

Committee(s):	Date(s):	Item no.
Hampstead Heath, Highgate Wood and Queen's Park Committee		APPENDIX1
Projects Sub-Committee	17 April	
Subject: Flood Management and Water Quality Project - Appointment of Strategic Landscape Architect		Public
Report of: Superintendent of Hampstead Heath & City Surveyor		For Decision

Summary

This report sets out a proposal following extensive consultation to appoint a Strategic Landscape Architect, whose role will be to work alongside the retained Panel Engineer to ensure an holistic approach to the design solutions for the Flood Management and Water Quality project.

When the initial concept images were produced the scale of works and their impact on the Heath became clear. These designs, prepared by the hydrologist, were only ever concept in nature and led to the realization that the landscape issue is not a subsidiary issue to the main works, but central to the designs.

Strategic landscape considerations are seen as being essential within the context of the Hampstead Heath Act 1871. This view was endorsed by the local community and their representative organisations. There are perceptions that the City's intentions and interpretations of the legislation and risks are unnecessarily placing compliance with the reservoir legislation over and above the provisions of the Heath's foundation legislation.

The City also believes that the landscape and obligations under the foundation legislation are important aspects of the project and strongly refutes the above position. The appointment of an eminent Strategic Landscape Architect is considered the right approach and is supported by the local organisations and will do much to assuage fears that the City, through its appointed Design Team, is not sympathetic to the landscape in its approach to the Flood Management and Water Quality project.

Such an appointment will ensure that the City will achieve the best possible solution to the liability it currently carries in terms of the spillway capacity problems that have been identified. Such an appointment will also give the City additional protection against the scheme being over engineered. This approach is fully supported by the City's retained panel engineer who has ultimate responsibility for ensuring that the peak water flows safely through the chains or over

the dams without the risk of collapse of any dams.

The cost of this appointment has been estimated to be within the range £100,000 to £150,000 depending on the level of consultation required. Whilst it is hoped that this figure can be contained within the overall estimate of £15.12m (at Q4 2010 prices and with an estimated 'confidence' range of +20%), this can not be guaranteed at this stage and additional budget is requested.

Recommendations

It is recommended that the:-

- appointment of a Strategic Landscape Architect to the Flood Management and Water Quality Management project at an estimated additional cost of between £100,000 - £150,000 (Q1, 2012 prices) is approved.
- need for competitive tenders for the appointment of the Strategic Landscape Architect be waived and that negotiated tenders be sought for these services from a select group of up to five professionals, identified from research including a list of potential candidates provided from the Landscape Institute.

Main Report

Background

1. At the Court of Common Council on the 14th July 2011 approval was given to the upgrade of the pond embankments on the Hampstead and Highgate chains, at an estimated cost of £15.12m (at Q4 2010 prices and with an estimated 'confidence' range of $\pm 20\%$). The works are being undertaken to reduce the risk of pond overtopping, embankment erosion and failure, to comply with the Reservoirs Act 1975, together with the emerging Flood and Water Management Act 2010 and must also provide for design solutions that ensure that the City also meets its obligations under the Hampstead Heath Act 1871.
2. The primary aim of the project is to pass the peak water flows safely through the chains or over the dams without the risk of collapse of any dams. The works are also to improve the water quality and aquatic ecology, reducing the current occasional non-compliance with the EU New Bathing Water Directive of 2006 and to provide ecological improvements to affected areas.
3. The proposed outcome needs to recognise and overcome the tensions between the differing objectives of the Reservoir Legislation and the Hampstead Heath Acts. The overarching philosophy of the Project is to

achieve a design that is “as formal as necessary but as informal as possible”.

