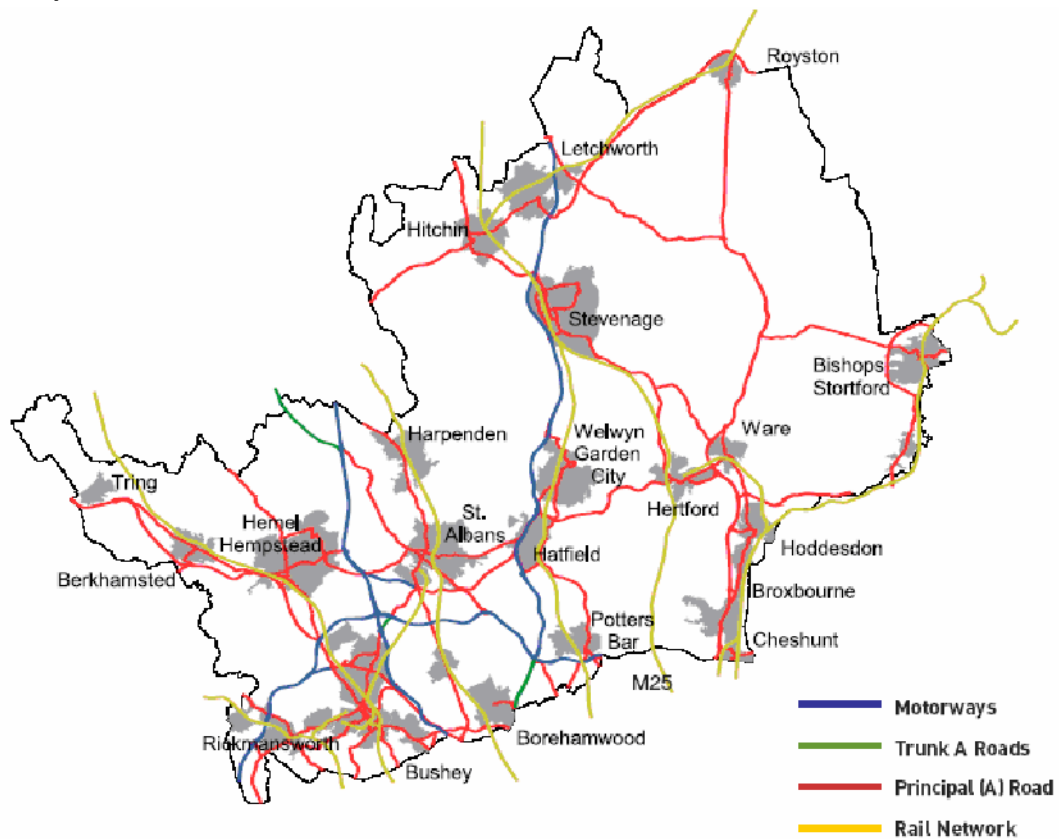




Hertfordshire County Council

Highway Tree Strategy and Guidance Document July 2020



Hertfordshire

¹ www.hertsdirect.org



Highway Tree Strategy Statement

Hertfordshire County Council (HCC) owns and is responsible for an estimated 150,000 trees in the public highway (highway trees).

Under the Highways Act 1980 HCC as a highway authority has a statutory duty to maintain its highways for use by the public. This activity contributes to the corporate objective of promoting safe neighbourhoods. The management of highway trees to ensure they do not pose a danger to the public or property (and third party trees that may affect the highway) falls within this duty.

Furthermore, the national Code of Practice (CoP) "*Well-maintained highways*" 2005¹ recommends that authorities should develop, with arboricultural advice, a strategy for the installation, management, removal and replacement of highway trees. The strategy should recognise the amenity and nature conservation value of trees, but also seek constructively to manage ongoing risk to the authority.

HCC has produced this Highway Tree Strategy and Guidance Document accordingly to ensure:

- A balanced and proportionate approach to risk and safety management based on a prioritised zoning regime considering the location of tree stock in relation to people or property;
- That a system of safety and service inspections of highway trees is in operation to identify and assess defects and condition;
- The capture and maintenance of a comprehensive and up to date highway tree asset inventory data recorded in HCC's computerised Confirm (highway and asset management) System;
- That systems and processes are in place to identify, prioritise and undertake safety related maintenance work according to level of risk;
- That highway tree inspections and safety related maintenance work are only carried out by competent and appropriately qualified personnel;
- That the highway tree stock contributes to people's health and wellbeing, a sustainable natural environment, carbon reduction and Hertfordshire's landscape.



