



## **REGENERATION AND ENVIRONMENT SCRUTINY COMMITTEE – 1ST NOVEMBER 2017**

**SUBJECT: THE MANAGEMENT OF TREES**

**REPORT BY: CORPORATE DIRECTOR - COMMUNITIES**

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### **1. PURPOSE OF REPORT**

- 1.1 To seek the views of the Scrutiny Committee on the current 'tree management' arrangements, the formal adoption of a tree strategy and the current resources (staff and budget) linked to this function prior to a report being considered by Cabinet.

### **2. SUMMARY**

- 2.1 In December 2016, Scrutiny Committee considered an initial report on the management of trees and draft strategy. The committee were supportive of the recommendations and agreed to consider resource requirements to ascertain if the draft strategy can be delivered before progressing further. Since this initial report was considered by the Scrutiny Committee, officers have further considered the strategy as well as looking at strategies in place in other Local Authorities and have made a slight amendment to the strategy. This amendment introduces an approach whereby land is risk rated using a red, amber, green (RAG) risk rating to underpin the inspection frequencies included in the original draft. This report now sets out the position following a review of resources (both staff and budget) and seeks the views of members prior to a further report being considered by Cabinet.
- 2.2 The draft strategy, set out in Appendix One, sets out a number of policies and actions to help safeguard and enhance the vital tree-scape.

### **3. LINKS TO STRATEGY**

- 3.1 The Wellbeing of Future Generations (Wales) Act 2015 is about improving the social, economic, environmental and cultural wellbeing of Wales. It requires public bodies to think more about the long term, working with people and communities, looking to prevent problems and take a more joined up approach. This will create a Wales that we all want to live in, now and in the future. The Act puts in place seven wellbeing goals and the content of this report links into four i.e. "A Healthier Wales, a Globally Responsible Wales, a Resilient Wales and a Prosperous Wales".
- 3.2 In July 2015, Corporate Management Team approved the Local Climate Impacts Profile (LCLIP), which was undertaken by Welsh Government as part of the requirements of the Climate Change Act 2008. Recommendation eleven out of fourteen makes references to the increasing vulnerability of trees as a direct result of climate change and how more proactive and preventative work should be considered.

## 4. THE REPORT

- 4.1 There are currently circa 250,000 trees across the county borough in the care of this council. Their management is essentially 3 fold:-
1. Reactive – responding to service requests. In these cases a visit by a suitably qualified Arboricultural Officer is generally required (some on a more urgent basis and others with less urgency). The outcome of the officer's investigation may or may not result in works to the tree(s) being undertaken.
  2. Proactive – safety inspections of the tree stock (dependent upon their location), although current resources do not allow a scheduled inspection regime to operate effectively.
  3. The provision of arboricultural comments in relation to planning applications.
- 4.2 Currently there is one fully qualified Arboricultural Officer and one dedicated/trained tree maintenance team located within the Parks service. The number of service requests received can vary but these have generally increased since 2014. The service deals on average with 750 per annum (directly related to trees).
- 4.3 The increase in service requests can be largely attributed to our changing climate. Autumn and winter periods are becoming much milder and wetter, which can have an adverse effect on trees. The changes in our climate have not only resulted in limbs etc. falling from trees, but there have been situations whereby whole trees have been uprooted due to the pressure on the root system and the inability of sodden ground to anchor the roots. During Autumn/Winter 2015/16, South East Wales was affected by a number of storms that led to a "spike" in emergency call outs and inspections, which in turn delayed routine inspection works. Storms by their very nature are unpredictable and during the Autumn/Winter of 2016/17, the borough experienced a lot less than the previous year. In addition, recent observations confirm the presence of Charara (Ash Dieback), which will also have an adverse effect on the tree stock.
- 4.4 There is a host of legislation and guidance available in relation to the inspection of trees but there is no definitive guide to inspection frequencies for trees in various locations. However, the existing legislation and best practice guidelines provide a framework for interpreting that Local Authorities carry a significant legal duty of care in the various types of locations/ settings and that professional arboricultural guidance should be relied upon to determine frequencies of inspection. In addition the plethora of legislation and guidance (the main documents are outlined in Appendix 2 to this report), there is a substantial amount of case law in existence.
- 4.5 In accordance with both civil and criminal law, an owner of land on which a tree stands has responsibilities for the health and safety of those on or near the land and has potential liabilities arising from the falling of a tree or branch.
- 4.6 Caerphilly's draft tree strategy (Appendix 1), refers to the Council's legal duty of care and how the Council should meet that duty with regard to tree inspections. It states, "the council refers to the National Tree Safety Group's 2011 report, Common Sense Risk Management of Trees, as best practice with regard to managing its duty of care".
- 4.7 In developing the draft strategy, officers have obviously considered the legislation, case law and guidance as well as considering strategies in place in some other Local Authorities.
- 4.8 In relation to frequency of inspections, officers have considered this and looked at various options, which vary across England and Wales.
- 4.9 In developing its draft tree strategy, the view of Caerphilly Officers has been that a "zoned approach" should be adopted with inspection frequencies being specified in the strategy according to the zone.

