**POLICY AND RESOURCES COMMITTEE**

**29 JANUARY 2018**

**PART I – NOT DELEGATED**

**5. JAPANESE KNOTWEED POLICY**

(CED)

1. **Summary**

1.1 This report seeks agreement of a Japanese Knotweed Policy.

2. **Details**

2.1 The Council receives a number of reports each year regarding the growth of Japanese Knotweed (JK) within the District. Most of these reports relate to concerns that the JK is, or will soon be, encroaching on to adjacent land. In some of these reports there is an assumption that the Council will take action to remove the JK, even when on land not owned by the Council.

2.2 JK is amongst a list of invasive non-native species (INNS) that must not be planted in the wild (Wildlife and Countryside Act 1981) or allowed to escape into the wild. This Act includes moving contaminated soil or plant cuttings. JK can spread and grow quickly. It can damage property. Owners of land have a responsibility to prevent JK spreading beyond their control. It can take three years or more to eradicate JK with treatment taking place annually.

2.3 Failing to control or prevent the spread of JK beyond one’s own land can be considered a form of anti-social behaviour. Councils generally try to resolve anti-social behaviour informally at first.

2.4 Officers currently follow the process outlined in Appendix 1 when receiving reports of JK. This seeks to identify the land from where the JK is emanating, and check if this is land owned by the Council.

2.5 Where the land from where the JK is emanating is owned by the Council this is referred to Grounds Maintenance to schedule treatment. Treatment is undertaken in the Autumn after the growing season.

2.6 Where the land from where the JK is emanating is not owned by the Council, officers seek to identify the landowner and send them a standard letter advising them of their responsibilities to control and prevent the spread of JK on to neighbouring land. A copy of this letter can be found in appendix 2. The letter reminds the recipient of their responsibilities concerning JK and advises of the potential for the Council to issue a Community Protection Warning (CPW), Community Protection Notice (CPN), Fixed Penalty Notice (FPN) and for the Council to prosecute them if they do not act reasonably and repeatedly fail to control and prevent the spread of the JK. They are also sent an information sheet on how to identify JK.

2.7 The current process also advises the reporting customer of the steps taken.

2.8 Where evidence is received of JK encroaching or likely to encroach on to a neighbouring property and the landowner has already been sent a standard letter and there is no action taken by the land owner in the Autumn immediately after the letter, the case is passed to the Community Safety team for action under the Council’s Anti-social Behaviour Policy. At this stage the matter would also be referred to the Planning Department of the Council to consider whether planning conditions have ben complied with and/or whether a notice under section 215 Town and Country Planning Act is appropriate.

 **Background**

2.9 As stated in 2.2 above landowners are not legally obliged to remove these plants but must keep control of them on their own land. If landowners or occupiers allow the plant to grow onto other people’s property then the owners of the neighbouring property can take common law private nuisance proceedings against the owner/occupier of the land in question (under civil law).

2.10 The Environmental Protection Act 1990 and associated guidance outlines when the Environment Agency must be informed if people are using certain herbicides to treat JK, when an environmental permit is required, requirements for registered waste exemption and trade effluent consent. The Environment Agency must be informed a week before people intend to bury the plant waste on their own land. Farmers are required to contact the Environment Agency a week before burning the plant as well as their local Environmental Health Officer. Businesses can require an environmental permit or registered waste exemption to do this. Soil or plant material contaminated with JK or non-native invasive plants has to be dealt with by a licensed waste carrier and an authorised landfill site.

2.11 The Home Office has published guidance regarding the potential use of Community Protection Notices under the Anti-social Behaviour, Crime and Policing Act 2014 to deal with JK. As a result there is an expectation amongst some residents that the Council will immediately issue a Community Protection Notice (CPN) to any landowner who has JK that is encroaching, or there is a perceived threat that it will encroach, onto neighbouring land. However the guidance makes it clear that the Act does not specifically refer to JK or other similar INNS and Councils can only use their powers under the Act if the behaviour alleged meets the general legal test for issuing CPWs and CPNs which is that the conduct (which includes a failure to act) of the individual or body is:

* having a detrimental effect on the quality of life of those in the locality;
* of a persistent or continuing nature;
* unreasonable.

