

**Executive**

**21 January 2020**

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

## **Castle Gateway phase one delivery strategy**

### **Summary**

1. This report sets out the recommended delivery strategy for the first phase of the regeneration of the Castle Gateway. This phase will deliver 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 which will allow Castle Car Park to be replaced with new high quality public realm in phase two.
2. The report considers a number of delivery options with different financial and delivery risk profiles, and recommends that the council should take the lead and act as developer for the whole of phase one. Whilst this requires significant short term borrowing during the construction period, the investment will be largely repaid through the sales of the new apartments and income from commercial spaces. This is the option that maximises the financial return to the council to pay for the wider public benefits, minimising the estimated project viability gap that the council will need to fund to £3.3m.
3. At this stage the Executive are only being asked to approve the procurement of construction contractors to undertake the RIBA stage 4 design of St George's Field and Castle Mills and provide a tender price for the build phase. These tender submissions will enable the Executive to make an informed decision on actual costs to then finalise and draw down the budget in late 2020. The budget commitment being sought at this point is £2.15m to deliver the recommendations in this report and progress the next stage of work to allow that informed decision in late 2020, and £532k to pay for a sewer diversion at St George's Field.

## Recommendations

4. The Executive is asked to:

- 1) Approve option one for the council to deliver phase one of the Castle Gateway regeneration and allow the future closure of Castle Car Park

**Reason:** *to implement the first phase of the Castle Gateway under the delivery option that allows the council to control timescales, quality and delivery and requires the lowest level of long term council financial commitment*

- 2) Approve the carrying out of procurement to engage a construction contractor to undertake the design and subsequent construction in respect of the multi-storey car park at St George's Field, and delegate to the Director of Economy and Place (in consultation with the Director of Governance or her delegated officers) the authority to take such steps as are necessary to award and enter into the resulting contract

**Reason:** *to proceed with RIBA stage 4 design and provide fixed build costs to inform the actual project budget*

- 3) Approve the carrying out of procurement to engage a construction contractor to undertake the design and subsequent construction in respect of the proposed development at Castle Mills, and delegate to the Director of Economy and Place (in consultation with the Director of Governance or her delegated officers) the authority to take such steps as are necessary to award and enter into the resulting contract

**Reason:** *to proceed with RIBA stage 4 design and provide fixed build costs to inform the actual project budget*

- 4) Note that a further report will be brought back to the Executive in late 2020 on completion of the early contractor engagement stages of the contracts in respect of St George's Field and Castle Mills to report on the actual build costs and to ask the Executive to agree to proceed with construction and recommend to full council the full contract delivery budget

**Reason:** *To allow the final decision to proceed with the project to be made based on fixed prices.*

- 5) Note that a report will be brought back to the Executive in summer 2020 to establish the design and construction budget for the new public realm at Castle Car Park and the Eye of York

***Reason:*** *To set out the outline business case for phase two to allow the design of the new public realm to commence based on an agreed budget*

- 6) Recommend to full council a budget of £2.15m to deliver recommendations 1 to 5 in this report

***Reason:*** *To enable the identified recommendations to be carried out*

- 7) Recommend to full council a budget of £532k for diversion of the Yorkshire Water sewer and associated toilet block demolition at St George's Field, and to delegate the decision to proceed to the Executive Member for Finance and Performance

***Reason:*** *To allow a decision to be made at the appropriate time to proceed with the sewer diversion that will enable the construction of St George's Field to commence*

- 8) Agree in principle that the Housing Revenue Account (HRA) will fund the construction of 20 apartments at Castle Mills as new council housing at an estimated value of £3.7m, should the council act as developer for the site

***Reason:*** *To enable new council housing to be delivered as part of phase one of the project, should the decision be taken to proceed with Castle Mills in late 2020*

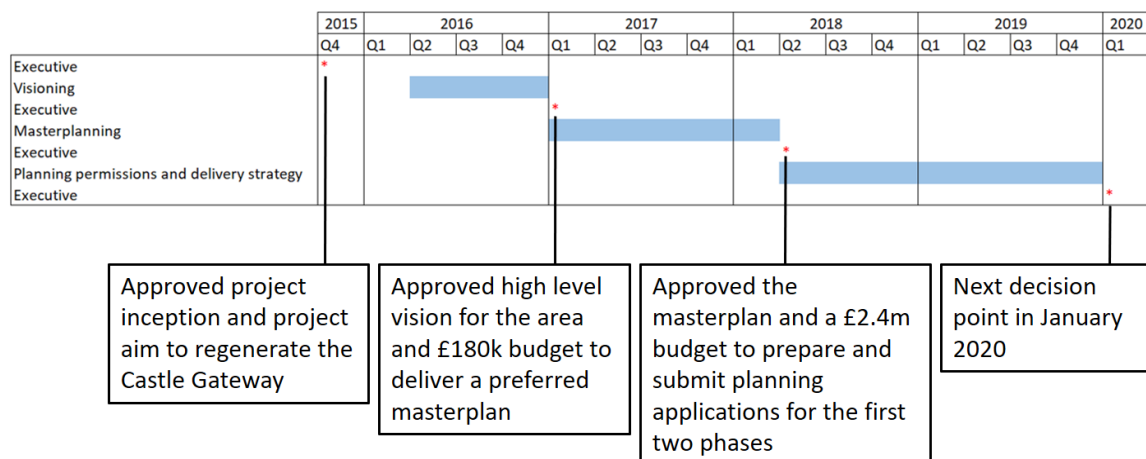
- 9) Note that a report will be brought to the Executive in summer 2020 setting out the recommended delivery strategy for 17-21 Piccadilly

***Reason:*** *To enable a decision as to whether 17-21 Piccadilly should be included in the council led delivery strategy once early design work has provided a more detailed viability appraisal*

## Background

5. The Castle Gateway project commenced in early 2015 and the inception was formally approved in October of that year. In January 2017 the Executive approved the high level vision for the area and a budget of £180k to deliver a preferred masterplan. Following the appointment of BDP as architects and masterplanning consultants, and the development of the proposals through the My Castle Gateway project, the masterplan was approved by the Executive in April 2018. At that point a budget of £2.4m was allocated to prepare and submit planning applications for the first two phases of work.
6. The masterplan will transform a large area of the city centre that has endured three decades of failed private sector 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 has gained wide-spread public and cross-party political support. The regeneration will create new high quality public realm and event spaces, significantly improve the setting of our heritage assets, improve cycle and pedestrian routes throughout the area, and reduce and consolidate car parking in to a modern multi-storey car park (MSCP) outside of the inner-ring road.

**Figure 1 – Timeline of Castle Gateway Executive decisions**



7. At all stages of the reporting process it has been made clear that this is a regeneration project, with limited development sites to generate a commercial return to fund the proposals, and will require significant levels of public realm and transport intervention and investment. The high level business case identified that the potential income from the development opportunities and external funding could broadly cover the

infrastructure costs of the full ambition of the masterplan. However, it also advised that different phases may have some viability gaps that would require funding and that detailed financial impacts would only become clear as further design, investigation and costings were undertaken. To mitigate these risks, it was agreed that decisions as to how to proceed with the delivery of each individual phase would be taken once more detailed information was available at planning application stage.

