

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Audit, Risk & Scrutiny Committee
<b>DATE</b>	29 September 2021
<b>EXEMPT</b>	No
<b>CONFIDENTIAL</b>	No
<b>REPORT TITLE</b>	Union Terrace Gardens – Removal of Material
<b>REPORT NUMBER</b>	COM/21/221
<b>DIRECTOR</b>	Steve Whyte / Gale Beattie
<b>CHIEF OFFICER</b>	John Wilson / Fraser Bell
<b>REPORT AUTHOR</b>	John Wilson/ Fraser Bell
<b>TERMS OF REFERENCE</b>	1.1

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### **1. PURPOSE OF REPORT**

- 1.1 The purpose of this report is to respond to the instruction of Full Council on 21 June 2021 to report to this committee on the events relating to the removal of granite and other items from the Union Terrace Gardens (UTG).

### **2. RECOMMENDATION(S)**

That the Committee:

- 2.1 Notes the events leading up to the point at which it was identified that an apparent breach of contract and of a listed building condition had occurred and the subsequent response to remedy the matter;
- 2.2 Notes that all the UTG materials which had been stored at an unapproved location have been returned and are now within safe and secure storage at an approved site;
- 2.3 Notes that a full audit of all granite dountakings, and other similar related items including railings, heraldry shields and lamps, has been carried out by the Principal Contractor and that they have confirmed all items, as per the site start inventory, are accounted for and are now within safe and secure storage at an approved location;

- 2.4 Notes that Police Scotland carried out their own extensive enquiries into the incident and found that no criminality had been established and their investigation is now closed, pending any new information;
- 2.5 Notes that there was a breach of a listed building condition, that the Planning Authority is satisfied with the action taken by the Principal Contractor in response to that breach, and that the Planning Authority does not intend to take any further action at this time;
- 2.6 Notes that there was a breach of contract on the part of the Principal Contractor, that the Principal Contractor remedied the breach, and that no further action is proposed at this time; and
- 2.7 Notes that the Chief Officer Capital will update the outline/full business case template by October 2021 as outlined in section 8.4 of the report.

### **3. BACKGROUND**

#### **Full Council Instruction**

- 3.1 At the Full Council meeting on 21 June 2021, an Urgent Notice of Motion was moved by Councillor Ryan Houghton in respect of UTG. Full Council agreed the terms of the motion and it was agreed that following the conclusion of a Police Scotland investigation, the Chief Officer – Capital and Chief Officer – Governance bring a report to the next meeting of the Audit, Risk and Scrutiny Committee. The report was to detail:
  - the events relating to the removal of granite and other items from the UTG site to a private residence;
  - elected member involvement with any of the parties involved in the removal of granite from UTG before the granite was removed from the private residence on the instructions of the main contractor; and
  - a full audit of all the granite and other items (including railings, lamps, and heraldry shields) removed from UTG to ensure that the main contractor could provide the Council with a guarantee that all granite and other items from UTG were accounted for.

#### **Tendering & Contract Award**

- 3.2 The design proposals to transform the Union Terrace Gardens have developed over several years and have been subject to the same statutory processes as any other development.
- 3.3 Reference is made to report RES/19/259 submitted to the Capital Programme Committee on 3 June 2019 which set out the procurement process followed to appoint Balfour Beatty Construction Ltd (the Principal

Contractor). The Principal Contractor was formally awarded the design and build contract on 20 July 2019.

- 3.4 Following contract award, the design team of external consultants were novated to Balfour Beatty to complete the detailed design. This means the design team are performing their contractual obligations under a new contract with Balfour Beatty Construction Ltd. Previously the contract was between the Design Team and the Council.
- 3.5 Supporting the Council throughout the construction period, Ryden LLP and McLeod + Aitken Limited were appointed as Contract Administrator and Contract Cost Consultant respectively.
- 3.6 Regular reporting on construction progress and project deliverability of the UTG project has been reported to the Capital Programme Committee.

