

Public Document Pack

EMERGENCY DELEGATED EXECUTIVE DECISION

In accordance with the Leaders decision and noted by Cabinet on 25/03/2020 to delegate to the Chief Executive any executive decision in this COVID 19 Global pandemic emergency or that is urgent or that would be necessary or expedient, or which would otherwise protect the Council's interests, including key decisions.

South Lakeland District Council Emergency Delegated Executive Decision Use of powers under Section 23 of the Local Government (Miscellaneous Provision) Act 1976

Date: 02 July 2021

Reference: 017

Reason for emergency

Chief Executive received emergency delegated executive decision making powers on the 25th March 2020. It is considered that this decision is necessary or arises from the COVID 19 Global pandemic emergency. The matter is urgent, necessary and expedient and is needed to protect the public interest.

The decision is required to be taken due to a request from a resident for the council to require a branch to be made safe under section 23 of the Local Government (Miscellaneous Provisions) Act 1976.

This is a Key Decision - No (A key decision means an executive decision which, in relation to an executive function, has a significant effect on communities in two or more Wards of the Council and/or is likely to result in the Authority incurring expenditure or making savings above £100,000)

Portfolio:	Cllr Jones Climate Change and Biodiversity
Decision Maker:	Chief Executive
Report Author:	Graham Nicholson – Specialist Arboriculture
Wards:	Windermere
Forward Plan:	Not applicable

1.0 Expected Outcome and Reasons for Proposed Decision

- 1.1 That approval be given to the Legal, Governance and Democracy Specialist (Monitoring Officer) to use the powers detailed within sections 23 and 24 of the Local Government (Miscellaneous Provisions) Act 1976 to make safe a broken Oak branch suspended over the boundary of South Wood, Ambleside Road, Windermere.
- 1.2 That approval be given to the Legal, Governance and Democracy Specialist (Monitoring Officer) to use the powers detailed within sections 23 and 24 of the Local Government (Miscellaneous Provisions) Act 1976 to enable South Lakeland District Council to take action when asked to do so by a resident of the District, as a means of last resort and where the tree is considered to be in imminent danger of causing damage to persons or property.

2.0 Proposed Decision

2.1 It is recommended that the Chief Executive:-

(1) Approves the Legal, Governance and Democracy Specialist (Monitoring Officer) to use the powers detailed within sections 23 of the Local Government (Miscellaneous Provisions) Act 1976 to serve a notice under that section to request that the owner make safe a broken branch suspended over the boundary of South Wood, Ambleside Road, Windermere, the tree being considered to be in imminent danger of causing damage to persons or property; and

(2) Approves the Director of Customer and Commercial Services to take action in default should it be required to enter the land and carry out the specified work, recovering reasonable costs from the landowner under sections 23 and 24 of the Local Government (Miscellaneous Provisions) Act 1976.

Review Date:	23 days time
--------------	--------------

3.0 Background and Proposals

- 3.1 South Lakeland District Council received an email from the occupier of The Lodge, Wynlass Beck, Ambleside Road Windermere LA23 1EU on the 28th April 2021 requesting the Council make safe a detached Oak branch which is suspended in trees on the boundary of South Wood, Windermere Road, Ambleside. The email stated that the occupier of The Lodge has raised the matter with the occupier of South Wood on the 17th March 2021 and no action has been taken.
- 3.2 The tree was assessed by the Councils Specialist – Arboriculture on the afternoon of the 28th April 2021. Upon assessment the branch, detached from an Oak tree located in the grounds of South Wood, was found to be suspended in two other trees, a Yew and another Oak tree.
- 3.3 A risk assessment was conducted using the Quantified Tree Risk Assessment methodology, using the following criteria:
- 3.4 Target 2 – property value of between £200,000 and £20,000, or occupancy of target area of 2.4 Hr/day – 15 Min/day

Size 3 – 250-110mm dia.

Probability of Failure 2 – 1/10-1/100 per annum

Risk of Harm 1/5,000

Current HSE Tolerability of Risk guidance states that a risk of harm of 1/10,000 or greater is unacceptable, therefore a risk of harm of 1 in 5,000 is deemed unacceptable.

- 3.5 A further visit was made to the occupier of South Wood on the 24th May 2021 during which the occupier was informed of the updated risk information. The occupier was shown the branch suspended in the crowns of the Oak and Yew tree, and indicated he would deal with the matter.

- 3.6 As of 1st July 2021 the branch remains suspended in the crowns of the Oak and Yew tree on the boundary of the two properties. Based upon the revised risk assessment the branch presents an unacceptable risk to users of the garden of The Lodge.
- 3.7 The Local Government (Miscellaneous Provisions) Act 1976 provides local authorities with discretionary powers to make safe dangerous trees if it considers that *“that the tree is in such a condition that it is likely to cause damage to persons or property”*. In this case section 23(3), would apply, as both the owner of the tree and the property under threat are known to the council. The local authority may serve a notice upon the owner or occupier of the land where the dangerous tree is located requiring them to make the tree safe within a period of no less than 21 days. If the work is not undertaken within the specified period, the local authority can enter the land and carry out the specified work, recovering reasonable costs from the landowner.
- 3.8 The legislation is intended to be a last resort option whereby all other attempts to resolve the matter have failed.
- 3.9 Although previous requests from residents to use these powers have been received, the matters have been successfully resolved without the need for formal action. Approval of the proposed decision would enable the authority to deal with future requests more swiftly. The relevant sections of the act do not appear in the Scheme of Delegation and a future review of the Constitution would seek to include them.

