
Executive

18 March 2021

Report of the Interim Director of Place

Portfolio of the Executive Member for Finance and Performance

Community Asset Transfer update

Summary

1. This report seeks approval to grant leases of public open space and buildings to various local community groups and organisations to facilitate community management and responsibility of those assets and save revenue costs to the Council if it were to otherwise manage these areas itself.

2. The assets are;
 - Mayfields North (the land shown edged red on the plan attached at Appendix 1).

 - Mayfields South (the land shown edged red on the plan attached at Appendix 2).

 - Clifton Without (the land shown edged red on the plan attached at Appendix 3).

 - Rowntree Pavilion (the land and building shown edged red on the plan attached at Appendix 4).

 - Rowntree Park Tennis Courts (the land edged in red on the plan attached at Appendix 5).

 - Land at Wetherby Road, Rufforth (the land shown edged red on the plan attached at Appendix 6).

 - The catering, communal dining and community hall facilities at Marjorie Waite Court (see plan attached at Appendix 7).

- Chapmans Pond, Moor Lane (the land edged in red on the attached plan attached at Appendix 8).
 - The Poppleton Centre, Moor Lane/Ousemoor Road, Upper Poppleton (the land edged in red on the plan attached at Appendix 9).
 - The upper floors of Rowntree Lodge, (see plan attached at Appendix 10 which illustrates the footprint of the whole building).
3. The leases are to be offered under the council's Community Asset Transfer policy in respect of the locations as detailed below.
 4. The majority of sites are currently maintained and operated by voluntary and community groups. This has provided financial savings to the council and if they were to return to the council's responsibility would place pressures on the council's budgets particularly within public realm.
 5. All of the properties detailed in this report will
 - remain in council ownership
 - continue to have, and in some cases, increased public access
 - be managed by their local community

Recommendations

6. The Executive is asked to approve;
 - (a) A lease of Mayfields North to The Mayfields Community Trust for 10 years subject to a break clause as set out in paragraph 30 of the report.
 - (b) A lease of Mayfields South to Friends of York Railway Pond and Reserve for 25 years subject to a break clause as set out in paragraph 30 of the report.
 - (c) A lease of Land at Clifton Without to Clifton Without Parish Council for 99 years
 - (d) A lease of Rowntree Pavilion to Rowntree Park Sports Association for 25 years.
 - (e) A lease of Rowntree Tennis Courts to Rowntree Park Tennis Club for 25 years

- (f) A lease of land near Rufforth to Rufforth & Knapton Parish Council for 99 years
- (g) To allocate £80K from the Climate Change capital budget to re-provide the allotments at Rufforth.
- (h) The offering of a 5 year lease (with the option to extend for a further 5 years) of the catering, communal dining and community hall facilities at Marjorie Waite Court to a community operator following a procurement exercise to secure an operator for a community café and the community hall under a concession contract and delegate to the Corporate Director of Economy & Place (in consultation with the Director of Governance or her delegated officers) the authority to take such measures as are necessary to procure, award and enter into the resulting contract.)
- (i) A lease of Chapmans Pond, Moor Lane to Chapmans Pond Community Interest Company for 10 years.
- (j) The offering to the Trustees of Poppleton Community Trust the principle of surrendering their existing lease and granting them a new 99 year lease of the Poppleton Centre.
- (k) To agree in principle a 99 year lease of the upper floors of Rowntree Park Lodge to the Friends of Rowntree Park and to delegate the final decision to grant that lease to the Executive Member for Finance and Performance subject to the agreement of a funded business case at an Executive Member Decision Session in the next 12 months, or at a date agreed by the Executive Member for Finance and Performance.

Reason: To support York communities to access external funding and grants, to develop the facilities in line with local community aspirations and secure their long term sustainable care providing savings to the Council if it were to otherwise operate and manage these facilities itself.

To support the health and wellbeing of people in the local community by providing the use of council assets which can be actively managed and improved by the involvement of the local community.

Background

7. The Corporate Asset Strategy 2020-2025 was reported and ratified by Executive in November 2020. The Strategy includes the following objectives;
 - We will use land and building assets to maximise positive outcomes for our communities
 - Assets should be operated by the community where a community group is best placed to deliver the outcomes.
8. The Council has historically transferred assets to the community where a community group are able to use the asset for improved community or social outcomes and this process is most effective when it is developed in partnership with communities to develop shared visions, collaborative proposals and when we ensure that groups taking on the responsibility for operating assets have the support and capability to do this successfully. Each case is considered on its own merits having regard to the business case and proposals submitted in support of such.
9. The following community asset transfers have taken place since 2017.
 - The bowling greens at West Bank Park, Glen Gardens, and Clarence Gardens have been transferred to the respective clubs on 25 year leases.
 - Scarcroft Bowling Club and the York Railway Institute Bowling Club, Holgate have been transferred on 30 year leases.
 - The Hut, Clarence Gardens has been transferred on a 99 year lease.
 - Tang Hall Community Centre has been transferred on a 30 year lease.
 - Seventeen of the Council's allotments across the authority have been transferred to The Officials of York Allotments Charitable Incorporated Organisation on 7 year leases.
10. All the leases have transferred maintenance and repair responsibilities to the community groups concerned for the duration of the respective leases with associated revenue savings made by the Council, if it were to otherwise retain management and responsibility of the assets.
11. The Community Asset Transfer Policy was adopted by the Council in 2007 in response to the Quirk Review set up by central government in 2006 to investigate future options for the increased community management and ownership of assets, in particular looking at ways to overcome barriers, taking into account the need to manage risk. The

Policy states that qualifying community groups must meet certain criteria, which are set out as follows.

