

LOCAL GOVERNMENT ACT 2000

REGISTER OF URGENT
DECISIONS TAKEN BY THE
CHIEF EXECUTIVE

NORTH DEVON COUNCIL CONSTITUTION
– Part 3 Annexe 2: Officer Delegations –
Chief Executive



Reference No:

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- 1) SUBJECT: Theatres Operating Contract, Deed of Assignment

 - 2) REQUESTED DECISION: That the Theatres Operating Contract is re-assigned to North Devon Theatres Limited

 - 3) STATEMENT OF THE REASONS FOR THE REQUEST AND WHY IT IS URGENT:

North Devon Council's (NDC's) Theatres Operating Contract is with Selladoor Worldwide. Selladoor Worldwide sub-contracts to Selladoor Venues (North Devon) who have operated both our theatres under the terms of the contract and accompanying leases since January 2019.

The theatre industry has been hit extremely hard by the COVID 19 lockdown and Selladoor is now struggling to keep the North Devon Theatres contract viable. They were successful in an application to the Arts Council England (ACE) administered "Arts Recovery Fund" at the end of 2020, with £553,000 awarded to Selladoor Venues (North Devon) for the North Devon Theatres contract. This has gone some way to keeping the contract viable.

Selladoor Venues North Devon has now applied for a further £276,000 from the Arts Recovery Fund Stage 2, but the Department for Culture Media and Sport (DCMS) which is responsible for the funds, has stated that Selladoor Venues North Devon is ineligible for the funding as it is part of the wider Selladoor Group, which is a commercial organisation. There has been much discussion with ACE as to why the "goalposts" appear to have moved for stage 2 of the funding, but their decision is final and they are not willing to change their position.

In order for the Stage 2 application to be considered and hopefully approved, Selladoor is internally re-structuring some of its groups and companies. They have settled on a proposal that will remove Selladoor Venues (North Devon) from the Selladoor Group, which ACE has confirmed will enable its eligibility for Arts Recovery Stage 2 Funding. The re-structure requires Selladoor Worldwide to assign all its rights under the North Devon Theatres Operational Contract to a newly created company known as North Devon Theatres Ltd. The sole member of this company will be Selladoor Director, David Hutchinson. North Devon Theatres

Ltd will then sub-contract to Selladoor Venues (North Devon) which is the same company that has operated our theatres since January 2019.

NDC can approve the re-assignment of the contract through a Deed of Assignment which has been drafted and is attached (Appendix 1).

An urgent decision is required to approve the deed of assignment, because Selladoor Venues (North Devon) has already submitted its bid to ACE. This had to be done in order to meet the application deadline. The Arts Recovery Fund Stage 2 is oversubscribed and bids are now being assessed. ACE could ask NDC at any point now for confirmation the deed of assignment has been approved and will not award funding if it has not. Without the funding it will be difficult for Selladoor Worldwide to keep our theatres operational.

4) PROCUREMENT IMPLICATIONS

Altering a contractor during the life of the contract amounts to a material change under Public Contract Regulations 2015 and NDC's own contract procedure rules. It is permitted if, "corporate changes have occurred in the supplier linked to merger, takeover or insolvency provided:

- (a) the new supplier complies with any pre-qualification criteria assessed during the procurement; and
- (b) the change in supplier does not require any other substantial amendments to the contract/Framework Agreement;"

There is obviously no takeover, merger or insolvency in this instance and we are altering the contractor to allow a funding application to proceed and assist the operator in recovering from the impact of COVID 19. Neither the Public Contract Regulations 2015 nor NDC's Contract Procedure Rules allow for this provision, so NDC could be exposed to challenge from a competing theatre operator. The risk of challenge is low as the contract is unlikely to be attractive to a rival operator in the current climate, but the risk is there and NDC will need to publish what it is doing on its contracts register.

No other substantial amendments are being made to the contract, so point b) above is not an issue. Point a) might be an issue though as North Devon Theatres Ltd will be a completely new company and it will not be possible to credit check it for financial stability. To mitigate any risks/concerns NDC could pay future management fees direct to the sub-contractor (Selladoor Venues (North Devon)), but this may require some re-drafting of the main contract.

5) FINANCIAL IMPLICATIONS: Approving the deed of assignment will not affect the level of management fee payments made to the operator. The budget will be unaffected, but future payments will be made directly to Selladoor Venues (North Devon) or North Devon Theatres Ltd rather than Selladoor Worldwide.

6) ANY ALTERNATIVE OPTIONS CONSIDERED AND REJECTED:

A direct application by NDC to the Arts Recovery Fund Stage 2 was considered, but then rejected due to complexities with the application process and potential confusion with NDC's bid to the same funding pot for the Museum of Barnstaple & North Devon. Local Authorities were only permitted to make a single application to the Stage 2 Fund and a combined Theatre and Museum bid would have been very difficult. There was also no guarantee that ACE would give approval for NDC to forward funds to an organisation that was still part of the Selladoor main group.

If the ACE Stage 2 Recovery Fund application is unsuccessful, Selladoor have asked if the 2021/22 management fee could be paid to them in one payment, rather than quarterly (as per the current contract arrangements). They would still like us to consider this request even if the ACE funding is successful, as it will enable them to budget with more confidence as the theatres come out of lockdown and hopefully recover from the effects of the COVID crisis.

