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Title: <b>FINAL DRAFT – TREE RISK MANAGEMENT STRATEGY</b>			

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## 1. EXECUTIVE SUMMARY

Cheshire East Council recognises the many important benefits trees provide and that although the overall risk to public safety from the failure of trees is very low, there is a duty of care to manage that risk, considering the benefits and costs. This Strategy sets out the approach to managing trees within the Council's ownership by managing risk to a level that is as low as reasonably practicable (ALARP). This will be achieved by undertaking regular tree inspections in a proportionate, and cost-effective manner according to their priority in relation to public safety. Trees located in areas of high use (e.g. those next to busy roads, buildings, busy paths and play areas) will be inspected more regularly than those in less well used places. This approach accords with the current national guidance published in: *Common Sense Risk Management of Trees – The National Tree Safety Group (NTSG)*.

This Strategy will provide a proactive approach to risk management of the Council's trees which will prioritise trees that present a significant risk over complaints from the public unless there is an urgent need for the works. This is necessary to ensure that the Council meets its legal obligations to ensure public safety according to the priority of works and its financial resources.

## **PART 1 - BACKGROUND**

### **2. INTRODUCTION**

Trees and woodlands are an essential part of our rural and urban landscapes from the hedgerow Oaks on the Cheshire Plain to our tree lined streets and urban parks. They add greatly to the quality of all our lives through their visual amenity and a variety of other benefits such as urban cooling; reducing air pollution; mitigating flood risk and carbon sequestration. They are part of the solution to the climate change emergency and Cheshire East like most local authorities and the government is aiming to increase woodland and tree cover over the next few decades. It is important that we retain as many of our mature amenity trees as possible while we also plant trees for the future.

While seeking to increase woodland and tree planting the government also recognises the importance of our existing trees stock. In the introduction to the 2018/19 DEFRA consultation about "Protecting and Enhancing England's trees and woodlands", David Rutley MP who was Minister for Food and Animal Welfare (Parliamentary Under Secretary of State) at the time, said *"Trees are a critical component of the country's green infrastructure network, and a precious natural asset which we must protect for future generations. In urban areas, trees play a pivotal role in creating healthy and economically successful communities, helping to clean and cool the air, reduce flooding, and improve people's physical and mental health and wellbeing."*

Cheshire East Council owns or controls many of the most valuable trees to our society - along our streets and highways; within our urban and country parks; at Tatton Park; in public open space within residential areas and within public cemeteries; on other land holdings and around our properties. The authority also undertakes regulatory functions that affect trees and woodlands such as those immediately adjacent to highways and public rights of way; within Conservation Areas and those protected by Tree Preservation Orders. All landowners and occupiers of land have a legal duty of care for the safety of trees within their control and in exercising this duty of care it is important that they have a high regard for the benefits that trees provide while balancing this against the need to keep the public safe.

The Council recognises that generally the risk from falling trees is low; however, as a large public landowner and with additional responsibilities such as over 2700km of road network, it has a specific legal and moral responsibility to visitors to its land and generally to members of the public. The Council will therefore undertake regular inspections of its tree stock and undertake work as necessary to maintain public safety in accordance with published guidance and case law. The level and periodicity of inspection will be dependent on an assessment of the risk of harm posed by the location of trees relative to visitors and the public, so that for example, trees in a public square will be inspected more frequently than trees in a rural location. This Strategy sets out the corporate approach to tree risk management and individual services will implement the strategy through procedures and processes that best fit their individual circumstances.

### 3. SCOPE OF THE STRATEGY

This Strategy describes the Council's approach to the management of the risk from trees within its ownership. Works to trees that present an unacceptable risk will be considered a priority above those perceived to be causing a nuisance to residents such as lack of light, shading, leaves and television reception. This is to ensure that resources are effectively allocated based on priority and efficient use of the Council's budget.

This document is part of the Council's commitment to protecting and enhancing the built and natural environment of the Borough and supplements the following documents:

- Cheshire East Council Environmental Strategy (2019-24)
- Highway Asset Management Policy
- Highway Asset Management Strategy
- Green Assets Policy

The Strategy accords with the strategic outcomes of the Councils Corporate Plan (2021-2025) and the Council's Corporate objectives for effective risk management.

### 4. NATIONAL GUIDANCE ON TREE RISK

This Strategy is informed by guidance produced by the National Tree Safety Group (NTSG) *Common Sense Risk Management of Trees* and current best practice within the arboriculture industry.

The NTSG position is underpinned by a set of five key principles:

1. Trees provide a wide variety of benefits.
2. Trees are living organisms that naturally lose branches or fall.
3. The overall risk to human safety is extremely low.
4. Tree owners have a legal duty of care.
5. Tree owners should take a balanced and proportionate approach to tree safety and management.

