

DECISION-MAKER:	PLANNING AND RIGHTS OF WAY PANEL
SUBJECT:	Referred felling licence application from the Forestry Commission for trees at Marlhill Copse
DATE OF DECISION:	20 th February 2024
REPORT OF:	David Tyrie – Head of City Services

<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY		
NONE		
BRIEF SUMMARY		
To Consider the referred felling licence application for the felling of 15 trees that are protected by a tree preservation order and are also situated within a conservation area which has been registered as 23/00281/TPO.		
RECOMMENDATIONS:		
	(i)	To refuse the felling of monterey pine numbered 97 on the plan.
	(ii)	To approve the felling of larch, identified as scots pine in the report, numbered 43 on the plan. Replacement tree condition to be applied to approval.
	(iii)	To approve the felling of monterey pine numbered 82 on the plan. Replacement tree condition to be applied to approval.
	(iv)	To approve the felling of ash numbered 6000 on the plan. Replacement tree condition to be applied to approval
	(v)	To approve the felling of ash numbered 6001 on the plan. Replacement tree condition to be applied to approval
	(vi)	To approve the felling of ash numbered 6002 on the plan. Replacement tree condition to be applied to approval
	(vii)	To approve the felling of ash numbered 6003 on the plan. Replacement tree condition to be applied to approval
	(viii)	To approve the felling of ash numbered 6004 on the plan. Replacement tree condition to be applied to approval
	(ix)	To approve the felling of ash numbered 6006 on the plan. Replacement tree condition to be applied to approval

	(x)	To approve the felling of goat willow to form a coppice, numbered 6007 on the plan.
	(xi)	To approve the felling of goat willow to form a coppice, numbered 6008 on the plan.
	(xii)	To approve the felling of goat willow to form a coppice, numbered 6009 on the plan.
	(xiii)	To approve the felling of silver birch numbered 6010 on the plan. Replacement tree condition to be applied to approval.
	(xiv)	To approve the felling of ash numbered 5836 on the plan. Replacement tree condition to be applied to approval
	(xv)	To approve the felling of scots pine numbered 95 on the plan. Replacement tree condition to be applied to approval.
REASONS FOR REPORT RECOMMENDATIONS		
1	The requested work is in relation to a referred felling licence application that has been passed to the council to consider under the Town & Country Planning Act 1990.	
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED		
2	The Council can grant consent, with or without conditions, or refuse consent to part or all the trees subject of the referred application.	
DETAIL (Including consultation carried out)		
3	Under section 9 of The Forestry Act 1967, the applicant was required to apply to the Forestry Commission (FC) for a felling licence to fell trees at Marlhill Copse.	
4	The FC can either consider the application, and if they propose to grant the licence, shall give notice in writing to the authority by whom the Tree Preservation Order was made. At this point, the council could provide comments to the FC and state if they are in support or not, to the issuing of a felling licence. In this instance, the council are only a consultee and the FC have the final decision.	
5	Alternatively, where trees are protected by a Tree Preservation Order, the FC can simply refer the application to the council to determine. If this action is taken, the application shall then be dealt with under the Town and Country Planning Acts.	
6	On the 27 th of June 2023, the FC officially referred the felling licence application over to Southampton City Council (Appendix 1)	
7	This application was registered with reference number 23/00281/TPO and contains the information supplied with the referred felling licence. This information is the subject of this report. (Appendix 2.0 & 2.1.	
8	The application requests the felling of 15 trees within Marlhill Copse. The trees are protected by The Southampton (Townhill Park - Cutbush Lane) Tree Preservation Order 1956, where they appear as W1 and W2 within the order.	