- It must be the intention to open up the asset for the whole community to have access and for a variety of uses and not just be a specialist or single purpose group. There should also be a minimum time (measured in hours per year) when the land and/or building is open to the public
- The community group must show that it is properly constituted and is sustainable in economic and social terms. It needs to show it will have the capacity to manage and run the property that meets the terms of any agreement.
- The aims of the group and its proposed use of the asset must support one or more of the Council's priorities and objectives contained in the Corporate Strategy and match the Council's strategic values.
- Need for the project – including how the needs have been identified, the outcomes for the project and how these outcomes will meet the needs.
- Partnership working – identify the partners, what each will bring to the project, the experience, skills and capacity of the partners to deliver the project.

12. Qualifying groups may be offered a lease for a term of up to 99 years, in order that the tenant can apply for funding to support the use of the asset and any work needed to repair or refresh the property. The lease term is offered on a nil rent basis subject to the following conditions;

- The tenant has full responsibility for repairs and decoration and for payment of all outgoing relating to the premises including insurance business rates and utility costs
- the premises must be open for the public to use for a minimum period each year
- The tenant is restricted from transferring the lease

These conditions are included as specific covenants within the lease granted by the council, as landlord, which also include a community use agreement.

Proposed New Leases

13. This section of the report sets out the background to each of the assets proposed to be the subject of a community lease.

A & B Mayfields North & South

Site History

14. Mayfields open space was created in the 1990's as part of a residential development of old railway sidings off Tadcaster Road. Designed as a continuous green corridor running north - south the land is split by Nelsons Lane. To the north the area was laid out as new meadow grassland with woodland shelter belts. To the south the area centred on the old "Railway" fishing pond surrounded by existing tree stock. Situated between the two is a play area. A site plan for Mayfields North is attached as Appendix 1 and a site plan for Mayfields South is attached as Appendix 2.
15. As part of the development process York Natural Environment Trust (YNET) provided the developer of the land with help and advice on the layout and function of the open space. In late 2012 the Council acquired ownership of the land (title numbers NYK384240 and NYK402542) from the developer pursuant to a S.106 agreement entered into with the developer on 2 June 1997.
16. YNET were of the view (with the exception of the play area which was retained by the Council) that the land (both Mayfields North and Mayfields South) was to be transferred to them in perpetuity rather than be simply managed by them. However, the S.106 Agreement specifically stated that the land would be transferred by the developer "to the Council or to such person or body as the Council may approve".
17. The land was not actively managed by the Council by virtue of the s106 Agreement and in response to this, the Cabinet Member for Transport, Planning and Sustainability approved on 8th March 2012 a process to invite community groups to submit expressions of interest to manage the land.
18. On 19th July 2013 the Cabinet Member for Transport, Planning and Sustainability approved the award of management (initially on short term licence) of: (i) Mayfields North to The Mayfields Community Trust (MCT)

and (ii) Mayfields South to YNET. Consequently eventually on 10th March 2016 respective licences were granted (for 3 years until 10th March 2019) for occupation and management of: (i) Mayfields North to MCT and (ii) Mayfields South to YNET. The short term licences were granted to allow the Council to take a longer term view of how the land would be managed in the future for community purposes. Licence extensions have been granted to both parties to cover the period up to the end of April 2021.

Review process and proposals for future community management

19. During the licence period the Council Officers have made regular site visits and held formal and informal meetings with organisational representatives. Both sites have thrived under community management as can be evidenced by their physical appearance and the amount of volunteer effort that goes into their upkeep.
20. During the course of YNET's management of their part of the site, the fishery of the pond has been managed by a dedicated angling group who over time have become more independent and whilst operating under the YNET umbrella have set themselves up as an independent group - Friends of York Railway Pond and Reserve (FoYRPR)
21. In order to provide certainty over the future management of the sites, in February 2020 three organisations were invited to submit proposals for future management of the site;
 - The Mayfields Community Trust (MCT)
 - York Natural Environment Trust (YNET)
 - Friends of York Railway Pond and Reserve (FOYPR)
22. The parties were asked;
 - What land they wished to manage
 - How long (duration) a lease they would like
 - To provide details of your recent management experience of the site
 - How they would carry out future management – who would be involved, what sort of tasks will be undertaken, how they will judge success; and,
 - to provide details of your governance / constitution and financial standing
 - Within the timetable set detailed submissions were received from both Mayfield Community Trust and Friends of York Railway Pond and Reserve. YNET declined to respond in full rather, instead

restating their position that it was their belief that ownership and all management responsibility should be transferred to YNET.

A. Mayfields North - Proposed lease to The Mayfields Community Trust (MCT)

23. Since taking over formal management of the Mayfields North site in 2015 MCT volunteers have;

- Carried out an extensive maintenance and restoration programme
- Improved public access by improving formal and informal paths and installing benches
- Developed species records for the site
- Obtained grants and in kind support
- Ran a weekly volunteering programme
- Provided public information on the site
- Set up a web site <https://mayfieldcommunitytrust.com>
- Worked with the local community and community groups

24. In response to the submission brief MCT have asked for a 10 year lease of the Mayfields North land they currently occupy/use under licence. Within the submission key elements are:

- A photographic record of the practical work carried out since 2015
- A photographic record of the community involvement since 2015
- Developed a photographic species record for the site
- An updated site management plan 2020 to 2025

25. MCT meet the requirement as a qualifying organisation for a transfer and the application is supported. It is recommend that Mayfields North, as set out in the plan attached at Appendix 1, is leased to MCT for 10 years.

