

Item No. 15.	Classification: Open	Date: 25 January 2011	Meeting Name: Cabinet
Report title:		Gateway 1 - Southwark Markets and Street Trading in-house management arrangements and legislative operating framework	
Ward(s) or groups affected:		All	
Cabinet Member:		Councillor Barrie Hargrove, Environment, Transport and Recycling	

FOREWORD - COUNCILLOR BARRIE HARGROVE, CABINET MEMBER FOR ENVIRONMENT, TRANSPORT AND RECYCLING

1. Following the Cabinet's agreement to the implementation of the Markets and Street Trading Strategy in September 2010, this report seeks Cabinet approval to implement an interim internal operational option for the management arrangements for Southwark Markets.
2. Consultation has taken place with Traders, Private Operators, and Borough Market to ascertain the best value sustainable way forward for Southwark's Markets. These discussions were helpful in coming to a decision on the immediate future provision of the Service.
3. I am therefore proposing an interim in-house option is agreed, with the added provision that discussions continue with Traders, Private Operators and other stakeholders to determine the best external solution for the management of Southwark Markets in the longer term.
4. I am also proposing that following further consultation with Traders the legislative framework is changed from the London Local Authorities Act 1990 as amended to Part 111 of the Food Act 1984, with the assurance that their current terms and conditions contained within the LLA 1990, are as far as is possible protected and enshrined in a new Terms and Conditions schedule.

RECOMMENDATIONS

5. That Cabinet agrees that Southwark Markets and Street Trading be managed in-house as per the timetable in paragraph 23.
6. That Cabinet agrees to further discussions with Traders, Private Operators and other stakeholders to determine the best solution for the management of Southwark Markets in the longer term either through an external License or Trust arrangement.
7. That Cabinet agree that a report be submitted to Council Assembly on the changing the legislative framework from London Local Authorities Act 1990 as amended to Part 111 of the Food Act 1984, with the assurance that all their

current terms and conditions contained within the LLA 1990, are protected and enshrined in a new Terms and Conditions schedule.

BACKGROUND INFORMATION

8. In September 2010 the Cabinet agreed the Markets and Street Trading Strategy that sets out the vision for the future of Southwark's Markets. The aim of the Strategy is to chart the way forward to revitalizing markets and street trading so that they play a full part in the regeneration of Southwark, maximise their economic and employment benefits, promote and sustain independent and small businesses, provide access to high quality affordable food and other commodities and contribute to a vibrant public realm.
9. A key objective set out in the strategy is the modernisation of the management of Southwark Markets. The Strategy outlined a number of options for the future provision of the Service as follows:
 - Private licensed operator with internal monitoring team and market champion. The Council retains the strategic management of the portfolio, and creates a small client team; it then seeks a private operator to manage the day to day operation.
 - Partnership with the private sector. The Council seeks a full strategic and operational partner to transform the markets.
 - Operate the markets in-house. The Council retains the strategic and operational management of the markets by recruiting the necessary staff and skills.
 - Trader managed operations. The Council explores the option of market traders directly managing the day-to-day operation.

KEY ISSUES FOR CONSIDERATION

Management arrangement proposals

10. The Council wishes to modernise how its markets are managed, reviewing policies, procedures and working practices to support thriving markets and encourage entrepreneurship. To succeed we are working closely with traders and have put in place improved consultation and engagement with traders and bring in expertise to transform and modernize the service. The Strategic review of the Service acknowledged that some excellent work was being done across the Council and that there are a great many opportunities to develop and expand the markets service so that it meets the challenges of the future.
11. Historically the management of markets has taken a regulatory/enforcement. This has meant the skills and experience required to successfully manage modern markets have not been applied. Through our partners and key stakeholders, we aim to bring a more commercial approach focused on retail, marketing and customer focus. We will also promote the social value of markets. A notable success in this regard is the recent Camberwell Green

Christmas market which attracted over 40 new traders to the borough and the development of licensed sites at Bankside at a commercial rate.

12. To ensure the Council selects the most appropriate management framework an options appraisal was undertaken (see Appendix 1). This appraisal resulted in two favoured options, namely
 - Private licensed operator with internal monitoring team and market champion. The Council retains the strategic management of the portfolio, and creates a small client team; it then seeks a private operator to manage the day to day operation.
 - Operate the markets in-house. The Council retains the strategic and operational management of the markets by recruiting the necessary staff and skills.
13. Throughout October and November 2010 discussions were held with Traders, Private Operators, and other key stakeholders on these potential management models. The key points from these discussions were:
 - Private operators would not be interested in a Licence to operate Southwark markets unless there were changes to current legislation in London.
 - The current requirement to ring fence income meant that it was difficult to make commercial investment decisions
 - Greater flexibility was needed in the setting of fees and charges to attract new business
 - Southwark Association of Street Traders (SAST) were willing to consider working with a private operator or Trust to operate Markets in the borough.
 - SAST are willing to accept a change in the Legislative framework, so long as they were involved in future decision taking and their existing rights are protected.
14. The key conclusion from the discussions with the market operators sector is therefore that in London there does not currently exist a viable private sector from which Southwark might seek a competitive tender and that for this to be the case in the future, the Council, at the very least would need to go to the sector with an offer similar to that of authorities outside of London operating under the Food Act.
15. Furthermore since the previous discussion at Cabinet the Borough Market trust have indicated that they are willing to discuss how they may assist in developing these options.

