

Decision Report: Castle Gateway Update Report and Next Steps

Subject of Report

Meeting:	Executive
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Portfolio of:	Cllr Lomas Executive Member for Finance, Performance, Major Projects, and Equalities

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Subject of Report

1. In April 2018, the Executive approved a masterplan for the “Castle Gateway” Scheme (the “**Scheme**”) to transform a large area of the city centre that had seen private sector regeneration proposals fail over a period of 3-decades. The context and detail of the Castle Gateway masterplan and its constituent projects (Castle & Eye of York, Castle Mills, St Georges Field car park, Piccadilly) is set out in the Background section of this Report at paragraph 26.
2. The purpose of this Report is to provide an update on the Castle Gateway masterplan and seek approval for the next steps, necessary to take forward individual projects:
 - 17-21 Piccadilly
 - Castle Mills
 - St George’s Field car park

- Castle car park and Eye of York
- Coppergate Centre

(Annex D illustrates the extent of the Castle Gateway area and the location of individual projects).

3. Since the original masterplan was approved in 2018, the individual Schemes have been progressed in accordance with previous Executive approvals (the previous reports are listed at the end of this report). However, the projects have been impacted by a number of macro-economic factors, including:
 - construction cost inflation driving increases in delivery costs
 - rising interest rates impacting borrowing costs
 - housing market uncertainty
4. There have also been two unsuccessful Levelling Up Funding (“LUF”) bids, which sought to fund the delivery of the public realm around Clifford’s Tower and the Eye of York. These factors have all impacted significantly on the business case for Phase 1 delivery approved in January 2020.
5. Following a review of the Scheme, this Report sets out recommendations for how the projects can be revised to deliver positive outcomes for the city, in accordance with both the original master plan principles, and the recently approved Council Plan and “Our City Centre” Vision. The projects can also be revised to ensure that they deliver against the three key city strategies (Climate Change, Economy, Health, and Wellbeing) that were approved in December 2022.
6. In respect of the Coppergate Centre, the existing head lease currently held by Mahavir Properties Ltd. expires on 14th June 2083. This Report asks Members to consider accepting a surrender of Mahavir’s current headlease and instead granting Mahavir a further head lease of the Coppergate Centre for a period of 250 years, from and including the date of such lease. The land on which the majority of the Centre is situated, is owned by the Council and is subject to an existing lease to Mahavir Properties Ltd., the owner of the Centre, who in turn leases them to the occupational tenants. The new lease would be granted by the Council to Mahavir Properties Ltd. in exchange for land being provided to the Council by Mahavir

Properties Ltd. and investment being made by Mahavir Properties Ltd. to refurbish the public realm of the centre, including the provision of new facilities within St Mary's Square at no capital cost, nor any maintenance liabilities to the Council.

7. The head lease of the 17-21 Piccadilly site currently held by Spark York from the Council expires on 31st October 2024. The Report also sets out the proposal to surrender the current lease to Spark York on the Council's 17-21 Piccadilly site, and the grant of a further lease to Spark York for a period of 2-years from and including 1st November 2023, to allow time for opportunities to be explored to allow this facility to re-locate elsewhere in the city.

Benefits and Challenges

8. **Annex C** provides an overview of the proposed approach, illustrating the Schemes anticipated impact on the Council Plan, their linkage to original master plan objectives and how they will contribute to the themes in the City Centre Vision.
9. Re-aligning the Castle Gateway masterplan with the new Council Plan and its Core Commitments will ensure that these key aspirations for the city are delivered.
10. Reviewing the Castle Gateway masterplan projects and setting out realistic options to progress their implementation, after a period of pause and uncertainty, will ensure that the regeneration of this important area of the city can now progress.
11. The delivery costs for some of the projects can be significantly reduced by changing the design, without compromising some of the overall fundamental principles.
12. The granting of a further headlease term at the Coppergate Centre to the Council's current tenant for an additional period will leverage capital expenditure and investment into the shopping centre, provide an enhanced public realm and new facilities, at no capital cost or maintenance liability to the Council. The surrender to the Council of Mahavir's lease (and of any subtenant's rights over) part of the service yard of land to the rear of the Coppergate Centre will also facilitate the proposals for re-purposing the Castle car park.
13. The headlease of the 17-21 Piccadilly site currently held by Spark York from the Council expires on 31st October 2024. The granting of

a further headlease of the site to Spark York (for a suggested period from 1st November until 31st October 2026) will provide greater security to this local business and allow continuity of operation for a vibrant city centre venue which is home to a multitude of small businesses, and part of the vibrant city centre offer to residents and visitors.

14. However, there are some challenges: whilst all previous survey and evidence base work will be utilised (where still valid) as the basis for project re-design work, amendments to project delivery scope will result in elements of this work on some of the Schemes being abortive. A review at this stage is less costly than making changes during delivery when contracts have been let. The value of all the background and previous design work to date will enable changes to be made quickly and abortive costs to be minimised.

15. Significant engagement and collaboration have been undertaken on the regeneration of the Castle Gateway throughout the project development from inception using the innovative 'My' technique. This was most significant in relation to developing the brief for the Castle and Eye of York area. There is a risk that revised proposals will not be seen as delivering against the expectation that has been built up. However, by realigning the Schemes with current Council priorities, where the underlining principles are not changed, this risk should reduce. Certainty around project delivery will build on the work undertaken to date and allow for momentum to be built up again as Schemes progress. The Council remain committed to consultation on the Castle Gateway project including engagement on the redesign of the Castle and EoY space to inform revisions to the planning application.

Policy Basis for Decision

16. This section sets out how the Castle Gateway contributes to the delivery of the commitments in the Council Plan (2023-27), 'Our City Centre' Vision and the Local Plan.

17. The Castle Gateway projects will contribute to the delivery of the four core 'EACH' commitments in the Council Plan 2023-27 – One City, for all by:
 - **Equalities and Human Rights** – by re-purposing the Castle car park and redesigning the proposals, blue

badge parking will be retained close to the city to aid accessibility, aligning to the emerging Local Transport Strategy's Policy Focus Area 1 - shaping a city centre that is accessible for all.

- **Affordability** – by investigating opportunities to increase the supply of affordable housing within the city centre in the longer term and creating a free amenity/play space for residents.
- **Climate & Environment** - by providing a new green space within the city centre, and enhancing/improving biodiversity, this will aid urban cooling for climate resilience. The public realm improvements will consider climate adaptations features for example passive shading/cooling, rest areas, water refill stations. It will also provide sustainable transport modes.
- **Health** – by creating a free amenity and play space for families to encourage healthier lifestyles, coupled with improved connectivity and travel opportunities across the site. Improving walking and cycling routes will contribute to active travel and help improve air quality

18. Below are specific examples taken from the Council Plan to illustrate the above linkages:

- Pg 18 3.2 - develop family friendly foot streets to bring playful exploration to the city centre.
- Pg 26 5.2 Work with partners to develop the city centre.
- Pg 30 3.2 Co-design a plan for Our City Centre to make foot streets more welcoming and accessible.
- Pg 30 4.1 Improve streets, cycleways and footpaths for walkers and wheelers.
- Pg 32 2 Create more affordable housing.
- Pg 36 2.2 Make the most of our green and blue infrastructure to improve biodiversity, improve health and wellbeing and support nature recovery.

