

Committee/Meeting: Cabinet	Date: 3 October 2012	Classification: Unrestricted	Report No: (CAB 036/123)
Report of: Corporate Director Communities, Localities and Culture Originating officer(s) Heather Bonfield, Interim Service Head Culture, Learning and Leisure		Title: Thames Tideway Tunnel Update Wards Affected: Shadwell, St Katharine's and Wapping, Limehouse, Millwall, East India and Lansbury and Bromley by Bow	

Lead Member	Councillor Alibor Choudhury
Community Plan Theme	A Great Place to Live
Strategic Priority	Improving the environment and tackling climate change

1. **SUMMARY**

- 1.1 This report provides Cabinet with the opportunity to respond to Thames Water's Section 48 Publicity Notice on the proposal to build the Thames Tideway Tunnel. The report also provides an update on issues addressed in the previous report on the proposal presented to Cabinet on 8 February 2012.

2. **DECISIONS REQUIRED**

The Mayor in Cabinet is recommended to:

- 2.1 Agree that he is satisfied that this matter is urgent, as defined in the Authority's Constitution (Part 4 Rules of Procedure, Section 4.5 Overview and Scrutiny Rules of Procedure, Rule 17 'Call In' and Urgency, sub paragraph 17.1, as any delay to implementation of all the decisions above would seriously prejudice the Authority's and the Public's interest; and therefore this matter should not be subject to 'Call In'.
- 2.2 Note that the results of the Phase Two Consultation have not materially altered Thames Water's proposals in respect of the proposed tunnel in the foreshore of the King Edward Memorial Park.
- 2.3 Agree that Thames Water have failed to provide sufficient information to allow a fully informed response to the Section 48 Publicity Notice to be provided.
- 2.4 Confirm the Council's concern at the impact of Thames Water's preferred scheme for a connection to the proposed tunnel in the foreshore of King

Edward Memorial Park and its objection to that scheme, and confirm the Council's support for an alternative scheme that provides for the main connection in the Heckford Street Industrial Estate with just a connection to the North East Storm Relief Sewer in King Edward Memorial Park.

- 2.5 Approve the draft version of the response to Thames Water based on recommendations 2.2 and 2.3 above set out in Appendix 1 and authorise the Corporate Director of Communities Localities and Culture in consultation with the Assistant Chief Executive (Legal Services) to determine the final content of the response and to submit this to Thames Water by the deadline for response of 5 October 2012.
- 2.6 Authorise the Corporate Director of Communities Localities and Culture in consultation with the Assistant Chief Executive (Legal Services) to submit an adequacy of consultation representation to the Secretary of State following the submission of Thames Water's formal Development Consent Order application.
- 2.7 Authorise the Corporate Director of Communities Localities and Culture (in consultation with the Assistant Chief Executive (Legal Services)) to take appropriate actions to sustain the Council's objection to Thames Water's preferred foreshore scheme by participating in the Development Consent Order and any related process, and if appropriate bringing a legal challenge in the courts

3. REASONS FOR THE DECISIONS

- 3.1 To allow the Council to maintain its objection to the preferred foreshore scheme and to comply with the statutory deadline for a response to be made to Thames Water's Section 48 Publicity Notice (both as land owner and local authority) which closes on 5 October 2012.

4. ALTERNATIVE OPTIONS

- 4.1 Members, if so minded, could determine not to respond to the Section 48 Publicity Notice. However, officers would not recommend this course of action as not only will it limit the ability of the Council to participate in the statutory process for determining the Development Consent Order for the Thames Tideway Tunnel, but in addition the promoters of this London-wide project and local residents may infer that the Council has no interest in influencing the final design solution. Disengagement from constructive dialogue could result in Thames Water imposing a solution on the borough.

5. BACKGROUND

- 5.1 Previous reports to Cabinet on 11 May 2011, 2 November 2011 and 8 February 2012 have provided an update on action taken by Thames Water in their development of the Thames Tideway Tunnel project and on action taken by the Council to consider the impact of their proposals and in particular to

look at alternatives to eliminate or reduce the impact of construction on King Edward VII Memorial Park (KEMP).

