

Executive

11 February, 2021

Report of the Directors of People and of Place
Portfolios of the Executive Members for Culture, Leisure & Communities
and Economy & Strategic Planning

Renewal of the council's contract with Make it York

Introduction

1. This paper proposes the main terms on which the Council will let a new contract to Make it York (MIY) for the period 2021-24.

Recommendations

2. The Executive is asked to:
 - Agree the priorities on which the new service specification are to be based as set out in paragraph 10 and following
 - Approve the undertaking of further work with MIY to develop the outcomes and service levels schedule of the contract (the SLA) following consultation with businesses and other stakeholder groups and that these be brought back to the Executive in April
 - Agree an extension of the current contract on the current terms until the new contract is in place following agreement to that new contract by the Executive in April

Background

3. In 2015 the council decided to establish MIY as a wholly owned, local authority company in order to deliver a new approach to marketing, culture, tourism and business development in the city. The council was able to enter into a contract to deliver these services without the need for a procurement exercise, as is permitted by regulation 12 of the Public Contract Regulations 2015, since the company is 'Teckal' compliant, i.e. the council has control of all the shares in the company and exercises effective day-to-day control over its affairs, and at least 80% of the activities of the company are carried out in the performance of tasks entrusted to it by the controlling contracting authority.

4. Whilst MIY had previously been financially successful across the life of the contract (the CYC annual net funding to MIY being reduced from £544k in 2015/16 to £324k currently), meeting its budget targets and producing a £25k annual dividend for the council, the current financial year has been extremely difficult for the company, as it has for thousands of businesses across the country. MIY's revenues have been decimated due to Covid-19 and, although the company's board has reduced costs and cut all non-essential spend, these measures have not been sufficient to ensure the commercial viability of the business in this year. As a result of this, the Executive in December had to take significant measures to secure the future of the company, agreeing to:
 - a. Waive the requirement for MIY to make a revenue return to the council in 20/21 in respect of trading activity across the city centre
 - b. Defer the first two quarters rent due from MIY in 20/21 for use of premises on Museum Street and Silver Street offices in line with arrangements for all council commercial tenants
 - c. A loan facility from the council of £300k to be accessed by MIY only if necessary
 - d. Provide a letter of guarantee to MIY with respect to the company's liabilities up to a maximum of £1m over the next 2 years to enable the company to continue as a going concern
5. The current contract comes to an end on 31 March, 2021 and it is therefore necessary now to decide on next steps. The next contract needs to be shaped taking account of the significant changes that have occurred in MIY's operating environment since 2015 as well as the company's present, difficult financial position. Key issues that need to be addressed include:
 - a. The extraordinary impact of Covid-19 on our economy has lead the council to take a stronger strategic leadership role in economic development in order to provide the city leadership required to establish effective public private partnership working and to drive recovery. This leadership role on the part of the council needs to continue and will have implications for the scope of the SLA with MIY
 - b. The financial support provided by the council to MIY referred to above represents a significant financial investment and it is therefore essential that appropriate arrangements are put in place to mitigate risk as far as possible

- c. MIY's governance arrangements as a Teckal company need to be clarified in order to ensure appropriate transparency and public accountability in decision-making
- d. It is important that MIY delivers for all residents across the city

Way Forward

- 6. In response to these points council officers have considered the options available to members including bringing part or all of the functions of MIY back in-house. Discussions have been held with the board of MIY in order to inform these options and to take account of the company's views. Given the broad success of the current model and the high level of cost that would be incurred in dismantling the current arrangements this is not recommended. Rather, in entering into a new contract, it is proposed that the council ensure that in the new arrangements:
 - a. MIY's Teckal company status is retained
 - b. Clarity of purpose is established with respect to what MIY is to deliver with appropriate performance regimes in place
 - c. Clearer governance arrangements are instituted
 - d. MIY continues to provide tourism, city centre and markets, culture and events functions broadly as now
 - e. The council takes a leadership role in economic development and inward investment, bringing together contributions from all parts of York's economic ecosystem, within an Economic Partnership, to set out the city's ambitions and strategy , with MIY contributing to the partnership and acting as an important delivery agent
 - f. Inward Investment arrangements are revisited to define the city's sectoral focus, sharpen its unique offer and clearly understand its opportunities. A plan will be developed for targeting investment opportunities, promoting the city to potential investors and occupiers, and creating a cohesive business support offer, with the respective roles of the council and MIY clearly defined reflecting their respective strengths
- 7. The proposals that follow aim, in essence, to create a closer relationship between the council and MIY. The start-up spirit of entrepreneurial independence helped to get MIY established is now in need of realignment as we seek to make best use of our limited resources in the face of the challenges that face us, notably Covid-19, Brexit and the winds of change affecting our high streets. The

council and MIY need to be working much more closely and collaboratively with resources located where they can be deployed to best advantage.

