
Executive

20 May, 2021

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

The Council's contract with Make it York

Introduction

1. This paper sets out the service specific requirements for a new contract to be entered into between the council and Make it York (MIY) for the period 2021-24.

Recommendations

2. The Executive is asked to:
 - Note the consultation that has been undertaken with businesses and other stakeholder groups;
 - Agree the changes to the Memorandum and Articles of Association as set out in paragraph 16 and Annex C and authorise the Director of Governance to prepare the necessary shareholder resolutions and carry out any action needed to effect the changes and delegate to the Chair of the Shareholder Committee the authority to sign the relevant shareholder resolutions in relation to the changes;
 - Agree the changes to the specification set out in Annex A and the changes to the contract as set out in paragraph 18 and to delegate to the Director of Place and the Director of Customer and Communities (in consultation with the Director of Governance or her delegated officers) the authority to take such steps as are necessary to enter into the resulting contract.

Reason: to secure a strong future for Make It York as a Teckal company.

Background

3. At its February meeting, the Executive agreed arrangements for the next contract between the council and MIY whereby:

- a. MIY's Teckal company status is retained
 - b. Clarity of purpose is established with respect to what MIY is to deliver with appropriate performance regimes in place
 - c. Clearer governance arrangements are instituted
 - d. MIY continues to provide tourism, city centre and markets, culture and events functions broadly as now
 - e. The council takes a leadership role in economic development and inward investment with arrangements revisited to define the city's sectoral focus, sharpen its unique offer and clearly understand its opportunities
4. The Executive approved:
- the priorities on which the new Service Specification of the contract (the SLA) was to be based
 - the undertaking of further work with MIY to develop the specific requirements to be included in the service specification following consultation with businesses and other stakeholder groups
 - an extension of the existing contract until the new contract is in place following agreement to the service specification
5. This report sets out the service specific requirements in light of the consultation undertaken.

The Consultation

6. Consultation has been undertaken with key stakeholder groups including:
- York and North Yorkshire Chamber of Commerce
 - The Federation of Small Business
 - York Business Improvement District
 - Universities and Colleges
 - Institute of Directors and other business networks
 - LEPs
 - Visitor economy sector
 - Retail sector
 - Cultural Sector
 - York Science Park
 - Key sector representatives for our growth priorities: Rail, Financial Services & Insurance, Biotech and Life Sciences, Digital and Creative Industries

7. Three methods were used for the consultation:
 - Structured interviews with key business networks
 - A series of structured interviews with 20 representatives of the key stakeholder groups set out above
 - An online survey publicised through newsletters and social media to enable businesses, residents and other interested parties to respond
8. A detailed presentation of the consultation can be found at Annex B. The consultation shows strong support for the priorities set out by the council for the SLA in each area:
 - Economic Development 80% of respondents agree with them
 - City Centre & Markets 70% agree
 - Visitor Economy 87% agree
 - Culture 81% agree
9. The majority of respondents also support the concept of MIY; however, a range of concerns are expressed about how the company model is operating in practice. It is clear that the company model is not well understood and that it is not perceived to be accountable and transparent. It is felt to be involved in too broad a range of activity as a result of which quality of delivery is seen to be inconsistent. The consultation suggests that there needs to be more regular reporting back to residents and businesses and greater collaboration with partners and stakeholders across the range of activities that MIY covers.
10. There is strong support for the council taking back the lead role in inward investment and economic development work with businesses and partners also expressing a desire to be more involved in all aspects of this agenda. This is seen as particularly important given the need for a co-ordinated economic recovery post the pandemic.
11. It is clear that much of the consultation feedback is a symptom of the tensions that are inherent in the particular financial model that the council put in place in respect of MIY, in 2015, whereby the great bulk of MIY's income, which it uses to fund its operations, derives from traded activity. The focus on income generation inevitably creates a tension with collaborative working with other partners as well as with the pursuit of more strategic objectives. Members will need to determine where an appropriate balance lies between the commercial aims of the company and broader strategic aims.

Clearly, where this balance sits has financial implications for both Make it York and the council.

The Specification

12. The proposed changes to the Service Specification, which forms part of the contract, are set out in Annex A. The Service Specification consists of three parts: Objectives, Service Specific Requirements and Outcomes and changes proposed to all three elements are set out in this annex.
13. The proposed changes aim to create a closer relationship between the council and MIY, making the best use of our limited resources given the challenges that face us and ensuring closer collaborative working between the respective organisations with resources located where they can be deployed to best advantage. It will ensure that the expertise of MIY's Board and staff, supplemented by research and engagement, is played effectively into the council's strategy development alongside that of private sector representative bodies and businesses so that the respective strengths of the two organisations can be used to best advantage in a complementary way. The service specification has been negotiated between the council and the MIY board in the light of the consultation feedback. The Service Specific Requirements are laid out under four main headings:
 - **Economic Development:** promoting York as a business location through all of MIY's activity
 - **Visitor Economy:** covering destination management and tourism sector development
 - **City Centre:** covering markets, city centre vibrancy and commercial events
 - **Culture:** focussing on driving the Culture Strategy, major events and the Unesco Creative City designation

The Service Specification also sets out: key deliverables, outcomes by which performance will be measured, and detailed delivery tasks.