The HSE sector information minute '*Managing the risk from falling trees*' requires that a reasonably practicable approach be taken which is proportionate to the risk. It also highlights that the inspection of individual trees can be disproportionate to the risk they pose.

The HSE has set out a framework, known as the Tolerability of Risk (ToR) (HSE 2001); for reaching decisions about whether risks are unacceptable, tolerable or broadly acceptable. Where a risk is considered tolerable it is deemed to be '*as low as reasonably practicable* (ALARP). A risk is tolerable where the costs of reducing that risk further would be disproportionate to the benefits gained.

The HSE has developed a five-step approach to risk management ([www.hse.gov.uk/risk/fivesteps.htm](http://www.hse.gov.uk/risk/fivesteps.htm)) which shall be applied when assessing the risk from trees (see Table 1 below)

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Table 1: Five steps to risk assessment

Step	HSE Assessment	Action
1	Identify the Hazard	Trees on land owned by Cheshire East Council, Trees affecting land owned by Cheshire East Council
2	Decide who might be harmed and how	The general public, council employees, contractors and their property when: <ul style="list-style-type: none"> <li>• Using the highway</li> <li>• When visiting parks, gardens, open spaces and other property owned by the council</li> <li>• On land adjoining council owned property</li> </ul>
3	Evaluate the risks and decide on precautions	Where the public might be harmed, or property damaged by falling trees or branches.  What constitutes an acceptable level of risk is determined by the Tolerability of Risk Framework (ToR) approach which defines broadly acceptable and unacceptable levels of risk. Within this range is where the risk is Tolerable if it is deemed to be ' <i>low as reasonably practicable</i> ' (ALARP). This means the risk is Tolerable if the costs of risk reduction are much greater than the value of the risk reduction.
4	Record findings	Tree Inspections /risk assessments and any remedial works will require to be recorded in an electronic database which shall be made available across Council Services.
5	Review your assessment and update where necessary	Reassessment will be based on the risk of significant harm for each area or site. This Risk Management Strategy will be formally reviewed every 3 years as part of the reporting and monitoring arrangements for key corporate risks.

## 5. THE COUNCIL'S LEGAL POSITION

The Council has a legal duty of care to ensure that it acts as a reasonable and prudent landowner. This means that the Council must ensure that it avoids acts or omissions that could cause a foreseeable risk of harm to persons or property.

This Strategy has considered the current legal position (both statute and common law) and how these relate to the Duty of Care placed on landowners (a summary of legislation and relevant legal cases are attached at Appendices 1 and 2).

The Council's responsibility as a reasonable and prudent landowner, is to consider the risks posed by its trees. The level of knowledge and the standard of inspection that must be applied to the inspection of trees are of critical importance, but the courts have not defined the standard of inspection precisely. Generally, the courts appear to indicate

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that the standard of inspection is proportional to the size of and resources available (in terms of expertise) to the landowner. It is of note that the HSE states that: “*for trees in a frequently visited zone, a system for periodic, proactive checks is appropriate*” (HSE 2007)

Where harm occurs, liability is a matter for the courts to determine. The question is whether or not the council has discharged its duty of care, which will be largely dependent upon whether or not the council has taken a reasonable and proportionate approach to the management of tree safety

A comprehensive summary of English Law as it relates to trees can be found in Chapter 3 of ‘*What the law says*’ of the National Tree Safety Group publication *Common Sense Risk Management of Trees (2011)*.

**PART 2 TREE RISK MANAGEMENT STRATEGY**

**6. PRIORITISING RISK REDUCTION**

**Proposed Policy**  
*The Council will manage the risk from trees using the Tolerability of Risk (ToR) principle taking into account the following factors: -*

- *Trees provide a range of important environmental and social benefits*
- *The overall risk to the public from tree failure is extremely low*
- *The Council has a duty of care to manage the risk from trees*
- *The duty should balance the benefits from trees, risk and costs*
- *The Council will manage the risk from trees where there are obvious defects reduced to a Tolerable or Acceptable level*

The Council’s duty of care to manage the risk from our trees shall be reasonable, proportionate and reasonably practicable. The Council must therefore balance this risk with the aesthetic, ecological, environmental and social benefits that trees bring with “reasonableness” and the benefits of risk reduction taking into consideration the financial cost of managing and controlling that risk.

The priority for implementing any remedial action will be dependent on the assessment of risk and hazard related to the zone of use. Those trees that have been identified as the highest risk will be dealt with first, with emergency work given the highest priority as set out in Table 1.

**Severe Weather**

When a severe weather warning is forecast the Council will secure the gates to any of the main parks that have them. Once the severe weather has passed, all high use zones in the parks and trees on the highway will be assessed by our staff for any obvious tree risk features.

