

## Commissioning and Procurement Executive Committee – 14 November 2023

<b>Subject:</b>	Provision of a Pantomime at the Theatre Royal		
<b>Corporate Director:</b>	Colin Parr – Communities, Environment and Resident Services		
<b>Portfolio Holder:</b>	Cllr Pavlos Kotsonis - Leisure and Parks		
<b>Report author and contact details:</b>	Peter Ireson, Venue Director, Theatre Royal and Royal Concert Hall <a href="mailto:peter.ireson@nottinghamcity.gov.uk">peter.ireson@nottinghamcity.gov.uk</a>		
<b>Other colleagues who have provided input:</b>	Maria Balchin, Senior Commercial Business Partner Vendie Charles, Solicitor Holly Fisher, Lead Procurement Officer		
<b>Key Decision</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<b>Subject to call-in</b>
			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Reasons:</b>	<input 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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Type of expenditure:</b>	<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital		
<b>Total value of the decision:</b> £4.8m			
<b>Wards affected:</b> All			
<b>Date of consultation with Portfolio Holder:</b> 14 September 2023			
<b>Relevant Council Plan Key Outcome:</b>			
Green, Clean and Connected Communities	<input type="checkbox"/>		
Keeping Nottingham Working	<input type="checkbox"/>		
Carbon Neutral by 2028	<input type="checkbox"/>		
Safer Nottingham	<input type="checkbox"/>		
Child-Friendly Nottingham	<input type="checkbox"/>		
Living Well in our Communities	<input type="checkbox"/>		
Keeping Nottingham Moving	<input type="checkbox"/>		
Improve the City Centre	<input checked="" type="checkbox"/>		
Better Housing	<input type="checkbox"/>		
Serving People Well	<input type="checkbox"/>		
<b>Summary of issues (including benefits to citizens/service users):</b>			
<p>The Council engages Crossroads Pantomimes Ltd, an experienced pantomime producer to co-produce the Theatre Royal pantomime. The producer takes on the risks of mounting the production, including the casting, sets, props and costumes based on an agreed share of the anticipated box office revenues.</p> <p>The contract with the current producer comes to an end in January 2025 following the final performance and get-out of the 2024/25 pantomime. There is the need to confirm and put in place a contract with a producer before the end of the 2024/25 pantomime to enable the planning and marketing of the 2025/26 pantomime to commence simultaneously and seamlessly.</p> <p>As well as contributing to the Council Key Outcome highlighted above, contract also contributes to the Council meeting its statutory duty around Best Value.</p>			

**Exempt information:**

An appendix to the report is exempt from publication under paragraph 3 of Schedule 12A to the Local Government Act 1972 because it contains information relating to financial or business affairs of any particular person (including the authority holding that information and, having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

It is not in the public interest to disclose this information because financial information is based on initial estimates, there is also a breakdown of the financial element included and sharing this information would not be recommended as it may prejudice the tender process and the income the Council could generate.

**Recommendations:**

- 1 To approve the undertaking of a full procurement process to secure a pantomime producer for the Theatre Royal Pantomime for 5 years duration (2025/26 - 2029/30).
- 2 To delegate authority to the Venue Director of the Theatre Royal and Royal Concert Hall to enter into a contract with the successful bidder.

**1. Reasons for recommendations**

- 1.1 The contract with the current pantomime producer comes to end after the completion of the pantomime in January 2025.
- 1.2 Offering a 5-year contract rather than a shorter period is more likely to attract suitable producer bids, as producers will feel they have an opportunity to recoup and make a return on any necessary investment.
- 1.3 The approval requested in this report will allow the Council to initiate the tender process to secure a pantomime producer. This will allow TRCH to work with the successful producer to plan, develop and deliver the Theatre Royal pantomime in December 2025, which generates a financial contribution supporting the sustainable operation of the venue.

**2. Background (including outcomes of consultation)**

- 2.1 Since the Theatre Royal opened in 1865 the provision on an annual pantomime has been a key element of Nottingham's festive celebrations. The theatre's celebrity led pantomime runs for several weeks and attracts large, multi-generational audiences, helping develop audiences for the rest of TRCH's programme whilst generating a significant financial contribution to help ensure TRCH's sustainability.
- 2.2 The Council has historically chosen to work with an external pantomime producer to present the pantomime. This has been in order to optimise the financial return to the Council whilst at the same time transferring much of the risk inherent in producing a commercial pantomime.

**3. Other options considered in making recommendations**

- 3.1 The option of presenting shows other than a pantomime at the Theatre Royal over the festive period was considered but rejected as the pantomime is extremely popular, makes a significant net contribution to the Council and the Royal Concert Hall is able to host alternative, complementary performances during the festive period.

3.2 The option of producing the pantomime in-house without an external producer was considered. This option was rejected as it would expose the Council to significant additional risks in the sourcing and securing of artists, sets, props and scenery without the specialist experience and economies of scale available to major producers who present a number of pantomimes across the UK each year.

#### 4. **Consideration of Risk**

4.1 There is the risk that the pantomime producer procured is unable to meet the requirements of the Council. This is mitigated by TRCH's experienced and industry specialist staff working with colleagues in procurement to ensure that the tender specification and assessment criteria secure a producer of the highest quality. The potential gross box office takings available over a 5-year contract, present an opportunity which is also likely to attract all the main producers, currently producing pantomimes in similar venues across the UK.

4.2 There is the risk that delays in the procurement or contractual arrangements may delay the mobilisation of the new contract. This is mitigated by commencing the procurement process in good time and also by the potential to put the 2025/26 pantomime on sale whilst contractual arrangements are finalised.