2.12 The Home Office guidelines appear to suggest that the very presence of JK can raise an inference that the quality of life of those in the locality is affected. The guidelines are silent on whether the apprehension of encroachment is sufficient to raise such an inference and therefore each case where encroachment has not actually occurred will be looked at on its merits. As stated before, the Council would require evidence that not treating JK on neighbouring land is:

a) having a detrimental effect on the quality of life of those in the locality;

b) of a persistent or continuing nature; and

c) unreasonable.

 The Anti-social Behaviour, Crime and Policing Act and Home Office guidance do not place a duty on the Council to issue CPNs.

2.13 Before serving a CPN, a mandatory written warning must be issued indicating that a CPN will be served if the behaviour which includes a failure to act does not change. In most circumstances the Council has not received evidence alongside reports of JK that landowners have been informed of the JK. Writing to advise the landowners that the JK has been reported is a first step in allowing them to take action – in line with the Council’s approach to all anti-social behaviour complaints. The written warning would follow only if the advice in the first step letter has not been observed.

2.14 The Council has to consider whether the conduct, or failure to act, is unreasonable and would investigate this taking into account the way the Council itself would deal with JK on Council land. This would be by timetabling treatment of the JK in the following Autumn. Effective treatment can take up to 3 years. So to consider whether to issue a CPW the Council needs to check what treatment action a landowner (or their agents) have taken. Evidence that the JK is still on their land alone would not be sufficient evidence to demonstrate unreasonable behaviour. The earliest a Council could consider issuing a CPW would be after the Autumn in which the landowner was asked to control and prevent the spread of the JK, and there was no evidence of the landowner taking any action.

2.15 If the Council were to issue a CPW, it would then have to see if that worked. This would mean seeing if the owner of the land started treatment when this is possible. So the Council would have to wait until the end of the Autumn of the following year. If the owner had done nothing by then the Council could serve a CPN. If the owner starts treatment and continues it each year, the Council would not take further action.

2.16 The Council’s existing Anti-social Behaviour Policy and procedures for the use of Community Protection Notices (and warnings) are sufficient to assess and respond to complaints regarding JK.

2.17 The Council’s main duties in relation to JK are to manage it when it is on its own land in order to stop it encroaching onto neighbouring land, and to do so within the requirements of the Environmental Protection Act. All works on the Council’s own land are commissioned out to approved providers to treat and dispose of JK.

2.18 The Council may also come into contact with JK when undertaking Environmental Protection enforcement, through its work on fly tipping, or waste carriers licence checks. It may also receive reports to its Environmental Health Officers of farmers burning the plant. This is because the plants would be categorised as controlled waste and therefore disposal must be in accordance with the Environmental Protection Act 1990.

2.19 The Council can also come into contact with JK through the planning process. Should it come to light during the planning application process that JK is present it may be appropriate to include planning conditions on any grant of consent e.g. to control the spread and disposal of the JK through environmental action plans. No adjustment is required of existing planning processes to deal with this.

2.20Planning officers have the power to serve a notice under section 215 of the Town and Country Planning Act 1990, where they have evidence that JK has invaded or is likely to invade neighbouring properties, to remedy the condition of land where the amenity of the area or adjoining area is adversely affected.

 **Policy Proposal**

2.21 The Council will take steps (as outlined in the Procedure in Appendix 1) to identify landowners in the District, where JK is reported. The Council will notify the landowners about their responsibilities to control and prevent the spread of the JK and safely dispose of the remains (as outlined in Appendix 2).

2.22 The Council will only treat JK on its own land.

2.23 Where evidence is received that landowners have not acted reasonably to control and prevent the spread of JK onto adjacent land the Council will use its Anti-social Behaviour Policy, and the relevant tests for different enforcement options. Planning Officers will be asked at this stage to look at enforcement under section 215 Town and Country Planning Act 1990.

2.24 The Council will continue its enforcement action in relation to Environmental Protection, including where there is evidence of JK being disposed of unlawfully or without a waste carriers licence.

2.25 The Council will continue to consider the use of appropriate planning conditions to control JK through the planning process.

3. **Options/Reasons for Recommendation**

3.1 To formalise a policy position regarding the Council’s response to Japanese Knotweed.

4. **Policy/Budget Reference and Implications**

[Link to current policies](http://intranet.threerivers.gov.uk/Default.aspx/Web/PoliciesAndProceduresCategoryListingPage)

4.1 The recommendations in this report are within the Council’s agreed budgets.

4.2 The recommendations in this report are not within the Council’s agreed policy.

4.3 The purpose of this proposed policy is to clarify the action that the Council will take to reports of Japanese Knotweed not on its land.

