Cabinet 13 March 2024



Tree Management Policy and Inspections Review

Ordinary Decision

Report of Corporate Management Team

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Councillor Mark Wilkes, Cabinet Portfolio Holder for Neighbourhoods and Climate Change

Electoral division(s) affected:

Countywide.

Purpose of the Report

To inform Cabinet of proposed revisions to the corporate Tree Management Policy and tree inspection procedures and to seek endorsement of the resulting revised policy and procedures.

Executive summary

- The council's current Tree Management Policy sets out its approach to managing trees in its ownership, or under its management, as well as trees in private ownership that pose a safety risk to the public. It was approved by Cabinet in July 2014 following a public consultation exercise. It is attached as Appendix 3.
- The policy has proved to be a useful document since its introduction, providing information to the public on tree-related matters and helping to provide a consistent approach to dealing with customer enquiries. It was programmed for review in July 2023 and that review has now been completed.
- The amendments made do not fundamentally change many of the elements of the previous policy and particularly those dealing with service requests which were the focus of interest in the 2013 public consultation. The main changes have been made in the areas of tree risk management and tree inspection procedures.

- The policy has been updated to reflect national guidance and best practice. The lessons learnt from the recent prosecution brought against Newcastle City Council have also been considered as part of the review and the proposed revised policy will enable the council to meet its statutory responsibilities under various legislation.
- The policy has been updated to better reflect the wider policy environment, to reflect changes in the council's approach to tree risk management and tree inspections, to clarify existing policies where necessary, and to introduce additional policy and guidance on new issues such as ash dieback disease. It has also been updated to reflect and complement guidance produced by the council in its Trees Woodlands and Hedges Supplementary Planning Document (SPD) (Consultation Draft). The main changes to the Policy are set out in the report and the revised Policy is attached as Appendix 2.
- The councils' approach to tree inspection in the past has been largely reactive. Highway trees have been the subject of regular cyclical inspections since 2013, and inspection procedures for schools were updated in 2022/23. However, inspection of trees on other land has not been systematic.
- The council is proposing to adopt a proactive approach to tree inspections to manage risks, to meet the council's other legal duties, and to deliver high quality tree care. Tree inspection procedures are set out in an Annex to the revised Tree Management Policy (Appendix 2: Annex 1).
- They include 'Zonal Inspections' which cover the council's assets within our busier urban areas, and 'Highway Tree Inspections' which are carried out on our busier roads. These will be carried out by qualified arborists on a minimum 5 year cycle and will cover all assets where active assessment is considered necessary, either to manage risk, or to manage our trees appropriately in accordance with good arboricultural practice.

Recommendation(s)

- 10 Cabinet is recommended to:
 - (a) Note the content of the report.
 - (b) Endorse the revised Tree Management Policy and proposed tree inspection procedures.
 - (c) Note that a review will be carried out of budgets and resources and where they lie within the organisation to help ensure that safety works are adequately resourced and prioritised.

- (d) Note that further reports will be submitted to Neighbourhoods and Climate Change Management Team and Corporate Property Board outlining the results of the inspection regime and potential resource implications.
- (e) Agree to an internal audit of the revised tree risk management strategy after 12 months of complete implementation.

Background

- The council's Tree Management Policy was approved by Cabinet on the 16 July 2014 (Key decision NS/25/13) following a public consultation exercise. The policy sets out the council's approach to managing trees in its ownership, or under its management, and trees in private ownership which pose a safety risk to the public.
- 12 It describes the council's approach to the inspection and maintenance of trees in its care and sets out how it deals with common tree care issues and damage caused by trees, which are the subject of service requests, customer complaints or insurance claims.
- It also sets out how the council uses its powers to deal with trees on private land affecting public safety and the council's role in dealing with high hedges. The policy provides information on Tree Preservation Orders (TPOs) and trees in Conservation Areas, and on trees in relation to development. There is further information on the council's approach to replacement tree planting and biosecurity and on tree pruning techniques.
- The document has therefore been a useful tool for providing information to the public on tree-related matters and helping to provide a consistent approach to dealing with customer enquiries.
- The policy has been subject to periodic review, with minor amendments being introduced in July 2017 and July 2020. However, the current review has been a more comprehensive exercise. The revised policy is intended to better reflect the current policy environment, to reflect changes in the council's approach to tree risk management and tree inspections, to clarify existing policies where necessary, particularly those relating to customer service requests, and to introduce additional policy and guidance on new issues such as ash dieback disease. It has also been updated to reflect and complement guidance produced by the council in its Trees Woodlands and Hedges SPD (Consultation Draft) in relation to trees and development and protected trees.
- The review has been informed by feedback from members and officers on its day-to-day application including consultation with Clean & Green, Highway Maintenance, and CPaL. Issues relating to the review were presented to the Environment Sustainable Communities Overview and Scrutiny Committee (July 2023) and their comments were noted.

