

Report of Trading and Operational Support Manager

Report to Director of Communities and Environment

Date: 4th October 2019

Subject: Design and Cost Report for Closed Churchyards

Capital scheme number: 33090

Are specific electoral wards affected? If relevant, name(s) of ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The purpose of this report is to request authority to spend £1.2m over the next three years for the maintenance of the Council's managed closed churchyards across the City.
2. The maintenance duty is only in relation to the Church of England to keep the closed churchyard in decent order and its walls and fences in good repair. There is also a separate duty to make the closed churchyard safe.

Recommendations

3. The Director of Communities and Environment gives authority to spend £1.2m over the next three years from the capital programme, for the purposes of keeping the Council's closed church yards in decent order.
4. The Director of Communities and Environment also requests that Legal Services takes the lead to encourage a cross council discussion as a joint lobby through the LGA to

raise the budgetary implications that fall onto an Authority in keeping a closed church yard in decent order.

1 Purpose of this report

- 1.1 The purpose of this report is to request authority to spend £1.2m over the next three years for the maintenance of the Council's managed 'closed churchyards' across the City.

2 Background information

- 2.1 Following a report to the Council's Strategic Investment Board (S.I.B) that was held on 4th October 2018, £1.2m was injected as part of the February 2019 capital programme to support the maintenance of closed churchyards.
- 2.2 This report only relates to Church of England closed churchyards that the Council's Legal Services have validated that the prescribed process for maintenance transfer has been completed.
- 2.3 In summary, the SIB report set out four Legal Advice notes which covered the following key areas:
 - 1) Advice Note 1 – Focused on background and process of transferring the maintenance of closed churchyards to the Authority.
 - 2) Advice Note 2 – Detailed the relevant Authority's duty to maintain a churchyard.
 - 3) Advice Note 3 – Liability for accidents within a closed churchyard.
 - 4) Advice Note 4 – The Faculty process and its effect on liability.
- 2.4 After a Parochial Church Council (PCC) has applied for and obtained an Order to close a churchyard, it remains responsible for the churchyards maintenance unless it follows a procedure set out in the LGA 1972 to transfer future maintenance responsibility to either the local parish council, local community council or the district/metropolitan district council. Once that transfer procedure is followed there is an absolute transfer of responsibility for maintenance from the PCC to the relevant council/local authority.
- 2.5 This process only relates to Church of England and does not include any other faith group or faith organisation.
- 2.6 The maintenance duty is to keep the closed churchyard in decent order and its walls and fences in good repair. There is also a separate duty to make the closed churchyard safe.
- 2.7 The local council/local authority takes on a primary responsibility for maintaining the churchyard itself and any fixtures which are part of the churchyard, including grassy areas, paths, walls, fences, trees and other plants, and any structures not owned by somebody else. The duty of maintenance for those items is for upkeep not just to make them safe.
- 2.8 Although it is the Council's responsibility to ensure that the closed churchyard is kept safe, when it comes to the maintenance of privately owned memorials, monuments

and gravestones, these are the primary responsibility of the owner and not the City Council.

- 2.9 Before most alterations to a closed churchyard can be carried out, a faculty is required from the Consistory Court (there is a set list of works which can be carried out without a faculty see advice note 4). The faculty can include requirements as to how those alterations can be carried out. A local council/local authority will have to comply with any faculty requirements set for alterations/repair works for which it has primary maintenance responsibility; unless the local council/local authority successfully appeals to the Chancery Court of York.
- 2.10 The City Council's Legal services are currently updating the list of closed churchyards and whilst this work will not be completed until later this financial year, it will be important for the Council to begin maintenance works as and when each closed churchyard has been legally validated.

