

## Mayor and Cabinet

<b>Report Title</b>	The Future Management and Maintenance of Parks and Open Spaces	
<b>Key Decision</b>	Yes	Item No.
<b>Ward</b>	All	
<b>Contributors</b>	Executive Director for Housing, Regeneration and Environment; Head of Law	
<b>Class</b>		Date October 2019

### 1 Summary

- 1.1 The Council's current Green Space Management and Maintenance Contract expires on 28<sup>th</sup> February 2020.
- 1.2 The report sets out the current management arrangements for Lewisham's Parks and Open Spaces. The management of the majority of these services are outsourced via the current Green Space Management and Maintenance contract (2010-2020), with a minority delivered in-house i.e. Beckenham Place Park (West) and Cemeteries and Crematorium grounds. The report then explores three potential future service delivery options. These are set out in section 6.
- 1.3 The Council's Corporate Strategy 2018-2022 (Priority: 'Building an inclusive local economy') states that when considering whether to commission services, 'we will have an assumption that the Council is our preferred provider and in-source our contracts'.
- 1.4 The thorough options appraisal undertaken used a standard framework, drawn from a model designed by the Association of Public Sector Excellence to allow Local Authorities to explicitly consider insourcing of services, which assesses various options and appraises these using both qualitative and quantitative metrics. The qualitative considerations for each operating model were: the risks associated with service delivery, the barriers to entry into the marketplace (high start-up costs or other obstacles that prevent new competitors from easily entering an industry), the responsiveness and control achievable, the commercial potential, and the social value that could be derived. The quantitative assessment looked at the potential and likely estimated cost of service delivery under each model. When combined the qualitative and quantitative measures provide an indication of the overall value for money and ranking of each option. The report sets out the outcomes of the analysis.

- 1.5 It is to be noted however that as with all models it is a desk top exercise which attempts to predict an outcome for each scenario. As such there is potential for the actual results to differ from those anticipated, and there is further the inherent risk that the modelling itself is not reliable.
- 1.6 The selection of the optimal future service delivery model will ensure that the Council will be further aligned with the Council's Corporate Strategy. In particular the priority of 'Making Lewisham Greener' which will contribute to the 'Preservation of our award-winning green spaces' and is also congruent with our Values i.e.:
- We put service to the public first
  - We respect all people and all communities
  - We invest in employees
  - We are open, honest and fair in all we do
- 1.7 The options appraisal considered the following factors:
- Risk
  - Advantages/Opportunities
  - Value for money
  - Commercial opportunities to generate income
  - Barriers to Market entry
  - Responsiveness/management and surety of service delivery
  - Social Value

## **2 Purpose**

- 2.1 The purpose of this report is to inform the Mayor and Cabinet of the current position of the Green Space Management and Maintenance Contract (2010-2020) and provide relevant information to inform decisions on the future service delivery model as recommended by officers.

### **3 Recommendations**

It is recommended that the Mayor and Cabinet:

- 3.1 Agree their intention in principle to insource all aspects of Lewisham's parks and open space services on 1 November 2021, subject to further detailed consideration.
- 3.2 Agree to extend the current contract on the existing terms and conditions with Glendale Grounds Management for 20 months from 29<sup>th</sup> February 2020 until 31<sup>st</sup> October 2021 at a maximum cost to the Council of £4,162,308.

### **4 Background**

- 4.1 The majority of the Council's Green Space Maintenance and Management Services are currently delivered via an outsourced contract with Glendale Grounds Management Limited.
- 4.2 Prior to the outsourcing of the services in February 2000, Lewisham's parks services were provided by its in house 'Parks Department'. This continued until the Local Government Act 1988 extended 'Compulsory Competitive Tendering' (CCT) to services such as grounds maintenance and other environmental services.
- 4.3 The impact of this legislation on the delivery of local services across London led to Lewisham setting up its in-house Direct Labour Organisation (DLO), 'DIRECTeam', to deliver the majority of its environmental services e.g. refuse collection, street sweeping, tree/parks and open spaces maintenance.
- 4.4 Quality and 'contract' compliance along with other elements of park services such as park security and infrastructure maintenance were provided by the internal 'Client'. These arrangements continued until all elements of the parks service were combined and outsourced in February 2000 via a Private Finance Transaction (PFT) contract.
- 4.5 The decision to outsource the service was influenced by, among other considerations, many years of under investment and cuts to parks budgets between the mid-1980s and 1997. The Council considered a PFT contract to be a relatively low risk vehicle to finance much needed parks improvements. Therefore, a PFT model of contract was offered to the market and following the procurement process a contract was awarded to Glendale Grounds Management for a duration of 10 years from March 2000 until February 2010.
- 4.6 In 2009 the Council returned to the market offering the opportunity for suitable companies to bid for a further contract to deliver Lewisham's Parks Services for a further 10 years. However, on this occasion there