Short term management arrangement

16. Given the conclusion set out in paragraph 14 it is therefore proposed that that the temporary Geraud Contract is not renewed at 31st March 2011 and an interim operational model in the form of an in-house provision be established

from April 2011 to take the modernisation process forward. The Structure will contain a specific Marketing post to establish new and improve existing Markets across the borough. A proposed structure is attached at Appendix 2

Summary of the business case/justification for the internalisation

17. The markets service is currently provided through a management contract with Geraud Markets UK Ltd that expires on 31st March 2011. The contract with Geraud Markets (UK) Ltd commenced 3rd September 2007. Geraud Markets (UK) Ltd was awarded a temporary contract following the investigation of allegations involving Street Trading staff.
18. Authority to let this initial contract to Geraud Markets (UK) Ltd was made under Contract Standing Order 4.8 (emergencies) which enables a Chief Officer to take necessary action to deal with an emergency, but only limited to that emergency. Since then, further authority to extend has been sanctioned through normal procurement/contract standing order processes.
19. There is a need to change the legislative framework before we can take the longer term proposals forward. This requires further consultation and ratification at Council Assembly before the next stages of procurement can commence.
20. The In-house Service will be managed through the Council's business planning and performance monitoring processes, key performance indicators are already in place for the operation of the Markets and Street Trading Services.
21. Staff performance will be managed and monitored through work plans and appraisal processes.

Developing a long term proposal

22. Notwithstanding the proposal in paragraph 16 it is considered that externalisation of market management could provide a more sustainable future for market trading in the Borough, by establishing a more commercial approach to investment and marketing. It is therefore proposed that the Cabinet Member for Environment, Transport and Recycling continue discussions with Southwark Traders, Private Operators and other stakeholders to develop a mechanism whereby Southwark Markets could move from direct Local Authority control to operate under a Licence or a Trust arrangement.

23. Project plan

Activity	Complete by:
Gateway 1: Procurement strategy for approval report to Cabinet (this report)	25/01/2011
Advise Geraud of termination of their Contract	04/02/2011

Activity	Complete by:
Commence consultation on TUPE	07/02/2011
Commence in-house delivery	01/04/2011
Adoption of Food Act Report to Council Assembly	15/05/2011
Further discussions with SAST and range of providers to develop longer term external option	May /June/2011

Legislation proposals

24. The Market strategy sets out the clear and significant issues arising from the current regulatory/legislative framework that are having a deleterious effect on the markets and the Strategy suggests changing the legal basis on which the Council operates markets and street trading.
25. It is therefore necessary to put this legislative change in place to ensure that Southwark Markets are able to compete with private markets and protect the existing markets from further private encroachment. This is the case whatever longer term option is chosen for the future operation of the Markets service.
26. Like the majority of London Boroughs the market and street trading operation of Southwark Council is governed by the provisions of the London Local Authorities Act 1990 (as amended). The focus of the London legislation is street trading, which does not fall within the definition of a market that gives rise to market rights.
27. London Boroughs can operate markets on the same basis as local authorities throughout England and Wales. In addition to the various powers available under charter, letters patent, prescription, custom and practice and local legislation it is possible to utilise the provisions of Part 111 of the Food Act 1984.
28. In September 2010 Cabinet agreed that officers seek the views of SAST on moving to the Food Act. SAST have been intensively consulted on this issue and they fully recognise that the markets must change and are willing to accept the move to Food Act provisions, with the proviso that they have similar protections as under the previous legislation.
29. Implementation will require a report to Council Assembly and a notice to be placed in the local press stating date of implementation. All current street markets will be de-designated under London Local Authorities Act 1990 and established under Part 111 of the Food Act 1984.

Policy implications

30. The Markets and Street Trading Strategy supports the Objectives and Priorities of the Sustainable Community Strategy (Southwark 2016) and the Council's Corporate Plan. The Strategy also makes links between markets and street trading and the Southwark Plan, the developing Local

Development Framework and the Council's Regeneration Plan and Policies, including the LDF and Southwark Employment and Enterprise Strategies.

