

**Notice of a public meeting of
Executive**

To: Councillors Aspden (Chair), Ayre, Craghill, Cuthbertson, D'Agorne, Runciman, Smalley, Waller and Widdowson

Date: Thursday, 26 September 2019

Time: 5.30 pm

Venue: The George Hudson Board Room - 1st Floor West Offices (F045)

A G E N D A

Notice to Members – Post Decision Calling In:

Members are reminded that, should they wish to call in any item* on this agenda, notice must be given to Democracy Support Group by **4:00 pm on Monday, 30 September 2019.**

*With the exception of matters that have been the subject of a previous call in, require Full Council approval or are urgent, which are not subject to the call-in provisions. Any called in items will be considered by the Customer and Corporate Services Scrutiny Management Committee.

1. Declarations of Interest

At this point, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

2. **Exclusion of Press and Public**

To consider excluding the public and press from the meeting during consideration of Annex 3 to Agenda item 11 on the grounds that it contain information relating in respect of which a claim to legal professional privilege could be maintained in legal proceedings. This information is classed as exempt under Paragraph 5 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 1 - 16)

To approve and sign the minutes of the last Executive meeting, held on 29 August 2019.

4. **Public Participation**

At this point in the meeting members of the public who have registered to speak can do so. The deadline for registering is **5.00pm on Wednesday, 25 September 2019**. Members of the public can speak on agenda items or matters within the remit of the committee.

To register to speak please contact the Democracy Officer for the meeting, on the details at the foot of the agenda.

Filming, Recording or Webcasting Meetings

Please note that, subject to available resources, this meeting will be filmed and webcast, or recorded, including any registered public speakers who have given their permission. This broadcast can be viewed at <http://www.york.gov.uk/webcasts> or, if recorded, will be uploaded onto the Council's website following the meeting.

Residents are welcome to photograph, film or record Councillors and Officers at all meetings open to the press and public. This includes the use of social media reporting, i.e. tweeting. Anyone wishing to film, record or take photos at any public meeting should contact the Democracy Officer (whose contact details are at the foot of this agenda) in advance of the meeting.

The Council's protocol on Webcasting, Filming & Recording of Meetings ensures that these practices are carried out in a manner both respectful to the conduct of the meeting and all those present. It can be viewed at http://www.york.gov.uk/download/downloads/id/11406/protocol_f_or_webcasting_filming_and_recording_of_council_meetings_201

- 5. Update on City of York Council preparations for Brexit** (Pages 17 - 28)
The Deputy Chief Executive to present a report that provides an update on the Council's preparations for the UK's exit from the European Union.
- 6. Reducing York's carbon footprint with Electric Vehicles** (Pages 29 - 44)
The Corporate Director of Economy & Place to present a report that provides an update on the progress of the Hyper hub facilities at Poppleton Bar and Monk's Cross Park and Ride sites.
- 7. Re-procurement of Primary Care Contraception Service** (Pages 45 - 58)
The Director of Public Health to present a report that outlines options for ensuring the continued provision of Long Acting Reversible Contraception within the local population from 1 April 2020.
- 8. Housing Delivery Programme Update** (Pages 59 - 102)
The Corporate Director of Health, Housing and Adult Social Care to present a report that provides an update on the Housing Delivery Programme.
- 9. Review of the Constitution and Governance Procedures** (Pages 103 - 110)
The Interim Assistant Director Legal and Governance to present a report that sets out the proposals for undertaking a review of the Constitution and the Governance arrangements for City of York Council.
- 10. Update on Taxi Licensing Policy** (Pages 111 - 140)
The Corporate Director of Economy and Place to present a report, which in accordance with the requirements of the Council's Constitution seeks the Executive's formal adoption of amendments to the Taxi Licensing Policy in relation to:

 - Driver training; and
 - Determining the suitability of applicants and licensees as drivers in taxi and private hire licensing

The report also advises of the joint work of the West Yorkshire and City of York Licensing Authorities, consultation undertaken and the amendments to the policy following the consultation.

11. Interpretation of the law – ‘Out of town’ (Pages 141 - 176) licences

The Corporate Director of Economy and Place to present a report that outlines the Council’s interpretation of the law relating to the ability of private hire operators and drivers to work their vehicles outside of the area within which they are licensed (often referred to as ‘out of town’ operators/drivers/vehicles).

12. York Outer Ring Road Improvements Update (Pages 177 - 202)

The Corporate Director of Economy and Place to present a report that sets out a number of options for the York Outer Ring Road Improvements.

13. Urgent Business

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

Democracy Officer:

Name: Fiona Young

Contact details:

- Telephone – (01904) 552030
- E-mail – fiona.young@york.gov.uk

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی میا کی جاسکتی ہیں۔ (Urdu)

 (01904) 551550

City of York Council

Committee Minutes

Meeting	Executive
Date	29 August 2019
Present	Councillors Aspden (Chair), Ayre, Craghill, Cuthbertson, D'Agorne, Runciman, Smalley, Waller and Widdowson
In Attendance	Councillor Myers

PART A - MATTERS DEALT WITH UNDER DELEGATED POWERS

23. Declarations of Interest

Members were asked to declare at this point in the meeting any personal interests not included on the Register of Interests, or any prejudicial or disclosable pecuniary interests, that they might have in the business on the agenda.

Cllr D'Agorne declared a personal interest in Agenda Item 10 (The Danesgate Community – Academy Conversion), as one of the ward councillors for the area who were mentioned in the report as taking part in discussions on the proposals.

24. Exclusion of Press and Public

The Chair confirmed that, since the Annex to Agenda Item 11 (Future of Centaurs) was now in the public domain, there was no need for Members to consider making a resolution to exclude the press and public during consideration of that item.

25. Minutes

Resolved: That the minutes of the Executive meeting held on 18 July 2019 be approved and then signed by the Chair as a correct record.

26. Public Participation

It was reported that there had been nine registrations to speak at the meeting under the Council's Public Participation Scheme and one request to speak by a ward member.

Cllr Warters, member for Osbaldwick & Derwent ward, spoke on matters within the Executive's remit, expressing concern about the state of roads and footpaths in the city and suggesting that the council set up a mobile service to clear debris and bring the week-killing service in house.

The following members of York Private Hire Association (YPHA) spoke on the council's taxi licensing policy in relation to Agenda Item 5 (Forward Plan) and as a matter within the Executive's remit, with reference to Uber taxis operating in York:

- Drew Thompson commented that, by allowing Uber to operate in York, the council was failing to protect local businesses in accordance with legal requirements;
- Barry Page raised issues about Uber drivers' lack of local knowledge, involvement in traffic accidents and potential contribution to increased crime and carbon emissions;
- a) David Rhodes queried why officers were seeking to amend the policy rather than prosecute Uber under the 1976 Act;
- b) Wendy Loveday (Chair of YPHA) drew attention to the successful prosecution of out of area operator by another local authority in 2014.

Andrea Dudding spoke on Agenda Item 6 (Responding to the Council's Climate Change Motion), on behalf of UNISON, expressing UNISON's support for the motion, and urged Members to support a Climate Strike in September.

Hon. Ald. Brian Watson spoke on Agenda Item 7 (My City Centre Project), noting that the project covered areas that were outside the city centre and querying how councillors would contribute to it.

Roger Pierce spoke on Agenda Item 8 (City Centre Access ETO Phase 1 Proposals). He supported the principles of the security cordon but suggested it should be extended to include Goodramgate and High Petergate.

Tricia Head spoke on Agenda Item 10 (The Danesgate Community – Academy Conversion), as Headteacher of the Danesgate Community. She outlined the context of the application to convert, in the light of the particular needs of the school's pupils, and stressed that it would not alter the nature of the school nor its emphasis on forging partnerships.

The final registered speaker was not present at the meeting.

In responding to the comments made, the Chair noted that:

- the Executive Member for Environment and Climate Change would receive a report on weed control in October;
- discussions would take place with UNISON on their and the Council's shared goals on climate change.

27. Forward Plan

Members received and noted details of the items that were on the Forward Plan for the next two Executive meetings at the time the agenda was published.

28. Responding to The Council's Climate Change Motion

The Head of Corporate Policy and City Partnerships presented a report which responded to a motion approved by Council on 21 March 2019. The motion called on Executive to declare a Climate Emergency, commit to making York carbon neutral by 2030 and request a report within 6 months setting out actions to address this (*Minute 68 of the Council meeting refers*).

The report summarised actions already taken in recent years towards environmental sustainability (paragraphs 9-16), suggested steps needed to create and implement a Carbon Reduction Plan and emphasised the elements that would be key to its success, in including learning from others and partnership working. The following options were presented in order to develop the Plan towards carbon neutrality:

Option 1 – to request the actions detailed in paragraph 35 of the report;

Option 2 – to request additional or alternative actions.

Members welcomed the report and the progress already achieved, while recognising there was much still to do.

Resolved: (i) That the significant activities and commitments already made in respect of the Climate Emergency agenda be noted.

Reason: To confirm that the Executive is aware of work carried out against this commitment of the Council.

(ii) That the following activities be requested, as set out in paragraph 35 with the addition of the words highlighted in bold below:

- a) The Climate Change Policy & Scrutiny Committee to consider York refreshing its engagement with the Global Covenant of Mayors for Climate & Energy;
- b) Officers to investigate the potential for York's participation in the developing network of UK Climate Emergency cities;
- c) Officers to investigate how to engage with the newly established Local Government Association Climate Emergency Task and Finish Group, which will make recommendations on how the government can support councils in achieving climate emergency targets;
- d) A further report to be developed regarding the emerging Carbon Reduction Plan, the timing of which will be determined by the Leader.
- e) Reports in relation to the following investments made in the Emergency Budget to be brought to the Executive / Executive Member for Economy & Strategic Planning, as indicated below:
 - To Executive:
 - The Northern Forest, **with this initiative to be signed up to by the council**
 - Building Insulation Programme
 - Electric Charging Points.
 - To the Executive Member:
 - Additional capacity to speed up the production of Supplementary Planning Documents to support the Local Plan.

Reason: To allow the work in response to the Climate Emergency declaration to be progressed.

29. My City Centre Project – Establishing a Strategic Vision for York City Centre

The Head of Regeneration Programmes presented a report which set out proposals to create a My City Centre project (the project), using the £100k budget set aside in February to devise a strategy in response to the social, economic and environmental challenges facing York city centre.

The challenges in York, though less extensive than in some areas of the UK and masked to an extent by York's successful evening and leisure economy, included issues associated with larger retail units in the city, and a need to balance the conflicting interests of bar / restaurant users, traditional family shoppers, visitors and residents. Challenges identified to date were set out in Annex 1 to the report.

The aim of the project was *'To engage the public and stakeholders to develop a long term social, environmental and economic strategic vision for a sustainable future for York city centre'*. Led by the Major Projects and Regeneration team, it would be overseen by the Assistant Director for Regeneration and Asset Management, with regular update reports to the Executive Member for Economy & Strategic Planning. The approach to stakeholder consultation would be similar to that used successfully in the My Castle Gateway project. A Project Initiation Document (PID) was attached as Annex 2. It was proposed that the budget be split between internal resources to manage the project and external resources to support stakeholder engagement work.

Members welcomed the proposals and the chance to bring people together and to re-connect residents with the city centre. Officers confirmed that the project was intended to cover the core city centre area, but there was no bar to including other areas.

Resolved: (i) That the aims and outcomes for the My City Centre project be approved.

Reason: To provide a strategic vision for the city centre that reflects stakeholder and public views and can guide development, regeneration and investment decisions.

(ii) That the approach, scope and governance for the My City Centre project be approved.

Reason: To ensure that the aims and objectives of the My City Centre project are delivered.

(iii) That the proposed spend of the £100k previously allocated to the project be approved.

Reason: To provide the resources required to deliver the My City Centre project.

(iv) That approval be given to procure a contract for the identified public engagement support required to deliver the project and that authority be delegated to the Assistant Director for Regeneration and Asset Management, in consultation with the Assistant Director of Legal and Governance or his/her delegated officers, to take such steps as are necessary to award and enter into the resulting contract.

Reason: To provide the necessary external support to deliver the public engagement that will sit at the heart of shaping the strategic vision.

30. City Centre Access Experimental Traffic Order Conclusion and Phase 1 Proposals

The Assistant Director of Transport, Highways & Environment presented a report which sought approval for actions to progress the implementation of measures to mitigate the risks and impact of a hostile vehicle attack in the city centre and on the public highway at the racecourse. Sean Tunstall, of the North East Counter Terrorism Unit, was in attendance to give an overview of the national situation with regard to potential terrorism targets.

In accordance with the decisions made by Executive on 27 September 2018 (*Minute 47 of that meeting refers*), an Experimental Traffic Regulation Order (ETO) covering the area shown in Annex A to the report (Phase 1) had been implemented on 5 November 2018 and further consultation had been undertaken with stakeholders, in particular disabled residents and Blue Badge holders. No formal objections to the

scheme had been received but access concerns had been raised, and measures proposed to mitigate these were contained in Annexes B and C. Approval was now sought to make the ETO permanent and to procure permanent hostile vehicle mitigation measures at the Racecourse Road / Knavesmire Road junction. Officers were working with York Minster to ensure the inclusion of similar measures in the Masterplan for the Minster area.

Members welcomed the proposals as an important first step towards ensuring the safety of the city centre in the context of the national security situation.

Resolved: (i) That the update provided in the report and its annexes, including the traffic monitoring and findings from stakeholder engagement events and the objections to making the Experimental Traffic Regulation Order permanent, be noted.

(ii) That, following consideration of the objections, approval be given to make permanent the Experimental Traffic Regulation Order, whereby the city centre will be closed to all traffic, except emergency vehicles and those with essential permission, during the footstreet hours, which currently are normally 10:30 am to 5:00 pm.

(iii) That officers be authorised to progress the process of advertising and changing the Traffic Regulation Order (TRO) exemptions to create a new permit for emergency and essential permissions to the city centre under a single heading of permit holders.

(iv) That the findings from the various disabled groups, as indicated in Annex B to the report (with further details of the engagement process and results in Annex F), be implemented, and that further reviews be undertaken as to any improvements to disabled access and disabled parking between city centre car parks and the footstreets area that would further mitigate the impact of implementing the TRO.

(v) That the design of the new bollard following consultation with conservation groups, as shown in Annex G, be noted.

(vi) That authority be delegated to the Assistant Director of Transport, Highways and Environment to carry out the procurement and installation of non-moving bollards at the end of Parliament Street at the earliest opportunity.

(vii) That the council work with the Counter Terrorism Unit to review the temporary measures for Christmas 2019.

(viii) That officers be requested to commence a procurement exercise for a supplier to procure and install the hostile vehicle rated measures in the city centre.

(ix) That officers be requested to commence the procurement of permanent measures at the Racecourse Road / Knavesmire Road junction, these to be in conjunction with measures to be implemented and operated by York Racecourse to manage access on race days.

(x) That details of the cost of the installation, operation and maintenance of the permanent measures be brought back to the Executive.

(xi) That the council work with the Police, consultants and other blue light services to finalise the operational protocols for providing emergency vehicular access to the city centre during the footstreets hours.

(xii) That the council continue to work with York Minster to review security arrangements and use the opportunity offered by their Neighbourhood Plan to propose alternatives to the current temporary hostile vehicle mitigation measures around the Minster area, known as Phase 2.

(xiii) That it be noted that:

- a) the Counter Terrorism Unit will continue to advise the council;
- b) the council will need to introduce essential measures and review them on a regular basis;
- c) the My City Centre consultation, which is the subject of the previous item on this agenda, will give residents the opportunity to comment on future use of the city centre, including the security and accessibility of any future proposals that come forward.

Reasons: (i) To respond to the advice given by North Yorkshire Police and the Counter Terrorism Unit to protect York's areas of high footfall against the 'vehicle as a weapon' (VAW) threat, through the provision of Hostile Vehicle Mitigation measures.

(ii) To ensure that measures are implemented to mitigate as best as possible the effect of the Hostile Vehicle Mitigation measures on blue badge holders, in view of the outcome of disabled group workshops and direct correspondence.

31. Refresh of Ward Committees

The Corporate Director of Children, Education & Communities and the Assistant Director, Communities & Culture presented a report which set out proposals to build on the success of the council's approach to ward working by removing unnecessary bureaucracy and delay while ensuring proper accountability for the use of public money.

The report had been informed by issues raised by the Children, Education & Communities Scrutiny Committee during a discussion on ward working at their meeting on 23 July 2019, as set out in the paragraph 5 of the report. The proposals included:

- Criteria for allocating the new Safer Communities Fund (SCF) to meet residents' priorities, with the impact of projects to be planned in advance and their outcome evaluated;
- Additional training sessions for Members on ward working, suggested to be run in political groups;

- Extra one-off funding for the Ward Highways Capital Scheme for improvements to highways and walking / cycling, with a revised process to improve timely delivery of schemes;
- Allocating ward funding in proportion to the number of members per ward, for a more equitable distribution;
- A new process for HEIP schemes, to achieve better value for money and more timely delivery of schemes;
- Use of the Social Value Engine, an online tool providing a universal measure of outcome, to compare projects;
- Plans to improve engagement with residents and refresh the liaison and partnership working with parish councils.

Details of current ward budget allocations were set out in Annex 1 to the report.

In response to questions from Members, officers confirmed that:

- The SCF would allow a broad scope for the use of funds to meet the needs of communities and residents, while requiring clear objectives to be identified for all schemes;
- The carry forwards of funding shown in Annex 1 related to ongoing projects rather than unallocated funds;
- Officers would look at the possibility of publishing the minutes of residents' associations as well as ward committees.

Members welcomed the report and

- Resolved: (i) That the following be approved:
- a) The criteria for the Safer Communities Fund set out in paragraph 6 of the report;
 - b) The proposal for member development set out in paragraph 9;
 - c) The allocation for highways funding and the draft updated process for identification of schemes set out in paragraph 12;
 - d) The revised basis for allocation of ward funding set out in paragraph 17;
 - e) The updated process for Housing Environment Improvement Programme (HEIP) schemes set out in paragraph 18.
- (ii) That the Social Value Engine be endorsed as a method for evaluating ward schemes.

(iii) That the proposals for resident engagement and the use of 'Planning for Real' set out in paragraph 25 onwards be endorsed.

(iv) That the proposals for Parish Liaison be endorsed.

(v) That the ideas for future development set out in paragraph 38 onwards be noted.

Reason: To support the Council's commitment to working with local communities and devolving power and budgets to residents.

32. The Danesgate Community - Academy Conversion

The Corporate Director of Children, Education & Communities and the Assistant Director, Education & Skills presented a report which sought to resolve a number of land lease issues, to enable the Danesgate Community to convert to academy status and join the South York Multi-Academy Trust (MAT).

The conversion would involve a 125 year lease of land on the Danesgate site to the MAT. Where the Council proposed to change the designation of land currently used for education purposes, Executive approval was required to exclude these areas of the land from the lease. Four such areas of the Danesgate site had been identified, as detailed in paragraphs 10-13 of the report and shown on Appendix C.

Both Danesgate and the MAT were in favour of the proposals, which also took account of other issues affecting the land, including the wishes of ward members to extend a proposed Residents Parking Scheme to Area 1, existing play equipment in Area 2 and the museum storage facility in Area 4.

Resolved: (i) That the following areas of land (as marked on Appendix C to the report) be excluded from the 125 year lease to the Multi Academy Trust:

- a) Area 1 - Road next to Triangle (grassed area)
- b) Area 2 - Triangle (grassed area) of land

(ii) That, in respect of Area 3 (Road to south of the site) approval be given to split the road area, with the car parking area on the northern edge to

remain education land and therefore included in the 125 year lease to the Multi Academy Trust (reserving a right of way over this land in favour of the council), and the remaining area of road excluded from the 125 year lease and designated a Public Right of Way.

(iii) That in respect of Area 4 (Walled Garden) approval be given to lease this area to the South York Multi Academy Trust as part of the 125 year lease, excluding the storage facility which is currently leased to the York Museums Trust.

(iv) That authority be delegated to officers to:

- a) where appropriate, obtain approval under Schedule 1 of the Academies Act 2010 and Section 77 of the School Standards & Framework Act to allow the transfer of land around this conversion to take place;
- b) agree future budgets when consents are obtained; and
- c) report back to Members in due course on the Public Right of Way application and process.

(v) That, in the event that the academisation of Danesgate does not take place or is delayed, Areas 1 and 2 no longer be designated as land currently used for educational purposes and therefore be removed from being part of the site and be adopted by the council.

Reason: In order to resolve outstanding land issues to enable the Danesgate Community to convert to academy status, in accordance with the requirement of the Academies Act not to disadvantage a school when so converting and taking into account the interests of other current users of the land.

33. Future of Centaurs

The Director of Children, Education & Communities and the Assistant Director, Communities & Culture presented a report

which outlined options for a pair of marble sculptures of centaurs purchased by the council at auction in 1949.

The sculptures, carved in Rome around 1755, had originally been displayed in the Assembly Rooms and later loaned to York Art Gallery, but never formally accessioned into the city's museum collection. In 2012, they had been mistakenly transferred by York Museums Trust to York Conservation Trust (YCT). Recent discussions between YCT and council officers had established that YCT would now be willing to transfer them to the city's collection.

Two options were available, as detailed in paragraphs 11-16 of the report:

Option 1 – to accession the sculptures into the council's museum collection. This was the recommended option, since it would resolve the ownership issue to the benefit of York residents and enable the works to be properly conserved.

Option 2 – to seek return of the sculptures from YCT for the purpose of selling them. This was not recommended, as it could damage the council's reputation and its relationship with YCT.

Resolved: That approval be given to accession the two Centaurs sculptures into the council's museum collection (Option 1).

Reason: In order to resolve the issue of ownership of the sculptures and ensure that they can be put on public display for the benefit of York residents.

34. 2019/20 Finance and Performance Monitor 1

The Corporate Finance & Commercial Procurement Manager presented a report which provided details of the council's overall finance and performance position for the period 1 April to 30 June 2019.

The financial pressures facing the council were projected at £1,384k, broadly in line with previous years at this stage. The report highlighted a number of known pressures, with strategies to manage and minimise these. Contingency provision of £500k was available to cover some of the projected pressures and the position was expected to improve over the year. All repayments were up to date on the two outstanding loans over £100k, both

to Yorwaste. It was expected that the council would again out-turn within the approved budget. Officers drew attention to the proposed use of government grant received to deal with costs associated with Brexit and the possibility of additional funding for adult social care arising from the Government's spending review.

Key statutory services continued to perform well, with 2 of the strategic indicators for which there was new data showing improvements. Details of all indicators, grouped around the new portfolio areas created in May 2019, were set out in paragraphs 38–118. For the next quarterly report, there would be a new Performance Framework and set of indicators, based on the Council Plan approved for 2019-2023.

Resolved: (i) That the finance and performance information in the report be noted.

(ii) That the use of grant funding outlined in paragraphs 29-32 of the report be approved.

(iii) That the council tax charging proposals for long term empty properties outlined in paragraph 33 be approved.

Reason: To ensure that expenditure is kept within the approved budget.

35. Capital Programme - Monitor 1 2019/20

[See also under Part B]

The Corporate Finance & Commercial Procurement Manager presented a report which set out the projected out-turn position of the council's capital programme for the 2019/20 financial year, along with requests to re-profile budgets to and from current and future years.

A decrease of £65,816m on the current approved programme was reported, resulting in a revised programme of £205,478m. Variances against each portfolio area were set out in Table 1 at paragraph 6 of the report and detailed in paragraphs 8 to 62.

Approval was sought for:

- An increase of £200k in the budget for the Assistance to Older & Disabled People scheme to cover a backlog of

adaptations carried over from 2017/18, funded from an HRA revenue contribution; and

- The award of a 5 year contract, totalling £1.1m, to deliver an essential Firewall software upgrade, funded from the existing budget set aside for this purpose.

Resolved: (i) That the 2019/20 revised budget of £205.478, as set out in Table 1 at paragraph 6 of the report, be noted.

(ii) That the re-stated capital programme for 2019/20 – 2023/24, as set out in Table 2 at paragraph 17 and detailed in Annex A, be noted.

(iii) That approval be given to increase the gross budget for the Assistance to Older & Disabled People programme by £200k, funded by a revenue contribution from the Housing Revenue Account (HRA), as detailed in paragraph 25.

(iv) That the contract award outlined in paragraphs 57 to 62 be approved.

Reason: To enable the effective management and monitoring of the council's capital programme.

PART B - MATTERS REFERRED TO COUNCIL

36. Capital Programme - Monitor 1 2019/20

[See also under Part A]

The Corporate Finance & Commercial Procurement Manager presented a report which set out the projected out-turn position of the council's capital programme for the 2019/20 financial year, along with requests to re-profile budgets to and from current and future years.

A decrease of £65,816m on the current approved programme was reported, resulting in a revised programme of £205,478m. Variances against each portfolio area were set out in Table 1 at paragraph 6 of the report and detailed in paragraphs 8 to 62. Approval was sought for:

- An increase of £200k in the budget for the Assistance to Older & Disabled People scheme to cover a backlog of adaptations carried over from 2017/18, funded from an HRA revenue contribution; and
- The award of a 5 year contract, totalling £1.1m, to deliver an essential Firewall software upgrade, funded from the existing budget set aside for this purpose.

Recommended: That Council approve the adjustments resulting in a decrease of £65.816m in the 2019/20 budget, as detailed in the report and contained in Annex A.

Reason: To enable the effective management and monitoring of the council's capital programme.

Cllr K Aspden, Chair

[The meeting started at 5.30 pm and finished at 6.20 pm].



Executive**26 September 2019**

Report of the Deputy Chief Executive
Portfolio of the Leader of the Council and Executive Member for Policy,
Strategy and Partnerships

UPDATE ON CITY OF YORK COUNCIL PREPARATIONS FOR BREXIT**Summary**

1. The United Kingdom (UK) was initially due to leave the European Union (EU) on 29 March 2019. However, the date for the UK's departure has now been set back until 31 October 2019.
2. Ahead of the initial Brexit date, City of York Council (CYC) prepared for a potential no-deal by assessing the impact of the changing relationship between the UK and EU to Council services and through engagement with city partners.
3. A consensus emerged that York was relatively well insulated from the known, immediate challenges, notwithstanding the notable impacts of a no-deal Brexit which are documented in Government reports.
4. Furthermore, lack of clarity on the final outcome of negotiations and lack of engagement from central Government have meant that it has been challenging to fully assess the implications of Brexit on York specifically.
5. As the new scheduled date for the UK's departure approaches, preparatory work will be enhanced to ensure that York is able to meet the challenges of this new reality.
6. Moving forward, the focus will continue to be prioritising information and support for residents and ensuring that the city has a collective response to challenges and opportunities posed by Brexit.

Recommendations

7. The Executive is asked to:

- 1) Note the contents of this paper and the Council's preparations for the UK's exit from the European Union.

Reason: To ensure that Executive is sighted on preparations that have taken place in advance of Brexit.

Background

8. In a referendum on 23 June 2016, a majority of voters supported the UK leaving the EU.
9. The Government committed to leave the EU on that basis and Article 50 (the process for a member state to leave the EU) was triggered on 29 March 2017. This set a two year deadline for the UK to leave the EU – 29 March 2019.
10. The conclusion of negotiations between the UK and EU, the Withdrawal Agreement (and associated political declaration) was signed off by EU leaders at a summit on 25 November 2018.
11. However, since this point, the UK Parliament has consistently rejected the Withdrawal Agreement. This made it necessary for the Prime Minister to request an extension to the withdrawal process beyond the initial 29 March deadline.
12. Initially the deadline was extended until 12 April to allow Parliament to pass the necessary legislation. However, Parliament once again rejected the Government's withdrawal agreement.
13. This resulted in the Prime Minister requesting an additional extension to secure passage of the Withdrawal Agreement in Parliament. The EU granted an extension to 31 October 2019.
14. Subsequent to the extension until the end of October, Theresa May resigned as Prime Minister with Boris Johnson winning a leadership election of the Conservative Party resulting in him becoming the new Prime Minister.
15. The new Prime Minister has committed the UK to leaving the EU on 31 October, whether that is with a deal or no-deal.
16. At time of writing, it is still not possible to determine the future relationship between the UK and EU.

17. Given the extended deadline for the UK to leave the EU, this paper looks at the planning which took place at City of York Council in advance of the initial 29 March deadline (and the initial short extension to 12 April) to assess how prepared the Council was for Brexit and what areas of improvement can be undertaken to ensure that the Council and the city is best prepared for the UK's eventual departure from the EU in either a transitional exit or no-deal scenario.

City of York Council planning for Brexit

18. Throughout the Brexit negotiations, the UK Government said that a no-deal scenario remained unlikely but that it continued to prepare for all eventualities. The Council took the lead from the Government in this respect and considered how the city should respond in the event of a no-deal.
19. Preparations looked at three areas: internal, city-wide and regional/national.
20. The overall aim of the Brexit engagement process from CYC was to, where possible, mitigate risk/flag opportunities both internally and at a city-wide level and to create a coherent city response to a challenging landscape.

Internal preparations

21. Initial internal preparations focused on the 106 technical notices and associated information packs that were published by the Government (<https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal>). This guidance provided information that was sector specific and gave detail on what changes would arise in the eventuality of a no-deal scenario.
22. The technical notices explained the arrangements from the point of view of transactions and regulation but did not detail the implications for the different organisations or people involved.
23. There was an initial review of the technical notices by the Policy and Partnerships team at the Council with any relevant information and notices flagged with the appropriate Head of Service.
24. As Exit Day (29 March 2019) approached, the Policy and Partnerships team engaged with each service that was likely to be impacted by a no-deal. This included face-to-face meetings with Heads of Service,

attending team meetings and sending information requests to gather intelligence on challenges that were anticipated.

25. CYC's Emergency Planning team requested Heads of Service to provide a daily return. These returns were then fed up the chain of command via the North Yorkshire Local Resilience Forum (LRF).
26. In addition, immediately prior to the 29 March and continuing through to 12 April, there was a daily meeting to flag any areas of concern at a CYC level and for information to be cascaded through relevant channels.
27. Throughout the process of engagement with Council services, based on this information available, it was felt that the Council was relatively well-insulated from the more serious threats caused by Brexit. It was also noted that many threats and opportunities were intangible given the variety of future scenarios that did, and still do, exist.
28. CYC also engaged with staff that had concerns about the EU Settlement Scheme for European citizens who wished to remain in the UK after Brexit.
29. Two information sessions were held (one in West Offices and one in Hazel Court) to provide information. These was coordinated by the Communications team and attended by Policy and Partnerships, Registration Services (responsible for providing biometric support as part of the Settlement Scheme), York Learning (who were able to provide digital support) and Citizens Advice York (CAY) (to provide immigration advice).
30. While attendance for both sessions was limited it did give staff the opportunity to ask any questions and for them to be signposted to relevant information.

