

City of London Corporation Committee Report

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| Committee(s): <ul style="list-style-type: none"> Hampstead Heath, Highgate Wood and Queen's Park Committee Policy and Resources Committee | Dated: 16/07/2025 Urgency |
| Subject: Hampstead Heath Ponds Consultation | Public report: For Decision |
| This proposal: <ul style="list-style-type: none"> Delivers Corporate Plan 2024-29 outcomes | <ul style="list-style-type: none"> Diverse Engaged Communities Vibrant Thriving Destination Providing Excellent Services Flourishing Public Spaces |
| Does this proposal require extra revenue and/or capital spending? | Yes |
| If so, how much? | TBC |
| What is the source of Funding? | TBC if local risk budgets can contain, or whether additional City Estate Finance contingency bid is required |
| Has this Funding Source been agreed with the Chamberlain's Department? | No |
| Report of: | Katie Stewart – Executive Director of Environment |
| Report author: | Andrew Impey – Deputy Director of Natural Environment |

Summary

Following the Supreme Court judgment in *For Women Scotland*, it is appropriate to review the access arrangements to the Highgate Men's Pond and the Kenwood Ladies' Pond on Hampstead Heath. It is recommended that a formal consultation is undertaken to inform that review. As there is a need to progress this work at pace, it is proposed that the Executive Director of Environment be given delegated authority to prepare, conduct and manage the proposed process, in consultation with relevant teams and Members.

Recommendation(s)

Members are asked to:

1. Agree that a consultation exercise on the access arrangements for the Men's and Ladies' Ponds should be carried out.
2. Authorise the Executive Director of Environment, in consultation with the Comptroller and City Solicitor, as well as with the Chairs and Deputy Chairs of both the Hampstead Heath, Highgate Wood and Queens Park Committee and the Policy and Resources Committee, to:
 - a. Finalise the consultation questions and materials;
 - b. Finalise the consultation programme, including timescales;
3. Authorise the Executive Director of Environment to:
 - a. Appoint an external supplier to help run the consultation exercise and analyse the results;
 - b. Issue appropriate pre-consultation communications; and
 - c. Take all other reasonably necessary steps required to carry out a lawful and effective consultation exercise.
4. Agree that the current access arrangements remain unchanged pending the carrying out of the consultation exercise and consideration of its product by this Committee and the Policy and Resources Committee in due course.

Main Report

Background

1. There are four swimming facilities on Hampstead Heath: the Highgate Men's Pond, the Kenwood Ladies' Pond, the Hampstead Mixed Pond and the Parliament Hill Lido. The Mixed Pond and the Lido are mixed-sex facilities, permitting access by both biological men and women. The Men's Pond currently admits biological men and trans men, and the Ladies' Pond admits biological women and transgender women.
2. This practice was consistent with the City Corporation's Gender Identity Policy (adopted in 2019) and the previous version of the Equality and Human Rights Commission's ("EHRC") Statutory Code of Practice, to which service providers must have regard. Both the Corporation's Policy and the EHRC Code of Practice interpreted the Equality Act 2010 as requiring that transgender people should be able to access single-sex services aligning with their gender identity, and that they should only be excluded if this was a proportionate means of achieving a legitimate aim.