<http://www.ukroadsliasongroup.org/en/UKRLG-and-boards/uk-roads-board/wellmaintained-highways.cfm>



1. Introduction

- 1.1 The Forestry Commissions National Tree Safety Group (NTSG) guidance document *Common sense risk management of trees* published in December 2011² has five key principles:
 - Trees provide a wide variety of benefits to society;
 - They are living organisms and naturally lose branches or fall;
 - The risk to human safety is low;
 - Tree owners have a legal duty of care; and
 - Tree owners should take a balanced and proportionate approach to tree safety management.
- 1.2 The Trees & Design Action Group (TDAG) guidance document *Trees in the Townscape* published in June 2012³ has four key principles:
 - Plan;
 - Design;
 - Plant / Protect; and
 - Manage & Monitor.
- 1.3 Noting these key principles, HCC seeks to comply with established best practice with regard to:
 - Discharging its duty of care and dealing with public liability claims;
 - Aligning with its Transport Asset Management Plan (TAMP, daughter document of the Local Transport Plan - LTP,) and asset management approach (i.e. knowing the size and condition of asset to establish need and service level);
 - Procurement and holistic management of affordable services (i.e. the need to inform potential suppliers of the size and condition of asset and scope of duties); and
 - Contributing to the Green agenda and aligning with Hertfordshire's Strategic Green Infrastructure Plan (i.e. increasing the focus on the benefits of its highway tree stock, seeking to manage and improve them in a safe and sustainable way).
- 1.4 Further HCC recognises and understands the importance of the safe, appropriate and reasonable management of its highway trees to ensure that a balance is maintained between public safety and a sustainable highway tree population with its many and varied environmental (including amenity value and landscape character), social, economic, health & wellbeing benefits.
- 1.5 Reasonable tree management involves taking actions proportionate to the risk (against a background of the general low risk from falling trees



- ² [http://www.forestry.gov.uk/PDF/FCMS025.pdf/\\$FILE/FCMS025.pdf](http://www.forestry.gov.uk/PDF/FCMS025.pdf/$FILE/FCMS025.pdf)
- ³ <http://www.tdag.org.uk/trees-in-the-townscape.html>



and or tree failures). This involves a judgement for HCC as owners and duty holders.

Reasonable tree management has both reactive and proactive elements.

Whilst HCC may need to react to events involving dangerous trees as they arise, it is also considered prudent to have forward-looking procedures to keep tree-related risks at an acceptable level.

- 1.6 The importance of trees has been emphasised in a number of Government reports including Trees in Towns II (a national survey of England's urban trees and their management) 2008. More recently, Hertfordshire stakeholders (including HCC), in response to the publication of the Governments Natural Environment White Paper in 2011, have applied to Defra and became a formally recognised Local Nature Partnership (LNP) in mid September 2012. LNPs are expected to improve the range of benefits and services we get from a healthy natural environment, provide local strategic leadership on environmental issues and to contribute to the green economy by linking with Local Enterprise Partnerships (LEP's).
- 1.7 Noting the above, HCC has set initial key objectives as follows:
 - Obtain endorsement for this Strategy and provide an update on progress in delivering the key objectives as part of the TAMP asset performance report to HCC's Highways & Transport Panel in 2013.
 - Complete the planned service inspections (hazard condition assessment) and associated prioritised safety related works of highway trees maintained directly by HCC (see detail in Appendix A) within high risk zones (i.e. high and medium route risk in urban areas) by the end of March 2013, subject to budget affordability and outcome of planned service inspections;
- 1.8 Medium term key objectives to be delivered by March 2014 comprise:
 - Complete the planned service inspections and associated prioritised safety related works of highway trees maintained directly by HCC within medium and low risk zones, subject to budget affordability and outcome of planned service inspections;
 - The capture and maintenance of a comprehensive and up to date highway tree asset inventory data (for highway trees maintained directly by HCC and indirectly by its agents) recorded in HCC's Confirm system and in Herts Direct Web Maps; and
 - Highway agency arrangements between HCC and District and Borough Councils to align with this Strategy.
- 1.9 Long term key objectives to be delivered beyond March 2014 comprise:
 - Reduce the cost of reactive maintenance and the cost of tree related public liability claims through reasonable,



appropriate, affordable, sustainable, realistic and deliverable regimes of holistically managed planned, proactive and preventative maintenance; and