Key areas of change

Summary

- 17 The summary of the existing policy (Appendix 3: 1) has been revised generally to reflect the content of the revised version (Appendix 2: 1.1 1.8), in particular, paragraphs have been added on risk management and customer services.
- On risk management, the revised summary says (1.4): 'We have a legal duty of care to manage the risk from our trees. That duty requires that we should be reasonable, proportionate, and reasonably practicable when managing the risk. There is a balance we need to strike between the many benefits trees provide, the risk, and the costs of managing the risk.'
- On customer service, the revised summary says (1.6): 'We receive many enquiries and requests for works to trees from customers. We aim to deal with those requests in a manner which is fair and consistent and reflects the council's priorities for managing its finite resources.'

Policy Scope

The scope of the policy set out in the existing document (Appendix 3: 2) has been amended (Appendix 2: 1.9-1.12) to include reference to tree protection (TPO/ Conservation Areas), which were referred to in the previous version but not mentioned as being within its scope.

Background

The existing Policy (Appendix 3: 3 & 4) provides background information on the importance of trees and relevant legislation. This has been expanded in the revised document (Appendix 2: 2) to include information on the benefits of trees, threats to trees, common law, legislation, policy and guidance and arboricultural best practice. This also refers to the County Durham Climate Emergency Response Plan (CERP) 2022-24 and the County Durham Ecological Emergency Action Plan 2022.

Tree Risk Management

A new section has been introduced on Tree Risk Management (Appendix 2: 3). This was not dealt with in previous versions. It is essential that the Council has a clear policy on managing the risks from trees and that this is reflected in how it inspects trees, how it programmes and undertakes work to them and how it priorities resources. This issue has been highlighted by the recent case of Newcastle City Council being fined £280,000 after the death of a child

hit by a falling tree in a school playground. It is also going to be a key consideration in how the Council deals with Ash Dieback disease which will affect large numbers of trees in the coming years: initial results from surveys on the highway network indicate that this is now widespread across the county.

- The revised Policy sets out (3.2 3.10) that the council is adopting the VALID approach to tree risk management. VALID is an internationally recognised method for assessing and managing risks associated with trees, developed by an industry specialist company. It reflects the guidance given in Common Sense Risk Management of Trees published by the National Tree Safety Group. It applies ISO 31000: Risk Management, and the Tolerability of Risk Framework to tree risk-benefit assessment and management.
- The revised document describes how we are going to manage the risk by a combination of active and passive assessments (3.11-3.19). Passive assessment will be carried out across the Council's estate and the public highway and involves the reporting by anyone of obvious tree risk features. This will be enhanced by training staff who work outdoors as Basic Validators' to recognise and report obvious tree risk features.
- Active assessment involves qualified arborists (Tree Officers) trained as 'Validators' undertaking programmed tree inspections or inspecting trees picked up in passive inspections by others. It also includes assessment by other staff trained as Basic Validators when they are undertaking other forms of programmed site inspections as part of their work which will include a basic level of active assessment for obvious tree risk features.
- The revised policy notes (3.21) the purpose of VALID as a tree risk benefit management tool. Management of the council's tree resource as a whole is influenced by a range of additional considerations. We need to manage our trees for the wider benefits they bring to the community. We also need to carry out work to trees to deal with other risks such as low branches and obstructions, trees causing a legal nuisance to properties, and to manage trees for their health in responding to service requests.
- The revised policy sets out how we will prioritise work (3.22 3.31) with risk reduction work taking priority over maintenance works. Emergency work will be given the highest priority and so the highest risks will be addressed first with other works being carried out in a sensible order to make the best use of our budget.