19. The Castle Gateway projects will also help deliver the 'Our City Centre' Vision, approved by Executive in October 2023, as set out below:

- **Theme 1 – Family friendly and affordable city centre**
 - The new public realm around Clifford's Tower will create valuable new play space in the city centre and create a space that can be used by people of all ages.
- **Theme 2 – An attractive, active and healthy city centre**
 - The creation of the new public realm space delivers investment in public space and squares.
 - Deliver active travel options for getting into and around the centre of York.
- **Theme 3 – A sustainable city fit for the future**
 - New green space will increase biodiversity in the city and improve climate resilience and reduce surface water run-off.
- **Theme 5 – Embracing our riversides**
 - The Castle and Eye of York designs will celebrate the cultural and environmental benefits of the River Foss, providing a new river edge and walkway linking to the new river park behind the museum.
- **Theme 6 – A safe city centre, which is welcoming and accessible to all**
 - Blue badge parking will be retained close to the city to aid accessibility.
 - Future affordable housing provision on Castle Mills and 17 – 21 Piccadilly will be explored.
 - The new public space at the Castle and Eye of York will provide open space and facilities for residents and will be specifically designed to improve accessibility. This supports the Health and Wellbeing strategy, "Creating an age friendly city for older adults."

- **Theme 7 – Thriving business and productive buildings**
 - Projects will explore and deliver temporary uses in empty buildings and spaces. Spark York is great example of this, and an extension of its lease forms part of this Report. Meanwhile opportunities on the Castle Mills site will be explored, whilst affordable housing options are considered.
- **Theme 8 – Celebrating heritage and making modern history**
 - The new public realm development in the Castle and Eye of York will enhance the setting of the heritage assets surrounding the spaces by; repurposing the car park, enhancing the Eye of York, and transforming the connectivity to this area.

20. In the Local Plan, which we expect to progress to adoption soon, **Policy SS5 – Castle Gateway** is allocated as an “Area of Opportunity.” It is identified as a major regeneration area of the city centre. The projects in the Castle Gateway masterplan are key to delivering this policy.

21. The projects also contribute to deliver of the three (3) 10-year City strategies approved in 2022:

- Economic Strategy (2022-2032).
- Health and Wellbeing Strategy (2022-2032).
- Climate Change Strategy (2022-2032).

Financial Strategy Implications

22. Significant project costs have been incurred to date in line with previous Executive decisions to progress the masterplan proposals for delivery. These break down across the Schemes as follows:

- **Castle and Eye of York** costs of c.£1,000,000 on: engagement work; site surveys; Scheme design in outline and detail; a planning application; project management, programme assurance and support.
- **St Georges Field Car Park** costs of c.£1,000,000 on: site surveys including liaison with Yorkshire Water and the Environment Agency on flood protection, the detail design and planning application for a potential Multi-Storey Car Park (“**MSCP**”) project management, programme assurance and support; and subsequent options for surface layouts. Unfortunately, a significant component of these costs will have to be written off in year if the decision is confirmed not to proceed with the MSCP.
- **Castle Mills** costs of c.£2,000,000 on: site surveys and preliminaries, detail design, planning approval, for Scheme and construction detail and technical design (which is at 75% completeness overall) project management, programme assurance and support. The bridge and pedestrian and cycle link design are complete to the stage needed to progress / procure a construction partner. Some of these costs may be abortive, but this will be determined at the point when a future Scheme is agreed.

23. These potentially abortive costs are not insignificant, but subject to the decisions of Executive can be treated separately:

- **Castle and Eye of York** – there is a proposed Scheme to go forward - much of the work that has been undertaken is still relevant and can be attributed to the new Scheme.
- **St Georges Field** - terminating the Scheme to build a MSCP will mean that a significant component of the work undertaken to date will be classed as abortive and will need to be written off to the revenue account at the point the decision is made. However, a decision to proceed with the MSCP would have required borrowing of around £15,000,000, at a cost of c. £1,100,000 pa over a 40-year term to provide an additional 80-spaces and associated revenue. Accordingly, the decision not to proceed does save the Council from a significant ongoing financial commitment.

- **Castle Mills** - the design work to date, and specifically the 2020 planning approval has demonstrated the potential quantum of development that the site can accommodate. The site can therefore be considered as an asset where the costs incurred can potentially be offset by any future capital receipt from the site. Should the capital receipt be lower than the costs incurred, this would be a charge to revenue in the future. Should the Council not secure a capital receipt from the site the costs will be required to be written off to revenue.
24. The decision to confirm the re-purposing of Castle car park will have the impact of reducing car parking income by approximately £1,000,000 per year when parking is withdrawn. This creates a budget pressure, that will need to be managed in the context of the car parking income budget target for future years. However, where there is an over achievement of car parking income by c. £1,000,000 in the current 2023/24 year, there is the potential to address this when future budget setting takes place.

Recommendation and Reasons

25. The Executive is asked to:

17- 21 Piccadilly

- 1) Approve the granting of a further head lease to Spark York of the 17-21 Piccadilly site for a further 2-year period from and including: 1st November 2024 until and including 31st October 2026.
- 2) Delegate to the Director of Housing, Economy, and Regeneration (and their delegated officers), in consultation with the Director of Governance (and their delegated officers), authority to negotiate the terms of and the entry into of such further lease of the 17-21 Piccadilly site to Spark York.

Reason: To enable the current use to continue in the short term and provide a continued income to the Council, whilst allowing Spark York the opportunity to identify an alternative location in the city.

Castle Mills

- 3) Confirm that further work on developing the Castle Mills site is paused and ask officers to investigate appropriate meanwhile use options in parallel with exploring longer term opportunities for the future delivery of 100% affordable housing on this Council owned site.
- 4) Delegate authority to the Director of Housing, Economy and Regeneration (and their delegated officers) in consultation with both the Director Governance and the Chief Finance Officer (and their respective delegated officers) to commission any necessary professional advice required for said work in compliance with the Public Contract Regulations 2015 (**'the Procurement Regs'**) and the Council's Contract Procedure Rules under Appendix 11 of the Council's Constitution (**'Council's CPRs'**), and to draft, negotiate, and conclude any contractual arrangements and/or legal documentation required for said work.

Reason: To seek an active use for this City Centre site and to progress the Council's objective of 100% affordable housing being delivered on Council owned sites.

- 5) Instruct Officers to progress work to secure delivery of the pedestrian/cycle bridge, sustainable travel links, subject to confirmation of funding with West Yorkshire Combined Authority ("**WYCA**"); updated delivery costings; and all necessary approvals, planning, highways, and bridge agreement.
- 6) Delegate authority to the Director of Housing, Economy and Regeneration (and their delegated officers) in consultation with both the Director Governance and the Chief Finance Officer (and their respective delegated officers) to commission any necessary contractors and/or consultants required for said works in compliance with the Procurement Regs and the Council's CPRs, and to draft, negotiate, and conclude any and all such contractual arrangements and/or legal documentation required for said works (including any and all planning agreements and/or highways agreements required; however for the sake of clarity this delegation is not for any requirements of either the Local Planning and/or Highways Authority).
- 7) Delegate authority to the Director of Housing, Economy, and Regeneration and the Director of Environment, Transport and Planning (and their delegated officers) in consultation with both the Director

Governance (and their delegated officers) to draft, negotiate, and conclude with WYCA any and all such contractual arrangements and/or legal documentation relating to the funding for the proposed works.