- 5.2 The objective of the Thames Tideway Tunnel is to reduce substantially the discharge of untreated sewage into the River Thames. At present any of 54 separate sewers can periodically discharge sewage into the river during periods of heavy rainfall. The basic solution proposed by Thames Water is to intercept most of these sewers at the points of discharge, to divert the sewage into a new tunnel running underneath the Thames, and then to pump the sewage to Abbey Mills, through the new Lee Tunnel, and on to the sewage treatment works at Beckton.
- 5.3 Two of the discharge points are in the Tower Hamlets river frontage, one from the North East Storm Relief (NESR) sewer alongside KEMP and one from the Holloway Storm Relief (HSR) sewer near Narrow Street. Thames Water's original preferred solutions to these discharges (as published during the Phase 1 consultation process between September 2010 and January 2011) were to intercept the NESR in KEMP and to connect it to the main tunnel at a site in the river foreshore immediately in front of KEMP, and to intercept the HSR in Butcher Row and then connect this by tunnel to the same foreshore site and link to the main tunnel there.
- 5.4 The May 2011 Cabinet report provided details of opposition to the use of KEMP identified during Thames Water's consultation on these proposals and also highlighted the response from the Council including the unanimously agreed motion passed by Council on 2 February 2011 opposing use of KEMP and its foreshore. The report also noted the meeting between the Mayor and the Chief Executive of Thames Water which strongly reinforced this position.
- 5.5 The November 2011 Cabinet report confirmed that Thames Water had been revising their proposals to take into account the feedback from the Phase 1 consultation and were proposing to undertake their formal Phase 2 consultation later that month. At that time Thames Water would not confirm details of any changes to their preferred scheme prior to formal publication but advised that the consultation material would contain information on other alternatives considered. Cabinet authorised the Corporate Director of Communities Localities and Culture to engage additional specialist advisors (Temple Group Ltd) to assist with the analysis of Thames Water's consultation material. The consultation began on 4 November 2011 with the deadline for responses set as 10 February 2012.
- 5.6 The February 2012 Cabinet report confirmed that Thames Water's preferred and published solution was still to intercept the NESR in KEMP and to connect to the main tunnel in the river foreshore with some revisions to the detailed format of the proposals. Thames Water proposed to deal with the discharge from the HSR by a local in-sewer modification and therefore the proposal to link to the main tunnel via the foreshore site has been dropped. Thames Water's consultation material also included information on alternative sites considered for the interception of the NESR instead of the KEMP foreshore proposal. The alternative which appeared to have been given the

greatest consideration was to intercept the NESR at a smaller site in the north of KEMP and to link from here by tunnel to the Heckford Street Industrial Estate where a down shaft to a realigned main tunnel would be constructed.

5.7 The February report presented Temple's findings. In summary, Temple's advice was that the basic methodology used by Thames Water to assess impacts appeared reasonable, but that the data provided in the consultation material (including extra material provided after Council requests) was relatively limited and thus it was not possible to gain a full understanding of the facts upon which Thames Water had come their conclusions. In particular Temple stated that much of the assessment undertaken by Thames Water had been based on professional judgement using baseline data available.

5.8 On the basis of this advice and other considerations, the February report recommended the following response to Thames Water:

(a) Inadequate information has been provided by Thames Water to enable the Council to make an informed and intelligent response.

(b) The response is made without prejudice to contention (a)

(c) Thames Water's consideration and comparison of the benefits and disbenefits of the KEMP Foreshore and KEMP/Heckford Street options is inadequate

(d) The Council's view is that:

(i) There has been an inadequate comparison of the KEMP Foreshore and KEMP/Heckford options

(ii) As a result Thames Water's decision to proceed with the KEMP Foreshore option is not justified by clear evidence.

(iii) The KEMP/Heckford option is to be preferred on the following main grounds:

- Its has significantly less impact on KEMP users during construction
- Is the option that local residents have indicated that they would prefer
- Minimises the impact of construction traffic on residents of Glamis Road
- Less noise impact during construction
- Less visual impact and less impact on the landscape in the vicinity

(e) The response relating to mitigation measures (during construction, and in operation) is made without prejudice to the contention that the KEMP/Heckford Street option is to be preferred.

