



**Notice of a public meeting of
Corporate Services, Climate Change and Scrutiny Management
Committee (Calling In)**

- To:** Councillors Fenton (Chair), Merrett (Vice-Chair), Ayre, B Burton, Coles, Crawshaw, Healey, Melly, Nelson, Rowley, Waller, Widdowson and a Vacancy (Labour, tbc)
- Date:** Monday, 3 June 2024
- Time:** 5.30 pm
- Venue:** West Offices - Station Rise, York YO1 6GA

AGENDA

- 1. Declarations of Interest** (Pages 1 - 2)
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.

[Please see attached sheet for further guidance for Members]

2. **Exclusion of Press and Public**

To consider excluding the public and press from the meeting during consideration of Annex B to the Advertising Contract report, on the grounds that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information). This information is classed as exempt under Paragraph 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.

3. **Minutes**

(Pages 3 - 12)

To approve and sign the minutes of the meetings held on 11 March and 07 May 2024.

4. **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 have changed to 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 Thursday 30 May 2024.

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 www.york.gov.uk/webcasts.

During coronavirus, we've made some changes to how we're running council meetings. See our coronavirus updates (www.york.gov.uk/COVIDDemocracy) for more information on meetings and decisions.

5. Called-in Item: Advertising Contract (Pages 13 - 216)
This report outlines the reasons for the call-in of the decision made by the Executive on 09 May 2024, in respect of the Advertising Contract. The report also sets out the powers and role of the Corporate Services, Climate Change and Scrutiny Management Committee (Calling-In) in dealing with the call-in.

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

Democracy Officer:
Jane Meller

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For more information about any of the following please contact the Democratic Services 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 میا کی جاسکتی ہیں۔ (Urdu)

 **(01904) 551550**

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Declarations of Interest – guidance for Members

- (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 <u>unless</u> you have a dispensation.
Other Registrable Interests (Directly Related) OR Non-Registrable Interests (Directly Related)	Disclose the interest; speak on the item <u>only if</u> the public are also allowed to speak, but otherwise not participate in the discussion or vote, and leave the meeting <u>unless</u> you have a dispensation.
Other Registrable Interests (Affects) OR Non-Registrable Interests (Affects)	Disclose the interest; remain in the meeting, participate and vote <u>unless</u> the matter affects the financial interest or well-being: (a) to a greater extent than it affects the financial interest or well-being 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 <u>only if</u> the public are also allowed to speak, but otherwise do not participate in the discussion or vote, and leave the meeting <u>unless</u> 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.

City Of York Council

Committee Minutes

Meeting	Corporate Services, Climate Change and Scrutiny Management Committee (Calling In)
Date	11 March 2024
Present	Councillors Fenton (Chair), Baxter, J Burton (from 5.11 pm), Healey, Rowley, Steels-Walshaw, K Taylor (from 5.16 pm), Clarke (Substitute for Cllr Merrett), Fisher (Substitute for Cllr Widdowson), Wann (Substitute for Cllr Ayre), Crawshaw (Substitute for Cllr Myers), Rose (Substitute for Cllr Kelly) and Knight (Substitute for Cllr Waller)
Apologies	Councillors Merrett, Ayre, Kelly, Myers, Waller and Widdowson

14. **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.

Cllr Fisher noted, in relation to item 4 (Called-in item, Bus Service Review), that he was in possession of a bus pass.

15. **Minutes**

Resolved: That the minutes of the last meeting held on 12 February 2024 be approved as a correct record.

16. **Public Participation**

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

Caleb Pell spoke on Item 4 (Called-in item: Bus Service Review) and raised concerns regarding cuts in bus services and the impact that could have on modal shift. He noted that cuts to

services did not support the council's objective to reduce car journeys.

Barbara Boyce, a former Sheriff, spoke in relation to Item 5 (Called-in item: Civic Protocols Review). She made a number of recommendations including reducing the role of Sheriff, a more economical vehicle, a reduction in the number of Guild events, the role of Lord Mayor (LM) should be more secular, and being prescriptive with the LM charities should be avoided. She also raised the possibility of the Mansion House being managed externally.

David Carr, a former LM, also spoke in relation to Item 5. He cautioned against any reduction in allowances for the civic party as this could lead to the role being filled only by those that could afford to do it, he also suggested the limousine could be sponsored 'discretely'. He raised concerns that the elected Mayor for York and North Yorkshire Combined Authority may overshadow the role of LM. Finally, he suggested that the civic party could be reduced to two people; the LM and Sheriff.

Honorary Alderman Brian Watson, a former LM, also spoke in relation to Item 5 (Called-in item: Civic Protocols Review). He raised concerns regarding the operation of the Mansion House as the LM's official residence and questioned the fire risk assessment relating to the use of the lift.

17. **Called-in Item: Bus Service Review**

Members considered a report which set out the reasons for the call-in of the decisions made by the Executive on 20 February 2024 in respect of the above matter, along with the committee's remit and powers in relation to the call-in.

The decisions were contained in the extract from the relevant Decision Sheet at Annex 1 to the report. The original report and associated annexes A to F were attached at Annex 2. The decisions had been called in by Cllrs Pearson, Steward and Hollyer for the following reasons:

- *The stated policy objective of the Draft Local Transport strategy is to increase bus patronage by 50% – the consultation that has been produce for the Local Bus Service Update shows that this decision would result in a*

reduction in bus patronage. It only proposes modifications to the services and makes no attempt to deliver on patronage uplift required in the administration's draft transport strategy.

- *The Executive rushed through the consultation over the Christmas period which reduced the amount of engagement with the public that the consultation had generated. The report shows that the cuts proposed will lead to a reduction in patronage and the views of residents and bus users have been ignored in the decision making process.*
- *The report makes no reference to the consultation on the reduction in patronage and there is no policy discussion on the effects of the reduction in bus patronage. The Bus Service Review was available in December but was not consulted on. The review contained a number of factual errors, and omissions in key details which are not a basis on which to make an informed decision. It judges accessibility just on the bus stop locations served and frequency of calls and not about where the buses go and the journeys people want to make at the times they need to make them, it does not mention or refer to the increased transport deprivation this change would cause. There is also no reference or consideration given to the 10 to 15 year plan that the council has to submit to government on their long term vision for buses in York.*

The Calling-in Members, Cllr Pearson, Steward and Hollyer, each addressed the committee in turn, expanding on their reasons for the call-in and then responding to questions from Members.

The Deputy Leader and Executive Member for Economy and Transport then addressed the committee regarding his decisions, and responded to questions. Officers responsible for the report to Executive spoke to clarify aspects of their report and to answer questions.

[5.59 – 6.01pm, Cllr Steels-Walshaw left the meeting]

Finally, Cllr Pearson summed up on behalf of the Calling-in Members and the Executive Member summed up the Executive position.

During the above process, it was confirmed that:

- There was no government funding for concessionary fares.
- The 1100 responses to the consultation was considered by officers to be a reasonable return, and in line with other consultations.

Under the provisions of the council's constitution at the time the call-in was made, Members were asked to state individually whether they considered the core principles identified in the call-in request (Annex 3) had been breached or not. The following options were available:

- In the event of the majority of Members finding no breach, the call-in request would be immediately closed with no further action unless the Committee identifies any areas worthy of future exploration by the scrutiny function.
- In the event of the majority of Members finding a breach, the called in decision would be referred back in full for further consideration at the next appropriate meeting of the Executive.

With five Members finding there had been a breach, and eight Members finding there had not been a breach, the call-in fell and it was:

Resolved: That the call-in request be closed.

Reason: To determine the outcome of the alleged breach in Executive decision making.

[6.53 - 7.01 pm, the meeting adjourned for a comfort break.]

18. Called-in Item: Civic Protocols Review

Members considered a report which set out the reasons for the call-in of the decisions made by the Executive Member for Finance, Performance, Major Projects and Equalities in consultation with the Executive Leader including Corporate Services, Policy, Strategy and Partnerships on 21 February 2024 in respect of the above matter, along with the committee's remit and powers in relation to the call-in.

[7.02 pm Cllr Rose re-joined the meeting.]

