



# Doncaster Council

## Cabinet Report

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**Date: 03.12.19**

**To the Chair and Members of the CABINET**

### **YORKSHIRE PURCHASING ORGANISATION (YPO) STRATEGIC INVESTMENT**

| <b>Relevant Cabinet Member(s)</b>     | <b>Wards Affected</b> | <b>Key Decision</b> |
|---------------------------------------|-----------------------|---------------------|
| Mayor Ros Jones<br>Cllr J Nightingale | All Wards             | Yes                 |

### **EXECUTIVE SUMMARY**

1. To provide Cabinet with an overview of a proposed transaction by the Yorkshire Purchasing Organisation (YPO) and the opportunity to consider the Business Case, risk profile and finance options in order to inform the decision to be taken at the YPO Management Committee.
2. To allow Cabinet the opportunity to consider proposed amendments to the governance arrangements of YPO. These have been proposed by Wakefield Council, as the Lead Authority on behalf of YPO, and are intended to safeguard the arrangements for the benefit of the Founder Members should the YPO Management Committee resolve to pursue the transaction.

### **EXEMPT REPORT**

3. This report is not exempt, however, there are financial and commercially sensitive matters contained within the Appendices to the report. Therefore, the Appendices are NOT FOR PUBLICATION because they contain exempt information under paragraph 3, of part 1 of schedule 12a of the local government act 1972, as amended, (information relating to the financial or business affairs of any particular person (including the authority holding that information)).

## **RECOMMENDATIONS**

4. That Cabinet notes the transaction proposed by YPO as outlined in the report and exempt appendices and indicate the Authority's view on the proposal to inform a vote at YPO Management Committee.
5. That Cabinet confirms its financial backing for the transaction by agreeing to underwrite the loan through entering into a Supplemental Agreement and delegates authority to the Director of Corporate Resources to approve the Supplemental Agreement set out at Appendix A subject to
  - i) at least 10 of the 13 Founder Members remaining as Founder members and agreeing to enter into the Supplemental Agreement,
  - ii) the satisfactory completion of legal and financial due diligence on the proposal giving confidence to proceed and
  - iii) a resolution of the YPO Management Committee to enter into the transaction proposed.

## **WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?**

6. The proposed strategic investment will safeguard the stated objectives of YPO as a public sector organisation that maintains effective, efficient and economical arrangements for the supply of goods, materials, works and services by providing excellent quality, service and competitive prices, while optimising the profits available for distribution to its members and customers and delivering a high quality service which saves time and money.
7. If the transaction proceeds as outlined it is anticipated that there will be increased dividends from YPO. If at least 10 Founder Members enter into the Supplemental Agreement each Council can have confidence that the opportunity outlined in the appendices can be progressed by the Management Committee at YPO to strengthen the business without significant risk to them as YPO Founder Members.
8. YPO's activities bring benefits to the district in ethical purchasing resulting in lower purchase prices for goods and services, local jobs in YPO and local supply chains and environmental benefits generated by YPO's approach to sustainable procurement and adherence to UN Sustainability Goals.

## **BACKGROUND**

9. The YPO was founded in 1974 and is a joint local government service for procurement of goods and services. The membership has changed over the years but currently comprises 13 'Founder Member' local authorities; Barnsley, Bolton, Bradford, Calderdale, Doncaster, Kirklees, Knowsley, North Yorkshire, Rotherham, St Helens, Wakefield, Wigan and York.
10. Wakefield Council currently acts as the 'Lead Authority' providing a range of services to YPO including employing YPO's staff, providing internal audit and s151 and Monitoring Officer functions.