9	The trees are also within the Itchen Valley conservation area and as such, section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that 'special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area'. Therefore, the council's Historic Environment Officer was invited to provide comments in relation to this application. To date, no comments have been received.
10	In addition to the protection status of the trees, a majority of Marlhill Copse is designated as a Site of Importance to Nature Conservation (SINC) and some areas form part of a nationally registered garden.
11	In relation to the SINC, the council's Planning Ecologist was informed of the application and has provided the following comment - I raise no objection to the felling of the trees, if the tree officers agree that it is justified. I would wish to ensure that the Goat Willows are felled to create a coppice as these will continue to provide habitat to the area. My main area of concern is how the work will be carried out in relation to the potential for impacts upon bat roosts and badger setts. No information was supplied with the application to detail what checks are to be in place before any permitted works commence.
12	For the proposed work that falls within the nationally registered garden, the council are required to inform Historic England on any application that impacts a grade I or II* registered garden. Town Hill Park is a grade II listed garden and as such is below the threshold of II*, therefore there is no requirement to contact Historic England in relation to this proposal.
13	When assessing the application to work on trees that are within a woodland, officers must apply regulation 17(3) of The Town and Country Planning (Tree Preservation)(England) Regulations 2012. (the regs)
14	This regulation states – <i>'Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area'</i> .
15	Due to the sensitive nature of the site, the application was assessed by two tree officers. Officers have considered the required tests set out within this regulation and have formed the following opinion.
16	The first part of the test is to determine if the application relates to an area of woodland.
17	Does the application relate to an area of woodland? The TPO is a 'woodland' TPO and DEFRA describe the location with the following classifications. Priority Habitat Inventory – Deciduous Woodland National Forest Inventory – Broadleaved

	<p>Part of Marlhill Copse is also Ancient Woodland (England) – Ancient and Semi-natural woodland (ASNW) This, added with the definition of ‘woodland’ within the UK Forestry Standard (UKFS), leads officers to agree that the trees are within a woodland.</p>
18	<p>Does the work accord with the practice of good forestry? There is no definition in the TPO Regulations of what “the practice of good forestry” means. However, the UKFS is a guidance document prepared by the Forestry Commission which sets out the Government’s approach to sustainable forestry. It is referred to within the national planning guidance on TPOs (“the PPG”) and it is therefore relevant when assessing what is good forestry practice.</p>
19	<p>The term ‘Forestry’ is described in the UKFS as ‘The science and art of planting, managing and caring for forests’. The UKFS states that the standard’s requirements are divided into legal requirements and good forestry practice requirements. The Requirements are categorised into different elements of sustainable forest management, each supported by Guidelines for managers. It makes it clear that they should be interpreted and applied flexibly: “Some aspects of forest management lend themselves to ‘yes or no’ compliance, but most do not, and so the UKFS has not attempted to condense all the complexities of forest management into an over-simplistic format. The UKFS has therefore been written to be interpreted with a degree of flexibility and applied with an appropriate level of professional expertise.”</p>
20	<p>The work detailed within this application is for tree felling, therefore officers must first determine if this work accords with the practice of good forestry.</p>
21	<p>This referred application has been advanced on the ground of felling in the interest of safety, therefore officers have considered this as the primary factor in relation to regulation 17(3) of the regs.</p>
22	<p>In relation to the refusal to fell Monterey Pine marked as 97 on the appended plan, officers have gone on to consider if the felling for other reasons within the UKFS are justified.</p>
23	<p>Chapter 5 of the UKFS “sets out the UKFS Requirements and Guidelines for General Forestry Practice.”. It refers to the need for general compliance with legislation and states that “All occupiers of land and parties engaged in commercial activities are subject to a range of laws and regulations. Some are of special relevance to land-based activities in general and others are more specific to forestry. Compliance with the law is fundamental to the UKFS, and the main legislation of most general relevance to forestry is outlined in this section.”. It states that: “Forestry activities and businesses must comply with all relevant laws and regulations. Operations must be authorised by the legal owner. Reasonable measures should be taken to ensure no illegal or unauthorised activity takes place within the forest or woodland.</p>

