town Centre, and a number of others intend to occupy premises which are currently vacant.

25. As well as the social benefits and the impact on town centre environment, both day and night, there is strong evidence of a growing impact of the Rose on the local business community. Increasing numbers are coming forward to sign up to the various corporate schemes on offer by the Rose Development team. The list of business supporters already includes 20 or more local companies including some of the Borough’s most significant employers. Pledges of financial support have come from the full range of large retailers, restaurants, legal practices, accounting firms and banks. Many of these companies are pleased to report a growth in their business from Theatre audiences over the successful opening 4 months. 3,500 people per week attended both matinees and evening performances.

26. The proposed “New Deal” strengthens this by providing a range of additional benefits, which are detailed in paragraphs 19-22 above. In considering whether to support the “New Deal”, it is important also to consider the financial and other impacts of not doing so. If the Council does not provide support, then it is highly likely that KTT will be financially unable to continue. At that point, the Theatre would close, with an immediate loss to RBK of the “community capital” which accrues through the Theatre’s current operations.

27. Additionally, should the Theatre close, it is important to note that there would be substantial costs which would effectively fall to RBK. These costs include

- **Landlord’s costs (LLP)** – would have to be met by RBK (as main partner in the LLP). The intention was that the LLP’s landlord costs would be met from rent income (see paragraph 31 below). If the theatre building is closed, the rental income will not materialise, but various costs associated with the building will remain to be funded. These will include insurance, external maintenance, security, “common areas”, Non-Domestic Rates (NDR), BID levy etc. The likely cost would be in the region of £200,000 per year. The largest cost would be NDR, which would become payable after 3 months. The current rate of NDR is £103,000 a year. (With KTT in occupation, and receiving mandatory and discretionary rate relief, around 70% of this is currently met from the national NDR pool). There would also be some costs to maintain heating boilers, lifts etc to keep these in working order, plus possible decommissioning of some items of plant (and subsequent recommissioning if the theatre was subsequently re-let).

- **Loss of car parking income** – the estimated additional (evening) income from The Rose (formerly Drapers) car park since the Theatre opened is around £20,000 a year. It is unlikely that this would continue to be received if the theatre closed.

- **University Lease** – this will be subject to the “clawback provision” as their postgraduate course is not sustainable unless the theatre operates as a producing house. The terms of the lease were that Kingston University will pay a premium of £250,000. This would be used to meet part of the fitting out cost. The clawback provision would mean the LLP (effectively RBK) having to repay this sum to the University – thereby meeting the effective shortfall in fitting out funding. This would be a one-off cost to RBK of £250,000.

- **Re-letting** – possible costs associated with marketing the building to seek another tenant.
• **Disposal** – The leases would fall away and the building would revert back to the Council. Although the shell was constructed as part of the Charter Quay development, there are no restrictions, from a landowner’s point of view, dictating how the property is to be used. The alternatives, however, are limited and would be subject to a use being identified that is acceptable in planning terms. The main obstacles to any alternative use are the lack of natural light to the building (especially the performance area) and the need to ensure that whatever replaces the theatre does not adversely impact on the “quiet enjoyment” of the residential flat owners/occupiers above. In the current economic climate, disposal would be difficult.

28. The total costs to RBK of not supporting the new deal amount to a one-off £250,000, plus annual revenue costs of at least £220,000. For this outlay the Council would receive no benefit, and would have a key building in a prime location unoccupied. It may be possible to let or dispose of the theatre building, although it is not clear that in the current economic climate whether either of these alternatives could be achieved quickly.

**OTHER FINANCIAL ISSUES RELATING TO THE KINGSTON THEATRE TRUST**

**Loans from RBK to KTT**

29. RBK provided KTT with two working capital loans of £0.9 million each to undertake fund raising and work to secure the fitting out of the Theatre. One of these loans attracts interest linked to the Base Rate, while the other is interest free. The interest accrued to 31 October 2008 is approximately £160,000.

30. On 31 July 2007, the Executive resolved that "officers be authorised to give an undertaking to KTT that the Council will not require repayment of the loans advanced to the Trust for working capital purposes totalling £1.8 million, until at least 12 months after the Theatre has opened." As a result of the subsequent call-in of that decision the phrase 'until at least 12 months after the Theatre has opened' was amended to read 'any earlier than…'.

