



GUILDFORD
BOROUGH

James Whiteman
Managing Director

www.guildford.gov.uk

23 August 2021

Dear Councillor

EXECUTIVE - TUESDAY, 24TH AUGUST, 2021

Please find attached the following:

Agenda No Item

10. **Key Decision Special Urgency Notice - GLive Contract Extension (Pages 1 - 8)**

Yours sincerely

John Armstrong, Democratic Services Manager
01483 444102

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GUILDFORD BOROUGH COUNCIL

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Notice under Regulation 11 (Special Urgency)

As the date by which the key decision referred to below must be taken makes compliance with Regulations 9 and 10 of the 2012 Regulations impracticable, I hereby give notice that the Chairman of the Council's Overview and Scrutiny Committee has agreed that the making of the decision is urgent and cannot reasonably be deferred for the reasons stated in the table below.

Key Decision: G Live Contract and Lease	Reasons for Non-Compliance with the Requirements of Regulations 9 and 10
<p>(1) To extend the G Live Contract with HQ Theatres from 1 October 2021 for 3 years until 30 September 2024.</p> <p>(2) To grant a Lease to HQ Theatres for a term of 3 years from 1 October 2021 until 30 September 2024.</p> <p>(3) To agree that the Lease and Contract shall be co-terminus.</p>	<p>HQ Theatres were appointed as the operator of G Live following an open tender process for a term of 10 years in 2011, a co-terminus Lease was granted to HQ Theatres at the same time.</p> <p>The G Live contract and lease expire on 30 September 2021.</p> <p>The Council had planned to commence an open tender process for a new contract in April 2020 with the new contract commencing on 1 October 2021. However, due to the Covid19 pandemic lockdowns causing theatres to close and uncertainty in the theatre market, the process was put on hold. The ongoing uncertainty has meant that the Council has not been in a position to tender the contract to date and does not believe it would receive competitive tenders at this time or within the next 12 months.</p> <p>The Council has negotiated an improved management fee with HQ Theatres over the extension period, details of which were submitted on Monday 16 August 2021.</p> <p>The urgency of this decision is due to the fact that, with the current contract expiring on 30 September 2021, the Council is required to publish an OJEU notice 30 days in advance of entering into the extension. This means that the decision needs to be taken before 31 August 2021.</p> <p>It was therefore not practicable to:</p> <ul style="list-style-type: none">(a) publish a notice of key decision in respect of this matter in the Forward Plan at least 28 days prior to 24 August 2021, under the requirements of Regulation 9, or(b) inform the chairman of the Overview and Scrutiny Committee by notice in writing of the matter about which the key decision is to be made, and publish that notice on the Council's website giving five clear days' notice before the key decision is due to be taken under the requirements of Regulation 10.

The key decision referred to above will be taken by the Executive its meeting to be held on 24 August 2021.

Councillor Joss Bigmore
Leader of the Council
20 August 2021

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ITEM OF URGENT BUSINESS

Report to the Executive

Ward(s) affected: All

Report of Director of Service Delivery

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Date: 24 August 2021

G Live extension proposal

Executive Summary

The Council entered into a 10-year G Live Operator Agreement with HQ Theatres Guildford Limited and QDOS Entertainment PLC (HQT) on 12 August 2011. This contract, which deals with the operation and management of G Live, is due to expire on 30 September 2021.

The pandemic caused the open procurement process that had commenced for a new agreement to be suspended in March 2020. The ongoing pandemic and its effect have made it impossible to operate a procurement process which would have secured a suitable replacement offer for the ongoing operation of the venue. There is no automatic provision within the existing contract to extend the agreement unless there are special circumstances. HQT have successfully operated the venue since it opened. Income and attendances have improved each year. It is possible to extend the existing contract on the same terms and conditions under Regulation 72(1)(c) of the Public Contracts Regulations 2015, which allows for a proportional extension of the current contract subject to meeting specific criteria. There is not a practical alternative to extending the existing contract.

HQT have offered an improved management fee which is permissible under the regulations in exchange for a three-year extension to the existing contract. This decreases the base cost of the management fee by £53,595 per annum.

Recommendation to Executive

That the Executive agrees:

- (1) To extend the G Live Contract with HQ Theatres from 1 October 2021 for 3 years until 30 September 2024.
- (2) To grant a Lease to HQ Theatres for a term of 3 years from 1 October 2021 until 30 September 2024.
- (3) To make provision for the Lease and Contract to be co-terminus.