8. Since April 2018 work has progressed to refine the delivery phases and masterplan proposals, undertake detailed survey work and design of the development sites, seek pre-application advice and discussions with relevant statutory bodies and the local planning authority, and provide greater clarity on costs. In autumn 2019 the first planning applications were submitted, seeking planning approvals necessary for delivery of the first phase of the Castle Gateway. This phase represents the major step to unlock the delivery of the whole masterplan, and also contains many of the project's significant public benefits, including:
  - Providing the replacement MSCP at St George's Field that will allow Castle Car Park to close and be replaced with new public realm
  - A new pedestrian cycle crossing over the inner-ring road
  - A new pedestrian cycle bridge over the Foss
  - A new public park at the rear of the Castle Museum and a riverside pocket park on Piccadilly
  - 106 new apartments at Castle Mills - 20 of which would be new council housing – above street level commercial spaces suitable for small independent traders
  - New apartments above further commercial spaces at 17-21 Piccadilly
9. The anticipated costs to deliver the whole of the first phase of the masterplan is £55m, as set out in Figure 2 below. Costs and delivery strategies for future phases will be brought to the Executive at the appropriate point in the decision making process. However, now that the planning applications have been submitted for St George's Field and Castle Mills (including the new bridge and public parks), a decision is required as to how to fund and proceed with the delivery of the first

phase. There are a number of alternatives as to how to finance and deliver phase one, each with different short term and long term funding implications.

**Figure 2 – Castle Gateway phase one**

Site	Includes	Anticipated cost
St George's Field	MSCP, coach park, new access road, new riverside public realm, public toilets	£14.2m
Pedestrian/cycle crossing	New crossing point over the inner-ring road	£0.8m
Castle Mills	106 apartments, 20 of which will be council housing, ground floor commercial spaces and new riverside pocket park	£28.2m
Foss Bridge	New pedestrian cycle bridge between Castle Mills and the rear of the museum	£2.4m
Public realm	New public park and cycle route to replace previously private land at the rear of the Castle Museum	£1.5m
17-21 Piccadilly	New apartments above ground floor commercial spaces	£5.9m
Contingency		£2m
<b>Total</b>		<b>£55m</b>

**Figure 3 – images of phase one developments**



St George's Field (£14.2m)



Inner-ring road crossing & riverside park (£2.3m)



Castle Mills and new Foss bridge (£30.6m)



Permanent redevelopment of 17-21 Piccadilly (£5.9m)



## Options

10. At this stage there is a viability gap in phase one as the financial return from the development sites and external funding sources that have been identified do not fully cover the £55m estimated cost of delivery. However, it is considered that the overall benefits of the project outweigh the long term impact of funding the relatively small viability gap in the recommended option. There are three main options that have been considered, each with varying degrees of risk, cost and control, with a fourth option not to proceed with any part of the masterplan and dispose of any council owned sites in the area. The key principle that underpins the delivery options is that the greater the short term financial risk the council is prepared to take the higher the commercial return is likely to be, and the lower the consequent project viability gap and long term revenue impact.
11. The suitability of establishing a joint venture delivery partnership for the council owned sites was also considered and discounted. The primary purpose of a joint venture is to allow the council to offset some of the development risk and borrowing cost to deliver a project. Joint ventures can be structured in a number of ways dependent on the level of risk the council is willing to take, but in principle they exist where capital investment or council borrowing is not available. In the case of Castle Gateway the council's priority is to maximise the financial return from its development sites to fund the masterplan and control delivery - neither of which would be achieved through a joint venture. It should be noted that joint ventures are also complex legal entities that take significant periods of time to set up and deliver.

### **Option 1 – the council acts as developer for all elements of phase one**

12. Under this option the council would fund and manage the development of all elements of the project, taking on the role of developer to benefit from the full commercial return and profit to help fund the wider public benefits of the project. The council would undertake short term borrowing of £45.8m (after taking into account HRA funding for the affordable housing at Castle Mills) to fund the whole development of phase one, including:
  - St George's Field MSCP
  - the pedestrian/cycle bridge and inner-ring road crossing,
  - the public park at the rear of the Castle Museum
  - the developments at Castle Mills and 17-21 Piccadilly

13. The short-term borrowing to build the above would be largely repaid by the commercial return from the sale of the apartments and income from commercial spaces at the Castle Mills and 17-21 Piccadilly developments. There would be a resulting £3.3m deficit which the council would need to service through long term borrowing. This delivery option would maximise the financial returns to the council through the full profits from the development opportunities; give the council full control over the timescales and quality of delivery; and would result in the smallest project viability and subsequent long term financial revenue impact to the council.

**Option 2 – the council builds St George’s Field MSCP and disposes of 17-21 Piccadilly and Castle Mills with a restricted use of residential and a requirement to build the new Foss bridge**

14. This option would still deliver the key principles of the masterplan and would reduce the council’s short term borrowing. The council would still need to fund:
  - St George’s Field MSCP
  - the pedestrian/cycle bridge and inner-ring road crossing,
  - the public park at the rear of the Castle Museum

However, the development sites at Castle Mills and 17-21 Piccadilly would be disposed of to the private sector, meaning the cost of borrowing to fund the construction would be borne by the developer, with the council receiving a capital receipt for the land. To ensure the disposed sites are not developed other than in accordance with the masterplan, restrictive covenants would be imposed prohibiting the sites from being developed or used for anything other than residential schemes (instead of hotels or student accommodation), and at Castle Mills the purchaser would be contracted to build the bridge with council funding.

15. Although the council’s developer risk and short term borrowing would be reduced to £14.9m under this option, so would the commercial return from the development sites, and the residential restrictions on the use of the sites would significantly reduce the market land value. This would result in a significantly higher project viability gap of £13m that the council would need to service through long term borrowing. The council would also have ceded control of the delivery of Castle Mills, the bridge, and 17-21 Piccadilly to private developers.



**Option 3 – do not proceed with St George’s Field MSCP; close Castle Car Park; and dispose of 17-21 Piccadilly and Castle Mills with a restricted use of residential and a requirement to build the new Foss bridge**

16. Under this option the council would close Castle Car Park without building the new MSCP to replace the lost car parking provision. This would allow the main principles of the masterplan to be delivered, including the closure of Castle Car Park for new public realm without incurring the significant capital cost of the new MSCP. This would almost remove the need for any short term council borrowing to finance the delivery of other elements of phase one. There would also be no project viability gap, with a small financial return from the disposal of Castle Mills and 17-21 Piccadilly. The sites would be disposed under the same restrictions and requirements as option 2 to provide the bridge and ensure only residential development takes place on council controlled sites on Piccadilly.
17. However, although the short term borrowing and exposure to risk is reduced, it would result in a significant reduction in annual car parking income of £810k per annum for future council budgets, with the lost revenue considerably outweighing the long term borrowing costs required to fund the viability gap of £3.3m in option one. All the work in developing the detailed design proposals of phase one to date would also lead to abortive costs of £1.5m. In summary, option 3 would minimise the short term risk to the council, but would create a significant long term funding liability that would impact on long term council budgets and could lead to a loss of support for the masterplan from city centre businesses opposed to the level of lost parking.

**Option four – do not implement the masterplan and sell 17-21 Piccadilly and Castle Mills without any restrictions**

18. The final alternative is to not proceed with the Castle Gateway regeneration and draw the project to a close. This would result in no further expenditure beyond upgrades to the existing poor quality surface level car parks in the area, and a significant anticipated capital receipt of in the region of £7m from the unencumbered sale of the council’s development sites at Castle Mills and 17-21 Piccadilly. As with option 3 this would result in abortive costs of £1.5m. The clear disadvantage of option four is that it results in the abandonment of the project and a failure to deliver the masterplan.

