

TREE MANAGEMENT

Reason for the Report

1. To provide Members with the opportunity to review how Tree Management is delivered by the Council and to consider existing and potential future arrangements.

Background

2. Trees are an important part of the environment and bring many health, social, environmental and economic benefits. The management of trees on Council land represents a significant challenge in terms of inspection and work, particularly as tree management is a visible issue that attracts a great deal of resident interest. In addition to this, there are numerous conflicts that arise due to Council owned trees being located adjacent to private land.
3. The Parks Services Tree Management Unit is responsible for all trees located on Council owned land and across all service areas. The maintenance of street trees is delivered through a framework contract – the budget for this framework contract is £96,000. The Tree management Unit is an integrated service and deals with a range of technical and operational functions. The service currently employs ten full time employees and operates a 24 hours a day, 365 days a year call out service to deal with emergencies.
4. The net revenue budget for Tree Management in Cardiff for 2017/18 was £428,000 plus an additional one off sum of £100,000 – this was allocated to reduce the backlog of outstanding works. The net revenue budget for Tree Management in Cardiff for 2018/19 is £431,530 – the additional one off sum of £100,000 that was allocated for 2017/18 has now been removed.

5. In 2017/18 the Tree Management Unit had an income target of £129,160; this income was required to achieve a net budget position of £429,020. During 2017/18 the service generated £113,734 in income which was £15,426 short of the target.
6. The income target for the financial year 2018/19 is £134,160 – an increase of £5,000 that was put forward as a saving in the 2018/19 budget setting process. Based on the achieved income figure for 2017/18 the service will need to increase income by £20,426 in 2018/19.
7. The main income sources for the Tree Management Unit are for surveys and works undertaken on behalf of the schools service, works for housing, strategic estates and development control.

Issues

8. The Council's Tree Management policy is based on risk management and legislative requirements. Liability claims can be made against the Council if it is alleged that the Council's negligence is deemed to have caused injury, loss or damage to a third party or their property, for example if a tree branch falls and damages a car, claims of this nature will be determined on the facts of each claim. The Council can mitigate the risk of successful claims and indeed intervention from the Health and Safety Executive by demonstrating that it has a reasonable risk based approach to the inspection and maintenance of its trees and by maintaining accurate records.
9. The Council does not undertake tree works on land in private ownership and concerns regarding trees on private land / between private parties is, principally a matter for respective landowners to resolve. Notwithstanding this, the Council does possess powers to require a landowner to make safe a tree that poses an imminent danger through the Local Government (Miscellaneous Provisions) Act 1976. It is the expectation that landowners will manage their own responsibilities and the Council should not be considered as the first point of contact in resolving concerns about the danger posed by trees in private ownership. The Council may intervene and undertake works, according to the powers given in the Act if a landowner fails to act within a reasonable timescale, based on the degree of risk presented, and may recover from the landowner costs reasonably incurred in so doing.
10. In addition to the above and in certain circumstances the Council does have

legislative powers to intervene under the Highways Act 1980 in where it is deemed that there is a critical issue, for example, a tree in close proximity to the public highway that is likely to collapse posing a risk to public safety.

11. The Health & Safety Executive (HSE) guidance on managing trees recommends that a reasonable and balanced approach is taken when dealing with problem trees. This needs to be based on a tree safety strategy for sensible tree safety management and a plan that guides management decisions and practice, in a reasonable and cost-effective way. The key elements recommended by the HSE are set out below and are central to the Council's approach:
 - **Zoning**: appreciating tree stock in relation to people or property;
 - **Tree inspection**: assessing obvious tree defects;
 - **Managing risk at an acceptable level**: identifying, prioritising and undertaking works according to level of risk.
12. Under current policy / arrangements the programme of work is risk based and priorities are dictated based on the level of risk posed. It is also the case that the programme of work changes constantly, the reasons for this being numerous. It is not uncommon for work to be delayed or for completion to take longer (or shorter) than expected.
13. Tree works undertaken by the Council are mainly delivered in the five following areas:
 - Highways / Streets;
 - Housing;
 - Schools;
 - Parks / Public Open Space, including Woodlands;
 - Cemeteries.
14. Prioritisation of work is consistent with the HSE guidance and is allocated on a risk basis. A report titled 'Apse Solutions – Tree Management Policy & Operational Management Review – Report for Cardiff City Council' is attached to this document as **Appendix 1**. Page 16 of **Appendix 1** contains a diagram referenced as '**Appendix 2 – Cardiff Council Tree Management Process Schematic**'. This

diagram sets out the risk-based process that is followed by Cardiff Council when undertaking tree management. In doing this the diagram lists the following risk categories:

- **Perceived Nuisance** – Unnecessary work rarely considered for action.
- **Low** – Necessary work completed within five years.
- **Medium** – Necessary work completed within three years.
- **High** – Essential works completed within one year.
- **Urgent** – Work completed within seven days.
- **Emergency** – Site made safe within two hours.

15. At the time of publication of **Appendix 1** (November 2017) approximately 358 jobs were outstanding. None of these fell under the emergency category; 75 fell under the high category; 227 fell under the medium category and 56 fell under the low category.

16. Work programme content falls under seven main categories, these are set out below:

- Felling / removal of dead, dying or diseased trees;
- Removal / cutting back of branches that have the potential to damage property;
- Removal / cutting back of branches that are obstructing the safe passage of vehicles and pedestrians;
- Removal /cutting back of branches / vegetation from lamp columns, traffic signals and street signs;
- The removal of basal growth that blocks sight lines of pedestrians / vehicles;
- Removal / cutting back of vegetation on strategic routes;
- Grinding / removal of stumps left in the pavement.