### **Planning Aspects related to Granite Downtakings**

- 3.7 The Planning Authority granted planning permission to the Council for the development of Union Terrace Gardens in March 2018. Listed building consent was granted in May 2020 following the normal statutory process.
- 3.8 The decision to grant planning permission and listed building consent was subject to specific conditions. The planning conditions were included as part of the tender documentation and the listed building conditions were confirmed following the granting of consent. The appointed Principal Contractor has the contractual responsibility to satisfy, comply with and discharge the conditions.
- 3.9 One of the listed building conditions dealt with granite storage. It states that no downtakings of any granite features were allowed until details of the safe storing of the granite were submitted to and approved in writing by the Planning Authority.
- 3.10 Appendix A contains the details submitted to the Planning Authority by the Principal Contractor in respect of satisfying the listed building granite storage condition. The Planning Authority reviewed the proposals and subsequently sent notice discharging the condition.
- 3.11 The discharging of this condition allowed the Principal Contractor to enter a contract with their chosen sub-contractor, Graeme W. Cheyne (Builders) Ltd, for the latter to uplift and temporarily store granite downtakings, as instructed, at Graeme W. Cheyne's secure storage yard in Torry.
- 3.12 As the project nears completion any identified surplus granite will be removed from both the Torry yard and Union Terrace Gardens and transported to Aberdeen City Council's storage facility. The granite shall remain there indefinitely until directed otherwise by the Council.

## **Granite and related materials records**

- 3.13 In April 2017 a comprehensive conservation statement was prepared on Union Terrace Gardens for the Council to detail the cultural heritage on the site. The conservation statement was produced by an architect accredited by the Royal Incorporation of British Architects (RIBA) and the Royal Incorporation of Architects in Scotland (RIAS). The statement contains an extensive back catalogue of the existing assets, materials, and features of the gardens. It also provides commentary on the heritage and history of such assets, prior to works starting.
- 3.14 Following production of the conservation statement, the project design team produced further detailed survey drawings and reports on the existing gardens. They also worked on the proposals for the new gardens. These documents and addendums were formally submitted, considered, and approved as part of the formal planning and listed building applications, non-material variations and the further purification of conditions to the Planning Authority. Additionally, the wider project design team have access to the Principal Contractor's own detailed pre site start dilapidation photographic survey and further photographic record with annotated plans of the entire site that was submitted to Archaeology as part of condition 1 of the detailed planning permission.
- 3.15 The aforementioned documents, drawings and records acted as the primary reference inventory of Union Terrace Gardens prior to works commencing. The existing information is viewed in conjunction with proposed tender design information to assist in the reconciliation of assets prior to re-use or long-term storage.
- 3.16 The preferred location for storing, handling, and re-using materials has been on-site. When site operations restricted the availability of space, an alternative temporary storage system, approved by the Planning Authority, was brought into use as set out in section 3.11 above. The Principal Contractor is accountable for managing this process and maintaining a schedule of material movement as part of the works, to suit the construction programme.
- 3.17 The Principal Contractor carried out a site start inventory of all items identified for re-use or potential re-use when they took possession of the site. As the project develops, and materials are required back on site, a cross-check with the site start inventory identifies whether any items removed from UTG as part of the construction works are unaccounted for. At the end of the construction phase of the project, a further reconciliation exercise of the granite and other associated items will be carried out to ensure that all items removed from the site are accountable for.

## **Notification of Granite Mis-Storage**

- 3.18 On Monday 7 June 2021, Councillor Yuill became aware from a social media post that granite had, allegedly at that point, been removed from

UTG. The post included a tightly cropped photo of what appeared to be granite blocks. Councillor Yuill subsequently emailed the Council's Customer Feedback team with five questions in respect of the UTG Granite:

- *What is the mass of the granite duntakings?*
- *Will all the granite duntakings be reused within Union Terrace Gardens?*
- *If some or all of the granite duntakings are not being reused within Union Terrace Gardens, what has/will be done with them?*
- *Have any of the granite duntakings been destroyed?*
- *If some or all of the granite duntakings are not being reused within Union Terrace Gardens, did the Council as planning authority give approval for this?*

3.19 Further to Councillor Yuill's email to the Customer Feedback team, on Wednesday 9 June 2021, the Project Manager on behalf of the Director of Resources, made initial verbal enquiries with the Principal Contractor. The Principal Contractor gave verbal assurances that the granite duntakings were being stored either on site or in an approved secure off-site store. This information was shared with Council Group Leaders and other relevant officers later that same day. Councillor Yuill asked the Director of Resources if his email could be shared with members of the public. The Director of Resources provided a formal statement that Councillor Yuill advised he posted online on Thursday 10 June 2021.

