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| <b>GROWTH, ENVIRONMENT AND RESOURCES SCRUTINY COMMITTEE</b> | AGENDA ITEM No. 5    |
| <b>8 SEPTEMBER 2021</b>                                     | <b>PUBLIC REPORT</b> |

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| Report of:                     | Steve Cox, Executive Director Place & Economy, Cambridgeshire and Peterborough   |              |
| Cabinet Member(s) responsible: | Cllr Nigel Simons Cabinet Member for Waste, Street Scene and the Environment<br>Cllr Peter Hiller, Cabinet Member for Strategic Planning and Commercial Strategy and investment. |              |
| Contact Officer(s):            | Darren Sharpe - Natural and Historic Environment Manager   | 01733 453596 |

**TREE MANAGEMENT: POTENTIAL REVIEW OF THE TREE AND WOODLAND STRATEGY; SCOPING FOR APPROPRIATE EXCEPTIONS; AND REVISED TREE PLANTING TARGETS.**

| <b>RECOMMENDATIONS</b>  |                       |
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| <b>FROM:</b>  | <b>Deadline date:</b> |
| <p>It is recommended that Growth, Environment and Resources Scrutiny Committee:</p> <ol style="list-style-type: none"> <li>1. Consider the draft revised Tree Risk Management Plan, and decide whether to recommend it to Cabinet</li> <li>2. Consider whether exceptions to current policy should be devised, such as allowing the removal of trees in certain areas contrary to standard policy; and if so, decide whether to recommend such exceptions to Cabinet. Officers do not recommend introducing any such exceptions.</li> <li>3. Consider whether an addendum to the Trees and Woodland Strategy is appropriate, which clarifies the operational guidelines to which Aragon operate to, in respect to encroaching vegetation and loss of daylight. Officers do recommend introducing such text.</li> <li>4. Offer any views on the ongoing work by the cross-party Climate Working Group in respect of whether or not the Council should consider amending its tree planting / tree canopy coverage target, with such views to be reported to Cabinet and the Working Group in due course.</li> </ol> |                       |

## **1. ORIGIN OF REPORT**

1.1 The report is submitted to Scrutiny and presents three items that pertain to the existing Trees and Woodland Strategy.

1. The existing Trees and Woodland Strategy contains a Tree Risk Management Plan contained within Appendix 4 of the Strategy. This document is kept under regular review by the Aragon Direct Services and thus it was considered timely to review and potentially update the current approach for risk management.
2. At its Annual Work Programming Meeting on 8<sup>th</sup> June 2021, the Committee requested that the Trees & Woodland Strategy be brought to the Committee, specifically to consider the potential to make recommendations on introducing 'exception rules' which would have the effect of allowing the removal of trees in certain areas contrary to normal policy.
3. The tree planting related element of this report is brought to Scrutiny following the Council's instruction (in October 2020) to the Climate Change Cross Party Working Group

to conduct an audit of Council owned land and produce a revised tree planting target by March 2022.

## 2. PURPOSE AND REASON FOR REPORT

2.1 The purpose of this report is to:

- 1) allow the Committee to receive and comment on a draft updated Tree Risk Management Plan and the measures outlined within it, which, if subsequently approved by Cabinet and Council, will replace the existing Appendix 4 of Trees and Woodland Strategy.
- 2) to explore the need for exceptions to be inserted in the Trees and Woodland Strategy, to allow the removal of trees in certain areas contrary to normal policy.
- 3) update Scrutiny on options being explored for tree planting targets on Council owned land.

Please note that the Trees and Woodland Strategy is a major policy item, and therefore only Full Council can amend its content. Scrutiny can therefore recommend amendments to Cabinet, which in turn can make recommendations to Full Council.

2.2 This report is for the Growth, Environment and Resources Scrutiny Committee to consider under its Terms of Reference Part 3, Section 4 - Overview and Scrutiny Functions, paragraph no, 2.1 Functions determined by Council:

### 2. Environmental Capital.

2.4 The outcome of this work has the potential to directly and indirectly support all of the council's corporate priorities.

2.5 The tree planting recommendations included in this report will help to improve air quality across the city which therefore could also have a corresponding benefit for Children in Care.