was a move away from the PFT model of contract as it was considered that it was no longer necessary to require the successful contractor to directly deliver inward capital investment and the financial structure of the contract was changed accordingly. Capital expenditure coming directly from the Council and other outside funding bodies therefore reduced the overall cost of capital required for parks improvements.

4.7 The current management and maintenance contract was awarded to Glendale for a second time commencing on the 1<sup>st</sup> March 2010. This contract expires on 29<sup>th</sup> February 2020.

4.8 The contract requires Glendale to provide a combined management and maintenance service for the boroughs parks and highways enclosures.

The following services are included within the scope of the contract:

- Grounds and Ecological Management
- Environmental Maintenance
- Serviced facilities e.g. parks buildings and depots
- Maintenance of park furniture and sports equipment
- Playground Inspection repair and maintenance
- Water play and Water Features
- Infrastructure maintenance
- Keepers/Patrols/Locking/Unlocking
- Events and Activities
- Sports & Sports Development
- Marketing and Development
- Customer Care

4.9 A limited grounds maintenance only service is provided at other locations such as:

- Closed churchyards
- Car Parks
- Homeless Person's Accommodation
- The Corporate Estate, including Laurence House and the Civic Suite
- Two School Playing Fields (Elm Lane and Whitefoot Lane)

4.10 It should be noted that in addition to the outsourced services provided by Glendale a number of Lewisham's open spaces, as set out below, are managed in-house by the Environment Division. This 'mixed economy' of service delivery has been in place for the duration of the outsourced contract and has delivered comparable levels of quality across all location.

- Mature trees within parks
- Street Trees
- Infrastructure maintenance within closed churchyards
- Beckenham Place Park (West) (In House)
- Warren Avenue Playing Fields
- 18 Nature Reserves
- 37 Allotment sites
- Cemeteries and Crematorium Grounds (In House)

4.11 The current contract performance is monitored by Green Scene's Parks and Open Spaces Team. Each month officers undertake a randomly generated inspection of 10% of all park facilities. In addition there is an 'Actual' inspection of the contractor's management systems to ensure that high risk elements of the service are being managed appropriately. This includes Health and Safety, playground inspections, water testing, fire and emergency procedures along with systems related to customer care, such as the contractor's complaints procedure.

4.12 There is a robust procedure for 'Targeted Inspection Notices' (TINs) that enable officers to resolve any performance issues found on site or if notified via park users or the council's corporate complaints system. The issuing of a TIN generates a financial deduction from the contractor's unitary payment.

4.13 The contractor provides regular data across a basket of KPIs and Service Standards. All of these contract monitoring procedures have ensured that the performance of the contractor over the life of the contract has been good. At no point during the contract term has there been any serious concerns regarding performance which may have led to an early termination of the contract.

## **5. Current Contract Position**

5.1 The contract with Glendale is considered a model of good practice with Lewisham's parks being widely recognised as amongst the best in London. This is evidenced in a number of ways including the following:

- The 'Good Parks for London' 2018 benchmarking assessment report confirmed Lewisham as the highest performing London borough
- 18 of the Borough's parks and open spaces were awarded a prestigious Green Flag in 2019
- 84% user satisfaction for parks recorded in the most recent Residents Survey (2015). The highest score of any non-universal service

- Local Government Association (LGA) 'Open Space' Value for Money (VFM) Profile April 2019 shows that Lewisham currently spends £12 per head of population on Open Space compared to the other boroughs within the region who currently spend £18

5.2 The 'Good Parks for London' assessment criteria and the current ranking of each London borough and how their parks service is delivered i.e. in house or via an outsourced contract are set out in **Appendix A**

5.3 It is from this favourable position that officers considered both the opportunities and the risks when making the recommendations regarding the future service delivery model.

