Tree Management Policy and Operational Management Review

Report for Cardiff City Council

This report has been prepared by Bernard Sheridan in November 2017

Version 1.0

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Contents

1.0   Brief

The brief as required from APSE is as follows

1.1   Purpose

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 a particular focus on the following areas:

1.2   Scope

* *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*

2.0   Response

On behalf of APSE, Bernard Sheridan, an APSE Associate, visited Cardiff Council and a comprehensive range of information and data was made available. Benchmarking with other authorities was made, sufficient for a credible response to fulfil the requirements of the brief. Comparator authorities include, amongst others, Manchester CC, Bristol CC, Nottingham CC, Cambridge CC, Ipswich BC and Charnwood BC. This report considers findings and gives recommendations based on available data in autumn 2017. It should be noted that in 2015/16 Cardiff Council were the core cities lead authority for developing a specific Tree Management Benchmarking exercise.

2.1   Executive Summary of Findings

2.1.1. The importance of trees

Cardiff Council (CC) makes it clear that the trees in its ownership are valued for their multi-functional contribution to the quality of life of the city, including public health, biodiversity, aesthetic value etc. and has put in place systems and resources to manage them well.

2.1.2. Robust tree management procedures

2.1.2.1.CC has a robust, pro-active and defendable process for managing trees based on-
* A stock inventory of trees and their related data

- Trees are recorded and identified on GIS-based mapping software
- Trees are categorised for risk/hazard
- Regular inspections of trees carried out according to identified risk
- A fair system of dealing with tree work requests
- A clear set of protocols for what tree work the council will, and will not, do regarding tree requests
- A tree work programme to deliver action to mitigate risk and deal with valid tree problems.

2.1.2.2. This system clearly identifies the priorities for spending the limited available budgets and resources.

2.1.2.3. This approach compares well with other prudent local authorities and landowners such as the National Trust, Royal Parks etc. The unambiguous evidence of regular and thorough tree inspection will continue to serve in defending the council against negligence claims.

2.1.2.4. There has been a significant decrease in upheld tree-related insurance claims against the council due to the robustness of this approach (See insurance claims data Appendix 1).

2.1.2.5. A well-thought out Tree Management Improvement Plan has been developed, and is being delivered, by the Arboricultural Team.

2.2 Development areas

2.2.1. There are insufficient resources to deliver the entire medium and low priority tree work programme within the available timeframe; the provision of the sum of £100 k for this financial year (2017/18) has enabled the service to complete all emergency and urgent tasks, and nearly all high priority works, within the timeframe. This one-off provision needs to be consolidated into the budget to prevent future backlogs of uncompleted work.

2.2.2. Only a part of the tree stock is included on the tree inventory, and there are limited resources to audit/survey further.

2.2.3. These shortfalls may put CC's defendable practice at some risk for those non-surveyed trees.

2.2.4. Tree policy could be strengthened by developing a customer-friendly set of protocols and guidelines for dealing with public concerns about the impact of trees on urban life and how the Council responds.

2.2.5. The customer contact management process could be re-engineered to make it more effective, including consideration of a direct on-line reporting system.

2.3 **Issues**

2.3.1. As with all other council's there is a seemingly insatiable demand from the public for work to alleviate minor tree issues, carry out cosmetic work and deal with perceived tree nuisance.

2.3.2. Almost all of this work is not the responsibility of the council and, like all local authorities, CC has put in place robust procedures to protect its budgets and resources from requests for unnecessary or inappropriate work and spurious insurance claims.

2.3.3. Often these work requests come from citizens and/or elected members who are genuinely representing their constituents' legitimate concerns, but can be unaware of the restraints underpinning tree policy and practice, and the resource implications to the council of agreeing to such work and/or of setting precedents.

2.3.4. When refusal to carry out such work is challenged, courts and the ombudsman's office, will not interfere with a decision to carry out/not carry out tree work unless it is completely irrational, but they will find against the Council if it did not follow its own proper policy and process in coming to a decision. That is why the stated policy is crucial and must be followed. CC's approach is clearly reasonable and is in line with all other comparator councils.