**Emergency Work**

Where a tree has a very high likelihood of failure and it is in a high use zone, then the risk is ‘**Not Acceptable**’ and will be deemed a priority. Operatives will attend to the tree as soon as possible (within 24 hours, with the site to be secured with warning signs and barriers or closed to the public in the event of a delay).

**Cost Effectiveness Risk Reduction**

Other than Emergencies, risk reduction work will not normally commence until all planned annual active risk assessments have been carried out. This will assist in prioritizing the work and coordinating with other tree maintenance so that it is planned in a cost-effective way.

**Not Tolerable Risks**

Not tolerable risks will be carried out in conjunction with other tree maintenance work. Where there is not the budget to do this, priority will be given to the risk reduction work.

## Tolerable Risks

Tolerable Risks will not be reduced but may require recording and be recommended for increased frequency of inspection.

## Review

A review will be undertaken with the Council's Contractors every 3 months to monitor how risk reduction priorities are being carried out and managed and whether any improvements to work priorities can be made.

**Table 1 : Priority for work to trees**

<b>Work Priority</b>	<b>Risk Assessment</b>	<b>Action</b>	<b>Response Time</b>
<b>Category A</b> Emergency (Council or privately owned trees)	Response to trees that are a significant risk and an imminent danger to public safety	<b>Not Acceptable</b> Risk will be reduced to an acceptable level	Within 24 hours (or site secured with warning signs and barriers until work is completed)
<b>Category B</b> Essential Works	Response to trees that are considered essential but not imminently dangerous but where remedial works are necessary	<b>Not Tolerable</b> Risk will be reduced to an Acceptable level but with a lower priority than Category A <b>Tolerable</b> Risk will not be reduced but may require increased assessment frequency than Category C	Works completed within 6 months or restrict public access by barriers and signs until work is completed
<b>Category C</b> Desirable – Pro active Management	Works to trees that are not considered to be high risk Works to abate a nuisance (other than subsidence) caused by Council owned trees	<b>Acceptable</b> Risks will not be reduced unless resources are available	No specific time scale (as resources allow)



## 7. SITE ZONING

### ***Proposed Policy***

*As part of a risk-based approach for the management of trees, the Council will identify and categorise all land within its ownership into zones on the basis of frequency of use.*

The inspection of Council owned trees will be informed by the use of Site Zones where the management of land is defined according to the levels of use (Table 2)

The Council will adopt a minimum of three zone categories, (High, Medium or Low) and will be defined by: -

- Frequency of use and/or function of use such as The Highway Authority Network Hierarchy, taking into account the risk-based approach in the Code of Practice 'Well Managed Highway Infrastructure' (WMHI).
- Frequency of use of all Public buildings, Parks and other Council owned land according to level of occupancy and public access (as assessed by site managers).

It may be appropriate for managers to incorporate additional zones depending upon their services management requirements and it will be a matter for each Service to determine which zone applies to a specific area based upon an informed assessment or their own data analysis.

The Council will carry out a review of all zones every three years or where there are clear identified changes in use.

**Table 2 Zoning, Frequency of Inspection and Inspection Method**

Zones of Use	Network Hierarchy (Highways)	Usage Criteria	Frequency of Inspection	Inspection Method(Level)	Examples
<b>Zone 1 High Use</b>	Strategic Routes/Main distributors/ Secondary distributors/Link Roads	High volumes of traffic and public access/ occupancy <sup>(3)</sup>	Every One or Two years <sup>(1)</sup>	Basic (Level 1)	Principal/Trunk Roads, Major Road junctions, Land adjacent to the rail network, Car Parks, Town Centres, Land adjacent to Schools, Employment areas, emergency facilities and access routes, Permanent Structures with a constant target, play areas, public areas/ Events <sup>(3)</sup>
				<b>Risk not tolerable/acceptable</b> Detailed (Level 2)	
<b>Zone 2 Moderate Use</b>	Strategic Routes/Main distributors/ Secondary distributors/Link Roads	Moderate volumes of traffic and public access <sup>(3)</sup>	Every Three or Four years <sup>(1,2)</sup>	Basic (Level 1)	Main Roads, junctions, car parks of moderate use, Footpaths/access ways (pedestrians 1-36/hour), Moderate use Parks/Public Areas, informal play areas, recreation areas <sup>(3)</sup>
				<b>Risk not tolerable/acceptable</b> Detailed (Level 2)	
<b>Zone 3 Low Use</b>	Local Access Roads unless volumes of traffic are subject to peak periods of traffic	Low volumes of traffic and public access <sup>(3)</sup>	Every Five or Six years <sup>(1, 2)</sup>	Basic (Level 1)	Secondary/unclassified road (unless used during peak periods to avoid congestion or regular events <sup>(2)</sup> Low use parks and recreation areas, woods with limited or restricted access Other public areas where recreation is dispersed. <sup>(3)</sup>
<b>Zones 1 and 2</b>		Reports of damage following severe weather events	Immediately following event	Detailed inspection of reported damage (Level 2)	