- Establish and maintain an affordable, sustainable, realistic and deliverable prioritised programme of planting (i.e. new) and replanting (i.e. replacement) highway trees based on evidence of need with an associated whole life cycle maintenance regime through partnership working and funding (i.e. via internal (e.g. County Councillor Highway Locality Budget) and external parties (e.g. District & Borough Council contributions) and organisations).

2. Scope

- 2.1 This Strategy outlines the inspection, maintenance and replacement regimes for highway trees (includes those on metalled (surfaced) Public Rights of Way) only. It does not include HCC establishments such as schools, adult care premises, and farms and non-highway land owned by HCC such as woodlands and public open spaces.
- 2.2 HCC will designate one or more responsible officers whose duty will be to ensure that the correct procedures are followed to fulfil the requirements of this Strategy. In doing so they will periodically liaise with other stakeholders within the County and District & Borough Councils.
- 2.3 The Highway Tree Strategy and Guidance Document is the result of further development work (which demonstrates how the inspection and maintenance regimes discussed at Part 3 of this Strategy will be achieved) and builds upon the previous strategy as referred to in the TAMP asset performance report endorsed by HCC's Highways & Transport Panel in February 2012⁴.
- 2.4 Adequate records of tree inspections and safety related maintenance work will be retained, maintained and updated on HCC's Confirm system with intent to establish core standard for data collection across the county to support an asset management approach regarding funding bids to inform allocation of resource to achieve best value for money and as a resource for green infrastructure analyses.
- 2.5 There will be an adequate budget based on evidence of need and service level for ongoing tree inspections and safety related maintenance work as a result of the inspections.
- 2.6 Insurance claims history (number and identified hot spots) is used to adopt appropriate maintenance regimes to manage real risks. With regard to public liability claims it is noted that there are four liability issues associated with trees:
 - Damage to buildings or Statutory Utilities Plant & Equipment by tree root and/or associated subsidence;



- Damage or injury by root damage to highway surfaces;

⁴ <http://www.hertsdirect.org/mm/15647583/15744703/-item6highwaytran070212.doc>



- Damage or injury by falling trees and branches; and
- Damage or injury by low growth and as a result of obstruction to highways, visibility and sightlines.

3. Planned, Reactive and Emergency Highway Tree Inspections

- 3.1 **Planned** highway safety inspections (currently undertaken by Highways Services Term Contractor) undertaken in accordance with HCC's Safety Inspection Manual (SIM) include highway trees, as recommended by the Code of Practice (CoP) *Well-maintained highways* 2005. The SIM provides guidance on the appropriate identification and classification of Category 1 (fallen or unstable tree or branch that poses an immediate hazard to highway users) and Category 2 (damaged or diseased tree that could represent a future hazard to highway users) defects and the prioritisation to be given to remedying them including seeking reactive or emergency inspections by arboriculture advisors. This also includes those on metalled Public Rights of Way and outside, but within falling distance of the highway. Inspectors should also take note of any encroachment or visibility obstruction and any obvious damage, ill-health or trip hazards and notify HCC. Basic arboriculture guidance (e.g. Lantra Basic Tree Survey & Inspection or equivalent) is also included in training for highway inspectors.
- 3.2 A separate programme of planned service inspections, based on a systematic and consistent methodology (e.g. Lantra Professional Tree Inspection or equivalent) is undertaken by arboriculture advisors (currently undertaken by Hertfordshire Business Services - HBS (but may be undertaken by Highways Services Term Contractor) and several Districts / Boroughs as agents to HCC via highway (environmental management) agency agreements. This programme comprises:
- A hazard condition assessment of trees on a rolling target 3 year basis (i.e. one third of trees surveyed per year), prioritised on a proportionate risk based approach - zoned considering the location of tree stock in relation to people or property - urban areas followed by rural areas and Route Risk aligned with HCC's Safety inspection Manual. Note that the footway route definitions below relate to the historic system which is still current at the time of drafting but is likely to be superseded by the new footway hierarchy currently under development. The Route Risks will be updated accordingly to correspond to the new footway hierarchy as necessary.



