

Commissioning and Procurement Executive Committee – 14 March 2023

Title:	Vehicles and Transport Dynamic Purchasing System (DPS) for services including Social Care Transportation (including SEND Home-to-School), School Trips Transport and Council Staff Transportation		
Corporate Director:	Catherine Underwood – People		
Portfolio Holder:	Councillor Cheryl Barnard – Children, Young People and Schools		
Report authors and contact details:	Claire Moores Whynott Transport Manager 07903556813 Claire.moores@nottinghamcity.gov.uk Robin Radford - Transport Service Manager 0115 8761464 robin.radford@nottinghamcity.gov.uk		
Other colleagues who have provided input:	Kate Collins – Operations Manager Anthony Heath – Solicitor Richard Bines – Solicitor Holly Fisher – Lead Procurement Officer		
Key Decision	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Subject to call-in
			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Reasons:	<input checked="" type="checkbox"/> Expenditure	<input checked="" type="checkbox"/> Income	<input type="checkbox"/> Savings of £750,000 or more taking account of the overall impact of the decision
			<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital
Significant impact on communities living or working in two or more wards in the City			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Type of expenditure:	<input checked="" type="checkbox"/> Revenue	<input type="checkbox"/> Capital	
Total value of the decision: Up to £41,620,000 over 10 years (£4,162,000 per annum)			
Wards affected: All			
Date of consultation with Portfolio Holder: 14/03/2023			
Relevant Council Plan Key Outcome:			
Clean and Connected Communities	<input checked="" type="checkbox"/>		
Keeping Nottingham Working	<input checked="" type="checkbox"/>		
Carbon Neutral by 2028	<input checked="" type="checkbox"/>		
Safer Nottingham	<input type="checkbox"/>		
Child-Friendly Nottingham	<input checked="" type="checkbox"/>		
Healthy and Inclusive	<input checked="" type="checkbox"/>		
Keeping Nottingham Moving	<input type="checkbox"/>		
Improve the City Centre	<input type="checkbox"/>		
Better Housing	<input type="checkbox"/>		
Financial Stability	<input checked="" type="checkbox"/>		
Serving People Well	<input checked="" type="checkbox"/>		
Summary of issues (including benefits to citizens/service users):			
Introduction:			
As part of the transformation of the department and services, the Education Division seeks authorisation to continue to procure transport for school travel. The main service areas utilising Social Care Transportation (including SEND Home-to-School), School Trips Transport and Council Staff Transportation services are Passenger Transport Service, Why Nott? Transport and the Theatre Royal & Royal Concert Hall. This approval will enable the establishment of a DPS (Dynamic Purchasing System) for the contracting and supply of transportation from external transport operators.			
Passenger Transport Service:			

Nottingham City Council's Passenger Transport Service is now part the Education Department but has always functioned as a specialised transport provider for SEND and Vulnerable Pupils, Adult Social Care and other Adult and Children's Services. Part of the home to school and adult day care specialised transport is provided internally by our fleet of 56 specially adapted passenger carrying vehicles. However, the majority of transport requirements are commissioned by our back office team from a range of local private specialised passenger transport operators and private hire operators. The value of the total contracts awarded in one year could be up to £3.7m spread amongst a number of passenger transport operators and private hire operators who can provide the services within the Nottingham City area.

Why Nott? Transport:

Nottingham City Council's Why Nott? Transport based in Curriculum and Enrichment has a history of over 10 years of successfully supporting schools and Academies to access educational visits, school swimming and ice skating lessons. The service allows schools to secure the best price for their journey through a competitive process within a pool of pre-approved transport providers. The value of the total contracts awarded in one year could be up to £450,000 spread amongst a number of passenger transport operators and private hire operators who can provide the services within the Nottingham City area.

Theatre Royal & Royal Concert Hall:

Theatre Royal & Royal Concert Hall presents around 675 performances each year attracting audiences in excess of 600,000. The service area is looking for suppliers of private hire vehicles mainly but exclusively to enable staff to get home after their shifts come to end. The need for this could be 7 days a week from about 10.30pm through to 6am the following morning, depending on the production playing. This service will also extend to journeys for visiting company and cast between the location that they are staying for the week/night as well as press engagements at local radio and TV stations. The value of the total contracts awarded in one year could be up to £12,000 spread amongst a number of passenger transport operators and private hire operators who can provide the services within the Nottingham City area.

