

<b>Item No.</b> 14.	<b>Classification:</b> Open	<b>Date:</b> 7 December 2021	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Gateway 1 - Procurement Strategy Approval for the Borough's Tree Works Programme	
<b>Wards affected:</b>		All	
<b>Cabinet Member:</b>		Councillor Catherine Rose, Transport, Parks and Sport	

## **FOREWORD – COUNCILLOR CATHERINE ROSE – CABINET MEMBER FOR TRANSPORT, PARKS AND SPORT**

This report builds on the previous Gateway 0 Report approved by Cabinet on 9 March 2021.

It outlines the additional work and development done to create a new strong, single in-house tree team in terms of strategic policy, oversight and leadership in regards to tree works and renewal of our tree stock. This report sets out how we will create a level of resource and skill to meet the challenges ahead. Trees are a key element to tackling the Climate Emergency, greening our streets and improving the health and well-being of our communities.

It also sets out a robust procurement framework that will tender for and create a contracted level of resource and specialist skills to focus on maintaining trees safely and helping us to maximise public safety, ensuring Southwark meets its duty of care obligations as well as managing corporate exposure to risk. We have a responsibility to develop a long term model of tree maintenance and works that allows us to be agile and responsive to the demands and scale of our ambition for our tree service and tree stock across the whole borough. The nature and characteristics of which are unique in scale, variety and complexity in London. We therefore wish to draw upon the wide variety of skills and specialisms that the industry has to offer and develop a model of delivery and management that is good value to our residents, but also delivers an excellent service, at scale and for the long term.

We continue to work closely with all directly affected staff, unions and stakeholders to ensure that the process of realigning the service is done in an orderly process that allows for the retention of key skills and knowledge. We also have an opportunity to secure a skill base and investment in trees skills in partnership with contractors, within the borough to help support the local economy and wider demand for skilled tree personnel.

The care, management and replenishment of trees forms a key part of our broader approach to tackling the climate emergency agenda.

We are directly responsible for 82,500 trees in our borough, we also seek to ensure the retention of another 30,000 trees that are the responsibility of others. We have

a stated ambition to plant another 10,000 trees by 2022 and develop essential plans that extend beyond that to meet the priorities and concerns of our residents, businesses and other stakeholders that care passionately about the trees in their local neighbourhood, parks, woodland and wider borough.

## **RECOMMENDATIONS**

That Cabinet are asked to:

1. Agree the retention of the in-house tree maintenance team and proposals to combine it with the in-house client team, to form a single, cohesive and comprehensive in-house team to manage the Borough's significant tree stock.
2. Approve a competitive tender process to formalise current externalised works delivery by putting in place longer term tree maintenance contract(s) to support in-house provision. The procurement process will seek up to three providers for a period of four years from October 2022, with an option to extend for an additional period of up to two years, at an annual estimated value of £1.5m, with an estimated maximum total contract cost of up to £9m (with extensions), recognising that final costs will only be determined following the completion of the tender process.
3. Approve the establishment of an additional framework agreement for tree maintenance for a period of four years that will be open for use by all London boroughs from October 2022, subject to business need, as further detailed in paragraphs 62 and 63.
4. Approve tree planting arrangements (as outlined in paragraph 43) to deliver the tree planting programme whilst noting that other delivery methods that optimise the capital resource allocated will be explored including direct employment and working with community interest companies.

## **BACKGROUND INFORMATION**

5. Southwark manages approximately 82,500 trees spanning over 400 species in places such as parks and open spaces, housing estates and highways. In addition, there are approximately 30,000 trees in Southwark which are located on private land and not managed by the council directly.
6. In recent years the council has faced challenges around the resources available to manage the tree stock. This, coupled with the council's commitment to planting more trees, led to a review of the overall tree services with the aim of ensuring the council was meeting its statutory duty of care whilst also being responsible custodians of a valued asset in a challenging urban setting.
7. In March 2021 a Gateway 0 report was presented to Cabinet that explored the options available to the council for reshaping the council's tree services in order to meet those aims.

8. The outcome of that report was to outsource the core tree works. It should be noted that 60% of the tree maintenance work is currently being carried out by external providers through a series of smaller procurements.
9. This report sets out proposals for a new tree model, comprising an in-house tree team to undertake the contract management function and some of the tree works functions (emergency, ad hoc, insurance), alongside the on-going use of external contractors. The report outlines the procurement route for procuring core tree maintenance works to be carried out by external suppliers to ensure the associated potential risks are managed and the tree stock is sustainably maintained for years to come.

### **Strategic direction**

10. Southwark's Tree Management Policy (TMP) sets the strategic aims for the council and other key stakeholders in relation to the security, preservation and enhancement of the council's treescape now and into the future. The policy includes the Tree Risk Management Strategy (TRMS) which sets out the procedures the council is required to carry out in order to meet its statutory obligations.
11. The trees in and around our urban areas are collectively known as the 'urban forest' and are generally recognised and appreciated for their amenity and presence in the cityscape whilst at the same time improving air quality, protecting watercourses, saving energy, improving economic sustainability as well as having many health and wellbeing benefits.
12. The council's biodiversity plan - the Southwark Nature Action Plan (SNAP), 2020 – 2025 sets out the plan for conservation and enhancement of the natural environment and drive for improvements in biodiversity.
13. In March 2019 the council declared a climate emergency and vowed to "*do all it can to make the borough carbon neutral by 2030.*" The Cabinet has formally considered Southwark's response to the Climate Emergency in a cabinet report presented in July 2021. The report set out Southwark's approach to the Climate Emergency and outlined approaches to support the Council and communities to achieve carbon neutrality by 2030.
14. Tree management and planting is an important part of Southwark's Climate Strategy owing to the significant contribution the tree stock makes towards climate change mitigation in terms of pollution removal, carbon storage (and sequestration) and flood alleviation. For these reasons it is important now more than ever, to ensure this valuable asset is protected, enhanced and managed effectively and therefore putting in place a sustainable and effective tree service that can deliver against these policies is a top priority.
15. In light of the council's broader environment and climate change agenda, capital funding of £5m was agreed in April 2020 to increase the number of trees planted annually, to reverse any net loss of trees (more trees removed than planted) and ensure a net increase in trees in the borough for the benefit

of future generations of Southwark residents. The current Borough Plan includes an ambitious target of planting a total of 10,000 trees from 20/21-21/22. In 20/21 8,014 trees were planted, substantially exceeding the 5,000 target for the year.