5.9 Cabinet accepted this recommendation and a response to that effect was sent to Thames Water.

6. BODY OF REPORT

Thames Water's Response to Consultation

- 6.1 Thames Water published their response to the Phase 2 consultation exercise in May 2012. The report advises that Thames Water received around 6,000 responses including 17 from local authorities. These responses included 9 petitions, the biggest of which was submitted by the SaveKEMP group and had 10,528 signatories.
- 6.2 The report separates the comments received into categories and sets out Thames Water's response to them. Some comments were made concerning the principle of constructing a tunnel as the solution to the discharge of untreated sewage into the Thames. Thames Water conclude that the previous research undertaken demonstrates the need for the tunnel and stress that the National Policy Statement for Waste Water designated by Government in March 2012 (i.e. after the Phase 2 consultation finished) clearly states that the need for the project has been demonstrated. The Policy Statement concludes that "detailed investigations have confirmed the case for a Thames Tunnel as the preferred solution".
- 6.3 The consultation report then goes on to look at the feedback received for each of the proposed construction and interception sites along the route. For the KEMP foreshore site, Thames Water report that 1,519 responses were received, 6 from statutory consultees (Design Council / CABE, Consumer Council for Water, English Heritage, Environment Agency, Greater London Authority, Port of London Authority), 1 from this Council, 10 from landowners, 1501 from community consultees, and the petition mentioned above. In relation to use of the KEMP foreshore site as the preferred site, the responses received were as follows :

Type of consultee	Supporting use of KEMP foreshore	Objecting to or concerned about use of KEMP foreshore	Unsure	Total
Statutory	0	1	0	1
Local Authority	0	1	0	1
Landowner	2	8	0	10
Community consultee	18	1446	11	1475
Petition	0	1	0	1

- 6.4 Thames Water's response states that *"the sites that we consulted on at the Phase 2 consultation have been identified through an extensive site selection process. We recognise that, given the locations in which we are seeking to construct and operate the tunnel, many of the shortlisted sites are constrained. However, based on our assessment we consider that, on balance, KEMP foreshore is the most suitable site. This is because only one site is needed to intercept the CSO and connect to the main tunnel, which also eliminates the cumulative effects of undertaking construction works at*

two sites at the same time, avoids direct impact on businesses, and there are opportunities to use the river for transportation of materials. The majority of the temporary work site is situated in the foreshore; therefore, we sought to minimise the effects on the park as far as possible. Furthermore, the tunnels would pass under fewer buildings”.

- 6.5 The report goes on to consider the implications of use of the alternative site at Heckford Street which many respondents (including the Council) suggested as an alternative to their preferred foreshore site. Thames Water respond by saying *“we have investigated a potential split site at KEMP and Heckford Street and we consider that the Heckford Street option is less suitable because the combination of both sites and the additional tunnelling works would be likely to take longer, cause more disruption to the local community, and put more traffic on local roads. The site would result in the disruption and potential loss of some businesses in an area where the Council’s planning policy seeks to protect employment uses. The use of the site would also result in the greater effects on people living and working near the site in comparison to our preferred site as it would not be possible to utilise the River Thames for movement of materials. Furthermore, the tunnels would pass below significantly more buildings and the connection tunnel would be at a much shallower depth. In response to feedback, we have also reduced the size of the footprint of the structure in the foreshore of the River Thames and changed the access, thereby avoiding the meadow area in the park”.*
- 6.6 Overall, in relation to feedback received, Thames Water state that during the Phase 2 consultation *“no new information has been highlighted that would change the conclusion of our site selection process to date. The KEMP foreshore remains our preferred site to connect the NESR to the main tunnel. Additionally no new information or issues were identified that would fundamentally change our proposals for this site. Therefore we will continue to develop the proposals for this site that were published at Phase 2 consultation”.*
- 6.7 Thames Water go on to say that they received detailed comments on the construction and operational effects of the proposed development and measure to reduce and manage these effects plus comments on the permanent design and appearance of the scheme. Having regard to these comments, Thames Water are considering:
- Locating construction site facilities off-site to reduce effects on the recreational facilities at the west of the park
 - Further noise attenuation measures to address noise generated during construction
 - Open fencing along the proposed access route from Glamis Road to allows view through to the river and foreshore
 - Improving the Glamis Road / The Highway road junction for safer access

At some sites elsewhere along the route, Thames Water have also considered changes to their preferred scheme as put forward at the Phase 2 consultation

and have carried out targeted consultation on the implications of those changes. For the KEMP foreshore site, Thames Water “do not consider that the degree of change or the effect on the local community would affect the nature of the comments received during Phase 2 consultation in such a way as to require further consultation”.

