

DECISION-MAKER:	PLANNING AND RIGHTS OF WAY PANEL
SUBJECT:	Application to work on trees in Marlhill Copse that are subject to a tree preservation order
DATE OF DECISION:	27th June 2023
REPORT OF:	David Tyrie – Head of City Services

<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY
NONE

BRIEF SUMMARY
To consider the content of a tree work application by Southampton International Airport to carry out work to protected trees at Marlhill Copse

RECOMMENDATIONS:	
	<p>(i) To <u>Grant Consent</u> for the following work.</p> <ul style="list-style-type: none"> i. 5813 - Ash - Reduce southern canopy extent by 2m, maximum cut diameter 100mm. ii. 5839 - Ash - Reduce southern canopy extent by 2m, maximum cut diameter 100mm iii. 5815 - Common Alder - Reduce southern leader by 3m to best appropriate union, maximum cut diameter 200mm iv. 5833 - Ash – Reduce lateral limb originating at 1.5m and extending north-west back to a point 3 metres from main stem and finish off with a coronet cut. v. 4 - Monterey Pine - Reduce pendulous limb extending to the south back by 3 metres from branch tips. Reduce dog-legged limb extending to the south back by 3 metres from branch tips.

	(ii)	<p>To <u>Refuse Consent</u> for the following work.</p> <ul style="list-style-type: none"> i. 5840 - Ash - Reduce to previous reduction points. ii. 4 - Monterey Pine - Reduce two hazard beam limbs extending south from apex of trunk at approximately 17m to source. iii. 533 - Oak - Reduce crown by 4m to best appropriate growth points, maximum cut diameter 150mm. iv. 5833 - Ash - Remove hazard beam limb originating at 1.5m and extending north-west.
	(iii)	<p>To note and approve the written statement appended to this report (Appendix 3)</p>

REASONS FOR REPORT RECOMMENDATIONS

1	<p>The requested work has been identified by an independent arboricultural consultant who carried out a site visit to conduct a tree survey at Marlhill Copse and has issued a recommended schedule of works, which has been submitted with the application.</p>
2	<p>The proposed work for each individual tree and its recommendation has been given in the body of the report.</p>
3	<p>In relation to recommendation iii, this is for the interests of good administration.</p>

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

4	<p>Granting consent to all the work within the application would have resulted in work deemed unnecessary being completed. This would have caused a detrimental impact to the trees health and the amenity they provide.</p>
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DETAIL (Including consultation carried out)

5	<p>A tree survey had been carried out for Southampton International Airport Limited (SIAL) by an independent arboricultural consultant. From this survey, there were a series of recommendations from SJA Trees, which have been submitted in the application. (Appendix 1)</p>
6	<p>The consultant has given a priority to each of the recommendations, and these are: -</p> <ul style="list-style-type: none"> R1. Works to be carried out within 5 days. R2. Works to be carried out within 3 months. R3. Works to be carried out within 1 Year. R4. Works to be carried out during the next available programme, schedule a more detailed inspection, or review condition at the next inspection, based on an assessment of the risk of the deterioration before next visit.

	The work subject of this application has been identified as being in the R2 and R3 category.
7	The plan appended to the report has given the location of the trees, which are all but one, are located to the south of the permissive path. These trees are located to the rear of properties in Moat Hill, St Helena Gardens and Maryland Close. (Appendix 2)
8	The applicant seeks permission for work to the trees that are protected by W1 of The Southampton (Townhill Park - Cutbush Lane) Tree Preservation Order 1956.
9	Part of Marlhill Copse is a nationally registered garden, however none of the trees within the application are within this designated area, therefore there is no requirement to consult Historic England on this application.
10	The majority of Marlhill Copse is designated as a Site of Importance to Nature Conservation (SINC). However, none of the trees within this application fall within the SINC designation, therefore there is no requirement to consult with the Council's Planning Ecologist on the impact the work will have to the SINC.
11	The trees are also within the Itchen Valley conservation area and as such, section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that ' <i>special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area</i> '. Therefore, the council's Historic Environment Officer was contacted in relation to this application.
12	When assessing the application to work on trees that are within a woodland, officers must apply regulation 17(3) of The Town and Country Planning (Tree Preservation)(England) Regulations 2012. (<i>the regs</i>)
13	This regulation states – ' <i>Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area</i> '.
14	Due to the sensitive nature of the site, the application was assessed by two tree officers. Officers have considered the required tests set out within this regulation and have formed the following opinion.
15	The first part of the test is to determine if the application relates to an area of woodland.

