

Executive

11 February 2021

Report of the Director of Governance & Monitoring Officer

Portfolio of the Leader of the Council & Executive Member for Policy, Strategy and Partnerships

City of York Trading Limited - proposed amendments to Shareholders Agreement

Summary

1. The Council is the sole owner of two companies (City of York Trading Ltd. and Make it York Ltd) and the joint owner of five others (Yorwaste Ltd., YPO Procurement Holdings Ltd., Veritau Ltd., York Science Park Ltd and Science City York Ltd). The different governance arrangements in relation to each company was becoming increasingly complex and so, in June 2016, Executive approved the establishment of a Shareholder Committee to ensure the effective governance of trading company activities.
2. The establishment of the Shareholder Committee meant the Council was more easily able to demonstrate clear management of its differing responsibilities, as both an owner (shareholder) of those companies and a client of the businesses. Greater consistency of the governance of the bodies has provided reassurance that:-
 - the Council is acting in an open and transparent manner in respect of its trading activities;
 - the objectives of the companies are being delivered;
 - performance and risk are being managed;
 - the extent of any delegation of responsibilities to Shareholders and Directors is clear;
 - there is transparency around key Council decisions;

- commercial confidentiality can be effectively maintained where appropriate.
3. Some of the Council owned companies have a shareholders agreement in place. Such an agreement sets out which decisions in relation to a company must be reserved to Executive or the Shareholder Committee.
 4. The Executive last reviewed the Shareholders Agreement in relation to City of York Trading (“**CYT**” or the “**Company**”) in 2015. The CYT Board felt it was time to review the Shareholders Agreement again to ensure that its provisions accurately reflect the current day-to-day running of CYT and that it is able to operate properly going forward.
 5. This report provides the relevant background information for the Executive to review and determine whether to approve the proposed amendments to the Shareholders Agreement for CYT.

Recommendations

1. The Executive are asked to:

Option 1:- approve the amendments to the Shareholders Agreement and agree to affix the Council’s seal to the document

Reason:- to ensure the provisions of the Shareholders Agreement accurately represent the most current and up-to-date practices of CYT

2. **Option 2:-** note that the s151 Officer and the Monitoring Officer, in consultation with the Chair of the Shareholder Committee, have commenced a review of the Shareholder Committee and its associated governance arrangements and updated arrangements will be reported to Full Council for approval to update the Council’s Constitution

Reason:- to ensure governance arrangements for the Shareholder Committee remain effective and fit for purpose

Background

3. CYT was established in 2011, and the Council is the sole shareholder. The main business of CYT is the supply of temporary

teaching, care and administrative staff, although other services can be and are traded through the Company.

4. CYT currently has three brands trading:
 - a. **Work with York**, which provides recruitment services for temporary, permanent and seasonal jobs on an ad hoc, part and full time basis for clients based in and around York filling a wide range of vacancies including admin, customer service, ICT, technical and finance to social work, events and manual work;
 - b. **Work with Schools**, which provides similar services for education establishments including nurseries, schools, academies and colleges in and around the York area;
 - c. **Work with Yorkshire**, a new brand planned to enable CYT to develop regional recruitment services in both the public and private sectors.
5. CYT is governed by:
 - a. the rules set out within its Articles of Association which are filed at Companies House; and
 - b. the provisions set out within a Shareholders Agreement between the Council and CYT, which the parties have been working to since 2012 (the "**Shareholders Agreement**").

The provisions of the Shareholders Agreement take precedence over the Articles.

6. The Shareholders Agreement sets out those decisions that the Directors can only make with the approval of the Council. In particular, the Council is able to control the strategic direction of CYT through having the right to approve substantial changes in its Business Plan. The Executive previously reviewed this agreement at its meeting in September 2015.
7. The Council is responsible for appointing CYT's Board and selecting the Chair. From its inception, a Councillor has chaired the Board. The current management structure is attached to this Report at **Annex A**.
8. A cross party Shareholders Committee (now known as the CYT Shareholder Group) has had oversight of the Company since its inception and receives a quarterly report. The Shareholders

Committee has no decision-making powers but, in accordance with the 2015 Shareholders Agreement, may advise the Executive on the exercise of its powers as shareholder and may make recommendations to the Board in respect of the appointment of Directors.

