

**Decision Maker:** EXECUTIVE

**For Pre-Decision Scrutiny by the Environment and Community Services Policy Development and Scrutiny Committee on Thursday 29 June 2023**

**Date:** 5 July 2023

**Decision Type:** Non-Urgent Executive Key

**Title:** WATERBODY MANAGEMENT: KELSEY PARK LAKES

**Contact Officer:** Hannah Jackson, Assistant Director Environment (Carbon Management & Greenspace)

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**Chief Officer:** Director of Environment and Public Protection

**Ward:** Kelsey and Eden Park

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1. Reason for decision/report and options

- 1.1 It is recommended that the Council remove silt from Kelsey Lakes to ensure that it meets its responsibilities as a riparian owner and to protect biodiversity. This report sets out the recommended procurement strategy for delivering these works and seeks to draw down funding allocated in the capital programme to undertake surveys, prepare the tender for the works and to create a Project Manager post to manage the delivery of this project.
- 1.2 This report also identifies desilting projects being undertaken at Croydon Canal and Glassmill Pond.

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2. **RECOMMENDATION(S)**

- 2.1 The Environment & Community Services Policy Development & Scrutiny Committee is asked to scrutinise the report and provide their comments on the report and the recommendations to the Executive.
- 2.2 That the Executive:

- **Agree to a variation to idverde's contract at a one-off value of £63k to undertake the survey work identified at paragraph 3.10 and prepare the technical specifications for the tender of a works contractor.**
- **Agree to proceed to procurement for a works contractor to deliver the project in accordance with the procurement strategy set out in paragraphs 3.21 – 3.24.**
- **Agree to delegate authority to the Director of Environment & Public Protection, in consultation with the Portfolio Holder for Sustainability, Green Services and Open Spaces, to award the works contract to the successful tenderer up to the value remaining in the capital programme for the Kelsey Lakes.**
- **Agree to create a 15-month fixed term Project Manager post to deliver the project using the capital programme funding for Kelsey Lakes at an estimated cost of £80k as set out in paragraph 3.27.**
- **To approve a one-off variation to idverde's contract of £17.5k for 2023/24 to fund the desilting project at Croydon Canal identified at paragraph 3.29.**

#### Impact on Vulnerable Adults and Children

1. Summary of Impact: No specific impact on vulnerable adults and children.
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#### Transformation Policy

1. Policy Status: Not Applicable Existing Policy New Policy: Further Details
2. Making Bromley Even Better Priority (*delete as appropriate*):

(4) For residents to live responsibly and prosper in a safe, clean, and green environment great for today and a sustainable future.

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#### Financial

1. Cost of proposal: Estimated Cost: £2m
  2. Ongoing costs: Non-Recurring Cost:
  3. Budget head/performance centre:
  4. Total current budget for this head: £
  5. Source of funding: Capital Programme
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#### Personnel

1. Number of staff (*current and additional*): 1 FTE
  2. If from existing staff resources, number of staff hours:
- 

#### Legal

1. Legal Requirement: Non-Statutory - Government Guidance:
  2. Call-in: Applicable:
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#### Procurement

1. Summary of Procurement Implications: The actions proposed in this report are compliant with the Contract Procedure Rules and the Public Contract Regulations 2015.
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#### Property

1. Summary of Property Implications: N/A
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#### Carbon Reduction and Social Value

1. Summary of Carbon Reduction/Sustainability Implications: Social value considerations will be evaluated as part of the tender process.
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#### Impact on the Local Economy

1. Summary of Local Economy Implications: N/A
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#### Impact on Health and Wellbeing

1. Summary of Health and Wellbeing Implications: An improved natural environment is shown to have positive impacts on mental and physical health.
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#### Customer Impact

1. Estimated number of users or customers (*current and projected*): Unknown.
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Ward Councillor Views