16	<p>Does the application relate to an area of woodland?</p> <p>The TPO is a 'woodland' TPO and DEFRA describe the location with the following classifications.</p> <p>Priority Habitat Inventory – Deciduous Woodland</p> <p>National Forest Inventory – Broadleaved</p> <p>Ancient Woodland (England) – Ancient and Semi-natural woodland (ASNW)</p> <p>This, added with the definition of 'woodland' within the UK Forestry Standard (UKFS), leads officers to agree that the trees are within a woodland.</p>
17	<p>As it is the officers' opinion that the application does relate to an area of woodland, the test required in the other elements of regulation 17(3) are applied.</p>
18	<p>Does the work accord with the practice of good forestry?</p> <p>There is no definition in the TPO Regulations of what "the practice of good forestry" means. However, the UKFS is a guidance document prepared by the Forestry Commission which sets out the Government's approach to sustainable forestry. It is referred to within the national planning guidance on TPOs ("the PPG") and it is therefore relevant when assessing what is good forestry practice.</p>
19	<p>The term 'Forestry' is described in the UKFS as 'The science and art of planting, managing and caring for forests'.</p> <p>The UKFS states that the standard's requirements are divided into legal requirements and good forestry practice requirements. The Requirements are categorised into different elements of sustainable forest management, each supported by Guidelines for managers. It makes it clear that they should be interpreted and applied flexibly: "Some aspects of forest management lend themselves to 'yes or no' compliance, but most do not, and so the UKFS has not attempted to condense all the complexities of forest management into an over-simplistic format. The UKFS has therefore been written to be interpreted with a degree of flexibility and applied with an appropriate level of professional expertise."</p>
20	<p>The work detailed within the application is to remove limbs and reduce the canopy of trees. The UKFS does not give any advice on this type of work, and this is regarded by the officers as not being 'forestry operations'. Officers consider this work to be more akin to Arboriculture rather than a forestry operation.</p>
21	<p>The word 'Reduction' is not used in the UKFS in relation to Crown Reductions, nor is it listed within the glossary of terms at the rear of the document. Arboriculture is listed in the glossary and is defined as '<i>The management of individual trees, but sometimes used to include the management of trees and woodlands in urban situations</i>'.</p>

22	<p>Officers considered other aspects of what may constitute ‘good forestry’ and how this may relate to this application.</p> <p>Section 6 of the UKFS deals with Health and Safety and states <i>‘Landowners and managers need to be fully aware of their obligations under both employment and health and safety legislation. This is extensive and includes equality of treatment for recruitment processes and contracts, and a duty of care for staff while at work. ‘There is also a duty of care towards people visiting business premises or land, whether they are there with permission or not.</i></p> <p>The requirement to undertake this sits within paragraph 11 and points towards the duty of care under the Occupiers Liability Act.</p> <p>It states that: -</p> <ul style="list-style-type: none"> • <i>‘The landowner or manager must discharge their statutory duty of care in relation to people visiting land, whether or not they are there with permission’.</i> <p>It can therefore be seen that the landowners are applying their ‘duty of care’ to ‘manage’ the woodland for visitors. This has been achieved by undertaking a survey of the trees and thus in alignment with section 6 of the UKFS.</p>
23	<p>Applying this to the decision that the officers have reached, where permission has been granted for the safety of visitors, this can be said to accord with the practice of good forestry and therefore the council are mandated to grant consent, if the maintenance of the special character or the woodland character of the area are not harmed.</p> <p>As can be seen with the test undertaken, which is detailed in paragraphs 41 to 43, the work would not harm these attributes, therefore are recommended to be granted under regulation 17(3).</p>
24	<p>Where officers have formed the view that the tree does not place visitors at an unreasonable risk, and therefore does not meet with the safety requirement of the UKFS, then officers have assessed the merits of the application in-line with the recommendations within the planning practice guidance laid out in paragraph 26.</p>
25	<p>All the proposed works that are recommended for refusal are not considered to accord with the UKFS and in particular the requirements set out above relating to visitors i.e. the state of the trees are not considered to present a risk to visitors. As such, reg 17(3) does not mandate approval therefore these have been assessed having regard to the advice set out in the PPG.</p> <p>In relation to works detailed in paragraphs 28 to 32, these are either considered to accord with the safety requirements within the UKFS and is</p>