3.2.1 *High Route Risk*

Carriageway Defects: Primary and Main Distributor roads, or lower category roads if appropriate, carrying high volumes of traffic. Total two-way traffic flow exceeding 10,000 vehicles per day.

Footway Defects: footways and pedestrian areas that carry high volumes of pedestrian traffic, such as shopping centres, and are defined in CONFIRM as "High Traffic".

3.2.2 *Medium Route Risk*

Carriageway Defects: Secondary and Local Distributor roads, or other category roads if appropriate, carrying medium volumes of traffic. Total two-way traffic flow between 5,000 and 10,000 vehicles per day.

Footway Defects: footways and pedestrian areas that carry moderate volumes of pedestrian traffic, or areas that carry a low volume of traffic but have a high proportion of vulnerable users, such as outside hospitals or schools; these are defined in CONFIRM as "Medium Traffic" and "Low Traffic (High Risk)".

3.2.3 *Low Route Risk*

Carriageway Defects: local estate roads, or unclassified rural roads, carrying low volumes of traffic. Total two-way traffic flow of less than 5,000 vehicles per day.

Footway Defects: defined in CONFIRM as "Low Traffic - Urban", "Low Traffic - Rural" and on "Low Traffic - metalled Public Rights of Way".

3.2.4 The selection of Route Risk should be based on the users of the highway most affected. Some Defects may pose a risk to more than one type of highway traffic. The Route Risk should be based on whichever poses the highest risk. If the road is a Low Risk category but the adjacent footway is High Risk, then the Defect should be treated as a High Risk; and

- Identified safety related works undertaken on a risk needs basis (i.e. to restore the tree to a safe condition).

3.3 **Reactive** inspections (currently undertaken by Highways Services Term Contractor arboriculture advisors) could be routine inspections as a result of reasonable customer complaints, concerns and enquiries, or following planned highway safety inspections, or as a result of damage to a tree or its root system from accidental or environmental causes or works to the highway.

3.4 **Emergency** inspections (currently undertaken by Highways Services



Term Contractor arboriculture advisors) could be in response to



planned highway safety inspections or in response to emergency situations following severe weather events such as gale force winds (subject to risk assessment with regard to the safety of arboriculture advisors).

- 3.5 **Recording** - Reactive, emergency, planned highway safety and service inspections and any resultant actions, to include proposals (by arboriculture advisors and HCC's Landscape Officer) for replacement trees, Tree Preservation Orders (TPOs), Conservation Areas or other designations will be recorded in HCC's Confirm system and will be held for 10 years. The hazard condition assessment survey will consist of the capture and maintenance of a comprehensive and up to date highway tree asset inventory data recorded in HCC's Confirm system. As a target, the data will accord with BS5837:2012 and include; GPS digital survey, tree reference, annotated photographs of location (from different carriageway directions), condition (physiological, structural and life expectancy), age, species, height, spread and height of canopy, stem diameter, root damage, decay, site details, soil type, form, general condition, recommended retention category (value), priority (frequency of inspection) and safety related actions and works. Districts / Boroughs as agents to HCC shall undertake a similar hazard condition assessment survey, record information in a format that is compatible with HCC's Confirm system and provide to HCC on an annual basis an electronic update of the highway tree asset inventory data.
- 3.6 **Reporting** - Appropriate and professional summary and status reports obtained from HCC's Confirm system.
- 3.7 **Action** - Reactive and planned programmes of work to remedy defects or replace trees are dependent on the physical and financial resources available to HCC to manage the real risks that defects present. The condition inventory data, insurance claims history (number and identified hot spots) is used to adopt appropriate maintenance regimes and inform the allocation of resources appropriately. Recommended actions may include further detailed tests (e.g. Picus Tomograph - to assess the amount of decay within a trunk or branch); or may be a request to Natural England for a licence where works would otherwise risk breaching legislation relating to protected species using the tree. In some circumstances it may be appropriate to take stakeholder advice on replacing trees in a different position.

