

SCOTTISH BORDERS COUNCIL

TREES FOR LIFE



FOREWORD

Trees are important to all of us. They provide us with food, timber for building, firewood and are also provide habitats for hundreds of animals, birds and insect species. Perhaps most importantly they help clean the air and produce much of the oxygen we breathe.

However, we may also appreciate trees for their landscape value; finding enjoyment from seeing changes throughout the seasons, from spring growth and the flush of new foliage to the vibrant colours of autumn and the sparseness of the winter months.

In the Scottish Borders, we are fortunate to have a rich and diverse countryside. Within our boundaries there are areas of established and plantation woodlands, copses and parkland trees. The Council has a clear duty to care for the trees it is responsible for and, it must also ensure that some of those located in private grounds are protected for the benefit of the community as a whole.

Whether grown for fruit or ornamental value, planted in an urban setting, on open spaces, woodlands and the coastal environment, the benefits of trees are clear and they contribute greatly to the quality of life in our area.

Trees are part of our nation's heritage and can grow to be hundreds of years old. We therefore have a duty as individuals and as a society to ensure that trees planted today have an equal chance to thrive and grow to maturity as far as is practically possible.

This Policy provides a framework with information and guidance to ensure that trees in the Scottish Borders are managed in a professional and sustainable manner.

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The policy is guided by the legal requirements in Scotland relating to tree management, which are detailed within appendix 1.

1. Introduction and Purpose

- 1.1 Most people agree that trees are a positive thing, and yet we continually see them removed for development, damaged or neglected, both on public and private land. We need to protect our trees and care for them properly. We also need to make sure we pass on a legacy of an attractive and healthy tree population for future generations, by endeavouring to replant where appropriate new trees to replace those that have died or have been removed.
- 1.2 As well as looking after trees and woodlands on Council-owned and/or managed land and protecting some trees on private land through statutory measures, SBC has a role in raising the awareness of the importance of trees and influencing their positive management. We can do this by acting as an example of best practice and by providing information about tree management.
- 1.3 The policies within this document provide the Council with a framework to manage its own tree operations and provide advice on common tree related enquiries.

2. Biodiversity

- 2.1 Trees and woodlands are an integral part of the ecosystem providing habitats for many species, some of which are completely dependent on them. Trees are used by birds and bats for nesting and roosting. The fruit and seed produced by trees provides a sustainable food source for various animals and birds. Invertebrates, lichens, moss, fungi and, also ground fauna such as bluebells and other woodland species are also dependent on trees. Older and veteran trees are particularly important for biodiversity providing unique and increasingly rare habitats for many specialised species. Dead wood is also important for biodiversity as it can provide a variety of important habitats either as dead branches that decay within a living tree, as a standing dead tree or on the ground.

3. Improving Air Quality and Mitigating Climate Change

- 3.1 Trees produce the oxygen that we breathe and absorb carbon dioxide, the greenhouse gas, and store it within their wood. They also help to improve air quality by trapping particulates on their leaves and absorbing harmful gases.
- 3.2 Woodlands and dense groups of trees can also be effective at reducing noise pollution. In addition, trees can positively affect the local climate by providing shade and shelter from wind and sun, and research has shown that trees can reduce the energy needed to heat or cool properties if they are positioned to provide shade or shelter. Trees within porous surfaces also help to reduce flash flooding by intercepting rainfall and slowing or reducing run off. With a growing understanding of climate change issues and the need to become more fuel efficient, trees will have an increasingly important role to play in this area.

4. Health and Well-being

- 4.1 Trees influence both the physical and mental health of local communities. The use of trees to remove air pollutants can be part of a wider strategy to curb respiratory illnesses. Trees also contribute to creating attractive urban and park settings for walking, cycling and running, helping to promote more active lifestyles. Access to trees and green spaces has been found to aid patient recovery and accelerate healing times in hospitals. Trees also help create environments that reduce stress and help towards reducing mental health problems.