2.3.5. Work undertaken on trees where there is no requirement to do so would be at risk of being deemed to be 'imprudent use the authority's resources' and/or ultra vires expenditure, particularly when there are shortfalls in the same service which are of much greater priority for funding.

2.3.6. The Council must therefore ensure that tree work at risk of being deemed to be ultra vires/ not the council's responsibility and/or of very low priority is not carried out at the expense of higher priority needs. It should always adhere to council policy and process.

2.3.7. The Council has a duty to explain its position/ policy relating to tree issues clearly to customers and stakeholders.

3.0 Background

3.1 In common with all other local authorities Cardiff Council owns, and therefore is required to properly manage, a large number of trees of various types and sizes. These trees are managed in a similar way to those of other councils and responsible landowners across the UK, using guidance from a number of organisations, including the Health and Safety Executive and National Tree Safety Group. There is no nationally recognised or proscribed methodology for managing trees and much of this guidance derives from case law, which identifies the need for landowners to put in place pro-active defendable systems for managing tree risk.

3.2   **General information/data relating to CC trees**

3.3   Information and statistics of relevance are :

- Street trees   12223 Recorded
- Strategic Routes   50 km
- Housing trees   4557 Recorded
- Parks and other CC open spaces trees   23481 Recorded
- Education trees   3421 Recorded
- Cemeteries & Crematorium   4119 Recorded
- Others e.g. PFI, Harbour Authority   1167 Recorded

- Highway Strategic Routes - tree encroachment, estimated to represent 20% of undertaken tree work

- Estimate of CC trees unrecorded   In excess of 350,000
- Number of tree-related enquiries from public 2016/17 In excess of 4000
- Number of Member's Enquiries relating to trees 2016/17   307
- The Tree Management Unit operates a 24 hour, 7 days a week, 365 days per year, Call out Service to respond to emergencies.
- This unit comprises
  o 1 Tree and Vegetation Management Officer
  o 3 Tree Inspectors
  o 5 Arborists
  o 2 Arboricultural Apprentices
- The net revenue budget for Tree Management for 2017/18   £428k
  (an additional one off sum of 100k for the current financial year has been allocated to reduce the backlog of outstanding works)

4.0   Pro-active, defendable tree management

4.1   All tree-owning Councils should operate a pro-active defendable (for court/ tribunals/ ombudsman/ insurance purposes) system for managing trees and tree risk. This system usually requires the following elements.

- A stock inventory of all owned trees (preferably on an e-database)
- All owned trees to be mapped (preferably using a GIS-based system)
- All trees to be risk-assessed using a recognized assessment system
- All trees to be inspected according to the priorities of risk assessment system
- A system for collating tree concerns from members of the public etc. with appropriate follow-up inspections
- Tree work delivery programmes based on inspections, priorities and identified risks/hazards

4.2 Cardiff Council carries out its responsibilities, as above, with due diligence and its system is outlined in the schematic (Appendix 2), showing in particular the prioritization protocols for creating the tree work programme, however there is an unquantified risk relating to trees which are not yet included on the tree stock inventory, and to some medium and low priority work which has not been completed.

4.3 This schematic is followed by graphs depicting the amount of priority work which has not been completed due to resource constraints (Appendix 3). This does not include work requested for perceived nuisance.

5.0 Findings

5.1 Cardiff Council has put in place a robust, proactive and defendable set of practices and procedures for managing its trees. Its methods and approach compare well with other similar-sized major cities and towns throughout the UK. The methodology relies on a stock inventory of trees and their related data such as species, location, size, girth etc. being recorded and identified on a GIS-based mapping software system (Arbortrack). Trees are categorised for risk according to their location and proximity to human activity such as busy streets, play areas, civic spaces etc. Trees on the inventory are inspected regularly for hazards based on their identified risk status on a minimum 5-yearly basis.

5.2 In addition there is a suitable system for processing complaints and work requests from members of the public, councillors, businesses etc. relating to tree issues, which are, where appropriate, added to the work programme.

