

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 15 March 2022	<b>Decision Taker:</b> Cabinet Member for Transport, Parks and Sport
<b>Report title:</b>		The replacement of a boundary wall at Dulwich Upper Wood including Traffic Order	
<b>Ward(s) or groups affected:</b>		Dulwich Wood	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATIONS

It is recommended that the Cabinet Member for Transport, Parks and Sport:

1. Instructs officers to pursue a Traffic Order application that will prevent vehicles turning right into Farquhar Road from Jasper Road, should it be required.
2. Instructs officers to deliver the construction of the new retaining wall and associated new highways layout.

## BACKGROUND INFORMATION

3. This report makes recommendation for the delegated authority to officers to deliver the construction stage of the project to erect a new wall in front of the damaged existing wall, along 50m of the boundary between the woodland and the eastern footway of Farquhar Road.
4. In February 2018 a section of the wall adjacent to Dulwich Upper Wood on Farquhar Road began to collapse and was removed for safety, and to allow for repairs. Initial repair options required removal of approximately 10 to 34 trees that are protected by a woodland tree protection order (TPO), to facilitate the repair.
5. In November 2019 officers recommended to proceed with the fastest and most cost-effective repair option that included removal of 34 trees. This recommendation was rejected on the grounds it included removing trees.
6. A feasibility study considered two options that do not require the removal of any trees and instead involve reconfiguration and narrowing of the public highway. Both options were taken forward to a public consultation. See paragraphs 36 to 42 for more details.
7. 99 responses were received by email and 83% of respondents preferred option A (Appendix 1). Option B can be seen in the consultation report (see

Background Documents). The design process has led to a slightly modified version of option A, with separate space for pedestrians and cyclists along the footway. The reason for this modification is set out in the Equalities Impact Statement below. The design being pursued is shown at Appendix 2.

8. In January 2021, IDM approval was granted to proceed with an application for a Stopping Up Order. However, officers have since received Counsel advice that the design can be achieved by using the powers of improvement under Part V of the Highways Act 1980 being S66 and S96(1). A Stopping Up Order is no longer required.
9. Specialist highways consultants are drawing up plans based on the chosen design, and the appropriate permits will be sought. Construction is estimated to commence in summer 2022.

### **KEY ISSUES FOR CONSIDERATION**

10. The replacement of the wall is necessary to avoid further collapse into the footway. There is also a tree risk failure if the wall collapses further. (Additional monitoring of the trees in this area is being undertaken to manage the risk.) Some pedestrians choose to walk in the road, at potential danger to themselves, because part of the footway is closed and fenced off.
11. A Traffic Order preventing vehicles turning right from Jasper Road may be necessary to facilitate the new highways layout, dependent on the results of a Road Safety Audit that is currently underway. An Order may be necessary to prevent pedestrians on the eastern side of Farquhar Road being put in danger when large vehicles turn right from Jasper Road into Farquhar Road.
12. The Cabinet Member is being asked to consider and approve the construction works going ahead and the implementation of the Traffic Order, should it be required.

### **Policy framework implications**

13. As the Highways Authority, the council has the responsibility to repair and maintain public highway to a safe and accessible condition. This project is essential to maintain access for pedestrians and cyclists along the eastern side of Farquhar Road.

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

#### **Community impact statement**

14. The footway along the eastern section of Farquhar Road adjacent to the failed wall will continue to be kept closed until the works start for safety reasons. This will continue to have a negative impact on members of the community until the works are completed. The proposed design will provide a facility for pedestrians and cyclists.

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

15. One of the Southwark Stands Together pledges is working to address and prevent structural racial inequalities and structural racism within our organisation, to organisations we partner with and within the service we deliver.
16. Dulwich Wood ward has a lower proportion of Black, Asian and minority ethnicity residents (36.8%) when compared with the borough as a whole (45.8%).
17. The design proposals for this scheme have been subject to significant scrutiny, with a strong lobby from local residents to review the original proposals, in order to save the 34 trees that were due to be lost under the original proposed scheme. As a result, the design has been amended, with a new scheme which minimises impact on the trees, but at a significant increase in costs – an estimated additional £350k.
18. The decision to spend a larger sum of money on this scheme has been weighed against the environmental benefits of minimising tree removals. Also the opportunity to deliver a significant highways improvement that will assist in reducing speeds and traffic calming as a result of the amended scheme.
19. In the interest of protecting users of the footway with certain protected characteristics, the proposed design of the footway has changed slightly since the public consultation in order to introduce separate space for pedestrians and cyclists. The aim of this modification is to make the pedestrian part of the footway safer for people with disabilities, children, the elderly, and pregnant women.

