

## Commissioning and Procurement Executive Committee – 11 June 2024

<b>Subject:</b>	Concession for annual music festival at Wollaton Park		
<b>Corporate Director:</b>	Colin Parr - Communities, Environment & Resident Services		
<b>Executive Member:</b>	Cllr Sam Lux – Leisure, Culture and Carbon Reduction		
<b>Report author and contact details:</b>	Stephen Chartres. <a href="mailto:stephen.chartres@nottinghamcity.gov.uk">stephen.chartres@nottinghamcity.gov.uk</a>		
<b>Other colleagues who have provided input:</b>	Maria Balchin – Finance Anthony Heath – Legal Holly Fisher - Procurement Patrick Loy - Head of Nottingham Events and Tourism		
<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 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 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> £11,788,000 (based on estimated turnover over 5 years)			
<b>Section 151 Officer expenditure approval</b>			
Has the spend been approved by the Section 151 Officer? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/a			
Spend Control Board approval reference number:			
<b>Commissioner Consideration</b>			
Has this report been shared with the Commissioners' Office? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Any comments the Commissioners wish to provide are listed in section 6 below.			
<b>Ward affected:</b> Wollaton West			
<b>Date of consultation with Executive Member:</b> TBC			
<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 checked="" type="checkbox"/>		
Safer Nottingham	<input type="checkbox"/>		
Child-Friendly Nottingham	<input type="checkbox"/>		
Living Well in our Communities	<input checked="" type="checkbox"/>		
Keeping Nottingham Moving	<input type="checkbox"/>		
Improve the City Centre	<input type="checkbox"/>		
Better Housing	<input type="checkbox"/>		
Serving People Well	<input checked="" type="checkbox"/>		
<b>Summary of issues (including benefits to citizens/service users):</b>			
Delegated approval was given in May 2023 for a full tendering process to be undertaken for a 5-year concession contract to deliver a 2-day Summer Music Festival at Wollaton Park (2024-2028)			
This tender process was completed over the period May to October 2023 and DHP was identified as the preferred supplier. Due to delays in the final negotiation and contract development, DHP made the decision to not proceed with the event in 2024.			
This report therefore seeks approval for finalisation of the event contract with DHP and for the contract to be revised to cover the period 2025-2029. This supersedes the approval made in May 2023 for the event contract to take place over the period 2024-2028.			

**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 finance and business affairs 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 it contains commercial and financial information which, if made available to the public, may jeopardise the current contract negotiation and future tendering of the concession.

**Recommendations:**

- 1** To delegate authority to the Corporate Director for Communities, Environment and Residents Services to conclude negotiations and finalise the contract with the preferred supplier (DHP) for the delivery of an annual 2-day music event at Wollaton Park for the period 2025-29.
- 2** To delegate authority to the Head of Events and Tourism, subject to approval by the Director of Legal and Governance, to enter into the contract.

**1. Reasons for recommendations**

- 1.1 To secure the event contract with the preferred supplier, ensuring best value, income to the Council and continuing a popular music festival which has been part of the Council's event calendar since 2007

**2. Background**

- 2.1 Nottingham City Council and local promoter DHP Family have staged the annual Splendour music festival jointly since 2007. Splendour has been targeted predominantly at Nottingham residents, with a family focussed, diverse line-up suitable for an all-ages audience.
- 2.2 Revised terms between the Council and DHP were agreed within a Heads of Terms agreement that covered the period from 2018-22. This approach reflected the wider changes in the Council's risk appetite and approach to staging events to reduce financial risks and begin the move towards a cost neutral, commercial income events model. This approach also sought to align our commercial terms for Splendour with other events of a similar nature staged within the city.
- 2.3 Some of the changes at this time were also reflected in the wider UK festival industry. Instead of very large annual mega-festivals such as V Festival or T in the Park, most cities were now hosting some form of local / regional music festival; hence there was little or no rationale for the Council to continue to financially support a festival, that was being entirely delivered by the commercial sector in other cities.
- 2.4 Subsequently this event was identified as a concession and under the Council's procurement policy and best value duty required a formal tendering process to be undertaken which commenced in 2023.

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

- 3.1 In recommending approval to finalise the contract with the preferred provider for the event, the following other options have been considered and rejected:

- 3.1.1 **Re-tender the contract.** The tender process already undertaken has secured a preferred supplier which can offer Best Value to the Council for delivery of this event. The open tender process identified that there are limited suppliers in the marketplace that are able to deliver to the specification and financial outcomes required and the revised dates do not materially change the basis on which suppliers originally tendered. To re-tender at this stage would involve significant cost and delay, put at risk the current contract development with the preferred supplier and is unlikely to achieve an improved position for the Council.
- 3.1.2 **Cease having a concession for a Summer Music Festival.** This would result in a loss of income to the Council as revenue is currently received from this event. This is a popular attraction as part of Nottingham's annual events and entertainment programme and has created positive recognition, economic and social benefit for the city. This would be lost or put at risk if these were discontinued. The cancellation of the event in 2024 has already seen a detrimental reputational impact on the City alongside a loss of income to the Council.
- 3.1.3 **Deliver the event in-house.** This would result in potential costs and risks to the Council. The event would still require external specialist expertise to secure artists, whilst the securing of infrastructure would require a significant investment and resource requirement which there is no budget or capacity within the current team to undertake. This option is therefore not considered to represent best value. The approach to secure an external provider reflects the Council's risk appetite to reduce the financial risks and move towards a cost neutral, commercial income commissioned events model.

