

**Forward Plan reference number:** FP/174/06/23

<b>Report title:</b> New charges for vehicle crossings near trees	
<b>Report to:</b> Councillor Tom Cunningham, Cabinet Member for Highways, Infrastructure and Sustainable Transport	
<b>Report author:</b> Sam Kennedy, Director of Environment & Climate Action	
<b>Date:</b> 24 October 2023	<b>For:</b> Decision
<b>Enquiries to:</b> John Meehan, Head of Climate Adaptation & Mitigation	
<b>County Divisions affected:</b> All Essex	

## 1. Everyone's Essex

- 1.1 Trees make an increasingly important contribution to the appearance of an area and are a vital resource in helping to achieve Net Zero greenhouse gas emissions by 2050. We need to retain trees if we are to maximise the contribution they make. Essex County Council (ECC) has a responsibility to manage and maintain all trees within its highways (save for boundary trees).
- 1.2 ECC is also responsible for granting residents' consent to cross the adjacent highway network via vehicle crossovers to access their properties.
- 1.3 Presently the vehicle crossover application process does not suitably consider the presence of trees and late consideration is leading to tree removal and root damage as a result, potentially leading to future health and safety risks when trees are retained.
- 1.4 To manage and enhance this important tree resource a process is needed that assesses the importance of a tree in relation to a resident's right to access their property by crossing the public highway. The proposed new process is set out in this report.
- 1.5 ECC's organisation strategy, Everyone's Essex, recognises the importance of trees and green spaces in our county. As such, our commitment to effective retention or replacement of trees under our jurisdiction effectively aligns with the principles set out in Everyone's Essex, including the key strategic aim for a High-Quality Environment. Through effective retention and replacement of our tree stock, we will be able to support ECC commitments, including for the county to be Net Zero. In addition, well managed trees will aid our commitment to building 'Green Communities', whereby residents and businesses are empowered to reduce greenhouse gases and to become more climate resilient. Furthermore, the cross-cutting benefits of trees, ranging from carbon sequestration to reducing flood risk, through to improved biodiversity and physical/mental health (particularly when trees are part of broader green spaces), highlight that trees are an important part of Levelling Up the Environment for people across Essex and for the county as a whole.

- 1.6 ECC's commitment to tree retention or replacement is demonstrated more broadly at a strategic level in documents such as the £200m four-year Climate Action Plan, originally published in November 2021. This plan fully endorsed the recommendations made in the report Net Zero: Making Essex Carbon Neutral (July 2021), by the independent advisory body, the Essex Climate Action Commission. This report included a key recommendation that "30% of all land in Essex will enhance biodiversity and the natural environment by creating natural green infrastructure". Protecting existing trees and replacing those that cannot be reasonably retained will help achieve this recommendation. The Climate Action Plan aligns with ECC's organisation strategy, Everyone's Essex.
- 1.7 ECC adopted its Tree Management Plan on 23 May 2023 [[https://cmis.essex.gov.uk/essexcmis5/Decisions/tabid/78/ctl/ViewCMIS\\_DecisionDetails/mid/422/Id/9359/Default.aspx](https://cmis.essex.gov.uk/essexcmis5/Decisions/tabid/78/ctl/ViewCMIS_DecisionDetails/mid/422/Id/9359/Default.aspx)] which also sets the vision for our tree stock, our aim and objectives used in the management of existing trees and the planting of new trees in all parts of our estate. It aims to improve the quality and impact of ECC's tree stock both through good management of existing trees and strategic planting of new trees to enhance the multiple benefits provided by a diverse tree population. As the Tree Management Plan noted, 'To set out how the Council will manage its trees and comply with some of the detailed requirements of this plan' and 'The significance of the ECC tree stock is mostly in the mature woods, hedgerow trees and larger trees along roads and on the built estate.'. A significant aspect of the overarching objectives for tree management in the Tree Management Plan is to protect and manage the health and safety of the existing trees. To set out how ECC will manage its trees and comply with some of the detailed requirements of the adopted Tree Management Plan, Tree Management Statements (TMS) will to be published on the ECC website following the signing of the Chief Officer Action in November 2023. So far as a highway tree is owned by ECC, the Tree Management Plan sets out the policy to be applied (section 7: Objective 1) and the Tree Management Statements to be applied (HW 6 and HW 7). The zone of influence of works in relation to a tree, including a highway tree, has been set using subject matter expertise and is applied by section 3.1.7 of the Tree Management Statements.

