

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Streetscene & Engineering Cabinet Board

12 June 2017

**Joint report of the Head of Streetcare – M. Roberts
Head of Planning and Public Protection – N. Pearce
Head of Property and Regeneration – S. Brennan
Head of Corporate Strategy and Democratic Services – K. Jones
and Head of Legal Services – D. Michael**

Matter for Decision

Wards Affected: All Wards

JAPANESE KNOTWEED

Purpose of Report

- 1 To consider the Council's policy and procedures with respect to Japanese knotweed.

Executive Summary

- 2 Japanese knotweed is becoming an increasing issue of concern, particularly for residents, and the Council therefore needs to confirm its policy and procedures for dealing with this Invasive Non-Native Species (INNS).

Background

- 3 Though there are some invasive native plants (e.g. Bracken), those having the greatest negative socio-economic and ecological impacts are non-native (e.g. Japanese knotweed, Giant hogweed and Himalayan balsam). These widespread and problematic INNS are legislated against under a range of UK legal instruments. Japanese knotweed is the best known of these species and is very difficult to control and manage, particularly in the longer-term. Photographs of Japanese knotweed are shown in Appendix A.

- 4 Japanese knotweed was introduced to the UK in 1825 as an ornamental plant and was first found growing in the wild in Maesteg in 1886. Japanese knotweed has established very successfully in Wales due to a suitable climate (i.e., high rainfall and mild winters) and the absence of natural predators. Knotweed is a large herbaceous perennial plant with hollow stems that grow rapidly to over 2 metres tall in midsummer. Stems have distinct raised nodes that give it the appearance of bamboo. In winter the plant dies back but dead stems (also known as canes) remain throughout the winter months. As shown in Appendix A, the plant has broad oval leaves and flowers, which are produced in late summer/early autumn are small and creamy-white. The invasive root system and strong growth can damage and/or displace paved and tarmaced surfaces, buildings (particularly outbuildings and new build homes), retaining walls and flood defences. The plant can also restrict flow in water courses, increasing flood risk. It is frequently found alongside roads, railways and watercourses and forms thick, dense colonies that completely crowd out other plant species, impacting upon biodiversity. The plant is highly resilient to cutting with vigorous re-sprouting; cutting is consequently not suitable as a control method and is likely to lead to further spread of the plant. Knotweed has a very large root system and is exceptionally difficult to control, manage and potentially eradicate. Knotweed spreads naturally particularly via rivers, but is also frequently spread by the actions of people, for example by careless disposal of soil contaminated with knotweed rhizome or material cut from above ground growth (including stems and leaves). Waste containing Japanese knotweed comes under the control of Part II of the Environmental Protection Act 1990 and must be disposed of at a suitably licensed waste disposal site. Furthermore, to comply with legislation it must not, for example, be put in bags provided for the collection of garden waste such as grass and hedge clippings.
- 5 The presence of Japanese knotweed is an increasing concern for mortgage companies and the plant can affect property value, to the extent some home owners are unable to sell their property. This is particularly true where there is evidence of knotweed on, or near the property and there is no management plan in place.
- 6 Given the increasing problems and costs of dealing with knotweed, a decision was taken by the UK Government to allow the release into the wild of a Japanese insect that has a diet which is highly

specific to Japanese knotweed and showed potential for control. Controlled release trials began in South Wales in 2011 (though there are none in Neath Port Talbot). To date, the insect has not been successful as populations have been unable to overwinter. Consequently, the most cost-effective method of control remains herbicide treatment. However, it is noted that the underground rhizome system may remain viable and dormant underground for many years.

- 7 Control may be carried out by the property owner and does not necessarily require a specialist company. However, a specialist company typically registered with a relevant trade body, such as the Property Care Association (PCA) or The Invasive Non-Native Specialists Association (INNSA) should normally be used due to the size of the plant and because they will be in a position to dispose properly of any plant waste. Typical advice on the chemical control of knotweed can be found on the Royal Horticultural Society web-site at www.rhs.org.uk/advice. There is also guidance available on the Department for Environment, Food and Rural Affairs web-site.