11. The YPO does not have a legal personality separate to that of its Members. In practical terms this means for example that it cannot directly enter into contracts, employ staff or own property. It is subject to local government legislation in terms of its powers and governance on the same basis as its member local authorities.
12. The YPO is currently governed by a management agreement dated September 2011 which designates as Founder Members the 13 Authorities who participate in YPO under a Joint Committee arrangement established under sections 101 and 102 of the Local Government Act 1972 and The Local Authorities (Arrangements for the Discharge of Functions)(England) Regulations 2000. Under the Management Agreement each Founder Member has one vote at the Management Committee and these votes are of equal standing. No single local authority/Founder has a controlling interest. Founder members are entitled to dividends and to vote on how the dividends are allocated amongst YPO members. The Management Committee is supported by an advisory strategic officer group which includes relevant officers from each Founder Member Council.
13. In addition there are two further categories of 'membership', 'Associate Membership' and 'Ordinary Membership'. Neither category has a substantive role in the governance but as customers of YPO are also eligible to a 'dividend' paid from any surplus accumulated by YPO in a financial year. Associate Members (and Founder Members) receive a dividend in cash. Ordinary members receive their dividend in the form of discounts on future purchases. In addition to achieving a range of non-financial benefits, the YPO has also been successful in delivering financial benefits to the Members and the dividend distribution for Doncaster for 2018 operating year was £0.45m.
14. A combination of increasing operating costs and an increasingly competitive market environment has meant that the YPO has been considering for some time the opportunity for new business strategies and diversification in order to safeguard and promote its strategic objectives. The YPO Management Team considers that the majority of the opportunities to cut costs have now been taken. Some further investment in the business will be needed in the medium term and the growth into new markets, whilst positive, will be a protracted process. Thus it will become increasingly difficult to keep dividends at current levels This has led to the proposed transaction more fully described in the exempt appendices.
15. The proposed transaction has been discussed with YPO Strategic Officers from each Founder Members including their s151 and Monitoring Officers (or their representatives). The proposed transaction has also been considered by elected members at the YPO Management Committee who resolved to take the proposal to the next stage and commission external financial and legal advisors to undertake due diligence.
16. This due diligence is expected to conclude in early December. Discussions on finance options and governance have led to the proposal outlined in the appendices.

17. The proposal is that the Lead Authority provides the funding and makes the transaction on behalf of all of the Founder Members. Founder Members will be asked stand behind the Lead Authority's position through a Supplemental Agreement which will outline the position should a Founder member wish to withdraw during the loan period or the Joint Committee terminate with liabilities in excess of assets.
18. In order to safeguard the position of Founder Members who will be carrying the risk of the proposed transaction it is recommended that each Founder Member enter into a Supplemental Agreement, which amends the Management Agreement. This will require any Authority serving notice to leave YPO during the ten year loan period to accept a contingent liability for an equal share of the loan outstanding at that time (principal sum and interest) to be paid if YPO is later wound up and assets are insufficient to cover the liability. The Agreement ring fences an element of the dividends to be paid to Founder Members along with a specific requirement for the management committee to have regard to the risk carried by the Founder Members when setting the split of dividends between Founder and Associate Members. If all 13 Founder Members wish to proceed and accept this Supplemental Agreement the risk to each is a 1/13th share of the loan. Should any Founder Members choose to withdraw before the proposed transaction it is suggested that as long as 10 Founder Members remain and enter into the Supplemental Agreement, the rise in risk level is acceptable given the potential benefits
19. It is anticipated that each of the 13 Founder Members will consider this report from 20 November 2019.
20. Due diligence is expected to conclude in early December and arrangements have been made for relevant officers to meet with the external advisors to receive the outcome. This will allow the relevant statutory officers to review the due diligence work that has been undertaken by the consultants.
21. YPO Management Committee is expected to meet to consider whether to enter into the transaction after the conclusion of due diligence.

## **OPTIONS CONSIDERED**

22. **Option 1 – confirm support for the proposed transaction and agree to enter into the Supplemental Agreement.**
23. This will allow the Lead Authority to borrow and acquire on behalf of YPO to expand and consolidate the business. There will be protection of the position of Founder Members who will receive a ring fenced dividend before further distribution with the comfort that other Founder Members will accept a contingent liability for the loan through the Supplemental Agreement in the event that they wish to withdraw from YPO during the loan period. This option is recommended for the reasons set out in the appendices.

