

## Cabinet

15<sup>th</sup> October 2014



## Cinema and Film Partner Procurement

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### Report of Corporate Management Team

**Terry Collins, Corporate Director Neighbourhood Services**

**Councillor Neil Foster, Portfolio Holder for Economic Regeneration**

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### Purpose of the Report

- 1 The purpose of this report is to set out a proposal for the procurement of an experienced, well established and successful Cinema and Film Partner with an existing national and regional presence to become a cultural partner with Culture and Sport and to develop the cinema and film offer across the county.

### Background

- 2 Whilst focusing predominantly on the Council's main cultural venue at the Gala we are seeking a partner to take an art form lead on cinema across the county with an expectation that they will be involved in wider community and development initiatives as well as other Council venues.
- 3 The County currently has cinema and film facilities at the Gala Theatre Durham, Bishop Auckland Town Hall (BATH) and the Empire Theatre Consett.
- 4 The Gala Theatre currently operates as the County's premier theatre and performing arts venue with a programme of live events attracting some of the country's leading theatre companies, comedians, bands, musicians and dance performers. The Gala also offers a cinema programme showing the latest blockbusters with limited independent and classic films. The current facilities include a state-of-the-art modern theatre (with digital projection), spacious and comfortable café-bar with full professional kitchen facilities, two cinema screens (with digital 3D projection) and a function room.
- 5 Both BATH and the Empire Theatre have more limited film programmes with projection capacity limited to a single screen within a multi-purpose hall/auditorium. BATH currently only runs DVD projection, whereas the Empire does have digital capacity.
- 6 It is also of note that the Gala Theatre & Cinema is located in a fast-developing area of Durham City. Whilst there is a lively night-time economy in the neighbouring Walkergate area, Millennium Place remains less vibrant and un-animated despite the presence of the theatre. One aim of the project is to bring a level of vibrancy and animation to this area of the City.
- 7 The council's high level priorities are set out in our Council Plan, which supports the county's Sustainable Community Strategy and outlines a vision

to make County Durham an Altogether Better Place which is Altogether Better for People. In addition a key priority of the Council's Regeneration Statement is to create a thriving Durham City by exploiting its potential as 'a major retail, business and residential centre, an academic hub and visitor destination.'

- 8 In line with this aspiration, the development of leisure and culture in County Durham seeks to draw together existing and new initiatives in order to address the economic, social and environmental needs of the County. Working together with the Council's Regeneration and Economic Development Service, Cultural Services are seeking a visionary proposal for Millennium Place, Durham City to improve the use and vibrancy of the area; creating a Cultural & Leisure Quarter.
- 9 In seeking to work with a third party partner it is proposed that any initial arrangement focuses on the Gala Theatre prior to considering the operation at BATH. It is further proposed that the Empire Theatre operation is considered outside the scope of this project given that it is currently outsourced to Leisureworks.
- 10 In considering the potential to procure a film partner there are a number of material considerations.

## **Material Considerations**

### **Current Offer:**

- 11 Gala Cinema: The Gala currently programmes what is essentially a 'multi-plex' programme, screening mainstream films of a popularist nature. Current trading from this programme is summarised in section 21-24 of this report.
- 12 Whilst this has provided a significant income stream, it is considered that a move in market position to an 'Art House' programme will contribute to enhancing the Millennium Place offer. This combined with an expansion in the offer through the development of further screens, will create a stronger business model and add to the vibrancy and development of both Millennium Place and the wider city.
- 13 Gala Catering: There is a current in-house catering service that provides a range of café, bar and kiosk services to complement the theatre and cinema offer within the Gala. Whilst the current offer has traded reasonably well it has never been able to provide a more vibrant and extensive service capable of attracting a sustainable clientele or a service that brings vibrancy and life to the building. There are a number of factors contributing to this position not least the location of the current offer, relatively deep within the building and constraints imposed by being a Council run operation.
- 14 Cinema & Film Art Form: While Culture & Sport have programmed a cinema offer both at Gala and BATH it has not complemented this with a wider art form programme of activity across other communities or progressed a development programme beyond the marketing of the current services. The County has, however, benefited from a number of short-term mobile cinema initiatives.