The decisions were contained in the extract from the relevant Decision Sheet at Annex 1 to the report. The original report was attached at Annex 2. The decisions had been called in by Cllrs Mason, Steward and Orrell for the following reasons:

- **Key Decision** *This should have been a key decision as a minimum; the Lord Mayoralty affects all wards and all members of the council. They are by statute the first citizen of the city and York's Lord Mayor is second only to the City of London, holding the title Right Honourable (which only York and London do within England). The ancient right to appoint a Mayor comes from royal charters dating back to 1212 and the office is of immense standing in York, the UK and internationally. Any change to how the office operates is significant to our city and the country. In regard to the office of Sheriff, York is one of only a small number of cities who retain the right to appoint a sheriff independently of the Crown. This right comes from royal charters and letters patent. The office of Sheriff of York dates back to 1396 and its current legal standing is as a "Local Officer of Dignity".*

The paper makes changes to the roles of the Lord Mayor and Sheriff which affect the constitution in regard to their duties, in particular "To act as an ambassador for the City locally, nationally and internationally", "actively promoting and supporting local business and economic activity", "actively promoting and supporting local tourism", "residency in the Mansion House". This alone should have meant a full council decision.

Article 7, 3.2 of the constitution helps define Key Decisions as:

- c) whether the decision is likely to be a matter of political or other controversy*
- d) the extent to which the decision is likely to result in or attract substantial public interest.*

It was clear such significant changes to the Mayoralty and Shrievalty of England's second civic city, which had no consultation whatsoever, would meet the above criteria.

- **Consultation and Analysis** *Lack of consultation is of great concern. There are only 3 members of the council with any experience of civic office, none were consulted. Other interested parties were not engaged with, including the Civic Trust and former Lord Mayors and Sheriffs. Indeed, no group leaders, councillors or the public, charities or businesses were consulted. There was no consultation with other CYC officers in terms of the Lord Mayor's and Sheriff's roles in promoting economy development or with organisations such as Visit York in regard to tourism. The only consultation was with the incoming Lord Mayor, who at the point of the decision being made was not known to the public and their views were not shared in the paper. No alternatives or comparisons were given.*
- **Equalities Impacts** *The lack of any equalities impact assessment meant the executive member could not take account of how these changes will affect members with disabilities or those with poorer socioeconomic backgrounds. A full EIA should have been provided.*
- **Lack of Financial Detail** *Details regarding the actual costs were not articulated. The paper fails to offer any detailed financial breakdowns or budgets. There is no cost benefit analysis against monies spent or context on positive impact. The executive member gave the media a figure of £53k ahead of the meeting, but at the meeting a different figure of £130k was given by officers.*

The proposed savings are not articulated, with the exception of the reduction in allowances. The paper fails to properly describe where and how the savings will be made and their impacts.

The paper made no mention of purchasing new "badges of office", nor any costs, yet at the meeting officers said new civic regalia was being commissioned. The executive member was not given any financial costings for these when agreeing this.

The Calling-in Members, Cllr Mason, Steward and Orrell, each addressed the committee in turn, expanding on their reasons for the call-in and then responding to questions from Members.

The Executive Member for Finance, Performance, Major Projects and Equalities and the Leader then addressed the committee regarding their decisions, and responded to questions. Officers responsible for the report to Executive spoke to clarify aspects of their report and to answer questions.

Finally, Cllr Mason summed up on behalf of the Calling-in Members and the Executive Member summed up the Executive position.

During the above process, it was confirmed that:

- There was no expectation that the number of events attended would be reduced, a list had been produced of the funded events, and the events calendar would be agreed with the incoming LM.
- The LM would continue to choose their own charities, in line with the newly codified protocols.
- The decision had been made at the Executive Member's decision session due to the recognised importance of the civic office. The Monitoring Officer had provided advice that in his view the decision would not have a significant impact on two or more wards and was therefore not a key decision.

Under the provisions of the council's constitution at the time the call-in was made, Members were asked to state individually whether they considered the core principles identified in the call-in request (Annex 3) had been breached or not. The following options were available:

- In the event of the majority of Members finding no breach, the call-in request would be immediately closed with no further action unless the Committee identifies any areas worthy of future exploration by the scrutiny function.
- In the event of the majority of Members finding a breach, the called in decision would be referred back in full for further consideration at the next appropriate meeting of the Executive.

With six Members finding there had been a breach, and seven Members finding there had not been a breach, the call-in fell and it was:

Resolved: That the call-in request be closed.

Reason: To determine the outcome of the alleged breach in Executive Member decision making.

Cllr S Fenton, Chair

[The meeting started at 5.06 pm and finished at 8.50 pm].

Meeting	Corporate Services, Climate Change and Scrutiny Management Committee (Calling In)
Date	7 May 2024
Present	Councillors Fenton (Chair), Merrett (Vice-Chair), Ayre, Baxter, J Burton, Healey, Kelly, D Myers, Steels-Walshaw, K Taylor, Widdowson, Steward (Substitute for Cllr Rowley) and Wann (Substitute for Cllr Waller)
Apologies	Councillors Rowley and Waller

19. **Called-in Item: Advertising Contract**

The Chair opened the meeting by stating that he had been advised by officers that new information, unrelated to the grounds for call-in had come to light, which meant that the Executive Decision, taken on 18 April 2024, would no longer be implemented.

Instead, an urgent report would be presented to the Executive meeting on Thursday 9 May, which would seek authority for a tender exercise; that decision would be subject to the call-in provisions in due course.

In light of this, Members were asked to consider whether they wished to proceed with the call-in, or to withdraw it and revisit the issue following the Executive meeting. The Chair proposed postponement on the advice of the Monitoring Officer and based on that advice the committee unanimously

Resolved: That the call-in be postponed.

Reason: In order that the committee can be assured that it is acting on the most current information available.

Cllr S Fenton, Chair

[The meeting started at 5.32 pm and finished at 5.50 pm].

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**Corporate Services, Climate Change and
Scrutiny Management Committee (Calling In)****3 June 2024**

Report of the Director of Governance

Called-in Item: Advertising Contract.**Summary**

1. This report sets out the reasons for the call-in of the decision made by the Executive on 09 May 2024 in respect of the Advertising Contract. The report also sets out the powers and role of the Corporate Services and Climate Change Scrutiny Management Committee (Calling-In) in dealing with the call-in.

Background

2. An extract from the Decision Sheet published after the Executive meeting of 09 May 2024 is attached as Appendix 1 to this report. This sets out the decisions taken on the called-in item. The original report to the Executive, together with its annexes, is attached at Appendix 2.
3. The decisions have been called in for review by the Corporate Services and Climate Change Scrutiny Management Committee (Calling-In) by Cllrs Smalley, Hollyer and Knight, in accordance with the Constitutional requirements, and based on the detailed reasoning set out in Appendix 3 attached.

Consultation

4. In accordance with the requirements of the Constitution, the calling-in Members have been invited to attend and/or speak at the calling-in meeting, as appropriate, together with relevant Executive Member(s) and Officer(s).

Options

5. The Committee must follow the practice for dealing with called in business set out in the Scrutiny Procedure Rules in Appendix 5 of the Constitution. After debate and all contributions have been heard, the Chair will invite each Member of the Committee to state whether they

consider the core principles identified in the call-in request (Appendix 3) have been breached or not.

6. In the event of a majority of Members finding no breach, the call-in request will be immediately closed with no further action unless the Committee identifies any areas worthy of future exploration by the scrutiny function.
7. In the event of a majority of Members finding a breach, the called in decision will be referred back in full for further consideration at the next appropriate meeting of the Executive.

Analysis

8. Members need to consider any breach specifically identified in the call-in request in relation to the original report to the Executive and the consequential decision made. As stated in the options identified above, the Chair will then guide the Committee on the constitutional requirements for handling the meeting and culminating in the Committee determining its position on any breaches.

Council Plan

9. Any implications associated with the delivery of Council priorities for 2023-2027 are addressed in the original report to the Executive set out in Appendix 2.

Implications

10. There are no known Financial, HR, Legal, Property, Equalities, or Crime and Disorder implications in relation to handling the call-in of the issue under consideration.

Risk Management

11. There are no risk management implications associated with the call-in of this matter.

Recommendations

12. Members' views are sought on the call-in request and specific breaches identified in Appendix 3.

Reason: To enable the called-in matter to be dealt with efficiently and in accordance with the requirements of the Council's Constitution.

