

REPORT TO:	FINANCE AND MANAGEMENT COMMITTEE	AGENDA ITEM: 7
DATE OF MEETING:	17 MARCH 2022	CATEGORY: RECOMMENDED
REPORT FROM:	ALLISON THOMAS STRATEGIC DIRECTOR - SERVICE DELIVERY	OPEN
MEMBERS' CONTACT POINT:	CHRISTOPHER WORMAN PARKS AND GREEN SPACES MANAGER	DOC:
SUBJECT:	TREE, WOODLANDS, AND HEDGEROW MANAGEMENT POLICY	
WARD(S) AFFECTED:	ALL WARDS	TERMS OF REFERENCE: (FM08)

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## **1.0 Recommendations**

- 1.1 That the Committee adopts the Tree, Woodland and Hedgerow Policy (**Appendix 1**) including appendices (**Appendix 2**).
- 1.2 That the resource implications outlined in this report to undertake the necessary identified tree works be approved.

## **2.0 Purpose of the Report**

- 2.1 To highlight issues, risks, opportunities, and solutions related to management of the Council's trees.
- 2.2 To request that the Committee adopts the Tree, Woodland and Hedgerow Management Policy (incl. Appendices) which is a revised and updated version of the 2010 Tree Management Policy previously approved. The Policy has been previously considered by the Housing and Community Services Committee on 10 March 2022.
- 2.3 To seek approval for the financial implications outlined in the report to undertake the necessary identified tree works.

## **3.0 Executive Summary**

- 3.1 The Council has a duty to effectively manage its many trees, which have been proactively mapped, inspected, and maintained according to available resource following the approval of a Tree Policy in 2010. Better data, an ever-increasing tree stock, increased environmental awareness, capacity issues, the desire for best practice and the passage of time mean a review of the original policy and custom and practice is due.

3.2 The original 2010 Tree Management Policy has been updated and replaced with a refreshed Tree, Woodland and Hedgerow Policy (Appendix 1) including appendices (Appendix 2). These are companion documents which have been created to provide the Council with a planned way forward for managing its trees safely, efficiently, effectively, and economically by providing current, medium, and long-term direction and action.

3.3 The recommended revised Policy documents, which were considered and approved by the Council's Housing and Community Services Committee on 10 March, outline issues and essential actions for dealing efficiently, effectively and economically with the District's tree, woodland and hedgerow issues, in particular:

- to optimise the protection and management of its tree stock
- to improve its service to residents
- to protect members of the public and employees
- to reduce the number of tree-related service enquiries and complaints
- to mitigate the potential for future negligence claims resulting from tree failure or subsidence
- to support planning policy and development
- to increase tree canopy cover according to achieve National Forest targets, meet carbon neutrality targets to mitigate global overheating and assist meeting the Council's Climate Emergency commitments
- to protect and enhance biodiversity in relation to trees, woodlands, and hedgerows
- to ensure that the important role of trees in providing ecosystem services is developed and is well understood and appreciate.

3.4 The Policy documents aim to realise the stated proposed Vision:

*“South Derbyshire will be a District where the natural capital of its trees, woodlands and hedgerows are fully valued, properly managed and well-maintained so that they can make their optimum contribution to ecosystem services and the health and well-being of the community, whilst providing aesthetic and seasonal pleasure to today's residents and visitors and future generations.”*

3.5 There are several risks and opportunities facing the Council which are highlighted by an examination of current issues. These issues include risks associated with achieving current policy response times, lack of a dedicated and defined tree work budget, an expanding tree management workload, unrecorded trees, uninspected trees, increasing adoption of trees, non-completed essential tree work, commissioning and procurement practice, handling of tree enquiries and complaints, and criminal damage.

3.6 There are financial implications of managing the Council's trees, much of which is covered within existing resources, but to meet its responsibilities there is a further requirement for dedicated budget for external arboricultural services.

