

**Executive**

**16 June 2022**

Report of the Corporate Director of Place  
Portfolio of the Executive Member for Finance and Performance

## **Castle Gateway update**

### **Summary**

1. This report provides a comprehensive update on the regeneration of the Castle Gateway and sets out the next delivery stages. The heart of the masterplan is the new Castle and Eye of York public realm and events space that will replace Castle Car Park. The designs for this world-class public space have been shared extensively and refined in response to public and stakeholder engagement and will be considered by planning committee in July. The project will, subject to Member approval, form part of the Council's Levelling Up Fund round two bid, which will be submitted on the 6th July 2022, with successful bids announced in the autumn. The recent completion of the English Heritage restoration of Clifford's Tower and new plaza area has provided an exciting glimpse of how the Castle and Eye of York will be transformed once the full ambition of the regeneration has been realised.
2. The Castle Mills site, which will create a new riverside park, pedestrian/cycle bridge, and new apartments that help to fund the wider masterplan's public benefits, has been subject to delays during the detailed design and costing process. The Council entered into a NEC3 Professional Services Short Form Contract ("**NEC3 PSSC**") with Wates Construction Limited ("**Wates**") to develop the RIBA Stage 3 design into a RIBA Stage 4 design, accompanied by a costed proposal for construction. COVID-19, Brexit and rising inflation have created significant cost pressures and supply chain uncertainty, which have made sub-contractor pricing of construction packages challenging. The design evolution process identified further challenges, which were not resolved to the Council's satisfaction, and as a result this has led to the Council terminating the NEC3 PSSC, and will now need to procure a new contractor. This delay will mean that the detailed design, construction tender price, and subsequent Executive decision to proceed

with construction will not be ready until summer 2023, although sufficient progress has been made on the new bridge to enable progress with the associated statutory processes in the meantime.

3. Castle Mills is the primary funding stream for other elements of the masterplan and this delay means that no decision on the optimum replacement car parking options that allow Castle Car Park to close is required until summer 2023. Deferring this decision provides the opportunity to collect more car parking data, engage further with city centre stakeholders, and assess all other options to identify a suitable replacement parking solution for the closure of Castle Car Park. This will ensure the Council adopts the best delivery strategy for the Castle Gateway masterplan.

## Recommendations

4. The Executive is asked to:

- 1) Note the inclusion of the new public realm at Castle and Eye of York in the Council's round two Levelling Up Fund bid.

**Reason:** To seek additional funding to deliver the Castle Gateway regeneration.

- 2) Instruct officers, subject to planning permission being secured, to prepare tender documents to procure a contractor for Castle and Eye of York so that the procurement is ready to proceed should the Levelling Up Fund bid be successful.

**Reason:** To ensure the Castle and Eye of York project is able to deliver within the Levelling Up Fund timeframes.

- 3) Note the termination of the NEC3 PSSC with Wates to produce a RIBA Stage 4 design and construction price for Castle Mills.

**Reason:** Note that the Council have not been able to reach a satisfactory outcome on identified challenges, and are in the process of terminating the NEC3 PSSC.

- 4) Delegate to the Corporate Director of Place (in consultation with the Director of Governance) the authority to take such steps as are necessary to procure a construction contractor to complete the detail

design/costing and subsequent construction of the proposed apartments, pedestrian/cycle bridge and riverside park at Castle Mills, and bring a further report to Executive on the Castle Mills business case before proceeding into the construction contract based upon tendered price.

**Reason:** To allow the delivery of the Castle Mills project and the Castle Gateway regeneration on a 2 phase re-procurement basis to secure firm prices before commencing construction.

- 5) Delegate to the Corporate Director of Place the submission of details to secure the necessary statutory consent under s106 of the Highways Act 1980 from the Secretary of State for the new bridge over the Foss navigation and to enter in to a build over agreement with Yorkshire Water in respect of the sewer running across the Castle Mills development.

**Reason:** To secure the necessary approvals to allow Castle Mills to proceed.

- 6) Defer the decision on whether to build a multi-storey car park (“**MSCP**”) at St George’s Field until the Executive have a construction price for Castle Mills.

**Reason:** Deferring until the inter-related point in time when a construction price is agreed for Castle Mills would allow further evidence to be collected to inform a decision on whether the MSCP still represents the best alternative replacement parking solution for the closure of Castle Car Park.