- 4.10 The draft strategy attached at Appendix One to this report therefore sets out recommended periods for proactive inspections, which is based on “zones” using a traffic light system.
- High Use (Red): A & B roads, schools, housing estates, street trees, town centres, libraries, car parks, municipal parks etc. – Aim to inspect every 2 years.
  - Medium Use (Amber): country parks, public open space with large mature trees, playgrounds, car parks, corporate offices etc. – Aim to inspect every 4 years.
  - Low Use (Green): All other sites, C class and unclassified roads, rights of way etc. These could be assessed on a reactive basis.

The “zone” system will reflect normal usage but will be kept under review. If the level of risk changes over time for example, if there is a plan to hold an event involving many people in a municipal park (a medium risk zone), the risk will change to high for the duration of the event.

The “zoning” policy will enable resources to be channelled to a more frequent inspection of some trees, with savings made in fewer inspections in zones where there is much lower risk.

- 4.11 Recent case law i.e. Cavanagh v Whitley Parish Council (14/02/2017) details where a giant lime tree came down onto a bus on a busy road. The driver escaped with his life due to the tree landing on a wall opposite. However, he was left with a brain injury, numerous fractures of his face and body and lost the use of his right hand. He subsequently brought proceedings against the Parish Council for £500,000. The Judge held that the Council’s 3 year inspection policy was inadequate (even though the 3 yearly frequency of inspections was in accordance with industry guidelines). He stated the tree was in an extremely high risk position and should have been inspected more frequently than 3 yearly. He stated on the application of negligence principles, the tree should have been inspected “at least every 2 years or indeed every 18 months”. He concluded that this frequency of inspection would have identified that the tree was diseased well in advance and prevented the accident. It could have been felled or made safe in advance and the accident would never have occurred.

This case illustrates that Local Authorities have a duty to act as reasonable and prudent land owners, this includes a duty to undertake regular inspections. In order to protect the public Local Authorities need to demonstrate that they implement a system of inspection where consideration has been given to identifying and prioritising the inspection of those trees which pose a greater risk to people and property.

- 4.12 In the judgment the Court advocated that the council's recently instituted zoning policy as a sensible and economic policy as it enabled resources to be channelled to a more frequent inspection regime of some trees with savings made in zones where there is little or no risk
- 4.13 The Council's proposed strategy has been drafted on a zoning basis as set out earlier in the Report, although it must be recognised that the new inspection regime is likely to increase the amount of remedial works required.
- 4.14 Officers have met with other service areas (Highways, Housing, Regeneration, Property Services etc.) to discuss the management of trees on land within their respective portfolios. In the event of any remedial works being identified, a budget estimate would be provided to the relevant department for their consideration and approval. Any immediate works which pose a health and safety risk would be addressed without delay. In terms of schools, advice would need to be provided to the Head Teacher in relation to the urgency of the works and the respective Health & Safety liability involved. The last survey of trees in Education ownership was funded centrally by education but in accordance with devolved management arrangements for schools, future surveys would be the responsibility of each school.
- 4.15 In addition to the routine highway tree surveying, resultant pro-active remedial works and reactive works, there are some “substantial” sections of highway where significant tree works are required due to the tree stock not receiving appropriate management at the time the highway was developed.

## 5. WELL-BEING OF FUTURE GENERATIONS

- 5.1 This report contributes to the well-being goals as set out in Links to Strategy above. It is consistent with the five ways of working as defined within the sustainable development principle in the Act in that in the long term, the importance of balancing our short-term needs to safeguard the ability to also meet long-term needs. The regular inspection of trees and undertaking resultant remedial works will safeguard their viability for our future generations. In terms of prevention, proactive inspections will ensure the safety and stability of our tree stock, which will reduce any potential accidents in the future. In relation to collaboration, our Arboricultural Officer is a consultee on planning applications and the role is important in terms of the Local Development Plan (LDP) and urban regeneration.
- 5.2 In respect of the seven well-being goals, this report contributes to at least four:-
1. A Globally Responsible Wales – The Authority is taking responsibility for its tree stock and needs to actively undertake pro-active inspections and resultant works. This will have a positive effect on global well-being, in particular absorbing carbon dioxide, which is the key greenhouse gas, will reduce the causes of global warming and climate change.
  2. A Resilient Wales – The maintenance and management of our tree stock enhances our biodiverse natural environment with healthy functioning eco systems that will support social, economic and ecological resilience and the ability to adapt to climate change, for example trees take up water and therefore slow the movement of water through systems, thus reducing the likelihood of flooding.
  3. A Prosperous Wales – The pro-active management of our tree stock can improve local employment prospects. In addition, international studies have shown that semi-mature trees (or older) in at least reasonable condition can add between 5 – 15% to the value of a property. A green environment will be more attractive to businesses and will therefore increase the likelihood of inward investment.
  4. A Healthier Wales – Trees have a positive impact on both physical and mental health and are an important public resource for the wider community where they are situated.

