

**Executive**

**1 October 2020**

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

## **Update on Castle Gateway and business case review**

### **Summary**

1. The following report recommends a revision to the delivery strategy for the regeneration of the Castle Gateway following a comprehensive review of the project and business case in light of Covid-19. Having considered a range of options it is proposed that the council continues to commit to the delivery of the masterplan, proceeding with the key public benefits at pace through staged decision making, whilst delaying delivery of the elements of the project on which Covid-19 has had the most significant impact, until there is further certainty.
2. To reflect the heightened importance of public space in our cities; it is recommended to bring forward the detailed design of the public realm that will replace Castle Car Park and the Eye of York. Committing to a high quality design and achieving planning permission to create a shovel ready scheme would leave the council in the best position to secure any external funding that may become available through the government response to Covid-19. Securing external funding would allow the closure of Castle Car Park to be brought forward into phase one of the masterplan and inform future decisions as to how to sequence the overall delivery to aid the city's economic recovery. However, any decision to close Castle Car Park and implement the new public realm would remain a future Executive decision.
3. It is proposed to continue as planned with the procurement of a construction partner for the Castle Mills apartments, allowing the council to retain the commercial return to cross-subsidise the wider public benefits of the Castle Gateway, as well as delivering many of the key elements of the first phase of the masterplan. This includes the new pedestrian/cycle bridge over the Foss; the riverside park at the rear of the Castle Museum; and the pedestrian/cycle crossing over the inner-

ring road. The final decision to proceed with construction would then be taken next summer, on completion of the detailed design and receipt of the actual tender price.

4. The council remain committed to providing parking to replace the closure of Castle Car Park, but it is prudent to delay the procurement of a construction partner for the new multi-storey car park at St George's Field until next summer. At that stage the impact of Covid-19 on parking trends, the current city centre disabled access engagement, and the availability of more detailed data from the new pay on exit systems at council car parks will provide clarity that the current proposal remains the best solution. There are no plans to close Castle Car Park until suitable replacement parking is available. Similarly a future decision on whether the council should develop or dispose of 17-21 Piccadilly would also be delayed until next summer when market conditions will have become clearer.

## **Recommendations**

5. The Executive is asked to:

- 1) To note the outcome of pre-decision scrutiny which recommended option 5 set out in this report, which is the option recommended to the Executive

*Reason: To consider of view of the Corporate Services Management Committee Scrutiny in taking the decision on how to proceed*

- 2) Approve the recommencement of the paused procurement of a construction contractor to undertake the design and subsequent construction of the proposed apartments, pedestrian/cycle bridge and riverside park at Castle Mills, and delegate to the Director of Economy and Place (in consultation with the Director of Governance) the authority to take such steps as are necessary to award and enter into the resulting contract

*Reason: To deliver the key public benefits of the first phase of Castle Gateway and allow the council to realise the commercial return to help deliver the wider masterplan*

- 3) Approve the design and submission of planning applications for a high quality public realm scheme on Castle Car Park and Eye of York

*Reason: To ensure that the council has shovel ready public realm proposals of sufficient magnitude to attract potential external funding for the project*

- 4) To note that the decision to procure a construction partner for St George's Field multi-storey car park will be taken in summer 2021

*Reason: To ensure the proposal remains the best replacement parking solution once the impact of Covid-19 has become clearer*

- 5) To note that a decision on the future of 17-21 Piccadilly will be brought back to Executive in summer 2021

*Reason: To allow a decision as to whether to develop the site in line with the masterplan or dispose on the open market once the impact of Covid-19 on the land market is more certain*

- 6) To note the expenditure of £1.5m from previously committed Castle Gateway budgets to deliver the recommendations set out in this report

*Reason: To support the delivery of the Castle Gateway scheme*

## **Background**

6. In January 2020 the council's Executive approved the delivery strategy for the first phase of the Castle Gateway masterplan. 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 at the rear of the Castle Museum; new apartments and commercial spaces at Castle Mills and 17-21 Piccadilly; and a multi-storey car park 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. This approach required significant short term borrowing for the whole of phase one of in the region of £46m during the construction period, but with the investment largely repaid through the sale of new

apartments and income from commercial spaces. This option maximised the financial return to the council to pay for the wider public benefits, minimising the estimated project viability gap that the council would need to fund to an estimated £3m to £4m.

8. Given the magnitude of the 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 to then finalise the budget in late 2020.
9. In addition to these approvals the Executive also approved further feasibility work to establish whether the council should look to develop or dispose of 17-21 Piccadilly, and to explore different cost options and establish a business case for the development of new public realm to replace Castle Car Park and the Eye of York. It should be noted that at that stage there was only a limited funding source identified for the new public realm and further investment would be needed to achieve the masterplan aim of a world class public space.
10. Following the Executive meeting, officers proceeded with the preparation of the procurement for St George's Field and Castle Mills alongside the ongoing 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 has 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 needs to be revised.