## **Health impact statement**

20. Retaining trees which would have otherwise been felled to facilitate the repair has a positive impact on air quality.
21. Providing a cycle lane increases safety for cyclists and encourages cycling, which is sustainable form of transport with associated health benefits.

## **Climate change implications**

22. The building of the new wall in front of the existing wall will avoid removal of trees within Dulwich Upper Wood. Retaining trees has a positive impact on climate change mitigation and is in line with Priority Three (Thriving Natural Environment) of Southwark Climate Change Strategy
23. The scheme includes a cycle lane, which increases safety for cyclists. Improving cycling infrastructure encourages cycling and helps to reduce reliance on cars. This has a positive carbon impact by reducing carbon dioxide emissions.

24. The fill material to be used between the existing boundary wall and the new brick retaining wall will consist of recycled crushed concrete, brick or mortar which is created as a by-product from demolition projects.

### **Resource implications**

25. The Parks and Leisure Team are managing the project up to the point of securing the capital funding / appointing the contractor (anticipated to be June 2022). At this point, the scheme will transfer to the Highways Structure Team. This team has been involved throughout, providing advice and guidance, as well as managing the specialist advice from the consultants and organising the necessary permits required.

### **Legal implications**

26. Traffic Management Orders, should they be required, would be made under powers contained within the Road Traffic Regulation Act (RTRA) 1984.
27. Should the recommendations be approved and a Traffic Order required, the council will give notice of its intention to make a traffic order in accordance with the Local Authorities Traffic Order (Procedure) (England and Wales Regulations 1996). Should an Order be made, it will also be made in accordance with these Regulations.
28. These regulations require the Council to consider any representations received as a result of publishing the draft order for a period of 21 days following publication of the draft order. Further detail about the procedure is included in the section on 'Consultation' in this report.
29. Should any objections be received they must be properly considered in light of administrative law principles, Human Rights law and relevant statutory powers. Under Part 3D, paragraph 23 of the Southwark Council Constitution, the Cabinet Member has authority to determine statutory objections and a further report will be brought should any unresolved objections be received following publication of the draft order(s).

### **Financial implications**

30. Expenditure to date on this project is £101,000. This expenditure covers surveys, erection and maintenance of the fence around the collapsed wall, and feasibility reports obtained through the Council's Highways and professional services contractor (AECOM).
31. A further £30,000 is forecast for design and any other possible construction services.
32. The funding for this project to date is contained under the Infrastructure & Investment capital project (L-2340-0401). However, the "Infrastructure and Investment" project is fully now committed and there is no spare budget

available to use on this project.

33. The cost of construction work is currently estimated at £500,000. A full cost plan for the detailed proposal is expected at the end of March 2022.
34. Once option costs are received and finalised a capital bid will be prepared and submitted. No retaining wall construction work to be awarded until full funding for this project is secured.
35. On the basis of expenditure to date, and capital estimates, it is anticipated that the total scheme will cost approximately £630,000.

