

**Cabinet Member delegated decision**

**Decision Due:** 27 July 2015

**Report title:** The tree at Durning Library

**Wards:** Princes Ward

**Report Authorised by:** Strategic Director Commissioning: Helen Charlesworth-May

**Portfolio:** Cabinet Member for Neighbourhoods, Councillor Jane Edbrooke

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**Report summary**

This report follows a High Court Order preventing removal of a *'tree of heaven'* located at the rear of the Durning library until the council has fully considered the impact of the trees removal on the Kennington Conservation Area. As a consequence of public consultation the council has also been requested to consider the benefits of the tree in respect to health, air quality, biodiversity, and to overall quality of life before determining any decision that may result in the tree being removed.

Following consideration of all of the evidence, research and community feedback this report sets out the reasons for the council to undertake the controlled removal of the tree of heaven located at the rear of the Durning Library. Alternative options should the tree be retained are set out in section 6 of this report.

**Finance summary**

The Council has earmarked £836,000 of capital investment for Durning Library to cover the cost of structural improvements, essential health and safety works, and to carry out feasibility studies into alternative income streams given the proposal to remove £175,000 of service revenue. Since 2013 the council has spent £25,412 in survey work, consultation and legal costs associated with this matter.

**Recommendations**

After reflecting on the responses received from interested parties, the Cabinet Member confirms:

- (1) The controlled removal of the *'tree of heaven'* be carried out no sooner than 4 August 2015.

(2) In addition to the 2 cherry trees already planted, the Council will work with the community and Ward Councillors to plant a further 2-3 new trees in replacement and will continue to encourage planting in the area.

## **1. Context and background**

- 1.1 The Durning Library is a Grade II listed building, which provides a major contribution to the Kennington Conservation Area. The building provides a library service for those who live, work and study in Lambeth. To address risk and prior to investing public funds in the building the decision to undertake the controlled removal of the *'tree of heaven'* located at the Durning Library was put to the Council's Cabinet on 22 October 2012.
- 1.2 A High Court Order was served preventing the controlled removal until a further review was undertaken on the impact of the trees removal in relation to the Kennington Conservation Area. As a consequence further public consultation was undertaken between the 25 November 2014 to 23 February 2015. The council has also been requested to consider the benefits of the tree in respect to health, air quality, biodiversity and overall quality of life before determining any decision that may result in the tree being removed. Opinions in the local community are divided on this matter.
- 1.3 The Council has set aside £836,000 of capital investment for the Durning Library. A proportion of this allocation has been used for required refurbishment works, health and safety and access improvements and options appraisal costs, with £670,000 of this allocation remaining. Whilst an options appraisal has recently been undertaken for this planned investment no major investment from this budget has been undertaken until a final decision on the tree has been reached and implemented. In making this funding available the council would need to be assured that any investment is made with minimum risk.

## **2. The Durning Library Building**

- 2.1 Durning Library was built in 1889. It was designed by the architect Sidney R. J. Smith, the architect of several local libraries as well as of the Tate Gallery at Millbank (now Tate Britain). The building is a Grade II listed building with a distinctive Victorian design with an arcaded loggia tower in the Gothic Revival style with North Italian and Flemish attributes.
- 2.2 The building is tall and narrow consisting of 3 storeys, an attic and basement; 2 bays at the right and a tower bay, of 4 storeys and basement under a tall pyramidal roof at left. Fareham red brick with dressings of different stones. Very steeply pitched slated roof with tall chimneys. An elaborate facade with a mixture of Gothic, Tudor and Renaissance motifs. Projecting open arcaded ground floor with balustrade and set back left and central entrances. Tile and terra-cotta decoration above arcade.
- 2.3 Second floor oriel on an elaborate corbel has a highly decorated gable above, and a griffin rests on a corbelled bracket below. The rear part of the building is over the ground floor only and is of solid London Stock brick construction with large timber framed single glazed casement windows. The roof to the rear is predominantly pitched and hipped in three sections, each with glazed lantern lights, slate coverings and metal rainwater

goods, parapet walls are to the edges with lead flashings. The rear fire exit leads out onto the residential flats behind the building.

### **3. The Lambert Smith Hampton report**

3.1 Lambert Smith Hampton (an independent agency) were commissioned in August 2014 to undertake an assessment of the tree in compliance with the High Court Order.

3.2 The Lambert Smith Hampton report includes 3 assessments - heritage, condition of the Durning Library building and arboricultural management. A full copy of the Lambert Smith Hampton report can be found at appendix 1, which is summarised below:

#### 3.3 Heritage Assessment

- The tree is not considered to make a contribution to the heritage significance of the conservation area as a whole, beyond the general amenity value associated with most trees.
- The tree does not contribute positively to the special interest of Durning Library, a Grade II listed building.
- The removal of the tree would sustain the heritage significance of the conservation area as a whole and that of the listed building. Accordingly, the character and appearance of the conservation area as a whole would be preserved as would the special interest of the listed building.