## Analysis

19. The following section provides a detailed analysis of the advantages and disadvantages of each option. Due to the complexity of the financial implications of each, and the size of potential short term borrowing required there is also a stand-alone detailed financial summary which compares and appraises each option.

### Option one - the council acts as developer

**Figure 4** – summary of option one

Funding implications	Advantages		
Total cost - £55m	<ul style="list-style-type: none"> <li>• Maximises council's financial income</li> <li>• Minimises the project viability gap</li> <li>• Lowest long term financial impact</li> <li>• Retain complete control over delivery</li> <li>• New council housing</li> <li>• Deliver highest quality design and sustainability standards</li> <li>• Restrict the use of short term lets</li> <li>• Contingency to convert sale apartments to private rent in case of market downturn to ensure delivery</li> </ul>		
External and HRA funding - £9.2m			
<b>Short term council borrowing - £45.8m</b>			
<b>Income - £42.5m</b>			
Viability gap - £3.3m			
<table border="1"> <tr> <td data-bbox="284 1234 794 1305">Cost of the short term council borrowing over 4 years - £1.5m</td> </tr> <tr> <td data-bbox="284 1357 794 1429"><b>Long term annual financial impact over 25 years - £0.29m pa</b></td> </tr> </table>	Cost of the short term council borrowing over 4 years - £1.5m	<b>Long term annual financial impact over 25 years - £0.29m pa</b>	Disadvantages
Cost of the short term council borrowing over 4 years - £1.5m			
<b>Long term annual financial impact over 25 years - £0.29m pa</b>			
	<ul style="list-style-type: none"> <li>• Highest level of short term borrowing</li> <li>• Council carries all developer risk</li> </ul>		

20. Option one is the only delivery model which would allow the council to retain full control of delivery of the masterplan. By funding and managing the construction process the council can decide when to proceed with development, chose to continue development should market conditions change, and ensure the interface and critical path between all aspects of the delivery programme. The planning application for Castle Mills is currently under consideration and if approved the council would be in a position to deliver the project at pace, bringing back in to use a vacant site and delivering the new pedestrian/cycle bridge in the shortest possible timeframe.

21. Financially, option one maximises the financial return from the council owned development sites and consequently minimises the overall project viability gap. This is because the council would retain all of the value generated by the completed developments. Once all of the apartments are sold on the open market and commercial spaces are let the value generated is anticipated to be in the region of £42.5m (see Annex 7). In addition the HRA would fund the building of 20 new council homes at Castle Mills, reducing the impact on General Fund borrowing. To mitigate the risk of the residential sales market suffering a downturn during the construction period the council could convert the completed sale homes to private rent until conditions improve. The rental income would generate an anticipated yield of 4.75% which would cover the council's borrowing costs until market conditions improved and the apartments could be sold.
22. In addition to that income stream the council has submitted an £8m funding bid to the West Yorkshire Transport Fund (WYTF), of which £4m would be eligible for phase one, and have an in principle agreement with Homes England for £1.4m of Accelerated Construction Funding (ACF), if the council acts as developer. In total the income and funding from phase one is anticipated to be £51.7m. This would result in an estimated viability gap on completion of phase one of £3.3m, which would result in a total long term financial cost to the council of £287k per annum, significantly lower than the other masterplan delivery options in this report (how the long term financial impact is calculated is set out in the Financial Appraisal section from paragraph 37).
23. A further consideration is the achievement of the expected social, quality and sustainability standards of the proposals. The planning application for Castle Mills has been developed through extensive public, stakeholder, and statutory consultee engagement. In addition to high design standards it would:
  - provide new council housing
  - meet the 28% carbon reduction target set out in the draft Local Plan
  - be a car-free development
  - restrict the use of apartments for short term lets

If the council were to act as developer for the site this commitment to design quality and sustainability would be maintained throughout the whole project delivery, and form part of the design principles for a future planning application for 17-21 Piccadilly.

24. Option one is the only option that allows the council to retain control over the delivery and quality of the masterplan; maximises the financial return from the development of its land assets; and consequently results in the lowest long term funding commitment from the council to deliver the masterplan. Whilst this will result in significant short term borrowing this would be largely repaid within a four year period and before any other future large scale capital projects, such as York Central and the outer ring road, will require council borrowing.

**Option 2 - the council builds St George’s Field MSCP and disposes of 17-21 Piccadilly and Castle Mills with a restricted use of residential and a requirement to build the new Foss bridge**

**Figure 5 – summary of option two**

Funding implications	Advantages		
Total cost - £18.9m	<ul style="list-style-type: none"> <li>• Reduces level of short term council borrowing</li> </ul>		
External funding - £4m	<ul style="list-style-type: none"> <li>• Council doesn’t carry direct developer risk</li> </ul>		
<b>Short term council borrowing - £14.9m</b>	<ul style="list-style-type: none"> <li>• Delivers key elements of masterplan</li> </ul>		
Income - £1.7m	<b>Disadvantages</b>		
Viability gap - £13.2m	<ul style="list-style-type: none"> <li>• Lose control of masterplan delivery</li> <li>• Significantly reduces financial return</li> <li>• Significantly increases long term funding requirement</li> <li>• Delays project delivery</li> <li>• Risk of no delivery and no capital receipt</li> <li>• Lower quality residential developments with no control over social and environmental benefits</li> </ul>		
<table border="1"> <tr> <td data-bbox="284 1397 683 1464">Cost of the short term council borrowing over 4 years - £0.5m</td> </tr> <tr> <td data-bbox="284 1509 724 1576"><b>Long term annual financial impact over 25 years - £0.98m pa</b></td> </tr> </table>	Cost of the short term council borrowing over 4 years - £0.5m	<b>Long term annual financial impact over 25 years - £0.98m pa</b>	
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25. Under option two the council would fund and build the MSCP at St George’s Field, whilst disposing of its development sites. The sites would be disposed with restrictions limiting the use of the sites to residential to prevent a developer from building hotel or student accommodation, and at Castle Mills the developer would be required to also build the new pedestrian/cycle bridge. It should be noted that the requirement for the bridge would mean that the Castle Mills development would need to be

through a development agreement approach rather than merely a land sale, which would require a complex procurement exercise.

26. In principle option two allows the delivery of the masterplan without the council undertaking the developer risks. However, even with restrictions applied to the development sites the council would still be conceding significant control over the delivery of the masterplan. Restrictions applied to the sale of land can be a useful tool but they do not guarantee delivery (as they do not oblige the buyer to develop the land), and it would mean that the timing of the Castle Gateway regeneration would be under the control of private developers rather than the council.
27. In the best case delivery timescale scenario any developer(s) acquiring the sites would more than likely pursue their own planning permissions which, coupled with the procurement and land sale process, would lead to a delivery delay in excess of 18 months. Should they fail to secure planning permission then the land sale and procurement process would need to begin again, adding further significant delay. As most bids are likely to be subject to planning there would be no capital receipt forthcoming unless and until a favourable planning permission was secured.
28. Even if an alternative planning permission is secured, any downturn in the residential sale market may result in the developer delaying construction to allow conditions to improve for them to maximise their profit. Consequently there would be no certainty as to when or whether the sites - and bridge - would be developed. Although it is possible to mitigate this risk to an extent through long stop legal clauses to take back the site if development has not commenced by a certain date, this would result in the whole sale process having to recommence with further associated delays.
29. Financially option two does have the benefit of reducing the short term borrowing to the council to £14.9m. However, due to the restrictions placed on the site the land values would be limited, and coupled with the council not receiving the developer profit it would result in the financial return to the council being significantly lower than option one. This in turn results in a much higher project viability gap, meaning the council would need to fund £13.2m, which would have an ongoing revenue impact of almost £1m per annum, almost £700k per year more than option one (see the financial appraisal section for sensitivity testing to assess the impact of receiving higher capital receipts for the sites).