24	<p>Safety.</p> <p>Chapter 6 of the UKFS deals with Health and Safety and states Landowners and managers need to be fully aware of their obligations under both employment and health and safety legislation. This is extensive and includes equality of treatment for recruitment processes and contracts, and a duty of care for staff while at work. There is also a duty of care towards people visiting business premises or land, whether they are there with permission or not.</p> <p>The requirement to undertake this sits within paragraph 11 and points towards the duty of care under the Occupiers Liability Act.</p> <p>It states that: - <i>'The landowner or manager must discharge their statutory duty of care in relation to people visiting land, whether or not they are there with permission'</i>.</p> <p>It is the officers opinion that the approved felling does accord with the practice of good forestry in the interest of ensuring safety to visitors to the site and therefore the owners are undertaking the work in accordance with their duty under the Occupiers Liability Act.</p>
25	<p>As the work accords with the practice of good forestry, regulation 17(3) mandates approval, unless <i>'they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area'</i></p>
26	<p>The second test of regulation 17(3) involves the assessment of whether the work would fail to secure the maintenance of the special character of the woodland or the woodland character of the area'. If it is deemed harmful to either of these characters, the council are permitted to refuse based on the harm.</p>
27	<p>However, as the work recommended for approval has been advanced based on safety, which accords with the practice of good forestry and would mandate approval, officers are required to make an assessment of the proposal and if it fails to secure the maintenance of the special character of the woodland or the woodland character of the area'.</p>
28	<p>Does the work fail to secure the maintenance of the special character of the woodland.</p> <p>In order to determine this question, officers must consider what the special character is and if the felling would fail to secure this.</p> <p>A woodland can have many aspects of what one may consider to be a special character and Marlhill has a rich history that has all helped create the woodland that it is today. To the north of the tarmac path, which served as a driveway to the main house, is the ancient semi-natural woodland and is made up of large oak trees with pioneer species of ash and sycamore occupying the space between the large canopy trees. London planes line the boundary of the old watercourse with a scattering of coniferous species of</p>

	<p>trees, some being native, such as scots pine, with others being more unusual to find within a woodland. Part of this area is a grade II listed garden and was once an arboretum associated with the main house, which is why unusual species can be found within part of this area.</p> <p>The understory consists primarily of young sycamore, ash, holly and hazel. A number of common yew are found growing in various locations around the woodland.</p> <p>The raised bank that lies to the south of the path is made up of various pine species that dominate sections of the area, interspersed with pioneer species, such as ash and sycamore. The pine trees have historical interest as they were planted to delineate the newly constructed driveway.</p> <p>The large canopy trees to the north along with the unusual plantings, with the pine dominated ridge are undoubtedly a special character of Marlhill and the loss or significant pruning of the trees would fail to maintain that special character.</p>
29	<p>Does the work result in the loss of the woodland character of the area.</p> <p>The requested felling is not concentrated in a singular area and is not seen as deforestation that would certainly remove the woodland character when viewed internally.</p> <p>The felling of the individual trees, except for Monterey Pine number 82, would result in small sections of the canopy being removed. Over time, the neighbouring trees would start to close the gap. The removal of these trees is not considered to result in the loss of the woodland character of the area, when viewed internally and external to the woodland.</p>
30	<p>The felling of the large monterey pine, which is marked as 82 on the plan is a significant tree within the woodland. It is certain that the loss of this tree will open the canopy for users walking through the woodland and some may consider that the loss amounts to an adverse impact to the immersive woodland experience that is currently enjoyed, however this is subjective and other visitors may not form the same view.</p>
31	<p>In the officers opinion, the loss of this tree would open the canopy from within and also impact the woodland view externally, however it is felt that it would not lead to the feeling of being outside of a woodland or that a significant proportion of the woodland has been lost when viewed externally. Walking through, the visitor will certainly notice a gap, however, there will be another monterey pine in nearby proximity and the woodland character will still exist. Essentially, the woodland character of the area will remain and with the new plantings and current understory, it will have the appearance of another change in the history of the woodland, but one that will be replaced over time.</p>