5.3 Identified essential work, generated from reported issues and regular inspections, is assembled into an annual work programme to deliver action to mitigate risk and deal with serious complaints.

5.4 The work is ranked in six categories - emergency, urgent, high priority, medium priority, low priority and perceived nuisance. This system clearly identifies the priorities for action, and those for spending limited budgets and use of resources.

5.5 Dealing with tree-related issues and delivering the work programme is carried out by a Tree and Vegetation Management Officer, three tree inspectors and five arborists.

5.6 However there is currently insufficient resource to deliver all the required identified medium and low priority work within timeframe. In addition a substantial part of the tree stock has not yet been recorded on the tree inventory and maps. This shortfall may put the CC's defendable practices at some risk of being deemed negligent regarding any incidents related to those trees with remaining work due or those which are not registered on the tree inventory.

5.7 The council has clearly laid out statements of tree policy in its Frequently Asked Questions. These are similar in content to all other councils throughout the UK.

Under current policy / arrangements the Council does not undertake any work as set out below:-

- Fell or prune trees that overhanging property - unless there is a risk to persons / property,
- Fell or prune trees considered too big or too tall - unless there is a risk to property / persons.
- Fell or prune trees to alleviate light issues and views.
- Fell or prune trees to alleviate issues with leaf fall.
- Fell or prune trees to alleviate issues with fruit/berries/blossom/nuts and other tree litter.
- Fell or prune trees to alleviate issues with bird droppings.
- Fell or prune trees to alleviate issues with sap exudation.
- Fell or prune trees to alleviate issues with wildlife and insects such as bees, wasps, or caterpillars.
- Fell 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.
- Fell or prune trees to alleviate issues with the loss of TV / satellite signals - such issues are referred to the utility service provider to identify an alternative solution.
- Fell or prune trees to alleviate issues with telephone lines - BT possess a wayleave to undertake cutting.
- Fell or prune trees to improve the performance of solar panels.

5.8   In many councils, work requests to alleviate perceived nuisance are submitted by citizens / and or elected members who are representing their constituents' genuine concerns, but are sometimes unaware of tree policy and practice, and the resource, legal and insurance implications to the council of agreeing to such work and/or creating precedents.

5.9   Considerable effort has been made to embed these defendable procedures into service routines, resulting in a comprehensive decrease in upheld tree-related insurance claims against the council due to the robustness of the systems, with no upheld claims last year (See insurance claims data Appendix 1).

5.10 The Arboricultural Team and managers have undertaken a wide-ranging review of its procedures, processes and activities with a view to increasing the efficiency, effectiveness and financial robustness of the service. They have produced a well-thought out Tree Management Improvement Plan which is currently being delivered, by the Arboricultural Team.

6.0 Cardiff City Council's Legal Position in Relation to Trees in its Ownership

Duty owed by landowners

6.1 Owners of trees have a legal duty of care and are obliged to take reasonable care to identify risks and ensure that any foreseeable hazards can be identified and made safe. Although it is not possible to completely eliminate the risk of a tree failing, there are often indications that a tree may be in decline, have structural faults, are damaging property or be suffering from decay or pests and diseases. Many of these signs can be recognized by first-line trained inspectors who can then instigate further investigations by a qualified arboriculturist.

6.2 Under UK law, in England and Wales, the Occupiers' Liability Act 1957 and 1984 governs liability. The earlier Act deals with landowners' 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 the Occupiers Liability Acts of 1957 & 1984, the Highways Act 1980 (especially section 130), The Miscellaneous Provisions Act 1976 'Dangerous Trees and Excavation' and Health & Safety at Work etc 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.

6.3 In the event of a claim arising from personal injury or other damage involving a tree, the occupier of land will, in most cases, be liable if found negligent in meeting their duty of care. For proof of negligence, it will usually have to be shown that it was reasonably foreseeable that the tree might do damage and that mitigation measures were insufficient.

6.4 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 decided on the facts of each claim.

