

**Notice of a public meeting of
Shareholder Committee**

To: Councillors Lomas (Chair) and Douglas
Date: Tuesday, 19 December 2023
Time: 4.30 pm
Venue: The Snow Room - Ground Floor, West Offices (G035)

AGENDA

1. Declarations of Interest

At this point in the meeting, Members and co-opted members are asked to declare any disclosable pecuniary interest, or other registerable interest, they might have in respect of business on this agenda, if they have not already done so in advance on the Register of Interests. The disclosure must include the nature of the interest.

An interest must also be disclosed in the meeting when it becomes apparent to the member during the meeting.

(1) *Members must consider their interests, and act according to the following:*

Type of Interest

You must:

*Disclosable
Pecuniary Interests*

Disclose the interest; not participate in the discussion or vote; and leave the meeting unless you have a dispensation.

*Other Registrable
Interests (Directly
Related)*

OR

*Non-Registrable
Interests (Directly
Related)*

Disclose the interest; speak on the item only if the public are also allowed to speak but otherwise not participate in the discussion or vote; and leave the meeting unless you have a dispensation.

*Other Registrable
Interests (Affects)
OR
Non-Registrable
Interests (Affects)*

Disclose the interest; remain in the meeting, participate, and vote unless the matter affects the financial interest or well-being:

*(a) to a greater extent than it affects the financial interests of a majority of inhabitants of the affected ward; and
(b) a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest,
in which case speak on the item only if the public are also allowed to speak, but otherwise do not participate in the discussion or vote, and leave the meeting, unless you have a dispensation.*

- (2) Disclosable pecuniary interests relate to the Member concerned or their spouse/partner.*
- (3) Members in arrears of Council Tax by more than two months must not vote in decisions on, or which might affect, budget calculations, and must disclose at the meeting that this restriction applies to them. A failure to comply with these requirements is a criminal offence under section 106 of the Local Government Finance Act 1992.*

2. Exclusion of Press and Public

To consider excluding the public and press from the meeting during consideration of agenda item 4, Annexes A and B:

- Annex A on the grounds that it contains information relating to any individual and information likely to reveal the identity of an individual (This information is classed as exempt under Paragraphs 1 and 2 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to information) (Variation) Order 2006).

- Annex B on the grounds that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) and information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority. (This information is classed as exempt under Paragraphs 3 and 4 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to information) (Variation) Order 2006).

3. Public Participation

At this point in the meeting members of the public who have registered to speak can do so. Members of the public may speak on agenda items or on matters within the remit of the committee.

Please note that our registration deadlines are set as 2 working days before the meeting, in order to facilitate the management of public participation at our meetings. The deadline for registering at this meeting is 5:00pm on Friday 15 December 2023.

To register to speak please visit www.york.gov.uk/AttendCouncilMeetings to fill in an online registration form. If you have any questions about the registration form or the meeting, please contact Democratic Services. Contact details can be found at the foot of this agenda.

Webcasting of Public Meetings

Please note that, subject to available resources, this meeting will be webcast including any registered public speakers who have given their permission. The meeting can be viewed live and on demand at <http://www.york.gov.uk/webcasts>.

During coronavirus, we made some changes to how we ran council meetings, including facilitating remote participation by public speakers. See our updates (<http://www.york.gov.uk/COVIDDemocracy>) for more information on meetings and decisions.

4. City of York Trading Limited Update (Pages 1 - 30)

The purpose of this report is:

- i) to approve the appointment of two Independent Non-Executive Directors.
- ii) to approve in principle the acquisition by City of York Trading Limited (CYT) the certain assets of an outside third-party company.
- iii) to ask Members to recommend to the Directors of CYT which Council Non-Executive Director should be appointed as permanent Chair of the Board of Directors of the Company.