## **KEY CONSIDERATIONS**

### **Statutory and legal requirements**

16. Public safety is of paramount importance and needs to be balanced with the environmental and amenity benefits trees provide. Southwark has a “Duty of Care” to manage its trees responsibly.
17. As well as mitigating the most significant risk – that of risk against the person - there are also financial and reputational risks, that manifest themselves when trees cause damage to persons or property. The on-going completion of tree inspections and works within specified timescales/dates is considered the absolute corner stone in mitigating risk to the person and thereby maintaining a “defendable risk management system”, which is also used as evidence to mitigate third party claims.
18. There are a number of areas of law that impact the tree service:
  - Wildlife and Countryside Act 1981 - Protection of birds during nesting season
  - Tree Preservation Order & Conservation Areas – Planning protection for trees
  - Highways Act 1980 Section 154 – Trees adjacent to the highway
  - Common Law Entitlement – Trees overhanging boundaries
  - Statute Law – Case law and precedents set in court.

### **Current service arrangements**

19. The current tree service is split between two in-house teams, supported by external contractors. The two in-house teams provide the following services;
  - The Tree Client Team (Parks and Leisure): Six posts including the service manager, responsible for;
    - Strategic, policy and risk management
    - Tree governance
    - Tree inspections and specification of works
    - Contracting out tree planting to external contractors
    - Dealing with insurance claims
    - Procurement of external contractor support for additional tree works required to complement the works provided by the internal tree maintenance team
  - The Tree Works Maintenance Team (Waste and Cleansing); 16 posts including the team manager, responsible for;
    - Tree surgery

- Pollarding
  - Felling
  - Waste storage/disposal
  - Stump grinding
  - Emergency response service.
20. The coordination of tree planting is undertaken by the client team and is currently capital funded and uses external specialised contractors via annually let contract arrangements including three year maintenance and aftercare. The work is seasonal by nature, with tree planting being undertaken in the winter months, and watering and establishment maintenance programmed for the spring and summer period.
21. In addition to the services outlined above, officers in the council's development management team within planning also deal with tree related planning matters such as planning applications (including consultation), planning appeals, court evidence, government guidance and legislation on natural heritage, biodiversity, Tree Preservation Orders (TPO's) and Conservation Areas. This element of the council's services is not within the scope of this report.
22. Currently, the council continues to require significant levels of support from external suppliers to respond to the historic and ongoing backlog of tree works which has built up due to the limited capacity of the current in-house team and the large volume of trees the council is required to maintain. Whilst this work is procured in line with Contract Standing Orders, the nature and length of the contracts means that this approach is not the most cost effective for the council.

### **Options for procurement route including procurement approach**

23. The Gateway 0 report that went to cabinet in March 2021 set out the assessment for various options for the delivery of the future of the tree service which included variations of the following:
- No change: Retain the current split management function and in-house tree work delivery service, supplemented by external contract support, let on a lotted procurement basis.
  - Merge the client and works teams and expand the current in-house provision to undertake all of the tree work.
  - Adopt a mixed economy model merging the client and works teams and providing tree works delivery through a range of four options with varying degrees of internal and external provision.
  - Externalisation of the entire service.
  - Consider how best to deliver the £5m capital funded tree planting programme through either internal or external suppliers.
24. Providing 'no service' or doing nothing was not considered an option owing to the statutory requirements protecting public safety and the council's climate change mitigation commitments, as outlined in the GW0.

## **GWO Recommended Option & Further Review**

25. The cabinet report recommended the approval of the option to externalise the tree maintenance works whilst retaining a small number of staff within a new tree planting team (known as Option 4).
26. Cabinet approved the externalisation of the tree maintenance works but requested that officers explore opportunities to retain any of the in-house works team (16 posts) in addition to any opportunities offered through the new proposed planting team (9 posts).
27. Following this request, officers have reviewed opportunities to retain a greater number of staff in the in-house team, which currently comprises 11 permanent members of staff. This has included early engagement with the tree works team (three staff meetings), where a clear preference was expressed by staff to remain in-house, and for their work focus to predominately comprise of tree surgery. This was seen as beneficial from a career development perspective, commensurate with specialised training investments made to date.
28. In response to the request by Cabinet members to explore any opportunities to retain any of the in-house works team alongside feedback from the tree works team, the recommendations in paragraphs 1 & 4 of this report is for a change to the original GWO proposals. This report now proposes a mixed economy approach to tree service provision, comprising a retained in-house team, alongside on-going, externalised tree maintenance contracts. Under this proposed model, the in-house maintenance team will be combined with the current client team, to form a single, in-house service meaning that Southwark will have one of the biggest in-house tree teams in London.
29. It should be noted that at the time of writing this report, of the 16 tree works maintenance team, there are five vacancies, of which one is being covered by an agency staff member. Under the current proposals the 11 permanent staff now in post continue to provide tree services as part of a re-organised in-house team and are not currently expected to be affected by TUPE (see paragraphs 80-83 of this report). All staff within the in-house team will be given appropriate training and support as required.