31. KTT’s draft budget submitted as part of the “New Deal” proposal provides for payment of the rent to the LLP. It does not, however, make any provision for either the repayment of the working capital loans, or for the equipment lease payments which are referred to later in this report. It is clear that if KTT is to remain solvent and continue to operate the Theatre successfully, it would as a minimum need an extension to the previously agreed repayment dates of the loans and lease.

32. In addition to the New Deal proposal, KTT is continuing to undertake fund raising activity to support its operation of the Theatre. However, its financial position is such that this process would be made more straightforward if RBK was prepared to write off the outstanding loans, or as a minimum was to provide some certainty as to the timescale over which it would be prepared to accept repayment of the loans. The reason for this is that potential contributors will be keen to ensure that any investment is used to enable future productions to take place, rather than to pay off outstanding debts.

33. The Council’s loans to KTT have been financed through the capital programme. The associated capital financing costs are included within RBK’s revenue budget. In the Council’s Final Accounts for 2007/08, a provision has been made for the total advanced, in the event that KTT should be unable to repay or cease to be a going
concern. In view of the previous Executive decision, and the continuing uncertainty regarding KTT’s ability to repay these loans, RBK’s current revenue budget does not provide for any repayments to be received. Consequently, whilst there would be a financial impact in terms of income foregone, no adjustment to the base budget would be needed in the event of a decision to delay repayment, or to write off the debts.

34. As previously advised, there were two loans approved of £0.9 million each, one of which (approved by the then Cabinet in 2000) attracts interest at a rate linked to base rate, and the second (approved by the Executive in 2005) which is interest free. The interest bearing loan attracts simple interest only (i.e. no interest is accrued on interest unpaid). The interest accrued to 31 October 2008 is approximately £160,000. Even allowing for the recent reduction in the base rate, interest will continue to accrue on this loan at approximately £40,000 a year.

35. In the light of the foregoing, the Strategic Director of Finance advises that it is appropriate to consider waiving the Council’s right to interest on the loan approved in 2000, to reschedule principal repayments to a nominal £18,000 a year and to write off the interest accrued to date of approximately £160,000. This would significantly improve KTT’s ability to attract additional funding. This could best be achieved by consolidating the two loans into a single new interest free loan of £1.8 million, repayable in equal annual instalments over 100 years.

Equipment Lease Costs

36. At its meeting on 20 June 2006, the Executive approved the setting up of the Rose Theatre Limited Liability Partnership (LLP) to provide capital funds for a fully fitted-out Theatre. The costs to be shared 95% RBK and 5% the University plus a £250,000 lease premium from the University. The LLP was incorporated on 30 August 2006 and has since awarded various contracts for the fitting-out of the theatre. The Executive also agreed that the Council would finance the capital cost of the equipment and that this would be leased to the theatre operator, Kingston Theatre Trust (KTT). The fitting out works have been carried out and formal completion took place on 4 January 2008. Final accounts and claims have now been agreed, and with the exception of payment retention monies, the capital project is now complete.

37. On 31 July 2007 and 13 May 2008, the Executive received further reports on the forecast costs of completing the fitting-out project and approved capitalisation increases totalling £600,000 in the LLP Budget. The final fitting out cost can be met from within the existing capitalisation.

38. A schedule of the equipment covered by the equipment lease has been prepared, and the lease is being finalised.

39. Equipment rental payments are due to be made by KTT to the Council annually, beginning on 1 January 2009. Repayments have been set at £10,000 (plus VAT) in 2009, increasing by £10,000 each year until 2013, at which point they will be £50,000 (plus VAT) a year. The lease is set to run until 31 December 2018.

40. Whilst KTT’s “New Deal” does not specifically mention this item, the Strategic Director of Finance advises that in the light of the preceding paragraphs, it would be appropriate to consider this matter at the same time. Payments under the
equipment lease are due to begin on 1 January 2009, and to be made annually on 1 January thereafter as follows:

- 2009 - £10,000
- 2010 – £20,000
- 2011 - £30,000
- 2012 - £40,000
- 2013 to 2018 inclusive - £50,000.