3 Main issues

3.1 Design proposals and full scheme description.

- 3.2 **Programme** – It is proposed to begin with the horticulture maintenance and general condition survey of each closed churchyard including tree safety inspections and the Memorial Testing for the safety of the memorials and gravestones. Both areas require specialist technical support. The next area of priority will then focus on the maintenance of paths and boundary walls.
- 3.3 Wherever possible this work will be carried out by the in house technical service provider, but may also necessitate a combination of contracting out and or employing small teams on a fixed term contract to undertake this technical and specialist work.
- 3.4 The legal process of allowing closed church yards to be transferred over to an Authority regardless of the budgetary implications is a national issue affecting all authorities. As such it would be better for the Council to encourage a cross council discussion with the LGA.

4 Corporate considerations

4.1 Consultation and engagement

- 4.1.1 The Executive Member for Environment & Active Lifestyles has been consulted on these proposals.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 A screening document has been prepared and an independent impact assessment is not required for the approvals requested. The screening document has been sent to the equality team to be approved and published.

4.3 Council policies and the best council plan

- 4.3.1 This report draws attention to co-ordinated working that demonstrates a contribution towards the following priorities contained in the City Priority Plan:

- Best city for communities:
 - Ensure that local neighbourhoods are clean.
- Best city to live:
 - Enable growth of the city whilst protecting the distinctive green character of the city.

4.3.2 The report highlights the contribution to the following Council Business Plan priorities:

- Improve the quality of Leeds' parks
- Create the environment for effective partnership working

4.3.3 The provision of quality greenspace also contributes towards climate change whereby some churchyards can be maintained as wildlife nature gardens where appropriate.

4.4 Resources and value for money

4.4.1 **Full scheme estimate** £1.2m over the next three years for the cyclical inspection and maintenance of closed churchyards as set out in section 1.1 and 3.2 above.

4.5 Keeping the closed churchyard in decent order and its walls and fences in good repair will reduce running costs over all.

4.5.1 Capital funding and cash flow.

Complete the embedded table below:-

Authority to Spend required for this Approval	TOTAL £000's	TO MARCH 2019 £000's	FORECAST				
			2019/20 £000's	2020/21 £000's	2021/22 £000's	2022/23 £000's	2023 on £000's
LAND (1)	0.0						
CONSTRUCTION (3)	960.0		320.0	320.0	320.0		
FURN & EQPT (5)	240.0		80.0	80.0	80.0		
DESIGN FEES (6)	0.0						
OTHER COSTS (7)	0.0						
TOTALS	1200.0	0.0	400.0	400.0	400.0	0.0	0.0
Total overall Funding (As per latest Capital Programme)	TOTAL £000's	TO MARCH 2019 £000's	FORECAST				
			2019/20 £000's	2020/21 £000's	2021/22 £000's	2022/23 £000's	2023 on £000's
LCC Supported Borrowing	1200.0		400.0	400.0	400.0		
Total Funding	1200.0	0.0	400.0	400.0	400.0	0.0	0.0
Balance / Shortfall =	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Parent scheme number : 33090 Title : Closed Churchyards

Revenue effects

There are no revenue implications for this scheme.

4.6 Legal implications, access to information and call-in

4.6.1 This is a key decision which is subject to call in.

4.7 Risk management

4.6.1 The risk associated with this report is thought to be low given the specialist nature and quality of the work required to keep a closed church yard in decent order.

5 Conclusions

5.1 Keeping the closed church yard in decent order will reduce the City Council's liability should an accident or injury occur.

5.2 It is also acknowledged that allowing closed church yards to be transferred over to an Authority regardless of the budgetary implications is a national issue affecting all authorities.

6 Recommendations

6.1 The Director of Communities and Environment gives authority to spend £1.2m over the next three years from the capital programme, for the purposes of keeping the Council's closed church yards in decent order.

6.2 The Director of Communities and Environment also requests that Legal Services takes the lead to encourage a cross council discussion as a joint lobby through the LGA to raise the budgetary implications that fall onto an Authority in keeping a closed church yard in decent order.

7 Background documents¹

7.1 None.

¹ The background documents listed in this section are available for download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.