## **Anticipated future service works requirements**

30. The following table outlines estimated future works volumes. Core programme and re-pollard figures have been calculated based on works orders relating to the last condition survey. Insurance programmed mitigation works (insurance cycle) figures are calculated from a new programme to be introduced in October 2021. Officers have modelled the estimated works required to be completed on an annual basis in order to determine the required resource to service the works generated.

**Table 1. Future estimated work requirements**

<b>Tree maintenance element</b>	<b>Work type</b>	<b>Required jobs per annum</b>	<b>Required jobs per month</b>
<b>1</b>	<b>Core programme (incl. emergency call outs)</b>	<b>6,720</b>	<b>560</b>
<b>2</b>	<b>Insurance cycle</b>	<b>1,279</b>	<b>107</b>
<b>3</b>	<b>Re-pollards</b>	<b>1,325</b>	<b>110</b>
<b>Totals</b>		<b>9,324</b>	<b>777</b>

31. Of the anticipated 9,324 jobs annual jobs required, officers anticipate that approximately 7,574 jobs will be undertaken by external providers and 1,750 internally (approximately 19% of all jobs required).

**Maintenance works contract**

32. The contracted element of tree service provision will provide the capacity required to respond to the significant level of tree works generated, in a timely manner (as set out on the table above), thereby minimising risk. The focus will be on creating a high quality external works service, supporting, wherever possible, locally based, high quality arboricultural practices, which will support and enhance the local economy.
33. The proposed contract term for the externalised tree works is for four years with an extension option of up to a further two years. In line with the Public Contracts Regulations 2015 a competitive tender process using the Open Procedure is recommended.
34. With regard to the procurement route, this report sets out the plan to procure a formal contract of up to three lots, spread across three geographical areas, providing cover across the whole borough. The contract will deliver a high proportion of risk based activities across various work streams which will contribute significantly to ensuring the borough meets its duty of care obligations.
35. As noted above, it is proposed that, alongside the external contract arrangements, an in-house tree works service is retained.
36. This approach, with both an internal team and contracted provision, maximises capacity and realises the benefits of a mixed economy, creating a single, policy-driven approach to manage risk and improve business resilience, thereby minimising the risk of a future backlog. Other associated benefits of this approach include an element of protection against the current economic and industry fragility, in relation to sourcing arboricultural provision, and the associated challenges around both the recruitment and retention of suitably qualified staff.

37. The in-house team will focus on the following work aspects;
- Emergency call outs
  - Fells (tree removal)
  - Ad hoc and high profile sensitive works
  - Insurance cyclical programme maintenance
  - Stump grinding.
38. The external providers will deliver all the remaining core works at volumes generated from the condition survey programme.

### **The Council Tree Team**

39. The existing tree maintenance team will combine with the existing client tree team to form one cohesive team, focused on both the delivery of tree works as well as policy, contract management and in-house works management functions. It may be necessary for some minor amendments to roles and responsibilities, to reflect the new service arrangements and reporting structure.

### **Framework agreement**

40. In line with the recommendation in paragraph 3, and in order to further mitigate against potential backlog of works, a framework agreement will also be established if required for tree works if this meets business needs. This framework will potentially be available to use by all London Boroughs as part of this procurement process. As well as providing the opportunity to introduce an additional contractor, in exceptional circumstances to assist with backlog (e.g. storm damage), this framework approach would have the potential to generate a modest income for the council, with a cost charged if utilised by other contracting authorities. The establishment of the framework incurs little additional work for the council.

### **Tree planting arrangements**

41. The council has committed to planting up to 5,000 trees (saplings through to mature trees) per annum in association with servicing a formal tree planting strategy. This service will also include a maintenance programme in the summer months to ensure successful establishment of the newly planted trees.
42. Following the request for officers to review the in-house staff arrangements (GW0 decision) the tree planting function has also been reviewed. At GW0 it was proposed that tree planting should be undertaken in-house, with the maintenance function externalised. However, as the proposed model is now to retain an in-house works team, with a focus on tree surgery/maintenance, and as it would take time to create an additional, new, in-house tree planting team, it is proposed that the optimal approach to ensure timely delivery of the ambitious tree planting quota continues to be through a procured service route in the short term. This approach will ensure delivery of tree planting at

pace and can also accommodate tree planting seasonality requirements. In view of this, this report seeks authority in the recommendation set out in paragraph 4 to procure tree planting externally, an approach that would be a change to the original GW0 decision to insource tree planting, taken at the 9 March 2021 Cabinet. Future arrangements will be subject to further Gateway reports.

43. Officers will, however, continue to explore other tree-planting options, including opportunities within the in-house works team to enable them to undertake some planting, which could, for example, focus on high profile planting opportunities and community engagement. Longer term opportunities will also be explored.
44. In the interim period existing seasonal planting arrangements will continue to be procured through the appropriate procurement process in line with Contract Standing Orders.

### **Market considerations**

45. Current industry considerations and pressures include:
  - ‘Brexit’ employment impacts
  - Rising London living costs restricting staff availability
  - Post COVID impacts on recruitment
  - Industry struggling to recruit and retain appropriately trained and skilled staff
  - Relatively low industry rates of pay, impacting recruitment and retention.
46. All industry suppliers, whether local authority or external, are impacted by the same pressures therefore competing for an increasingly smaller pool of specialised staff.
47. Due to industry conditions there are only a small number of suppliers servicing local authority contracts. This has the potential to impact not only market capacity, but also a competitive market place.
48. The proposed dual function model seeks to address these challenges by seeking multiple external suppliers through contract lots, therefore reducing resourcing concerns and associated risk. This approach may also prove attractive to smaller local suppliers, an approach that also seeks to support Southwark’s local economy.