City-wide engagement

31. The Council sought to engage with city partners to ensure that the city was prepared for a no-deal Brexit.
32. The Council hosted three Brexit city partners meetings. These were held in August 2018, January 2019 and February 2019 and chaired by Cllr Andrew Waller, then deputy leader of the Council.
33. A fourth meeting, to take place in April 2019 was also scheduled. However, this was cancelled following the delay to Brexit.
34. Attendees to these meetings are listed in table 1:

Table 1: Attendees at the city partner Brexit discussions

Organisation
Askham Bryan College
CVS
Make It York
North Yorkshire Fire and Rescue
North Yorkshire Local Enterprise Partnership
North Yorkshire Police
University of York
Vale of York CCG
York College
York St John University
York Teaching Hospital NHS Foundation Trust

35. Additionally, a wider group of city wide partners were emailed by the Chief Executive of the Council asking them to keep the Council informed, confidentially, of any concerns and issues that had arisen in anticipation of a no-deal Brexit. This correspondence channel remains active but has had limited take-up.
36. At the meetings that were organised there was a consensus view that York was relatively well-prepared for a no-deal Brexit based upon the information that was available. However, there was recognition that there were a number of unknowns, particularly related to the long-term implications of a no-deal scenario.
37. It was noted that organisations were making their own preparations in advance of Brexit in recognition that they had particular challenges specific to their individual needs that may not be addressed by support from the Council and cross-city partnership working. This has been further reflected in the work undertaken by Local Enterprise Partnerships (LEP) in anticipation of Brexit.

38. The Council requested that relevant information to businesses be flagged on the Make It York website - <http://www.makeityork.com/do-business/preparing-for-brexit/>. This webpage was updated as new information became available. Similar information is also available on the LEP websites.
39. Communications to residents was seen as a priority. It was determined that messaging from the Council would align with that from government with information directing individuals to the gov.uk/euexit website. Information was made available via posters, postcards and social media channels. Social media activity reached 42,987 people with 1,029 people engaging with the posts.
40. At a practical level, CYC offers a biometric identification support service as part of the EU Settlement Scheme programme. This is administered via Registration Services. The service offered was initially available from very few authorities with York being one of the only centres covering North and West Yorkshire.
41. In line with Home Office advice and in keeping with other local authorities offering this service, a fee of £14 is payable to cover costs of the service (this is a separate fee to the £65 fee that was waived by Prime Minister Theresa May for applying to the settlement scheme).
42. The service drew an increasing amount of interest (including a radio interview) as the 'Brexit day' approached but then tailed off when it was announced that the UK's exit from the EU would be delayed until October.
43. Digital support is also available via York Learning to those residents who require assistance with the online settlement scheme application.

Regional and national engagement

44. CYC continues to engage in discussions at a regional and national level related to the continuity of supply and service provision in addition to ensuring relevant information was disseminated.
45. Preparatory work on emergency planning was focused through the North Yorkshire LRF.
46. Following concern that local government was being overlooked in preparing for Brexit, a regional coordinator (Tom Riordan, Leeds City Council) was established for Yorkshire. This flagged concerns and questions up to central government and also allowed neighbouring

authorities to share information. Returns from each local authority were made to the coordinator on a weekly basis.

47. In addition, officers attended a number of Government run workshops to prepare for Brexit on issues that had a relevance to the work of the council.
48. Services have also engaged in forums organised by the two LEPs.

Funding allocated by CYC

49. The Government has released £210,000 spread evenly over two financial years to aid with Brexit related work. The use of this resource will be channelled to appropriate areas. Further money has subsequently been released and is detailed in paragraph 59.
50. To date, we have spent around £10k through Citizens' Advice York to support people applying to the EU Settlement Scheme. This will fund staff hours to supervise and coordinate advice, communicate the service offer with community groups, major employers and other bodies, and the provision of training where required.
51. A small amount of funding has also been spent on publicising the EU Settlement Scheme and on staff time to work on Brexit related activity.
52. A further £100k has been allocated to community support programme that includes the recruitment of a Community Involvement Officer who will work directly with minority communities directly impacted by Brexit.
53. Further funding will be allocated as deemed appropriate.

Work since the delay to Brexit

54. While daily preparation meetings were stood down following the decision to delay Brexit until 31 October, work at CYC has continued to ensure that services were available to those who required support.
55. For example, biometric identification support for the EU settlement scheme was continued by Registration Services with take-up being maintained even when there was a tail-off in Brexit discussions over the summer.
56. Further, an article appeared in the internal CYC staff e-newsletter in early August 2019 highlighting the avenues for EU workers to secure settled status in the UK. The article suggested this information be rolled out to those using Council services in addition to employees.

57. A further meeting with city partners was organised for 4 September in anticipation of the new deadline. An internal heads of service meeting was also organised to refresh coordination within CYC to ensure that any challenges to service delivery are addressed. Liaison across the Council continues to identify any Brexit related challenges.
58. CYC has also engaged with community groups to discuss Brexit related issues.
59. In August 2019, further funding for local authorities was announced. As part of this additional funding, CYC has received £105k. Further, the Government has announced a national £4 million pot of money for LRFs to prepare for Brexit.
60. The Government has also requested that each authority designate an officer to lead on no-deal planning. This role will be to act a coordinator of activity in preparation for Brexit ensuring that all reasonable steps have been taken in advance of 31 October. Will Boardman, Head of Corporate Policy and City Partnerships, will take up this responsibility.

Assessment of CYC's Brexit preparations

61. Brexit has presented a unique situation that has been difficult to fully prepare for across all sectors and geographies, including Council services. Anticipated outcomes have not come to fruition while there has been a constantly changing landscape that is well beyond the control of the Council. Indeed, there is still no clarity as to the impact of the UK's eventual departure from the EU.
62. The decision to follow the lead of the Government in planning for a no-deal scenario meant that the Council was able to present a single version of the truth and signpost concerned residents and businesses to appropriate information providers.
63. Assessments that were made internally and with the Council's external partners from the information that is available highlighted that there was a consensus view that York should be relatively well insulated from the known challenges that a no-deal Brexit would present, when compared to other areas in the UK. However, the potential impacts of a no-deal Brexit at a national level have been widely publicised and this will continue to be monitored.
64. This was reflected in the returns of Heads of Service and via the information channels open to city partners. These channels have also meant that any new information and challenges could be assessed and

fed into regional and national discussions. This provided a level of assurance as the initial Brexit day approached and will do so again as 31 October approaches.

65. Liaison with city partners was succinct and provided a useful mechanism for engaging with key stakeholders on a matter of vital interest to the city. As the UK's departure from the EU becomes a firmer reality the Council will reengage with its partners on this issue.
66. Throughout the preparatory work for Brexit, there has been a focus on reassurance for residents and to provide support to those who require it. The media campaign to highlight access to not only biometric identification support for the EU Settlement Scheme but also the digital assisted support was an example of the Council using its position as a leader in the community to provide guidance for those that were in need of support.
67. Take up in this service is likely to rise again as the UK's departure from the EU returns as a live issue in the public consciousness. As one of only a few centres offering biometric support York's investment in biometric facilities highlighted that the Council was putting residents first. The Council's support of CAY further speaks to this commitment.
68. The work that has already taken place will enable the Council and the wider city to be better prepared for the new October exit date. This will provide additional assurance to partners and residents that preparations that can take place will have taken place and that service provision, where it is possible to foresee, will be able to meet the challenges that Brexit will bring in the immediate timeframe following 31 October.
69. Looking further ahead, the Council will continue to be an active participant at a local, regional and national level in discussions to frame opportunities emerging from Brexit such as a new Shared Prosperity Fund and an enhanced devolution offer. This will allow the city to take advantage of the emerging opportunities that the UK's new status will afford whilst mitigating some of the more challenging aspects of this changed landscape.

Consultation

70. As described in this report, Officers from across the Council and Partners have been and will continue to be consulted on preparations for Brexit.

Options

71. Option 1 is that Executive note the contents of this paper and the Council's preparations for the UK's exit from the European Union.
72. Option 2 is that Executive suggest alternative or additional activities.

Analysis

73. Option 1 represents a set of activities that have provided a level of assurance in the Council's ongoing preparatory work for Brexit.
74. Executive may wish to suggest alternative or additional activities, which is Option 2.

Council Plan

75. The contents of this report do not have an impact on Council Plan outcomes although Brexit could have an impact across outcome areas.

Implications

76. The contents of this report do not have implications for the below although Brexit may impact on these areas.
 - **Financial** – no implications
 - **Human Resources (HR)** – no implications
 - ***One Planet Council / Equalities*** – no implications
 - **Legal** – no implications
 - ***Crime and Disorder*** – no implications
 - ***Information Technology (IT)*** – no implications
 - ***Property*** – no implications

Risk Management

77. There are no specific risks identified in respect of these recommendations.

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Report **Date** 12 September 2019
Approved

Wards Affected: List wards or tick box to indicate all

All

For further information please contact the author of the report

List of Abbreviations Used in this Report

- CAY – Citizens Advice York
- CYC – City of York Council
- EU – European Union
- LEP – Local Enterprise Partnership
- LRF – Local Resilience Forum
- UK – United Kingdom of Great Britain and Northern Ireland

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Executive**26 September 2019**

Report of the Corporate Director of Economy and Place
Portfolio of the Executive Member for Transport and
Portfolio of the Executive Member for Environment and Climate Change

Reducing York's carbon footprint with Electric Vehicles

Summary

1. The Council has made a commitment to tackle climate change and reduce the City's carbon footprint by 2030 and carbon reduction is starting through a number of projects that seek to make the way the City operates more sustainable.
2. In March 2019, the Executive approved plans to engage with the market to deliver two Hyper hub facilities at Poppleton Bar and Monk's Cross Park and Ride sites. A Hyper hub is a collection of ultra rapid charging points for electric vehicles (EV). This is a scheme that is part funded through the Office for Low Emission Vehicles (OLEV) and part funded through European Regional Development Funding (ERDF). The principle benefits of this scheme are:
 - promoting and driving more sustainable, environmentally friendly cars;
 - having two strategically positioned Hyper hubs to service households and businesses with Electric Vehicles (EV) that don't have the benefit of off street parking;
 - to ensure the council has ownership of strategic assets that allow the Council to play a part in the setting of tariffs that form a key part of the local, regional and national EV charging network landscape;
3. Prior to the development of the Hyper hubs proposals, the Council already had a track record in investing in EV infrastructure in Car parks, retail parks and leisure centres. There has also been experimentation with EV and EV infrastructure for the Council's own fleet.
4. One of the difficulties with executing innovative schemes of this nature, where the market is not mature, is the uncertainty around availability of the technology and the cost, particularly where there is high demand for the

technology proposed. After initial market engagement regarding a specific scheme it was clear that the costs for Hyper hubs would be significantly higher. In order to meet this potential increase of around £700k in cost further funding is being sought through several sources (including Local Enterprise Partnership (LEP) funding and additional ERDF). In order to match this funding the Council will need to provide a contribution to the costs (£400k).

5. During market engagement the opportunity to use on site battery storage to generate revenue has been raised by several suppliers. This potential wasn't accounted for in the original business could and can help to offset the additional Council investment through revenue over the projects lifetime, however in a brand new market income forecasting could prove highly unreliable and therefore is not considered in this report as a viable means of suggesting capital repayment.
6. Despite the increased forecast cost the importance of the two Hyper hubs remains:
 - To provide a sustainable and inclusive solution for EV owners with no off street parking. The cost of installing 50 on street chargers (of which a government subsidy would be available) would be in the region of £250,000 and multiplying this out across the City would represent a significant cost as well as the ongoing maintenance issue. It would also to a challenge with existing technology to provide on street charging where parking is limited, for example in terraced areas;
 - To allow control over tariffs in the City to ensure a fair cost of EV charging for residents, businesses and visitors;
7. Hyper hubs is the cornerstone of the City's future EV charging estate strategy and further work will be done in the next 6 months to refine the strategy for the EV charging estate as a whole. This will include work on the Council's approach to EV in its own fleet and the importance of taking an holistic approach to the development, operation and support.

Recommendations

8. The Executive is asked to:
 - 1) Note the progress of the Hyper hubs project.
 - 2) Recommend to full council an increase in the budget of £700k including £400k additional prudential borrowing to fund the increased cost of the Hyper hubs project;

- 3) Agree to proceed to the procurement of a contract for the supply and installation of the hyper hubs and delegate to the Assistant Director of Transport, Highways and Environment (in consultation with the Assistant Director of Legal and Governance or his/her delegated officers) the authority to take such steps as are necessary to award and enter into the resulting contract for the delivery of the Hyper Hubs project but that if the scheme needs to be tailored to the available budget this will be brought back to Executive in a further report.
- 4) Approve the approach to the wider estate and progress on fixing the Council's current EV charging assets;
- 5) Ask officers to develop the principles laid out in this report along with the comments into a formal Public EV Charging Strategy to be brought back to a future Executive.
- 6) To include the fees for parking in EV bays as part of the budget proposals for 2020/21

Reason: In order to move forward and implement the EV charging infrastructure that meets the Council's ambitions in terms of carbon reduction, promoting sustainable transport and increasing the use of electric vehicles to improve air quality in the City.

Background

9. City of York Council is committed to creating a city which has a thriving local economy, strong communities and a sustainable way of life. A City where residents are healthy, happy and prosperous. This can be no better illustrated than the Council's commitment to the reduction of carbon emissions by 2030 and the resourcing of a number of projects that would make a real impact on the delivery of these targets.
10. An area where the Council can exercise significant influence is by supporting the transition to more sustainable means of transport both for residents, visitors and businesses and internally for the Council's own fleet.
11. The Department for Transport's "The Road to Zero" sets out a framework to end the sales of conventional petrol and diesel cars and vans by 2040 and put the UK at the forefront of manufacturing and sale of ultra low emission vehicles. The ambition is for all new cars and vans to be effectively zero emission by 2040.

12. Vehicles with reduced emissions range from efficient Euro 6d diesel and petrol vehicles, alternatively fuelled vehicles and parallel hybrids (which use traditional fuels (petrol or diesel) and have a supporting electric motor that is charged by the combustion engine). Ultra Low Emissions Vehicles include plug-in hybrids, fully electric vehicles (EVs) and fuel cell electric vehicles (FCEVs – the fuel cell in this example would be hydrogen. Fuel cells are devices that convert chemical energy directly into electrical energy, water and heat). There is a strong narrative in the Department for Transport's strategy for the production and uptake of Ultra Low Emissions Vehicles to play a large part in delivering on the strategy in the next 10-20 years.
13. Already nationally there is an increase in uptake of EVs with nearly 60,000 plug-in cars registered in the UK in 2018 marking the 7th consecutive year of growth and this is reflected locally in terms of sales of EV and demand on the Council's charging infrastructure.
14. Locally, as well as the Local Transport Plan putting in place a strategy for transport, the Smart Transport programme is putting in place the systems to allow better real time and strategic modelling. In addition, the connectivity layer developed by the Council's Digital team puts in place an environment where intelligence can be easily passed to network users.

Cost

15. There is now an increasing range of new and used EVs available on the market and as take up increases and the technology improves the cost of the vehicles will reduce and become more accessible to all users. In this context the Council's main role will be to communicate the benefits of switching to a low emission vehicle.

Range anxiety

16. A perceived barrier to the purchase and subsequent issue for EV users is the uncertainty over the distance a vehicle will go on a charge and when the next charging opportunity will be. This starts with where the user parks the vehicle over night. If this is on a drive and the user has the necessary infrastructure to charge the car, this is less of an issue. If the user doesn't have access to charging infrastructure overnight (or when the vehicle isn't being used), for example where a user parks on-street, which is common in York's terraced areas, there will be a constant question as to where the vehicle will next be able to charge.

17. This anxiety is emphasised for new users as this is not something that normally exists with petrol or diesel vehicles due to the abundance of service stations, even in rural areas. Also, the average range (of more affordable EVs that are likely to replace vehicles) is currently significantly lower than its diesel or petrol contemporary.
18. The resolution to this is supporting the development of an EV charge point network that would give certainty to users around where they will charge. Alongside this would be supporting technology that is available to EV users to allow them to find their nearest operational charging point and to plan a journey with EV charging points considered.

EV charging infrastructure

19. Since 2013 the Council has invested in building EV charging infrastructure in Council car parks, shopping centres and leisure centres. This has enabled the uptake of EVs in the City and the transition to lower carbon and improved air quality to be accelerated. Council owned charging points have usage rates of over 1500 sessions per month.

Hyper hubs

20. At the core of the Council's strategy to accelerate the adoption of EVs is the Hyper hubs project. This project, reported to and agreed by Executive in March 2019, puts in place a key element of the City's ecosystem in terms of EV charging infrastructure. The Monks Cross and Poppleton Bar Park and Ride sites were chosen to host the Hyper hubs because of their geographic locations to the East and the West of the City and their connectivity to the outer ring road.
21. The Hyper hubs will provide a number of 150kW ultra rapid chargers that will allow an average EV to recharge in around 20 – 60 minutes (this will depend on the type of vehicle). This represents a significant improvement on the current EV charging infrastructure and would make the facility more similar to a service station in its usage than a place that the car would be left all day. This would be reflected in the usage regulations for the Hyper hubs where it is envisaged that customers would not be able to dwell at the charger for longer than 90 minutes.

22. The Hyper hubs are designed with the supplementary solar canopy and battery storage to provide charge through sustainable energy by harvesting solar energy through the canopy to store in the battery and using energy in the battery in the charging point.
23. The importance of Hyper hubs is that they enable the Council to provide equality in terms of usage of EVs, the ability for the Council to play a role in the setting of tariffs and to provide nodes in the regional/national charging infrastructure ecosystem.
24. At present, residents living in terraced areas with no off street parking cannot charge at home because there is no infrastructure in place on the street and connecting to their home would be impractical. Hyper hubs would provide the facility to charge these EVs quickly and efficiently.
25. Of equal importance is the ability of the Council to influence tariffs once the market does start to install hyper charging points in service stations. The ownership of the assets also gives the Council the opportunity to provide revenue to support the ongoing maintenance and operation of the facilities.
26. Hyper hubs will also play a role in the regional and national infrastructure piece and allow EV users to connect longer journeys together. This will be a further release on the strain of range anxiety.
27. In terms of the Hyper hubs project, the planning application has been submitted for both Poppleton Bar and Monks Cross sites. The solar canopy in the application covers a larger area than will be installed as part of the Hyper hubs project to assist any future schemes that will look to benefit from solar harvesting.
28. Advice has been taken from the market on the best design of the hubs and an element that emerged during this work was the potential requirement for a canopy over the charging hub to protect the users and the equipment from the elements. Also, the design allows the users to flow rather than park as is the norm with the current EV bays in the Council car parks.
29. A period of market engagement has been completed to inform design and to further inform cost certainty. Several issues arose from this work. Firstly, it was assumed that as time passed in terms of securing funding and developing the designs for the project the technology would have developed and improved and that the 150kW ultra rapid charging units would be more readily available on the market. This has proven not to be the case and, because other cities are on pathways to installing Hyper hub

technology, demand for the units is high. This has had the resultant effect of keeping prices relatively high.

30. This issue, coupled with more developed costs for the frames to support the solar canopies and the practicalities of having a canopy over the charging hubs, has meant a budget shortfall risk has been identified that is likely to be realised during the procurement process.
31. At present, it is estimated that the scheme will cost around £2.2m. This is an increase of £700k on the amount secured to date through OLEV and ERDF. In order to close this shortfall it is proposed that a further amount is applied for through ERDF and, in accordance with the ERDF change control process, this funding will need to be matched.
32. It is proposed that CYC fund £400k and a further £300k is applied for through ERDF (this will bring the ERDF contribution up to £1m). Early discussions have been had with the ERDF managing authority, the Ministry of Housing, Communities and Local Government (MHCLG), and a change request has been constructed for MHCLG's consideration. In terms of the spend profile it is expected that the Council contribution will be required in the financial year 2020/21.
33. There is an opportunity through the Local Enterprise Partnership to apply for funding the match through another source, but there is a process to follow before any potential funding emerges. In terms of the LEP opportunity the team would be looking for a contribution of around £1.5m to cover the shortfall in Hyper hubs funding (as discussed above) and invest in the wider EV charging estate.
34. At this stage any surplus from this budget project will be used to assist in the development of the next stages of the City's Hyper hubs provision, which will be to support the development of a Hyper hub at York hospital.

Wider council EV charging estate

35. In 2013 City of York Council led the way in encouraging low emission vehicle usage by installing a range of APT (brand) public charging infrastructure sites for electric vehicles around the City. However, being an early adopter has meant that much of the estate is now life expired, unreliable and some of the charge points have 3 pin sockets which no longer meet The Alternative Fuels Infrastructure Regulations 2017.

36. Whilst the ambition to install EV was positive and the outcome was good at the time, this was not supported by a wider strategy associated with the installations in terms of the overall management, support and maintenance.
37. In response to this, the assets have now been moved into the Transport systems team in terms of responsibility and an audit of the current estate has been undertaken.
38. At the time of the audit around 44% of the assets were operational. This was due to the issues highlighted above. In July, Full Council approved £25k to invest in the short term repair and maintenance of the assets.
39. The Transport Systems team is now in the process of commissioning the work to put in place the repairs to the assets and 84% of the charging units are now functional with the final sites awaiting third party inspections in order to complete repairs. At present in the region of £15k has been committed.
40. It is clear from the work to date that the repairs will not represent a permanent fix and it is positive that Members have committed a £25k revenue budget for EV charging point maintenance. The wider EV charging network is fundamental to support the Hyper hub project in terms of EV charging provision so the team is now developing a longer term strategy to ensure a sustainable EV charging network is in place.
41. It is proposed that the future Public EV estate development will be initially managed under the following principles:
 - i) Keep residents, businesses and visitors engaged and consulted on future measures and charging types and locations – The initial work will be treated as a scheme in terms of identifying the best locations, the most appropriate charging types and the usability. The implementation and consultation will be carried out in line with the consultation process on Transport system renewal projects.
 - ii) Deliver a reliable network – The technology implemented will be fit for purpose and endeavour to be future proof and the funding to support will cover support and maintenance and renewal.
 - iii) Ensure parking bays are best utilised and EV users who require a charging point are able to access – The objective in this principle is to stop users dwelling in EV charging bays longer than it takes to charge

the car. In some of the City centre car parks the EVs occupying the bays charge for a short period of time (15p per kWh) and occupy the bay for the rest of the day effectively giving free parking to the user and preventing other users from charging. There are a number of possible ways to move forward on this issue:

Examples	Analysis
The bay can only be occupied as long as the car is charging.	This would theoretically ensure that the bays are used for the maximum amount of time, giving more opportunity. The issue here is that the user will not necessarily know how long the car will take to charge and they may need to stay longer and charge.
The user is charged just for the power when charging and then is charged a different standard rate when not charging.	This would resolve the issue of the bays being a free parking bay when not charging, but it would mean that an EV charging bay would be occupied as a standard parking space. There would also need to be a system put in place to manage the cost change.
The bay can only be occupied for a set length of time. Examples in other cities include 4 hours, no return that day.	This would ensure more opportunity and the user would be sure of parking timings, but there would still potentially be a period when the bay was occupied and not charging.

As part of the ongoing review, once the parking bays are identified as fitting with the strategy, the most suitable approach for that location would be identified. Also under review would be the tariff. At present the Council charges 15p per kWh and this could be increased to 20p/kWh to ensure that the charging network is self funding whilst maintaining a competitive tariff that encourages usage. It is proposed that options on tariffs for EV charging are brought forward as budget proposals for 2020/21.

- iv) Match the power output of the chargepoints to dwell time so that the right type of charger is available at the right location – When looking at the whole picture in terms of EV bays take an approach that would

ensure that the right chargers were placed in the right parking areas to ensure best usage.

- v) Ensure residents without off street parking are able to access public chargepoints at a reasonable cost – This is the Council's role in setting the tariffs and influencing the rest of the market in the City.
 - vi) Ensure that the any growth in network is adequately funded to enable effective maintenance, and when required, expansion and renewal of charge points. Members have agreed a budget of £25k per year for the maintenance of the assets. There is potential to kick start further growth in the EV Estate using York, North Yorkshire and East Riding LEP funding. It is proposed that funding is applied for to contribute to Hyper hubs costs and develop, support and replace the current estate. However, growth in the estate will mean more maintenance so the charging structure will need to make it self supporting or a budget will need to be identified.
 - vii) Complement commercial networks to provide a wide choice of publicly owned and privately owned charge points to maximise coverage and choice for users – Interface with private providers, such as BP, to ensure that we have best charge point coverage.
 - viii) Promote the benefits of more sustainable transport and Electric vehicles – to drive the strategy forward engage with the Communications team to develop a campaign to inform of the current policies and installations and the benefits of using more sustainable modes of transport.
42. It is important to recognise that a national issue associated with the increased uptake of EV is the capacity of local distribution networks. Power management will be vital and it may be that future schemes can be developed in line with Hyper hubs where there are elements of energy generation and storage.

The Council's fleet

43. Whilst there is a commitment to shift the Council's own fleet to more sustainable fuels. The work is being picked up as part of the fleet replacement work and should be considered by the new Climate Change Scrutiny as to the potential for greater policy commitments.
44. Not wishing to delay early delivery, officers are to review the Parking services fleet and its potential to become the first all electric fleet and this

proposal will be developed later this calendar year and the waste specifically will be subject to a report later this year.

45. In addition the Council will be exploring fleet opportunities for V2G applications where electricity is fed from the vehicle battery back into the grid, building on previous trials undertaken at Hazel Court.

Finance summary

46. The latest estimated costs of the scheme is £2,200k which when compared to the original budget of £1,500k is an additional cost of £700k. The supplementary costs to fund the shortfall in funding for Hyper hubs is as follows:

Funding source	Note	Value
City of York Council	This will be a contribution to the scheme in the financial year 2020/21	£400k
European Regional Development Funding	This is subject to securing match funding and agreement by the managing authority MHCLG	£300k

47. It is important to note that the Council will comply with the conditions of the award of ERDF funding and have capacity within the Smart Transport team in order to administer the funding and ensure that all activity is compliant.
48. Also note that alternative funding sources for the Hyper hubs shortfall and funding the wider EV estate will be sought in the Autumn.
49. The revenue costs of the additional borrowing equate to circa £40k per annum. This will need to be incorporated in future budget considerations when determining the Treasury Management budget from 2020/21 onwards.

Options

50. **Option 1** is to request Executive Members to approve the supplementary funding to move forward with the Hyper hubs scheme.

51. **Option 2** is to reduce the scope of the Hyper hubs scheme. To ask officers to develop proposals for a reduced scheme for consideration at a future Executive. The likely impact of a reduction in scope would be the delivery one or both of the EV charging elements of the Hyperhubs, but, at this stage, no solar canopy or battery storage.

Analysis

52. **Option 1** is the preferred option as it will deliver on the Council's sustainability ambitions. In **Option 2** the scope would be reduced and it is likely that the project would no longer be eligible for the currently agreed ERDF funding. It is possible that a Hyper hub with just chargers at one or possibly both sites would be affordable, but the solar harvesting and battery technology and consequently the benefit of the sustainability of the scheme in terms of clean energy direct to the EV and managing energy production would be lost, this option would need a further report to Executive but would inevitably reduce the Carbon reduction potential of the project

Council Plan

53. The Hyper hubs project and wider improvements to the EV estate will deliver outcomes which contribute directly to the following objectives in the Council Plan 2015-19.

A prosperous city for all

- Local businesses can thrive
- Efficient and affordable transport links enable residents and businesses to access key services and opportunities
- Environmental Sustainability underpins everything we do
- Visitors, businesses and residents are impressed with the quality of our city.

Implications

- **Financial**
See paragraphs 41 – 44 of the report.
- **Human Resources (HR)**
None

- **One Planet Council / Equalities**

The project will deliver against sustainability outcomes and equalities impacts will be assessed as the project develops.

Legal

54. Funding Agreement

The ERDF funding is predicated on the council proceeding with the project as described in the body of this report. This being solar harvesting, battery storage and rapid charging for electric vehicles. A reduction in the scope would mean a change request would need to be drafted and submitted to MHCLG to vary the existing application, if that was permitted.

Regarding the process for additional ERDF funding a change has been submitted to MHCLG but one of the conditions of the funding is that any such funding must be matched by the Council. The funding agreements in respect of any further funding provided by ERDF or other sources will be reviewed by Legal Services.

55. Procurement

The supply of goods and installation services will be procured in accordance with the provision of the Public Contracts Regulations 2015 and the Council's Contract Procedure Rules.

56. Property

The sites are currently leased to First Bus plc and so consideration will need to be given to the terms of the leases to ensure the hubs can be erected on site. In addition, some of the sites are bound by covenants limiting the use of the sites so these will also need to be considered as part of the project. Initial due diligence on these issues do not suggest any insurmountable concerns.

- **Crime and Disorder**

None

- **Information Technology (IT)**

None at this stage. The Head of ICT will be consulted during the design phase.

Risk Management

57. As with all leading edge technology projects there is a risk that the technology implemented is overtaken by new technologies, systems and approaches. In order to mitigate this, the council has built into the sustainable transport structure the capability to support the project

management and engagement with suppliers. The project is, at an early stage, engaging with experts in the industry to de-risk the adoption of technology solutions.

58. Securing consent for the Solar panels and storage is critical to the projects environmental outcomes. The Park and Ride sites have been selected for their geographic locations and also as there was always an ambition to implement further sustainable transport innovations at these locations.
59. Failure to develop and maintain the EV charging network will lead to reputational risk and a dysfunctional charging network across the City which kicks against the Council's ambitions for Smart, sustainable transport and reducing carbon and other emissions.
60. Without a clear strategy in terms of expanding the network the wrong charging technology may be installed or the wrong locations may be selected.
61. Careful consideration, related to the strategy, needs to be given to the regulations associated with parking and dwell time. Issues with these items could mean lost customers which means loss of revenue and underutilised assets. Failure to set a financially sustainable tariff will mean the network will not be maintainable. Setting it too high will effect uptake.

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Wards Affected: List wards or tick box to indicate all **All**

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List of Abbreviations Used in this Report

OLEV – Office for Low Emission Vehicles
ERDF – European Regional Development Fund
MHCLG – Ministry of Housing and Local Government
EV – Electric Vehicle
ULEV – Ultra Low Emission Vehicles

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Executive**26 September 2019**

Report of the Director of Public Health
Portfolio of the Executive Member for Health and Adult Social Care

Re-procurement of Primary Care Contraception Service**Summary**

1. Ensuring the provision of free, open access to contraception services is a mandated local authority responsibility under the Health and Social Care Act 2012 and is funded by the Local Authority Public Health Grant Allocation.
2. This report outlines options for ensuring the continued provision of Long Acting Reversible Contraception (LARC) within the local population from 1st April 2020.

Recommendations

3. The Executive is asked to:
 - 1) Agree option 1 to enable a joint commissioning approach for the provision of Long Acting Reversible Contraception (LARC) between City of York Council (CYC) and NHS Vale of York Clinical Commissioning Group (VoYCCG).

Reason: To ensure CYC meets mandated responsibility to provide LARC provision for women in York through the provision of effective and efficient joint commissioning arrangements.

- 2) Approve the procurement of LARC through a competitive tendering process in order to secure provision for the proposed duration of commissioned activity from 1st April 2020 – 31st March 2026.

Reason: To provide adequate resource and duration of contract to ensure equitable provision and the sustainability of LARC provision within York.

- 3) Agree to delegate the decision to award a contract to the preferred bidder to the Director of Public Health in consultation with the Executive Member of Health and Adult Social Care.

Reason: To enable the contract to be awarded in a timely manner and allow maximum time for mobilisation of the new service to commence from 01 April 2020.