Contact Details

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Chief Officer Responsible for the report:

Bryn Roberts
Director of Governance
Tel: 01904 555385

Report Approved



Date: 21/05/2024

Wards Affected: All

For further information please contact the author of the report

Annexes

Appendix 1 – Extract from the Decision Sheet produced following the Executive Meeting on 09 May 2024, setting out the decisions made on the called-in item.

Appendix 2 – Report of the Assistant Director, Policy and Strategy to the Executive Meeting on 09 May 2024, Advertising Contract.

Appendix 3 – Call in Request from Councillors Smalley, Hollyer and Knight.

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EXTRACT**Executive****Thursday, 9 May 2024****Decisions**

Set out below is a summary of the decisions taken at the Executive meeting held on Thursday, 9 May 2024. The wording used does not necessarily reflect the actual wording that will appear in the minutes.

Members are reminded that, should they wish to call in a decision, notice must be given to Democracy Services no later than 4pm on Thursday, 16 May 2024.

If you have any queries about any matters referred to in this decision sheet please contact Robert Flintoft.

12. Urgent Business - Advertising Contract

Resolved:

- i. Noted the independent market appraisal and the potential revenue opportunities from place-based advertising.

Reason: Understanding the potential value of advertising opportunities across the Council's estate and assets to realise maximum revenues, recognising that by doing so there will be a necessary change from analogue to digital advertising, to keep up with market demand and recognise increased revenue opportunities.

- ii. Approved the additional extension of 12-months to the current concession contract for the supply and maintenance of street furniture with or without advertising with the incumbent supplier commencing on 1st January 2025 and expiring at 23:59:59 GMT on 31st December

2025, to allow a formal competitive exercise to be undertaken and delegate authority to negotiate and conclude the extension in accordance with the terms and conditions of the current concession contract with the incumbent supplier and the Council's Contract Procedure Rules under Appendix 11 of the Council's Constitution (the "**Council's CPRs**") to the Director of Governance in consultation with the Head of Procurement.

Reason: The current bus shelter and digital information board contract was originally meant to expire on 31st December 2023 and is currently now on a 12-month extension as per the current contract mechanism. The contract allows for further extensions to be undertaken and has the provision within the contract to do so (please refer to the Legal Implications and Procurement and Social Value Implications below).

- iii. Approved a formal competitive procurement exercise to be undertaken for a new 15-year (plus 1-year optional extension) concession contract for the provision and maintenance bus shelters with either no advertising, paper adverts or digital adverts, and digital Free-Standing Units on Council land, and delegate authority to the Director of Governance in consultation with the Head of Procurement to commence the procurement exercise via an open, fair and transparent competitive process and evaluation criteria in compliance with the Council's CPRs and (where applicable) the Concession Contract Regulations 2016 (the "**Concession Regs**"), and/or the Procurement Act 2023 which comes into force from 28th October 2024 (the "**Procurement Act**").

Reason: Delays to initiating the competitive procurement exercise has led to financial pressures on the current financial strategy, these will aim to be alleviated through a competitive process, although

until that has concluded it is not possible to confirm to Executive whether these financial pressures remain.

- iv. Delegated authority to the Director of Governance in consultation with the Head of Procurement to negotiate and conclude the new 15-year (plus 1-year optional extension) concession contract for the provision and maintenance bus shelters with either no advertising, paper adverts or digital adverts, and digital Free-Standing Units on Council land , along with authority to negotiate and conclude the provisions of any subsequent modifications and/or extensions thereto post award.

Reason: To finalise a new 15-year (plus 1-year optional extension) contract.

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Meeting:	Executive
Meeting date:	9 th May 2024
Report of:	Claire Foale Assistant Director Policy and Strategy
Portfolio of:	Cllr Katie Lomas Executive Member for Finance, Performance, Major Projects, Human Rights, Equality, and Inclusion

Decision Report: Advertising Contract

Subject of Report

1. The Council has had a concession contract in place for a Concessionaire to provide and maintain bus shelters with either no advertising, paper adverts or digital adverts, and digital Free-Standing Units (**FSUs**) since 15th July 1999, which is due to come to an end on 31st December 2024.
2. During April 2023, the Council conducted an independent market appraisal to understand the value of place-based advertising across the city.
3. The market appraisal provided sufficient information for the Council to conduct a competitive tendering exercise to enter into a contract with a supplier to provide and maintain bus shelters with either no advertising, paper adverts or digital adverts, and digital FSUs, subject to the necessary planning consents.

The market appraisal is commercial in confidence and is to be treated as exempt under Section 100I and paragraph 3 of Schedule 12A of the Local Government Act 1972.

Appendix 2

4. To successfully conduct a competitive tendering exercise, the Council also seeks an extension to the current concession contract with the incumbent supplier for a further 12-months expiring on 31st December 2025. This is to allow a compliant procurement process to be undertaken and for current negotiations to come to a natural end, as well as (where applicable) to allow for the smooth transition from the incumbent supplier to any new supplier. With the appropriate time, a sound procurement strategy will be developed in line with the market appraisal to ensure the procurement is an attractive opportunity for the market.
5. In tandem, the Council has developed an advertising policy and supporting guidance which aims to restrict high fat, salt, or sugar (HFSS) adverts being displayed across the city which will be incorporated into the specification of the new concession contract.

Benefits and Challenges

6. Outdoor advertising in York currently raises around £179k for the Council through a combination of bus shelter adverts, carparks and park and ride, roundabout and boundary signs. The independent Market Appraisal demonstrated there is the potential to increase advertising revenue across a range of formats across the city, with a potential value of “anywhere from £456,000 to £479,000 per annum, an uplift of circa £290k per annum.” This estimate is subject to caveats including planning consent for the installation FSUs, market demand, capacity to grow the offer and appetite in the market.
7. The end of the current bus shelter contract provides an opportunity for York to reshape the specification to maximise the Council’s expectations and requirements. There will be a number of benefits in the range of value-added advertising installations which could include air quality monitors, UK GDPR compliant device counters via publicly available Wi-Fi and dedicated digital advertising space for council events, civic promotion, and messaging (subject to planning consents). In addition, the new concession contract following the competitive tendering exercise will set out clear sustainability expectations and social value additional benefits to the city, such as participating in community projects through the York Community Fund together with restricting the display of HFSS adverts across the advertising on renewal and retenders.

Appendix 2

8. There is a challenge resulting in the move from paper advertising to digital advertising. This is demanded by the market and is prevalent in other heritage and conservation areas, however for York this represents a unique challenge to continue to ensure the character of the city remains intact.
9. Each installation with digital advertising (whether bus shelter or free-standing units) will require planning permission. Furthermore, the digital advertising screens will include auto dim technology, and turned off between 12pm-5am whilst being compliant to the luminance levels stipulated by the planning authority.
10. Exploration of whether it is possible to waive the requirement for a competitive process under the Council's Contract Procedure Rules under Appendix 11 of the Council's Constitution (the "**Council's CPRs**") for a new concession contract, and instead renegotiate with the current provider was presented to Executive on 18th April 2024.

This previous position was based on the information provided by officers to Legal Services and Commercial Procurement, who as result advised that as the estimated turnover for the incumbent supplier under the new concession contract appeared to have been below the relevant procurement threshold under the Concession Contract Regulations 2016 (the "**Concession Regs**"), and/or the Procurement Act 2023 which comes into force from 28th October 2024 (the "**Procurement Act**"), a full competitive tender would not be required under law, and Executive could waive the requirement for such an exercise under the Council's CPRs.

One of the benefits of this approach would have been to meet the budget savings set out in the financial strategy.

However, since Executive met on 18th April 2024, officers have obtained further clarification which has led them to revise their previous assessments/estimates on what the likely turnover for a concessionaire under the new concession contract would be. As a result, Legal Services and Commercial Procurement have now reached the conclusion that the revised estimated turnover for a concessionaire under any new concession contract is likely to exceed the relevant public procurement threshold, and so an open and transparent competitive tender process is now required.

This means the budget savings anticipated in 2023-25 will not be met, introducing additional pressures to existing budgets.

