

# Nottingham City Council Delegated Decision



**Nottingham**  
**City Council**

**Reference Number:**

4754

**Author:**

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**Department:**

Growth and City Development

**Contact:**

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**Subject:**

Broadmarsh Caves

**Total Value:**

£278,188 (Type: Capital)

**Decision Being Taken:**

To approve the allocation and spend of £278,188 from the Capital Programme budget towards the works specified in Appendix 1:  
To delegate authority to the Corporate Director of Growth and City Development to enter into a variation under the existing SCAPE Framework Construction Contract with Wilmott Dixon Construction (WDC) (as approved in Delegated Decision 4159) to extend the scope of works to include those specified in Appendix 1.

**Reasons for the Decision(s)**

**In 2021 work commenced under a contract with Willmott Dixon Construction for Phase 1 demolition and associated public realm works at the Broadmarsh Centre (as approved in Delegated Decision 4159) under which are located the Broadmarsh Caves. The Broadmarsh Caves are a Scheduled Ancient Monument under the Ancient Monuments and Archaeological Areas Act 1979 (as amended) ('the 1979 Act').**

**An inspection was carried out of the Scheduled Monument in early 2022 by Historic England, following the demolition of elements of the Broadmarsh / Severns House complex The former indoor area (south from 10 Middle Pavement / Drury Walk) adjacent to Severns House and the capping to the former escalator shaft lie open to the elements. It was observed that "the cave roof infrastructure is exposed to the elements and water levels in the caves was high. The cave roofs were wet and there was significant spalling in excess of the minor flaking and dusting that one would expect. The collapse of deposits defining the tanning pits have appeared as a result of water level fluctuations. The construction of the shopping centre and later works appears highly complex, and it would appear that irreversible relationships were created between ridged concrete fabric and fragile bedrock / caves. Significant un-surveyed areas of caves in varied states of preservation with archaeological and concrete fills, open areas and in places spray concrete coatings are visible above and below ground. The inspection indicated that current survey and mapping is incomplete and these present significant risk in the planning and management of works. The existing areas mapped as a Scheduled Monument are inadequate to support conservation management or the proportionate weighing of the impacts of change, hence the survey led approach set out in the Local Plan Policy HE2".( Historic England Letter to Council dated 15.04.2022)**

**The 1979 Act provides the legal framework for the protection of scheduled monuments. The Council is the owner of the caves for the purposes of the 1979 Act. As the owner of a scheduled monument, proposing to carry out works to the monument, the Council has confirmed with Historic England (istoric Englanas representative for the Secretary of State for Digital, Culture, Media and Sport) that these works do not themselves require Scheduled Monument Consent (SMC).**

**The City Council is responsible for the impact of its works upon the scheduled monument and renders itself exposed to criticism in respect of the delivery of best value and potential legal action (prosecution under S2 / S28 of the Ancient Monuments & Archaeological Areas Act) where works affecting the caves are unauthorised or cause wilful or reckless damage.**

**On this occasion whilst the works themselves do not require SMC they are necessary to ensure the Council does not cause reckless damage.**

**Historic England have been consulted and requested the above works be undertaken, with immediate effect. The works required arise from the demolition (detailed in appendix 1) and are to be carried out through a variation to the scope of the existing contract works under the SCAPE Framework awarded to Willmott Dixon Construction. Nevertheless, these do not alter the overall nature of the contract. The monitoring and recording of cave water levels, temperature, humidity and the Caves Trust who operate the caves is undertaking vibration recommended by Historic England, with the agreement of Historic England.As the initial contract value was £4,976,848.28, the additional works represent less than 15% of that value for the purposes of regulation 72(5) Public Contracts regulations 2015.**

**Briefing notes documents:**

**Appendix 1.docx**

**Other Options Considered:**

**Do nothing - rejected, as the Council will be open to prosecution if it does not protect this Scheduled Ancient Monument.  
Undertake works at a cost of £278,000**

**Background Papers:**

**Published Works:**

**Affected Wards:**

Castle, Dales

**Colleague / Councillor Interests:**

**Consultations:**

Those not consulted are not directly affected by the decision.

**Crime and Disorder Implications:**

There are no crime and disorder implications as this is purely construction works to protect the caves from external weather implications.