### **Consultation**

36. Public consultation on the proposal has been undertaken as part of the feasibility study. Information was published on the project webpage including design options, a description of the project, the feasibility report and the scoping report.
37. A community consultation event (online) took place on 5 October 2020 and the online consultation was available from 28 August 2020 to 12 October 2020. Posters were displayed on the fencing, 210 residents in close proximity of the scheme were sent a letter and Ward Councillors and local stakeholders on the mailing list were informed by email.
38. Stakeholders on the mailing list have also been updated by email and through the Council's project website.
39. Counsel have been consulted regarding statutory approvals and none are required as the works can be undertaken under the Highways Act.
40. If a Traffic Order is required, statutory consultation will be carried out as follows:
  - a) publication of a proposal notice in a local newspaper
  - b) publication of a proposal notice in the London Gazette
  - c) display of notices in roads affected by the orders
  - d) where appropriate, the delivery of notices or letters to premises, or premises occupied by persons, appearing to the Council to be likely to be affected by any provision in the order.
  - e) consultation with statutory authorities
  - f) making available for public inspection any associated documents (e.g. plans, draft orders, statement of reasons) via the Council's website or by appointment at 160 Tooley Street, SE1
  - g) a 21-day consultation period during which time any person may comment upon or object to the proposed order
41. Following publication of the proposal notice, any person wanting to object must make their objection in writing, state the grounds on which it is made and send to the address specified on the notice.

42. Should an objection be made that officers are unable to resolve so that it is not withdrawn, it will be reported to the cabinet member for determination. The cabinet member will then consider whether to modify the proposal, accede to or reject the objection. The Council will subsequently notify all objectors of the final decision.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Governance (SW 02/22)**

43. Part 3D Paragraph 22 of the Council's Constitution provides that Individual Cabinet Members can '*decide to implement a traffic and highway improvement project subject to statutory consultation*' and the Cabinet Portfolios for 2021 to 2022 state that the Cabinet Member for Transport, Parks and Sport has responsibility, amongst other matters, for street safety and highways. The recommendations in this report are therefore appropriate for determination by the Cabinet Member for Transport, Parks and Sport.
44. A public consultation was carried out in relation to this recommendation, as outlined in the 'Consultation' section above. If a Traffic Order is required, the statutory consultation requirements before making an Order are also set out in the 'Consultation' section above.
45. The Equality Act 2010 introduced the public sector equality duty (PSED), which merged existing race, sex and disability equality duties and extended them to include other protected characteristics; namely age, gender reassignment, pregnancy and maternity, religion and belief and sex and sexual orientation, including marriage and civil partnership. In summary those subject to the equality duty, which includes the Council, must in the exercise of their functions: (i) have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; and (ii) foster good relations between people who share a protected characteristic and those who do not. The Equalities Impact Statement above demonstrates that the Council has had due regard to the PSED.
46. The Human Rights Act 1998 imposed a duty on the Council as a public authority to apply the European Convention on Human Rights; as a result, the Council must not act in a way which is incompatible with these rights. The most important rights for highway and planning purposes are Article 8 (respect for homes); Article 6 (natural justice) and Article 1 of the First Protocol (peaceful enjoyment of property). The implementation of these proposals is not anticipated to breach any of the provisions of the Human Rights Act 1998.
47. Council Assembly on 14 July 2021 approved a change to the Council's constitution to confirm that all decisions made by the Council will consider the climate and equality (including socio-economic disadvantage and health inequality) consequences of taking that decision. These have been considered in the report in the Equalities impact statement and the section on Climate Implications, above.

## Strategic Director of Finance and Governance (EL21/147)

48. This report is requesting approval from the Cabinet Member for Transport, Parks and Sport to instruct officers to pursue a Traffic Order application that will prevent vehicles turning right into Farquhar Road from Jasper Road, should it be required and to instruct officers to deliver the construction of the new retaining wall and associated new highways layout.
49. The Strategic director of finance and governance notes the financial implications and understands that there is currently no budget available for the re-construction of the wall. A capital bid will be submitted once the full cost plan for the detailed proposal is prepared which is expected at the end of March 22.
50. The Strategic director of finance and governance also notes that no contract will be awarded for the construction of retaining wall until full funding for this project is secured.
51. Staffing and any other costs connected with these recommendations are to be contained within existing departmental revenue budgets.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Dulwich Upper Wood Wall Consultation Report	Parks & Leisure/ 160 Tooley Street	Adolfo Gonzalez 07415646183
<a href="#">Download report from council website</a>		

## APPENDICES

No.	Title
Appendix 1	Option A: The design that was preferred during consultation
Appendix 2	Layout A: Outline design

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Adolfo Gonzalez, Project Manager	
<b>Version</b>	Final	
<b>Dated</b>	4 March 2022	
<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>
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Policy and Research officer	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>	15 March 2022	