Reason: To maximise use of external funding, previously allocated by WYCA, to deliver city centre connectivity in accordance with the sustainable travel principles of the Local Transport Strategy, with delivery progressed in advance of development of the Castle Mills site, achieving the wider aims of the Castle Gateway masterplan.

St George's Field Car Park

- 8) Confirm that the Council will not proceed with the building of a MSCP on St George's Car Park and that officers are to develop proposals which balance: improved parking capacity; pedestrian and cycle connectivity; and coach drop off facilities within a surface level layout. This decision acknowledges that there will be an in-year revenue impact to the Council of up to £1m.
- 9) Delegate authority to the Director of Housing, Economy and Regeneration and the Director of Environment, Transport and Planning (and their delegated officers) in consultation with both the Director Governance and the Chief Finance Officer (and their respective delegated officers) to commission any necessary professional advice required for said work in compliance with the Procurement Regs and the Council's CPRs, and to draft, negotiate, and conclude any contractual arrangements and/or legal documentation required for said work.

Reason: A MSCP does not represent value for money in terms of providing additional spaces, reconfiguring the surface level parking will provide improved facilities in accordance with the draft Local Transport Plan.

Castle & Eye of York

- 10) Confirm the re-purposing of the Castle car park to support the delivery of a revised Castle Gateway Masterplan, with retained Blue Badge parking; subject to an updated business case being brought back to Executive for full consideration, and where closure will only occur when a revised Scheme has been approved for delivery.

- 11) Delegate authority to the Director of Housing, Economy and Regeneration and the Director of Environment, Transport and Planning (and their delegated officers) in consultation with both the Director Governance and the Chief Finance Officer (and their respective delegated officers) to commission any necessary professional advice required for the updated business case in compliance with the Procurement Regs and the Council's CPRs, and to draft, negotiate, and conclude any contractual arrangements and/or legal documentation required for said work. A further report to the Executive will be required once the business case has been concluded as it will have a budget impact.

Reason: To enable the Council plan objectives, and Castle Gateway masterplan benefits, to be delivered with parking capacity and city centre traffic reduction prioritised in accordance with the draft Local Transport Plan.

- 12) Confirm the re-design of the Castle and Eye of York Scheme, with a specific emphasis on the retention of blue badge parking numbers, flexible green space with children's play provision and a keen focus on reducing capital and management costs and the submission of revisions to the planning application.

- 13) Delegate authority to the Director of Housing, Economy and Regeneration and the Director of Environment, Transport and Planning (and their delegated officers) in consultation with both the Director Governance and the Chief Finance Officer (and their respective delegated officers) to commission any necessary contractors and/or consultants required for said works in compliance with the Procurement Regs and the Council's CPRs, and to draft, negotiate, and conclude any and all such contractual arrangements and/or legal documentation required for said works (including any and all planning agreements and/or highways / bridge agreements as required; however for the sake of clarity this delegation is not for any requirements of either the Local Planning and/or Highways Authority).

Reason: To enable the existing planning application to be revised with a simpler, more affordable Scheme reflecting the more inclusive ambitions of new Council Plan.

Coppergate Centre

- 14) Approve the granting to Mahavir Properties Ltd. of a new headlease for a period of 250 years [from and including the date of grant of such lease] in return for Mahavir: (i) carrying out improvement works to the shopping centre; (ii) transferring to the Council unencumbered ownership of an agreed area of land to the rear of the Coppergate Centre); and (iii) settlement of rent reconciliations on the basis set out in the report (paras 76-77). Upon the grant of the new lease, the existing lease shall be surrendered.
- 15) Delegate to the Director of Housing, Economy, and Regeneration (and their delegated officers), in consultation with the Director of Governance (and their delegated officers), authority to negotiate the terms of and the entry into of such surrender and replacement head lease of the Coppergate Centre site to Mahavir Properties Ltd. on the basis of the terms set out in this Report.
- 16) To waive the requirements of Rules 11.1.3(iii) and 11.4 of the Council's CPRs in respect of any proposed Leaseholder Development Agreement ("**LDA**") at the Coppergate Centre site between the Council and Mahavir Properties Ltd., further to Rule 26.1 of the Council's CPRs.
- 17) Subject to paragraph 16 of this Report, delegate authority to the Director of Housing, Economy and Regeneration (and their delegated officers) in consultation with both the Director Governance and the Chief Finance Officer (and their respective delegated officers), authority to negotiate the terms of and the entry into a LDA at the Coppergate Centre site with Mahavir Properties Ltd. on the basis of the terms set out in this Report, in compliance with the Procurement Regs and the Council's CPRs.

Reason: To facilitate investment into the shopping centre and provide land to the Council which will aid the plans for Castle Car Park.

Background

26. In April 2018, the Executive approved the Castle Gateway masterplan to transform a large area of the city centre that had seen private sector regeneration proposals fail over 3 decades. The extent of the Castle Gateway masterplan area is set out at **Annex D**.

27. The innovative My Castle Gateway engagement approach, saw the masterplan gaining widespread public and cross-party political support. The proposals focussed on the creation of new high quality public realm and event spaces, around Clifford's Tower and the Eye of York, significantly improving the setting of key heritage assets, and also improving pedestrian and cycle and routes throughout the area. To achieve this the masterplan proposed the consolidation of two large surface level car parks (Castle car park and St George's Field car park) in to a single modern multi storey car park MSCP outside of the inner-ring road and the development of the Castle Mills site with city centre living and commercial units.
28. The business case and delivery strategy for the first delivery phase of the masterplan was approved in January 2020. This phase included: a new bridge over the Foss creating new pedestrian and cycle routes, a riverside public park, and linking to; new apartments and commercial spaces at Castle Mills; a MSCP at St George's Field to replace Castle car park, which would then have become a high-quality public realm/events space – proposed for phase 2 delivery.
29. A number of delivery options were considered, and the Executive approved the Council taking the lead to deliver the projects, acting as developer for the whole of phase one. At that time (January 2020) the business case suggested that a commercial return from the sale of apartments could cover the majority of the costs of the MSCP facilitating the repurposing of Castle car park.
30. It is important to note that the commitment by the Council to invest in the Castle Gateway has already acted as a catalyst for private investment in the area. This is particularly apparent along Piccadilly, where a number of Schemes have been developed / delivered or are in construction. This includes new hotel Schemes and conversion of offices to residential.
31. This private sector investment has included agreed highway improvements being implemented on Piccadilly in line with the highway design agreed by Executive Member for Transport on 17 May 2022. As noted above this has facilitated implementation by developers where they are progressing their projects and includes; the creation of an additional "integrated", on carriageway bus stop in front of the Banana Warehouse site, review of additional public seating and parking provision aiming to maximise Blue Badge parking provision, and to provide a taxi rank and motorcycle parking if possible. The decision also required further work to assess the

feasibility of implementing an alternative cycle route through quieter streets or segregated cycling provision on Piccadilly. This work is being led by the Highways Team.