#### 3.4 The condition of Durning Library

- There is no sign of structural damage to the library structure but damage may have occurred to the foundations which cannot be seen.
- The boundary wall has been significantly damaged by the tree but visible damage has not worsened since the LSH inspection in June 2012.
- There is a risk of subsidence to the library due to likely damage caused to drains by the tree.
- Ground levels have increased due to the growth of the tree, breaching the damp proof course to the library which could be the cause of high damp readings internally.
- Leaves and branches falling from the tree will block gutters and is likely to be a contributing cause of water leaks into the library. Prevention work to the gutters is being undertaken.
- The flat sheds close to the tree have been damaged and rebuilding is required to ensure their stability.

#### 3.5 Arboricultural management and further investigation report

- The condition of the tree has not deteriorated since the last inspection in June 2012 and it remains in fair health.
- The tree trunk still has considerable potential for growth.

- The tree is a problematic species for the site and its location is contrary to best building design principles.
- The tree has caused the raised ground levels against the boundary, and a root runs along the foundations of the library. To remove this root would destabilise the tree.
- Younger trees in the vicinity suggest a network of sucker roots from the subject tree.
- The tree is considered as unsuitable for its setting.

3.6 The conclusion of the Lambert Smith Hampton report is also summarised below:

- The subject tree will continue to grow and the trunk has considerable potential for growth increasing the risk of further damage and or potential collapse of the pram store and boundary wall.
- Further growth is likely to increase the pressure from the roots to the library foundations and drains with the potential to cause damage.
- The size and proximity of the tree to the library will result in leaves and branches falling on the roof blocking gutters and potentially causing strike damage to the slate covering, resulting in an increased risk from water ingress and a corresponding increase in maintenance costs.
- The continued suckering of the root system both throughout the library and adjoining properties is likely to continue to cause damage and disruption to areas of hard standing and other structures within the locality.
- Options to preserve and manage the tree whilst reducing the root system to remedy and prevent further damage to the building is unsustainable and likely to adversely affect the health and stability of the tree.
- The continued presence of the tree will place the library building at risk of damage due to the continuing growth of the trunk, canopy and root system and the accumulation of leaf and branch debris on the roof and gutters.
- In consideration of the facts and advice received to date and our own review it is our recommendation that the removal of the tree is put to the councils Cabinet for consideration.
- An application for consent to remove the tree would not need to be made to the conservation officer.
- The council will need to demonstrate a robust decision making process should the Cabinet look to remove the tree.

#### **4. Public consultation 25 November 2014 – 23 February 2015**

4.1 A period of public consultation (25 November 2014 until 23 February 2015) was entered into to seek feedback on the Lambert Smith Hampton report and prior to the council determining a recommendation. A report from the public consultation period can be found at appendix 2. The following methods were used to gather the views of local residents:

- Correspondence was entered into with those who opposed and supported the tree's removal alerting them to the consultation period.
- Locally elected councillors and the Member of Parliament were advised of the public consultation period.

- Copies of all relevant documentation, including a questionnaire were made available on the council's consultation website. Paper copies were also made available at the Durning Library.
- A letter box drop to 1000 residents in the streets and estate around Durning Library was made.
- A public consultation meeting was advertised and held in Durning library.
- Using the council's data base of local community groups emails were dispatched advising them of the consultation period and how to make a contribution.
- A dedicated email address and freepost address for written comments was provided.
- A freephone telephone number was provided for those requesting assistance to complete the feedback form or request the information in other formats (audio or Braille) or community languages.

### Summary of consultation feedback

54 completed questionnaires	43 in support of removing the tree	10 in support of retaining the tree
6 email responses	2 in support of removing the tree	4 in support of retaining the tree
1 written response	1 in support of removing the tree	N/A

- 4.2 A total of 24 residents attended the public meeting and contributed to the discussion. The minutes of these meetings can be found in the consultation report. A petition was received signed by 122 local residents requesting *"council officials take into account the wellbeing of residents when making decisions on their behalf."*
- 4.3 A privately commissioned report was provided to the council on 9<sup>th</sup> April 2015. This report was commissioned by Ms K McClellan (24<sup>th</sup> March 2015) and undertaken by Sharon Hosegood Associates. Given the professional status of the report the council has considered this report alongside all other reports and input obtained during the public consultation period.
- 4.4 Those in favour of controlled removal point to the impact and risk the tree is having on the long term sustainability of the library building and the library service itself. Whilst those in favour of keeping the tree point to the contribution the tree makes to the local Kennington conservation area, its amenity value and the health, wellbeing, environmental and biodiversity benefits the tree brings.
- 4.5 As a consequence of the public consultation period an additional line of investigation was opened up concerning the potential health, wellbeing and biodiversity benefits of the tree. In compiling this information officers have consulted with The Forestry Commission and Kew Gardens, as well as reflecting on the privately commissioned report undertaken by Sharon Hosegood Associates.

### Ward Councillors

4.6 Local ward councillors in Princes Ward, where the tree is located, have been engaged in this matter prior to the start of the public consultation period.