6.5 The Council puts itself in the best possible position possible to defend any claims if it can demonstrate that it has a reasonable and proportionate risk-based approach to inspection and maintenance of its trees and keeps accurate records to demonstrate that this has been adhered to. Where negligence is not proven, the failure of a tree would be deemed an "Act of God".

6.6 Trees in Towns II (a study carried out for the Department of Communities and Local Government by ADAS and Myerscough College in 2008) states that at least 40% of the local authorities' tree maintenance work should be done on a systematic,

regularly scheduled cycle. CC is well within this band. This is in contrast to work that is done 'on demand' in response to requests, complaints or hazardous situations. The 40% level is now generally recognised as a benchmark indicating a relatively systematic and planned approach to tree maintenance work.

6.7 Generally, legal precedents from the courts appear to indicate that the standard of inspection is proportional to the size of and resources available (in terms of expertise) to the landowner. The courts have not defined the standard of inspection more precisely than the standard of "the reasonable and prudent landowner". The HSE states in the HSE sector information minute Management of the risk from falling trees (HSE 2007), that: "for trees in a frequently visited zone, a system for periodic, proactive checks is appropriate. This should involve a quick visual check for obvious signs that a tree is likely to be unstable and be carried out by a person with a working knowledge of trees and their defects, but who need not be an arboricultural specialist. Informing staff who work in parks or highways as to what to look for would normally suffice".

7.0 Work Priorities

7.1 CC has limited finances and staff resources, so it must budget across competing demands. All demands cannot be met simultaneously. Because of this, the council's arboricultural team prioritises the work systematically to criteria endorsed by risk managers.

- Programmed work on trees that always require annual pruning to prevent damage/ minimise risk
- Programmed work on trees that have been considered to be essential and ranked of emergency, urgent or of high, medium or low priority following inspection
- Programmed work on trees added to the priority list due to other priorities e.g. development, security, health/wellbeing
- Ad hoc tree work resulting from weather events, sudden tree failure, justified complaints etc.

7.2 Work which the council is able to carry out includes work on

- Dangerous, dead, dying, or diseased trees or branches.
- Trees/ branches liable to cause damage to property or persons
- Trees/ branches causing obstruction of traffic sightlines, access or signage
- Requests from a statutory body, trees/ branches evidenced to be problematic, where there is no other solution
- Trees/ branches which require removal for permitted development

8.0 Perceived Nuisance

8.1 There are a number of tree issues which are of genuine concern to members of the public for which landowners such as councils are not responsible for in common law. These include-

- Overhanging branches
- Shade, including solar panels
- Tree litter such as leaves, blossom, fruit, etc.
- Honeydew/ sap exudation
- Bird droppings
- Wildlife such as squirrels, wasps, bees, caterpillars etc
- Interference with signals such as satellite or terrestrial TV, mobile phone, CCTV cameras, sensors etc (The Council may act upon an instruction/ request from a statutory body in some cases).

8.2   Under current policy / arrangements the Council does not undertake any work as set out above. Some councils have a protocol to allow sponsorship of tree-work by the residents, and/or arrange for tree work paid for by the resident. This is only in cases where a local authority agrees that the work on the tree would be beneficial but would not be of sufficient priority to make the annual work programme. This allows the council to control the quality and timing of the work on its trees overhanging property etc. at no expense to itself.

9.0   Private Trees

9.1   If there is a danger posed by tree(s) between private parties, principally the matter is for such parties to resolve. Local government has powers to require a private individual to make 'safe' a tree via Local Government Miscellaneous Provisions Act 1976.

9.2   It is expected that private parties will take care of their own responsibilities and hence we should not be considered as the first point of contact in attempting to resolve concerns about the danger posed by trees in private ownership. However, we will intervene according to the powers given in the Act if an owner of such trees fails to act in a reasonable timescale.

9.3   CC will only intervene to make a private tree safe where the danger of it causing damage to persons or property is imminent and in accordance with the provisions set out in the Local Government Miscellaneous Provisions Act 1976 Section 23.

9.4   If CC attends to an emergency involving a tree growing on land not owned by us, we will carry out the work as a chargeable service.

