



**COUNCIL CABINET**  
**11 SEPTEMBER 2019**

**ITEM 14**

Report sponsor: Strategic Director of  
Communities & Place  
Report author: Head of Regeneration & Major  
Projects

## **Castleward – Next Steps**

### **Purpose**

- 1.1 To seek approval for a new primary school at Castleward as a critical step in the delivery of further housing in Castleward and the adjacent former DRI site.
- 1.2 To seek approval for the use of un-ringfenced right to buy receipts and HRA funding to enable delivery of further phases of housing development including the acquisition of a number of affordable homes.

### **Recommendations**

- 2.1 To approve the development and construction of a new primary school at Castleward with approval delegated to the Strategic Director of Peoples Services in consultation with the Strategic Director of Communities & Place, Cabinet Member for Adults, Health and Housing and the Cabinet Member for Children and Young People to take all necessary actions to secure the building of the new School as per paragraphs 4.17 through to 4.19.
- 2.2 To delegate approval to the Strategic Director of Corporate Resources, in consultation with the Strategic Director of Communities & Place to enter into a Deed of Variation to the existing Housing Infrastructure Fund grant funding agreement with Homes England as per paragraphs 4.13 and 7.5.
- 2.3 To delegate approval to the Strategic Director of Corporate Resources, in consultation with the Strategic Director of Communities & Place to enter into a grant funding agreement with D2N2 LEP for Local Growth Fund money as per paragraphs 4.11 and 7.8
- 2.4 To approve the consideration in the 2020/21 budget setting process of the ongoing revenue pressures that occur as a direct result of delivering a new school at Castleward and a cashflow contingency for this project as described in paragraph 7.2.
- 2.5 To approve the use of the Sovereign Car Park site for the school and note the financial implications of this change of use (paragraphs 4.20 and 4.21 refer).
- 2.6 To approve the use of the Supported Capital Expenditure allocation of £500,000 financed through borrowing towards funding the school in Castleward.

- 2.7 To approve a departure from the corporate capital receipts policy and instead to earmark the receipts from the sale of Council owned land in Castleward for use on the Castleward Regeneration scheme (See Appendix 1 for a plan of the Castleward area). This will include land at Traffic Street with an estimated value of £250,000 that will contribute to the funding package for the school (paragraph 7.11 refers).
- 2.8 Once Grant Funding Agreements are in place and subject to approval through the Council's project gateway process, to delegate approval to the Strategic Director of Corporate Resources to add £8m to the Council's 2019/20 – 2021/22 Schools capital programme for the Castleward school, in line with the Financial Implications section of this report.
- 2.9 To approve up to £1.5m of un-ringfenced Right to Buy receipts to use towards the costs of land acquisition and other costs arising from a compulsory purchase order (should this be approved), to enable delivery of further housing development at Castleward as per paragraphs 4.14 and 7.16.
- 2.10 To delegate approval to the Strategic Director of Corporate Resources, in consultation with the Strategic Director of Communities & Place and the Cabinet Member for Adults, Health and Housing, to negotiate the purchase of a number of affordable homes at Castleward through the HRA and secure a formal agreement with Compendium Living as described in paragraph 7.16.

## **Reasons**

- 3.1 The above approvals are required in order to progress the delivery of a new primary school at Castleward and to deliver the scale of housing in the vicinity of Castleward that delivers the Council's approved Local Plan housing targets and the objectives of Derby's City Centre Masterplan.

## **Supporting information**

### **Background**

- 4.1 The regeneration of Castleward is a priority project in the Derby City Centre Masterplan 2030 and critical to achieving the housing targets in the Derby City Local Plan (2011-2028). A residential led development for Castleward to deliver up to 840 dwellings, secured outline planning permission in 2013, (ref: DER/05/12/00563) with delivery of new homes planned over 5 phases. Phase 1 is successfully complete (164 new homes) and Phase 2 has commenced on site (54 homes).
- 4.2 The key partners in the delivery of Castleward are Derby City Council, Homes England and Compendium Living who were appointed as developer partner for Castleward in 2011. A development agreement exists governing the roles of and relationship between these partners. The Local Plan Target for Castleward expects at least 800 new housing completions by 2028, including affordable housing.