## 5. The tree of heaven

5.1 The tree of heaven (*Ailanthus altissima*) at the rear of Durning Library is a self seeded specimen, which is not a native species of the United Kingdom and originates from China. In Europe the tree of heaven is regarded as one of the most serious and worst invasive specimen of trees, included in the top 25 alien invasive plants listed by the European Plant Protection Organisation as posing an important threat to plant health, environment and biodiversity.

### Assessment of species

5.2 Sara Redstone, Plant Health Officer at Kew Gardens advises gardeners, “*to be vigilant and look out for sprouts and self sowing seeds in your area and remove them.*” Using a strategy called allelopathy, the tree of heaven leaks toxins into the ground which prevent the germination and establishment of other species in the vicinity. It is very tolerant to pollution and soil disturbance and flourishes in urban habitats. This species of tree can also be a fall hazard and its root system can damage pavements, archaeological remains, buildings and walls.

5.3 The Forestry Commission classify the tree of heaven as a very rapid growing tree, spreading extensively by suckers and whilst visually attractive with its large leaves and tropical appearance, its other attributes are not desirable. Its spread across London along rail and roadways is becoming an increasing nuisance.

5.4 Whilst used in traditional Chinese medicine, the foliage has a foul smell which can cause headaches, nausea, rhinitis and conjunctivitis. The pollen of the tree can cause hay fever and those tasked with maintaining this species face the risk of vesicular eruption on their hands and face, if not protected. The tree has been planted widely across Europe, North America and Australia where it has become invasive and is classed as a noxious weed.

5.5 Flowering and pollination occurs in late spring and although disagreeable to humans, the strong odour of flowers attracts honeybees, beetles, and other insects. The fruit is called samara (a winged fruit). A single tree can produce up to 325,000 seeds per year. It also reproduces vegetatively, spreading profusely from suckers which may emerge up to 15m from the nearest existing stem. The council over the past year has had to take action to remove suckers sprouting from the tree.

### The tree of heaven at Durning Library

5.6 The tree of heaven at Durning Library is a mature specimen of 70-80 years old, close to 20 metres tall and is located to the rear South East corner of the library site, against the boundary wall circa 2 metres from the library building. The tree has up to 30 years left to fully mature to the end of its average life expectancy. The tree is considered unsuitable for its setting and problematic for this particular site. Its existence is contrary to the design principle of Right Plant: Right Place endorsed in the London Plan.

- 5.7 It is twin-stemmed with a co-dominant decurrent growth pattern. The two stems touch and grow together in a helical pattern in an easterly direction. This represents a weak union in the trees structure and means ingrown bark does not have the structural strength of wood and the branch union risks becoming very weak.
- 5.8 Younger trees in the vicinity suggest a network of sucker roots from the subject tree and although given the mature status of the tree its trunk still has considerable potential for growth. The tree has caused raised ground levels against the boundary, and the trial pit showed a root running along the foundations of the library. To remove this root would destabilise the tree. In addition, root removal of a tree of this type promotes further suckering as the species has a propensity to send out shallow roots that sucker and can potentially disrupt infrastructure at greater distances.
- 5.9 There is currently no known structural damage to the library building caused directly by the tree, although there is damage to the boundary wall and a structure outside of the main library building. It is likely that the rain water pipe close to the tree does not connect into the drain properly and that the drain serving the rainwater pipe is damaged. This poses a risk to the foundations of the library and wall, as material can be washed away from under the foundations. The trees crown overhangs the library building and the adjoining rear property.
- 5.10 There are no trees to the front of the library on either side of the road. The nearest tree on the opposite side of the road is approximately 27m away from the front of the library. The next street tree on the library side is 50m away to the north-east. Further east there is sporadic tree planting of semi-mature London planes. Kennington Road is flanked by mature London plane trees. Whilst the tree of heaven at Durning Library is not isolated, there are fewer trees in this section of Kennington Lane than elsewhere locally. The Sharon Hosegood Associates report has identified a number of younger trees of heaven in a group on Black Prince Road.

#### Financial value of the tree

- 5.11 The London Tree Officers Association (LTOA) use the Capital Asset Value for Amenity Trees (CAVAT) system, which provides a method for managing trees as public assets rather than liabilities by creating a formula from multiple factors for valuing trees in monetary terms.
- 5.12 CAVAT is designed to be a 'strategic tool' and to aid decision-making where the value of a tree needs to be expressed in monetary terms. The system is used to secure compensation claims against private companies that have damaged a tree, or used to value individual trees when considering their removal as part of development of public spaces or road improvements.
- 5.13 According to the Treework Environmental Practice report a CAVAT financial value of £53,356 has been estimated. As previously referenced in this report £670,000 of capital investment for the Durning Library building has been set aside to safeguard this Grade II listed building, which offsets the CAVAT value. The future maintenance costs of the tree

over the remainder of the trees expected lifespan are estimated at £72,000, as set out in paragraph 6.4.