5. Urgent Business

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

Democracy Officer:

Name: James Parker

Contact details:

- Telephone – (01904) 553659
- Email – james.parker@york.gov.uk

For more information about any of the following please contact the Democracy Officer 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)

 (01904) 551550

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Shareholder Committee**19 December 2023**

Report of the Head of HR and OD

City of York Trading Limited Update**Purpose of Report**

1. To approve the appointment to the City of York Trading Limited (trading as WorkwithYork, WorkwithSchools and WorkwithYorkshire) (“**CYT**” or the “**Company**”) Board of two Independent Non-Executive Directors, whose CVs are both contained within **Exempt Annex A**.
2. To approve in principle the acquisition by CYT the certain assets of an outside third-party company (referred to in this report as “**Company W**”) in line with the report at **Exempt Annex B**.
3. Under the terms of the CYT Shareholders Agreement dated 1 April 2021 (the “**Shareholders Agreement**”) and CYT’s Articles of Association adopted on 17 January 2012 (the “**Articles**”), and Article 12 (**Shareholders Committee**) of the Constitution of the Council of the City of York (“**CYC**”) to recommend to the Directors of CYT which Council Non-Executive Director should be appointed as permanent Chair of the Board of Directors of the Company.
4. The CVs are both exempt due to them containing personal details and the acquisition report update is exempt due to commercial sensitivities.

5. Recommendations

- i) Approve the appointment to the Company of two new Independent Non-Executive Directors whose CVs are contained within **Exempt Annex A**, and delegate authority to the Board of Directors of the Company and the Company Secretary to pass any necessary Board resolutions, make all necessary filings with the Registrar of Companies and all necessary updates to the statutory registers, letterhead, website, etc. of the Company in relation to said appointments.

Reason: To ensure CYT has an appropriate number of Non-Executive Directors on its Board as required by the CYT Shareholders Agreement.

- ii) Approve in principle the acquisition of the identified assets of Company W by CYT in accordance with proposals in this report at **Exempt Annex B**, and delegate authority to the Board of Directors of CYT to take any necessary steps to negotiate the terms and conditions of and conclude the acquisition of Company W in line with the contents of and proposals set out within this report and the annexes hereto.

Reason: To enable further growth of CYT's non-Council recruitment business in line with the Company's business plan.

- iii) Inform the Board of Directors of CYT which Council Non-Executive Director the Shareholder wishes to be appointed as permanent Chair of the Board of Directors of the Company as required by the Shareholders Agreement, and delegate authority to the Board of Directors of the Company and the Company Secretary to pass any necessary Board resolutions and make all necessary updates to the statutory registers, letterhead, website, etc. of the Company in relation to said appointment.

Reason: To ensure Board has a Chair nominated by the Shareholder as required by the Shareholders Agreement.

Background and analysis

- 6. CYT was formed in 2011 with the intention of supplying temporary staff to CYC as WorkwithYork, to local schools as WorkwithSchools and permanent and temporary staff to other outside organisations as WorkwithYorkshire. CYC is the sole shareholder of the Company.
- 7. Through the Company, CYC makes a cost saving compared to the cost of agency staff on the open market and is also able to secure staff to cover hard-to-fill roles where permanent recruitment is challenging. In addition, the payment of an annual dividend from the Company's overall profits is designed to assist CYC's financial position.
- 8. The Company's Board of Directors currently comprises Karen Bull (the "**Managing Director**") with Non-Executive Directors ("**NEDs**") Cllr Kallum Taylor, Cllr Ian Cuthbertson, Cllr Jason Rose, and Ann Vickers, and usually meets monthly to consider financial and performance reports and discuss strategy

going forward. Cllr Ian Cuthbertson is current acting Chair of the Board, pending the Company being notified of a final decision by the Shareholder.

9. The Company advertised for new NEDs following the resignation of a previous independent NED in September 2023. The Company received a very good response and in November 2023, shortlisted and interviewed. As these are transitional times for the Company, in line with the CYT Shareholders Agreement, the Shareholder is asked to approve the appointment of the two successful candidates as independent Non-Executive Directors. The CVs of both candidates have been provided to the Shareholder as **Exempt Annex A**. In summary however, one candidate is a Marketing Consultant and former Marketing Director, the other a Delivery & Transformation Director.
10. In line with CYC's budget savings, its use of WorkwithYork agency staff from the Company has reduced substantially during 2022/23. Accordingly, considering the Company's long-term business plan to grow its recruitment business outside of CYC, initial enquiries have been made during the year with a number of potential acquisition targets.
11. Following recent productive discussions, the Company now seeks the Shareholder's agreement in principle for the acquisition of Company W, in line with the proposals contained in **Exempt Annex B**.