### **Review - aims of the masterplan and alignment with Covid-19 impacts**

11. The first stage in the review process considered whether Castle Gateway remains relevant and desirable both during the ongoing pandemic and in a – hopefully – post-Covid-19 world. In the short term Covid-19 has focused attention on the need for public spaces in our city centres and for well-planned and accessible walking and cycling routes with space to

social distance. In the long term it has reaffirmed the importance of tourism to the city's economy, but also presented an opportunity to reframe the tourist offer to a more responsible and sustainable form. Against this backdrop, the Castle Gateway masterplan is a significant opportunity to drive the city's response to Covid-19 due to the:

- Focus on sustainable transport to create new key pedestrian and cycle routes
- Reduction of vehicle journeys inside the inner ring road through the closure of Castle car park
- Creation of significant new public realm
- Enhanced cultural and heritage offer and the creation of a new major event space – building on the city's unique selling points and expanding the capacity to attract responsible tourism to support the city's economy
- Regeneration and investment in rundown parts of the city
- Development of new city centre homes, including new affordable and council housing
- Capacity to reinvigorate the economy by supporting jobs in the construction sector

### **Review – business case and delivery strategy**

12. Although the project principles remain highly relevant, it does not necessarily follow that the business case and delivery strategy devised pre-Covid-19 remains viable or desirable due to the significant impact on the council's finances, the wider economy, and the construction and residential sale markets. The key questions this raises for the Castle Gateway are:

- **Is the previous delivery strategy the best route to delivery** – are there alternative routes that are better placed to deliver the project, and is the level of council investment needed still viable?
- **Does the replacement car parking in its current form remain the optimum solution** – how will Covid-19 impact on car parking and is the previously agreed approach still the best solution to replace Castle Car Park
- **How have the risks and commercial returns changed** – how will the impacts on the construction industry and residential sales market impact on the viability and project risks?

- **How will partner organisation schemes and private sector projects be affected** – will other related projects like the redevelopment of the Castle Museum, investment in Clifford’s Tower, and developments on Piccadilly proceed as planned?
- **Should the immediate focus switch to prioritising delivery of the public realm at Castle and Eye of York** – previously the business case was predicated on phase one enabling the closure of Castle Car Park, with the delivery of the Castle and Eye of York public realm in phase two. However, does the renewed focus on public spaces and economic recovery and potential availability of external funding allow the public realm to be brought forward in to phase one?

13. These key questions have underpinned the following review of the project, the options that have been developed and considered, and the final recommendation. The following section considers each of the individual project components in isolation, before a series of options are presented that draw them together in an overarching delivery strategy.

Figure 1 – summary of the existing project components

<b>Project element</b>	<b>Exec approval</b>	<b>Status</b>
Castle Mills	Procure a construction partner to undertake RIBA 4 design and provide a fixed construction price for Executive to decide whether to proceed	Planning application to be considered in November;  Procurement paused
St George’s Field MSCP	Procure a construction partner to undertake RIBA 4 design and provide a fixed construction price for Executive to decide whether to proceed	Planning application to be considered in November;  Procurement paused
Castle and Eye of York public realm	Approval and budget to proceed with planning application; future Executive decision required as to whether to design a low, medium, high cost option	High level appraisal of low, medium, and high cost options undertaken  On hold
17-21 Piccadilly	Undertake RIBA 2 design to inform a decision as to whether to dispose of or develop in line with the masterplan	On hold

## Review of Castle Mills

14. The Castle Mills site would provide 106 apartments - of which 20 would be new council homes - above ground floor commercial spaces that provide an active street frontage to Piccadilly. The site also includes the new public riverside park on the currently private land at the rear of Castle Museum, and a new pedestrian cycle crossing over the inner ring road and bridge over the river Foss, delivering many of the public benefits of the masterplan.
15. In January 2020, Executive approved the principle of the council acting as the developer for the site. This would require the council to finance the construction with an anticipated £28m of short term borrowing, in addition to £4m of West Yorkshire Transport Funding (WYTF) that would deliver the new pedestrian cycle bridge and routes. The council's investment would then be repaid by the sale of the apartments and return from the commercial spaces and in addition to generating a profit in the region of £9m to cross-subsidise the delivery of the wider masterplan.
16. The key questions that Covid-19 raises for this site are:
  - Can the council afford the short term borrowing due to the impact of Covid-19?
  - What impact will Covid-19 have on construction costs?
  - What impact will Covid-19 have on sales values?
17. In terms of borrowing, although the budget required is high this would only be over a three year period, at which point it would be repaid by the sales incomes. Whilst there will be a short term revenue impact of that borrowing of c. £1m over three years, it would generate an anticipated £9m surplus for the council to either enable the delivery of the wider masterplan, or potentially as a capital receipt to offset other budget pressures.
18. In terms of construction cost and sales values, these are the two key elements of developer risk, and it is potentially possible that both will be volatile over the coming years. The immediate impact has been for both to increase, with an overheated housing market and high material costs due to limited availability. In terms of house prices, agents are positive about the long term impact as York fundamentally remains an attractive place to live and has the potential to become the best home working city in the UK with its high speed internet, rail connections to London, and

quality of life. Build costs may be harder to predict, but if there is any form of recession it is likely that private sector investment will be less forthcoming, reducing demand, and leaving the public sector well placed to invest and be the key driver of local economic recovery. Ultimately the proposed approach to procurement, which would provide an actual tender price next summer before the Executive commit to construction, will provide reassurance and certainty through a staged decision making process that mitigates these risks.