## Insurance

- 5.14 The council's insurance team has provided guidance on the risk posed by the tree in the event of future claims being made. A loss adjuster visited the site on 22 November 2012 to inspect damage that had been found to the single storey toilet extension on the east side of the building. A property damage claim was completed and investigations were carried out into the cause of the damage. It was found that the damage to the toilet extension was caused by ivy roots from a neighbouring property.
- 5.15 The September 2014 tree report highlights the risk that insurance cover may not apply in the future should the tree remain in place. The risk lies in that where damage or a potential problem has been found which could have been minimised or prevented by earlier intervention, then these are the instances whereby claims may not be upheld by the insurers if they were deemed to have been avoidable. The council's insurance team would expect that any professional recommendations to remove the tree are considered in full. Given the professional recommendations that have been received for the tree, there are implications on whether the insurers would uphold a claim should any damage be caused if the tree fell on the library or neighbouring properties, or if damage was caused to these properties by the roots of the tree.

## **6. The option of not removing the tree**

- 6.1 Lambeth Council has approximately 70,000 trees that it manages within its boundary, although this does not include trees on private property. Those trees which the council has responsibility for receive inspections once every 3 years. On-going management of a single tree of heaven will be particularly challenging, although chemical spraying the foliage, repeated cutting and hand pulling can be effective against young emerging root suckers.
- 6.2 Mechanical treatment of the main tree is considered worthless due to prolific sucker resprouting, with treated areas requiring to be rechecked several times a year in order to avoid new root suckers from proliferating. Management of the tree is likely to become more challenging as climate warming increases and disturbance of habitats and issues such as pollution create opportunities for this species to colonise new areas.
- 6.3 Even if controlled removal is undertaken stump treatment will need to be conducted immediately. Whilst suckers from the roots will be inevitable this method will prevent vigorous stump sprouts in the future, although there could be a risk of building subsidence if the root system is removed.
- 6.4 If the Cabinet Member is minded not to sanction the controlled removal of the tree, or if faced with further legal challenge, the council's legal team will be instructed to negotiate with the owner of the property adjacent to the tree to accept liability for any damage caused by the tree. This is in recognition of the risk that the council's insurance cover may not be upheld for any future damage claims, given the professional

recommendation to remove the tree and that the tree still has potential for growth. This would only be feasible if the neighbour wanted the tree to remain in place and was prepared to accept liability in consideration of the tree remaining in place. Inspection visits by the council's tree contractor will be required four times per year with all necessary work undertaken. Annual inspection reports of the building, drains, neighbouring wall and structures will also need to be programmed. The estimated costs for this are as follows:

Expenditure	Estimated annual cost	Estimated cost over life of tree (30 years)
Quarterly inspections	£500	£15,000
Prevention maintenance (gutter clearing etc.)	£250	£7,500
Tree maintenance and root control	£1,000	£30,000
Annual building, drains, walls and structural monitoring inspection	£650	£19,500
<b>Totals</b>	<b>£2,400</b>	<b>£72,000</b>

- 6.5 The budget will need to be factored into the annual service budget for the library service at Durning Library given this additional expenditure will be outside of the council's borough wide tree maintenance contract. This equates to 165 hours of library service time per year (based on single time staffing costs at scale 3).

## 7. Potential health related benefits

- 7.1 As a consequence of the public consultation period the council was requested to consider: "the benefits of the tree with respect to health, air quality, biodiversity, its importance in a conservation area, and to overall quality of life". Information was sought from council officers with known expertise, Kew Gardens, The Forestry Commission and additional evidence supplied by Sharon Hosegood Associates. Officers also undertook desk top research and cross referenced information obtained with known experts. The information assessed can be found at appendix 3.
- 7.2 Health and environmental benefits of trees are widely acknowledged and this report does not challenge them given it is widely accepted that the right tree in the right place contributes to reducing air pollution and helps to mitigate the impact of climate change. Also there is a growing body of evidence that supports the important role trees have in reducing the negative impacts of heat in summer through cooling and shading, reducing stress, improving mental health and creating an environment that encourages physical activity.
- 7.3 Although it must be noted that this growing body of research involves an assessment of trees in the plural sense, their general impact and the net effect of a mass of trees, rather than an individual specimen. As previously stated Lambeth Council manages 70,000 trees within the borough. Quantifying the health impact of a single specimen tree is difficult to measure given that each tree is unique in its effect and impact. The general view is that there is no wide consensus on an accepted methodology for determining the health benefits of a single tree.

- 7.4 The Sharon Hosegood Associates report places the value of ecosystem services at £554.60 and the typical amount of carbon stored in a Tree of Heaven (based on a sample of 10) is 1.67 tonnes. The council is not in a position to dispute this assessment.
- 7.5 In mitigation and in support of the general benefits provided to communities by trees when the council last considered this matter it was agreed to plant two replacement trees to help mitigate any potential negative impacts following the controlled removal of the tree of heaven at Durning Library.
- 7.6 Two cherry trees have already been planted in the locality as replacements. After reflecting on the feedback provided on this report, the council will plant a further 2 - 3 trees and will continue to encourage planting in the area. The chosen species of tree will be in compliance with the design principle of Right Plant: Right Place endorsed in the London Plan and will take the recommended species list provided by Sharon Hosegood Associates into consideration.