Risk Management

12. There are no specific risk issues arising from this report.

Implications

13. Financial Implications

There are no financial implications in relation to CYC arising from this report.

14. HR Implications

There are no HR implications arising in relation to CYC from this report, however, please refer to **Annex C** regarding the appointment of Non-Council NEDs under the Company's governing documents and Article 12 (**Shareholders Committee**) of the CYC Constitution.

15. Legal Implications

- (a) The legal and governance implications under the Company's governing documents and Article 12 (**Shareholders Committee**) of the CYC Constitution relevant to both the NED appointments and the acquisition of Company W are set out in **Annex C**.
- (b) The proposals within this report have no immediate impact on the recently concluded service agreement between CYC and CYT dated 7th September 2023, subject to ongoing monitoring of CYT's current Teckal status (see below). Should CYT lose its Teckal status, the Company must consult with the Shareholder Committee forthwith who (along with the advice of officers from CYC Finance, Procurement, Legal, HR, etc.) to determine what course of action to take under the service agreement.
- (c) Notwithstanding 15(b) above, whilst the acquisition of Company W in the short to medium term should have no adverse material impact on CYC and its relationship with the Company, it must be acknowledged by Committee Members that the whole point of this acquisition is for CYT to grow its recruitment business beyond CYC whose requirements have in recent years been decreasing. CYT's commercial (i.e., non-CYC related) activity must be carefully monitored to ensure that the minimum thresholds/requirements for Teckal Companies set out in Regulation 12(1) of the Public Contract Regulations 2015, specifically Regulation 12 (1)(b) (i.e., "...more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority..."). If at any point it looks like CYT's commercial activity should start to outweigh its activity in relation to CYC, the Company must consult with the Shareholder Committee forthwith who (along with the advice of officers from CYC Finance, Procurement, Legal, HR, etc.) to determine what course of action to take.
- (d) The CVs are both exempt under Section 100I and paragraphs 1 and 2 of Schedule 12A of the Local Government Act 1972 due to them containing personal details, and the acquisition report update is exempt under Section 100I and paragraphs 3 and 4 of Schedule 12A of the 1972 Act due to commercial sensitivities.

16. Procurement Implications

Subject to 15(b) and 15(c) above, there are no procurement implications in relation to CYC arising from this report.

17. Health & Wellbeing Implications

There are no health & wellbeing implications in relation to CYC arising from this report.

18. Environment & Climate Action Implications

There are no environment & climate implications in relation to CYC arising from this report.

19. Affordability Implications

There are no affordability implications in relation to CYC arising from this report.

20. Equalities & Human Rights Implications

(a) CYC recognises, and needs to take into account its Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority's functions).

(b) There are no equalities or human rights implications in relation to CYC arising from this report.

21. Data Protection & Privacy Implications

Subject to the continuing exempt and confidential status of the information in **Exempt Annexes A and B** to this report, there are no data protection & privacy implications in relation to CYC arising from this report.

22. Communications Implications

Subject to the continuing exempt and confidential status of the information in **Exempt Annexes A and B** to this report, there are no communications implications in relation to CYC arising from this report. The Company however

should liaise and consult with CYC around any publicity with regards the proposed appointments and acquisition of Company W.

23. Economy Implications

There are no economic or city development implications in relation to CYC arising from this report.

24. Other Implications

There are no crime and disorder, information technology, property or other implications arising from this report.