### **Proposed procurement route**

#### **Contract period and coverage**

49. The contract term will be four years with extension options of up to a further two years. This term is considered optimal, as it is long enough to make it viable for contractors to bid for but avoids the pitfalls often inherent in long contracts. It is designed to be flexible to allow for an extension in the

circumstances that the contract/s is/are performing well and meeting the desired outcomes.

50. It is proposed that the contract will be made up of three tree maintenance lots reflective of the three geographical areas; North, Central and South.
51. The contract(s) will include the provision of an emergency call out service for contingency, storm events and business continuity purposes. However, the main service in this regard will continue to be provided by the in-house team.
52. Suppliers will be able to bid for all three lots, however no single supplier shall be awarded more than two lots. Bidders will be able to express a preference for their preferred lot. This approach will provide choice for the market, and will demonstrate whether best value for money can be achieved by suppliers having more than one lot. Tender returns will be evaluated against the evaluation criteria. This approach will ensure a level of balance between achieving value for money and having a number of available suppliers in place to manage capacity, risk and mitigate the potential for further backlog. This approach is advantageous in providing optimum business resilience and contingency options.
53. This approach seeks to provide maximum flexibility for the market, as it should attract smaller, local providers, as well as larger arboricultural firms.
54. In line with the Public Contract Regulations, the framework agreement would be set up for four years and will provide additional risk mitigation should a service failure occur.

## **Contract form**

### **Maintenance works and planting contracts**

55. The procurement will be for services contracts and let in line with the Public Contract Regulations 2015.
56. The new contracts will include requirements for robust governance, monitoring and KPI's, ensuring quality outputs. A programme of work to include, risk management, customer service, environmental considerations and a proactive approach to social values and innovation.
57. The contracts will be targeted at appropriately sized, specialised tree work and landscape suppliers to maximise market interest.
58. Mechanisms will be put in place in the contract terms and conditions whereby contractors can support each other should the situation arise such as post-storm clear-up support. These mechanisms will also allow the council to act quickly in instances where a contractor fails to perform. The council will be able to either call on one of the other contractors or from the framework. The purpose of this would be to ensure backlogs do not build up and works are

completed in accordance with the timeframes set out in the Tree Risk Management Strategy (TRMS).

59. Suppliers invited to tender as part of the capacity assessment will need to meet an annual turnover threshold set against the estimated lot values, and must demonstrate their financial stability if they are to be included in the tender process. This is part of the usual management of risk within the procurement process.

### **Contract documentation**

60. The contract documents will cover the following key elements;

- Conditions of contract
- Arboricultural specification
- Price, quality and social value evaluations
- Health and safety risk and method statements
- Contract governance
- Financial assessment.

61. A robust performance management system will be put in place.

62. The contract will include if required the establishment of a framework agreement for the same term. The purpose of the framework is for the council to be able to respond quickly to any capacity issues by having an established agreement to call off. This will encourage bidders and provide additional risk mitigation enabling swift access to service contingencies and potentially a facility for other boroughs to use. This aspect will be evaluated broadly in line with the criteria set out for the main contract, with appropriate adjustments for external borough use.

63. The number of providers on the framework is yet to be determined but is being developed ahead of the procurement. Officers are currently exploring the optimum number which will be detailed in the invitation to tender and reported in the gateway 2 report.

### **Advertising the contract**

64. The contracts will be advertised on the Find a Tender Service in line with the Public Contract Regulations (PCR 2015).

### **Evaluation**

65. As this will follow an Open Procedure as regulated by the PCR 2015, tenderers will be asked to submit a Selection Questionnaire (SQ) alongside their tender proposals. The SQ will be assessed prior to the tenderer's proposals being evaluated and the evaluation panel will assess the capacity, capability and experience of the supplier to provide these services.

66. Evaluation of bids will be conducted at 55% price, 35% quality and 10% social value considerations. The establishment of a framework agreement, if carried out, will be evaluated in line with these percentages but allowing for social value to be assessed by boroughs at call off stage.
67. Each tenderer's price will be calculated in accordance with the price evaluation methodology detailed in the tender pack with suppliers completing a schedule in the tender. The lowest sustainable tender price will be awarded the maximum scores for the price evaluation; the other tenderers' scores will be based on a percentage of that score.
68. The quality element of the tender evaluation will be scored against the following criteria for tender evaluation:
  - Proposed management structure
  - Contractor's proposed method statements for carrying out the service, managing work volumes and ensuring professionally qualified staffing capacity, to ensure maximum productivity
  - Quality management and quality control
  - Social value and benefits to local community
  - Compliance with management
  - Equality and Diversity.
69. The questions will require bidders to explain how they intend to deliver the services. The responses submitted by the winning tenderer will become contractually binding.
70. The quality evaluation will be carried out independently by an evaluation panel. Each question will be scored independently by each member of the evaluation panel from 0 to 5. Once each question is scored the appropriate weighting will be applied to each score.
71. A quality moderation meeting will be held. This will be chaired by an officer who has not independently scored the quality submissions and attended by all officers who have independently scored the quality submissions. At this meeting a consensus score will be agreed to ensure consistency in the scoring methods. The consensus scores will then be weighted as defined in the tender documents and will be added together to produce the final quality score for that tender.
72. The price score and the quality score will then be added together to produce an overall score for each lot.
73. Tenderers are invited to bid for any or all three lots but can win a maximum of two lots, which will result in two or three successful contractors. Quality and social value scoring (by lot) will remain constant, but any referential discounts given against pricing for winning two lots will be evaluated to show which combination will achieve best value for the delivery by the council of the contracts. This criteria will then be used to allocate pricing scoring against the evaluation and this information will be used to recommend the award of the

contract(s). The evaluation criteria for the framework agreement will be as set out above.