## 6. EQUALITIES IMPLICATIONS

- 6.1 There are no potential equalities implications associated with this report for specific groups or individuals. Therefore, there is no requirement for an Equalities Impact Assessment to be undertaken.

## 7. FINANCIAL IMPLICATIONS

- 7.1 Within the report that was considered by the Scrutiny Committee in December 2016, it was suggested that in order for Parks Services to effectively manage the Council's tree stock, additional resources would be required. Further analysis of the resources required has been undertaken.
- 7.2 To enable the safe management of its tree stock in line with the proposed tree strategy and its resultant zones/inspection frequencies the following resources would be required:-
- (i) One-off allocation of £600,000 over a 3-5 year period to deal with highway tree maintenance on strategic routes.
  - (ii) An additional Arboricultural Officer to enable the level of surveying required by the draft strategy to be accommodated. This would cost circa £42,500.

- (iii) An additional tree maintenance team and associated vehicle. This would cost circa £85,500.

It should be noted that once the strategic highway route works are completed, on-going maintenance of the strategic routes can be absorbed by 2 in-house tree teams.

- 7.3 Given the Health & Safety responsibilities of the Council in this regard it is proposed that this funding is found through a combination of recharging land holding departments for pro-active survey work and any resultant works required, and a reprofiling of budgets in Community & Leisure Services to convert 2 current posts to those of tree operatives (with the team then recharging their time for works completed to the various land holding departments). As compliance with Health and Safety legislation is paramount, and the Authority cannot ignore its Statutory Health and Safety responsibilities it has adopted a recharging policy for various Health and Safety related surveys/works e.g. statutory electrical, legionella, gas safety and fire safety testing/works for its buildings with the department responsible for the building being recharged accordingly. This recharging process will also therefore be adopted for tree related inspections and works.
- 7.4 Tree surveying and associated tree works will consequently need to be funded from a mixture of the relevant departmental capital and revenue budgets on an annual basis (in the case of the highway related tree works, service reserves may also need to be used).
- 7.5 Obviously this may result in other aspects of service delivery reducing as land holding departments will be required to fund identified tree works (in the case of schools, this funding could fall to the authority if works are capital in nature although this is unlikely) in order to fulfil the Authority's statutory Health and Safety responsibilities.

## **8. PERSONNEL IMPLICATIONS**

- 8.1 Currently there is one suitably qualified Arboricultural Officer for the whole of the county borough.
- 8.2 As an interim measure to deal with the escalating number of service requests, an additional resource has been deployed to assist with inspections, etc. This has been implemented on a temporary basis via amending existing Area Parks Officers duties. Four Area Parks Officers have recently undertaken a basic (Level 1) Tree Inspection Course, which is endorsed by the Arboricultural Association. This will allow these staff to assist in the event of an emergency or during periods of high workload.
- 8.3 Currently there is one dedicated tree team within the Parks Operations area (comprising of three trained operatives) to undertake maintenance work, which often means that private contractors are engaged to undertake additional works.
- 8.4 As outlined above the cost of employing another qualified Arboricultural Officer and a team of qualified frontline staff (including vehicle and equipment etc.) is estimated at circa £128K.
- 8.5 To enhance the service further, it would also be beneficial for a number of key staff across the organisation (i.e. Highways Inspectors, staff at Cwmcarn Scenic Drive, Rights of Way Officers, Countryside Rangers etc.) to work towards a basic Level One tree inspection qualification (one day) endorsed by the Arboricultural Association. The cost of this training is £125 (per candidate) excluding VAT (which would need to be funded by each individual service area).

## **9. CONSULTATIONS**

- 9.1 This report reflects the views of the listed consultees.

## 10. RECOMMENDATIONS

10.1 Members views are sought on the recommendations set out below prior to a further report being considered by Cabinet:-

- (i) The current tree management arrangements set out within the body of this report.
- (ii) The proposed draft tree strategy (set out at Appendix One) and in particular the frequency of proposed proactive inspections.
- (iii) The funding proposals set out in the report to meet the associated costs in delivering the tree strategy and complying with the Authority's Health & Safety liabilities.

## 11. REASONS FOR THE RECOMMENDATIONS

11.1 To establish the views of the Scrutiny Committee on the existing 'tree management' arrangements including the formal adoption of the draft tree strategy prior to a further report being considered by Cabinet.

## 12. STATUTORY POWER

12.1 Local Government Acts 1972 and 2000  
Highway Act 1980  
Local Government (Miscellaneous Provisions) Act 1976  
Health & Safety at Work Etc. Act 1974  
Climate Change Act 2008

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Appendices:

Appendix 1 Draft Tree Strategy

Appendix 2 Main Legislation & Guidance Outlining Land Owners Responsibilities in Relation to Trees & Duty of Care