- 7) Instruct officers to collect more data on parking demand, further engage with city centre businesses and stakeholders, and explore alternative options to maximise surface car parking provision at St George’s Field to inform the future decision on car parking replacement.

**Reason:** To provide further information and enable consultation with city centre businesses and scrutiny to inform consideration of replacement parking solutions to allow the closure of Castle Car Park.

## Background

5. In April 2018, the Executive approved the Castle Gateway masterplan to transform a large area of the city centre that had endured decades of failed private sector regeneration proposals. By placing the public and stakeholders at the heart of the development and visioning process through the innovative My Castle Gateway engagement project, the masterplan gained widespread public and cross-party political support. The proposals were to create new high quality public realm and event spaces, significantly improve the setting of heritage assets, improve cycle and pedestrian routes throughout the area, and reduce and consolidate two large surface level car parks in to a modern MSCP outside of the inner-ring road.
6. The business case and delivery strategy for the first delivery phase was approved in January 2020. This phase included many of the key public benefits of the transformative masterplan, including a new footbridge and pedestrian and cycle routes, a riverside public park, and new apartments and commercial spaces at Castle Mills; and a MSCP at St George's Field to replace Castle Car Park, which would become new high-quality public realm in Phase Two.
7. Having considered a number of delivery options with different financial and delivery risk profiles, the Executive approved the Council taking the lead to deliver the project and acting as developer for the whole of phase one. The commercial return from the sale of apartments would then repay the majority of the upfront investment, with a small project viability gap to be met by the Council. Given the magnitude of the upfront investment, it was agreed to undertake a staged approach to decision making, with the full commitment to the investment only being made once actual construction costs were received for Castle Mills and St George's Field. To that end, the Executive approved the procurement of separate construction contractors to undertake the RIBA Stage 4 design of St George's Field and Castle Mills and provide tender prices for the build phases. These tender submissions would then enable the Executive to make an informed decision based on actual costs, and to finalise the budget in late 2020.
8. Following the Executive meeting, officers proceeded with the preparation of the procurement for St George's Field and Castle Mills alongside the on-going planning determination process. However, in March 2020 in response to the impact of COVID-19, the Council put all procurement on hold and instigated a review of the business case and delivery models

for all major projects. This led to a fundamental review of the Castle Gateway regeneration to understand if the project principles remain valid, the business case remains viable, and if the delivery strategy needed to be revised.

9. The outcome of this review in October 2020 was to continue as planned with the procurement of a construction partner for the Castle Mills apartments. However, whilst the Executive reiterated its commitment to providing parking to replace the closure of Castle Car Park, the procurement of a construction partner for the new multi-storey car park at St George's Field was paused until the impact of COVID-19, reviews of Council car parking locations, and the availability of more detailed data from the new pay on exit systems would provide clarity as to whether that proposal remained the best replacement parking solution. Similarly, a future decision on whether the Council should develop or dispose of 17-21 Piccadilly was also delayed until market conditions became clearer.
10. Since the last Executive decision, planning permission has been secured for both Castle Mills and St George's Field MSCP, and £4m of West Yorkshire Transport Funding ("**WYTF**") has outline business case approval secured for the new pedestrian/cycle footbridge and connecting riverside cycle route at Castle Mills. However, these elements can only be delivered as part of the Castle Mills apartments due to the key connecting bridge being an integral part of the apartment construction.

## **Castle Mills**

11. Following the approval to recommence the paused procurement of a contractor for Castle Mills in October 2020, a full open market procurement process was undertaken, with Wates being appointed in May 2021. The structure of the contract was in two stages; the first was a NEC3 PSSC to progress existing RIBA Stage 3 designs to a detailed RIBA Stage 4 design and to provide a construction tender price based on those designs. The Council's appointed architects, Building Design Partnership Limited ("**BDP**"), were to be novated to the contractor to undertake the design work. On receipt of a satisfactory tender price, the Council would then formally commit to the construction phase, and enter a NEC3 Engineering and Construction Contract ("**NEC3 ECC**"). However, the Council would **only** issue the NEC3 ECC **if** the price was acceptable and the Council were satisfied with the detailed design produced. The NEC3 PSSC also made it clear that if the Council did not enter into the NEC3 ECC for whatever reason, the Council would not be

responsible and would have no liability for any loss of profit or any other losses suffered or incurred by Wates arising because of the NEC3 ECC not being entered into. Further, the Council's liability under the NEC3 PSSC would be strictly limited to any sums due under terms and conditions of the NEC3 PSSC.