### Development of the tender documentation

74. The project team consists of appropriate officers from finance, legal and procurement departments to assist the Parks and Leisure Teams by providing suitable technical expertise and governance. The project team are responsible for ensuring all documentation has been produced and approved for the final tender packs. The project team meet, as a minimum, on a monthly basis. The documents are reviewed at these meetings. The specification and ITT documents are being developed by the existing tree client team in conjunction with the project team.

### Identified risks for the procurement

**Table 2 – Identified risks for the procurement**

No.	Risk	Risk rating	Description and mitigation
1	<b>Abnormally low bids</b> - There would be a risk of suppliers providing an unsustainably priced bid	Low	Indicative costs have been modelled on the current market costs the borough is paying for arboricultural services.  Robust evaluation of the pricing proposals will be conducted to ensure that the successful supplier can deliver sustainable services to the required volumes and desired quality.
2	<b>Exceptionally high bids</b> - There is a risk that bidders will submit unacceptably high bids.	Medium	Indicative costs have been modelled on the current market costs the borough is paying for arboricultural services.  Robust evaluation and reviews of the pricing tender submissions  Challenge bidders understanding of contract pricing.
3	<b>Insufficient resource</b> - Not having the appropriate resource to deliver this project could result in delays or even stop this project. Not providing this service would leave the council vulnerable	Low	Appropriate resources have been identified to ensure this procurement is resourced correctly.

No.	Risk	Risk rating	Description and mitigation
4	<b>Poor supplier response</b> - A poor response resulting in few suppliers presenting submissions undermines the procurement and limits the council's choice of suppliers.	Low	Workshop sessions for bidders will be held to inform potential suppliers and promote the procurement to the market. These workshops will include messaging about interest in receiving bids from smaller organisations.  Lotting strategy set up to be inclusive of both small and large businesses. Establishment of the framework provides the dual benefit of a mechanism to deal with work volume contingency/poor performance to avoid future backlog.
5	<b>Failure of Suppliers (financial security)</b> - Tree maintenance suppliers working within low margins are at financial risk when systemic problems arise.	Low	Tender evaluation methodology will provide reassurance of bidders' financial security, reducing risk to the council
6	<b>Insufficiently robust specification</b> - Poor specification results in contracted services not being fit for purpose to meet the council's requirements.	Low	Development of a clear specification, alongside, effective specialist workshops to identify requirements of the service and mitigate risks in terms of public safety and escalated costs.
7	<b>Delays to procurement programme</b> Procurement programme is delayed	Low	Resources are identified, tender and contractual documentation is in advanced format - this has been built into the timetable.

### Key / Non Key decisions

75. This report is a key decision.

### Policy Implications

76. The Borough Plan 2020-22 sets out a series of commitments across six themes:

- A place to call home
- Climate Emergency
- A green and fair economic renewal

- Tackling health inequalities
- A great start in life
- Southwark Together.

77. An effective tree service provision is linked to a number of the themes in the Borough Plan through specific commitments set out below.

78. The council will:

- Make Southwark carbon neutral by 2030
- Plant 10,000 new trees
- Make nature accessible to all
- Halve emissions by 2022
- Make council homes greener
- Improve air quality.

### Procurement Project Plan (Key Decisions)

Activity	Complete by:
Gateway 1 decision on the Forward Plan	September 2021
DCRB Review Gateway 1	3 Nov 2021
Brief relevant cabinet member (over £100k)	13 Oct 2021
CCRB Review Gateway 1	11 Nov 2021
Deadline for reports to Agenda Planning	15 Nov 2021
Agenda Planning	23 Nov 2021
Deadline for reports submission for Cabinet	25 Nov 2021
Approval of Gateway 1: Procurement strategy report	7 Dec 2021
Scrutiny Call-in period and notification of implementation of Gateway 1 decision	21 Dec 2021
Completion of tender documentation	Jan 2022
Invitation to tender	17 Jan 2022
Closing date for return of tenders	21 Feb 2022
Completion of any clarification meetings/presentations/evaluation interviews	21 March 2022
Forward Plan (if Strategic Procurement) Gateway 2	10 March 2022
Completion of evaluation of tenders	29 April 2022
DCRB Review Gateway 2:	5 May 2022
CCRB Review Gateway 2	18 May 2022

<b>Activity</b>	<b>Complete by:</b>
Notification of forthcoming decision	7 June 2022
Approval of Gateway 2: Contract Award Report	15 June 2022
End of scrutiny Call-in period and notification of implementation of Gateway 2 decision	23 June 2022
Debrief Notice and Standstill Period (if applicable)	30 June 2022
Contract award	1 July 2022
Add to Contract Register	1 July 2022
Place and award notice on Find a tender service	1 July 2022
Place award notice on Contracts Finder	1 July 2022
Mobilisation period	1 July – 3 Oct 2022
<b>Contract start</b>	<b>3 Oct 2022</b>
<b>Contract Completion Date- framework agreement and contracts</b>	<b>2 Oct 2026</b>
<b>Contract End Date - (if extension(s) exercised for recommendation 1 and 3 only)</b>	<b>2 Oct 2028</b>

79. As shown in the procurement project plan, award of the contract is expected in July 2022, with an estimated start date of 03 October 2022, subject to any unforeseen variables causing delays.

### **TUPE/Pensions implications**

80. Although currently considered unlikely there is a possibility that The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply to this proposed procurement exercise in respect of now vacant posts (see paragraph 29). TUPE may apply if the appointment of potential suppliers for the existing tree maintenance service amounts to a service provision change under TUPE.
81. The extent of the application, if any, of TUPE and its implications will depend on a number of factors and will be considered during the proposed procurement exercise.
82. Any identified TUPE considerations that come to light throughout the exercise will be reported in the Gateway 2.
83. The procurement will also need to ensure sufficient time to ensure that the council and any affected supplier(s) are able to comply with legal obligations that could potentially arise in respect of TUPE.