17. Under current policy / arrangements the Council does not undertake the works set out below for the reasons outlined:

- To fell and / or prune trees that are overhanging property - unless there is a risk to persons and / or property;

- To fell and / or prune trees considered too big or too tall - unless there is a risk to property / persons;
 - To fell and / or prune trees to alleviate light issues and views – there is no legal right to light, however, if natural light is blocked by growth from hedging then action may be taken under the Anti-Social Behaviour Act 2003, Part 8 – 2005;
 - To fell and / or prune trees to alleviate issues with leaf fall - this is a natural / seasonal occurrence;
 - To fell and / or prune trees to alleviate issues with fruit/berries/blossom/nuts - this is a natural / seasonal occurrence;
 - To fell and / or prune trees to alleviate issues with bird droppings - this is a natural occurrence, nesting birds are also protected under the Wildlife & Countryside Act 1981;
 - To fell and / or prune trees to alleviate issues with sap exudation - this is a seasonal and natural occurrence, the identification of suitable species, particularly in streets is an important factor;
 - To fell and / or prune trees to alleviate issues with wildlife and insects such as bees, wasps, or caterpillars - this is a natural occurrence and some insects are protected species;
 - To fell and / or prune trees to facilitate vision for security cameras / sensor equipment – systems should be installed to avoid interference with trees, the Council may act upon an instruction from a statutory body;
 - To fell and / or prune trees to alleviate issues with the loss of TV / Satellite signals - such issues are referred to the service provider to identify an alternative solution;
 - To fell and / or prune trees to alleviate issues with telephone lines - BT possess a wayleave to undertake line cutting;
 - To fell and / or prune trees to improve the performance of solar panels – the presence of trees should be assessed prior to installation / when site surveys are undertaken.
18. Under Common Law Rights, a landowner has a right to remove (abate) the nuisance associated with trees encroaching / overhanging their property. A landowner can only consider removing those parts of the tree from the point where they cross the boundary of their property and not beyond the property boundary. There is no legal right to cut or remove any part of a tree that does not overhang a property and any works undertaken by a landowner must be done so at their own expense, with consent from the Council to access their land if necessary. Consent to undertake

work is required from the Council if a tree(s) have Tree Preservation Orders or are located in a Conservation Area.

19. An annual Tree Planting Programme for replacements and new exists and the Tree Management Unit works with Friends Groups, volunteers and grant funders in developing and implementing.

Tree Management Policy & Operational Management Review

20. During 2017/18 the Council commissioned APSE to deliver a 'Tree Management Policy & Operational Management Review'. To reflect the findings of this review APSE published a report titled 'Apse Solutions – Tree Management Policy & Operational Management Review – Report for Cardiff City Council' that is attached to this report as **Appendix 1**.
21. The content of **Appendix 1** focuses on the following areas:
 - Brief
 - Response
 - Background
 - Pro-active, defensible tree management
 - Findings
 - Cardiff City Council's Legal Position in Relation to Trees in its Ownership
 - Work Priorities
 - Perceived Nuisance
 - Private Trees
 - Options/ Opportunities for Income Generation
 - Recommendations
22. The purpose of the APSE report is described as:

To undertake an independent assessment of the Council's policy and operational arrangements for dealing with / responding to the management of trees, relating to nuisance factors / neighbourhood issues. The review will be undertaken within the context of legislative requirements and budget available and with particular focus on the following areas:

- *Management of perceived nuisance factors;*
- *Arrangements for inspection and interface / communications with customers;*
- *What works the Council does / does not currently undertake;*

- *How works are categorised;*
- *How works are prioritised;*
- *Comparison of policy with other Local Authorities / good practice;*
- *Current arrangements / approach in respect of trees located on land in private ownership;*
- *Assessment of opportunities for income generation.*

23. In concluding the report makes six recommendations, these are:

- *That the Council continues its work to include all Council owned trees in its tree stock inventory, with each tree having an appropriate survey, recording of data, risk, assessment and being mapped on its Arbortrack software. A clear and reasonable timetable (for example, a five year programme) for completion will limit any liability for claims against unrecorded trees, if such a programme is evidenced. However this will require a commitment to additional resource.*
- *That all identified and prioritised emergency, urgent, high, medium and low tree work in the programme is completed within a reasonable timescale. Again, this will need to be adequately resourced.*
- *That income generation opportunities should be fully considered.*
- *That opportunities for income generation be considered in the light of available spare capacity after recommendations 1 and 2 are resolved.*
- *That consideration is given to developing an integrated customer contact system for trees-based enquiries including an on-line work request form and enhanced C2C staff guidance.*
- *That consideration is given to strengthening tree policy by developing a customer-friendly set of protocols and guidelines for dealing with public concerns about the impact of trees on urban life, with advice on complex areas of perceived nuisance.*

Way Forward

24. Councillor Peter Bradbury, Cabinet Member for Culture & Leisure has been invited to attend for this item. He will be supported by officers from the Economic Development Directorate.

Legal Implications

25. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

Financial Implications

26. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

RECOMMENDATION

The Committee is recommended to:

- i. Note the contents of the attached report;
- ii. Consider whether they wish to pass on any comments to the Cabinet following scrutiny of the item titled 'Tree Management'.

DAVINA FIORE

Director of Governance & Legal Services

30 May 2018