Background

4. The Health and Social Care Act 2012 resulted in significant changes to the commissioning of Sexual Health services. As from 1 April 2013, local authorities are required by regulation to commission HIV prevention, sexual health promotion and open access genitourinary medicine and contraception services for all age groups.
5. LARC is currently commissioned through a Section 75 agreement with VoYCCG acting with delegated authority as the commissioner on behalf of City of York Council. NimbusCare are the current provider of LARC and coordinate this provision across GP practices within the City of York.
6. Under the existing arrangement, there is a significant risk to CYC due to the current spend predicted to exceed statutory financial legislation limits for spend not aligned to a formal tender process. This is a key driver for requiring a commissioning process but does bring with it opportunity to develop service provision to be more efficient through encouraging, supporting and developing innovation in delivery.
7. The existing contract is an 'activity based' arrangement against a tariff payment model. This payment model was negotiated with the Local Medical Council which has significant influence in setting local tariff payments for health service provision. Under this current arrangement, payment is given for each LARC fitted rather than by a 'block' contract where a set contract value is paid to deliver a specific, broadly defined, service.
8. Under current arrangements of tariff payment against activity, year on year increases in spend have been seen which is due to year on year increase in demand for and provision of LARC. Activity for LARC is increasing year on year which is in line with stated aims of national guidance due to the fact that LARC is a method of contraception at a 99% effectiveness rate.

9. As a mandated area of service provision and one which supports key public health prevention and population health outcomes, the availability of LARC can not be rationed according to budget availability. It is provision that is required to be fully accessible to support a woman's choice to access contraception.
10. Supporting a commissioning process to implement a commissioning approach that looks to award a delivery model which will enable LARC service provision to respond to year on year increases in demand within a context of innovative service provision and a focus on developing efficiencies to ensure equitable and high quality clinical standards is a priority within the proposed commissioning arrangements.

Consultation

11. A series of exploratory meetings between CYC and VoYCCG have informed the development of this commissioning model. These considered future commissioning arrangements for the provision of LARC across both mandated organisational responsibilities – these being the provision of LARC for contraception purposes which sits within the Local Authority; and the provision of LARC for gynaecological purposes which sits within VoYCCG remit.
12. These meetings involved exploration of joint commissioning arrangements among lead commissioners; finance; legal; and procurement representatives from within both CYC and VoYCCG. A working group was established which has explored commissioning and procurement options; organisational processes, statutory and legal considerations; finance implications; scope of provision and potential cost and efficiency saving options in light of current and predicted budget limitations; and timelines for achieving new service delivery arrangements to be in place for 1st April 2020.
13. Following a market testing event held on 22nd July, 2019, it was considered important to follow this up with facilitated system-wide discussions about the development of delivery model options and to better understand what sort of budget and efficiencies might be realised if innovative practice is considered. This will be held on 22nd August and inform the ongoing development of service specification and contract development.

14. Feedback from the engagement event has been considered when developing the commissioning model and service specification. This has been particularly relevant when considering feedback about the suitability of a proposed financial envelope for the provision of LARC and setting a suitable budget to enable needs to be met whilst requiring efficiencies to be made through streamlining LARC provision, resource utilisation and achievement of key outcomes.

Options

15. Option 1: VoYCCG delegate the exercise of their LARC functions to CYC. CYC then lead commissions a service.
16. Option 2: CYC commissions it's own LARC services independent of VoYCCG.
17. Option 3: CYC and VoYCCG enter into some form of joint procurement for LARC services.
18. Option 4: CYC delegate exercise of their LARC function to the CCG. CCG then lead commissions a service.
19. Approve the procurement of LARC through a competitive tendering process in order to secure provision for the proposed duration of commissioned activity from 1st April 2020 – 31st March 2026.
20. Agree to delegate the decision to award a contract to the preferred bidder to the Director of Public Health in consultation with the Executive Member of Health and Adult Social Care.

Analysis

21. Of the 4 commissioning model options considered to ensure continuation of provision of LARC, Option 1 – that VoYCCG delegate the exercise of their LARC functions to CYC. CYC then lead commissions a service - is suggested as the preference:
22. Option 1: VoYCCG delegate the exercise of their LARC functions to CYC. CYC then lead commissions a service. This would require initial negotiation of a S75 partnering agreement, seeking CYC potentially exercise the CCGs LARC functions alongside it's own. Given the proposed values and duration, this S75 would need fairly extensive clauses dealing with process and liability. CYC may then procure and

commission a contract with a service provider to cover all. This would require a CYC Executive decision. The CCG would also have its own decision making processes to follow.

23. This option would allow alignment between the existing Integrated Sexual Health Service contract and LARC which could be combined at a future point. By adding the potential to combine these two elements of service provision, we would be strengthening our local joint commissioning and joint working arrangements and this approach could realise improved service provision and efficiencies for the provision of sexual health services in general.
24. This option would enable CYC to take a direct lead on contract arrangements and ongoing contract management for a substantial part of the current Public Health Grant. This would enable CYC to more effectively shape local service provision and to manage risks associated with this service provision, activity and costs.
25. This approach would support our VoYCCG colleagues to implement a service delivery model that supports NHS England priorities around prevention focussed provision and local area outcome based commissioning arrangements that contribute to and support CYC objectives and priorities, specifically Public Health related priorities but also priorities within the Health & Wellbeing Strategy and Council Plan.
26. Option 2: CYC commissions its own LARC services independent of VoYCCG. This would require CYC Executive decision. CYC would then set it's own procurement process, define clear timescales and documentation, and develop a specification.
27. Separating provision arrangements between LARC provision for contraception and gynaecological reasons would move away from a joint commissioning approach and destabilise the provision of LARC. It goes against NICE guidance for the recommended provision of LARC and it would be an inefficient and un-joined up approach to the provision of LARC for our local population. There would be potential negative consequences to the availability of expert support where one of the funding streams (the VoYCCG contribution towards LARC for contraception purposes) would be significantly lower in value.
28. This would make the clinical training and competency maintenance for practitioners much harder to achieve and maintain and carries risk to de-skilling our health system. It would create artificial barriers to accessing

LARC support for women based on funding streams. This would be expected to have negative impacts on equity of access to provision and potentially see an increase to unnecessary secondary care referrals for women who need to access LARC for gynaecological purposes.

29. Option 3: CYC and VoYCCG enter into some form of joint procurement for LARC services. This would require a CYC Executive decision. The CCG would also have its own decision making processes. Parties would need to agree a procurement process, timescale and documentation/ specs.
30. This would essentially be a less robust and formal application of Option 1. This would not enable the most effective joint commissioning approach as it would not necessarily enable the provision elements of LARC to be joined up; it would not necessarily create a sustainable and long-term contract arrangement; it would not necessarily be the most attractive arrangement to a provider; and it would not necessarily enable service delivery contract terms to be aligned to the current Integrated Sexual Health Service contract.
31. These factors would make it much more challenging to influence the development of service delivery across the city that enabled and supported system delivery change, efficiency savings and improvements in outcomes for women accessing the service and wider population level health outcomes.
32. Option 4: CYC delegate exercise of their LARC function to the CCG. CCG then lead commissions a service. This would require negotiation of a S75 partnering agreement, seeking the CCG potentially exercise the CCGs LARC functions alongside its own. Given the proposed values and duration, this s75 would need fairly extensive clauses dealing with process and liability.
33. The CCG may then arrange or procure a new service covering both. This would require a CYC Executive decision. The CCG would also have its own decision making processes. This is effectively what the current arrangement is. This doesn't seem the most appropriate arrangement when the bulk of investment into LARC provision comes from CYC and the most obvious service connections are to those also commissioned by CYC – the Integrated Sexual Health Service.
34. This arrangement has seen a lack of focus on contract and performance monitoring, as well as access to data and intelligence through primary

care which, if obtained, would enable more effective contract monitoring and service development. These gaps would not be expected to change if this arrangement was continued.

35. In addition to this, VoYCCG is not under the same organisational risk connected to potential breach of financial regulations that CYC is and as this is an extremely small part of overall CYC budget spend, it is not an organisational priority for VoYCCG to lead a commissioning exercise.
36. There is a clear acknowledgment of the need for CYC to respond to the organisational risk identified; along with a clear acknowledgement of the importance of LARC as a Public Health mandated provision; and a clear acknowledgement of the necessity and importance of entering into a joint commission arrangement. Therefore, there is a clear willingness to support CYC in this commissioning process but with CYC as the lead with delegated authority to manage VoYCCG commissioning duties for the relatively low activity of LARC provision that is connected to gynaecological need.
37. Approve the procurement of LARC through a competitive tendering process in order to secure provision for the proposed duration of commissioned activity from 1st April 2020 – 31st March 2026.
38. In relation to the budget envelope, the continued provision of LARC under an activity based tariff payment schedule is not sustainable given the trend of year on year activity increases. There is a need to develop innovation into the delivery model in order to realise efficiency savings.
39. Feedback from market testing indicated a risk to provision due to a capped payment model which might not be adequate to cover predicted increases. The finance envelope for this service is therefore based on a period of continued budget increase calculated from predicted spend against current tariff payments on an assessment of trend of activity increase. This is offered to enable a new delivery model to be established and to realise efficiency savings before ongoing investment is capped. A contract review will be built into a potential break point of this contract in order to enable both parties to assess and review how effectively the resourcing of LARC is being achieved against demand.
40. An activity based contract such as a tariff led delivery model would not allow future budget planning to be put in place due to the variable nature of quarterly and annual costs associated with provision. This would be

particularly important when the aspiration for LARC is to increase its uptake within our local population.

- The application of a fixed price, block contract approach that would remove unpredictable activity based spend based on tariff prices aligned to predicted increase in activity needs detailed exploration. Appendix C highlights some financial modelling that will support the process of identifying a suitable budget for the duration of the contract. Finance options are further explored in the section below this
- A range of efficiency saving options could be considered dependent upon the proposed delivery model of a lead provider that would not be as achievable if GP practices were paid on an individual basis. This is because there would be limited opportunity for efficiency savings if commissioned at an individual practice level.
- This commissioning model would also support the new and developing way of working through Primary Care Networks which supports place based outcome focussed commissioning
- This would enable the potential development of a mixed or 'nurse rich' staffing group with the expertise to provide LARC at reduced cost levels when compared to this being primarily GP led provision
- This would better support a skilled and trained staff group to maintain their skills to fit and extract LARC which requires specific activity and competence levels to be achieved due to an increased likelihood of dedicated and targeted specialist staff groups across the city
 - Consideration about how a delivery model would support skill attainment and retention will require some clear focus so that this is achievable
- This would enable the development of cost and efficiency saving initiatives to be built into the Service Level Agreement and the service delivery of this contract

41. Aligning the lifecycle of the LARC contract with that of the Integrated Sexual Health Contract would support:
 - Future commissioning arrangements to consider incorporating both of these key areas of delivery into one contract if this was considered preferential.
 - A commissioning cycle that supports long-term and sustainable delivery by offering a long duration contract as opposed to many regular and short term contracts that can have detrimental impacts on system development and service delivery due to lack of consistency.
 - The development of a delivery plan that enables potential alignment of other services and health provisions that support sexual health across the city.
 - What and how this might be achieved can be explored in greater detail at the market testing event and during the procurement process.
42. Meaningful use of the Social Values Act requirement to build into the contract an expectation that the winning bidder provide an element of social value within their contract delivery that meets system wide requirements.
 - This might consider things such as health inequality and the provision of / development of capacity to support holistic health services to those women who experience health inequalities across a range of indicators e.g. those accessing substance misuse or mental health services; those with learning disabilities; those who are immigrants or refugees; those who are homeless; or those who are living in poverty; those who are experiencing domestic abuse.
43. Agree to delegate the decision to award a contract to the preferred bidder to the Director of Public Health in consultation with the Executive Member of Health and Adult Social Care.
44. This option would enable the effective implementation of a contract in a timely manner to ensure that service provision can be mobilised on 1st April 2020 meaning no gap in service delivery of a mandated requirement.

45. The current procurement process is being managed against a project plan which has very limited opportunity to extend current deadlines. The procurement process being followed is fully supported by CYC legal and procurement colleagues as well as having been developed in partnership with VoYCCG commissioning, legal and Transformation colleagues all of which has been developed in collaboration within the context of a joint commissioning arrangement and with input from Joint Commissioning Lead.

Council Plan

46. This provision supports the Council Plan priority to focus on frontline service provision, particularly for those who experience health inequalities. It supports the approach to develop effective provision within a range of community based locations.

Implications

Financial

47. The current budget for LARC is £274k. However in recent years the cost of the service has risen significantly due to increased demand (2016/17: £255k, 2017/18: £284k, 2019/20: £312k) and this additional cost has been funded by underspends elsewhere in Public Health.
48. The budget for 2020/21 allows for further increases in activity and can provide an increased LARC budget of £377k (2020/21) and £415k (2021/22 to 2025/26). Over the proposed 6 year duration of this contract, this equates to a total CYC financial contribution of £2.45M.

Human Resources (HR)

49. There are no HR implications.

Equalities

50. For the purposes of this procurement, LARC applies to women within City of York. The provision is expected to be accessible to all women with a need for either contraception or gynaecological use of LARC. To ensure that this provision will be accessible, a focus on providing breadth of access across primary care that considers equity and diversity will be a requirement of the provider.

51. In addition to this, there is some provision built into the existing Integrated Sexual Health contract that requires provision of LARC within the specialist service. This is offered to those women who would otherwise not engage with primary care services to receive LARC.
52. The development of service delivery arrangements to ensure that those women who might most benefit from LARC be part of the service development focus within the new arrangements. There will be an expectation to support the development of the service to reduce health inequalities and to contribute to a reducing unplanned pregnancies and abortion rates within York.

Legal

53. The procurement of LARC services will need to comply with the requirements of the Public Contracts Regulations 2015 and CYC's Contract Procedure Rules. The form of procurement process and related contract documentation would need to be finalised.
54. In relation to proposed s75 arrangements, the NHS Act 2006 provides powers to Local Authorities and NHS Bodies to enter in to s75 agreements relating to relevant prescribed health functions. This can include delegation of prescribed health functions and powers including lead commissioning, pooled budgets and integrated services. The NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 also set out information requirements for such partnering agreements.
55. A s75 agreement would be required between VoY CCG and CYC were CYC to agree to lead commissioning LARC services. The agreement would also need document any related partnering arrangements and agreed processes. The power to enter into a section 75 agreement is also conditional on the following:
 - That the arrangements are likely to lead to an improvement in the way in which those functions are exercised; and
 - The partners having jointly consulted people likely to be affected by such arrangements.

Crime and Disorder

56. There are no crime and disorder implications.

Information Technology (IT)

57. There are no IT implications.

Property

58. There are no property implications.

Risk Management

59. There are a number of risks connected to the provision of LARC which are being mitigated against in a range of ways. An immediate risk is that if this arrangements to commission through a suitable tender process are not followed that CYC will breach legal and statutory legislation as at 1st April 2020.

60. The current commissioning model is provided through an activity based provision model attached to payment tariff for specified activity. The provision of service in this way allows no control over budget forecasts. Remaining within this model of service delivery will maintain ongoing budget pressures for CYC.

61. There is a risk that moving to a block contract based commissioning arrangement, that there will not be provider interest to bid for this contract. This is being mitigated against by building a finance model for the duration of the contract to be based on a payment schedule that mirrors predicted budget spend against the current payment tariff for a set period of time before maintaining annual budget at this level. This is seen as an effective compromise to ensure that risk is adequately shared between provider and commissioner; that the provision opportunity is fair, realistic, and attractive to potential bidders; and will enable a suitable amount of time for a new service provider to develop a delivery model to support efficiency savings.

62. It is important to acknowledge that whilst a range of mitigations are planned to reduce the risk to CYC, the ultimate responsibility for funding and securing provision of LARC in line with mandated responsibility lies with CYC. There remains a risk to CYC around provision of robust and adequately resourced service where factors like governance, sustainability and future demand are never risk free and might be influenced by market forces.

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Report **Date** 18/09/2019
Approved

Wards Affected: List wards or tick box to indicate all **All**

For further information please contact the author of the report

Background Papers:

None

Annexes

None

List of Abbreviations Used in this Report

LARC - Long Acting Reversible Contraception

VoYCCG - NHS Vale of York Clinical Commissioning Group

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Executive**26 September 2019**

Report of the Corporate Director of Health Housing and Adult Social care
Portfolio of the Executive Member for Housing and Safer Neighbourhoods

Housing Delivery Programme Update**Summary**

1. York has a strong history of being at the forefront of tackling housing issues. In 1902, Joseph Rowntree appointed Parker and Unwin to help tackle poverty and slum housing conditions by designing 'improved houses' for working people of differing incomes in York. The result was New Earswick which has gone on to inspire the garden village movement throughout the country and continues to be used as a model of balanced and sustainable living.
2. Following his work creating garden villages, Raymond Unwin was appointed by the government to deliver a design manual. This manual set out space and design standards and the energy, transport and open space requirements for new housing developments. The design manual formed part of the 1919 Housing Act which was the origin of council house building in the UK and fulfilled the government's commitment to deliver 'homes fit for heroes'. Just one year later York commenced the construction of Tang Hall, with the design manual being used to ensure the new homes were light and spacious with large private gardens.
3. The City of York Council recently committed to delivering its largest house building programme since the 1970's to help tackle the housing crisis. On the 100th anniversary of the Housing Act, this report presents a new Design Manual for our Housing Delivery Programme. The manual sets a new standard for residential placemaking in York, helping to tackle some of the housing, social, health and environmental challenges facing our city today. The

Design Manual will support York in pioneering housing delivery which helps to address the climate emergency, creates beautiful and distinctive new neighbourhoods, fosters sustainable new communities, and provides people of different income levels with a home to be proud of and from which to thrive.

4. In July 2018, Executive approved the scope and vision of the Housing Delivery Programme, with the aim of delivering over 600 new homes over the next 5 years with at least 40% of these being affordable. This report explains the work that has taken place in the last year to enable us to deliver these ambitious objectives and what we need to do next to ensure the success of the Housing Delivery Programme.

Recommendations

5. Executive are asked to:
 - i. Note the progress made on Lowfield, Ashfield football pitches, and Duncombe Barracks and the procurement of a design team to help us deliver the objectives of the Housing Delivery Programme.
 - ii. Approve the 'Building Better Places' Design Manual (Annex B) as the new set of standards for the Housing Delivery Programme.
 - iii. Support the 'Shape Homes York' brand and the creation of a website to support our open market and shared ownership sales.
 - iv. Support the proposed approach for site based business case development, the setting of open market and shared ownership sales prices (supported by RICS valuations and guidance from procured sales agent) and agreeing sales including the associated delegated authorities (see Annex C) with quarterly sales reports to be presented to the S151 Officer and Executive Member for Housing and Safer Neighbourhoods.
 - v. Approve the proposed new public engagement strategy for the programme to ensure the voices of our communities are heard and responded to.
 - vi. Approve the reallocation of the previously approved budget (Recommendation V - Building More Homes for York, Executive report, July 2018) to undertake detailed design work to develop and submit a planning application for the Askham Bar site. With this budget to instead be used to

- undertake the equivalent work at the Ordnance Lane and Hospital Fields Road site. The Askham Bar site to instead be brought forward as part of a later phase of development.
- vii. Note the proposed timetable for the submission of planning applications and a business case for Burnholme, Duncombe Barracks and Ordnance Lane/Hospital Fields Road

Reason: To progress with the building, rental and sale of much needed new homes in York set within healthy and sustainable new neighbourhoods.

Background

6. Executive approved the 'Vision' of the Housing Delivery Programme in July 2018. The Vision is to:
- Deliver the type of housing which meets the needs of our residents
 - Meet the full range of affordable housing need
 - Build homes to higher environmental standards
 - Create healthy places where people want to live

The Executive report set out an ambition to directly deliver over 600 new homes across council owned sites, with at least 40% to be affordable housing. The report identified seven sites to be brought forward, namely Lowfield, Burnholme, Askham Bar, former Clifton Without School, former Manor School, Woolnough House, and Hospital Fields Road/Ordnance Lane. In October 2018, a further report was approved by Executive regarding the acquisition of the Duncombe Barracks site, this now forms the eighth site within the Housing Delivery Programme.

7. The July 2018 report and subsequent January 2019 Executive report, confirmed that delivery through the Housing Revenue Account (HRA) was the preferred approach. The 2019 report highlighted how the removal of the HRA borrowing cap has given us much greater capacity to deliver more homes at speed. The council formally approved a £90.75m budget to deliver the programme, funded from market sales and HRA resources as part of the overall Capital Budget (February 2019) with detailed allocations to schemes subject to Executive approval.
8. Since the July 2018 Executive approval of the Housing Delivery Programme, the following progress has been made:

- Lowfield has received planning permission for 165 new homes which includes 40% affordable housing, self and community build homes, public open space, a health and public service building, and a care home
- £1,466,800 of Homes England (HE) grant has been secured for Lowfield under the Local Authority Accelerated Construction fund
- Enabling works have commenced utilising the HE grant at Lowfield and a house building contractor has been procured
- Construction work has started on the creation of eight new football pitches at the former Ashfield Estate site, this will support a growing local children's football club whilst discharging our obligation to provide replacement pitches for those previously at Lowfield
- An internal restructure has been undertaken, creating a new team of housing delivery project managers, customer service officers, construction specialists, a dedicated community and self-build resource and associated support staff
- A new external support team has been procured, including a multi-disciplinary design team led by Mikhail Riches, our new framework architects
- Duncombe Barracks has been purchased at a cost of £1.942m, with part of this acquisition funded from Right to Buy receipts

Setting a new standard of housing in the city

9. The vision of the Housing Delivery Programme (set out in para 6) has created a high level set of objectives through which to deliver new homes. Lowfield was designed and will be constructed in accordance with this vision with the first people moving into their homes in 2020. This report sets out how we can build on these objectives further to create a new standard of housing in York on the next sites within the programme.
10. The new Executive have set out clear and bold ambitions to make the city fairer and more affordable for everyone and to address the climate emergency by making York carbon neutral by 2030. The Housing Delivery Programme will be at the forefront of this agenda delivering a wide reaching positive legacy for the city. The new Design Manual (See appendix 1) outlines that our developments

will create pride in place, support participation, healthy activity, and sustainable communities. We will deliver high quality homes which supports higher educational attainment, mental wellbeing, low carbon lifestyles, and independence. Our homes will be affordable to live in and designed such that our communities are able to thrive.

11. We will develop homes which are spacious and highly accessible and adaptable, allowing people to live in their homes for longer and accommodating the changing needs of occupants. Our developments will create distinctive and beautiful new neighbourhoods which positively respond to the local context. The homes will be zero carbon thus being affordable and comfortable for occupants in the long term. Our next three sites in the programme will achieve this through Passivhaus standards plus renewable energy generation. This will help to tackle fuel poverty for our most vulnerable residents. The homes will sit within new neighbourhoods which contain high quality and accessible open space and public realm which encourage communities to come together. Promoting sustainable transport choices will be integral to all of our developments. The Design Manual includes indicative images demonstrating how some of these aspirations could be delivered on the ground. Developments delivered through the guidance of this Design Manual can add a new layer to York's rich housing history.

Engaging with our Communities and Inspiring Change

12. The Design Manual sets the standards we will be looking to deliver for all of our new neighbourhoods. However, the best outcomes are always achieved by fully understanding the existing area and the needs and concerns of local residents, businesses and other interested stakeholders. Before any design work is undertaken we will undertake a detailed contextual analysis of the site and identify local stakeholders. We will use this to create a site by site public engagement plan which will seek to ensure that as many local residents and other stakeholders can be involved in the development process. We will foster trusted, meaningful and impactful conversations between all stakeholders.
13. The Housing Delivery Programme will build on the success of the MyCastleGateway public engagement strategy by working closely with our communities and other stakeholders at the start of the process to ensure everyone is able to positively shape the

development. Whilst each site will require a different public consultation plan to ensure full engagement in the issues and opportunities, our engagement will follow these three phases:

- **Phase A - Co-develop and refine the design briefs**
We will use a variety of engagement and dialogue tools, including the Design Manual, to explain the ambitions of the Housing Delivery Programme. We will share best practice examples of developments which have delivered high quality and sustainable new communities. We will gain an in-depth understanding of a diverse range of local needs, wishes and ideas for each site and how the new part of the neighbourhood can be made to fit in and enhance the area. We will make these local needs, ideas and perspectives visible and share them through a site specific project section on the Council's website, a household newsletter and social media where appropriate.
- **Phase B - Inspire, understand and resolve shared design challenges**
We will cultivate an open, grown-up debate about challenging design and delivery issues and opportunities. Share and explore challenges, solutions, and decisions throughout the design and delivery process including financial aspects. We will use the 'Building Better Places' Design Manual to structure conversations on design quality and utilise 3D model building techniques to support a better understanding, a more engaged dialogue and to create shared solutions. We will draw on practical examples of homes and streets from our city and elsewhere to inspire creative solutions.
- **Phase C - Make city wide change together**
We will build and strengthen established networks through a programme of site visits, talks and practical workshops focused on learning and delivering high quality 21st century zero carbon homes, healthy streets and sociable places. This will allow the Housing Delivery Programme to inspire innovation across the city. This can be supported by local academic institutions as part of our commitment to measure the success of our developments against our objectives and to continue to learn and improve.

14. Taking time to properly engage stakeholders in the process will help ensure our developments reflect the local context. We will foster long term involvement in our new neighbourhoods, helping achieve our aspirations of creating sustainable and inclusive communities. Well considered community spaces will act as a focal point for the existing and new residents of the area.

Delivering the programme

15. Utilising the HRA is a suitable method of delivering development which achieves our housing and wider social objectives. The HRA has the capacity, both in terms of staff resource and financial scope, to deliver this ambitious programme. We have procured a variety of support services which will allow us to draw on expertise in the areas of cost consultancy, design, construction, and project management. Our new primary architect framework partner, Mikhail Riches, have experience of delivering the type of new neighbourhoods outlined in our Design Manual. They have recently completed a Passivhaus scheme for Norwich City Council which won the Good Neighbour Award and was the Overall Winner at this year's Housing Design Awards and has been shortlisted for the Stirling Prize.
16. Delivering exemplar housing developments can be cost effective in the long term. Such developments can reduce long term costs of maintenance and the cost of living for residents. Creating healthy new neighbourhoods which allow people to live happily in their homes for longer will reduce the demands on other public sector resources. However, Executive need to be clear that developing to higher standards brings additional upfront costs. It is often considered that a Passivhaus development will cost around 10% more than a standard building regulations scheme. Creating high quality public spaces, is partly achieved through a well-considered design but is also influenced by the quality and therefore cost of materials.
17. The increased upfront cost of creating low carbon homes within high quality and distinctive new neighbourhoods can be off-set by the market sale of a proportion of homes on our larger developments. Low carbon homes significantly reduce the overall cost of living. This enables potential buyers to be able to afford the cost of the home over their lifetime. This supports the achievement of strong market sales which is essential to ensure our HRA debt

levels remain affordable and that we are able to support a long term and financially viable Housing Delivery Programme. A large number of local authorities and housing associations in the UK aim to maximise market sale values in order to cross fund the total development cost in order to be able to deliver social rent and shared ownership homes. Any reduction in sales values on our sites impairs our ability to deliver affordable housing. We need to maintain the HRA's capacity to increase its level of debt such that we can deliver the existing programme and take advantage of future opportunities for acquiring land and delivering more homes for our residents. Achieving full market value for our homes will create opportunities to deliver more affordable homes, both on the 8 sites within the programme and in the long term. It is important that we are clear during our site stakeholder engagement work that strong market sale values are vital to cross funding our wider programme objectives such as delivering zero carbon homes, at least 40% affordable housing and high quality public open space. Our approach to developing site financial business cases, determining sales values and delegated authorities as part of the sales process is outlined in Annex C.

18. To assist in understanding the best approach to achieving full open market value for our homes we undertook a survey of local residents and housing professionals. 195 responses were received, primarily from local residents across the full spectrum of age ranges. Responses to two questions were particularly insightful. These are presented below:

Q. Would your expectation of the sale price of a house change if a development was branded as City of York Council compared to a commercial housing developer?

I would expect houses to be...	<u>Percentage of respondents</u>
More than Market Value	0.5%
Less than market value	76.5%
No difference	23%

Q. Would your expectation of the specification of the house for sale (e.g. the quality of the kitchen and bathrooms) change if the house was built by the City of York Council compared to a commercial developer?

I would expect houses to be...	<u>Response</u>
Of a higher specification than a commercial developer	17%
Of a lower specification than a commercial developer	40.5%
No difference	42.5%

19. This tells us that if homes are branded for sale by the City of York Council, this is likely to both reduce potential buyers' expectations of the quality of the home and reduce their expectation as to what the sale price should be. Within this context, it is considered more difficult to sell the homes for the same open market value as would be achieved by a commercial housing developer. This would negatively impact the long term viability of the programme and our ability to deliver more affordable homes for our residents.
20. The approach taken to overcome this issue by a large number of housing associations and local authorities is to sell houses through a distinct brand. The City of York Council, like many other local authorities, does not have a brand which people associate with buying a home.
21. A working group was established containing the Housing Delivery, Communication, and ICT teams alongside external support from a sales partner with experience of selling homes in the city and a design studio with experience of residential sales brand development. Through this collaboration we have developed a brand concept and website wireframe highlighting how a new sales brand might look. This brand would be clearly linked to the council through the use of our 'style guide', the strategic use of our logo and supporting text. The brand would build on and compliment the council's values. However, the new brand would provide clarity around offering market homes for sale.
22. The brand name chosen is Shape Homes York. It is considered that this name successfully portrays a positive message about placemaking, bringing communities together, and setting a new standard of residential development in the city. The brand concept has been market tested through both online surveys and face to face

conversations with members of the public. Of the people who responded and are looking to buy a home in the next 12 months, 92% said that if they saw this brand today they would be interested in learning more about the developments. This is considered to be a very positive response. It is considered that the successful implementation and use of the Shape Homes York brand would increase our opportunity to sell our homes at a rate and level which can help to cross fund our development costs.

Programme Timescales

23. Executive have previously approved a budget to deliver 165 new homes at Lowfield and to prepare and submit planning applications at Askham Bar, Burnholme, and Duncombe Barracks. This report seeks approval to reallocate resources from the Askham Bar site to the site at Ordnance Lane and Hospital Fields Road. This is to ensure that this sensitive site is not left unused for a significant period of time. A business case will be brought before Executive for a budget to deliver these projects over the coming months. The Askham Bar site will be brought forward as part of a later stage of development proposals.

24. The current estimated timescales for the above four sites are:

Site	Start public engagement and design work	Planning app submission	Planning Permission	Executive Business Case consideration	Procure contractor
Lowfield	Complete	Complete	Complete	Complete	Complete
Ord Ln/HFR	Nov 2019	June 2020	Oct 2020	Oct 2020	Mar 2021
Burnholme	Aug 2019	May 2020	Sept 2020	Oct 2020	Mar 2021
Duncombe	Aug 2019	May 2020	Sept 2020	Oct 2020	Mar 2021

25. Following submission of the planning applications for the above sites, the design and public engagement work will commence on the second set of sites within the Housing Delivery Programme. These are Askham Bar, former Manor School, former Clifton Without School, and former Woolnough House sites.