- 6.8 For the Bekesbourne Street site, Thames Water state that 12 responses were received, 2 from statutory consultees (English Heritage and the Greater London Authority), 1 from this Council, and 9 from community consultees. In relation to use of the Bekesbourne Street site as the preferred site, the responses received were as follows :

Type of consultee	Supporting use of Bekesbourne Street foreshore	Objecting to or concerned about use of Bekesbourne Street	Unsure	Total
Statutory	0	0	0	0
Local Authority	1	0	0	1
Landowner	0	0	0	0
Community consultee	2	4	0	6
Petition	0	0	0	0

- 6.9 Thames Water indicate that they consider they received no information that would change their decision to proceed with the use of the Bekesbourne Street site to intercept the HSR or to fundamentally change their proposals for that site. Changes to the detailed design may be considered but none of these would be significant enough to justify further consultation.
- 6.10 Essentially, therefore, the Phase 2 consultation has not resulted in any significant changes to Thames Water’s published proposals in this borough. The Council’s specialist advisors Temple were commissioned to review Thames Water’s analysis of the Council’s consultation response in order to check that every point raised by the Council had been taken into consideration. Temple indicate that most of the issues raised by the Council in its response have been acknowledged by Thames Water but this takes the form of re-stating their view that the KEMP foreshore site remains their preferred option and then cross-referencing this to various papers included in the Phase 2 consultation material. No new information or data has been provided by Thames Water to enable the advisors to fully understand the decisions made by Thames Water through their site selection process. Indeed, in some cases it is not clear that Thames Water have addressed specific issues raised by the Council. Temple’s conclusions therefore are that, whilst the overall assessment methodologies are found to be reasonable and the information sources for the assessments are appropriate, the assessment work from which to determine the preferred option is mostly absent.

Thames Water's current position

- 6.11 As indicated above, Thames Water have completed their Phase 2 consultation for the whole project and have carried out additional targeted consultation at locations where they have made significant alterations to their designs in response to that consultation. Thus Thames Water have now come to a final decision on their preferred solution.
- 6.12 During this period, Government has confirmed the Section 14 order under the Planning Act 2008 which brings major waste water transfer and storage projects within the scope of the Act. This means that the Thames Tideway Tunnel is now categorised as a Nationally Significant Infrastructure Project and thus will be processed under the streamlined planning process allowed by the Act rather than requiring separate planning permission from the 14 planning authorities through which the route of the tunnel runs. Thames Water will need to submit an application for a development consent order for the project to the Planning Inspectorate. The Planning Inspectorate will consider the application, seek the views of interested parties (including the Council) and make a recommendation to the Secretary of State. It will be the Secretary of State who makes the final decision.
- 6.13 The first formal step in this process is for Thames Water to issue a notice in accordance with Section 48 of the Planning Act publicising their intention to make a development consent order application for the project. Thames Water published that notice on 16th July 2012 with a closing date for response of 5th October 2012. The notice is accompanied by a substantial pack of publicity material including detailed drawings of what is proposed and indicating the land Thames Water would need to acquire to be able to undertake the works. A copy of the notice is attached to this report as Appendix 2.

Options available to the Council

- 6.14 Advice has been taken on options available to the Council now that Thames Water have confirmed their decision to proceed with the KEMP foreshore proposal rather than use the alternative sites preferred by the Council. Section 49(2) of the Planning Act requires Thames Water to have regard to the any relevant responses when deciding whether the application that it will actually make should be in the same terms as the proposed application. It would seem unlikely that a Council response generally repeating the points made in response to the Phase 2 consultation would result in any change of mind by Thames Water. However it is possible for the promoter of a scheme to put forward two options in a draft development consent order. This would enable both options to be explored during the examination of the development consent order and would avoid delay if the examining authority prefer a different option to that preferred by the promoter. In this particular case, Thames Water have accepted that they only preferred the KEMP foreshore option "on balance" and indeed at meetings have indicated that the difference between the two alternatives was small. Therefore a case could be made for asking for both alternatives to be put forward in the development consent

order. Cabinet should note however that this suggestion has been put to Thames Water informally and their initial response is that “the advice from both the former Infrastructure Planning Commission and more recently the government in their review, is that alternatives should only be in exceptional circumstances for ‘limited elements’ of a project and should not include alternatives that could alter the route or alignment of a linear scheme such as the Thames Tideway Tunnel”.