## 4.0 Detail

- 4.1 The Council's Tree Management Policy was adopted in 2010. The current policy, attributes priority timescales to when tree works must be undertaken and has, in part, created a backlog of tree maintenance works that must now be resolved.
- 4.2 The current priority timings in the (2010) policy is creating unnecessary procedural risk. Changing the priority timings in the revised Management Policy would reduce the Council's procedural risk, by introducing a traffic Red/Amber/Green (RAG) system of priority would be put in place rather than a specific timeframe approach.
- 4.3 If the recommended revised Policy, which was considered and approved by the Council's Housing and Community Services Committee is adopted this would go some way to better managing the identified risks. However, there are still trees that still require some form of works, so whilst the risk process is managed the backlog of tree work will not disappear - if anything these will continue to accumulate.
- 4.4 Therefore, the recommended response is to provide appropriate and dedicated resource that will allow the appointment of external approved arboricultural contractors that will solely work on clearing the identified backlog of priority tree works promptly and efficiently, over an initial two to three-year period (as set out in 5.4), whilst the Council implements its revised Policy approach and meaningfully operationalise this.
- 4.5 In common with most local authorities, South Derbyshire District Council is responsible for many areas of land which often contain trees, woodland, and hedgerows. These valuable natural capital assets, which are critical to the ecosystem need careful management.
- 4.6 The Policy documents have been created with due consideration to current legislation and national, regional, and sub-regional policy. In addition to relevant UK legal case law and applicable non-governmental organisations' policy and guidance which is dedicated to ensuring health and wellbeing of the public whilst protecting trees and related biodiversity. Furthermore, advice has been sought from the Council's insurers, Zurich and incorporated into the documents and proposals.
- 4.7 Although the Tree Officer post sits within Cultural and Community Services, it should be noted that management of trees impacts on many other Council service areas including Housing, Planning, Corporate Property, Operational Services, Environmental Services, Legal Services etc. as such the Tree Management Policy documents are critical cross-cutting strategic documents.
- 4.8 Given the impact of tree management across service areas, considerable emphasis has been placed on a more integrated approach to managing the Council's trees using guidance from several industry bodies and organisations, including:
  - The Forestry Commission UK Forestry Standard 2017
  - The Health and Safety Executive - Management of the risk from falling trees.
  - UK Road Liaison Group - Well-managed Highway Infrastructure Code of Practice
  - National Tree Safety Group - Common sense risk management of trees
  - Tree and Design Action Group - Trees in the Townscape: A Guide for Decision Makers.

- 4.9 Those involved in caring for the Council's trees are in the front-line of a challenging national industry to manage a range of potentially very damaging pests and diseases, many of which have arrived from abroad.
- 4.10 In addition to the Council's duty of care and requirement for policies and procedures for managing its tree stock, district councils have a regulatory role in ensuring the preservation of trees and woodlands that offer high public amenity value, regardless of their public or private ownership and the provision and protection of adequate green infrastructure in new developments.
- 4.11 The new Policy documents bring together all these themes to ensure that the Council can properly manage its trees into the long-term future and provide a framework which details the Council's approach to the management and enhancement of its tree stock. It outlines the mechanism by which the Council will achieve a proposed vision for trees.
- 4.12 The routine management of the Council's trees will involve:
- Surveying the tree stock on a regular basis to maintain a database that tracks the condition of individual trees or group of trees and assigns a risk-rating based on that condition
  - Planned cyclical maintenance based on a minimum four-year inspection cycle which will identify tree pruning and tree felling where required
  - Reactive maintenance in response to health and safety issues and customer requests.
  - Emergency work such as that following storms and gales.
- 4.13 The new Policy is set out as overarching documents, whilst specific requirements are dealt with in detail within the appendices. These policies should provide clear principles for the management and maintenance of the District's trees for the future.