5.4 **Appendix B** sets out Risk Allocation for the current contract.

## 6. Options Appraisal

6.1 Officers carried out initial research into a number of service delivery models that were considered possible viable options for the delivery of Lewisham's Parks Service as follows:

- In House service provision
- Outsourced service provision
- Local Authority Trading Company (LATCo) – sometimes referred to as a 'Wholly Owned Company'.
- Shared service e.g. with neighbouring boroughs

6.2 The Shared Service option was discounted. This was due to decisions taken recently by a number of officers in neighbouring boroughs on the future delivery models for their parks and open space service, who considered that they would have no appetite for a shared service at this time. For instance Bromley have recently procured and awarded a long term contract, Lambeth have insourced their service and the Royal Borough of Greenwich have relatively recently reorganised and joined up their housing, parks and open space services. In addition to these local factors there would likely be various challenges that could prevent a successful shared service being developed at this time. Examples of some of these challenges can be found within the Local Government Association (LGA) report 'Stronger Together', these include:

- Lack of a clear and shared vision of the reasons for shared management
- Concerns around the loss of sovereignty of a council
- A fundamental difference in the organisational culture of the councils
- Fears of a 'takeover' by one council
- A poor relationship or lack of trust between councillors, leaders or managers.

- 6.3 The remaining options considered for future service delivery set out within this report are:
- In House service provision
  - Local Authority Trading Company (LATCo)
  - Outsourced service provision
- 6.4 For the purpose of the options evaluation the assumption has been made that the outsourced option would be based on the same contract model as the current contract and that the Council would procure a new contract on that basis.
- 6.5 Officers advise that there is insufficient time to either procure, insource or set up a LATC by the last day of February 2020. Therefore officers are requesting an extension to the current contract.

#### Option 1 In-House

- 6.6 The decision to include the option of the in-house service provision has been informed by The Corporate Strategy (2018-2022) priority 'Building an inclusive local economy'. This states that when officers are considering whether to commission services, 'we will have an assumption that the Council is our preferred provider and in-source our contracts'.
- 6.7 APSE research suggests that 'insourcing is happening for practical reasons rather than any ideological stance'. Local Authorities from across the political spectrum have made the decision to insource their grounds maintenance services. These include the London Boroughs of Croydon, Islington, and Lambeth as well as Ashford District Council, Maidstone Borough Council in Kent and Slough Borough Council in Berkshire.
- 6.8 Various reasons have been given for the move to insource services. These include:
- Need for higher standards and better services
  - A need to provide a better service at a reduced cost
  - Contracts had reached their natural conclusion
  - Political support for bringing service back in-house
  - Desire for better and more attractive neighbourhoods
  - Desire for a more flexible, responsive and productive workforce
  - Review of service revealed dissatisfaction with external providers
  - Review of service showed need for service improvement and closer link between service delivery and the local authority's priorities and objectives

- 6.9 APSE research would further suggest that services have also been insourced as a result of unmotivated workforces contributing to poor performance. Poor terms and conditions and poor career development opportunities would appear to impact upon the quality of service delivered.
- 6.10 The option appraisal indicates that costs of delivering the service will increase regardless of the option chosen. However the financial modelling for the in-house and LATCo options indicate that annual cost would be approximately 108k higher than the out sourced option. This should be considered within the context of the Council's current financial position along with the likelihood that this position will be further compounded by ongoing 'perma-austerity' placing increased pressure on all operational budgets. However, the weighted scoring of all options that include the non-financial elements as set out within Appendix C indicate that In-House service delivery would be the most favourable option.
- 6.11 The Council should be fully aware of the financial risk as the longer term costs of delivering any public service cannot be forecast to a high degree of accuracy and will be dependent on a number of factors that are beyond our control e.g. inflation, salaries, fuel costs and possible changes in legislation. The parks service is currently insulated against many of these potential increases in costs as the risks sit with the contractor. However, should the service be insourced any increase in costs could be mitigated by income generation opportunities from events, concessions and other activities such as sports facility hire, which the incumbent provider currently benefits from.
- 6.12 Any increases in costs over and above those as set out within the report will become apparent once the service has been insourced. However, officers assume that based on the Bank of England's Monetary Policy Committee's (MPC) Inflation report February 2019 that annual inflation is likely to be approximately 2% for the Consumer Prices Index (CPI) and 3% for public sector wage inflation. The MPC's forecasts have factored in their potential actions to mitigate any potential risks associated with a possible Brexit and to keep inflation at the target of 2%.
- 6.13 Insourcing would allow the Council to exercise more effective resource allocation and maximise its limited resources. Further it would give the Council greater control over the day to day management of the parks service. It would also allow more control of the budget and spending priorities allowing the Council to consider, and where possible implement, the findings of the recent Lewisham Parks Consultation: 'A New Strategy For Parks & Open Spaces In Lewisham (Autumn 2018) - Your Chance To Have Your Say'. This could include the renovation of park toilets, exploring the possibility of orientating new play areas with café concessions, improving security and a formal presence in parks.