12. The RIBA Stage 4 work with Wates commenced in late spring 2021, based on the approved RIBA Stage 3 Design that was granted planning approval in December 2020, with the intention to have produced a final design and construction price in late 2021. However, due to a combination of price volatility, high demand and material shortage owing to COVID-19 and Brexit, and challenges in arriving at design solutions that were acceptable to the Council, this process encountered significant delays. Having explored all available options the Council decided to exercise its right to terminate the NEC3 PSSC. This process remains subject to the on-going termination process and contractual and legal discussions between the parties. The Council has taken extensive legal advice to confirm and safeguard its position.
13. Whilst this is a disappointing outcome, it highlights the Council's prudent approach to procurement. By adopting the two-stage strategy it enabled design issues to be drawn out in the initial stage of the Castle Mills project, and rigorous assessment as to whether to proceed has enabled affirmative action to be taken. Elements of the RIBA Stage 4 design that the council deems to have been satisfactorily completed, including the bridge, drainage and highways designs, would be usable in any further design work.
14. Once the Council terminates the NEC3 PSSC with Wates, a new procurement exercise to appoint an alternative contractor is required. Having considered the various alternative procurement routes, it is proposed to replicate the two-stage approach applied previously, which has proved invaluable in allowing issues to emerge before entering in to the full construction phase of the project. Soft market engagement with contractors has also confirmed that a two-stage approach remains the industry preference given the high market demand, reducing the abortive costs of a full single stage costed tender for contractors, and allowing risk to be priced dynamically and minimised based on accurate designs. Wherever possible the RIBA 4 design work undertaken to date that is complete will be incorporated in to the new tender pack to reduce replication of work.

15. The need to procure a new contractor and restart the RIBA Stage 4 design process will result in a significant delay to the project. The procurement process, including the preparation of new tender documentation, is estimated to take 6 months; the RIBA Stage 4 design 6 months; with a further 6 weeks to confirm the construction costs. Consequently, the final tender price that would enable Executive to commit to the construction phase will not be available until summer 2023. At this point the actual tender price will allow a final review of project viability, supported by updated sale values to ensure the commercial return remains within the Castle Gateway project business case budget envelope (see risk section). If the construction phase is approved this would mean a start on site in autumn 2023.

### **St George's Field**

16. The masterplan proposals for St George's Field were to consolidate the large surface level car park in to a land efficient MSCP, offsetting some of the lost car parking from Castle Car Park outside of the inner-ring road and creating a flood resilient car park with raised access at first floor level and high levels of Electric Vehicle charging. The space created at St George's from the closure of the existing surface level car park would then be repurposed as a new riverside park area, the creation of a new cycle route from the south through the site, and 52 new apartments built adjacent to the floodwall that separates the car park from the Foss Basin.
17. In January 2020, Executive approved the procurement of a construction partner on the same two-staged strategy as Castle Mills. Following the business case review necessitated by COVID-19 it was agreed to pause that procurement until the impacts on car parking of the pandemic became clear. Subsequently, in November 2020 the Executive commissioned a strategic review of Council car parks as part of decisions relating to the city centre footstreets, in part to assist future decisions on the MSCP. The review was approved by Executive in November 2021, and concluded that car parking demand had returned to and was exceeding pre-COVID-19 levels, and identified St George's Field as a priority car park location given it is outside the inner-ring road, is not accessed through residential streets, and has no alternative development use.
18. However, the review was also clear that the hierarchy of car parks is simply a tool to indicate priority car parks for investment, and which car parks may be appropriate for alternative uses should demand decline. It was not a definitive decision making tool, and any future decisions on

investment or alternative uses would need to be subject to individual business cases and Executive decisions. Consequently, any decision to proceed with a MSCP at St George's Field would need to be accompanied with a full strategic business case, which was proposed to be brought back to the Executive in February 2022 alongside the decisions relating to Castle Mills. During this period, the issues were also considered by scrutiny committee, with further pre-decision scrutiny agreed to take place on the replacement car parking solutions before any Executive decision is taken.

19. The decision to terminate the Castle Mills NEC3 PSSC with Wates means that the next decision point on Castle Mills – to proceed with construction – will not take place until summer 2023. As the MSCP was to be funded through the profit from Castle Mills, even if the strategic business case was approved for an MSCP, delivery could not proceed until there is certainty of Castle Mills also proceeding. Consequently, the delay to Castle Mills requires a delay to the MSCP decision which represents a prudent, measured approach to decision making and enables the following:
  - the collection of further data on car park usage;
  - further engagement with city centre businesses and stakeholder on car parking needs; and
  - consideration of alternative options to maximise car parking provision at St George's Field to offset the closure of Castle Car Park, which would also be considered at pre-decision scrutiny.
  