24. **Option 2 – do not support the proposed transaction and Supplemental Agreement.**
25. Should the YPO Management Committee still resolve to go ahead with the transaction and if two thirds of members resolve to enter into a Supplemental Agreement (which amends the Management Agreement), the Council could be in a position of taking on the risk without being able to withdraw in advance. YPO does not want to put Founder Members in such a position. For that reason it is suggested that any Council who is fundamentally opposed to the transaction should have the opportunity to withdraw now without the normal 12 months' notice on 31 December 2019 with an option of transferring to Associate Member status. Taking this option would mean the Council is not exposed to the risk of the transaction and loan but would mean that the Council would not receive dividend payments after for 2019. This option is therefore not recommended.
26. If the management committee resolves not to enter into the proposed transaction YPO could continue as present. In that case a supplemental agreement is not required. However in an increasing competitive market with rising costs, the existing benefits to the council may reduce over the medium to longer term. This option is not recommended.

## REASONS FOR RECOMMENDED OPTION

27. To enable YPO to continue to provide benefits to members into the long term.

## IMPACT ON THE COUNCIL'S KEY OUTCOMES

28.

|  | <b>Outcomes</b>   | <b>Implications</b>   |
|--|---|---|
|  | <p><b>Doncaster Working:</b> Our vision is for more people to be able to pursue their ambitions through work that gives them and Doncaster a brighter and prosperous future;</p> <ul style="list-style-type: none"> <li>• Better access to good fulfilling work</li> <li>• Doncaster businesses are supported to flourish</li> <li>• Inward Investment</li> </ul> | <p>YPO delivers social value for all Founder Members through its procurement policies which actively seek to engage with local businesses and encourage YPO supply chains to measure and embed social impact.</p> |
|  | <p><b>Doncaster Living:</b> Our vision is for Doncaster's people to live in a borough that is vibrant and full of opportunity, where people enjoy spending time;</p> <ul style="list-style-type: none"> <li>• The town centres are the beating heart of Doncaster</li> <li>• More people can live in a good quality, affordable home</li> </ul>                   | <p>YPO annually publishes the social, economic and environmental impact of its procurement through its annual benefits statement.</p>   |

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|--|--|--|
|  | <ul style="list-style-type: none"> <li>• Healthy and Vibrant Communities through Physical Activity and Sport</li> <li>• Everyone takes responsibility for keeping Doncaster Clean</li> <li>• Building on our cultural, artistic and sporting heritage</li> </ul>   |  |
|  | <p><b>Doncaster Learning:</b> Our vision is for learning that prepares all children, young people and adults for a life that is fulfilling;</p> <ul style="list-style-type: none"> <li>• Every child has life-changing learning experiences within and beyond school</li> <li>• Many more great teachers work in Doncaster Schools that are good or better</li> <li>• Learning in Doncaster prepares young people for the world of work</li> </ul>   |  |
|  | <p><b>Doncaster Caring:</b> Our vision is for a borough that cares together for its most vulnerable residents;</p> <ul style="list-style-type: none"> <li>• Children have the best start in life</li> <li>• Vulnerable families and individuals have support from someone they trust</li> <li>• Older people can live well and independently in their own homes</li> </ul>   |  |
|  | <p><b>Connected Council:</b></p> <ul style="list-style-type: none"> <li>• A modern, efficient and flexible workforce</li> <li>• Modern, accessible customer interactions</li> <li>• Operating within our resources and delivering value for money</li> <li>• A co-ordinated, whole person, whole life focus on the needs and aspirations of residents</li> <li>• Building community resilience and self-reliance by connecting community assets and strengths</li> <li>• Working with our partners and residents to provide effective leadership and governance</li> </ul> | <p>The Council participates in Yorkshire Purchasing Organisation (YPO) as a high quality public sector procurement organisation that maintains effective, efficient and economical arrangements for the supply of goods, materials, works and services by providing excellent quality, service and competitive prices, while optimising the profits available for distribution to its members and customers.</p> |