## **8. Conservation Area**

- 8.1 The Kennington Conservation Area is well known to elected members and council officers. The tree is not considered to make a contribution to the heritage significance of the conservation area as a whole, beyond the general amenity value (para 5.11-5.13), which will be associated with most trees.
- 8.2 More specifically the tree does not contribute positively to the special interest of Durning Library, a Grade II listed building, which makes a far greater contribution to the local conservation area. The removal of the tree would sustain the heritage significance of the conservation area as a whole and that of the listed building. Accordingly, the character and appearance of the conservation area as a whole would be preserved as would the special interest of the listed building.

## **9. Berent v Family Mosaic Housing and London Borough of Islington**

- 9.1 The Court of Appeal on Friday 13 July 2012 handed down its judgment in the matter of Berent v Family Mosaic Housing and London Borough of Islington [2012] EWCA Civ 961, and dismissed the Claimant's appeal.
- 9.2 The claim was advanced on the misapprehension that mere proximity of trees to a building equated to a reasonably foreseeable risk of damage. Both the trial judge and the Court of Appeal found that there was no 'real risk' of reasonably foreseeable damage from the adjoining trees. In this case all of the damage occurred prior to Islington Council being informed that there was damage or that the trees were implicated in that damage. Once Islington Council were presented with evidence, it felled two street trees and also allowed for a tree with a Tree Preservation Order (TPO) on the neighbouring property to be removed.
- 9.3 The trial court found that neither Islington Council nor Family Mosaic (who owned the neighbouring property) could reasonably be expected to foresee that their trees might

pose 'a real risk' of causing damage to the property until they had been notified that the property had suffered damage, and reasonable evidence had been provided.

- 9.4 This case does not change the situation for damage that occurs after tree related subsidence has been identified as the cause, or in other words when a potential risk has become a real risk. The tree at Durning Library is having an impact on the building. The Council does have a responsibility to deal with it. The Council's Risk and Insurance Team have been made aware of the situation and concur that any professional recommendations to remove the tree are considered in full.

## **10. Finance**

- 10.1 Recent maintenance requirements to prune the tree and remove dead wood cost £450. This cost is not met by a budget within the tree department but is covered by the revenue budget for Durning Library. Ongoing monitoring and maintenance costs related to the tree will need to be covered by the library's revenue budget. In addition, any removal costs should the decision be made to remove the tree, would be met by the capital allocation assigned to Durning Library. Removal costs are not expected to exceed £1000.
- 10.2 Durning Library also has a capital allocation assigned to the building of £836,000, as noted earlier in this report. A proportion of this capital budget has been used to address health and safety repairs, a programme of refurbishment works to both the interior and exterior of the building, and works to improve access. In addition, the options appraisal cost has been funded from this budget. £670,000 of the allocation remains and could also be used for future redevelopment of the building in line with the Council's formal approvals process. There is thus ample capital funding for removal of the tree, which would be appropriate to use as it would be for the purpose of extending the building's life and thus enhancing it.
- 10.3 During the consultation period information was provided on the financial value of the tree which was assessed by an independent arboriculturist at £53,356 according to the CAVAT valuation system (Capital Asset Value for Amenity Trees), as noted in section 5.13. No tree value was ascribed by the professional consultants in the September 2014 tree report, but the importance of the right plant being in the right place was highlighted, and that a large tree does not of itself equate to significant value.
- 10.4 From the 30 January to the 24 April 2015 the council carried out a public consultation on the future of cultural services in Lambeth, which concerned the future provision of parks, open spaces, libraries and archives, sports and physical activities and the arts. The proposals include significant changes to the way cultural services in Lambeth are provided and this may mean the council no longer providing a service.
- 10.5 It is proposed that access to a Lambeth Community Library Fund will replace the council's revenue budget for service provision at Durning Library. This approach may also include the building being transferred to an independent charitable trust, community trust or social enterprise under the council's asset transfer policy. Following the close of public consultation, the council is now reviewing and considering all the comments and

suggestions received. It is anticipated that a report will be taken to Cabinet later in the summer where decisions about the future of library services, including Durning Library, will be made. Given the challenging climate for public sector investment and the level of capital investment allocated to Durning Library, there will be a need to achieve value for money and address any potential risks for this investment.

## 11. Summary of reports and conclusions

11.1 As referenced throughout this report the Council has reviewed and considered a number of independent assessments on the tree, including privately commissioned reports submitted in response to the public consultation. This information included:

- The Lambert Smith Hampton report – with assessments on:
  - Heritage and conservation area
  - Condition of the Durning Library building
  - Arboricultural management.
- CET Safehouse Ltd. root investigation report November 2012
- Neville Fay’s arboricultural report October 2012
- Sharon Hosegood Associates arboricultural report March 2015

11.2 As noted in section 7 we have also considered a range of additional information on the health and environmental benefits of the tree. The feedback from the public consultation, the reports and all other information have informed the recommendations set out in this report.