Solution and recommendation:

The Council's updated Contract Procedure Rules (Article 18 of the Constitution) and also the Public Contract Regulations 2015 (PCR's) stipulate that contracts should be aggregated where possible, in the event of multiple departments are procuring the same services to maximise economies of scale and avoid dis-aggregation of contracts and risking breaching the PCR's. The service areas named in this report all have similar requirements operationally. Creating a Dynamic Purchasing System offers a compliant and flexible solution enabling multiple departments meet the council's Contract Procedure Rules and PCR's while also satisfying the service requirements of the named service areas.

Benefits of a collective Dynamic Purchasing System for each service are:

- Enablement of new operator inclusion on to the DPS when required (subject to satisfying qualification criteria) which also can offset instability of losing suppliers and increases competition.
- Suppliers can apply at any time once the DPS is 'live' or enabled. If unsuccessful on first application, suppliers can re-apply (unlike a closed framework arrangement)
- It enables competition for each requirement supporting best value
- It is a streamlined procurement process for buyers and suppliers, which may be helpful for new/smaller suppliers.
- All suppliers on the DPS have undergone a due diligence exercise, ensuring they meet the minimum criteria.
- Contractual framework supports quality assurance.

The benefits to our children and citizens of providing an amalgamated DPS for the above services is as follows:

- The Passenger Transport Service enables not just access to education for children with special educational needs but some of the most vulnerable adults in the city are able to access day care services whilst also enabling independent living within their own home.
- Passengers travel on transport that meets pre-approved standards with regards to safety and quality of service and are attended by staff that can meet the needs of all of our passengers through quality assurance.
- A range of inclusive learning can be accessed outside the classroom activities that enhance children's personal development, physical and mental health and life chances.

The benefits of this to schools/academies are that they can:

- Evidence they have exercised due diligence;
- Secure best value through a competitive process;
- Share vehicles with other schools to bring the costs down;
- Receive support on a scale greater than the school alone should there be issues with quality;
- Reduce the planning burden of providing inclusive learning outside the classroom experiences that contribute towards meeting CMO, National Curriculum and OFSTED Personal Development standards.

The benefits to Nottingham City Council in relation to implementing this service are as follows:

- Other local authorities that have introduced a DPS have been able to evidence significant savings in the procurement process.
- Use of the DPS allows competition in the local passenger transport market of all to be based on a fair and transparent vetting and bidding process.
- Supports the local authority's legal obligation to provide home to school transport for children with special educational needs.
- Supports school attendance and inclusion for SEN children.
- Facilitates a degree of control over the costs and quality of school swimming, ice skating and adventurous activity transport (which directly affects the booking volumes for at Leisure Centres, NIC and NCC's Adventure Centres);
- Supports compliance with the Council's statutory duties with regards Health and Safety in maintained schools;
- Supports maintained schools in offering an inclusive, broad and balanced curriculum that meets the requirements of the CMO, National Curriculum and OFSTED standards.
- Supports the council's financial governance processes.

Passenger Transport Service and WhyNott? Transport currently works with the vast majority of operators in Nottingham through competitive tender. This approval will enable the establishment of a DPS for the contracting and supply of transportation from external transport operators to be put in place for 10 years.

Funding for the provision of these services are budgeted or have a transaction sold service option within Adult and Children's Services and Education budgets as well as and Theatre Royal and Royal Concert Hall underpinned by contractual arrangements which provides the tools to monitor which are embedded to ensure that spend is in line with budgets and forecasting. In order to ensure effective and efficient implementation of the service following the development of the DPS, staffing resources will need to be considered.

In addition to the DPS system, the services seek to analyse improvements for monitoring of contracts and further changes and implementation to provide system links to process transactions supporting further efficiencies surrounding procurement, ordering and payment

solutions to make sure the automation and processing provides a supportive mechanism between tender and confirmation providing processing efficiency throughout the transaction in its entirety.

Exempt information: None

Recommendations:

1. To procure under a 10 year DPS (with lots), in compliance with the rules of the restricted procedure and subject to the provisions of regulation 34(5) of the PCR 2015 (regulation 34(5), PCR 2015, transportation services including Social Care Transportation (including SEND Home-to-School), School Trips Transport and Council Staff Transportation.
2. To approve a spend of up to £4.162m p/a within the above DPS (Dynamic Purchasing System) on the award of complaint call off contracts.
3. To delegate authority to the Corporate Director for People to:
 - (a) confirm economic operators/providers meet the selection criteria and will be admitted the specific Lots;
 - (b) to tender for, and award and sign off, call-off contracts.