## 3. TIMESCALES

|   |                                      |   |                                    |
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| Is this a Major Policy Item/Statutory Plan?     | YES                                  | If yes, date for Cabinet meeting  | TBC – potentially 10 November 2021 |
| Date for relevant Council meeting if applicable | TBC – by February 2022 at the latest | Date for submission to Government Dept. (Please specify which Government Dept.) | N/A                                |

## 4. BACKGROUND AND KEY ISSUES

4.1 Trees are a vital natural resource, and their importance to human welfare and wellbeing (as well as to wider biodiversity wellbeing) is becoming increasingly recognised by society. PCC, as a major landowner, is a custodian of many thousands of trees – indeed, 20% of land owned by PCC is covered by trees, ranging from woodlands to single urban 'street' trees. To help manage that tree stock (as well as new planting), the Council has an adopted Trees and Woodland Strategy, the last being adopted by Full Council in 2018. It is nationally recognised in the industry as a 'best practice' example of such a Strategy. Members may wish to remind themselves of its content here:

<https://www.peterborough.gov.uk/council/planning-and-development/conservation-trees-and-hedges/tree-management>

4.2 The Strategy has been very effective in putting in place clear processes and guidelines as to how the city council will not only discharge its statutory functions in relation to Trees and Woodland, but also establishes guidelines, or ‘service standards’, in respect of this important resource, a matter which is a very ‘public facing’ service.

4.3 However, for a number of reasons as explained in this report, Scrutiny Committee is asked to consider and offer its thoughts on potential changes to the Strategy. Any such recommended changes or comments will then be reported to Cabinet. Cabinet will then determine what to recommend to Full Council.

4.4 This report has three broad elements, each covered separately below.

### **Tree Risk Management Plan**

4.5 Part of the function of the Council’s Trees and Woodland Strategy is to help facilitate compliance with:

- Occupiers Liability Act 1957 [revised 1984] which requires it “to take reasonable care” to maintain its trees and woods in a reasonably safe condition.
- The Health and Safety at Work Act 1974 which requires the council to have a duty of care to employees and members of the public in respect to safety of the trees in its ownership.

4.6 The existing Strategy, at Appendix 4 of the Strategy, contains a Tree Risk Management Plan. As with all risk management, it is important to regularly review such management processes and update any measures to meet legislative changes, case law or general current best practice guidance. A review and update of this Risk Management Plan has recently been undertaken by Aragon Direct Services (whom deliver tree services on the ground for the Council) and relevant Council officers, and it is recommended that the Risk Management Plan be updated and agreed as an amendment to the existing main Strategy. Appendix 1 of this report provides the recommended updated Risk Management Plan.

4.7 In summary, the changes proposed in the Plan (compared with that agreed in the 2018 Strategy) are relatively limited. The main systems of health and safety checks on trees that have been developed over time are proposed to be maintained. The overall aim of the revised Plan continues to be to keep risks presented by trees as low as it is reasonably practical to do so. The main proposed changes, therefore, are:

- To reflect upon recent case law that has subsequently already influenced current operations and thus needs to be formally reflected in the plan.
- To provide a clearer structure to the document, in order to explain the ‘what’, ‘why’ and ‘how’.
- To introduce a ‘high priority tree survey’ process for sizeable trees which are within falling distance of a high value target.

If Members have any concerns with the updated Tree Risk Management Plan, we would be grateful to receive such comments prior to taking to Cabinet.

### **Exceptions to remove trees within certain areas contrary to standard policy**

4.8 This Report now turns to the Scrutiny Committee’s express request for a report to be brought to it which considers whether the Trees and Woodland Strategy should be amended to allow for certain ‘exceptions’ to standard policy to be created, which would have the effect of allowing certain trees to be felled (or otherwise substantially reduced in size) when standard policy would dictate that such felling would not be approved.

4.9 In advance of bringing the Report to Committee, Scrutiny Members were asked to set out what possible exceptions (or issues) should be considered by officers to help facilitate preparation of this Report. The following themes of concern were raised:

- Long term problems where trees are blocking out light to residential homes.
- Encroachment over properties where the branches are both large or densely covered in foliage.
- Self-seeded trees

This Report discusses each of the above, and sets out an officer recommendation on them.

