



27. 3. 2003

**REPORT BY THE CHAIRMAN OF THE
PARKS, GARDENS AND WATERWAYS COMMITTEE**

PART A - MATTERS REQUIRING A COUNCIL DECISION

1. SOUTH BRIGHTON MOTOR CAMP – PLANTATION TREES

Officers responsible Leisure Manager and Parks and Waterways Manager	Authors Anne Greenup and Lucy Wilson-Parr, DDI 941-8701
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The purpose of this report is to advise the Council that the Parks and Waterways Manager proposes to exercise her delegated power to arrange for the urgent removal of approximately 281 trees and the pruning of a further 35 trees in the South Brighton Reserve and South Brighton Motor Camp, on the grounds that the trees concerned are in a dangerous condition, and thus represent a health and safety risk for both users of the motor camp and members of the public. Photographs of the affected trees will be tabled at the Council meeting.

BACKGROUND

South Brighton Motor Camp is leased from the Council and is set within Jellicoe Park, part of the greater South New Brighton Park plantation. The plantation consists mainly of pine and macrocarpa, planted in stages so that the age of most of the trees varies from 60-80 years. They are planted close together and have never been thinned out.

In 1999, permission was sought from the Burwood/Pegasus Community Board to remove trees within a 30m strip but owing to public protest, only selected trees within a 20m strip were removed, leaving an exposed row of trees. The effect was to reduce the impact of tree removal on the camp and the park, but the remaining trees still pose some risk to the public and to property.

In October 2000, a devastating storm ripped through the plantation area, resulting in the loss of a large block of plantation trees on the SE boundary of the camp and a number of trees by the lodge area within the camping ground. To enable work to begin to restore the site, a landscape plan was presented to the Community Board in July 2001. Since then the planting programme has been undertaken and new trees are establishing. Some follow-up work has recently been organised, after an inspection in February 2003.

Last year, trees that were within falling distance of the Estuary Road property boundaries to the north and south of Jellicoe Street were removed in the interest of residents' safety. For a more complete list of incidents relating to trees in this area, see Appendix A.

SAFETY ISSUES

Over the past 12 months there have been a series of losses of major trees in the vicinity of the camp, with one tree narrowly missing the lodge and another tree crushing a car by the camp workshop.

On Tuesday 25 February 2003, a willow tree, which had been scheduled for maintenance work, lost a major limb and narrowly missed a campsite. In the early hours on Monday 3 March 2003, during a period of strong winds, two trees came down during the night. A camper, woken by the sound of the wind, vacated his tent which was then damaged by one of the falling trees.

Both the camp and the park are used by large numbers of people and in spite of the fact that the trees add enormous amenity value to the area, many of them clearly have to be removed or pruned to render the site safe. The Council has a responsibility under the Health and Safety in Employment Act 1992 to identify and to reduce risk.

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ARBORIST'S REPORT

The vulnerability of the trees to wind-throw and loss of limbs is attributed to several factors. They have been planted in a sandy location with a high water table. This has led to poorly developed root systems on which the trees have to support themselves. Trees that have not been exposed over time to the force of wind and that have been planted closely together develop very few sinker (anchor) roots. Attached to this report are a number of photos showing the root plate of trees that have blown over, illustrating the limited root development and the effect of a high water table on root growth.

As trees have failed or been removed, adjacent trees that have been sheltered before now are exposed and they in turn become more susceptible to wind-throw. This can occur in light winds from an unusual direction or strong winds from the prevailing directions. Moisture content in the soil and foliage can influence the outcome when the tree is hit by such winds. On this particular site, winds can vary significantly in any one day. An example is a northerly wind swings around to the south, coinciding with the water table rising with a high tide, and a downpour of rain wets the foliage thereby increasing significantly the load the tree carries in the sail area. This added stress on a poorly anchored root system can result in the tree tipping over or snapping out branches.

Taking the above explanation into consideration, together with the evidence of trees continually failing in moderate to strong winds, the risk is clear. In response to the risk, trees close to property boundaries have been removed, though not as far back as staff recommended, and planting of new species has begun to restore the area. The October 2000 storm put a halt to the programme, as resources had to be diverted to the massive clean-up afterwards.

In July 2002, another two sections of trees were removed from the bowling club area in Jellicoe Street, continuing down to the camping ground boundary. This is where the single row of smaller trees was retained as a result of public protest. On 3 March 2003, during a period of strong winds, two trees came down during the night with one hitting the camper's tent and his parked car.

There is clear evidence that more trees in the plantation and the camping ground will fall.

PEER REVIEW OF ARBORIST'S REPORT

An independent arborist's report was commissioned by the Parks and Waterways Unit to peer review our own position on the safety of the trees and the need for their removal. A copy of the report is attached as Appendix B. The conclusions at the end of the report support our arborist's view that immediate action is required to reduce the risk and that our current proposal, with some minor modifications, will achieve this.

THE PROPOSAL

The Parks and Waterways Unit proposes:

- (a) To immediately remove 68 trees from within the camping grounds and carry out further remedial work on 27 others, to render them safe.
- (b) To remove a further 198 trees in the park and carry out remedial work on eight others, to render them safe ((a) and (b) will create a 35m safety buffer zone so trees cannot fall on campers).
- (c) To continue the commitment made in the past to replant where removals have occurred. The programme which was halted by the demands of tidying up after the 2000 storm will be reinstated.
- (d) To consult with the lessee of the camping ground, property owners and members of the public on reinstatement options following these latest proposed removals.
- (e) To carry out an assessment of the whole park for managed removal of mature trees and their replacement where there is no immediate danger.

