

**EAST AYRSHIRE COUNCIL  
DEVELOPMENT SERVICES COMMITTEE: 03 MAY 2005  
TREE PRESERVATION ORDERS  
CONSULTATION REPORT**

**Report by Executive Director of Development and Property Services**

**1. PURPOSE OF REPORT**

**1.1** The purpose of this report is to advise the Committee on the contents of the Consultation Paper 'Tree Preservation Orders' issued by the Scottish Executive in December 2004 and seek the Committee's views on a proposed response to the Scottish Executive on the Consultation Paper.

**1.2** As the Scottish Executive required a formal response from the Council on the Consultation Paper by 28 February 2005 the Head of Planning, Development and Building Standards has already sent a provisional response to the Scottish Executive in the terms set out in the Appendix of this report and therefore the Committee is requested to homologate the Appendix as the Council's formal response to the Scottish Executive on the Consultation Paper.

**2. BACKGROUND**

**2.1** In Scotland the legislation relating to trees has changed little since 1975, and in 2002 research was commissioned to examine whether the Tree Preservation Order (TPO) procedures in Scotland are still effective. The research report 'The Effectiveness of Tree Preservation Orders in Scotland' (December 2002) found that the TPO system is basically sound, and that a series of fine tunings would provide an up-to-date structure for protecting trees across Scotland.

**2.2** A Tree Preservation Order (TPO) is an Order made by the Planning Authority in respect of trees or woodlands. The principal effect of a TPO is to prohibit the cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of trees without the Authority's consent. In the case of Conservation Areas, notice must be served on the Planning Authority before any work can be undertaken. The Planning Authority then has 6 weeks to either give their consent or serve a TPO for the trees in question. TPO's are generally used when a valued tree, group of trees or woodland is considered to be under threat.

**2.3** The Consultation Paper sets out a number of specific proposals for changes to the Town and Country Planning (Scotland) Act 1997 and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975. The Scottish Executive believes the proposals would improve the effectiveness of TPO's and simplify the system. Following full consideration of responses the Scottish Executive will take

forward any proposed changes to the legislation through the forthcoming Planning Bill and new regulations.

### **3. MAIN PROVISIONS OF CONSULTATION PAPER**

**3.1** The main provisions of the consultation paper can be summarised as follows:

- Removal of the distinction between TPOs and provisional TPOs
- Giving Planning Authorities emergency powers to prohibit tree operations
- Placing a requirement on Planning Authorities to monitor TPOs
- Requiring statutory undertakers to notify Planning Authorities of their intentions to undertake work on TPO'd trees
- Ensuring that all replacement trees are subject to TPO status
- Adding historic value to amenity is a reason for serving a TPO
- Introducing procedures for trees in ownership of Planning Authorities
- Extending notification procedures to owners/occupiers of land adjacent to TPO'd trees
- Removing exemptions from compensation to create a general right to compensation for loss or damage caused by TPO decisions.
- Making TPOs easier to understand and use
- Making the Forestry Commission a statutory consultee for planning applications involving felling of more than 0.25 hectares of woodland

### **4. PLANNING IMPLICATIONS**

**4.1** The majority of the provisions of the Consultation paper relate to proposed changes to procedures which have potential legal and technical, but not necessarily planning implications. There is a general increase in the scope for consultation regarding TPOs in terms of proposed increased public notification by the Council on TPOs to bodies such as Forestry Commission and clearer TPO documents. Conversely there is a requirement for statutory undertakers to notify the Council of their proposals affecting trees. The above proposed revised procedures and wider consultation should better enable the Council to protect trees of amenity, cultural and historic value and increase public participation in the TPO process.

**4.2** The proposal to remove the distinction between TPOs and provisional TPOs would have no planning implications because it would not materially change the Council's ability to protect trees of amenity value or significantly change the procedures whereby such protection was effected.

**4.3** The introduction of a duty for planning authorities to monitor and review TPOs is considered necessary to ensure that the Council's records in this respect are up to date. There may also be a requirement to involve Neighbourhood Services in such monitoring work to ensure that TPO'd trees

are in a condition where they are not a threat to public safety. If increased monitoring is introduced as a requirement additional resources will be needed and appropriate allocations should be made by Scottish Ministers.

**4.4** It is considered there is a need for more rigorous enforcement of replacement of TPO'd trees and the proposed monitoring of TPOs should assist this work.