Tree Inspections

- 27 The existing policy (Appendix 3: 6) states that we have a risk-based approach to risk management and a programme of inspections but contains no detail other than in relation to highway tree inspections. In the period since it was published, we have developed a more systematic approach. The new procedures have been designed to manage risk, meet our legal duties, and to manage our tree resource in accordance with good arboricultural practice. The revised document (Appendix 2: 4) summarises the council's approach to inspections, which will include zonal tree inspections and highway tree inspections, as well as inspections of facilities like schools under Service Level Agreements (SLA's). The procedures are set out in full in an Annex to the revised document (Appendix 2: Annex 1).
- Zonal Tree Inspections (4.2 -4.5) will involve regular programmed inspections of council land within Settlement Zones; urban areas of trees by qualified arborists (Tree Officers) on a minimum 5-year cycle (the frequency recommended in VALID). We will use active assessment for all council land that is identified as a 'zone of high confluence'; where there are high levels of use in all weather and larger trees are present, or where we feel that high levels of arboricultural management might be required.
- 29 Highway tree inspections (4.6 4.8) will involve regular programmed inspections of the county's busier roads by qualified arborists (Tree Officer / Tree Inspector) on a minimum 5-year cycle. This is in addition to inspections by Highway Inspectors who will be trained as 'Basic Validators' and who will be carrying out a basic level of active assessment for obvious tree risk features across the wider network on a more frequent basis (monthly to annual).
- Public Rights of Way (4.9) will generally be the subject of passive assessment. Access and Rights of Way Officers will receive training as Basic Validators and will be able to identify obvious tree risk features as they go about their duties. A small number of very well-used routes are currently subject to regular safety inspections. Officers undertaking those inspections will carry out a basic level of active assessment for obvious tree risk features. Some busier routes within settlement zones will be identified for active assessment as part of Zonal Inspections by Tree Officers.
- Schools (4.10) have a legal duty of care to ensure all trees on land within their management responsibility are subject to an adequate system of inspection and maintenance. The council offers tree inspection services to both maintained and academy schools under a Service Level Agreement (SLA). Maintained schools not entering into

an SLA with the council will be expected to evidence their own arrangements for tree inspections. Academy Schools not entering into an SLA will be responsible for making their own arrangements for tree inspections and maintenance works in accordance with their independent legal responsibilities.

- Rural sites (4.11) including woodlands, country parks, railway paths and local nature reserves will largely be subject to passive assessment, with Countryside, Forestry and Clean & Green staff trained as 'Basic Validators'. Land managed by the Countryside Team is subject to annual inspections. Staff trained as Basic Validators will carry out a basic level of active assessment for tree risk features as part of those inspections. Some sites with potential for higher levels of use or containing large numbers of older trees will be identified for active assessment as part of Zonal Tree Inspections by Tree Officers.
- Across all property portfolios there are likely to be trees within the demised land that is leased out by the Council. As part of the inspection process where it is identified that land is subject to agreements, enquiries will be made to ensure that legal responsibility for trees on these areas are fully understood.
- Tree inspection procedures are under development and are likely to evolve depending on the choice of asset management software and information fed back from initial inspections and surveys. Performance will be monitored and this will also inform the review of procedures. The processes for day to day management of reporting, inspection and programming works and the roles of staff in different service areas are also being reviewed.
- It is proposed that an internal audit of the revised tree risk management strategy and inspection procedures is carried out after 12 months of complete implementation.

Tree maintenance

- The existing policy (Appendix 3: 7) deals with tree maintenance. In the revised policy this has been expanded (Appendix 2: 5: Managing our trees) to describe in more detail the work that we carry out and why. New paragraphs have been added on trees on unregistered land / uncertain ownership, woodland management, ancient woodland and ancient and veteran trees, ash dieback and service requests. The most significant changes are described below.
- 37 Section 96A of the Highways Act 1980 imposes a duty of local highway authorities in England to consult members of the public before felling street trees. This came into force on November 30th, 2023. The revised

document provides information on the duty to consult and states that the council will follow Defra guidance on consultation procedures and how the requirements of the duty should be interpreted.