Current Position

4. In its stewardship of the Heath, the City has long appreciated the support and critical friendship provided by the local community and its representative groups. However, given that it is the City which holds the risks and liabilities associated with dam failure and resulting loss of life, it is recognised that this stakeholder engagement must be carefully managed.
5. Officers are working to achieve a balance between reducing the likelihood of legal challenge (which would delay the project and prolong the risk) through consultation and progressing the project at a reasonable speed. To support this, a Dams Communications Officer has been appointed and a Flood Management Stakeholder Group is being convened. Together with Hampstead Heath Consultative Committee, this will provide a conduit to consider the emerging proposals and a mechanism to feed information back to the wider community.
6. Local groups are taking a close interest in the dam’s project and have expressed concern about what they perceive to be the City’s intentions and interpretations of the legislation and risks. In particular, they are concerned that the City is unnecessarily placing compliance with the 1975 and 2010 Acts over and above the provisions of the foundation 1871 Act. The City strongly refutes this.
7. The Heath & Hampstead Society recently held a meeting for its members to discuss the project. Officers understand that it was an opportunity to consider the project and gain the views their members hold. It is understood that whilst some members of the Society accept the need for works to be undertaken, they remain very concerned about the scale of the current proposals and the impact on the Heath landscape and intend to monitor very closely how the project is progressed. There remains a potential hazard of a legal challenge. Such a challenge, if it materialises, could slow down implementation and would result in additional costs.

Proposal

8. It has been accepted that following the appointment of the Design Team there will be a basic review of the project to date. This will include verifying (or amending) hydrology studies, including the design flood, downstream impacts, potential options for spillway/dam design that are viable and comparing the existing landscape situation with the proposed changes.

9. Discussions with Heath & Hampstead Society have largely progressed from debating the necessity of the project to considering how the project can be implemented in a way that is sympathetic to the Heath. This has been the result of on-going dialogue and engagement by the City Members and officers. To help assuage local fears that the project is purely 'engineering led' it has been proposed that the City should appoint a Strategic Landscape Architect to work alongside the Panel Engineer.
10. The Strategic Landscape Architect is to be appointed as a champion of the landscape and environment of the ponds and their surrounds, to ensure they are not unduly affected by the design proposals and also can provide alternatives for consideration which may benefit the environment of the Heath, meet engineering requirements and reduce costs. This will provide reassurance that a professional is specifically engaged to oversee the protection of the natural aspect of the Heath within the detailed design process and that the 1871 Act is fully taken in to account in the design of the dams to meet the reservoirs legislation.
11. In appointing a Strategic Landscape Architect, the City hopes to demonstrate its intention that the project will be sympathetic to the landscape. The overall aim of this appointment is to ensure that the two valleys of the Hampstead and Highgate chain of ponds retain insofar as possible their semi-rural character sympathetic to the Heath's natural aspect and that opportunities are taken, where appropriate, to enhance the landscape.
12. The Strategic Landscape Architect will be appointed independently of the Design Team and report directly to the Client, thereby ensuring that the person is able to influence without being prejudiced by the partnership contract arrangements. The person appointed will not (for reasons of clarity of responsibility) engage in the detailed design, but will take an holistic approach to the landscape of the two valleys suggesting interventions to ensure that impacts are minimised. The diagram appended to this report shows relationship between the Strategic Landscape Architect and the organisation of other components of the project.
13. The Strategic Landscape Architect will be expected to consult with stakeholders, to lend weight to discussions with the design team and Reservoirs Act Construction Engineer over any landscaping/environmental concerns stakeholders have with the design proposals. This will be particularly important during the initial review period and early stages of the detailed design when iterations of potential options are being considered. This position will also give the City additional protection against the scheme being over engineered.
14. The Strategic Landscape Architect shall provide challenge to any aspect of the design and construction proposals which stakeholders believe may

have a detrimental effect on the landscaping, environment or ecology of the ponds. The Strategic Landscape Architect is to obtain specialist technical advice where this is deemed necessary.

15. The Strategic Landscape Architect will undertake a pivotal role in helping to reduce the overall consultation period and assisting up to and with, the planning process. It is anticipated that this person will maintain a watching brief during the construction period to ensure that the final designs are adhered to on the ground.
16. This approach is fully supported by the City's retained Panel Engineer who has ultimate responsibility for ensuring that the peak water flows safely through the chains or over the dams without the risk of collapse of any dams