3.20 On 10 June 2021, a member of the public contacted Councillor Yuill to challenge the information Councillor Yuill had posted online. This person also provided a less tightly cropped photo which appeared to show granite blocks in the context of what might have been a garden. In addition, they notified Councillor Yuill of a person who allegedly held the granite within their private residence.

3.21 Using contact information provided by the member of the public, Councillor Yuill was able to attend the location, and take photos of what appeared to be granite blocks, on Friday 11 June 2021. Prior to attending the location, Councillor Yuill discussed the matter with the Director of Resources. Councillor Yuill recalls being advised by the Director of Resources to be careful if he chose to visit the site.

3.22 That same day, Councillor Yuill provided further information to the Director of Resources by email (and copied to the Chief Officer Capital). Councillor Yuill advised that he had viewed granite at that location, and he also supplied some photographs taken at the time of his visit.

3.23 The Director of Resources and the Chief Officer Capital were both on annual leave on Friday 11 June 2021 and therefore the email that Councillor Yuill shared on 11 June 2021 was not considered until Monday 14 June 2021.

### **Actions taken**

- 3.24 Following the Chief Officer Capital's return from annual leave on Monday 14 June 2021, and after having read the UTG email of 11 June 2021 from Councillor Yuill, the matter was discussed with the Director of Resources.
- 3.25 The Chief Officer Capital arranged to attend the location on Wednesday 16 June 2021. During the afternoon of Monday 14 June 2021, Councillor Yuill contacted the Chief Officer Strategic Place Planning and reported a potential breach of a planning condition. Councillor Yuill also contacted the Chief Officer Capital to discuss his email of 11 June 2021. The Chief Officer Capital shared his intention to visit the location on Wednesday 16 June 2021. Councillor Yuill suggested that it would be better if a senior officer could visit the site as soon as possible in advance of any potential media interest to confirm whether the granite had been sourced from UTG and on any further action to be taken.
- 3.26 In response, the Chief Officer Capital was able to carry out an earlier than planned viewing of the deposited granite during the early evening on Monday 14 June 2021.
- 3.27 The Chief Officer - Capital visited the location alone and on inspection was able to confirm that the deposited granite was from the UTG Project.
- 3.28 Photographs were taken at the Chief Officer Capital's visit. Before returning home, the Chief Officer Capital shared some of the photographs via email with the Principal Contractor's Site Agent and confirmed to him that the granite depicted within the photographs, had been taken from the UTG project.
- 3.29 Following this action, the Principal Contractor carried out an initial investigation into the circumstances, a full audit of the granite duntakings, storage, re-use and surplus commenced and the return of the granite to UTG was ordered. In addition, and as set out below, the matter was referred to Police Scotland by the Chief Officer Governance.
- 3.30 Throughout the week commencing 14 June 2021, the Chief Officer Capital and Chief Officer Governance maintained dialogue with the Leader of the Council and the Business Manager. The Leader and Business Manager were appraised of the circumstances as the matter developed and provided with assurances as requested.
- 3.31 On 28 June 2021, the Project Manager responded to Councillor Yuill's enquiry referred to in section 3.18 to say that the matter was subject to police investigation and that a report on the matter would be submitted to Audit, Risk and Scrutiny Committee at a future date.