30. The other key disadvantage of disposing of the sites is that developers are likely to seek to reduce some of the social and environmental benefits that the council has committed to delivering as part of its proposals and planning applications. This may result in lower quality design, failure to meet the draft Local plan sustainability targets, or a failure to provide on-site affordable housing. It is also unlikely that they would maintain a car-free approach, or sell the apartments with restrictions on short term lets due to the impact on values and saleability. Whilst the reduction in standards may reduce the construction costs and improve the profitability of the scheme, most of that financial uplift would be retained by the developer as profit. The council could seek to impose further requirements on developers through the disposal of the sites, but this would have a further impact on land value and project viability.
31. Option two would allow the masterplan principles to be delivered for less upfront council investment and having transferred the direct developer risk to the private sector. However, whilst the short term borrowing is reduced the council would have ceded control over delivery and quality, and the assumed income would be entirely dependent on achieving alternative planning permissions for complex sites and favourable prevailing market conditions. More importantly, the council losing the developer profit opens up a substantial viability gap, resulting in much higher ongoing long term financial funding requirements for the council of up to almost £1m per annum.

**Option three - do not proceed with St George's Field MSCP, close Castle Car Park, and dispose of 17-21 Piccadilly and Castle Mills with a restricted use of residential and a requirement to build the new Foss bridge**

**Figure 6 – summary of option three**

<p><b>Funding implications</b></p> <p>Total cost - £4.6m</p> <p>External funding - £3m</p> <p><b>Short term council borrowing - £1.6m</b></p> <p><b>Income - £1.7m</b></p> <p>Viability gap - £0.1m surplus</p>	<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>• Negligible short term council borrowing</li> <li>• Council doesn't carry any direct developer risk</li> <li>• Delivers key elements of masterplan</li> <li>• Castle Car Park closes earlier</li> </ul> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>• All disadvantages of option 2, plus:</li> <li>• City centre business would not support loss of 327 parking spaces</li> <li>• Council loses significant parking revenue</li> <li>• £1.5m abortive costs</li> <li>• Higher long term financial impact than option 1</li> </ul>
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Cost of the short term council borrowing over 4 years - £0m

**Long term annual financial impact over 25 years - £0.56m pa**

32. Option three effectively removes the council's need for any short term borrowing or direct developer risk, even returning a small upfront surplus through the removal of the capital cost to build the MSCP. It would still achieve the key masterplan principle of closing Castle Car Park, and the delivery of the new pedestrian cycle footbridge. However, crucially it does not provide the replacement car parking which many city centre businesses have said is essential for them to support the masterplan, or offset the loss of £1.2m revenue that is currently generated by Castle Car Park.
33. Whilst it is anticipated that there would be some retained revenue through displacement to existing council car parks at St George's Field and Piccadilly - based on analysis of car parking displacement during the part closure of Castle Car Park for the Rose Theatre - the annual loss of revenue would be in the region of £810k per annum. This would result in a long term negative financial revenue impact for the council of £560k per annum (once the loss has been offset by the new income generated from the new event space at Castle Car Park), which would be a significant sum of money that the council would need to fund every year in setting the annual budget.
34. In addition to the revenue implications and impact on city centre businesses of lost car parking at a time of unprecedented high street pressures, the delivery of Castle Mills and 17-21 Piccadilly would be

subject to the same negative delivery, timescale and quality implications set out in option two.

### **Option four - do not implement the masterplan and sell 17-21 Piccadilly and Castle Mills without any restrictions**

**Figure 7 – summary of option four**

<p><b>Funding implications</b></p> <p>Total cost - £0m</p> <p>External funding - £0m</p> <p><b>Short term council borrowing - £0m</b></p> <p><b>Income - £6.6m</b></p> <p>Viability gap - £6.6m surplus</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Cost of the short term council borrowing over 4 years - £0m</p> <p><b>Long term annual financial impact over 25 years - £0m pa</b></p> </div>	<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>• No capital investment required</li> <li>• No loss of car parking revenue</li> <li>• Capital receipt from unrestricted sale of development sites</li> </ul> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>• Does not deliver the Castle Gateway project and area remains distressed</li> <li>• Missed opportunity to deliver a masterplan with public, stakeholder and political support</li> <li>• £1.5m abortive costs</li> <li>• Significant reputational damage of not proceeding with masterplan</li> </ul>
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35. Option four is to not proceed with the delivery of the Castle Gateway masterplan; retain and upgrade Castle Car Park; abandon the new pedestrian cycle bridge and riverside park; and dispose of Castle Mills and 17-21 Piccadilly on the open market without any restrictions. This would generate a significant capital receipt of approximately £7m for the council and would have no long term revenue implications resulting from borrowing or loss parking revenue.
36. However, this option would result in the lost opportunity to implement a masterplan that is at an advanced stage, with unprecedented level of public support, for an area that has endured decades of failed proposals, when there are viable delivery options. This would lead to significant reputational damage for the council and result in the Castle Gateway remaining a neglected part of the city centre, dominated by surface level car parking and vehicles, damaging our heritage assets and cultural attractions, and lead to three years of abortive time and costs.



## Financial appraisal

37. Due to the scale of the financial implications of the project the following section considers and compares the financial impacts of each option in detail. The key principle in assessing each option is to differentiate between the risks associated with short term borrowing and financial return, and the impact of long term borrowing. Short term borrowing does have a revenue impact, as the full costs of the project delivery have to be financed until the financial return from the sales of either land or property are realised to pay back the initial outlay. However, this is time limited until the project has completed and the benefits are realised.
38. The greater impact on the council's long term financial position is having to service any project viability gap – if there is a shortfall to deliver the project that has to be funded by the council this results in an ongoing annual revenue cost to the council over a 25 year period. Similarly any loss of existing annual revenue from car parking also results in a long term impact on council's finances and budgets. Under all masterplan delivery options the long term impact is mitigated by an estimated £250k annual income from the commercial return from the new event space to replace Castle Car Park. It is therefore the project viability gap and the long term financial cost to the council that is of paramount importance. These impacts are summarised in detail in Figure 8 below:

**Figure 8 – summary of the financial impacts of each option**

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>	<b>Option 4</b>
	CYC as developer	CYC to build SGF and sell CM and 17-21 restricted	SGF is abandoned and sell CM and 17-21 restricted	Don't deliver the masterplan, sell development sites
Total cost	£55,000,000	£18,900,000	£4,600,000	£0
Short term council funding required	£45,800,000	£14,900,000	£1,600,000	£0
Cost of short term borrowing over a 4 years	£1,530,000	£544,000	£0	£0
Total income (sales, HRA and external funding)	£51,700,000	£5,675,000	£4,675,000	£6,600,000
<b>Surplus/Viability gap (income – cost)</b>	<b>-£3,300,000</b>	<b>-£13,225,000</b>	<b>£75,000</b>	<b>£6,600,000</b>
Long term borrowing cost to council to fund viability gap (pa)	-£230,000	-£926,000	£0	£0
Lost car parking revenue (pa)	-£307,000	-£307,000	-£810,000	£0
New income from events spaces (pa)	£250,000	£250,000	£250,000	£0
<b>Long term financial cost to the council</b>	<b>-£287,000</b>	<b>-£983,000</b>	<b>-£560,000</b>	<b>£0</b>
Abortive costs written off to revenue	£0	-£800,000	-£1,500,000	-£1,500,000
Short term council funding required	High	Medium	Low	None
Long term council funding required	Low	High	None	None
Loss of parking revenue	Low	Low	High	None
Long term financial impact	Low	High	Medium	None