19. The alternative approach, considered and discounted in January, would be for the council to seek a joint venture partner to provide the investment and reduce the council's exposure, but they would retain the profit. At that stage the primary concern was not access to finance to deliver the project but ensuring quality and delivery and maximising the commercial return to the council to help fund the wider masterplan, a principle that hasn't changed. A joint venture could also potentially require complex procurements, take a significant time to establish, and may necessitate a complete review of the planning application. Furthermore, the uncertain market conditions may make securing a joint venture partner challenging in the current climate.

### **Review of St George's Field MSCP**

20. St George's Field would provide a 372 space multi-storey car park, with the upper floors remaining fully accessible in times of flood. The principle is to remove car parking from inside the inner-ring road onto a site that has no alternative uses due to its flood zone designation, releasing Castle Car Park for public realm whilst protecting some of the existing parking revenue.
21. Due to significant site constraints, requirement to raise the access road over the flood barrier, and the diversion of a major Yorkshire Water sewer, the multi-storey car park is an expensive project to deliver. The restrictions on height and orientation mean it isn't possible to create an efficient rectangle, and to reach the optimum numbers this has resulted in the need for large internal circulation areas that don't generate any revenue. The anticipated cost of St George's Field (including access road, landscaping coach parking) is anticipated to be £14.2m, meaning all of the profit from Castle Mills would be required to fund it, in addition to the council meeting an overall budget shortfall of around £4.5m through long term borrowing, with ongoing annual revenue implications.
22. The key questions raised by Covid-19 are:



- Once the impact of Covid-19 on parking trends are known will the replacement car parking in its current format remain the optimum solution?
- Will Covid-19 bring about any significant changes to transport strategies at a local, regional and national level?

23. The challenge at this point is these remain largely unknown. Since the relaxation of lockdown and the reopening of retail and hospitality, York has performed significantly above the national average, with high footfall, high spend, and car parking revenues returning to 85% of the same period last year in July and August. However, a key point to note is that during the current ongoing social distancing restrictions, cars are seen as the primary mode of transport, with capacity and demand hugely reduced on public transport and so should not be taken as a firm long term trend.
24. During the coming months the roll out of pay on exit at Piccadilly car park and improvements to the pay on exit system at Marygate car park will provide more detailed and accurate data on car park usage, which will further add to the evidence base as the impact and recovery from Covid-19 becomes clearer. The ongoing engagement with disabled people on access to the city centre will also have completed and the new Local Transport Plan will be in development. Given these uncertainties and ongoing workstreams it may be prudent to delay the procurement of a contractor and next stage of design work until there is greater clarity.

### **Review of 17-21 Piccadilly**

25. The masterplan proposals for 17-21 Piccadilly are for up to 25 apartments built over ground floor commercial spaces for small independent businesses. At this stage the plans have not been progressed beyond initial design work due to the focus being on Castle Mills and St George's Field planning applications. Whilst 17-21 Piccadilly does have an important role to play in the redevelopment and regeneration of Piccadilly it doesn't contain any of the fundamental elements of the masterplan. It is also currently playing a temporary role in bringing vibrancy and driving footfall to Piccadilly through the Spark:York project for start-up businesses, which has been hugely popular during Covid-19 due to the outdoor seating environment.
26. If the site was sold with an unrestricted use the anticipated land value would be in the region of £1m. If the council were to develop the site it would control delivery, quality and land use and would realise an

anticipated return of £2m. However, as with Castle Mills this would require the council to undertake the short term borrowing (circa £6m) and the developer risk. The decision as to whether the council should act as developer for the site or dispose of the land was not taken in January 2020 as there was insufficient detail on the potential scale of development and value uplifts on the site. Instead a report was due to be brought back to the Executive this summer on how to proceed.

27. As this site doesn't have the same strategic importance to the delivery of the public benefits of the masterplan, and given the impact of Covid-19 on council finances, it may be a better option to sell the land. This would reduce the council's exposure to risk and need for future borrowing whilst generating a modest financial return. However, due to the ongoing uncertainty of Covid-19 selling in the current market may be challenging, as there is an increased risk of low or unrealistic land prices and sales falling through before completion. Consequently it may be best to delay any decision until next year.