## RISKS AND ASSUMPTIONS

29. Contained within Appendix A.

## **LEGAL IMPLICATIONS [Officer Initials SRF Date 22/11/19]**

30. YPO is a public sector procurement organisation operated through a Joint Committee structure. The final approval of the proposed transaction will be taken at YPO Management Committee in the light of decisions on the matters set out in this report by all Founder Members.
31. External legal advice has been taken on the powers of Founder Members to undertake this transaction.
32. The business of the YPO primarily relies on the powers under s111 Local Government Act 1972 and the Local Authority (Goods and Services) Act 1970. However where YPO wishes to trade with organisations that are not covered by such legislation it can rely on the General Powers of Competence (“GPOC”) under Section 1 of the Localism Act 2011. Section 4 of the Localism Act 2011 enables the local authority to do for a commercial purpose anything that it is empowered to do under GPOC. The section 4 trading powers prescribe which company structures may be used. In short, given the trading mix of the target company and commercial scale the more resilient basis of reliance in powers is GPOC and the acquisition of the shares in the existing target company satisfies the requirement that such powers be exercised through a company.
33. Additional reliance can be placed on Section 95 of the Local Government Act 2003 which enables relevant authorities “to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions” i.e. anything which they are empowered to do in legislation. The section 95 power can be limited by order and authorities exercising it must have regard to the guidance issued by the Secretary of State. To adhere to the requirements under this legislation the local authority must 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). In the event that YPO Proceed with the transaction and subsequently trade through a company for a period of time, then the business case appended to this report as Appendix A satisfies the requirements of that Order for Wakefield as the Lead Authority holding the assets in Trust.
34. Once acquired, YPO can reorganise the business of the target to achieve the most cost effective delivery of service which will allow trading with designated public bodies to be done other than through the Company.
35. If the proposed transaction proceeds, Doncaster Council and the other YP Founder Members will be required to enter into the Supplemental Agreement attached at Appendix A. Legal advice has been provided on the contents of the agreement. The Council has the necessary powers to enter into that Agreement at the appropriate time.

## **FINANCIAL IMPLICATIONS [CA 20.11.9]**

36. The proposed transaction is set out in detail in the confidential appendices to this report. The strategic business case, which models the forecast income and expenditure over a ten-year period, outlines potentially significant financial and non-financial benefits to the YPO, its customers, the

Founder Members, and the wider public sector.

37. External financial advice has been commissioned to undertake financial due diligence. This due diligence is expected to be completed by early December.
38. There is a financial risk arising from the proposed transaction. To help mitigate this, the business case has been based on a prudent set of assumptions and has been risk-assessed and stress-tested to financially model different scenarios. In addition, there will be dedicated project management resource deployed to support transitional arrangements and strengthened senior capacity at board level. A full risk assessment and potential mitigation is set out in the appendices.
39. The proposal is that Wakefield Council, as the Lead Authority, would provide the funding and makes the transaction on behalf of all of the Founder Members. Founder Members will be asked stand behind the Lead Authority's position through a Supplemental Agreement to the Management Agreement which will outline the position should a Founder member wish to withdraw during the loan period or the Joint Committee terminates with liabilities in excess of assets.

#### **HUMAN RESOURCES IMPLICATIONS**

40. No human resources implications have been sought for this paper.

#### **TECHNOLOGY IMPLICATIONS**

41. No technology implications have been sought for this paper.

#### **HEALTH IMPLICATIONS**

42. No health implications have been sought for this paper.

#### **EQUALITY IMPLICATIONS [Officer Initials SRF Date 22/11/19]**

43. There are no direct equality implications arising from this proposal.

#### **CONSULTATION**

44. Discussion on the proposed transaction and proposal to enter into a supplemental agreement has taken place with YPO Strategic Officers Group. The independent director, who is the chief financial officer of Asda is supportive of the proposed transaction. The YPO Management Committee resolved to proceed to due diligence.

#### **BACKGROUND PAPERS AND APPENDICES**

45. Appendix A - Business Case, Risk Profiling, Finance Model and Draft Supplemental Agreement (PDF pack) ALL EXEMPT



## **GLOSSARY OF ACRONYMS AND ABBREVIATIONS**

GPOC – General Powers of Competence

UN – United Nations

YPO – Yorkshire Purchasing Organisation

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