Author:	Chief Officer responsible for the report:		
Karen Bull, Managing Director CYT karen.bull@cytlimited.co.uk	Debbie Mitchell Chief Finance Officer		
Helen Whiting Head of HR and OD helen.whiting@york.gov.uk	Report Approved	✓	Date 11 December 2023
Wards Affected:		All	
For further information please contact the author of the report			

Annexes:

Exempt Annex A – details of two proposed Independent Non-Executive Directors including their CVs.

Exempt Annex B – report on proposed acquisition of Company W.

Annex C – Summary of Legal & Governance Implications

By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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By virtue of paragraph(s) 3, 4 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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RELEVANT LEGAL & COMPANY GOVERNANCE IMPLICATIONS IN RELATION TO THE PROPOSALS OUTLINED IN THE REPORT FROM CITY OF YORK TRADING LIMITED (“CYT”) TO THE COUNCIL OF THE CITY OF YORK (“CYC” or the “COUNCIL”) SHAREHOLDER COMMITTEE DATED 19TH DECEMBER 2023

1. Article 12 (Shareholder Committee) of the CYC Constitution

- [Art 12 \(Shareholder Committee\) of the Constitution](#) states that:
 - Any other Meetings of the Shareholder Committee (outside of the usual programme) will be called as and when required to deal with company business. (2.2)
 - Minutes (from the last meeting), Notices and Agenda of Shareholder Committee Meetings shall be sent to Shareholder Committee members **at least 5 working days prior to the Meeting**. (2.3)
 - Subject to any relevant overriding provisions contained in a company’s Shareholder Agreement or within a company’s Articles of Association, the Shareholder Committee is established to undertake all the following functions of the Council as a shareholder under the Companies Act 2006, including (but not limited to):
 - approving the **acquisition of shares in another company**;
 - approving the **establishment of subsidiary companies**; and
 - approving **the appointment or dismissal of any company Directors (including the Chair), which requires Shareholder consent** under the Articles and/or Shareholder Agreement of the company (see 5.2 below however).



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(4.1)

- The Shareholder Committee has the power within its terms of reference to exercise all the Council's powers arising from the Council's role as the shareholder and owner of the company, ***other than the following decisions, which are reserved exclusively to the (CYC) Executive:***
 - changes to company governance (e.g., including amending a company's Articles of Association or its Shareholder Agreement);
 - agreements to any amalgamation, merger, division, joint venture, take-over, profit sharing, re-registration from private to public (or vice-versa), re-registration from limited to unlimited (or vice versa), compromise arrangements, or similar arrangements, subject to consultation with the Council's Chief Finance (s151) Officer;
 - approval of any disposals of assets valued over £500,000, subject to the company's Articles of Association;
 - approval of any grants and/or loans in excess of £500,000;
 - approving borrowing in excess of £100,000;
 - entering, amending, or terminating any agreements which create a potential liability for the company in excess of £500,000; and
 - approving steps to wind up a company.

(5.1)

- For the avoidance of any doubt, the Shareholder Committee has delegated authority to exercise all the Council's powers arising from the Council's role as the Shareholder and owner



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of the company on all matters relating to the appointment, dismissal, the terms and conditions, and entering into contracts with Non-Council Directors insofar as such matters require Shareholder consent under the Articles and/or Shareholder Agreement of the company (5.2).

- The following decisions may be taken under delegated powers of the Chief Operating Officer (Chief Executive) of the Council:
 - approving changes to the location in which the company works;
 - approving alterations to company's name or registered office;
 - matters relating to the employees or agents of the company other than its senior management team;
 - where required giving any further specific approval to a matter provided for within the approved business plan;
 - approving changes to accounting arrangements; and
 - entering, terminating or amending any agreements that create a potential liability for the company not exceeding £250,000.

(5.3)

- Anything not covered under 4.1, 5.1, 5.2, and 5.3 of Art. 12, which does not require shareholder consent under the Articles or Shareholder Agreement of the Company, doesn't need to be referred to Shareholder Committee.