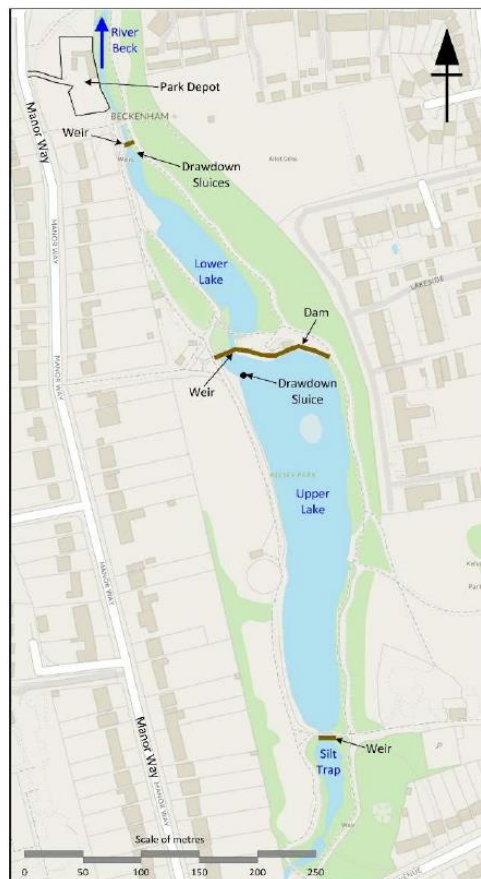
1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments:

### 3. COMMENTARY

- 3.1 The Council is the riparian owner of numerous water courses that run on Council owned land which includes those in parks and open spaces. Riparian owners are the landowners on each side of the watercourse itself and the flow within it. Riparian owners have the responsibility to let water flow naturally through the water courses on their land in its natural quantity and quality. There are some additional and specific responsibilities that riparian owners have under statute and common law which broadly relate to flood risk management, protecting wildlife and the environment, and the prevention of pollution.
- 3.2 idverde, the Council's contractor for parks management and grounds maintenance, have responsibilities for managing water courses in parks and open spaces which support the Council to discharge their responsibilities as a riparian owner. This includes:
- Ensuring they are kept clear of debris, litter, and surplus weeds
  - Inspecting islands and removing rubbish or excessive undergrowth
  - Monitoring water levels to ensure the survival of wildlife
  - Maintaining pumps and aerators
  - Monitoring potential flood risks and reporting issues of sustained erosion or defects to naturally occurring infrastructure and managing any emergencies arising.
- 3.3 However, a cyclical programme of dredging and de-silting is not included within the scope of the contract. There are no formal records about when water bodies were last dredged and consequently silt levels in some of the waterbodies in the parks and open space portfolio are high. This was particularly noticeable during the hotter weather in the summer of 2022 when water levels were low.
- 3.4 The Portfolio Holder for Sustainability, Green Services and Open Spaces has committed to scoping works that may be required to support the health of water bodies in parks and open spaces in recognition of the Council's responsibilities as the riparian owner, and in recognition of the benefits that this can provide to local ecosystems and biodiversity. Desilting water bodies will also improve the attractiveness of the open space and reduce health and safety risks.
- 3.5 Officers and idverde have therefore created a priority list for waterbody management, with priority assigned based on risk in relation to the waterbody condition, health and safety, biodiversity, and flooding.
- 3.6 Kelsey Park Lakes were deemed to be the highest priority waterbody. This is because:
- Silt levels are thought to be very high in the Lakes and are already causing operational issues and health and safety concerns.
  - Heavy siltation in waterbodies reduces flood capacity and where the Kelsey Lakes are in line (part of a river course), water that cannot be held will be sent downstream and in high flow events may contribute towards flooding.
  - De-silting will restore flow control and allow the lake to act as a storm balancing asset.
  - Kelsey Park is a Site of Importance for Nature Conservation, and there is concern about the general impact higher siltation levels have on wildlife.

## Kelsey Lakes: Early Contractor Involvement Report

- 3.7 In summer 2022, Land and Water Services were commissioned to produce an Early Contractor Involvement report to scope and provide indicative costs for potential de-silting works required at Kelsey Lakes.
- 3.8 There are two lakes at Kelsey Park which were formed by damming the river Beck: the Lower Lake and the Upper Lake. Before the flow from the Beck passes into the Upper Lake, it passes through a Silt Trap intended to minimise the siltation of the two lakes.