8. It will be important that the expertise of MIY's Board and staff, supplemented by research and engagement, is played effectively into the council's strategy development alongside that of private sector representative bodies and businesses. In this way, the respective strengths of the two organisations can be used to best advantage in a complementary way: MIY in driving innovation and responding rapidly to emerging issues, the council in taking the overarching strategic lead and ensuring public accountability. As practical initiatives develop, they need to be closely aligned between both organisations, whether delivery sits primarily with the council or with MIY, or through a mixture of both. By working in this way both the council and MIY will be able to facilitate collaboration with our city institutions and present our shared York narrative to the world.

Consultation

9. Whilst it had originally been intended that this report would be accompanied by a final version of the SLA that had been fully consulted on, this has not been possible under the current circumstances. The actions required to stabilise the financial position of the company have consumed significant time and staffing resource and have delayed our ability to engage with stakeholders. Similarly, the new period of lockdown and the uncertainties and issues caused by the pandemic have taken resource away from this exercise whilst also making it difficult to engage effectively with the respective sectors over the December – January period. Under the circumstances, it is proposed that the draft priorities for the SLA set out in this report are the subject of consultation over the following month with final proposals to be approved by the Executive in April. Consultation will take place with key stakeholder groups including:
 - York and North Yorkshire Chamber of Commerce
 - Federation of Small Business
 - York Business Improvement District
 - Universities and Colleges
 - Institute of Directors and other business networks
 - LEPs
 - Visitor economy sector
 - Retail sector
 - Cultural Sector

- York Science Park
- Key sector representatives for our growth priorities: Rail, Financial Services & Insurance, Biotech and Life Sciences, Digital and Creative Industries

We have begun to ask businesses to share their views with us through the regular business bulletin which goes out to many hundreds of businesses. There will also be opportunities for public comments.

Priority areas

10. The following section provides an overview of the key-deliverables proposed under each area of the SLA. More detail is set out in Appendix A.

Economic Development:

11. The priorities for York's economy are well-established and primarily concern:
 - growing employment in our higher-paid sectors
 - supporting businesses to expand and bringing new investors to the city
 - improving employment prospects for all and ensuring there is flexible work which supports household incomes
 - increasing the productivity of our less well-paid sectors
 - supporting inclusive and sustainable green growth
 - helping businesses start and flourish, whether they are high-tech spin-outs from the Universities, independents, social enterprises or community-based businesses
 - a skills system which can produce employees for the future while supporting career-changers
 - making the most of York Central and our other key sites
12. For inward investment, we have identified the key sectors to target, begun to establish the scale and type of businesses we want to attract, and laid the foundations of a partnership approach. The next steps are to identify priority geographies where we might find investors, and then identify target businesses to approach. This targeted approach will be developed by the council working collaboratively with the business community and will be supported by MIY.
13. Potential investors will come both from this direct approach and from the established route of Government agencies and departments –

the LEPs, BEIS, DIT and the Embassy network. Linking into this government network is key both to promotion of the York offer and to helping those who filter enquiries in the network to bring the right opportunities to us.

14. While some investors may prefer to approach the city through intermediaries – whether that be their own business networks and advisers or a DMO such as Make It York or Welcome to Yorkshire – key conversations with the planning and transport policy functions and those who have the ability to provide economic incentives need to be driven by the council. Ensuring that potential investors can have early conversations with senior officers / members is key to establishing the trust which underpins successful inward investment. Inward investment thus needs to be delivered through a blended model. The public facing aspects of:
 - promoting our city as a place for business,
 - welcoming new investors to the city and
 - helping new businesses to become part of the ecosystemare best done outside of the Council. In previous SLAs we have described this as to welcome investors, and we have recognised that Make It York is best placed to fulfil this function.
15. Alongside this public facing role is the crucial behind-the-scenes work of inward investment. This involves identifying and targeting potential inward investors, liaising with national and international trade organisations, and working with potential investors to establish their requirements and provide support: Where might the investor base their business? What are the planning constraints? Does the local workforce have the skills required, and how might the education system adapt to help? Are there incentives available, and if so, how might these be accessed? As the case develops and trust is established, the involvement of key decision makers increases. Involving Executive Members and the senior officers of the council and the LEP is key to securing investment and needs to be coordinated from within the council.
16. Further work will be undertaken with MIY to specify in detail the functions set out in paragraphs 14 and 15 above and to identify where resources will best be located, under the new contract, to deliver them.
17. MIY currently delivers the York specific elements of the Leeds City Region Growth Hub, employing two business advisers and

undertaking outreach and engagement. Current funding for this ends in March 2023. The implications for future delivery once the funding ends will need to be explored and a mechanism included in the contract to vary the arrangement depending on any new delivery model that is developed.