32	From the results of the assessment of the second test of regulation 17(3), the council are not mandated to approve the application as the felling would fail to maintain the special character of the woodland.
33	Officers therefore had to weigh the impact that the work would have to the special character of the woodland against the potential threat that retaining the trees posed to the public.
34	<p>It is the officers view that, on balance, that the safety of visitors to the woodland or to the adjoining properties outweighed the potential impact to the special character of the area.</p> <p>It was the view of the officers that when evidence supports the felling of a tree and that, by its retention, created an unnecessary risk, then at this point is it deemed acceptable to fell trees.</p>
35	The proposed felling of trees has been requested for various reasons, of which officers have reviewed and agree, be it for canopy decline or other structural issues. It is the officers' opinion that the felling of these trees be permitted, and where appropriate, to have replacement trees planted to ensure that the amenity of the woodland and the enhancement of the conservation area be secured.
36	The most significant felling would involve the removal of a large monterey pine, marked as 82 on the plan. This tree is a very prominent tree in the area and is also part of the character of the conservation area, therefore the decision to allow the felling of the tree required significant justification.
37	The applicant has supplied a hazard report and resistograph drill data in support of the tree felling. (Appendix 3) Officers have reviewed the data provided and can supply the following comments.
38	<p>Two officers visited the site to assess the information supplied in relation to monterey pine and considered the points raised in support of felling.</p> <p>Section 8 references a 'shear bomb' crack on the eastern aspect of the main stem. Officers agree that this was not easily detectable at the site visit and therefore do not consider this to be part of the justification to fell or to indicate the presence of 'significant wind loading'.</p> <p>Section 10 relates to the consultant's assumption, based on the decaying fruiting body and host species of tree, to be Dyer's mazedgill (<i>Phaeolus schweinitzii</i>). At the site visit, officers were able to see new fruiting bodies on the stem of the tree and can confirm that the decay pathogen infecting this tree is <i>Phaeolus schweinitzii</i>. (Appendix 4)</p>

	Section 12 references that the canopy held abundant cones and is sparsely foliated. It was the officers view that there was no discernible difference between this canopy and others of the same species and was as expected for the species. Therefore, the officers formed the view that the canopy health was good and that it did not point to other issues with the tree.
39	Drill data was supplied from a resistograph. This is a machine that uses a microdrill to drill into the stem of the tree and it can measure the resistance on the tip of the drill as it proceeds into the stem. The lesser resistance encountered, points to an area of decay which is then demonstrated in a graph form.
40	There are areas that decay was detected, however none are sufficient to warrant felling based on this test alone.
41	Officers have gone on to consider the impact that <i>Phaeolus</i> has to the tree, the trees' location and what impacts the disease has to the tree. They have then applied this knowledge to form a view.
42	<i>Phaeolus schweinitzii</i> causes a brown cubical rot by the degradation of cellulose within the wood substrate. This leaves a stiff but brittle framework. A tree damaged in this way can fail due to a brittle fracture and without prior warning.
43	The Forestry Commission publication 'Diagnosis of ill-health in trees' provides a quick reference of tree pathogens. Within the chart, it gives the location on the tree that the disease attacks and gives an indication of the likely impacts that the disease has to the safety of the tree.
44	Given that it is known that the tree is infected with <i>Phaeolus schweinitzii</i> , and that this causes the loss of tensile strength in the stem of the tree without warning, it comes as no surprise that the chart gives information that it is 'likely to render tree unsafe'. The other categories given are 'may render tree unsafe' and 'not known to render tree unsafe' and finally 'more likely to cause dieback or death than dangerous decay'. As can clearly be seen, the category assigned to <i>Phaeolus</i> is that the decay is likely to render the tree unsafe and there is no higher category than this.
45	Given the location of this very large tree adjacent to a bungalow, officers are concerned over the potential harm that the tree can cause and do not wish to retain such a tree for a prolonged period of time. It can be safely assumed that the tree, with this type of decay, will fail at a point in the future and it is therefore the officer's recommendation to approve its felling with a condition to replant with another monterey pine in a nearby location.
46	Officers have considered the request to fell monterey pine that is marked as number 97 on the plan. The reason given in support states ' <i>Specimen is situated at the top of a slope and is wind exposed. The tree has a 12 degree</i>