4. Highway Tree Management and Maintenance

- 4.1 In general tree maintenance shall be undertaken to achieve the desired results and shall be undertaken in accordance with BS3998:2010 Tree Work - Recommendations. Each tree shall be individually considered



and the general description of work to be undertaken shall be interpreted in relation to the species, shape, size, character and



- condition of each individual tree. Before commencing the work the Contractor shall confirm the absence of any Tree Preservation Orders (TPOs), Conservation Areas or other designations (see Appendix A).
- 4.2 Where trees are identified for removal, and the works are not emergency works, advance notices should be put on the tree(s) and local residents and businesses in the immediate vicinity (i.e. nearest four properties adjacent and nearest four properties opposite) should be notified in writing (copied in advance to the local County Council Member and District & Borough Councils). In circumstances of a substantial number of trees being removed, or of specimen trees in prime civic locations, further notification will be given to HCC's Landscape Officer.
 - 4.3 Felled trees will have their stumps ground out below ground level (where essential). Where a tree is to be replanted in the same position, the ground will be temporarily reinstated with sandy topsoil (left proud for settlement) in grass verge areas and compacted Type 1 granular material in paved areas. Where a tree is not to be replanted in the same position, the ground will be permanently reinstated with material similar in construction to match neighbouring surfaces.
 - 4.4 On construction sites within the public highway, all work must be in accordance with BS5837:2012 Trees in relation to design, demolition and construction - Recommendations, the Department for Transport's 'Roots for Routes': Guidelines on Highway Works and Trees' and comply with Volume 4 of the National Joint Utilities Group (NJUG) Guidelines for The Planning, Installation and Maintenance of Utility Apparatus in Proximity to Trees (Issue 2).
 - 4.5 Tree inspections and maintenance work shall only be carried out by competent and appropriately trained personnel. The Contractor shall comply with the current Forestry and Arboriculture Safety & Training Council recommendations in relation to all aspects of the arboriculture works.
 - 4.6 No tree inspection or work shall be carried out during periods of extreme weather (i.e. of wind, rain, snow or ice) except in emergency situations (subject to risk assessment with regard to the safety of arboriculture advisors). In emergency situations, the work carried out shall be the minimum required to render the tree safe or to allow removal from the highway.
 - 4.7 Where trees, of significant conservation, historical, commemorative, amenity or other value (e.g. veteran trees), as determined by HCC's Landscape Officer, then alternative options to felling should be explored in the first instance, such as remedial works to the tree(s) by ⁹



for example, management of decay - cavities and water pockets,
treatment of bark wounds or injuries that involve the wood,



management of weak structures, flexible restraint systems, rigid bracing, propping etc.

4.8 **Above ground Pruning** may be recommended where essential for the following situations:

- A tree with branches or twigs causing an obstruction to or growing low over a public highway, public right of way, footpath or access to property over gardens or open spaces where the public have access. Generally a minimum clearance of 2.4 metres should be maintained over pedestrian accesses and 5.4 metres above the highway. However for the benefit of amenity and biodiversity, low growth will not be routinely removed where it is not causing a problem.
- A tree causing an actionable nuisance to an adjoining property.
- A tree that is proven (by private owners) to be contributing to structural damage to buildings (where it considered appropriate to restrict the size and moisture demand of the tree).
- Trees restricting repairs and maintenance of property, or authorised construction work.
- Trees growing close to and likely to obstruct or interfere with street lighting, traffic signals and other services equipment, where it is not possible to relocate street lighting, traffic signals and other services equipment.
- Trees obstructing highway and other signage or likely to do so, where it is not possible to relocate signage.
- Trees obscuring sight lines at road junctions and accesses.
- Trees obstructing essential police or council-monitored CCTV surveillance cameras or likely to do so, where it is not possible to relocate essential police or council-monitored CCTV surveillance cameras.
- Removal of dead, defective or diseased material (where essential) or to remedy storm damage or mutilation, to make the tree safe.