#### **4. INITIAL INVESTIGATION, AUDIT OF GRANITE & OTHER ITEMS**

- 4.1 As set out in section 3.29 above, the Principal Contractor carried out an initial investigation into the circumstances. The Principal Contractor contacted their sub-contractor and subsequently received a letter from the sub-contractor dated 15 June 2021. The letter explained that the sub-contractor had laid down the “last 2 loads” at another site they had been working on. The reasoning set out in the letter was that there was a lack of available space within the approved storage location. On 16 June 2021 the Principal Contractor wrote to the sub-contractor to reiterate the requirement that material from UTG could be stored only at an approved location in accordance with the Listed Building Consent. The sub-contractor was directed by the Principal Contractor to remedy the situation. The materials at the unapproved location were subsequently returned to the UTG site.
- 4.2 On Wednesday 23 June 2021, the Principal Contractor confirmed to the Council that the granite and other items which had been deposited at the unapproved address had all been returned to either UTG or the approved location belonging to the sub-contractor. This was verified by the Council’s Contract Administrator on the same day.
- 4.3 In addition, a full audit of all granite dountakings, railings, lamps and heraldic shields was also carried out by the Principal Contractor. This audit confirms that all items, as per their site start survey inventory, including those items removed from the UTG site that were deposited at an unapproved address, have been accounted for. This full audit is attached as Appendix B.

#### **5. CONTRACTUAL IMPLICATIONS**

- 5.1 As set out above, the Council entered a contract with the Principal Contractor on 20 July 2019. This contract incorporated a requirement for the Principal Contractor to satisfy, comply and discharge the planning and listed building conditions for the development of Union Terrace Gardens. Due to the Principal Contractor’s Sub-Contractor storing granite at an unapproved site not in accordance with the approved listed building condition set out in Appendix A, the Principal Contractor breached its contractual obligations as set out in its contract with the Council. As noted above in section 4, the Principal Contractor remedied the breach and subsequently confirmed that all the missing granite and other items have since been returned and are in safe storage.

#### **6. PLANNING IMPLICATIONS**

- 6.1 On Thursday 17 June 2021, Aberdeen City Council Strategic Place Planning sought an explanation from the Principal Contractor regarding

the breach of planning control. The Principal Contractor responded on 22 June 2021 by stating that they had been unaware that an alternative unapproved location was being used and that on becoming aware of the matter they had written to their sub-contractor to return the materials to UTG.

- 6.2 The Contract Administrator sent confirmation to the Planning Authority on 23 June 2021 that all materials had been returned to site
- 6.3 The Planning Authority has confirmed that it is satisfied that the missing granite has been returned and is now in safe storage in accordance with the approved planning conditions and that no further action is required.

## **7. POLICE SCOTLAND ENQUIRIES**

- 7.1 The Chief Officer – Governance, following consultation with the Leader, Business Manager and Chief Executive, referred the matter to Police Scotland on Wednesday 16 June 2021 for their consideration.
- 7.2 On Thursday 8 July 2021, Police Scotland released a statement stating that they had carried out extensive enquiries and confirmed that no criminality had been established and the investigation was now closed, pending any new information.

## **8 CONCLUSION**

- 8.1 As set out above, material from UTG was not stored at a location that had been approved by the Planning Authority. As a result, there was a breach of a listed building condition. In turn, the Principal Contractor breached a provision within their contract with the Council because it required the Principal Contractor to satisfy, comply with and discharge the conditions. The situation was remedied with the return of all mis-stored materials back to the UTG site. In addition, a full audit was carried out into all the granite and other items (including railings, lamps, and heraldry shields) removed from UTG. All items identified in the site start inventory were accounted for in this process as set out in Appendix B. A police investigation confirmed that no criminality had been established as part of its investigations.
- 8.2 As set out in section 3.17, arrangements are in place for the Principal Contractor to monitor materials removed from UTG as part of the construction works. At the end of the construction phase of the project, a further reconciliation exercise of the granite and other associated items will be carried out to ensure that items removed from the site are accounted for. As the design develops and construction works proceed these controls will identify any items that may be missing.

Should it ever become apparent that items are unaccounted for, the Council would carry out further investigations and, depending on their findings, consider the legal remedies available to it.

