

# **BRIDGEND COUNTY BOROUGH COUNCIL**

## **REPORT TO CABINET**

**19 JUNE 2018**

### **REPORT OF THE CORPORATE DIRECTOR COMMUNITIES**

#### **BRIDGEND COUNTY BOROUGH COUNCIL TREE MANAGEMENT POLICY**

##### **1. Purpose of Report**

The purpose of this report is to highlight the value of Bridgend County's Urban Tree population, update on work to assess the condition of the Council's tree population and undertake priority tree management works and approval of a long term Tree Management Policy for Bridgend County Borough Council (BCBC).

##### **2. Connection to Corporate Improvement Objectives/Other Corporate Priorities**

2.1. This report supports the following corporate priorities:

- Supporting a successful local economy
- Helping people to be more self-reliant
- Smarter use of resources

##### **3. Background**

3.1. This work is set against a backdrop of consideration for health and safety as well as best practice in relation to environmental preservation and enhancement.

3.2 As a significant land owner within the County Borough, BCBC has a legal duty of care to ensure the woodlands and trees within the council's ownership are safe environments for the public to visit and move within.

3.3 The Council has a liability under Civil law under the Occupiers' Liability Acts which provides that an occupier with control over premises is obliged to take reasonable care to ensure that either the visitor (under the 1957 Act) or trespasser (under the 1984 Act) will be reasonably safe. A higher standard of care is owed to a visitor than to a trespasser. An even greater duty of care is owed to a child and occupiers must expect children to behave with less care than adults.

3.4 The Council could also be liable to criminal prosecution under the Health and Safety at Work Act 1974: This places a duty on employers to ensure, so far as is reasonably practicable, that employees and members of the public (and other persons such as self-employed people) are not put at risk. New sentencing guidelines were introduced in 2016 and upon conviction the Council could be liable to a fine of up to £4 million.

3.5 BCBC's tree stock is not the responsibility of one single department and the Council has no in-house arboricultural expertise. Therefore, if there is a tree issue, the responsibility falls to the holding department who has responsibility for the land on which the tree(s) are located. In respect of schools, individual Premises

Responsible Persons (PRPs) have this responsibility and in respect of the Highways, relevant Highways legislation applies.

- 3.6 In 2005, BCBC produced a corporate policy to deal with complaints received in respect of trees on Council owned land, excluding trees affecting the Highway. This corporate policy identified a number of circumstances where the Council will intervene and fell trees following complaints from third parties and where it will not. Since this time, a tree protocol and checklist has been prepared and used as an initial tree assessment.
- 3.7 In 2015, BCBC in partnership with Forest Research – the research agency of the Forestry Commission – produced a report entitled “Valuing the Urban Trees in Bridgend County Borough”. The report utilised i-Tree, which is a state-of-the-art, peer-reviewed software suite from the United States Department of Agriculture (USDA) Forest Service that provides urban and community forestry analysis and benefits assessment tools. i-Tree uses a plot based method of sampling, with data recorded from a number of plots across a study area that are extrapolated to represent the area as a whole. The study areas included were defined using the Landscape Character Assessment (LCA) boundaries and Bridgend’s Local Development Plan boundary (LDP) and covered the urban areas of Bridgend, Maesteg, Porthcawl, Pencoed and Pyle. This combination was used as it included greenspaces on the periphery of the urban area and consequently outside of the LCA boundaries.
- 3.8 When the research was carried out, Bridgend County Borough’s urban forest:
- had over 439,000 trees, resulting in an average urban tree density of 99 trees per hectare (ha); this is above existing estimates for other areas in the UK
  - had a 12% urban tree cover, equal to an area of 533 ha. The trees were primarily found in parks, on residential land and on vacant land
  - had a low proportion of large trees compared to previous i-Tree Eco studies conducted in the UK, and would benefit from more medium and large sized trees
  - had up to 27% of urban space available to plant trees or shrubs
  - included 60 tree and shrub species, recorded across 12 land use categories
  - had ash, hawthorn and goat willow as the most commonly encountered species
- 3.9 The report concluded that urban trees alone in Bridgend County Borough deliver the following:
- intercept an estimated 124 million litres of water every year, equivalent to an estimated £163,790 in sewerage charges avoided
  - remove an estimated 61 tons of airborne pollutants each year, worth more than £326,000 in damage costs
  - remove an estimated 2,080 tons of carbon from the atmosphere each year, this amount of carbon is estimated to be worth £461,400
  - store an estimated 53,500 tons of carbon, this amount of carbon is estimated to be worth £12.1 million
  - have a replacement value of £142 million
  - have an asset value of £686 million, an evaluation based on visual amenity.
- 3.10 The report concluded that these figures should be considered as conservative estimates for the urban forest. It should also be noted that not all of these trees are

on Council land and that the report does not include figures or values for the tree population, Council owned or otherwise, outside of the urban areas covered.