11.3 Summarised below are the key issues and conclusions drawn from the information reviewed:

Issue	Conclusions
Ecosystem services: <ul style="list-style-type: none"> <li>• Storm water interception</li> <li>• Air pollutant removal</li> <li>• Carbon dioxide reduction and storage</li> <li>• Home to wildlife and insects</li> </ul>	<ul style="list-style-type: none"> <li>• The Council acknowledges the ecosystem services provided by the tree.</li> <li>• Technical officers and independent arboriculturists have identified a structural weakness in the tree.</li> <li>• To mitigate the impact of tree removal, replacement trees have been planted in the local vicinity. The Council will consider planting more trees in the nearby area to further mitigate against tree loss.</li> </ul>
Health benefits: <ul style="list-style-type: none"> <li>• Cooling and shading</li> <li>• Reduce stress</li> <li>• Improve mental health</li> <li>• Encourage physical activity</li> </ul>	<ul style="list-style-type: none"> <li>• The Council acknowledges the health benefits provided by trees.</li> <li>• No reliable methodology for determining single tree health benefits has been identified,</li> <li>• The tree is in a confined location with limited access to the wider public.</li> </ul>
Amenity value: <ul style="list-style-type: none"> <li>• Public amenity</li> <li>• Size and form</li> <li>• Life expectancy</li> <li>• Suitability to the area</li> </ul>	<ul style="list-style-type: none"> <li>• The extent to which the tree is visible to the public is limited.</li> <li>• The tree is confined within a restricted location at the rear of the library building and is seen by a small number of people in the surrounding estate and neighbouring</li> </ul>

	<p>properties.</p> <ul style="list-style-type: none"> <li>The tree is a self-seeded specimen considered unsuitable for its setting.</li> </ul>
<p>Financial value of tree:</p> <ul style="list-style-type: none"> <li>CAVAT assessment of £53,356</li> </ul>	<ul style="list-style-type: none"> <li>The library service annual revenue budget is £175,000.</li> <li>£670,000 in capital is allocated to the building.</li> <li>Durning Library is a grade II listed heritage building - any structural works to repair tree related damage would need to comply with conservation policies, likely to have higher cost implications. There is a risk that insurance claims may not be upheld.</li> <li>Monitoring and maintenance costs should the tree remain would need to be met from the library service budget.</li> </ul>
<p>Relevant policy guidance and legislation:</p> <ul style="list-style-type: none"> <li>The London Plan</li> <li>Lambeth Local Plan</li> <li>Conservation Area Legislation</li> </ul>	<ul style="list-style-type: none"> <li>The London Plan supports appropriate tree retention in accordance with the Right Plant: Right Place principle.</li> <li>The tree is located in a conservation area, however removal of the tree would sustain the heritage significance of the conservation area as a whole and that of the listed library building.</li> <li>The tree is considered unsuitable for its setting, in a severely restricted location close to the library building.</li> <li>To mitigate the impact of tree removal, replacement trees have been planted in the local vicinity. The Council will consider planting more trees in the nearby area to further mitigate against tree loss.</li> </ul>
<p>Structural damage</p>	<ul style="list-style-type: none"> <li>The boundary wall and pram sheds have been damaged by pressure from the tree trunk and roots.</li> <li>Damage may have occurred to the foundations which cannot be seen. Potential damage has occurred to the rainwater pipe and drain.</li> <li>Tree debris on the roof has contributed to water ingress into the building.</li> <li>No structural damage has been found to the library building; however the roots from this tree species are invasive and known to cause damage to foundations and sewers, and the tree still has potential for growth.</li> <li>Roots can spread up to 15m from the nearest existing stem.</li> <li>Root management would be challenging and would affect the structural stability and health of the tree.</li> </ul>

## 12. Legal and Democracy

12.1 The tree which is subject of this report is located within the rear grounds of the Durning Library. The Durning Library is a listed Grade II building. This grading imposes an obligation upon the Council to protect the building. The tree is owned by the Council and is not subject to a tree preservation order. The tree and the library are located in a conservation area. Having consulted with residents and community groups and obtained reports from an arboriculturist and a surveyor in October 2012 Cabinet made a decision that the tree should be felled in order to prevent any damage to the library and to avoid the costs of maintenance it would incur if the tree were to remain in place. A complaint was made to the Local Government Ombudsman so it was decided to delay the felling of

the tree until the Ombudsman made a decision in relation to the complaint. On 10 October 2013 the Local Government Ombudsman decided that the decision to fell the tree was one the Council was entitled to take and could not find any fault in the process of reaching the decision. Therefore the Ombudsman did not uphold the complaint. On 26 November 2013 a resident applied for Judicial Review of the decision to fell the tree. The High Court on 27 November 2013 made an interim order restraining the Council from felling the tree until the application for Judicial Review was determined. On 16 June 2014 His Honour Judge Sycamore concluded that the Council in reaching the decision to fell the tree had failed to take into account a material consideration, the fact that the tree was located in a conservation area. Judge Sycamore stated “Had the members of the Defendant’s cabinet weighed the impact that the loss of the tree would have on the character of the conservation area as a whole there is a real possibility that a different conclusion would have been reached”. The decision to fell the tree on 22 October 2012 was quashed. It must be noted the purpose of Judicial Review is to examine that decisions are reached as a result of due process. As with the complaint to the Ombudsman the High Court did not make any finding as to the merits of felling the tree.