- 8.3 Notwithstanding the existing controls in place, the Principal Contractor has introduced a new control for the remainder of the construction phase of the project. The Principal Contractor has confirmed in Appendix B that granite, railings (including heraldic shields), lamps and lighting features will not be taken off-site without confirmation that the removal has been approved by the Council's nominated person. That means on each occasion that items are to be removed from the site, confirmation will have to be given to the Council that it will be transferred to an approved location. A full record of each component to be removed including a note of the location that it will be transferred to will be retained by the Principal Contractor.
- 8.4 For all future capital projects, the Chief Officer Capital will update the outline/full business case template so that it identifies those projects which involve items of heritage value. The template will require authors to identify proposed measures to protect and monitor the control of such items, including where they are to transfer from one location to another as part of any construction works. This control will further help to ensure that the specification in any subsequent tendering exercises continues to incorporate proportionate measures relating to items of heritage value to support those set out in any relevant planning consent. The Chief Officer Capital will update the template by October 2021.

## **9. FINANCIAL IMPLICATIONS**

- 9.1 There are no direct financial implications. All granite and other items have been accounted for.

## **10. LEGAL IMPLICATIONS**

- 10.1 The legal implications are contained within the body of the report.
- 10.2 Following the meeting of Full Council on 21 June 2021, the Chief Officer – Governance wrote to all councillors on 1 July 2021 asking elected members to detail by 16 July 2021 any involvement they had with any of the parties involved in the removal of granite from UTG before it was removed from the private residence on the instructions of the Principal Contractor. Councillor Yuill responded with relevant involvement and a summary of his involvement is outlined in this report.

## 11. MANAGEMENT OF RISK

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
<b>Strategic Risk</b>	Risk of overall delay of the project, impacting on the wider Masterplan and interaction with other projects thereby impacting on the delivery of the LOIP outcomes.	L	<p>A full audit of all granite dountakings, and other similar related items including railings, heraldry shields and lamps, has been carried out by the Principal Contractor. This is in addition to the ongoing monitoring of the site start inventory.</p> <p>All items identified as per the site start survey inventory, are accounted for and are within safe and secure storage at an approved location.</p> <p>The inventory of items will continue to be monitored as the development progresses and a full reconciliation will take place at the end of the project.</p>
<b>Compliance</b>	<p>Planning breaches during construction.</p> <p>Contractual breaches.</p>	L	As above.
<b>Operational</b>	Delay in Construction Programme	L	As above.
<b>Financial</b>	Granite inappropriately stored not being recovered	L	As above.
<b>Reputational</b>	Construction delay and reputational damage to the Council	L	As above.

<b>Environment / Climate</b>	Loss of architectural heritage in granite form.	L	As above.
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## 12. OUTCOMES

<b><u>COUNCIL DELIVERY PLAN</u></b>	
	<b>Impact of Report</b>
<b>Aberdeen City Council Policy Statement</b>	Completion of the project will support increasing the city centre footfall through the delivery of the City Centre Masterplan / Union Terrace Gardens.
<b>Aberdeen City Local Outcome Improvement Plan</b>	
Prosperous Economy Stretch Outcomes	<p>By providing a more pleasant environment, this could have a commensurate benefit on footfall and spend in the city centre. The Council has a key role in delivering specific projects that will deliver economic impacts in their own right; and the Council's corporate role in delivering wider 'business facing' activity in supporting the competitiveness of the business environment. Supporting the implementation of the City Centre Masterplan and tourism, events and culture support are key elements of the Regional Economic Strategy.</p> <p>The project will also have a positive impact on city centre employers themselves, and those operating in the retail, tourism, and leisure sector. Developers and subsequent occupants / employers base their location decisions on being able to attract the best talent and skills to work in their businesses, and they recognise the positive correlation between their business competitiveness and the quality of the public realm.</p> <p>Through the investment in UTG, Schoolhill and the Art Gallery, as well as considering the HMT and the Music Hall, the city centre will have a vibrant cultural quarter that will promote footfall and spend within the city centre.</p>
Prosperous People Stretch Outcomes	The project will create a safer and attractive environment for all people living in and visiting Aberdeen. Residents, workers, and visitors increasingly demand a high standard for the places they are in. Under the proposals, they could feel

