

REPORT TO: Executive Board

DATE: 5 September 2013

REPORTING OFFICER: Strategic Director, Communities

PORTFOLIO: Physical Environment

SUBJECT: Environment Policy & Performance Board Tree Working Group

WARD(S) Borough-wide

1.0 PURPOSE OF THE REPORT

1.1 To provide Members with the findings and recommendations of the Environment Policy and Performance Board Tree Working Group for adoption and endorsement.

2.0 RECOMMENDATION: That the Executive Board:

- i) adopt the recommendations of the Environment Policy and Performance Board Tree Working Group;**
- ii) refers the recommendations for Capital Funding to the Budget Working Group and if minded, support the funding identified.**

3.0 SUPPORTING INFORMATION

3.1 On 12 June 2013 the Environment Policy and Performance Board considered a report from a Members Tree Working Group. The Board endorsed the recommendations of the Tree Work Group and asked that the Executive Board consider them for adoption.

In June 2012 it was agreed that a Tree Working Group be established. The group was chaired by Cllr Dave Thompson and included Cllr John Bradshaw; Cllr Geoff Zygadlo; Cllr Bill Woolfall; Cllr Frank Fraser; Cllr Pauline Hignett; Cllr Andrew MacManus; Cllr Stan Parker; Cllr Pauline Sinnott. The group met for the first time on 22/01/2013 and then subsequently on 19/02/2013 and 18/04/2013.

3.2 At the first meeting the group was given a presentation by officers. Members learned that the Council has an estimated 900,000 trees. The numbers had been calculated using known values for a small proportion of trees and through the extrapolation of sample count-data and is a conservative estimate of tree numbers.

Trees are highly beneficial to human health as they produce oxygen, filter out particulates, have a cleansing effect on pollution, take up water thereby alleviating the risk of flooding and are attractive within the landscape/townscape.

The Council has a legal duty of care under both civil law and criminal law to manage its tree stock (primarily under Occupiers' Liability Acts of 1957 or 1984 and the management of Health and Safety at Work regulations 1999). This includes inspecting them to ensure they are safe. The Council has not proactively inspected its tree stock since 2000 but it does reactively inspect trees following complaints. This is not adequate to meet the duty of care. Within the current structure, the Open Space Service does not have the capacity to proactively inspect trees.

The Council has a tree maintenance team that consists of a team leader and 3 trained operatives. The team is an effective unit of qualified staff who carry works to larger trees and to all trees where it is required that work be carried out above ground level. The team carries out programmed woodland work and reactive work to trees following complaint or reports of damage.

In 2011/12, 494 tree related Calls were recorded and directed to the Open Space Service. This equates to 23% of all calls recorded. This places considerable demand on the team for reactive works which often displaces programmed and other proactive tree works.

- 3.3 In the second meeting the group considered the issues of inspection and liability. Members learned that the Council would have no defence in court if one of its trees caused serious injury or death. Many Councils are in the same position as Halton but others do carry out inspection regimes. Those that do often apply considerably more resources (staff and budget) to the management of trees than Halton does and many of them have far fewer trees.
- 3.4 Insurance claims alleging damage to property caused by trees is also an issue for the Council. In the last three years the Council has received 21 claims. Not all are adequately evidenced but can incur significant resources to investigate. The Working Party felt that a programme of inspection and management of trees is critical in defending and mitigating against such claims.
- 3.5 Members heard how the council manages its tree stock in line with best practice (BS3998). Unnecessary or inappropriate works can result in damage that can be detrimental to the tree in the long term, which may in turn lead to potentially serious consequences for the tree and ultimately create liabilities. Therefore, when carrying out works to trees it is essential to maintain appropriate standards. All tree works carried out by the Council's tree team (or contractors managed by the Open Space Service) are required to conform to

guidance and recommendations set out in BS3998 Tree work – Recommendations.