2. Reasons for recommendations

- 2.1 Each of these services needs a flexible and compliant solution to meet their needs, and that meets all statutory and legislative requirements to mitigate any operational and reputational risk for the Council.
- 2.2 The services provided by Passenger Transport Service and WhyNott? Transport are all well established and successful, both in terms of meeting service expectations and service continuity. For this reason, it would be recommended to amalgamate all of the named service areas under one overarching DPS as above.
- 2.3 Authorisation is sought to procure transportation on the basis that all contracts awarded under the DPS can be held account under simultaneous terms and conditions, as well as performance measurement. Alongside this, the services help to contribute positively to children and young people's learning, personal development and a number of elements of the Council Plan. Ensuring affordable best value, high quality safe, and transit by capturing 90% of the market operators within the DPS in the Nottingham area.
- 2.4 The financial benefit associated with this can be addressed through the requirement for all providers on the DPS to commit to ensuring the efficient and effective running of all routes tendered for by making the Council aware of opportunities to amalgamate routes if services on certain routes are underutilised on assessment.
- 2.5 In order to comply with NCC financial procedures and CPR regulations, to support a further ten years of contracting with suppliers and enable a DPS contracting agreement for our operators which supports the Compliant Purchasing Agreements to raise purchase orders in the Fusion system.

3. Background (including outcomes of consultation)

3.1 Passenger Transport Service

- 3.1.1 The Passenger Transport internal fleet operate as viable alternative to commissioning for SEN transport with the key objective of insourcing routes that become too expensive from external providers. This can be because external pricing has become above the operating costs that we can achieve in-house or it can be because the needs of the children or adults have become so complex that the market cannot provide the expertise to meet their needs. In addition, as the market changes their own fleet capacity, we are able to provide economies of scale with our in-house transport if the market cannot provide our needs. The overall effect of the internal fleet is to provide a source of pressure on all external passenger transport providers, which helps to keep the market competitive, effective, and encouraging them to invest in better transport solutions.
- 3.1.2 Support the wider council plan in relation to addressing carbon emissions within NCC through the DPS in relation to the age size and model of vehicles preferences for the contracts.
- 3.1.3 Use of a DPS will allow us to encourage new providers into a fair and transparent bidding process and on role out of the DPS we will conduct a marketing exercise, with the aim of encouraging, for example, the third sector interest in applying for the DPS. This will give these organisations the opportunity to compete for work through the electronic system used by the DPS.
- 3.1.4 During the COVID pandemic, external transport providers helped us maintain service continuity across our services, enabling vulnerable children to attend school or vulnerable adults to access essential day care. External contractors even helped us with delivery of meals to those vulnerable citizens that were in shielding. External contractors also helped with the vaccine programme in Nottingham. The benefit of a specialised external market during emergency situations was extremely valuable and helped with the health and wellbeing of many of our services and citizens. The DPS will ensure that this benefit continues and expands.
- 3.1.5 Under s. 508B of the Education Act 1996, local authorities are obliged to provide free, suitable transport for children with special needs or disabilities who cannot reasonably be expected to walk to school. If a school is named unconditionally in an EHC plan, then it is the child's nearest suitable school, and transport must be provided if necessary. The use of a DPS assists with the transport requirements that are necessary for the council to fulfil its legal obligation under the Act.

3.2 WhyNott? Transport

- 3.2.1 The service is important to provide children with access to activities where learning away from the classroom is necessary, due to facilities or environment required (e.g. such as school swimming or residential camps) a one stop for schools can be offered.
- 3.2.2 School Swimming and Why Nott? Transport are both services which work hand in hand to provide affordable lessons and transportation for

Swimming Teachers, Pool Hire and Transportation, providing a set pricing structure to all city school regardless of geographical location.