- 15 In considering the current operation in light of the above it is notable that:
- a. The cinema programme is very mainstream-focused with little diversity of content and a lack of independent, art-house, foreign language or other specialised content
  - b. The cinema lacks an identity within the theatre building. Although it has its own marketing channels awareness remains low.
  - c. The cinema auditoriums are in need of modernisation.
  - d. The catering and public spaces could be made more inviting.
  - e. Additional cinema screens would be likely to contribute to a stronger business model serving the catchment area better and act as an anchor and draw to Millennium Place.
- 16 In overview this initiative has a number of aims namely:
- a. Identify a contribution to the £200k MTFP saving for 15/16
  - b. Identify further opportunities to improve the quality of the cinema and catering offer.
  - c. Enhance the Millennium Place offer and visitor economy

**Proposed Offer:**

- 17 In order to re-position the current cinema and film offer it is proposed that a cinema and film partner is identified to work with the Council to affect a number of changes. Appendix 2 sets out in more detail the general direction of travel for the offer which are currently being developed with a specialist advisor. These remain indicative at this stage as the work of the specialist adviser in developing a detailed specification and business case is on-going. In summary, the Council would be seeking a partner to deliver a comprehensive cinema and film offer, including ancillary services such as catering, of the following nature.
- 18 Initial Phase:
- a. Gala Cinema Operation: Develop a wide ranging, high quality cinema programme that includes 'arthouse' films and events not generally available at multiplex cinemas and provide the programming and distribution of all content. At the same time deliver targeted marketing that ensures the cinema is differentiated and remains accessible to local audiences, so that the cinema remains successful and sustainable in a changing market place.  
  
Through co-ordinating activities with the Gala theatre programme any partner would cross-pollinate audiences between the cinema and theatre and help grow audiences for both.
  - b. Cinema & Film Development: It would be the aspiration that any partner would also provide art form lead for film and cinema by providing a more general programme of development work that may include audience

development, touring cinema, film industry workshops and seminars as well as acting as the liaison for the Council with film and cinema agencies such as British Film Institute, the Film Audience Network, the Film Hub North, Arts Council England, Heritage Lottery Fund, trade groups, arts networks and trade organisations across the UK.

We would anticipate that any partner would become an active community partner within Durham, working not only with the Council, but also with other stakeholders including community groups, educational organisations, artistic and grass roots groups and the business community.

- c. Gala Catering Operation: seek a partner willing to maximise the contribution of the catering business at the Gala, including better use of the kitchen facilities, and to create a livelier, more vibrant feel for the café/bar spaces.

19 Additional Phases:

- a. Capital Development: Further development of the facilities is likely to be an integral part of any future offer and partnership albeit as a latter phase. Whilst the exact nature of this will need to be elicited through the tender process it may range from small scale refurbishments to large scale built extensions. Such proposals, if accepted, could be funded by either the appointed partner or directly by the Council – or a combination of both.

It is envisaged that the development of additional screens at the Gala and digitalisation of BATH are likely developments to be proposed by potential partners.

- b. BATH Cinema Operation: Bishop Auckland Town Hall is a multi-purpose venue which provides a Library, Café, Art Gallery, Meeting / Functions space, Arts Venue and cinema. BATH has become a focal centre for the area, attracting an average of 5,700 visitors a month (April 2014). Library visitors adding a further 3,000 per month.

Current programmes include regular print workshops, gallery launches, films, tea dances, hire for town centre events, children's activities, holiday children's workshops, literary based reader development sessions and theatre and comedy shows. The building is currently closed Sundays, bank holidays, Easter and between Christmas and New Year. The current cinema offer is limited and screens only circa 15 films per year. It is believed, however, that a more substantial offer could be developed at the venue with specific opportunities to develop 'alternative content' screenings of live shows and theatre productions.

Proposal - Whilst this may form part of a phased partnership, a cinema and film partner would be able to develop audiences for a wider, full-time cinema/events offer. In order to achieve this any partner would need to support a digital upgrade as current projection is via DVD.

In going to the market it would be the intention to seek a partner who had the potential to develop the venues cinema offer and explore catering potential for the venue

20 **Outcomes:** The outcome of the successful implementation of these proposals would be:

- a. A broadening and re-positioning of the cinema offer.
- b. Redevelopment and extension of the cinema facilities at Gala.
- c. Cost savings in the current and future operation of the Gala through a partnership structure which contributes to the financial underpinning of the Gala Theatre through guaranteed revenue from the cinema operation
- d. Greater audience development and programme development in conjunction with the theatre programme.
- e. Significantly increased cinema and alternative content admissions
- f. Enhanced and more attractive catering offer and increased revenue
- g. A new and loyal audience through marketing, membership, programming and partnership development
- h. A more robust cinema and catering offer capable of protecting the long term future of the Gala and BATH in the event of multiplex competition

#### **Financial Implications:**

- 21 Revenue Position: The Gala's 13/14 out-turn position shows cinema generated an income of £449,863 from 89,466 attendances and a further £13,584 from screen advertising. This was off-set by a range of direct costs associated mainly with film distribution and staffing costs of £270,317, providing a net position for cinema of a £193,130 surplus.
- 22 Whilst it is recognised that this project is as much about protecting current levels of income against competition as well as generating further surpluses, initial estimates of the return on a more focused programme and wider catering offer provides the confidence that a market response could generate greater returns. One aim of the project should therefore be that any partnership arrangement should make an improved contribution to the running of the facility.
- 23 Similarly, the associated catering generated a surplus of £73,935 from confectionary, bar and café sales. Initial market investigations would indicate that an extended and re-positioned offer has the potential to out-perform the current levels of trading.
- 24 Overall, the cinema and catering offer, in isolation, generates a surplus of £267,065. In considering a partnership for the provision of such services this trading position should act as a benchmark in considering the financial implications of any tender or proposal.