**4.5** Preparation of guidance literature relating to TPOs by the Council might be required to accompany serving of TPOs to clarify their legal implications for owners etc.

## **5. LEGAL IMPLICATIONS**

**5.1** Any introduction of appeals procedures for TPOs under the new Planning Bill would have legal implications in terms of the need for adoption of new procedures by the Planning, Development and Building Standards Division and Legal Services.

**5.2** There could be potential legal problems in serving instant Tree Preservation Orders as proposed because of the requirement to serve such an Order on any persons involved in, or threatening, lopping or felling of trees.

## **6. FINANCIAL IMPLICATIONS**

**6.1** None.

## **7. RECOMMENDATIONS**

**7.1** It is recommended that the Committee agree to homologate the Appendix of this report as the Council's formal response to the Scottish Executive on the Tree Preservation Orders: Consultation Paper.

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**Executive Director of Development and Property Services**

25 April 2005 (JT/SA)  
FV-AN

## **LIST OF BACKGROUND PAPERS**

1. Tree Preservation Orders: Consultation Paper (Scottish Executive, December 2004).

## APPENDIX

The consultation takes the form of a series of questions on specific issues relating to Tree Preservation Orders. These questions and the provisional response of the Head of Planning, Development and Building Standards to them are set out below under respective issue headings.

### 1. Removing the distinction between TPOs and provisional TPOs

Q- It is proposed that all TPOs should take effect immediately, and remain in force provisionally for a period of six months or until they are confirmed.

Do you agree with this proposal?

**A- Yes. In practice, owing to the need to target limited resources, most Tree Preservation Orders within East Ayrshire are made as provisionals as a response to a perceived threat to trees of amenity value. However even where there is no evidence of a threat to trees the proposal that trees of value should have immediate statutory protection once they have been identified as such is fully supported.**

### 2. Protecting trees under immediate threat

Q- It is proposed to introduce provisions that would give Planning Authorities an emergency power to prohibit tree operations. The notice would be publicised by a site notice identifying the trees in question and their location. The notice would stay in force for a maximum of 28 days.

Do you agree with this proposal?

**A- Yes, in principle. Under the present system trees which are considered worthy of protection are vulnerable up to the time of serving and advertising a TPO. It would be necessary for such new provisions to take effect immediately (i.e same day) the threat is identified (rather in the manner of Stop Notices under current Enforcement procedures). There are practical problems with this in that it might not be possible to identify quickly those threatening action on the trees. Also, while notices can be put up on individual trees, where it is intended to protect an area of trees or woodland extent of the Order. Guidance would be required in any proposed Bill regarding such technical matters.**

### 3. Placing a general requirement on Local Authorities to monitor TPOs

Q- In the forthcoming planning Bill it is proposed to introduce a general duty on Planning Authorities to monitor and review TPOs.

Do you agree with this proposal?

What do you think would be the implications of such a duty?

***A- It is considered that monitoring of TPOs is essential if an accurate record of protected trees is to be maintained. Over time there may be planning permissions granted for the removal of TPO'd trees. This may have either resulted in possible reduction in the number of protected trees or, if permissions were conditioned for replacement trees to be planted, possible changes in the species included for protection. Therefore there may be a need to amend the schedules relating to many original TPOs.***

***There are considerable resource implications regarding this monitoring process in terms of checking TPO sites to ensure that existing Council records accord with the situation on the ground.***

***There are also legal implications in terms of TPO documentation not reflecting the situation on the ground and the possibility that certain TPOs in this category may not be valid in terms of statutory protection.***

#### **4. Clarifying the position on varying and revolving powers**

Q- It is proposed to introduce much simpler procedures which will not require Planning Authorities to invite objections and representations or confirm any decision to revoke a TPO. Nor will they have to confirm any decision to vary a TPO in cases where no new trees or woodlands are being added to the order. Instead, the decision to revoke or vary the TPO in these circumstances will take immediate effect. The Planning Authority will still be required to inform the owners affected by the revocation or variation of their decision. Any decision to vary or revoke a TPO will also have to be recorded formally on the TPO document and be made available for public inspection. These procedures would be set out secondary legislation.

Do you agree with these proposals?