## **Plans for the monitoring and management of the procurement process**

84. The project to put the new arrangements in place will be managed by the Parks and Leisure Team with significant input by colleagues from the Waste and Cleansing Team.
85. The project will be monitored by the Tree Management Strategy Board consisting of key stakeholders from across the council including:
  - HR
  - Legal
  - Procurement
  - Finance
  - Marketing and Communications
  - Insurance.
86. The Tree Management Strategy Board will be reporting progress against key milestones and updating on key risks and issues with recommendations for mitigation to the Tree Sponsorship Group which is chaired by the Strategic Director for Environment and Leisure.
87. The contracts will be let and managed by the Parks and Leisure division.
88. Key performance indicators (KPI's) will be set and challenged to ensure the successful contractor's performance is to the required standard and remains consistently so throughout the life of the contract.
89. Poor performance will be identified early and reported to the Tree Management Strategy Board. Strict and swift measures will be included within the contract documentation and specification to make clear the council's expectations on service quality and the implications of not delivering to those standards.
90. The client team will review all applications for payment and monitor and administer defaults and recovery of costs for poor performance.
91. Monthly progress meetings, to be attended by officers, will be arranged and recorded to review performance and compliance.
92. Annual performance reviews will be submitted to departmental contract review board (DCRB) and corporate contract review board (CCRB) in line with Contract Standing Orders.

## **Community, equalities (including socio-economic) and health impacts**

### **Community impact statement**

93. As set out under the Equality Act 2010 and the Public Sector Equality duty (PSED) an equalities impact assessment was considered during the development of the service options and is attached as appendix 1. There is

no clear, detrimental impact to any group or protected characteristic as outlined in the Equality Act or the PSED.

94. Trees benefit our communities and the environment in a number of ways: improving air quality, reducing urban temperatures through shading and evapotranspiration, mitigating climate change, reducing noise and calming traffic, managing flood risks, supporting biodiversity and improving health and wellbeing. The service options present a framework of delivery to achieve the benefits above, minimising risks to Southwark.
95. A clear determination regarding the service's future direction is likely to have a positive impact on communities. By maintaining a healthy, protected and sustainably managed tree stock the service outcomes will contribute significantly to the health, safety and wellbeing of Southwark residents and visitors.
96. It is recognised that trees must be well maintained to ensure they do not have a detrimental impact on the community. Risks and concerns include: falling trees, obstructed pavements and examples of unreasonable tree related nuisance.

#### **Equalities (including socio-economic) impact statement**

97. The Public Services (Social Value) Act 2012 requires that the council considers, before commencing a procurement process, how wider socio-economic benefits that may improve the wellbeing of the local area can be secured. The details of how social value will be incorporated within the tender are set out in the following paragraphs.
98. The council expects suppliers to consider the additional benefits of social value to be delivered; this must support the social, economic or environmental well-being of Southwark and its residents and specifically support the delivery of the council's Fairer Future commitments and policies. Key areas of social value commitments include:
  - Apprenticeships
  - Job creation
  - Work placement opportunities
  - Payment of London Living Wage where appropriate
  - Environmental and sustainability considerations including the council's climate change strategy
  - Health and wellbeing considerations.
99. Requirement for suppliers to comply with the council's Safer Lorries, Safer Cycling Pledge including the Fleet Operator's Recognition Scheme in line with the council's standards, where appropriate.

## Social considerations

100. The successful supplier will be required to demonstrate that they offer their staff and contractors guaranteed hours (and do not employ them on harmful zero hours contracts), they operate an Equal Opportunities Policy, comply with the provisions of the Equalities Legislation and the Employment Relations Act 1999 (Blacklists) Regulations 2010, and make guidance or policy documents concerning how the organisation embeds equality and diversity available to employees / subcontractors, recognised trade unions or other representative groups of employees.
101. An equalities impact assessment has been undertaken (appendix 1). Social considerations are to be built into the process for delivering the recommended option and will be reported in the Gateway 2 reports.
102. However, any supplier appointed would need to:
- guarantee the London Living wage for both its own staff and any subcontractors used
  - follow all relevant standard provisions on blacklisting
  - follow the standards for financial transactions and payment windows for their entire supply chain
  - make every effort to reflect the council's fairer future principle by 'looking after every penny as if it was our own'
103. Apprenticeships/internships
- Suppliers would need to engage with Southwark Council's apprenticeship model.
  - There are potential opportunities to introduce apprenticeship schemes into the in-house team as part of remodelled provision.
  - Apprenticeships can be encouraged with external contractors through the quality assessment criteria of the procurement process.
  - New apprenticeships will soon be available at levels 4 and 6 (ABC) for roles in the client team which should be explored in future recruitment processes.
104. Community engagement- Opportunities for community engagement will be through the delivery of the tree planting programme in terms of consultation, participation, volunteering and education. This approach is complimentary to broader Southwark employment and climate change initiatives, such as the Green New Deal.
105. Officers will also be working with local tree conservation groups and community tree stakeholders to establish how they might want to be engaged with in relation to the new services and contractors and to develop a mechanism by which they are able to hold the council and contractor accountable in relation to performance. Officers would then look to formalise the outcome of those discussions so that the council can share progress with delivering the Tree Management Policy, progress in terms of tree planting

targets and give groups the opportunity to work collaboratively with the council on caring for and protecting the borough's tree stock for the future.

106. Internal staff impacts

- Impacts on the existing workforce will be fully considered at each stage of the Gateway process. This will include a transparent consultation process with both staff and the unions.
- Staff will be supported through the general process to enable individuals to make objective decisions around their future.
- Whilst unlikely, where applicable, staff will be prepared for a potential TUPE transfer
- Staff will have the opportunity to feed into the design of service arrangements through the transition period.