## **2 Recommendations**

- 2.1 To approve a pre-application tree assessment charge of £180 (inc. VAT) (subject thereafter to annual review) payable prior to residents submitting a vehicle crossover application where there is a highway tree within 15 metres of the outer edge of the proposed crossover.
- 2.2 To agree that ECC should seek to secure the provision of a replacement tree nearby where the requirement for a replacement of a highway tree is necessary and acceptable for one to be removed to support a vehicle crossover installation.
- 2.3 To agree that where a replacement tree is required approval should be subject to the payment of a replanting charge of £1,284 (inc. VAT) (subject thereafter to annual review) where approval is given by ECC for the removal of a highway tree.

### 3 Background and Proposal

- 3.1 Essex County Council (ECC) has a responsibility to manage and maintain all trees within its highways. ECC is responsible for approving construction of vehicle crossovers in order for residents to access their properties, in accordance with various conditions. The application process considers highway safety for other road users and suitable construction methods in order to meet highways specifications. Under the Highways Act (1980), the applications can be refused on various grounds including where the loss of a tree or damage to a tree would cause a danger to highway users. The Tree Management Plan aims for this to also be considered where the removal of a tree would be detrimental to the local character. This does protect the smaller trees, which are equally as important for meeting our climate goals outlined in this report.
- 3.2 Presently the vehicle crossover application process does not suitably consider the presence of trees and late consideration is leading to tree removal and root damage as a result. The late consideration is also causing complaints in relation to response times for applications, for refusal of crossovers and for delays in carrying out the crossover installation where a tree must first be replaced by the resident (given that planting season is November-March).
- 3.3 In appropriate cases, as the tree owner, ECC does have the right to refuse tree removal where the loss cannot be compensated for. ECC, as a tree owner, can also request suitable working methods in relation to construction of vehicle crossovers, to protect trees and prevent them becoming a health and safety risk to users of the public highway. This must be managed in advance of the vehicle crossover application as it may affect the suitability of the vehicle crossover given that applications can generally not be refused on these grounds.
- 3.4 There have been commitments at government and local level to prioritise maximising tree cover. Firstly, the Climate Change Act 2008 commits the UK government by law to reduce its greenhouse gas emissions and achieve net zero by 2050. Trees are important contributors to this.
- 3.5 Everyone's Essex sets out an aim to 'help all our communities to enjoy a high-quality environment, by making them more resilient against flooding, heat stress and water shortages, by enhancing our county's green infrastructure and by reducing air pollution'.
  - a. ECC's endorsement of the Essex Climate Action Commission's published report *'Net Zero: Making Essex Carbon Neutral'* has a key recommendation for '30% of all land in Essex will enhance biodiversity and the natural environment by creating natural green infrastructure. We expect these figures to be 25% by 2030 and 30% by 2040'. ECC's tree estate is an important element of that natural green infrastructure, especially in urban areas where street trees make up much of the tree population.