14. The inward investment and economic development functions have been removed from the Service Specification and these functions will return to the council from MIY.

Governance Issues

15. In February the Executive agreed changes be made to the governance arrangements of MIY to ensure the company's Teckal

compliance as well as to maintain robust and transparent processes. Further work has been undertaken with Legal Services in pursuit of these objectives. Amendments are proposed to both the company's memorandum and articles of association and to the service contract as follows:

16. **Memorandum and Articles of Association:** Amendments are proposed to Schedule 1, *Matters reserved to the shareholder*. The revised Schedule 2 is set out in Annex C. Principal changes proposed in this revision are:
 - Bringing the schedule up to date, removing clauses that expired at the end of the initial six year period
 - Introducing clauses regarding determining and approving all matters relating to terms and conditions of the Managing Director as well as the remuneration of senior staff
 - Introducing a clause regarding approving a scheme of delegation which will set out the decisions that can be made by the senior management and other employees of the Company
17. MIY's board will be asked to agree the changes and register the revised Memorandum and Articles of Association with Companies House.
18. **The Contract:** The Executive agreed that measures should be taken in the new contract to ensure robust mechanisms for monitoring of performance against the Service Specification with a structured approach to client meetings and improved communication and collaboration. It is proposed to address this in the new contract through:
 - Providing stronger step-in rights for the council in the event of any persistent or material failure by MIY to deliver any part of the service, whereby the council could take over operation of the respective function
 - Building into the contract the requirement to provide formal quarterly narrative reports, to hold structured client meetings, to

produce an annual business plan and report to the Shareholder Committee as well as to brief other council bodies as required

- A requirement for MIY to keep robust and detailed information about its activities

Options

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

- Agree the new service specification as set out in Annex A
- Suggest amendments to the specification

Analysis

20. The proposed service specification is recommended reflecting the views of stakeholders to ensure a strong and effective MIY, working in partnership with the council, with a clear focus in the areas where it is best placed to contribute.

Implications

21. **Financial:** The council currently provides revenue support of £798k per annum to MIY for the provision of services. MIY provides income to the council of £474k per annum to reflect the net income earned from trading activities across the city centre. The net expenditure to the council is therefore £324k. The council also budgets for a dividend of £25k per annum from the company.

22. In view of the transfer of functions from MIY back to the council, as set out in paragraph 14, the final value of the new contract and the revenue support to be provided by the council will be adjusted. A process will be undertaken with MIY to assess:

- a. The practical date at which transfer can take place
- b. The future cost to the council of employing the staff transferring
- c. The saving to MIY from the staff transferring out (a and b may not necessarily be the same)
- d. Any other cost implications arising for both parties from the changes to the respective organisations

23. The contract price will be adjusted to ensure that:

- a. The council will be able to operate the transferred service
- b. MIY will remain viable

24. It is envisaged that this is achieved within the existing budget resource. The final contract price will be reported to members.
25. **Legal:** The council can make a direct award of this contract to MIY without undergoing a procurement process while it remains a Teckal compliant company in accordance with regulation 12 of the Public Contract Regulations 2015. This requires the council to exercise similar control over the company as it does over its own departments, that at least 80% of the activities of the company are those entrusted to it by the council, and that there is no direct capital participation from the private sector in MIY.
26. Legal Services will work with officers to ensure the proposed changes to the Service Specification will maintain the Teckal compliance of the company.
27. The proposed transfer of responsibility for functions from MIY to the council is likely to qualify as both a business transfer and a service provision change under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006. As a consequence, all those MIY employees who are assigned to work on any transferring functions are likely to be eligible to transfer to CYC.

Council Plan

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

Risk Management

29. In compliance with the council's risk management strategy the main risks arising from this report have been identified. These risks are mainly ones that could lead to the inability to meet business objectives (Strategic) and to deliver services (Operational), leading to financial loss (Financial), non-compliance with legislation (Legal & Regulatory), damage to the council's image and reputation and failure to meet stakeholders' expectations (Governance).

30. Measured in terms of impact and likelihood, the risk score has been assessed at 14. This “medium” risk level is acceptable but means that regular active monitoring is required.

Annexes

A: Proposed new terms to be included in the Service Specification

B: The Consultation

C: MIY Memorandum and Articles of Association Schedule 2, *Matters reserved to the shareholder*

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