	<i>lean to the east and exhibits minimal corrective growth in the upper canopy. Additionally, there's no significant buttressing below the leaning side or on the side of the downward slope which would typically be expected of a conifer in this setting; as such, the tree is likely subsiding. Furthermore, the crown shows minor dieback at its branch tips. Indicating reduced physiological function and, by extension, inhibited ability to compensate for structural deficiencies.</i>
47	It was the view of the officers that monterey pine trees are not trees that are notable for large, flared buttress roots and the absence of such large visible buttress roots, was not a concern and did not lead the officers to agree that the tree is subsiding and liable to fall. The detail given over the canopy health was also reviewed. Officers were not able to locate an area of canopy die back and a reduction of the trees physiological function, therefore both officers agreed that they cannot support the felling of his tree on the grounds given.
48	As officers did not agree with the applicants view that tree number 97 required felling on grounds of safety, they went on to consider the felling in relation to an assessment under regulation 17(3).
49	<p>Other elements that may accord with the practice of good forestry?</p> <p>Officers agree that as the tree is a non-native species and may be classed as an exotic species, the UKFS recognises the removal of such a tree where they occupy less than 10% of the woodland, should be eradicated. Therefore, it could be argued that the UKFS would support the felling of this tree, regardless of its condition.</p> <p>In this instance, the council would therefore be mandated to approve, unless the felling would fail to secure the maintenance of the special character or the woodland character of the area.</p>
50	However, a counter argument to this is the importance that the UKFS has placed on having a diverse woodland and one that will be readily adaptable to climate change with the potential of dryer conditions. This in itself is a recommendation in the UKFS and therefore constitutes a practice of good forestry.
51	<p>In addition to the above, the trees do not form part of the designated ancient semi-natural woodland and were planted to be a considerable future landscape feature that now adds to Marlhill's spirit of place. The UKFS recognises the importance of what people can feel contributes to a woodlands spirit of place and the harm that is associated with its loss.</p> <p>It is the officers opinion that both these points are valid reasons to justify the retention of the trees. It therefore leads to the council having grounds to refuse the proposal as the work does not accord with the practice of good forestry and not to lead to it mandating approval based purely on the grounds that they are 'exotic' species.</p>

52	<p>Special Character.</p> <p>It is the officers view that a woodland can have many special characters. DEFRA classify this area to be broadleaved woodland, however it is clear to see that the upper slopes of the woodland are dominated by large pine trees. These were planted to delineate the driveway that served the main house at Town Hill Park and are therefore considered to be a feature of the woodland.</p>
53	<p>The question over the pine trees forming a special character of the woodland, was considered in a previous application submitted by Southampton International Airport Limited to undertake felling as part of a woodland management scheme. This application had reference number 20/00340/TPO</p>
54	<p>The woodland management plan was presented to members of the Planning & Rights of Way Panel on the 23rd February 2021.</p> <p>Members considered the officers report in relation to the proposed woodland management plan and the impact to would have to the character of the area. Panel Members considered that the refusal to grant consent to the felling of the monterey pines and corsican pines was justified because the loss of the trees would fail to secure the maintenance of the special character of the woodland, would be harmful to the visual amenities of the local area and would fail to preserve the character and appearance of the conservation area.</p>
55	<p>The felling of the pine trees was subsequently refused, and the decision by the Council was subject to an appeal to the Planning Inspectorate. An appeal hearing was held on the 2nd and 3rd of November 2022.</p> <p>The Planning Inspectorate dismissed the appeal and issued their decision to all parties on the 29th of November 2022.</p> <p>With reference to the pine trees, the planning inspector included the following comment in the decision notice. <i>'they can be considered to be a part of the landmark, which is strikingly noticeable in winter because of the contrasting prominence of a number of evergreen pines alongside their bare deciduous neighbours. The loss of these trees, at a single point in time, would fail to maintain the prominent stature of the skyline trees'</i>.</p>
56	<p>The appeal inspector, in his conclusion wrote: -</p> <p><i>I consider that the blanket clearance of vegetation from the appeal site, including the removal of some of the mature pine specimens, would be harmful to public amenity, both as experienced when walking along the former carriageway and as seen from the area to the immediate south and beyond, in the context of the skyline trees.</i></p> <p><i>The proposal would therefore fail to secure the maintenance of the special character of the woodland or the woodland character of the area. In addition,</i></p>