- 4.3 In November 2018, Cabinet approved in principle the use of compulsory purchase powers to progress further phases of housing development at Castleward. The land referencing, valuation and consultation work required developing a CPO strategy and statement of reasons is well progressed and Cabinet will receive a report later in the Autumn on the proposed CPO approach.
- 4.4 An award of £4.5m of Housing Infrastructure Fund (HIF) was made in March 2019 to fund land acquisitions, thereby enabling further phases of development to proceed. In order to guarantee the achievement of outputs attached to the HIF funding (512 new homes), a number of conditions are set out within the funding agreement. One of these conditions requires the Council to resolve key planning requirements, namely the provision of a new primary school, to ensure development of new homes can proceed.

### **School Provision**

- 4.5 The provision of a new primary school is a requirement of the outline planning permission to serve the new neighbourhood and ensure a sustainable form of development. For Castleward, the requirement is for a single form intake comprising a 210 place school plus nursery unit of 39. The residential re-development of the former DRI site (recently awarded planning permission) increases the number of places required to 315 plus 39 place nursery. In order for any further phases of housing to achieve planning consent and proceed at Castleward, delivery of a new school is required.
- 4.6 The Education Act 2011 changed the arrangements for establishing new schools and introduced section 6A (the free school presumption) to the Education and Inspection Act 2006. Where a Local Authority thinks there is a need for a new school in its area, it must seek proposals from potential sponsors to establish a free school. There is guidance from the Department for Education (DfE) on the process to be followed to establish a new school. The School Organisation Team will undertake the marketing and selection process to establish an academy sponsor and this will be subject to a separate report to Cabinet.

### **School costs**

- 4.7 Based on the initial feasibility work to date, a total cost of £7m is estimated with a further £1m of contingency to cover the site abnormalities risk.

- 4.8 The anticipated cost of the school is higher than originally estimated. There are three key reasons for this:
1. The need to build a 1.5 form entry school rather than the 1 form entry school originally envisaged. This decision is based on professional advice that it is most cost effective to construct the 1.5 form entry school required for both Castleward and the former DRI site, rather than constructing a 1 form entry with the infrastructure built-in to allow for a school extension at a later date.
  2. Given a 1.5 form entry school and relatively small size of the site (1 acre or thereabouts), the school will need to be a mix of one and two storey construction, include a lift and include high-specification play space to compensate for the lesser amount of sports pitches.
  3. Due to the previous industrial / housing use of the land an additional level of contingency has been included at this stage to allow for site conditions (contamination, underground services etc.)
- 4.9 To improve cost certainty, a robust development and cost feasibility study has been commissioned by School Organisation and Provision via the Council's Property Design & Maintenance Division within an approved budget of £120,000. This will be concluded in September and any results available at the time of the Cabinet meeting will be reported verbally. Should the results of the feasibility study show a cost increase that is unaffordable then the scheme will be reviewed and either stopped or brought back to Cabinet with revised proposals.

## **Funding**

- 4.10 £1.5m of Local Growth Fund (LGF) funding has been approved in principle by the D2N2 LEP for the Castleward project, of which £1.4m is designated towards the new school. D2N2 LEP requires that a funding package for the school is confirmed by the end September in order to safeguard the LGF3 allocation. If this does not happen, it is likely that the £1.5m LGF will be re-allocated to another project within the D2N2 LEP area, and will be lost to the Castleward project and potentially to Derby City. The approvals requested in this Cabinet report including the proposed funding package for the school will satisfy the D2N2 LEP's requirement and secure the LGF funding.
- 4.11 The Council has submitted an Outline Business Case (OBC) to the D2N2 LEP and will submit a Full Business Case when the project design has reached RIBA Stage 4 (detailed design) and a planning application is submitted. Once planning permission is granted and the Full Business Case is approved (Expected April 2020), D2N2 LEP will enter into a grant agreement with the Council. Letting of the final construction contract will follow once the LGF grant agreement is in place. The LGF funds have to be spent by the end March 2021 and based on the programme detailed at paragraph 4.19 we can prioritise spend of LGF funds to achieve this. Paragraph 7.8 details the financial risks associated with this.
- 4.12 Homes England have agreed to provide advance funding of £450,000 from our HIF allocation to support the detailed design and planning phase of the project up to achieving a full planning consent. There is a risk that if the project does not proceed to construction then this funding would have to be paid back to Homes England. Paragraph 7.6 refers to this risk and the mitigation measures in place to address it.

