

## ***Legal Framework:***

### **(i) Duty of Care**

There is an obligation under the Occupiers Liability Act 1960 et seq. of reasonable safety owed by site owners to both visitors to and those adjacent to any site. The owner of the land may be held liable for any physical harm to person or property arising from an accident that was both reasonably foreseeable and reasonably preventable in that situation.

In order for an owner to foresee and prevent harm arising from failure, it is necessary to subject trees to 'regular inspection' by someone competent to identify defects and interpret the significance to public safety.

In law it is assumed that the owner of a tree is the owner of the land on which the tree stands. The person responsible for any tree has a 'duty of care' to ensure that all reasonable care is taken to avoid foreseeable harm to anyone on or adjacent to their land.

In practice it is never possible to eliminate all danger, so the law requires that a landowner takes reasonable care to identify possible sources of foreseeable danger and, where hazards have been identified, eliminate them as far as is possible.

Negligence is a breach of legal duty resulting in damage; for example, where a tree owner fails to take necessary action resulting in harm to people, animals or property.

### **(ii) Trees and Wildlife**

**Bats:** In Britain all bat species and their roosts are legally protected, by both domestic and international legislation. In Scotland, the key legislation that

applies is the Conservation (Natural Habitats &c.) Regulations 1994 (as amended). It is criminal offence in the UK to:

1. deliberately capture, injure or kill a bat;
2. intentionally or recklessly disturb a bat in its roost or deliberately disturb a group of bats;
3. damage or destroy a bat roosting place (even if bats are not occupying the roost at the time);
4. possess or advertise/sell/exchange a bat (dead or alive) or any part of a bat; or
5. intentionally or recklessly obstruct access to a bat roost.

Licences to permit illegal activities relating to bats and their roost sites can be issued for specific purposes by Scottish Natural Heritage. These are called 'derogation licences' or 'European Protected Species' licences, and are issued under the Habitats Regulations. It is an offence not to comply with the terms and conditions of a derogation licence. Work that affects bats or roosts undertaken without a licence is a criminal offence (see <http://www.snh.gov.uk/protecting-scotlands-nature/protected-species/which-and-how/mammals/bat-protection/> for further information).

**Birds:** In Scotland, all wild birds, their nests and their eggs are protected by the Wildlife and Countryside Act (1981) as amended by the Nature Conservation (Scotland) Act 2004. Further protection is offered to some species of birds that are particularly sensitive to disturbance. The amount of protection afforded to wild birds varies depending on whether the species are listed on various Schedules or Licences (see <http://www.snh.gov.uk/protecting-scotlands-nature/protected-species/which-and-how/birds/> for more information on this).

In summary, it is an offence to intentionally or recklessly:

- kill, injure or take a wild bird;
- take, damage, destroy or interfere with a nest of any wild bird whilst it is in use or being built
- obstruct or prevent any wild bird from using its nest; or
- take or destroy an egg of any wild bird.

**Other species:** Other protected species of wildlife may also be affected by tree works, for example, squirrels and pine martens as well as mosses and lichens (see <http://www.snh.gov.uk/protecting-scotlands-nature/protected-species/protected-species-az/> for further information).

### ***The Proposed Development:***

The Children's Wood Committee has applied to Glasgow City Council to formalise the use of the site as a community woodland and park (see Glasgow City Council planning application number 15/1223/DC).

### ***Tree and Woodland Survey and Analysis:***

The tree survey undertaken relates to 57 trees within the site boundary. The locations of these trees are plotted on the attached plan (Drawing Number 2016/001/01) and their condition, and any suggested remedial works, are set out in detail in the table at Appendix 1. This contains (where relevant) the following information with respect to each tree surveyed:

- Tree number;
- Tree species;
- Stem diameter at breast height (1.5m above ground level);
- Canopy spread (estimate in metres);
- Tree height (estimate in metres);

- Crown height (clearance to lowest branches in metres);
- Tree Condition Category (A, B, C or U);
- General condition (good, fair, poor or dead);
- Age (young, middle-aged, young-mature, mature, over-mature or veteran); and
- Whether single or multi-stemmed.