5. Trees in the Scottish Borders

- 5.1 Responsibilities are placed on land owners to safeguard the public and employees from danger through the Occupiers Liability (Scotland) Act 1960, and the Health and Safety at Work Act 1974.
- 5.2 Powers are given to Councils, under the Roads (Scotland) Act 1984 to ensure that road users are safeguarded from potential danger by roadside trees even when these are on private land. Legislation also provides ways of safeguarding particular trees from harm through the use of Tree Preservation Orders made under the Town & Country Planning (Scotland) Act 1997, which also sets out a provision to protect trees in conservation areas. Council duties under the Nature Conservation (Scotland) Act 2004 to improve provisions for wildlife are also reflected within this policy.
- 5.3 The priority in managing trees belonging to the Council is, first and foremost, public safety. Where a tree constitutes a demonstrable hazard to people or property, then the appropriate works will be carried out as a matter of urgency to make the tree safe. The Council is also committed to maintaining the health and longevity of trees through appropriate management. Works will be undertaken on unhealthy trees where they are threatened by disease or instability. In addition, trees on Council land will be encouraged to develop a natural form, characteristic of their particular species wherever this is appropriate. To achieve this, any works on trees will be carried out by SBC to the highest standards of arboricultural practice, in accordance with all relevant health and safety legislation and to the British Standard BS 3998:2010 (Tree Works) standards.
- 5.4 Whilst resources are focussed on delivering the priorities and standards set out above, there are many issues which the public expect or would like the Council to address regarding trees on Council owned land, which cannot be reasonably resolved. This policy therefore sets out the Council's position on dealing with these issues and additional advice, which will assist members of the public, councillors, officers and all stakeholders.

The advice provided is for general guidance purposes only and individuals should seek their own legal advice in specific cases.



6. Cyclical Risk Assessment of Council Owned Trees

6.1 Whilst the Law does not regard trees in themselves as dangerous, the Council has a common law duty of care to take reasonable steps to prevent or minimise the risk of personal injury, or damage to property, arising from the presence of any of its Council owned trees on a site. Guidance under the 'National Tree Safety Group – Common Sense Risk Management of Trees' is followed. Therefore, Council owned trees are assessed on a rolling five year cyclical basis to ensure they do not pose any unnecessary risks from being in poor condition. Only trees which warrant work or further assessment are assessed and recorded, this enables the priorities outlined below to be undertaken practically and within their respective timeframes. Due to the geographical size of the Borders the areas are divided into 5 localities. If work has been identified as urgent, or not urgent but requires remedial action, the timeframe is:

- **High Priority – Work completed within a week**
- **Not Priority – Work completed within six to twelve months**
- **Reactive - Only inspected on notification of an issue or if an officer is on site for another purpose. These would be for trees which are in remote sites, or locations which are infrequently used and where there would be no damage to structures or surfacing.**

Note: The above policy on tree inspection applies to trees managed in general parks and open spaces. Any tree removed will be assessed for replacement planting. This includes tree species, suitability of the location, or identifies an alternative location for replacement.

7. Dangerous Trees

7.1 If a Council owned or managed tree is in such a condition that it poses a 'high' risk to people or property, and is considered to be an emergency situation, the Council will make the tree safe as soon as possible. If Council staff cannot make the tree safe the Council engages external contractors drawn from a framework of approved tree surgeons to carry out the necessary work.

7.2 If a Council owned or managed tree is identified as dangerous, but the risk to the public is not high, then the tree will be made safe depending on the degree of risk identified at the time of inspection. Trees may be made safe by pruning or felling and the most cost effective approach will be taken. For certain High Value trees, other options would be considered to reduce risk of the tree failing or people being close to the tree if it did fail. Options such as physically supporting the tree through

bracing or creating fenced areas around the tree are options that may be considered.

7.3 Work to Council owned or managed trees must follow this policy. Trees which are unsafe are dealt with as a priority by area teams. Likewise, council owned trees directly affecting building/structure will receive work to alleviate potential or existing issues. The policy will ensure a standard and impartial approach to dealing with council owned trees and any tree work out with dedicated tree budget must adhere to the policy direction.