- 3.2.3 By controlling a market share of bookings, a competitive situation can be established where transport operators enter Supply quotations and bids for with Nottingham City Council, managed by its Why Nott? Transport services team on behalf of our customers. This provides them with opportunities for hire, at a regulated pricing structure regardless of location in relation to activities. This is replicated for other services within the Education Division, such as The Adventure Team.
- 3.2.4 The service currently works with all 71 schools in the area with an added offer of transportation for those who are unable to walk to local swimming pools, where it provides weekly transport trips for 50 schools per week, per term and per academic year.
- 3.2.5 Why Nott? also provided on average over the past three academic years (pre COVID) of 19,670 contracted school bookings for transport for Educational visits on behalf of schools visiting local, national and international destinations.
- 3.2.6 Travel is unavoidable for schools due to leisure centre locations and historically a one stop booking for schools has provided equality, and economic viability.
- 3.2.7 The carbon impact and associated costs of transport has been considered and, in consultation with schools, the service delivery of Why Nott? Transport and School Swimming lessons moved towards longer length swimming lessons and reducing the carbon footprint where possible for 2021/22.
- 3.2.8 Following a consultation process the delivery of learning outside the classroom lessons including School Swimming provided changes to delivery ensuring maximum time within the classroom could be achieved during the school day, and reduces the time spent away from the classroom on a weekly basis on travel.
- 3.2.9 Support the wider council plan in relation to addressing carbon emissions within NCC through the DPS in relation to the age size and model of vehicles preferences for the contracts. The service aims to provide cleaner vehicles by omitting aging registrations during contracting where possible and stipulates double-deckers from 2002 at a euro 4 emissions rate, and single deck coaches from 2011 with a euro 6 emissions rate.
- 3.2.10 The service also contributes to reduced traffic congestion and carbon emissions by taking control over the strategic coordination of 'routes' for swimming transport, rather than each school individually booking their own vehicle.

4. Other options considered in making recommendations

- 4.1 The specialised passenger transport market is a niche business in the passenger transport market. Over many years we have been able to develop relationships with local specialised passenger transport operators but as the market has

developed there is an opportunity for larger operators to price out smaller competitors. The development of a DPS specific to the needs of the Council ensures that all suppliers, regardless of size, can compliantly bid for contracts with the Council.

- 4.2 Framework – the creation of a framework agreement means that any new entrants to the market cannot join the agreement, regardless of if another supplier leaves. A framework agreement can also only be in place for a maximum of four years, currently.
- 4.3 Do nothing and continue to have separate contracts across the organisation – this option would not be compliant with the Council's updated financial regulations and the Public Contract Regulations (2015).

5. **Consideration of Risk**

- 5.1 There is a legal risk of not fulfilling the obligations under s. 508B of the Education Act 1996 should procurement not be achieved. The legal risk lies in that; if the DPS is not awarded then children may not be able to gain transportation to partake in education unless a method of procuring transport is agreed.
- 5.2 Not fulfilling the obligations under s. 508B of the Education Act would also lead to a possible tribunal or complaints to the Local Government Ombudsman. This item under 4.2 and 4.1 can also lead to reputational damage if routes are not tendered as the outcome of a LGO enquiry is published publicly.
- 5.3 Schools not requesting transport or low demand: Transport is only procured on the basis that a school has requested it (be that on a scheduled or ad-hoc basis). It is paid for after it has taken place. A Dynamic Purchasing Agreement will support the fluctuation of supply and demand for services, without detriment for income generating and expected expenditure. There is a proven positive annual budget of transactional income.
- 5.4 Customers not paying for transport used: There is a small risk that a journey may be unsatisfactory and therefore the customer will not pay for it after confirmation/call off stages for all parties. However, this is mitigated through effective and proactive quality control and customer liaison and is very rare. We also don't pay for transport until after it has been satisfactorily provided and there are a range of sanctions or actions available to us.
- 5.5 Services no longer required through Curriculum changes within academy chains: There will always be fluctuations of purchasing due to school budgets becoming more challenging, and should this be the case, the service only contracts what is required by the school, and coupled with dynamic timetabling and contract negotiations supports the least space required. The service books back to back sessions and all year round lessons only, opening the schedule for other business opportunities for Sport and Leisure and Transport Operators, therefore transport only when required in the most economical way.
- 5.6 The contracting of staff variation to contract supports such changes without causing redundancy challenges supporting fluctuations. There is a very small risk that schools will no longer buy into swimming if academies decide to

change the curriculum, however this is mitigated through positive relationships, high quality service and competitive pricing. As Local Authority maintained schools have made the conversion to academy status, our service has maintained and grown market share. There are still a considerable number of maintained schools in Nottingham that are required to follow the National Curriculum and swimming and water safety is featured in the PE curriculum.

