



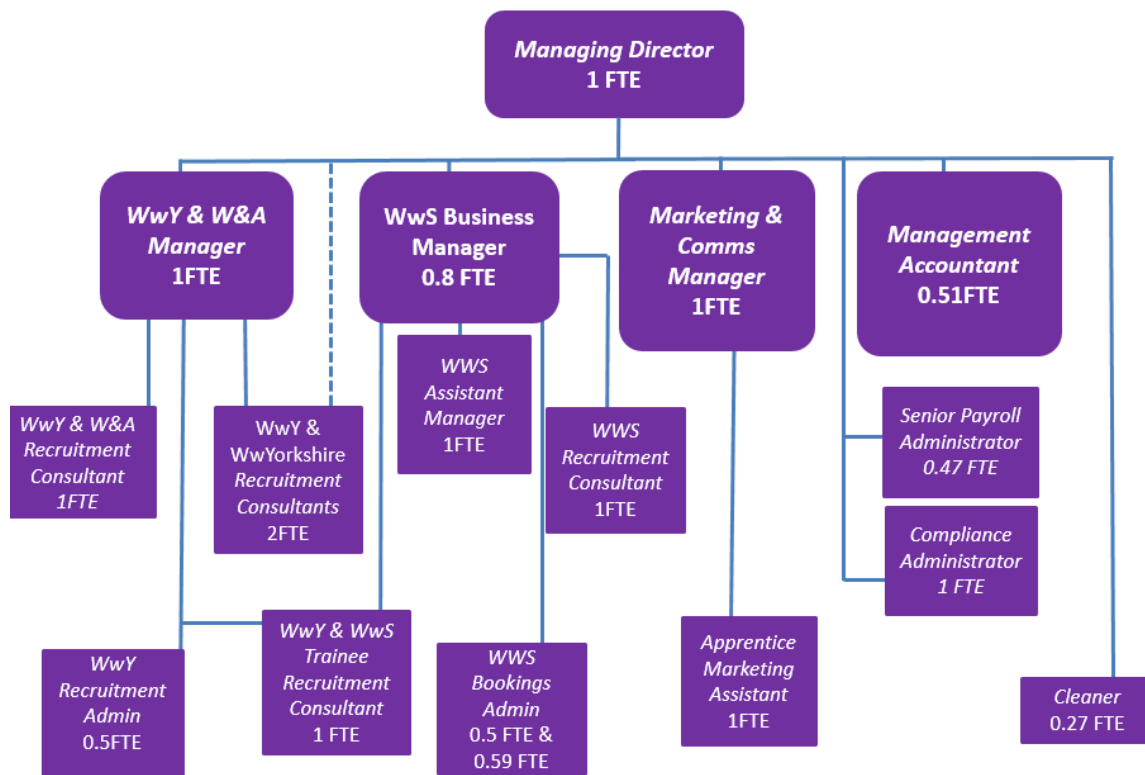
Business Case in support of Creation of a New Company for the Provision of Agency Workers

Background

- 1 City of York Trading Ltd (CYT/the Company) was established in 2011 by City of York Council (CYC/the council) with the intention of supplying temporary staff to CYC, to local schools, and to providing staff to other outside organisations.
- 2 CYC is the sole shareholder of the Company which started trading on 1st June 2012.
- 3 The benefits of creating CYT were set out in the original business case, as follows:
 - CYC makes a cost saving compared to the cost of agency staff on the open market;
 - CYT are able to quickly respond to CYC's changing staff requirements;
 - Schools and other organisations are supported with quality staff and an experienced local service;
 - CYT pay an annual dividend from the Company's overall profits to assist CYC's financial position.
- 4 CYT was established as a Teckal company. This enabled CYC to take advantage of the exemption contained in the Public Contracts Regulations to award long-term contracts to companies for the supply of services without the requirement to undertake a public procurement exercise, providing certain conditions were satisfied (see paragraph 7 below).