32. In terms of the Castle Gateway masterplan, as explained at paragraph 3 to this Report, a number of macro-economic factors have impacted significantly on the business case since decisions were taken in January 2020. The background and current context for each component part of project is set out below:

17-21 Piccadilly

33. 17-21 Piccadilly is the site of the former Reynard's Garage and is now the site of the hugely successful Spark York, a pop-up container development hosting many small, local, retail, food, and drink businesses. Spark have occupied the site since 2017. A plan showing the site extent is attached at **Annex E**.
34. In accordance with a decision made by Executive in March 2022, Registered Providers were approached to provide affordable housing on the site, and it was anticipated that the value of the site could provide £500,000 on a 999 year lease basis. However, despite soft market testing providing a reasonable response from Registered Providers, when formal expressions of interest were subsequently invited, only one expression of interest was made. Rising build costs and the relatively small / restricted site were cited as challenges deterring other bidders. Options to provide affordable housing provision on this site will continue to be explored.
35. Spark York has proven to be popular and continues to bring vibrancy and activity to Piccadilly. 17 out of 19 units are currently occupied and the others are under offer, particularly appealing to start-up businesses.
36. Pursuant to Spark:York's current lease, at present they pay a yearly rent comprising the aggregate of:
 - (i) a "basic rent" of £25,000 per annum; and
 - (ii) an "additional rent" equal to such amount (if any) by which the "Maximum Rent" exceeds the "basic rent" in that 12-month period (with the "Maximum Rent" being the aggregate of: (a)

£13,333.33 and (b) 30% of Spark:York's profit generated from the site for that 12-month period)

37. In addition, there are art studios, co working space and meeting rooms. Spark advise that 21 of their previous occupiers have moved on as part of those businesses' growth. They also estimate that there is a £4m turnover from current businesses providing 65 jobs and attracting 400,000 visitors a year to the facility. They also advise that they provide free space to community groups to meet which has totalled 800 hours in the last year.
38. Given the success of Spark:York and the lack of interest by Registered Providers in the affordable housing proposition, it is proposed that the Council grant Spark:York a further headlease of the 17-21 site for 2-years from and including 1st November 2024 until and including 31st October 2026. This will provide further time to work with Spark to ascertain if an alternative venue within York could be suitable, such as York Central. Affordable Housing provision on this site will continue to be explored.
39. The precise provisions of the further lease would be negotiated by the Director of Housing, Economy and Regeneration (and their delegated officers) in consultation with the Director of Governance upon advice from officers in Legal Services and Property Services but would contain provisions obliging Spark:York to comply with all statutory controls which will necessitate them in applying for an extended planning consent for which their current use runs until September 2025. Landlord controls within the extended lease, governing noise and issues of potential disturbance would be commensurate with the current lease. This in recognition that, whilst the site is located in the vibrant city centre, that there is residential accommodation in close proximity.

Castle Mills

40. Castle Mills site at 84 Piccadilly is another Council owned site on Piccadilly Planning approval was secured in November 2020 for a Scheme comprising: 106 apartments with 20 affordable units and commercial units at ground floor; a bridge over the river Foss to provide pedestrian and cycle connectivity to St Georges Field and the Castle / Eye of York and highway improvements on Piccadilly. A ground level plan is attached at **Annex F**.

41. A delivery partner (Wates Construction Limited) was procured to provide a detail design and construction costs, work progressed from June 2021 to January 2022, but the contract was ultimately terminated in June 2022, without a finalised design or an agreed construction cost.
42. A significant amount of valuable technical design and further ground investigation and site survey work was completed. Designs for the Foss bridge and associated pedestrian cycle route are sufficiently progressed to facilitate a new procurement. However, in the absence of a material start on site the planning permission will lapse in December 2023 and this will need to be renewed if these elements are to be progressed.
43. Work to progress and the secure delivery of the pedestrian/cycle route and Foss bridge is a key decision to support sustainable travel principles, subject to:
 - confirmation of WYCA funding
 - updated delivery costings
 - securing all necessary approvals; planning, highways, and bridge agreement.
44. The risks associated with bringing the bridge and riverside pedestrian cycle route and park forward in isolation will be assessed as part of this process. The bridge and river park were classed as enablers when the Castle Mills planning application was considered due to the public benefits they deliver.
45. However, where there is a Council commitment to increasing the supply of affordable housing, with 100% affordable housing provision on Council owned sites, a decision is sought to pause work on the development of Castle Mills, and for officers to investigate appropriate meanwhile use options in parallel with exploring all opportunities for the delivery of an affordable housing Scheme on the site. A meanwhile use will prevent this site standing vacant.
46. It should also be noted that the viability of developing this site will be particularly challenging, as set out above, and where there are a range of known technical and ground condition challenges, and some costs relating to the previously agreed Scheme design may be

abortive if a different Scheme is delivered, and these will have to be set against the site value.

St George's Field Car Park

47. Planning permission was obtained on 12 January 2021, for a MSCP on the St George's Field Car Park, including a coach park cycle routes and improved public realm and riverside setting.
48. The MSCP was proposed as a solution to replace two surface level car parks serving the city (Castle Car Park and St George's Field car park). Consolidating the two surface level car parks in to the proposed MSCP reduced the parking capacity across the two locations from 594 spaces to 372 spaces (a loss of 222 spaces).
49. The site is constrained both in terms of restricting the height of the building requiring a floor to be removed, and also the ground constraints limiting the footprint of the building limit the capacity that can be achieved in the MSCP.
50. Due to the constrained capacity, coupled with the sewer diversion that is required, the cost of which has risen significantly and increasing construction costs, the MSCP is seen as not representing value for money; in terms of providing additional spaces.
51. An alternative has been considered for St George's Field car park to improve car parking capacity. Reconfiguring the car park with removal of the coach parking, instead facilitating space for three coach drop off bays could increase capacity at St George's Field from 267 spaces (plus 28 coach parking bays) to 297 spaces (with 3 coach drop of bays).
52. Reconfiguring the existing surface level car park parking will provide improved facilities in accordance with the draft Local Transport Plan.
53. Therefore, a decision not to proceed with the building of the MSCP on St Georges Car Park is included in the recommendation, along with instructing officers to develop a proposal for the St George's car park that seeks to balance improved parking capacity; pedestrian and

cycle connectivity; and coach drop off facilities within the surface level layout.

Castle and Eye of York

54. The heart of the Castle Gateway masterplan is the repurpose of the Castle car park and Eye of York. The Executive previously approved the design and submission of a planning application for a high spec public realm/event space, considering comments received during a public engagement undertaken in drawing up the in the Open Brief during 2019/20.
55. The planning application was submitted on 31st January 2022 (**Annex G** indicates the planning application red line boundary). This has been the subject of ongoing design input from the Castle Gateway Advisory Group and refinements through the My Castle Gateway public engagement project. The following three matters are yet to be resolved on the planning application – wider parking strategy including blue badge parking provision, Hostile Vehicle Measures and access arrangements for the Eye of York.
56. Two levelling up funding bids have been unsuccessful for delivering the project. York was in the lowest priority areas list in the governments levelling up fund process. So, there is a significant funding gap for the current project.
57. Considering the above and to realign this project with the new Council Plan a re-design of the Castle and Eye of York Scheme with specific emphasis on the retention of blue badge parking numbers; flexible green space with children’s play provision and a keen focus on reducing capital and management costs is proposed. Consideration will be given in the design process to the new play space proposed within the Coppergate Centre to prevent duplication.
58. The re-purposing of Castle Car Park remains a pre-requisite for any regeneration Scheme for this key city space. The principle of the car park closure was previously approved by the Executive on 21st January 2020 when considering the Castle Gateway Phase one delivery strategy Report. Executive are recommended to confirm the re-purposing of the Castle car park to support the delivery of a revised Castle Gateway Masterplan, with retained Blue Badge parking; subject to an updated business case being brought back to the Executive for full consideration, and where closure will only occur

when a revised scheme has been approved for delivery. The updated business case will set out the overall implications for parking capacity and parking revenue.