39. Based on the principle's set out above the two key figures to consider in Figure 8 are the short term borrowing cost over a four year period, and the long term borrowing cost to the council, summarised as follows:

**Figure 9 – short term and long term borrowing implications**

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
Short term borrowing required	£45,800,000	£14,900,000	£1,600,000
Total cost of borrowing from revenue over a 4 year period	£1,530,000	£544,000	£0
Long term 25 year annual revenue impact	£287,000	£983,000	£560,000

40. Option one has the highest short term borrowing cost of £1.6m over a four year period. This would need to be funded from revenue budgets identified within future financial strategies. It does however have a significantly lower long term financial impact for the council. This option would mean the impact on future revenue budgets of £287k per annum, rather than £983k under option two and £560k under option three.
41. In arriving at these long term financial impacts officers have been prudent in assuming a reduction in net parking revenue of £310k per annum even under option one and two due to the higher running costs associated with an MSCP and reduced number of spaces. It should also be noted that the £250k per annum income assumed from the event space at Castle Car Park will be dependent on future Executive decisions on the delivery strategy for phase two of the masterplan which are not part of this report. These decisions may also have additional funding implications which will need to be considered at the appropriate point (see Risk Management section, paragraph 106).
42. The figures for options two and three are based on the independent land valuations set out in Annex 5 and 6, and the assumed sale values of £1.7m for Castle Mills and 17-21 Piccadilly reflect the proposed restrictions and complexities associated with each site (values would be significantly higher for hotel or student accommodation, land uses that were ruled out in the masterplan). Whilst this advice is robust and based on market evidence, experience suggests that actual offers for the sites may be significantly more based on developer 'hope' value that they can reduce quality and further increase density. Consequently officers have applied sensitivity testing to option two to assess the impact of an increased capital receipt for the sites over and above the independent financial advice.
43. This testing showed that even if the council was to receive £7m instead of the £1.7m valuation figure, and ignoring all other risks associated with actually realising that sum, the project viability gap under option two would still be £7.9m, which would result in an ongoing total annual financial impact for the council of £610k, still significantly higher than the £287k in option one. In addition to the reduced commercial return the council would not receive the Homes England ACF of £1.4m which is only available if the council act as developer.
44. For option three it would result in a higher capital receipt from phase one of £5.4m (noting that this is based on an assumed value and not formal valuation advice), but crucially the impact of ongoing lost car parking

revenue would remain the same. Due to the importance of not acquiring large ongoing long term financial commitments option one is the recommended option from a financial perspective.

### Recommended option – option one

45. Having analysed all of the options and considered the different implications of each approach it is recommended that the council should act as developer for phase one of the Castle Gateway regeneration.

**Figure 10 – Options appraisal summary**

	Option 1	Option 2	Option 3	Option 4
Short term council borrowing	£45.8m	£14.9m	£1.2m	£0m
Surplus/viability gap	-£3.3m	-£13.3m	£0.07m	£6.6m
Long term annual financial revenue impact	-£0.29m	-£0.98m	-£0.56m	£0
Delivery of masterplan outcomes				
Long term financial impact				
Abortive costs				
Delivery risk (control and timescales)				
Social outcomes				
Quality outcomes				
Sustainability outcomes				
Reputational outcome				

46. Option four has been discounted as it does not deliver the masterplan and would result in the closure of the project when there are viable alternatives for delivery. Option three has been discounted, as although it still delivers the key principles of the masterplan with the minimum levels of council short term borrowing and developer risk, it does not provide any replacement car parking to compensate for the closure of Castle Car Park. Option two has been discounted as, although it delivers all of the key principles of the masterplan, with the private sector funding and

taking the developer risk for the sites on Piccadilly, it results in the biggest project viability gap.

47. Consequently the recommended option is option one. This would maximise the potential financial return to the council; minimise the project viability gap and long term borrowing required to deliver the project; deliver the full ambition of the first phase of the masterplan; and allow the council to control and drive the delivery in terms of timescale, quality and sustainability.
48. Given the size of the financial commitment it is proposed that the Executive only commit to the principle of the approach at this stage, with the final approval and drawdown of the budget to be taken once actual tender returns for construction have been received. Based on the proposed timescales for the next stage of work this decision would be brought back to the Executive in late 2020. The proposed procurement approach for St George's Field and Castle Mills that will allow this staged decision making is set out in the following procurement strategy section.
49. In respect of 17-21 Piccadilly, the designs are not yet at a stage that would allow an in principle decision as to whether the council should act as developer for that site. All cost and financial return assumptions remain at a very high level. Consequently the recommendation as to how to proceed with the delivery of this site will be brought back to the Executive on completion of the RIBA stage 2 designs in the summer of 2020. The cost of undertaking this work forms part of the existing Castle Gateway delivery budget and as such no further funding is required at this stage. It should be noted that if an alternative approach is ultimately taken for the delivery of 17-21 Piccadilly, or the current assumptions regarding the site's capacity for development alter significantly in the next stage of design, then the viability gap for phase one could change.

## **Procurement strategy**

50. To enable the staged approach to decision making it is proposed that the procurement of St George's Field and Castle Mills results in a contract containing an Early Contractor Involvement (ECI) phase. This will allow the detailed design phase up to RIBA stage 4 to be undertaken in collaboration with a contractor, enabling their input to optimise the detailed design; commence construction planning; identify opportunities; and provide the contract sum for the construction phase. This period normally takes between 8 and 12 months but is not an additional delay to the project, as in an alternative process that did not involve an ECI phase

the council would need to lead and undertake the RIBA stage 4 design period before the tender process could begin.

