



**Notice of a public Decision Session -  
Executive Leader (incorporating Finance & Performance)**

**To:** Councillor Carr (Executive Leader)

**Date:** Monday, 15 May 2017

**Time:** 3.00 pm

**Venue:** The Thornton Room - Ground Floor, West Offices (G039)

**AGENDA**

**Notice to Members – Post Decision Calling In:**

Members are reminded that, should they wish to call in any item\* on this agenda, notice must be given to Democratic Services by **4:00pm on Wednesday 17 May 2017**.

\*With the exception of matters that have been the subject of a previous call in, require Full Council approval or are urgent which are not subject to the call-in provisions. Any called in items will be considered by the Corporate and Scrutiny Management Policy and Scrutiny Committee.

Written representations in respect of items on this agenda should be submitted to Democratic Services by **5.00pm on Thursday 11 May 2017**.

**1. Declarations of Interest**

At this point in the meeting, the Executive Leader is asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they might have in respect of business on this agenda.

**2. Minutes** (Pages 1 - 6)

To approve and sign the minutes of the Decision Sessions held on 28 March 2017 and 6 April 2017.

**3. Public Participation**

At this point in the meeting, members of the public who have registered their wish to speak at the meeting can do so. The deadline for registering is at **5.00pm on Friday 12 May 2017.**

Members of the public may register to speak on :-

- an item on the agenda
- an issue within the Executive Member's remit;

**Filming, Recording or Webcasting Meetings**

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Residents are welcome to photograph, film or record Councillors and Officers at all meetings open to the press and public. This includes the use of social media reporting, i.e. tweeting. Anyone wishing to film, record or take photos at any public meeting should contact the Democracy Officers (whose contact details are at the foot of this agenda) in advance of the meeting.

The Council's protocol on Webcasting, Filming & Recording of Meetings ensures that these practices are carried out in a manner both respectful to the conduct of the meeting and all those present. It can be viewed at: [http://www.york.gov.uk/download/downloads/id/11406/protocol\\_for\\_webcasting\\_filming\\_and\\_recording\\_of\\_council\\_meetings\\_20160809.pdf](http://www.york.gov.uk/download/downloads/id/11406/protocol_for_webcasting_filming_and_recording_of_council_meetings_20160809.pdf)

**4. Staff transfer to City of York Trading Ltd** (Pages 7 - 14)

This report asks the Executive Leader to agree to the transfer of eight employees of City of York Council's WorkwithYork Service to City of York Trading Ltd (CYT) in line with TUPE regulations, in order to support CYT to achieve its business objectives.

**5. Urgent Business**

Any other business which the Executive Member considers urgent under the Local Government Act 1972.

Democracy Officers:

Catherine Clarke and Louise Cook (job share)

Telephone No- 01904 551031

Email- catherine.clarke@york.gov.uk/louise.cook@york.gov.uk

For more information about any of the following please contact the Democratic Services Officers responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

**This information can be provided in your own language.**

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

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City of York Council

Committee Minutes

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Meeting	Decision Session - Executive Leader (incorporating Finance & Performance)
Date	28 March 2017
Present	Councillor Rawlings

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#### **34. Declarations of Interest**

The Executive Member was asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests that he may have in respect of business on the agenda. No additional interests were declared.

#### **35. Public Participation**

It was reported that there had been one registration to speak at the meeting under the Council's Public Participation Scheme.

Ms Gwen Swinburn spoke in respect of agenda item 3 – Guarantees relating to Pension Fund Admitted Bodies. She raised concerns regarding the handling of this matter including the issue not having been considered as a key decision and detailed information not having been provided in respect of the costs involved.

#### **36. Guarantees relating to Pension Fund Admitted Bodies**

*As this item impacted on companies which include those of which the Leader is a director, Councillor Carr had allocated this decision to Councillor Rawlings.*

The Executive Member considered a report that sought approval for the Council to amend the guarantor arrangements in relation to the following organisations:

- Yorkshire Museums Trust
- Veritau
- Make it York
- Be Independent

- Explore

The Executive Member stated that, in considering this issue, he was taking into account confidential financial briefing papers that he had requested from officers in advance of the meeting. This information was exempt from publication in view of its commercial sensitivity.

Officers detailed the differences between the current arrangements whereby these bodies had a guarantee of last resort and the proposed new arrangement to provide a subsumption guarantee. The Executive Member was informed that the proposed new arrangement would offer greater security for the Pension Fund and the admitted bodies without creating any additional financial burden for the Council.