B. Mayfields South - Proposed lease to Friends of York Railway Pond and Reserve (FoYRPR)

26. YNET took over management of the pond in 2015 and an occupational agreement was signed in March 2016. Their volunteers, initially as part of YNET and then since 2018 as FoYRPR have;

- Carried out an extensive maintenance and restoration programme
- Improved public access with restored footpaths and fishing pegs
- Created conservation / wildlife zones on the land and in the pond
- Managed angling on the site and provided a bailiff service

- Obtained grants and in kind support
- Ran a weekly volunteering programme
- Provide public information on the site
- Promote their activities through Facebook
<https://m.facebook.com/pages/Railway-pond/152855831403121>
- Worked with the local community and community groups

27. In response to the submission brief FoYRPR have asked for a 25 year lease of the land currently used/occupied by YNET under licence which is due to expire 30th April 2021. Within the submission key elements are

- A photographic record of the practical work carried out since 2015
- A photographic record of the community involvement since 2015
- Operating guidance for volunteers including bailiffs
- A five year plan 2020 to 2025
- Details of their constitution

28. FoYRPR meet the requirement as a qualifying organisation for a transfer and the application is recommended. It is recommended that Mayfields South as set out in the plan attached at Appendix 2 is leased to FoYRPR for 25 years. This proposed duration is a reflection of the ongoing financial investment and ongoing maintenance and associated capital expenditure needed to keep the pond in a healthy condition.

York Natural Environment Trust (YNET)

29. YNET declined to respond to the submission request, instead, YNET restated that “*they seek legal title to the entire land from Mayfield Grove to Hob Moor*”.

30. Although YNET have written to the Council (in a letter to the Council’s Chief Executive dated 3rd November 2017) seeking that ownership of the land at Mayfields (both North and South) be transferred to them as they claimed this was the agreed intention between the Council and YNET, they have not supplied any clear evidence to support their claim. Further detail, including Legal Services’ assessment as to the risk of any successful claim being brought by YNET, is contained in the Legal Implications in the confidential annex to this report. In order to protect the council’s position it is recommended that a landlord’s break option be inserted within both the North and South leases entitling the council to terminate the lease(s) if the council becomes legally obliged to transfer freehold ownership to, or grant a lease to YNET.

31. In the absence of any future management proposals being submitted it is recommend that no lease be offered to YNET.

C. Land at Clifton Without – Proposed Lease to Clifton Without Parish Council

32. The council owns a 1.16 hectare area of roughly triangular shaped open space in Clifton Without adjacent to the Clifton Ings Flood Bank. See Appendix 3 for a location plan. The site was transferred to the council on 28th January 2015 pursuant to a S.106 agreement and it is a legacy of the Clifton Hospital development. Pursuant to the Transfer Deed by which the council acquired this land, it is subject to a restrictive covenant limiting its use to open space and is in Flood Zone 3.

33. The land is of limited recreational value in its present condition consisting of rough grassland which is often subject to unauthorised pony grazing. It is remote from any other council managed open space and represents an ongoing maintenance liability with no immediate prospect of improvement.

34. Since 2016 the council has been in discussion with a number of interested parties about possible use and improvement of site. These are;

a) The Friends of Rawcliffe Meadows for cattle grazing in times of flooding on the Ings. This facility has since been provided within part of Rawcliffe Country Park (option a);

b) Clifton Cricket Club for an additional cricket square. This was discounted some 12 months ago as the land available is too small (cricket outfield are generally some 135m to 150m in diameter). This position has been checked with the club and no progress has been made in securing additional neighbouring land from a private landowner (option b);

c) Clifton Without Parish Council for use as local amenity open space. Whilst remote from other public open space the land is connected to the Parish footpath network. Their plans include for improved wildlife habitats, educational and fitness activities (option c);

d) The Environment Agency also enquired about using the area as an alternative to the approved alignment of the increased Clifton Ings flood bank and for mitigation tree planting. This idea of realignment has not been progressed and we are advised is no longer on the agenda (Any change in the flood bank location would differ from currently approved plan for the B10 flood cell where work is due start in early 2021.)

Significant tree planting would be incompatible with the use as a cricket field due to the land take but may be compatible with the Parish Council ambitions. The EA would like to plant trees here to offset some tree felling they are doing elsewhere in the city as part of city wide works. (option d)

35. In view of the length of time that this project has been ongoing and the uncertainty of the cricket club timetable it is proposed to lease the site to Clifton Without Parish Council. This would be for 99 years at a peppercorn rent. As and when the cricket club or Environment Agency are in a position to develop their ideas further any joint use would then need to be agreed with the Parish Council.

D. Rowntree Park Pavilion – Proposed Lease to Rowntree Park Sports Association (RPSA)

36. Rowntree Park pavilion was built approximately 40 years ago. It is of brick construction with a tile roof. (See Appendix 4 for the location plan). When the park floods water can reach up to 1.5 metres high inside the building. This causes repeated damage to building and limits its use as all contents are covered by a thin layer of mud once the water is pumped out.
37. Between 1996 and 2013 the building was used for a variety of purposes including for a park attendant who collected fees from the tennis courts, for children's activities organised by the Friends of Rowntree Park, and, to support events in the performance space.
38. In 2013 York Canoe Club (YCC) took over use of the building, using it as storage facility and meeting point for canoeing on the Ouse. The Club have a year to year lease on the building but have stated they will surrender the lease in the event of redevelopment involving them.
39. YCC have operated in the park since 1952 and in the past have used the pavilion for its intended purpose.
40. Rowntree Park Tennis Club (RPTC) (see also section E of this report) have since taking over the running of the courts has seen its membership doubled and a coaching programme and junior section has been established whilst maintaining public access to the facility. With such growth has come the need to have access to the pavilion for coaching, social functions and to provide shelter in the rain. However the current layout and risks posed by flooding mean that the structure is not fit for purpose.

41. Over the last three years the Canoe and Tennis clubs have developed ideas for redevelopment and shared use, forming in 2018 the Rowntree Park Sports Association (RPSA) to develop their proposals further. Their proposals would see the removal of redundant walls on the ground floor to increase storage space and to bring the upper floor (which is above flood levels) into use as social space. Both organisations have the support of their respective governing bodies (The Lawn Tennis Association and British Canoeing), are financially sound and have the potential to access grants and loans to fund the work. They require a lease with a substantial term to access funding from their respective governing bodies who have both indicated their support for the proposal.
42. RPSA meet the requirement as a qualifying organisation for a transfer and the application recommended. Membership of the RPSA is open to other groups and community use of the building will be increased through its redevelopment and extended facilities including new toilet and kitchen provision.
43. The transfer of the building on a 25 year lease will enable the RPSA to access funds for its refurbishment and flood resilience, enabling it to be better used by the community. In taking on the maintenance of the building which would otherwise fall to the Council should the current annual arrangement fall away, the Council's revenue position will be improved.