- On the issue of unregistered land / uncertain ownership (5.10 5.11) the revised document states that the council is not responsible for trees on land that is unregistered or where a private owner is unknown or absent. There are some cases where the ownership of, or responsibility for, public open spaces is unknown, unclear, or undocumented and we may decide it is in the public interest to undertake essential health and safety related works to trees.
- On the issue of ash dieback (5.26 5.34) the revised policy gives background information and states that as ash is a very common tree, pruning or felling all affected trees would place a substantial and unnecessary financial burden on the council. A targeted approach is required based on the proportionate management of risks and benefits. Our approach to ash dieback will therefore be to retain trees where possible. Pruning or felling of trees will only be undertaken where they pose an unacceptable risk of harm to people or risk of damage to property, or as part of woodland management operations. We will not remove dead or diseased trees where risks are assessed as being tolerable. We will not fell or prune trees purely for aesthetic purposes unless there are clear benefits which would justify the costs.
- On the subject of service requests (5.35- 5.39), the revised policy includes additional information on how we deal with enquiries in general terms. Issues are also dealt with on a topic-by-topic basis in Section 6: Common Management Issues. We receive many enquiries relating to trees, including complaints and requests for tree work. This in an area where members of the public often have strong feelings about the effects of trees on their properties and their quality of life. The policy needs to be clear on what action the council will or won't take in response to service request and the factors that will influence its decisions. It also needs to retain sufficient flexibility to be applied with sensitivity to individual circumstances.
- The revised policy (5.36) states that it is important that individual issues are dealt with consistently and fairly and that balanced decisions are taken. This is to be based on the following factors: any adverse effects the trees may have; the contribution they make to the amenity of local communities and the wider environment. Any decision must also be cognisant of tree health, condition, and sustainability in that location; the practicality of any remedial action and whether it conforms to good arboricultural practice. The resources available to the Council and its priorities for allocating them must also be considered.

- Given that there are limited resources to manage our tree stock, the policy gives priority to essential works to manage risk and abate legal nuisance. We will not therefore undertake works to trees that in our judgement are not necessary, or contrary to good arboricultural practice, or works that are desirable but non-essential which are un affordable within council budget limits.
- Where customers are dissatisfied with the council's decision, the existing policy refers to a two-stage review process. This was considered to be an unnecessarily complex and drawn out procedure and has been replaced in the revised policy (5.38) with a simpler single stage process.
- This section also sets out (5.39) the circumstances in which work that we would consider desirable but non-essential, but is unaffordable within budget limits, could be undertaken if separately financed. This reflects and accommodates initiatives taken by elected members who, understanding that some work might not be undertaken primarily for financial reasons, have found other resources to fund it. The revised policy sets out that members of the public or their agents cannot be authorised to undertake work on council land due to health and safety, insurance, and other considerations.

Common Management Issues

- The existing policy (Appendix 3: 9) deals with common management issues such as overhanging branches, obstruction, shading, loss of view, trees affecting TV reception or solar panels, overhead cables, general/minor nuisances, large trees, and personal medical complaints. The principles underlying the council's approach to these matters are robust and well-founded and typical of those adopted by other local authorities and public sector organisations.
- The wordings for these issues have been amended where appropriate (Appendix 2: 6) to give more clarity on the way the council will deal with minor issues and the factors that will influence its decisions. This will also relate to the availability of resources and priorities for spending. The more significant changes are described below.
- In respect of overhanging branches (6.1 6,7) the councils policy remains that we will not normally prune the branches of trees that overhang neighbouring properties unless they present an unacceptable risk of harm or are causing or likely to cause an actionable nuisance. The revised policy advises that pruning is likely to have only temporary and often short-lived effects, can lead to vigorous regrowth and require repeated costly work in future. It clarifies that where we do consider it appropriate to prune to prevent or remedy an actionable nuisance, we

will do so in accordance with good arboricultural practice, and we will only do what is necessary to mitigate the nuisance. It references the common law right of landowners to cut branches back to their boundary to remedy matters at their own cost.