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PUBLIC CONSULTATION

Where there is immediate danger and risk, the public cannot be expected to make judgements which require training and expertise, based on years of experience and professional practice.

As a result of public consultation in the past, attempts by trained staff to deal definitively with the risk posed by trees in the park and camping grounds have been modified and pegged back. The requests have been for staging of the removal of trees and their managed replanting. This is a sound process where there is not an immediate threat of danger to people and property. It is unfortunate that site conditions and time have coincided to create a serious risk situation here, which cannot be addressed by a slow and staged programme when applied to the most dangerous trees.

A meeting was held by the South New Brighton Residents' Association on Monday 17 March and the conclusions of the meeting were faxed through on the following day. Once again, the residents are asking for a reduction of the number of trees to be removed, in spite of the fact that failure to remove sufficient trees in the past has exacerbated the current situation. The residents have also asked for a reinstatement of the planting programme, as listed in our proposal under (c) above.

RECENT RISK MANAGEMENT

On 19 March 2003, a letter was sent jointly by the Leisure Manager and the Parks and Waterways Manager to the lessees of the camping ground, Garry Gaynor and June Barns. Sites within the camp which were close to at-risk trees were identified in the letter and the lessees were requested to ensure campers were moved to safer areas. As the lodge is a fixed building and is already let, consideration was given as to whether the trees close to the lodge should be removed immediately but this has been put on hold, owing to communication from the lessees' solicitor and pending this report to Council.

The peer review of our arborist's report was carried out over the weekend and emailed to the Parks and Waterways Unit late on Monday 24 March 2003. This confirmed our position that the risk is real and that immediate action is called for.

COMMENT FROM LEGAL SERVICES TEAM

It is clear that should the trees posing a safety risk remain and subsequently cause harm to life or property, the Council would be liable under the common law of negligence. The Council has a duty of care to the public and in this situation there is clearly foreseeability of an accident occurring, the cause of which would be dangerous trees on Council property. If dangerous trees remain on Council-owned property the Council risks being liable for a claim for negligence.

Obviously it is preferable if the Council can reach agreement with the tenant whereby the Council temporarily occupies part of the leased premises in order to undertake the tree felling work. However, if such agreement is not achievable then, in our view, the Council is able to require the tenant to allow the Council into occupation of part of the leased premises for the purposes of removing the dangerous trees. Although not strictly required, in our view it would be prudent to provide the tenant with rent relief for the period the Council occupies part of the premises to undertake the tree felling work. Pursuant to clause 12 of the lease, the tenant has an obligation to comply with all relevant statutes. Under the Health and Safety in Employment Act 1992 and the Occupiers Liability Act 1962 the tenant has an obligation to reasonably ensure that its visitors and employees are kept free from danger, while on the premises. By allowing the dangerous trees to remain on the premises, the tenant is in breach of clause 12 of the lease. Where there is a breach of any clause of the lease the Council as landlord, pursuant to clause 20 of the lease, may re-enter the premises without the need to give any notice to the tenant. Therefore in our view the Council may re-enter the premises for the purposes of undertaking the tree felling work without providing the tenant with any notice. The Council should, however, take reasonable steps to minimise the impact of the tree felling works on the tenants' business.

Although not required to do so, we recommend granting the tenant rent relief for the period of Council's occupation of part of the premises, in an effort to reach agreement with the Council's tenant over the removal of trees from the camping ground.

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CONCLUSION

Delegations approved by the Council on 23 October 1996 and 12 December 2001 provide the Parks and Waterways Manager with delegated power to arrange for the removal of trees presenting an immediate danger to persons or property on any reserve or other land under the Manager's control, subject to the Chairperson of the relevant Community Board being advised of the proposed removals.

The trees are located on land which is within the boundaries of the Burwood/Pegasus community and the Chairperson of the Burwood/Pegasus Community Board (Mr Don Rowlands) has therefore been advised of the proposal.

The purpose of this report is to likewise advise the Council of the proposal, and to obtain the Council's approval for staff to temporarily re-enter the camping ground for the purpose of undertaking the tree felling work; for some rental relief to be granted to the proprietors of the South New Brighton Camping Ground and for a replanting programme to be put in place following public input and consultation with the tenant of the motor camp.

Staff

- Recommendation:**
1. That the Council note that the Parks and Waterways Manager proposes to exercise her delegated power to arrange for the urgent removal of approximately 281 trees and the pruning of an extra 35 trees in the reserve and the motor camp, on the grounds that they are in a dangerous condition and thus represent a risk to health and safety to both the camp users and the public.
 2. That the Council exercise its right under clause 20 of the lease with the tenant of South New Brighton Camping Ground, to temporarily re-enter part of the premises for the purpose of undertaking the tree felling work as detailed in this report.
 3. That the Council waive the rental for South New Brighton Camping Ground for the period the premises are partly occupied for the purposes of the tree felling work detailed in this report.
 4. That the Parks and Waterways Unit together with the Leisure Unit put in place a programme of re-planting, following public input and consultation with the tenant of the South Brighton Motor Camp.

Chairman's

Recommendation: For discussion.

CONSIDERED THIS 27TH DAY OF MARCH 2003

MAYOR