E. Rowntree Park Tennis Courts – Proposed Lease to Rowntree Park Tennis Club (RPTC)

44. Since 2016 RPTC have managed the six tennis courts in the Park. This includes routine court cleaning, deep cleaning after flooding, provision of nets and taking bookings.
See <https://clubspark.lta.org.uk/RowntreeParkCYC>. Under a long standing agreement RPTC currently pay £1,238 pa for the use of the 2 courts close to the Rowntree Park café, have a short term occupational agreement for use of a small part of a Lodge basement, and were offered a lease for the four courts near the pavilion which was never formalised. Given the proposal involving the Pavilion, it is considered the timing is now right to formalise a longer lease on the courts.
45. Over the course of the last four years RPTC have worked with their Governing Body, The Lawn Tennis Association to develop and grown the club and improve the facilities. This has included the introduction of a web based court booking system, which is open to the public and electronic key code court access gates. Going forward the club are about to resurface the main block of four courts and install new nets at costs of

nearly £40k which is being paid for from a mix of club funds and sports sS106 contributions.

46. In line with the proposed lease of the pavilion to RPSA, (an alliance of to RPTC and YCC), it is proposed to offer a 25 year lease for all six courts (including the 2 currently leased) to RPTC. To match other self-managed sites e.g. bowls, the new agreement is proposed be set at a peppercorn rent. RPTC have confirmed that they no longer need part of the lodge basement and this space will be returned to the council's control.

F. Land at Rufforth – Proposed Lease to Rufforth and Knapton Parish Council

47. From 1923 until December 2018 there were allotments serving Rufforth on land adjoining Wetherby Road to the west of the village (“the Former Allotments Site”). West Riding of Yorkshire County Council had on 31st December 1923 granted a sublease of the Former Allotments Site to an allotment association (known as The Ouseburn Allotments Limited) for a Term of 14 years (less one day) from 6th April 1925. (WRYCC was not the freehold owner of the land – it leased the land from the owner pursuant a headlease). On local government reorganisation in 1996 the council took over the headlease and continued to sublease the land to allotment association.
48. When the councils headlease expired in 2012, the freehold owners of the Former Allotments Site were only prepared to grant the councils a further headlease on a short term basis (as they wished to reserve the ability to potentially develop the land for other uses) and so on 19th November 2012 the freehold owners granted the council a further headlease but only on a yearly tenancy from 6th April 2012 that entitled them to terminate the council headlease (and therefore the allotment associations sublease) by giving the council at least 13 months' notice (provided such notice expired either: (i) on or before 6th April or (ii) on or after 29th September).
49. In November 2017 the freehold owners of the land served notice on the council terminating our headlease with effect from 20th December 2018 and requiring the council to hand back the land to them with vacant possession by 20th December 2018. (Therefore the council had to in turn serve notice on the allotment association terminating their sublease with effect from 19th December 2018.)

50. As a result of the closure, the Allotment Association, Rufforth and Knapton Parish Council and past and present Ward Councillors requested that the City Council seek a replacement site.
51. The Council have historically leased out the Harewood Whin site between Rufforth and Knapton to YorWaste. Whilst the majority of the site is used as a landfill facility, part of the site included a field adjacent to the B1224 which YorWaste sub-let to a local farmer for grazing. Discussions with YorWaste were undertaken in respect of the field (outlined blue on the location plan in Appendix 6) and it was confirmed that YorWaste had no operational need now or in the future for this. The City Council has taken back the site of the field from YorWaste at no charge and it is considered that this could be used (in part) for the provision of a new allotment.
52. Under the 1908 Allotment Act, where an area has a Parish Council, the Parish Council is the defined legal entity required to provide allotments. In view of the previous allotment provision arrangements the City Council has taken the lead on finding and developing the new allotments. Subject to such it is recommended that the council grant Rufforth with Knapton Parish Council (“the Parish Council”) a 99 year headlease of the proposed replacement site at a peppercorn rent for use as allotments (to comply with the Parish Council’s statutory role as sole allotment authority for their Parish) on condition that the Parish Council then sublease the land to Rufforth Allotment Association (RAA) so RAA can develop and manage the land as an allotment site. The Chairman of the Parish Council has advised that the Parish Council would be willing to take responsibility for the control and administration of the new site on such basis.
53. The proposed new allotment (see the indicative plans at Appendix 6) will be of a similar size to the old site and will be laid out with input from the RAA. The proposed site lies in the green belt and planning permission will be required for the scheme. In preparation, the area has been subject to a contaminated land assessment which gave the all clear for food growing. If sheds or greenhouses were required the design would need to include appropriate ventilation due to possible, if unlikely, gas seepage. Site location, access arrangements and site layout have all been discussed over the last 12 months.
54. The scheme consists of two key elements – 1) a new vehicle entrance off Height Lands Lane, this will provide both safe access to the allotments and a new entry point to the wider field, 2) the allotments including water supply, boundary fencing and car parking area. Subject to the lease being approved, the next steps in the project will be to secure planning permission and tender the works. It is proposed that the

Council pay and procure these works. £80k of the budget for the community Forest will be allocated for this additional facility.