59. Options are being explored to deliver a scheme, including a phased approach focusing on the car park and riverside. The Castle car park surface is not in good condition. In the short term some maintenance work will be required to keep the car park operational, however in the longer-term significant expenditure would be necessary to facilitate its ongoing operation. The re-purposing scheme will, however, bring significant benefits to the city: it will retain blue badge accessibility close to the city: provide a green space that will benefit families' health and wellbeing, and also increase connectivity and promote sustainable transport modes.
60. This part of the development supports the aims of the York Public Health physical activity strategy which champions inclusive spatial design, thus having a direct and positive impact on physical and mental wellbeing and improving sedentary behaviour in the population through free well designed play spaces, cycling routes and walking. The scheme supports an accessible city and directly impacts on the ambition of the York Health and Wellbeing strategy to create an accessible and age friendly city. The proposed scheme will help to increase footfall to the city centre and help draw footfall into this part of the city, boosting visitors to the attractions, and benefiting local businesses. It will also provide some biodiversity net gain through new planting and enhancing the riverside, resulting in an improved setting for the historic buildings that occupy this area.

Coppergate Centre

61. The Coppergate Shopping Centre (the "**Centre**") is a purpose-built, open-air Shopping Centre, which opened in 1984. The Centre has retail frontage and pedestrian access from Coppergate; Piccadilly; and Castlegate. To the southwest, the Centre is bounded by the River Foss and two visitor attractions in the form of the York Castle Museum and Clifford's Tower. The Centre is arranged around St Mary's Square with two open air malls, Coppergate Walk and Castlegate.
62. The two major anchor tenants in the Centre are Primark and Fenwick's. Primark opened in November 2016 and includes an

extension which was constructed by the head tenant on the site of 22 Piccadilly, which is owned freehold by Mahavir Property. There are 19 retail tenants together with kiosk units in the Square. The Jorvik Viking Centre visitor attraction is located beneath the Centre and uses two of the retail units for its admissions and gift shop facilities.

63. The footprint of the Centre is c.3.25 acres and is one of the largest real estate holdings in York's city centre. (See plan in **Annex H**)

Coppergate Existing Lease Basis

64. The majority of the land that the Centre sits upon is owned freehold by the Council and is subject to a long leasehold (Headlease) interest held by Mahavir Properties Ltd.. The buildings are owned by Mahavir Properties Ltd. and the head lease is a ground lease (the Council owning the land/ground that the buildings are situated upon). The Council hold a sublease back from Mahavir Properties Ltd. of the car park and toilets within the Coppergate Centre (for nil rent).
65. The term of the headlease granted from the Council is 99 years from 15th June 1984 (i.e., until 14th June 2083) (but with an option for either the landlord or the tenant to require the entry into of a further headlease on the same terms (excluding any further option to renew such further headlease) by serving written notice on the other party at any time between 15th June 2062 and 15th June 2082). Mahavir Properties Ltd.'s lease is a full repairing basis with no repair liability on the council, except for a contribution to the operational service charge through its use of the car park. The current headlease expires on 14th June 2083 but with an option for either the landlord or the tenant to 'extend' the lease by 26 years in the manner specified above. This lease is known as the "**Headlease**" as the head lessee has in turn, granted occupational leases to those occupiers trading in the Centre.
66. The Head Lease is subject to a yearly rent (which is payable to the Council in quarterly instalments) which is equal to the greater of:
- (i) £23,000 per annum;
 - (ii) Such sum as represents 16% of rents that the head lessee receives from the Centre's occupational tenants, less deductible costs which include bad debts, professional fees in rent reviews and lease renewals and for any empty units, rates, insurance, and service charge.

-

The figure currently payable is c. £170,000 per annum.

67. In addition to the area of the shopping centre detailed above, Mahavir Properties Ltd. own the freehold of part of the Primark shop. The reason for this is that this area was formerly a non-council owned cinema, and it thus forms a separate property interest to the majority of the Centre which is held on the long leasehold basis described above.
68. The Council and Mahavir Properties Ltd.'s headlease predecessor, had been in negotiations over a potential lease restructure whereby the existing lease would be replaced by a modern longer term 250-year lease. No deal was ever done, as the previous head lessee were only willing to offer limited investment into the Centre, which is in need of such. The grant of a new replacement 250 head lease on more modern terms was seen as leverage to negotiate such investment. Mahavir purchased the head lease interest last year and discussions have moved positively with investment into the Centre now proposed in exchange for the granting of a longer-term lease.

Coppergate link to Masterplan

69. The Castle Gateway master plan identified the potential of the area at the rear of the Centre.. This area partly forms a service yard serving Fenwick's and the former Topshop unit, which backs on to the Castle Car Park and which is intended to be transformed, from the current surface car park into a public realm area, providing a place for people to gathering for variety activities.
70. Whilst the Council owns the freehold of this area, under the ground lease it has granted, it is subject to the head lease to Mahavir Properties Ltd. whom, in turn, have sublet to other occupational tenants. The Council thus has no control of this area. To bring this into the Council's "unencumbered" control requires the agreement of Mahavir Properties Ltd. the head tenant and the other occupational leasehold interests.

Coppergate - Proposed New Head Lease

71. In return for the grant of a new replacement headlease for a term of 250 years (from date on which such is granted) (whereby the existing 59 year lease with 26 year option to extend would be surrendered on grant of new lease) for nil monetary payment to the Council by Mahavir Properties Ltd., the Council has agreed the following points which shall form part of any new agreement granted.

A. **Land Surrender to the Council, forming part of service yard, for nil cost.**

72. The land surrender detailed above and by that outlined and hatched black on the plan (See **Annex I**) will not involve a payment by the Council to Mahavir or their subtenants of any monetary "surrender" premium. The Council's freehold interest will thus be released from any existing leases currently affecting it without any monetary cost to the Council except for any Stamp Duty Land Tax which may be payable by the Council to HM Revenue & Customs as a result of such surrender arrangement.

B. **Refurbishment**

73. Mahavir will commit to refurbish St Mary's Square which forms the main central public realm hub to the Coppergate Centre. Plans need to be finalised and planning permission obtained, but indicative proposals include the creation of new kiosks; seating areas; paving, signage, and lighting plus children's play area. (See indicative images in **Annex J**).

74. It is envisaged that this will create an enhanced customer experience for visitors and focal point for families with children, given the lack of such facilities in the city centre. The Castle/EoY redesign and these new facilities provided in the Coppergate centre will have regard to each other to ensure they compliment rather than compete. The estimated cost of this Scheme is c £1,300,000 and it is considered that this should encourage the demand and levels of rental achievable in the Centre's retail outlets, for which the Council receive 16% of rents. Under the terms of the new lease, the Council will continue to receive 16% of the sub-lease rents from occupational tenants payable to Mahavir Properties Ltd. by their subtenants as the head rent payable by Mahavir. An increase in demand for units raising rents would thus have a positive impact on the Council's financial position through its 16% share of rent, even though it would contribute nothing financially to the upfront investment.