**Equality:**

EIA not required. Reasons: EIA not required. Does not effect this as this is purely a construction project to weather proof the caves and any Health and Safety

**Decision Type:**

Portfolio Holder

**Subject to Call In:**

Yes

**Call In Expiry date:**

01/11/2022

**Advice Sought:**

Legal, Finance, Procurement

**Legal Advice:**

**As stated above, the Boardmarsh caves are a Scheduled Ancient Monument under the Ancient Monuments and Archaeological Areas Act 1979 (as amended) ('the 1979 Act'). The 1979 Act provides the legal framework for the protection of scheduled monuments.**

**As the owner of a scheduled monument, proposing to carry out works, whilst the Council has established with Historic England that the specific works in question do not need Scheduled Monument Consent (SMC), the definition of works should be born in mind throughout the proposed project. 'Works' are defined by the 1979 Act as demolishing, destroying, damaging, removing, repairing, altering, adding to, flooding or tipping material onto the monument. Under the 1979 Act if a person carries out works to a scheduled monument without SMC, or fails to comply with any conditions attached to a consent, the person is guilty of an offence (section 2, AMAAA 1979). On conviction, a person found guilty is liable to an unlimited fine.**

**Furthermore, under s28, of the 1979 Act, a person who without lawful excuse destroys or damages any protected monument knowing that it is a protected monument; and intending to destroy or damage the monument or being reckless as to whether the monument would be destroyed or damaged; shall be guilty of an offence and liable to an unlimited fine or to imprisonment for a term not exceeding two years or both.**

**The works are to be carried by the exiting demolition contractor through a variation to the scope of works within the existing contract procured through the compliant SCAPE Framework. Legal Services will support with any necessary formal variation to the exiting contractual documentation to ensure compliance with the SCAPE Framework terms. The NEC suite of construction contracts utilised here and are fully compliant with the Public Contract Regulations 2015 - this approach and form of contract is supported by Legal Services. Under the Public Procurement Regulations 2015 (PCR), regulation 72 (5) permits a modification or variation to a contract without a new procurement being needed, as the variation value of £278,188, is confirmed as below the PCR threshold for works contracts of £5,336,937; does not exceed 15% of the initial contract value (£4,976,848.28 covered under DDM 4159) and does not alter the overall nature of the contract or framework agreement.**

**Best Value is achieved as the construction partners on the Frameworks have evidenced that they are the very best that industry has to offer. The continued use of the SCAPPE framework contractor will ensure a OJEU compliant procurement process that abides by UK, Scottish and EU procurement law and is configured to achieve value for money, efficiency and local economic impact. A quick to market, sole source pre-qualified contracting mechanism, allows the project to start as soon as possible, without the need for a lengthy tendering process. SCAPE will continue to actively audits each project and framework partner, ensuring you receive value for money and an excellent level of service.**

**An embedded social value process for each project, covering job creation, local labour spend and community engagement is provided for within the SCAPE contracts.**

**Richard Bines, Solicitor, Contract and Commercial Team - Legal Services**

**04.10.2022**

**Advice provided by Richard Bines (Solicitor) on 04/10/2022. Advice provided by Richard Bines (Solicitor) on 10/10/2022.**

**Finance Advice:**

**This project was approved at September Capital Board due to being classified as a high priority project as defined in the Capital Strategy, with the £278k decision value being funded from secured capital receipts.**

**The project manager is required to manage the project within the approved budget.**

**Following the approval of this decision the Capital Programme will be amended accordingly.**

**Advice provided by Tom Straw (Senior Accountant - Capital Programmes) on 26/09/2022.**

**Procurement Advice:**

**Variations to existing contracts are permitted under Article 18.99 of the Constitution, and in accordance with that article the Category Manager (Places), as nominated representative of the Head of Contracting & Procurement, has been consulted. As the value of the contract is above the threshold at which Part 2 of the Public Contracts Regulations 2015 applies, the modification must be compliant with Regulation 72. Regulation 72(5) provides for a modification where: (a) the value of the modification is itself below threshold; (b) the value of the modification is below 15% of the initial contract value; and (c) the modification does not alter the overall nature of the contract. The initial value of the contract awarded was £4.9m and this variation of £278k represents an increase of 5.6%, satisfying the first two conditions; assuming the client team is happy that the new works do not alter the overall nature of the contract then there are no procurement issues with the decision being sought. Advice provided by Jonathan Whitmarsh (Lead Procurement Officer) on 11/10/2022.**

**Signatures**

<b>David Mellen (Leader/ PH Strategic Regeneration Communications)</b>
<b>SIGNED and Dated: 25/10/2022</b>
<b>Sajeeda Rose (Corporate Director of Growth &amp; City Development)</b>
<b>SIGNED and Dated: 12/10/2022</b>