55. With the Council now in full control of the field which it took back from Yor Waste, this opens up the prospect of developing the area not required for the proposed allotment, as a wildflower meadow and possibly some limited tree planting. Much of the field is ridge and furrow and is currently grazed. It is proposed to include the remainder of the field in the landscape appraisal for the nearby community Forest to see what is appropriate. Subject to planning permission and the works being tendered satisfactorily within budget, it is recommended that the land designated for the allotments be leased to Rufforth and Knapton Parish Council for 99 years at a peppercorn rent. The new entrance infrastructure would remain in the ownership of the Council. The lease would restrict the use of the land for allotments only.
56. The provision of a new allotment will offer considerable health and wellbeing benefits to people using the facility in the local community. A further report will be brought to Executive in the future which shall detail the benefits of food growth, carbon reduction and the linkages to this provision to the nearby proposed community woodland.

G. Marjorie Waite Court – Proposal to Procure for an Operator and Grant a Lease

57. In August 2017 the Executive agreed that “new, community focused, facilities be provided and integrated into the newly built extension of Marjorie Waite Court as a replacement for the loss of Burton Stone Community Centre.
58. The Marjorie Waite Court extension which is due for completion in July 2021 will feature a 172m² community hall, a full commercial kitchen and a communal dining area. These facilities will help to provide activities for residents and the wider community and help to integrate the two communities.
59. Access to regular hot, affordable meals, and the social benefits of eating together is important for everyone and particularly for our older residents. The provision of a full commercial kitchen provides the opportunity to ensure that hot nutritious meals are available for residents at Marjorie Waite Court.
60. Previous user groups of Burton Stone Community Centre having been relocated and the new 172m² community hall was designed to allow the return of local resident user groups.

61. The design of the new building allows the Council to seek an operator to run the community facilities at a small financial surplus with a focus on reinvestment to seek additional social outcomes for the local community.
62. Engagement with community groups and residents throughout the development of the Marjorie Waite Court extension has shown that there is interest in using the community hall and a demand for hot shared meals.

The Proposal

63. It has always been proposed to seek a community minded operator to run the community facilities as described in the August 2017 report to the Executive. The proposal set out below has been developed to include the catering service at Marjorie Waite Court and link the two services to procure a single operator. The catering service will include hot and cold meal services to residents of Marjorie Waite Court as well as a public facing café to serve those community groups using the community facilities as well as local residents.
64. The procurement scope for this concession contract will include:
 - a. Day-to-day management of the community facility, including online bookings, payment and the development of a programme of activities that provide the local area with a wide range of opportunities
 - b. A regular meals service for residents of Marjorie Waite Court offering nutritious food, taking into consideration specific dietary needs
 - c. A well run public facing café and kitchen that offers food and beverages on a value for money basis
65. The community hall, dining area and commercial kitchen will be leased to the successful bidder for a period of 5 years, with the option to subsequently grant a further lease for a further 5 years if both parties agree. The operator will be required to maintain all areas included in the lease site and contribute to the costs of maintenance of areas of the building shared with the council's housing service. The area to be leased is shown by the red areas in the plan attached at appendix 7, whilst shared areas are shown blue.
66. As part of the procurement the Council will be seeking a creative and innovative bid that can provide a range of wider social benefits for the local residents including but not limited to; a diverse programme of activity that can support local outcomes around health and wellbeing, mental health, education, learning, social isolation, food poverty etc.

Procurement Process

67. In order to inform the procurement documents a soft market testing exercise has been carried out with a number of local community café and community facility providers. They have all expressed an interest in bidding for the opportunity
68. As the Marjorie Waite Court extension is due for completion in July, and will have a short mobilisation period, the procurement timetable has been set to achieve a start on site in early August 2021.

Activity	Date	Progress
Soft Market Testing and consultation.	Nov 2020 to March 2021	Initial engagement completed. Consultation is ongoing.
Development of procurement documents and drafting of lease	Nov 2020 to March 2021	Initial draft documents prepared and reviewed to reflect feedback.
Procurement launched	April to June 2021	
Evaluation of submissions	June 2021	
Appointment of preferred bidder	July 2021	
Launch of community facilities café and meal service.	August 2021	

69. Once procured it is recommended that a 5 year lease (with option to subsequently grant a further lease for a further 5 years by mutual agreement of the Council and the operator/tenant) will be offered to allow the successful bidder to exclusively occupy and manage the areas as set out, as well as setting out the rights to use shared areas. The terms of the lease will be a peppercorn rent for the duration, however the tenant will be obliged to pay a fair and proportionate service charge to cover a share of common costs such as the building service contracts, cleaning and other facility management services. It is envisaged that more than one community group may wish to bid for the service in collaboration with each other. This is encouraged and such collaborative set ups will be considered under the procurement process.

70. The aim of the procurement is to seek a five year concession contract with no revenue support payments from the Council, but allowing the service provider to collect income from the catering and community facilities activities to cover operational running costs. No capital funding is required.
71. The proposal will ensure that the residents of Marjorie Waite Court and the wider community in the area have access to a broad programme of community activities and access to a range of hot and cold food, and the social benefits of both of these.

H. Chapman's Pond – Proposed Lease to the Friends of Chapman's Pond

72. Chapman's Pond, located off Moor Lane in Dringhouses is a flooded gravel pit used for fishing, surrounded by informal grassland and woodland nature areas. Since 2016 the pond and surrounding area (see plan at appendix 8) has been managed by the Friends of Chapman's Pond, on behalf of the council, following a decision by the Executive Member on 23rd September 2016.
73. Prior to that, the Friends of Chapman's Pond supported the Council for well over two decades by carrying grounds maintenance and environment improvements. Between around 2010 and 2015 the lack of day to day management of angling became a problem for the local community - issues such as litter, antisocial behaviour and night fishing promoted calls for more formal arrangements to be put in place. As the council were not able to manage fishing, we wished the Friends to take on this task, and in 2016, were granted the authority to do so.
74. Over the last four years the Friends have:
 - Developed and introduced fishing rules based on best practice from the Angling Trust <https://anglingtrust.net/>
 - Provided a bailiff service under the guidance of the Angling Trust
 - Secured grants from both the Environment Agency £5k for environmental improvements and Angling Trust
 - Received Ward funding
 - Updated the five year management plan
75. Whilst a formal licence has never been entered into, the Friends, now wish to set up as a Community Interest Company and have requested

that this be formalised under a 10 year lease at a peppercorn rent in order to formalise and continue their work.