#### **4. Current Situation / Proposal**

4.1 Following the Cabinet report in November 2016, entitled “Environment (Wales) Act 2016 – New Duties and Responsibilities”, and running alongside the development of BCBC’s Corporate Landlord approach, a cross-directorate working group was established to consider options for a future approach towards the management of trees on BCBC owned land. The focus was to review the Council’s current approach towards tree management and put in place a new policy, procedures and management plan with a dual focus on health and safety and environmental preservation and enhancement.

4.2 It was considered that there was a need for:

(a) Research and analysis of all BCBC tree stock to determine fit with the following categories:

- Very high target occupancy (constant use)
- High target occupancy (frequent use)
- Medium Target occupancy (intermittent use)
- Low target occupancy (occasional use)

(b) Inspections of tree stock in areas of very high or high occupancy and identify trees considered to be of a significant risk.

(c) A document that identifies remedial tree works required in areas of greatest risk, in priority order. Based on this report, the contracting of suitably qualified company/companies to undertake the required works.

(d) The development of a new Tree Management Policy, setting out the Council’s approach to tree management on its land

(e) The development of a Framework Agreement for future procurement of tree management works covered under the new Tree Management Policy, once the priority works had been completed.

(f) The delivery of a training programme for BCBC staff to support an increased understanding of the value of trees and their management and to enable relevant officers to undertake initial level tree assessments. It is intended that this training will be mandatory for site responsible officers and PRPs, or those with delegated authority to attend.

4.3 Following the completion of the review of tree stock in relation to target occupancy a holistic inspection programme took place of those areas identified as very high and high target occupancy. A document has been produced that itemises the required works in the areas of greatest risk and draft procurement documentation has been prepared. It is intended to procure appropriately qualified company/companies by August 2018.

4.4 Procurement documentation has also been prepared for the Framework Agreement and it is intended that this will be in place by December 2018. This Framework Agreement will be for on-going works once the priority works covered in 4.3 have been completed.

- 4.5 The opportunity to achieve relevant qualifications in Arboriculture up to National Qualification Framework (NQF) level 4 will be made available to relevant staff, in line with policies and procedures. When qualified, the on-going arboricultural assessment works will be undertaken in-house. Until such a time as this occurs, the on-going assessment works will be procured via the above Framework Agreement.
- 4.6 Funding has been secured through the Single Revenue Grant provided by Welsh Government to deliver a training programme for BCBC staff in relation to initial level tree management and tree assessment. The training programme will be delivered between July 2018 and March 2019.
- 4.7 A new Tree Management Policy has been developed and is attached as appendix 1.
- 4.8 The aim of this Policy is to ensure that the Council is compliant with all relevant statutory legislation and current best practice guidance, regarding the management of trees and woodlands within the Bridgend County Borough area, set against the legislative context. This includes management of trees to reduce any associated hazards as well as taking into account the social, economic and environmental benefits that a healthy urban tree stock provides.
- 4.9 This Policy is purely for the management of trees and woodlands located on Council owned land. The management of trees located on land outside of Council ownership is the responsibility of the relevant landholder.
- 4.10 This Policy outlines a proactive tree survey system that identifies the issues of management and records the way in which BCBC owned trees are assessed and managed so that a realistic response to the issue of tree risk and management is given. This system is compliant with the Safety at Work Act (1974) and the Health and Safety Executive's (HSE) Management of the risk from falling trees. This Policy identifies that a reasonably practicable approach be taken, which is proportionate to the risk. There will, however, always be a risk associated with trees. This risk can be managed and reduced by the implementation of a proactive inspection regime to help identify potential failures and safety issues with particular trees. There will however also always remain a need for reactive management.
- 4.11 The Policy has been developed to be used as a tool to provide an audit trail of actions taken in response to a potential risk, what the findings were and how these findings were acted upon. It is a systematic approach that can help to demonstrate that BCBC has dispensed its duty with 'reasonable care' and takes appropriate action as necessary to protect members of the public and employees.
- 4.12 The Policy sets out a framework under which proactive tree assessments and works and reactive tree assessments and works can take place. The Policy also highlights a specific approach in relation to Highways and identifies criteria against which the Council may refuse requests to undertake tree management works.
- 4.13 Proactive tree assessments will involve a two stage process. Initially, and following attendance at relevant training, site responsible officers and PRPs, or delegates, will undertake initial tree assessments using the BCBC protocol and checklist detailed in the Policy. The frequency with which these are carried out will

depend on the level of risk identified following the risk zone mapping outlined in 4.2. Whilst risk zone mapping allows the establishment of priority areas for inspection, an assessment of the potential for an individual tree to fail also needs to be carried out. If uncertainty exists or further assessment is required, stage two will commence. The stage two proactive tree surveys should be carried out by someone who is qualified in Arboriculture to a minimum of level 4 National Qualification Framework (NQF) or higher. The approach for ensuring this is set out in 4.5. There is potential for conflict between the presence of trees and the safe use of the public highway. The Highways Act 1980 (amended 1986) is relevant to both BCBC owned trees and those in private ownership that have the potential to affect the adopted highway and decisions will be made by the Highway Authority. BCBC will endeavor to carry out all works required by the Act on BCBC owned land within 14 days of the works being identified.