	<p>considered to be a practice of good forestry, which regulation 17 (3) mandates approval, or that the work is not a requirement for safety but is not considered to be harmful to the local amenity, and on balance can be approved.</p>
26	<p>Where the work does not accord with the practice of good forestry, then the application has been considered in line with the Governments planning policy guidance publication 'Tree Preservation Orders and trees in conservation areas', which is also known as the PPG .</p> <p>Within the PPG, the following guidance is given: -</p> <p>When considering an application, the authority is advised to:</p> <ul style="list-style-type: none"> • assess the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area; • consider, in the light of this assessment, whether or not the proposal is justified, having regard to the reasons and additional information put forward in support of it; • consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions; • consider whether any requirements apply in regard to protected species; • consider other material considerations, including development plan policies where relevant; and • ensure that appropriate expertise informs its decision. <p>It is based on the points above, that the officers have formed the decision on the application.</p>
27	<p>The work listed below has an officer recommendation to GRANT CONSENT</p>
28	<p>Tree: Ash 5813</p> <p>Work Applied for: Reduce southern canopy extent by 2m, maximum cut diameter 100mm.</p> <p>Reason given to support work: Significant crown weight to the south, in close proximity to residential property and shows below average physiology.</p> <p>Officers' Assessment: The impact of the light lateral reduction of the canopy over the rear garden of the property will have negligible impact to the amenity that the tree provides within the woodland. The work is also unlikely to have an adverse impact to the tree's health.</p> <p>Decision: Reduce southern canopy extent by 2m, maximum cut diameter 100mm</p>
29	<p>Tree: Ash 5839</p> <p>Work applied for: Reduce southern crown extent by 2m to best appropriate growth points.</p>

	<p>Reason given to support work: Crown is significantly weighted over residential property and specimen shows significant dieback suggestion reduced physiology.</p> <p>Officers' Assessment: The impact of the light lateral reduction of the canopy over the rear garden of the property will have negligible impact to the amenity that the tree provides within the woodland. The work is also unlikely to have an adverse impact to the tree's health.</p> <p>Decision: Reduce southern canopy extent by 2m, maximum cut diameter 100mm.</p>
30	<p>Tree: Common Alder 5815 – Common Alder</p> <p>Work applied for: Reduce southern leader by 3m to best appropriate union, maximum cut diameter 200mm.</p> <p>Reason given to support work: Significant phototropic lean southwards towards the residential property. Acute union at base with bark to bark contact.</p> <p>Officers' Assessment: It was the officers opinion that the union at the base of the tree was not considered to be of a significant concern, however the officers assessed the impact of the work on the amenity and the trees health. The reduction of 1 stem by up to 3 metres would not adversely harm the amenity. The cut size that would be left after the work is acceptable and the species would respond well and produce growth over the following growing seasons.</p> <p>Decision: Reduce southern leader by 3m to best appropriate union, maximum cut diameter 200mm.</p>
31	<p>Tree: Ash 5833</p> <p>Work applied for: Remove hazard beam limb origination at 1.5m and extending north west.</p> <p>Reason given to support work: Large limb of hazard beam form overhangs public footpath.</p> <p>Officers' Assessment: The consultant refers to the limb as having 'hazard beam form'.</p> <p>A hazard beam is a branch that has a crack running along a limb. This is caused by excessive end weight placing pressure on the underside of a limb, which is under compression. As the top of the limb is under tension, when the forces become too great, the part of the limb under compression buckles and a split occurs. This may result in just a split occurring but also can result in the underside of the limb buckling downward. It is the officers view that the long extending limb over the footpath has the potential to form a hazard beam, and therefore, due to its location, appropriate management should be considered. The officers differed to that of the opinion of the consultant in as much as the extent of the work. The officers felt that a more appropriate way to deal with this limb was not to remove it back to the main stem, where it would expose the heartwood of the tree and open it to the potential for decay pathogens entering. The cut size would also be large and not likely to occlude, which would result in a cavity forming. The officers therefore agreed that it would be more appropriate to cut the limb approximately 3 metres from the union of the main stem. The cut would be required to be a coronet cut, which over time</p>