- 12.2 This proposed key decision was entered in the Forward Plan on 12 June 2015 and the necessary 28 clear days notice has been given. In addition, the Council’s Constitution requires the report to be published on the website for five clear days before the proposed decision is approved by the Cabinet Member. Any representations received during this period must be considered by the decision-maker before the decision is taken. A further period of five clear days - the call-in period – must then elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

### 13. Consultation and co-production

- 13.1 As noted above in section 4, a period of public consultation on the tree at Durning Library was carried out between the 25 November 2014 and 23 February 2015. In total 85 people took part in the consultation. 61 respondents submitted their views via the questionnaire, a written response or email. Of these 61 respondents 75% were in favour of removing the tree, 23% were in favour of retaining the tree, and 2% were undecided. A public consultation meeting was held on 14 January 2015 and a total of 24 people attended.

- 13.2 The responses received are categorised as follows:

Type of response	Number of respondents:	In support of removing the tree:	In support of retaining the tree:	Undecided
Questionnaire respondents	54	43	10	1
Email respondents	6	2	4	0
Written response	1	1	0	0
<b>Total</b>	<b>61</b>	46 (75%)	14 (23%)	1 (2%)
Attendees at council public	24			

consultation meeting				
<b>Number of respondents:</b>	<b>85</b>			

- 13.3 A petition of 122 signatures was received. The petition expressed opposition to any proposal by the council to cut down the tree and requested that council officials take into account the wellbeing of residents when making decisions on their behalf. The tree was also discussed at a community-led public meeting held by the Kennington Oval and Vauxhall (KOV) Forum where residents both opposed to the tree’s removal and in favour of removal presented their views.
- 13.4 A range of views and comments were provided by respondents to the consultation (see appendix 2). These views were able to be categorised into two distinct areas – those in favour of removal and those against removal of the tree. One respondent was undecided.
- 13.5 As noted above, during the course of the consultation we received a request to consider *“the benefits of the tree with respect to health, air quality, biodiversity, its importance in a conservation area, and to overall quality of life.”*
- 13.6 Following this request the commissioning team sought advice from council officers with known expertise, external professional advisors, relevant professional organisations and from available research online. The conclusions and feedback drawn from this information review is further detailed in section 7 of this report and in appendix 3.

#### 14. Risk management

- 14.1 In reviewing the September 2014 tree report from Lambert Smith Hampton (which considered the risks and liabilities to the Council in the medium and long term posed by the tree) and looking at the additional information and feedback considered as part of the consultation, a summary of risks is outlined as follows:

#	Risk Description	Rating
1	Risk of subsidence to the library building due to potential damage to drains and rainwater pipes caused by the tree.	High
2	Risk that the root system of the tree could cause structural damage to the library building.	Medium
3	Risk of claims from neighbours due to the trespass of tree branches and roots onto neighbouring properties.	Low
4	Risk of further damage to the boundary wall and pram shed as the tree still has potential for growth.	High
5	Risk of water ingress to the library building due to blocked gutters from tree debris and potential strike damage to the slate roof covering.	Medium
6	Risk that the council’s insurance cover may not be upheld in the event of a future claim.	Medium

- 14.2 It is clear that should the tree remain, steps will need to be taken to address and mitigate these risks. Despite there being no evidence of structural damage to the library building itself, there remains an unquantifiable risk that damage could have occurred, or be

occurring, to the foundations of the library that is not visible. This risk is present given the tree's proximity to the building, the characteristics of its invasive root structure, and the identification of roots alongside the foundations of the building exposed by the trial pit. There is no doubt that the tree will need to be removed at some point in the future. It is reasonable to conclude that the majority of the risks outlined above will only become more prevalent and require more stringent management and mitigating actions over time as the tree continues to grow. This has a financial implication on the council due to the monitoring and maintenance costs that will be needed if the tree remains in place.

## **15. Equalities impact assessment**

- 15.1 Due to the location of the tree and the specifically localised nature of this issue, an equalities impact assessment has not been carried out.

## **16. Community safety**

- 16.1 There are potential implications to public safety from falling branches or debris from the tree, as would apply to any other tree which is publicly accessible. However, given the location of the tree at the rear South East corner of the Durning Library site and the limited frequency of public access to this area, it is accepted that the risk of injury to the public, staff or residents in neighbouring properties is low.

## **17. Organisational implications**

- 17.1 Health and Environmental

The health and environmental benefits of the tree have been assessed by Council officers following a request by a resident during the public consultation period, as noted earlier in this report. Our assessment of the health and environmental benefits the tree provides have informed the recommendations set out in this report and this information can be found in section 7. The information sources that were assessed can be found in appendix 3.