- 4.14 Following proactive tree assessment, if it is considered that proactive tree management works are required the land holding department will procure the required works to be carried out in a timeframe as indicated in the assessment report from a Framework Agreement, made up of suitably qualified and experienced companies. The tree works must be in accordance with BS 3998:2010 – Tree Work Recommendations (2010) and other relevant and current industry good practice.
- 4.15 Reactive tree assessments should take place by site responsible officers and PRPs following severe weather conditions such as high winds or prolonged periods of precipitation which may have resulted in stability issues relating to saturated or waterlogged soils, root heave or wind damaged crowns. Reactive tree management work is undertaken in response to an emergency situation such as damage to council trees following a storm event or on verification of a reported dangerous tree.
- 4.16 BCBC receives many requests from the public to carry out works to trees that are considered as non-essential, that is management that isn't directly related to the condition safety issues and/ or nuisance in legal terms and which will result in the loss of this valuable resource. Works considered to be non-essential as detailed in the Tree Management Policy will not be undertaken.
- 4.17 The Tree Management Policy states that BCBC will aspire to lead by example at sites within its control by planting and where practicably possible will seek to encourage the planting of trees and woodland on sites not owned by BCBC.
- 4.18 Funding has been secured in partnership with Neath Port Talbot Council, Swansea Council, Natural Resources Wales (NRW) and Public Health Wales that will support BCBC to assess its estate and identify areas of greatest opportunity for tree planting, in particular where maintenance regimes are in place that will support the correct management of any new trees. Planting will consider the right tree in the right place with a preference to native species where possible. Additional tree presence will be considered through new planting, development mitigation, direct management and community involvement.

## **5. Effect upon Policy Framework & Procedure Rules**

- 5.1 The Council under Civil law has a duty to both visitors and trespassers to take reasonable care to ensure that they do not suffer injury on land and premises

owned by the Council. In respect of visitors there is a duty to ensure that they are reasonably safe in using the premises. In addition there is also a duty to trespassers to take reasonable care for their safety in respect of any risk of their suffering injury by reason of any danger due to the state of the premises. Any breach of these duties can give rise to a claim for damages against the Council.

- 5.2 There is also a liability in Criminal law under the Health and Safety at Work Act (1974) which places a duty on employers to ensure, so far as is reasonably practicable, that in the course of conducting their undertaking, employees and members of the public are not put at risk. Whilst the acts of felling or pruning a tree obviously fall under the act, the growing and management of trees on land also falls within the scope of this duty. The Management of Health and Safety at Work Regulation (1999) will also be applicable. Regulation 3 deals with risk assessments which would include carrying out risk assessments of tree stock. In relation to Highways, relevant Highways legislation applies.
- 5.3 The introduction of the Well-being of Future Generations (Wales) Act 2015, the Planning (Wales) Act 2015 and the Environment (Wales) Act 2016 has created a more interconnected policy context in relation to environmental preservation and enhancement.
- 5.4 The Well-being of Future Generations (Wales) Act 2015 requires public bodies to consider improving the social, economic, environmental and cultural well-being of Wales.
- 5.5 A new biodiversity duty included in the Environment (Wales) Act 2016 helps to reverse the decline and secure the long-term resilience of biodiversity in Wales. This enhances the Natural Environment and Rural Communities (NERC) Act 2006 duty to require all public authorities, when carrying out their functions in Wales, to seek to “maintain and enhance biodiversity” where it is within the proper exercise of their functions. In doing so, public authorities must also seek to “promote the resilience of ecosystems”. To this end, on 24<sup>th</sup> April 2018, BCBC Cabinet approved the Bridgend County Borough Council Biodiversity and Ecosystems Resilience Forward Plan, 2018-2022.

## **6. Equality Impact Assessment**

- 6.1. Screening has highlighted that no issues arise as a result of this report.

## **7. Well-being of Future Generations (Wales) Act 2015 Assessment**

- 7.1 The Well-being of Future Generations (Wales) Act 2015 Assessment template has been completed. A summary of the implications from the assessment relating to the five ways of working is below:
  - Long-term - The Tree Management Policy sets out an approach to the management of BCBC trees that responds to short term issues of health and safety matters associated with trees in a way that undertakes works to promote the long term health of trees. The Policy highlights that value that trees provide to the County Borough and proposes an approach towards planting of further tree stock for longer terms benefits.

