

REPORT TO: PLANNING AND TRANSPORTATION COMMITTEE - 20 DECEMBER 2004

REPORT ON: REQUEST PERMISSION FOR SERVICE OF TREE REPLACEMENT NOTICE

REPORT BY: DIRECTOR OF PLANNING & TRANSPORTATION

REPORT NO: 797-2004

1 PURPOSE OF REPORT

- 1.1 This report seeks to advise the Committee that the Council's Forestry Officer considers that there are 38 mature trees either dead or dying on land to the north and east of the Western Cemetery, Dundee. This woodland site lies within the West End Suburbs Conservation Area and therefore the landowner has a duty to protect the trees contained therein. At present the Scheme of Delegation does not include the service of Tree Replacement Notices in the powers delegated to the Director of Planning and Transportation. Therefore this report seeks the agreement of the Committee to allow service of this Notice.

2 RECOMMENDATION

- 2.1 It is recommended that the Director of Planning and Transportation be remitted, in consultation with the Depute Chief Executive (Support Services), to serve a Tree Replacement Notice under the terms of Section 168 of the Town and Country Planning (Scotland) Act 1997 on the owner of the land to the north and east of Western Cemetery, Dundee. Replanting will be required on a 1:1 basis to be completed by 30 April 2005. Failure to comply with the terms of the Notice will lead to the Council undertaking Direct Action as specified in paragraph 6.4.
- 2.2 It is also recommended that the Depute Chief Executive (Support Services) be remitted to investigate the potential for the wilful destruction of these trees to be reported to the Procurator Fiscal to prosecute the person responsible.

3 FINANCIAL IMPLICATIONS

- 3.1 It is estimated the cost of felling the trees, removing all timber and the ground clearance would be £8,63085 excluding VAT and a further £4,180 excluding VAT for replacement planting. These expenses will be recovered from the owner in the event of Direct Action being undertaken.

4 LOCAL AGENDA 21 IMPLICATIONS

- 4.1 This request is in line with two Key Themes of the Local Agenda 21. Firstly, the diversity of nature is valued and protected. The replacement of the trees within the grounds will ensure that the amenity previously brought by trees in this area will be returned. Secondly, pollutions is limited to levels at which natural systems can cope.

5 EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 There are no equal opportunity implications.

6 BACKGROUND

- 6.1 The Council has promoted and continues to promote Tree Preservation Orders and the protection of trees in Conservation Areas. In the interests of protecting and enhancing the amenity of the city, a general legal protection is afforded to trees within these areas. In effect, this prohibits landowners from permitting cutting down, topping, lopping, uprooting, wilful damage or wilful destruction to any trees within their grounds except with the consent of the Planning Authority.

- 6.2 Following information received from a member of the public, the Council's Forestry Officer visited this site, inspected the trees and advised he considers there are 38 mature trees either dead or dying. The Council considers that these trees have been wilfully destroyed as on inspection it was discovered that holes have been drilled into the base of these trees. The Council's Forestry Officer took samples from the trees and arranged for tests to ascertain if chemicals had been used to poison the trees. However, having examined the samples, the Arboricultural Advisory and Information Service considered that it would be unlikely that anything meaningful could be obtained from undertaking chemical analysis. Although in the last paragraph of their report it is stated "it is curious to note that several of the samples showed good extension growth until 4 or 5 years ago. This suggests that something may have started the decline at that time and that the trees were able to hang on until another damaging event occurred." A copy of the full Report is available in the Members' Lounge.
- 6.3 The Council has two options to pursue this matter. The Council can report the matter to the Procurator Fiscal to prosecute the person who has wilfully destroyed the trees and or the Council can serve a Tree Replacement Notice on the owner. In the case of non-compliance the Council can decide to proceed with Direct Action. It is therefore considered that serving a Tree Replacement Notice on the owner is appropriate in the circumstances, and that the Council investigate further the potential for a prosecution.
- 6.4 The Notice will dictate the planting period, size and species of trees to be replanted. The Forestry officer has recommended that all trees should be replaced and planted before the end of the Spring planting 2005.

7 CONSULTATIONS

- 7.1 The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance) and Assistant Chief Executive (Community Planning) have been consulted and are in agreement with the contents of this report.

8 BACKGROUND PAPERS

- 8.1 Letter and report received from Arboricultural Advisory and Information Service.

Mike Galloway
Director of Planning & Transportation

Ian G S Mudie
Head of Planning

IGSM/LC/DB

8 December 2004

Dundee City Council
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Appendix 1

Report No 797/2004

This site has been the subject of the following planning applications:

D22546	- Outline consent for the erection of one dwellinghouse	- Approved 28/5/97
D22722	- Outline consent for the erection of 3 dwellinghouses	- Approved 27/8/97
D23715	- Erection of one house with garage	- Refused 22/2/99
D24662	- Renewal of consent for one dwellinghouse (Ref D22546)	- Refused - Appeal dismissed 9/4/01
D24824	- Renewal of outline consent for erect of 3 houses (Ref D22722)	- Refused - Appeal dismissed 9/4/01
04/00745/OUT	- Proposed erection of 4 dwellinghouses	- Currently under consideration