- The revised policy says (6.4) that we will consider works that might be of benefit where they would form part of the sustainable management of our trees such as removing diseased, poorly formed, or leaning trees close to boundaries, but that works of this nature will generally be given a low priority and subject to the availability of resources. It also says (6.5) that we will have regard to the issue when carrying out woodland management works, subject to programme and resources.
- In respect of shading (6.10 6.12) the council's policy remains that we will not normally prune or remove our trees to improve light levels at neighbouring properties. The revised document advises that pruning is rarely effective, likely to have temporary/short lived effects, and can lead to vigorous regrowth which is likely to require repeated costly work in future.
- The revised document states that we will consider undertaking work (6.11) where in our judgement the amount of shade cast is exceptional and overbearing and particularly where it effects elderly, infirm or disabled persons who spend a significant amount of time within the area affected. The wording 'exceptional and overbearing' is new and has been introduced to reflect concern from members and officers that the policy was unnecessarily inflexible.
- The policy goes on to say that in those circumstances we will take into account the value of the tree/s to the locality and the wider community and that we will only do works that are consistent with good arboricultural practice that can improve the situation sustainably without compromising the health and amenity value of the tree/s. Works of this nature will generally be given a low priority and will be subject to the availability of resources. Taken in the round, it is considered that the revised policy offers sufficient flexibility without undermining the original intent.
- In respect of trees affecting reception (TV/Satellite) or Solar Panels (6.14-6.17) the council's policy remains that we will not normally prune or fell our trees for these purposes. The revised document advises that the effects of pruning are generally temporary and short-lived and can lead to vigorous regrowth which can exacerbate the problem and require repeated costly work in future. It advises that while in respect of solar panels (6.15), we recognise the benefits of renewable energy sources, trees also play an important role in mitigating climate change, as well as providing other environmental benefits.

- The revised policy does add the caveat (6.17) that we may consider undertaking works that may be of benefit that would be part of the sustainable management of our tree stock, or when carrying out woodland management work subject to programme, priorities and resources.
- In respect of trees that are considered too tall (6.26-6.28), the policy remains that we will not prune or fell a tree simply because it is considered to be 'too big' for its surroundings; being large does not in itself make a tree dangerous. In assessing risks posed by trees we will consider the relationship of trees with their surroundings as well as their health, condition and future growth potential. The revised policy says (6.28) that we understand that these factors are not always obvious to residents who may be anxious about the size and proximity of trees. Where the level of risk needs detailed analysis, we will use VALID's Tree Risk App to assess it and share those findings. This shows transparency in the way we exercise those judgements and should help reassure residents that the risk has been professionally assessed.
- The revised policy introduces new material on how the council will deal with effects of trees on horses and other livestock (6.32 -40), with particular emphasis on sycamore poisoning. This states we will not normally prune or remove trees to remove effects on grazing animals on adjacent land, as it is generally the landowners' responsibility to manage their land and livestock appropriately. It provides more information based on the joint guidance produced by the Arboricultural Association and the British Horse Society.

Damage caused by trees.

- The existing policy (Appendix 3: 10) deals with damage arising from trees owned by the council and particularly in respect of root invasion, damage to walls and fences, paths, drains and subsidence. This has been expanded (Appendix 2: 7) to provide more background information on these matters and how the council will deal with them.
- 57 Additional material has been added on damage from falling trees and branches (7.38-7.39), stating that where trees owned by the council cause damage by falling, the Council will normally only be liable if this was reasonably foreseeable and preventable. This would not be the case, for example, where an otherwise healthy tree or branch failed in severe weather. Claims relating to damage, or harm will be determined by insurers on a case-by-case basis.

Trees on Private Land / risk

The existing policy (Appendix 3: 11, 12) deals with the council's powers and duties relating to trees on private land causing a risk to the public. It has been re-worded slightly in the revised document (Appendix 2: 12) to improve clarity.

Tree pruning techniques.

The existing policy (Appendix 3: 20) gives advice of tree pruning. This has been updated (Appendix 2: 10) to provide more detailed advice which better reflects British Standard: BS3998:2010 Tree Work – Recommendations and accompanying illustrations have been improved.

Tree planting

The existing policy (Appendix 3: 16) deals with council tree planting I. This has been updated (Appendix 2: 11) to give more information on priorities for new planting and species selection, including getting the right tree in the right place and the use of native species for nature recovery, as well as the standards to be adopted.

Trees and development

The existing policy (Appendix 3: 17) gives information on trees and development. This has been updated (Appendix 2: 12) to reference planning policies in the County Durham Plan and the Trees Woodlands and Hedges SPD. A paragraph has been added (12.4) stating that we will determine the monetary value of amenity trees lost to development using the CAVAT method which is now widely adopted by local authorities as the most appropriate means of valuing amenity trees. The paragraph on development by the council (12.5) has been updated to reference the SPD.