8 Privately Owned Tree(s)

8.1 The Council has no authority to intervene where a privately owned tree affects the occupiers of neighbouring property. Owners of trees on private land should check to see if the tree is within a Conservation Area, or is the subject of a Tree Preservation Order before carrying out any work. If the preserved tree is imminently dangerous and posing a serious risk the work can be undertaken without formal consent. However, proof of this would need to be provided to ensure there are no breaches of TPO or Conservation Area regulations.



9 Customer Advice

9.1 An emergency is defined as a tree that is imminently dangerous, as outlined below:
High risk (Emergency) if a tree poses an immediate danger of collapse, or is causing an obstruction requiring urgent attention, it will be made safe immediately or as quickly as possible.

Please contact the Customer Service Centre during office hours-Tel: 0300 100 1800
or out of hours contact: Tel: 01896 752111.

10 Things to Look for When Considering Tree Condition

10.1 Indicators to look for which may mean that a tree is in such condition to warrant immediate attention include:

- Snapped or blown over
- Rocking at the base - roots are damaged
- Uprooted but held up by another tree or building
- A Large branch has broken off or is hanging off the tree
- Blocking road, footpath, access to property
- Fallen onto a property or vehicle

11 Medium or low risk (Non-emergency) SBC Owned or Managed Trees

11.1 If the level of risk is lower the tree will be made safe within 6 months. Signs to look out for which may mean that a tree is a risk to people or property but does not require an emergency response include a tree which is:

- Dead
- Dying - few leaves in summer or dieback in the crown
- Bark is loose and falling off
- Mushrooms or fungi growing on or near the tree
- Old splits and cracks in the trunk or large branches
- Smaller branches falling from the tree

11.2 The public can report a dangerous tree by contacting the Customer Service Centre during office hours, Tel: 0300 100 1800 or out of hours contact Tel: 01896 752111.

12 Nuisance to Third Parties/Neighbouring Trees

12.1 Common Law Right to Cut Back Overhanging Branches and Roots:

Policy: Anyone has a Common Law right to remove (abate) the nuisance associated with trees encroaching onto their property. The Council will not prune back trees where they encroach onto a neighbouring property on private land. Council owned trees will be assessed, and if necessary tree work undertaken.

Customer Service Centre during office hours: 0300 100 1800 or out of hours contact: 01896 752111.

https://www.scotborders.gov.uk/info/20008/emergencies_and_safety/481/antisocial_behaviour/4

12.2 In relation to overhanging branches our advice is that you send a short polite letter to your neighbour (tree owner) outlining your proposals to undertake limited tree works while offering them any arisings back.

12.3 Common Law Rights on Encroaching Trees:

- Only the parts of the tree, which cross the boundary of the property, can be removed. There is no legal right to cut or remove any other part of that tree. A professional tree surgeon should be asked for guidance on how best to prune back encroaching trees, unless the works are very minor and could be done with hand secateurs or similar;

- Before any works to a tree / trees are considered, please check to see if the tree/trees are protected by a Tree Preservation Order, or are located within a Conservation Area. If the trees are protected, consent for any works will need to be obtained by making an application or giving notice to the Council. Please see SBC website for Tree Preservation Orders and Conservation Areas-
https://www.scotborders.gov.uk/info/20013/environment/601/protected_trees_and_tpo
- Any intention to prune encroaching branches or roots should be discussed with the owner first, and any cuttings offered to them as legal owner. If the encroachment is from a Council owned tree, any cuttings must be disposed of appropriately and not returned to Council land.
- Root encroachment affecting buildings is very uncommon in the Scottish Borders due to the nature of the soils in this area. Any concerns about this should be referred to the owner's insurance company for further specialist investigation.