- 6.15 Nevertheless, in order to develop such a case, Temple have been asked to carry out a thorough review of the process which Thames Water claim to have undertaken as part of their site selection methodology. This review has used all information provided by Thames Water as either as part of their Phase 2 consultation or previously. Temple have tried to replicate the approach taken by Thames Water of using professional judgement to judge the relative merits of alternatives and have examined the five equally weighted factors which Thames Water used in their analysis – namely Engineering, Planning, Environment, Socio-economic and community, and Property. Where appropriate Temple have sought input from Council staff on areas outside their expertise – for instance planning policy, property valuation. Copies of the advisors’ report are attached as Appendices 3 and 4.
- 6.16 The report is in two parts. The first part (Appendix 3) looks at the data published by Thames Water. As indicated in para 5.7 above, Temple had concerns about the adequacy of the data at earlier stages in the process and indeed the Council wrote to Thames Water requesting further information. Although some additional data was provided, this was considered inadequate to allow the Council to make an intelligent and informed response to the Phase 2 consultation, and this was a key part of the Council’s response to the consultation. Temple have now re-examined the material produced by Thames Water and identified those elements still missing and needed to allow a proper comparison of the KEMP foreshore option and the Heckford Street alternative. Thames Water have again been asked to provide this information. They have replied indicating that they consider their approach to the Section 48 Stage of the procedure has been handled correctly and that they have met their legal duties. Thames Water’s reasons for holding this view are set out in their letter, but no additional information is included.
- 6.17 The second part of Temple’s report (Appendix 4) comprises an analysis of the two alternatives in relation to the five factors used by Thames Water. For each of the factors, Temple have looked at the various elements used by Thames Water for evaluating each factor (e.g for Environment elements such as noise and vibration, air quality, visual impact, effect on archaeology, effect on ecology have been considered) and made their own assessment of the relative merits of the two schemes. Temple have also used their professional judgement to weigh the varying impact of each element within each factor to produce an overall assessment. Using this approach (which as indicated above replicates the approach Thames Water claim to have undertaken), Temple judge that the Heckford Street alternative is the better option in terms of the Environment, Socio economic / community and Planning factors, whilst the KEMP foreshore is better in terms of the Engineering and Property factors.

- 6.18 This conclusion would support the case that there is no clear preferred site in Tower Hamlets. Indeed it could be argued that, as it is the environment and socio-economic / community factors which impact on people and the engineering and property factors which impact on cost, justify and support the Council's view that the Heckford Street option is to be preferred, particularly as the extra costs are insignificant compared with the overall cost of the project and are outweighed by the impact on the local community. There is a clear case for proposing that Thames Water should present both alternatives in their draft development consent order so that the Planning Inspectorate can carry out a comprehensive analysis and present their independent recommendation to the Secretary of State.