	<p><i>it would not preserve the arboricultural character and appearance of the Itchen Valley Conservation Area.</i></p> <p>Officers are very much in support of this view and continue to hold this position and consider that the felling of monterey pine 92 would fail to maintain the special character of the woodland and therefore recommend refusal.</p>
57	<p>To further support this decision, it is the officers view that the felling of this tree would also be harmful to the conservation area as it forms part of its character.</p> <p>This view was also tested at the appeal hearing and the appeal inspector covered the conservation area assessment as part of their decision. It can clearly be seen that the inspector considers that the felling '<i>would not preserve the arboricultural character and appearance of the Itchen Valley Conservation Area</i>'.</p> <p>As such, the officers agree that the felling of the tree should be refused on the basis of it failing to secure the special character of the woodland and due to the negative impact that it would have to the arboricultural character and appearance of the Itchen Valley Conservation area.</p>
58	<p>Public Comments Received.</p> <p>At the time of writing this report, the Council had only received 1 neutral comment in relation to the proposal.</p> <p><i>Some of these are iconic trees and part of the special character of the area, whose loss is a shame. I note that the reason for felling is given as disease or danger posed by the trees, but I hope the Council will make its own inspection to confirm the necessity for felling. I would also like to see a requirement, if felling on grounds of disease is permitted, especially in relation to the pines, for SIA to inspect the felled timber afterwards to confirm or otherwise whether the expected level of disease was indeed present.</i></p>
59	<p>Compensation.</p> <p>Section 24 of The Town and Country Planning (Tree Preservation)(England) Regulations 2012 deals with compensation in relation to refusal of an application and states the following: -</p> <ul style="list-style-type: none"> • (1) If, on a claim under this regulation, a person establishes that loss or damage has been caused or incurred in consequence of— • (a) the refusal of any consent required under these Regulations; • (b) the grant of any such consent subject to conditions; or • (c) the refusal of any consent, agreement or approval required under such a condition,

	<p>that person shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.</p> <ul style="list-style-type: none"> • (2) No claim, other than a claim made under paragraph (3), may be made under this regulation— • (a) if more than 12 months have elapsed since the date of the authority’s decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or • (b) if the amount in respect of which the claim would otherwise have been made is less than £500. <p>(3) Where the authority refuse consent under these Regulations for the felling in the course of forestry operations of any part of a woodland area—</p> <ul style="list-style-type: none"> (a) they shall not be required to pay compensation to any person other than the owner of the land; (b) they shall not be required to pay compensation if more than 12 months have elapsed since the date of the authority’s decision or, where such a decision is subject to an appeal to the Secretary of State, the date of the final determination of the appeal; and (c) such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal. <ul style="list-style-type: none"> • (4) In any case other than those mentioned in paragraphs (2) or (3), <u>no compensation shall be payable</u> to a person for- <ul style="list-style-type: none"> (a) for loss of development value or other diminution in the value of the land’. (b) for loss or damage which, having regard to the application and the documents and particulars accompanying it, was not reasonably foreseeable when consent was refused or was granted subject to conditions. (c) for loss or damage reasonably foreseeable by that person and attributable to that person’s failure to take reasonable steps to avert the loss or damage or to mitigate its extent. (d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under these Regulations or the grant of any such consent subject to conditions.
60	<p>To consider what paragraph of section 24 could be engaged, officers first considered what work is being refused. In this instance it is the felling of a tree in a woodland, therefore paragraph 3 would appear to be the appropriate assessment of what claim for compensation may be applied.</p> <p>Paragraph 3 states ‘<i>Where the authority refuse consent under these Regulations for the felling in the course of forestry operations of any part of a</i></p>