- 3.9 Unfortunately, it appears that the Silt Trap has not fulfilled its purpose for some years and consequently the Upper and Lower Lakes now contain large volumes of silt, estimated in the region of 15,800m<sup>3</sup> based on initial survey work. As part of the preparation of their report, Land and Water Services have undertaken some limited silt sampling, the results of which showed that the silt does not contain any hazardous properties meaning that it can be managed as non-hazardous waste. As there is no available space on site at Kelsey Park for the disposal of the silt, it will need to be removed and taken to an appropriate offsite disposal or reuse site.
- 3.10 The report identifies that there is some significant preparatory work that needs to be undertaken before works to desilt the Lakes and silt trap can proceed, which includes:
- Ecological assessments, including a phase 1 survey, eDNA survey for Great Crested Newts and a Preliminary Ground Level Roost Assessment survey on trees.
  - Silt surveys (sampling and testing), with additional sampling focused on the southern part of Kelsey Upper Lake and the silt trap, covering approx. 2,850m<sup>2</sup> of area where the greatest amount of sedimentation appears to be present.
  - Fish population survey including application for a FR2 permit

- Condition and operational assessment of existing water control sluices to determine current operational capability.
- Onsite utility mapping using desk top searches and GPR (ground penetrating radar) technology to locate utilities on site affecting the ability to undertake works.
- Topographical and bathymetric surveys of the southern most part of Kelsey Upper Lake and the silt trap.
- Submission of Flood Risk Activity Permit (FRAP), noting that a bespoke permit is required.
- Ground investigation works to support the potential island revetment permanent works design, which could include installing a retaining cell around the island to allow for onsite use of some material.

3.11 It should be noted that if the desilting works go ahead, there would likely be a requirement for enabling works, and that the methodology for removing silt will be intrusive by necessity, impacting on use of the park. Enabling works may include:

- Installation of a compound to include site welfare facilities, a site office, lockable stores, operative and plant parking etc.
- Works to temporarily widen a set of gates for access and to remove obstruction to enable vehicular access
- Laying of trackway to provide a suitable surface for larger delivery vehicles to navigate the park
- Phased partial closures of areas of the park to enable works.
- Vegetation clearance and/or arboricultural works to enable access into the Lakes for dredging machinery.
- Temporary stone banks to protect the integrity of the natural banks while works are undertaken.

3.12 The report suggests that if works were to proceed, there should be a phased approach to the dredging, starting with the Silt Trap, then Kelsey Park Upper Lake and finally Kelsey Park Lower Lake, with some works undertaken concurrently where possible.

3.13 Removing this quantity of silt will require use of several different pieces of machinery, including excavators (amphibious and long-reach), tracked dumpers and sealed bulk wagons.

3.14 The report estimates that the cost of preparatory (pre-commencement) activity, enabling works and the desilting works is £1.92m with a project duration of approximately 1.5 years.

### **Kelsey Lakes: Next Steps**

3.15 There are three main options in terms of next steps following the findings of the Early Contractor Involvement report which are set out below:

#### Option 1: Do nothing

Advantages: No cost

No immediate disruption to park users caused by the desilting works

Disadvantages:

Retained flood risk

Increased risk to biodiversity and specifically wildlife

Increasing health and safety risk caused by high silt levels and low water levels

Unattractive park environment which will only worsen over time

### Option 2: Undertake the full extent of the de-silting works identified in the report

Advantages:

Responsibilities as riparian owner discharged – flood risk reduced

Long term benefits to biodiversity and habitat

Reduced health and safety risks

Will return lakes into a manageable state with the potential for the introduction cyclical programme of dredging/de-silting within existing revenue budgets.

Improves attractiveness of park environment

Disadvantages:

Significant investment required with no direct financial return

Dredging will be disruptive to park users and will limit access to parts of the parks while delivered.

### Option 3: Undertake works de-silt the worst affected parts of the Lakes

Advantages:

Some reduction in the level of cost, although note that it is recommended that de-silting works are undertaken to the Silt Trap and the Lower Lake to address the worst areas of siltation, and these are the areas where the highest costs exist.

Will reduce risk of flooding and improve biodiversity, but not the extent achieved under option 2.

Reduces health and safety concerns by addressing the worst affected parts of the lakes.

Improvement to the attractiveness of the park environment.

Disadvantages:

Significant level of investment required, and loss of economies of scale as enabling works required irrespective of the scale of the de-silting.



Some retained flooding, biodiversity and health and safety risk

Loose ability to introduce an affordable cyclical programme of dredging/de-silting.

Almost as disruptive to park users as Option 2 but without all the associated benefits.

3.16 Option 2 is recommended on the basis that it most fully addresses the risks and achieves better value for money than de-silting only the worst affected areas (which saves a comparatively small amount of money with additional disadvantages).