**Economic considerations**

107. Fairer Future Procurement Framework and the economic and social benefits to Southwark will be considered and weighted as part of the procurement process and the criteria for award in line with this policy.

108. The council is an officially accredited London Living Wage (LLW) Employer and is committed, to ensuring, where appropriate, contractors and subcontractors engaged by the council to provide works or services within Southwark pay their staff at a minimum rate equivalent to the LLW rate. It is expected that payment of the LLW by the successful contractor for these contracts will result in quality improvements for the council. These should include a higher calibre of staff that will contribute to the delivery of services on site and it is therefore considered that best value will be achieved by including this requirement. It is therefore considered appropriate for the payment of LLW to be required.

109. The successful contractors will be expected to meet LLW requirements and contract conditions requiring the payment of LLW will be included in the tender documents. As part of the tender process, bidders will also be required to confirm how productivity will be improved by payment of LLW. Following award, these quality improvements and any cost implications will be monitored as part of the contract review process.

**Health impact statement**

110. Southwark's trees are maintained to reduce incidences of predictable failure ensuring a safe environment for its residents, workers and visitors.

111. Trees intercept and remove polluting particulates from the air and sequester and store carbon.

112. Trees are known to contribute positively to people's mental wellbeing and quality of life.

113. Research demonstrates that trees and other green assets can have a positive influence in recovery rates following ill health.

### **Climate change implications**

114. The new contracts will as far as is reasonable work towards delivering on the aims and objectives of the council's Climate Emergency Strategy.

115. The new contracts and service provision will adhere to industry best practice on sustainability and green waste arising from tree maintenance works will be recycled and re-used in the borough whenever possible.

116. The contracts specifications will demand the latest Euro standard engines on new fleet in this contract, and encourage more sustainable forms of transport where this is feasible.

117. Throughout the tender process the appointed suppliers will be required to agree to adhere to the following:

- not to use single use plastic and to use recycled paper where practical
- encourage the use of low emission vehicles and the minimisation of journeys
- report on the suppliers energy use, water consumption and CO2 emissions to ensure the industry standards are adhered to
- all new equipment will be low energy rated to meet current regulations
- ensure that all recyclable packaging will be set aside and disposed of via a recycling centre
- ensure that no hazardous materials will be used
- proactively assisting the council to achieve its carbon neutral target.

### **Staffing/procurement implications**

118. Resource to deliver this procurement is being contained within existing resources of the Parks and Leisure Team with assistance from the Waste and Cleansing team, legal, finance and procurement teams.

119. In relation to staff members affected by the proposed service changes, officers leading the transition would seek to maximise support for staff through the process.

### **Financial implications**

120. The future tree service will be funded by both revenue and capital, with the tree works contract and client and internal works team funded through revenue budgets, and the tree planting programme funded via capital budgets.

### **Revenue**

121. It is likely that there will continue to be a shortfall in the current approved revenue budget (£1.430m per year). This will need to be addressed as part of

the council's annual budget setting process this winter for the financial year 2022/23 when the external contracts are due to commence.

122. The future additional revenue requirements is estimated to be c. £1.089m. Therefore, the total revenue budget required to deliver the service from 2022/23 will be £2.519m. These figures are based on the anticipated market price for the outsourced provision being in line with estimates, so revenue costs will not become definite until tenders are returned.
123. Although the project may proceed to tendering stage, award of the contract/s will only be done once all the required funding is fully secured. This will be addressed in the council's budget setting process for 2022/23.
124. Staffing and any other costs connected with this contract will need to be contained within existing departmental revenue budgets.

### **Capital**

125. Projected annual capital costs to deliver the tree planting programme are £0.96m. This funding was secured through an ambitious capital bid which contributes towards broader climate emergency objectives and enables the delivery of borough plan tree planting targets.
126. The latest approved council's capital programme has a total provision of £4.6m as at April 21/22 in "Additional Replacement Tree Planting" which provides for a four year planting programme, following 2021-22 forecast expenditure. Projection to spend in 21/22 is £750k leaving £3.850m for a further four years. Beyond this period further funding will be required.
127. Capital element of any arrangement should not be agreed for more than four years unless further funding is secured.
128. The overall expenditure incurred against the capital allocation for the scheme will be monitored and reported as part of the capital programme management.

### **Investment implications**

129. Investment in new plant, equipment, and training will be required for the remodelled tree maintenance team however that will be covered from the revenue tree budget, see paragraph 122.

### **Legal implications**

130. Please see concurrent from the Director of Law and Governance outlined in paragraphs 143-149.

### **Consultation**

131. Pre engagement has taken place with both tree works team staff members and unions leading up to the GW0 and leading up to the GW1.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Finance and Governance (FC21/034)**

132. This report seeks cabinet to approve the recommendations and the procurement strategy outlined in this report for the borough's tree works programme.
133. The strategic director of finance and governance notes that the capital costs associated with this contract will be contained within the approved departmental capital budgets as detailed in the financial implications.
134. The strategic director of finance and governance notes that based on the current anticipated market price for the proposed outsourced provision of the service, there is an estimated shortfall in revenue budgets of approximately £1.089m associated with this contract which will need to be addressed as part of the council's annual budget setting process for 2022/23.
135. It is also noted that all required funding will need to be confirmed before the contract is awarded.
136. Staffing and any other costs connected with this contract will need to be contained within existing departmental revenue budgets.