5 **Financial, Equal Opportunities, Staffing, and Public Health Implications**

6. **Legal Implications**

6.1 Before a CPW or CPN is considered the relevant tests in the Anti-social Behaviour Crime and Policing Act 2014 must apply.

6.2 When a CPN is issued there is a right of appeal to the magistrates’ court within 21 days. There are several grounds of appeal; amongst them that the conduct is not unreasonable or it is not persistent or continuing. The failure to act would have to be shown probably over a period long enough to cover at least one autumn treatment season.

6.3 Breach of a CPN is a criminal offence and must be proved beyond reasonable doubt. The Legal Department would be obliged to prove, to this standard, that the defendant landowner had failed to comply with the CPN. Therefore the only realistic term of a CPN would be to treat the land in accordance with approved guidelines and to provide evidence of that treatment on specified occasions. The situation would have to be monitored by officers over a considerable period of time

6.4 There is a power under Section 215 Town and Country Planning Act 1990 where amenity of an area (or adjoining area) is adversely affected. In theory this power could be exercised for infestation of land by JK, particularly where it is at risk of spreading into adjoining land. However, legal implications that arise in considering whether to issue a CPN are very similar to those arising as to appeal, prosecution and proof in criminal matters. Planners would expect to see evidence that the JK was established and likely to encroach. Planning officers would have to apply the definition of ‘amenity’ when considering whether the presence of JK has an adverse effect. Amenity is given a wide definition and impact on the surrounding area is a consideration.

7. **Environmental Implications**

7.1 The Council already takes action to treat and safely dispose of JK on its own land. The Council already takes action with regards to Environmental Enforcement in relation to fly tipping and waste carrier licences.

8. **Community Safety Implications**

8.1 Officers authorised by the Director of Community and Environmental Services can take action regarding JK under the Anti-Social Behaviour Crime and Policing Act 2014 where the tests of relevant enforcement options are met.

**9. Customer Services Centre Implications**

9.1 The process in Appendix 1 is already used by the Customer Services Centre to process reports of JK.

10. **Communications and** **Website Implications**

10.1 A self serve reporting form is already available on mythreerivers.gov.uk. Further information needs to be added to the Council’s website to clarify actions it can take with regards to JK and manage the public’s expectations.

11. **Risk Management and Health & Safety Implications**

11.1 The Council has agreed its risk management strategy which can be found on the website at http://www.threerivers.gov.uk. In addition, the risks of the proposals in the report have also been assessed against the Council’s duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.

11.2 The subject of this report is covered by the Community Partnerships, Environmental Protection, Regulatory Service, Customer Service Centre and Property Services service plans. Any risks resulting from this report will be included in the risk register and, if necessary, managed within these plans.

11.3 There are no risks to the Council in agreeing the recommendations.

11.4 The following table gives the risks that would exist if the recommendation is rejected, together with a scored assessment of their impact and likelihood:

|  |  |  |
| --- | --- | --- |
| Description of Risk | Impact | Likelihood |
| 1 | The expectations of the Public are not managed in relation to how the Council will respond to Japanese Knotweed that is not on Council owned land.  | II | C |
| 2 | The Council does not delegate officers to respond to reports of Japanese Knotweed that is not on Council owned land.  | III | A |

11.5 Of the risks detailed above none is already managed within a service plan.

11.6 The above risks are plotted on the matrix below depending on the scored assessments of impact and likelihood, detailed definitions of which are included in the risk management strategy. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood are plotted in the shaded area of the matrix. The remaining risks require a treatment plan.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Likelihood** | A |  |  | 2 |  |  | Impact | Likelihood |
| B |  |  |  |  |  | V = Catastrophic | A = >98% |
| C |  | 1 |  |  |  | IV = Critical | B = 75% - 97% |
| D |  |  |  |  |  | III = Significant | C = 50% - 74% |
| E |  |  |  |  |  | II = Marginal | D = 25% - 49% |
| F |  |  |  |  |  | I = Negligible | E = 3% - 24% |
|  | I | II | III | IV | V |  | F = <2% |
| **Impact** |  |  |

11.7 In the officers’ opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks. The effectiveness of treatment plans are reviewed by the Audit Committee annually.

12. **Recommendations**

12.1 That Policy & Resources Committee agree the following policy:

12.1.1 The Council will take steps (as outlined in the Procedure in Appendix 1) to identify landowners in the District, where Japanese Knotweed is reported. The Council will notify the landowners about their responsibilities to control and prevent the spread of the Japanese Knotweed and safely dispose of the remains (as outlined in Appendix 2).

