

## **KNOTWEED NOTE**

### **Introduction**

1. At the last JAC meeting on 11<sup>th</sup> September, a question was asked as to how the Core Strategy inter-related to invasive species such Knotweed. The Strategy does not contain a policy which specifically relates to this issue, however, there are a number of controls in place in other legislation as set out below. The Core Strategy envisages significant development and therefore how Knotweed relates to development sites is of most relevance to the delivery of the Strategy.
2. The Environment Agency who are a regulatory body in this regard, have prepared an informative note in relation to Knotweed on development sites. The introduction to this document broadly sets out the context.
3. It states:

*“The above legal provisions have consequences for a range of people, including anybody involved in the management or disposal of Knotweed. For example, Knotweed which is cut down or excavated and removed from a development site must be transferred to an authorised person, and correctly described. It must be disposed of appropriately, as set out below in this code. If you are going to bury Knotweed on the development site you will need to consult us first. To make sure that the material does not contain any other contaminant that may affect the quality of groundwater. If you pollute the environment or cause harm to human health you may be prosecuted. Anyone who uses an herbicide must ensure that they do not pollute the water environment and the use of herbicides in or near water requires approval from us.*

*If any waste soil or Knotweed is sent for landfill either before or after any treatment, it must go to a landfill that is authorised to receive it.*

*It is not an offence to have Japanese Knotweed on your land and it is not a notifiable weed. Allowing Japanese Knotweed to grow onto other people’s property may be regarded as private nuisance under common law, but this would be a civil matter.”*

### **Legislation**

4. Managing Japanese Knotweed is the responsibility of the owner/occupier of the site. There is no statutory requirement to control/eradicate this species, nor is it necessary to report its presence as it is not listed in the Weeds Act 1959.

5. Japanese Knotweed is listed on Schedule 9, Part II of the Wildlife & Countryside Act 1981 making it an offence under Section 14 (2) (a) of the Act to “Plant or otherwise cause Japanese Knotweed to grow in the wild”. Both the police and local authorities have enforcement functions under the Act. Penalties for a section 14 offence have been modified by the Countryside & Rights of Way Act 2000 for England & Wales. A magistrate’s court can impose a maximum fine of £ 5000 or a prison sentence of six months or both.

## **Nuisance**

6. Allowing Japanese Knotweed to spread onto neighbouring land could be considered to be a private nuisance but is not a statutory nuisance.

## **Environmental Protection Act 1990**

7. Soil and waste containing Japanese Knotweed is considered to have the potential to cause ecological harm and is deemed, “controlled waste”, or “directive waste”.
8. Section 33 (1) of the Environmental Protection Act 1990 makes it an offence to keep, treat or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.
9. Section 34 of the Act 1990 places a duty of care on any person who imports, produces, carries, keeps, treats or disposes of controlled waste.
10. Their duty is to ensure that:
  - No-one disposes of the waste unlawfully or in a manner likely to cause pollution of the environment or harm to human health
  - Waste does not escape
  - Waste is only transported by a carrier that is either registered or exempt from registration by the controlled waste registration of carriers and Seizure of Vehicle Regulations 1991
11. Breach of the duty of care under Section 34 of the Environmental Protection Act 1990 is a criminal offence. The Environment Agency is responsible for Enforcement and a person found guilty of an offence under this section is liable to a fine not exceeding £5000 in the magistrate’s court and to a fine in the Crown Court.
12. Japanese Knotweed must be safely disposed of at an appropriately licensed landfill site in accordance with the Environmental Protection Act 1990 (Duty of Care) Regulations 1991. To ensure safe disposal, contaminated soils must be buried to a depth of at least 5 metres. Section 34 of the Environmental Protection Act 1990 also places a duty of care on all waste producers to

ensure that a written description of the waste and any harmful properties is provided to the site operator.

### **Hazardous Waste England & Wales Regulations 2005**

13. Untreated Knotweed is not regarded as a “Hazardous Waste”, but the above Regulations contain provisions about the handling and management of hazardous waste. Untreated Japanese Knotweed is not classed as a hazardous waste, but material containing Knotweed which has been treated with certain herbicides may be classified as hazardous waste.