41. The total contributions under the equipment lease would total £400,000 over ten years. Clearly, the nature of the equipment is such that some of it will require repair, refurbishment or renewal by the end of this period. Consequently it is suggested that payments made by KTT in respect of this lease should be paid into the Repairs and Renewals Fund and held for this purpose.

42. As with the loan, RBK’s current revenue budget does not provide for any repayments to be received. Consequently, no adjustment to the base budget would be needed in the event of this decision. It should be borne in mind, however, that the capital cost of the equipment was £1.5million. In this context, it is unlikely that the above sum will be sufficient to replace all of the equipment in full, should that be required.

KTT Rent Payments to the LLP

43. The Theatre building is owned by the LLP. RBK is the major “partner” (95%), with Kingston University owning the remainder (5%).

44. The LLP has been set up as a property company. Its costs are those of a landlord, relating to the external fabric of the building, plus insurance and “governance” items (eg Audit fees, legal fees etc). Its income arises from rents paid by its tenants. It has two tenants, Kingston Theatre Trust (KTT), which undertakes the detailed operation of the Theatre, and Kingston University, which leases the studio theatre for its performing arts course.

45. It is the responsibility of RBK and the University to ensure that the LLP remains financially viable.

46. The University’s occupation lease is for 10 years, at a peppercorn rent but with a premium of £250,000. The lease has been agreed and, in accordance with the previously approved arrangements, the premium will be used to meet part of the capital costs of the fitting out project.

47. The LLP’s revenue income to cover the landlord’s costs in respect of the theatre building will arise from rental payments made by KTT. The rent has been set at £150,000 per year, (plus VAT), which, as agreed by the Executive on 31 July 2007, was waived for the first six months of operation, and the next payment deferred to be six months in arrears. The first payment will be due in January 2009.

48. The LLP will remain solvent and the partners will have met their responsibilities, provided its income is sufficient at least to meet its costs in full.
49. The position in regard to the rent is more complex. KTT’s expenditure budget within the “New Deal” proposal assumes that KTT will make payments of rental direct to the LLP, although it assumes that these will start to fall due from January 2009 (ie the rent free period would be extended by six months).

50. However, the LLP’s financial position is that after making the final payments due in respect of the fitting out of the Theatre, unless it receives the rent income due in January 2009, it will only have sufficient funds to meet its cost until mid 2009, after which point the shareholders (principally RBK) would need to make either a further contribution or a loan to prevent it from becoming insolvent. Consequently, it is necessary to consider an alternative approach to this element of KTT’s request.

51. One possible solution would be for RBK to agree to extend the rent free period to 31 December 2008, and to make the rental payment accrue half yearly in advance from 1 January 2009. It would then be possible for RBK to adjust the timing of payments made under the New Deal so as to make a contribution to KTT, equivalent to the rent due on 1 January 2009 (£75,000 plus VAT). As a condition of the “New Deal”, RBK would insist on a sum equivalent to the rent being assigned in full to the LLP. This would mean that the LLP’s income was received intact, thereby ensuring its continued solvency.

52. A further benefit from this approach could accrue in the event that if KTT were able to secure some funding from the Arts Council, this might be on the basis of matched funds being made. It is possible that RBK’s contribution could be counted for matched funding purposes.

53. In view of the continuing importance of the Rose Theatre to the Town Centre economy, the Strategic Director of Finance advises that the contribution could be financed from the Town Centres Strategies Reserve which was created earlier in this financial year with monies received from the final year of the Local Authorities Business Growth Incentive Scheme (LABGI).

LEGAL IMPLICATIONS

54. As has been previously reported to the Executive, the Council does have the necessary legal powers to make any further investment and may contribute towards the costs of providing a Theatre. The Council’s power to promote the economic, social and environmental well being of the Council’s area includes the power to provide financial assistance to KTT on the basis set out in this report. In considering any further investment regard must also be had to the implied fiduciary duty to council tax payers. In the context of making the further investment contemplated by this report, the consequences of not making the investment must be weighed against the investment that has already been made in order to complete the fitting out of the Theatre.