75. The Council is not obliged to contribute any capital contribution towards any improvements under the current lease, however through not contributing this would naturally diminish the viability, (financial return) to the head lessee in carrying out any such improvement Scheme. Mahavir Properties Ltd. recognises that in lieu of the Council not contributing, this forms part of the deal for a longer lease. The Council will thus not contribute towards the capital investment and Mahavir Properties Ltd. will be responsible for the upkeep and maintenance of the area and its facilities.

C. Settlement of Rent Reconciliations

76. Mahavir Properties Ltd.'s predecessors had paid the Council £236,000 as an estimate of the rental share each year (given the level of rent had stayed relatively static for some years). At year end, a reconciliation process occurred.

77. A number of year's reconciliation statements are outstanding which includes for the Covid period, where there is a risk that the rental owed to the Council is less than has been paid. This matter is a point of legal debate and not accepted by the Council but as part of the deal Mahavir Properties Ltd. have agreed to draw a line under such a notion and hence no back rent would be paid through any previous reconciliation.

Coppergate - Documentation of the New Lease

78. The obligations of:

(i) The Council to:

(a) Accept a surrender from Mahavir Properties Ltd.'s existing headlease; and

(b) Grant new replacement 250-year lease upon completion by Mahavir Properties Ltd. of the agreed "improvement works" to St Mary's Square in accordance with an agreed deadline.

(ii) Mahavir Properties Ltd. to:

(a) use their reasonable endeavours to obtain planning permission (on terms satisfactory to Mahavir Properties Ltd. acting reasonably) for the proposed improvement works to St Mary's Square;

- (b) commence and complete such improvements works within a specified period subject to, and after, obtaining satisfactory planning permission;
- (c) surrender their current headlease of the agreed part of the 'service yard' (after obtaining surrenders from any subtenants who currently also have leases of/rights over such land) (for nil cash payment by the Council to Mahavir Properties Ltd.); and
- (d) surrender their current head lease of the remainder of the site of the Centre to the Council (for nil cash payment by the Council to) in return for the Council granting Mahavir Properties Ltd. new 250-year lease.

This would need to be documented within a detailed Leasehold Development Agreement (“**LDA**”) The specification of the improvement works that Mahavir Properties Ltd. would be obliged to carry out (subject to obtaining planning permission) would need to be approved by the Council as landlord and this would form part of the LDA. Only once the agreed works had been implemented would the new lease be granted. The surrender back to the Council of the agreed part of the service yard would also form part of the pre requirements simultaneous with the grant of the new lease.

- 79. The lease back arrangement of the car park and toilets to the Council would remain commensurate with the existing lease, with the Council receiving all car park income.
- 80. A third-party valuation Report has been prepared by an external valuer (see confidential **Annex K**) who advises this deal represents good value to the Council.

Consultation Analysis

- 81. The Castle Gateway Masterplan was shaped through extensive stakeholder and public engagement on both the masterplan and subsequent sub-projects in the form of My Castle Gateway. Over 8,500 comments have been recorded to date.
- 82. The last intensive period of engagement related to the proposed new open space at Castle and the Eye of York. This ran from summer 2019 to February 2022 and included a programme of activities to inform a community open brief for the new public space, followed by

the team sharing the evolving design process through the RIBA concept design, concept proposals, and developed design stages. This provided a process of continuous conversation and feedback to inform the final design which was submitted for the Castle and Eye of York Planning application in February 2022, and full details are set out in the Statement of Community Involvement which accompanied the planning application.

83. The last MCG update blog on the regeneration of the Castle Gateway area was published in June 2022 to accompany the Council's Executive on 16 June 2022. Castle Gateway Advisory Group meetings with stakeholders took place in October 2022 and February 2023, and a further meeting is scheduled for November 2023.
84. The redesign of the space will draw on the wealth of engagement that already exists. One of the main themes of the open brief was "Gathering playfully" which will be key to informing the redesign. The Council remain committed to consultation on the Castle Gateway project, including engagement on the redesign of the Castle and Eye of York space to inform revisions to the planning application.

Options Analysis and Evidential Basis

85. There is an urgent need to confirm how the Castle Gateway projects are to progress following a period of pause, and there is a clear opportunity to re-align project aims and objectives to ensure that they deliver outcomes for the city in accordance with the recently approved Council Plan and Our City Centre Vision.
86. A period of uncertainty where the projects were impacted by a number of macro-economic factors including: construction cost inflation, driving increases in delivery costs; rising interest rates impacting borrowing costs and housing market uncertainty, have all impacted the 2020 business case. It is also the case that delivery funding was not secured through 2-bidding rounds to central government for Levelling up Funding.
87. Accordingly, **Option 1** – is to approve the recommendations in the Report which clearly set out the next steps for all the current Castle Gateway Projects.
88. Other options include:

- **Option 2** - pausing all Castle Gateway projects for now and follow a do nothing approach; or
- **Option 3** - to select only certain projects to continue forward in the short time, while further work is carried out.

89. A new lease at the Coppergate Centre could be withheld as there is no requirement for the Council to grant one. However, the benefits outlined above which have been negotiated as part of the deal with the new owners, would be very unlikely to be realised should a “Do Nothing” option be preferred.

Analysis

90. Option 1 offers a clear way forward in accordance with the recently approved Council Plan and Our City Centre Vision; also responding to the reality that there is significantly less funding available to deliver the Castle Gateway projects. The recommendations allow the regeneration of the area to progress, see the projects aligning to reflect the Council Plan and deliver the masterplan objectives at an affordable cost.

91. Unlocking the regeneration of the Castle Gateway has always presented significant challenges to overcome. The interdependences between Schemes were an integral part of the previously approved delivery model, however, given new Council Plan priorities, including 100% affordable housing on Council sites, and the changed economic circumstances, preclude profit to cross fund projects in the Castle Gateway. To enable regeneration of the area to continue, a new delivery approach is needed, which breaks the interdependencies between the Schemes and through careful redesigns, reduces capital costs to secure early delivery.

92. The regeneration of the area has been informed by extensive engagement and shaped by a strong stakeholder group, with the technical expertise of Council officers. There is strong support to see this area transformed and the key principles of improving the heritage setting of key buildings in York, improving connectivity, providing a free attractive space for residents and visitors, along with greening the city are still part of the vision and supported by the engagement.

93. All other options involve further delay to decision making and additional costs being incurred in undertaking further work on the individual projects where this may not offer significant additional information or certainty to inform future decision making.

Organisational Impact and Implications

- **Financial**, contact: *Chief Finance Officer*.

The key Financial Implications are included within the Strategic Financial Implications. The most significant implication is the need to write off the abortive costs relating to the decision to cease development on the St George's Field site. A detailed analysis of payments made on the scheme will be undertaken to ensure those costs that we incurred designing the multi-storey car park and taking the scheme to planning are written back to revenue. This is anticipated to be up to £1m and will be accounted for at year end. This charge will impact the council's outturn position and update of which is reported elsewhere on the agenda. Whilst the decision provides a short-term negative impact on the council's finances it saves the council from future significant financial liabilities.