- 4.13 The increase in costs for the school, coupled with an award of just £1.5m of LGF against a bid for £6.6m had left a funding gap for the school. Recent discussions with Homes England have resulted in the award of an additional £3m of HIF funding towards the school which has largely addressed this funding gap. This increased funding offer is subject to the Council entering into a Deed of Variation to the existing funding agreement with Homes England which introduces revised milestones for the delivery of the school. The target practical completion date is 31/7/2021. The emerging project programme through early contractor engagement indicates this is achievable (paragraph 4.19 details the delivery programme).
- 4.14 Utilising un-ringfenced Right to Buy receipts towards land acquisition costs, will help facilitate the provision of affordable housing on site. Note, Homes England has agreed that the HIF grant for the school can increase from £3m to £4.5, on the assurance that the Council will fund £1.5m of the land acquisition / CPO costs for which the HIF was originally awarded. It is proposed to fund this out of the un-ringfenced Right To Buy receipts.
- 4.15 Full Planning Permission for the development of circa 800 homes on the former DRI site has been granted with a S106 Agreement that contributes a total of circa £1.2 million to education provision in Castleward. Payment of this S106 will be phased over a number of years. A further S106 agreement for £126,000 on the former Alcora Car park site is in draft and being negotiated with the developer. The expected timescale for receipt of these S106 payments is detailed at paragraph 7.2 and Table 1. In advance of S106 receipts the Council will need to cashflow spend – this is also detailed at paragraphs 7.2, 7.4, Table 1 and Table 2.

- 4.16 The various actions and approvals necessary to mitigate grant funding and cost risk are detailed within the following stages:

<b>Project Specific Finance Gateways</b>	<b>Actions and Approvals</b>	<b>Timescales / Milestones</b>
Stage 1	Obtain Cabinet Approval.	11 Sept 2019
Proceed to Stage 2		
Stage 2a	Conclude School Feasibility. Indicative cost < £8.0m	End Sept 2019
Stage 2b	Obtain written consent from Compendium Living agreeing to sell a number of affordable units to the Council using HRA finance	End Sept 2019
Stage 2c	Agree Deed of Variation with Homes England to increase and re-profile £7.5m HiF grant	End Sept 2019
Proceed to Stage 3		
Stage 3a	Draw down £450k HiF planning and pre-construction funding	October 2019
Stage 3b	Appoint preferred contractor to undertake design and full planning to RIBA Stage 4	October 2019
Stage 3c	Obtain Detailed Planning Permission	Mar/Apr 2020
Proceed to Stage 4		
Stage 4a	Submit and obtain approval to LGF Full Business Case with D2N2	April 2020
Stage 4b	Finalise construction cost and prepare construction contracts	Mar/Apr 2020
Proceed to Stage 5		
Stage 5	Appoint preferred contractor to build the school	May 2020

### **Delivery and programme**

- 4.17 The project management for the delivery of a new school will be undertaken by the School Organisation and Provision Division with technical contract management support from the Property Design & Maintenance team. Project management costs will be funded from the Local Growth Fund monies as a capital cost.
- 4.18 A feasibility study to scope the cost, specification and programme for the school is due for completion by the end of September. Subject to completion of the Deed Of Variation with Homes England and draw down of the £450,000 advance HiF funding, the Council will subsequently:
- procure the concept and detailed design of the school
  - apply for full planning permission
  - appoint a contractor for pre-construction design and planning afforded by the £450,000 HiF
  - once the LGF funding agreement and approval through the Council's project gateway process is in place, the full construction contract will be let
  - identify a sponsor to establish a free school subject to DfE approval

The School Organisation and Provision team consider the best procurement approach to each of these workstreams is to directly appoint Morgan Sindall from the Scape Framework. This decision will be taken under delegated authority on confirmation of the HIF funding. The school competition process to identify a sponsor will be subject to a separate report.