- 17.2 Staffing and accommodation

There are no staffing and accommodation implications at this time. The visible parts of the library structure currently do not show signs of structural movement (e.g. cracking) caused by the tree. It is not known whether any damage has occurred to the foundations of the library building although the September 2014 tree report notes the risk of potential damage to the foundations and drains which can not be seen. As such it is noted that if the tree is removed and structural investigations carried out to the foundations of the building, there may be staffing and accommodation implications should remedial building works be required to repair any damage that might be found.

- 17.3 Procurement

There are no procurement implications attached to this report. The council has a borough-wide tree maintenance contract for tree maintenance works. Should the tree be

removed, specialist removal services would be procured through the Council's tree department in liaison with the parks department and property services team.

**18. Timetable for implementation**

18.1 Given the history of the tree, the high level of public interest and strength of feeling in this matter, this decision will be published on the forward plan and this report will be made available through the council's decisions webpage. Any representations received would be considered prior to a decision on the tree being taken by the Cabinet Member within the decision making timeframe.

18.2 If the recommendation set out in this report is supported the council would then instigate a process for controlled removal of the tree through the council's tree department in liaison with the parks department and property services team.

<b>Audit trail</b>				
<b>Consultation</b>				
<b>Name/Position</b>	<b>Lambeth cluster/division or partner</b>	<b>Date Sent</b>	<b>Date Received</b>	<b>Comments in para:</b>
Helen Charlesworth-May	Strategic Director Commissioning	02.06.15	09.06.15	Cleared
Adrian Smith	Commissioning Director	02.06.15	09.06.15	Cleared
John Kerridge	Associate Director Commissioning	10.04.15	29.04.15	Throughout the report
Doug Black	Delivery Lead, Conservation and Urban Design	03.06.15	10.06.15	
Susanna Barnes	Head of Service Libraries and Archives	03.06.15		
Alastair Johnstone	Lead Commissioner	30.04.15	08.05.15	Throughout the report
Donna Wiggins	Lead Commissioner	02.06.15	03.06.15	
Ian Speed Accountant, Capital	Integrated Support, Enabling	14.05.15	27.05.15	10.2
Chris Parker Risk and Insurance	Enabling: Risk and Insurance	03.06.15	03.06.15	
Tolu Fatogbe, Building Technical Services	Enabling: Business and Customer Services	03.06.15		
Martin Hastwell Legal Services	Enabling: Integrated Support	14.05.15	20.05.15	6.4 and 12.1
Henry Langford Democratic Services	Enabling: Corporate Affairs	14.05.15 02.06.15	20.05.15 02.06.15	12.2
Valerie Dinsmore Integrated Lead	Customer Engagement, Health and Wellbeing	03.06.15		
Bimpe Oki	Public Health	03.06.15	09.06.15	
Councillor Jane Edbrooke	Cabinet Member for Neighbourhoods	14.05.15	03.06.15	
Councillor Jenny Brathwaite	Cabinet Member for Environment and Sustainability	03.06.15		
Councillor Joanne Simpson	Prince's Ward Councillor	14.05.15		
Councillor David Amos	Prince's Ward Councillor	14.05.15		
Councillor Vaila McClure	Prince's Ward Councillor	14.05.15		
<b>Internal Officer Board</b>	<b>Date of meeting</b>			
Procurement Board	N/A			

<b>Report history</b>	
<b>Original discussion with Cabinet Member</b>	23.06.14
<b>Report deadline</b>	09.06.15
<b>Date final report sent</b>	N/A
<b>Report no.</b>	N/A
<b>Part II Exempt from Disclosure/confidential accompanying report?</b>	N/A
<b>Key decision report</b>	Yes
<b>Date first appeared on forward plan</b>	12.06.15
<b>Key decision reasons</b>	Community Impact
<b>Background information</b>	Cabinet Report Oct 2012 Cooperative Libraries Update Oct 2012 Neville Fay Arboricultural Report Oct 2012 High Court Judgement June 2014
<b>Appendices</b>	Appendix 1 - September 2014 Lambert Smith Hampton tree report Appendix 2 - Consultation report - tree at Durning Library (25 November 2014 to 23 February 2015) Appendix 3 – Additional Information report – tree at Durning Library Appendix 4 – Sharon Hosegood Associates Arboricultural Report 24 March 2015

**APPROVAL BY CABINET MEMBER OR OFFICER IN ACCORDANCE WITH SCHEME OF DELEGATION**

**I confirm I have consulted Finance, Legal, Democratic Services and the Procurement Board and taken account of their advice and comments in completing the report for approval:**

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Post** Marion Cable, Commissioning Officer

**I confirm I have consulted other relevant Cabinet Members including the Leader of the Council (if required), and I approve the above recommendations:**

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Post** Councillor Jane Edbrooke  
Cabinet Member for Neighbourhoods

**Any declarations of interest (or exemptions granted):**

**Issue** \_\_\_\_\_ **Interest declared** \_\_\_\_\_