There is £4.6m of West Yorkshire Transport Funding towards the transport improvements of the scheme including bridge and associated pedestrian and cycle improvement works. In addition there is £4.4m of Council borrowing approved to fund the aspirations detailed in the report.

- **Human Resources (HR)**, contact: *Head of HR*.

There are no resource implications identified at the current time. Dependent upon the decisions that are made there may be staffing implications in future years which would be managed in accordance with Councils policies.

- **Legal**, contact: *Head of Legal Services*).

Contract & Procurement Law Implications:

Any external professional advice, consultant and/or design services required for any work relating to Castle Mills, St George's Field car park and/or Castle/Eye of York must be procurement in line with the Council's statutory obligations under the Procurement Regs and the

Council's CPRs, with advice and input from the Council's Legal Services and Commercial Procurement teams.

Theoretically, any LDA between the Council and Mahavir Properties Ltd. may also be subject to the Procurement Regs and the Council's CPRs as a "public works contract" and therefore may need to be subject to a formal procurement. Further advice from Legal Services and Commercial Procurement should be sought in due course.

"Public works contracts" are defined as public contracts which have as their objective any of the following:

- the execution, or both the design and execution, of works related to one of the activities listed in Sch. 2 of the Procurement Regs;
- the execution, or both the design and execution, of a work; or
- the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work.

A **"work"** is defined as *"the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function"*, e.g., an asset such as a building or road.

Normally any contract "for the acquisition or rental, by whatever financial means, of land, existing buildings or immovable property, or which concern interests in or rights over any of them" is exempt from the Procurement Regs. If the works are incidental to the main object of the contract, namely the land transaction, it is unlikely to constitute a public works contract; in other words where the scope and value of the works are insignificant to the total size and value of the land transaction, they may be considered incidental.

However, this may become more difficult to prove if:

- the works are valued over the relevant procurement threshold (i.e., worth over £5,336,937 (inc. VAT));
- the works are extensive in terms of scope;

- the work(s) must correspond to the Council's specified requirements and the Council exercises a "decisive influence" on the type or design of the work;
- the works are to proceed irrespective of the land transaction;
- the Council becomes the owner of all of part of the works;
- the Council holds a legal right over the use of the works, for example so that they are made available to the public; and
- the Council will enjoy economic advantages from the future use or transfer of the work, for example where it made a financial contribution to the works or assumed some of the project risks.

Based on the estimates and limited information provided to Legal Services at the time of writing this report, the estimated value of the works under the proposed LDA are currently c. £1,300,000. If this remains to be the case, then even though in Legal Services' view it is highly likely the LDA will meet the other requirements above for a public works contract, this will technically take the LDA completely outside of the Public Procurement Regime under Part 2 of the Procurement Regs.

In addition, given that the leaseholder/developer, Mahavir Properties Ltd. currently have a c. 100 years remaining on their lease at the property, one could potentially argue this would mean (even if Part 2 of the Procurement Regs were to apply for whatever reason) that the Council may be able to justify use of the negotiated procedure without prior publication under Reg 32(2)(b)(ii) of the Procurement Regs due to competition is absent for technical reasons (so long as we can still show that no reasonable alternative or substitute exists, and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement).

If the Procurement Regs were to apply, then there is the potential risk of challenge that there are insufficient technical reasons justifying the use of the negotiated procedure without publication of a notice in accordance with the Procurement Regs, and that the Council is seeking to circumvent the application of the procurement

rules. However, due to the reasons set out within this Report, this risk is considered to be low.

Furthermore, if the Procurement Regs were to apply, the risk of challenge against relying upon Reg 32(2)(b)(ii) could be mitigated by the publication of a Contract Award Notice on Find a Tender immediately after the decision to award the LDA has been taken and then waiting a minimum of 30-days prior to contract signature to see if any challenges are made as such challenges must be brought within 30-days of the date that an aggrieved party knew or ought to have known that a breach had occurred. It is advised that this step is taken.

Regulation 84 of the Procurement Regs is a measure which requires a full record to be kept of the stages of the procurement process. Therefore, where Reg 32(2)(b)(ii) is relied upon, a record needs to be kept of the circumstances which justify the use of the negotiated procedure without prior publication. This is also necessary so to fulfil requirements under Crown Commercial Services Public Procurement Note 1/20, which states that a written record which satisfies the test should be kept and contracting authorities should continue to achieve value for money and use good commercial judgement during any direct award.

Notwithstanding any of the above relating to the Procurement Regs, even if the LDA sits outside of the Public Procurement Regime the direct award of any LDA to Mahavir Properties Ltd. without any kind of procurement exercise beforehand will still require a waiver of Rules 11.1.3(iii) and 11.4 of the Council's CPRs. This can either be:

- via an Executive Decision further to Rules 8.11 and 26.1 of the Council's CPRs; or
- via a waiver request under Rule 26.2.1 and 26.2.6 of the Council's CPRs.

Notwithstanding any of the above relating to the Procurement Regs and the Council's CPRs, further advice from Legal Services will still be necessary on the drafting and conclusion of any proposed LDA, and if the circumstances subsequently change so that the Procurement Regs do in fact apply to LDA, then advice will be needed from both from Commercial Procurement and Legal Services on any relevant tender documentation and process to ensure that such an agreement is set up properly in compliance with the Public Procurement Regime.

Any additional grant funding arrangements, or amendments to existing arrangements, with WYCA or any other funders will need to be reviewed and vetted by Legal Services to that the funding terms and conditions are acceptable and to ensure compliance with the Subsidy Control Act 2022.

Property Law Implications:

It is understood that the sites of the Coppergate Centre and 17-21 Piccadilly are both held by the Council as General Fund assets (rather than Housing Revenue Account/HRA assets)

The Council has the following statutory powers:

- Pursuant to Section 123 of the Local Government Act 1972, to dispose of any General Fund/non-HRA land held by the Council (including granting a lease of it). Although Section 123 requires that the consent of the Secretary of State for Housing, Communities and Local Government be obtained for a disposal at a consideration (price) less than best reasonably obtained, such consent is automatically given for the disposal of General Fund/non-HRA land by a General Consent Order where both of the following conditions are satisfied:
 - the Council considers that the disposal will contribute to the promotion or improvement of the economic, environmental, or social well-being of its area; and
 - the difference/shortfall between the consideration/monetary receipt obtained and best consideration amount does not exceed c. £2,000,000.
- Pursuant to Section 120 of the Local Government Act 1972, to acquire land for the purposes of any of the Council's functions or for the purpose of the benefit, improvement, or development of the Council's area.