- 4.19 A programme for delivering the school has been drawn up and the headline milestones are as follows:

Secure HIF Forward Funding via Deed of variation	Sept 2019
Cost Feasibility and Design Development complete	Sept 2019
Submit planning application	Jan 2020
Secure planning consent	April 2020
Start on site	May 2020
Launch call for school sponsor	Jan 2020
Select school sponsor	Jan 2021
Practical completion	July 2021
School opens	Sept 2021

### **Sovereign Car Park site**

- 4.20 In March 2011, Cabinet approved the acquisition of the Sovereign Car Park site for the sum of £500,000 as a strategically important site for the Castleward development. The original Cabinet report envisaged that the land would be sold to the appointed development partner for delivery of Phase 2, dependent upon market conditions. However, in developing plans for Phase 2, all partners agreed that a viable scheme and rapid delivery required the former gym site on Carrington Street to be brought forward as a priority, notwithstanding that this site had previously been the designated site for a new school.
- 4.21 It is important that the site for the school is already in partner ownership, is of sufficient size and sensible location. The only site that meets these criteria is the Sovereign Car Park site and it is proposed therefore, that this site is designated as the location for the new primary school. Cabinet approval is required for this change. The change in use of the Sovereign Car Park site will mean that there will be a loss of revenue from the car park of £150k p.a., which will create a pressure on the parking service's budgets.

### **Public/stakeholder engagement**

- 5.1 Partners in the development agreement for Castleward (Homes England and Compendium Living) are integrated into the governance for the project through a formal Strategic Board that meets quarterly.
- 5.2 There has been and will be public consultation as part of planning applications for development at Castleward.

### **Other options**

- 6.1 The option of doing nothing would put at risk the delivery of the Castleward Urban Village, which is essential in achieving our Local Plan targets and City Centre Masterplan objectives. If delivery of housing at Castleward were to stall, significant

regeneration benefits for the city centre economy would be lost (for example footfall, local spend). We would also risk losing significant funding from Homes England's Housing Infrastructure Fund, which is predicated on a confirmation of the funding for the school and in turn the social infrastructure that accommodates the growth in housing numbers. There is also a risk that the £1.2 million of S106 education contribution from the DRI development would have to be repaid at the end of the term as set out in the S106 Agreement and the Council has no alternative in the medium term but to provide school places to cater for the new family housing within the DRI site.

## Financial and value for money issues

- 7.1 The expected capital cost of a new school is currently forecast at £7m, plus a £1m contingency for site abnormalities. Subject to securing HIF and LGF funding agreements and approvals through the Council's gateway process, this report seeks delegated approval to add £8m to the corporate capital programme with the profile of spend set out in Table 1, (overleaf) utilising grant first where possible. Should the costs increase following feasibility studies and design, then the scheme will be reviewed and either stopped or a further report brought back to Cabinet with proposals.
- 7.2 The cashflow profile in Table 1 demonstrates that the Council will need to temporarily financially support the scheme from 2021/22 onwards. Based on assumptions of the timing of receipt of S106 monies and capital receipts, it is estimated that the minimum amount of the temporary funding support will be £1.024m in 2021/22 which would then reduce over the subsequent financial years if and when the S106 monies and capital receipt are received. S106 monies will be received in stages when new homes are built.

The revenue cost of any subsequent borrowing undertaken to temporarily fund the capital expenditure in each year of funding cashflow shortfall amounts to £80k for 2020/21 to 2023/24 based on the assumed position detailed overleaf.

**Table 1: Estimated Scheme Capital Expenditure and Funding Profile to 2024/25**

<b>Financial Year</b>	<b>2019/20</b>	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>	<b>2023/24</b>	<b>2024/25</b>	<b>Total</b>
	£000's	£000's	£000's	£000's	£000's	£000's	£000's
<b>Expenditure</b>	<b>550</b>	<b>5,587</b>	<b>1,863</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>8,000</b>
Abnormals		1,000					1,000
Capital Cost	550	4,587	1,863				7,000
<b>Funding</b>							
HiF	(450)	(4,050)					(4,500)
LGF		(1,400)					(1,400)
Future S106 DRI				(555)	(200)	(69)	(824)
Future S106			(326)	(200)			(526)



(other)							
Borrowing SCE (R)	(100)	(137)	(263)				(500)
Future Capital Receipt			(250)				(250)
<b>Total funding</b>	<b>(550)</b>	<b>(5,587)</b>	<b>(839)</b>	<b>(755)</b>	<b>(200)</b>	<b>(69)</b>	<b>(8,000)</b>
<b>Funding cashflow shortfall /(surplus)</b>	<b>0</b>	<b>0</b>	<b>1,024</b>	<b>(755)</b>	<b>(200)</b>	<b>(69)</b>	<b>0</b>
Add Funding cashflow shortfall bfwd	0	0	0	1,024	269	69	
<b>Minimum Funding cashflow shortfall cfwd</b>	<b>0</b>	<b>0</b>	<b>1,024</b>	<b>269</b>	<b>69</b>	<b>0</b>	