### **Review of Castle and Eye of York**

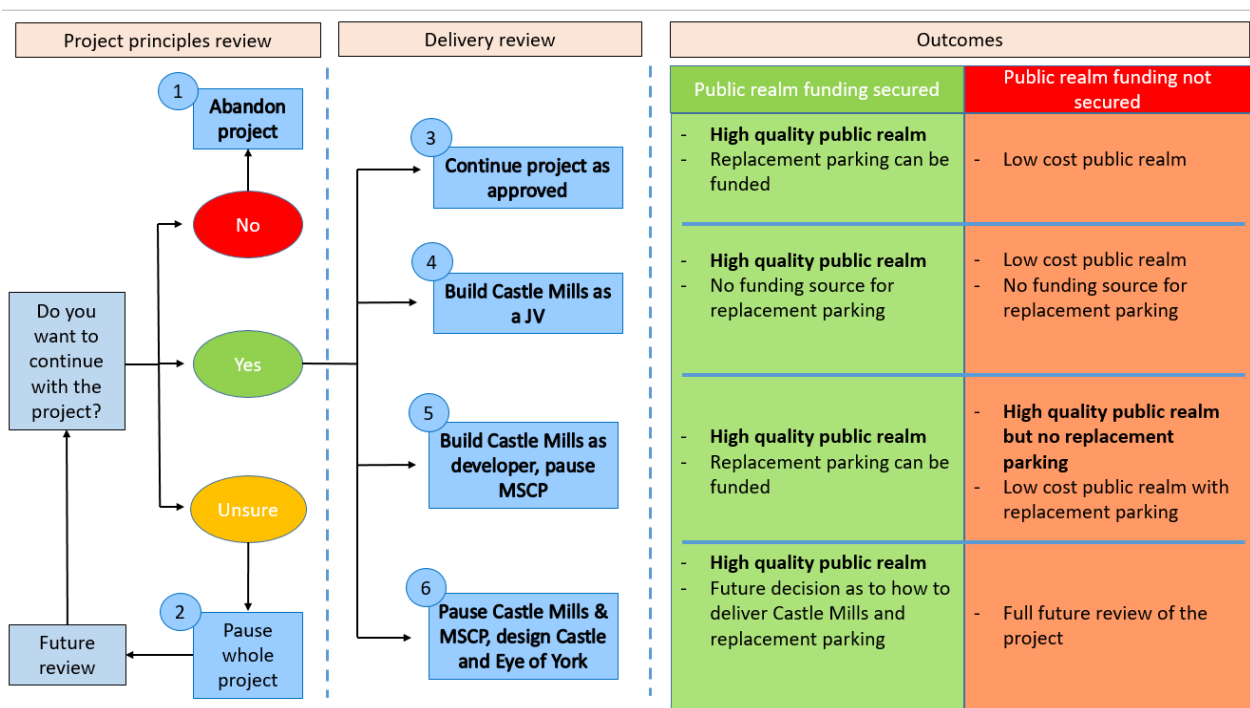
28. The replacement of Castle Car Park with high quality public realm and an event space is the centrepiece of the masterplan. It would create a world class setting for the city's internationally renowned heritage assets, reduce car journeys within the inner ring road and historic core, attract new visitors to the city, and create a major new public space for residents. The current approach is for this part of the project to be in phase two of the masterplan, with the closure of Castle Car Park to follow the completion of the St George's Field multi-storey car park
29. However, Covid-19 has had a number of impacts. It has identified the importance of accessible public space in our city centres for residents to be able to exercise and relax; it has shown the benefits of having flexible spaces which can quickly respond and adapt to the needs of local businesses and society; and the prevailing expectations are that the economic recovery from the pandemic will be supported by public investment and infrastructure as a conduit to leverage private sector growth.
30. Against this backdrop Castle and Eye of York has the potential to be a key centre piece of city's social and economic recovery from Covid-19. By committing to investing in new public realm and sustainable transport for residents and creating a major event space that will increase visitor

numbers and spend, the new heart to the Castle Gateway could serve as an important catalyst by rebuilding the city's confidence.

31. There is also a new opportunity to secure external funding to deliver Castle and Eye of York. Pre-Covid-19 funding for public spaces in our city centres was often limited. However, central government has already committed funding to new city centre public spaces, including £23m for a major new city centre park in Manchester and other public realm schemes in Leeds and Sheffield as part of the £900m Getting Building Fund for national infrastructure. The Castle and Eye of York project was included by the LEP in the Ministry of Housing, Communities and Local Government call for capital projects. Although well received it ultimately did not make the final successful list as it was considered too high risk for the required delivery timeframe due to not having planning in place. Increasingly external funding is being determined on perceived deliverability, with government spend targeted at projects which are able to make the biggest short term impact in response to the economic consequences of Covid-19.
32. To ensure the council are best placed to secure any upcoming external funding it is therefore a key requirement that projects are shovel ready. To that end, bringing forward the design work and planning permission for Castle and Eye of York would allow the strongest funding case to be made. This would not represent a decision to proceed with the closure of Castle Car Park, which would remain linked to the delivery of replacement car parking. However, it would give the best opportunity to create a fully funded project and aid future strategic decision making based on a known business case. This design work would be funded through existing project budgets that were agreed in April 2018 to deliver the masterplan.
33. In January 2020 Executive agreed to a future report being brought back to Executive to establish the budget for the public realm based on a business case. Whilst initial work has been undertaken to establish that there are a range of cost options from providing a modest replacement of the car park with soft landscaping through to providing a world class public realm and event space Covid-19 has impacted on the ability to conclude that business case and funding strategy. However, as outlined above there is now a new opportunity to try and secure the external funding for the high quality option, but this will necessitate proceeding with the design work at risk. The cost of achieving planning permission would be in the region of £300k, but would increase the opportunity to secure funding of up to £10m.

## Options

34. Having undertaken a review of the fundamentals of the project and the business case there are 6 options as to how to proceed, from abandoning the project entirely through to continuing as approved in January before Covid-19. These 6 options are set out in the decision tree below, followed by a summary of each option. The decision tree first reviews the project principles and then establishes the outcomes under each option if funding for the Castle and Eye of York public realm is or isn't secured.