In response to questions from the Executive Member, officers explained why the issue had not been deemed to be a key decision and the reasons why it had not been included on the Forward Plan at an earlier stage.

The Executive Member requested that when future matters of this nature were considered consideration was given to including more detailed information in the published report and, although not technically a key decision, consideration was given as to whether it would be more appropriate for the issue to be taken by the Executive. He was, however, satisfied that on the information that had been provided the proposed arrangements offered a potential reduction in the Council's liabilities and hence he supported Option 1 detailed in the report.

**Resolved:** That the change to the guarantor arrangements in relation to the admitted bodies from guarantee of last resort to a subsumption guarantee be approved.

**Reason:** To enable the admitted bodies a greater level of security and reduce risk to the pension fund.

Executive Member

[The meeting started at 4.18 pm and finished at 4.43 pm].

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Meeting	Decision Session - Executive Leader (incorporating Finance & Performance)
Date	6 April 2017
Present	Councillor Carr

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### **37. Declarations of Interest**

The Executive Leader was asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests in the business on the agenda. No additional interests were declared.

### **38. Minutes**

Resolved: That the minutes of the Executive Leader (incorporating Housing and Safer Neighbourhoods) Decision Session held on 23 January 2017 and the minutes of the Executive Leader (incorporating Finance and Performance) Decision Session held on 13 March 2017 be approved and signed by the Executive Leader as a correct record.

### **39. Public Participation**

A representative from the Friends of the Carlton Committee spoke on behalf of the group. He said that there were a number of reasons why the application had been made for the Carlton Tavern Public House to be listed as an Asset of Community Value, including the nature of the building and the fact that it was well used by the community and by families.

### **40. Application for Community Right to Bid under the Localism Act 2011 - The Carlton Tavern**

The Executive Leader considered a report which presented an application to list the Carlton Tavern Public House, 104 Acomb Road, York as an Asset of Community Value (ACV). The

nomination had been made by the Friends of the Carlton Tavern.

Officers drew the Executive Leader's attention to the application that had been submitted and to the response from the freehold owner of the property, as included in the report.

The Executive Member was informed that there was a proposal by the owners to sell the property to enable the site to be redeveloped as a care home. The owners had stated that contracts had been agreed subject to planning consents. The legal advice given was that the fact that contracts had been exchanged did not prevent a decision being made as to whether to list the Carlton Tavern as an ACV. However, as it was under contract prior to a decision being taken, the provisions relating to the moratorium on a sale would not apply in this case.

The Executive Leader acknowledged that there was considerable interest in the application. He noted the position in respect of the proposed sale of the property and the legal advice from officers regarding the situation. The Executive Leader stated that he approved the recommendation to list the Carlton Tavern as an Asset of Community Value.

Resolved: That the listing of the Carlton Tavern, 104 Acomb Road, York as an Asset of Community Value (ACV) be approved.

Reasons: (i) The application meets the required criteria.  
(ii) To ensure the Council meets its legislative requirements of the Localism Act 2011 and promotes community access to community facilities.

**41. Application to Vary Restrictive Covenant at 3-4 Patrick Pool, York**

The Executive Leader considered a report which set out details of an application received by the owners of 3-4 Patrick Pool, to vary a restrictive covenant on a currently vacant retail property in the city centre. The property was previously owned by the Council but had been sold by the Council in 2007. On sale the Council had imposed a restrictive covenant prohibiting use of



the property as a sex shop or public house. The owners of the property had requested that the Council vary the covenant so that the property could be used as a public house.

Officers drew the Executive Leader's attention to the representation received from Ward Members, as detailed in Annex 3 of the report.

Officers were asked about the reasons why the covenant had originally been put in place.

The Executive Leader stated that he supported the recommendation to vary the restrictive covenant.

Resolved: That the requested variation to the restrictive covenant at 3-4 Patrick Pool so that the property can be used as a public house, as detailed in the report, be approved in exchange for a one-off consideration of £25,000.

Reason: To provide the Council with a one-off consideration in exchange for agreeing to a variation of the covenant.

Executive Leader

[The meeting started at 3.30 pm and finished at 3.40 pm].

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**Decision Session - Executive Leader  
(incorporating Finance & Performance)**

**15 May 2017**

Report of the Deputy Chief Executive and Corporate Director Customer & Corporate Services

**Staff Transfer from City of York Council to City of York Trading Limited**

**Summary**

1. The Executive Leader is asked to agree to the transfer of eight employees of City of York (CYC) WorkwithYork Service to City of York Trading Ltd (CYT). The transfer will be in line with the requirements of TUPE (Transfer of Undertakings Protection of Employment) regulations. The transfer will support CYT to achieve their business objectives.
2. The Council has fulfilled its obligations under TUPE legislation and a pensions admissions agreement will be put in place to ensure that the transferring staff can continue to access the Local Government Pension Scheme.