- 4.10 The encroachment of trees on residential properties and the loss of light remains the two most frequent enquiries raised regarding council owned trees (44.9% of the 1,182 enquiries received last year). It is also important to note, however, that since the introduction of proactive management of the tree stock and the establishment of clear guidance in the Trees and Woodland Strategy, over the last 8 years the number of enquiries has reduced by 53% (from approximately 2,500pa). This demonstrates that the Council are starting to address some of the historic issues experienced with our tree stock, and also demonstrates that by having clear procedures written down in the form of a Strategy helps communicate what we aim to do and, equally, what we will not do.
- 4.11 The current framework and management process we have in place, as established by the Strategy, allows tree officers employed by Aragon Direct Services to make clear decisions based on the policies within the Strategy. Prior to having such clear management and policy procedures in place, tree complaints were dealt with in an ad hoc manner, arguably inconsistently, and often led to ‘those who shout loudest get what they want’.
- 4.12 Accordingly, officers (and Aragon Direct Services) are very concerned with the introduction of any kind of ‘exception’ rules. Introducing any kind of ‘exceptions’ rule within our policy framework has a considerable risk of undermining the clear management and policy framework we have in place. By definition, it brings an element of doubt into the decision maker’s mind (“should an exception be made in this case?”), opens the door to more complaints (“you have the ability to make an exception, so why aren’t you?”), and risks setting precedents (“you cut the tree down as an exception to policy at 31 Anystreet, why not mine at 35 Anystreet?”).
- 4.13 As a matter of principle, therefore, officers do not support the introduction of any ‘exceptions to policy’ type arrangement. Any such introduction is likely to increase workloads (including on cases which are not deemed necessary, such as less significant issues such as leaf fall, loss of view or satellite reception), increase complaints and, overall, increase costs. It could ultimately end up returning the service to a more ad hoc (and highly inefficient and inconsistent) management regime.
- 4.14 It is Officers’ opinion that the existing Strategy provides the policy and toolkit to address the vast majority of the issues raised. It is therefore proposed that no exception based policies are inserted within the existing strategy. It is, instead, recommended that resources remain targeted to proactive management rather than short term reactive responses, and it would be helpful if ward councillors could be encouraged to support Aragon to identify key areas within their wards where the full scope of the strategy can be implemented e.g. short sections of problematic shelterbelts or key residential streets experiencing issues.
- 4.15 Whilst officers are therefore not recommending exception policies be introduced, officers do think it would be helpful if the Strategy was updated to introduce an addendum to the Strategy that clarifies the operational guidelines to which Aragon operate to, in respect to encroaching vegetation and loss of daylight. The suggested new text is as follows:

#### Daylight Loss

*Trees are often perceived to block light to nearby properties. However, pruning or removal of trees will often have a negligible impact on the amount of light reaching a house or garden. The Council will only consider taking reactive action (pruning or felling) in the following circumstances:*

- *The separation between the tree's branches and windows of the main room of the dwelling is less than 4 metres.*
- *The works are considered compliant with BS3998: Recommendations For Tree Work; and*
- *The trees lost would not have significant landscape impact or would not result in the loss of a significant community asset.*

*For the purposes of this guidance windows to toilets, bathrooms, storerooms and circulation areas are excluded. Equally the guidelines do not apply to sheds, greenhouses, summer houses, garages and workshops. Where a dwelling has a conservatory, the opening between it and the house, not windows to the front or side of the conservatory, is taken as the window position.*

*Encroaching vegetation (trees).*

*Council owned trees will not be pruned to prevent overhang of a private property unless it is touching the main dwelling or garden buildings. Where cases of this nature are reported it is aimed, following pruning, to provide 2 metre clearance from the structure to the offending branches.*

*The council will advise residents of their common law rights to prune overhanging vegetation to the boundary line of the property (the exception to this would be where the tree is covered by a TPO and consent would first have to be obtained from the Local Planning Authority).*

- 4.16 An additional item of concern raised by Cllrs, for the purpose of potentially introducing exceptions to standard policy, was the problems caused by trees self-seeding where it is detrimental to local residents or infrastructure. This issue is long running within the city and typically arises as a result of trees seeding within shrub beds and pavement cracks etc. These seedlings are seldom appropriate to allow to mature in their current location, owing to the proximity to properties or the density of the seedlings. These self-setts do not fall within the current tree maintenance contract but do fall within the grounds maintenance contract as part of hard surface and shrub bed maintenance. As a consequence of budget pressures, shrub beds are now only maintained once a year resulting in self set seedlings establishing far more frequently. To resolve this, Scrutiny Committee may wish to consider recommending that additional resources are inserted into the grounds maintenance contract. Officers do not recommend the Trees and Woodland Strategy is amended to address this concern.
- 4.17 In conclusion, therefore, in respect of 'exceptions' to allow more felling/pruning being introduced to the Strategy or additional policy relating to self-set trees, officers are recommending no such exceptions be introduced. If Scrutiny Committee disagrees with this position, and wish to recommend to Cabinet that such exceptions be introduced, then officers would be grateful if such a request was as clear as possible as to what exceptions, and under what circumstances, Committee sees such exceptions as being appropriate to introduce in the Strategy. This would then reduce (but not eliminate) the risks as outlined in this report.

**Tree Planting Target**

- 4.18 The Report now turns to whether or not the council should amend its Tree Planting Target. At a meeting of Full Council in October 2020, Council instructed the cross-party Climate Change working group and relevant officers to:

- “1. Carry out an audit of council owned land in the city to identify possible planting opportunities
2. Research and recommend much more ambitious tree planting targets for planting on Council land and to submit to Full Council not later than March 2021 amendments to the Trees and Woodland Strategy and the Carbon Management Plan to include the proposed new targets.”