Reason(s) for Recommendation:

A contract extension is the only viable option at this point due to the impact of the pandemic. A three-year extension offers the best extension period for the Council to meet its medium-term objectives in relation to the financial savings strategy.

Reason for Urgency:

The urgency of this decision is due to the fact that the current contract expires on 30 September 2021 and the need to publish an OJEU notice in advance of entering into the extension means that the decision needs to be taken before 31 August 2021.

Is the report (or part of it) exempt from publication? No

1. Purpose of Report

- 1.1 The agreement with HQ Theatres to operate G Live expires on 30 September 2021. The Executive is asked to agree to the extension of the existing agreement for the operation of G Live for a further three years on improved terms to the Council.

2. Strategic Priorities

- 2.1 The provision of the services detailed within this report support the Corporate Plan in respect of the Community theme in enhancing sporting, cultural, community, and recreational facilities:

- i. by attracting visitors to the borough and making Guildford a more attractive place in which to live. The venue offers a range of employment opportunities and facilities that businesses need.
- ii. through providing an enhanced cultural and entertainment offer in an attractive, vibrant town.

3. Background

- 3.1 The Council entered into a 10-year G Live Operator Agreement with HQ Theatres Guildford Limited and QDOS Entertainment PLC (HQT) on 12 August 2011. This contract, which deals with the operation and management of G Live, is due to expire on 30 September 2021. There is no automatic provision within the existing contract to extend the agreement unless there are special circumstances.

- 3.2 The Council also granted a lease of the G Live premises to HQT for a period of 10 years at a peppercorn rent. This lease also expires on 30 September 2021.

- 3.3 The venue consists of main concert space capacity of 1,031 people seated, 1,700 standing, and a second space seating for up to 100. In addition, there are hospitality and meeting rooms.

- 3.4 In the existing contract agreement, HQT is required to optimise commercial and hospitality income in G Live as well as provide different genres of entertainment.

- 3.5 HQT have successfully operated the venue since it opened. Income and attendances have improved each year. The venue has now over nine operating years' history and is an established venue in the marketplace. G Live is reliant on touring product, so promoters will either hire the venue or enter into an agreement for a percentage share of the box office.
- 3.6 A procurement process for the selection of an operator for a new agreement started prior to the pandemic. This, however, had to be suspended due to the pandemic in March 2020.

The current marketplace

- 3.7 The pandemic has had a really significant impact in the entertainment industry. Due to the nature of the industry, venues have been completely closed for the majority of the emergency. The industry has been filled with uncertainty with many venues and operators struggling to cope financially. HQT have received Covid support throughout the pandemic from the Council to ensure they are able to re-open as we emerge from the depths of the pandemic.
- 3.8 The market remains uncertain about the future of the industry. If social distancing requirements continue to be a factor, many venues will be very restricted in the choice of shows they can accommodate, and many producers will not tour as the business will no longer be financially viable. It will take some time for the market confidence return once the pandemic recedes. Until that point, operators will be both reluctant to take on new risk and will price the perceived increased risk accordingly.
- 3.9 The procurement process for the operation of a venue such as G Live is time consuming and if an alternative operator was awarded the contract, they would ideally require a lengthy handover period as the event programme is usually organised nine to twelve months in advance. A typical procurement process might formally commence with potential bidders 18 months prior to the intended handover date.
- 3.10 G Live has been used during the pandemic very successfully as a vaccination centre until 19 July 2021. The venue needed a few weeks to prepare for a return to its normal operation and is due to reopen with its first event on Thursday 26 August. The risks associated with the pandemic are not yet over and the entertainment industry remains extremely vulnerable.
- 3.11 The available timeframe made it progressively obvious that a contract extension due to special circumstances would potentially be the best route to ensure continued service delivery. As reported previously in the G Live annual report presented to Overview and Scrutiny Committee on 19 January 2021, HQT were approached to enter into discussions for a contract extension. Any contract extension must be on the same terms and conditions as the original contract award although there is some flexibility in relation to the financial arrangements.
- 3.12 As the Council could not reasonably foresee the circumstances brought about by the pandemic it is able to extend the existing contract (subject to fulfilling some specific criteria for any proposed extension). This is covered by Regulation

72(1)(c) of the Public Contracts Regulations 2015 (see section 7 below). The extension cannot alter the overall nature of the existing contract and cannot exceed 50% of the original contract value.