As the proposed LDA recommended to be negotiated and entered into the Council and Mahavir Properties Ltd. would contain provisions obliging Mahavir Properties Ltd.to:

- (i) Use their reasonable endeavours to obtain planning permission (on terms satisfactory to Mahavir Properties Ltd. acting reasonably) for the proposed improvement works to St Mary's Square;
- (ii) Commence and complete such improvements works within a specified period subject to, and after, obtaining satisfactory planning permission;

As the Council would be obtaining (upon completion of the proposed improvement works by Mahavir Properties Ltd.:

- (i) a surrender of Mahavir Properties Ltd.'s existing headlease of (and also of any subleases/subtenant rights over) agreed part of the service; and
- (ii) a surrender of Mahavir Properties Ltd.'s existing headlease of the remainder of the site of the Coppergate Centre in return for granting Mahavir Properties Ltd. new 250-year headlease of the Coppergate Centre),

these proposed surrenders would be acquisitions of land by the Council. Therefore, the amount/value of any 'consideration' or deemed consideration (whether monetary or non-monetary in nature) paid/given by the Council in return for obtaining such surrenders may attract Stamp Duty Land Tax ("**SDLT**") and result in the Council becoming liable to pay SDLT to HM Revenue & Customs ("**HMRC**"). However, the grant of any lease by a landlord to the same tenant in return for that tenant having surrendered their previous lease from that landlord is not classed as "chargeable consideration" for obtaining a surrender of the previous lease and so the Council should not be liable to pay any SDLT to HMRC.

- ***Procurement***

Any proposed works or services will need to be commissioned via a compliant procurement route under the Council's Contract Procedure Rules and where applicable, the Public Contract Regulations 2015. All tenders will need to be conducted in an open, fair, and transparent way to capture the key principles of procurement and to achieve all required outcomes of the project. Procurement will recommend market engagement events to seek advice on market conditions to allow the council to create attractive,

realistic and deliverable procurements. Further advice regarding the procurement routes, strategies and markets must be sought from the Commercial Procurement team.

- ***Health and Wellbeing***, contact: *Director of Public Health*.

The matters discussed in the report broadly reflect the Health and Wellbeing strategies for the city. There is a perceived positive impact on health and wellbeing, however a desk top Health Impact Assessment if not already completed should be factored into the project planning and undertaken in due course to highlight and analyse the health impacts and where required offer mitigation within the projects going forward.

Each scheme of works has green areas and play space access outlined, and, in the detail of the design, we would hope the strategic health and wellbeing ambitions for the council are reflected: Reduction of smoking and working towards a smoke free city, reduction in the consumption of alcohol. Well-lit and accessible play spaces which are available for all to use, including women and girls and older adults.

- ***Environment and Climate action***

Exploration of longer-term opportunities for the future delivery of 100% affordable housing at Castle Mills should not compromise on the sustainability of new developments, which should aim to be operationally net zero carbon and minimise embodied carbon associated with construction.

The proposal for St George's Field Car Park will avoid embodied carbon emissions from a new MSCP construction. Any future development will need to consider contributions towards reducing carbon emissions associated with the city's transport system.

The updated business case for a revised Castle Gateway Masterplan should include a Carbon Impact Assessment for proposed options, in line with the objectives of the Local Transport Plan and Climate Change Strategy

The proposals set out within this Report are in line with the Council's Plans. York's Climate Change Strategy identifies that 28% of emissions are from transport and that we should be seeking to reduce overall travel miles and increase uptake of active travel and public transport. It also fits with the transport objectives of the Local Transport Strategy approved at Executive in October in that the proposals support an inclusive, accessible, affordable city, support delivery of the Climate Change Strategy, support delivery of the Economic Development Strategy, improve health and wellbeing through healthy place shaping, improve the local environment by reducing air pollution and noise and protect the city's heritage and enhance public spaces.

- ***Affordability,***

These proposals secure ongoing security for small, diverse and vibrant businesses in Spark as well as exploring opportunities for more affordable housing in the city. The improvements to the public realm will provide free spaces for all ages to enjoy.

- ***Equalities and Human Rights,***

The Council recognises, and needs to take into account its Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority's functions).

A high-level Equalities Impact Assessment has been carried out and is annexed to this report at **Annex A**.

There are no equalities implications identified in respect of the matters discussed in this report. However, an Equalities Impact Assessment will be carried out for each project in due course and the process of consulting on the recommendations in this report will

identify any equalities implications on a case-by-case basis, and these will be addressed in future reports.

- ***Data Protection and Privacy***

Data protection impact assessments (“DPIAs”) are an essential part of our accountability obligations and is a legal requirement for any type of processing under UK GDPR. Failure to carry out a DPIA when required may leave the council open to enforcement action, including monetary penalties or fines. DPIAs helps us to assess and demonstrate how we comply with all of our data protection obligations. It does not have to eradicate all risks but should help to minimise and determine whether the level of risk is acceptable in the circumstances, considering the benefits of what the council wants to achieve. As there is no personal data, special categories of personal data or criminal offence data being processed to inform the Castle Gateway Update Report, there is no requirement to complete a DPIA. This is evidenced by completion of DPIA screening questions. (see Annex B – Data protection implication form).

- ***Economy***

York city centre is home to around a quarter of York’s businesses and is a key attractor of inward investment and business growth. Castle Gateway and the Eye of York, including the Castle and St Georges Field car parks, are important entry points and facilitate our vibrant city centre economy. The measures set out in this report support the delivery of the York Economic Strategy 2022-2032 and the involvement of the York Economic Partnership in shaping future delivery of the Our City Centre Vision will ensure continued close alignment with city and business priorities.

- ***Communications***

Significant work has been done to support the project to date, including on the ‘my castle gateway’ process and in explaining the project and its ambitions. Further communications support will be required to provide an update on the project to all of our stakeholders, outline next steps and support any future engagement work, should this be necessary.

- **Property** – Head of Property – Property implications are included within the main body of the report.

Risks and Mitigations

94. The principal risks associated with the Castle Gateway project at this stage are reputational and non-delivery. This is why re-evaluating the projects as proposed in this report is necessary, so that the regeneration of this area can progress and is not further stalled.
95. There is a risk that having engaged extensively and raised expectations amongst the public, the change of approach will not fully deliver initial expectations. However, the bigger risk to the city is not to change the delivery approach and see the regeneration of the area continue to stall. The key principles remain and are embedded in the over-arching delivery aims for delivery which should mitigate this risk.

Wards Impacted

All wards

Contact details:

For further information please contact the authors of this Decision Report.

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Background papers

Report to the Executive, 'York's Southern Gateway,' October 2015
<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=733&MId=>

Report to the Executive, 'York Castle Gateway,' January 2017
<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=733&MId=9309>

Report to the Executive, 'The Castle Gateway Masterplan,' April 2018
<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=733&MId=10197&Ver=4>

Report to the Executive, 'Castle Gateway phase one delivery strategy,' January 2020
<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=733&MId=11115&Ver=4>

Report to the Executive, 'Update on Castle Gateway and Business Case Review,' October 2020
<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=733&MId=12297&Ver=4>

Report to the Executive 'Castle Gateway Update' June 2022
<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=733&MId=13287&Ver=4>

Annexes

Annex A - Summary EIA
 Annex B - Data Protection Implications Form

Further Annexes – as below -

Annex C - Overview of proposed approach
 Annex D - Extent of Castle Gateway Masterplan Area Plan
 Annex E – 17 - 19 Piccadilly location plan
 Annex F - Castle Mills site plan with Foss Bridge / ped / cycle link

Annex G - Castle / Eye of York planning app red line
Annex H – Extent of Coppergate Centre
Annex I - Land surrender plan rear of Coppergate
Annex J - Coppergate proposed improvements.

Confidential Annex

Annex K – Coppergate Centre Valuation Advice