2. Shareholders Agreement dated 1st April 2021 between (1) CYC, and (2) CYT

- Under the **Shareholder Agreement** for CYT:



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- The minimum number of Directors shall be 6, consisting of at least:
 - 3 x elected Members of the Council, appointed by the Council as Non-Executive Directors (the “**Council Non-Executive Directors**”);
 - 2 x Non-Executive Directors who are neither employees of the Company, nor Members or Officers of the Council (the “**Independent Non-Executive Directors**”); and
 - the Managing Director of the Company.

(Cl. 7.1).

- The maximum number of Directors shall be 10, consisting of not more than 4 x Executive Directors (including the Managing Director) and 6 x Non-Executive Directors, no more than 3 of whom shall be elected Members of the Council (Cl. 7.2).
- The quorum for Board meetings shall be 3 x Directors, including at least 1 x Non-Executive Director (Cl. 7.4).
- The Company will advertise for the recruitment and appointment of Independent Non-Executive Directors and Executive Directors, unless appointed by way of a restructure. Where appropriate, the Board will then create a shortlist of and interview candidates. ***The Board will submit its final recommendations to Shareholder Committee for approval before the formal appointment of any such Directors by way of a formal Board resolution*** (Cl. 7.5).
- The Company shall procure that ***the Directors shall appoint the Council Non-Executive Directors recommended by the Shareholder Committee, and the Shareholder Committee shall recommend for appointment a replacement Council Non-Executive Director*** should the number of Council Non-Executive



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Directors fall below the number specified in Clause 7.1 (Cl. 7.6).

- The Company shall procure that ***the Directors shall appoint the Council Non-Executive Director recommended by the Shareholder Committee as Chairman of the Board*** (Cl. 7.7).
- The Company ***shall not remove or purport to remove any Director as a Director of the Company or any of its subsidiaries without the prior written consent of the Shareholder Committee*** (Cl. 7.8).
- The role of the Shareholder Committee shall not be operational. The Shareholder Committee shall (*inter-alia*) exercise the functions of the Council in relation to the giving of Shareholder consent for the matters set out in ***paragraph 1.2 of Schedule 2*** (of the Shareholder Agreement), ***other than consent required by the following paragraphs under Schedule 2 for which the approval of the Council's Executive is required:***
 - paragraph 1.2.3 (allotment of further share capital);
 - **paragraph 1.2.7 (formation of a subsidiary);**
 - paragraph 1.2.8 (joint ventures);
 - paragraph 1.2.10 (amendments to the Articles);
 - paragraph 1.2.26 (winding up etc.);
 - paragraph 1.2.32 (listing of share capital); and
 - paragraph 1.2.34 (negotiations re sale etc.).

(Cl. 8.3.5).

- The following paragraphs of Schedule 2 of the Shareholder Agreement make it clear that ***CYT shall not, (save as set out in or as required by this Agreement) without the prior written consent of the Council and/or approval of the Shareholder Committee*** carry out any of the matters:
 - Paragraph 1.2.7 - ***the formation of any subsidiary*** undertaking (see Cl. 8.3.5 above);



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- Paragraph 1.2.9 - ***acquire any interest in the share capital or instruments convertible into share capital of any other company*** or body corporate;
- Paragraph 1.2.18 - ***acquiring or making any investment in another company*** or business or ***incorporate any subsidiary***;
- Paragraph 1.2.25 - ***the appointment or dismissal of any Executive Director, or the Council Non-Executive Director who acts as Chairman*** of the Board;
- Paragraph 1.2.29 - ***acquiring the assets of any other business entity***;

3. Articles of Association of CYT adopted on 17th January 2012

- Under the **Articles of Association** for CYT:
 - CYC, as sole Shareholder, may ***by Special (Written) Resolution direct the Directors of CYT to take, or refrain from taking, a specified action.*** (5.1).
 - No such Special Resolution invalidates anything which the Directors have done before the passing of that resolution. (5.2).
 - CYC as sole Shareholder, may from time to time and at any time, ***appoint any person or persons as a Director or Directors, and remove from office any Director (regardless of how they were appointed) ... by notice in writing to the Company, signed by/of behalf of CYC,*** and shall take effect once delivered to CYT's registered office. (20.4).