- 8 It is not an offence for a property owner to have Japanese knotweed on their land and there is no legal requirement to control this plant. However, under Section 14(2) of the Wildlife and Countryside Act 1981 it is an offence to cause plants listed in Schedule 9 to the Act to grow in the wild, which includes planting knotweed or causing it to spread. Such offences carry a maximum penalty of £5,000 and/or 6 months imprisonment on summary conviction and an unlimited fine and/or 2 years imprisonment on indictment. Furthermore, Section 23, subsection 14(4A) was introduced to the Infrastructure Act 2015, amending the Wildlife and Countryside Act 1981 by inserting a new Schedule 9A to introduce a statutory regime of species control agreements and orders to ensure that under appropriate circumstances, landowners take action on INNS, or allow statutory bodies (e.g. Natural Resources Wales) to enter their land and carry out those operations to prevent plant establishment or spread. This amendment was principally aimed at early detection and rapid response of newly introduced INNS and is not intended for widespread control of established INNS such as Japanese knotweed. Property owners should therefore aim to control Japanese knotweed on their land, along with any other invasive non-native plants to prevent them from becoming a problem in

their neighbourhood i.e., they should demonstrate reasonable responsibility.

- 9 In addition to the above, if it can be demonstrated that a 'Schedule 9' species is impacting on the physical condition and/or value of adjacent land, then owners of such land can seek costs for 'making good' under a private nuisance claim.
- 10 There has also, more recently, been a change to the Anti-Social Behaviour legislation, and Section 43 of the Crime and Policing Act 2014 could potentially be used to enforce control. Details of this legislation are set out in Appendix B, although there is (to date) little experience of its application. Whilst delegated authority has been granted to various officers in the Council to implement the provisions of the Act, under a report to the Policy and Resources Cabinet Board of 3rd September 2015, it is noted that:
 - There was no new money provided to Local Government associated with this new power.
 - It is not known whether any notice served in respect of Japanese knotweed would withstand legal appeal given mitigation measures can be expensive, eradication of the plant cannot be guaranteed, and consequently timescales for action and costs can be open-ended. Furthermore, there is no national standard to guide a consistent approach to knotweed across regions and agencies, similar to the national guidelines for dealing with 'High Hedges'.
 - If a complaint regarding knotweed crossing a boundary were to be received, and the legislation used, it is likely both parties to the boundary would need to be served with a Notice. Combined with the above any investigation and enforcement activity in relation to the legislation is likely to be resource intensive and expensive.
 - There is no UK Code of Practice and Natural Resources Wales withdrew its Code of Practice for the management of Japanese knotweed in July 2016. Consequently there are currently no national guidelines.
 - Whilst UK Government guidance cites the use of the new legislation with respect to knotweed as an example, there is no legal requirement for the legislation to be used, as it is a power, not a duty.

- 11 Complaints concerning the spread of knotweed are essentially a 'neighbour dispute'. Whilst acknowledging that the Planning Section can get involved in 'High Hedge' disputes under related legislation once the complainant can demonstrate they have taken all reasonable action to address the problem with the neighbour and paid a significant up-front fee, such disputes are better dealt with directly between parties concerned, in court if necessary.
- 12 As far as Police use of the anti-social behaviour powers is concerned, it might be expected that such action would only occur in cases where Japanese knotweed plants have been illegally moved.
- 13 Under planning legislation, the Council's planning section can also serve notices on landowners and occupiers where the condition of that land appears to adversely affect the amenity of part of the Borough, which can sometimes be relevant to Japanese knotweed.
- 14 In terms of Environmental Health, the presence of Japanese knotweed is generally not considered to be a public health issue.
- 15 As a landowner with significant holdings, as well as being a statutory body with associated duties, the Council needs to adopt a consistent approach to the way it manages and deals with Japanese knotweed.
- 16 Arising from complaints, reports and operational issues, the Council holds some records regarding the presence of knotweed. However these are by no means comprehensive, as there has been no systematic mapping of the plant.

The Council's approach to dealing with Japanese knotweed to date

- 17 With the exception of council-owned strategic development land, the Council's approach to Japanese knotweed has generally been reactive although there has been some annual herbicide treatment of knotweed, e.g. along transport corridors to keep the plant away from the carriageway edge and out of the regular maintenance zone.
- 18 There has similarly been some work on Council land generally, to control spreading of the plant, although it must be acknowledged

that to date there has been some inconsistent policy across the Council with respect to knotweed, such as in relation to the distance subjected to treatment from any boundary.