20. Regarding the first bullet point above, any decision can be improved by having more up to date data. Whilst a variety of mechanisms are applied to assess usage of Council car parks, this historically has not been a core metric analysed in its own right as part of the Council's business intelligence or monitoring functions. As a result, data has not been available in a full and consistent manner over a meaningful period of time. There is information held on car park income, and car park usage has been analysed manually through CCTV since May 2020, but these do not provide a clear and consistent data set, and the strategic review of parking noted that data could be improved. To that end, to reflect the need to improve data an officer decision was taken in May 2022 to install car park counters across the parking estate and upgrade the relevant software to collect the data, and the first counters are already operational. The Council are also working with the Business Improvement District ("**BID**") to expand the Moving Insights data that uses O2 and Visa spend to assess city centre usage, to include



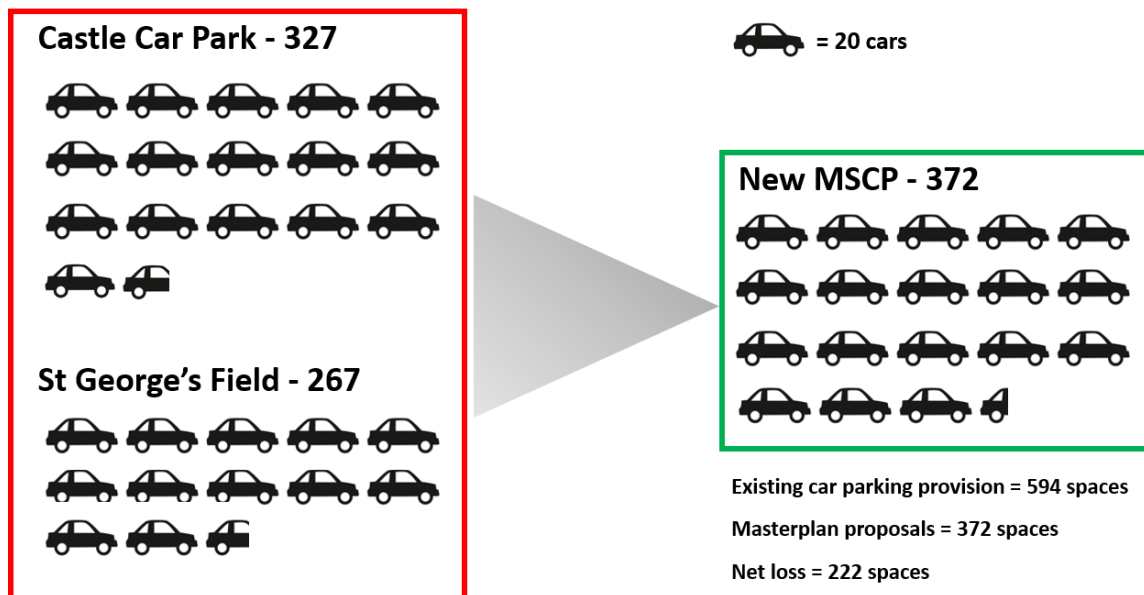
assessments of car parking usage. This, coupled with data from pay on exit that has been installed at Coppergate and Marygate car parks, will provide an improved evidence base collected over a longer period of time to inform future decisions.