Please note that these priorities, if acted upon could potentially increase costs of the service as more resources may be required.

- 6.14 There will be opportunities to contribute to the implementation of other desired policy outcomes including those that relate to: Social value, increasing the number of directly employed apprentices of all ages, increasing the number of local SMEs within our supply chain, contributing to the mitigation of the Climate Emergency. When tendering parks concessions consideration will be given to reduction in obesity via Sugar Smart options and other healthy eating options as part of our selection criteria. Engage with the self-prescribing initiatives to encourage and support citizens to become more active.
- 6.15 Further, in-house provision would provide more control over quality, local responsiveness and service contribution/connection to other key strategic objectives e.g. the environment, health and/or employment, the ability to work more closely with Public Health, the 'Local Labour' Manager and the Apprenticeship Team to increase the number of horticultural apprentices directly employed by the Council and increase the number of local SMEs within the local supply chain.
- 6.16 In addition to these potential opportunities the Council will also take on the inherent risks that accompany increased control. Many of the risks are set out within Appendix B. with those shown as currently resting with the contractor will transfer back to the Council. These would include:
- Change to British Standards
  - Performance risk
  - Service related legislative change
  - Other legislative change
  - Operational capability
  - Industrial action by contractors staff or sub-contractors
- 6.17 As an external provider currently provides the services and employs staff working on this contract, it is likely that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") will apply. We do not have information at present about the numbers and types of staff to whom TUPE obligations may be owed. However, depending on the circumstances of Glendale's staffing arrangements, if the contract is terminated it is likely that some staff will transfer to the Council. Further information will need to be obtained from Glendale, and the Council will need to comply with its own TUPE obligations as a potential receiving employer. The benefit of the transfer of staff is that the Council will inherit staff that already have the experience required in relation to the parks in Lewisham from working for Glendale.

- 6.18 Should TUPE apply, then there will be a presumption to harmonise terms and conditions. It is anticipated that this will increase the staffing costs and the pressure on the LGPS.
- 6.19 In addition to the staff transferring as a result of TUPE, it is possible that the Council would need to recruit staff in order to resource the in-house provision.
- 6.20 Insourcing the parks and open space services could be a medium term 'holding position' allowing the Council the opportunity to explore more fully a wider divisional LATCo to deliver a greater number of environmental services in the longer term.

### Option 2 LATCo

- 6.21 In England and Wales, under the 2003 Local Government Act, councils have powers to set up companies to trade with a view to making a profit in areas relating to any of their existing functions. It is under this legislation the LATCo option could offer surplus generating potential for the service.
- 6.22 There are examples of successful transition from an outsourced service to a LATCo. For example Liverpool City Council recently incorporated its parks service into its established LATCo who are responsible for the delivery of many of the City Council's other environmental services.
- 6.23 This successful transition appears to have been partly due to extensive negotiations with the Trade Unions in relation to enhancing terms and conditions of transferring staff in return for a more flexible workforce. Harmonisation did not include admittance to the Local Government Pension Scheme (LGPS).
- 6.24 It should be noted that if the Council's key driver for setting up a LATCo was to generate a surplus to reinvest in services, the harmonisation of staff terms and conditions could have a negative impact on the LATCo's commercial competitiveness.
- 6.25 Given the current time constraints and potential resources required to allow officers to undertake more sufficiently detailed research in to the possibility of setting up a division wide LATCo covering all environmental service, officers advise that it would be prudent to explore this option in the longer term. I.e. following the initial insourcing of the park services currently delivered via the Green Space Contract. The advantage of this approach would be to enable the Council to realise its Corporate Priorities as set out in 1.3 and 1.5 and simultaneously consider more fully the key drivers, benefits and risks of setting up of a LATCo