	<p>more content in a more attractive and vibrant environment; as reported in other competing cities with similar projects.</p> <p>With more people walking and cycling in the area there could be a reduction in inactivity-related illness.</p> <p>Through the community benefit requirements of the Council's procurement process, the Council has established improved supplier access to public contracts, particularly for SMEs; maximising efficiency and collaboration; and placing the local, social, and economic aspects of sustainability for the UTG project.</p>
<p>Prosperous Place Stretch Outcomes</p>	<p>For Aberdeen to be globally competitive, the quality of the 'place', the commercial space, and the public realm around it all have a role. Stakeholder engagement revealed that the 'poor state' of the City Centre is one of a number of issues identified as a common theme 'In terms of the attractiveness and marketing of the city to attract workers, visitors and investment...' and 'A high quality of life is integral to attracting and retaining the talent and investment needed to grow the economy. This sense of place, with a key emphasis on the city centre, is crucial in underpinning economic growth and essential in underpinning the necessary infrastructure requirements.'</p> <p>One of the key goals of the project is to contribute to the improvement of the city centre and improved safety, access, and atmosphere.</p>
<p><b>Regional and City Strategies</b> City Centre Masterplan June 2015</p>	<p>The Aberdeen City Centre Masterplan is a regeneration blueprint that is transforming the city centre while conserving its proud heritage. The Union Terrace Gardens is a key project identified within the Masterplan.</p>
<p><b>UK and Scottish Legislative and Policy Programmes</b> The Town and Country Planning (Scotland) Act 1997 Act</p>	<p>The purpose of the Act is to govern the day-to-day operation of the Scottish planning system. The Act seeks to ensure that future development and use of land in cities, towns and rural areas is sustainable. Its primary objectives are to promote sustainable economic development, encourage regeneration and to maintain and enhance the quality of the natural heritage and built environment.</p>

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### 13. IMPACT ASSESSMENTS

Assessment	Outcome
<b>Equality &amp; Human Rights Impact Assessment</b>	Full impact assessment not required
<b>Data Protection Impact Assessment</b>	Not required

### 14. BACKGROUND PAPERS

None.

### 15. APPENDICES

Appendix A: Listed Building Consent re Granite Storage  
 Appendix B: Principal Contractor – Granite Reconciliation Report and actions

### 16. REPORT AUTHOR CONTACT DETAILS

<b>Name</b>	John Wilson
<b>Title</b>	Chief Officer Capital
<b>Email Address</b>	JohnW@aberdeencity.gov.uk
<b>Tel</b>	01224 523629

<b>Name</b>	Fraser Bell
<b>Title</b>	Chief Officer Governance
<b>Email Address</b>	FrBell@aberdeencity.gov.uk
<b>Tel</b>	01224 522084

## Appendix A

### Listed Building Consent re Granite Storage

<p><b>Granite Storage</b></p> <p>That no dountaking of any granite features, shall take place until details of the safe storing of said granite have be submitted to and approved in writing by the planning authority. Thereafter no works shall be carried out unless in complete accordance with such details as so approved unless otherwise agreed in writing with the planning authority.</p> <p>- to safeguard the special architectural and historical character of the site.</p>	<ul style="list-style-type: none"><li>• The down takings of the granite balustrade will be kept on site where possible, however if specialist work or repair of individual items of balustrade need to be done these items will be taken to the granite specialist Graeme Cheyne (<a href="https://www.graemecheynebuilders.co.uk/">https://www.graemecheynebuilders.co.uk/</a>)</li><li>• Off-site material storage address: Graeme W Cheyne builders 2 Walker Lane Toray AB11 8BW</li><li>• All materials taken off site will be covered under a separate insurance policy to cover damage and theft.</li><li>• All materials taken off site will be tracked and traced via the unique identification number.</li><li>• All granite down takings that are identified to stay within the site will be placed on pallets, padded with hessian or other soft material and then banded to secure to the pallet. No more than three items of granite per pallet and no pallets will be stacked. A specified area will be given for granite storage that is fenced off from other site activates.</li></ul>
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## Appendix B

Link to Documents: [here](#)