#### 5. **Best Value Considerations**

5.1 The proposal in this report represents best value for the Council, as through procuring an external producer, the Council is able to secure the optimal financial return whilst at the same time minimising any risks.

#### 6. **Finance colleague comments (including implications and value for money/VAT)**

6.1 This decision seeks approval to undertake a compliant procurement process to secure a pantomime producer.

6.2 On completion of the procurement process, the Medium-Term Financial Plan (MTFP) will be updated to reflect the expected income to the Council.

6.3 There is an exempt appendix outlining the financial details for this proposed contract. The appendix is exempt in order to secure the most advantageous income stream for the Council.

Maria Balchin, Senior Commercial Business Partner - 3 October 2023

#### 7. **Legal colleague comments**

7.1 This proposal seeks to approve the undertaking of a full procurement process to secure a pantomime producer to co-produce the Theatre Royal Pantomime for 5 years duration, and to delegate authority to the Venue Director of the Theatre Royal and Royal Concert Hall to award and enter into a concession contract with the successful producer following completion of the tender process.

7.2 There is the need to confirm and put in place a contract with a producer before the end of 2024/25 pantomime, to enable the planning and marketing of the 2025/26 pantomime to commence simultaneously and seamlessly, in readiness for the January 2025, and the December 2025 Production.

- 7.3 It has been confirmed that the proposed contract comprises a Concession Contract falling within regulation 3 of the Concession Contract Regulation 2016 as the contract opportunity involves the transfer to the concessionaire of an operating risk in exploiting services encompassing demand or supply risk or both and the part of the risk transferred to the concessionaire involves real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire is not merely nominal or negligible.
- 7.4 It is understood a concessionaire will assume operating risk, under normal operating conditions, as it is not guaranteed to recoup the investments made or the costs incurred in operating the services, which is dependent upon sale of ticket sales for the pantomime productions, which are the subject-matter of the concession contract.
- 7.5 The Concession Contract Regulations 2016 will govern the procurement process and must be followed if the value of the concession opportunity (inclusive of VAT) exceeds the threshold value of £5,336,937 as stated in PPN 09/21. The Value stated stands at £4.8 Million, however, exclusive of VAT, thereby meeting the Concession Contract financial threshold 2023.
- 7.6 Notwithstanding that, and the discretion under the CCR to determine the precise nature of the tender process, as there is no prescribed tender process in the CCR 2016, a Local Authority must treat economic operators equally and without discrimination and must act in a transparent and proportionate manner during its tender process. That said, key procedural principles must be applied such as those highlighted in the Crown Commercial Services Handbook for the Concession Contracts Regulations 2016 Microsoft Word - 20160607 Handbook for the Concession Contracts Regulations 2016 final.xml ([publishing.service.gov.uk](http://publishing.service.gov.uk)).
- 7.7 The proposed 5 years duration of the contract is permitted under the Concession Contract Regulations 2016 (Chapter 3 of Part 2) as the duration of the contract is limited and based upon the services requested, and is of a duration in which a concessionaire can reasonably be expected to take to recoup the investments made in operating the services together with a return on invested capital taking into account the investments (both initially and during the term) required to achieve the pantomimes.
- 7.8 Due to the nature of the services, there is also a request that the financial information contained in the report be exempt from publication under paragraph 3 of Schedule 12A, to the Local Government Act 1972, as it contains information relating to financial or business affairs of the Council and, having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 7.9 Under Section 19 of the Freedom of Information Act 2020, every public authority is required to adopt and maintain a Publication Scheme. The Council has based its Publication Scheme on the Information Commissioner Office Model Publication Scheme, which gives clear guideline on which information the Council publishes. Having considered the request for exemption of publication under paragraph 3 of Schedule 12A to the Local Government Act 1972, and with regard to Section 19 of the Freedom of Information Act 2020, it holds merit. The exemption against publication of the part of the report affected, is warranted as it would not be in the public interest for disclosure and may prejudice the tender process and the potential revenue the Council could generate.

- 7.10 Furthermore, the proposal on analysis contributes to the Council meeting its statutory duty around Best Value under the Constitution, whilst transferring the inherent risks to the producer and generating income to the council.
- 7.11 Subject to the above comments, compliance with the Concessions Contract Regulations 2016; the Council's Contract Procedure Rules; and the Council's procedure around exemption under paragraph 3 of Schedule 12A to the Local Government Act 1972, the proposal does not raise any significant legal concerns.

Vendie Charles, Solicitor - 05/10/2023.

## 8. **Other relevant comments**

### 8.1 **Procurement**

The request to undertake a procurement exercise for the provision of a five-year agreement for the co-production of the annual pantomime does not pose any procurement risk to the Council. The request complies with both the contract procedure rules and Concession Regulations 2016. Procurement will support throughout to ensure the process and award remains compliant with the referenced rules and regulations.

Holly Fisher, Lead Procurement Officer - 19 September 2023

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

9.1 N/A

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

10.1 The pantomime has the potential to create social value through generating and sustaining jobs at the venue and in the local supply chain.

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

11.1 N/A

## 12. **Equality Impact Assessment (EIA)**

12.1 An EIA is not required as there are no implications identified from the proposals in this report, however, the procurement process will ensure that the chosen producer delivers a pantomime which is accessible to all.

## 13. **Data Protection Impact Assessment (DPIA)**

13.1 A DPIA is not required as there are no implications identified from the proposals in this report, however, the procurement process will ensure that any data protection implications are identified and addressed including any DPIA and any data sharing agreements.

## 14. **Carbon Impact Assessment (CIA)**

14.1 A CIA is not required as there are no implications identified from the proposals in this report, however, the procurement process will ensure that the successful producer signs up to the Council's Business Charter Principle 'to be environmentally responsible.

**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.