Policy Basis for Decision

11. **Equalities:** The design specification of the bus shelters and free-standing units includes features to better support different communities, including seating across all bus shelters, avoiding blocking visibility, wider walk around widths and energy efficient lighting. The design of replacement bus shelters and free-standing units will be shared with disabled community groups for comment.
12. **Affordability:** The new advertising contract supports the Council's Mid Term Financial Strategy and savings plan.
13. **Climate:** The new contract responds to the Council's ambition to be net zero by 2030. Air quality measures can be added to bus shelters in key locations together with sustainable measures incorporated within the design and maintenance of the refurbished bus shelters and proposed digital FSUs (subject to planning). Conducting a competitive tendering exercise, the Council will be seeking a supplier to minimise emissions associated with demolition, disposal and replacement of the existing shelters and advertising infrastructure. Opportunities for bus shelters and advertising infrastructure to support the ambition for York to be Climate Ready by 2030 should be considered in the design of the units.
14. **Health:** There is a strong body of evidence that suggests restricting advertising to avoid high fat, sugar and salt products better supports resident's healthy weight. The Council has refreshed the advertising policy to incorporate HFSS policy developed by Public Health and partners. Incorporating the Council's advertising policy into any new advertising concession contract, and all place-based advertising contracts going forward, is aligned to both the Council Plan's commitment to reduce health inequalities and provide the best start for children and young people, and the Joint Health and Wellbeing Strategy 2022-2032.

Financial Strategy Implications

15. The current financial strategy already assumes a total of £500k additional income for the Council from advertising, of which £125k was expected in 2023/24, with the balance of £375k expected in 2024/25.
16. Delaying the competitive tender process whilst exploration of the potential for a single tender waiver to deliver budget savings within the time period has now introduced a pressure on the financial strategy that will be carried forward into 2025/26, with the balance now anticipated in 2026/27.
17. Following the Market Appraisal and additional discussions with the incumbent, it is clear York represents a lucrative market for media owners who can meet the requirements of the proposed tender. The gross revenue of media owners from York advertising has meant there is no longer a legal basis for a single tender waiver.

Recommendation and Reasons

18. Executive are invited to:
 - a. Note the independent market appraisal and the potential revenue opportunities from place-based advertising.
 - Understanding the potential value of advertising opportunities across the Council's estate and assets to realise maximum revenues, recognising that by doing so there will be a necessary change from analogue to digital advertising, to keep up with market demand and recognise increased revenue opportunities.
 - b. Approve the additional extension of 12-months to the current concession contract for the supply and maintenance of street furniture with or without advertising with the incumbent supplier commencing on 1st January 2025 and expiring at 23:59:59 GMT on 31st December 2025, to allow a formal competitive exercise to be undertaken and delegate authority to negotiate and conclude the extension in accordance with the terms and conditions of the current concession contract with the incumbent supplier and the Council's Contract Procedure Rules under

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Appendix 11 of the Council's Constitution (the "**Council's CPRs**") to the Director of Governance in consultation with the Head of Procurement.

- The current bus shelter and digital information board contract was originally meant to expire on 31st December 2023 and is currently now on a 12-month extension as per the current contract mechanism. The contract allows for further extensions to be undertaken and has the provision within the contract to do so (please refer to the **Legal Implications** and **Procurement and Social Value Implications** below).
- c. Approve a formal competitive procurement exercise to be undertaken for a new 15-year (plus 1-year optional extension) concession contract for the provision and maintenance bus shelters with either no advertising, paper adverts or digital adverts, and digital Free-Standing Units on Council land, and delegate authority to the Director of Governance in consultation with the Head of Procurement to commence the procurement exercise via an open, fair and transparent competitive process and evaluation criteria in compliance with the Council's CPRs and (where applicable) the Concession Contract Regulations 2016 (the "**Concession Regs**"), and/or the Procurement Act 2023 which comes into force from 28th October 2024 (the "**Procurement Act**").
- Delays to initiating the competitive procurement exercise has led to financial pressures on the current financial strategy, these will aim to be alleviated through a competitive process, although until that has concluded it is not possible to confirm to Executive whether these financial pressures remain.
- d. Delegate authority to the Director of Governance in consultation with the Head of Procurement to negotiate and conclude the new 15-year (plus 1-year optional extension) concession contract for the provision and maintenance bus shelters with either no advertising, paper adverts or digital adverts, and digital Free-Standing Units on Council land, along with authority to negotiate and conclude the provisions of any subsequent modifications and/or extensions thereto post award.

Background

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19. The Financial Strategy 2023/24 - 2027/28 approved by Council in February 2023 notes additional income from advertising contracts of £125k in 2023/24 and £375k in 2024/25.
20. The Council currently generates revenue from advertising from bus-shelters and other formats (boundary signs, roundabouts, car parks), totalling around £179k per year.
21. The current bus shelter contract is with JC Decaux UK and has been in place since 15th July 1999 and is currently due to expire on 31st December 2024 This report only considers the bus shelter contract, noting not all bus shelters are managed through this contract.
22. To understand the potential value of advertising contracts, the council commissioned an independent market appraisal to better understand income generation opportunities from small and large format out of home media, with options that are deliverable and with 'the estimated value of their recommendations.'
23. *The Advertising and sponsorship income generation feasibility study and audit report* (the market appraisal) was produced independently and identifies several possible new and or enhanced revenue streams for the Council from commercial advertising and sponsorship. Council income from place-based advertising could be increased to around £456k-£478k per annum (subject to planning consents) through a combination of:
 - a. Re-tendering the bus-shelter concession contract to include free-standing digital advertising and information units (**FSUs**).
 - b. Tendering new large format out of home advertising displays (billboards), primarily digital, with both rental and percentage share income.
 - c. Add to the commercial value of sponsored roundabouts and boundary signs along with advertising displays in carparks and park & rides, either through engagement with the current supplier or through a tender exercise.

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24. In addition, an independent report issued in March 2024 by ¹KPMG and Outsmart explored sustainability comparisons between advertising channels and noted:
- a. Per impression out of home emits less carbon than all other media measured.
 - b. Out of home is 3.3% of advertising power consumption and less than 3.5% of advertising carbon footprint.
 - c. Control over the supply chain and end to end operations means out of home advertising media owners directly improve sustainability more easily than other advertising channels.
 - d. Out of home is a more sustainable advertising platform for brands than other media types.

Bus shelter and FSU concession contract

25. The Financial Strategy 2023/24 - 2027/28 approved by Council in February 2024 notes additional income from advertising contracts of £125k in 2023/24 and £375k in 2024/25.
26. JC Decaux UK Limited (**JC Decaux**) currently holds the concession contract for providing and maintaining bus shelters across the Council's geography. Although they are not the only provider of bus shelters, they own 142 bus shelters (of which 80 include paper advertising). The concession contract with JC Decaux was extended for 12-months on 20th December 2023 from 1st January 2024 and up to and including 31st December 2024. There are other bus shelters managed outside of this concession contract, which do not feature advertising.
27. A new concession contract for the provision and maintenance of bus shelters with either no advertising, paper adverts or digital adverts, and digital FSUs therefore needs to be commissioned and in place for when the current concession contract with JC Decaux expires.

[OOH is just 3.3% of UK Advertising's Power Consumption & under 3.5% of its Carbon Footprint - New Report \(outsmart.org.uk\)](https://outsmart.org.uk)

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An initial exploration as to whether it would be possible under the Council's CPRs to waive the requirement for a competitive tender and instead directly negotiate a new contract with the incumbent supplier, JCDecaux, was presented to Executive on 18th April 2024. This previous position was based on the information provided by officers to Legal Services and Commercial Procurement, who as result advised that as the estimated turnover for the incumbent supplier under the new concession contract appeared to have been below the relevant procurement threshold under Concession Regs, and/or the Procurement Act, a full competitive tender would not be required under law, and Executive could waive the requirement for such an exercise under the Council's CPRs.

Since then, however, officers have obtained further clarification which has led them to revise their previous assessments/estimates on what the likely turnover for a concessionaire under the new concession contract would be. As a result, Legal Services and Commercial Procurement have now reached the conclusion that the revised estimated turnover for a concessionaire under any new concession contract is likely to exceed the relevant public procurement threshold, and so an open and transparent competitive tender process is now required.