### Option 3 Outsourced

- 6.26 There could be advantages to tendering a further outsourced contract if it is based on the current contract terms, conditions and specifications as it is considered to be a model that has proved successful in Lewisham. The advantages include that it is a tried and tested model that has performed well for a relatively low fixed cost. The legal transfer of the asset has also helped deliver a good service as the contractor has some degree of ownership and accountability. It is in the contractors business interests to ensure that remedial works are carried out in a timely fashion to ensure that the parks fabric, building and wider estate are well maintained and free from hazards.
- 6.27 This success has been driven and supported by the robustness of the contract monitoring processes, potential financial deductions for poor performance, sanctions, the level of risk transferred to the contractor and ability for the contractor to exploit potential commercial opportunities to generate additional revenue streams which they keep. Further, the Council's client team have developed a successful partnership with the contractor contributing to a successful service.
- 6.28 The current outsourced model has also demonstrated over almost 20 years that it is possible to provide a high performing public service with low operational risk to the Council at a relatively fixed cost, along with the additional advantage of the current contract model's inbuilt annual efficiency mechanism i.e. reducing the annual contract sum paid to the contractor by RPIx- 3%.
- 6.29 However it should be noted that past performance is not a guarantee of future results. Information obtained from colleagues delivering similar services across London indicates that costs of recently tendered contracts have increased by between 10% and 15%. This trend has been reflected within the cost for an outsourced model in the Appendix C. This means that should the Council tender the service this could lead to bidders exceeding available budget potentially leading to a reduction in service and/or standards.

## **7 Extension**

- 7.1 The recommendation to extend the current contract as set out at 3.2 will allow officers from multiple departments across the organisation sufficient time to plan and input to the process of transferring the parks service from a contractor to the Council. The departments, aside from Green Scene, which will be required to input to the process are as follows:
- Legal Services
  - Human Resources
  - Finance
  - Pensions Team
  - Payroll

- Property Services

- 7.2 The extension will allow Green Scene officers time to plan and make adequate arrangements for the mobilisation and long term delivery of the new service. This will include for the operational elements of the service including budget planning, the calculation of workloads, working patterns, labour requirements and seasonal variations. It will provide time to assess if and prepare for any recruitment should that be required. It will also provide time to prepare for where assets will need to be transferred back to the corporate estate. For these reasons an extension is necessary to help manage the risk of bringing the service back in-house after 20 years of externalisation.
- 7.3 The end of the current contract presents an opportunity to reduce the carbon footprint currently generated in the delivery of the service. An extension will offer the opportunity for officers to quantify cost and potential sources of funding to replace older petrol/diesel powered plant, equipment and vehicles used to deliver the service with new environmentally friendly alternatives such as rechargeable grass cutting equipment and electric vehicles. This will contribute to the aims of the Council's objective to be carbon neutral by 2030.
- 7.4 The Council has legal responsibilities under the Health and Safety at Work Act, including a duty to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all its employees. Giving consideration to this duty and other work streams that will be underway in relation to the demobilisation of the current contract and mobilisation of a new in house service, it is officers advice that there is insufficient time to develop and implement a robust health and safety management system for the service to allow us to meet the necessary requirements on the day of transfer.
- 7.5 Lewisham has a borough wide network of 25 Park User Groups who are linked together by the Lewisham Green Space Forum (LGSF). These are our Key Stakeholders who support, constructively input and work closely with the Council and Glendale on various funding initiatives for parks improvements, as well volunteering their own time on a regular basis for various parks related activities. These groups are highly valued by the service and therefore we would use the contract extension to work and consult closely with them on the future shape of the Parks Service as well as, where appropriate, build their aspirations in to future service planning.
- 7.6 Glendale Grounds Management has confirmed that if required they would be willing to extend the contract for a further 20 months i.e. until November 2021 on the same terms and conditions as is currently in place. This will enable officers to mobilise the service in the autumn when there is less seasonal demand and therefore increasing the likelihood of success.