I. The Poppleton Centre – Proposal to Renew/ Extend Lease to the Trustees of the Poppleton Community Trust

76. The property is comprised of a Community Hall, a bowling green, tennis courts and a playing field (see plan in Appendix 9). The Trustees of the Poppleton Community Trust (PCT) currently occupy the premises on a 99 year lease with effect from 1st September 1987 between Harrogate Borough Council and the Trustees of Poppleton Sports and Social Club. The City of York Council (CYC) and the Trustees of PCT are both successor organisations to the original parties. The Trustees pay a current rental of £2,100 per annum and repair and maintenance liabilities are split between the two parties.
77. Discussions have been ongoing over the past year, between the PCT and the Council's Operations Manager Public Realm about a possible Community Asset Transfer. Recently, the Trustees have made a grant application to the Lottery for various improvements to the premises, but have been turned down on the basis that the parties named on the existing lease did not match the PCT as applicant.
78. The PCT are now considering proceeding with a community asset transfer lease, subject to agreement over some outstanding grounds maintenance issues.
79. Although the granting of a community asset transfer will mean a loss of rental, currently £2,100 per annum, this will be compensated for by the Council no longer having to incur revenue costs in complying with their maintenance obligations.
80. The PCT meet all the criteria for a community asset transfer and have run a successful community facility since the original lease was granted back in 1987. It is, therefore, recommended that the Trustees of PCT are offered a 99 year lease at a peppercorn rental.

J. Rowntree Park Lodge – Proposal to Offer the Principle of a Lease to the Friends of Rowntree Park

81. Rowntree Park Lodge comprises of a former park keeper's accommodation and is situated above the Park Reading café. The property has been empty since 2017 when the park maintenance arrangements were centralised and the former resident park keeper retired.

82. The future of the property was reported to Executive in January 2018 and February 2019 with a number of options considered for the property. Having considered these in January 2018 Executive approved the conversion of the property for use as a holiday let subject to the publication of a notice notifying that the council intended to dispose of public open space. (As the property is located within the Rowntree Park open space it was considered that the Lodge itself also constituted open space). The report outlined the business case for the conversion and set out the income which could be yielded from the holiday let.
83. Costs for the refurbishment of the Lodge were significant given the complexities of the project and the need to close the café if the upper floors were fully utilised given the presence of asbestos between the floors. Total conversion costs were estimated at £392k which included £132k of costs associated with the removal of asbestos and works to the roof. Despite the costs, given the perceived demand for a holiday let in this location it was considered that after allowing for annual funding of the work costs, a profit of £25k pa could be derived, which was intended to be provided towards the running of the Park.
84. The February 2019 Executive considered a revised business case for the conversion. That report outlined a number of objections from the public to the proposal but at that point no viable alternative had been identified. The Executive noted the objections but still recommended that the scheme should proceed.
85. Rowntree Park was gifted to the Council in 1919 by Joseph Rowntree (Nestle being their successors in title). The Lodge (and Park) is subject to various encumbrances/third party rights including a covenant contained in Conveyances dating from 1919 which prohibits the land from being used for purpose other than a public park, public pleasure ground, public playing fields or other like purposes of public recreation. In addition Rowntree Park is subject to a covenant that no buildings within the land may be used for the sale or distribution of alcohol, nor used for betting and gaming. It is considered that Nestle are the current beneficiary of the covenants. Whilst we had originally been advised by Nestle's agents that they would have no objections to the conversion of the Lodge, we were subsequently advised after the February decision that they would no longer be supportive having been contacted by some of the objectors to the scheme.
86. Officers were also contacted by the Friends of Rowntree Park who advised they would like to work up a business plan to put the property into a community use. In consultation with the Executive Member for Finance and Performance it was agreed that, given the renewed

interest from the local community and the difficulties with the Nestle situation, that we would await the business plan from the Park Friends before moving forwards to any scheme.

87. The Friends of Rowntree Park (which is registered as a Charitable Incorporated Organisation) have been in existence for nearly 30 years and have been supportive and underpinned many of the recent developments in the park including the Heritage Lottery Fund restoration 2000, Green Flag submissions, running events and educational activities, whilst more latterly taking on gardening duties. They have worked alongside the development of the Explore Reading café. They are keen to expand their interest into managing the upper floors of the Lodge as a development of their current remit, providing them with a base within the park.
88. A business plan has now recently been received from the Park Friends. The business plan sets out a proposal to convert the upper floor rooms which form the Lodge into a number of studios which can be utilised to run various community activities and be available to hire for voluntary organisations, community groups and individuals. The Friends also undertook their own survey of what people in the area would like to see for the future of the Lodge and they advise of the 582 surveyed, 88% wish to see it used as a community facility. The use of the upper floors is not without its challenges however. In order to provide suitable public access the Friends consider that a lift is required. This would have an impact on the Reading café space at ground floor level (which is leased to York Explore). The works would require statutory consent and along with the proposed conversion works, is costly.
89. The business plan considers, as an estimate, that c.£440K is needed to convert the accommodation for community use and provide suitable access to the upper floors. In order to raise this money the community group requires the prospect of a lease in order to maximise its chances to secure grant funding. It was previously considered that the costs of removing the asbestos plus the associated costs of the café closure for the period of the works and repairs to the roof would amount to c.£130K. It is proposed that the costs of these works would be borne by the council to ensure that the building was handed over to the Friends in a suitable state of repair and that the Friends would raise and pay for the remainder of the works which is likely to amount to c.£300K. The costs to the Council will be contained within current budgetary approvals.
90. The business plan also sets out that the Friends of Rowntree Park will manage and maintain the upper floors of the Lodge which will

reduce the council's liabilities for such. The Friends consider that income from the use of the refurbished accommodation will provide a sustainable future for the facility to allow for running costs and maintenance. It does however mean that additional income generated from a holiday let will not be available to fund broader improvements to the park.