4.9 **New Planting:** To ensure an affordable, sustainable and prioritised programme of planting (i.e. new) highway trees:

- Trees may only be planted on the existing highway with the written consent of HCC.
- Planting where utility apparatus or structures are within the mature 'zone of influence' (as defined by the National House Builders Council Standards Chapter 4.2) of the tree will not usually be permitted.
- A suitable third party maintenance agreement or commuted sum covering whole life cycle costs (i.e. installation, safety & service inspections and maintenance including safety related works, removal and replacement) must be in place as referenced in HCC's *Roads in Hertfordshire - A Highway Design Guide*⁵.



5

<http://www.hertsdirect.org/services/transtreets/hertscounttravsurv/infdev/roadsinherts/>

10



4.10 Replanting: To ensure an affordable, sustainable and prioritised programme of replanting (i.e. replacement) highway trees:

- Any tree that is felled may be replaced, based on evidence of need (e.g. significant conservation or amenity value), with one or more new trees of an appropriate species (in accordance with the Highways Corridor Document 1999), but typically species which are growing well locally, as agreed by HCC's arboriculture advisors, with further notification to HCC's Landscape Officer. The new tree or trees do not have to be replaced in exactly the same site as the original (e.g. for reasons stated in section 4.11). This will depend on the site characteristics and usage and the presence of services above and below ground.
- Where the amenity value of a tree(s) is high and the tree or trees to be felled are essential components of groups or formal or semi formal arboriculture features (e.g. the dominant and / or principal trees within an avenue, or trees, of particular visual importance as arboriculture and/or landscape features) and there is a requirement for their removal, then replacement trees should be considered at the highest priority.
- The replacement tree must receive 3 years establishment maintenance to include watering. Weed control should be undertaken with use of mulch or biodegradable matting.

4.11 Roots

- No root pruning should be carried out without consultation with HCC's arboriculture advisors. Cutting tree roots is highly undesirable and can affect the health and safety of a tree. Pruning of buttress or other major roots can make the tree unstable. Severance of more than 30% of a tree's root system is quite likely to cause slow dieback and eventual death of a mature tree.
- Where a tree root is causing damage to a footway and repairs are necessary, the path level should be raised to accommodate the tree roots. Where repair cannot be carried out by building up the footpath to remove the trip hazard, HCC's arboriculture advisors must be consulted so that a solution can be achieved that will not compromise the tree's structural integrity.
- Where appropriate and justified, a system of root protection and root barriers may be considered for existing and new (replanted or planted) trees.

4.12 Felling may be recommended where absolutely necessary for the following situations:

- A dead, dying, diseased or dangerous tree that is a danger or hazard to public safety.
- A tree which is proven (by private owners) to be causing significant structural damage to buildings.



- A tree causing an obstruction to a public highway, public right of way, access to property or footpath.



- A tree causing an 'actionable nuisance' to an adjoining property.
- Trees which are clearly of a size and species inappropriate (as determined by HCC's arboriculture advisors) to their situation.
- When removal is required (as determined by HCC's arboriculture advisors) as part of an agreed management programme or improvement project.

4.13 **Enforcement** - HCC will enforce and prosecute where appropriate, in accordance with the Highways Act 1980, tree related contraventions and where appropriate the maximum penalty. HCC will also seek compensation from any external organisation responsible for significant damage to or removal of any HCC owned tree(s).

4.14 **Wildlife & Biodiversity** - Highway tree management will be in accordance with the Biodiversity Action Plan for Hertfordshire and will include the following:

- Veteran highway trees will be identified by arboriculture advisors and will be managed to ensure they are retained in a manner that promotes their continued longevity and that they pose as low a risk as is reasonably practical. Information on veteran highway trees will periodically be deposited with the Herts Biological Records Centre.
- Deadwood removal will only be specified when essential for health and safety reasons. Where possible, it will be recommended that dead branches will be shortened to a point where they no longer pose a risk, but are still valuable as a wildlife habitat. Where not a risk to safety and not diseased, dead wood cut from the tree will be left at its foot.
- Pruning cuts to benefit wildlife will be specified where appropriate e.g. on pruned limbs of 150mm or greater thickness (no point on small limbs - benefits can be accrued in urban as well as rural areas).
- Cable bracing, pollarding or monolith creation may be specified to reduce the risk of harm where a tree may have the potential to fail due to compression forks or decay. This would usually be where a tree merits retention due to its cultural, wildlife or landscape value.
- Nesting birds and bats are protected by law and cannot be disturbed. Bat roosts should be recorded in highway tree asset inventory data records. See appendix A for more detail.