26. In addition, opportunities will continue to be explored for additional provision of housing in the city. This will include engagement with public sector landowners through One Public Estate, work with our strategic partners, and consideration of council owned land which

becomes surplus to requirements. At present, consideration is being given to a council led development on York Central. Business cases will be brought before Executive for consideration of any new proposal which is to be included within the Housing Delivery Programme.

Implications

27. The following implications are:

- **Financial** – The overall cost of the Housing Delivery Programme is £153.9m. This includes the financial implication of appropriating the land at the sites from General Fund to HRA. Council formally approved a £90.75m budget to fund the future programme funded from market sales and HRA resources as part of the overall Capital Budget (February 2019) with detailed allocations to schemes subject to Executive approval. The financial assumptions have been modelled within the HRA business plan and are affordable within that plan. It will be necessary to monitor and amend this plan as individual sites come forward for development. This will be undertaken as part of the regular refresh of the HRA business plan. Key to the success of the programme will be the sales values that can be achieved at the developments.
- **Human Resources** – The Housing Delivery and Older Person's Accommodation Programme teams have been expanded this year. This has created project management and support resource to deliver our development projects. The funding for these teams was included in the previously approved capital programme budget. Council policies will be followed for any further recruitment.
- **One Planet/Equalities** - The development of a wider range of mixed tenure housing in the city will contribute to narrowing the affordability gap which will impact on communities with protected characteristics. See Annex A.
- **Legal** – The Council has the power under section 9 of the Housing Act 1985 to build or acquire housing which includes houses for sale. There are a range of supplementary powers available to the Council which can also assist in delivering this project including powers to borrow. As the Council does not intend to do this for a commercial purpose the Council can act as the developer without the need to do so through a company structure. Disposals of land held under the HRA must be at best consideration unless a

dispensation has been granted allowing sales at under value. Tenancies of HRA properties will need to be granted under normal Housing Act provisions including those as to security of tenure and the right to buy unless the tenancy falls within an exception under the legislation.

- **Crime and Disorder** – Developments will be designed taking account of good practice in terms of reducing the likelihood of crime.
- **Information Technology** – The Housing Delivery Programme will seek to ensure that all housing developments supports digital inclusion and our Digital City ambitions by making the most of existing technology and facilitating future enhancements. This ambition will be supported by utilising existing resources from the ICT team. The sales brand will include a new website which will be funded from previously approved capital budgets and will be developed and maintained in collaboration with the ICT team.
- **Property** – The Asset and Property Management team have and will continue to provided specialist property advice in regards to the Housing Delivery Programme and Elderly Persons Accommodation Review, dealing with commercial landlord and tenant matters; site assembly and development advice. Work has been undertaken to understand where strategic opportunities arise within the commercial and operational estate where assets are potentially surplus and provide an opportunity to be incorporated within the Housing Delivery scope. This work will continue and rationalisation opportunities will be identified and fed into the scope in the future.

Risk Management

28. Delivering an ambitious Housing Delivery Programme brings with it a number of risks. Many of these are in the control of the council, including ensuring sufficient internal resourcing is in place to deliver the projects and managing programme level cash flow. However, a number of risks are external to the programme, such as an increase in building costs or a fall in the housing market.
29. The programme will utilise a comprehensive risk management approach to help identify, understand, and mitigate risk to individual projects and the programme. Each project will be assigned to an internal Housing Development Manager who will be responsible for

creating and regularly updating a risk register in conjunction with colleagues in legal, procurement, finance, property and housing. Executive will have sight of the key risks to each project on a site by site basis through consideration of a business case prior to any building work starting on site. The Housing Delivery Working Group will meet monthly and be updated on the progress and any changes in the risk profile of each site. A programme level financial model has been developed and will be updated monthly to fully understand the current and projected programme level cash flow.

Author:

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Tel 551262

Chief Officer Responsible for the report:

Sharon Houlden
Corporate Director of Health Housing and
Adult Social care

Report **Date** 18/09/19
Approved

Wards Affected:

All

For further information please contact the author of the report

Background Papers:

Executive reports

12 July 2018 – Housing Delivery Programme

<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=733&MId=10470&Ver=4>

17 January 2019 – Building More Homes for York

<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=733&MId=10476&Ver=4>

Annexes

Annex A – Better Decision Making Tool

Annex B – ‘Building Better Places’ Design Manual

Annex C - Business case development and sales strategy

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Annex A - Better Decision Making Tool



'Better Decision Making' Tool

Informing our approach to sustainability, resilience and fairness

The 'Better Decision Making' tool has been designed to help you consider the impact of your proposal on the health and wellbeing of communities, the environment, and local economy. It draws upon the priorities set out in our Council Plan and will help us to provide inclusive and discrimination-free services by considering the equalities and human rights implications of the decisions we make. The purpose of this tool is to avoid decisions being made in isolation, and to encourage evidence-based decision making that carefully balances social, economic and environmental factors, helping us to become a more responsive and resilient organisation.

Please complete all fields. If you wish to enter multiple paragraphs in any of the boxes, hold down 'Alt' before hitting 'Enter'.

Introduction

Service submitting the proposal:	Housing Delivery Programme (Major Projects)
Name of person completing the assessment:	Michael Jones
Job title:	Head of Housing Delivery
Directorate:	HHASC
Date Completed:	13th September 2019
Date Approved (form to be checked by head of service):	16th September 2019

Section 1: What is the proposal?

Name of the service, project, programme, policy or strategy being assessed?
Housing Delivery Programme

What are the main aims of the proposal?
To use council land and investment to deliver new housing in the city, with a focus on creating sustainable neighbourhoods and much needed affordable housing.

What are the key outcomes?

Number of homes delivered
 Number of affordable homes delivered
 Zero carbon homes
 New high quality public open space

Section 2: Evidence

What data / evidence is available to support the proposal and understand its likely impact?
 (e.g. hate crime figures, obesity levels, recycling statistics)

The Strategic Housing Market Survey highlighted a number of unmet housing needs in the city. This information, in conjunction with consultation with colleagues within housing, was drawn upon to establish priority housing needs .
 Various documents were consulted to establish the link between housing quality and healthy placemaking and social and economic outcomes - this informs the new Design Manual.

What public / stakeholder consultation has been undertaken and what were the findings?

Significant consultation has been undertaken on the draft Design Manual, including various internal teams and external specialists. A new public engagement strategy has been drafted such that we can discuss our objectives with local stakeholders on a site by site basis.

Are there any other initiatives that may produce a combined impact with this proposal? (e.g. will the same individuals / communities of identity also be impacted by a different project or policy?)

The regeneration of Castle Gateway and development of York Central will both include new residential developments. There is the potential for the council to invest in affordable housing on strategic sites within the Local Plan.

Section 3: Impact on One Planet principles

proposal on residents or staff.
This section relates to the impact of your proposal on the ten One Planet principles.

For 'Impact', please select from the options in the drop-down menu.
If you wish to enter multiple paragraphs in any of the boxes, hold down Alt before hitting 'Enter'

Equity and Local Economy

Does your proposal?		Impact	What are the impacts and how do you know?
3.1	Impact positively on the business community in York?	Positive	By providing more affordable and high quality homes we will better be able to retain talent within the city, helping local businesses.
3.2	Provide additional employment or training opportunities in the city?	Positive	Through the procurement process, contractors will be encouraged to deliver additional social benefits such as apprenticeships, and training. We will be working with local educational establishments and contractors to increase knowledge and skills associated with delivering zero carbon homes.
3.3	Help improve the lives of individuals from disadvantaged backgrounds or underrepresented groups?	Positive	Provisional of good quality affordable housing (including social housing) will help some of the most vulnerable residents. There is also the potential for apprenticeships etc to be targeted at certain groups e.g. the long-term unemployed, individuals who have been in care etc.

Health & Happiness

Does your proposal?	Impact	What are the impacts and how do you know?
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3.4	Improve the physical health or emotional wellbeing of residents or staff?	Positive	Developments will be designed with healthy placemaking principles in mind e.g. bicycle storage, good connections to cycle and footpaths, open space, etc. By building homes to higher accessibility standards, new residents will be able to live more comfortably and independently.
3.5	Help reduce health inequalities?	Positive	By building homes to higher accessibility standards, new residents will be able to live more comfortably and independently. Homes will be affordable to heat helping to tackle health issues associated with fuel poverty.
3.6	Encourage residents to be more responsible for their own health?	Positive	Developments will be designed with healthy place making principles in mind e.g. bicycle storage, good connections to cycle and footpaths, green space. This will encourage residents to be more active.
3.7	Reduce crime or fear of crime?	Positive	Developments will be designed to reduce the likelihood of crime.
3.8	Help to give children and young people a good start in life?	Positive	Children living in or near the new developments will be able to make use of green space and play equipment . Developments will be designed in a manner that enables individuals with mobility issues to make use of communal facilities. Homes will be designed to space for children to study and learn as well as play.

Culture & Community

Does your proposal?		Impact	What are the impacts and how do you know?
3.9	Help bring communities together?	Positive	The provision of open space will provide opportunities for residents to come together. Developments will be designed to be 'neighbourly', encouraging both formal and informal social interaction.

3.10	Improve access to services for residents, especially those most in need?	Positive	Some developments are co-located with health and social care facilities, libraries, etc. Residents living in these new developments would therefore have good access to these services. We will seek to improve connections between our sites and local services and facilities.
3.11	Improve the cultural offerings of York?	Neutral	No impact
3.12	Encourage residents to be more socially responsible?	Positive	Newly designed homes will be zero carbon with a strong promotion for sustainable transport choices. We will create neighbourly developments which encourage residents to look out for each other. Communal growing areas will also form part of the plans.

Zero Carbon and Sustainable Water

	Does your proposal?	Impact	What are the impacts and how do you know?
3.13	Minimise the amount of energy we use and / or reduce the amount of energy we pay for? E.g. through the use of low or zero carbon sources of energy?	Positive	We will be delivering zero carbon homes which also promote sustainable transport choices.
3.14	Minimise the amount of water we use and/or reduce the amount of water we pay for?	Positive	The construction and use of new homes will require additional water usage. However, water saving measures will be employed in the use of the homes.

Zero Waste

	Does your proposal?	Impact	What are the impacts and how do you know?
3.15	Reduce waste and the amount of money we pay to dispose of waste by maximising reuse and/or recycling of materials?	Neutral	The construction process will create some waste. However, we will seek to minimise this through the creation of a waste management plan on every site before work commences. Once occupied, recycling will be promoted through carefully considered facilities.

Sustainable Transport

Does your proposal?		Impact	What are the impacts and how do you know?
3.16	Encourage the use of sustainable transport, such as walking, cycling, ultra low emission vehicles and public transport?	Positive	Developments will be designed in a manner that connects them to existing footpaths and cycle paths, where possible. Electric charging points will be provided to encourage the use of electric vehicles over traditional fuel. Bus stops and services will be upgraded where appropriate. Cycle parking will be well integrated into the schemes to encourage their use.
3.17	Help improve the quality of the air we breathe?	Positive	The homes we design on our next sites will be zero carbon and not include a gas connection. Sustainable transport choice will be promoted. This will have some positive impact on air quality.

Sustainable Materials

Does your proposal?		Impact	What are the impacts and how do you know?
3.18	Minimise the environmental impact of the goods and services used?	Neutral	Through the procurement process, contractors will be encouraged to make use of sustainable materials.

Local and Sustainable Food

Does your proposal?		Impact	What are the impacts and how do you know?
3.19	Maximise opportunities to support local and sustainable food initiatives?	Positive	Some of our new developments will include communal growing areas. One fruit tree will be planted for every new home we build.

Land Use and Wildlife

Does your proposal?	Impact	What are the impacts and how do you know?
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3.20	Maximise opportunities to conserve or enhance the natural environment?	Positive	Opportunities to create sustainable green spaces will be maximised. We will seek to enhance the biodiversity of each site compared to its current use. This will include the retention of important trees, the installation of new natural and man made habitat features.
3.21	Improve the quality of the built environment?	Positive	The developments will bring some much needed vibrancy back to the existing brownfield sites through the delivery of high quality homes and communities.
3.22	Preserve the character and setting of the historic city of York?	Positive	Before we start designing any sites we will undertake a detailed contextual analysis of the site to ensure our developments respect and enhance the existing built environment.
3.23	Enable residents to enjoy public spaces?	Positive	We will maximise opportunities to provide open space. All sites will seek to improve access to existing facilities.

3.40	Additional space to comment on the impacts		

Section 4: Impact on Equalities and Human Rights

Please summarise any potential positive and negative impacts that may arise from your proposal on staff or residents.
 This section relates to the impact of your proposal on **advancing equalities and human rights** and should build on the impacts you identified in the previous section.

For 'Impact', please select from the options in the drop-down menu.
 If you wish to enter multiple paragraphs in any of the boxes, hold down 'Alt' before hitting 'Enter'

Equalities

Will the proposal **adversely impact** upon 'communities of identity'?
 Will it **help advance equality** or **foster good relations** between people in '**communities of identity**'?

		Impact	What are the impacts and how do you know?
4.1	Age	Positive	The homes provided should positively impact on the lives of residents of a wide range of ages. A number of the affordable housing products will help young people and families to get on the housing ladder. A range of accommodation suitable for older people will also be provided, including bungalows and more accessible houses and apartments.
4.2	Disability	Positive	The number of homes built to higher accessibility and adaptability standards will be maximised. This will include delivering some homes that are fully wheelchair accessible. This will help individuals live more comfortably and independently in their own homes.
4.3	Gender	Neutral	No impact anticipated

4.4	Gender Reassignment	Neutral	No impact anticipated
4.5	Marriage and civil partnership	Neutral	No impact anticipated
4.6	Pregnancy and maternity	Neutral	No impact anticipated
4.7	Race	Neutral	No impact anticipated
4.8	Religion or belief	Neutral	No impact anticipated
4.9	Sexual orientation	Neutral	No impact anticipated
4.10	Carer	Positive	Carers will benefit from homes that are more accessible and better adapted to the needs of the individual they are caring for.
4.11	Lowest income groups	Positive	More affordable housing (including social housing) will be provided than would be anticipated if the sites were delivered by the private sector. This will positively impact on the lives of individuals from low income groups. The higher environmental standards of developments will reduce utility costs for residents.
4.12	Veterans, Armed forces community	Neutral	No impact anticipated

Human Rights	
Consider how a human rights approach is evident in the proposal	

		Impact	What are the impacts and how do you know?
4.13	Right to education	Neutral	It is not expected that there will be any impact
4.14	Right not to be subjected to torture, degrading treatment or punishment	Neutral	It is not expected that there will be any impact

4.15	Right to a fair and public hearing	Neutral	It is not expected that there will be any impact
4.16	Right to respect for private and family life, home and correspondence	Neutral	It is not expected that there will be any impact
4.17	Freedom of expression	Neutral	It is not expected that there will be any impact
4.18	Right not to be subject to discrimination	Neutral	It is not expected that there will be any impact
4.19	Other Rights	Neutral	It is not expected that there will be any impact

4.20	Additional space to comment on the impacts		

Section 5: Planning for Improvement

	What have you changed in order to improve the impact of the proposal on the One Planet principles? (please consider the questions you marked either mixed or negative, as well as any additional positive impacts that may be achievable)
5.1	The programme aims to create healthy and sustainable communities. Therefore throughout the programme's development we have been looking to maximise the potential to deliver additional social and environmental benefits. This includes a commitment to delivering zero carbon homes through a Passivhaus methodology.

	What have you changed in order to improve the impact of the proposal on equalities and human rights? (please consider the questions you marked either mixed or negative, as well as any additional positive impacts that may be achievable)
5.2	The programme aims to provide new homes that meet priority need. Key to this is ensuring that people of different ages, accessibility needs and income level etc. are catered for. As site-specific plans are developed, efforts will be made to ensure the housing delivered meets the local need identified.

	Going forward, what further evidence or consultation is needed to ensure the proposal delivers its intended benefits? e.g. consultation with specific vulnerable groups, additional data)
5.3	Public consultation will occur on a site-by-site basis, this will enable us to tailor the new development to meet local need.

5.4	Please record any outstanding actions needed to maximise benefits or minimise negative impacts in relation to this proposal? (Expand / insert more rows if needed)
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Action
Public consultation on a site-by-site basis

Person(s)	Due date
Michael Jones	Prior to the development of each site

In the One Planet / Equalities section of your Executive report, please briefly summarise the changes you have made (or intend to make) in order to improve the social, economic and environmental impact of your proposal.



BUILDING BETTER PLACES

Housing Delivery Programme

DESIGN MANUAL



Purpose of the guide

The Housing Delivery Programme has the potential to deliver a wide reaching positive legacy for the city which further builds on the city's rich history as a housing pioneer. Good design is essential for communities to thrive. It creates pride in place, participation, healthy activity, self-supporting communities, and safe and secure homes which improve educational attainment, mental wellbeing, low carbon lifestyles, and independence.

This design manual has been developed to ensure that we meet our city's housing need by 'building better places'. The manual provides a strong and ambitious design framework to support a progressive and collaborative programme which will ensure our existing communities positively influence the outcomes.

Creating a clear and strong set of design principles will allow us to significantly raise the standards of residential place-making in York. We hope that our innovative developments will raise expectations and inspire others to deliver better.

This manual forms the basis of the strategic brief for the project manager and design team. It builds on the housing and wider social aspirations outlined within 'The Vision' of the Housing Delivery programme approved by Executive in July 2018. The guide also reflects best practice, guidance and policy, both local and national. The guide is formed of cross directorate collaboration lead by the Housing Delivery Team and is designed to work alongside existing council policies. The Design Manual is set around five principles:

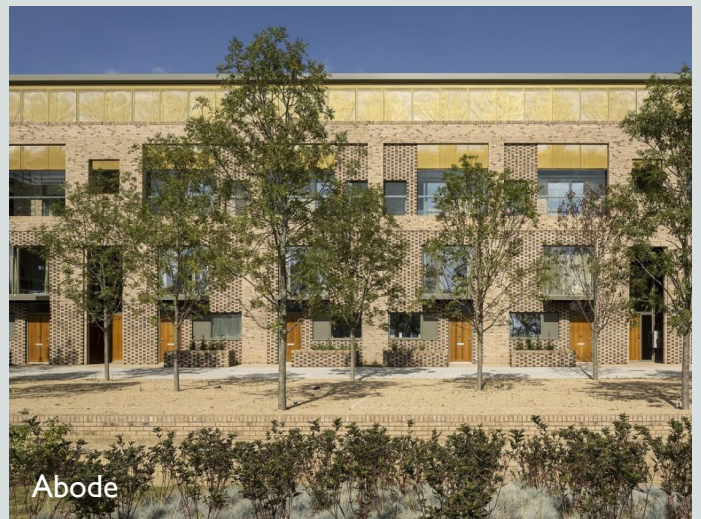




Goldsmith Street



Ouse Lea



Abode

Delivering the housing our communities need...

We will...

- Deliver **tenure blind** developments including a minimum of **40% affordable housing** across the programme - with at least 20% social rent housing as well as providing opportunities for first time buyers and key workers to take their first step into home ownership
- Build all of our homes to high **accessibility/adaptability** standards - meaning residents can more easily and affordably live in their home for longer
- Develop homes that respond to the **needs of our ageing population** and identified specialist need
- Provide opportunities for self and community build housing – **empowering our communities** to provide their own home
- Engage with a wide range of internal and external stakeholders to ensure our developments meet the **health and wellbeing needs** of our communities



Abode



Abode



Derwenthorpe

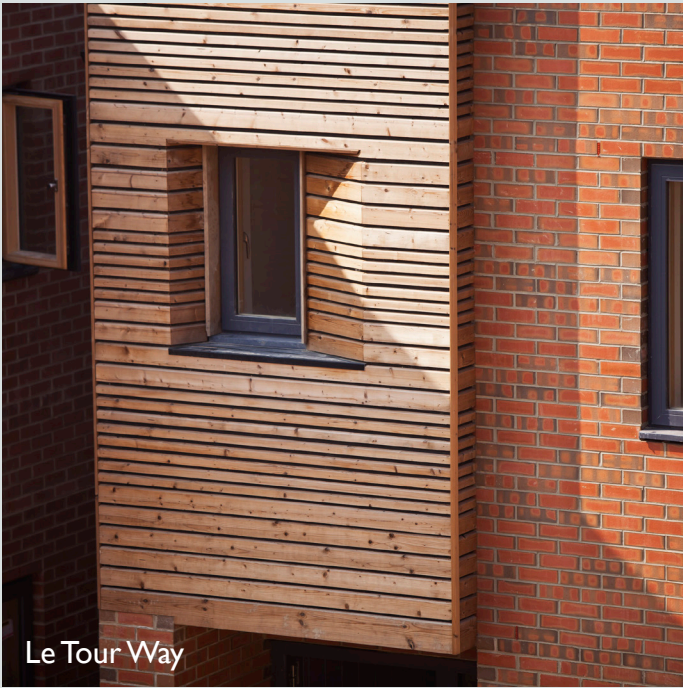


New Earswick

Building healthy homes and neighbourhoods

We will...

- Build our homes to National Space Standards as a minimum - **creating comfortable and spacious homes** which are naturally light and bright with access to private outdoor space
- Design homes with consideration for how current and future generations wish to inhabit and enjoy their homes, **promoting independence** and reflecting the growth in multi-generational living
- Create developments which are **neighbourly** and **encourage social interaction** inside and outside of the home, helping to tackle loneliness and social isolation
- Develop new housing, open spaces and planted areas which are **resilient to changes in the climate**
- Integrate significant new **tree and shrub planting** - providing seasonal variation to support mental health whilst **enhancing the biodiversity of our sites**
- Provide opportunities for **communal gardens** and food growing such as urban orchards and allotments, with at least one fruit tree to be planted on site for each home built
- Look to engage with local craftspeople to elevate the quality of our homes and increase the **sense of pride** in the new communities
- Monitor and evaluate our new neighbourhoods, **learning lessons** in order to deliver the best schemes we can



Le Tour Way



Castle Gardens Public Park, Malmö



Goldsmith Street



Accordia

Creating distinctive and beautiful places which bring communities together...

We will...

- Design our new neighbourhoods **alongside the local community** through public engagement which empowers stakeholders
- Create **distinctive and beautiful** new neighbourhoods informed by a thorough analysis of the physical, historic, and cultural context of the site
- Gather a thorough understanding of community and commercial facilities and services in an area – such that we can **enhance and complement the existing neighbourhood, adding a new vibrancy**
- Provide high quality **communal and public open space**, including play streets **for all residents to enjoy**
- Provide inclusive formal and informal **play opportunities** close to home within child friendly neighbourhoods
- Develop neighbourhoods which **support older people in being active members of the community** by providing level walking routes, dropped kerbs and public seating/resting points
- Consider potential ‘meanwhile’ uses for sites, benefiting the community and the local economy



Accordia



Accordia

Reducing our impact on the environment and residents' energy bills...

We will...

- Adopt a fabric first approach by developing all new build housing to certified **Passivhaus standards**
- Install the most appropriate **renewables** (including consideration of co-owned solar PV systems which maximise the use of free generated solar electricity) in order to achieve **zero carbon** whilst also minimising bills for residents and helping to **tackle fuel poverty**
- Build homes with heating and ventilation systems which are simple to use and maintain
- **Reduce water usage** within homes through carefully specified internal fittings, grey water recycling and water butts. We will use permeable surfaces, green roofs and sustainable urban drainage to reduce and manage water run-off
- Select building materials considering their **carbon footprint, whole life cost and ease of repair and maintenance**
- Develop a site waste management plan (SWMP) before construction begins, which sets out how materials will be managed, maximising the re-use and recycling of materials. We will review previous SWMP's and seek improvements before starting each project
- **Promote recycling** through well designed and integrated storage areas which facilitate ease of use and collection
- Actively engage with local construction training providers to help **improve local skill levels** in sustainable design and construction
- Carry out post-occupancy monitoring on a percentage of the completed dwellings in partnership with a local academic institution to ensure there is no performance gap between design and build and to assess how occupants can most effectively **benefit from living in zero carbon housing**



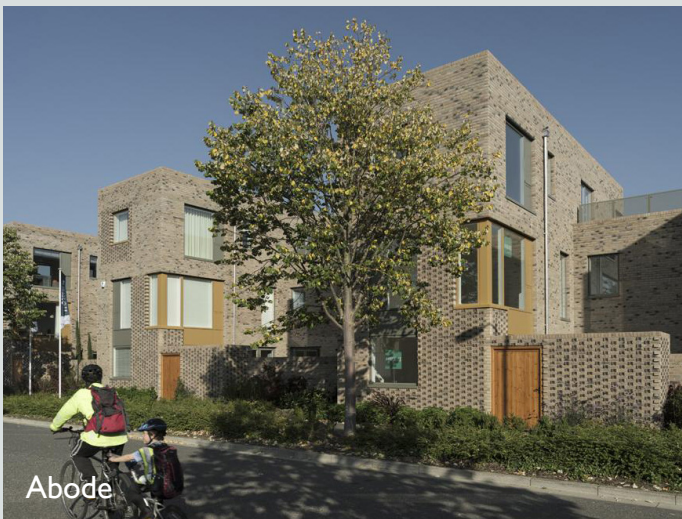
Supporting sustainable transport choices and connectivity...

We will...

- Look beyond our site boundary and take opportunities to better **connect people to local facilities** - strengthening routes to open space, play opportunities and other community assets
- Developments will be designed with careful consideration of on-street parking levels such that **pedestrians and cyclists are prioritised** – creating streets with low traffic speeds which promote walking, cycling, play and socialising
- Accelerate the transition from petrol to electric car and cycle use through the provision of **electric charging points**
- Encourage **sustainable transport choices** by supporting strategies and investments in public transport, car clubs, and car-sharing
- **Promote walking and cycling and minimise unnecessary car journeys.** Well integrated covered and secure cycle spaces will be provided at two spaces per 1 bedroom home with one additional space for each additional bedroom. We will not exceed the council's maximum car parking standards and where sites have good access to local facilities and sustainable transport choices, we will seek to provide no more than 1 parking space per dwelling across the site



Goldsmith Street



Abode



Derwenthorpe

Acknowledgements

Thank you to the following teams within the City of York Council for sharing knowledge and experience

- Housing Delivery Programme
- Public Health
- Design and Conservation
- Forward Planning
- Major Projects
- Older Person's Accommodation Programme
- Housing Policy
- Economic Development
- Procurement
- Education and Skills

Thank you to Factored, Mikhail Riches and Imagine Places for your support and guidance.

Image credits:

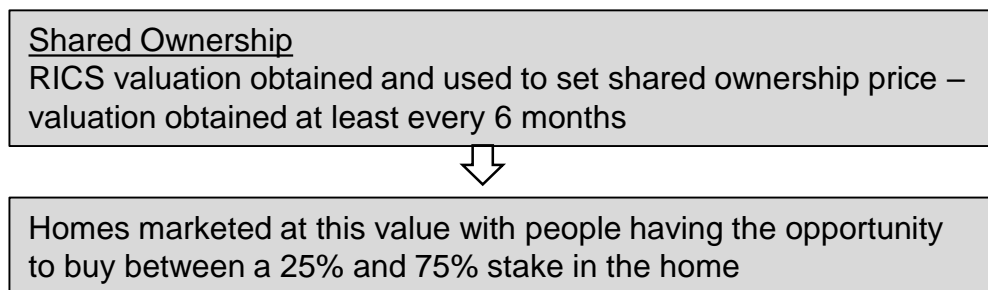
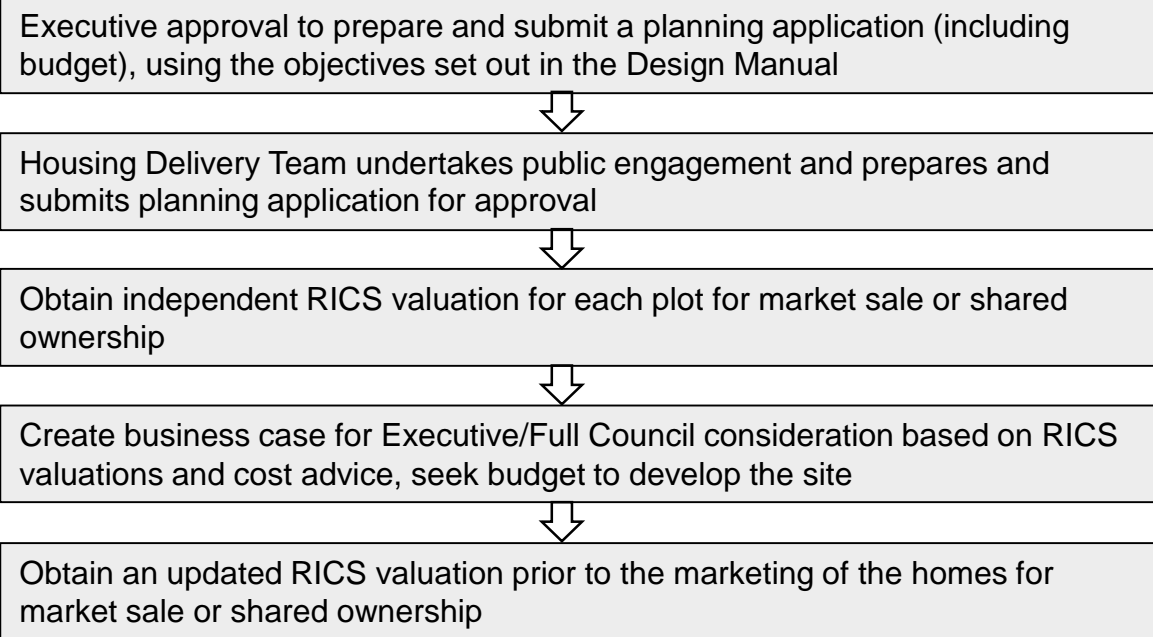
- Goldsmith Street: Tim Crocker/The Guardian
 - Abode: Proctor and Matthews
 - Horsted Park: Proctor and Matthews
 - Derwenthorpe: Joseph Rowntree Housing Trust
 - Accordia: Fielden Clegg Bradley, Matthew Smith Architectural Photography
 - New Earswick: Antecedent Architecture Blog
 - Ouse Lea: OnTheMarket.com
 - Castle Gardens Public Park, Malmø: Nigel Dunnett
-

- The document has been informed and inspired by local and national planning guidance as well as the following documents:
- A Home for the Ages: Planning for the Future with Age-Friendly Design – (RIBA 2019)
- Building for Life 12: The Sign of a Good Place to Live (Building for Life Partnership, 2015)
- Cambridgeshire Quality Charter for Growth
- Claiming the Passivhaus Standard: Technical Briefing Document (Passivhaus Trust, 2015)
- Code for Sustainable Homes (Department for Communities and Local Government, 2010)
- Distinctively Local – (Pollard Thomas Edwards, HTA, Proctor and Matthews, and PRP Architects, 2019)
- Healthy Placemaking (Design Council, 2018)
- Healthy Urban Planning Checklist (NHS England & London Healthy Urban Development Unit, 2017)
- Home Quality Mark: Technical Guide (Building Research Establishment, 2018)
- Housing Standards: Minor Alterations to the London Plan (Greater London Authority, 2016)
- How to Build a Passivhaus (Passivhaus Trust, 2015)
- Lifetime Homes (revised criteria) (Habinteg, 2010)
- London Housing Design Guide (London Development Agency, 2010)
- Places, Spaces, People and Wellbeing: Full Review (What Works Centre, 2018)
- Planning Healthy Weight Environments: a TCPA Reuniting Health With Planning Project (Town and Country Planning Association and Public Health England, 2014)
- Purposeful Design for Homes and Communities: Design Council response to the Housing White Paper (Design Council, 2017)
- Putting Health into Place: Introducing NHS England's Healthy New Towns Programme (NHS England, 2018)
- Space in New Homes: What Residents Think (CABE, 2009)
- Spatial Planning for Health: An evidence resource for planning and designing healthier places (Public Health England, 2017)
- Sustainable Construction: Simple Ways to Make it Happen (BRE, 2011)
- Technical Housing Standards – Nationally Described Space Standard (Department for Communities and Local Government, 2016)
- The Case for Space: The Size of England's New Homes (RIBA, 2011)



Annex C – Site
business case
development and sales
strategy

Annex C



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Executive**26 September 2019**

Report of the Interim Assistant Director Legal & Governance
Portfolio of the Executive Leader (incorporating Policy, Strategy &
Partnerships.