18. MIY also maintains a Key Account Management (KAM) service which aims to engage with key employers and to be the council's eyes and ears with the business community. The council too engages with businesses at all levels as part of its regular stakeholder engagement activities and has been active in many key sectors and networks in parallel with MIY especially throughout the Covid-19 emergency. It is proposed to reconsider how best to engage with businesses going forward and to reflect this in revised arrangements to be included in the new SLA.

City Centre:

19. In this area the priorities concern:
 - **Outdoor Markets:** Day-to-day management of the Shambles Market and development of a new outdoor markets strategy, on behalf of the council, for approval by the Executive Member for Economy and Strategic Planning
 - **City Centre vibrancy:** Contributing expertise, ideas and experiences to the MyCityCentre consultation which will set the city centre strategy; keeping the city centre relevant and enticing by curating a programme of public events in the footstreets; working with city centre landlords, including those distant from York, to ensure they are engaged with the development of the city
 - **Commercial events:** Running commercial events in a safe and sustainable manner with the potential to generate a surplus for investment in the economy
20. Senior MIY staff will be part of the MyCityCentre Stakeholder Group which will help to guide future development of the city centre. Close working is expected between MIY and the Business Improvement District (BID) with MIY's MD serving on the BID board. There will be regular liaison between MIY and CYC's Executive Member on city centre matters. Where the council is required to exercise its public accountability functions in respect of city centre issues MIY will be able to refer matters formally into the Executive decision-making process.

21. Reports will be made to scrutiny on an ad hoc basis in response to relevant scrutiny reviews ongoing.

Visitor Economy / Destination Management Organisation (DMO):

22. In this area the priorities concern:

- **DMO:** Promotion of York as a tourist destination and liaison with stakeholders to make the most of all available support and contribute to national and regional marketing initiatives
- **Tourism sector development:** Working with tourism sector businesses to increase their productivity and help them become even better employers; provision of sector intelligence through a monthly dashboard
- **Tourism Advisory Board:** Contributing to the development of a new Tourism Strategy to be adopted by the council

23. Regular joint meetings will be held between MIY, the council and Welcome to Yorkshire.

24. Reports will be made to scrutiny on an ad hoc basis in response to relevant scrutiny reviews ongoing.

Culture:

25. The over-arching aim is to grow the confidence of the cultural sector and its ability to self-organise, collaborate, develop cultural strategy and action plans, and to contribute to wider city plans and strategies. MIY will not act primarily as a cultural provider.

26. Key priorities in this area will be:

- **Cultural Strategy:** Promote the city's new cultural strategy, develop action and funding plans with defined leadership for each area of activity, put in place new representational / partnership structures for the city to drive implementation of the strategy and develop the city's cultural offer
- **Events Strategy:** Develop a strategy, consistent with the aims of the cultural strategy, that enables the city proactively to identify the events that it wishes to host and attract taking account of feedback from council consultations, including the My City Centre consultation
- **Unesco designation:** Establish stakeholder arrangements to determine priorities for the designation going forward, to be contained in a revised 4 year prospectus.

27. In dealing with key cultural organisations such as ACE, major festivals organisers, institutions considering relocating to York, etc. this is likely to mean joint involvement of the council and MIY.
28. The cultural strategy will be reported to the Executive Member for “adoption” into council policy.
29. The events strategy will be a council approved strategy and therefore will be reported to the Executive Member for approval and developed closely with CYC staff and the Executive Member.
30. Reports will be made to scrutiny on an ad hoc basis in response to relevant scrutiny reviews ongoing.

Governance

31. It is vital that the governance arrangements for MIY ensure confidence in the relationship between CYC and MIY and in the robustness of oversight of the company’s delivery of the outcomes agreed with the council. Key principles concern transparency and accountability of decision-making as well as the quality of communication between the two parties. The governance regime has been revisited in consultation with MIY to ensure that it:
 - a. Provides appropriate controls for what is a Teckal company
 - b. Delineates clear roles and responsibilities
 - c. Resolves conflicts of interest
 - d. Is commensurate with the scope of the business
 - e. Is clear and transparent
 - f. Provides certainty to the council on the progress with delivering the agreed business plan and the financial recovery plan
 - g. Provides greater clarity on the outcomes of the work undertaken by MIY
 - h. Facilitates appropriate scrutiny of the operation of the company
 - i. Enables joined up communications to promote the city
32. Detailed issues concerning governance are set out in Annex B. Key issues that will be addressed in collaboration with the board of MIY are:
 - A structured approach will be taken to client meetings, placing a focus on the SLA / outcomes and ensuring that the MIY board are kept informed of the business of the client meetings

through a quarterly report to the board. Client meetings will be informed by a *Quarterly Narrative*, to be produced by the MD of MIY detailing progress against the key deliverables. The Quarterly Narrative will be published via the council's quarterly economic update to the Executive Member for Economy and Strategic Planning