5. Privately Owned Trees (including Hedges and Shrubs)

5.1 **General** - Where privately owned trees (includes boundary trees), hedges and shrubs (of a similar size and form to trees) represent potential hazards to the highway; HCC has a duty of care to act to ensure the safety of highway users. Where such hazards are identified,



whether by complaint or arising from safety or service inspections, the owner/occupier responsible for the defect and will be notified in writing



of the existence and nature of the defect and require them to undertake the defect remedy within an assigned defect remedy time. The contractor shall monitor progress with the defect remedy. Where the owner/ occupier has been duly notified but fails to undertake the defect remedy within the defect remedy time the contractor shall notify HCC who will consider enforcement action in accordance with the Highways Act 1980 to ensure that necessary works are completed.

- 5.2 **Development Control** - Consideration be given to planting (new) private trees (not maintainable at public expense) on private land, subject to appropriate planning approval. Progression of adoption agreements for trees planted on roads within new developments that are intended for adoption as public highway through a Highways Act Section 38 agreement will be dependent upon a suitable third party maintenance agreement or commuted sum covering whole life cycle costs (i.e. installation, safety & service inspections and maintenance including safety related works, removal and replacement) being in place as referenced in HCC's *Roads in Hertfordshire - A Highway Design Guide*.

6. Monitoring

- 6.1 Designated responsible officers (HCC's Highways Senior Asset Manager) will ensure that systems of monitoring are put in place. These may be subject to periodic internal audit.
- 6.2 The Highway Tree Strategy including key objectives will be kept under regular review amended and enhanced on a periodic basis to keep up to date with current best practice and is formally reviewed every 5 years.



Appendix A: Useful Supporting Information

Note: this information is correct at the time of writing (January 2013) but may be subject to change; it is provided here for guidance and should be checked from current sources if necessary.

7 Detail of highway trees maintained by HCC

- 7.1 HCC directly maintains highway trees on 'A' class primary and main distributor high speed roads (speed greater than 50mph) and on all other roads within the following Districts & Boroughs: East Herts, Hertsmere, Three Rivers (planned service inspections commenced April 2010) and St. Albans (planned service inspections commenced April 2012).
- 7.2 HCC indirectly maintain highway trees via agency arrangements with the following Districts & Boroughs: Broxbourne, North Herts, Stevenage, Dacorum, Welwyn Hatfield and Watford.

8 Principal Legislation relating to Highway Trees

8.1 Tree Preservation Orders (TPOs)

- 8.1.1 The law on TPOs is in The Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- 8.1.2 A TPO is an order made by a local planning authority (LPA). In Hertfordshire this is the District or Borough Council. It makes it an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree without the planning authority's permission. It is designed to protect trees which make a significant impact on their local surroundings.

8.2 Conservation Areas

- 8.2.1 Trees in conservation areas which are already protected by a TPO are subject to the normal TPO controls. The Town and Country Planning (Tree Preservation) (England) Regulations 2012 also makes special provision for trees in conservation areas which are not the subject of a TPO. Anyone proposing to cut down or carry out work on a tree in a conservation area is required to give the LPA six weeks' prior notice. The purpose of this requirement is to give the LPA an opportunity to consider whether a TPO should be made in respect of the tree.



8.2.2 The LPA permission to work on a tree covered by a tree preservation order (or within a conservation area) is needed **except** for:



- i. Cutting down trees in accordance with one of the Forestry Commission's grant schemes, or where the Commission has granted a felling licence.
- ii. Cutting down or pruning a tree:
 - which presents an urgent or serious safety risk – however written notice must be given (by letter or email) of the proposed work to the LPA as soon as practicable after the work becomes necessary.
 - which is dead – five working days notice must be given (by letter or email) of the proposed work to the LPA.
 - which is directly in the way of a development that is about to start for which detailed planning permission has been granted.
 - to prevent or control a legal nuisance.
 - in line with an obligation under an Act of Parliament.
 - by or at the request of certain organisations listed in the regulations (principally statutory undertakers and the Environment Agency under certain circumstances in which case NJUG guidelines apply)
- iii. Removing dead branches from a living tree.

