



Policy Guidance Note:  
**TP10 Dangerous Trees**

August 2010

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## Introduction

The purpose of this document is to outline how the council will respond to reports of 'a Dangerous Tree'. This should provide a more efficient, consistent and clear response to serious events and ensures that our response is in accordance with current legislation, guidance and wider council policies. The document helps deliver the Council's policy (Trees East Lindsey: Part One), and specifically policy TP 10 below:

**TP 10: Owners of trees that are immediately dangerous will be asked to make them safe. In the event of failure to carry out work we will ensure that the public and valuable property is protected.**

The Council has also adopted policies and guidance notes for regular inspection and maintenance of its own tree stock (see 'Tree Risk Management Guidance Note'). We believe that this will reduce the chance of trees becoming dangerous and that timely work can reduce overall maintenance costs. We encourage other owners to do the same.

## Legislative background

All landowners with trees have a legal 'duty of care' to ensure their trees are maintained in a safe condition. Failure to do so can result in substantial costs for damages if the responsible person is found in court to be negligent. The Health & Safety Executive (HSE) may also prosecute offenders.

Occasionally there may be reasons why owners do not make dangerous trees safe, e.g. owners may not be traceable, or refuse, or are unable to pay. As a last resort, the Council has powers Under the Local Government (Miscellaneous Provisions) Act 1976 section 23 & 24 Dangerous Trees, to take the minimum action necessary to remove immediate danger on private land.

## Investigating reports of dangerous trees

Most reports of dangerous trees fall into one of the following four ownership categories. Therefore it is important to ascertain the land (location) that the trees are growing on and try to determine ownership - if the owner is known the enquiry should be referred to them :

- On Private Land (gardens/businesses/farmland) - The Private Owner (householder/farmer/business). Many complaints of dangerous trees are in fact neighbour disputes and the council does not have the resources or powers to intervene where common law, e.g. overhanging branches is concerned (but see below).
- On Highways (road verges, pavements etc.) - Lincolnshire County Council as Highway Authority.
- Ex. Council House Stock (open spaces, verges and gardens) - New Linx Housing Trust, Part of Eastern Shires Housing Assoc. (ESHA).
- Council Land (parks, foreshore, open spaces etc.) - East Lindsey District Council, Tree Management Team in Neighbourhoods Service.

## Trees on private land

These are generally the responsibility of the owners, who are expected to pay for any necessary work. In certain exceptional circumstances this may not happen e.g. there may be no time to contact owners or owners are unwilling to pay. In these cases, if a formal written request is made by a person affected, the District Council may use its powers Under the Local Government (Miscellaneous Provisions) Act 1976 section 23 & 24 Dangerous Trees to take direct action. But this can only be done as a 'last resort'. The Council has powers to recoup the costs of the work plus administrative costs. Occasionally boundary trees may be in 2 ownerships and neighbours should agree any necessary works and to share costs where possible.

### Trees overhanging the road and other highways

The Lincolnshire County Council is the 'Highway Authority' and manages its trees on its own land. It has powers under the Highways Act to require adjoining owners of land to keep their trees and hedges clear of the road. This can also include signs and paths and for visibility on junctions and bends. Usually in the first instance, it will write to owners to request that the necessary work is undertaken and giving a date by which it should be done.

Trees frequently overhang roads from private property without causing a problem provided the following separation is maintained (2.5 metres vertical clearance over footpaths and cycleways and 5 metres vertical clearance over most roads).

### Tree Protection

When the tree is protected by a Tree Preservation Order or within a Conservation Area the tree owner may be advised that an exemption applies under section 198(6) of the Town & Country Planning Act 1999, so as not to hinder work to make dangerous trees safe. Trees should not be felled however if they can be made safe by other lesser works e.g. pruning.

If the above applies, then where possible, 5 working days notice should be given to the Council to enable an inspection to be made. If the danger is immediate then the work can proceed but owners are advised to obtain a report from a tree surgeon and to keep a photographic record to avoid possible prosecution. The Council will write to the owner/applicant to advise of the exemption and detail the legal requirement for replanting in the event of felling.

## Taking Action under the Miscellaneous Provisions Act 1976

Any request to make safe a 'Dangerous Tree' under this provision must be made in writing to the Council. The following information is important to help with further investigation, including possible site visits:

1. Accurate information regarding the location of the tree and the owner's/tenant's name, address and telephone number, if known.
2. If not initially known, make inquiries to supply details of the above if possible.
3. As much information as possible regarding the tree's condition:
  - (i) Size/No. of trees, large branch or small branch etc?
  - (ii) The exact position of any fallen parts e.g. Are branches on structures, paths or road?
  - (iii) Any other visible defects e.g. split, cavities?
  - (iv) The extent of any damage, or if the dangerous part failed what would it damage?

The Council's Arboricultural Officer or another member of the Tree Management Team will make an initial assessment of the need for a site inspection to ascertain the tree's condition, based on the information supplied, as in the table below:

Response level	Assessed Risk	Response time
Level 1	10-12	Within 1 working day
Level 2	8-10	Within 2 working days
Level 3	6-8	Within 5 working days

This numerical 'assessed risk' is based on the Council's 'Tree Risk Policy Guidance Note' (Matheny and Clark) and is a score between 1 and 12. It is used to provide guidance as to the relative risk of the threat posed by a tree defect. A tree scoring 12 therefore represents the most serious danger, and a minimum score of at least 10 would be appropriate before the Council considered a tree to be 'imminently dangerous'. Trees scoring under 6 are unlikely to be in a serious condition requiring an urgent response. The person requesting the Council's action will be informed of this assessment and the response time allocated to it.

Telephone and other requests relating to 'dangerous trees' will also be dealt with in accordance with the above process, but would still need to be followed by a written request before the Council could consider taking any necessary action.

For written requests, the Council will follow the guidelines of the National Association of Tree Officers Practice note No.1. (method statement for site inspections). The legislation confers a right to enter land to carry out such investigations and the relevant Council officers are authorised in its use, including to take other officers/individuals with them as necessary (e.g. for safe working or other reasons).

If following the Council's assessment of the tree, the request is turned down, there is a right of appeal to the Business Manager who will review the information available.

When proceeding under this Act, the Council will try to find the owner of the tree and allow sufficient time for the owner to take any necessary action. If all else fails the Council must serve notice of the intended works, that can only include sufficient to make it safe (the minimum works).

When works have been carried out, the Council can recoup the costs of the works plus an administration fee. If the owner is untraceable or uncontactable a land charge will be entered against the property for future payment.

## Other situations where Trees are unsafe

The public can also request work to dangerous trees or to those on Council property through the Council's website where some further information is available. A written response will be made to any formal written application.

Emergency situations may arise similar to the storms of 1987 and 2001 when many trees fell or were damaged across the District. The Council will use its staff resources to assist with clearance of the highway and removal of any dangerous trees as considered necessary. The officers for emergency planning are detailed on the Council's website.



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