- 5 In addition to providing agency workers to CYC as WorkwithYork, CYT has an education division, WorkwithSchools, and a commercial brand in WorkwithYorkshire. In addition, in February 2024 CYT acquired Williams & Anthony, a small York-based Civil Engineering Recruiter . This diversification has so far enabled CYT to maintain operating capacity during periods of fluctuating demand from CYC, avoiding the need for widescale redundancies, delivering some economies of scale and generating profits. The current structure can be seen below:

CYT Ltd – Staffing Structure April 2024



- 6 CYT currently has 18 employees (14.64 FTEs). CYT has admitted body status with the North Yorkshire Pension Fund limited to three staff who transferred from CYC in 2017. The remainder of the CYT staff team are eligible for CYT’s NEST workplace pension scheme.

Teckal exemption

- 7 In order to benefit from the Teckal exemption, the council must be satisfied that the specific control and functional tests set out in the Public Contracts Regulations 2015¹ are met before the award of contracts. These conditions must continue to be met throughout the period of the contracts. The tests require that:
- the contracting authority on its own or jointly with other contracting authorities exercises a similar degree of control over the company as it does over its own departments
 - more than 80% of the work undertaken by the company is for the benefit of the contracting authority or for other organisations controlled by the same contracting authority (averaged over 3 years)
 - there is no private capital participation in the company

Governance arrangements

- 8 The governance arrangements for CYT are set out in the articles and a shareholders' agreement, dated 1st April 2021. These are drafted to reflect local authority control and the Teckal provisions. The shareholders' agreement includes a number of provisions including the appointment of directors and the chair, the frequency of board meetings, and the requirement to prepare an annual business plan and budget. The agreement also includes a number of reserved matters which require the unanimous consent of both councils as shareholders. These reserved matters include any proposed changes to the company's name, the articles, the establishment of any subsidiaries, the admission of any new shareholders and any changes to the authorised or issued share capital.

¹ The new Procurement Act 2023 (expected to come into force in 2024) includes equivalent tests. The relevant part of the Act is Schedule 2, Part 1, Para 2.



- 9 The CYT board of directors currently comprises:

Name	Position
Cllr Ian Cuthbertson	Chair and Non-Executive Director
Cllr Kallum Taylor	Non-Executive Director
Cllr Jason Rose	Non-Executive Director
Ann Vickers	Non-Executive Director
Lisa Wood	Non-Executive Director
Chloe Kerridge-Phipps	Non-Executive Director
Karen Bull	Managing Director

- 10 The council also has arrangements in place to maintain oversight over the strategic direction and performance of CYT. They also ensure that CYT's purpose and aims continue to be aligned to their own priorities. In most cases this involves the approval of the CYT business plan and annual budget by the council shareholder committee and the periodic reporting of performance including the submission of audited financial statements and an annual report. Together with the articles and shareholders' agreement, these arrangements help the council to demonstrate the degree of control required to satisfy the Teckal exemption.

Delivering shareholder value

- 11 Shareholder value is typically delivered in a number of ways including through non-tangible benefits. CYT delivers shareholder value to the council through:
- Supply of temporary agency staff at all levels by WorkwithYork to support CYC's ongoing and changing recruitment and operational needs, often at short notice. For example, during the pandemic WorkwithYork recruited over 200 staff to act as Covid Testers, Contact Tracers and Covid Marshalls;