3. The recent Supreme Court judgment in For Women Scotland Ltd v The Scottish Ministers [2025] has now clarified the meaning of “man”, “woman” and “sex” for the purposes of the Equality Act 2010: to mean that these terms relate to biological sex, not certificated sex (whereby someone has a gender recognition certificate). However, it remains the case that gender reassignment is a protected characteristic, separately protected from unlawful discrimination and inequality. That said, the judgment has also clarified that, if a service provider admits transgender people to a service intended for the opposite biological sex, it is not a separate-sex or single-sex service under the Equality Act 2010. It should be noted that there is no legal requirement to provide single sex swimming facilities.
4. It is recognised that the Supreme Court judgment has implications for how the City Corporation discharges its duties in its various capacities under the Equality Act 2010 and that the ruling is of particular significance to the Highgate Men’s Pond and the Kenwood Ladies’ Pond. It was previously understood - based on the EHRC Code and other guidance available at the time - that these spaces were operating as separate-sex or single-sex facilities under the Equality Act 2010, but all of this guidance has now been withdrawn following the Supreme Court decision
5. The admissions policy at these two ponds has been a controversial and sensitive subject for a number of years, particularly at the Ladies’ Pond. Administration and enforcement of the current policy has caused a significant and increasing strain on Hampstead Heath staff, who have been subjected to verbal harassment, protests, and operational disruption by some service users and non-swimmer campaigners.
6. Interest and tensions have increased further since the Supreme Court judgment. Officers and Members have had an increase in correspondence from, and questions raised by, members of the public and interest groups on what impact the judgment will have on the admissions policy at the Men’s Pond and the Ladies’ Pond. In addition, the Corporation has received a number of formal complaints related to this issue. Staff have had to respond to protests, both planned and unplanned, and remove pro and anti-transgender inclusion graffiti/stickers at the Ladies’ Pond in particular – all of which has put additional pressure on these officers.
7. The Supreme Court judgment does not mean that the current practice regarding admissions necessarily must change. However, as the current practice was previously based on guidance that misinterpreted the law, the practice would have to be reconsidered and justified under the Equalities Act 2010 in the light of the recent judgment. It is therefore appropriate to now review the swimming facilities on the Heath, in order to assess and decide what arrangements are most appropriate to adopt going forward and to ensure that those arrangements are compliant with the Equality Act 2010.
8. In relation to the Men’s Pond and the Ladies’ Pond, this will need to involve a clear assessment and justification of the reasons for continuing to provide segregated facilities, if that is the approach to be adopted. In deciding whether or not they should continue to be trans-inclusive spaces, or should become

biological single-sex spaces, the competing needs of different user groups with their own protected characteristics will need to be considered and balanced. Either way, it will need to be demonstrated that the arrangements which are finally approved are a proportionate means of achieving a legitimate aim as required by the Equality Act 2010.

9. The EHRC's own consultation on a new Statutory Code of Practice has been subject to legal challenges. Whilst that consultation has now closed, it is not yet clear when a revised Code will be in force, or whether it will fully address the outstanding questions. Therefore, officers advise not to wait for the outcome of that process. Equally, it is advised that the review not be tied to the review of the City Corporation's Gender Identity Policy, given the unique nature of the Ponds and the fact that the overarching policy will of necessity be strategic. Clearly, once the revised Code and Corporation Policy are in place, they will then need to be taken into account as appropriate.
10. Two pre-action protocol letters have already been received, threatening judicial review proceedings in respect of the current trans-inclusive policy at the Ladies' Pond. The first was from an individual; the second from solicitors acting for the charity, Sex Matters (who were an intervening party in For Women Scotland). Sex Matters have additionally threatened to apply for an injunction, and their letter has generated national media coverage. Both letters have been responded to with the assistance of leading counsel on the basis that (i) the intimated claims are premature, (ii) that Sex Matters lacks standing (iii) that the claims have no merit and are unarguable and (iv) in relation to the threat of an injunction that the Court is highly unlikely to force the change of a policy operated without known issue since at least 2017 while it is under review. Should proceedings be issued they will be vigorously defended
11. There is obviously an ongoing high risk of legal proceedings, whatever approach is ultimately adopted. Individuals and interest groups, with differing perspectives on the issue, are waiting with great interest to see how the City Corporation will respond. Whilst both of the pre-action protocol letters received so far demand that the admissions policy at the Ladies' Pond is changed immediately, a successful legal challenge from other groups is also likely if the City Corporation acts precipitously, without taking reasonable steps to gather sufficient information before making decisions, ensuring procedural fairness and informed decision-making; ("the Tameside Duty").

Proposed consultation exercise

12. This report seeks authority to conduct a consultation exercise on the access arrangements for the Men's and Ladies' Ponds at Hampstead Heath. The scope of the consultation will be specifically in relation to access to the two ponds, and the changing facilities associated with each.
13. The outcome of this consultation will be presented to the two relevant decision-making committees: the Hampstead Heath, Highgate Wood and Queen's Park (HHHW&QP) Committee, and the Policy and Resources Committee. In order to

support the decision made by these two Committees, the outcome of the consultation will also be shared with both the Hampstead Heath Consultative Committee and the Equity, Equalities, Diversity and Inclusion (EEDI) Sub-Committee. The item will also be brought to Corporate Services Committee to consider the impact of any potential changes to policy on staff.