### Option 1 – abandon the project

35. If the Executive decided they no longer wanted to proceed with the project then the first option would be to abandon Castle Gateway. This would result in Castle Car Park and St George's Field Car Park remaining as surface car parking and with the council's land assets at Castle Mills and 17-21 Piccadilly sold on the open market with unrestricted land uses. This would have no impact on existing parking revenue and would generate in the region of £6.5m of capital receipts, although this would need to fund the resulting £2.4m of abortive costs relating to the expenditure on Castle Gateway to date.

### Option 2 – pause the whole project

36. If the Executive are unsure as to whether to proceed with Castle Gateway they could chose to completely pause the project. Officers would continue to secure planning permissions for Castle Mills and St George's Field so it could be recommenced at any point, but no further work would take place until a future decision is made whether to abandon or proceed with the project. Again, this would have no financial impact on the existing revenue from parking, but there would be no capital receipt from land sales. The project costs to date would remain live and there would be the need to apply major projects' staff to other projects and budgets.

### **Option 3 – continue with project as previously approved**

37. If the Executive do remain committed to the delivery of Castle Gateway there are four options as to how to proceed. If the Executive are of the view that St George's Field multi-storey car park remains the best solution to replacement parking and is unaffected by the impact of Covid-19 the only route forward is to proceed as previously agreed. This is because the commercial return from Castle Mills is required to part fund the capital cost of building the new multi-storey car park, necessitating that the council would have to fund and build the apartments.
38. Under this option the council would proceed with the existing approvals to procure construction partners for both Castle Mills and St George's Field to undertake the RIBA 4 design on receipt of planning permission, with a report brought back to Executive in summer 2021 with an actual tender price to deliver the projects, at which point a decision would be made as to whether to proceed based on those known costs.
39. In addition to this existing workstream it is proposed under this – and all of the following options - that the council proceeds with the design of the public realm for Castle and Eye of York through to full planning permission. The budget and approval to undertake this phase of design was approved in April 2018, but it was agreed in January 2020 that a decision on whether to pursue a low, medium or high quality level of public realm would be taken in the summer of 2020 and accompanied with a business case and delivery strategy. However, due to the impact and opportunities presented by Covid-19 it is proposed to proceed with the design of the high value option without having the full budget identified, but with a design that can be scaled back to a more modest budget. This is to give the council the best opportunity to secure external funding to deliver the project by having a high profile and shovel ready

project. Any decision to actually close Castle Car Park and proceed with the public realm would be a future Executive decision.

#### **Option 4 – joint venture for Castle Mills; no replacement multi-storey car park**

40. If the Executive want to continue with Castle and Eye of York public realm but are certain they no longer wish to build the replacement multi-storey car park then this opens up alternative delivery models for Castle Mills which do not require the high level of short term council borrowing. This is because the cross-subsidy from Castle Mills would not be needed to fund the multi-storey car park so the council wouldn't need to act as sole developer to achieve the full profit and land value. Instead a joint venture partner could be sought to help finance the development. This would still deliver the public benefit elements of Castle Mills (the new pedestrian/cycle bridge, riverside park) with the council providing the land but a partner providing the investment and keeping the commercial return. As above the council would also design up the high quality public realm to allow the best chance of external funding.

#### **Option 5 – proceed with Castle Mills as developer; delay the multi-storey car park**

41. If the Executive want to ensure the full impact of Covid-19 on parking is known before committing to the next major spend point on the St George's Field multi-storey car park then they could chose to delay the procurement of a contractor until next summer. However, Castle Mills would continue as previously agreed with the council acting as developer, and designing up the high quality public realm. This would ensure the delivery of all key elements of the masterplan and provide the commercial return that would allow the replacement car parking to be delivered. Should external funding not be secured for the high quality public realm this option is the only one that would allow an alternative funding route to deliver the high quality realm through the commercial return from Castle Mills. If this were the case the financial gap to deliver the whole masterplan would increase.

#### **Option 6 – pause Castle Mills and St George's Field**

42. Alternatively, the Executive could also pause Castle Mills as well as St George's Field multi-storey car park, whilst trying to secure planning and external funding for Castle and Eye of York. This would allow the

Executive to make a decision as to how proceed with those elements of the project once there is certainty over external funding.

## **Analysis**

43. Option one, to abandon the project, has been discounted as the project principles remain valid and there are viable alternatives to proceed with delivery. Failure to deliver the Castle Gateway project would result in reputational damage; stagnation of a large area of the city centre depressing council assets and the local economy; cars remaining within the inner ring road; and no improvements to sustainable transport with £2.4m abortive costs needing to be written off to revenue in year.
44. Whilst option two would allow a complete pause until some of the wider long term impacts of Covid-19 are known it would mean that the project stalls and would affect public and stakeholder confidence in the council's commitment and ability to deliver and invest in the post-pandemic economic recovery of the city. Delays to the project could impact on wider investor confidence, and potentially result in the loss of £7.5m of West Yorkshire Transport Funding that has outline business case approval.
45. Option three would allow the project to proceed at pace and as intended, whilst also bringing forward the public realm design to try and secure external funding. However, it would also require the council to borrow in the region of £46m in the short term, and fund a long term viability gap of approximately £4.7m from future budgets. This borrowing would also only cover the costs of Castle Mills and St George's Field, and if no external funding could be secured for Castle and the Eye of York public realm then there would be no funding source for the high quality option, and the designs would have to be scaled back to fit the available funding. Whilst the multi-storey car park is anticipated to remain the right route forward it is difficult to make a decision of that magnitude at this stage when there is such uncertainty relating to the impact of Covid-19. Delaying the next stage of spend and procurement of a contractor to build the car park will instead allow an informed decision to be taken once there is further clarity on that impact. Consequently this option is not recommended.
46. Option four is only possible if the multi-storey car park is abandoned and no replacement car parking provided, as the use of a joint venture to deliver Castle Mills would not provide any commercial return to fund the new car park. Consequently a joint venture is not an appropriate route