9. Following 2018/19, changes in Board personnel and a series of resignations from the CYT Board that directly affected the Company's ability to carry out its business due to the Board becoming at times inquorate, the Board felt it was time to review the Shareholders Agreement again. This was to ensure that the provisions of the Shareholders Agreement accurately reflect the current day-to-day running of CYT and that it is able to operate properly going forward.
10. Since May 2020, CYT's Board of Directors and the Council's Legal Services Department have had a number of discussions to agree the proposed amendments in principle.
11. In summary these amendments:
 - Alter the balance between the numbers of Executive and Non-executive Directors, allowing now:
 - a minimum of six Directors on the board (formerly five), comprised of:
 - at least three Council appointed Non-executive Directors, (formerly a minimum two);
 - a minimum of two Independent Non-executive Directors appointed by the board acting together; and
 - at least one Executive Director to act as the Managing Director of the Company; and
 - A maximum of ten Directors on the board (formerly nine), consisting not more than:
 - four Executive Directors, including the Managing Director (formerly five); and
 - six Non-executive Directors (formerly four), of which now only three can be Council appointed Non-executive Directors.

- The quorum for Board meetings shall remain at three Directors, including at least one Non-executive Director (which can now be either a Council Non-executive Director or an Independent Non-executive Director).
12. A mark-up of the 2015 Shareholders Agreement illustrating the proposed amendments is attached to this Report at **Annex B**.
 13. Before the Council can execute and seal the amended Shareholders Agreement, it requires the approval of the Executive in accordance with paragraph 3.2(a) of Section 3BA (Responsibility of Functions – Shareholders Committee) of the Constitution. This states that any decision to amend the governance arrangements of a company, including the Shareholders Agreement, is reserved to the Executive.
 14. In addition, Schedule 1, paragraph 1.2.23 of the Shareholders Agreement states that CYT will not enter into, or vary any contract with any of its Directors or any Shareholder, without the prior written consent of the Council and/or approval of the Shareholder Committee.

Consultation

15. The Board of Directors of CYT have discussed and agreed the changes recommended in this report.

Options

16. **Option 1:** Approve the amendments to the Shareholders Agreement and agree to affix the Council's seal to the document
17. **Option 2:** Reject the amendments to Shareholders Agreement

Analysis

18. **Option 1:** Approve the amendments to the Shareholders Agreement - this would ensure the provisions of the Shareholders Agreement accurately represent the most current and up-to-date practices of CYT
19. **Option 2:** Reject the amendments to Shareholders Agreement - this would mean the provisions of the Shareholders Agreement do not accurately represent the most current and up-to-date practices of CYT, and effective governance arrangements for CYT would not be in place.

Council Plan

20. The proposals in this report further the priorities in the Council Plan with regard to well-paid jobs and an inclusive economy and an open and effective Council.

Implications

Financial

21. None directly arising from this report.

Human Resources (HR)

22. The HR implications are detailed within this report, insofar as they relate to the Company.

Equalities

23. None directly arising in this report.

Legal

24. Legal Services have been in discussion with CYT since May 2020 and have been fully involved in drafting the proposed changes to the Shareholders Agreement to ensure they do not negatively affect the Council in any way.
25. If the Executive approves the amendments to the Shareholders Agreement, the Council will need to provide a formal written shareholder's resolution to the Company prior to the Shareholders Agreement being completed. This will need to be signed by a member of the Shareholder Committee on behalf of the Council, and by the Managing Director on behalf of CYT. As the Agreement is a private document between CYT and the Council, this can take the form of an ordinary resolution and does not need to be filed at Companies House.
26. If approved by the Executive, Legal Services will work with CYT to finalise the relevant documentation.

Crime and Disorder

27. None directly arising in this report.

Information Technology (IT)

28. None directly arising in this report.

Property

29. None directly arising in this report.

Other

30. None directly arising in this report.

Risk Management

31. The approval of this Shareholder Agreement for CYT will serve to mitigate any risks, which may arise from a governance perspective.

Contact Details

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Chief Officer Responsible for the report:

Janie Berry
Director of Governance & Monitoring
Officer

**Report
Approved**



Date 1/2/21

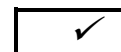
Specialist Implications Officer(s)

Financial Implications – Patrick Looker
Legal Implications – Dan Moynihan

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Wards Affected:

All



For further information please contact the author of the report

Background Papers:

Section 3BA (Responsibility of Functions – Shareholders Committee) of the Constitution.

Annexes:

- Annex A – City of York Trading Limited – Current Company Structure
- Annex B – City of York Trading Limited – Amended 2012 Shareholders Agreement