- 25 Investment and development: Direct investment by the Council, into any such schemes, would need to be undertaken on an 'invest to save' basis and tenderers/C&S would need to demonstrate the business case for any investment. In general terms this would translate into an annual cost of approximately 10% of the investment value when utilising the Prudential Borrowing scheme.
- 26 It may be further anticipated that potential partners are likely to wish to make investment, particularly at the Gala, both to the existing cinema and catering facilities but also in the development of further screens. It is estimated that an investment of circa £2m - £3m would be required to achieve this.
- 27 Should such an investment be funded via the Council this will need to be reflected in any financial arrangement with any new partner/operator. On the basis of covering the borrowing alone this would demand an improved net gain to the Council of circa £200k - £300k.
- 28 Greater detail on the funding of potential investments will be developed within the tender specification allowing partners to propose the scope of investment together with how they envisage this being funded. Clearly, the greater the scale of any investment will also have an effect on the length of any agreement that would need to be entered into..

#### **Procurement Issues:**

- 29 A recommendation of this report is to transfer the management and operation of cinema and catering operations to a third party operator. The Authority is however required to consider the procurement issues associated with this decision. The portfolio of services under consideration is made up of Part B services under the Public Procurement Regulations. For Part B services there is no requirement to advertise the opportunity in the Official Journal of the EU (OJEU), as there would normally be for an opportunity of this value. However a notice in OJEU, announcing the award of the contract, is still required to be published once the selected operator has been chosen. It is therefore important that the Council is seen to follow a transparent and fair contract award process, since the Council's choice of operator must be publically announced. It should also be noted that the exemption for Part B services is being abolished in the newly updated EU Procurement Directive. This will take effect in UK law when the Public Contract Regulation are published early in 2015.
- 30 Even for Part B services, the fundamental EU Treaty procurement principles in particular the principles of transparency, non-discrimination and equal treatment, continue to apply. This means that there is a general requirement for the opportunity to be advertised at an appropriate level, within the United Kingdom and for the successful operator to be chosen on the basis of a competitive and fair process.
- 31 Following discussion with Procurement it is, therefore, recommended that the Council undertakes a procurement exercise to determine appetite and test value for money. Clearly any operators expressing an interest in the contract will have to satisfy the Council's overriding objectives for the service as well as meeting financial and operational requirements, which will be stated expressly in any advert or resulting PQQ.

- 32 A specialist cinema and film adviser has been appointed to develop a detailed framework and specification to work alongside and advise the procurement process.

**HR Implications:**

- 33 As a general rule the transfer of any services to a third party would trigger Transfer of Undertakings (Protection of Employment) Regulations 1981 ("TUPE"). In such a case all employees essentially dedicated to the Services within the scope of the exercise would transfer on existing terms and conditions and there would be no break in their continuity of service.
- 34 Any organisational change will, of course, be of concern and will need to be managed in line with the Council's Change Management Tool Kit. The services under consideration have been subject to considerable uncertainty in recent times and it is imperative that any future management options prioritise employee concerns.

**Recommendations and reasons**

- 35 It is recommended that:
- i. A procurement process is entered into to identify a cinema, film and catering partner for the Gala Theatre and Bishop Auckland Town Hall.
  - ii. The appointment of a cinema and catering partner is delegated to the Director of Neighbourhood Services in collaboration with the portfolio-holder for Economic Regeneration following the procurement process.
  - iii. Resources note that this project may request capital resources on an 'invest to save' basis in order to facilitate further development of the facilities.

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## **Appendix 1: Implications**

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**Finance** - As set out in the body of the report.

**Staffing** - TUPE Regulations place a legal requirement on both transferor (the Council) and transferee (the new operator) to formally consult with affected employees, and their representatives, in relation to the implications of any transfer exercise, and indeed the Council's Change Management protocols facilitate this process when a TUPE scenario has been agreed. However, in all cases it is important that early identification of, and engagement with, those employees who are likely to be affected by the proposals takes place. Therefore, having identified those employees who will essentially make up the potential TUPE list, a detailed employee and Trade Unions communications plan will need to be implemented which will allow for full, meaningful and timely engagement ahead of and throughout the transfer process.

Assuming the Council enters into a contract to carry out functions previously carried out by the Council, and staff have their employment compulsorily transferred from the Council to a third party, the third party will have to provide the transferring employees with either continuing access to the Local Government Pension Scheme (LGPS) or access to a broadly comparable pension scheme.