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NOTES

1. Frequency and timing of inspection may be subject to change when considering size, age., condition and species characteristics of the tree population and trees known to be inherently prone to failure.
2. In cases where moderate or low use zones are known to have increased volume of use for example in peak periods to avoid traffic congestion, outside or within the vicinity of schools, or where special events are anticipated, zones and frequency of inspections shall be re evaluated amended where appropriate.
3. Frequency (High: Vehicle 4700/480/hr; Peds 720-8/hr; **Moderate**: Vehicle 480-48, Peds 7-2/hr; **Low** Vehicle 47-6/hr, Peds 1/hr).  
Vehicle frequency based on 32mph Source Quantified Tree Risk Assessment (v.5) <https://www.qtra.co.uk>

## 8. INSPECTION PROCEDURE.

### **Proposed Policy**

*A programme of tree inspections shall be implemented for all land under the Council's ownership using a risk-based approach and directed by dedicated arboricultural advice*

It will be the responsibility of the inspector to ensure the tree are assessed to the best of his/her ability and to ensure that the inspection is recorded accurately. The method of inspection is set out below and will be dependent on the Zones of Use. (Table 2)

Tree inspections will normally be carried out from ground level with the use of binoculars and hand tools (such as a nylon sounding hammer and metal probe). Cameras may also be used to record specific defects and in order to monitor defects over a period of time.

### **Basic Inspection (Level 1 Visual Survey)**

The HSE Sector Information Minute (SIM) *Management of the risk from falling trees or branches* has identified a "quick visual check" as the starting point for duty holders under the Health and Safety at Work Act.

Trees will be assessed on foot or in a vehicle as a drive- by inspection. The inspection will identify the target area (what the tree or parts of it will fall on) and the type of assessment recorded. For example, trees in a park will be recorded as having been assessed on foot. Trees beside a road will be recorded as being assessed on foot or drive- by.

A more detailed Level 2 Assessment will be carried out where there are trees with obvious features where the risk is considered not acceptable or tolerable.

### Drive by Inspection

A drive by inspection is an assessment carried out at a Basic Level from a moving vehicle that is driven at a low speed observing only trees with obvious risk features which might not be acceptable or tolerable. The inspection shall be carried out in accordance with a Traffic Management Plan and incorporate the following: -

- the vehicle shall include one driver and one surveyor.
- The surveyor will be trained in basic tree risk assessment to recognize obvious tree risk defects.
- the surveyor must only assess trees and not assess other highway issues.
- Trees will be assessed from both directions even if trees are only on one side of the road to avoid missing any features that are only visible from one direction.
- where trees are present on both sides of the road, each side of the road shall be observed separately.
- the vehicle shall be driven at an appropriate speed and may be variable depending on the surveyor (less than 50kph/30mph).

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- Flashing beacons and vehicle display signage may be appropriate at busy locations.
- Where it is safe to do so the vehicle shall slow down or stop when there are many trees or a tree is showing obvious defects (e.g. decay fungi, crown dieback, large wounds, splits, cracks or significant leaning towards the road).
- The surveyor will take photographs and record the tree and a decision made as to whether a detailed assessment shall be carried out.
- If the decision is to Carry out a detailed assessment, a full 360-degree assessment will be carried out on foot. If vegetation needs removing or access is difficult, arrangements shall be made to carry out the work necessary for a closer examination of the tree.

### Walk-over Inspection

A visual examination carried out on foot to identify obvious and serious above ground defects of a tree. This will involve observing the tree in its entirety at a distance followed by a walk round each tree to gather information on the condition of roots, trunk, branch structure, crown, buds and leaves and may include the use of simple tools. Where there are limitations to the inspection due to obstructions or restrictions due to ownership this shall be noted in the survey.

### **Detailed Inspection (Level 2 Survey)**

A detailed inspection is carried out on trees identified during a Basic Inspection that require closer examination because they have a feature where there is an obvious risk that is considered not acceptable or tolerable.

The assessment is carried out from ground level using a quantifiable tree risk management system.

A report will be produced which will include the risk assessment/rating and appropriate options (if necessary) for reducing the risk and any appropriate management advice. Any work carried out will be recorded when it has been completed.

### **Advanced Inspection**

Where a risk assessment from a Level 2 survey is unclear or more information is required about the likelihood of failure, and resources are justified for further intervention (e.g. a tree of significant amenity, heritage or cultural value) a more detailed advanced inspection may be undertaken. This may include below ground and aerial investigation, including detailed information about specific parts of the tree, the significance structural defects and strength loss due to decay, the presence and significance of diseases, pests, assessment of targets and site conditions and the use of specialized equipment.