- 19 In terms of other land, the Council is responsible for the determination of most planning applications. When planning applications are submitted for the development of land, where Japanese knotweed is known to be present, the Council if minded to grant planning permission, will usually impose a condition requiring the developer to treat/eradicate the knotweed on site (Town and Country Planning Act 1990).
- 20 In addition, the Council's Countryside and Wildlife Team has undertaken to facilitate the treatment of Japanese knotweed and other INNS on private land as part of grant funded projects, normally to promote restoration of natural habitats or the protection of designated sites, such as local nature reserves. Where such treatment has been expanded onto private land it is normally with the agreement of the landowner to continue the treatment following the initial grant funded period.

Proposed approach going forward

- 21 On receiving reports/complaints of Japanese knotweed Officers would firstly check land ownership in respect of:
 - (i) The location of the Japanese knotweed
 - (ii) Adjacent land
- 22 In light of the findings of the land check, it is proposed the policy and procedures as set out in the appendices would then be applied.

Financial Impact

- 23 Managing knotweed impacts on the Council's revenue budgets, in particular those relating to the maintenance of highways, property and estates, although future costs are difficult to quantify given that the overall location and extent of knotweed infestation is not known.
- 24 Additional resources would be needed if the Council adopted a policy of using the Anti-Social Behaviour legislation to address

disputes concerning the presence of Japanese knotweed between neighbouring property owners. Furthermore, if Community Protection Notices were served, should they be successfully appealed then the Council may be liable for costs.

Equality Impact Assessment

25 A screening assessment has been undertaken to assist the Council in discharging its Public Sector Equality Duty under the Equality Act 2010. After completing the assessment it has been determined that this proposal does not require an Equalities Impact Assessment.

Workforce Impact

26 Council employees will need to implement adopted policies and procedures.

Legal Impact

27 The Council having significant land holdings on which knotweed can and may be growing, needs to avoid unwittingly committing an offence. Furthermore, the Council needs to comply with its statutory duties and also determine its position with respect to discretionary powers which it has the power to exercise.

28 As set out in the report, there is likely to be difficulties associated with attempting to use the new Anti-Social Behaviour legislation to address neighbour disputes concerning Japanese knotweed.

Risk Management

29 To date there has not been any successful prosecutions or claims against the Council with respect to knotweed and the aim is to maintain this position going forward. The issue of spreading knotweed and its impact on property is increasing in profile so risks of claims against the Council are increasing. Maintaining policy and procedures with respect to knotweed will help in mitigating the risk.

Consultation

- 30 There is no requirement under the Constitution for external consultation on this item.

Recommendation(s)

- 31 It is recommended that the contents of this report are noted and that:
- (1) the policies and procedures given in Appendices C and D are adopted by the Council.
 - (2) The Council continues to implement its annual programme of knotweed treatment.

Reason for Proposed Decision(s)

- 32 To establish policy and procedures with respect to dealing with Japanese knotweed.

Implementation of Decision

- 33 The decision is proposed for implementation after the three day call in period.

Appendices

- 34 Appendix A: Photographs of Japanese knotweed
Appendix B: Anti-Social Behaviour Crime and Policing Act 2014
Appendix C: Proposed policy and procedure for dealing with Knotweed on Private Land
Appendix D: Proposed procedure for dealing with Knotweed on Council land

List of Background Papers

- 35 Anti-Social Behaviour, Crime and Policing Act 2014 – Report of the Head of Corporate Strategy and Democratic Services to the Policy and Resources Cabinet Board, 3rd September 2015.

References

<https://www.gov.uk/japanese-knotweed-giant-hogweed-and-other-invasive-plants>

<http://www.legislation.gov.uk/ukxi/2010/609/made>

<http://www.rhs.org.uk/advice>

Officer Contact

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Appendix A: Photographs of Japanese knotweed



Appendix B: Anti-Social behaviour Crime and Policing Act 2014

The relevant part of the Act is Section 43 relating to Community Protection Notices. These notices can be issued by the Police, Councils or designated social landlords, and used against individuals 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.

A Community Protection Notice could potentially be issued to require someone to control or prevent the growth of Japanese knotweed or other plants that are capable of causing serious problems to communities. The test is that 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 that the conduct is unreasonable. Under section 57 of the Act, "conduct" includes "a failure to act". A notice can place restrictions on a person's behaviour (in the case of an individual, as long as they are aged 16 or over) and, if necessary, force them to take steps to rectify the behaviour that is having a detrimental effect on the quality of life of the community. A mandatory written warning must be served before a notice is issued.