- **Prevention** - The recent assessment of BCBC tree stock, outlined in the report, has highlighted the action required to undertake tree management works to assist in preventing issues arising as a result of the BCBC tree stock. An analysis on this scale and the proposed approach towards taking forward works in a co-ordinated way over the coming years represents a clear commitment towards a proactive and preventive approach.
- **Integration** - The value of trees has been researched and is detailed within the report. Undertaking the actions outlined in the report and the attached Tree Management Policy will enhance these values.
- **Collaboration** - A cross-Council project team has worked together to manage the work to date and develop the Tree Management Policy in recognition that the management of BCBC tree stock does not fall to a single department. Going forward, training will be provided to members to staff to increase the awareness of sustainable tree management.
- **Involvement** - The project team involved in undertaking the assessment work to date and developing the Tree Management Policy has been drawn from officers across Council departments and the future training proposed will be available for those with a direct responsibility for management of land holdings that contain tree stock, thereby widen the involvement in and understanding of tree management amongst BCBC staff. In undertaking tree management works, close partnership working with Natural Resources Wales will be required.

## 8. Financial Implications

- 8.1. A sum of £70,000 has been made available through an earmarked reserve to undertake parts (a), (b), (d) and (e) outlined in section 4.2. £21,355 was spent in 2017/2018 and a further £13,615 spent in 2018/2019. This leaves £35,030 available in the earmarked reserve.
- 8.2 Following inspections of tree stock in areas of very high or high occupancy a report was produced that identified a total sum IRO £240,000 is required to undertake Priority 1, 2, 3 and 4 management works. The £35,030 remaining in the earmarked reserve can be used towards this and the remaining £204,970 will be funded in the following way:

<b>Directorate</b>	<b>Estimated sums</b>
Education and Family Support	23%
Wellbeing	2%
Communities	44%
Operational and Partnership Services	0%
Corporate Contingency Fund	31%

These figures are indicative at this stage and subject to confirmation but set out broadly where at this point it is considered the costs may be incurred. As the works are undertaken they will be re-charged to the relevant land holding departments. The Corporate Contingency Contribution will be a maximum of £65,000. The process for recharging individual schools will be determined by the Corporate Director, Education and Family Support.

- 8.3 Following completion of the initial priority tree management works, all future tree assessments and works, whether proactive or reactive, will be procured via a new Framework Agreement. The responsibility for doing so and the associated costs will rest with the land holding department as relevant.
- 8.4 The costs associated with the training staff to Arboriculture National Qualification Framework (NQF) level 4 will be met from the directorates in which the members of staff are based, using existing budgets.
- 8.5 Funding has been secured through the Welsh Government Green Infrastructure Grant to undertake mapping and analysis of tree planting opportunity areas identified in 4.18.
- 8.6 Funding has been secured through the Single Revenue Grant, administered by Welsh Government, to fund the Tree Training Programme in 2018/2019 outlined in 4.6.

## **9. Recommendation**

- 9.1. Cabinet recommended to:
- 9.2 Note the findings of the Valuing Urban Trees report
- 9.3 Note the progress made to establish a new approach towards the management of BCBC's existing trees and approve the approach towards tree planting
- 9.4 Approve the new Bridgend County Borough Council Tree Management Policy

**Mark Shephard**  
**Corporate Directorate, Communities**  
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**Contact Officer:** Ieuan Sherwood  
Manager, Economy and Natural Resources

**Telephone:** (01656) 815334

**E-mail:** [Ieuan.Sherwood@bridgend.gov.uk](mailto:Ieuan.Sherwood@bridgend.gov.uk)

**Postal Address:** Economy and Natural Resources  
Communities Directorate  
Civic Offices  
Angel Street  
Bridgend  
CF31 4WB



**Background documents:**

- British Standards Institution, BS 3998:2010 Tree work recommendations, 2010
- Cabinet Report, Bridgend County Borough Council Biodiversity and Ecosystems Resilience Forward Plan, 2018-2022, 24th April 2018
- Cabinet Report, Environment (Wales) Act 2016 – New Duties and Responsibilities, 29<sup>th</sup> November 2016
- Environment (Wales) Act, 2016
- Forest Research, Valuing the Urban Trees in Bridgend County Borough, 2015
- Health and Safety at Work Act, 1974
- Management of Safety at Work Regulations, 1999
- Natural Resources Wales, Town Tree Cover in Bridgend County Borough - Understanding canopy cover to better plan and manage our urban trees, 2013
- Natural Environment and Rural Communities Act, 2006
- Planning (Wales) Act, 2015
- Well-being of Future Generations (Wales) Act, 2015