4.0 Consultation

- 4.1 The Operational Lead – Specialist Services and Director of Customer and Commercial Services have been involved in the decision making process leading to the composition of this report.

5.0 Alternative Options

- 5.1 The council decides to not use its discretionary powers in this case and refer the matter back to the complainant and tree owner to resolve between themselves.
- 5.2 This action is unlikely to resolve the matter and could lead to a challenge by the complainant. There is also the risk that if the branch were to become dislodged and cause damage to persons or property, the council could be subject to a claim for damages as a result of not taking action where there is a legislative means to do so.

6.0 Links to Council Priorities

- 6.1 This decision meets all the Councils Corporate Priorities. Working across boundaries, delivering a balanced community, a fairer southlakeland and addressing climate change.

7.0 Implications

Financial, Resources and Procurement

- 7.1 If the proposal is approved, a formal notice is served on the Occupier of South Wood and that notice is not complied with, the council would be required to make the branch safe and then reclaim the costs from the tree owner. There is a risk that these costs would not be recovered immediately, and action would be required to recover costs through the courts or by applying a land charge on the property.

Human Resources

- 7.2 There are no Human Resources implications arising from this report.

Legal

- 7.3 Section 23 of the Local Government (Miscellaneous Provisions Act 1976 provides local authorities with the power to deal with dangerous trees. Pursuant to section 23(3) of the Act, where an authority:
- receives notice from an owner or occupier of land requesting that the council make safe a tree on other land which is in its area and which appears to the council not to be owned or occupied by the person who served the notice; and
 - considers that the tree is in such condition that it is likely to cause damage to persons or property on the above mentioned land; and
 - knows the name and address of a person appearing to the council to be an owner or occupier of the other land; the council may serve on such person as is mentioned in above to take such steps for making the tree safe.
 - The notice served by the council must specify the steps to be taken and must specify a period, of not less than 21 days from the date of service of the notice, within which the works must take place.
- 7.3.1 Anyone served with a notice may, within 21 days beginning with the date of service, appeal to the County Court on one or more of the following grounds:
- That he is neither an owner nor an occupier of the land on which the tree is situated;
 - That the tree is not in such condition as is mentioned above;
 - That less expensive steps than those specified in the notice would suffice for the purpose of making the tree safe;
 - That it would have been fairer to serve the notice on another person who is an owner or occupier of the land.
- 7.3.2 In order to reduce the risk of appeal it is important to ensure that the tree in question is assessed and that the steps being specified in the notice are reasonable.
- 7.3.3 If the person served with the notice, fails to comply with the notice, the council may take the steps specified in the notice and recover from that person the expenses reasonably incurred in doing so.

Health, Social, Economic and Environmental

- 7.4 Have you completed an Health, Social, Economic and Environmental Impact Assessment?
No
- 7.5 If you have not completed an Impact Assessment, please explain your reasons: It is not applicable.

Equality and Diversity

- 7.7 Have you completed an Equality Impact Analysis? No
- 7.8 If you have not completed an Impact Assessment, please explain your reasons: It is not applicable.

Risk

Risk	Consequence	Controls required
The Council is required to make a decision whether to use its discretionary powers under Section 23 & 24 of the Local Government (Miscellaneous Provisions) Act 1975 to require a	If the council decides not to record a decision it may be open to challenge and subject to claims for omitting to require a dangerous tree to be	The record of decision will control this risk.

Risk	Consequence	Controls required
owner or occupier of land to make safe a dangerous tree.	made safe.	

Contact Officers

g.nicholson@southlakeland.gov.uk

Appendices Attached to this Report

Appendix No.	Name of Appendix
1	Site Plan and Photograph 1 showing the detached branch to be made safe