- The new contract will provide mechanisms to ensure robust monitoring of performance against the SLA
- Communication and collaboration will be improved, with the MD of MIY attending the council's corporate management team on a regular basis, and regular formal and informal intelligence sharing between CYC and MIY to aid the respective parties in carrying out their functions
- In recommending new board members to fill vacancies (of which there are currently three) the board will continue to use skills mapping to ensure an appropriate mix of skills: finance, marketing, events, legal, etc. as well as good sectoral representation
- Where a MIY project, plan or initiative gives rise to public accountability considerations requiring a decision to be taken publically through the democratic process, the council will facilitate consideration of the matter through the Executive decision making process. Relevant reports will frame significant issues at the outset, setting out any consultation proposed together with the decision-making process and endorsing the ultimate decision. The annual business plan will identify which areas of work will require this level of decision-making and any adjustments to that plan will be agreed through the regular client meetings.

Options

33. The principal options available to the Executive are to:

- Agree the priorities on which the new service specification are to be based as set out in paragraph 10 and following or to suggest amendments
- Approve the undertaking of further work to develop the outcomes and service levels schedule of the contract (the SLA), following consultation with businesses and other stakeholders and agree an extension of the current contract to facilitate this

- Ask officers to explore alternative delivery mechanisms for some or all of the services currently provided by MIY, examples referenced in paragraphs 11-18

Analysis

34. In view of the success of the current model and the high level of cost that would be incurred in dismantling the model in order to create alternative delivery arrangements, the council is likely to obtain better value for money by entering into a new contract with MIY.
35. It will be preferable to the public purse to enable MIY to trade out of the current financial position and so to reduce the financial liabilities that will otherwise fall largely on the council. Any dismantling of the company will lead to significant disruption with additional costs for the council.
36. It is vitally important that the services that MIY provides for the council in the area of economic development are maintained at this critical time when the city needs to drive recovery from the effects of the pandemic. A strong and effective MIY, working in partnership with the council, will be able to make a key contribution to building the necessary partnership working and to placing a concerted focus on attracting inward investment.

Implications

37. **Financial:** The council provides revenue support of £798k per annum to Make it York for the provision of services. Make it York provides income to the council of £474k per annum to reflect the net income earned from trading activities across the city centre. The net expenditure to the council is therefore £324k. The council also budgets for a dividend of £25k per annum from the company.
38. Due to the impact on trading activities in 2020/21 from the Covid-19 pandemic the council previously agreed to forego the income payment in this financial year.
39. The final value of the new contract and the revenue support to be provided by the council will be assessed in the light of final SLA to be brought back to Executive Members in April.
40. **Legal:** The Council can make a direct award of this contract to MIY without undergoing a procurement process while it remains a Teckal compliant company in accordance with regulation 12 of the Public Contract Regulations 2015. This requires the Council to exercise

similar control over the company as it does over its own departments, that at least 80% of the activities of the company are those entrusted to it by the Council, and that there is no direct capital participation from the private sector in MIY.

41. Legal Services will work with officers to ensure the proposed changes to the SLA will maintain the Teckal compliance of the company.
42. Following consultation, any potential transfer of responsibility for functions from MIY to the council is likely to qualify as both a business transfer and a service provision change under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006. As a consequence, all those MIY employees who are assigned to work on any transferring functions may be eligible to transfer to CYC.

Council Plan

43. The contract with MIY supports a number of aims of the Council Plan including:
 - Good Health and Wellbeing
 - A Better Start for Children and Young People
 - Well-paid jobs and an inclusive economy
 - Creating homes and World-class infrastructure
 - Safe Communities and culture for all

Risk Management

44. In compliance with the council's risk management strategy the main risks arising from this report have been identified. These risks are mainly ones that could lead to the inability to meet business objectives (Strategic) and to deliver services (Operational), leading to financial loss (Financial), non-compliance with legislation (Legal & Regulatory), damage to the council's image and reputation and failure to meet stakeholders' expectations (Governance).
45. Measured in terms of impact and likelihood, the risk score has been assessed at 14. This "medium" risk level is acceptable but means that regular active monitoring is required.

Appendices

A: Key deliverables

B: Governance arrangements

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