- 5.7 The overwhelming majority of Academies also include these activities in their curriculum. Additionally, OFSTED, who inspect both maintained schools and academies, will be looking to see these types of activities as part of the Personal Development section of their inspection judgement. The National Governing body continue to lobby the government for the need to include this life skill in education. The service continues to offer the hire of pool space for alternative bookings for aquatic disciplines and mental and physical wellbeing and will continue to evolve the service to broaden and enhance our offer.

6. Finance colleague comments

- 6.1 As outlined above, this report seeks approval to procure high quality services for Social Care Transportation (including SEND Home-to-School), School Trips Transport and Council Staff Transportation through suggested DPS systems for further efficiencies the system will bring compared to the current processes.
- 6.2 To ensure the best outcomes for pupils and citizens for whom the services are to be provided, the procurement process should include a focus on the objective of achieving excellent value for money.
- 6.3 A breakdown of the services areas values alongside the total value can be seen below:
- Social Care Transportation (including SEND Home-to-School): £3.7m p/a;
 - School Trips Transport: £450,000 p/a;
 - Council Staff Transportation: £12,000 p/a

Total per annum: £4,162,000

Total value of the decision:

Proposed 10-year Dynamic Purchasing System - £41,620,000

Funding for the provision of these services are budgeted or have a transaction sold service option within Adult and Children's Services and Education budgets as well as and Theatre Royal and Royal Concert Hall underpinned by contractual arrangements which provides the tools to monitor which are embedded to ensure that spend is in line with budgets and forecasting.

- 6.4 Any changes to that outlined in this report will be subject to further approval, as appropriate.

Clare Rickett, Senior Commercial Business Partner - 05.09.2022

7. Legal colleague comments

- 7.1 A DPS is a valid route to market and in principle accords with the Council's Contract Procedure Rules and the Public Contract Regulations 2015.
- 7.2 Contractual arrangements need to be monitored and, due to the nature of the DPS, actions taken in a timely way, appropriately evidenced and following the required processes as outlined in the Public Contract Regulations 2015.
- 7.3 A 10 year Dynamic Purchasing System is proposed, so the value of the decision in relation to the DPS must reflect the total estimated value of all the call-off contracts (inclusive of VAT) envisaged over the life of the DPS Framework Agreement. A DPS is a valid tool in the situation described in the report, as multiple departments are seeking to procure essentially the same services generally available on the market (albeit in defined lots) and so expenditure should be consolidated to maximise economies of scale and prevent disaggregation of contracts and thereby minimising the risk of breaching the principle that procurement shall not be subdivided with the effect of preventing it from falling within the scope of Part 2 of the PCR 2015. Lots can be used to break contracts up and separate Lots can be advertised in separate notices. However, the value of all these Lots must be aggregated when calculating the total value to be compared to the threshold.
- 7.4 The DPS is similar to an electronic framework agreement but where new suppliers can apply to join at any time. However, a DPS has its own specific requirements. It must be operated as a completely electronic process and established using the restricted procedure and other requirements as set out in regulation 34 of the PCR 2015.
- 7.5 The DPS is a two-stage process. In the initial establishment stage, all suppliers which meet the selection criteria and are not excluded must be admitted to the DPS. Suppliers are permitted to apply to join the DPS at any time during the lifetime of the system. Individual contracts are awarded during the second stage, in which all suppliers on the DPS (or the relevant category within the DPS) are invited to bid for the specific contract.
- 7.6 Where a DPS is divided into categories (as proposed here), the contracting authority should apply selection criteria that are proportionate and relevant to the characteristics of the category concerned. It would not be contrary to the rules to have different terms and conditions for contracts awarded under different categories of a DPS provided these complied with the principles of transparency, equal treatment and proportionality.
- 7.7 For the life of the DPS (10 years in this instance) the Council must offer unrestricted and full direct access, free of charge to the procurement documents, by means of the internet, from either of the following dates:
- The date of publication of the contract notice on the UK e-notification service;
 - The date on which an invitation to confirm interest is sent. (This is relevant only where a PIN is used as a call for competition.)
- 7.8 In relation to the award of a call off contracts the Council can require bidders to confirm that their exclusion and selection status has not changed before the award of any a call-off contract.