### **Head of Procurement**

137. This report seeks the approval of Cabinet for the procurement strategy of undertaking a competitive tender process to establish a tree maintenance and emergency contract with up to three providers for Southwark's tree stock. The contract period is four years, with an option to extend for an additional period of up to two years. The estimated annual value is £1.5m, with an estimated total contract cost of £9m for the full term of the contract, estimated to start from October 2022.
138. Cabinet are also asked to approve the establishment of a framework agreement for tree maintenance for a period of four years. The framework will be open for use by all London boroughs from October 2022 as further detailed in paragraphs 62 and 63.
139. Cabinet are asked to note the proposed remodel of the current in-house tree maintenance team as part of the re-shaping of the council tree services.
140. The report sets out in paragraphs 25-29 the recommended options, with external procurement detailed in paragraph 28. The procurement is subject to the Public Contract Regulations 2015 and will be let as a single stage, open procedure. The details of the proposed in-house team are set out in paragraphs 36-37.

141. The plans for the management and monitoring of the contracts once let are set out in paragraphs 84 to 92. London Living Wage would be payable under the contracts as confirmed in paragraphs 108-109. Social value considerations are to be evaluated for the main Southwark contracts with 10% of the evaluation criteria allocated to this.
142. The Community Impact and Equality Impact Statements are in paragraphs 97-99 with an EQIA report attached to the report as Appendix 1. The Health Impact Statement and Climate Change Implications are in paragraphs 107-117.

### **Director of Law and Governance**

143. This report seeks approval of the procurement strategy for the borough's tree maintenance and tree planting programmes, as detailed within the recommendations in paragraphs 1 to 4.
144. Due to the nature, scope and estimated value of the services that the council requires their procurement is subject to the full application of the Public Contracts Regulations (PCR) 2015. As noted in the recommendations it is proposed to conduct a publicly advertised competitive tendering process, following the PCR Open Procedure, both for the purposes of procuring one or more contracts for the delivery of tree maintenance and to establish a framework which can be used by the council (and other London boroughs on payment of an access fee) as necessary, and in particular for mitigating the risk of any service failure and clearing any backlog which may arise from time to time. It is also proposed to conduct a publicly advertised competitive tendering exercise in order to procure one or more contracts for tree planting.
145. The process that the council intends to follow in order to procure the contracts and the framework meets the requirements of the PCR 2015 and the council's Contract Standing Orders (CSOs).
146. The procurement strategy described is in relation to a strategic procurement as defined in CSOs, which means that the decision to approve the report recommendations is one which is expressly reserved to the Cabinet, after consideration of the report by the corporate contract review board.
147. This report notes the likelihood that TUPE may apply to the new arrangements for the reasons discussed at paragraphs 80-83 and 119. While the full extent of the application of TUPE is unknown at this stage, further detail will be made available for the Cabinet's consideration in the Gateway 2 report.
148. The report notes that sufficient time will be required to ensure the council and any affected supplier(s) are able to comply with legal obligations that could potentially arise in respect of TUPE.
149. In making procurement decisions Cabinet should be mindful of the Public Sector Equality Duty under section 149 of the Equality Act 2010, and to have regard to the need to (a) eliminate discrimination, harassment, victimisation or

other prohibited conduct, (b) advance equality of opportunity and (c) foster good relations between persons who share a relevant protected characteristic and those who do not share it. The relevant characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion, religion or belief, sex and sexual orientation. The duty also applies to marriage and civil partnership but only in relation to (a). The community impact statement set out from paragraph 93 notes the consideration that has been given to equalities issues and advises that an equality analysis has been undertaken in order to measure the likely and actual effect and impact of the procured services on individuals and groups within the community, in particular those having a protected characteristic under the Act. Cabinet is also referred to paragraph 131 which confirms that affected staff and unions have been consulted about the proposed procurement strategy.

## BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
Gateway 0 - Strategic options assessment for the future direction of the tree service	160 Tooley Street, London SE1 2QH.	Julian Fowgies 0207 525 0225
Arboricultural Services Options Appraisal – Options around future service provision.		
<b>Links (please copy and paste into browser):</b>		
<a href="https://moderngov.southwark.gov.uk/documents/s94282/Report%20Gateway%20-%20-%20Strategic%20Options%20Assessment%20for%20the%20Future%20Direction%20of%20the%20Tree%20Service.pdf">https://moderngov.southwark.gov.uk/documents/s94282/Report%20Gateway%20-%20-%20Strategic%20Options%20Assessment%20for%20the%20Future%20Direction%20of%20the%20Tree%20Service.pdf</a>		
<a href="https://moderngov.southwark.gov.uk/documents/s94283/Appendix%20-%20-%20Options%20Appraisal%20-%20March%20Cabinet.pdf">https://moderngov.southwark.gov.uk/documents/s94283/Appendix%20-%20-%20Options%20Appraisal%20-%20March%20Cabinet.pdf</a>		

## APPENDICES

No	Title
Appendix 1	Future Direction of Tree Service – Equality Impact Assessment

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Catherine Rose, Transport, Parks and Sport	
<b>Lead Officer</b>	Toni Ainge, Director of Leisure	
<b>Report Author</b>	Tara Quinn, Head of Parks and Leisure	
<b>Version</b>	Final	
<b>Dated</b>	24 November 2021	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Finance and Governance	<b>Yes</b>	<b>Yes</b>
Head of Procurement	<b>Yes</b>	<b>Yes</b>
Human Resources	<b>Yes</b>	<b>Yes</b>
Director of Law and Governance	<b>Yes</b>	<b>Yes</b>
<b>Contract Review Boards</b>		
Departmental Contract Review Board	<b>Yes</b>	<b>Yes</b>
Corporate Contract Review Board	<b>Yes</b>	<b>Yes</b>
<b>Cabinet Member</b>	<b>Yes</b>	<b>Yes</b>
<b>Date final report sent to Constitutional Team</b>		24 November 2021