	<p>would resemble a branch failure rather than it being removed intentionally. It is felt that in the woodland setting and being adjacent to the path, this would be more suited to the location.</p> <p>Decision: Reduce lateral limb originating at 1.5m and extending north-west back to a point 3 metres from main stem and finish off with a coronet cut.</p>
32	<p>Tree: Monterey Pine 4</p> <p>Work applied for: Reduce two hazard beam limbs extending south from apex of trunk at approximately 17m to source.</p> <p>Reason given to support work: Specimen has historically lost its top, lateral limbs have extended upwards in response and formed hazard beams that are at increased risk of failure. The upper crown is wind-exposed and multiple adjacent trees have failed due to wind throw. Due to the removal of a large part of its crown, the tree should be re-inspected annually (initially) to ascertain its response to the works.</p> <p>Officers' Assessment: the consultant has stated that the work is to reduce two hazard beams, and within the reason to support the work, it states that the tree has formed a hazard beam. This was taken as the fractures had already occurred and not that it has hazard beam form, such as Ash 5833. Officers used binoculars to look for the fractures but were not able to identify any failures. Therefore, officers have considered the work request to be preventative work on a tree that has two limbs of hazard beam potential and not to resolve an existing failure.</p> <p>Decision: Reduce pendulous limb extending to the south back by 3 metres from branch tips. Reduce dog-legged limb extending to the south back by 3 metres from branch tips.</p>
33	<p>The work listed below has an officer recommendation to REFUSE CONSENT</p>
34	<p>Tree: Ash 5840</p> <p>Work applied for: Reduce to previous reduction points.</p> <p>Reason given to support work: Epicormic regeneration with potentially weak attachment points overhang residential property.</p> <p>Officers' Assessment: Officers were not able to identify the reduction points on the tree and it had the appearance of a maiden tree and not having ever undergone any form of crown reduction. It was felt that the work was not necessary and would impact that amenity that the tree provides.</p> <p>Decision: Refuse consent.</p> <p>Reason for refusal: The work was deemed not to be necessary, and the work would result in the loss of canopy that would impact the amenity that the tree provides to the local landscape.</p>
35	<p>Tree: Monterey Pine 4</p> <p>Work applied for: Reduce two hazard beam limbs extending south from apex of trunk at approximately 17m to source. Re-inspect within 2 years of completed works.</p>