- 3.6 The trees within the control of ECC are therefore an important resource in helping to achieve the national target of net zero greenhouse gas emissions by 2050. Trees act as a carbon store, especially the older trees, and also fulfil a carbon sequestration role when new trees are planted. In addition, they absorb heat and provide shade in our city and town centres reducing the “Heat Island effect”, as well as reducing flooding and enhancing biodiversity.
- 3.7 ECC’s Tree Management Plan states its aim ‘to improve the quality and impact of its tree stock both through good management of existing trees and strategic planting of new trees to enhance the multiple benefits provided by a diverse tree population’. One aspect of this is to have a process that assesses the importance of a tree in relation to a resident’s application for an access to their property by crossing the public highway.
- 3.8 The proposal is to establish a service to residents that integrates with the existing vehicle crossover application process, so that the impact of an application where there is a tree within 15 metres of a proposed crossover can be fully assessed at the outset, before the application has been submitted. The charge to residents will pay for a qualified arboricultural consultant in the Place Services Arboriculture team to visit the site and determine whether it is acceptable for a tree to be removed, whether amenity compensation planting will be needed, and what mitigation may be needed to protect retained trees.
- 3.9 This proposal is a cost recovery exercise, which will enhance the service provided to residents whilst maximising protection of ECC’s tree stock. One of four possible outcomes will be provided for each pre-application received:
- The applicant can proceed with the crossover application without any additional requirement in relation to trees.
  - The applicant can proceed with the crossover application, subject to committing to working to methods specified in their advice to prevent damage to a highway tree.
  - The applicant can proceed with the crossover application but will be required to provide funds for tree removal and a replacement tree nearby if a suitable location can be found, prior to crossover approval. The replanting of a replacement tree "nearby" can either be in the street of the removed tree, or a location in an adjacent street in which a replacement tree would be visible (now or in the future) from the site of the removed tree.
  - The applicant should not proceed with the crossover application as the tree is considered to be of sufficient quality (maturity, importance etc) that mitigation for its loss cannot be provided.
- 3.10 The tree application pre assessment charge of £180 is based on the average time calculated to carry out the work at a set hourly charge out rate. The replacement tree planting charge of £1,284 is based on the estimated costs for the tree cost, the tree stakes, the tree ties, the tree root protection, the wood chip mulch around the tree base, the tree watering bag, the labour cost of planting the tree, the units costs of watering the tree every year for three years, the visual inspection and any damaged tree branch removal, the management time required to oversee the operations and VAT. This charge will not be made if there is no suitable location to plant another tree nearby.

- 3.11 The payments charge will be made in advance on Place Services' website, linked from the relevant pages on the Essex Highways website.

## **4 Links to our Strategic Ambitions**

- 4.1 This report links to the following aims in the Essex Vision:
- Develop our County sustainably
- 4.2 Approving the recommendations in this report will have the following impact on ECC's ambition to be net carbon neutral by 2030:
- Carbon will be retained in trees at risk of being felled due to a crossover proposal by either being fully retained or being subject to tree surgery to ensure their long-term health
  - Replacement trees will lock up carbon for many years.
- 4.3 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':
- A high-quality environment
  - Health wellbeing and independence for all ages
  - A good place for children and families to grow.
- 4.4 This report links to the vision, aims and objectives of the ECC Tree Management Plan.

## **5 Options**

- 5.1 Option 1: To offer a chargeable pre-application tree assessment service to residents proposing to submit a vehicle crossover application where there is a highway tree within 15 metres and where the assessment recommends a replacement tree, a charge is also proposed (Recommended).**

5.1.1 This proposal ensures that proposals for vehicle crossovers that may affect trees are properly assessed by subject matter experts in advance of the resident applying/paying for a vehicle crossover application that it may not be possible to grant. In accordance with the Tree Management Plan, this will ensure that consideration can be given to the retention of trees providing valuable services in terms of landscape, thermo-regulation and carbon storage are retained whenever possible, or their removal is fully compensated.

5.1.2 The assessment of requests for tree removal is a separate decision to that for the installation of the crossover and so this option keeps the two processes and payments separate, providing better service to residents. It also provides a simpler process for ECC/Essex Highways officers, improving effectiveness in the delivery of this function.

5.1.3 With this proposal we can seek full cost recovery for both the assessment of tree removal requests and for the replacement of trees where removal is acceptable. Residents will be aware from the outset about the likelihood of their application being permitted and the costs that they face, and so be able to make an informed decision whether to proceed to apply for the crossover or not.

5.1.4 Consent for tree works or removals can be granted upon the condition that appropriate working methods are followed, protecting the health of retained trees and reducing the risk of future maintenance issues. This is done via a formal letter.

## **5.2 Option 2: To carry on with the existing process**

5.2.1 This is not fit for purpose and causes significant problems to officers involved. At present, any consultation with arboricultural experts is at the cost of Essex County Council and comes after a vehicle crossover application has been submitted. This consideration of trees late in the process leads to delays in determining applications, with understandable frustration from residents.

5.2.2 The process also means that trees that could otherwise be saved are being removed or are at risk of damage that could lead to their useful life being reduced, with associated liability and maintenance costs to ECC.

## **6 Issues for consideration**

### **6.1 Financial implications**

6.1.1 The pre-application charge will be the responsibility of the Place Service's team whereas the replacement tree planting service charge will be the responsibility of the Essex Forest Initiative team, therefore financial implications are considered in the context of each service.