**Risk** - There are a number of risks associated with this project and a risk register will be developed as part of the appointment process.

**Equality and Diversity/Public Sector Equality Duty** – None from this report.

**Accommodation** - None from this report.

**Crime and Disorder** - None from this report.

**Human Rights** - None from this report.

**Consultation** – Staff consultations will be required as part of any TUPE implications.

**Procurement** – as set out in the body of the report.

**Disability Issues** - None from this report.

**Legal Implications** – Legal advice will be sought in relation to entering into any future contractual arrangements.

## **Appendix 2: Partner Requirements**

Durham County Council are looking for an experienced, well established and successful cinema operator with an existing national and regional presence to become a *cultural partner* for Durham County Council and to work in partnership to develop a cinema and catering offer across the county.

Whilst focusing predominantly on the Council's main cultural venue at the Gala Theatre & Cinema we are seeking a partner to take an art form lead on cinema across the county with an expectation that they will be involved in wider community and development initiatives across the county, including operation of a cinema offer in Bishop Auckland Town Hall.

In order to fulfil this role any partner will need to demonstrate:

### **For the overall project:**

- Proven experience of working in public/private partnership
- Proven experience working closely with Local Authorities, communities, educational institutions, arts organisations and the business community
- Ability to deliver value for money, demonstrate efficiency and sound management experience
- A proven track record of working in shared spaces
- Experienced education officer resource to work on outreach and expansion programmes
- A proven track record of working in areas with high levels of University students and being successful at engaging with them

### **For Gala Theatre & Cinema:**

#### **Essential**

- To provide a wide ranging, high quality cinema program that includes 'arthouse' films and events not generally available at multiplex cinemas
- To ensure the cinema remains accessible to all with discounts at off peak times
- To deliver targeted marketing that ensures the cinema is differentiated and remains accessible to local audiences so that the cinema remains successful and sustainable in a changing market place
- To work directly with the University to help deliver student audiences to the Gala programme
- To become an active community partner within Durham, working not only with the Council, but also with other stakeholders including community groups, educational organisations, artistic and grass roots groups and the business community at large
- To co-ordinate with the Gala Theatre to help cross-pollinate audiences between the cinema and theatre and help grow audiences for both
- To maximise the contribution of the catering business at the Gala, including better use of the kitchen facilities, and to create a more vibrant feel for the café/bar spaces
- Experience in putting on outdoor, pop-up and site specific screenings and events in a variety of contexts

- Established relationships with national and regional organisations such as the British Film Institute, the Film Audience Network, the Film Hub North, Arts Council England, Heritage Lottery Fund, trade groups, arts networks and trade organisations across the UK
- An ability to develop the cinema offer across the county, beyond Durham
- Extensive development experience in architectural, project management and construction projects
- Ability to develop projects which may involve multiple sources of public funding (BFI, ACE, etc.)

### **Desirable**

- To deliver a cinema programme which responds to popular demand but develops an audience for a more diverse range of cinema and events, enriching the cultural offer in Durham
- To develop, in partnership with the Council, further cinema facilities within the Gala Theatre, including additional screens, improved facilities for existing screens and improved catering and public spaces and facilities
- To work with the Gala Theatre & Cinema to develop a programme of events for the theatre space when not in use for live performance and for the cinema spaces as well, including a wide range of 'Event Cinema' (Opera, Ballet, Theatre, Music, etc.) that will increase audience numbers and provide a broader cultural offer for Durham.
- To help grow the conferencing and private hire side of the business, co-ordinating all the spaces in the Gala, including catering services, to provide a unique offer in Durham
- To help grow the digital marketing presence of the Gala Theatre & Cinema through use of the operator's website and social media channels
- To increase the amount and frequency of one-off special events in the cinema spaces, including satellite broadcasts, in person Q&A's, live scores, archive screenings, etc.
- Experience in working with, and producing, film festivals
- Experience working with local and regional film makers to help showcase work and create links and relationships
- Experience employing education officers
- Ability to provide advice and consultancy to the Council on all matters related to film culture
- Experience in audience development and creating schemes that encourage loyalty and repeat visits

### **For Bishop Auckland Town Hall**

#### **Essential**

- To develop audiences for a wider, full time cinema/events offering
- To programme suitable content for the community, listening closely to the audience demand, whilst always aiming to increase audience numbers and frequency of visits
- To ensure the widest range of audiences are able to access the cinema through accessible pricing and programming
- Proven experience at delivering effective marketing

**Desirable**

- To support a digital upgrade of the Town Hall
- A co-ordinated approach with the Gala Theatre & Cinema offer to maximise efficiencies, grow audiences and create economies of scale
- To explore catering potential for the venue