Therefore, the Council can no longer proceed at this time with the previously proposed waiver of the Council's CPRs or direct negotiations with the incumbent.

28. Subject to planning consents, the new concession contract will need to make provision for internally illuminated and digital advertising and non-advertising bus shelters, together with FSUs.
29. If digital advertising is not supported, the independent market appraisal has made clear the market will not be interested in entering into a new concession contract as it will no longer be commercially viable and will likely produce a failed procurement.
30. As a result, this could expose the Council to having to develop and maintain its own Bus Shelter estate at an initial fee of around £1.4m in Capex (asset, foundations, installation, power connection) as well as an ongoing annual operational costs of around £200k considering electricity costs, business rates and associated cleaning and maintenance costs.

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31. On expiry of the current contract in December 2025, should the incumbent, JC Decaux UK, be unsuccessful in the competitive tender process, all street furniture, including bus shelters, belonging to the incumbent will be removed with potential disruption to the service whilst new shelters with a new provider are installed. An extension to the current contract has been arranged to allow for a smooth transition, although the risk of service disruption remains.
32. The new concession contract will provide the Council with an annual revenue comprised of a minimum guarantee and profit share. Subject to contract and planning for digital advertising, the Council anticipates that it will see an increase in income from the previous concession contract, partially as a result of a move to digital which is more lucrative for the market (subject to planning) and partially because the current contract was negotiated nearly 20-years ago.
33. The value of the proposed concession, which is subject to contract and planning approval for digital advertising, is based on both the resident population and the high number and high value of the visitor economy which is extremely attractive to advertisers, benefiting the council indirectly through increased revenue. The value of York place-based advertising to the market as result of the visitor economy is lucrative with York seen as an essential part of the advertising landscape, with the Council potentially being in a strong position to negotiate through the competitive tender process.
34. The addition of digital adverts is a market requirement. Digital advertising both increases revenue to the Council and provides the Council with the opportunity of advertising its own information, with complete autonomy to promote Council messaging and events, at the time the Council wants, and to the audience that is most appropriate.
35. The construction and maintenance of bus shelters has changed since the existing contract was first negotiated and entered into in 1999. Sustainability measures will be included within the new specification and concession contract. These will include (but may not be limited to):
 - a. Lighting should be LED.
 - b. Energy from 100% renewable sources certified via private meter connection (solar on-site has been discounted due to

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the variable conditions, with only 18% energy at most which cannot power the full unit, leading to reliance on grid provision).

- c. 100% electric fleet for maintenance crews.
 - d. Rainwater collated for cleaning where feasible.
 - e. Recycled or upcycled production and maintenance.
 - f. Community biodiversity initiatives.
 - g. Monitor and minimise embedded carbon, contributing to the Council's annual emission reporting.
36. In addition, following discussion with the Local Planning Authority, illuminated panels will have restricted luminance levels as set by the Local Planning Authority, to reduce both visual impact and keep emissions low. This is similar to the current illuminated advertising panels that are set by the Local Planning Authority.
37. Maintenance of the bus shelters will be included in the new concession contract. Response times are to remain the same, with a slight enhancement. The specification for the competitive tender will invite potential suppliers to offer residents and officers the ability to report issues easily and directly to the supplier to arrange timely responses to faults reported. Response times of maintenance issues are listed below, through the competitive tender these will be set as the minimum expectation:
- a. all items shall be cleaned at least once a fortnight throughout the year - including sides and clear roofs;
 - b. graffiti and fly posters shall be removed within one working day of the supplier becoming aware or being notified;
 - c. offensive graffiti shall be removed within four (4) Normal Working Hours of the supplier becoming aware or being notified;
 - d. routine repairs shall be carried out within 2-working days of the supplier becoming aware or being notified of the fault;

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- e. Brandsabotage/Brandalism - on notification the supplier shall replace within a day.
38. The design of the bus shelters will include provision to include air quality sensors for the council's Air Quality Team to consider, free public Wi-Fi, together with sustainability measures above. The Yorkshire Rose will be added to the design of bus shelters and FSUs to be consistent with street furniture installed across the city, which is currently included on the wayfinding signage across the city centre. Any new design will be subject to internal approval.
39. The design includes requirements such as ensuring advertising improves visibility for approaching buses.
40. Executive are therefore invited to endorse the procurement of a new 15-year (plus 1-year optional extension) concession contract, and endorse a 12-month extension of the incumbent concession contract to allow time for a compliant tender exercise to take place, and delegate authority to conduct a procurement exercise and to negotiate and conclude the terms and conditions of a new concession contract (as well negotiate and conclude the provisions of any subsequent modifications and/or extensions thereto post award) to the Director of Governance and the Head of Procurement.
41. The Council will develop the other place-based advertising opportunities identified in the independent market appraisal when appropriate, with Executive subsequently invited to endorse any future contracts.

Consultation Analysis

42. An internal group including Communications, Planning, Regeneration and Highways was convened to inform the development of the market appraisal and the specification and requirements for the new concession contract.
43. An independent consultation with key stakeholders was conducted by Fortuna who produced the market appraisal. Responses from key stakeholders covering conservation and the city are included against the advertising 'opportunities' in the *Advertising and sponsorship income generation feasibility study and audit report*.

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44. The budget consultation focus groups conducted throughout December 2023 and January 2024 highlighted that residents are comfortable raising additional income from tourists. Although indirectly, because the revenue share of the new concession contract is predicated on York's high value, high volume visitor economy, the Council can attract a higher income than other places.
45. Following Executive on 18th April 2024, discussions with the incumbent supplier, JC Decaux, brought further information to light about the value of the place-based advertising contract to the market which has led to the revised recommendations set out in this paper for Executive consideration.

Options Analysis and Evidential Basis

46. There are only two options presented today:
 1. Accept the recommendations above and:
 - a. progress with the extension to the incumbent supplier for a maximum of 12-months to allow a procurement exercise to be undertaken; and
 - b. approve officers to undertake a competitive tendering exercise and award of a new 15-year (plus 1-year optional extension) concession contract for the provision and maintenance bus shelters with either no advertising, paper adverts or digital adverts, and digital FSUs on Council land and delegate authority to negotiate and conclude the new concession contract to the Director of Governance in consultation with the Head of Procurement (as well as authority to negotiate and conclude the terms and conditions of any modifications and/or extensions to the new concession contract post award).
 2. Reject the recommendations and invite officers to explore a business case for the Council to instead own and maintain bus shelters, running the advertising sales and securing additional Council income.
47. Proceeding with Option 2 above would introduce an additional pressure to cover both the capital expenditure for the new bus

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shelters, together with a maintenance contract of around £200k per year, and additional capacity to run bus shelter installation, maintenance, and movements into the Council. Such assets would have to be managed by the Council, which would also mean that the Council would be wholly responsible for all advertising sales. Advertising revenue from media sales could be lucrative, however media buyers typically buy space across the country, rather than in individual towns or cities, with two media owners having 98% of the national market. Further, this approach relies upon the Council being able to sell enough advertising space to cover cleaning, maintenance, and upgrade costs. The Council would have 100% responsibility to sell advertising space to generate revenue, therefore the risk would be greater. The Council will also be responsible for all damages and repairs required within the network. If revenue falls, the Council could be vulnerable.

48. It is the recommendation of this paper that the Executive approve Option 1 above.

Organisational Impact and Implications

49. Financial

The current level of income generated by place-based advertising is c£179k and, as outlined elsewhere in the report, total savings of £500k was approved for 2023/24 and 2024/25.

This new concession contract will provide the council with an annual revenue comprised of a minimum guarantee and profit share. However, by moving from direct negotiations with the incumbent supplier to an open tender exercise, a budget pressure has been introduced to the current financial strategy, with savings from the bus shelter contract not now expected until 2025/26, meaning that additional mitigating savings will need to be identified. Future finance and performance monitoring reports will consider this pressure, alongside the other Council wide budget pressures.

The new bus shelter concession contract would mitigate additional Council expenditure by providing the bus shelters and bus shelter maintenance (see **Financial Risks**).

50. Human Resources

Should there be additional resources required to undertake aspects of these projects, consideration should be taken to assess and possibly re-prioritise existing resources or seek short term additional capacity. All options will be considered in line with the current financial climate and HR processes.