	<p>Reason given to support work: Specimen has historically lost its top, lateral limbs have extended upwards in response and formed hazard beams that are at increased risk of failure. The upper crown is wind-exposed and multiple adjacent trees have failed due to wind throw. Due to the removal of a large part of its crown, the tree should be re-inspected annually (initially) to ascertain its response to the works.</p> <p>Officers' Assessment: No hazard beams noted. The work to reduce the limbs back to the main stem would result in the bulk of the upper canopy being removed and leaving a poor form tree with limited amenity or long-term future. Reducing the weight from the limbs will retain some form, albeit a smaller canopy, but the tree will still provide to the local landscape.</p> <p>Decision: Refuse consent to reduce two hazard beam limbs extending south from apex of trunk at approximately 17m to source. Re-inspect within 2 years of completed works. Consent was given to lesser works (See Above)</p> <p>Reason for refusal: The requested work would have a negative impact to the tree's health and to the amenity that it provides to the local landscape. There is other forms of management that are considered to be more appropriate in relation to the hazard beam potential.</p>
36	<p>Tree: Oak 533</p> <p>Work applied for: Reduce crown by 4m to best appropriate growth points, maximum cut diameter 150mm</p> <p>Reason given to support work: Specimen shows phototropic limbs which are newly wind exposed following the failure of the large adjacent tree and are at increased risk of failure.</p> <p>Officers' Assessment: The tree is set back into the woodland and has good protection from wind by neighbouring trees. The reason given to support the work is that this tree has been recently exposed following the failure of the large adjacent tree and that there is an increased risk of failure. By taking this view, after the tree were reduced by 4 metres, this would then expose other trees in close proximity to this tree, to additional wind forces that it had not experienced. It was accepted by the officers that that it would be a lesser extent, however the principle remains the same. This may then lead to a legitimate request being submitted for the reduction of neighbouring trees due to them being exposed.</p> <p>Decision: Refuse consent to reduce crown by 4m to best appropriate growth points, maximum cut diameter 150mm.</p> <p>Reason for refusal: The tree has protection by the neighbouring woodland and the reduction of the canopy by 4 metres is extensive and the work would result in a negative impact to the trees health and to the amenity that it provides to the local landscape.</p>
37	<p>Tree: Ash 5833</p> <p>Work applied for: Remove hazard beam limb originating at 1.5m and extending north-west</p> <p>Reason given to support work: Large limb of hazard beam form overhangs public footpath.</p> <p>Officers' Assessment: The removal of the entire limb would place a sizable cut against the main stem of the tree. Lesser works were considered to be a</p>

	<p>more appropriate method of dealing with the potential hazard beam. It is accepted that the limb is likely to produce growth from around the cut site, and this can be managed by removing it on a cyclical bases to be determined by the applicant.</p> <p>Decision: Refuse consent to remove hazard beam limb originating at 1.5m and extending north-west.</p> <p>Reason for refusal: The removal of the entire limb would place a large wound against the main stem of the tree. An alternative method of dealing with the potential hazard beam was considered and consented to. This would result in the final cut being moved away from the main stem with the same required result being achieved.</p>
38	<p>Officers understand that the members may form a different view to that of the officers, and may consider that the work, either in part or in full, does accord with the practice of good forestry.</p> <p>If members form this view, then the Council must go on to consider the other tests set out in regulation 17(3). Therefore, this further assessment has been made, should members determine that, in their mind, the work does accord with the practice of good forestry.</p>
39	<p>The remaining elements of regulation 17(3) of the TPO regulations are to consider is whether the work would fail to secure (a) the maintenance of the special character of the woodland and (b) the woodland character of the area.</p>
40	<p>The special Character.</p> <p>The officer has considered what the special character of the area is and agrees that in a large section of the copse, it conforms with the description as detailed by DEFRA as being a broadleaved ancient and semi-natural woodland with the areas falling outside of this being predominantly a mixed native and naturalised broadleaved woodland.</p>
41	<p>Does the work fail to secure the maintenance of the special character of the area?</p> <p>It is the officer's opinion that the work would not result in the failure to secure the special character of the area. As defined above, the special character is one of a broadleaved ancient and semi-natural woodland with the areas falling outside of this being predominantly a mixed native and naturalised broadleaved woodland. The work that has been requested would not remove any of the broadleaved trees or the semi-ancient natural woodland. As this character would remain after the work had been completed, it is the officer's opinion that it would not result in harm that would fail to secure the maintenance of this special character.</p>
42	<p>Does the proposed felling remove the woodland character of the area?</p> <p>Internal assessment:</p> <p>The work applied for would not result in the loss of the woodland character from within the woodland. Any visitor to the woodland would still have the experience of walking through a woodland. The work is to reduce the canopy</p>