- WorkwithYork temporary staff who have experience of CYC systems and processes and who are suitable applicants for contractual roles within CYC (during 2023/24 over 80 staff transferred to CYC contracts);
- WorkwithYork Interim and Specialist staff to support CYC's strategic plans, projects and objectives. For example to support the Local Plan WorkwithYork provided professional and support staff including a Programme Officer, two Local Plan Policy Officers and an Interim Head of Strategic Planning; for current critical transport projects WorkwithYork staff are working as Senior Transport Projects Manager (Tadcaster Rd) and Major Transport Projects Support Assistant (York Station); and to support the Combined Authority Mayoral elections WorkwithYork have provided an Electoral Services Consultant;
- Support by WorkwithYork with hard-to-fill permanent roles, with headhunting and direct candidate sourcing. For example, WorkwithYork filled a Database Systems Engineer which CYC had advertised for three times without success and currently working on an Application Support Analyst role which is being advertised for the fourth time;
- Management by WorkwithYork of all second-tier agency staff suppliers, ensuring a high level of compliance, standardisation of contract terms and charges and a significant cost saving on transfer fees;
- Staff provided by WorkwithYork deliver a cost saving for CYC when compared to the substantially higher cost of both temporary staff and permanent appointments in the open agency market.
- Freezing of transfer fees and permanent charges for the five years of the current CYT/CYC contract;
- Supply of temporary teaching and support staff to local schools, by WorkwithSchools - accredited as a Crown Commercial Framework supplier and a holder of Recruitment and Employment Confederation Gold Standard Audited status and with over 139 mostly five-star Google reviews;



- A comprehensive WorkwithSchools training programme –tailored bespoke Continuing Professional Development courses specifically designed for supply teachers and teaching assistants in consultation with local schools and provided free of charge for WorkwithSchools agency staff. This has also included Teaching Assistant “taster” courses aimed at candidates new or returning to this work to help schools with increasing demand for TA support.
- The Company’s support for apprenticeships and staff training within its own staff team, which has seen three of its current staff completing recruitment apprenticeships, and others undertaking industry accredited qualifications and training, including in payroll, compliance and marketing as well as recruitment.
- Employment opportunities for local residents across all brands within the Company, though some roles may be temporary , a large number of agency staff stay registered enabling to move between assignments over many years;
- Local affordable and ethical recruitment across Yorkshire, for CYC’s partners and contacts, new and existing businesses, as well as public and third sector organisations.
- CYT’ staff awards events – the last held in July 2023 at the Merchant Adventurers Hall celebrated the hard work and commitment of the Company’s temporary and supply staff and welcomed 120 guests (including the Lord Mayor and Lady Mayoress) for an evening including welcome drinks, a charity raffle, presentation of ten awards and entertainment. The Company received excellent feedback from staff and other guests, including CYC elected members and managers and received local and regional press coverage;
- The Company’s rental of 29 Castlegate at a market rate, and its contributions both in financial and aesthetic terms, to the refurbishment of a building which had been empty for several years;
- ICT costs paid at market rate to CYC for hardware, network and systems access and advice ;



- Shareholder dividends paid by the Company to CYC, which in the last ten years have exceeded £1m.

Finance

- 12 CYT first traded only with schools in 2012 and entered into a Teckal contract by CYC from 2013. The Company's annual turnover rose from a little over £600k in 2012/13 to just under £11m in 2021/22 post pandemic. Further details of turnover and changing Teckal percentages are shown in the table below:-

Year	Turnover	CYC	Other Clients	CYC %	3 yr. average	Note
2012/13	£604,798	£0	£604,768	0.00%		Schools only
2013/14	£2,389,132	£1,578,194	£810,938	66.06%		CYC contract Sept 13
2014/15	£5,368,618	£5,317,136	£51,482	99.04%		
2015/16	£6,103,734	£5,157,055	£946,679	84.49%	83.20%	
2016/17	£7,046,585	£5,972,540	£1,074,045	84.76%	89.43%	
2017/18	£8,687,197	£7,679,192	£1,008,005	88.40%	85.88%	
2018/19	£8,240,320	£7,602,315	£638,005	92.26%	88.47%	
2019/20	£8,829,580	£7,926,419	£903,161	89.77%	90.14%	
2020/21	£8,763,898	£8,303,842	£460,056	94.75%	92.26%	
2021/22	£10,955,149	£9,989,941	£965,208	91.19%	91.90%	
2022/23	£9,948,336	£8,511,042	£1,437,294	85.55%	90.50%	
2023/24*	£6,577,578	£5,115,490	£1,462,088	77.77%	84.84%	* subject to audit

- 13 During 2023/24 and continuing into 2024/25, in line with CYC's ongoing required budget savings, demand for and spend on WorkwithYork agency staff has reduced - by two-thirds over the last two years, with a particularly dramatic drop over the last six months. With 363 live non-shift-based assignments in February 2022, and 78 in February 2024, CYC's weekly billings dropped from an average £151k in February 2022 to £89k in August 2023 and down again to £53k in February 2024.