51. Legal

Powers: The Council has power under the general power of competence under section 1(1) of Localism Act 2011 to raise income through outdoor advertising.

By virtue of section 9D of the Local Government Act 2000 any function of the Council is the responsibility of the Executive unless there is a contrary intention expressed in legislation. There is nothing in the Concession Regs referred to below (see **Procurement and Contract Law Implications** below) or the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 that indicate that proposed concession contract is not to be a matter for Executive.

Further to Rules 8.10 and 11.7 of the Council's CPRs, where the aggregate contract value (including any extension) of any concession contract exceeds £500,000, the decision will be regarded as a Key Decision reserved to Executive, unless the Chief Finance Officer acting in consultation with the Monitoring Officer has approved the procurement as Routine.

Given the subject matter of the proposed concession contract referred to in this paper, it is the view of Legal Services that the procurement of the proposed concession contract for the provision and maintenance of bus shelters with either no advertising, paper adverts or digital adverts, and digital FSUs referred to in this paper would not be considered to be a routine procurement under Rules 8.11 and 8.12 of the Council's CPRs, as it does not relate to any core administrative, infrastructure or business functions of the Council.

Any Key Decision (and any decision as to whether a matter should be considered a Key Decision) is subject to Call-In.

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Specific Legislation: Further to section 4 of Local Government (Miscellaneous Provisions) Act 1953, the Council can provide and maintain bus shelters on highways it is the highway authority for, and on land it owns abutting such highways, and may also enter into and carry into effect any agreement with any other party with respect to the provision and maintenance of shelters.

The Council is also able to allow a bus shelter provider to advertise on the highway, pursuant to the New Roads and Street Works Act 1991.

Outdoor advertising is also subject to a legal control system predominantly contained in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. Consents would need to be in place before any advertising commences. Where a local authority seeks planning consent from itself, there is a mechanism in place to maintain probity.

Guidance: Following an Office of Fair-Trading investigation, non-statutory guidance was issued in 2012 entitled “*Street furniture advertising: Recommendations to Local Authorities*”. This focuses on ways Local Authorities might procure street furniture advertising in future to encourage greater competition. It highlights the risks of long duration contracts and recommends Local Authorities separate out contracts for installing and maintaining street furniture from contracts to advertise on that street furniture. It also recommends that Local Authorities tender out contracts which come to the end of their current term, rather than simply renegotiating an extension with the incumbent provider for reasons of transparency and encouraging new entrants.

Procurement and Contract Law Implications:

a) Extending the current concession contract

The current concession contract with JC Decaux allows for the parties to extend the term of the contract by successive periods of 1-year each, subject to the mutual written agreement of the parties.

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Legal Services must be consulted with regards to the drafting on any such extension to ensure that the correct procedure under the contract is followed.

Failure to extend the contract in this way will result in the expiry of the contract and disruption to local services (see ***Implications of not proceeding with extension and reprocurement*** below).

b) Procurement of a new concession contract

Based upon previous information provided to both Legal Services and Commercial Procurement, it had been advised that the Council could enter into direct negotiations with the incumbent supplier for a new concession contract without engaging with the market. This was why a previous waiver of the Council's CPRs further to Rule 26.1 of the CPRs was sought from Executive.

However, based upon new recent information provided to Council by the incumbent supplier, it is now understood by both Legal Services and Commercial Procurement that the likely turnover (net of VAT) of any new supplier for the entire duration of any new concession contract (including any extensions thereto) will exceed the current procurement threshold for public concession contracts as calculated under Regulation 9(3) of the Concession Regs (i.e., £5,372,609 including VAT). As such, any new concession contract must be commissioned via an open and compliant procurement route under (where applicable) the Council's CPRs and the Concession Regs (and from 28th October 2024 the Procurement Act – but only if the procurement had not started by that time), with advice from the Commercial Procurement team (see **Procurement and Social Value Implications** below).

The successful bidder will be expected to (*inter-alia*) to provide, install, and take on maintenance responsibilities of the advertising bus shelters and digital FSUs, and to offer a concession fee, in return for the advertising/sponsorship income that it can generate. The commercial risk will rest with the supplier, so this is why any new contract would be treated as a concession contract (rather than a services contract) for public procurement purposes.

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An appropriate form of concession contract will therefore need to be drafted and completed with support from Legal Services. One should note that under the Concession Regs, a duration of 5-years should only be exceeded in a concession contract should a longer period be necessary in order to allow the concessionaire to recoup its investment, together with a return-on-investment capital. This will need to be factored into the drafting of both the new concession contract and the Council's service specification/requirements.

Advice should also be sought from Legal Services with regards to any exit and/or handover provisions in the current contract with JC Decaux. In particular, as all the bus shelters, street furniture and equipment under the current concession contract belong to JC Decaux, any change in supplier would also necessitate the additional costs of procuring and installing temporary bus shelters and equipment while the current provider removes all of their assets and any new provider installs theirs, as well as address potential TUPE and pension implications in relation to the relevant transfer of any JC Decaux UK staff to the Council or any replacement supplier, all of which would require further advice from Legal Services.

c) Implications of not proceeding with extension and reprocurement

If the Executive decide not to proceed with the extension of the current contract with JC Decaux and/or the procurement of a new concession contract, this will mean the current concession contract will expire on 31st December 2024.

As all the bus shelters, street furniture and equipment under the current concession contract belong to JC Decaux, expiry of the current concession contract would also necessitate the removal of all relevant bus shelters and street furniture from Council land and the additional costs of procuring and installing new bus shelters and relevant street furniture in line with the Council's CPRs and (where applicable) the Public Contract Regulations 2015, the Concession Regs and/or Procurement Act. It is highly likely that such assets would have to be managed by the Council itself, which would also mean that the

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Council would be wholly responsible for all advertising sales and all cleaning and maintenance of any bus shelters and other relevant street furniture. This approach relies on the Council being able to sell enough advertising space to cover cleaning, maintenance, and upgrade costs. The Council would also have 100% responsibility to sell advertising space to generate revenue, therefore the risk would be greater. The Council will be responsible for all damages and repairs required within the network. If revenue falls, the Council could be vulnerable.

In addition, expiry of the current contract without a replacement concession contract may result in potential TUPE and pension implications in relation to the relevant transfer of any JC Decaux UK staff to the Council, all of which would require further advice from Legal Services.

52. Procurement and Social Value

Any proposed extension will need to be carried out as per the provision within the current contract. Both Commercial Procurement and Legal Services must be consulted prior to the extension being entered into.

As this report is covering the advertising requirement, this is a concession contract and subsequently, any new concession contract must be commissioned via a compliant procurement route under the Council's Contract Procedure Rules and where applicable, the Concession Regs, and from 28th October 2024 the Procurement Act 2023 and any successor, amending or enabling legislation implemented to govern the award of public contracts.

All tenders will need to be conducted in an open, fair, and transparent way to capture the key principles of procurement. Further advice regarding the procurement routes, strategies and markets must be sought from the Commercial Procurement team.

The Social Value Act came into force January 2013 which requires all public sector bodies to adhere to. In June 2018, Central Government announced Social Value would then be an element within the procurement and contract that would be evaluated when awarding major projects. This is now the protocol the Council takes on spend and projects with a value of £100k +.

Social Value will be a requirement within this procurement and as such, the requests made by officers in the tender documentation must meet the council's priorities and commitments made in the Council Plan.

53. **Health and Wellbeing**

The inclusion of the HFSS policy drawn up by CYC in any new concession contract for the bus shelter and FSU advertising will improve the long-term health impacts and nutritional benefits of food advertised to York residents and will therefore be a net health gain for the city.

54. **Environment and Climate action**

Through the competitive tender process, bidders should be assessed on their understanding of the main sources of emissions associated with the contract and their plans to minimise these emissions, along with the potential climate adaptation measures and associated benefits.

Potential climate change implications associated with this contract include:

- i. embodied emissions associated with the materials, construction, and installation of new infrastructure;
- ii. operational emissions from energy consumption associated with digital advertising;
- iii. emissions associated with the disposal of old and new infrastructure; and
- iv. risks and opportunities for climate adaptation (e.g., resilience to higher temperatures and extreme weather events).