55. The provision of significant community benefits and services by KTT could raise possible procurement issues in the context of the proposed Funding Agreement. In view of the local nature of the community benefits and services to be provided, and having regard to the Council’s intention to make the financial assistance as consideration for the provision of such community benefits and services, it is necessary for the requirements of the Council’s Contract Standing Orders to be suspended to enable the proposed Funding Agreement to be entered into without the need to undertake a formal procurement process.
56. The provision of recreational, cultural and educational services are classified as Part B services for the purposes of the EU procurement rules, and accordingly such services are excluded from the application of the rules even where (as here) the value of the services is above the threshold which would ordinarily trigger the application of the rules. It is also highly unlikely, because of the nature of the services to be provided, that there would be any cross border interest in providing the community benefits and services contemplated by the New Deal.

TIMESCALE

57. KTT is continuing with its fund raising programme, and requires a decision in regard to the “New Deal” proposal in order to plan and commit to its programme for Spring 2009. Consequently, a decision is required at this meeting of the Executive, to provide it with the time to make appropriate financial arrangements and to avoid the risk of the Theatre Trust having to cease trading through insolvency.

FINANCIAL IMPLICATIONS

58. The Strategic Director of Finance advises that there are significant budgetary implications as a result of the issues considered in this report. These are discussed above, but may be summarised as follows:

a) If the Council does not subscribe to the “New Deal” proposed by KTT
   • One off cost of £250,000
   • Ongoing annual revenue cost of £220,000
   • Plus costs associated with re-letting or disposal of the theatre building.

b) Costs of subscribing to the “New Deal”
   • Revenue cost of £600,000 a year for 3 years

c) Loan repayments
   There is currently no budget provision for income in respect of these repayments. If the loan repayment is re-phased/delayed there is no further impact on the Council’s budgetary or financial position. The impact, however arises in terms of income foregone.

d) Due diligence
   In offering support to KTT through the “New Deal”, RBK should take steps to protect its proposed investment by undertaking a “financial due diligence” audit, in order to satisfy itself that funding will be used to support delivery of the “New Deal” benefits and not to extinguish existing liabilities. It is also appropriate to ascertain that the University and other partners in the “New Deal” have “signed up”, and to identify the impact on the “New Deal should one of the other partners not agree to participate. It is suggested that the Strategic Director of Finance undertake this work, and report back to the Leader of the Council on the outcome.

RBK BOARD MEMBER ON THE LLP

59. On 20 June 2006, the Executive decided that the Council’s representative Board Member on the LLP would be the Strategic Director of Finance (at the time, Mr Tony Knights). On his retirement, to ensure continuity and retention of detailed
background knowledge of the project, whilst the fitting out was completed, Mr. Knights was retained to oversee the fitting out of the theatre on behalf of the Council, including monitoring and making payments to contractors, together with administration and submission of financial returns (to HM Revenue & Customs) for the LLP.

60. In the report to the Executive on 13 May 2008, it was reported that Mr Knights’ appointment would cease at 30 June 2008. However, delays in submission of contractors’ final accounts made it appropriate that Mr Knights be retained for a further period in order that his detailed knowledge of the fitting out process could be used to ensure that the LLP (and hence the Council) was not disadvantaged in discussions/negotiations in regard to various claims. It is now appropriate to end Mr Knights’ appointment, which will cease on 31 December 2008, and it is suggested that the Head of Financial Services be appointed as the Council’s Board Member on the LLP with effect from 1 January 2009.

ENVIRONMENTAL IMPLICATIONS

61. The Theatre is making a significant contribution to improving the quality of the “after dark” experience in Kingston Town Centre and providing associated social and economic benefits.

Background papers: held by Jeremy Randall (main author of report)], 020 8547 5572; e-mail: Jeremy.Randall@rbk.Kingston.gov.uk

1. Report to Executive 13 May 2008 – Appendix F
2. Letter from Chair of Kingston Theatre Trust to the Chief Executive, dated 14 October 2008 and proposed “New Deal” E
3. Letter from Leader of the Council to Chair of Kingston Theatre Trust dated 5 November 2008
5. Cultural Strategy
6. Children & Young People’s Plan, 2006-10