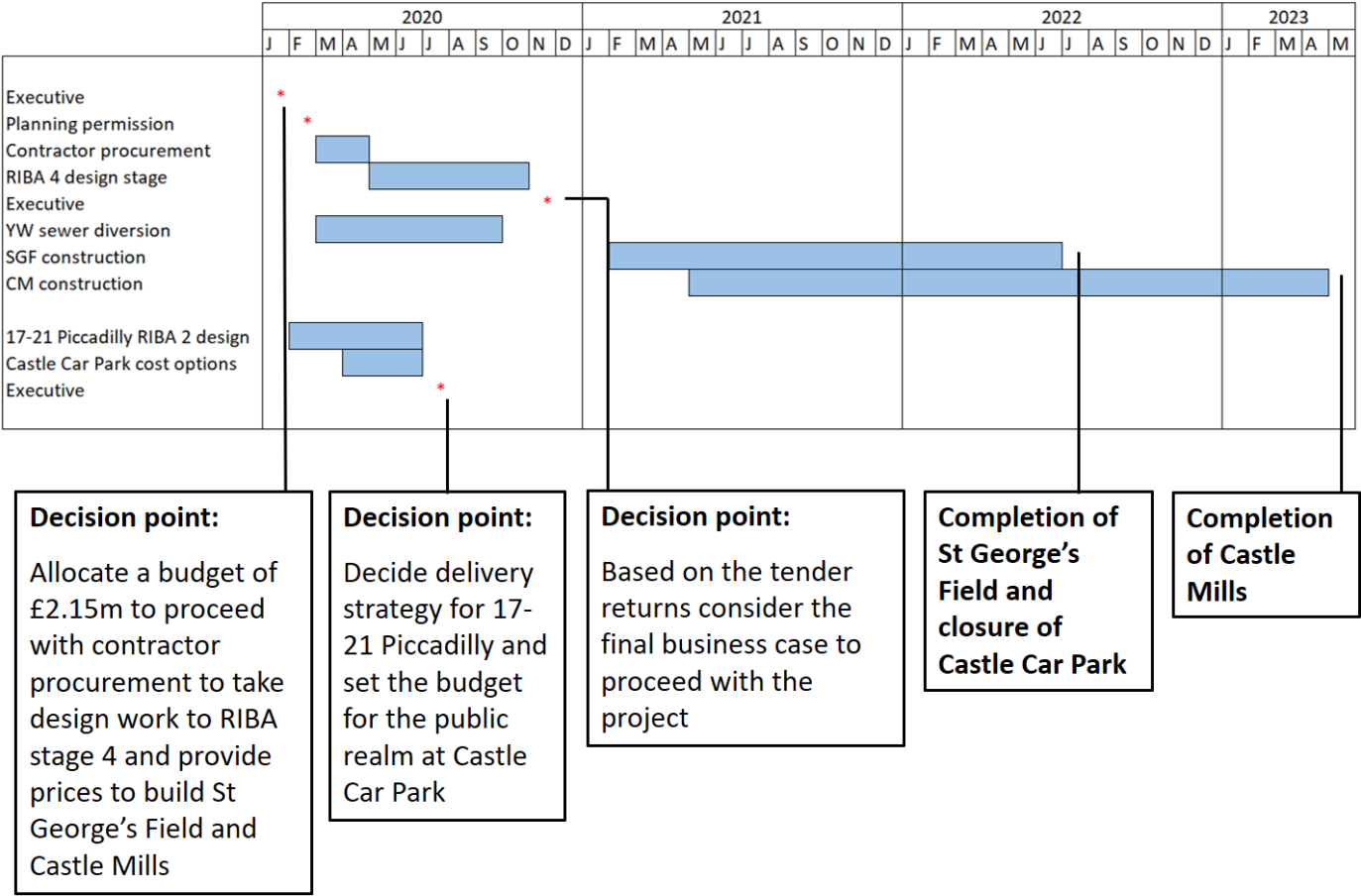
51. Once the ECI phase has completed progression to the delivery stage with the contractor would only commence if they had performed to the council's satisfaction in the first stage by reference to performance standards set out in the contract and provided an agreed affordable price for construction. It should be noted that the RIBA stage 4 design that is produced through this process is owned by the council so that if the construction cost is in excess of the budget a new procurement exercise could be carried out with the market based on that detailed design.
52. It is proposed that St George's Field and Castle Mills are procured separately, given that they are different types of construction projects that will likely require contractors with different specialisms. Under this approach BDP, who were project architects during the planning application process, would be novated to the contractor to continue the detailed design. This will ensure design continuity and comfort that the hours allotted to the RIBA stage 4 design are agreed up front so that a contractor does not seek to reduce tender costs through allowing insufficient architect time to the project.
53. The key benefit of this approach is that it would allow a report to be brought back to the Executive at the end of the ECI phase once the fixed costs of delivery are known to enable a decision to be made based on fixed costs. It is therefore recommended that the council proceed with the procurement of a contractor for both Castle Mills and St George's Field resulting in a contract incorporating an ECI phase, with a report to be brought back to the Executive at the end of the ECI phase for a final decision to draw down the budget and proceed with construction.
54. For Castle Mills it is also proposed to add a second contract 'lot' to the procurement to cover 17-21 Piccadilly. This would not commit the council to using the contractor to build out 17-21 Piccadilly but, if the Executive do decide to develop 17-21 Piccadilly itself following the completion of RIBA stage 2 design, and are happy with the Castle Mills contractor based on contract performance, it could choose to proceed on that basis.

### **Timescales and next steps**

55. The following section sets out an overview of the project delivery. The separate procurements of contractors and RIBA stage 4 design to provide a fixed price for the construction of St George's Field and Castle

Mills is expected to complete by October 2020. This will allow a report to be brought back to the Executive by the end of 2020 setting out the actual cost of project delivery to allow a final decision to be taken as to whether to proceed and commit the full budget required. The Executive decision required at this point and set out in this report is only to commit to the procurement and recommend to full council the £2.15m budget required for the next stage of work.

**Figure 11 – timescales for delivery and key Executive decision points**



56. As set out in Figure 11, should the fixed price be acceptable then project delivery would commence in early 2021. This would enable the construction of the St George's Field MSCP to complete in summer 2022, allowing the closure of Castle Car Park at that point. Concurrent to the construction of the MSCP, the phase two detailed designs and planning permissions will be progressed for the replacement public realm at Castle Car Park and the Eye of York, with a report to be brought back to the Executive in summer 2020 to establish the future construction budget.

57. Due to a proposed planning condition that the construction of Castle Mills cannot commence until after the groundworks for St George's Field has started, start on site for that development would begin in spring 2021. Based on a two year construction programme the anticipated completion date would be spring 2023.

58. To achieve this timescale for delivery:

- Officers would proceed with the procurement of construction contractors for St George's Field and Castle Mills to allow the development of the RIBA stage 4 design following January Executive
- This would allow a report to be brought back to Executive in late 2020 with fixed construction costs to enable a decision to proceed to be taken
- In the meantime RIBA stage 2 design work for 17-21 Piccadilly will be undertaken to establish more detailed cost and sales value estimates, to allow a recommended delivery route for that site in summer 2020
- A report will also be brought back to the Executive to establish the budget for the new public realm at Castle and Eye of York with the intention that planning permissions are in place and the project can proceed once Castle Car Park closes in spring 2022

### **Finances to deliver the next stage of work**

59. To deliver the recommendations set out in this report a budget of £2.15m will be required. This is not additional budget but is part of the total anticipated project costs of £55m set out in the report. Although the drawdown of this element would be at risk if the tender returns proved to be unaffordable and the project did not proceed, it will enable a considered step by step approach to decision making without having to commit to the full project costs now. This is a prudent approach to delivery and financial management.

60. The £2.15m consists of:



- £1.87m to cover St George's Field and Castle Mills procurement costs; RIBA stage 4 design; and project management resource
- £0.28m to complete the planning applications for phase two - a £2.4m budget was allocated by Executive in April 2018 to deliver the planning applications for both phase one and two. Phase one has now completed and work is about to proceed on phase two. Based on the actual costs to date in submitting planning applications for phase one it is anticipated that a further £0.28m will be required to complete this work.