6.1.2 The budgeted income requirement for Place Services for 2023/24 is £3.959m. It is anticipated that the proposed introduction of the pre-application tree assessment charge will generate additional income of up to £7,500 per annum. This charge has been prepared on a full cost recovery basis and will be resourced by existing headcount. There is a low risk that work undertaken on pre-application charges will prevent Place Services' resource being used on other chargeable services that would make a surplus.

6.1.3 There is currently no budgeted income requirement for the Essex Forest Initiative team. It is anticipated that the proposed introduction of a replacement tree planting service charge will generate income of up to £5,000 per annum. This charge has been prepared on a full cost recovery basis and will be resourced by existing headcount.

6.1.4 Income budgets will be adjusted as necessary during the 2024/25 budget setting process as there is currently no assumption of this income within the Council's Medium Term Resource Strategy (MTRS) for either charge.

- 6.1.5 The recommended approach will ensure full cost recovery for both the pre-application tree assessment charge and the replacement tree planting fee and implementing these charges will avoid budget pressures that may arise from offering this new service in order to comply with the ECC Tree Management Plan.
- 6.1.6 There are no proposed discounts or concessions associated with these charges and payment will be taken at point of sale to avoid any risk of debt. Both charges will increase in line with RPI annually per the Council's Fees & Charges policy unless agreed otherwise via the appropriate governance route.
- 6.1.7 It should be noted that both charges should be treated as Standard rated for VAT purposes and are therefore subject to VAT at 20%.

	<b>Net charge (excluding VAT)</b>	<b>Gross charge (including VAT at 20%)</b>
Pre-application tree assessment charge prior to residents submitting a vehicle crossover application where there is a highway tree within 15 metres	£150	£180
Replacement tree planting charge where approval is given for the removal of a highway tree to support a vehicle crossover installation	£1,070	£1,284

- 6.1.8 There is an unquantified financial risk that applicants will appeal the pre-application tree assessment decision which would result in associated resource costs.

## **6.2 Legal implications**

- 6.2.1 The Highways Act 1835 states that it is an offence to drive a vehicle across a footway which is made or set apart for foot passengers. In order to ensure that vehicle crossings are properly constructed, all domestic vehicle crossings must be built to a specification determined by the Council. As such, prior to any work being carried out, Essex Highways must first approve the location, specification and the contractor in the form of a vehicle crossing licence granted under section 184 Highways Act 1980. In certain circumstances, planning permission may also be required to be obtained by the resident.
- 6.2.2 The construction of a vehicle crossing does not give the occupier of the premises any particular rights, except to drive across the footway to gain access to their property with a private or light goods motor vehicle (up to 3.5t). The crossing itself forms part of the public highway and the Council is at all times responsible to the public for its maintenance.

- 6.2.3 Arboriculture specialists are to be consulted on the impact of a vehicle crossing licence on trees once the pre-application tree assessment charge has been paid. The zone within which this will be applied has been set but the arboricultural team at 15 metres of the outer edge of the proposed crossover.
- 6.2.4 There is no statutory right to charge a fee for a tree replacement and therefore this cannot be enforced. ECC is however entitled to refuse a vehicle crossing licence if it has a detrimental impact on a tree where it considers that is relevant to safe access to and egress from premises and/or the passage of vehicular traffic in highways or require suitable conditions to be complied with. The applicant would have a statutory right of appeal in relation to conditions imposed on the s184 licence under Schedule 14 of the 1980 Act.
- 6.2.5 ECC's Fees and Charges register and websites will be updated to include the new charges and the internal officer guidance updated to reflect the new process.

## **7 Equality and Diversity Considerations**

- 7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful.
  - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 7.3 The Equalities Comprehensive Impact Assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

## **8 List of Appendices**

Equalities Comprehensive Impact Assessment

## **9 List of Background papers**

None



<b>I approve the above recommendations set out above for the reasons set out in the report.</b>	<b>Date</b> <b>23/11/2023</b>
Councillor Tom Cunningham, Cabinet Member for Highways, Infrastructure and Sustainable Transport	

**In consultation with:**

<b>Role</b>	<b>Date</b>
<b>Executive Director, Corporate Services (S151 Officer)</b>	8 November 2023
<b>Stephanie Mitchener on behalf of Nicole Wood</b>	
<b>Director, Legal and Assurance (Monitoring Officer)</b>	24 October 2023
<b>Paul Turner</b>	