13 Blocked Light or View

- 13.1 Policy: Council owned trees will not be pruned or felled to improve natural light in a property or to open up a view. The Council has no authority or locus to intervene where a privately owned tree affects the occupiers of neighbouring property, and will therefore not get involved.
- 13.2 The exception to this would be where the pruning of the trees could be reasonably enforced under the High Hedges (Scotland) Act 2013 (see below).
- 13.3 In law there is no general right to light or a view in Scotland. If natural light is being blocked by the growth of a hedge, then action may be taken to reduce the problem under the High Hedges (Scotland) Act 2013. This Act expressly requires the Council to take account of the effect of the high hedge on the amenity of the area, and whether the high hedge is of cultural or historical significance.

Customer Service Centre during office hours: 0300 100 1800 or view advice on High Hedges on the SBC website **Mediation Service** available through SBC website link https://www.scotborders.gov.uk/info/20052/environmental_problems/277/high_hedges



14 Leaves, Berries, Sap, Fruit, Bird Droppings and Wild Animal or Insect Pests

- 14.1 Policy: Council owned trees will not be pruned or felled to remove or reduce leaf fall, berries, sap and fruit, reduce bird droppings or the incidence of perceived pests such as bees, wasps, or wild animals.
- 14.2 The loss of leaves, berries and fruit from trees in the Autumn is part of the natural cycle and cannot be avoided by pruning. The maintenance of gutters is the responsibility of the landowner/householder and the Council is not obliged to remove leaves etc. that may have fallen from Council owned trees. Where gutters are regularly blocked by fallen leaves, gutter guards may be fitted to provide a low maintenance solution. The Council sweeps streets to clear leaves, which may cause a hazard. Gathered leaves are generally used for composting.
- 14.3 Bird droppings may be a nuisance, but the problem is not considered a sufficient reason to prune or remove a tree. Nesting birds are protected under the Wildlife and Countryside Act (and other related wildlife law) so they (and their habitat) should not be disturbed. Warm soapy water will usually be sufficient to remove the bird droppings.

- 14.4 **Honeydew** is caused by greenfly (aphids) feeding on the tree, which excrete a sugary sap. Often the honeydew is colonised by a mould, which causes it to go black. Unfortunately, there is little that can be done to remove the aphid, which causes the problem and pruning the tree may only offer temporary relief. Also, any re-growth is often more likely to be colonised by greenfly, thereby potentially increasing the problem. Some trees, such as limes, are more prone to attack by greenfly and in some years greenfly are more common especially following a mild winter. Honeydew is a natural and seasonal problem. Where new trees are planted, trees are chosen that are less likely to cause this problem. Where honeydew affects cars, warm soapy water will remove the substance, particularly if the car is washed as soon as possible.
- 14.5 **Bees** are protected species and advice should be taken before considering their removal. Residents may be able to dispose of individual wasps using an aerosol insect-repellent spray, but this will not control or eliminate the nest itself. Ideally, the whole nest should be destroyed. This can be achieved with great caution but it is far safer to use pest control experts.
- 14.6 **Bats** - All bats are protected, under the Wildlife and Countryside Act (Schedule 5) and the EU Directive Conservation of Habitats and Species Regulations 2010. This legislation makes it illegal to intentionally or deliberately kill, injure or capture bats; deliberately disturb bats, whether in a roost or not; or to damage, destroy or obstruct a bat roost. Given that trees can be significant hosts to bat roosts, inspections will precede works where bat roosts are suspected. Where necessary the Council will seek expert advice.
- 14.7 **Red Squirrels** are also protected and it is an offence to intentionally or recklessly damage or destroy any structure or place a red squirrel uses for shelter or protection or to disturb a red squirrel while it is occupying such a place. Given that trees are significant hosts, inspections will precede works where Red Squirrel drays are suspected. Where necessary the Council will seek expert advice.

15 Drains

- 15.1 **Policy:** Council owned or managed trees will not be felled or pruned (including the roots) to prevent tree roots entering a drain that is already broken or damaged. The Council has no authority to intervene where roots from a privately owned tree affect a neighbouring privately owned property.
- 15.2 **Customer Advice:** Tree roots found in a drain are often symptomatic of an underlying problem requiring repair of the broken pipe. If residents are concerned about the condition of their drains, they are advised to contact their water and sewerage company –Scottish Water?