8.2.3 **Planting a replacement tree:** Replanting is required:

- i. If a protected tree is cut down or destroyed
 - In breach of a tree preservation order, or
 - Because the tree is dead or dangerous
- ii. If the LPA gives permission to cut down a protected tree but makes replanting a condition of its consent;
- iii. in most cases where the forestry commission grants a felling licence

The LPA have legal powers to ensure that a replacement tree is planted when required.

8.2.4 **Planning Conditions:** Trees, hedges and landscaping schemes may be the subject of planning conditions that require a written application for work to be submitted to the administering District or Borough Council for consideration. More information on TPOs and trees in Conservation Areas (published 11th April 2012) is available on the Communities and local government website.⁶



https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6111/2127793.pdf





8.3 Felling Licenses

8.3.1 It is unlikely that an inspector will need to have detailed knowledge of felling licence legislation as this would be flagged up by the arboricultural officers at the time of a Professional Tree Inspection. It is sufficient to know that you only need a felling licence if you want to cut down trees containing more than five cubic metres of wood in any calendar quarter. This includes trees within the highway boundary. There are exceptions to this rule which are set out in the Forestry Act 1967 and Regulations made under that Act. For example, you do not need a licence for felling trees in gardens. For more information, contact the Council's arboricultural officers or the Forestry Commission website⁷.

8.3 Wildlife Legislation

8.3.1 Before any tree work is carried out, an assessment of whether a tree is likely to support a species protected under British law or a European Protected Species (EPS) will be carried out. The assessment to check for signs of protected species will be made by the arboricultural officers. This will be based on current advice and training from organisations such as Natural England, Defra, the Bat Conservation Trust (BCT) and the Forestry Commission.

8.3.2 Many mature trees have the potential to be used by nesting birds and roosting bats which are protected under the Wildlife and Countryside Act 1981, The Habitat Regulations 1994, The CROW Act 2000, the Conservation (Natural Habitats &c) (Amendments) Regulations 2007 and the Conservation (Natural Habitats &c) (Amendment) (England and Wales) Regulations 2009. In addition, the Habitat Regulations and the Conservation (Natural habitats, &c) (Amendments) Regulations have created various offences in relation to EPS.

8.3.3 The species listed as EPS that could potentially use woodlands and trees are:

- Bats (all 17 species of British bats),
- Dormouse,
- Great crested newt,
- Otter.

8.3.4 An offence may be committed by a person not actively intending to harm an EPS, but who goes ahead with an operation being aware - or in a situation where they could or should have been aware - of the possibility of harm. Any harm arising in such a situation will be deemed to be deliberate. (For example capturing, injuring or killing a bat roost or dormouse nest as a result of pruning or felling of trees without a sufficient buffer area).



⁷ <http://www.forestry.gov.uk/>



- 8.3.5 Hertfordshire Biodiversity Information (2011 Strategic Green Infrastructure Plan and Key Biodiversity Areas) can be found on HertsDirect⁸.
- 8.3.6 Practical guidance has been developed by the Forestry Commission and the Bat Conservation Trust for woodland managers and operators on how to conserve European Protected Species (EPS) and how to modify operations to reduce the risk of anyone committing offences under the Habitats Regulations. If activities cannot be modified, an EPS licence can be obtained from Natural England to carry out woodland operations that fall outside the Good Practice Guidance.
- 8.3.7 Guidance on EPS and Woodland operations is available on the forestry commission website, along with how to apply for an EPS licence.⁹
- 8.3.8 The Forestry Commission's EPS checklist is also available on their website.¹⁰



⁸ <http://www.hertsdirect.org/services/leisureculture/heritage1/landscape/about/bioplan/>

⁹ <http://www.forestry.gov.uk/forestry/INFD-75TJU5>

¹⁰ [http://www.forestry.gov.uk/pdf/eps-checklist-v3.pdf/\\$FILE/eps-checklist-v3.pdf](http://www.forestry.gov.uk/pdf/eps-checklist-v3.pdf/$FILE/eps-checklist-v3.pdf)