Tender Process

17. As this appointment is being made as an integral part of the overall Flood Management and Water Quality project there are two routes for procuring the Strategic Landscape Architect services. The first involves tenders being managed competitively through the Official Journal of the European Union (OJEU).
18. The second route involves procuring the services and works using the City's Standing Orders to procure competitive tenders without an EU wide call to competition. The Public Contracts Regulations 2006, which implement the EU Procurement Directive, only apply to the City in its capacity as a local authority or police authority. The London Government Reorganisation (Hampstead Heath) Order 1989 specifically refers to the City acting "*...in a capacity other than as local authority, police authority or port health authority...*". As stated in Procurement regulation 12, the City has generally decided to apply the Directive across all its funds. However, this Regulation also provides that where there is a satisfactory business case, inclusive of risk assessment, consideration may be given not to apply the Directive in specific instances for procurements solely affecting the City outside its capacities as a local or police authority.
19. The City is not seeking to make an appointment with a company who might seek to change the Strategic Landscape Architect at some point in the process, but to engage an individual with the right credentials to be able to meet the demanding requirements of the brief for the necessary duration of the project. The company providing the Strategic Landscape Architect cannot change this appointment without the City of London's agreement. It will require the appointment of a nominated individual with extensive knowledge and experience of major landscaping projects at a national level, excellent communication and influencing skills, ability to work at a strategic level and with the tenacity to champion the natural aspect of the

Heath. It will be essential that this individual brings with them a weight of influence in their field.

20. On 15th March 2012, the City sent out to those who had met the criteria within the prequalification questionnaires the detailed Schedule of Services for the appointment of the design team for this project. The tender process is expected to last for approximately three months. In terms of timescale if Members are minded to approve the appointment of the Strategic Landscape Architect then this appointment needs to be made concurrently with the Design Team. If the City pursues the OJEU procedure for appointment then this will incur further delays in the timetable. Discussions have taken place the Landscape Institute and this has revealed only a handful of potential candidates capable of delivering the complex brief.
21. For these reasons it is therefore proposed that in accordance with Procurement Regulation 15, Members approve that the need for competitive tenders for the appointment of the Strategic Landscape Architect be waived, and that negotiated tenders be sought for these services from a select group of up to five professionals identified from research including a list of potential candidates from the Landscape Institute and following appropriate selection and interview, together with determination of their suitability to work with the Design Team and stakeholders.

Project Gateway – Transition Arrangements

22. Although the Evaluation Report for project has received approval from the Court of Common Council, this was before the new corporate project arrangements were in place. The project current will enter the new arrangements at Gateway 4c – Detailed Design.
23. In accordance with the new project arrangements authority is sought from Projects Sub-Committee to proceed with the appointment of the Strategic Landscape Architect, recognising that the full implications of the financial position will not be known until the tenders for the Design Team and Contractor are known. The principle of the Strategic Landscape Architect has been discussed at both the Heath Consultative and Management Committee's and would be considered as an Urgency item by the Town Clerk in consultation with the Chairman and Deputy Chairman of the Hampstead Heath, Highgate Wood and Queen's Park Management Committee.

Corporate & Strategic Implications

24. The works link to the City Together Strategy Themes of supporting our communities and protecting, promoting and enhancing our environment. The scheme will improve community facilities, conserve/enhance biodiversity and contribute to a reduction in water pollution. There are also links with the Corporate Plan strategic aims of providing excellent services for our communities and valued services for London and the nation as a whole.
25. Appointing a Strategic Landscape Architect supports the Heath's Management Plan (Towards a Plan for the Heath 2007 -2017) objective to manage the Heath's ponds and watercourses to enhance their nature conservation value, reduce flood risk and address water quality problems. The work proposed is required to ensure the risk to life is minimised, and comply with the City's existing and expected statutory obligations. The work should mitigate any risk to the reputation of the City if the embankments were not improved and suffered damage/failure.