The sustainability requirements incorporated within the specification will address the majority of these implications (see paragraph 35 of this paper above), and it is recommended that consideration is also given to:

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- a. Assessment of embodied carbon associated with installed infrastructure and construction work;
- b. materials are future-proofed for climate adaptation; and
- c. following the waste hierarchy for removal/disposal.

55. **Affordability**

The council will have 10% of all advertising time, allowing it to provide messages direct to specific groups, including carers, or low-income groups, to promote council services that could better support.

56. **Equalities and Human Rights**

The Council 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).

The Equality Impact Assessment (**EIA**) **Annex A** notes the impact the advertising and street furniture could have on protected characteristics, see below summary.

- Age – Children are particularly vulnerable to advertising content, with the HFSS policy aimed at mitigating the risk of choosing unhealthy food or drink
- Disability – disabled residents have shared concerns about the current bus shelters in the Local Transport Strategy and these concerns form part of the specification for new designs, with testing to be offered to disabled community groups
- Gender – All advertising must comply to ASA guidelines.
- Gender reassignment – All advertising must comply to ASA guidelines.
- Marriage and civil partnership – no impact

- Pregnancy and maternity – no impact
- Race - – All advertising must comply to ASA guidelines.
- Religion and belief – All advertising must comply to ASA guidelines.
- Sexual orientation - All advertising must comply to ASA guidelines.
- Other socio-economic groups including:
 - Carer – no impact, the council will have advertising space on digital advertising units and can promote messages direct to the carer community (see Disability);
 - Low-income groups – no impact, the council will have advertising space on digital advertising units and can promote messages direct to low-income groups;
 - Veterans, Armed Forces Community – no impact, the council will have advertising space on digital advertising units and can promote messages direct to the community.

57. **Data Protection and Privacy**

Data protection impact assessments (**DPIAs**) are an essential part of our accountability obligations and is a legal requirement for any type of processing under UK data protection and privacy legislation. Failure to carry out a DPIA when required may leave the council open to enforcement action, including monetary penalties or fines.

DPIAs helps us to assess and demonstrate how we comply with all of our data protection obligations. It does not have to eradicate all risks but should help to minimise and determine whether the level of risk is acceptable in the circumstances, considering the benefits of what the council wants to achieve.

The DPIA screening questions were completed for this report and as there is no personal data being processed for the options set out in this report, there is no requirement to complete a DPIA. This will be reviewed where required following the decision on this report.

58. **Communications**

There are unlikely to be any implications of this report for the Communications Service, except to deal reactively with any media enquiries which may result.

59. **Economy**

No impact.

Risks and Mitigations

60. The opportunities for income uplift through advertising revenue, are not insignificant, which go some way towards mitigating the risks outlined below:

a. **Market acceptance risk** The Out of Home Advertising market is no longer developing 100% paper advertising given the increasing move to Digital which now represents 75% of revenue. As such, there is a risk that if digital advertising is not supported, the market will not be interested in entering into a new 15yr term for the development of paper display shelters as the contract will no longer be commercially viable.

b. **Financial risks** relate to:

- i. additional financial pressure on current year's budget as a consequence of delaying the competitive tender (outlined above);
- ii. retention of the current level of income; and
- iii. failure to realise the opportunities for increased income as described.

If the contract does not go forward, this could expose the Council to having to develop and maintain its own Bus Shelter estate at an initial fee of around £1.4m in Capex (asset, foundations, installation, power connection) as well as an ongoing annual operational costs of around £250k-£300k considering electricity costs, business rates and associated cleaning and maintenance costs.

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- c. **Installation risks** relate to whether as a Local Planning Authority, and constraints imposed by conservation areas, the ability to switch from paper to digital is possible, with the risk that revenue is compromised.
- d. **Reputationally** although the digital advertising units have been tested and are designed to be no more obtrusive than existing bus shelter advertising units, residents might not support them and will make representations through Planning. Resident engagement will take place once the installation plan has been completed.

Wards Impacted

All.

Contact details

For further information please contact the authors of this Decision Report.

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Report approved:	Yes
Date:	13 March 2024

Specialist officers

Head of Procurement
 Head of Legal
 Monitoring Officer

Background papers

Executive February 2024 Financial Strategy 23/24-27/28 Savings
[Agenda for Council on Thursday, 22 February 2024, 6.30 pm \(york.gov.uk\)](#)

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Executive April 2024 considers initial recommendations for a single tender waiver [Agenda for Executive on Thursday, 18 April 2024, 5.30 pm \(york.gov.uk\)](#) item 115

Annexes

Annex A Equalities Impact Assessment

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City of York Council
Equalities Impact Assessment

Who is submitting the proposal?

Directorate:	Governance		
Service Area:	Policy and Strategy		
Name of the proposal :	Advertising Contract		
Lead officer:	Claire Foale		
Date assessment completed:	May 2024 (updated from March 2024) https://democracy.york.gov.uk/documents/s175864/Annex%20C%20Equalities%20Impact%20Assessment.pdf		
Names of those who contributed to the assessment:			
Name	Job title	Organisation	Area of expertise
David Smith	Access Officer	CYC	Access
Laura Williams	AD Communities and Equalities	CYC	Equalities
Michael Howard	Head of Highways and Transport	CYC	Highways
Olly Willmore	Regional Director	JCDecaux UK	Bus Shelter and Digital Free-Standing Units – current incumbent

Step 1 – Aims and intended outcomes

<p>1.1</p>	<p>What is the purpose of the proposal?</p> <p>The proposal is to approve a new 15-year contract + 12 month extension for place-based advertising on Bus Shelter and Digital Free-Standing Units (subject to planning consents)</p>
<p>1.2</p>	<p>Are there any external considerations? (Legislation/government directive/codes of practice etc.)</p> <p>Out of home (OOH) advertising is covered by the Town and Country Planning (Control of Advertising) Regulations 2007 and amendment 2021 https://www.legislation.gov.uk/ukxi/2021/617/contents/made ; The UK Code of Non-broadcast Advertising (ASA) ; and the Code of Recommended Practice on Local Authority Publicity 2011. Advert content is covered by:</p> <ul style="list-style-type: none"> • <u>Consumer Protection from Unfair Trading Regulations, 2008</u> • <u>The Calorie Labelling (Out of Home Sector) (England) Regulations, 2021</u> • <u>The Soft Drinks Industry Levy Regulations, 2018</u> • <u>The Food (Promotion and Placement) (England) Regulations 2021</u> • Restrictions on multi-buy deals (due October 2023) • Restrictions on advertising on TV and online (due January 2024) • <u>Consumer Protection from Unfair Trading Regulations 2008</u>, <p>By the time the new contract is established, the new Procurement Bill 2023 and Procurement Regulations 2024 will have been enacted. Transforming Public Procurement - GOV.UK (www.gov.uk)</p>

1.3	<p>Who are the stakeholders and what are their interests?</p> <p>Residents, commuters, businesses – who view the advertising, or purchase advertising space and/or use the bus network and bus shelters</p>
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1.4	<p>What results/outcomes do we want to achieve and for whom?</p> <ul style="list-style-type: none"> • Modern, accessible and sustainable bus shelters and Digital Free-Standing Units – improved / high standard street furniture • Continued, high standard maintenance & cleaning regime of the bus shelters and Digital Free-Standing Unit estate • Increase in revenue from place-based advertising due to digitisation • Increase Council’s time on screen on Digital Bus Shelters and Free-Standing Units to promote messaging and civic events • Partnership to promote social benefit – social value activity including: biodiversity initiatives and support of the York Community Fund
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Step 2 – Gathering the information and feedback

2.1	What sources of data, evidence and consultation feedback do we have to help us understand the impact of the proposal on equality rights and human rights?	
Source of data/supporting evidence	Reason for using	
A range of national evidence has been used to inform the development of the proposal and advertising policy including national/international best practice.	Place based advertising is informed by data and evidence which informed the Town and Country Planning (Control of Advertising) regulations.	
Budget consultation 2022 and 2023	Residents indicated they would be comfortable with the council seeking increased revenue from tourists	
Local Transport Consultation and Blue Badge Access Consultation	How disabled people move through the city, and understanding the barriers they face has helped inform the contract specifications.	