10.0 Options/ Opportunities for Income Generation

10.1 CC should consider proactively promoting/ selling the arboricultural service, for all elements of tree-related work. This may include-.
- Seeking opportunities to provide a range of external arboricultural services.
- Undertaking, by agreement, inspection, risk assessment, mapping and work programming for other local authorities and landowners.
- Bidding/ re-bidding for commercial arboricultural contracts within the operating distance of the depot base.

- Developing further sales of timber/wood-based products arising from arboricultural work, eg. wood chippings, logs, timber, fuel etc. and divert from waste streams.
- A scheme to assist private householders in arranging, at their expense, any legitimate agreed tree work which the council is not able or liable to pay for itself. This would allow tree officers to control the quality and timing, and monitor any such work, either through its own team or local contractors The council's charges would include administration/ management fees plus a reasonable rate of return. There may be customer resistance to such a scheme.
- Build on, and increase, the existing work of providing BS5837 surveys for internal and external customers.

11.0 Recommendations

11.1 That CC 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 (e.g. a 5-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.

11.2 That all identified and prioritised emergency, urgent, high, medium and low tree work in the programme is completed within a reasonable identified timescale. Again, this will need to be adequately resourced.

11.3 That income generation opportunities should be fully considered.

11.4 That opportunities for income generation be considered in the light of available spare capacity after recommendations 1 and 2 are resolved.

11.5 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.

11.6 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.

Appendix 1. Pattern of Diminishing Claims against CC 2012 to Present Date (Autumn 2017)

Below is data relating to tree insurance claims received for the last 5 full financial years. The payment figures will be all payments and not just compensation. The majority of payments are made on settled claims. Any payments made on repudiated claims will be defence costs. It is clear from these statistics that tree-related claims against the council have diminished as a result of the robust pro-active management regime.

12/13

	Data	
Status Description	Sum of Count	Sum of Payments
Re-Opened->Ins.	1	0
Repud/Settled	18	840
Repud/Settled In House	1	0
Settled	15	44493.96
Grand Total	35	45333.96

13/14

	Data	
Status Description	Sum of Count	Sum of Payments
Re-Opened->Ins.	1	6407.5
Repud/Settled	27	4136.6
Settled	15	22349.34
Grand Total	43	32893.44

14/15

	Data	
Status Description	Sum of Count	Sum of Payments
Re-Opened->Ins.	3	840
Repud/Settled	21	0
Repud/Settled In House	3	0
Settled	3	8399.28
Settled In House	1	385
Grand Total	31	9624.28

15/16

	Data	
Status Description	Sum of Count	Sum of Payments
Repud/Settled	18	0
Repud/Settled In House	4	0
Settled	4	3100
Settled In House	2	200
To Insurer	1	0
Grand Total	29	3300

16/17

	Data	
Status Description	**Sum of Count**	**Sum of Payments**
Dealing In House	1	0
Repud/Settled	5	0
To Insurer	11	0
Grand Total	17	0

Appendix 2 Cardiff Council Tree Management Process Schematic.

Tree Enquiry through Contact centres, C2C, Parks Enquiries etc.

Process may be improved by referring online or sending form with current policy statements

Enquiry answered with FAQ's Yes /No

Further Information Required

General 21 days

Cllr 10 days

Site Visit Required

Tree inspected within 10 days

Safety Related

Tree inspected within 1 day

Emergency 24/365

Tree inspected within 2 hours

Tree audit, inventory and mapping
Highways and Housing areas completed

Tree audit, inventory and mapping
Parks, cemeteries, allotments and other open space incomplete

Risk Zones identified and mapped on Arbortrack and GIS

Periodically reassess risk zones

Any **available spare resources** should be targeted here for compliance purposes

ROUTINE TREE INSPECTIONS

High risk zones inspected every year
Medium risk zones inspected every 3 years
Low risk zones inspected every 5 years if required

Total tree inspections as required.
Risk of harm calculated to determine priority of **tree works programme**