- 14 The Company's focus in 2024/25 is on growing all aspects of CYT's non-CYC business, with brands WorkwithSchools, WorkwithYorkshire and recent acquisition, Williams & Anthony. With WorkwithSchools above budget for most of the financial year 2023/24, CYC monthly Teckal percentages for February and March 2024 were 69.4% and 67.5% respectively (though still currently above 80% using the three year average).
- 15 Based on the Company's current budget, with just moderate growth for its other brands, then by January 2025 at the latest, CYT is not expected to be Teckal compliant. Should business development for non-CYC brands prove more successful, then this non-compliance will be brought forward. More details are shown in the table below :-

Month	Total Turnover	CYC	Other Clients	CYC %	3 yr. Average %	Note
Apr-24	375,530	249,000	126,530	66.31%	85.61%	
May-24	411,375	249,000	162,375	60.53%	85.08%	
Jun-24	492,125	314,000	178,125	63.80%	84.53%	
Jul-24	407,750	260,000	147,750	63.76%	83.97%	
Aug-24	302,750	260,000	42,750	85.88%	83.57%	
Sep-24	472,750	314,000	158,750	66.42%	82.90%	
Oct-24	449,250	260,000	189,250	57.87%	82.02%	
Nov-24	414,250	260,000	154,250	62.76%	81.35%	
Dec-24	486,350	303,000	183,350	62.30%	80.57%	
Jan-25	403,900	249,000	154,900	61.65%	79.83%	Teckal non-compliant
Feb-25	425,750	260,000	165,750	61.07%	79.12%	Teckal non-compliant
Mar-25	579,125	325,000	254,125	56.12%	78.01%	Teckal non-compliant

Options

- 16 A number of options have been considered along with legal advice. The options are:

Option 1 – to do nothing

The 2024/25 budget indicates that CYT will not be Teckal compliant in 2024/25 due to the value of other client exceeding the 20% limit. The functional test conditions will therefore not be satisfied. This risks the existing award of contract by the council being challenged. If any challenge was successful, then the council would need to re-tender the services. The council might also be liable for any resulting costs and damages. The CYT operating model would also cease to have a purpose. This option can therefore be discounted.

Option 2 – to keep the existing business structure but take immediate steps to return to Teckal compliance

This would involve reducing the value of non-CYC work to below 20% of total turnover. This would have a catastrophic impact on the Company's financial viability due to the loss of profitable non-CYC work. Having built up the WorkwithSchools brand since 2012, recently acquired Williams & Anthony and moved staff into commercial parts of the business, this would also would run counter to the current CYT business plan. There would be additional costs due to the need to make staff redundancies, and the Company would not be able to continue to lease 29 Castlegate. If the Company were able to survive in any viable form, in future even further reductions in the value of other client income might be needed to match any reductions in the value of income from services to the council as a consequence of the need to deliver more budget savings. Overall, this option is not considered to be sustainable in the long-term and can therefore be discounted.



Option 3 – **Create an in-house bank of agency workers**

A further option would be to create an in-house bank of agency workers.

Setting up an internal bank would require additional CYC resource to be allocated to manage the bank and source candidates.

Additional resource would also be required in Business Support to manage adding and removing agency workers from the payroll. A new weekly payroll system would need to be set up as it is unlikely that agency workers would want to be paid monthly in line with other CYC employees.

There would also be pension implications and auto-enrolment of temporary staff to the Local Government Pension Scheme (this was the main reason temporary staff from CYC's in-house bank were transferred to CYT during 2012/2013).

A timesheet facility would also need to be set up managed alongside a resourcing database of agreed terms, in addition IT costs associated with additional licences would be required for iTrent (HR and payroll system) as they are charged based on the number of active employees/workers on the payroll. A team would also need to ensure that references and qualifications are checked (WwY currently do this on CYC's behalf) and DBS check costs would also increase as CYC would need to pay for the checks.