If the costs of an Advanced Inspection are substantial, a decision will be made whether the tree has sufficient value to justify the expense. This will be determined using a system for valuing amenity trees as public assets (e.g. CAVAT). A report will be produced that will include the detailed information obtained from the investigation and those covered in the Detailed (Level 2 Survey).

## 9. RECORDING AND PRIORITISING REMEDIAL ACTION

### ***Proposed Policy***

*A record of all tree inspections, including related maintenance and proposed actions shall be maintained on a retrievable database that is accessible and be corporately available.*

Accurate record keeping enables proactive and responsible risk management providing evidence in support of professional challenge. It also supports future decision making about the management of the Council's trees.

Whilst all trees within a survey area need to be checked, only those identified with specific defects requiring work need to be recorded, however the areas that have been inspected need to be recorded.

Each service with trees within its area of responsibility shall: -

- Undertake a survey to identify all land that falls within its management responsibilities that include trees.
- Ensure that safety inspections include both trees within the managed land and those outside but within falling distance of land.
- Implement a programme and record of tree inspections including related maintenance and action proposed. The record will be retained, maintained and updated in a retrievable database to support an asset management approach and inform allocation of resources and value for money.
- Ensure adequate budget provision based on evidence of need and service level for ongoing regular tree inspections and necessary safety related maintenance work for trees arising from inspections.
- Ensure that the data base is accessible to all officers with corporate responsibility for tree risk.

## 10. COMPETENCY AND TRAINING

### ***Proposed Policy***

*Staff involved in the inspection of Council owned trees shall be competent for the task and have a basic level of arboriculture training.*

### Competency of Personnel

Under the Health and Safety at Work Act and guidance contained in the HSE SIM a quick visual check should “be carried out by a person with a working knowledge of trees and their defects, but who need not be an arboricultural specialist”.

Well-managed Highway Infrastructure (2016) also states that highway authorities: “should include some basic arboricultural guidance in training for inspectors”.

All staff shall be aware of their limitations and should consider whether they have the necessary competence to carry out a specific task effectively. If in doubt, it is advisable to obtain appropriate specialist advice. In relation to a tree risk assessment, if an assessor is unable to confidently identify obvious external signs of defect and particularly their significance in respect of structural stability in the tree, s/he should consult a specialist.

All personnel carrying out inspections of trees on behalf of the Council shall have the following levels of competence and training: -

#### Level 1

Inspections shall be carried out by a member of staff or contractor with a basic understanding of trees. Because of their training, experience and site knowledge, they will be able to notice common defects and abnormal growth in trees and will understand how to pass on their concerns to a more experienced person.

#### Training

LANTRA Basic Tree Inspection Certificate, although LANTRA Intermediate Tree Inspection certificate is desirable.

#### Level 2

The inspector shall be a competent arboriculturist (as recommended in Circular 52/75 Inspection of Highway Trees) with training and experience of managing trees for safety, balanced with other site-specific requirements. Inspectors will be familiar with the use of probes, nylon faced mallets and binoculars.

#### Training

Minimum RCF Level 3 Arboriculture with modules covering tree inspection and the recognition and treatment of defects.  
LANTRA Professional Tree Inspection.

### Level 3 – Detailed Inspection

An inspection that provides a detailed assessment of any decay or tree stability with the use of specialized equipment e.g. Resistograph or Tomography. This level of inspection shall be usually reserved only for high value trees within high use areas.

### Training

Minimum RCF Level 6 Arboriculture (e.g. BSc. RFS Professional Diploma, LANTRA, Professional Tree Inspection)

## 11. SUBSIDENCE RISK

### ***Proposed Policy***

*As part of a risk based approach, the Council will identify those areas within its ownership where soil conditions and incident trends indicate a potential subsidence risk.*

Public liability claims that involve trees can arise where there is alleged damage by tree Roots which under certain conditions can give rise to subsidence damage to a property. Subsidence is normally a problem on shrinkable clay soils, with properties that have shallow foundations at the highest risk. Tree roots can cause desiccation of the ground near to a building causing the clay soil to shrink leading to subsidence. However, there are other determining factors which can lead to subsidence and these require thorough investigation and inspection by a qualified and competent tree specialist, structural engineer and soil analyst.