Review of the Constitution and Governance Procedures**Summary**

1. This report sets out the proposals for undertaking a review of the Constitution and the Governance arrangements for City of York Council.

Recommendations

2. The Executive is asked to:
 - 1) Approve the proposed reviewed of the Council's Constitution and Governance arrangements as set out in Option 2.

Reason: To facilitate an expedited review of the Constitution document to ensure it is accurate and effective and to enable a thorough and robust review of the governance arrangements taking into account the impact of any potential changes on all interested parties.

Background

3. City of York Council, like all local councils, has to make decisions that have far reaching implications for the way that services are delivered which impact on the lives of local people. Local people need to be confident that such decisions are evidence based and considered openly and accountably.
4. The Constitution sets out the framework within which Council decisions are taken and it is therefore imperative that it is accurate to ensure that

all decisions taken are within the Council's powers and are compliant with legislative requirements.

5. The Localism Act 2011 introduced changes to the possible governance arrangements available to councils to include the adoption of a committee system.
6. Good governance is essential to ensure decision-making is effective and therefore the Council must regularly review its governance arrangements including the decision making structures as set out in the Constitution.
7. This report recommends a staged approach to ensuring that the existing Constitution document is accurate and effective in the short term and to facilitate a more wide-ranging review of how decisions are taken in the longer term.

Consultation

8. None in relation to this report although consultation with the Executive, members of Council, the public and officers will be required if the recommendations are approved. Stage 1 will require consultation with members and officers to ensure areas of concern are addressed in relation to the Constitution document itself. Stage 2 will require more extensive consultation to include external bodies both in terms of developing the proposals for presentation to Full Council and then following the Council decision in principle, prior to implementation.

Options

9. Option 1 – Do Nothing. The existing Constitution document remains unchanged subject to any legally required amendments that can be undertaken by the Interim Assistant Director of Legal & Governance under delegated powers. The decision-making framework would also remain unchanged.

Option 2 – Undertake a Stage Approach to the Review

Stage 1 – Undertake a review of the Constitution document to ensure it is accurate, up to date and effective. This should be completed within 2 months. The proposed tracked changes to the document would be presented to the Audit & Governance Committee meeting for recommendation to Council. Ideally this should be completed as soon as possible but the timescales will need to take account of

the dates of all the committee meetings for those committees who would wish to participate in the review.

Stage 2 – Undertake a full review of the Council’s formal governance arrangements to include consideration of decision-making systems available to the Council under the Localism Act 2011 which for example:

Leader and cabinet
Committee system.

In addition the review should also consider the possible variations for each of the models that can lead to a hybrid approach, for example a leader/cabinet and committee system.

This review will require a programme of consultation with the Executive, members of Council, officers, the public and partners to understand how the different structures impact on their engagement with the decision making process to inform the recommendations to the Executive, Audit and Governance Committee and to Full Council.

The review will consider what works well under the present system and what might improve under a different system. It will include consideration of the improvements delivered in Councils where a Committee system has been adopted such as Worcester City Council and Newark & Sherwood District Council and where a hybrid system has been adopted such as Brighton and Hove City Council. In addition consideration will be given to the reasons Councils such as Cambridge have decided against reverting to the Committee system and why South Gloucestershire moved to the Committee system and has now moved back to the Executive system.

A proposed change in formal governance arrangements must be implemented at the Council’s Annual Meeting. Prior to this the Council must resolve formally to make a governance change. There is no minimum period of time between the resolution to change and the implementation but there must be sufficient time for the Council to publish the final proposals and consult upon them which is a legal requirement. This has implications for the timescale for Stage 2 as effectively a decision to change the governance arrangements would need to be made no later than the Full Council at its meeting in March to facilitate a consultation, consideration of the responses to a consultation and any

amendments to the proposal for presentation and implementation at the Annual Meeting in May.

To enable any new arrangements to be implemented in the next municipal year proposals would have to be finalised and ready to be considered at first instance by Audit and Governance Committee at their meeting on 5th February 2020, to be presented at the Executive on 19th March 2020 to go to Council on 26th March 2020. Members may consider that this is insufficient time to undertake a comprehensive review of all the options. It should also be noted that as well as the oversight of Audit and Governance Committee the Customer and Corporate Services Scrutiny Management Committee may wish to engage in the process. If it is the case that the timescales cannot not be made to facilitate a change at the end of this municipal year then a decision to amend the decision-making structure can be made at any point in the next municipal year for implementation at the following Annual Council meeting.

Members should note that to successfully deliver a change to the governance arrangements it will need broad agreement across the main political groups to ensure it is a system that delivers a transparent and inclusive approach to decision-making that all parties can support.

Stage 3 – Amend the Constitution to reflect any new governance arrangements as agreed by Council.

Option 3 – Undertake the reviews detailed in Option 2 together. Effectively this would mean that any significant changes to the Constitution would be made after the outcome of the review of the wider governance arrangements.

Analysis

- 10.** Option 1 – Do Nothing. Although the Council is not legally required to review its formal governance structure, as stated in paragraph 4 above, it is essential that as a minimum the Council's Constitution is accurate and meets the legal requirements. This Option would not provide the assurance to the Council and the public that the existing framework document meets the legal requirements and is therefore not recommended.

Option 2 – Undertake a Staged Approach to the Review. This option would facilitate an expedited approach to reviewing the Constitution document to ensure the legal requirements are met whilst allowing sufficient time for a robust consideration of the governance arrangements options taking on board the views of a wide range of interested parties. The stages can be undertaken concurrently but would be done independently. This is the recommended option.

Option 3 – Undertake both stages of the review together. This would effectively put the amendment of the Constitution document on hold pending the outcome of the review of the governance arrangements. This would mean that the Council would continue to operate on the basis of the existing document for at least the remainder of this municipal year and possibly longer if the timescales detailed above cannot be met in a manner that ensures the review is thorough and robust. Given the concerns expressed regarding the accuracy of the Constitution this would not provide the assurance to Council and the public that is required in terms of meeting our obligations to have good governance in place. Therefore this option is not recommended.

Council Plan

11. The governance framework is key to facilitating how residents engage with the decision-making process. A review would provide an opportunity for the Council to engage with the public to understand how the framework can ensure that residents can participate in these processes to increase their confidence that decisions are robust and transparent.

Implications

- **Financial**
The review of the Constitution as set out in Stage 1 of Option 2 can be done from within existing resources. Stage 2 of Option 2 will require additional resources to deliver the review of the governance arrangements and then potentially redraft the Constitution in a limited timescale. It is anticipated that the initial cost to carry out the review would be an estimated £35,000, as agreed in the recent budget proposals agreed by the Executive and Council.

- **Human Resources (HR)**
None
- **One Planet Council / Equalities**
The review of the governance arrangements will need to take into account a number of equalities issues to ensure the final proposals are compliant with equalities legislation.
- **Legal**
The legal implications are set out in the report.
- **Crime and Disorder**
None
- **Information Technology (IT)**
None
- **Property**
None
- **Other**
None

Risk Management

12. The main risk associated with the recommended option is determining a timescale for Stage 2 and possibly Stage 3 which ensures that any proposed changes can be implemented at the Annual Council meeting but at the same time facilitates a thorough and comprehensive review of all the possible governance arrangements after a programme of engagement with all interested parties.

Contact Details

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Interim Assistant Director
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Chief Officer Responsible for the report:

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Interim Assistant Director Legal and
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Customer and Corporate
Services
Tel No. 554587

**Report
Approved**

Date 12/09/19

Wards Affected: List wards or tick box to indicate all

All

For further information please contact the author of the report

Background Papers

Local Government and Centre for Public Scrutiny “Rethinking
Governance” <https://www.cfps.org.uk/wp-content/uploads/Rethinking-Governance.pdf>

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Executive

26 September 2019

Report of the Corporate Director of Economy and Place
Portfolio of the Executive Member for Transport

Update on Taxi Licensing Policy

Summary

1. In accordance with the requirements of the Councils Constitution this reports seeks the Executive's formal adoption of amendments to the Taxi Licensing Policy in relation to:
 - Driver training; and
 - Determining the suitability of applicants and licensees as drivers in taxi and private hire licensing
2. It advises of the joint work of the West Yorkshire and City of York Licensing Authorities, consultation undertaken and the amendments to the policy following the consultation.

Recommendation

3. Members are asked to approve option 1 of the report and adopt the amendments to the Taxi Licensing Policy.

Reason: This will allow the Council to align policies in relation to training and suitability with the West Yorkshire Authorities. Aligning policies will help ensure that people across the six authority areas are transported safely and protected from harm to standards applied consistently across the area.

Background

4. Unlike other licensing regimes, there is not statutory requirement for local authorities to have hackney carriage and private hire policies. Local authorities are however entitled to adopt such policies as they are an

integral part of the decision-making process. The Council adopted the current Policy on the 26 January 2017.

5. Under the provisions of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847, the Council is responsible for the licensing of hackney carriage and private hire drivers. The primary concern when licensing drivers is public safety.
6. It is a requirement of Sections 51 and 59 of the 1976 Act that Licensing Authorities must ensure that applicants for driver licences and licensed driver are and remain fit and proper to hold a licence.
7. Taxis and private hire vehicles are used by almost everyone but are used regularly by vulnerable groups:
 - children
 - the elderly
 - disable people
 - the intoxicated
8. Council Leaders of the five West Yorkshire Authorities and the City of York asked Licensing Committee Chairs, in conjunction with Licensing Managers, to harmonise our policies in relation to taxi licensing matters. It was agreed by Committee Chairs that two of the areas to be addressed were driver training and suitability of applicants and licensed drivers especially in relation in relation to convictions. Other aspects may follow; the Department for Transport are considering implementing minimum standards across England and Wales.

Training

9. In order to demonstrate that they are 'fit and proper' to hold a licence, prospective drivers have to undertake a raft of checks including criminal record checks (see below), the right to work in the UK and a medical examination. They must also undertake (and pass) the following training:-
 - driving assessment (by a provider approved by the Council)
 - knowledge/locality test
 - disability/equality
 - sexual exploitation awareness/safeguarding

10. In relation to the latter three elements, these are currently ‘tested’ by one paper consisting of 30 questions following a full day training session. An applicant needs to score 26/30 (87%) to pass. Additionally, licensed drivers and driver applicants must have a reasonable level of conversational and written English, along with an understanding of basic maths (but the English/Maths elements are not tested).
11. Existing drivers are required to demonstrate they have had ‘up to date training’ on disability/equality and sexual exploitation/safeguarding awareness (and that they therefore continue to be a ‘fit and proper person’) prior to having their licence renewed. To this end, the Council provides a half day training course. This includes a quiz at the end to check understanding but it is not a requirement to pass.

N.B The Council received two petitions against implementing the training for existing drivers prior to implementation.

12. Following their meeting on 15 July 2019, Members of the Licensing and Regulatory Committee recommended that the Executive adopt the training policy. It is also recommended that the implementation date will be set by officers once a training provider is in place. New driver applicants will be expected to undertake and pass the training prior to being licensed and existing drivers will be expected to attend refresher training at least once every three years. The training will be provided by a trainer approved and appointed by the West Yorkshire and City of York licensing authorities, each authority will appoint a trainer(s). The policy can found in full at Annex 1. In summary:

Advanced Taxi Driving Test	Practical Assessment (any providers recognised by each authority will be acceptable)
An English Test	Practical Assessment, ESOL Entry 3 in Speaking, Reading and Listening
Local Knowledge Test	Requirement to achieve a pass rate specified by the authority that you are applying to. (will have questions specific to each area and cannot be transferred)
Regulatory Framework of the Hackney Carriage and Private Hire Industry and Test	Requirement to achieve a 80% pass rate (these questions will cover the same topics for all authorities)

Professional Standards Training and Test	Requirement to achieve a 80% pass rate (these questions will cover the same topics for all authorities)
Safeguarding Training and Test	Requirement to achieve a 80% pass rate (these questions will cover the same topics for all authorities)
Equalities/Disability Training and Test	Requirement to achieve a 80% pass rate (these questions will cover the same topics for all authorities)
Practical Wheelchair Course (for all Drivers of Wheelchair Accessible Vehicles)	Practical Assessment

Suitability of drivers/previous convictions

13. Our current policy states the following in relation to convictions:-

'Under Section 61(1) of the 1976 Act the Council has the power to suspend or revoke the licence of a hackney carriage or private hire driver:

- *who since the grant of the licence has been convicted of an offence:*
 - *involving dishonesty, indecency or violence; or*
 - *under the provisions of the Act of 1847 or Part II of the 1976 Act; or*
- *for any other reasonable cause.*

Licensed drivers shall inform the Council within three days of any conviction being recorded against him/her or any Company of which he/she is a Secretary or Director. On receipt of this information the Council may have reasonable cause to issue a written warning, require the driver to attend a driving assessment, suspend the licence for a specified period or revoke the licence.

Licensed hackney carriage and private hire drivers are regarded as a 'notifiable occupation'. Therefore, if a licensed driver comes to the notice of the police, the police may notify the appropriate local authority of a conviction and any other information that indicates that a person poses a risk to public safety. Most notifications are made once an individual is

convicted, however, if there is a sufficient risk the police may notify the authority immediately. On receipt of this information the Licensing Manager may have reasonable cause to suspend or revoke the licence.

Failure to declare convictions received during the lifetime of the licence could lead to the renewal applications being refused.'

14. The Licensing and Regulatory Committee recommended that the Executive adopt the taxi licensing policy in relation to suitability to strengthened and be more specific in relation to previous convictions (although all individual circumstances will have to be considered on their merits). It is also a recommendation that the policy come into effect from the 1 October 2019. The full policy can be found at Annex 2. In summary:

Offence	Period Elapsed
Crimes resulting in death of another person or was intended to cause the death or serious injury to another person.	No period is thought sufficient to have elapsed and the application will be refused.
Exploitation – any crimes involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victims were adults or children including, for example: slavery, child sexual exploitation, grooming, psychological, emotional, or financial abuse.	No period is thought sufficient to have elapsed and the application will be refused.
Offences involving violence (including arson, riot, terrorism offences, harassment, common assault & criminal damage) or connected with any offence of violence.	10 years
Possession of a weapon or any other weapon related offence.	7 years

Sex and indecency offences – any offence involving or connected with illegal sexual activity or any form of indecency.	No period is thought sufficient to have elapsed and the application will be refused.
Dishonesty – any offence of dishonesty, or any offence where dishonesty is an element of the offence.	7 years
Drugs supply – any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply.	10 years
Drugs use – any conviction for possession of drugs, or related to possession of drugs.	5 years
Discrimination – any conviction involving or connected with discrimination in any form.	7 years
Drink driving/driving under the influence of drugs.	7 years
Driving whilst using a hand-held telephone or other device.	5 years
Minor traffic or vehicle related offences – offences which do not involve loss of life, driving under the influence of drink or drugs, driving whilst using a hand held telephone or other device and has not resulted in injury to any person or damage to any property (including vehicles) resulting in 7 or more points on a DVLA licence.	3 years

Major traffic or vehicle related offences – offences not covered under minor traffic or vehicle related offences and also any offence which resulted in injury to a person or damage to any property (including vehicles), driving without insurance or any offence relating to motor insurance.	7 years
Hackney carriage and private hire offences.	7 years
Vehicle use offences, for example being carried in vehicle without the owners consent.	7 years.

Consultation

15. In relation to the proposed changes to the ‘training’ and ‘suitability of applicants and licensed drivers’ changes, five of the six authorities (Calderdale, Kirklees, Leeds, Wakefield and York) consulted on the proposed training policy between November 2018 to January 2019; with York’s consultation taking place from 6 November 2018 to 18 January 2019. Bradford carried out an engagement exercise in relation to the suitability policy.
16. York’s consultation was carried out by direct mailing via email and letter, with the proposed policy being available on the Councils website; hard copies were available at the Customer Centre at West Offices and the Reception of the Eco Depot.
17. Hackney carriage and private hire driver, vehicle and operator licence holders were consulted. With hard copies of the consultation provided to the Hackney Carriage and Private Hire Associations and the large private hire operators. The results of the consultation can be found at Annexes 3 and 4.

Options

18. Option 1 – take into consideration the responses to the consultation and the recommendations of the Licensing and Regulatory Committee and adopt the policy changes in relation to driver training (Annex 1) and

determining the suitability of applicants and licensees as drivers in taxi and private hire licensing (Annex 2). The policies will come into effect as stated in paragraphs 12 and 14.

19. Option 2 – take into consideration the responses to the consultation and the recommendations of the Licensing and Regulatory Committee and make further amendments to the proposed policies prior to adoption. The policies will come into effect as stated in paragraphs 12 and 14.
20. Option 3 – take into consideration the responses received from the consultation and determine that a change to the current policy is not required.

Analysis

21. The convictions are in line with the new guidance issued by the Institute of Licensing (IOL), that the offences to be considered in the proposed policy are:
 - crimes resulting in death or intended to cause death or serious injury
 - exploitation
 - violence
 - possession of a weapon or any other weapon related offence
 - sex and indecency
 - dishonesty
 - drugs supply
 - drugs use
 - discrimination
 - drink driving / driving under the influence of drugs
 - driving whilst using a hand held telephone or other device
 - minor traffic or vehicle related offences
 - major traffic or vehicle related offences
 - hackney carriage or private hire offences
 - vehicle use offences
22. Since the introduction of the IoL guidance in April 2018, it has become common practice for Licensing Authorities to adopt the provisions of this guidance. The DfT has recently consulted on Statutory Guidance for Licensing Authorities, if this guidance is implemented Licensing Authorities would have to justify their position if they do not comply with the requirements of the guidance.

Council Plan

23. This report helps ensure the Council is meeting its statutory duties.

Implications

24. **Financial** – There are not financial implications

25. **Human Resources (HR)** - There are no HR implications.

26. **Equalities** – There are not equality implications, taxis are a preferred method of transport for many residents and visitors to the city with a disability.

27. **Legal** – Any changes to the licensing policy could be challenged by an aggrieved party to the High Court.

28. **Crime and Disorder** – There are no crime and disorder implications.

29. **Information Technology (IT)** – There are no IT implications.

30. **Property** – There are no property implications.

31. **Other** – There are no other implications.

Risk Management

32. Making changes to the taxi licensing policy in respect of training and the suitability of applicants and licensed drivers to ensure it is consistent with other areas creates a risk score of 2 on the Council's Risk Register (a blue risk) on the matrix. This is because there is a 'remote' risk of a minor impact i.e. 'little or no media coverage' in making the changes. Failing to make the changes raises the risk of media coverage to 'possible', furthermore any such coverage is more likely to be adverse.

Contact Details

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Chief Officer Responsible for the report:

Neil Ferris
Corporate Director of Economy and Place

Report
Approved

Date 18/09/19

All

Wards Affected:

List of abbreviations

Department for Transport (DfT)
Institute of Licensing (IoL)

Background papers

GLRC Meeting – 18.3.19

<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=606&MIId=10533&Ver=4>

GLRC Meeting – 15.7.19

<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=606&MIId=11472&Ver=4>

Taxi Licensing Policy

https://www.york.gov.uk/downloads/file/9715/taxi_licensing_policy

Annexes

Annex 1 - Proposed Driver Training Policy

Annex 2 - Proposed Policy Determining the Suitability of Applicants and Licensees as Drivers in Taxi and Private Hire Licensing

Annex 3 - Summary of responses to the Driver Training Policy Consultation

Annex 4 - Summary of responses to the Suitability Policy Consultation

HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER TRAINING POLICY

INTRODUCTION

Calderdale, Leeds, Kirklees, Wakefield, and York all recognise that the role of Hackney Carriage and Private Hire Drivers is a professional one. Hackney Carriage and Private Hire Drivers transport our most vulnerable persons and are often the first point of contact for visitors to each of the authorities.

The reason for this policy is to ensure that the travelling public within West Yorkshire West Yorkshire and York can be confident that the drivers licensed by each authority have been trained to the highest standard and to a standard which is consistent across the West Yorkshire and York region.

We will ensure that all applicants wishing to train as Hackney Carriage or Private Hire Drivers will know that the requirements will be the same for whichever authority they choose to apply to.

1. REQUIREMENTS

The requirements that all new applicants will have to undertake are:

- An Advanced Taxi driving test
- An English test
 - ESOL Entry 3 in Speaking, Listening and Reading
- Local knowledge test
 - Local Tourism and routes to places within the authority for which you are applying
 - Local Conditions/policies/bylaws
- Regulatory framework (Legislation) of the private hire and hackney carriage industry and test
 - Local Government (Miscellaneous) Provisions Act 1976
 - Town Police Clauses Act 1847
 - Highways Act 1980
- Professional standards training and test:
 - Health and safety (Personal Safety/Passenger Safety)
 - Professional customer service (Assisting Customers)
 - Fares
 - How to drive safely and efficiently

- Providing a safe and legal vehicle
- Transport parcels, luggage and other items
- Safeguarding training and test:
 - Adults safeguarding
 - Children safeguarding
 - Vulnerable passengers
- Equalities/disability training and test
 - Wheelchair users
 - Users with assistant dogs
 - Elderly passengers
 - Recognising non visible disability
- Practical wheelchair course (for all drivers of wheelchair accessible vehicles)

2. TESTING

Advanced Taxi Driving Test	Practical Assessment (any providers recognised by each authority will be acceptable)
An English Test	Practical Assessment, ESOL Entry 3 in Speaking, Reading and Listening
Local Knowledge Test	Requirement to achieve a pass rate specified by the authority that you are applying to. (will have questions specific to each area and cannot be transferred)
Regulatory Framework of the Hackney Carriage and Private Hire Industry and Test	Requirement to achieve a 80% pass rate (these questions will cover the same topics for all authorities)
Professional Standards Training and Test	Requirement to achieve a 80% pass rate (these questions will cover the same topics for all authorities)
Safeguarding Training and Test	Requirement to achieve a 80% pass rate (these questions will cover the same topics for all authorities)
Equalities/Disability Training and Test	Requirement to achieve a 80% pass rate (these questions will cover the same topics for all authorities)
Practical Wheelchair Course (for all Drivers of Wheelchair Accessible Vehicles)	Practical Assessment

You will be required to carry out the training specified by the authority in which you are applying and each authority will have different approved providers and/or approved methods for delivering the training and testing procedure. However, it will cover the above requirements to the same standard. Costs at each authority may vary for each aspect of the training.

Where a module has a test associated with it, there will be, within that test, certain questions that an applicant must answer correctly. If an applicant fails to answer these questions correctly, then the test will be classed as a fail, irrespective of whether the pass mark has been achieved or not.

All new applicants will be required to complete and pass the training programme.

The aspects of the training shown in section 3 of the policy will have to be carried out by all existing drivers prior to the renewal of their application. New drivers must have completed all training within the twelve month period following the submission date of their application.

If the module requires the training material to be given in advance; this will be provided either by the local authority or the training provider when you confirm your booking onto the course.

The training must be completed before an application will be accepted.

3. REFRESHER TRAINING

Once completed (by new applicants or at renewal), there will be a number of the modules which will require refresher training every three years, to ensure that all current drivers remain up to date with current industry legislation and practice, these will be:-

- Regulatory Framework of the Private Hire Industry
- Professional Standards Training
- Safeguarding Training
- Equalities/Disability Training
- Practical Wheelchair Course (for all Drivers of Wheelchair Accessible Vehicles)
- Any other training, such as any legislation changes

4. OTHER REASONS FOR HAVING TO COMPLETE MODULES

There may be occasion for the licensing authority to require an existing licensed driver to complete and pass one or more of the training modules. This may be the result of a substantiated complaint, for example, about the standard of English, the standard of driving, the standard of customer care, attitude of the driver (this list is not exhaustive) or if the licensing authority believes that a driver's standard of driving or behaviour falls below the standards required.

The West Yorkshire Authorities including York firmly believes that safe, suitable and professional trained Hackney carriage and Private Hire drivers are an asset to the West Yorkshire and York region as a whole. We wish to set standards on a par or above that of our neighbouring regions to ensure the safety of the travelling public within our region.

DRAFT

A POLICY ON DETERMINING THE SUITABILITY OF APPLICANTS AND LICENSEES AS DRIVERS IN TAXI & PRIVATE HIRE LICENSING.

Introduction

1. The West Yorkshire and York licensing authorities, which consists of Bradford, Calderdale, Leeds, Kirklees, Wakefield and York, recognises that the role of Hackney Carriage and Private Hire Drivers is a professional one. Hackney Carriage and Private Hire Drivers transport our most vulnerable persons and are often the first point of contact for visitors to each authority.
2. The reason for this policy is to ensure that the travelling public within West Yorkshire and York can be confident that the drivers licensed by each authority are suitable for this role, that the standards applied are consistent across each Authority area and that the requirements will be the same for whichever authority they choose to apply to.
3. It is a function of the Council to issue Hackney Carriage and Private Hire licences under the Local Government Miscellaneous Provisions Act 1976.
4. The overriding requirement of the Council when carrying out this function is the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services. The aim of this policy is to ensure that public safety is not compromised.
5. The Council must ensure that applicants/licence holders are and remain fit and proper to hold a licence. This policy will apply to all new applicant and to existing licensees on renewal. This requirement is contained within Sections 51 & 59 of the Local Government Miscellaneous Provisions Act 1976.
6. This policy categorises the types of issues including, crime and driving convictions, that form part of the “fit & proper” test to facilitate the assessment of the potential risk to the public. As part of this assessment the Council is concerned to ensure that
 - An individual does not pose a threat to the public.
 - The Council’s obligations to safeguard children and vulnerable adults are met.
 - The public are protected from dishonest persons.
7. The standards of safety and suitability are not set as a base minimum. They are set high to give the public the assurance it requires when using taxi services. The Council does **not** have to strike a balance between the driver’s right to work and the public’s right to protection. The public are entitled to be protected. This means that the Council is entitled and bound to treat the safety of the public as the paramount consideration.
8. Taxis are used by almost everyone but they are used regularly by particularly vulnerable groups: children; the elderly; disabled people; and the intoxicated. A taxi driver has significant power over a passenger who places themselves, and their personal safety, in the driver’s hands.

9. As part of the assessment referred to in paragraph 4 above the Council can consider convictions and cautions but also other outcomes of actions taken by the Police, other agencies and the Civil Courts.
10. Reference to convictions in this policy also includes cautions, warnings, reprimands, all forms of fixed penalty notices, restrictive type orders and any other relevant information. **These must be reported to the Council in the format and timescales stated in the relevant policy.** In addition any circumstances relating to the licensee is potentially relevant if it is relevant to their safety and suitability to hold a licence.
11. Matters which have not resulted in a criminal conviction (whether as a result of an acquittal, a conviction being quashed, a decision not to prosecute or an investigation which is continuing where the individual has been bailed) will be taken into account by the Council. In addition, complaints where there was no police involvement will also be considered.
12. In the case of a new applicant who has been charged with any offences and is awaiting trial, the determination will be deferred until the trial has been completed or the charges withdrawn.
13. In all cases, the Council will consider a conviction or behaviour and what weight should be attached to it, and each case will be decided on its own merits and in line with this policy.
14. The licensing process places a duty on the Council to protect the public. Therefore it is essential that those seeking a licence as a driver meet the required standards. As previous offending and other behaviour can be considered as a predictor in determining future behaviour, it is important that the Council considers all relevant factors including previous convictions, cautions, complaints, failures to comply with licence conditions, and the time elapsed since these were committed.

Applying the Guidance

15. One of the purposes of this policy is to provide guidance to an applicant or existing licence holder on the criteria to be taken into account by the Council when determining whether or not an applicant, or an existing licensee on renewal, is fit & proper to hold a hackney carriage or private hire driver's licence.
16. When determining whether or not a person is "fit & proper" to become or remain a licensed driver each case will be decided on its own merits and the Council shall only depart from this Policy in exceptional circumstances.
17. There must be clear and compelling reasons for the Council to depart from this policy. The otherwise good character and driving record of the applicant or licence holder will not ordinarily be considered exceptional circumstances nor will the impact of losing (or not being granted) a licence on the applicant and/or his family.
18. The granting of a licence places an individual in a unique position of trust and they are expected to act with integrity and demonstrate conduct befitting of the trust placed in them. For this reason, whilst it is possible for an applicant or existing licence holder to have convictions that individually comply with the policy, the overall offending history and conduct of the applicant/licence holder will be considered.

Appropriate weight will be applied where a series of convictions/incidents have been incurred over a period of time.

19. The Policy will also be applied if any additional issue arises that would call into question a person's suitability to continue to hold a licence. If an existing licence holder's conduct falls short of the "fit and proper" standard of behaviour at any time, their licence will be revoked.
20. Where a licence would normally be granted after an elapsed period, there may be circumstances where the elapsed period will be extended.
21. Any foreign offence disclosed by the applicant/licence holder or revealed on an enhanced Disclosure & Barring Service Disclosure will be dealt with in line with this Policy.
22. Any concerns, issues, incidents or convictions/offences not covered by this Policy will not prevent the Council from taking them into account.

Disclosure and Barring Service

23. Applicants need to be aware that as a consequence of the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002, they are excluded from the provisions of the Rehabilitation of Offenders Act 1974 in relation to spent convictions and that **ALL** convictions (including minor motoring convictions and fixed penalty notices) must be declared. The Secretary of State made this exemption because it is necessary to put public safety as the first consideration and to enable the Councils to take a wider view of the applicant over a longer timescale.
24. The Council conducts enhanced disclosures from the Disclosure and Barring Service ("DBS") of any applicant for a drivers licence. Applicants will be required to obtain an enhanced disclosure at their expense and to subscribe to the Disclosure and Barring Update Service.
25. Any information contained in the Enhanced DBS Certificate that identifies an individual as not suitable to work with children or vulnerable adults will normally be refused.
26. The Council is also entitled to use other records and information including any complaints history that may be available to it in determining applications or an entitlement to continue holding a licence. This may include information held by the Council or other Councils and information disclosed by the police under the Home Office scheme for reporting offences committed by notifiable occupations.
27. In determining safety and suitability the Council is entitled to take into account all matters concerning that applicant or licensee. This includes not only their behaviour whilst working in the hackney carriage or private hire trade, but also their entire character including, but not limited to, their attitude and temperament.
28. Any applicant who has resided outside the UK for any period longer than 6 months within the preceding 3 years will be required to produce a **certificate of good conduct dated in the last 3 months** which details any convictions or cautions recorded against the individual. It is the applicant's responsibility to obtain this evidence at his cost.