	<p>of trees or the removal of selected branches. As the work is on the occasional tree along the permitted path, it would not result in a woodland that has undergone a transformation by extensive crown works that may impact the woodland character internally. It is therefore the officer's opinion that the work on the occasional tree would not remove the woodland character when assessed internally.</p>
43	<p>External Assessment:</p> <p>As above, the work is spaced out on a small number of trees within the woodland. The requested work would not result in the loss of woodland and therefore the woodland character for visitors external to the woodland would remain the same. On the trees that are recommended for a lateral reduction where it extends over rear gardens, as this work would not result in the reduction of the trees height, then the canopy outline will remain largely unchanged. It is therefore the officer's opinion that the work would not result in the loss of the woodland character of the area when viewed external to the woodland.</p>
44	<p>Outcome of the assessment:</p> <p>If the members have formed the opinion that the work applied for does accord with the practice of good forestry, then the council are mandated to grant consent unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.</p>
45	<p>As can be seen in the above assessment, it is the officer's opinion that the work, subject of this application, would not fail to secure the maintenance of the special character of the woodland and would not remove the woodland character of the area when assessed internal and external to the site.</p>
46	<p>Therefore, if the members have formed the view that the work does accord with the practice of good forestry, then given the assessment of the remaining tests of regulation 17(3), it mandates that the council shall grant consent to all the work identified in this application.</p>
47	<p>Conservation Area.</p> <p>The trees subject of this application are within the Itchen Valley conservation area and as such, require the council to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area in accordance with section 72 of the Planning (Listed Building and Conservation Area) Act 1990.</p> <p>To be able to assess the impact, first there must be a consideration as to what the character of the conservation area is. The Itchen Valley Conservation Area strategy document of 1993 was used to supply the details of the character of Marlhill Copse. This can be found in sections 17.2 and 17.3 of the document.</p>

48	<p>Section 17.2 – ‘Marlhill Copse itself originally formed part of the Townhill Park Estate and is shown on the 1st Edition Ordnance Survey Plan dated 1871, as a woodland block running along the Itchen Escarpment. The size of the trees suggest that they were planted around 1800 and the woodland is now a fine example of mature Oak trees grown as standards. During the 1920's and 30's these were thinned, and the glades were planted up with many unusual trees and shrubs, in particular Rhododendrons, Magnolia and Nothofagus, some of which remain today’.</p>
49	<p>Section 17.3 – ‘The Copse itself lies on an escarpment and its mature trees form a very important element in the landscape of this part of the City, providing a very effective transition in visual terms between the City and its surrounding countryside’.</p>
50	<p>When considering the work that is subject of the application and the councils requirement to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area, it is the officers view that the work would not adversely harm the character or appearance of the conservation area as the work is minimal in its request and that the subject trees are spaced around the woodland and not concentrated within a smaller geographic zone. The transition between the City and its surrounding countryside will not be visually impacted and this would remain. The work is also not involving the felling of trees or work to such extent that would destroy the trees character or negatively impact the conservation area.</p>
51	<p>The councils Historic Environment Officer was contacted regarding this application and has provided the following comments: -</p> <p>Consultation response: No objection – subject to carrying out the works in accordance with best woodland management principles and practices.</p> <p>Assessment and advice:</p> <p>The trees affected are located within Riverside Park and Marlhill Copse which fall within the Itchen Valley Conservation Area and positively contribute to its overall character. Some of the trees also sit within the former historic boundary of Town Hill Park - a Registered Park and Garden. As such, the complete loss of the smaller Ash/Scotch Pines/Willows, and the reduction works to the taller Alders, Monterey Pines and Oak and would only be supported should it be satisfied that the works are urgent and necessary to safeguard property and people, and that the works accord with best woodland management principles and practices to ensure that the welfare of the wood, and the character or appearance of this part of the conservation area would continue to be sustained. Planting appropriate tall species to replace the trees to be lost would also be expected to ensure that the landscape setting of the affected heritage assets would be maintained.</p>
52	<p>Objections received.</p> <p>There were two objections received from members of the public in relation to this application.</p>