- The Council will as part of a risk-based approach identify those areas within its administrative boundary which are more prone to subsidence risk. Within these areas details of tree species, their location, soil type and records of incidents shall be maintained on a retrievable database.
- The Council will provide dedicated resources for dealing with subsidence related claims involving Council owned trees.
- Where tree removal is required to mitigate any damage arising from a subsidence claim, the Council shall plant a replacement tree of a more suitable species where site conditions allow.
- The Council's Arboriculture Officers in conjunction with Insurance Officers and Highways Officers shall ensure an effective risk-based approach on the basis of the Joint Mitigation Protocol method of subsidence claims management where trees are implicated as being the cause of building movement. The protocol recommends Councils undertake a cost benefit analysis, proportioning costs, and repudiating claims where appropriate and undertaking cyclical pruning, felling and replacement where appropriate.



- The Council will challenge unwarranted claims based upon insufficient or inaccurate evidence.
- The Council will challenge the claim where there are clear inadequacies or discrepancies in the evidence that has been submitted.
- The Council will adopt specific levels of evidence required for evaluating claims where there are trees of particular value.
- Where the evidence clearly indicates another cause of movement/subsidence then the claim should be dismissed, and the Insurer informed of the Council's decision.

The Council will require the following information in support of a claim for tree related subsidence damage: -

- An Arboricultural Report which should include an assessment of the vegetation within the site and adjacent with recommendations for future management together with assessment of any other evidence in connection with the alleged damage.
- The Circumstances and date that the damage was first discovered and any previous history of subsidence at the insured property.
- An Assessment of the alleged damage (description, classification and category of damage in accordance with Table 1 of BRE Digest 251).
- Full cyclical crack and/or level monitoring.
- Description and depth of property's foundation.
- Engineers assessment of mechanism of movement and damage progression.
- Soil Geology and Soil description from Trial Pit/Bore Hole investigation (min. 2 Trial Pits - 1 control).
- Soil Plasticity - Atterberg Liquid Limits (LL); Atterberg Plastic Limits (PL) and Plasticity Index (PI) to BS 1377: Part 2:1990 Clause 4.4
- Oedometer Test in accordance with BS1377-5 (moisture content desiccation test).
- Assessment of Heave potential should trees be removed.
- Root analysis/Investigation Report.
- Drainage Investigation Report.
- Estimated Cost of Repair if tree retained.
- Estimated Cost of Repair if tree removed.
- Management Recommendations

#### Procedure for dealing with subsidence claims

On receipt of a claim the following procedure will be adopted: -

1. An initial investigation will be undertaken by the Council's Insurance Team to assess the merits of the claim and to determine if any further evidence is required.

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2. Following a site investigation and assessment of the evidence provided a written report (in accordance with the LTOA Risk Limitation Strategy for Tree Root Claims) will be provided by the Council's Arboricultural Officers to the Council's Insurance Team. A Capital Asset Valuation for Amenity Trees (CAVAT) assessment and a history of any past management which will be assessed against the cost of the claim.
3. The report and evidence will be considered by the Council's Loss Adjuster to establish the contributory reasons for the damage which will be reflected in the Council's eventual offer of any settlement.
4. Where tree related subsidence damage has been determined, the removal of the tree will be considered, taking into account the supporting evidence and Capital Asset Value of the tree.

## **12. IMPLEMENTATION AND REVIEW**

The implementation of this Tree Risk Management Strategy will be the responsibility of the Manager of each individual service working in conjunction with the Environmental Planning Manager/Principal Arboriculture Officer who will report to The Director of Place on progress and compliance.

Overall responsibility for risk management is underpinned by the Council's Risk Management Policy Statement, Strategy and Framework and managed by the Corporate Risk Management Team.

This Strategy shall be reviewed as necessary (for example following new guidance, case law and statute law) and/or every three years.

## REFERENCES

Cheshire East Council Risk Management Policy Statement and Strategy 2015-2017

Cheshire East Council Highway Tree Risk Management Review (RMP/Gallagher Bassett July 2017)

Cheshire East Council Code of Practice for Highway Safety Inspections Part 1 – Strategy 2013

Cheshire East Council Strategic Asset Management Plan (Montagu Evans May 2015)

Highway Tree Risk Management Review Cheshire East Council (Risk Management Partners/Gallagher Bassett RMP/GB July 2017).

National Tree Safety Group - *Common sense risk management of trees*  
<http://ntsgroup.org.uk/guidance-publications/>

Prevention of Future Deaths Report arising from the Inquest of Michael Arthur Warren(2014)  
<https://www.judiciary.uk/wp-content/uploads/2014/08/Warren-2014-0330.pdf>

Quantified Tree Risk Assessment Practice Note Version 5.2.4 (on line QTRA 2019)

Quantified Tree Risk Assessment User Manual (Version 3) (2010)

*Reducing the Risks Protecting People* HSE's decision-making process (HSE/HMSO 2001)

Technical Information Note 1 *Tree Risk management for duty holders* (BTC/134/2018).  
Barrell Tree Consultancy.