21. The second advantage of delaying the decision is that it will allow further engagement with city centre businesses and stakeholders. Whilst there are differing views within these groups as to the needs for car parking, the majority of representative groups remain of the view that car parking plays an important role in a successful city centre economy. The masterplan was only supported by York Retail Forum in 2018 on the basis that the MSCP was built to replace Castle Car Park. The BID board, which represents 915 city centre businesses, has recently reiterated their formal position that their previous support for the masterplan had been predicated on the MSCP, and their ongoing support for the closure of Castle Car Park is now conditional on an acceptable replacement car parking solution being delivered.
22. However, it is important that the on-going debate on car parking is fully informed, through improving parking data as above, but also reviewing what has changed since the masterplan approval. There are two main changes that have taken place since 2018. Firstly, the MSCP had to reduce in size to secure planning permission. This meant that instead of the proposed 400 space MSCP the actual planning permission is for a 372 spaces.
23. The second change is that the number of car parking spaces at the two car parks that were proposed to be closed has changed, particularly at St George's Field. Until earlier this year St George's Field's capacity was only 150 spaces. In the first instance this was a temporary reduction resulting from the ongoing Environment Agency works to the Foss Flood Barrier, which have now completed. However, the crucial point is that the masterplan didn't just propose a MSCP for the St George's Field. The site was also expected to accommodate 52 apartments which also would have taken up existing car parking capacity and limiting any alternative surface, meaning the actual number of potential surface level parking spaces being replaced would still have been 150, even once the Foss Flood Barrier works had completed.
24. However, during the detailed development of the masterplan it has now become apparent that no technical solution can be identified for the proposed apartments that would satisfy the Environment Agency's requirements for a building on functioning flood plain. As a consequence

the plans for the apartments is not being progressed. Coupled with the now complete Foss Flood Barrier taking up less space than previously expected it means that retaining the surface level car park would now provide the existing 267 car park spaces, alongside 27 coach bays.

25. This evolution of the masterplan now means that the position regarding car parking numbers has now changed. At masterplan stage the new 400 space MSCP was replacing a 150 space surface level car park, creating 250 additional spaces. However, now with the loss of the apartments and the reduction in height of the MSCP through planning the new 372 space MSCP would replace a 267 space surface level car park, creating only an additional 105 spaces.

Figure 1 – the current position if the MSCP proceeds



26. Under the MSCP solution, there would be a net loss of 222 car spaces, whilst the failure to deliver any replacement car parking solution for Castle Car Park would see a loss of 327 spaces. If a decision was taken in the future not to build the MSCP, then there would need to be confidence in businesses that a reduction in spaces from the previously supported MSCP solution of 372 spaces would not harm the economic success and recovery of the city centre. Not proceeding with the MSCP would avoid a capital cost, but could see parking reduced to a level which may harm the city centre economy.

27. It is important to note that these high level numbers also do not reflect usage or, importantly, the proportion of time when parking is at capacity. This picture will be better understood after analysis of new data from parking counters.
28. Articulating what has changed and ensuring public clarity and transparency is the first key step in facilitating the debate with city centre stakeholders, and it is proposed to use the period of delay to enable further engagement. Consequently it is proposed that officers work with representative and stakeholder groups to consider the above and seek to build consensus on the best approach.
29. The third opportunity in delaying a decision on the MSCP would be to allow the exploration of whether the number of spaces could be increased further at St George's Field without building a MSCP. It should be noted that this could impact on other public benefits at the site such as the proposed riverside public park area and new cycle routes.
30. In summary, all of the above would benefit from delaying a decision on the MSCP, allowing exploration and refinement of the available replacement car parking solutions that will deliver the clear ongoing commitment and desire to close Castle Car Park to create the new public realm and event space that sits at the heart of the masterplan.

## **Castle and Eye of York**

31. Work has progressed significantly on the Castle and Eye of York area and a planning application for the new public realm and event space is due to be considered by planning committee in July. 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. Following feedback on the initial proposals, there have been a number of revisions, including the retention of the central oak tree at the Eye of York, the inclusion of more green space, and additional disabled parking bays at Tower Street. Following guidance from security consultants and the police, Hostile Vehicle Mitigation measures have been introduced, and access arrangements incorporated to meet the operational requirements of the Crown Court following discussions with Her Majesty's Courts and Tribunals Service and the judiciary.
32. Alongside the planning process, the first phase of transformation of the area has been delivered with the reopening of Clifford's Tower following English Heritage's £5m restoration project. The project has received

universal acclaim and has allowed a completely new appreciation and understanding of the Tower's history, and safeguarded its future by protecting the internal structure from the elements. The new entrance plaza at the base of the stairs leading up to the Tower offers a glimpse of how the proposed wider public realm will transform the whole space and allow a complete interpretation of the area in a car free setting. In response to the completion of the project, and working with English Heritage, the planning application has now been updated to incorporate the completed entrance plaza and seating and the repositioning of some of the proposed tree planting away from the entrance.