61. For development of the St George's Field site to proceed it will require the diversion of an overflow sewer that crosses the site at a cost of almost £500k and will take Yorkshire Water 6 months to complete. To allow the diversion to take place the existing toilet block will also require demolition (to be replaced with new toilets in the MSCP). The cost of this diversion is part of the overall construction budget for St George's Field set out in this report. Until the Executive take the final decision to proceed with St George's Field in late 2020 there is no absolute certainty that the development will go ahead, and if the Executive decided not to proceed in late 2020 the sewer would have been diverted and toilet block demolished unnecessarily at a cost of £532k.
62. Delaying the sewer diversion until after that decision point would in principle result in an estimated 3 month delay to the programme, which would not have a significant detrimental impact on delivery. However, that is predicated on the assumption of Yorkshire Water being able to schedule the work for that period, and it taking place over the winter months with increased flood risk potentially impacting on the diversion. A further complication is that Yorkshire Water are re-tendering their contractor delivery partner, meaning the delivery of any work that is commissioned after June 2020 is uncertain.
63. It is therefore proposed that an additional budget of £532k is allocated to allow the sewer diversion and toilet demolition, but the decision to proceed with commissioning the work is delegated to the Executive Member for Finance and Performance. This will allow a flexible and reactive decision to be taken at the appropriate point when the need to divert the sewer due to programme outweighs the risk of St George's Field not proceeding. There are likely to be mitigating points that will inform that decision, including receipt of planning permission and the final tender price which is due at the end of August.

## **Council Plan**

64. 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 reducing 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 will help to build strong, sustainable communities within the city walls. Proceeding with the first delivery phase of the masterplan will reaffirm the council's commitment to engaging residents and investing in shaping our city for the future.

## **Consultation**

65. The masterplan is the product of comprehensive and innovative public consultation through the My Castle Gateway project, which has applied a multi-platform approach to engagement with face to face interactions, social media, and regular public updates. This has then continued through to the delivery phases, with the planning applications for Castle Mills and St George's Field again being subject to intensive public engagement including walks, ward and resident committees, and drop-in events. In addition to public and residents, other stakeholders have been involved throughout as part of the Castle Gateway Advisory Group, which has met on a monthly or bi-monthly basis to consider the emerging plans and have been integral in shaping the proposals.

66. Ward members from the affected neighbouring wards and leaders of other political parties have been kept up to date with regular briefings to ensure a cross party approach as requested by the Executive in January 2017. Internally, specialist officers across the council, and those whose services are affected by the proposals, have contributed to the development of the masterplan and planning applications.

67. The delivery options set out in this report are the product of external advice and support from consultants, and were shaped through contractor engagement events to assess the level of interest in the

project and the advantages or disadvantages of different delivery models and procurement approaches.

## Implications

68. The following section from paragraphs 69 – 95 sets out the specialist advice on the financial, legal, and property implications of the recommended option from the appropriate officers.

### Financial

69. This project has significant financial implications, which are considered within the report. This section summarises the key impact of the recommended option

#### Overall Capital Cost and Funding

	£'m	£m
Capital Cost		55.0
Funded by		
HRA Capital Resources	-3.7	
Homes England Grant	-1.4	
WYCA Grant	-4.0	
Castle Mills (sales and commercial income)	-34.5	
17-21 Piccadilly (sales and commercial income)	-8.1	
		-51.7
<b>Net Overall Cost</b>		<b>3.3</b>

#### Funding the Project

70. The long-term funding gap would be funded from prudential borrowing at an ongoing cost of £0.2m per annum. In addition to forecast lost net parking income the ongoing long term funding requirement is approximately £0.3m.
71. The project will need significant short term borrowing which is currently modelled to be at a peak of £40m at the end of 2022/23. The short-term borrowing costs are forecast to total £1.6m over the period with a peak of

c£1m in 2022/23. These will need to be identified within future year's budget strategy reports subject to further funding approvals. The HRA Contribution of c £3.7m is available within current HRA capital budgets – Local Authority Homes Phase 2.

### Funding and Spend to date

72. The council has approved £2.58m of capital towards supporting the Castle Gateway project including funding to demolish Castle Mills car park. This funding has been used to fund design work at St George's Field MSCP as well as the new build at Castle Mills along with associated management costs and taking the schemes to planning. To date the spend is anticipated to total £1.7m at the end of the financial year. The additional funding request of £2.15m will fund the next stage required to progress these two schemes that is procurement and final design.
73. It is assessed that were the scheme to be abandoned at this stage these costs would be deemed to be abortive and will need to be written off to revenue. Should the funding be allocated at this stage and the scheme not progress further the potential abortive costs will increase to £4.73m, plus up to a further £0.53m if the sewer was diverted before that decision point.

### Risk Management

74. The risk management section below considers a number of the most significant financial risks that need to be considered alongside the decision to progress with the project.

### **Legal**

#### Grant Funding

75. It is noted that £1.4 million of ACF will be received from Homes England (HE) but only if the council implements option one. HE's standard grant agreement for ACF contains a number of provisions to be aware of in respect of clawback and profit share, which could apply even if the council is not in breach of any of its obligations in the grant agreement. The Council would also become liable to repay to HE all or a proportion of the HE grant funding if the council breaches any of its obligations under the grant agreement, such as failing to achieve the delivery milestones within the timescales set out in the agreement.

76. It is noted that £4 million of WYTF will be received from WYCA in respect of phase 1. The standard terms of the WYTF require the council to repay to WYCA all, or a proportion of, the funding received from WYCA if the council does not comply with its obligations under the grant agreement.

Option one - the council acts as developer for all elements of Phase

Commercial/Contractual - Procurement

77. The procurement of contractors for the design and construction works at Castle Mills and the design, demolition and construction works at St George's Field 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.
78. 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.
79. 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

80. The Council has a number of powers to develop, sell or lease Castle Mills and develop the MSCP at St George's Field, 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.

81. 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.
82. 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'.
83. 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

84. The approval and co-operation of Yorkshire Water (YW) will be needed for the diversion of the mains sewer within the St George's Field site before construction of an MSCP on that site can commence. Yorkshire Water will require the council to enter into a 'diversion agreement' (which will be prepared by YW and be on YW's standard terms for such a document) and will require the council to pay/reimburse YW for all costs incurred by YW in carrying out the necessary diversion works.
85. Construction of an MSCP on the St George's Field site will also require demolition of the public toilet block currently standing on that site which is operated on the council's behalf by Healthmatic under a contract for the management and maintenance of public toilets in the City of York. The contract is not due to expire until 31<sup>st</sup> March 2029 and so the Council will need to consult and co-operate with Healthmatic in relation

to the closure of the existing facilities and re-development elsewhere. The contract will need to be varied accordingly including a recalibration of the payment mechanism to take account of the temporary reduction in the number of service users (which is an integral part of the Healthmatic revenue costs specified in the current contract). Any revised payment terms will need to be negotiated and agreed with Healthmatic.

86. It is understood that development of the Castle Mills site will also require the co-operation of YW 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 will be prepared by YW and be on YW's standard terms for such a document).
87. In the event the residential sales market experiences a downturn it is understood there may be a decision to convert the completed residential sale homes to private rental accommodation until conditions improve. Any apartments which are rented out by the council for a term of less than 21 years to persons for occupation as their principal or sole residence will be 'secure tenancies' pursuant to the Housing Act 1985. The tenants would therefore have the substantial rights and protections which secure tenants benefit from including: (i) the right to be granted a lease for a Term of 125 years pursuant to the 'Right to Buy' once they have been a tenant of a local authority for the qualifying period (ii) security of tenure/protection from eviction in accordance with the provisions of the Housing Act 1985.
88. The tenant of any apartment whose lease is granted for a fixed term of at least 21 years will have a statutory right to be granted an extension of 90 years to the term of their original lease (in return for a paying a premium to the landlord). (A majority of such tenants may also have a statutory right to acquire the freehold of the building).
89. The tenants of any commercial/non-residential units will have security of tenure, and therefore a statutory right to renew their lease on similar terms, under the Landlord and Tenant Act 1954 unless this is excluded before the leases are granted (by adopting the exclusion procedure specified in that Act).
90. The property implications regarding possible leases at Castle Mills in respect of the security of tenure and Right to Buy provisions of the Housing Act 1985 would not be applicable if the apartments were let through a company structure. Forming a company and transferring the

land to that company so that the company, rather than the council itself, granted any leases, would ring-fence the risks associated with the rental of the apartments.