***A- In principle the above proposed streamlining of revocation procedures relating to TPOs is to be welcomed and supported.***

#### **5. Statutory Undertakers and TPO's**

Q- It is proposed that statutory undertakers should be required to notify Planning Authorities when undertaking operations on a tree, group of trees or woodland covered by a TPO.

Do you agree with this proposal?

What do you think would be the implications of this requirement?

**6.1 This proposal is welcomed. In East Ayrshire there are already informal arrangements with some statutory undertakers regarding consultations on tree work but many trees are lost through statutory undertakers not informing the Council of their intentions. A requirement for statutory undertakers to notify the Council of proposed tree works would therefore be fully supported.**

## **6. Ensuring that all replacement trees are subject to TPOs**

Q- It is proposed that TPOs should remain in force for all replacement trees, including those required as a condition of consent.

Do you agree with this proposal?

**A- Yes for replacement trees within a TPO. As this is already under Section 167 of the Town and Country Planning (Scotland) Act 1997 it is considered that the principal issue relates to the need for better enforcement of replacement of TPO'd trees and monitoring of such protected trees as raised under point 3 above.**

## **7. Adding historic value to amenity as a reason for serving a TPO**

Q- Do you consider the existing provisions to be adequate for the protection of trees of cultural or historical significance?

**A- Yes. Reasoning for giving certain trees TPO status often includes reference to cultural associations or their value as part of, for example an historic landscape.**

## **8. Introducing procedures for trees in the ownership of Planning Authorities**

Q- It is proposed that before carrying out work on protected trees, Planning Authorities will have to publicise their proposals by displaying a site notice on or near the site on which the trees are situated. The site notice will have to give details of the proposal, the Planning Authority's reasons for it, and will have to specify a date (at least 21 days from the date of the site notice) by which any comments on the proposal should be received. Any comments received will have to be considered before the Planning Authority can make a decision on the proposal, and this decision must not be made by a Committee or officer of the Authority responsible for managing the land in question.

Do you agree with this proposal?

What do you think would be the implications of this procedure?

**A- There are no objections in principle to this as it would ensure that Local Authority proposals in relation to tree work to protected trees would be subject to the same scrutiny as proposals by the public. It therefore could be seen as a more equitable system. Exemptions may, however, have to be made for works done by Local Authorities for safety reasons or routine annual maintenance.**

#### **9. Extending notification procedures**

Q- It is proposed to extend notification to the owners and occupiers of any land adjoining the land on which a TPO is being served. This requirement would also apply to related appeals procedures.

Do you agree with this proposal?

What do you think would be the implications of this?

**A- There is no objection to this in principle. It would mean proposals for the Tree Preservation Orders would be put on an equitable basis with other planning proposals. There would, however, be additional administrative work involved which would require to be factored into any additional resources identified for implementing the provisions of any new planning legislation.**

#### **10. Removing compensation exemptions**

Q- It is proposed to remove the exemption from compensation established by Article 6 certificates, creating a general right to compensation for such loss or damage caused by Planning Authority's decision.

Do you agree with this proposal?

What do you think would be the implications for Planning Authorities?

Is there a need to restrict minor compensation claims in Scotland?

**A- It is considered that Article 6 powers for Local Authorities should remain because they enable Council's to exercise their powers provided there is a reasoned forestry and/or planning justification for the Tree Preservation Order. Were any appeals procedure to be put in place for Tree Preservation Orders in any future planning legislation such reasoning would form the Council's case for promoting the Order.**

#### **11. Providing a clear legislative framework**

Q- It is proposed to make the content and language of TPOs clearer, easier to understand and easier to use.

How do you think this can be achieved and what essential information do you think should be conveyed in the model order?

***A- It is considered that the existing legislative framework for TPOs is relatively simple. However, it is accepted that the legal documentation that forms the greater part of the TPO is of necessity lengthy and closely worded. It is suggested that rather than dispense with valuable legal information which the Order contains any serving of TPOs should be accompanied by an explanatory leaflet setting out the general terms of the Order in a simplified form.***

**12. Making the Forestry Commission a statutory consultee on planning applications that involve felling of more than 0.25 ha**

Q - It is proposed to make the Forestry Commission a statutory consultee for applications that involve more than 0.25 ha of felling. Do you agree with this proposal? Would a requirement to notify Scottish Ministers also be necessary?

***A - In principle it is considered that the Forestry Commission should be consulted regarding any planning application which would normally require a Felling Licence under the Forestry Act 1967.***