7) A RECORD OF ANY CONFLICT OF INTEREST DECLARED:

None

8) A NOTE OF ANY DISPENSATION IF GRANTED:

None

9) LIST OF BACKGROUND PAPERS (but not including published works or those which disclose exempt or confidential information (as defined in paragraph 10.4 and 10.5 of the Access to Information Procedural Rules Part 4 of the Constitution):

None

10) CONSULTATION UNDERTAKEN:

The following have been consulted on this urgent decision:


Consultee	Consulted Yes/No	Date
Leader of Council	Yes	26/02/21
Head of Service: Ken Miles	Yes	Email sent 26/02/21
Finance	Yes	Email Sent 26/02/21
Legal: Simon Fuller	Yes	25/02/21

11) OFFICER REQUESTING URGENT DECISION TO BE TAKEN BY THE CHIEF

EXECUTIVE: Mark Kentell (Contracts Delivery Manager)

12) APPROVED BY CHIEF EXECUTIVE: YES or NO

13) DATE OF DECISION: 1/3/21



14) CHIEF EXECUTIVE'S COMMENTS:

15) DATE TO BE PRESENTED TO STRATEGY AND RESOURCES COMMITTEE:

GUIDANCE NOTES

NOTE:

PROCEDURE FOR URGENT DECISIONS:

1. Completed form to be passed to the Chief Executive following consultation with the interested parties.
2. If a decision is specific to a Ward, efforts should be made to ascertain the views of the local Councillor (s).
3. The Chief Executive will make his decision.

PROCEDURE FOR URGENT DECISION MAKING AS PER THE CONSTITUTION

Officer Delegations: the Chief Executive:

Urgent Decision Making

3.48 To take a decision on any matter falling within the remit of any Committee in cases of urgency where it is not reasonably practicable to obtain prior approval of a Committee SUBJECT TO:

3.48.1 the prior consultation, where practicable, with the Leader or Deputy Leader and the Chair or Vice Chair of the relevant Committee, and

3.48.2 the proviso that this power will not extend to the determination of any application submitted pursuant to the Planning Acts or under the Licensing Act 2003 or the Gambling Act 2005, and

3.48.3 the decision being reported to the next meeting of the relevant Committee and the next meeting of Strategy and Resources Committee.

DATED

2021

DEED OF ASSIGNMENT OF CONTRACT

AMONG

(1) SELLADOOR WORLDWIDE LIMITED

(2) NORTH DEVON THEATRES LIMITED

AND

(3) NORTH DEVON DISTRICT COUNCIL

SELLADOOR

VENUES

This deed is dated

2021

Parties

- (1) **SELLADOOR WORLDWIDE LIMITED** incorporated and registered in England and Wales with company number 08914295 whose registered office is at 3 East Point High Street, Seal, Sevenoaks, Kent, TN15 0EG (**Assignor**)
- (2) **NORTH DEVON THEATRES LIMITED** incorporated and registered in England and Wales with company number 13150931 whose registered office is at 3 East Point High Street, Seal, Sevenoaks, Kent, TN15 0EG (**Assignee**)
- (3) **NORTH DEVON DISTRICT COUNCIL** of Lynton House, Commercial Road, Barnstaple, Devon EX31 1DG (**Authority**)

Background

- (A) The Assignor is party to a theatre operating contract with the Authority dated 11 January 2019, relating to the Queens Theatre, Barnstaple and the Landmark Theatre, Ilfracombe (**the Contract**).
- (B) The Assignor has agreed to assign all its rights under the Contract to the Assignee on the terms of this deed with effect from the date of this deed (**the Effective Date**).
- (C) The Assignee has agreed to perform all the Assignor's obligations under the Contract with effect from the Effective Date.
- (D) The Authority has consent to the assignment of the Assignee's rights and obligations under the Contract with effect from the Effective Date.

Agreed terms

1. Assignment

- 1.1 The Assignor assigns all its rights, title, interest, and benefit in and to the Contract to the Assignee with effect from the Effective Date.
- 1.2 The Assignee agrees to perform all the Assignor's obligations under the Contract from the Effective Date.

2. Authority Consent

Pursuant to clause 23.2 of the Contract, the Authority hereby grants its consent to the assignment of all of the Assignor's rights and obligations under the Contract to the Assignee.

3. Further assurance

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may reasonably be required to give full effect to this deed.

4. Governing law

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

5. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Execution Page

**EXECUTED as a deed by SELLADOOR
WORLDWIDE LIMITED acting by its director,
David Hutchinson, in the presence of this
witness:**

.....
David Hutchinson, director

.....
Witness signature

.....
Witness name (print)

.....
.....
Witness address

**EXECUTED as a deed by SELLADOOR VENUE
DEVELOPMENT LIMITED acting by its director,
David Hutchinson, in the presence of this
witness:**

.....
David Hutchinson, director

.....
Witness signature

.....
Witness name (print)

.....
.....
Witness address

**The COMMON SEAL of NORTH DEVON
DISTRICT COUNCIL was affixed in the
presence of this duly authorised officer:**

.....

Authorised officer