## 4 Consideration of Risk

- 4.1 There are number of risks associated with securing this concession contract for the event:
- 4.2 Risk: Low contract amounts offered in the tender process, resulting in the income target previously received, not achieved from this event  
Mitigation: A full and open tender process has been undertaken to maximise best value for the Council
- 4.3 Risk: Limited interest from suppliers to tender for the concession contract.  
Mitigation: The open tender approach undertaken provided the opportunity for interest from potential suppliers
- 4.4 Risk: Delay in the procurement process and awarding of contract  
Mitigation: Whilst some delay has been experienced to get to this point, we are now in a position of a having a finalised contact where both parties are now in largely in agreement

## 5. Best Value Considerations

- 5.1 Operating a concession and testing the market through an open tender process to deliver a Summer Music Festival is considered best value. The overall approach has minimised risk to the Council, provided the potential for

maximising income whilst ensuring delivery of the broader expectations for the event for residents, for the City's profile and wider visitor economy

## 6. **Commissioner comments**

6.1 The Commissioners have no further comments on this decision. (28/05/24)

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

7.1 This advice is exempt from publication and is contained within an exempt appendix

Maria Balchin, Senior Commercial Business Partner - 29/04/2024

## 8. **Legal colleague comments**

8.1 This report seeks approval for Corporate Director for Communities, Environment and Resident Services to conclude negotiations and finalise the contract with the preferred Supplier, DHP, for the delivery of an annual 2-day music event at Wollaton Park for the period 2025-29 and approval to delegated authority to the Head of Events and Tourism, subject to approval by Director of Legal and Governance, to enter into a contract for a period of 5 years.

8.2 In attempting to conclude negotiations with the preferred supplier and finalising the contractual arrangements for the period 2025–29 inclusive, the Council must be clear that any agreement, and contractual arrangements, must be in the best interests of the Council and allow the Council to meet its best value duty and evidence this fact. The Council has used an external law firm, Browne Jacobsen LLP, supported by in-house lawyers, to assist throughout this matter

8.3 The preferred supplier, DHP, has been involved with the festival for many years. It is understood that DHP's initial involvement were the artist booking agent and undertook the artist advance on behalf of the Council, with the Council making substantial financial and non-financial contributions to set up and establish the Splendour festival. The Head of Events and Tourism estimated, last year, that the Council had contributed around £2million to the festival in financial and non-financial contributions prior to the 2018-22 Heads of Terms agreement.

8.4 It is understood that the involvement of DHP in the festival gradually increased once the festival was established. Unfortunately, no formal documentation setting out the agreed arrangements with DHP can be found that covers the period 2007-18 before the 2018-22 Heads of Terms document referenced in the report was created.

8.5 The previous financial and non-financial contributions of the Council may be part of the reason why the Heads of Terms document included the agreement that the intellectual property rights for 'Splendour in Nottingham' were "co-owned" by the Council and DHP. The treatment of the intellectual property rights was one of a number of areas where the Council and DHP could not reach agreement in negotiations at the end of 2023 which subsequently led to the announcement by DHP that the 2024 event was cancelled. The position of

DHP was that they owned the intellectual property rights relating to Splendour, citing their trademark registered in 2009 as evidence of this; this was made known to the Council by Browne Jacobsen solicitors in July 2023 and was the first time the Council were made aware that a trademark for 'Splendour in Nottingham' had been registered.

- 8.6 Legal advice was initially provided by in-house lawyers in August 2022 that the arrangements for the festival fell within the scope of the Concession Contract Regulations 2016. The market engagement referred to in the report commenced after the 2023 festival. That market engagement envisaged either a promoter developing a completely new festival or using an existing festival brand, with a view to commencing the new arrangements in 2024; this was reported by promoters and the Head of Events and Tourism to be an extremely challenging timeline for promoters, and it is unclear whether a longer lead-in period would increase the number of promoters who might be interested in undertaking the festival.
- 8.7 Subject to the above comments, in potentially offering a concession contract for a 2-day festival for the period of 2025–29 inclusive, following a tender process that specified a period of 2024–28 inclusive, the risks of a legal challenge appear to be low and the risk of a legal challenge being successful also appear to be low.
- 8.8 It is understood that the proposed details of the contractual arrangements are now “largely in agreement”. Browne Jacobsen have been instructed on 2 May 2024 to produce a draft contract incorporating the amendments agreed by DHP. This covers two main issues, namely the IPR and an increase in the maximum numbers per day.

Anthony Heath, Team Leader, Contracts and Commercial - 02 May 2024

## **9. Procurement Advice**

- 9.1 The request to supersede DD 4946 to facilitate the conclusion of contract negotiations for the provision of an annual music festival for 2025-29 does not pose any procurement risk to the Council. The information provided in the initial DD, other than the concession agreement start and end date, remains.

Holly Fisher (Lead Procurement Officer) - 06/03/2024

## **10. Crime and Disorder Implications**

- 10.1 Safety Advisory Group for Events have been consulted on the brief. Included in the specification is a requirement for ensuring safety and security of the site and public during the event

## **11. Social value considerations**

- 11.1 Built into the contract specification is for the supplier to demonstrate how the festival can deliver social value for residents of Nottingham. Specifically, this will include ensuring the festival:

a) is high profile and populist, including programming of local artists;

- b) becomes a destination event, encouraging visitors to Nottingham, contributing to the visitor economy, increasing local employment and using local suppliers.

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

- 12.1 An EIA is not required for finalising the contract. However, as part of the tender process equalities considerations were built into the tender specification and evaluated as part of the selection process

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

- 13.1 A DPIA is not required because there are no data protection implications for finalising the contract and for delivery of the Summer Music Festival as a concession contract.

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

- 14.1 A CIA is not required because there are no Carbon Impact Assessment implications for finalising the Contract. However, carbon Impact and environmental considerations were built into the tender specification and evaluated as part of the selection process for the preferred supplier

## **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 DD4946 'Concession Process for Annual Music Festival at Wollaton Park' - published 17 May 2023.