33. The delivery of the Castle and Eye of York will form part of the Council's round two Levelling Up Fund bid. Approval to submit this bid is sought as part of another report being considered by Executive on the same agenda. The bid will need to be submitted by 6<sup>th</sup> July, and successful bids are expected to be announced by central government in the autumn. The bid will build upon the round one bid which was unsuccessful, primarily as York is identified as a tier 3 area for investment, the lowest priority band. However, detailed feedback on the round one bid was that it was a very strong contender and the Council have been strongly encouraged to resubmit the same bid in round two with some refinements, and it was noted that there were 6 other tier 3 areas across the country that did secure funding in round one.
34. The key criteria to be noted in Levelling Up round two funding is that projects must be completed by March 2025, or by exception 2026. Castle and Eye of York could be completed within those timescales, and project deliverability is a key strength of the bid given that by July 2020 it will hopefully have planning permission. However, if the £10m of external funding is secured through this route, the closure of Castle Car Park would need to have taken place by early 2024 at the latest to allow for the 12 month construction period and completion by March 2025. Consequently, a decision on the replacement car parking solution could take place in summer 2023, as proposed in this report. However, in accepting the Levelling Up Funding, it should be noted that Executive would need to commit to the closure of Castle Car Park within those timeframes. The benefit of having £10m external funding would represent a significant change to the business case and would therefore warrant a review of the delivery strategy at that point in any case.
35. Given these timescales it is recommended that officers prepare tender documents and a procurement strategy for Castle and Eye of York so that the project is ready to proceed should the Levelling Up bid be

successful. If Executive accepted the funding the procurement process could commence immediately, ensuring – and evidenced in the bid documentation – the Council’s ability to deliver the world class public realm and event space by March 2025.

## **Consultation**

36. The Castle Gateway regeneration continues to engage extensively with the public, residents and communities through the My Castle Gateway project. The plans for the Castle and Eye of York have been shared through multiple media platforms and at in-person events, including Facebook live Q&As, and the final plans being considered by planning committee have revised and refined in response to public feedback. The overarching regeneration masterplan also continues to be overseen by the Castle Gateway Advisory Group that is comprised of key stakeholders and meets on a bi-monthly basis.
37. A 1,335 signatory petition was presented to full Council by Councillor Kilbane in April 2022 which called for the deferral of any decision on St George’s Field MSCP. The recommendations in this report, which have been shaped over a long period of wider stakeholder engagement and through consideration by scrutiny committees, are unaffected by this petition. Any future Executive decisions will also be subject to pre-decision scrutiny.

## **Council Plan**

38. The regeneration of the Castle Gateway is one of the priorities set out in the Making History, Building Communities 2019-23 Council Plan. The proposals will help contribute to meeting all eight of the plan’s core outcomes, and significantly improve an area of the city that is home to many of our heritage assets and cultural institutions. The focus on relocating car parking and creating new pedestrian and cycle links will help create a greener and cleaner city and enable people to get around sustainably. New homes will be created on Piccadilly and new bridges and public realm will create world class infrastructure, bringing back in to use vacant sites and driving the vibrancy of the area which will help to build strong, sustainable communities within the city walls. Continuing with the delivery of the masterplan will reaffirm the Council’s commitment to engaging residents and investing in shaping our city for the future.

## Implications

39. The following implications have been identified:

- **Financial**

The Council has approved £5.4m funding towards the development of the Castle Gateway Scheme

Executive Date	Value £'000	Purpose
February 2016	180	Demolition of Castle Mills Car Park
February 2017	100	Castle Museum Masterplan
June 2017	38	Land Purchase
April 2018	2,400	Castle Gateway Masterplanning
January 2020	2,682	Delivery of phase one
Var	8	Project Assurance Budgets (with charges)
	5,408	

To date expenditure has totalled £3,483k leaving a budget of £1,925k that is carried forward into 2022/23. It is considered that this budget is sufficient to deliver the recommendations laid out in this report and progress the scheme to the next decision point, which will detail the expected costs of the Castle Mills development.

In addition to the above there has been a further £3.5m of CYC funding released for the future capital delivery of the Castle Gateway from the York Outer Ring Road Project (“YORR”) due to a switch of WYTF to that project, as reported in the capital monitor 3 (Feb 2022).

It should be noted that the funding agreed in January 2020 was been proposed to fund a sewer diversion (£532k) to facilitate the MSCP, and a further proportion for RIBA Stage 4 design and procurement of a contractor for the MSCP. This work has been deferred, and as such it is proposed to be utilised to develop the other elements of the Castle Gateway regeneration (Castle Mills/ Castle and Eye of York). Should Members agree to the recommencement of the MSCP the revised business case and funding will need to be agreed at that time including the funding that has been repurposed.