Step 3 – Gaps in data and knowledge

3.1	What are the main gaps in information and understanding of the impact of your proposal? Please indicate how any gaps will be dealt with.	
Gaps in data or knowledge		Action to deal with this
The view of different people with different protected characteristics.		Feedback will continue to be collated and inform the regular review of the contract and advertising policy.
The views of residents in the development of this proposal.		Feedback will continue to be collated and inform the regular review of the contract and advertising policy.

Step 4 – Analysing the impacts or effects.

4.1	<p>Please consider what the evidence tells you about the likely impact (positive or negative) on people sharing a protected characteristic, i.e. how significant could the impacts be if we did not make any adjustments? Remember the duty is also positive – so please identify where the proposal offers opportunities to promote equality and/or foster good relations.</p>		
Equality Groups and Human Rights.	Key Findings/Impacts	Positive (+) Negative (-) Neutral (0)	High (H) Medium (M) Low (L)
Age	<p>Evidence suggests that children are more likely to be influenced by advertising. The refreshed advertising policy and ban on HFSS adverts on bus shelters and free standing units will mitigate risks.</p> <p>Advertising copy must comply with ASA Guidelines and CYC’s Advertising Policy.</p>	+	M
Disability	<p>The bus shelter design will include provision for more space to support greater accessibility through the city, and seating in all bus shelters. The design of the bus shelter will be tested with community groups prior to approval. Bus timetabling has been highlighted as an issue which is being explored through the Enhanced Bus Partnership task and finish group.</p> <p>All bus shelters and digital free-standing units are subject to planning consents which would mitigate the risk of inaccessibility becoming an issue.</p>	0 +	L L

	Advertising copy must comply with ASA Guidelines and CYC's Advertising Policy.		
Gender	Advertising copy must comply with ASA Guidelines and CYC's Advertising Policy.	-	-
Gender Reassignment	Advertising copy must comply with ASA Guidelines and CYC's Advertising Policy.	-	-
Marriage and civil partnership	Advertising copy must comply with ASA Guidelines and CYC's Advertising Policy.		
Pregnancy and maternity	The carbon emissions and digital frequencies emitted from digital advertising does not have an impact on children/maternity.	0	L
	Advertising copy must comply with ASA Guidelines and CYC's Advertising Policy.	+	L
Race	Advertising copy must comply with ASA Guidelines and CYC's Advertising Policy.	-	L
Religion and belief	Advertising copy must comply with ASA Guidelines and CYC's Advertising Policy.	0	L
Sexual orientation	Advertising copy must comply with ASA Guidelines and CYC's Advertising Policy.	-	L
Other Socio-economic groups including :	Could other socio-economic groups be affected e.g. carers, ex-offenders, low incomes?		
Carer	The council will have a% of all advertising time, allowing it to provide messages direct to specific groups, including carers, or low income groups, to promote council services that could better support.	0	L

Low income groups	The council will have a% of all advertising time, allowing it to provide messages direct to specific groups, including carers, or low income groups, to promote council services that could better support.	0 -	L L
Veterans, Armed Forces Community	The council will have a% of all advertising time, allowing it to provide messages direct to specific groups, including to promote council services that could better support.	0	L
Other			
Impact on human rights:			
List any human rights impacted.	none	0	-

Step 5 - Mitigating adverse impacts and maximising positive impacts

5.1	Based on your findings, explain ways you plan to mitigate any unlawful prohibited conduct or unwanted adverse impact. Where positive impacts have been identified, what is been done to optimise opportunities to advance equality or foster good relations?
<p>Residents and businesses will be able to continue to inform the annual review of the advertising contract and keep the council informed about any issues or changes required.</p> <p>The design of the bus shelters will be tested with the disabled community. Accessible timetabling is being explored through the Enhanced Bus Partnership task and finish group.</p>	

Step 6 – Recommendations and conclusions of the assessment

6.1	Having considered the potential or actual impacts you should be in a position to make an informed judgement on what should be done. In all cases, document your reasoning that justifies your decision. There are four main options you can take:
<p>- No major change to the proposal – the EIA demonstrates the proposal is robust. There is no potential for unlawful discrimination or adverse impact and you have taken all opportunities to advance equality and foster good relations, subject to continuing monitor and review.</p>	

Step 7 – Summary of agreed actions resulting from the assessment

7.1	What action, by whom, will be undertaken as a result of the impact assessment.		
Impact/issue	Action to be taken	Person responsible	Timescale
Resident and business feedback	Promote how residents and businesses can inform the annual review of the contract	Claire Foale	ongoing
Bus shelter design	Set out how the bus shelters meet space and accessibility arrangements	New provider	September 2025. Planning applications to be submitted post contract completion.
Free Standing Unit design	Set out the space and accessibility arrangements in the design	New provider	When submitting planning applications. Post contract completion.
Advertising risk to children	Incorporate the new advertising policy and HFSS guidance in the specification as part of the contract	Claire Foale	July 2024

Step 8 - Monitor, review and improve

8. 1	How will the impact of your proposal be monitored and improved upon going forward? Consider how will you identify the impact of activities on protected characteristics and other marginalised groups going forward? How will any learning and enhancements be capitalised on and embedded?
	The contract will be reviewed annually, with quarterly progress meetings. The above points will be covered in the annual meeting.

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

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Call-in Request Form

This form must be completed and signed by THREE City of York Councillors and MUST be returned to Democratic Services within 5 working days of the decision being published (not including the day of publication).

Decision taker:	Executive
Date of publication of decision:	09/05/24
Title of Decision Called in:	Advertising Contract
Date Decision Called in:	14/05/2024

	REASONS FOR CALL-IN	Tick which reason applies
1.	Decision contrary to the policy framework?	
2.	Decision contrary to or not wholly consistent with the budget?	
3.	Decision is Key but it has not been dealt with in accordance with the Council's Constitution.	
4.	Decision does not follow principles of good decision-making set out in Article 7 of the Council's Constitution.	x
	If reason 4, please tick which specific element of Article 7 the decision maker has not followed, did he or she not:	
a)	Meaningfully consider all alternatives and, where reasonably possible, consider the views of the public.	x
b)	Understand and keep to the legal requirements regulating their power to make decisions.	
c)	Take account of all relevant matters, both in general and specific, and ignore any irrelevant matters.	x
d)	Act wholly for proper purpose and/or in the interests of the public.	
e)	Keep to the rules relating to local government finance.	
f)	Follow procedures correctly and be fair.	
g)	Make sure they are properly authorised to make the decisions.	
h)	Take appropriate professional advice from Officers.	

Detailed Reason(s) for Call-in.

Please explain below why one of the reasons for call-in applies (e.g. for number 1- which major policy affected and how/why).

PLEASE NOTE: *If you wish to produce and rely on significant supplementary, external evidence in support of your reasons for this call-in it must be provided to Democratic Services prior to the publication of the agenda. It will not be permissible to introduce and rely upon evident at the meeting without it being subject to prior circulation unless by consent of the Chair.*

4c – The report did not set out the difficulties that previous applicants that have applied for free standing digital advertising boards have had in getting their applications approved by the planning department. Therefore, the level of additional advertising revenue that would be achieved in this circumstance was not taken account for when this decision was made.

- No consideration for the reputational risk of the City of York Council and it's relationship with key stakeholders in the city (such as manufacturing and tourism stakeholders).

4a – No consultation has taken place with the public with that they would like to see be included in a long-term contract to deliver bus shelters in York; including no commitment to replace glass planes with plexiglass, increase the frequency of graffiti removal. No joined up approach with Parish Councils that have responsibility for some other bus shelters.

	Name (please print)	Signature (<i>please note that signatures will not be published with the agenda. Electronic signature will be accepted</i>)	Date
1.	Darryl Smalley	D Smalley	14/05/24
2.	Andrew Hollyer	A Hollyer	14/05/24
3.	Emilie Knight	E Knight	14/05/24

For office use only:

Received on behalf of the Monitoring Officer by: (signature)

Name: Jane Meller

Date: 14/05/24

Time: 15:47

Validation check (if necessary):

Monitoring Officer / ~~Chief Operating Officer~~

Valid: YES / ~~NO~~

Reason: The stated reasons for call-in may give rise to arguable grounds for the reconsideration of the decision by Executive.

Completed by:



Date: 15/5/2024

Time: 13:30