3.17 In January 2023, a sum of £2m was identified for the purpose of undertaking dredging works to Kelsey Lakes as part of setting the Capital Strategy 2023/24 – 2026/27 (**FSD23001** paragraph 3.13.9).

3.18 This report recommends drawing down the allocated funding to deliver this project. It is recommended that this project is taken forward in stages, with an indicative programme applied below:

Stage 1:	Undertake preparatory works identified at paragraph 3.10	July – December 2023
	Prepare tender documents	July – December 2023
Stage 2	Tender works contract	January – June 2024
	Apply for relevant permissions	January – June 2024
Stage 3	Deliver de-silting works, including mobilisation	July 2024 – December 2024 (estimate, subject to tender and ecological assessments)

#### Stage 1 - Delivery

3.19 Officers recommend that delivery of stage 1 is achieved through a one-off variation to idverde's contract for £63k to undertake the preparatory works identified at paragraph 3.10 and to prepare the technical specifications and contract documents for tender. idverde have the local knowledge to be able to oversee these works, and access to the relevant technical expertise through their supply chain. Additionally, delivering these works in advance to tendering the works package will support de-risking the dredging methodology and provide greater certainty about the extent of the required works to complete the desilting exercise.

3.20 The cost of £63k is within the estimated budget for this the preparatory works submitted as part of the Early Contractor Involvement report.

## Stage 2 - Procurement Strategy

3.21 The estimated contract value for the dredging works at the Kelsey Lakes is £1.857m, which can be separated out as:

### **Kelsey Lakes: works estimates**

	<b>£</b>
Pre-commencement works	15,550
Site works	181,000
Enabling works	171,423
Desilting of Silt Trap	105,450
Desilting of Upper Lake	1,010,786
Desilting of Lower Lake	199,901
Contingency	172,890
	<u>1,857,000</u>

3.22 The other associated costs for this procurement are the £63k for preparatory works identified at paragraph 3.10 and the preparation of tender documents for this contract.

3.23 The proposed contract period will be dependent on the programme submitted by the winning tenderer, but the Early Contractor Involvement report suggested that works are likely to have a duration of 3 – 4 months onsite.

3.24 An open tender will be advertised with a Contracts Finder Notice published or a suitable framework will be used, and the process will be delivered in accordance with the Council's Contract Procedure Rules. Tenders will be evaluated based on a 60:40 split of price and quality respectively and evaluated based on the Most Economically Advantageous Tender (MEAT). Officers intend to use a suitable model form contract for works, as amended for the benefit of the Council.

3.25 It is recommended that authority to award this contract is delegated to the Director of Environment & Public Protection in consultation with the Portfolio Holder for Sustainability, Green Services and Open Spaces to avoid delay to the delivery of these works, noting that this decision would be subject to call-in.

## **Project Governance and Delivery**

3.26 An additional Project Manager post is required to manage this project through to completion, recognising that the resources in the Carbon Management & Greenspace division are already fully committed. This project will require close supervision and a proactive approach to stakeholder and public communications given the level of disruption delivery is likely to cause.

3.27 It is therefore recommended that a budget of £80k is allocated from the capital programme to fund a 15-month fixed term Project Manager post (grade BR13) to oversee the procurement and delivery of the desilting of Kelsey Lakes.

3.28 A project board will be established to oversee delivery of the project, including representatives from Carbon Management & Greenspace, Procurement, Legal, Finance and Communications. The board will consider options for ensuring these works do not disrupt the delivery of the replacement footbridge in Kelsey Park (**ES20224**) and where possible align programmes, although it should be noted that it is anticipated that the bridge will be installed prior to the dredging works commencing on site.

## Other waterbodies: Next Steps

- 3.29 A desilting project is planned for the section of the Croydon Canal that runs through Betts Park (Crystal Palace & Anerley) to remove the silt from this waterbody; this will include pumping the water out of this section of the canal, removing an estimated volume of 350-400m<sup>3</sup> of silt, leaf debris and any other waste from the Canal and transporting it to a small compound area at Betts Park where it can be deposited for reuse. This work is due to be undertaken over a period of 3-4 weeks in the summer (with the exact dates dependent on ground conditions) at a cost of £17.5k. This work is being funded from the increased revenue budget (Parks Infrastructure Fund) agreed for parks and greenspace in the 2023/24 budget (**FSD23003**)
- 3.30 Officers are also working with environmental charity Thames 21 on a grant funded project to desilt Glassmill Pond (Shortlands & Park Langley). The estimated value of the project is £209k and is being grant funded by the Environment Agency's Water Environment Improvement Fund (WEIF). In addition to desilting the pond, the project also aims to restore the River Ravensbourne's natural processes for sediment transport to improve fish passage and create new wildlife habitat for riverine species.