	<p>Objection 1 received on the 2nd March 2023</p> <p><i>While I accept the need to remove dead and frankly diseased trees, the justification for the works on some of the trees is flimsy and I hope the Council will commission an independent arboricultural report before granting permission.</i></p> <p><i>The summary of the proposed works is misleading, failing to mention that the proposed works include the complete felling of 2 Monterey Pines and a Scots Pine.</i></p> <p><i>The importance of the trees in this part of Marlhill Copse for public amenity and the special character of the woodland has been established at the recent planning appeal, therefore removal of any of these trees should not be permitted unless absolutely essential.</i></p> <p><i>The schedule of works also refers (felling of Monterey #82) to an 'additional tree report' which does not seem to be available on the planning site. In the absence of this there is no justification whatsoever for felling this tree.</i></p> <p>Objection 2 received on the 16th April 2023.</p> <p><i>This needs deep scrutiny and consideration of long-term affects. This applicant is whittling away at the woodland, destroying its immersive and enclosed character and risking the exposure of more and more trees to effects of wind. The map supplied clearly indicates that there are trees that they intend to fell and it is difficult to imagine that this current application is not just another blow to the woodland with the aim of eventually destabilising these specimens so that there is no option but to fell them. Please insist that all height reduction works are accompanied by a replacement with the tall species that characterise this area of the woodland such as scots pine and oak.</i></p>
53	<p>Compensation. Section 24 of the regulations.</p> <p>The council, as part of the decision process, is advised to consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions.</p> <p>Any claim made must be within 12 months of the date of the council's decision and must also be above the minimum threshold of £500.</p> <p>As the work is not for felling in the course of forestry operations, the council would not be liable for the depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.</p> <p>However, the council has considered the possibility of a claim under the sections that do apply, in relation to its issuing of the decision.</p> <p>Regulation 24(1) of the regs states: -</p>

- *If, on a claim under this regulation, a person establishes that loss or damage has been caused or incurred in consequence of—*
 - *(a) the refusal of any consent required under these Regulations;*
 - *(b) the grant of any such consent subject to conditions; or*
 - *(c) the refusal of any consent, agreement or approval required under such a condition,*
- *that person shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.*

Given that the work is not for felling in the course of forestry operations, paragraph 3 does not apply, therefore the council have considered the impact of paragraph 4.

- *(4) In any case other than those mentioned in paragraphs (2) or (3), no compensation shall be payable to a person—*
 - *(a) for loss of development value or other diminution in the value of the land;*
 - *(b) for loss or damage which, having regard to the application and the documents and particulars accompanying it, was not reasonably foreseeable when consent was refused or was granted subject to conditions;*
 - *(c) for loss or damage reasonably foreseeable by that person and attributable to that person's failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or*
 - *(d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under these Regulations or the grant of any such consent subject to conditions.*

The officers' have considered the aspects of this section and have formed the following opinion.

Paragraph (a) – The decision issued would not result in the loss of development value or other diminution in the value of the land.

Paragraph (b) – The applicant has not supplied adequate information to justify that reasonable loss or damage may occur. Officers have considered the comments from the consultant, have formed an opinion and consider that loss or damage is not reasonably foreseeable in the elements of the application that have been refused.

	<p>Paragraph (c) – Compensation would not be payable by the council if the landowner fails to carry out the works approved on this application, therefore paragraph ‘c’ has no significance to the council in terms of liability.</p> <p>Paragraph (d) - Compensation would not be payable by the council for costs incurred in appealing to the Secretary of State against the refusal of any consent required under these Regulations or the grant of any such consent subject to conditions, therefore paragraph ‘d’ has no significance to the council in terms of liability.</p>
54	Officers therefore seek approval to issue the decision for the tree work, as set out within the recommendation in section (i) & (ii) of this report.
55	Members are also invited to note and approve the appended written statement, for the potential of ongoing minor work approvals, as per recommendation (iii) of this report.

RESOURCE IMPLICATIONS

Capital/Revenue

NONE

Property/Other

NONE

LEGAL IMPLICATIONS

Legal implications are set out in the report.

Other Legal Implications:

NONE

RISK MANAGEMENT IMPLICATIONS

POLICY FRAMEWORK IMPLICATIONS

KEY DECISION?

Yes/No

WARDS/COMMUNITIES AFFECTED:

SUPPORTING DOCUMENTATION

Appendices

1.	
2.	

Documents In Members' Rooms

1.	
2.	

Equality Impact Assessment

Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.	Yes/No
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Data Protection Impact Assessment

Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.	Yes/No
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Other Background Documents

Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	
2.	