Acquisition of land for the scheme

- 6.19 The plans accompanying Thames Water's Section 48 notice indicate the extent of land that Thames Water would need to acquire or use to be able to carry out the works. This comprises a significant section of the southern part of KEMP (which is owned by the Council), much of Glamis Road, and a section of the foreshore of the River Thames in front to KEMP, plus most of Bekesbourne Street on each side of the junction with Ratcliffe Lane and a small parcel of land at the south west corner of Limehouse Station.
- 6.20 The Planning Act includes provision for the Secretary of State to authorise the compulsory acquisition of land if required to facilitate implementation of the development. In relation to the KEMP land, this is defined as open space (Acquisition of Land Act 1981 Section 19) and the Planning Act generally requires that compulsory acquisition of this land will require authorisation by special parliamentary procedure unless the Secretary of State issues a certificate indicating that replacement land will be given in exchange for the order land. The special parliamentary procedure would require the application to be considered by a joint committee of the House of Commons and House of Lords with the opportunity for the Council to make representations. Although this procedure might delay the scheme, it would be extremely difficult to persuade the committee to reject the scheme if the development consent order had been made and failure to confirm acquisition would prevent the tunnel being built. If Thames Water seek to obtain a certificate for replacement land (possibly suggesting that the land in the foreshore is suitable replacement), the Planning Act requires the Secretary of State to consider whether to cause a public local inquiry to be held in relation to that proposal. The Council would attend that inquiry, along with local people.
- 6.21 It is not presently clear whether Thames Water intend to acquire the open space land owned by the Council compulsorily, although it is anticipated that Thames Water will seek a certificate for replacement land. As such, it is recommended that the Council's response to the Section 48 notice should also seek confirmation of Thames Water's position and state that Thames Water should seek to obtain a certificate before they submit their development consent order and that, if they do not intend to provide replacement land or do intend to provide replacement land but not apply for a certificate in advance of making an application for a development consent order, they should justify and explain their position.

Proposed response to Thames Water

- 6.22 A detailed proposed response to Thames Water is set out in Appendix 1. In summary, however, the proposed response states the following:
- Insufficient information has been provided to allow the Council to make an intelligent and informed response
 - The Phase 2 consultation report is inadequate as it contains no re-assessment of the merits of the Heckford Street and KEMP foreshore options against the site selection criteria in the light of consultation responses
 - That both options should be included in Thames Water's development consent order application as both Thames Water's and the Council's independent advisor's assessments indicate that the relative merits of the two options are finely balanced
 - That Thames Water should seek to obtain a certificate for the provision of replacement land before they submit their development consent order application

Next steps in Thames Water's process

- 6.23 Following completion of the Section 48 publicity stage, Thames Water must have regard to any relevant responses when deciding whether the development consent order application should be in the same terms as the proposed application. Thames Water have indicated that they are proposing to submit their application in early 2013. The Secretary of State will have 28 days to review the application and decide whether to accept or reject it. The Council have the opportunity to submit an "adequacy of consultation representation" which the Secretary of State must take into account when deciding whether to accept the application. This representation could address the inadequacies in Phase 2 consultation methods highlighted in the February 2012 Cabinet report, the failure to provide sufficient information to allow the Council to provide an intelligent and informed response to both the Phase 2 consultation and the Section 48 publicity notice, the inadequacy of the Phase 2 consultation report, and possibly the failure of Thames Water to have regard to responses received to the Section 48 publicity notice.
- 6.24 In view of the uncertainty of the actual date when Thames Water will make their application and the relatively short time available to make the adequacy of consultation representation, members are requested to agree that authority be given to the Corporate Director Communities Localities and Culture in consultation with the Assistant Chief Executive (Legal Services) to submit an appropriate and timely representation.
- 6.25 Should the development consent order application be accepted by the Secretary of State, the Council will be able to make formal representations to the Planning Inspectorate as part of the development consent order examination process. In addition, the Council will be invited to submit a "local impact report" which should set out what the Council believes to be the likely impacts of the proposed development on its area. This is expected to be a

comprehensive document representing the broader views of residents and can cover a broad range of local interests and impacts. This will involve a substantial amount of work and is likely to require further input from specialist advisors. The Planning Inspectorate will then undertake a formal examination of the proposal and the Council is likely to be given the opportunity to appear to support any representations made. If a compulsory acquisition hearing is held into land owned by the Council, it will have a right to make oral representations, The Inspectorate will then draw up a report on findings and make recommendations to the Secretary of State. The Secretary of State will make the final decision whether to confirm the order or not. Current advice from Government is that this process will take around 15 months from date of application – this implies a decision in mid 2014.

7. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 7.1 The report seeks Cabinet approval to respond to Thames Water's Section 48 Publicity Notice on the proposal to build the Thames Tideway Tunnel. The report also provides an update on the issues addressed in the previous report in February 2012.
- 7.2 Provision of £25k has been made within available resources of the Culture budget to fund the cost of expert advice and the Council's contribution to the costs of the Hammersmith & Fulham Commission. Expenditure to date has been £5k for the Commission, £29k for engineering advice, £11k for legal advice, £7k for environmental advice all totalling £52k with further costs of up to £30k committed for environmental advice just received. Thames Water have advised that none of these costs will be recoverable as part of the memorandum of understanding on costs that the Council has signed with Thames Water. Thames Water are only prepared to accept costs related to development of their preferred proposal.
- 7.3 There is no budget provision within the medium term financial plan that support the costs associated with Thames Tideway, the additional costs as well as costs involved in making representations to the Planning Inspectorate will need to be contained within the existing budget provision for the service. If the costs cannot be contained within the existing budget provisions then a supplementary budget will need to be approved.

8. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)

- 8.1 The Council has a number of functions in relation to the Thames Tideway Tunnel proposal, including as a land owner of King Edward Memorial Park, as a statutory consultee in the application process and as an authority responsible for promoting well-being in Tower Hamlets.
- 8.2 The Thames Tideway Tunnel project is included as a Nationally Significant Infrastructure Project, which means that the development consent application

for the Project will be examined by the Planning Inspectorate and determined by the Secretary of State, and not by local authorities. The Planning Act 2008 and associated regulations deals with the requirements for such applications, which include a duty to consult and a duty to have regard to such consultation responses.

- 8.3 The Council is empowered under section 2 of the Local Government Act 2000 to do anything which it considers likely to promote the social, economic or environmental well being of Tower Hamlets, provided the action is not otherwise prohibited by statute. In exercising the power, regard must be had to the Community Plan. It is open (and indeed desirable) to the Council to respond to Thames Water's consultation, having regard to the potential impacts on the borough, the Community Plan objectives and its statutory functions.
- 8.4 This report seeks Cabinet approval for the Council's response to Thames Water's Section 48 Publicity Notice. The report notes the inadequacy of information provided by Thames Water in relation to the Council's preferred option at the Heckford Street Site.
- 8.5 Following the Section 48 publicity, Thames Water advise that they intend to submit a development consent order application to the Secretary of State in early 2013. The process is carried out in accordance with provisions of the Planning Act 2008 and will afford the Council opportunities to make representations on the proposed scheme to an independent Planning Inspector. As outlined in paragraph 6.13 of the report, it is considered that the most favourable way to secure acceptance of the Heckford Option by the Secretary of State is to request Thames Water to put forward two options for examination. However the likelihood of this is low. Therefore, in order to assist in sustaining the Council's objection to the foreshore option, the report seeks authorisation for the Corporate Director of Communities Localities and Culture to take such appropriate action, which could include legal challenge. The merits of any such decision would be based on legal advice and taken in consultation with the Assistant Chief Executive (Legal Services).

9. ONE TOWER HAMLETS CONSIDERATIONS

- 9.1 The borough has a significant shortfall in Public Open Space. Parks and Open Spaces play a major role in bringing communities from different backgrounds and ages together. Any proposed loss of open space, temporary or otherwise in an area of such severe deficiency is one that should be subject to robust challenge and scrutiny.

10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 10.1 The response to consultation will confirm the Council's commitment to protecting and enhancing habitats, particularly in the area of the borough subject to Thames Water's proposals

11. RISK MANAGEMENT IMPLICATIONS

- 11.1 There are no immediate risk management implications arising from the public consultation exercise. The Council can work with the promoters of the scheme to ensure that they manage the risks from construction.

12. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 12.1 There are no specific implications arising.

13. EFFICIENCY STATEMENT

- 13.1 There are no specific implications arising.