## 8 Conclusion

8.1 Please find below total weighted scores for each of the option.

Delivery option	Surety of Service Delivery 10%	Barriers to entry into marketplace 10%	Responsiveness and Control 10%	Commercial potential 10%	Social Value 10%	Cost 50%	TOTAL (out of 100%)
<i>In house</i>	6	6	8	7	8	48.4	<b>83.4</b>
<i>LACTo<sup>1</sup></i>	6	4	6	8	7	48.4	<b>79.4</b>
<i>Commercial contractor</i>	7	7	6	4	5	50.0	<b>79.0</b>

8.2 The current Green Space Contract expires 29 February 2020, therefore the Contract Variation as recommended in section 3 will ensure service continuity from 1<sup>st</sup> March 2020.

8.3 When developing recommendations to the Mayor and Cabinet consideration was given to the data generated from the APSE insourcing model i.e. the rank and score for each option as summarised at 8.1 and the potential opportunities and risks as set out in Appendix D. This has led officers to the following conclusions:

8.4 Option 1 In-House. In addition to the existing knowledge, skills and experience within the Environment Division, Green Scene and among the existing contractors' staff, who may transfer to the council via TUPE, the Council would be in a good position to deliver a high quality service to citizens. This will be supported by an established corporate centre including HR, Payroll, Legal Services and Corporate Health and Safety. Opportunities will also be presented to work with other services within the Environment Division and exploit possible economies of scale.

8.5 Option 2 LATCo. This option would have a greater chance of success if it were part of a larger Environment Division LATCo. This option would offer the opportunity to increase trading potential and generate additional income. However this would be a much larger entity with a greater scope, delivering significantly more than the parks service. As a totally new entity, i.e. a new company wholly owned by the Council, there would be various political, structural, financial and legal matters to be fully explored and agreed before any realistic chance of developing this further. For these reasons it is therefore not recommended to proceed with this option at this point in time.

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<sup>1</sup> Please note that that for the reasons set out below at 8.5 the provisional scores within the table above regarding the LATCo are to be ignored at this stage. As further qualitative and quantitative assessments is required for this option.

- 8.6 Option 3 Outsourced. Since the decision was taken to outsource the Parks and Open Spaces service in 1999 we have developed a contract model that has delivered a high quality service for almost 20 years. However, due to ongoing central government budget cuts the Council's financial position continues to worsen. In its efforts to mitigate these challenges the Council has adopted the corporate objectives as set out within the current Corporate Strategy (2018-22). This includes the assumption that the Council will be the preferred provider.
- 8.7 Tendering a new external contract that allows the contractor to take all revenues generated from concessions, events and other income generating aspects of the service, in such a financially challenging environment, would not be prudent. However, without a contractor receiving the revenues generated from these opportunities, whilst at the same time retaining a contract obligation to accept an inbuilt annual efficiency mechanism and absorb the ongoing cost of the London Living Wage, as well as other legislative, public liability and economic risks contained within the current contract model, it is likely that a new contract let on this basis would come at a greater cost to the Council.
- 8.8 Giving consideration to the cost and quality data (see Table at 8.1) generated using the APSE insourcing evaluation model for the three options set out within the report and to our corporate objectives and values, information gathered from colleagues in other public sector organisations indicate that costs of recently tendered parks maintenance contracts have increased by 10% to 15%. This is a potential 375k increase on the current contract cost. Therefore officers would not recommend re-tendering the service.
- 8.9 **Appendix D** sets out the indicative timelines for the implementation for each option

## 9. Financial implications

- 9.1 The current annual value of the existing Green Space Management and Maintenance contract is £2,497,385.
- 9.2 The recommendation to extend the current contract in paragraph 3.2 for 20 months from 29th February 2020 until 31st October 2021 will cost the Council a maximum of £4,162,308.
- 9.3 The 19/20 budget for this contract is £2,347,100, which implies potential budget pressures of up to £250k over the period. This is likely to be mitigated, in part or whole, by reductions in the contract value through application of the annual RPIX-3% contract efficiencies, inflationary uplift, and cost deductions.