- 7.3 In line with the Council's project gateway process, the robustness of the project's full business case will be assessed by the Council's Project Management Office Board prior to any construction contracts being entered into.
- 7.4 The proposed funding package for the school comprises funding available now (Section A in Table 2 overleaf) and income that is expected in the future that the Council will need to 'cashflow' in advance of receipt (Section B). The subsequent paragraphs explain the future income / funding opportunities in more detail and indicate the legal and financial risks associated with each. A summary of the key financial risks is included at Table 3.

**Table 2: Funding sources**

Funding source	£000	Current Status
A: Available funding		
HIF	4500	Funding Allocated, Deed of Variation to be concluded and £450k forward funding drawn down
LGF3	1,400	Funding allocated, full business case to be submitted and funding agreement to be secured
B: Potential funding sources		
Revenue funded borrowing	500	Recommendation 2.6 commits this borrowing to the School; which is otherwise unallocated. The resultant revenue

		borrowing costs have been included in a previous Revenue Support Grant settlement from Central Government and as such will be covered from the corporate treasury management budget
Capital receipts	250	Proposed sale of Council owned site on Traffic Street. Receipt projected for 2020/21
S106 – Other	526	Agreements not yet signed with developers. Receipts projected for 21/22 and 22/23, further receipts anticipated beyond the MTFP
S106 – DRI	824	Agreement signed and sealed for a total of £1.224m. £824k receipts projected via instalments 22/23 to 24/25, remainder beyond the MTFP
Total	8,000	

### **Housing Infrastructure Fund (HIF)**

7.5 The Council and Homes England signed the existing HIF Grant Agreement on 29<sup>th</sup> March 2019. This has provided £4.5 million to fund land acquisition by negotiation and CPO in Castleward. The monies must be spent by 31 March 2022 and deliver outputs of 512 homes by 2030. The proposed terms of the Deed of Variation will vary the grant agreement to increase funding to £7.5 million. The additional money must:

- be spent by 31 March 2022 consistent with the main agreement;
- and utilise £450k as soon as possible to forward fund the planning and design stages

7.6 Failure by the Council to spend the monies or deliver the outputs in accordance with the agreed milestones will give rise to a risk of future monies being withheld and monies already paid being clawed back by Homes England under the terms of the grant agreement.

The mitigation measures to reduce risk of repayment/clawback are as follows;

- Outline planning permission for education uses is already in place until 2028 and designation of the Sovereign car park for the primary school has been discussed with the planning department.
- The current feasibility work (including early contractor engagement) will be concluded prior to drawing down the advance HIF funding. It will include design proposals, a robust risk register and detailed cost plan providing greater certainty that delivery is achievable against cost and programme parameters.

7.7 Should the scheme not proceed there is an abortive spend risk that would have to be funded from the Council's Revenue Budget.

### **Local Growth Fund 3**

- 7.8 If LGF3 monies are made available to the Council, the monies must be spent by 31 March 2021 and deliver outputs of 200 homes. Although the Council has not yet received a draft grant agreement for the LGF3 monies, it is reasonable to assume that failure by the Council to spend the monies or deliver the outputs in accordance with the agreed programme will give rise to a risk of future monies being withheld and monies already paid being clawed back by the LEP under the terms of the grant agreement.

### **S106 receipts**

- 7.9 The Council is currently negotiating a Section 106 Agreement in respect of a development on the former Alcora Car Park in Castleward. The former DRI site (Nightingale Derbyshire Ltd) is now subject to a signed and sealed Section 106 Agreement. At the time of writing this report, the Alcora Car Park scheme is not subject to a binding legal agreement. If agreement is not reached (or negotiations are protracted), this funding will not be available to the Council to meet the cost of funding the school. If agreement is reached with the developers on the terms of the section 106 Agreements, payment will be subject to future development taking place. Timing of repayment will be subject to the terms negotiated with each developer. This means that the S106 funds will not be received by the Council before the cost of delivering the school needs to be funded. Effectively, this means that the Council needs to 'cashflow' this funding source in advance of receipt.
- 7.10 Future development of additional sites within Castleward will be the subject of Section 106 Agreements (or through equivalent obligations in a development agreement between the Council and Compendium as the Council will control the land to be developed by Compendium, acquired through negotiation and CPO). However, at the time of writing this report it is not possible to state a timeline for such agreements being put in place.