91. It is recommended thus, that the Friends of Rowntree Park be offered the principle of a lease of the upper floors of the Lodge for a term of 99 years at a peppercorn rental subject to;

- Them being able to secure funding and having a scheme which is capable of being implemented (given the need to obtain planning and statutory approvals); and,
- Them being able to discuss further and negotiate an agreement with York Explore, who have a lease on the reading café space and ensure that the plans would not adversely impact them.

92. The future of the Lodge has been uncertain since 2017 and it is important that the building is brought back into use as soon as possible in order to protect the fabric of the building. It is therefore proposed that the Friends of Rowntree Park be given a 12 month window to develop their proposal, identify funding and secure the relevant permissions to undertake the works.

93. In granting a potential lease to the Friends of Rowntree Park, this will bring the upper floors of the Lodge into use for the benefit of the community. It is recommended that in 12 month's time a report be taken to the Executive Member for Finance and Performance, which will provide evidence of the progress that the Friends of Rowntree Park have made in providing a scheme which could be implemented whilst demonstrating that they have secured the necessary finance. Should these details be considered sufficient, then Executive are asked to delegate the Decision to grant a lease in return for legal commitments to deliver the proposed scheme to the Executive Member for Finance and Performance. The lease would provide for controls and assurance as to the scope and nature of the works permitted. Should the Executive Member consider that the 12 month timescale should be extended then Executive are also asked to delegate this authority to them.

94. It is also recommended that discussions be held with Nestle to ascertain whether they would provide their support for the FRP proposal or the holiday let proposal for the upper floors, in the event that the Friends of the Park were unable to deliver a funded and permissioned scheme.

Consultation

95. In each case consultation and input has taken place at various times with
- The applicants to assist in the development of their plans
 - Interested 3rd parties
 - Council officers
 - Ward members

Loss of Open Space

96. Under the Local Government Act 1972 the granting of a lease of public open space land/property is considered to be a 'disposal' and Section 123 of that Act prohibits local authorities from "disposing" of "open space" unless they have first advertised the proposed disposal in a local newspaper for two consecutive weeks and consider any objections received.
97. In this context, disposal does not mean the sale of the property rather its leasing to/ use by a 3rd party with ownership remaining with the Council. See also Legal Implications section of this report.

Council Plan

98. This proposal supports and contributes to the following Council Plan priorities:
- good health and wellbeing
 - a better start for children and young people
 - a greener and cleaner city
 - safe communities and culture for all

Implications

Financial.

Capital

99. The report highlights £80K investment required to re-provide the allotments at Rufforth. Given its proximity to the land purchased for

the Northern Forest and additional sustainability benefits of allotment provision it is proposed to be funded from the newly combined Climate Change capital budget. The budget for these schemes totals £600k and this allocation can be contained within that budget.

100. The overall cost of converting the upper floors of Rowntree Park Lodge (see section J) is estimated to cost a minimum of £440k of which £300k is expected to be provided by Friends of Rowntree Park. The council's contribution (£140k) can be funded from the council's Asbestos budget (£75k) and the balance from the council's Asset Maintenance budget (£65k).

Revenue

101. Many of the sites listed above have financial liabilities whereby the council either currently maintains or would be required to maintain. The value of these varies depending on the level of resource employed at each individual site. It is estimated that were the council to take on the liabilities for all the sites it would require additional staff resource to undertake grounds maintenance / gardening duties as well as cash collection and administrative duties around tennis courts and angling licences. It is unlikely that any income levels achieved would fully cover the staffing costs. The table below provides details of some of the additional costs that would potentially occur at the individual sites although many of the additional costs would in reality be absorbed into the Public Realm team's budget and would result in their limited resources being stretched across a wider area.

Site		Current expenditure / income	Example future costs if retained by the council	
			Day to day	Capital
a	Mayfield North	£600 pa	Grounds maintenance	
b	Mayfield South	2 x life buoys / Nil	Management of fishing, taking fees, bailiff service	Investment in paths and fishing pegs
c	Land at Clifton Ings	Minor weed control / Nil	Yes	Site security
d	Rowntree Pavilion	Emergency Repairs / Nil	Building repairs	Structural repairs
e	Rowntree tennis courts	Nil / £1,238 pa	Management of tennis, taking	Replacement court surfaces,

			bookings, court cleaning	boundary fences
f	Land at Rufforth for allotments	Nil	Grounds maintenance and management of tenancies	Replacement boundary fencing, paths
g	Marjorie Waite Court	One year start up revenue budget for the community hall (approx £5k) available to support the successful bidder. No on-going operational budgets in housing or communities.	On-going staffing, building and operational costs. Service charges for all shared area would be met by tenants of MWC.	Housing would be required to meet all shared area maintenance costs. With the directorate of People finding all costs related to the community
h	Chapmans Pond	Minor assistance with grass cutting / Nil	Management of fishing, taking fees, bailiff service	Investment in paths and fishing pegs
i	Poppleton Community Centre	Grass cutting and hedge maintenance / £2,000 pa	Grass cutting and hedge maintenance	None
j	Rowntree Lodge (upper floors)	Emergency Repairs / Nil	Building repairs	Long term care

Human Resources (HR)

102. There are no HR implications.

Legal

General

103. The Council has the power to dispose of land (by sale or lease) for less than open market value/best consideration without needing specific consent from the Secretary of State for Housing,

Communities and Local Government under Section 123 of the Local Government Act 1972 provided that the Council is satisfied that:

- (i) the purpose of the disposal will facilitate the improvement of the economic, environmental or social well-being of the Council's area

and

- (ii) the difference between the price/rent being obtained by the Council and open market value/best consideration is less than £2 Million

104. It is considered that some of the areas of land/property referred to in this report are 'open space' because they are already used by the public for recreation or were used/held by the Council for purposes ancillary to public recreational use of adjoining land). To ensure compliance with Section 123 of the LGA 1972, before any leases of any of the properties are granted by the Council as detailed within this report (save the proposed replacement allotment site in Rufforth and the property at Marjorie Waite Court site which are not considered open space under the Section 123 definition) the Council should:

- (a) publish notices in relation to each property in two consecutive editions of a local newspaper advertising its intention to grant a lease

and

- (b) consider any comments/objections received in response to the notices.