14. It is recommended that the Corporation carry out a consultation targeted at current and potential users, and in line with The *Gunning principles*, which are summarised below:
 - Consultation must be undertaken when the proposal is at a formative stage.
 - Sufficient reasons must be given for the particular proposals to allow those consulted to give intelligent consideration and response.
 - Those consulted should be aware of the criteria that will be applied when considering proposals and which factors will be considered decisive or of substantial importance at the end of the process.
 - Adequate time must be given for intelligent consideration and response.
 - The product of the consultation must be conscientiously taken into account when the ultimate decision is taken.
15. It is recommended that an external supplier is appointed to develop and deliver the consultation. This approach will not only ensure the right expertise is employed in delivering the consultation, it will also provide for independence in the management of the exercise.
16. The consultation programme itself, including specific content, options to be presented, questions, timetable and methods of delivering the consultation, will require considerable technical expertise from a number of disciplines, including legal and communications, as well as expertise in relation to equalities, diversity and inclusion. This report therefore seeks authority for the Executive Director of Environment to finalise and issue the consultation questions and materials in consultation with the Comptroller and City Solicitor, as well as the Chairs and Deputy Chairs of the Hampstead Heath, Highgate Wood and Queen's Park Committee, and the Policy and Resources Committee.
17. Further, the Executive Director commits to engaging with the relevant Committees informally to seek their views and input to shaping the consultation programme. These Committees include the two decision-making Committees: HHHW&QP Committee and Policy and Resources Committee; the Hampstead Heath Consultative Committee and the EEDI Sub-Committee.
18. Whilst the detail of the programme will be developed and confirmed in consultation with the Chairs and Deputy Chairs of HHHWQP and Policy & Resources Committees, officers are aiming to try to start the consultation programme by end of summer. Considering the likely consultation period, it is unlikely that the outcome of that consultation will be able to come forward to Committees until November or December. However, these timescales are all

subject to confirmation once a consultation provider has been appointed and the detail of the consultation programme confirmed.

Corporate & Strategic Implications

19. **Strategic implications** – The proposed consultation will enable the Natural Environment Division to continue to deliver services at the Hampstead Heath ponds in a way that aligns with corporate commitments, delivering Diverse Engaged Communities, Vibrant Thriving Destination, Providing Excellent Services and Flourishing Public Spaces. It will also enable officers to deliver on the charitable objects of the Hampstead Heath charity and the Hampstead Heath Management Strategy.
20. **Financial implications** – The consultation will require additional funding and resource to the current budget for the Natural Environment Division. This includes the costs of the external consultant, external counsel and internal staff time. It is still to be confirmed if local risk budgets can contain this additional spend, or whether an additional City Estate Finance contingency bid is required
21. **Resource implications** – Beyond the staff time already expended in the development of this proposal, the consultation will likely require considerable staff and particularly senior staff and Member time and consideration. The overall resource implications for managing the entire process are therefore likely to be significant and would require a reprioritisation of tasks in relevant business plans for FY 2025-26.
22. **Legal implications** – The legal implications of the recommendations in this report are contained within the body of the report.
23. **Risk implications** – The City Corporation must be seen to have delivered a fair, open, transparent and robust consultation. Failure to do this could significantly erode public trust in the City Corporation's ability to manage public amenity open space.
24. **Equalities implications** – The City Corporation must ensure a proportionate and compliant response in line with the Equality Act 2010. While the ruling clarifies that reference to "sex" in the Act refers to biological sex, the protections for transgender people remain via the protected characteristic of gender reassignment. An Equality Impact Assessment will be essential to support the decision(s) that may be recommended on the back of the consultation referenced in this report, in order to assess the potential impacts on all affected groups, to identify and mitigate any risks of discrimination, and to inform an inclusive policy response.
25. **Climate implications** – None
26. **Security implications** – The Ladies' Pond and Men's Pond at Hampstead Heath are likely to experience further protests this summer, and officers are likely to experience continued challenge from service users and interest groups, presenting health and safety risks for officers, swimmers, and the general public.

Conclusion

27. It is recognised that the Supreme Court judgment in *For Women Scotland* has implications for how the City Corporation discharges its duties under the Equality Act 2010 and that the ruling is of particular significance to the Highgate Men's Pond and the Kenwood Ladies' Pond.
28. Both operational staff and Members have been coming under increasing pressure to explain how the City Corporation will proceed. Two letters threatening judicial review have also been received.
29. The report proposes a consultation exercise that will allow the Corporation to effectively review its policies for access to and changing facilities associated with the Highgate Men's Pond and the Kenwood Ladies' Pond.

Appendices

None

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