12.1.2 The Council will only treat Japanese Knotweed on its own land.

12.1.3 Where evidence is received that landowners have not acted reasonably to control and prevent the spread of Japanese Knotweed onto adjacent land the Council will use its Anti-social Behaviour Policy, and the relevant tests for different enforcement options. Planning officers will be asked at this stage to look at enforcement under section 215 Town and Country Planning Act 1990.

12.1.4 The Council will continue its enforcement action in relation to Environmental Protection, including where there is evidence of Japanese Knotweed being disposed of unlawfully or without a waste carriers licence.

12.15 The Council will continue to consider the use of appropriate planning conditions to control JK through the planning process.

 Report prepared by: Andy Stovold, Head of Community Partnerships

 **Data Quality**

Data sources:

 Home Office Guidance:

 https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/364846/Japanese\_Knotweed\_information\_note.pdf

 Environment Agency Guidance:

 <https://www.gov.uk/guidance/prevent-japanese-knotweed-from-spreading>

Data checked by: Andy Stovold, Head of Community Partnerships

 Data rating:

|  |  |  |
| --- | --- | --- |
| 1 | Poor |  |
| 2 | Sufficient | **✓** |
| 3 | High |  |

 **Background Papers**

 **APPENDICES / ATTACHMENTS**

 Appendix 1 – Japanese Knotweed Process

 Appendix 2 – Standard notification letter

Appendix 1



Appendix 2

|  |  |
| --- | --- |
| 2007 04 13 - TRDC cmyk PC | Three Rivers District CouncilThree Rivers HouseNorthwayRickmansworthHerts WD3 1RLTel: (01923) 776611Fax: (01923) 896119DX: 38271 Rickmansworth |

Dear

**Notification of potential Japanese knotweed on your premises and your legal responsibilities**

The Council has received a report that there is what appears to be Japanese knotweed growing on your premises and that this could spread onto neighbouring property. I am writing to advise you of your legal obligations in relation to Japanese knotweed and other non-native invasive species. We have enclosed a leaflet to help you identify Japanese knotweed.

**Preventing the spread of Japanese knotweed**

You could face action under the Anti-social Behaviour, Crime and Policing Act 2014 if you fail to control and prevent the spread of the Japanese knotweed onto anyone else’s property.

Using herbicides is an effective treatment to prevent spreading but it usually takes 3 years to treat Japanese knotweed. Further advice on the use of approved herbicides can be found on the government’s website <https://www.gov.uk/guidance/prevent-japanese-knotweed-from-spreading>

Advice on whether you can bury the waste of invasive plants on your own land is also available on the above website. You can burn the waste on private land (but farmers are required to tell the Environment Agency and local Environmental Health Officer). The waste can survive burning so you need to dispose of the remaining materials safely.

**Disposing of waste off-site**

You must use a registered waste carrier and an authorised landfill site to dispose of soil or plant material contaminated with non-native invasive plants including Japanese knotweed. Further advice on this is available on the website above.

I hope that the information in this letter enables you to take the required action to control any non-native invasive species on your land.

Yours sincerely

Andy Stovold

Head of Community Partnerships

**Further action by the Council**

If the Council receives complaints that Japanese knotweed is invading, or is at risk of invading your neighbouring properties and you have not acted reasonably in responding to this notification then we may consider issuing you with a Community Protection Warning. If you fail to follow that warning we may issue you with a Community Protection Notice. If you fail to comply with a Community Protection Notice without a reasonable excuse:

1. You may be issued with a fixed penalty notice of £100 (payable within 14 days)
2. You may be prosecuted. If you are prosecuted and convicted the maximum penalty is a fine not exceeding level 4 on the standard scale (currently £2,500) for individuals, or an unlimited amount in the case of companies or other bodies;
3. The court may make whatever order it thinks appropriate for ensuring that the notice requirements are carried out as stated.
4. An order under this section may in particular require you
	1. to carry out specified work, or
	2. to allow specified work to be carried out by on behalf of a specified local authority
5. The court may require you to surrender possession of any item used in your failure to comply with the Notice, to a constable or to a person representing the local authority. The court may require this item to be destroyed or disposed of by the police force or local authority. A justice of the peace may issue a warrant, authorising a constable or authorised person to enter your premises to seize the item.