forward at this time. It should also be noted that a joint venture may also require a complex procurement process, and would therefore result in a significant delay to programme.

47. Option six would allow the progression of the public realm design for Castle and Eye of York but pause both Castle Mills and St George's Field until next summer. Whilst delaying the decision on St George's Field has merit the delay to Castle Mills would result in a significant loss of momentum for the project, delay delivery of many of the public benefits, and put the £4m West Yorkshire Transport Funding associated with the site at risk. It should also be noted that the existing approval for Castle Mills is only to procure a construction contractor to undertake the next stage of detailed design and provide a fixed price to deliver the project – Executive would not actually commit to proceeding until next summer. On balance, pausing Castle Mills, when the business case remains strong for the council to act as developer to unlock the masterplan, invest in the local economy, and realise the commercial return, would create an unnecessary delay when the merits of the alternatives are unlikely to change during that period.

#### **Recommendation – option five**

48. Having considered all of the above options the recommended route forward is option five:
- **Design and secure planning** for high quality public realm on Castle Car Park and Eye of York before deciding how to proceed next summer (cost of c.£300k from existing allocated budget)
  - **Proceed** with existing approvals to procure a construction partner for Castle Mills, design to RIBA 4, and return to Executive with an actual tender price next summer (cost of c.£1m from existing allocated budget)
  - Take the decision to procure a contractor for St George's Field multi-storey car park in the summer of 2021
  - **Delay** the decision as to whether to develop or dispose of 17-21 Piccadilly until the summer of 2021
49. This option would provide a clear commitment to the delivery of the Castle Gateway regeneration, proceeding with all of the key public benefits of the project but with a staged process to decision making, and pausing the elements that have any uncertainty relating to the impact of Covid-19 until there is greater clarity. All of the above would be delivered from existing project budgets and within existing approvals.



50. The only new decision is to commit to designing the public realm at Castle Car Park and Eye of York to a high quality. There is an existing approval and budget to undertake the design (April 2018), but in January 2020 the Executive approved a future report to be brought back this summer outlining a series of modest to high quality options for the space and the proposed funding route. This would then have allowed the decision to be taken as to which cost option to pursue so that the design work could commence.. More modest options would be predominantly soft landscaping and a low level of intervention, which would limit the capacity for events. Higher cost options would create the level of quality that would elevate York's reputation internationally, attract significant numbers of new visitors, and allow for major events to take place.
51. It is recommended that the design work and planning application is based on the high quality option, but with a design that can be scaled down to a more modest budget. It is this level of ambition which would leave the council best placed to secure external funding. A more modest intervention is less likely to have the prestige to be attractive to funders or attract the number of new visitors and associated spend and economic uplift that would allow a strong enough funding case to be made. Progressing with the scheme would also ensure that funders would have sufficient confidence in delivery by creating a shovel ready scheme that could be delivered at pace – which is increasingly important in securing funding.
52. Should external funding not be forthcoming then an alternative funding strategy would be to revise the public realm plans to deliver a lower cost alternative. Having a scalable design which would allow more expensive elements of the design to be removed or replaced, such as potential water features and hard landscaped areas changing to soft landscaping. As such much of the estimated £300k design costs could be repurposed, and on balance the risk of spending £300k to give the opportunity of securing extensive external funding is a calculated risk worth taking, whilst also raising the city's profile and sending a clear message of commitment and intent to the long term future of the Castle Gateway.

## **Consultation**

53. The review of the business case and the following options were taken to Customer and Corporate Services Scrutiny Management Committee on Monday 6 September. Having considered all of the options there was unanimous support for continuing with the Castle Gateway regeneration and for option 5 set out in this paper, which is the recommended option.

This is an important commitment which reiterates the ongoing cross-party political support that has been achieved at all major decision points for this project.

## **Council Plan**

54. 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**

55. The following implications have been identified and considered.

### **Financial**

56. The council has approved £4.73m towards the Castle Gateway scheme to date (Feb 2017 £0.18m, April 2018 £2.4m and Jan 2020 £2.15m). This has been approved to fund the design and planning work for St George's MSCP as well as the new build at Castle Mills. To 31<sup>st</sup> July 2020 total spend on the project totals £2.2m. Funding for the recommendations in this report has already been agreed and can be delivered within this budget.

57. This capital expenditure remains potentially abortive subject to future decisions surrounding the project although this could be offset from any future asset sales in the area.