31. The value of street markets and street trading more generally is increasingly recognized for its economic and social benefits. Well managed and supported Street Markets:
 - Provide access to high quality affordable food and other goods.
 - Have significant economic and employment benefits.
 - Promote and sustain independent and small businesses and can be a fertile environment for black and minority ethnic entrepreneurs as business start-ups.
 - Contribute to a vibrant public realm that people enjoy and feel safe using.

32. The Council is keen to work with the community to develop markets and street trading in Southwark to ensure that they fulfill their potential to:
 - Increase their pull to visitors and destination shoppers.
 - Become successful economic, social and cultural institutions.
 - Encourage more entrepreneurship, independence and innovation.
 - Support an extraordinary range and variety of businesses.
 - Promote distinctiveness and vibrancy in a well managed and maintained public realm.
 - Provide access to affordable, healthy and high quality food and other commodities including to those on low incomes.

Community impact statement

33. The Markets and Street Trading Strategy aims to ensure that markets are inclusive of all residents of the borough and meet all the criteria in the Council's Equalities Policy. An EQIA was carried out in 2006 that identified gaps in equality of opportunity between black and minority ethnic communities and those with disabilities. There have been improvements introduced to address these issues and these have been adopted as part of the Market and Street Trading Strategy. A further review of the EQIA will be completed in 2011 to examine further progress in these areas. The Strategy also seeks to change current Street Trading operational policies and practices that hinder the ability of some new traders to establish themselves on Southwark Markets, to ensure that Markets and street trading have a positive impact on the community.

Resource implications

34. By bringing the Service back in-house for a temporary period, whilst the option of a Licence or operation under a Trust are developed, will result in savings from the present management arrangements. There will be scope to reduce the deficit in the first year of operation, and into future years, should the transfer of the service to an Operator or Trust not be feasible. Geraud staff will transfer to the Council under TUPE arrangements.

35. There are no additional resource requirements other than additional legal advice if a Trust arrangement is preferred. External contract licence can be procured using existing finance and staffing resources.

Staffing/procurement implications

36. This will be completed within the existing internal resources. Examples of other similar type contract arrangements will be used to achieve best solution for Southwark's markets.
37. Any additional bids for Council resources will be made through the Council's policy and resourcing strategy and this report does not attempt to pre-empt that process.
38. The Strategy aims to raise additional income by maximising trader numbers through revitalising existing markets and taking advantage of opportunities for new ones to reduce and over time remove the deficit on the account.
39. The Fees and Charges process would remain the same as at present with levels approved by the Cabinet Member. However, as is the case at present, there would no longer be a requirement to provide traders with a full breakdown of Markets expenditure, although the budget summary and outturn would remain available to SAST.

Legal/financial implications

40. The street trading account is a ring fenced account and this means that all expenditure on the street trading service is met from fees and charges paid by the traders. There is a significant deficit on the account which the service must attempt to reduce and clear. This has arisen because the fees and charges to traders have not been sufficient in the face of declining trader numbers to cover the costs of operating the street trading service. A key objective set out in the strategy is the reduction of the Street trading deficit. A detailed financial recovery plan to reduce the current deficit is in place to bring the 2010/11 trading account back to a break even position, and these recommendations will be able to reduce and clear the existing deficit of £820K over time.
41. Comments by the Finance Director and Strategic Director of Communities, Law & Governance are set out below.

Consultation

42. Consultation was undertaken with Traders, Private Operators, and other key stakeholders on potential management models throughout October and November 2010. Some conclusions drawn were:
 - SAST are willing to make a bid alongside a Private Operator or Trust to operate Markets in the borough.

- SAST are willing to accept a change in the Legislative framework, as long as they were involved in future decision taking.
 - Private Operators would not be interested in a Licence to operate unless there was a slackening of Local Authority control, and changes to current legislation, moving to the Food Act 1984
 - Borough Market were interested in commencing discussions in relation to the possibility of extending their Trust arrangement to cover Southwark Markets.
 - They would also be available to advise Southwark Traders, if they wished to consider setting themselves up as a Trust to manage Southwark Markets
43. The Markets and Street Trading Strategy will continue to explore these options for change through the newly established Quarterly Traders Forum mechanism, SAST, Private operators and Borough Market Trust, ensuring the best sustainable solution is pursued to enhance Markets in Southwark for future generations.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance (DC/1210)