## 4. TRANSFORMATION/POLICY IMPLICATIONS

- 4.1 The desilting projects at Kelsey Lakes, Croydon Canal and Glassmill Pond supports the Council's Corporate Strategy: Making Bromley Even Better, specifically in relation to Ambition 4: For residents to live responsibly and prosper in a safe, clean, and green environment great for today and a sustainable future. It supports our objectives for a clean and green environment.
- 4.2 An improvement plan for Kelsey Park is an Action Point under Strategic Objective 2 within the Council's *Open Space Strategy 2021-2031*, through which it aims to develop proposals for the park to reflect its uniqueness, history, and horticulture.
- 4.3 The delivery of a project to improve Glassmill Pond meets a specific action under Strategic Objective 2 of the *Open Space Strategy 2021 – 2031* to develop an improvement scheme for the Glassmill Lane Reservoir.

## 5. FINANCIAL IMPLICATIONS

- 5.1 The total cost of this contract is estimated at £1.857m. This will be funded from the capital programme – the addition of this project was approved by the Executive as part of Q3 monitoring at its January 2023 meeting.
- 5.2 The total approved budget in the capital programme is £2.000m. There is therefore sufficient budget within the capital programme to meet the cost of this contract and any contingency required, and so there should be no impact to the revenue budget from this contract award.

## 6. LEGAL IMPLICATIONS

- 6.1 This report seeks the Executive to increase the contract value of Idverde's contract in so far as:
- members are asked to agree to a variation to idverde's contract at a one-off value of £63k to undertake the survey work identified at paragraph 3.10 and prepare the technical specifications for the tender of a works contractor and;
  - to approve a one-off variation to idverde's contract of £17.5k for 2023/24 to fund the desilting project identified at paragraph 3.29.

- 6.2 Regulation 72 of the PCR 2015 provides for “Modifications of contracts during their term...where all the following conditions are fulfilled:
- i. the need for the modifications has been brought about by circumstances which a diligent contracting authority could not have foreseen.
  - ii. the modification does not alter the overall nature of the contract.
  - iii. any increase in price does not exceed 50% of the value of the original contract or framework agreement.
- 6.3 This report also seeks Executive Approval to spend approximately £1,857,000 on works in and around the Kelsey Lakes. Where the legislation applies, contracting authorities must, in general, meet their contractual obligations for goods, works and services by means of an advertised competitive contract award by means of an advertised competitive process based on objective, relevant and proportionate criteria.
- 6.4 The Council has both an implied and a specific legal power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.
- 6.5 Under the Public Contract Regulations 2015 (Regulations) the procurement of these services is a public contract within the meaning of the Regulations. As the estimated value exceeds the relevant threshold under the Regulations the Council is required to carry out a fully compliant Procurement exercise. A standstill period following awards will need to be carried out under the Regulations
- 6.6 Under the Council’s Contract Procedure Rules (CPR 16.7) the award of contracts which exceed in total £1M must be agreed by the Chief Officer, the Assistant Director Governance & Contracts, Director of Finance, Director of Corporate Services, the Portfolio Holder and approved by the Executive using this report.
- 6.7 A Riparian Owner describes anyone who owns a property where there is a watercourse within or adjacent to the boundaries of their property and they benefit from certain common law rights in respect of watercourses dependant on whether the watercourse is natural or artificial, whether that be surface water or underground water, or it flows through a defined channel.
- 6.8 Where there is a natural watercourse that flows through a defined channel, the “riparian owner’s rights include the right to receive the water in the watercourse, without sensible alteration in its quality or quantity (*Young v Banker Distillery Co [1893] AC 691*).
- 6.9 This means a discharge by an upstream riparian owner that pollutes water and significantly changes its quality may be a breach of the rights of the downstream riparian owners who may be able to bring an action in the form of a claim for nuisance, negligence, trespass, or under the principles of *Rylands v Fletcher [1868] UKHL 1*. However, this is a very complex area of law, and it is by no means certain any claim would be successful.
- 6.10 There is no statutory duty to Dredge or Desilt. Officers have been and will be taking advice from experts in their field.
- 6.11 Environmental Permitting Regulations 2010 (regulate Dredging and the removal of silt). They identify a number of flood risk activities that require a permit, and such activities are unlawful if they are carried out without a permit.
- 6.12 However, there are four exemptions that may not require a permit, providing they are registered.