This will be in addition to the Enhanced DBS. **Alternatively you may be required to produce a Statutory Declaration dated in the last 3 months.**

29. It is the responsibility of the applicant/licence holder to satisfy the Council that they are a “fit and proper person” to hold a licence. Therefore the applicant/licence holder must ensure that all convictions, cautions, warnings, reprimands, fixed penalties, arrests and summonses are disclosed to the Council, including any incurred outside the UK. **A failure to report such convictions, cautions, warnings, reprimands, fixed penalties, arrests and summonses will be given significant weighting.**
30. Once a licence has been granted there is a continuing requirement on the part of a licensee to maintain their safety and suitability to meet the “fit and proper” test. The Council has the powers to take action against licence holders and any behaviour, incidents, convictions or other actions on the part of the licensee which would have prevented them from being granted a licence will lead to the licence being revoked.
31. Any dishonesty by any applicant or other person acting on the applicant’s behalf which occurs in any part of the application process will result in a licence being refused, or if already granted, revoked and may result in prosecution.
32. **An applicant must hold a full DVLA driver’s licence, have the right to remain and work in the UK and be a “fit and proper” person.**
33. Under the Local Government (Miscellaneous Provisions) Act 1976 section 57, the Council has the power to require an applicant to provide:

“such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to such licence.”

The provision of this information can help to satisfy the Council that a person has the skills and competencies to be a professional driver to hold a licence. However, the concepts of “fit and proper” and “safety and suitability” go beyond this. There is the character of the person to be considered as well.
34. The character of the applicant in its entirety is the paramount consideration when considering whether they should be licensed. The Council is not imposing an additional punishment in relation to previous convictions or behaviours. The information available to them is used to make an informed decision as to whether or not the applicant is a safe and suitable person.
35. The fact that an offence was not committed when the applicant was driving a taxi or when passengers were aboard is irrelevant. Speeding, drink driving and bald tyres are all dangerous, irrespective of the situation. Violence is always serious. A person who has a propensity to violence has that potential in any situation. Sexual offences are always serious. A person who has in the past abused their position (whatever that may have been) to assault another sexually has demonstrated completely unacceptable standards of behaviour.
36. Licensees are expected to demonstrate appropriate professional conduct at all times, whether in the context of their work or otherwise. Licensees should be courteous, avoid confrontation, not be abusive or exhibit prejudice in any way. Licensees are

expected to act with integrity and demonstrate conduct befitting the trust that is placed in them.

37. There are those who seek to take advantage of vulnerable people by providing services they are not entitled to provide; for example, by plying for hire in an area where they are not entitled to do so. The Council expects licensees to be vigilant of such behaviour and to report any concerns to the Police and the relevant licensing authority. Passengers must feel able to check that the person offering a service is entitled to do so. Licensees must be willing to demonstrate that they are entitled to provide the service offered by, for example, showing their badge. Any applicant or licensee who does not comply with the requirements set out in this paragraph will not meet the “fit and proper” test.

Criminal and Driving Convictions

38. The Council considers that a period of time must elapse after a crime before a person can no longer be considered to be at risk of re-offending. The timescales set out in Table A are to reduce the risk to the public to an acceptable level.
39. In relation to single convictions Table A sets out the time periods that should elapse following completion of the sentence (or the date of conviction if a fine was imposed) before a licence will be granted.
40. The Council will look at the entirety of the individual and in some cases the suitability will not be determined simply by a specified period of time having elapsed following a conviction or the completion of a sentence. The time periods are a relevant and weighty consideration but they are not the only determining factor.
41. In addition to the nature of the offence or other behaviour, the Council will also consider the quantity of matters and the period of time over which they were committed. Patterns of repeated unacceptable or criminal behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for such behaviour or offending.
42. This policy does not replace the Council’s duty to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person. Where a situation is not covered by this policy the Council must consider the matter from first principles and determine the fitness of the individual.
43. Once a licence has been granted there is a continuing requirement on the part of the licensee to maintain their safety and suitability to meet the “fit and proper” test.
44. Some offences on their own are serious enough for a licence not to be granted and these identified Table A. In the case of an existing licence “refused” in the Table means “revoked”.
45. Applicants and licensees should be aware that where they have been convicted of a crime which has resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.
46. Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual

irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual exploitation, grooming, psychological or financial abuse.

47. The Council will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any "barred" list. Existing licensees who are placed on the Sex Offenders Register or on any "barred" list will have their licence revoked.
48. Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. A caution is regarded in exactly the same way as a conviction. Fixed penalties and community resolutions will also be considered in the same way as convictions.
49. Road Safety is a major priority to the Council. A taxi driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in their vehicle. As those passengers may be alone, and may also be vulnerable, any driving convictions or unacceptable behaviour whilst driving will weigh heavily against a licence being granted or retained.
50. Taxi drivers are professional drivers charged with the responsibility of carrying the public. Any motoring convictions demonstrate a lack of professionalism and will be considered seriously. Whilst it is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence or may not result in action taken against an existing licence, subsequent convictions would indicate that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.

Decision and Right of Appeal

51. Where the Council is minded to refuse an application or suspend or revoke an existing licence in line with this policy the applicant or existing licence holder will be informed and be given an opportunity to provide any additional written evidence in support of their application or retention of their licence.
52. The Council, at its absolute discretion, may determine to meet with the applicant or existing licence holder for the purpose of clarifying information provided or received. The applicant can be accompanied by one individual at the meeting who is not permitted to make comment or enter into any part of the discussion.
53. The Applicant or existing licence holder will be notified in writing of the Council's final decision within 14 days of completion of the procedures set out in paragraphs 43 and/or 44 above.
54. Any person whose application is refused or licence suspended or revoked by the Council has a right of appeal to the Magistrates' Court. An Appeal must be lodged within 21 days of the decision at the appropriate Magistrates' Court. Appeal rights are contained in Section 77 of the Local Government (Miscellaneous Provisions) Act 1976 (Part II) and Section 300 of the Public Health Act 1936.

TABLE A

Offence	Period Elapsed
Crimes resulting in death of another person or was intended to cause the death or serious injury to another person.	No period is thought sufficient to have elapsed and the application will be refused.
Exploitation – any crimes involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victims were adults or children including, for example: slavery, child sexual exploitation, grooming, psychological, emotional, or financial abuse.	No period is thought sufficient to have elapsed and the application will be refused.
Offences involving violence (including arson, riot, terrorism offences, harassment, common assault & criminal damage) or connected with any offence of violence.	10 years
Possession of a weapon or any other weapon related offence.	7 years
Sex and indecency offences – any offence involving or connected with illegal sexual activity or any form of indecency.	No period is thought sufficient to have elapsed and the application will be refused.
Dishonesty – any offence of dishonesty, or any offence where dishonesty is an element of the offence.	7 years
Drugs supply – any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply.	10 years
Drugs use – any conviction for possession of drugs, or related to possession of drugs.	5 years
Discrimination – any conviction involving or connected with discrimination in any form.	7 years
Drink driving/driving under the influence of drugs.	7 years

Driving whilst using a hand-held telephone or other device.	5 years
Minor traffic or vehicle related offences – offences which do not involve loss of life, driving under the influence of drink or drugs, driving whilst using a hand held telephone or other device and has not resulted in injury to any person or damage to any property (including vehicles) resulting in 7 or more points on a DVLA licence.	3 years
Major traffic or vehicle related offences – offences not covered under minor traffic or vehicle related offences and also any offence which resulted in injury to a person or damage to any property (including vehicles), driving without insurance or any offence relating to motor insurance.	7 years
Hackney carriage and private hire offences.	7 years
Vehicle use offences, for example being carried in vehicle without the owners consent.	7 years.

Annex 3

Driver Training Policy – Summary of City of York Consultation Responses

	Advanced Practical Driving Assessment			English Test ESOL Entry 3			Local Knowledge Test			Regulatory Framework			Professional Standards			Safeguarding Training		
	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered
York	115	8	1	122	2	0	108	16	0	107	16	1	107	17	0	105	17	2

	Equality/Disability Training			Practical Wheelchair Assessment			90% Pass Rate			Refresher Training for Existing Drivers		
	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered
York	102	21	1	116	7	1	100	24	0	74	47	3

	Represents a majority of the number of responses in favour of the proposal
	Represents a majority of the number of responses against the proposal

Consultation Comments

Ref :	Comments	Officer Comments
1	Refresher training every 5 years	Refresher training is in line with licence renewal which is every 3 years
2	To much red tape – local knowledge test to server – 90% to server,	It is important that new driver applicants complete and pass training. Knowing the local knowledge of a city like York is very important due to our visitor base and pedestrian zone.
3	Language and understanding oral assessment 1-1 test – all drivers should be police checked,	We are introducing as English test. DBS checks are carried out on all new driver applicants, and the existing trade.
4	Refresher training is insulting to most people; you don't do refresher courses to be a builder, mechanic, plumber, etc. If you do it is paid for by the employer. Self employed people are independent this is an infringement on a persons human and consumer rights.	Taxi and private hire drivers transport vulnerable customers. Refresher training is important to keep drivers abreast of the best practice approach to being a driver, so that they are aware of equability related issues and customer needs. This helps safeguard the driver as well as the passenger.

5	Refresher training only if driver has had a substantial complaint against them – knowledge test is now Mickey take – tested every 3 years is an insult.	As stated in point 4 above. Existing drivers will be expected to attend refresher training every 3 years; they will not be a test.
6	Pass rate to high 60/70% - refresher training is used to maintain standards, if same pass rate as new drivers and licence suspension on failure.	The pass rate for each module has been set at 80%; apart from the local knowledge test which will be 90% for York, as detailed above this is due to our visitor base and the pedestrian zone. Refresher training will maintain standards; there is no test for the refresher training.
7	Advance practical driving no doubt additional expense for already struggling driver – refresher training its just another opportunity to take money off drivers.	It is already a requirement that new driver applicants must pass the advance practical driving assessment. The free for refresher training will be set at a cost recovery level.
8	Practical wheelchair assessment if they drive a WAV they should already know.	It is already a requirement that new driver applicants must pass the practical wheelchair assessment.

Responses were also received that did not relate to this consultation and are therefore not included within these comments.

Driver Training Policy – West Yorkshire & York Summary of Consultation Responses

	Equality/Disability Training			Practical Wheelchair Assessment			90% Pass Rate			Refresher Training for Existing Drivers		
	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered
Calderdale	130	71	4	153	49	3	87	115	3	89	114	2
Kirklees	120	38	3	124	34	3	75	83	3	70	91	0
Leeds	786	103	0	790	99	0	625	264	0	307	582	0
Wakefield	23	22	0	32	13	0	10	35	0	7	38	0
York	102	21	1	116	7	1	100	24	0	74	47	3
Combined Results	1161	255	8	1215	202	7	897	521	6	547	872	5

	Represents a majority of the number of responses in favour of the proposal
	Represents a majority of the number of responses against the proposal

Summary of respondents

	Calderdale	Kirklees	Leeds	Wakefield	York
Total Number of Responses	205	176	899	45	124
Type:					
A licensed driver	117	95	-	34	68
A licensed private hire operator	10	14	-	2	7
A licensed vehicle proprietor	2	3	-	0	21
A member of the public	70	59	61	7	3
A licensed driver/a proprietor	-	-	-	-	16
A licensed driver/private hire operator	-	-	-	-	2
A licensed driver/a proprietor/private hire operator	-	-	778	-	1
Other	5	5	59	2	-
Not specified	1	-	1	-	6

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Annex 4

Suitability Policy – CYC Summary of Consultation Responses

	Crimes resulting in death or intended to cause death or serious injury– no elapsed period			Exploitation – no elapsed period			Offences involving violence – 10 years				Possession of a weapon or any other weapon related offence – 7 years				Sex and indecency offences – no elapsed period		
	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Disagree	Not Answered
York	42	8	0	39	11	0	21	23	3	3	35	4	9	2	38	11	1

	Dishonesty offences – 7 years				Drugs supply – 10 years				Drugs use – 5 years				Discrimination – 7 years				Drink driving/ driving under the influence of drugs – 7 years			
	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered
York	26	20	3	1	29	14	7	0	26	15	9	0	33	14	2	1	39	5	6	0

	Driving whilst using a hand-held telephone or other device – 5 years				Minor traffic or vehicle related offences – 5 years				Major traffic or vehicle related offences – 7 years				Hackney carriage and private hire offences – 7 years				Vehicle use offences – 7 years			
	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered
York	14	34	0	2	17	32	0	1	33	10	3	4	19	28	0	3	26	22	0	2

	Requirement to subscribe to DBS Update Service			Certificate of good conduct		
	Yes	No	Not Answered	Yes	No	Not Answered
York	46	4	0	48	1	1

	Represents a majority of the number of responses in favour of the proposal
	Represents a majority of the number of responses against the proposal

Comments

Ref :	Comments	Officer Comments
1	How can you licence someone who has supplied drugs – 10 years for major traffic related offence.	This is in line with guidance issued by the Institute of Licensing (IoL), ‘Guidance on Determining the Suitability of Applicants and Licensees in the Hackney Carriage and Private Hire Trades’.

2	Never be allowed a licence for use of a weapon – dishonesty depending on offence – drink driving and using hand-held phone/device should be as long as courts decide – minor traffic fine and points from court should be enough.	As point 1. The period for a minor traffic offence has been reduced to 3 years.
3	Each case judged on merit 0 drivers who have convictions and hold a licence who has been of good character for several years should not be penalised now.	As point 1. Each case will be considered on their own merits.
4	Drink driving no elapsed period – minor / major traffic offences look at each case individually.	As point 1 and 3.
5	DBS checks implemented immediately.	DBS (criminal record) checks are carried out on all new driver applicants prior to licence and existing drivers once every three years as recommended by best practice.
6	Crime resulting in death 10 yrs if intentional – exploitation 5 yrs – offence involving violence 10 yrs – possession of a weapon 10 yrs – discrimination 5 yrs – drink driving 10 yrs – others 1 yr.	As point 1.
7	Exploitation further debate required – dishonesty varying degrees.	As point 1.
8	Offences involving violence/possession of a weapon/drug use drink driving life time ban.	As point 1.
9	Exploitation 5 yrs – dishonesty 2 yrs – HC & PH offences/drink driving/major traffic 5 yrs – using hand-held phone 3 yrs – minor traffic 2 yrs.	As point 1 and 2.
10	DBS online update service means giving out bank details strongly disagree.	This is a requirement of the DBS who undertaken.

Responses were also received that did not relate to this consultation and are therefore not included within these comments.

Suitability Policy – West Yorkshire and York Summary of Consultation Responses

	Crimes resulting in death or intended to cause death or serious injury– no elapsed period			Exploitation – no elapsed period			Offences involving violence – 10 years				Possession of a weapon or any other weapon related offence – 7 years				Sex and indecency offences – no elapsed period		
	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Disagree	Not Answered
Calderdale	115	63	7	111	63	11	65	86	28	6	85	52	42	5	107	75	3
Kirklees	111	45	1	116	39	2	69	61	26	1	73	43	40	1	110	46	1
Leeds	194	41	5	194	41	5	203	24	23	0	194	19	37	0	182	68	0
Wakefield	33	17	0	36	14	0	10	38	3	0	17	27	7	0	32	18	0
York	42	8	0	39	11	0	21	23	3	3	35	4	9	2	38	11	1
Combined Results	495	174	13	496	168	18	368	232	83	10	404	145	135	8	469	218	5

	Dishonesty offences – 7 years				Drugs supply – 10 years				Drugs use – 5 years				Discrimination – 7 years				Drink driving/ driving under the influence of drugs – 7 years			
	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered
Calderdale	86	81	13	5	115	28	35	7	110	33	36	6	106	60	15	4	105	32	42	6
Kirklees	75	62	19	1	95	34	27	1	88	36	33	0	91	54	12	0	84	32	39	2
Leeds	203	35	12	0	196	13	41	0	201	22	27	0	213	21	16	0	200	12	38	0
Wakefield	10	38	3	0	30	13	7	0	27	12	12	0	19	30	2	0	32	10	9	0
York	26	20	3	1	29	14	7	0	26	15	9	0	33	14	2	1	39	5	6	0
Combined Results	400	236	50	7	465	102	117	8	452	118	117	6	462	179	47	5	460	91	134	8

	Driving whilst using a hand-held telephone or other device – 5 years				Minor traffic or vehicle related offences – 5 years				Major traffic or vehicle related offences – 7 years				Hackney carriage and private hire offences – 7 years				Vehicle use offences – 7 years			
	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered
Calderdale	71	87	19	8	62	111	8	4	94	65	24	3	73	92	11	9	75	98	11	1
Kirklees	64	71	19	3	59	93	4	1	74	63	17	3	68	77	11	1	72	73	9	3
Leeds	200	44	6	0	185	61	4	0	201	28	12	0	199	42	9	0	212	29	9	0
Wakefield	5	45	0	0	4	46	1	0	12	37	2	0	7	39	4	0	12	39	0	0
York	14	34	0	2	17	32	0	1	33	10	3	4	19	28	0	3	26	22	0	2
Combined Results	354	281	44	13	327	343	17	6	414	203	58	10	366	278	35	13	397	261	29	6

	Requirement to subscribe to DBS Update Service			Certificate of good conduct		
	Yes	No	Not Answered	Yes	No	Not Answered
Calderdale	113	67	5	88	90	7
Kirklees	118	38	1	108	47	2
Leeds	235	15	0	6	9	235
Wakefield	31	20	0	24	27	0
York	46	4	0	48	1	1
Combined Results	543	144	6	274	174	245

	Represents a majority of the number of responses in favour of the proposal
	Represents a majority of the number of responses against the proposal

Summary of respondents

	Calderdale	Kirklees	Leeds	Wakefield	York
Total Number of Responses	185	168	250	51	50
Type:					
A licensed driver	116	93	-	42	17
A licensed private hire operator	4	13	-	1	3
A licensed vehicle proprietor	3	2	-	1	17
A member of the public	58	60	19	6	2
A licensed driver/ a proprietor	-	-	-	-	9
A licensed driver/private hire operator	-	-	-	-	1
A licensed driver/a proprietor/private hire operator	-	-	227	-	-
Other	4	-	4	1	1



Executive**26 September 2019**

Report of the Corporate Director of Economy and Place
Portfolio of the Executive Member for Transport

Interpretation of law - 'Out of town' licences**Summary**

1. This report concerns the council's interpretation of the law relating to the ability of private hire operators and drivers to work their vehicles outside of the area within which they are licensed (often referred to as 'out of town' operators/drivers/vehicles).
2. Please note, there has been suggestion made that Members are being asked to make a decision to 'prosecute Uber'. This is not the case, any decision to take formal enforcement action – of which prosecution is only one option – would only occur following an investigation and proper application of our enforcement policy to the situation. Members are being asked to consider whether they wish to change the Council's current stance and make a statement to the effect that 'out of town operators/drivers/vehicles working in York' are not considered lawful unless certain conditions are met (which would need to be determined) in the Taxi Licensing Policy.
3. In summary, the council's legal position is that provided the three licences required in relation to a private hire vehicle (operator, driver and vehicle) have all been licensed by the same authority then the private hire vehicle can undertake journeys anywhere in England and Wales. That is irrespective of where the journey commences, areas through which the journey passes and, ultimately, the area where the journey ends. This has become known as the 'triple licensing rule' (or similar) and this interpretation has been confirmed in external legal advice.
4. The situation in York is similar to that in many other towns and cities in the country. For example, Medway Council have a statement on their website in relation to Uber which says 'As the law stands, at present the Council do not believe that Uber is acting unlawfully within the council's area'. Furthermore, Uber are not the only firm who work under the 'triple

licensing rule' and it is said that other firms work to this model on race days in York for example.

5. The 'Taxi Licensing Policy' sets out the policy that the Council will apply when making decisions about new applications and licences currently in force' and as such is not currently concerned with 'out of town' operators/vehicles/drivers. Neither is it intended as a comprehensive list of the wider rules that private hire drivers must comply with such as 'plying for hire' and 'parking on ranks'.
6. At the Gambling Licensing and Regulatory Committee (GLRC) meeting on 18 March 2019, it was recommended to Members that 'the conclusions of the Legal Advice at Annex 2 are accepted and that it be recommended to the Executive that there is no requirement for a change in Taxi Licensing Policy as a consequence'.
7. Members resolved that 'it be recommended to the Executive that in order to make an informed decision further investigation be undertaken regarding the requirement for a change in licensing policy'.
8. There was also concern at the GLRC on 18th March about the lack of information in the original report presented to them. Members of GLRC considered this, more detailed report, on 4th September 2019. They recommended that you follow Option one in the report and in doing so consider that:
 - There is a need for increased enforcement
 - An assessment of the climate change implications from out of town taxis be made
 - The Department for Transport be lobbied to bring in legislation
 - There are concerns about out of town drivers not having local knowledge of the roads

Recommendations

9. That Executive Members follow Option 1 within this report, namely that the legal position remains with no changes required to the Taxi Licensing policy.
10. Reason: To provide clarity for the public in relation to the council's interpretation of the law. If the Council changes its position in relation to 'out of town' operators and vehicles it creates a score of 19 (orange risk) on the Council's risk matrix. This is because there would at least be a 'possible' risk of a 'major' impact to our service i.e. national media

coverage/action in a national court and which could cost over 10% of the Public Protection budget. Retaining the status quo keeps the likelihood to 'remote' thereby reducing the score to 12 on the risk matrix (yellow risk).

Background

11. The council's settled legal position is as stated in paragraph 3 above, the principle arising from *Adur District Council v Fry* [1997] RTR 257.
12. In this case, a private hire operator, driver and vehicle were licensed by Hove Borough Council. The situation concerned a booking for a journey that commenced, ended and throughout its entire length was within the district of Adur District Council. The High Court determined that no offence was committed, and it was lawful for the vehicle to undertake a journey that is wholly outside the district in which it is licensed. This is due to the limited meaning of the term "operate" contained in the Local Government (Miscellaneous Provisions) Act 1976, section 80(1), which meant "in the course of business to make *provision* for the invitation or acceptance of booking for a private hire vehicle and could not be construed more widely" [emphasis added]
13. 'Provision' has subsequently been held to refer to the 'antecedent arrangements' around the invitation/acceptance of a booking.
14. On the 19 November 2018, the Private Hire Association shared a legal opinion it had obtained from Queen's Counsel that argues operators of 'out of town vehicles' and their drivers are illegally operating in York by virtue of displaying their vehicles on the app (Annex 1).
15. The Council instructed separate Counsel (Leo Charalambides) to advise, and a comprehensive advice note is attached at Annex 2. Our Counsel had the benefit of the outcome of a case earlier this year concerning an Uber driver working in Reading who was prosecuted (unsuccessfully) for 'plying for hire' simply by virtue of his presence on the Uber app. Although this case concerns a different offence to that which the Private Hire Association's counsel alleges is occurring in York, it provides a useful insight as to how the courts – in particular the High Court - may interpret the situation as in reaching their decision they had consideration of the Uber business model. Lord Justice Flaux found the app:

'is simply the use of modern technology to effect a similar transaction to those which have been carried out by PHV operators over the telephone for many years'

16. As a result, our Counsel concludes that the Private Hire Association's position is 'untenable and self evidently wrong'.
17. The York Private Hire Association have since circulated a further opinion to Councillors which is attached as Appendix 3 (please note – we have been asked by those who sought this opinion not to put it into the public domain). The opinion says that the Reading case 'may be significant' because of 'its implicit acceptance of Uber's business model... throughout the judgment' and that 'one must take it into account [the Reading case] when considering if Uber could be successfully prosecuted for operating without a licence'.
18. Finally, a Department of Transport 'Task Finish Group' (TFG) was commissioned last year to review current taxi licensing laws. They recommended the following:-

'TFG Recommendation 11

Government should legislate that all taxi and [Private Hire Vehicle] journeys should start and/or end within the area for which the driver, vehicle and operator... are licensed. Appropriate measures should be in place to allow specialist services such as chauffeur and disability transport services to continue to operate cross border.

Operators should not be restricted from applying for and holding licences with multiple authorities, subject to them meeting both national standards and any additional requirements imposed by the relevant licensing authority.'

19. In their response, the Department for Transport recognise that

'Currently, a PHV journey can take place anywhere in England provided that the driver, vehicle and operator are licensed by the same licensing authority.'

The Department for Transport go on to say that they

'agree with the principle of this recommendation, and will consider further (with a view to legislation) how it might best work in detail. In particular, Government will need to consider what size of area is appropriate. We will also consider what flexibilities or exemptions might be needed to reduce or avoid negative impacts on any particular business models,

types of transport or passenger, and businesses or localities that are close to (perhaps multiple) licensing authority borders.'

20. That the Department of Transport are considering 'legislation' to prevent private hire journeys taking place 'anywhere in England' implies that the Government agrees with the City of York Council's current interpretation.
21. As outlined in the summary above (at paragraph 5), the Council's Taxi Licensing Policy does not currently deal with 'out of town' operators, drivers or vehicles as it is only concerned with those we do licence or those who are seeking to be licensed by the City of York Council. Licences held in other Authorities will be covered by the licensing policies of those areas. Please also note that the case of R (Uber Britannia Ltd & Delta Merseyside Ltd) v Knowsley Metropolitan Borough Council [2018] EWHC 757 (Admin) prevents other licensing authorities restricting the areas in which drivers can work i.e. it prevents other authorities from introducing licensing conditions which prohibit their drivers from working in York.

Consultation

22. As this matter concerns legal opinion, wider public consultation with the passengers who use taxis including 'out of town' vehicles, the local trade who are in competition with those drivers or the wider public is not appropriate.

Options

Option 1

23. Follow the Council's legal advice and agree the legal position as outlined in paragraph 3 with no change to the Taxi Licensing Policy. The situation could be reviewed in the event of a change in the law as a result of new legislation or a binding court judgement.

Option 2

24. Disregard the council's legal advice and adopt the position that 'out of town' operators and/or their drivers work in York illegally (unless certain conditions are met) and make a statement in the Taxi Licensing Policy to this effect. Members would need to advise on what statement is appropriate.

25. Enforcement action would only be taken after an investigation had been conducted and the findings considered in accordance with the Council's enforcement policy. This would include there being a reasonable prospect of a conviction on the evidence obtained and it being considered in the public interest to take such action.

Analysis

26. Option 1 maintains the status quo. It is consistent with the Council's independent legal advice, but enables the council to review its position in light of new legislation or a binding court judgement. It provides certainty to the public on the council's interpretation of the law. The risk of a *successful* legal challenge to this position by an aggrieved party is low.
27. Option 2 will mean we disregard our own independent legal advice in preference to one of the opinions supplied by the local taxi trade. Any change to the Taxi Licensing Policy which considers 'out of town' operators and drivers to be working in York illegally (unless certain conditions are met – to be determined) risks successful legal challenge and/or simply being ignored.
28. Formal enforcement action – particularly a prosecution – would only be possible under our enforcement policy on consideration of the evidence gathered during the investigation and it being in the public interest to take such action. We would need to establish that an operator is 'making provision' for the invitation or acceptance of bookings in York i.e. that 'antecedent arrangements' are taking place here. The Reading case suggests that the High Court is unlikely to consider the image of a vehicle on an app being the 'provision' for invitation/acceptance of booking, since they considered the app to be nothing more than a modern day manifestation of the telephone.
29. What is more, even before we reach court, we may be subject to challenge on the basis that we have been advised by independent Counsel that the situation is unlikely to be considered unlawful. In the event of losing the case we risk having costs awarded against us. It is difficult to estimate the cost of legal action, but discussions with Counsel Chambers suggest that the cost of a successful prosecution could be in the region of £30k (although there could of course be an order made that our costs are repaid). In the event of an unsuccessful prosecution we will incur the estimated £30k cost, plus there is a potential claim for a further £60- £80k if costs were awarded against us. Any such action is likely to be vigorously defended given that it strikes at the heart of the business model of some operators. Legal costs will rise if the case is taken to

higher courts. Similar costs are likely to arise in the event of a judicial review. These costs do not include those of council officers and in-house legal services.

30. Officers consider that Option 2 is not a credible option.

Council Plan

31. This report helps ensure the council is meeting its statutory duties.

Implications

32. **Financial** – As highlighted in paragraph 28, there are significant financial implications to the council in the event that the Members decision to alter the position/policy (and any subsequent formal enforcement action) is successfully challenged. It is important to note that the costs of taking a case to court are by their very nature uncertain.

33. **Human Resources (HR)** - There are no HR implications. An investigation into a breach of the law is likely to be fairly straightforward. There is however likely to take hundreds of officer hours in defending the decision to over-ride our independent legal advice.

34. **Equalities** – Taxis are a preferred method of transport for many residents and visitors to the city with a disability.

35. **Legal** – Legal opinion is the subject of this report. The Council is satisfied that the opinion set out in Annex 2 is accurate and robust. Any decision of the council to act/not to act may be the subject of judicial review.

36. **Crime and Disorder** – The Taxi Licensing team receive complaints about 'out of town drivers' and the local trade. Complaints are similar in nature in both areas, the biggest cause of complaints being the standard of driving. Complaints about the behaviour of out of town drivers are dealt with by the local licensing authority. The number of serious complaints about taxi drivers either local drivers or out of town are low, particularly in relation to the number of journeys taken.

37. **Information Technology (IT)** – There are no IT implications.

38. **Property** – There are no property implications.

39. **Other** – There are no other implications.

Risk Management

40. If the Council changes its position in relation to 'out of town' operators and vehicles it creates a score of 19 (orange risk) on the Council's risk matrix. This is because there would at least be a 'possible' risk of a 'major' impact to our service i.e. national media coverage/action in a national court and which could cost over 10% of the Public Protection budget. Retaining the status quo keeps the likelihood to 'remote' thereby reducing the score to 12 on the risk matrix (yellow risk).

Contact Details

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Report **Date** 19.09.2019
Approved

Specialist Implications Officer(s) List information for all

N/A

Wards Affected: List wards or tick box to indicate all **All**

For further information please contact the author of the report

Annexes

Annex 1 – Gerald Gouriet QC 'Opinion' for the York Private Hire Association, 16.11.18

Annex 2 – Leo Charalambides 'Advice Note' for City of York Council, 05.03.19

Annex 3 – Further opinion, salmon paper

List of Abbreviations Used in this Report

GLRC - Gambling Licensing and Regulatory Committee

PHV – Private Hire Vehicle

TFG - Department of Transport 'Task Finish Group'

RE: UBER BRITANNIA LIMITED**UNLICENSED PROVISION FOR THE INVITATION OF PHV BOOKINGS
LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976****YORK PRIVATE HIRE ASSOCIATION**

OPINION

Introduction

1. On 12 December 2017 York city Council (“the council”) refused to renew the York private hire vehicle operators’ licence held by Uber Britannia Limited (“Uber”).
2. The refusal appears to have made little or no difference: Uber vehicles and drivers continue to present themselves in York and invite potential customers to book their services on their smartphones. Uber encourages and incentivises drivers to do so. The result is that out-of-town private hire drivers, and vehicles not meeting York’s licensing requirements, are undertaking PHV bookings on the City’s streets.
3. I have been asked by the York Private Hire Association whether the continued activities of Uber and its drivers in York is lawful. For the reasons given below, I am strongly of the opinion that Uber and Uber drivers are acting as unlicensed operators, contrary to section 46(1)(d) of the LGMPA 1976.