## **5.0 Financial Implications**

- 5.1 The Council's Tree Management Policy was adopted in 2010. As outlined at 4.2 above, the current policy, attributes priority timescales to when tree works must be undertaken and has, in part, created a backlog of tree maintenance works that must now be resolved.
- 5.2 To address this backlog, it is proposed to provide a dedicated resource that will allow the appointment of external approved arboricultural contractors that will solely work on clearing the identified backlog of priority tree works promptly and efficiently, over an initial two to three-year period, whilst the Council implements its revised Policy approach and meaningfully operationalise this.
- 5.3 The average annual spend (based on the current tree policy) for tree works over the previous five years (contractors) is c.£40k per annum.
- 5.4 The funding required to undertake identified priority tree works are as follows:
- Year 1 - 2022/3 £60,000
  - Year 2 - 2023/4 £20,000
  - Year 3 - 2024/5 £20,000 (contingency)

- 5.5 In the medium-term, the continued implementation of new strategic and policy approach will help the Council manage identified future risks.
- 5.6 There is currently an annual budget of £10k for dedicated tree works within the General Fund Parks and Green Spaces.
- 5.7 An earmarked reserve for Operational Services has been set-aside from maintenance sums through S106 totalling £154,740 which to-date has not been utilised and has no committed spend against.
- 5.8 The Housing Revenue Account (HRA) contributes £120k pa to Grounds Maintenance for works including grass cutting and trees. This recharge was due to be reviewed in 2020/21 but due to the pandemic never progressed. This will be undertaken during 2022 with a dedicated Accountant and the new Head of Operational Services.
- 5.9 It is proposed to fund the backlog works by utilising the £5k of the Parks and Green Spaces budget allocation in 2022/23 and 2023/24, £10k of the recharge from the HRA to Grounds in 2022/23 and 2023/24 with the balance and majority of the funding to be drawn from the earmarked reserve.
- 5.10 Grounds Maintenance underspends each year due to vacant posts. If, however the team was up to full complement, the HRA recharge could not be utilised as it would negatively impact the General Fund. Any shortfall in funding from either Parks or Grounds would need to be sourced from the earmarked reserve.
- 5.11 A full review of the budgets in Parks and Green Spaces and the Grounds Maintenance needs to be undertaken prior to the next budget round and in line with the new tree policy to ensure any opportunities are maximised and all risks are covered.

## **6.0 Corporate Implications**

### **Employment Implications**

- 6.1 An Assistant Tree Officer was approved as part of the previously approved and now implemented Cultural and Community Services restructure. A team of officers is being established with the requisite skills and expertise to effectively manage the Council's trees.
- 6.2 In addition to the current Tree Officer, there is a vacant Tree Inspector post, which has been repositioned as an Assistant Tree Officer to attract and retain candidates.
- 6.3 Furthermore, a Biodiversity Officer has recently been appointed, who has arboricultural experience. These are additional to the wider support of the Parks and Green Spaces team, within Cultural and Community Services.

### **Legal Implications**

- 6.4 Under UK law, in England and Wales, the Occupiers' Liability Act 1957 and 1984 governs liability. The earlier Act deals with any liability relating to visitors, i.e., persons who enter the land or premises either by invitation or by permission. The later Act deals with liability to other persons, including trespassers. Occupiers can be held negligent in their duty of care even if injury or damage occurs on land where people do not have access by right or invitation. Under General Liability, a tree owner

has a 'Duty of Care' to its 'neighbours' with regards to the regular inspection and hazard abatement of its tree stock. This duty is laid down in;

- Occupiers Liability Acts of 1957 & 1984
- Highways Act 1980 (especially section 130),
- The Miscellaneous Provisions Act 1976 'Dangerous Trees and Excavation'
- Health & Safety at Work Act 1974 (for bystanders' sec 3(1)).
- Criminal Liability can be pursued under Section 3 of The Health and Safety at Work Act 1974, where there is a general duty of care at Common Law to take reasonable care to avoid injury to your neighbour.
- Corporate Manslaughter and Corporate Homicide Act 2007

6.5 The Government consulted last year on the need for Councils to adopt tree strategies and policies, and the proposed response was agreed by this Committee in August 2020. This could be the subject of future legislation. In addition, the Natural Environment and Rural Communities Act 2006 places a statutory duty to consider biodiversity in all Council functions, which the forthcoming Environment Bill may change to "evidence net biodiversity gain".