**Background**

3. In October 2011 Cabinet agreed to the creation of a Local Authority Trading Company, a company which is wholly owned by the council and all profits made by the company come back to CYC. This subsequently became CYT. A Shareholder Committee was created to review the activities of CYT Ltd and monitor its performance.
4. The company commenced trading as a schools supply agency in June 2012 under the name WwY@CYT using the internal CYC casual staffing team, the brand was later changed to WorkwithYork (WwY).
5. In June 2013 Cabinet agreed that all requests for CYC temporary workers or casual work will be made through WwY. This decision was made to ensure value for money and was supported by a business case which demonstrated that there were several advantages of CYC using WwY to source temporary workers over external agencies. The

contractual relationship between CYC and CYT is set out in a management services agreement.

6. Neither of these reports proposed transferring the CYC staff who were administering these services to CYT. Since 2012 arrangements have been in place for any work undertaken for CYT by CYC employees to be recharged to the company on a full cost basis. The June 2013 report did reference that consideration had been given to transferring staff at that point.
7. Since the creation of WwY CYT has grown this area of its business and has appointed additional staff directly on terms and conditions determined by CYT.
8. There are currently eight CYC staff supporting the delivery of WwY services.
9. The issue of staff transferring to CYT was first raised on 20th May 2016 in a letter sent by the Chair of the Board of Directors of CYT to CYC. There were then a number of Governance and other changes to the CYT board and correspondence about the transfer recommenced on the 18th January 2017, following receipt of a business case for the proposal which was sent by the recently appointed Managing Director for CYT.
10. In this communication CYT set out their intention to growing its commercial business interests outside of the public sector and in order to achieve our business objectives it expressed their view that it was in the interests of the company (and therefore CYC as the sole shareholder) that all staff are directly employed by CYT. They also confirmed that the newly appointed Managing Director CYT had been tasked by the Board to lead on this matter and that they would take external legal and HR advice to ensure that they fulfilled their obligations.
11. Where one employer takes over activities from another (in this case known as in-sourcing) these types of transfer are called “service provision changes” and the following must exist immediately before the transfer for the TUPE regulations to apply:
  - there is a defined group of employees
  - the employees transferring should be assigned to the group
  - the client / service provider should remain the same
  - the activities should not become fragmented
  - the activities should remain fundamentally the same.

Legal advice has been taken and CYC are satisfied that these conditions have been met.

## **Consultation and Considerations**

12. Formal consultation commenced with the staff and Trade Unions on the 17th February 2017 and since this point all of the relevant due diligence information required under TUPE has been provided and an application for an admissions agreement, which would allow the staff who would transfer to remain in the North Yorkshire Pension Scheme, has been made.
13. TUPE is designed to protect the terms and conditions of employment for those employees who are transferred to another employer. The TUPE Regulations provide for:
  - The transfer of all employees working in an undertaking to the new organisation with their contracts of employment. Continuity of employment and terms and conditions of employment are preserved and on the date of transfer the employee automatically becomes an employee of the new employer.
  - Protection against dismissal before or after the 'transfer' takes effect. Any dismissal for a reason connected with the transfer that is not an ETO reason (economic, technical or organisational reason) will automatically be 'unfair' in relation to employees with more than one year's service.
  - A limited opportunity for the transferee (new employer) or the transferor (former employer) to vary, with the agreement of the employees concerned, the terms and conditions of employment contracts where the sole or principal reason is not the transfer itself but is a reason connected with the transfer that is an ETO reason entailing a change in the workforce.
14. CYT have confirmed that they are not proposing to introduce any 'measures' as part of the transfer. A measure is a proposal to change to existing work practices such as pay rates, job descriptions, hours of work or recognition and collective bargaining as part of the transfer.
15. CYC, CYT and the North Yorkshire Pension Fund (NYPF) are proposing to sign an admissions agreement which will allow all staff transferring to

CYT to retain access to the NYPF with all pension benefits and rights under the scheme remaining.