Breach of any requirement of a Community Protection Notice, without reasonable excuse, would be a criminal offence, subject to a fixed penalty notice (which attracts a penalty of £100) or prosecution. On summary conviction, an individual would be liable to a level 4 fine. An organisation, such as a company, is liable to a fine up to £20,000.

Councils and other relevant agencies are not obligated to use Community Protection Notices, as they only have a power and not a duty to use them.

In Neath Port Talbot Council the point of contact for anti-social behavior issues is our Antisocial Behaviour Case Co-ordinator based in Neath Police Station.

Appendix C: Proposed policy and procedure for dealing with Knotweed on Private Land

Having established knotweed is on private land, the Council's policy will be to:

- Take no further action, with the exception of offering, if requested, informal advice with reference to: plant identification; the Wildlife and Countryside Act 1981; the general responsibilities for landowners, land managers and developers; and sign-post to advice on plant control, management and eradication, with legal disposal options. This includes where there is knotweed on un-adopted rear lanes unless the Japanese knotweed is spreading from Council land.

However, where Japanese knotweed is threatening to cross, or crossing, a property boundary onto Council land or land formally dedicated for highway use, or is growing on property affecting sight lines for the safe passage of highway traffic, then the Council's policy will be to:

- Issue a warning to the property owner/occupier from where the plant is spreading or at risk of spreading;
- Request a remediation plan and action, to reverse or stop environmental damage by means of effective plant management and/or eradication. Depending on circumstances this may include requirement for a survey by a Property Care Association (PCA) approved surveyor, and any work being undertaken by a PCA Approved contractor holding a minimum 10 year Insurance Backed Guarantee or an appropriate public body. Depending on circumstances the Council may also seek a verification report with respect to alleged completion of plant treatment to confirm no re-occurrence of growth for more than two years.
- Take legal action if the property owner/occupier does not undertake voluntary remediation to the satisfaction of the Council.
- In appropriate circumstances the Council may also appeal to Welsh Ministers or Natural Resources Wales to pursue a Species control Agreement/Order under the Wildlife and Countryside Act.

As a matter of policy, the Council considers that any Japanese knotweed within 7 metres of land in its ownership is a potential threat to its property and should be subject to reasonable measures to prevent it spreading unless there are extenuating circumstances.

Landowners of sites from which knotweed is spreading should consider the overall biodiversity value of the land and select treatment methods to

conserve existing biodiversity value to ensure compliance with the Environment (Wales) Act 2016.

Appendix D: Proposed procedure for dealing with Knotweed on Council land

On receipt of reports concerning Knotweed on Council land, a site investigation and assessment will be undertaken with reference to the Wildlife and Countryside Act 1981; Codes of Practice, and control strategies.

The site investigation will initially seek to confirm or disprove the presence of Japanese knotweed. With respect to confirmed knotweed the Council will assess whether its presence:

- a) Will cause it to grow in the wild, or spread beyond the limits of the Council's property (as doing so may in-turn result in causing it to grow in the wild); or
- b) Presents a safety, amenity or structural risk (e.g. reducing vision splays, blocking footpaths or damaging concrete, tarmac, etc.).

Control Strategies

Given that the presence of Knotweed on Council land may cause the plant to grow in the wild by:

- Natural growth
- Land management / ground maintenance practices
- Land development / construction

consideration will be given to each in identifying the Council's control strategy as below.

Natural Growth:

Risk Japanese knotweed spreads locally by underground growth and inappropriate management strategies. Wider dispersal may occur through natural process (e.g. flooding rivers) and through inappropriate management process (i.e. illegal disposal of contaminated soil and cut material).

Policy The Council considers that knotweed found on its land and within 7 metres of its ownership boundary, or 7m of a watercourse on its land, should be subject to

reasonable measures to prevent it spreading beyond its control.