- 4.19 It became apparent that there was insufficient time and resources to meet the March 2021 target, especially in terms of a comprehensive audit of Council owned land. In February 2021, therefore, Cabinet resolved that it:

*"Supports the work of the Climate Change Cross Party Working Group to identify mechanisms to enable the Council to significantly increase tree canopy cover across the city over the next ten years and to present detailed proposals within a maximum 12 months detailing how this can be achieved."*

4.20 The Working Group continues to discuss what an appropriate revised planting target should be (the present council agreed target being to increase tree canopy cover on PCC owned land from 20% to 22%). The Working Group are looking at options to substantially increase this target, but it is (as are officers) mindful of the cost and resource implications involved.

4.21 Whist no firm Working Group proposals are available to present to Scrutiny Committee today, any overarching views the Committee has on tree planting targets, and whether additional resource should be found to boost our planting targets, would be welcome and will be reported to both the Working Group and Cabinet. Ultimately, it will be Full Council to amend, or otherwise, the current target. Alternatively, Scrutiny Committee may be content for the Working Group alone to advise Cabinet on this point, but it was considered important to at least remind Scrutiny Committee of this ongoing discussion, due to Scrutiny Committee's wider tree related interests.

## **5. CONSULTATION**

5.1 No external consultation has taken place on any matters referred in this paper.

## **6. ANTICIPATED OUTCOMES OR IMPACT**

6.1 It is anticipated that Growth, Environment and Resources Scrutiny Committee will consider and comment on the report, and set out its views for Cabinet (and, if applicable, the Climate Working Group).

## **7. REASON FOR THE RECOMMENDATION**

7.1 The proposed updated Tree Risk Management Plan has considered current best practice and has been developed alongside the framework of resources available to the Council and extensive working knowledge of the tree resource within the city.

The Trees and Woodland Strategy is considered to provide a robust strategic pro-active management regime for the Council's trees. The introduction of exemptions could be counter-productive and risks harmful to the progress made to-date.

Minor addendums to add clarity on operational guidelines are however considered beneficial to provide a clearer understanding for all customers.

The revised tree planting targets are being devised via officers and the cross-party Climate Change Working Group, at the request of Full Council.

## **8. ALTERNATIVE OPTIONS CONSIDERED**

### **8.1 Tree Risk Management Plan**

Other rejected options include:

1. Keep plan as existing. This was dismissed as it was considered that the Council would not comply with best practice guidance or its legal duties.
2. Specify a Plan that exceeds best practice guidance or resources. Although commendable this approach would impose unacceptable financial pressures on the authority.

### **Amendments to policy (including exceptions)**

Other rejected options include:

1. Prune any tree that shades or overhangs private property. This would introduce a significant financial burden exceeding existing budget along with the destruction of one of the city's most valuable natural assets.
2. Insert a broad range of exemptions. This would make the role of the Tree Officer untenable and would impose financial burdens far in excess of existing budgets.

#### Tree Planting Target

A variety of options have, and continue to be, considered by the Working Party.

### **9. IMPLICATIONS**

#### **Financial Implications**

##### **9.1 Tree Risk Management Plan**

It is considered that the revised Tree Risk Management Plan will impose no new financial burden on the council.

#### Addendum to operational guidelines

The proposed changes are considered to be minor and currently considered to be deliverable within existing budgets.

#### Tree Planting Target

Any increase in the tree planting target will require additional resources, potentially substantial running into £millions (both short term and annual basis for maintenance). These costs are not currently planned for in the Medium Term Financial Strategy. The potential for securing grants to pay for any increase in planting targets is also being explored. These are matters forming part of the discussion at the Working Group.

#### **Legal Implications**

##### **9.2** There is a legal duty to maintain any trees planted on land that the Council owns and is responsible for, as defined in the Health and Safety at Work Act 1974, Management of Health & Safety at Work Regulations 1999, Highways Act 1980 and The Occupiers Liability Act 1957. If Council commits to the planting of additional trees, PCC will be legally responsible for their maintenance.

The loss of daylight on neighbouring properties from Council owned trees may constitute, in some people's mind, a nuisance based in law. It is however reported that to-date that no such cases have been brought to the courts or succeeded in respect of trees. This maybe because a remedy is seldom available.

Where a tree is causing actual harm directly to a person property e.g. rubbing on a shed roof, the resident has the right to abate the nuisance themselves. It is however considered that the Local Authority would take reasonable steps to abate the nuisance in response to harm.

#### **Equalities Implications**

##### **9.3** There are no known implications, positive or negative

#### **Rural Implications**

##### **9.4** There are no known implications, positive or negative

#### **Carbon Impact Assessment**

9.5 Directly, there will be no impact arising, as Scrutiny Committee are not the decision maker. A full CIA will be undertaken as part of the Cabinet's consideration of recommendations arising. If Scrutiny recommend increased tree felling or increased tree planting, and such a recommendation is approved by full council, then this could have a material effect on the amount of CO2 the council offsets from its operations.

**10. BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

10.1 Trees and Woodland Strategy 2018

**11. APPENDICES**

11.1 Appendix 1 – proposed updated Tree Management Risk Plan