16. The council will fulfil its obligation to ensure that all staff currently in the Local Government Pension Scheme who are transferring to a new provider will continue to have access to a broadly comparable pension scheme. As is normal when transfers such as this take place it is proposed that the council will act as guarantor for pension liabilities. This will be through a subsumption guarantee and will continue to fund the pension deficit in relation to the employees transferring that have arisen up to the point of transfer, this is consistent with other similar staff transfers. An Admission agreement will be drawn up setting out the details of the pension obligations of CYT. These will be signed by CYT, the council and NYPF prior to staff transferring.
17. Staff and the local trade unions have been fully consulted on these proposals and other than the need to clarify some questions relating to the transfer CYC have not received any specific feedback about the proposal.
18. Within TUPE there are no set timescales for the consultation, however both employers must consult for long enough before the transfer to ensure that the consultation is timely and meaningful.

## **Options**

19. **Option 1** - To agree the proposed transfer of CYC staff to CYT with a proposed transfer date of 1st June 2017.
20. **Option 2** – To not agree to the transfer of CYC staff to CYT.

## **Analysis**

21. **Option 1** – Consideration has been given to the proposal made by CYT and a period of consultation has been undertaken with staff and trade union representatives about the proposal.
22. There has been no feedback received by CYC which would suggest that we could not agree to the transfer. CYC have taken legal advice, ensured that we have fulfilled our statutory responsibilities which include the drafting of an admissions agreement to allow the transferring staff to retain access to the North Yorkshire Pension Fund.

23. **Option 2** – As all due process has been followed there is no reason for CYC to not agree to the transfer on this basis. CYC could take the view that the preference would be to continue with the current model of having some CYC staff delivering the WwY service, but this is not CYT's preference and as the sole shareholder CTY being a profitable and growing business is in the interests of the council.

### **Council Plan**

24. The proposed recommendations made by this report support both 'a focus on frontline services' and 'a prosperous city for all' priorities in the 2015-19 Council Plan. The provision of temporary workers by CYT support the delivery of many essential front line services in the Council whilst also providing work opportunities for local residents.

### **Implications**

25. **Financial** - There are no known additional costs to CYC. The CYC staff currently supporting the delivery of WwY services would transfer to CYT and the recharging of their salary costs from CYC to CYT would end.
26. **Human Resources (HR)** Staff and trade unions have been formally consulted on the proposed transfer. Should option 1 be approved, the council will ensure that we comply with its obligations under TUPE (Transfer of Undertakings Protection of Employment Regulations 2006).
27. Any changes will be carried out in accordance with the council's HR Change Management policy and procedure.
28. **Legal** - The main implications of a TUPE transfer have been covered in the body of this report. Legal services have advised on the proposed transfer to ensure that the transfer takes place under the requirements of the TUPE legislation.
29. **Information Technology (IT)** - There are no IT implications for CYC arising from this report.
30. **Property** - There are no property implications.
31. **Other** - There are no equalities or crime and disorder implications arising from this report.

## Risk Management

32. As the sole shareholder it is in CYC's interest to support CYT to become a growing and profitable company. There are some potential financial liability risks associated with the admissions agreement; however the council also has obligations to ensure that all staff currently in the Local Government Pension Scheme who are transferring to a new provider can continue to have access to a broadly comparable pension scheme and the admissions agreement allows this.

## Recommendations

33. The Executive Leader is asked to consider:

**Option 1** - To agree the proposed transfer of CYC staff to CYT with a proposed transfer date of 1st June 2017 and to authorise the Director of Corporate and Customer Services to take all steps required including the entering of relevant agreements to achieve that transfer.

Reason: To support CYT to deliver their business objectives and grow the business.

## Contact Details

<b>Author:</b>	<b>Chief Officer Responsible for the report:</b>		
Mark Bennett Head of HR & OD Tel No.01904 554518	Ian Floyd Director of Customer & Corporate Services		
	<b>Report approved</b>	✓	<b>Date</b> 4 May 2017
Specialist Implications Officer(s)			
Finance: Debbie Mitchell, Corporate Finance and Commercial Procurement Manager, 01904 554161			
Legal: Andy Docherty, Assistant Director, Legal and Governance, 01904 551004			
<b>Wards Affected:</b>			<b>All</b> ✓

For further information please contact the author of the report



## **Background Papers**

Executive - Tuesday, 4th October, 2011

Establishment and Governance of the Local Authority Trading Company

Executive - Tuesday, 4th June, 2013

City of York Trading Ltd (CYT) Business Development

**Annexes:** None

## **Report Abbreviations:**

**CYC** – City of York Council

**CYT** – City of York Trading Ltd

**ETO** – Economic, Technical or Organisational

**NYPF** – North Yorkshire Pension Fund

**TUPE** – Transfer of Undertakings Protection of Employment

**WwY** – WorkwithYork

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