91. 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.
92. 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).
93. 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'

Options 2, 3 and 4

94. A consideration of the legal implications in respect of Options 2, 3 and 4 is set out in Annex 4.

### **Property**

95. The report sets out the various property disposal/ development options available in detail and considers the merits for and against such in detail. External independent property advice has been sought and which has informed the recommendations as set out within this report and which is contained within Confidential Annex 5 and 6.

**One Planet Council / Equalities** – see One Planet Council 'Better Decision Making Tool in Annex 3

**Human Resources** – *no impact*

**Crime and Disorder** – *no impact*

**Information Technology** – *no impact*



## **Risk Management**

### **Recommended option**

96. The recommended option is not without significant risk. The council will need to undertake substantial short-term borrowing to achieve the anticipated financial returns from the sale of the apartments and generate income from the commercial units. Financial returns from new development can only ever be estimates at this stage in the process. The final outcome is particularly sensitive to fluctuations in the cost of construction and residential market values. A squeeze at either end of the cost to income ratio can reduce the anticipated profit, and in a worst case scenario of rising build costs and a collapse in sales values can have a significant impact on financial returns.
97. To mitigate this risk officers have undertaken a number of measures. Firstly, the current Castle Mills costs are based on detailed planning application drawings that minimise unknown costs and up-to-date market analysis of build costs by the project's cost consultants, Turner and Townsend. These costs also include contingencies and the anticipated build cost inflation has been applied. The sales valuations undertaken by Hudson Moody are based on the actual floor plans, and conservative assumptions have been applied to safe-guard against unforeseen market fluctuations. To ensure that the actual costs for the project do not prove to be significantly higher than the estimates at this stage the final Executive approval will only be given on completion of the RIBA stage 4 design and tendered contract sums.
98. Secondly, the council have modelled the impact of converting the apartments from market sale to market rent in the event of a downturn in the residential sales market, and this has confirmed that the rental income generated would be sufficient to cover the borrowing costs until such time as market conditions had recovered and the apartments could be sold. This may require the establishment of a separate company in which to transfer the rented units as set out in the Legal Implications section.
99. Whilst the level of short term borrowing is significant, based on the current programme it should have been repaid before other major council funding commitments for York Central and the outer ring-road are due. However, it should be noted that any delay to programme may result in an overlap which whilst not an issue in principle it would increase the council's short term borrowing exposure. The financial commitment

needed to deliver the Castle Gateway masterplan would however reduce the council's capacity to undertake any new major capital investment project during the construction period.

### **External funding sources**

100. The financial assumptions set out in this report are predicated on receiving £4m of WYTF for phase one and £1.4m of ACF from Homes England. The WYTF is drawn from the council's existing funding agreement for other historic transport projects that are no longer proceeding. However, the repurposing of these funds still requires approvals from the West Yorkshire Combined Authority (WYCA). The business case is currently being taken through the WYCA decision making process, and a final decision is expected in summer 2020. Whilst the funding is already part of the council's existing funding commitment the spend has to be ratified by WYCA, and if that process is unsuccessful it would lead to a further funding gap or a decision not to implement the transport measures such as the new bridge and inner-ring road crossing.
101. The £1.4m ACF has been agreed in principle. However, it contains some exacting requirements over the modern methods of construction that must be used and has tight delivery timescales. The council will only commit to the funding if the required construction methods are cost effective and can be delivered. Should the council decide not to proceed with the funding it would need to be covered by the £2m project contingency that form part of the total scheme costs.

### **Failure to secure planning**

102. St George's Field and Castle Mills have been submitted for planning and are due to be determined in March 2020. Both are challenging sites in sensitive heritage areas with significant planning constraints. Whilst officers have undertaken thorough pre-application processes with both planners and statutory consultees - and remain hopeful of positive outcomes - there is no guarantee of permission being granted by planning committee.
103. Should St George's Field fail to secure planning permission then there would be no alternative parking provision to allow the closure of Castle Car Park. It would not be cost effective to reduce the size of the MSCP as any further reduction in height or number of spaces would not justify the expensive foundation and ground work costs. As there is no other

viable new car park location in the area the Executive would need to reconsider option three or four set out in this report.

104. Should Castle Mills fail to secure planning permission then there would be no commercial return to pay for St George's Field. The council could look to revise the planning application to reduce height or density, but this would reduce the income from sales and further increase the project viability gap. Alternatively the council could look to dispose of the site with restrictions as residential and a requirement for the bridge and then fund the resulting higher viability gap; or sell without restrictions for the highest offer, reducing the viability gap but not delivering the bridge and public park elements of the masterplan.

### **Reputational damage of abandoning at the next decision point**

105. The proposed delivery strategy is to procure construction contractors to undertake the next stage of design and provide a fixed price for the build phase. This form of contractual engagement is not designed or intended to allow projects to be abandoned simply because the council do not like the outcome of the ECI stage. There will be specific performance and pricing parameters set out in the contract within which the contractor must operate in order to proceed to the build phase of the contract. However, because the contractor has been paid for their work in developing the RIBA stage 4 design under an ECI phase the council do own that design work and do have the capacity to decide not to proceed if the contractor has not achieved the required performance standards or the fixed price for the build phase is over-budget. Consequently, although it would not be best practice to decide not to proceed at the end of the ECI phase the contractor would have entered in to the ECI phase knowing that this would be a possible outcome and be comfortable with that risk.

### **Closure of Castle Car Park**

106. Due to a proposed planning condition requiring the closure of Castle Car Park within 3 months of completion of St George's Field MSCP the council are in effect committing to close Castle Car Park once they make the decision to proceed with phase one. Consequently the Executive will need comfort that there is a budget available to replace the closed Castle Car Park with public realm. It should also be noted that the financial strategy for phase one has assumed a £250k per annum income from holding events at Castle Car Park once it has closed. To create a space capable of generating this level of income may need further capital

investment that does not form part of this report as part of the funding strategy for phase two. To that end a report will be brought back to the Executive in the summer of 2020, before the final decision to proceed with St George's Field is taken by the Executive, setting out the proposed funding strategy for the new public realm.

## Contact Details

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**Report**  **Date** 6 January 2020  
**Approved**

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## 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

## **Annexes**

**Annex 1** – Castle Gateway masterplan

**Annex 2** – Castle Gateway phase one summary

**Annex 3** – One Planet Council Better Decision Making Tool assessment

**Annex 4** – Legal implications of options 2, 3 and 4

**Confidential Annex 5** – Stapleton Waterhouse site valuations of Castle Mills

**Confidential Annex 6** – Stapleton Waterhouse site valuations of 17-21  
Piccadilly

**Confidential Annex 7** – Summary of phase one viability appraisal for option  
one

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

ACF – Accelerated Construction Fund

ECI – Early Contractor Engagement

MSCP – Multi-storey car park

WYCA – West Yorkshire Combined Authority

WYTF – West Yorkshire Transport Fund