- 3.13 The urgency of this decision is due to the fact that the current contract expires on 30 September 2021 and the need to publish an OJEU notice in advance of entering into the extension means that the decision needs to be taken before 31 August 2021.
- 3.14 They were initially asked to provide a submission covering options on two, three, or four-year extension periods. The initial offer was presented to Councillor Bigmore and Councillor Steel on Wednesday 16 June. The initial submission by HQT was a simple extension proposal maintaining the existing financial arrangements with the annual base management fee payable by the Council remaining at £328,595 per annum for each of the options. In exchange for a four-year extension there would be an additional capital injection by HQT to update the mezzanine restaurant offer. HQT agreed to reconsider their offer to see if any improvement could be made to recognise the changed circumstances of the venue from when the original contract was let and the success that the venue has enjoyed.
- 3.15 HQT resubmitted a revised offer on Monday 16 August which offered an improved base management fee for the four-year option to £275,000 per annum, an improvement of £53,595 per annum on the existing arrangement. On 19 August they offered to extend this improved base management fee to the 3-year extension offer.
- 3.16 HQT will review the opportunity to work in partnership with the Council to deliver some capital improvements over the term of the three-year extension including the possible use of the venue sinking fund as set out in the existing agreement.

4. Consultations

- 4.1 Due to the impending expiry of this agreement, it has not been possible to consult with a wider audience.

5. Key Risks

- 5.1 There is a constantly changing, and uncertain, health, environmental, financial, economic, and political environment due to Covid-19.
- 5.2 Failure to put a suitable arrangement in place could result in G Live being unable to operate.
- 5.3 The application of Regulation 72(1)(c) of the Public Contracts Regulations 2015 has to be proportional. The application of a longer extension could increase the risk of challenge from any potential alternative operator who considers the Council has acted disproportionately to the impact of the pandemic.

6. Financial Implications

- 6.1 In the proposed extension all income and tariff receipts at G Live would remain the property of HQT (subject to the agreements with the promoters) i.e. HQT keep the income attributable to the venue from hires, bookings and ticket sales and secondary income (such as catering, refreshments, programmes, souvenirs etc.). The Council pays a management fee in monthly instalments for the operation of the venue that is currently fixed at £328,595 per annum. Under the proposed 3-year extension this management fee would be fixed at £275,000 per annum, an improvement to the Council's base position of £53,595 per annum. A part year saving of £26,797 will now be taken in 2021-22 and the full year saving of £53,595 will be included in the council's medium term financial plan and will make a contribution to reducing the Council's budget gap for the period 2022-23 to 2024-25.
- 6.2 Any net income that is generated over that break-even point is referred to as a surplus and is divided between the operator (80%) and the Council (20%). This arrangement would not change in the proposed extension.

7. Legal Implications

- 7.1 Section 3 of the Local Government Act 1999 requires that the Council as a best value authority to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness". Reviewing and where required monitoring the Council's contractual approach is an important way in which that obligation can be fulfilled.
- 7.2 The Council is relying on Regulation 72(1)(c) of the Public Contracts Regulations 2015 to extend the contract for 3 years in that:
- (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen
 - (ii) the modification does not alter the overall nature of the contract
 - (iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.
- 7.3 The urgency of this decision is due to the fact that the current contract expires on 30 September 2021 and the need to publish an OJEU notice in advance of entering into the extension means that the decision needs to be taken before 31 August 2021.
- 7.4 A suitable deed of variation and a new co-terminus lease will be required to be prepared to reflect the revised arrangements.

8. Human Resource Implications

- 8.1 There are no human resource implications if the contract extension is awarded.

9. Equality and Diversity Implications

- 9.1 This report does not propose any change in the existing situation and therefore has no equality and diversity implications.

10. Climate Change/Sustainability Implications

- 10.1 This report does not propose any change in the existing situation and therefore no implications for the carbon footprint.

11. Conclusion

- 11.1. The pandemic has created a unique situation where it has been impossible to progress a normal procurement process for the operation of G Live. The confidence within the marketplace will grow as the pandemic diminishes.
- 11.2. HQT have operated G Live very successfully over the period of its operation.
- 11.3. Regulation 72 (1)(c) allows for a proportional extension of the current contract subject to meeting specific criteria. A longer extension could increase the risk of a successful challenge.
- 11.4. A two-year extension is considered too short a time period for sufficient certainty to return and a suitable procurement process to be completed.
- 11.5. A three-year extension would provide the best chance of a stable industry environment giving the Council the best chance of a good offer for the future operation of the venue. A three-year extension also delivers an improved financial position for the Council.
- 11.6. A four-year extension may result in a delayed opportunity for a further improved financial situation for the Council and would increase the risk of a procurement challenge for inappropriate application of Regulation 72 (1)(c).

12. Background Papers

None

13. Appendices

None