Implications

Financial and Risk Implications

26. At present given the unusual nature of this appointment it is difficult with to determine with absolute confidence the likely cost of engaging a Strategic Landscape Architect. As a guide it is likely to fall within the range of £100,000 – to £150,000. There is currently no budget allocated for this appointment and whilst it is hoped that the financial cost can be retained within the overall £15.12m (at Q4 2010 prices and with an estimated 'confidence' range of $\pm 20\%$) set out in the Evaluation Report, this can not at this stage be guaranteed and additional budget is requested.
27. The risk of embankment failure at Hampstead Heath is shown red on the City's strategic risk register. A detailed report was recently submitted to the Audit and Risk Management Committee. In addition to the current measures to mitigate risks, the report also highlighted other risks that the City need to consider, including the resources needed for on-going consultation and the potential threat of legal challenge that could delay the project. If the right individual is appointed then hopefully this will provide a level reassurance to the local community that will assist with reducing these risks and ultimately costs associated with them.
28. The appointment of a Strategic Landscape Architect independent of the design team is important in demonstrating the commitment the City has to achieving the best possible solution to the liability it currently carries in terms of the spillway capacity problems that have been identified from the extensive studies undertaken. The City's panel engineer has also recognised that this project must be sympathetic to the landscape taking an holistic approach to the landscape and also supports the appointment of an

eminent landscape architect with the necessary skills and experience to help to shape the final design solution.

Corporate Property Comment

29. The City Surveyor supports the recommendation of this report to appoint a Strategic Landscape Architect. This appointment will demonstrate that the City is making a commitment to comply with statute in a way that is as sympathetic as possible to the local environment, therefore ensuring that the City's liabilities are met whilst ensuring that Hampstead Heath is protected as a public open space.

Legal Implications

The Hampstead Heath Act 1871 ("the 1871 Act")

30. Under Section 16 of the 1871 Act the City must, "...at all times preserve, as far as may be, the natural aspect and state of the Heath..." Leading Counsel is of the view that the ponds were considered by the draughtsman in 1871 to be part of the natural aspect and state of the Heath.

The Reservoirs Act 1975 ("the 1975 Act")

31. Under the provisions of the 1975 Act, the Hampstead No 1, Highgate Men's Bathing Pond and Model Boating Pond are designated as large raised reservoirs due to the volume of water (more than 25,000 cubic metres) stored above natural ground level.
32. The 1975 Act requires that all large raised reservoirs must be inspected and supervised by a panel engineer. Panel engineers are a group of specialist civil engineers appointed by the Secretary of State. It is the responsibility of the undertaker (the City) to appoint a panel engineer (at its own cost). There are three types of panel engineer relevant to this project – inspecting, supervising and construction:
 - a. An inspecting engineer is appointed to inspect a reservoir every 10 years (or following a recommendation by the supervising engineer). As a result of that inspection, a safe operating regime will be specified and the inspecting engineer can make any recommendations he sees fit in the interests of safety.
 - b. A supervising engineer is required to supervise the operation and maintenance of the reservoir and produce an annual statement. A supervising engineer must be available at all times (unless the reservoir is under construction). They can also recommend that an inspecting engineer carry out an inspection. The City's supervising engineer is Andrew Hughes of Atkins Ltd.

- c. A construction engineer is appointed to supervise the design and construction of a new reservoir or modification of a reservoir such that the capacity is increased.
33. The last 10 year inspection report in 2007 recommended a downstream impact assessment and flood study be carried out to establish whether any increase in overflow capacity would be necessary. Accordingly a Flood Risk Assessment was produced in 2009. A further study in January 2011 established the probable maximum flow which the ponds should be designed to cope with and considered what measures would be necessary to mitigate the downstream impact identified by the Flood Risk Assessment. The maximum probable flow was higher than previously estimated and resulted in the pond overflows and embankments being identified as inadequate to meet current requirements under the 1975 Act. The embankments are deemed highly vulnerable to erosion as a result of predicted overtopping which may result in collapse. It was further discovered that if there were to be a failure of the pond embankments during a major storm and no public warning had been given, the likely loss of life on the Hampstead Chain would be in the region of 400 people and around 1000 people on the Highgate Chain. There would also be inundation and damage to local properties, roads and the railway lines to Kings Cross.

Conclusion

34. This is a major project for the Heath and the City and every effort must be made to ensure it succeeds in both meeting reservoir legislation while also protecting the natural aspect of the Heath as laid out in the 1871 Act and to this end, the Strategic Landscape Architect is now deemed essential.
35. The Strategic Landscape Architect should be eminent in their field and bring extensive knowledge and experience of landscaping to this project. The Strategic Landscape Architect will not only champion the landscape and pond environment but will ensure there is challenge to the detailed design process, they will also work closely with stakeholders to reassure them that this project is sympathetic to the landscape and obligations of the foundation legislation.

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