- **Human Resources (HR)** – none identified

- **One Planet Council / Equalities** – this report is an update on an ongoing project that does not materially impact on previous Equality Impact Assessments (“**EIA**”) of the Castle Gateway regeneration.

The inclusion of Castle Mills in the Levelling Up Fund bid is set out in another report on that matter to be considered by Executive on the same agenda with an accompanying EIA. The decision to procure a contractor to recommence the RIBA Stage 4 design has no material equality impacts beyond previous decisions to proceed with the project.

Any future formal Executive decisions that would be required on replacement car parking provision or the closure of Castle Car Park will be accompanied with full EIAs.

- **Legal**

Concerning the termination of the Castle Mills NEC3 PSSC with Wates:

- The Council’s Contract Procedure Rules require that where the Council proposes to terminate a contract:
  - officers must consult with Legal Services throughout the termination process.

The Executive should note that Legal Services have been involved since the issue of termination was first raised, and that officers have also sought additional advice and support from the Council’s duly appointed external solicitors for this matter – Bevan Brittan LLP (“**BB**”) – and the Council’s appointed project manager and costs management consultant, Turner and Townsend Cost Management (“**T&T**”) on this issue;

- it will only be possible for Contracts to be terminated early, where provided for within the Contract (see below), and if this action is authorised by the relevant Chief Officer through a Delegated Decision;
- a copy of the report and decision for termination of any Contract exceeding £100,000 in aggregate for the whole of

the contract period (including any extensions) must be sent to the Chief Procurement Officer for monitoring purposes; and

- subject to the above action being taken, any formal notice to terminate must be drafted and issued via Legal Services, in conjunction with the Authorised Officer. The wording of the notice will be determined in due course by Legal Services (in conjunction with external advisers), to ensure that the Council properly safeguards its position and correctly enforces its rights under the NEC3 PSSC.
- The NEC3 PSSC allows the Council to either terminate:
  - at will, for no other reason except that the Council no longer requires Wates' services under the NEC3 PSSC; or
  - in the event that Wates is in breach of the terms and conditions of the NEC3 PSSC, and has not put this right within four weeks of a notification by the Council.
- Upon termination of the NEC3 PSSC, Wates will be required to cease all work under the NEC3 PSSC, and provide the Council with any models, drawings, details, plans, sketches, CAD, material, analyses, estimates, budgets, reports, valuations, notes of meetings, specifications, bills of quantities, calculations and other documents of any nature whatsoever and any designs and inventions contained in them which have been or are hereafter prepared by or on behalf of the Consultant in the course of performing its obligations under the NEC3 PSSC, in accordance with the licensing and intellectual property clauses under the NEC3 PSSC.
- The Council may complete the pre-construction services themselves, or procure other people or organisations to do so and use any material to which he has title. At the same time, any new replacement contract will need to be subject to a brand new competitive tender process carried out in accordance with the Part 2 of the Public Contract Regulations 2015 and the Council's Contract Procedure Rules, with input and advice from Legal Services, the Procurement Team, and where necessary external advisers.



- A final negotiated payment will be made to Wates as soon as possible after termination. This amount will include:
  - an amount assessed by T&T as being due for normal payment under the NEC3 PSSC; and
  - any other costs T&T have assessed as reasonably incurred by the Consultant in expectation of completing the services and to which the Consultant is committed.

However, if the Council terminates due to any default by Wates, the amount due on termination will also a deduction assessed by T&T as the forecast additional cost to the Council for completing the services itself, or for having a replacement contractor complete the services on its behalf.

- Again, it is important to note that:
  - The NEC3 PSSC makes it clear that if the Council terminates and does not enter into the NEC3 ECC with Wates for the construction phase, the Council would not be responsible and would have no liability for any loss of profit or any other losses suffered or incurred by Wates arising because of the NEC3 ECC not being entered into.
  - Further, the Council's liability under the NEC3 PSSC would be strictly limited to any sums due under terms and conditions of the NEC3 PSSC. In addition, the Council shall not be liable to Wates for loss of profit, loss of any contract or for any indirect or consequential loss or damage that may be suffered by Wates because of termination of the NEC3 PSSC.
- As stated elsewhere within this report, the termination of the NEC3 PSSC with Wates will be subject to on-going contractual and legal discussions between the parties, as well as advice from Legal Services and where necessary our appointed external lawyers at BB and our cost management consultants and project managers at T&T. Such advice will be particularly critical going forward concerning the negotiation and agreement of the final payment due to Wates following termination, and if matters between the parties were to unfortunately escalate into a formal dispute necessitating adjudication.