### **One Planet Council / Equalities**

58. The previous Equalities Impact Assessments (EIA) that accompanied the approval of the masterplan (April 2018) and phase one delivery strategy (January 2020) are attached as annex 1 and 2 to this report and remain

valid. A new EIA has not been undertaken as at this stage there are no proposals to change any elements of the masterplan. Whilst the procurement of the multi-storey car park and decision as to how to deliver 17-21 Piccadilly will be delayed for now the intention remains to proceed. Any changes to the actual masterplan will be accompanied by a new EIA.

## **Legal**

### **Option 1 – abandon the project**

59. Abandoning the project would mean that any agreements already entered into, such as consultant advisory agreements, would need to be terminated. At the current stage the majority of work has already been provided and so termination would have a minimal impact.
60. If the Council disposes of 17-21 Piccadilly and Castle Mills sites without any restrictions limiting future development or use (or any obligations requiring particular development within any timescale) then the capital sum received for those sites would be maximised. However the buyer(s) would be able to build whatever they considered appropriate on the sites (subject to obtaining planning permission) or landbank the sites without carrying out any development/regeneration on the sites unless and until the buyer wishes to do so.
61. The Council's only ability to control development of those sites would be limited to exercise of its statutory functions and powers as local planning authority.
62. There is a likelihood that any grant funding already spent would need to be returned to the funder.

### **Option 2 – pause the whole project**

63. Pausing the project would mean that any agreements already entered into, such as consultant advisory agreements, would need to be paused if possible. At the current stage the majority of work has already been provided and so pausing would have a minimal impact.
64. It is likely that grant funding already secured would be at risk given the timescales within which such grant funding must be spent. It would be advisable to discuss the reasons for the delay with the funder(s) and it

may be possible to vary any current grant funding arrangements to extend the applicable timescales.

### **Option 3 – continue with project as previously approved**

65. The legal implications set out in paragraphs 77 to 93 of the report to Executive on 21 January 2020 are applicable to this option (see Background Papers).

### **Option 4 – joint venture for Castle Mills; no replacement multi-storey car park**

66. The option to abandon the construction of a multi-storey carpark at St Georges Field opens up the possibility of exploring a different legal structure to deliver the rest of Phase 1 in the form of a joint venture. The forming of a joint venture is complicated from a legal and procurement perspective and, as noted in the body of the report, could lead to a significant delay to the programme. JV's are also expensive to establish and would require upfront investment in order to fund the process.

### **Option 5 – proceed with Castle Mills as developer; pause the multi-storey car park**

67. The legal implications in respect of pausing the development of the MSCP are covered in the legal implications for Option 2.

#### Commercial/Contractual - Procurement

68. The procurement of contractors for the design and construction works at Castle Mills will be carried out in accordance with the council's Contract Procedure Rules and the Public Contracts Regulations 2015 (PCRs), as the value of the works is in excess of the EU threshold of £4.7 million.
69. The inclusion of an ECI phase within a contract is permitted by the PCRs as long as the procurement process carried out in awarding the contract has been open, fair and transparent. In order to ensure this, all bidders within the procurement process must have been able to bid on equal terms. Although a fixed price for the construction works element of the contract would not be able to be submitted as part of the bids received, equality can be achieved by requiring the bidders to submit indicative prices for the construction work, for example, against a schedule of rates. This enables all bidders to be evaluated equally.

70. The form of contract would set out the terms of an ECI phase as well as the usual contractual terms expected for a design and build contract. At the end of the ECI phase the contractor would only be able to progress to the construction phase of the contract if the performance standards set out in the contract have been achieved and the fixed price presented by the contractor is within the set budget. In the event the contractor had not achieved the performance standards or the construction cost is in excess of the budget a new procurement exercise could be carried out with the market based on the detailed design produced by the contractor as part of the ECI phase.

#### Commercial/Contractual - Powers, Structure and Governance

71. The Council has a number of powers to develop, sell or lease Castle Mills, subject to certain restrictions. The Council may rely on the general power of competence in section 1 of the Localism Act 2011. If the council's primary purpose for an activity governed by the general power of competence (such as buying property) is 'commercial', section 4 of the Localism Act 2011 then requires the council to act through a company. Whereas if the primary purpose is deemed to be 'not commercial' (such as economic development and regeneration) then a separate company vehicle will not be required even if an ancillary purpose of the project is commercial.

72. The Castle Gateway project is a regeneration scheme which uses a commercial approach to generate funding for the social objectives of the broader scheme. Any profits made from the purchase and development of land/property will be reinvested to fund the wider regeneration.

73. Section 12 of the Local Government Act 2003 (LGA 2003) gives a local authority a separate/additional power to invest (including potentially the power to act primarily for commercial purposes without needing to form a company), provided this is in line with the council's 'investment strategy'.

74. If the council were intending to borrow money to invest in property for the sole purpose of acting as a commercial landlord and seeking to generate ongoing profits, the council would not be able to rely on section 12 of the LGA 2003. However, given the underlying reasons for the investment is for regeneration and to promote economic development the council can rely on its powers under the LGA 2003 with regards to borrowing and investment.