Individual trees have been tagged 3982 – 4000 and 5001 – 5037. Tag number 5003 is a group of c.15 stems of mainly young and middle-aged birch but also some young pine, maple, willow and sycamore with some seedling beech. Small trees of less than 10cm stem diameter, and areas of undergrowth, are described in general terms but have not been surveyed in detail.

Trees and groups have been categorised as follows, in accordance with the guidelines contained in BS 5837:

- **Category A** - Trees of high quality with an estimated remaining life expectancy of at least 40 years (shown in green on the attached plan);
- **Category B** - Trees of moderate quality with an estimated remaining life expectancy of at least 20 years (shown in blue on the attached plan);
- **Category C** - Trees of low quality with an estimated remaining life expectancy of at least 10 years (shown in grey on the attached plan); and
- **Category U** - Trees in such a condition that they cannot realistically be retained in the context of the current land use for longer than 10 years (shown in red on the attached plan).

Several areas of developing woodland and scrub are also shown on Drawing Number 2016/001/01 as W1, W2 and W3 and described in general terms below. As the site



was surveyed in January a full assessment of woodland ground flora could not be undertaken. The woodland areas are all less than 20 years old and are dominated by pioneer species, particularly silver birch and goat willow.

## **Area W1**

This copse occupies the north eastern corner of the site and is contiguous with an area of more mature woodland within the grounds of the adjacent Kelbourne Park Primary School. It is dominated by middle-aged, multi-stemmed silver birch with dense ash regeneration at sapling stage. Willow regeneration is also becoming established. Holly and hawthorn are becoming well-established along the northern boundary. Compost bins for the community garden are located on the northern boundary of the W1 with an informal network of paths providing access to them. Bramble is becoming well-established in the field layer along the western boundary and adjacent to the back lane along part of the south eastern boundary and while this is protecting the natural regeneration from trampling, it is also catching litter making it difficult to remove. Ivy is well-established in the field layer along the northern boundary of the copse and is smothering other field layer species.

## **Area W2**

This area of developing woodland lies to the south of the site on the former pitches. The woodland is dominated by birch and willow which varies in density throughout the area. W2 has been divided into three sub-compartments (as shown on Drawing Number 2016/001/01). Compartment W2a is dominated by multi-stemmed, widely spaced birch and willow. This area is well-used for recreation and includes a small bike skills area created by local children. The south western edge of W2a rises steeply by about 1.5m up to a flat bank where the mature lime trees are located. This area does not appear to have been blaes pitch. Ash regeneration is evident above and below the bank. The land in W2a also rises up towards the eastern boundary between the site and rear gardens of the adjacent tenements. Bramble

and *Lonicera nitida* are dense in this part of the site and sycamore is also present here. W2b is also dominated by willow and birch but appears to be younger than W2a. The woodland here is denser than in W2a and there appears to be less public access. W2c is very open with only a few birch trees present.

### **Area W3**

W3 has been divided into 2 sub-compartments (as shown on Drawing Number 2016/001/01). W3a is more established than the other woodland areas and is dominated by middle-aged birch trees and dense thicket stage regeneration of birch, willow, ash and some sycamore. There are several middle-aged and mature trees located along the boundaries of the site with Sanda Street and Kelbourne Street which pre-date the abandonment of the site. A large mature multi-stemmed white willow (tagged 5016) located on the boundary of W3 has been felled to a height of approximately one metre within the last few years but is re-growing from the cut stumps. Waste, mostly organic garden waste and arisings from the felled willow have been tipped within the north western corner of the site. The south western part of the site is a raised bank adjacent to the wall of the adjacent tenements and gardens with only scattering of young trees, several of them growing from the base of the wall. W3b is a prominent area of birch and willow regeneration on the former playing fields, contiguous with W3a.

### ***Recommendations for Management:***

#### **Mature lime trees adjacent to Clouston Street)**

The lime trees (tree numbers 3982 – 4000) along the southern boundary are a significant feature of the site and Clouston Street. The amenity value of the trees and their contribution to the character of the conservation area has been recognised by the serving of a Tree Preservation Order on 17 of the trees. The trees are generally in good condition although some deadwood is evident in the crowns of