Mitigation The Council will undertake a 3 year control strategy to control any knotweed which is either within 7m of the Council's landownership boundary or within a 7m strip of a water course and then review the need for continued treatment. In any case, whilst the Council is not in a position to give a ten year Insurance Backed Guarantee, it will continue to inspect land for any regrowth for a period of 10 years. In the presence of any regrowth, treatment will be resumed. Whether control measures are actioned by internal or external personnel they will be appropriately qualified. (See also limitations on action)

Land Management / Ground Maintenance:

Risk Japanese knotweed can spread when small pieces of the plant including rhizomes (underground root-like stems) and above ground growth (stems and leaves) are broken off, possibly as a result of general land use or certain land management practices (e.g. flailing, trafficking, horses passing on bridleways etc.)

Policy The Council will adjust its land management practices in the presence of knotweed to reduce the risk of spreading.

Mitigation Ground maintenance practices which do not cause pieces of the plant to break-off and/or chemical treatment to eliminate the plant from the working area. This may include creating access paths for chemical treatment although all material must remain on site.

Land Development / Construction:

Risk The development of land and construction on land where knotweed is present may cause pieces of the plant including rhizomes to be broken off and spread beyond the landowner's control, or to remain in place affecting the developed property. This extends to soils which may contain pieces of the plant.

Policy The Council will take a proactive approach to knotweed on council-owned strategic development land and knotweed will be assessed and subject to the most appropriate control to ensure the land is available for development. This will be identified by an optional appraisal and production of a detailed specification for any works where necessary. The outcome may include control measures that are designed into the development of the land.

Mitigation The Council will adhere to best practice including the Code of Practice: “Managing Japanese knotweed on Development Sites”, issued by the Environment Agency (though this document is now withdrawn).

The overall control strategy for each site will aim to:

- (i) To control existing and new growth; and,
- (ii) To prevent the movement from the area of soil contaminated with knotweed and aboveground knotweed material.

The strategy may also aim to eradicate the knotweed where it is considered reasonable to do so.

Control may be either by treatment with herbicide (via spray or stem injection) or by physical eradication with on or offsite disposal. When considering which control strategy to use the following factors may be considered:

- timescale (and time of year)
- environmental impact (carbon footprint, chemical impact, nearby watercourses, nearby plants and wildlife)
- disturbance and other impacts on any nearby residents
- cost
- proposed land use following control

All on-site strategies will be exhausted before considering the removal of material off-site.

In order to comply with its legal responsibilities, the control strategy selected may be the subject of consultation with organisations such as Natural Resources Wales (NRW) or adjoining landowners.

Limitations on Action

In carrying out any of the above mitigating actions, the Council must comply with specific legal responsibilities when, for example:

- spraying invasive plants with herbicide
- burying invasive plant material on site
- disposing of invasive plants and contaminated soil off site

Note: cutting and burning of invasive plants generally should be avoided and in the case of Japanese knotweed, no cutting or burning should be undertaken.

This may present particularly challenges, for example, it may restrict the use of chemicals near watercourses. In such cases, and where alternative management techniques such as excavation are likely to aggravate the situation overall, mitigating action may not be possible as any cutting etc. to maintain river flow is likely to result in further spread of Japanese knotweed.

Register of locations

A map-based register will be kept of all confirmed incidents of Japanese knotweed on Council land. The register will include the outcome of the site investigation and assessment, and include any control strategy.

Neighbouring Landowners

The Council may issue a letter of comfort with regard to its register of knotweed sites and its control strategy.

Transmission along watercourses from upstream sources

As it is not possible to prove that any infestation adjacent to a watercourse has arisen as a result of being carried from a single up-stream source then no enforcement action will be taken in respect of any such transmission.

Access to Council land by neighbouring property owners for the purposes of knotweed treatment

In the event an adjacent property owner wished to employ a PCA approved contractor to treat knotweed on Council land then approval would not be unreasonably withheld.

Watercourses passing through local authority land where the Council is not the Riparian Owner

In these circumstances, and where action against knotweed is necessary to preserve the adequacy of flow in a water course then action will be taken in accordance with the Council's policy with respect to knotweed on private land.

Treatment/Eradication within Designated Sites

Due to the threat to County native biodiversity, the Countryside and Wildlife Team will need to continue to actively treat and facilitate treatment of INNS to promote the conservation of the County's natural resources, particularly in sites designated for their biodiversity interest and where funding is available. The Team will also need to continue to be involved in and contribute towards partnership projects that also include treatment of such species. Long-term strategic management must be considered as the the final aim for designated sites, e.g. LNR's, where possible.