6.6 The proposed new Management Policy seeks to better meet the legal implications of tree management.

### **Corporate Plan Implications**

6.7 The Management Policy contributes significantly to the Corporate Plan Priorities and Key aims including:

#### **Our Future**

- a. Support economic growth and infrastructure
  - i. Enable the delivery of housing across all tenures to meet Local Plan targets
  - ii. Influence the improvement of infrastructure to meet the demands of growth
- b. Transforming the Council
  - i. Provide modern ways of working that support the Council to deliver services to meet changing needs

#### **Our People**

- c. Supporting and safeguarding the most vulnerable
  - i. Promote health and wellbeing across the district
- d. Deliver excellent services
  - i. Ensure consistency in the way the Council deals with its service users
  - ii. Have in place methods of communication that enables customers to provide and receive information
  - iii. Ensure technology enables us to effectively connect with our communities
  - iv. Invest in our workforce

#### **Our Environment**

- e. Improve the environment of the district
  - i. Enhance biodiversity across the District
- f. Tackle Climate Change
  - i. Strive to make South Derbyshire District Council carbon neutral by 2030
- g. Enhance the attractiveness of South Derbyshire

- i. Enhance the appeal of Swadlincote town centre as a place to visit
- ii. Improve public spaces to create an environment for people to enjoy

### **Risk Impact**

- 6.8 There is no nationally recognised practice or prescribed methodology for tree management, although Forestry England's - Operational Guidance Book #1 (Tree Safety Management) sets out a good baseline for inspecting trees on the public forest estate. As a result, much guidance derives from established professional practice and case law, which identifies the need for landowners to put in place pro-active defensible systems for managing tree risk as part of its general duty of care, particularly for open spaces. If the Council does not have adequate measures in place, it may be liable to substantial financial and reputational consequences, if found to be negligent in its management.
- 6.9 The new Policy allows the Council to protect itself against potential claims for damage or injury, but also allows a much more integrated and pro-active approach to managing trees on its land.
- 6.10 There is currently a Government consultation on the need for councils to create and adopt tree policies and strategies and the matter could be the subject of future legislation. By adopting this Management Policy, the Council will be fulfilling this future need ahead of potential legislation.

### **7.0 Community Impact**

- 7.1 Effective management of its tree stock is of critical importance to all South Derbyshire residents who benefit from the positive impact of trees in many areas of life including the environment, biodiversity, housing, amenity and leisure. Similarly, effective management is of critical importance to a variety of partners and community stakeholders including the National Forest Company, Forest England, Parish Councils the private sector and a plethora of Voluntary and Community Sector organisations.

### **Consultation**

- 7.2 Consultation has taken place across relevant service areas within the Council

### **Equality and Diversity Impact**

- 7.3 None Known

### **Social Value Impact**

- 7.4 Use of local tree contractors can promote local businesses.
- 7.5 Working closely with developers to enable the delivery of housing across all tenures to meet Local Plan targets.
- 7.6 Potential to involve communities in planting schemes etc.

### **Environmental Sustainability**

7.7 Trees are crucial to the environmental sustainability of the District and by extension the planet, by:

- Capturing atmospheric carbon
- Cleaning the air that we breath
- Filtering atmospheric pollution
- Stabilising river/stream sides and attenuating flow
- Stabilising soils and moderating rainfall absorption
- Improving the quality of contaminated land
- Providing a barrier to noise and screening poor views; trees and other vegetation can play an important role in reducing noise
- Providing shelter from the sun, wind, rain, and other weather events
- Shading out harmful solar radiation, reducing “heat island” effects.

## **8.0 Conclusions**

8.1 Trees are an immensely valuable asset for the environment and people of South Derbyshire. The new Tree Management Policy provides a robust framework for their effective management.

## **9.0 Background Papers**

9.1 Tree Management Policy - 2010.