To undertake this option, it is anticipated that there would need to be a 12 to 18 month project implementation plan. There would also be TUPE implications if this option were agreed.

This option is not viable due to the additional costs and the timeline as current advice has indicated that CYT will not be *Teckal* compliant in January 2025 due to the current value of external work exceeding the 20% limit.



Option 4 – to create a new company

This option would involve the creation of a new standalone company. The existing CYC contract for agency workers would then be novated to the new company. All the existing schools and commercial work and contracts held by CYT would remain with the company. Legal advice confirms that this corporate structure would satisfy the Teckal control and functional tests. This would enable the continued support to CYC when needed, alongside the planned commercial expansion of CYT. Another advantage of this option is that CYT would be able to bid for new non-CYC work on the basis of its existing trading history. New companies with no trading history are usually at a disadvantage in any competitive procurement exercise.

- 17 **Option 4** is recommended because it will address the concerns around Teckal compliance, secure the staff team and temporary workers in the business, and enable commercial expansion as in CYT's Business Plan for 2024/25 and beyond.

Detailed Proposal

- 18 It is proposed that a new company is established to provide services to CYC on a Teckal basis.
- 19 Temporary Staff contracts, second tier agency contracts, payroll, accounts, systems and other regulatory and statutory functions would need to be transferred to/set up by the new company.
- 20 The existing CYT contract for the supply of agency workers to CYC would then be novated to the new company. There would be no change to the core services currently offered or provided to the council. All the existing service delivery arrangements and processes would therefore continue as before.



- 21 CYT would remain as a company owned by City of York Council. All the existing schools and commercial work by CYT would also remain with the company. CYT would then become a standalone non-Teckal company providing services on a commercial basis.
- 22 CYT would remain the employing organisation of all the staff team working in the business, with work done for CYC recharged to the new company, there would therefore be no change to the structure of CYT, other than that the Directors of CYT be appointed directors of the new company as soon as possible in order to facilitate the set up and transfer of contracts set out at paragraph 19 above.
- 23 It is proposed that where new policies and procedures are required to cover temporary agency staff working for the new company, the new company board would adopt those existing in CYT.
- 24 To support the new company's
 - a. initial licensing and set up costs.
 - b. first month payroll and HMRC costs for pending payment of initial invoice by CYCCYT would propose to make an inter-company loan to the new company limited to £500,000.

Legal advice is that CYC's approval is required for this under the terms of CYT's Shareholder Agreement.

Legal Implications

- 25 To establish the new company structure, CYC would rely on their general trading powers as set out in Section 95 of the Local Government Act 2003 and Section 4 of the Localism Act 2011. Section 95 of the Local Government Act 2003 allows relevant authorities to undertake any commercial activities which they would otherwise be authorised to undertake for the purpose of performing their ordinary functions.

- 26 Section 4 of the Localism Act 2011 confers a general power on local authorities to undertake any commercial activities which they would be authorised to do in the exercise of their general power of competence. Where a local authority relies on these general trading powers then they must do so through a company.
- 27 The Section 95 and Section 4 general trading powers also prescribe which company structures may be used. These include companies limited by shares and by guarantee.
- 28 Each local authority must also prepare a business case supporting the exercise of the Section 95 power, which the authority must approve (Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009). This business case is deemed to satisfy that requirement.
- 29 External legal advice has been obtained which confirms that the proposed new corporate structure will satisfy the control and functional tests set out in the Public Contracts Regulations 2015, and also meet the requirements of the Procurement Act 2023, when this comes into force. The Teckal exemption would therefore apply for the award of a contract to the new company.
- 30 Both companies own procurement activities would be bound by the Public Contracts Regulations 2015. In addition, as wholly owned local authority trading companies they would also be covered by the provisions of the Freedom of Information Act 2000.
- 31 The new company will be established in a way that will enable the council to take advantage of the Teckal provisions and to award contracts to the company without the need to go through a procurement process.

Karen Bull
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1st May 2024