### **Capital receipts**

- 7.11 It is proposed that the Council sell a small parcel of vacant land on Traffic Street to Compendium Living, the Council's development partner in Castleward. A development agreement exists between Compendium, the Council and Homes England (HE), signed in 2011. This sale would be subject to the disposal terms set out in this agreement, which includes transfer of land at market value. The assumed value of £250k is supported by a RICS Red Book Valuation from Thomas Lister, the retained advisors to the Council and HE, however, there are no heads of terms for the sale and the price remains subject to negotiation. The proposal to ring fence this receipt towards funding of the school is a departure from the corporate capital receipts policy and therefore requires Cabinet approval.

### **Revenue Implications**

- 7.12 The proposal to use Sovereign Car Park (which was acquired to support the development of Castleward) as the site for the school will mean a loss of the car parking income that is currently received by the Council. This would create a budget pressure for the service of c. £150k p.a. This will need to be considered in the budget setting process for 2020/21.
- 7.13 Also, the timing of the potential funding streams does not fit in with the construction period and payment profile. The Council will need to financially support the project from 2021/22 – 2023/24 until the funding streams materialise. The risk of this is included in paragraphs 7.2 and Table 1

### **Other Financial Risks**

- 7.14 There are other financial risks associated with this project:
- 1) Progress with construction contract is subject to the necessary grant agreements being in place and the final construction / tender price being within budget.
  - 2) If HIF forward funding is utilised for design of the school and the project does not proceed, the design costs incurred would be abortive costs and be considered as revenue. The Council may have to fund the abortive costs and repay the full amount of the HIF monies. There is not currently a revenue budget identified to fund any abortive costs.
- 7.15 The Council is responsible for meeting all costs associated with the opening of the school. Further work will be required in due course to establish the likely pre and post opening costs, which will then be agreed with the successful sponsor of the school, once they have been identified. Pre-opening costs are likely to be in relation to the appointment of a Head-teacher, teaching staff and administrative capacity. Post opening costs relate to the funding required to address diseconomies of scale until the school reaches full capacity. These costs are funded from the Growth Fund elements of the Dedicated Schools Grant of which future year allocations are unknown. A further report will be brought to Cabinet on this in due course.

### **Housing Revenue Account**

- 7.16 It is proposed to use £1.5m of un-ringfenced Right To Buy Receipts in the Housing Revenue Account to support the acquisition of land in Castleward.

In addition it is proposed to fund via the Council's HRA New Build and Acquisition budget, the acquisition up to 40 new properties in Castleward from Compendium Living for social housing. These properties will be managed by Derby Homes.

**Table: 3 Financial Risk Summary**

Potential Risks (£)	Comment	Proposed Mitigation
£250k Traffic Street	No heads of terms are	Viability and development

Capital Receipt not received	agreed for the sale	options have commenced with Compendium
£1.35m S106 Contributions not received by 2024/25	Contributions are subject to future development of these sites	DRI S106 is in place. Future Castleward development is controlled through existing partnering arrangements.
Dedicated Schools Grant yet unknown	Use of Growth Fund for preopening costs, pressure remains on education revenue budget	See paragraph 7.15
£4.5m HIF monies	Funding may be subject to being withheld or clawed back if the Council is unable to spend the monies by 31/03/2022 or complete the school by 31/07/21	Outline Planning is in place. Early contractor engagement with detailed viability studies are underway, indicative programme supports delivery on time
Cost certainty of the school - £8.0 million	Final construction cost has not yet been confirmed, the contractor has not been appointed and essential survey work has not been completed (but is advancing).	As above. Plus, costs have been projected based on completion at Hackwood Farm (£5.0 million), adjusted for size, specification and with a £1.0 million contingency. Morgan Sindall can be rapidly appointed from SCAPE Framework
£1.5m LGF3 monies	Once confirmed this funding may be subject to being withheld or clawed back if the Council is unable to spend the monies in accordance with an agreed programme before March 2021 or deliver the output of 200 homes.	Funding profile based on cost and speed of construction will allow LGF to be spent rapidly.  54 homes will be built 2019 and 179 units on the Alcora site have detailed planning subject to signing the S106.
£10k per annum revenue implication for every £500k increase in the funding cashflow shortfall	Potential increased revenue cost from the need to cover an increased level of funding cashflow shortfall, arising from any delay to the timing of receipt of monies to that assumed in Table 1 and paragraph 7.2.	Viable development of sites (using HiF & CPO) is key to unlocking S106 in Castleward.  Compendium is working on Traffic Street as a priority development site.