	<p><i>woodland area</i>', therefore officers have considered the separate elements of this to determine its validity for a claim.</p>
61	<p>Felling in the course of forestry operations?</p> <p>Officers have reviewed the UKFS to determine what constitutes a 'Forestry Operation'. In the glossary of terms at the end of the document, a description of 'forestry operations' has been given and describes it as '<i>Work or procedures carried out within a forest such as felling, extraction, cultivation and planting</i>'. Therefore, it is the officers view that felling is a forestry operation.</p> <p>Officers note that to be a forestry operation, it describes it as being 'carried out within a forest'.</p> <p>The UKFS also gives a description of what is a forest, and it describes a forest to include the terms '<i>woods, copses, spinneys or shelterbelts</i>', which are generally regarded as being smaller areas.</p> <p>Given that the refused work is to fell a tree is regarded as a forestry operation and that it is within a 'forest', it is the officers opinion that the level of claim that the Council may be liable for '<i>shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal</i>'</p>
62	<p>Conclusion</p> <p>Officers agree that the felling that has been recommended for approval, is justified on the grounds of safety and that any approved felling may also attract a condition to replant within Marlhill Copse. This will include provision for monterey pines to be planted along the boundary of Marlhill in order to continue the special character of the woodland and that of the conservation area.</p> <p>The recommendation to refuse the felling of monterey pine 97 relates to the officer's view that the justification put forward in support, does not constitute justification on the grounds of safety. Officers consider its felling constitutes good forestry practice (by removing non-native species) and as such, officers assessed the impact that the proposed felling would have on the special character of the woodland and to the character of the conservation area. This assessment demonstrated that the felling would harm both the special character of the woodland and the conservation area, as such, officers were not mandated to approve the felling under regulation 17(3).</p>
63	<p>Replacement Trees.</p> <p>Under section 206 of The Town & Country Planning Act 1990, there is a requirement for the landowner to replant a tree that has been felled, therefore</p>

	<p>the council will add a condition to any approval for felling to ensure that replacement trees are replaced.</p> <p>Officers have given consideration over the species choice and agree that not all the tree's need be native species. Part of Marlhill is regarded as an old arboretum with unusual trees found within the ancient and semi natural woodland landscape.</p> <p>It is the officers view that non-native planting within the ancient and semi-natural woodland, although against the UKFS recommendations, would be appropriate to ensure that the arboretum character is retained. If only native trees are ever planted, over time, the unusual trees would be lost, resulting in the arboretum character being extinguished.</p> <p>It is therefore the officers proposal to condition that a number of monterey pines are planted to reinforce the pine dominated boundary with scots pine being planted on the northern side of the footpath.</p> <p>A red oak is to be planted in the space by tree 533 along with a swamp cypress to be planted to replace the ash being felled, marked as 6006 on the plan.</p> <p>The remaining species choice for the area will be a mixture of common yew, hazel to form understorey tree planting, with field maples being planted in more open areas.</p>
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RESOURCE IMPLICATIONS

Capital/Revenue

NONE

Property/Other

NONE

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

Other Legal Implications:

RISK MANAGEMENT IMPLICATIONS

POLICY FRAMEWORK IMPLICATIONS

KEY DECISION?

Yes/No

WARDS/COMMUNITIES AFFECTED:

SUPPORTING DOCUMENTATION

Appendices

1.	Letter from Forestry Commission reeving felling licence to the Council.
2.	Information supplied from Forestry Commission. 2.0 site Plan 2.1 Schedule of work
3.	Tree condition report with resistograph drill data for monterey pine 82.
4.	Officers site visit photograph confirming existence of <i>Phaeolus schweinitzii</i>

Documents In Members' Rooms

1.	
2.	

Equality Impact Assessment

Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.	Yes/No
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Data Protection Impact Assessment

Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.	Yes/No
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Other Background Documents

Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	
2.	