- 9.4 With regards to the potential in-sourcing of the service from 1<sup>st</sup> November 2021, three options were appraised using both quantitative and qualitative measures with agreed weightings. Indicative costs for each option is set out at Appendix C.
- 9.5 It should be noted that the LATCo option requires further detailed evaluation in order to provide sufficient assurance as to the potential financial costs. This work should feed into the decision making process in due course about the options for the service from 1<sup>st</sup> November 2021.
- 9.6 The assumptions on which the costs are modelled are essentially sound but there is a risk that these could change and impact on the final costs of each option. In mitigation, the higher end of market price increases has been used for the outsourcing option (15%) and a blended level of corporate overheads (25% of staffing cost) applied to the in-House option.
- 9.7 The appraisal model indicates that both the In-House and LATCo options cost £108k more than the outsourcing option at £3,264,398 and £3,372,770 respectively. However, the In-House option has the highest overall score when the qualitative measures are factored into the appraisal model as shown in paragraph 8.1.
- 9.8 Within the options appraisal model management overheads, staff inflation at 3%, contract inflation at 2% and some running costs are largely included in the current budget, totalling in excess of £500k. This implies real budget pressures in excess of £500k from 2021. Funding implications for 2021 onwards will need to be contained within the appropriate budget.

## **10. Legal Implications**

### Extension of the Glendale Contract

- 10.1 Officers recommend that the contract with Glendale is extended for a period of 20 months for the reasons set out in this report. The contract was awarded to Glendale in 2010 for a period of 10 years. It expires in February 2020.
- 10.2 The Council is obliged to comply with the procurement Regulations (Public Contracts Regulations 2015). Some variations to existing contracts may trigger a requirement to undertake a new competitive tender process. The Council's Contract Procedure Rules set out which variations can be made without a new competitive process (Constitution Part IV I, paragraph 17 of Contract Procedure Rules). This report explains why this extension to the contract for a further year is proposed.

10.3 Contract Procedure Rules say that where a contract variation is 'not substantial', the variation can be made (paragraph 17.5). The definition of 'substantial' takes into account matters including the nature and size of the proposed change relative to the original contract, and the likely market effect of the change (including the change to the scope and economic balance of the contract). There is a reasonable argument that the proposed extension is not substantial. As such, the variation does not trigger a requirement to undertake a new procurement. On that basis, therefore, the proposed changes are allowable under the Council's Contract Procedure Rules paragraph 17.

#### Recommendation to insource

10.4 Legal issues to be taken into account in this decision are set out below. The report sets out the potential impacts of the options.

- **General powers and decision making:**  
The provision and maintenance of green space is a discretionary service which means the Council is not under a duty to provide it. The Council has a general power of competence contained in the Localism Act 2011 which allows the Council to do anything that individuals generally may do provided it is not prohibited by other legislation. General decision making principles require consideration of all relevant matters, including financial impacts and the Council's fiduciary duty to its council tax payers.
- **Best value:**  
The Council has a general duty to obtain best value by securing continuous improvement in the way functions are carried out, having regard to a combination of economy, efficiency and effectiveness (Local Government Act 1999 s3). This means that the Council must, on a case by case basis, weigh up the costs of the proposed action against the benefits of the particular relevant issue.
- **TUPE:**  
The Council has obligations as set out in its contract with Glendale in relation to TUPE, and under the TUPE regulations. These include a requirement to consult in relation to any measures it would take in relation to staff who would TUPE from Glendale to the Council, and to comply with the terms and conditions of employment of any Glendale staff.

10.5 The Council has a public sector equality duty (the equality duty or the duty - The Equality Act 2010, or the Act). It covers the following protected characteristics: age, disability, gender reassignment, marriage



and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

10.6 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

10.7 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above. The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. The decision maker must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

10.8 The Equality and Human Rights Commission (EHRC) has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance. The Council must have regard to the statutory code in so far as it relates to the duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found on the EHRC website.

10.9 The EHRC has issued five guides for public authorities in England giving advice on the equality duty. The 'Essential' guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice.

## **11. Crime and Disorder Implications**

11.1 There are no direct crime and disorder implications arising as a result of this report.

## **12 Equalities Implications**

- 12.1 There are no direct equalities implications arising as a result of this report.