105. It is considered that a S.123 Notice for Rowntree Park would be published only once the Friends of Rowntree Park were able to demonstrate they have a scheme which is capable of being implemented as detailed earlier in the report.

106. The Council should also ensure that it continues to comply with any outstanding obligations under any Section 106 Agreements relating to any of these sites (including any provisions regarding the use of any commuted sums or maintenance contribution monies paid to the Council under any such Agreements) and that the proposed leases oblige the prospective tenants to comply with any such provisions in turn.

107. In line with the Council's policy and usual practice regarding community asset leases, it is recommended that all of the proposed leases referred to in this Report contain provisions:

- (i) excluding the relevant lease from the security of tenure/statutory renewal provisions of the Landlord and Tenant Act 1954
- (ii) entitling the Council/landlord to either:
 - (a) terminate the relevant lease; or
 - (b) increase the yearly rent from a peppercorn/nil rent to full open market rent (reviewed every 5 years thereafter),
in the event of any of the following circumstances occurring:
 - (A) The demised land not being used solely for community purposes
 - (B) The tenant assigns or sublets all or any part of the demised land (except and for and excluding any assignment with the consent of the Council/landlord to another community group)
 - (C) Any change in the aims, purpose or status of the tenant as a provider of community facilities

Proposed lease of the Lodge at Rowntree Park to Friends of Rowntree Park (FoRP)

108. Unless Nestle are willing to release the restrictive covenants affecting Rowntree Park so far as they relate to the Lodge, the Council should seek to ensure that FoRP's proposed use does not breach those covenants and seek an indemnity from FoRP in respect of any breach(es) of the covenants by them.

Proposed lease of land at Wetherby Road, Rufforth for use as an allotment site

109. The lease should be granted by CYC to the Parish Council (rather than directly by CYC to the Rufforth Allotments Association). The Local Govt Act 1972 (Schedule 29 Paragraph 9(1)) expressly prohibits a district/unitary Council from exercising functions under the Allotment Acts 1908 to 1950 in relation to any area for which there is a Parish Council. Section 23 of the Small Holdings and Allotments Act 1908, states that where there is a Parish Council for an area, then the S.23 duty to 'provide a sufficient number of allotments' for the area falls on the Parish Council rather than the Council.

Proposals regarding the areas of land at Mayfields North and Mayfields South

110. The legal implications in relation to the proposals for the areas of land at Mayfields North and Mayfields South are contained in the confidential annex to this report.

Proposal to procure and operator and grant a lease at Marjorie Waite Court

111. The type of contract described – one in which the service provider will collect income from the catering and community facilities activities to cover operational running costs – means this is a services concession contract. Therefore, the Council's Contract Procedure Rules along with the Concession Contracts Regulations 2016 (as appropriate) will need to be applied when conducting the procurement process.

112. **Crime and Disorder:** Keeping the facilities and land in good condition prevents deterioration of the asset and increases use which in turn create a greater sense of security.

113. **Information Technology (IT)** - None.

114. **Property** See main body of the report.

115. **Public Health** – “Access to open spaces ... has direct and indirect impacts on people's physical and mental health, but can also enable people to build social capital” (Kings Fund)

116. **Planning (Conservation and Design)** – None at this stage, some projects will need planning permission as they progress

Risk Management

117. In compliance with the Council's risk management strategy, the risks associated with the projects are:

- Financial – if the facilities and land remain in day to day council care then there will be ongoing maintenance obligations
- Reputational – if the facilities and land remain underutilised and visibly deteriorates, it will detract from the wider open space experience.

- Operational – if any of the proposed lease holders ceased to exist then another operator would need to be found or the facilities and land would revert back to Council management.

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

For further information please contact the authors of the report

Background Papers:

19th July 2013 Cabinet Member for Transport, Planning and Sustainability –
Future Management Arrangements for Land at Mayfield Grove York

29th January 2016 Decision Session - Executive Member for Culture, Leisure and Communities Review of Management of Rowntree Park tennis courts

23rd September 2016 Decision Session - Executive Member for Culture, Leisure and Communities Review of the Management of Chapmans Pond

Appendices –

- 1- Plan of Mayfields North
- 2- Plan of Mayfields South
- 3- Plans of Land at Clifton Without
- 4- Plan of Rowntree Park Pavilion
- 5- Plan of Rowntree Park Tennis Courts
- 6- Plans of Land at Wetherby Road, Rufforth
- 7- Plans of Marjorie Waite Court
- 8- Plan of Chapmans Pond
- 9- Plan of Poppleton Centre
- 10- Plan of Rowntree Park Lodge, Rowntree Park

11- **Confidential** annex – legal advice on Mayfields

List of Abbreviations Used in this Report:

CATs - Community Asset Transfers
FoYRPR - Friends of York Railway Pond and Reserve
MCT - Mayfield Community Trust
YNET - York Natural Environment Trust
RAA – Rufforth Allotment Association
RPTC – Rowntree park tennis Club
RPSA – Rowntree Park Sports Association
WTYCC – West Riding of Yorkshire County Council
YCC - York Canoe Club