- 7.9 Once on the DPS, tenders/mini competitions will take place electronically but this does not prevent human evaluation of tenders received.
- 7.10 In relation to the award of each contract based on the DPS, contracting authorities must publish (within a reasonable time, which means 90 calendar days after the contract award date under the Cabinet Office Guidance on the Transparency.
- 7.11 Requirements for Publishing on Contracts Finder) the name of the successful contractor, the date the contract was entered into and the value of the contract on Contracts Finder (regulation 108, PCR 2015). However, the contracting authority shall not cause the information to be published on Contracts Finder before the notice is published on the UK e-notification service.
- 7.12 Following the Public Contract (Amendment) Regulations 2022 which came into effect on 21.12.2022 of the all awards over a value of £30,000 (incl VAT) must be published on Contracts Finder.

Richard Bines, Solicitor, ContractandCommercial Team - 31.01.2023

8. **Other relevant comments**

8.1 **Procurement colleague comments**

The need for a flexible and compliant solution was identified through spend analysis and different discussions. Permission is sought to establish and utilise a multi-lot DPS for the provision of Vehicle and Transport services across Social Care Transportation (including SEND Home-to-School), School Trips Transport and Council Staff Transportation services are Passenger Transport Service, Why Nott? Transport and the Theatre Royal & Royal Concert Hall – each department has a particular set of requirements and a number of known providers, with fluctuating capacity.

As highlighted in the legal comments above, there are a number of criteria that need to be satisfied for a DPS to be and remain compliant. The key criteria has been outlined in the tender documentation and the legal agreement.

Procurement will support the development and implementation of the DPS to provide a compliant and commercially viable solution to meet the needs of the Council.

Holly Fisher, Lead Procurement Officer (Products) – 06 February 2023

9. **Crime and Disorder Implications (If Applicable)**

9.1 N/A

10. **Social value considerations (If Applicable)**

10.1 N/A

11. **Regard to the NHS Constitution (If Applicable)**

11.1 N/A

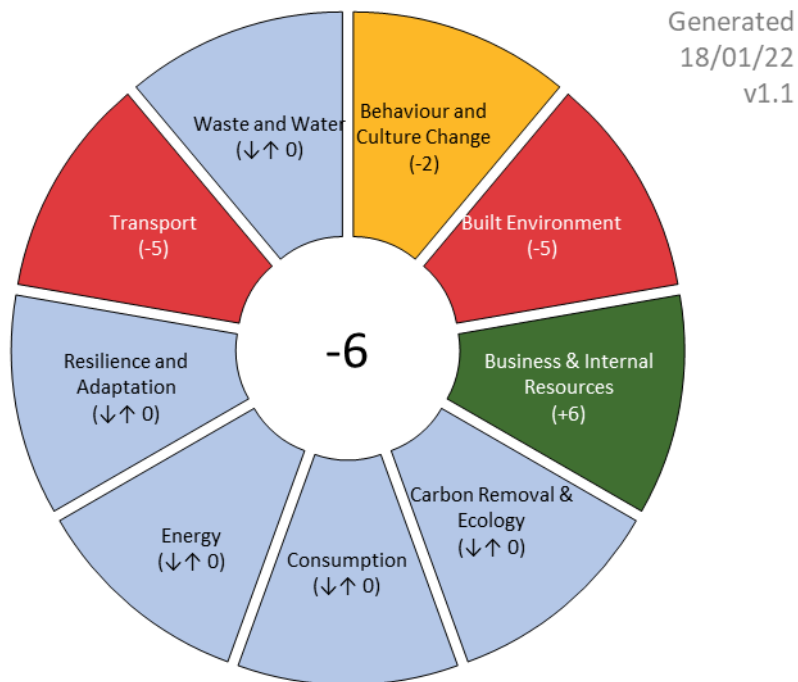
12. Equality Impact Assessment (EIA)

12.1 An equality impact assessment is not required because this report is solely concerned with existing contractual values.

13. Data Protection Impact Assessment (DPIA)

13.1 A DPIA is not required.

14. Carbon Impact Assessment (CIA)



Nottingham is aiming to become the first carbon neutral city in the country by 2028 (5 years and 11 months away).

15. List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

15.1 None.

16. Published documents referred to in this report

16.1 None.