16 Nuisance to Third Parties - Private Trees

- 16.1 **Policy:** The Council has no authority to intervene in a dispute concerning trees between neighbours. However, if the problem is due to a 'high hedge' guidance may be found on the Council's web page.

- 16.2 Customer Advice: Residents and other property owners/occupiers may benefit from approaching the mediation service. Contact the Customer Service Centre during office hours. Tel: 0300 100 1800.

17 Roadside Trees

- 18.1 Most roadside trees are in private ownership, and the owner of the tree has a responsibility for ensuring they do not cause an obstruction or danger to a public road or footpath. Powers exist under the Roads (Scotland) Act 1984 to instruct the owner of the tree to remove the obstruction. If they do not, the Council may do this work and recharge the owner.
- 18.2 Roadside trees - Sight-lines, traffic signals, street/road signs, street lights and trip hazards. The Council will undertake work to a tree in Council ownership to maintain clear sight lines (where reasonably feasible), at junctions and access points (associated with a street, road or highway 5.0m). The Council will cut back trees where they encroach on and obscure traffic signals, road signs or street lights, and undertake measures to make safe an unacceptable trip hazard caused by tree roots.
- 18.3 Standards for visibility vary according to the class of road and speed limit in force. If a privately owned tree is causing an obstruction to the visibility at a road junction (sight line) or a trip hazard in a roadside pavement, powers exist under the Roads (Scotland) Act 1984 to instruct the owner of the tree to remove the obstruction. If they do not, the Council will do the work and recharge the owner.
- 18.4 Customer advice - Members of the public can report a tree that is clearly causing an obstruction at junctions or is obscuring traffic signals, a road sign or street light (associated with a street, road or highway). Please contact the Customer Service Centre during office hours. Tel: 0300 100 1800 or out of hours Tel: 01896 752111.



Appendix 1 - Tree Management Legislation and Guidance

Description Occupiers' Liability (Scotland) Act 1960 and Health & Safety at Work Act 1974

Under the Health and Safety at Work etc. Act 1974, all occupiers have responsibilities to ensure the safety of those not in their employment. "Occupier" is generally taken to mean any person occupying or having control of premises, in this case, land. Thus, there are clear legal responsibilities to assess risks that arise from trees, and to take suitable and sufficient steps to control such risks. In addition, occupiers have duties under the Occupiers Liability Act 1984. This states (s.2) that the occupier owes a "common law duty of care" to visitors and those who enter his land or premises.

Roads (Scotland) Act 1984

The Health and Safety Executive (HSE) have highlighted the role and responsibility of local authorities with regard to the safety of trees. The HSE has confirmed that councils have a duty of care to people using the roads. In addition, the SBC has potential liabilities if it was deemed to be not effectively using its powers under the Roads (Scotland) Act 1984 Section 91 to prevent danger from trees in the vicinity of a road, but which are in private ownership.

Town & Country Planning (Scotland) Act 1997

Covers legislation for Tree Preservation Orders (TPOs) & Trees in Conservation Areas. TPOs are used to protect selected trees from threats such as felling, pruning or uprooting. Anyone wishing to carry out such works to a tree protected by a TPO must apply in writing to the Local Planning Authority. Most trees within Conservation Areas have protection and anyone wishing to carry out work to a tree must provide written notice of the proposed work to the Local Planning Authority six weeks in advance.

The European Habitats Directive

This is the main piece of European Union (EU) legislation, (which remains applicable at present) that identifies habitats and species of EU community importance requiring protection and conservation.

Nature Conservation (Scotland) Act 2004

Places duties on public bodies to improve provisions for wildlife in their policies, operations and within their properties.

Wildlife and Countryside (Scotland) Act 1981, as amended. This UK legislation sets out the protection of species identified in a series of appendices, which are updated regularly.

High Hedges (Scotland) Act 2013

Legislation dealing with issues associated with high hedges in Scotland.

Common Sense Risk Management of Trees, the Forestry Commission, December 2011

Guidance on trees and public safety in the UK for owners, managers and advisers.



Photos credit: Keith Robeson