Tree Risk – Benefit Management / Government Agency Policy (v1.5).  
VALID Tree Risk – Benefit Assessment and Management.  
[www.validtreerisk.com](http://www.validtreerisk.com)

UK Roads Liaison Group *Well-managed highway infrastructure* (2016)  
<http://www.ukroadsliaisongroup.org/en/codes/>

## APPENDICES

### APPENDIX 1

#### Legislation

##### The Health and Safety at Work Act 1974

The Act places a duty on employers to ensure, so far as reasonably practicable, that in the course of conducting their undertaking employees and members of the public are not put at risk.

##### Occupiers Liability Acts 1957 and 1984

The Council has a legal duty of care to ensure that they act as a reasonable and prudent landowner. This means that they must ensure that they avoid acts or omissions that could cause a foreseeable risk of harm to persons or property.

This is reinforced in criminal law under section 3 of the Health and Safety at Work Act 1974 where the Council must also ensure that risks to its employees and contractors are reduced as far as is 'reasonably practicable' .

##### The Corporate Manslaughter and Corporate Homicide Act 2007

The Act establishes that if a duty of care exists, senior managers are liable to prosecution if an employee or member of the public dies as a result of a failure to provide a demonstrable system or policy that deals with the risk in a proportionate manner.

##### The Highways Act 1980

The Highways Act 1980 sets out a general legal duty to maintain the public highway, which includes risks associated by street trees. Under Section 58 the Highway Authority would be required to provide evidence in defence of this duty that it operated a reasonable system for inspection and a reasonable system for repair and maintenance.

The Highways Authority is also responsible for ensuring that trees within falling distance of the highway boundary do not present a risk. Section 154 of the Act empowers the authority to serve notice on adjoining landowners whose trees are presenting an unacceptable risk and to recover costs.

##### The Well – Maintained Highways: Code of Practice (2005)

This Code of Practice published by the Roads Liaison Group in July 2005 identifies three issues of liability associated with highway trees:

- Damage to buildings arising from subsidence linked to trees and tree roots.
- Damage or injury caused by falling trees or branches.
- Damage or injury caused by tree root damage to highway surfaces.

The Code of Practice recommends that safety inspections undertaken by highways

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inspectors should incorporate highway trees, including those outside the highway boundary and within falling distance of the highway. The Code advises a separate programme of tree inspections should be undertaken by specialist arboricultural advisors and recommends a policy to manage tree risk.

#### The Well- Managed Highways Infrastructure: Code of Practice (2016)

This Code replaces the 2005 Code and is designed to promote the adoption of an integrated asset management approach to highway infrastructure based on the establishment of local levels of service through risk-based assessment. The new code replicates the 2005 Code to highway tree management within the scope of a highway asset management scheme. This includes the need for safety inspections to incorporate highway trees including those within falling distance of the highway.

#### Common Law Duty of Care

A duty of care may exceptionally be established where a local authority has failed to exercise a statutory power.

## **APPENDIX 2**

### **Legal Cases relevant to this Strategy**

#### Edwards v National Coal Board [1949] All ER 743 (CA)

The case established the concept of “reasonable practicability” in relation to risk reduction. The Court of Appeal decided that “reasonably practicable” was more narrowly defined than what was “physically possible” and gave rise to the measurement of risk present in a given situation against the reasonable practicability of mitigating that risk.

#### Chapman v Barking and Dagenham LBC [1997] 2 EGLR 141

It was held that a local authority was liable for serious injury to a member of the public due to the failure of a limb as the authority could not show that the tree in question had been subject to “systematic expert inspection”.

#### Poll v Viscount Asquith of Morley (Bartholomew) [2006] All ER 158

The case established that tree inspections should be carried out by a suitably competent person.

#### Atkins v Scott 2008

It was held that in this case an informal system of tree inspection was adequate but that this had a disadvantage in that it would be more difficult to resist claims based on an inadequate system of inspection. The keeping of formal records would therefore assist in confirming the adequacy of a management regime.

#### Stagecoach South Western Trains Ltd v-Hind & Steel [2014] EWHC 1891 (TCC)

The land-owner’s duty extended no further than the carrying out of periodic informal or preliminary observations/inspections of the tree. The principles suggested are that the owner of a tree owes a duty to act as a reasonable and prudent landowner, the duty must not amount to an unreasonable burden, a reasonable and prudent landowner should carry out preliminary/informal inspections or observations on a regular basis and in certain circumstances, the landowner should arrange for fuller inspections by an arboriculturalist where a preliminary inspection revealed a potential problem or there is a lack of knowledge by the landowner.

#### Witley Parish Council v Cavanagh 2018

This Court of Appeal ruling requires that any property owner responsible for trees on their land should not rely on a ‘one size fits all’ policy and examine the adequacy of their regime for tree inspection (in particular roadside trees) taking account site specific circumstances, species characteristics and the degree of risk to persons and property in the event of failure.