Legislation

44. Currently Southwark manages street trading under the provisions of Part III of the London Local Authorities Act 1990 (“the 1990 Act”). By section 24 of the 1990 Act Southwark as designated certain streets as licence streets. This enables applications for street trading licences to be made. Part III of the 1990 Act also allow street to have their designations removed following the procedures in Section 24.
45. This removal will require a resolution by Council Assembly as outlined in recommendation 4, following consultation with the licence holders or a body or bodies representing them. In addition statutory advertisements have to precede such a resolution pursuant to section 24(4).
46. It likely that a street trading licence is a ‘possession’ within the meaning if article 1 of the first protocol to the European Convention on Human Rights. Therefore we must be mindful that any interference is proportionate.
47. By section 50(1) of the Food Act 1984, as amended, (“the 1984 Act”) a local authority, such as the Southwark, may establish a market within their area. Part III of the 1984 Act thereafter provides for certain other matters, which enable such markets to operate and be properly regulated. The local authority establishing a market can appoint an authorised market officer to run it and fix the charges.

In-house Procurement provision

48. Bringing the markets management service back in-house to the Council on the termination of the Geraud contract will amount to a service provision change which is a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). TUPE will apply to transfer the employment of those Geraud employees assigned to the management contract to the Council. The transfer should be conducted under the Council's TUPE policy and procedure to minimise the risk of employment tribunal claims by affected staff.
49. As they will become Council employees, all transferring Geraud staff will be entitled to LGPS membership (pursuant to the Superannuation Act 1972, LGPS Benefits, Membership & Contribution Regulations 2007, LGPS (Administration) Regulations 2000).
50. To avoid potential claims of discrimination by applicants, the establishment of the Marketing post in the internalised service, including grading, must be conducted in compliance with the Council's relevant procedures and protocols, in particular the Recruitment Policy and Procedure, Job Evaluation protocol and organisational staffing protocol.
51. It is likely that the subsequent tender exercise will also amount to a service provision change under TUPE. As well as TUPE, the Code of Practice on Workforce Matters in Local Government Service Contracts and the Best Value Authorities Staff Transfers (Pensions) Direction 2007 will apply to the externalisation process to protect the employment and pension rights of all those Council employees who are assigned to the markets management service and who transfer to the successful bidder organisation. The transfer should be conducted under the Council's TUPE policy and procedure to minimise the risk of employment tribunal claims by affected staff .

Finance Director (NR/ENV/101210)

52. The Markets and Street Trading Strategy and implementation plan has been developed to recover the trading account deficit and put the trading account in a better financial footing to at least break even in the long term. The method chosen to operate markets and street trading activities is one of main items in the Implementation Plan that will ensure that the most economically advantageous option is chosen that will ensure the deficit is cleared over the term of the contract.
53. The Head of Service has confirmed that the bringing in of the Service in-house will begin to reduce costs and in turn reduce the street trading deficit.
54. Any proposal to take the Service under a Trust arrangement would require a clause that would make a yearly financial contribution to clear the outstanding deficit.

Head of Procurement (MG 20122010)

55. This report seeks the Cabinet's approval of the internalisation of the Southwark Markets and Street Trading Service for an initial period of 15 months commencing 3 months from the implementation of this report and currently scheduled to end June 2011.
59. The period during which the service will be managed in-house will be used by officers to explore options to manage the service through an external Licence or a Trust arrangement.
60. The report details the work that has been undertaken to develop a strategy to take the service forward. However, consultation with key parties has led officers to the view that there is not currently a viable private sector with which to tender a modern, commercial market services hence the need to manage the service in-house on a temporary basis.
61. Internal management of the service will enable the contractual arrangements for the service currently provided by Geraud to be regularised as well as bring savings on present spending levels.
62. Staff employed by Geraud, the incumbent contractor, will be eligible to TUPE transfer to the Council. The report confirms that appropriate legal advice has been sought in order to manage this process and the transition to an in-house service.
63. This report has been to the Environment and Housing Departmental Contract Review Board as well as Corporate Contract Review Board. Changes requested by the Boards to the content of the report have been incorporated into this final draft.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Strategic Review of Southwark Markets & Street Trading Service, October –December 2008. Markets and Street Trading Strategy Document	160 Tooley Street, London SE1 2TZ	John McHenry 020 7525 2105

APPENDICES

No.	Title
1	Markets Options Appraisal
2	Markets and Street Trading proposed staffing structure

AUDIT TRAIL

Cabinet Member	Councillor Barrie Hargrove, Environment, Transport and Recycling		
Lead Officer	Gill Davies, Strategic Director, Environment and Housing		
Report Author	Des Waters, Head of Public Realm		
Version	Final		
Dated	11 January 2011		
Key Decision?	Yes		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
	Officer Title	Comments Sought	Comments included
	Strategic Director of Communities, Law & Governance	Yes	Yes
	Finance Director	Yes	Yes
	Head of Procurement	Yes	Yes
	Date final report sent to Constitutional/Community Council/Scrutiny Team		11 January 2011