- If it falls within para 21-24 of Part 4 of Sch 3 of the Regulations
- If it meets qualifying conditions relating to location, design and operation set out in para 1 of Part 4 of Sch 3 of the Regulations
- That is, registered with the Environment Agency by the operator (that is, the person responsible for the works)
- The specific conditions of the exemptions are met

6.13 LBB and idverde will need to work with the Environment Agency in consideration of the proposals in this document.

## **7. PROCUREMENT IMPLICATIONS**

7.1 This report seeks to vary the Council's contract with idverde:

- at a one-off value of £63k to undertake the survey work and prepare technical specifications for survey work specifications.
- At further one-off value of £17.5k for the de-silting project at paragraph 3.29.

7.2 This was originally procured as an above-threshold contract following a competitive tendering process. The variations stated above can be completed in compliance with Regulation 72 of the Public Contracts Regulations 2015.

7.3 The Council's requirements for authorising a variation are covered in CPR 23.7 and 13.1. Variations of this value would normally fall under the Approval of the Chief Officer, however the cumulative value of variations to date require these to be Approved by the Executive with the Agreement of the Assistant Director Governance & Contracts, the Director of Corporate Services, and the Director of Finance.

7.4 Following Approval, the variations must be applied via a suitable Change Control Notice, or similar, agreed with the Provider.

7.5 Further, this report seeks to proceed to procurement for a works contractor to deliver the project at a total value of £1.857m.

7.6 The Council's specific requirements for authorising proceeding to procurement are covered in 1.3 of the Contract Procedure Rules with the need to obtain the formal Approval of the Executive Committee following the Agreement of the Portfolio Holder, the Chief Officer, Assistant Director Governance & Contracts, the Director of Corporate Services, and the Director of Finance for a procurement of this value.

7.7 Delegated authority is requested to award the contract. The Council's requirements for authorising an award of contract are covered in CPR 16. Normally, awarding a contract of this value would require the Approval of the Executive following Agreement by the Portfolio Holder, the Chief Officer, the Assistant Director Governance & Contracts, the Director of Corporate Services, and the Director of Finance.

7.8 In accordance with CPR 2.1.2, Officers must take all necessary professional advice.

7.9 The actions identified in this report are provided for within the Council's Contract Procedure Rules, and the proposed actions can be completed in compliance with their content.

## 8. CARBON REDUCTION/SOCIAL VALUE IMPLICATIONS

- 8.1 Kelsey Park is a formal public park within Beckenham that historically formed part of the Kelsey Manor Estate. It is a Site of Importance for Nature Conservation (SINC) along with being located within both a Locally Designated Site ('River Beck') and adjacent to the Manor Way Conservation Area. The methodology of any works will be expected to give due weight to the Park's value for biodiversity and ensure that any birds or bats are not disturbed during the nesting/breeding season or any on site activity.
- 8.2 Any onsite work will also be expected to ensure that it does not cause any detrimental effects downstream of the lakes including to wildlife and to flooding risk.

## 9 IMPACT ON HEALTH AND WELLBEING

- 9.1 The proactive management of the Kelsey Park Lake and Croydon Canal as outlined by this paper is envisaged to improve lake water quality and health by decreasing the amount of stagnation. This in turn will produce other associated benefits for biodiversity including fish, plant, and birdlife.
- 9.2 An improved natural environment as brought about by the proposals will have associated mental and physical health benefits for the users of the relevant greenspaces.

<b>Non-Applicable Headings:</b>	Impact on Vulnerable Children and Adults, Customer Impact, Impact on the Local Economy, Property Implications; Ward Councillor Views.
Background Documents: (Access via Contact Officer)	<a href="#">FSD23001 CAPITAL STRATEGY 2023/24 TO 2026/27 &amp; Q3 CAPITAL PROGRAMME MONITORING</a>  <a href="#">FSD23003 Draft 2023/24 Budget and Update on Council's Financial Strategy 2024/25 – 2026/27.</a>  <a href="#">ES20224 Kelsey Park Replacement Bridges Options Appraisal.</a>