The law

4. It is important to recognise that the statutory provisions applying to PHV drivers and vehicles are materially different from the provisions applicable to PHV operators.

Vehicles

5. The owner of a vehicle may not use it as a private hire vehicle in a controlled district unless the vehicle is licensed under section 48 LGMPA 1976: section **46(1)(a)**.

Drivers

6. A private hire vehicle may not be driven in a controlled district otherwise than by someone licensed under section 51: section **46(1)(b)**. (It is also an offence for the owner of a vehicle to employ as a driver someone who is not so licensed: **46(1)(c)**).
7. No offence under sections 46(1)(a), (b) or (c) is committed, however, if a driver’s licence and a vehicle licence issued in a different controlled district are in force: section 75(2).

8. The so-called “right to roam” of PHV drivers and vehicles derives from section 75(2). It means that licensed drivers and vehicles may lawfully undertake journeys (not ‘accept bookings’) “which ultimately have no connection with the area in which they are licensed” (per Latham LJ in *Shanks v North Tyneside BC* [2001] LLR 706).
9. The right is not unqualified: PHV drivers and vehicles may not solicit custom, and may only fulfil a booking accepted by an operator licensed by the same authority as licensed them: *Dittah v Birmingham City Council* [1993] RTR 356. Thus all three licences (operator’s, driver’s and vehicle) must be issued by the same authority: *Dittah*.

Operators

10. Section 80(1) LGMPA 1976 provides:

“operate” means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle.
11. An operator may only make provision for the invitation or acceptance of PHV bookings in the controlled district in which he is licensed: LGMPA section **46(1)(d)**, applying section 80, subsections (1) & (2).
12. **Section 75 of the LGMPA 1976 does not provide an exemption for operators from section 46(1)(d):** (i.e. there is no equivalent exemption to that provided for drivers and vehicles from sections 46(a), (b) & (c)). Thus, whilst drivers and vehicles may lawfully undertake *journeys* “which ultimately have no connection with the area in which they are licensed” (*Shanks*), provision for the invitation or acceptance of bookings may only be made in the controlled district in which the operator is licensed.
13. Whether or not provision has been made in breach of section 46(1)(d) is a question of fact. The following guidance emerges from the cases -
 - “It is simply a question of asking, in common sense terms, whether there has been provision made in the controlled district for invitation or acceptance of bookings”: *Kingston Upon Hull City Council v Wilson* (1995) WL 1082181, per Buxton J.
 - “There could well be provision for invitation of bookings in one place and for acceptance in another”: *East Staffordshire BC v Rendell* (1995) WL 1084118, per Simon Brown LJ.
 - “As the authorities clearly show, the [main] question is not where the act of accepting any particular booking or bookings take place, but where the provision is made”: *idem*
 - “The determining factor is not whether any individual booking was accepted, let alone where it was accepted, but whether the person accused has in the area in question made provision for the invitation or acceptance of bookings in general”: *Windsor and Maidenhead v Khan* [1994] RTR 87, per McCullough J.

Invitation of bookings

14. Uber customers make bookings using the Uber Rider App on a smartphone. The App is licensed by Uber BV. When customers activate the Uber Rider App, they are immediately presented with a map of their local area, showing the position of each nearby Uber vehicle that is currently available for hire. Each vehicle is continuously advertising its availability for hire and inviting potential customers in the vicinity to commence the process of booking.
15. *Rose v Welbeck* [1962] 1 WLR 1010 was a decision on the prosecution of a driver for plying for hire: but the court's analysis of the facts, and discussion of what amounted to an invitation to book, are relevant. There, a PHV vehicle was parked in a public street, bearing the inscription "Welbeck Motors, Minicabs" on both its sides, together with a telephone number. Winn J said: "At the very lowest, the evidence in the present case discloses behaviour and appearance on the part of this vehicle which amounts to an invitation:

'Get in touch one way or another with my owner and see whether he is willing for you to take me as a vehicle which you are hiring.'"

Lord Parker CJ said: "The vehicle was saying:

'Not only do I, if I may personify the vehicle, recommend you to Welbeck Motors Ltd., where you can hire a minicab, but further I am one of those minicabs and I am for hire.'"

16. In terms of 'invitation to book' there is no meaningful distinction to be drawn between the invitation made by vehicles displayed on the Uber Rider App, and that made by the parked *Welbeck* vehicle: the former is merely a modern, internet-assisted manifestation of the latter.
17. By exhibiting (on the Rider App) their physical presence in York, and their availability for immediate hire, Uber drivers and vehicles self-evidently invite bookings for their services. Provision for that invitation is made by 'Uber'; and it is made in York, where Uber are unlicensed.

Uber's 'Regions'

18. On 14 February 2018 Uber announced its unilateral decision to divide the UK into nine 'regions', each of which spans several different licensing districts, with their own standards and local licensing requirements.
19. UBL has told drivers on the Uber platform that if they hold a vehicle/driver's licence from any licensing authority within one of Uber's so-called regions, they will have exclusive rights to work as Uber drivers anywhere within that region.

20. Uber has placed York within its wide “Yorkshire Region” (which includes other local authority areas such as Leeds, Bradford and Kirklees). Uber uses surge pricing to encourage ‘out-of-town’ Uber drivers, including those licenced by Leeds, Bradford and Kirklees, to come to York and activate the Driver App. I have been shown screen shots of a Leeds Driver App showing how Leeds drivers are encouraged to go York where there is surge pricing.
21. The only discernible difference to Uber’s operations in York, since the refusal to renew its licence there, is that York licensed drivers who were working on the Uber platform on 12 December 2017 are no longer eligible to do so: the entirety of Uber’s provision in York is now made by ‘out-of-town’ vehicles and drivers licensed by other authorities.

Surge Pricing

22. ‘Surge pricing’ (also known as “dynamic pricing”) is a feature of the Uber model. It applies a multiple to its standard rates for journeys that commence in certain areas. These areas, and the applicable multiple, are broadcast to drivers via the Driver App. Drivers who commence journeys in areas where surge pricing is in force receive a multiple of whatever fare they would otherwise have received. Surge pricing therefore provides a strong incentive for drivers to travel to areas where ‘surge’ is in operation, in the expectation of receiving enhanced rewards for their work.

Local Licensing Control

23. Uber’s conduct is in no way a ‘technical breach’ of the statutory provisions. It goes to the heart of the licensing regime and its purposes. The Courts have said that “*the hallmark of the licensing regulatory regime is localism*”¹, and that “*that the authorities responsible for granting licences should have the authority to exercise full control*” over “*all vehicles and drivers being operated ... within its area.*”²
24. The undermining of local licensing control is a nationwide concern. In its representation to TfL, on the opposed renewal of Uber’s London licence, the Mayoress of Watford wrote:

“Uber’s method of operation seems inconsistent with the principles of a locally determined licensing regime that allows for each authority area to decide what is best in the interests of public safety for residents and visitors...”

I understand there to be every bit as great concern in York about the lack of local licensing control as there is in Watford - and as there is in licensing authorities throughout the Country.

¹ *Blue Line Taxis v Newcastle upon Tyne City Council* [2012] EWHC 2599 (Admin).

² *Shanks v North Tyneside Borough Council* [2001] EWHC 533 (Admin).

Conclusions

25. The licensing requirements of PHV drivers and their vehicles, and the exemptions therefrom, are different from those made of PHV operators. The gross oversimplification - “*cross-border hiring is lawful*” – is a misreading of the relevant case law (*Shanks*) and suggests a failure to recognise that distinction. There is no “loophole” in the law that allows Uber to operate a private hire vehicle in an area in which neither Uber, the vehicle nor the driver are licensed.
26. Uber is not a licensed operator in York.
 - a. Uber supplies Uber drivers (who are not licensed in York) with the means (smartphone and App) by which the drivers advertise their presence in York, and their availability for immediate hire there.
 - b. Uber actively encourages and incentivises Uber drivers (not licensed in York) to trade in York.
 - c. Uber drivers, so supplied with the means, and so incentivised, come to York and invite potential passengers to make bookings with Uber, via the Uber App.
27. I have no doubt at all that Uber, together with Uber drivers, are making unlawful provision in York for the invitation of PHV bookings, contrary to section 46(1)(d) of the LGMPA 1976.

Gerald Gouriet QC

Francis Taylor Building
Inner Temple

Friday, 16 November 2018

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In the matter of
Section 46(1)(d) of the Local Government (Miscellaneous Provisions) Act 1976

And in the matter of York City Council

ADVICE NOTE

1. Section 46(1)(d) of the Local Government (Miscellaneous Provisions) Act 1976 provides:

Except as authorised by this Part of this Act – no person shall in a controlled district operate any vehicle as a private hire vehicle without having a current licence under section 55 of this Act’.

2. A question has arisen in York as to whether the business model of Uber is in breach of this sub-section. This has been brought into focus by an Opinion provided to the York Private Hire Association by Gerald Gouriet QC (16th November, 2018).

3. The Editors of *Paterson’s Licensing Acts 2019* provide a detailed footnote to this sub-section (see 2.467 / p 1181):

It is suggested that PHV operators who knowingly send drivers in their fleet expressly to work in areas where they are not licensed will be in breach of this subsection if they are found as a question of fact to be making provision in those areas for the invitation of bookings: see the definition of ‘operate’ in s 80(1). The detailed circumstances of each case will be relevant. Whether or not the display of a waiting PHV on a potential passenger’s Smartphone is an invitation to book that vehicle has yet to be determined by the courts. The operator may in any event be vulnerable to having his operator’s licence revoked or refused renewal under s 62(1)(d) of the 1976 Act on the ground that he undermines local licensing control.’

4. This footnote along with the Gerald Gouriet QC Opinion to the York Private Hire Association (16th November, 2018) seem to me to represent, in part, the anxieties and challenges raised by the advent of new technologies on established systems.
5. The recent case of *Reading Borough Council v Ali* [2019] EWHC 200 (Admin) is of assistance. This case is an appeal by way of case stated from the decision of the Chief Magistrate to acquit Mr Ali of two charges of plying for hire contrary to s 45 of the Town Police Clauses Act 1847. The respondent is an Uber driver, he, his vehicle and Uber are licensed by Transport for London (“TfL”) to conduct private hire business pursuant to the “triple lock” licensing-regime under the Private Hire Vehicles (London) Act 1998. On the nights in question, some 60 Uber vehicles were in Reading. In the early hours of 21st January, 2017, Mr Ali was parked in Kings Road in the center of Reading waiting for a passenger to make a booking for his vehicle via the Uber smartphone App. Two of the appellant’s Licensing Enforcement Officers who were registered as Uber passengers saw the outline of his vehicle on their App, approached the vehicle and interviewed Mr Ali. He said he was waiting for a booking through the Uber App. A

similar series of events occurred just after midnight the following night when the same Officers interviewed Mr Ali again.

6. Similarly, the Gouriet Opinion summaries the circumstances in York as follows:

‘Uber customers make bookings using the Uber Rider App on a smartphone. The App is licensed by Uber BV. When customers activate the Uber Rider App, they are immediately presented with a map of their local area, showing the position of each nearby Uber vehicle that is currently available for hire. Each vehicle is continuously advertising its availability for hire and inviting potential customers on the vicinity to commence the process of booking’ [14].

7. The question that arises for Mr Gouriet and the York Private Hire Association, is whether this business model is lawful. Gouriet opines that: ‘I am strongly of the opinion that Uber and Uber drivers are acting as unlicensed operators, contrary to section 46(1)(d) of the LGMP 1976’ [3]. And again at [27]: ‘I have no doubt at all that Uber, together with Uber drivers, are making unlawful provision in York for the invitation of PHV booking contrary to section 46(1)(d) of the LGMPA 1976’.

8. The High Court in the *Reading* case gave consideration to the Uber business model and concluded:

33. In my judgment, there was no unlawful plying for hire in this case for a number of reasons. First, the mere depiction of the respondent’s vehicle on the Uber App, without either the vehicle or the driver being specifically identified or the customer using the App being able to select that vehicle, is insufficient to establish exhibition of the vehicle in the sense in which that phrase is used by Lord Parker CJ in formulating the two stage test for plying for hire in *Cogley v Sherwood* and *Rose v Welbeck*. That requires not just exhibition of the vehicle but its exhibition expressly or implicitly soliciting custom, inviting members of the public to hire the vehicle.

34. It seems to me that depiction of the vehicle on the App does not involve any exhibition of that kind, but is for the assistance of the Uber customer using the App, who can see that there are vehicles in the vicinity of the type he or she wishes to hire. I agree with Mr Kolvin QC that the App is simply the use of modern technology to effect a similar transaction to those which have been carried out by PHV operators over the telephone for many years. If I ring a minicab firm and ask for a car to come to my house within five minutes and the operator says “I’ve got five cars round the corner from you. One of them will be with you in five minutes,” there is nothing in that transaction which amounts to plying for hire. As a matter of principle, I do not consider that the position should be different because the use of internet technology avoids the need for the phone call.

9. At para 16 of the Gouriet opinion it is said that ‘[i]n terms of ‘invitation to book’ there is no meaningful distinction drawn between the invitation made by vehicles displayed on the Uber Rider App, and that made by the parked [*Rose v Welbeck*] vehicle: the former is merely a modern, internet-assisted manifestation of the latter’. This analysis is expressly rejected by Lord Justice Flaux and the very opposite position taken, that the use of the app *is simply the use of modern technology to effect a similar transaction to those which have been carried out by PHV operators over the telephone for many years* [34].

10. In *Reading* the court further drills down into the character of waiting – that is the vehicles being physically present in an area that is not in the area the controlled district of which the operator, vehicle and driver are licensed – and the Uber App. In so doing the court further distinguishes the Uber business model from the *Rose v Welbeck* scenario:
38. This leads on to the third reason why this was not plying for hire, which is the character of the waiting. The respondent was waiting in his vehicle until a customer confirmed a booking on the Uber App and he accepted that booking. There was no question of his soliciting custom during the period of waiting. His vehicle did not advertise itself as available for hire nor did he do anything which would have suggested to the public that he was available for hire. Indeed, as the Chief Magistrate found, if a member of the public had approached the vehicle and sought a ride, the respondent would have refused to take such a passenger off the street without a prior booking through the Uber App.
39. The waiting here was of a completely different character to that in *Rose v Welbeck*. Unlike in that case, the respondent was not waiting to solicit custom from passing members of the public, but he was waiting for a private hire booking via the Uber App. Putting the example given by Lord Parker CJ in *Cogley v Sherwood* of what would not be plying for hire into the context of the Uber App, if approached in the street, the respondent would have been saying: ‘You cannot have my vehicle, but if you register for the Uber App and make a booking on it, you will be able to get a vehicle, not necessarily mine.’
11. In effect the Uber business model represents no more than an efficient, speedy and convenient modern manifestation of the private hire regime under the 1976 Act. In *Dittab v Birmingham City Council* [1993] RTR 356 it was held that ‘an accurate statement of the law’ (363) was provided by the Department of Transport letter (dated 25 June, 1993) which read: ‘In our view applying section 80(2) to sections **46(1)(d)** and (e) has the effect that an operator requires a licence from the area in which he intends to operate and may only operate in that area vehicles and drivers licensed by the same district. This has the practical effect that an operator licensed in area A may only use vehicle and drivers licensed in area A but these vehicles and drivers will be able to go anywhere in the course of hiring’ (363) (Emphasis added). Further in *Shanks v North Tynside Borough Council* [2001] EWHC (Admin) Lord Justice Latham came to the firm conclusion that *Dittab* was correctly decided [22].
12. In *Shanks* it was held that ‘[t]he meaning of “operator” in section 80 when taken in conjunction with section 75(2) provides for considerable flexibility. The operator can use the vehicles within his organisation for journeys both inside and outside the area of the local authority in which he is licensed **and, indeed, can use such vehicle and drivers for journeys which have no ultimate connection with the area in which they are licensed.** There is, it seems to me, therefore, no reason to believe that the construction, which I consider to be the right construction of the Act, renders the operation of private hire vehicles in any way so restrictive as to justify the conclusion that the construction that I have reached must be wrong.’ [26]. (Emphasis added).
13. That the drivers and vehicles may be in areas (such as Reading or York) which have no ultimate connection with the area in which they – and the operator – are licensed. This is

both lawful and an accepted part of the *considerable flexibility* of the private hire regime.¹ The key factor for enforcement purposes (and compliance with section 46) is that the vehicle licence, the driver licence and the operators licence are issued by the same local authority how-so-ever the vehicles and drivers may rightly roam.

14. At para 12.99 *Button on Taxis* (4th Edn) opines that '[t]he simplest way to establish whether or not an offence has been committed is to inquire whether all three licences have been issued by the same authority? If the answer to that is 'Yes', and the 'happy family of licences' is present, then there is no restriction on the geographical area in which the journey can take place.' These established principles seem to have informed the approach of the High Court in the *Reading* case [2]:

The respondent is an Uber driver, He, his vehicle and Uber are licensed by Transport for London to conduct private hire business pursuant to the "triple lock" system under the Private Hire Vehicles (London) Act 1998. Uber had been refused an operating licence by the appellant. However, if Uber, their vehicles and drivers were conducting a private hire business, they could lawfully operate in Reading with their private hire vehicle ("PHV") licences from Transport for London ("TfL"). What drivers were not permitted to do was ply for hire, which only licensed hackney carriages are permitted to do.

15. It seems to me that the key question informing the *Reading* case and also the Gouriet opinion is whether or not the Uber business model is lawful, in other words is it a genuine private hire operation? In *Reading* the court accepts that the Uber business model is indeed a modern variant of the traditional private hire regime ([33] & [34] above).
16. In *Reading* the court went on to further consider whether the Uber business model in the context of pre-booking (an established feature of the private hire model), here again the court was satisfied that the Uber model was in accord with the principles of private hire:

37. Whatever the correct contractual analysis, in my judgment it has no impact on the question we have to decide. On any view, there is a pre-booking by the customer, which is recorded by Uber as PHV operator, before the specific vehicle which will perform the job is identified. This is all in accordance with the transaction being PHV business, not unlawful plying for hire. There was no soliciting by the respondent without some prior booking, as he only proceeded to the pick-up point after the customer had confirmed the booking and the respondent as driver had accepted the job. Whenever any contract was concluded, I have little doubt that this was not plying for hire, because on the facts found in this case, the customer could not use the respondent's car without making a prior booking through the App. As with the charabanc in *Sales v Lake*, the customer would make a booking to be picked up at a pre-arranged point. On the evidence in this case, all the Uber App did was to facilitate that booking.

17. This reflects existing established principles: In *Britain v ABC Cabs (Camberly) Ltd* [1981] RTR 395 the court was asked to determine whether the collection of a passenger within a controlled district (Rushmoor) in pursuance of a contract of hire made outside of the control district (Surrey Heath) 'was operating' for the purposes of the 1976 Act (403 – 404): 'I am satisfied that when the defendants' vehicle picked up the passenger at

¹ It seems to me that this 'considerable flexibility' (*Shanks*) is further reflected in the recognition that there are no restrictions upon where a private hire operator may advertise (see *Windsor & Maidenhead Royal Borough Council v Khan* [1994] RTR 87). To my knowledge there has been no consideration given to the Uber app (and similar applications) as being a form of advertisement.

Farnborough Station, the only material act which the defendants did in the borough of Rushmoor controlled district, they were not “making provision for the invitation or acceptance of bookings” at all, whether for a private hire vehicle or for any other vehicle. In my judgment to conclude otherwise would be to strain the language of the definition far beyond breaking point. If they were making provision for the invitation or acceptance of bookings anywhere, they were doing that, it would seem to me, in their office at Camberley, which is not a controlled district. In my judgment therefore no offence was made out under section 46(1)(d) and the justices rightly dismissed that information.’

18. The case of *Milton Keynes Council v Skyline Taxi and Private Hire Ltd* [2017] EWHC 2794 applies *Britain* and also endorses the practice whereby the traditional methods of business practice are replaced by automated computerised systems. In *Milton Keynes* ‘the definition of the word ‘operate’ focuses on the arrangements in pursuant to which the a private hire vehicle is provided and not with the provision of the vehicle itself ... the word ‘operate’ is not to be equated with, or taken as including, the providing of the vehicle, but refers to the antecedent arrangements.’ (per Dyson J in *Bromsgrove v Powers* (1998) cited in *Milton Keynes* [8]). Those *antecedent arrangements* being the triple lock.
19. Thus, in *Milton Keynes Hinkinbottom LJ* states [10] that:

‘However, because of the limited definition of “operate” [[8], above], he only commits an offence if, in the course of business and in a controlled district, he makes provision for the invitation or acceptance of bookings for a private hire vehicle in circumstances in which the vehicle and/or the driver do not have the required licence(s). That too is firmly established by the cases to which I have referred (see, eg, *Britain* at page 403). Therefore for these purposes, it is irrelevant (eg) where the customer might be picked up, or where the contract for hire might have been made, or where the particular booking might in fact have been accepted.’
20. In light of *Reading*, *Milton Keynes* and the established principles to which these cases adhere and apply, the assertion by Gouriet [at para [17]] that ‘[b]y exhibiting (on the Rider App) their physical presence in York, and their availability for immediate hire, Uber drivers and vehicles self-evidently invite bookings for their services. Provision for that invitation is made by ‘Uber’; and it is made in York, where Uber are unlicensed’ is, in my opinion, untenable and *self-evidently* wrong.
21. It seems to me that the Gouriet opinion is flawed in that it advances an analysis of the App-based Uber business model that has now been rejected by the High Court in the *Reading* case and secondly, fails to apply the established legal principles in respect of the specific legal definition of ‘operate’ within the 1976 regime.

Leo Charalambides
Francis Taylor Building
5th March, 2019

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Executive**26 September 2019**

Report of the Corporate Director of Economy and Place
Portfolio of the Executive Member for Transport

York Outer Ring Road Improvements Update**Summary**

1. Planning and development work for the York Outer Ring Road (YORR) Improvement scheme commenced in 2017 and the first junction upgrade was completed in early 2019. As the scheme is evolving, the phasing of the six remaining junctions is subject to various changing conditions and challenges.
2. Various opportunities for the provision of grant funding from Central Government for enhancing the capacity of the Outer Ring Road are being progressed by City of York Council (CYC) and Transport for the North. Currently no decisions have been made at Central Government level to confirm whether these bids have been successful.
3. A decision is needed on funding to enable the construction of an enhanced junction and underpass at the A1237/Clifton Moor roundabout which would provide access and pedestrian/cycle facilities to a site allocated for housing in the draft Local Plan.
4. To facilitate the acquisition of necessary land and/or rights over land, against a background of some protracted land acquisition negotiations, Executive Members are asked approve the principle of pursuing a Compulsory Purchase Order using powers contained in Part XII of the Highways Act 1980 to acquire the land edged red on the plan attached to this report at Annex C required to deliver the Monks Cross Junction improvements. A separate report requesting the endorsement of the making of one or more Compulsory Purchase Orders will be brought to Executive in due course. Officers would endeavour to continue negotiations with landowners during any Compulsory Purchase Order process.

Recommendations

5. The Executive are requested to:

- 1) Note the potential grant award from the DfT of c. £26m for upgrading the A1237 (Phase 1 Dualling (Rawcliffe to Hopgrove)) and the need to co-ordinate planning and design work on the current junction upgrade programme.

Reason: To be aware of the potential impacts of co-ordinating the design and construction on the YORR Programme.

- 2) Note the inclusion of a scheme to dual the A1237 from A19 Rawcliffe to B1223 Wetherby Road (Phase 2 Dualling (Rawcliffe to Wetherby Road)) in Transport for the North's Regional Evidence Base submission to the Department for Transport.

Reason: To inform Executive about the current status of proposals for dualling sections of the A1237 YORR.

- 3) Instruct Officers to investigate options for the introduction of further measures across the city to lock in the sustainable transport and environmental benefits which could result from the increased capacity provided by dualling the A1237.

Reason: To ensure that the potential for significant sustainable transport and environmental benefits resulting from the dualling of the ORR are investigated further with options presented to Members for future decision.

- 4) Recommend to Council to approve a budget of £7.0m for the 'enhanced option' upgrading of the A1237/ Clifton Moor junction. This is to be funded from £2m West Yorkshire Transport Fund contribution and £5m prudential borrowing. The revenue costs of which to be incorporated within 2020/21 Revenue Budget.

Reason: To enable the construction of an upgraded junction which will be future proofed to provide access to a proposed new development site shown in the Draft Local Plan for approximately 1350 new homes, new cycle and pedestrian networks and accommodate dualling of the A1237. In addition delivering a single enhanced scheme will minimise traffic disruption and abortive work

which would result from delivering the WYTF and development schemes separately.

- 5) Approve, subject to the approval of the budget in recommendation 4), the carrying out of the procurement to engage a contractor to undertake the civil engineering and associated construction works and delegate to the Assistant Director for Transport, Highways and Environment (in consultation with the Assistant Director of Legal and Governance or his/her delegated officers) the authority to take such steps as are necessary to award and enter into the resulting contract with the final layout subject to the approval of the Executive Member for Transport following the consideration of a report reviewing the landscaping, drainage and highway integration for east-west cycling and walking routes, and options for the Hurricane Way B&Q junction.

Reason: To enable the procurement process for the engagement of a contractor to undertake the civil engineering and associated construction works of an upgraded junction to be carried out and the resulting contract to be awarded.

- 6) Request Officers to identify opportunities to reduce the CYC contribution through external funding (HIF, developer contributions etc.) which if successful will reduce overall CYC borrowing.

Reason: To reduce the overall council financial contribution.

- 7) Approve the principle of pursuing a Compulsory Purchase Order using powers contained in Part XII of the Highways Act 1980 to acquire the land edged red on the plan attached to this report at Annex C required to deliver the Monks Cross Junction improvements.

Reason: To date it has not been possible to acquire these land interests by negotiation. The Executive are therefore recommended to approve the principle of using CPO powers and officers will continue to prepare the documentation necessary to make the Order. In the meantime negotiations will continue but in the event that these do not prove successful officers intend to take a report to December Executive requesting authority to make the Order.

- 8) Delegate authority to the Assistant Director of Transport, Highways and Environment to take all necessary steps to prepare to make the Compulsory Purchase Order referred to above. This delegation will also include negotiation of easements and temporary rights where

freehold ownership is not required e.g. for drainage purposes, or temporary occupation for the construction works. This delegation will also include obtaining the release/extinguishment of, or variation of, any third party rights over affected land (for example a third party might have a right of way over land which needs to be acquired).

Reason: To ensure that the Council is in a position to make the Order as soon as practicable in the event that a final resolution to make the Order is made.

- 9) Extend the delegated authority of the Assistant Director of Transport, Highways and Environment for purchase of land by private agreement/Private Treaty from £200k to £250k in any one land interest.

Reason: To enable the Assistant Director of Transport, Highways and Environment to negotiate the acquisition of land by private agreement/Private Treaty in an efficient and timely manner to support the planning, development and delivery of the YORR Improvement scheme.

Background

6. The current YORR Improvement project comprises upgrades to 7 of the existing YORR roundabouts between the Wetherby Road and Monks Cross junctions. The expectation is that these upgrades will deliver an overall 18-20% improvement in journey times at peak periods and drive economic growth to provide jobs and homes.
7. The identified improvements are being delivered through the West Yorkshire Plus Transport Fund (WY+TF). The West Yorkshire Combined Authority (WYCA) co-ordinate the WF+TF and are responsible for the approval and allocation of funds to identified projects. The allocated fund to the YORR Improvement Programme is £38.3m.
8. Since a report was presented to the Executive in July 2017 setting out the approach and delivery methodology of the scheme, a number of changing circumstances have arisen. These can be broadly broken down into the following three areas:
 1. Opportunities have arisen to bid for funding from the Department for Transport (DfT) to provide dualling along sections of the A1237.

2. An opportunity has arisen to bid for funding from Homes England to deliver an enhanced junction upgrade at Clifton Moor providing access to future housing sites and significantly reducing potential abortive works.
 3. Difficulties have been encountered in acquiring land at Monks Cross increasing the risk of delays to the programme.
9. With regard to 8.1 above, an outline business case was submitted to the DfT in December 2018 for a grant for approximately £26m to enable provision of a dual carriageway along the A1237 from the junction at A19 Rawcliffe in an easterly direction to A64 Hopgrove (Phase 1 Dualling (Rawcliffe to Hopgrove)). Since that time CYC have responded to all requests for additional information and clarifications from the DfT in order for a recommendation to be made to Ministers on the proposals. A decision is now awaited but there is no firm indication when this will be made. Executive are asked to note that the project team are balancing the needs of progressing the junction upgrade programme with the possibility that a dualling scheme may be announced. This requires careful co-ordination and decision making to minimise the risk of abortive work.
10. Transport for the North (TfN) have recently announced the submission of the Regional Evidence Base (REB) identifying a number of schemes which should be prioritised for delivery in the north of England. The REB includes a proposal to dual the A1237 from the junction at A19 Rawcliffe south west to the B1224 Wetherby Road (Phase 2 Dualling (Rawcliffe to Wetherby Road)) at a total cost of approximately £63m part funded by the Major Route Network (MRN) funding allocation. The scheme is at Pre-Strategic Business Case stage, and includes the high cost elements to bridge the River Ouse and East Coast Mainline. The progression of this potential Phase 2 dualling scheme is heavily dependent on the outcome of the Phase 1 dualling bid and the availability of approximately 15% match funding. Potential match funding sources such as the LEPs and adjacent Local Authorities will be investigated for the Phase 2 dualling.
11. A further bidding opportunity was utilised during 2018 to provide an enhanced junction upgrade for the A1237/Clifton Moor junction. This particular bid was made to Homes England for a grant from the Housing Infrastructure Fund (HIF). A decision on the HIF bid is currently still awaited and therefore a gap exists between the funding available for the base scheme from the WY+TF and the enhanced scheme. This is discussed in 'Options' below.

12. In terms of general progress, Members are asked to note the following:
 1. The upgrading of the junction at Wetherby Road was completed in January 2019.
 2. All necessary arrangements and approvals to commence construction work at the Monks Cross junction have been in place (with the exception of land acquisition) since April 2019.
 3. Consultation and Highway Authority approval was completed for the Clifton Moor junction in August 2019.
 4. Consultation was undertaken for the Wigginton Road junction in April 2019.

13. In summary, whilst progress has been made in a number of areas, it is apparent that some changing conditions and challenges (as outlined above) are now being experienced which require a slightly different approach to align CPO and negotiated/Private Treaty land acquisitions more effectively, co-ordinate funding approaches with planning requirements or seek alternative funding arrangements and some decisions need to be made. These issues are discussed below and involve the options for the design of the Clifton Moor Junction and the need to seek authority to the principle of making Compulsory Purchase Orders for the scheme.

Consultation

14. Consultation with the public has been carried out on a phased basis for the following junctions:
 1. Junction 1 Wetherby Road
 2. Junction 7 Monks Cross
 3. Junctions 3 Clifton Moor and 4 Wigginton Road.