PERCEIVED NUISANCE

Unnecessary work rarely considered for action

LOW
Necessary work completed within 5 years

MEDIUM
Necessary work completed within 3 years

HIGH
Essential work completed within 1 Year

URGENT
Work completed within 7 days

EMERGENCY
Site made safe within 2 hours

Risk of harm reduced to acceptable level

Any available spare resources should be targeted here to ensure completion of all identified work for compliance purposes. There is usually a serious backlog
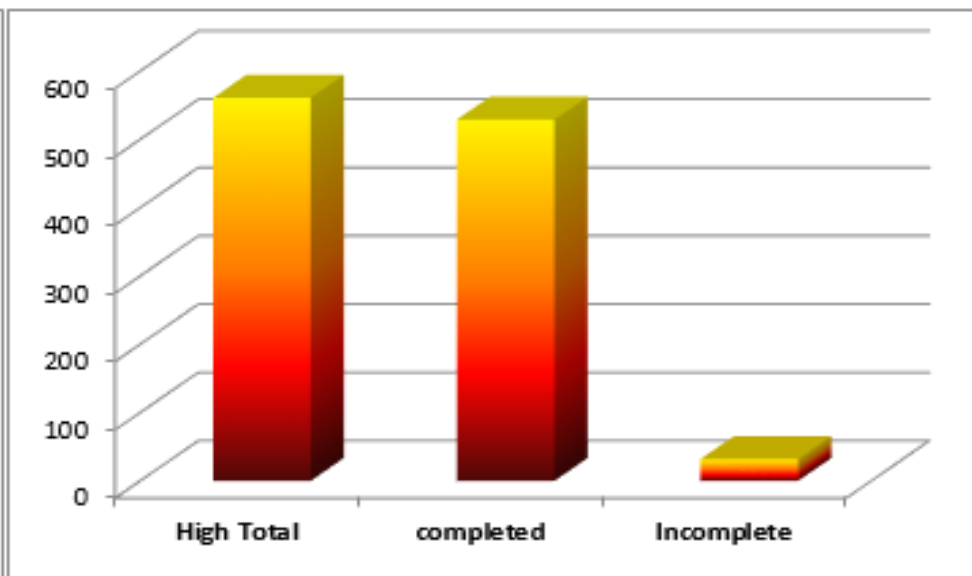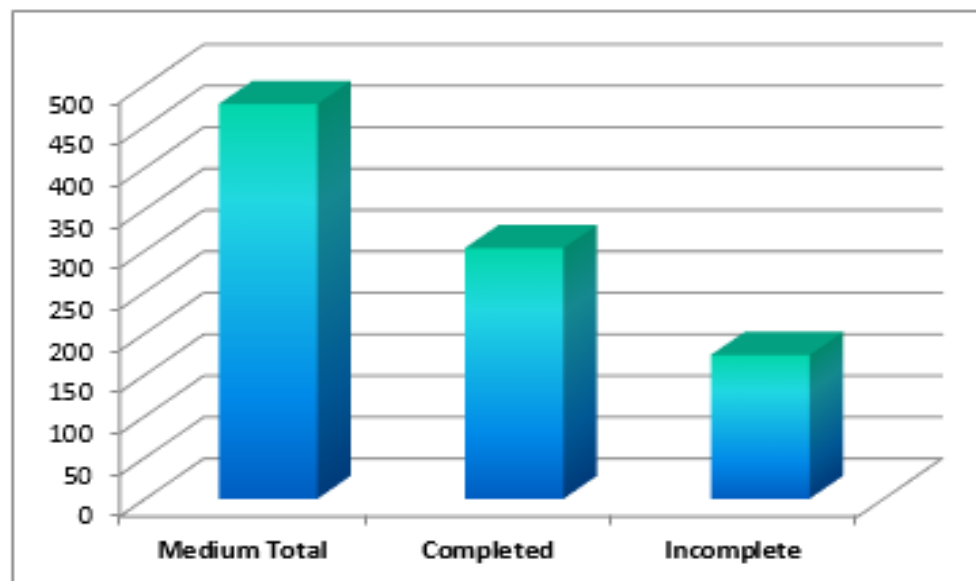
Appendix 3 Annual Work Programme Data- Completed and Uncompleted Current Work (October 2017)
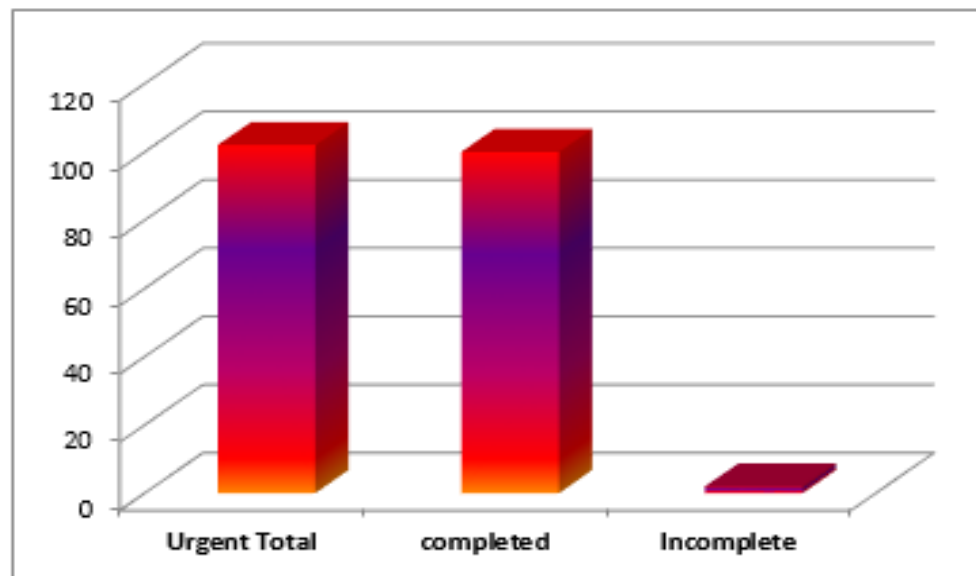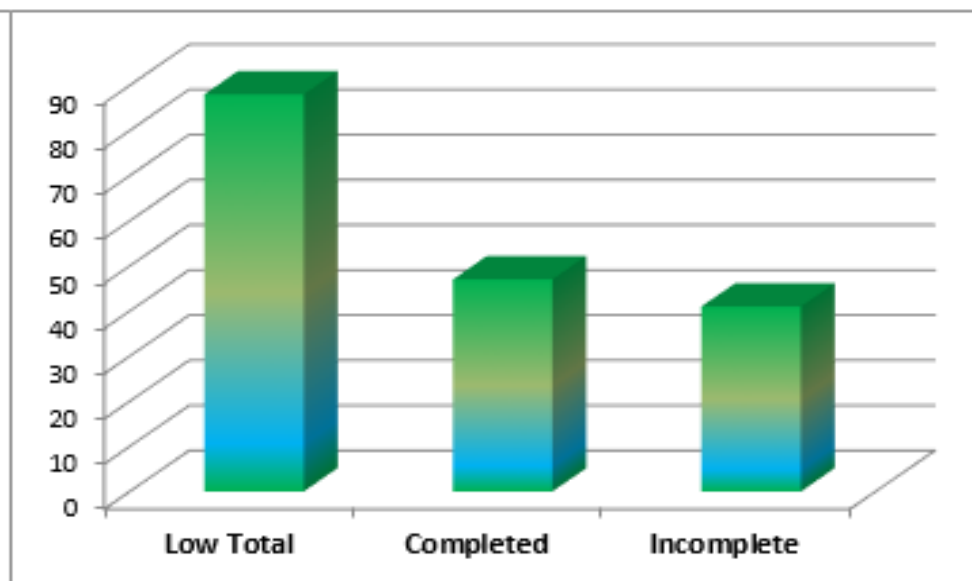

Urgent Work

High Risk Work

Medium Risk Work

Low Risk Work

LOCAL SERVICES
LOCAL SOLUTIONS