## Legal implications

- 8.1 Each local authority with responsibility for education has a statutory duty to secure sufficient primary and secondary places to meet the needs of the population of their area, under section 13 of the Education Act 1996.
- 8.2 At the date of this report there is insufficient primary school capacity to meet the needs of the population generated by further development at Castleward or the former DRI site. It is also not possible to expand any of the surrounding schools.
- 8.3 Planning condition 8 of the outline permission DER/05/12/00563 dated 8 February 2013 relating to the Castleward Development prevents the delivery of more than 224 homes until a half form primary school has been constructed and brought into use in the area ("Planning Condition").
- 8.4 Further legal certainty needs to be negotiated and secured for the school funding packages as per the financial implications section of this report.
- 8.5 Notwithstanding the legal implications associated with moving forward without legally binding agreements in place to secure all funding streams, there are also the legal implications associated with the Council not committing to delivering the school:

Risk & Comment	Mitigation
<b>Loss of LGF3 monies:</b> The LEP have indicated that failure to commit to delivery of the school could jeopardise the LGF3 funding	Approval of the recommendations in this report at September Cabinet will safeguard the LGF3
<b>Loss of HIF monies:</b> All funding must be committed by 31st March 2022 and conditions attached to the Grant Agreement, amongst others, require that there is no impediment to the delivery of the housing outputs of 512 homes. The Planning Condition limits the number of homes that can be built until the school is constructed. Failure by the Council to prove the school can be delivered will mean that the HIF funding is unlikely to deliver its outputs and consequently Homes England will advance no further funding beyond the £450,000 provided to forward fund the planning stage of the school (which itself may be subject to clawback).	Homes England have provisionally agreed to swap £4.5 million of HiF towards the school so that the Council can balance its financial contributions. Approval of the recommendations in this report at September Cabinet will safeguard the £450k advance funding. Once the school is constructed the planning condition will be satisfied.
<b>Risk to the compulsory purchase order (CPO):</b> In order to progress the CPO, the Council will need to demonstrate that it is capable of delivering the regeneration benefits (housing) stipulated in the CPO Statement of Case. If the Council does not commit to delivering the school it is likely that CPO would fail on this test. This would result in abortive	Obtaining full planning permission and letting of the construction contract to build the school should satisfy this test. A full report on the progress, anticipated costs and Statement of

costs and no additional land acquisition or development in Castleward.	Reasons to progress CPO will be presented to Cabinet later in the Autumn.
<b>Delivery of further housing at Castleward stalls:</b> Without a commitment to deliver a new school, no further planning permissions will be granted for future phases of housing delivery at Castleward. There would be a consequent loss of indirect economic and social benefits of housing growth in the city centre.	

- 8.6 Whilst the Riverside Group is a 50% shareholder in Compendium Living joint venture along with Lovell Partnerships, there is no legal exclusivity stated within the Castleward Development Agreement to deliver affordable housing, for either itself or its subsidiary, Riverside Housing. Therefore, Riverside Housing who has so far enjoyed an informal exclusivity will now share future delivery with the Council and with Derby Homes, who plan to acquire up to 40 new social housing properties. Following verbal consent already obtained, sufficient written confirmation will be obtained from partners including Homes England as well as the Compendium Living and Derby Homes Boards to approve Derby Homes as an additional delivery partner for Castleward.

### Other significant implications

- 9.1 There are no other significant implications.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Olu Idowu	16 August 2019
Finance	Simon Riley	02 September 2019
Service Director(s)	Andy Smith	15 August 2019
Report sponsor	Greg Jennings	02 September 2019
Other(s)		

<b>Background papers:</b>	November 2018 cabinet report (Castleward future phases)
<b>List of appendices:</b>	Appendix 1 - Plan of the Castleward Area