15. The YORR Improvement scheme is generally well supported as it will bring much needed relief in terms of traffic congestion at a local level as well as other more strategic benefits. Whilst there are few options to offer, as the funding is directed at upgrading junctions, support ranges from 85 – 94% on a scheme by scheme basis in the consultation processes carried out so far.

Options and Analysis

16. There are a number of direct and indirect benefits of upgrading the A1237 in addition to the reduced journey times to local and strategic traffic.
17. As part of the dualling scheme an orbital cycle route will be delivered over the East Coast Main Line and River Ouse substantially improving the walking and cycling connections in this area of the city.
18. Modelling indicates that a significant number of trips will divert from the main urban area (and adjacent villages) onto the YORR as a result of the additional capacity provided by the A1237 upgrades. The additional capacity provided by the dualling, in particular, will enable a significant redistribution of trips. For example it is anticipated that traffic flows will more than double on sections of the A1237 with consequential reductions on key radial and orbital routes in the northern and western sides of the city. It is recommended that options for locking in the released capacity and the potential to reassign road space to more sustainable transport modes should be investigated in more detail.
19. In this section the two main issues of: (i) future-proofing the A1237/Clifton Moor roundabout upgrade and (ii) use of CPO powers will also be considered.

(i) Future-proofing the A1237/Clifton Moor roundabout upgrade
20. At Clifton Moor, a preliminary design for an upgrade was initially proposed in 2017, see Annex A. This design is a modest upgrade based on the existing three arm roundabout, estimated to cost approximately £2m.
21. During early 2018, an opportunity arose to bid for funding from the Housing Infrastructure Fund (HIF) administered by Homes England on behalf of UK Government. This fund is aimed at investing in infrastructure which will unlock sites to help ease the national housing shortage. A site which is included in the Draft York Local Plan (Ref, ST14) north of Clifton Moor with an allocation of approximately 1350 homes was identified as eligible for this funding and CYC Officers committed to work with local developers in order to exploit this

opportunity. A collaborative partnership then developed between CYC and local developers to prepare the bid.

22. A bid was submitted in late 2018 to Homes England and DfT for an enhanced junction upgrade with a fourth arm and a pedestrian/cycle subway (both to serve the proposed housing to the north), and future proofed for being made into a dual carriageway at a later stage, see Annex B. The estimated cost of constructing this option is approximately £7m. The funding breakdown for this cost is £2m from the WY+TF and a £5m grant from the HIF (if successful).
23. To summarise, there are three options:

Option 1: the basic option (Annex A) funded solely by the WY+TF is estimated to cost approximately £2m. This option, based around the existing junction footprint i.e. three arms, would be constructed online and would provide benefits in accordance with the YORR Junction Improvement Programme.

Option 2: the enhanced junction upgrade option (Annex B) would include a fourth arm to the north and a pedestrian/ cycle subway. This option is estimated to cost approximately £7m (including the £2m contribution from the WY+TF). The enhanced option provides access to future sites allocated for housing in the Draft Local Plan (ST14) including significant pedestrian and cycling networks. The works would be predominantly undertaken off line to accommodate the space required for the subway and future proofed for modification to a dual carriageway in due course. There are several advantages to this approach as follows:

1. economies of scale.
2. ability to co-ordinate the design and construction with the future proposed housing needs and dualling options in mind.
3. distinct advantage to residents in only having one set of disruption to the area and impact on the highway network.
4. loss of productive effort if the basic option was later de-commissioned and superceded by the enhanced option.

However the key advantage would be to eliminate, as far as possible, £3-4m of abortive work in the event that Option 1, the basic option (Annex A), be constructed first, followed sometime later by Option 2, the enhanced option (Annex B).

Option 3: there is a further option to initially deliver the enhanced roundabout without the cycle subway if the HIF bid was not successful. This could be considered in recognition that the sustainable travel benefits of subway are limited without the presence of the housing development. This would allow the subway to be delivered by the developer when the development progressed and would reduce the short term funding requirement by approximately £1m. However the overall cost of delivering a subway at a later date would be higher due to increased contractor mobilisation, traffic management and access costs. In addition there would be significant additional disruption to the travelling public during the separate delivery of the subway at a later date. It is recommended that the subway is constructed and integrated into the city's walking and cycling network as much as possible, at the same time as the main roundabout upgrade to reduce the impact on travellers.

24. At this time a decision on the HIF bid is currently still awaited with no indication when this will be made, and therefore a funding gap of £5m exists. Executive are therefore asked to approve the investment of £5m to enable the enhanced option to proceed to be funded from prudential borrowing initially but with Officers investigating other possible funding mechanisms.
25. In terms of progress on the Clifton Moor junction upgrade scheme, design work is at an advanced stage following the consultation process earlier in the year. The Executive Member for Transport has endorsed the general arrangement design for Option 2, the enhanced upgrade shown in Annex B subject to a review of the landscaping, east-west cycle route and right turn arrangements at the Hurricane Way (B&Q) junction. The project team are in a position to submit a Full Business Case to WYCA and could invite tenders during the autumn of 2019 with a view to commencing work on site in early 2020 subject to the confirmation of funding.
26. Executive are therefore recommended and requested to sanction the funding of an additional £5m from prudential borrowing, subject to approval by Full Council, to enable the enhanced option (Annex B) to be constructed at this stage, and give delegated authority for the Assistant Director of Transport, Highways and Environment to investigate possible funding mechanisms.

(ii) use of CPO powers

27. Moving on to the issue of the need for a CPO, this has been predicated on some difficulties being experienced in acquiring land for the proposed Monks Cross Junction Upgrade (Monks Cross Scheme). A plan showing the area that needs to be acquired to deliver the Monks Cross Scheme is attached at Annex C to this report
28. The Land Acquisition Strategy (LAS) for the YORR Junction Improvement Scheme has always recognised that compulsory acquisition may be required if it is not possible to purchase land by private agreement. An impasse has now been reached at Monks Cross which has meant that the start of works has now been delayed since April 2019.
29. As indicated above, all necessary steps have been taken to facilitate a start on site at Monks Cross. In summary, the scheme comprises the upgrading of the existing roundabout junction between the A1237 ring road, North Lane and Monks Cross Link. The works include the enlargement of the roundabout and reconnection of the existing arms; increasing the length of the 2 lane approach on Monks Cross Link; and increasing the entries to 3 lanes and exits to 2 lanes on the A1237 to future-proof a potential dual carriageway for 100m on both sides of the roundabout.
30. The implementation of the Monks Cross Scheme requires the Council to demonstrate to Natural England that the impact on Great Crested Newts (GCN) has been considered and appropriate mitigation measures are incorporated and these must be reflected in a licence obtained from Natural England. As part of this process it is necessary to identify a suitable area of land in a suitable location (a hibernaculum) to compensate for the GCN habitat that will be lost as a result of the Scheme. This has been identified at the location identified on the plan attached at Annex C. Natural England are satisfied that this is an appropriate location and have approved a licence on the basis that the hibernaculum will be sited in this position.
31. In terms of the land required to deliver the scheme, this falls into two categories. First of all there is the land that is required to carry out the junction improvements. The second category is the land required to accommodate the hibernaculum. These areas are both shown on the plan at Annex C.
32. A number of unforeseen circumstances have led to delays in acquiring the land necessary for the junction. A key factor has been that a

landowner who has changed agent and negotiations to acquire the land have not progressed.

33. A compulsory purchase order should only be made where there is a compelling case in the public interest for making and promoting a CPO, the use of the powers is necessary and proportionate, and the public benefits associated with the proposed scheme will clearly outweigh the interference with the rights of those affected. These matters are referred to below, and will be considered further in detail in any future report to the Executive to seek authority for a CPO to be made. In summary, the key public benefits are as follows:-

- Reduced congestion and delays on the A1237.
- Increased capacity to accommodate future development in the area
- Improved design to modern standards reducing the potential for accidents.
- Improved Non-motorised User facilities.

34. In submitting the CPO to the Secretary of State for Transport for confirmation the Council must demonstrate that there are no impediments to implementation of the CPO. To do so, the Council must provide substantive information as to the sources of funding available for both acquiring the land and implementing the Scheme for which the land is required. In this case. Funding for the roundabout upgrade scheme is available through the West Yorkshire Plus Transport Fund and has been confirmed by the West Yorkshire Combined Authority most recently at their meeting on 13 December 2018.

35. The Council must also show that the Scheme is unlikely to be blocked by any physical or legal impediments to implementation including any need for planning permission or other consent or licence. In this case the Council in its capacity as Local Planning Authority has formally confirmed that the works all fall within the definition of permitted development and they therefore do not need any further planning consent.

36. Turning to human rights issues, whilst this report only seeks an ‘in principle’ decision from the Executive that it is prepared to authorise the use of CPO powers to facilitate the Scheme, officers would provide the

following guidance at this stage on the human rights implications of pursuing CPO action.

37. The MHCLG Guidance on the CPO (the Guidance) confirms that an acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights (ECHR) (right to the peaceful enjoyment of property) and, in the case of a dwelling, Article 8 of the ECHR (right to respect for private and family life, home and correspondence). In this case no dwellings are to be acquired to deliver the Scheme. Before deciding whether to authorise a CPO, the Executive will need to consider the balance and compatibility between the compulsory powers sought and the rights enshrined in the ECHR and whether there is a compelling case for a CPO in the public interest which means that the acquisition of land to enable the scheme to proceed, brings benefits to the area, which could not be achieved without the use of compulsory purchase powers.
38. Executive should note that approvals have already been given to undertake preparatory work for a possible CPO, including the appointment of external lawyers (Weightmans) and a land referencing exercise identifying all relevant land interests in the site to be occupied by the works is being progressed by Land Referencing Services (LRS).
39. Accordingly, whilst any case for making a CPO will be rehearsed in a future report, officers are of the view that a compelling case in the public interest for making and promoting a CPO could be made out and the use of the powers could be seen as both necessary and proportionate and the public benefits associated with the proposed works are likely to outweigh the interference with the rights of those affected. So whilst negotiations to acquire the necessary land by agreement are ongoing and will continue, in the event that these do not prove successful officers intend to take a report to December Executive requesting authority to make the Order.
40. Executive are also asked to note that preparations are now under way to prepare for a further possible CPO to ensure the acquisition of land required to deliver the YORR Junction Upgrade Programme. This will ensure completion of the wider Programme in a timely manner.

41. If it is necessary to promote a further CPO approval of the Executive will be sought at the appropriate time. In the meantime the Council will continue to approach landowners, through its agents, to acquire land by private agreement as CPO is a 'last resort' measure.
42. In order to proceed with the efficient preparation, making and serving of the of the CPOs, Executive are asked to delegate operational and detailed decision making to the Assistant Director Transport, Highways and Environment to negotiate the terms of acquisition by private agreement for individual land interests, this delegation will also include negotiation of easements and temporary rights where freehold ownership is not required e.g. for drainage purposes, or temporary occupation for the construction works. This delegation will also include obtaining the release/extinguishment of, or variation of, any third party rights over affected land (for example a third party might have a right of way over land which needs to be acquired). This delegation will also include acquisition of land up to £250k in any one interest. .
43. The following decisions will remain with the Executive Member for Transport:
 1. Approval of proposed consultation with residents, businesses and stakeholders.
 2. Approval of the final layout of each junction upgrade.
 3. Approval of phasing of the scheme.
 4. Acceptance of tenders for construction.

Council Plan

44. The YORR Improvement proposals are embedded in the Council Plan 2015-19. The implementation of this programme of highway improvements will be an integral part of the key priorities to "provide a prosperous city for all"; to ensure it delivers the services people want and work in partnership with local communities. Improvements to transport infrastructure are key drivers for improved productivity and unlocking sites for homes and jobs. This in turn leads to economic growth and the increase in wealth.

45. Residents have been consulted about the junction upgrades to ensure that consideration of the potential impact of decisions in relation to health, communities and equalities has been made.
46. Improved journey times will support the following aims from the Plan. A city where:
- Local businesses can thrive
 - Residents have the opportunity to get good quality and well paid jobs
 - Efficient and affordable transport links enable residents and businesses to access key services and opportunities
 - Environmental Sustainability underpins everything we do

Implications

Financial Implications

47. The estimated cost for the Clifton Moor roundabout upgrade scheme is currently £7m. This estimate includes all works, land, fees, project management and utility diversions. Funding is anticipated to be split between a bid for a HIF grant (£5m) and WY+TF (approximately £2m). Release of funds from the WY+TF will be processed through satisfying the Project Assurance process and approval at meetings of WYCA. A decision on the funding grant for the HIF is still awaited from Central Government.
48. If the bid for a HIF grant were to be unsuccessful, the City of York Council have pledged to work with local developers to seek alternative routes to secure funding for the junction upgrade.
49. In the event that external funds do not become available in advance it is proposed that the council funds the additional cost through additional borrowing of up to £5m. The revenue impact of this borrowing would be up to £350k per annum and this will need to be incorporated in the Treasury Management budgets to be updated in the Budget Strategy report in February 2020. Once external funding is secured this can be utilised to reduce the level of borrowing and ongoing revenue costs.

Human Resources

50. There are no Human Resources Implications.

One Planet Council / Equalities

51. The One Planet Council Better Decision Making Tool has identified the following areas which can be explored further during the design and development of the whole YORR improvement programme:

- Greater consideration of renewable materials during construction.
- Consideration about the reduction of crime where subways are proposed.
- Enhanced Landscaping.
- Use of Public Art to provide attractive spaces for residents.

Legal Implications

52. CYC is actively pursuing the purchase of land and rights necessary for the YORR scheme (including Clifton Moor roundabout upgrade) by negotiated agreement.

53. CYC has the necessary powers to acquire land compulsorily for YORR. Part XII of the Highways Act 1980 includes a number of CPO powers to support the delivery of highways. These include:

- Section 239 of the 1980 Act pursuant to which the highway authority for the area may acquire land required for the construction of a highway, other than a trunk road, which is to become maintainable at the public expense, as well as any land required for the improvement of a highway.
- Section 240 of the 1980 Act, pursuant to which the highway authority may acquire land required for use in connection with construction or improvement of a highway and the carrying out of a diversion or other works to watercourses
- Section 246 of the 1980 Act pursuant to which the highway authority can acquire land for the purpose of mitigating any adverse effect which the existence or use of a highway constructed or improved by them has or will have on the surroundings of the highway.
- Section 248 of the 1980 Act pursuant to which the highway authority can acquire land in advance of requirements
- Section 249 of the 1980 Act prescribes distance limits from the highway for the acquisition of land for certain purposes.

- Section 250 of the 1980 Act allows the highway authority to acquire rights over land, both by acquisition of those already in existence, and by the creation of new rights.

54. In the event that CPO is required Legal Services will work closely with the external legal advisors to ensure there is continuity between the negotiated agreement process and any CPO process which may be required.

55. In respect of the funding of the future-proofing of the A1237/Clifton Moor roundabout upgrade, if the HIF bid is unsuccessful, Legal Services will work closely with the external legal advisors to provide advice regarding the possible funding routes available, in particular having regard to potential State aid implications.

56. The procurement process to engage a contractor to undertake the civil engineering and associated construction works will be undertaken in accordance with the Public Contracts Regulations 2015. Legal Services will provide resources to support the procurement process and prepare the relevant contractual documentation.

Crime and Disorder

57. There are no Crime and Disorder implications.

Information Technology

58. There are no Information Technology implications.

Property

59. Property Services are involved in this project acting as land managers for CYC. New pieces of land will be acquired for the junction upgrades, the title of which will belong to CYC. Property Services will also advise and assist the Project Team in supervising the work of the Land Valuers, land referencers and Legal advisors.

Other

60. There are no other known implications

Risk Management

61. In compliance with the CYC's risk management strategy the main risks that have been identified in this report are those which could lead to financial loss, damage to the CYC's image and reputation and failure to meet stakeholders' expectations. Measured in terms of impact and likelihood, the land acquisition risk has been assessed at 21. This is classed as Major/Highly Probable and is the most significant live issue on the project. Other risks have been assessed at 14 or below. At this point the risks will be monitored and managed. A risk allowance has been estimated and is included within the current cost plan for the project. The top two risks currently affecting this project are:

- a. Risks associated with land acquisition. As described above, there is a high risk that some landowners may potentially be unwilling to sell land to CYC by private agreement, or in a timely manner. This presents a programme risk potentially prolonging the time to complete the project, increase costs or lose the secured funding. In order to mitigate this risk, preparation of a CPO in parallel to land negotiation is being progressed as described in this report.
- b. Risks associated with utility diversions being more complex than anticipated. These could lead to programme delays and have a cost implication. In the case of Clifton Moor junction, early meetings with utility companies are planned to mitigate these risks.

Contact Details

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Chief Officer Responsible for the report:

James Gilchrist
Assistant Director for Transport,
Highways & Environment

Report **Date** 18/09/19
Approved

Specialist Implications Officer(s)

Financial Implications
Patrick Looker
Finance Manager
Tel No.551633

Legal Implications
Cathryn Moore
Legal Manager – Projects
Tel No. 552487

Gerard Allen
Senior Solicitor
Tel No. 552004

Property Implications
Nicholas Collins
Head of Asset & Property Management
Tel No. 553360

Wards Affected:

Rural West York, Rawcliffe & Clifton Without, Haxby & Wigginton;
Huntington & New Earswick.

For further information please contact the author of the report

Background Papers:

Report to Executive 13th July 2017

<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=733&MIId=10188&Ver=4>

Annexes

Annex A – Proposed Preliminary Design 3 Arm Clifton Moor Clifton Moor Junction.

Annex B – Proposed General Arrangement for 4 arm roundabout at Clifton Moor.

Annex C – Potential CPO Land Plan.

List of Abbreviations Used in this Report

CPO – Compulsory Purchase Order

WYCA – West Yorkshire Combined Authority

YORR – York Outer Ring Road

CYC – City of York Council

FBC – Final Business Case

FBC+ - Final Business Case Plus

HIF – Housing Infrastructure Fund

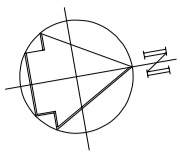
HR – Human Resources

WY+TF – West Yorkshire Plus Transport Fund

DfT – Department for Transport

TfN – Transport for the North

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Annex A



CLIFTON MOOR

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YORK
CITY OF
COUNCIL
OUTER RING ROAD

Drawing Title
**A1237/ CLIFTON MOOR JUNCTION
GENERAL ARRANGEMENT PLAN**

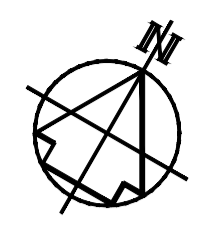
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LB	18/05/17	
JW	18/05/17	

Design	18/05/17	1:1000 (at A1)
Checked	18/05/17	
Approved	18/05/17	
Drawing No.	W50819/CMR/09/101	
Revision	R0	

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Annex B

CUTLINE 1

SEE SHEET 1

CUTLINE 2

SEE SHEET 3

- GENERAL NOTES**
- ALL DIMENSIONS ARE IN METRES AND LEVELS IN METRES UNLESS OTHERWISE STATED. DO NOT SCALE.
 - THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL OTHER SCHEME DRAWINGS AND SPECIFICATION APPENDICES, IN ACCORDANCE WITH THE DESIGN MANUAL FOR ROADS AND BRIDGES (DMRB) AND MANUAL OF CONTRACT DOCUMENTS FOR HIGHWAY WORKS (MCHW).
 - THE CONTRACTOR SHALL CONFIRM THE POSITION OF ANY STATUTORY UNDERTAKER'S PLANT AND APPARATUS PRIOR TO COMMENCING ANY EXCAVATION WORKS WITH HAND DUG TRIAL HOLES. APPARATUS SHOULD BE CLEARLY IDENTIFIED AND MARKED. SEE SPECIFICATION APPENDIX 1/16.
 - SETTING OUT SHALL BE CARRIED OUT IN ACCORDANCE WITH THE CONTRACT DRAWINGS, REFER TO DRAWING W50819-PF-HGN-CMR-DR-CH-0101 TO 0106 FOR THE SETTING OUT STRING NAMES AND LOCATIONS. FILE 'GENO DES CMR RBT - (REV & DATE).TXT' FOR SETTING OUT DATA, AND APPENDIX 1/12.

- HEALTH & SAFETY NOTES**
- THE OVERHEAD ELECTRICITY CABLES PRESENT A SIGNIFICANT RISK DURING CONSTRUCTION. GOAL POSTS SHALL BE ERECTED ALLOWING FOR MINIMUM SAFE WORKING VERTICAL CLEARANCES AS DETAILED IN APPENDIX 1/16. THE OVERHEAD CABLES ARE TO BE DIVERTED AS PART OF THE STATUTORY UNDERTAKER COUNTERMEASURES.

- KEY**
- PROPOSED CARRIAGEWAY
 - PROPOSED FOOTWAY AND BITUMINOUS PAVED AREAS
 - PROPOSED VERGE
 - PROPOSED EARTHWORKS
 - PROPOSED LANDSCAPING
 - PROPOSED BALANCING POND
 - PROPOSED DRAINAGE DITCH
 - PROPOSED V-CHANNEL
 - PROPOSED FENCELINE
 - PROPOSED STRUCTURE
 - PROPOSED GATE
 - PROPOSED HEDGE-LINE
 - EXISTING KERB-LINE
 - PROPOSED STREET LIGHTING

REV	DESCRIPTION	DRN	CHK	APP	DATE
-	-	-	-	-	-
-	-	-	-	-	-
-	-	-	-	-	-

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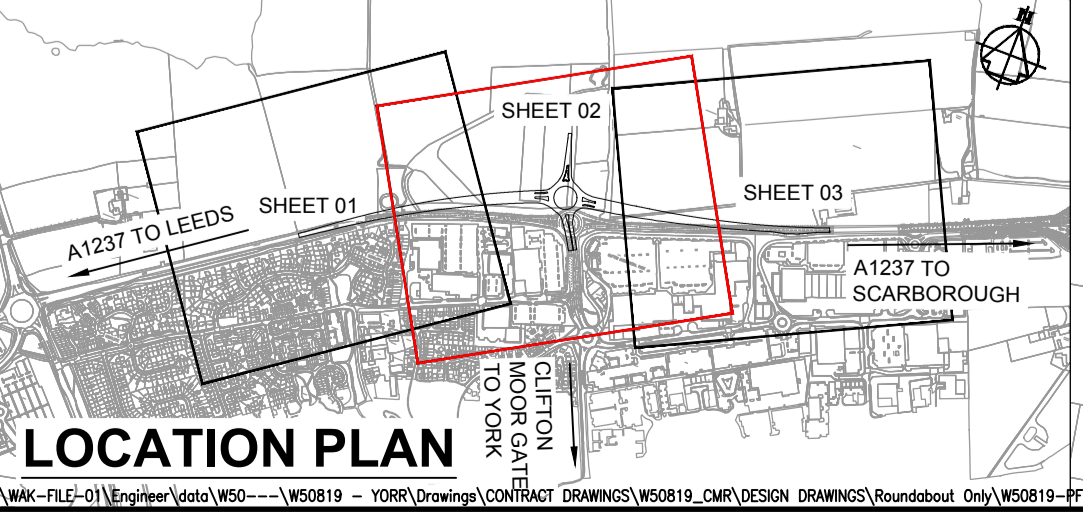


Project
YORK OUTER RING ROAD

Drawing Title
**CLIFTON MOOR ROUNDABOUT
 GENERAL ARRANGEMENT
 SHEET 2 OF 3**

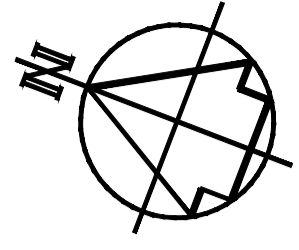
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Approved CH	28/05/19		
Drawing No.	Project/Originator/Volume/Location/Type/Role/Number	Revision	
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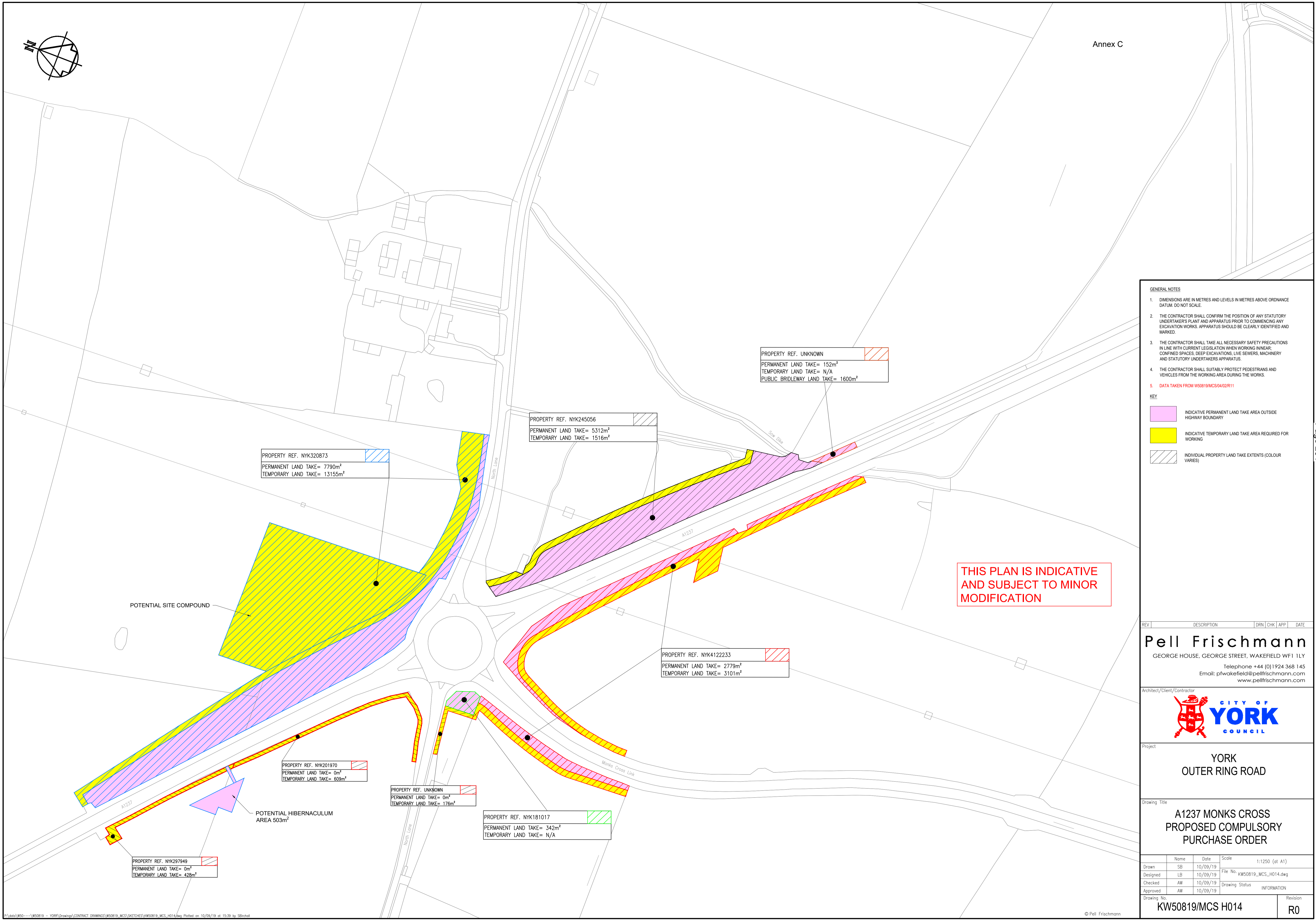


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 FOR CONSULTATION
 AND COMMENT ONLY

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Annex C



PROPERTY REF. UNKNOWN
 PERMANENT LAND TAKE= 152m²
 TEMPORARY LAND TAKE= N/A
 PUBLIC BRIDLEWAY LAND TAKE= 1600m²

PROPERTY REF. NYK245056
 PERMANENT LAND TAKE= 5312m²
 TEMPORARY LAND TAKE= 1516m²

PROPERTY REF. NYK320873
 PERMANENT LAND TAKE= 7790m²
 TEMPORARY LAND TAKE= 13155m²

PROPERTY REF. NYK4122233
 PERMANENT LAND TAKE= 2779m²
 TEMPORARY LAND TAKE= 3101m²

PROPERTY REF. NYK201970
 PERMANENT LAND TAKE= 0m²
 TEMPORARY LAND TAKE= 609m²

PROPERTY REF. UNKNOWN
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 TEMPORARY LAND TAKE= 176m²

PROPERTY REF. NYK181017
 PERMANENT LAND TAKE= 342m²
 TEMPORARY LAND TAKE= N/A

PROPERTY REF. NYK297949
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 TEMPORARY LAND TAKE= 428m²

THIS PLAN IS INDICATIVE
 AND SUBJECT TO MINOR
 MODIFICATION

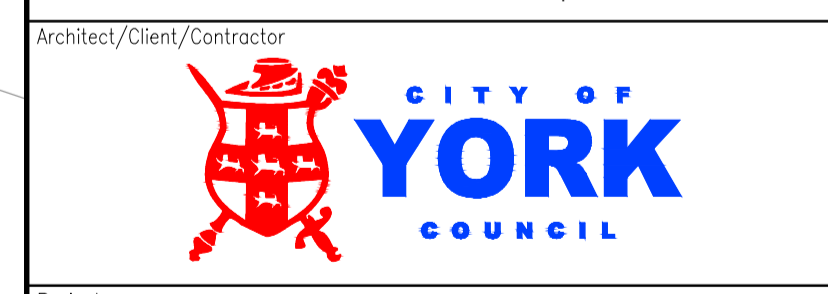
POTENTIAL SITE COMPOUND

POTENTIAL HIBERNACULUM AREA 503m²

- GENERAL NOTES
- DIMENSIONS ARE IN METRES AND LEVELS IN METRES ABOVE ORDNANCE DATUM. DO NOT SCALE.
 - THE CONTRACTOR SHALL CONFIRM THE POSITION OF ANY STATUTORY UNDERTAKERS PLANT AND APPARATUS PRIOR TO COMMENCING ANY EXCAVATION WORKS. APPARATUS SHOULD BE CLEARLY IDENTIFIED AND MARKED.
 - THE CONTRACTOR SHALL TAKE ALL NECESSARY SAFETY PRECAUTIONS IN LINE WITH CURRENT LEGISLATION WHEN WORKING IN NEAR CONFINED SPACES, DEEP EXCAVATIONS, LIVE SEWERS, MACHINERY AND STATUTORY UNDERTAKERS APPARATUS.
 - THE CONTRACTOR SHALL SUITABLY PROTECT PEDESTRIANS AND VEHICLES FROM THE WORKING AREA DURING THE WORKS.
 - DATA TAKEN FROM W50819/MCS/H014/R11
- KEY
- INDICATIVE PERMANENT LAND TAKE AREA OUTSIDE HIGHWAY BOUNDARY
 - INDICATIVE TEMPORARY LAND TAKE AREA REQUIRED FOR WORKING
 - INDIVIDUAL PROPERTY LAND TAKE EXTENTS (COLOUR VARIES)

REV | DESCRIPTION | DRN | CHK | APP | DATE

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Architect/Client/Contractor

YORK
 OUTER RING ROAD

Drawing Title

**A1237 MONKS CROSS
 PROPOSED COMPULSORY
 PURCHASE ORDER**

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Approved AW	10/09/19	Drawing No:	KW50819/MCS H014

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