## **13 Environmental Implication**

- 13.1 There are no direct environmental implications arising as a result of this report. However there are a number of potential advantages of delivering an in-house service with respects to environmental/ecological benefits and our aspirations to be carbon neutral by 2030. An in-house service will mean that changes to park specifications to alter the management to benefit ecology are easier and quicker to enact. This may increase or decrease the resource demand in terms of labour and machinery but could be carefully managed to suit.
- 13.2 With respect to the climate emergency, it is difficult to anticipate exactly what future requirements will be in terms of energy efficiency and reducing carbon emissions. The Council will have the flexibility to corporately innovate across a wide range of service areas and divisions to maximise the opportunities for energy efficiency and to reduce carbon emissions if it is operating an in house service. This flexibility may not be available for the other service delivery models without it being reflected in their ability to be commercially competitive and to provide a revenue return.

## Appendix. A

Parks for London are an independent charity that support the mission to improve the criteria applied was as follows:

- 1. Public satisfaction with parks** - taken from borough public satisfaction surveys, where available.
- 2. Awards for quality** - the number of Green Flag Awards attained for parks directly managed by boroughs.
- 3. Collaboration with other boroughs** - indicates that Parks for London/ London Parks Benchmarking Group is supported.
- 4. Events** - is the number of internally and externally managed events held in parks across the borough expressed as a % of green space managed.
- 5. Health, fitness and well-being** - is a combination of the number of outdoor gyms and food-growing areas in Borough parks.
- 6. Supporting nature** - is a combination of the percentage of parks that have a management plan that includes in any borough that have a management plan that includes Biodiversity Action Plan (BAP) objectives (as a % of total parks) and has a BAP.
- 7. Community partnerships** - is a combination of Community Green Flag Awards, number of friends groups and whether the borough has a borough-wide Friends group forum.
- 8. Skills development**- is the number of park apprentices as a percentage of the total workforce.
- 9. Sustainability** - is a combination of green fleet as a percentage of total fleet and battery operated as a percentage of total handheld equipment that contribute to reducing air and noise pollution.
- 10. Strategic planning** -is a combination of having a green/open or infrastructure space strategy and an asset management plan.

<b>Borough</b>	<b>Good Parks for London Score</b>	<b>Current Provision</b>
Lewisham	45	External
Southwark	41.5	External
Lambeth	39.5	Internal
Ealing	39	External
Richmond upon Thames	36	External
Islington	33.5	Internal
Westminster	33.5	External
City of London	32.5	Internal
Haringey	32.5	Internal
Harrow	32	Internal
Hillingdon	31.5	Internal
Tower Hamlets	31.5	Internal
RB Greenwich	30	Internal
Bromley	29.5	External
Hackney	29	Internal
Havering	29	Internal
Camden	28.5	External
Kensington & Chelsea	28	External
Sutton	28	Internal
Hounslow	27	External
Croydon	26	Internal
Barnet	25.5	Internal
Barking & Dagenham	25.5	Internal
Bexley	25.5	External
Redbridge	23.5	Mixed *
Hammersmith and Fulham	22	External
Brent	21.5	Internal
Wandsworth	21.5	External
Waltham Forest	21	Internal
Enfield	20	Internal
Merton	17.5	Internal
Newham	14.5	External
Kingston upon Thames	11.5	External

\* Usually a combination external providers and in – house provision

## Appendix. B

### Risk Allocation – current contract

Type of Risk	Glendale	Council
Legislative change requiring, say, only certain types of fuel to be used in vehicles.	✓	
Legislative change requiring change in waste disposal requirements		✓
Legislative change removing parks function from LBL		✓
General legislative change	✓	
A changing block burns down		✓
A building collapses due to subsidence		✓
A changing room in a park is covered in graffiti	✓	
Change to British Standards	✓	
Performance risk	✓	
Service related legislative change	✓	
Other legislative change	✓	
Operational capability	✓	
Industrial action by contractors staff or sub-contractors	✓	
Sub-contractor default	✓	
Inflation	✓	
Third party income	✓	
Approval of further commercial events	✓	
Health and Safety	✓	
TUPE transfer at start	✓	
TUPE transfer at end	✓	
Generation Play clubs R&M		✓
Enhanced redundancy payments to staff	✓	
Works to redundant buildings		✓
Works inside bowls pavilions		✓
Access denied by LBL		✓