### **Damage to property by action of tree roots**

#### Solloway v Hampshire CC CA [1981] 79 LGR 449).

Judgement was made that the encroachment of the tree roots constituted a nuisance and HCC were responsible for damage caused. However, geological maps showed that whilst the house was on plateau gravel sections of it rested on small pockets of clay which were not shown on geological maps.

The Court of Appeal ruled that the existence of small clay pockets beneath the house was not reasonably foreseeable and hence there was no breach of duty on the part of HCC. The appeal was allowed.

#### Peterson v Humberside County Council [1995]

A local authority was liable for nuisance for damage (cracks to house) caused by tree roots once it could be shown that it knew of the soil condition, by virtue of the council's own warnings to residents of the danger in the area meant that the damage was foreseeable.

The test of foreseeability was whether the risk was one which a reasonable person in the Defendant's position would have regarded as a real risk as distinct from a risk which he would have been justified in disregarding and taking no steps to eliminate

#### Delaware Mansions Ltd and others v Westminster City Council [2001] 44 EG 150

Where there is a continuing nuisance, which a defendant knows about or ought to know about, the claimant is entitled to the reasonable costs of eliminating the nuisance if he has given notice of the problem to the defendant and a reasonable opportunity to deal with it.

#### GA Berent v Family Mosaic Housing Islington BC [2011] EWHC 1353 (TCC)

The court held that a local authority, or other relevant party, would only be liable for property subsidence damage caused by their tree(s) if they were aware (or ought to have been aware) that there was a "real risk" that their tree(s) would cause damage to the specific property in question.

This case potentially makes it more difficult for claimants to establish that any damage was foreseeable, and therefore for claimants to establish their claim in either nuisance or negligence

#### Robins v London Borough of Bexley [2012] EWHC 2257 (TCC)

The court held that the risk of damage to the property was clearly foreseeable from 1998 onwards and gave rise to questions about what the council should have done and whether that would have prevented the damage that occurred. On the facts, it was clear that the council should have undertaken a regular programme of pruning and therefore it was liable for the damage caused to the property by the subsidence that occurred in both 2003 and 2006.

The court applied the "well settled principles relating to foreseeability and causation", an approach that was entirely consistent with the principles in Berent.

## **APPENDIX 3**

### **DEFINITION OF TERMS**

#### **As Low as Reasonably Practicable (ALARP)**

Where duty holders are required to exercise judgement on the tolerability of risk and consider the costs of the risk reduction where it is much greater than the value of the risk reduction.

#### **Capital Asset Valuation of Trees (CAVAT)**

CAVAT is a method for managing trees as public assets rather than liabilities. It is a strategic tool and aid for decision-making in relation to assessing trees stock as a whole, and where the value of a single tree needs to be expressed in monetary terms.

#### **Drive by Check**

A visual check from a moving vehicle driven at low speed by one driver and one surveyor

#### **Defect**

A structural, health or environmental condition that could predispose a tree to failure (NTSG).

#### **Harm**

An adverse impact on a person or object.

#### **Hazard**

A hazard is defined as anything with the potential to cause harm to people or property. A tree- failure hazard is present when a tree has potential to cause harm to people or property.

#### **Highway Inspector**

An engineering professional primarily trained in highway matters, but may also be trained to identify obvious tree hazard conditions.

#### **Informal Observations**

Reports from members of the public or employees that alert duty holders to tree problems which may support decisions on risk management

#### **Risk**

Risk is defined as “the likelihood of that particular hazard causing harm” and the measure of its effect and severity of the consequences. In terms of assessing a risk will depend on the likelihood of failure, occupation of the target and the magnitude of the consequence (QTRA 2010).

#### **Risk Assessment**

The process of risk identification, analysis, and evaluation within an organization.

#### **Risk Management**

Coordinated activities or operations that direct and control risk within an organization.

#### **Risk (Tolerable)**



A risk is tolerable if it is low as reasonably practicable (ALARP)

**Risk (Not acceptable)**

A risk that needs to be reduced to an acceptable level

**Risk (Not Tolerable)**

A risk that needs to be reduced to an acceptable level but has a lower priority than not acceptable

**Risk (Tolerable)**

A risk that will not be reduced but may require an increased frequency of assessment

**Significant Risk**

An estimated level of risk that requires proactive management usually within an organization.

**Target**

A person or an object that could be harmed by trees.

**Tree Inspection**

An informal or detailed tree investigation that includes a visual inspection of the whole of the tree from various vantage points and may include climbing and/or internal structural assessment using tools.

**Walk over check**

A visual examination carried out on foot to identify obvious and serious above ground defects and will involve observing the tree in its entirety from as many vantage points as possible from a distance and close by