- In order to minimise the Council's exposure to risk, officers will determine in due course:
  - what the most appropriate method of termination will be under the NEC3 PSSC;
  - how best to proceed with negotiating a settlement with Wates of any final amounts that are due under the terms and conditions of the NEC3 PSSC; and
  - if necessary, how to best protect the Council's position in the event of any possible adjudication and/or legal proceedings between itself and Wates relating to the NEC3 PSSC,

subject to on-going advice and input from both Legal Services, and (where necessary) and the Council's external solicitors at BB and external consultants at T&T.

- In addition, any necessary changes to any existing funding arrangements due to the delay to Castle Gateway Project caused by this termination will require the advice of Legal Services, to determine how to vary these arrangements in accordance with the relevant terms and conditions.

- **Crime and Disorder** - none identified
- **Information Technology (IT)** – none identified
- **Property** – covered in the report

## **Risk Management**

40. The termination process with Wates under the NEC3 PSSC remains subject to ongoing contractual and legal discussions between the parties. The Council has taken extensive legal advice to confirm and safeguard its position, but should there be any unforeseen costs arising from this process they would be reported in due course. To minimise this risk any design work that has concluded and has been approved by the Council will be made available to the next contractor to prevent duplication of work.

41. The ongoing impact of COVID-19, Brexit and rising cost of living and inflation continues to be a challenge and risk to all project delivery. In response, the Council's cost management consultants at T&T are regularly updating price estimates based on market intelligence. At Castle Mills, the rise of construction costs is broadly equivalent to the rise in house prices of the new apartments. However, the proposed procurement process has an in built review once the contractor provides a fixed tender price for construction, where a detailed viability review can take place before committing the major capital budget for delivery. In a worst case scenario if the construction price for Castle Mills proved to be unviable the site could be disposed of on the open market with the benefit of the planning permission that has been secured.
42. There is a risk that should elements of the Castle Gateway not be progressed there will be abortive costs that will need to be recharged to revenue. This report does not propose any recommendations that would lead to abortive costs at this time. As noted above however, should Castle Mills prove to be unviable on receipt of tender the land value from a disposal would be expected to cover expenditure to date associated with the Castle Gateway regeneration, meaning the cost to the Council of abandoning the whole project in the future could be offset.
43. Deferring the decision on the St George's Field MSCP until a construction price for Castle Mills is available continues the measured approach to decision making undertaken to date. It will also allow the collection of further data and exploration of alternative solutions.
44. A successful Levelling Up Fund bid for Castle and Eye of York would provide a fully funded project alongside the £3.5m Council funding released from the YORR Project through realigning the funding received from WYTF. However, the funding deadlines of Levelling Up would mean that this part of the project would need to be brought forward. This would require a review of the delivery strategy at that time. However, submitting the funding bid does not commit the Council to accepting the funding, and if the revised delivery strategy proposed at that point was not acceptable Executive could chose not to accept the funding.
45. If Levelling Up Funding is not successful there are a number of alternative delivery options for Castle and Eye of York that could be considered, such as; funding the project via the commercial return from Castle Mills if a future decision is taken not to proceed with the MSCP; seeking devolution funding from any new combined authority's gain

share; phasing the development of the site; and scaling back the proposals and resubmitting a less ambitious planning application.

## Contact Details

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**Report Approved**  **Date** 6 June 2022

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

**For further information please contact the author of the report**

## Background Papers:

Report to the Executive, 'York's Southern Gateway', October 2015  
Report to the Executive, 'York Castle Gateway', January 2017  
Report to the Executive, 'The Castle Gateway Masterplan', April 2018  
Report to the Executive, 'Castle Gateway phase one delivery strategy', January 2020  
Report to the Executive, 'Update on Castle Gateway and Business Case Review', October 2020

## Annexes

None

## **List of Abbreviations Used in this Report**

BID - Business Improvement District

CCTV – Closed Circuit Television

EIA – Equalities Impact Assessment

LTP - Local Transport Plan

MSCP – Multi Story Car Park

NEC3 ECC – NEC3 Engineering and Construction Contract

NEC3 PSSC – Professional Short Services Contract

WYTF – West Yorkshire Transport Fund

YORR – York Outer Ring Road