- 3.6 Neighbour issues relating to trees take up the largest proportion of officer time. They are usually related to height of trees and shading but can also include issues such as leaves falling into gardens. The Council endeavours to be a good neighbour and will try to accommodate the wishes of residents when it can. This includes undertaking work to trees when they do not really require any, subject to such work not being harmful to the general health of the tree. There are however many occasions when members of the public ask for works that are inappropriate and when such works are refused it causes conflict situations. A typical example is the request to have the height of a tree lowered (often described as ‘lopped’ or ‘topped’). The Council never carries out such work as it is bad practice, counterproductive (the tree becomes even thicker in the crown causing even more problems for the resident), and can wound trees so severely that major dieback or extensive decay are likely to follow.

Residents often claim a right to light when trying to press officers to carry out works to trees that are not required. Officers try to explain diplomatically that there is not in law a ‘right to light’ as such. Wherever practicable, works will be carried out to try to give residents more light but at all times works must comply with BS3998. Claims of a loss of light are also more prevalent when leaves are in full growth and this often conflicts with the bird nesting season. The Council has a statutory duty not to disturb nesting birds unless works are essential.

- 3.7 Having considered all of these issues, the Tree Working Group recommends that:

- The Council develop a new tree strategy that clearly articulates how the council manages its tree stock whilst adhering to guidance and recommendations set out in the National tree Safety Group - Common sense risk management of trees 2010.
- A post of Open Space Officer who would hold the portfolio for trees and woodlands be created to oversee the implementation of work. This post holder would implement and oversee inspection and monitoring systems.
- A tree inspection regime be implemented at a frequency that is deliverable with the resources available to the Council. This system should be robust enough to defend the Council from potential liabilities.
- That new advice and guidance leaflets and webpages be produced to assist elected members and members of the public to understand how the Council manages its tree stock. This

includes explaining the Council's position on right to light, trees interfering with Sky reception, etc.

- That officers should identify a suitable tree management system (database) that allows mobile working and resources be made available to procure such a system or develop one in-house. Issues concerned with systems being able to 'speak' with other Council IT systems be investigated and resolved. Members of the Tree Working Party recognised that budgets are tight at this time but that the potential risk of more accidents and claims could be avoided by investment.
- The operational tree maintenance team be strengthened so that more proactive maintenance work can be carried out. This should help reduce complaints and ensure more effective handling of tree issues.
- Officers will explore all opportunities to derive income from the Council's tree stock through the sale of logs or arisings. In particular opportunities relating to biomass energy production should be explored.

4.0 **POLICY IMPLICATIONS**

4.1 There are no policy implications.

5.0 **FINANCIAL IMPLICATIONS**

5.1 The above staffing proposals could be achieved within existing resources. It is estimated that a suitable system would cost in the region of £20,000.

5.2 The capital costs identified above need to be further considered by the Council's Budget Working Group as part of the budget setting process for 2014/15.

6.0 **IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

6.1 **Children & Young People in Halton**

Implementing inspection regimes and increasing proactive maintenance will create a safer environment for young people.

6.2 **Employment, Learning & Skills in Halton**

It is likely that additional training will be required to develop the skills and knowledge of both key Officers and frontline staff in the visual assessment of trees.

6.3 **A Healthy Halton**

Trees contribute to a wide range of environmental benefits, including

improving and mitigating air quality and pollution, and capturing carbon. Active management of Halton's tree stock will support the ability of the landscape to contribute to key determinants of health including, education and skills, and environment.

6.4 A Safer Halton

Implementing inspection regimes and increasing proactive maintenance will create a safer environment; and will help maintain a green and attractive place to live.

6.5 Halton's Urban Renewal

Healthy trees planted in appropriate locations enhance the townscape making it a more desirable place to live and work.

7.0 RISK ANALYSIS

7.1 Failure to establish a proper inspection regime involves considerable risks to the Council.

7.2 The potential for death or injury to the public and for damage or destruction of property should be apparent. Where such consequences arise from a failure by the Council to discharge its obligations there is a potential for criminal as well as civil liability.

7.3 Criminal liability can range from corporate manslaughter to a range of offences under the Health and Safety at Work Act 1974. It should be noted that officers of the Council as well as the Council itself could be charged with a number of offences.

7.4 Quite apart from the potential financial consequences on the Council, the reputational damage to the Council should not be ignored.

8.0 EQUALITY AND DIVERSITY ISSUES

8.1 None identified.

9.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

None