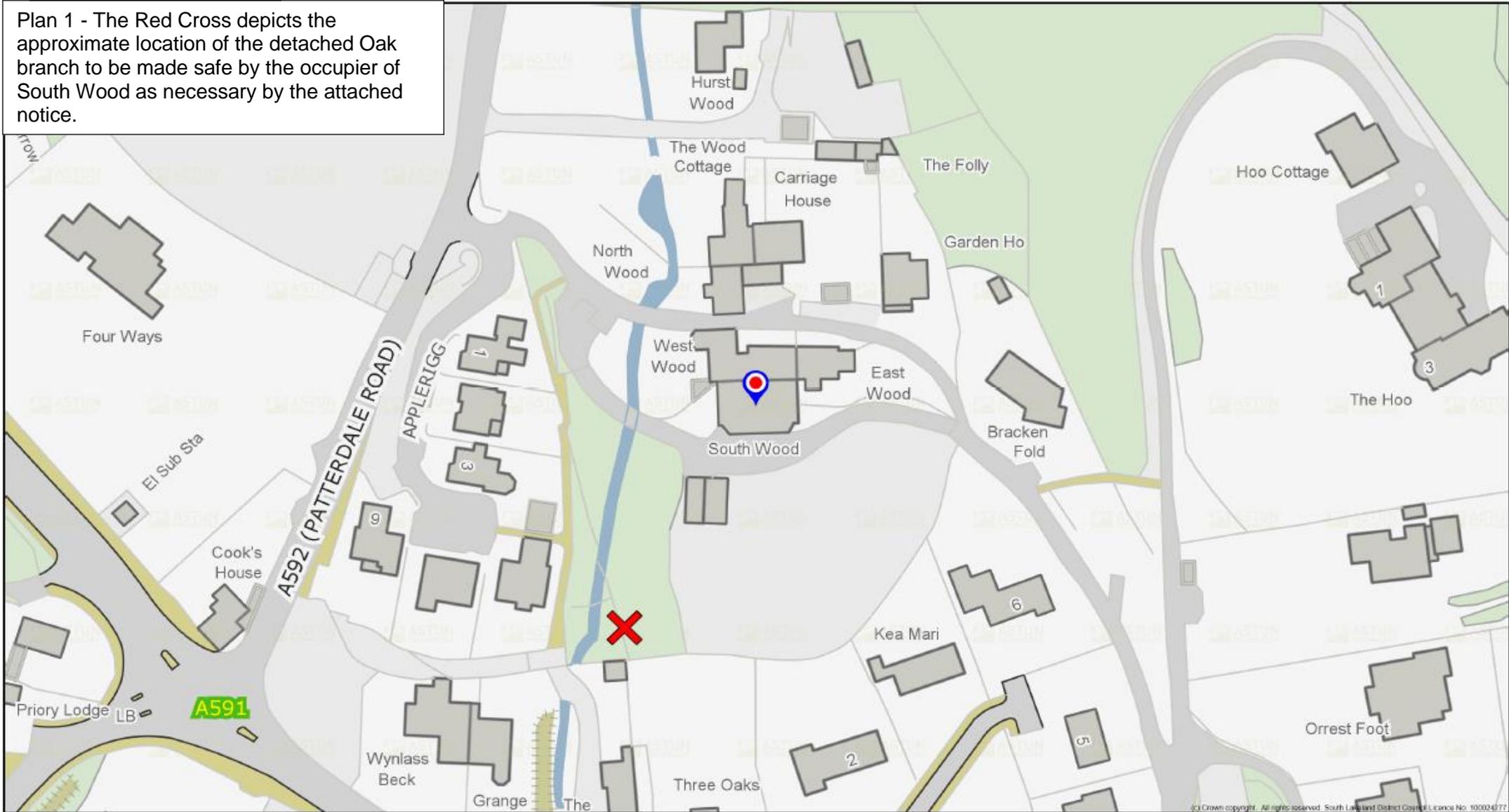
Background Documents Available

Name of Background document	Where it is available
S23 Power of local authorities to deal with dangerous trees	Local Government (Miscellaneous Provisions) Act 1976 (legislation.gov.uk)
Approved by:	Signature and Date (or email confirmation)
Chief Executive	02/07/2021
In consultation with	
The Leader of the Council	02/07/2021
And Relevant Portfolio Holder	02/07/2021
CMT Directors	02/07/2021
The following interests were declared – disclosable pecuniary interest or other or none	None

<p><i>Due to COVID 19 and Government announcements , it has not been possible for this Key decision to be included in a Forward Plan at least 28 clear days before the decision was to be made. It is not possible to comply with the General Exemption procedure.</i></p> <p><i>In accordance with Part 4 of the Constitution - Rules of Procedure – Access to Information Rules – Paragraph 16, the Chairman of the Overview and Scrutiny Committee (Cllr Hughes) has agreed that the taking of the decision is urgent and could not reasonably be deferred because for the reasons outlined in this report and the timescales required to protect the public/business interest and to comply with Government advice.</i></p> <p><i>This being “special urgency”</i></p>	Yes (Provide copies of emails etc)
<p><i>In accordance with Part 4 of the Constitution – Rules of Procedure – Overview and Scrutiny Procedure Rules - paragraph 16(j), the Chairman of the Council (Cllr Coleman) agrees that this decision is reasonable in all the circumstances and that it is treated as urgent for the reasons outlined above and, therefore, the decision is exempt from call-in.</i></p>	Yes (Provide copies of emails)

Appendix 1

Plan 1 - The Red Cross depicts the approximate location of the detached Oak branch to be made safe by the occupier of South Wood as necessary by the attached notice.



South Wood Oak Branch



N Scale: 1:1250

© Crown copyright. All rights reserved. South Lakeland District Council Licence No: 100024277

Printed on: 2021-06-30 16:14:13 by g.nicholson@SLDC

Photograph



Photograph 1 showing the detached branch to be made safe - viewed from The Lodge, Wynlass Beck.

This page is intentionally left blank