14. APPENDICES

- 14.1 Appendix 1. Proposed response to Thames Water (below)
Appendix 2. Thames Water's Section 48 publicity notice (separate attachment)
Appendix 3. Temple's Thames Tunnel – LBTH Information Requirements report (separate attachment)
Appendix 4. Temple's Thames Tunnel – Sites Reassessment report (separate attachment)

Local Government Act, 1972 Section 100D (As amended) List of "Background Papers" used in the preparation of this report

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| 1 | Review of Thames Tunnel Phase 2 Consultation Report – Temple Group Limited 19 June 2012 | Andrew McKenzie, 020 7364 4650
4 th Floor Anchorage House |
| 2 | Letter from the Council to Thames Water dated 4 Sept 2012 re Thames Tunnel s48 consultation – request for information | |
| 3 | Letter from Thames Water to the Council dated 17 Sept 2012 re Thames Tideway Tunnel, Section 48 Publicity, Request for Information | |

Appendix 1 – Proposed response to Thames Water

Dear Sirs

Thames Tideway Tunnel: Section 48 Publicity of a proposed application

I refer to your letter of July 2012 giving notice of your intention to make a development consent order application for the Thames Tideway Tunnel project. The Council wishes to record its continued opposition to this project because of its impact on King Edward Memorial Park (KEMP) and the surrounding area and requests that you take the following into account before you submit your formal application for the scheme.

Firstly, it is the Council's contention that insufficient information has been provided to allow the Council to make an intelligent and informed response both to the current publicity notice and to the Phase 2 consultation exercise which preceded it. The Council wrote to you during that Phase 2 exercise requesting additional information and, although some additional information was provided, this was not considered adequate to allow the Council to make an informed response. The Council wrote to you again on 4th September 2012 setting out the information needed to allow an informed response to be made to your publicity notice but again insufficient information has been provided. The report from our specialist advisors Temple Group Ltd attached sets out in detail the information that is missing. The comments that follow are made without prejudice to the Council's contention that it is unable to make an intelligent and informed response.

Secondly, your Phase 2 consultation report is considered inadequate as it contains no re-assessment of the merits of the KEMP foreshore and the Heckford Street options against the site selection criteria in the light of consultation responses.

Thirdly, because the Phase 2 consultation report is considered inadequate, the Council has commissioned its advisors Temple (in conjunction with Council staff) to undertake a separate assessment of the two options using your own site selection methodology, whatever information has been provided in your consultation material or in response to Council requests, and Temple's own professional judgement where the provided information is insufficient. This assessment has been undertaken to replicate as far as possible the process which you claim to have undertaken when selecting construction sites and to test whether the conclusions you have come to on your preferred scheme can be justified. A copy of Temple's report is attached. The report makes it clear that your conclusion that the KEMP foreshore site should be preferred "on balance" is not supported by evidence and that, using the five factors set out in your site selection methodology, the Heckford Street option is clearly preferable in terms of environmental, socio-economic / community and planning impact but is unfavoured in terms of engineering and property considerations. It is the Council's view that, because the environmental and socio-economic / community considerations have such a significant impact on local people, the Heckford Street alternative should be preferred, particularly as the engineering and property impacts primarily effect only the financial cost of implementing the scheme. The extra cost involved is insignificant when compared to the overall cost of the project and is

outweighed by the significant impact of the KEMP foreshore scheme on the local community.

On this basis, it is the Council's view that your current proposals should be withdrawn and that your development consent order application should be for the Heckford Street alternative instead. Without prejudice to this contention, if it is your intention to continue to promote your preferred scheme, the Council proposes that you also set out the Heckford Street alternative in your draft development consent order so that both options can be explored in the examination of the development consent order. This approach is in your own best interests as it will avoid delay in the event that the examining authority prefers the Heckford Street alternative. The Council will be making a case in the strongest possible terms during the examination process that your selection of the KEMP foreshore option is flawed.

Fourthly, the plans accompanying your publicity notice indicate the need for you to acquire or use land within KEMP to undertake your project. This land, which is owned by the Council, is open space as defined in Section 19 of the Acquisition of Land Act 1981. Section 131 of the Planning Act 2008 stipulates that compulsory acquisition of this land using a development consent order is subject to special parliamentary procedure unless the Secretary of State issues a certificate that replacement land has been or will be given in exchange for the land required to implement the order. The Council requests that you seek to obtain such a certificate before you submit your development consent order. If you do not intend to provide replacement land, or do intend to provide replacement land but not apply for a certificate in advance of making an application for a development consent order, the Council requires a detailed and reasoned explanation to justify your position.

Finally, all the points raised in the Council's submission to your Phase 2 consultation are still relevant and the Council requests that you take them into account during this stage of the process.

Yours faithfully

Corporate Director
Communities Localities and Culture