Tree Preservation Orders / trees in Conservation Areas

The existing policy (Appendix 3: 14) gives information on TPOs and trees in Conservation Areas. It has been updated (Appendix 2: 13) to give more detail and to better reflect the content of the Trees Woodlands and Hedges SPD. The revised version also provides more information on the circumstances in which the council will make a TPO and the considerations that will apply when considering applications for works.

Other factors constraining works to trees.

The existing policy (Appendix 3: 15) gives background information on felling licences, Hedgerow Regulations, birds, bats, planning permissions and restrictive covenants. It has been updated in the

revised document (Appendix 2: 14) to ensure it is accurate and up to date.

Resources

- As part of the build up to this review of the Policy, and particularly the development of proactive tree inspections, an additional Senior Tree Officer post was created in 2022. Income from the SLA with schools is providing income to support an additional temporary Tree Inspector. Recruitment for this post is nearing completion.
- The proposed approach to risk management will entail additional staff training which is likely to be met largely from existing budgets. The acquisition of asset management software will entail some additional costs. Increased levels of inspection will lead to increased referrals of tree works to Clean and Green teams This can't be quantified at this stage but will be offset to some degree by re-prioritising allocation of resources within existing budget limits. A review will be carried out of budgets and resources and where they lie within the organisation to help ensure that safety works are adequately resourced and prioritised.
- Ash dieback in itself is likely to lead to increased workload which will have resource implications. As inspections progress, further reports will be submitted outlining their results and any resource implications.

Conclusion

The proposed revised Tree Management Policy will help the council meet its statutory and other legal duties, manage the risks arising from trees in a proportionate way, and deliver a high standard of tree care. It is a significant improvement on the existing documents as it not only brings into consideration current tree health issues but will also give members of the public more useful information on tree management issues in a clear and consistent way in relation to their everyday enquiries.

Background papers

None

Other useful documents

 Cabinet Report 16th July 2014: Draft Corporate Tree Management Policy.

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Appendix 1: Implications

Legal Implications

The review of the document will help ensure that the council meets its legal responsibilities in respect of trees and exercise its duties effectively. The current Tree Management Policy was adopted by Cabinet. The proposed changes to the policy are relatively substantial and advice from the legal team is that the revised policy will need to go to Cabinet for adoption.

As part of the inspections process there will be protocols put in place to ensure legal responsibility for tree maintenance is understood. This is applicable where the Council lease out land and tenants may have taken on responsibilities through their lease agreement.

Finance

No immediate implications, although as stated at paragraph 62 in the report, further work will be required to review existing budget and resource alignment within the Council to ensure the requirements of the policy can be delivered efficiently.

The approach to risk management will entail additional staff training which is likely to be met largely from existing budgets. It is not anticipated that additional training for staff will impact on the grades of their posts. The acquisition of asset management software will entail some additional costs. Increased levels of inspection will lead to increased referrals of tree works to Clean and Green teams. This can't be quantified at this stage but will be offset to some degree by re-prioritising allocation of resources within existing budget limits.

Consultation

None

Equality and Diversity / Public Sector Equality Duty

No impact

Human Rights

None

Crime and Disorder

No direct implications

Staffing

None

Accommodation

None

Risk

A well-founded and up-to-date Tree Management Policy is needed to support the council in meeting its legal obligations in relation to trees and public safety. The proposed approach to tree risk management and tree inspection will reduce the risk of harm to people and property. Potential impacts of the spread of Ash Dieback Disease on the environment, public safety, and Council finances is identified as a Strategic Risk (UR0175). The development of a new risk management strategy and proactive inspection regime in the revised Tree Management Policy is identified as a planned control improvement in the Strategic Risk Assessment. Tree inspection arrangements have been discussed with the Council's insurer.

Procurement

None

Climate Change

Maintaining and expanding the council's tree and woodland resources is a key part of its response to climate change both in respect of carbon capture and storage and the role trees play in mitigating the effects of climate change including urban heating and flood management.

Appendix 2: Tree Management Policy, January 2024

As Attached PDF

Appendix 3: Tree Management Policy, July 2020 as attached PDF