**POLICY AND RESOURCES COMMITTEE**

**7 NOVEMBER 2017**

**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 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.

2.3 Where the JK is emanating from land owned by the Council this is referred to Grounds Maintenance to schedule treatment. Treatment is undertaken in the Autumn after the growing season, so there is a check in the process to see if there have already been reports of the JK in the same area.

2.4 Where the JK is emanating from land that is not owned by the Council, officers seek to identify the landowner and send them a standard letter advising them of their responsibilities to not allow the JK to encroach on neighbouring land. A copy of this letter can be found in Appendix 2. They are also sent an information sheet on how to identify JK.

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

***Background***

2.7 JK is amongst a list of non-native invasive plants that must not be planted in the wild (Wildlife and Countryside Act 1981). This Act includes moving contaminated soil or plant cuttings.

2.8 Landowners are not legally obliged to remove these plants or to control 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).

2.9 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. Business 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.

2.10 In addition to the above the Home Office has issued guidance regarding the potential use of Community Protection Notices under the Anti-social Behaviour, Crime and Policing Act 2014 to deal with JK ‘against individual or bodies who are acting unreasonably and who persistently or continually act in a way that has a detrimental effect on the quality of life of those in the locality’. The Act and guidance do not place a duty on the Council to issue Community Protection Notices.

2.11 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.

2.12 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.

2.13 The Council can also come into contact with JK through its work on anti-social behaviour, when landowners fail to take action to treat JK. Due to the Home Office guidance 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 on neighbouring land. However in order to consider using a CPN the following test must be met:

* the conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality; and
* the conduct is unreasonable.

2.14 Before serving a CPN, a warning must be issued indicating that a CPN will be served if the behaviour 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 the first step in allowing them to take action – in line with the Council’s approach to all anti-social behaviour complaints.

2.15 Reasonable conduct would be likely to be the same approach as that of the Council itself, in timetabling treatment of the JK in the following Autumn. Effective treatment can take up to 3 years, so to consider whether to issue a CPN 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.

 ***Policy Proposal***

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

2.17 The Council will take steps (as outlined in the Procedure in Appendix 1) to identify landowners in the District, where Japanese Knotweed is encroaching from their own land onto adjacent land. The Council will notify the landowners about their responsibilities to stop the encroachment of the Japanese Knotweed and safely dispose of the remains (as outlined in Appendix 2).

***On-going Policy Implementation***

2.18 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.

2.19 The Council will continue to consider action under the Anti-Social Behaviour, Crime and Policing Act, where the tests for action are met, and unreasonable behaviour can be evidenced.

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**

5.1 None specific.

6. **Legal Implications**

6.1 When a CPN is issued there is a right of appeal to the magistrates’ court. There are several grounds of appeal; amongst them that the conduct is not unreasonable or it is not persistent or continuing. 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.

6.2 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 Japanese Knotweed, 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.

7. **Environmental Implications**

7.1 The Council already takes action to treat and safely dispose of Japanese Knotweed 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 Japanese Knotweed 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 Japanese Knotweed.

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

10.1 Appropriate information needs to be added to the Council’s website to clarify actions it can take with regards to Japanese Knotweed 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, 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 and Resources Committee agree the following policy:

12.1.1 That the Council will only treat Japanese Knotweed on its own land.

12.1.2 That the Council will take steps (as outlined in the Procedure in Appendix 1) to identify and notify landowners in the District about their responsibilities to stop the encroachment and safely dispose of the remains where Japanese Knotweed is encroaching from their own land onto adjacent land.

 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



 **Further action by the Council**

Appendix 2

If the Council receives further complaints that Japanese knotweed is 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 a £20,000 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.