## Property

75. It is understood that development of the Castle Mills site will require the co-operation of Yorkshire Water as there is a public sewer within that site. Although it will not be diverted, the development proposals would involve building near to it and so YW would require the council to enter into a 'build over agreement' (which would be prepared by YW and be on YW's standard terms for such a document).
76. Should there be a decision to convert the completed residential sale homes to private rental accommodation in the event of a downturn in the residential sales market, further consideration would need to be given at that time to the associated legal and property implications.
77. The council proposes to seek to impose a clause in leases of apartments prohibiting subletting for short-term letting/holiday letting, this may adversely impact upon the premium received for the grant of the lease. Further the council may have difficulty in monitoring and enforcing compliance (as courts are reluctant to authorise the forfeiture of residential leases/eviction of residential tenants).
78. Construction of a new bridge may require approval from the Secretary of State for Transport pursuant to Section 106(3) of the Highways Act 1980 if the relevant section of the Foss is classed as 'specified navigable waters'

### **Option 6 – pause Castle Mills and St George's Field**

79. The legal implications in respect of pausing the development of Castle Mills and the MSCP are covered in the legal implications for Option 2.

**Property** – the issues are covered in the main report.

## **Risk Management**

80. The full risks associated with establishing the delivery strategy for phase one were considered in the January 2020 Executive report (see Background Paper). However Covid-19 has required a full review of the business case and strategy, and the following section considers the risks associated with the recommendations in this report and how they will be mitigated.

81. Castle Mills – it is proposed to continue with the previously approved procurement of a contractor to undertake the next stage of design work and provide a fixed price for construction. This is a staged approach to decision making, meaning the Executive are only committing to the RIBA stage 4 design at a cost of £1m from existing budgets, before making the final informed decision as to whether to proceed based on actual known costs next summer. This reduces one of the main risks associated with COvid-19, namely the uncertainty caused by a likely volatile construction industry and material costs. If the fixed price was unacceptable the council would then own the RIBA stage 4 designs and be able to run a single stage tender process with other contractors to seek alternative prices. If those prices still remained unacceptable or there is an unexpected collapse in house prices, and the project was deemed unviable or no longer a priority due to the ongoing pandemic, the project could be abandoned and the site sold.
82. Although that would mean the £1m design work would be abortive, as any purchaser of the land would likely seek their own planning permission, it does allow a considered approach to decision making whilst allowing the project to continue. It will remove the uncertainty around build costs, reaffirm the council's commitment to the Castle Gateway and allow the key components of the delivery of the wider masterplan to progress at pace. Without the commercial return from Castle Mills there would be no funding to cross-subsidise replacement car parking and the wider public benefits. Any delay to this element of the project would also increase the short term borrowing required by the council to fund the project, as the earlier the apartments can be built and sold in the delivery programme the quicker the wider project outlay can be recouped.
83. St George's Field – whilst the council remains committed to providing replacement car parking for the closure of Castle Car Park there is at this stage sufficient uncertainty due to the impact of Covid-19 that it is prudent to delay the construction of the multi-storey car park until next summer. The new car park is a major financial commitment that, unlike Castle Mills, does not generate a commercial return that covers its capital cost, and would need to be subsidised and funded through Castle Mills. As such it is vital that the Executive are convinced that it remains the right solution for replacement car parking, and that there is a viable delivery strategy and funding source for Castle and Eye of York as commencing the construction of the new car park commits the council to the closure of Castle Car Park. Whilst this will result in a further delay to project delivery

of 9 months on balance this is acceptable to ensure the current approach remains the right one.

84. Castle and Eye of York – the key risk with the recommendations in this report is that the design and planning permission for the public realm will be brought forward without having a certain funding source for delivery. However, the most likely route to being able to deliver the full ambition of a major event space and public realm of a magnitude that would enhance York’s reputation and attract increased visitor spend is through external funding, which is only likely to be forthcoming if the project is shovel ready. Consequently the investment of £300k in proceeding with the design to that high quality is considered to be worthwhile. Should no external funding be secured for the public realm there will be potential alternative delivery strategies that can be considered at that time through a full review of the business case for replacement parking, or the plans could be scaled back to fit a more modest budget and utilise the existing outline business case West Yorkshire Transport funding of £3.5m.
85. 17-21 Piccadilly – in January 2020 Executive agreed to a future report in the summer setting out options as to whether the council should seek to act as developer for 17-21 Piccadilly in line with the masterplan proposals for apartments above ground floor commercial, or look to sell the site to another party. However, due to the uncertainty of Covid-19 and the overall funding strategy for the Castle Gateway it is prudent to delay this decision until summer 2021. This will not have a significant impact on programme and the site is currently occupied by Spark York who have resolved their outstanding planning issues and have a lease until early 2022. Spark York has proven to be particularly popular during the pandemic due to availability of outdoor seating which has a reduced risk of transmission in comparison with indoor venues, and continues to bring vibrancy and activity to Piccadilly.

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**Report**  **Date** 22 September 2020  
**Approved**

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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

**Annexes**

Annex 1 – Equalities Impact Assessment – Castle Gateway masterplan, 2018  
Annex 2 – Equalities Impact Assessment – Castle Gateway phase one  
delivery strategy, 2020

**List of Abbreviations Used in this Report**

CPR – Contract Procurement Regulations  
LGA – Local Government Association  
MSCP – Multi-storey car park  
WYTF – West Yorkshire Transport Fund