

REPORT TO: PLANNING & TRANSPORTATION COMMITTEE - 21 MARCH 2005

REPORT ON: SCOTTISH EXECUTIVE DEVELOPMENT DEPARTMENT
CONSULTATION PAPER ON TREE PRESERVATION ORDERS

REPORT BY: DIRECTOR OF PLANNING & TRANSPORTATION

REPORT NO: 163-2005

1 PURPOSE OF REPORT

- 1.1 To make the Committee aware of the consultation being undertaken by the Scottish Executive on the subject of Tree Preservation Orders and to make recommendations as to the Council's response.

2 RECOMMENDATION

- 2.1 It is recommended that the Comments outlined in the Appendix to this report be forwarded to the Scottish Executive as the Council's formal response to the Consultation paper Tree Preservation Orders.

3 FINANCIAL IMPLICATION

- 3.1 There are no direct financial implications for the Council arising from this report.

4 LOCAL AGENDA 21 IMPLICATIONS

- 4.1 The protection of trees is an important aspect of the Council's duties and responsibilities for the care of the natural and built environment. In particular the consultation paper emphasises the importance of Key Theme 3 : The diversity of nature is valued and protected. and Key Theme 11 : All sections of the community are empowered to participate in decision-making.

5 EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 There are no direct equal opportunities implications

6 BACKGROUND

- 6.1 The Scottish Executive has consulted the Council on the Consultation Paper Tree Preservation Orders. Responses were due by 28 February 2005 and in view of Committee timetabling a provisional officer response has been issued to the Scottish Executive pending receipt of the formal views of the Committee. The paper sets out a number of specific proposals for changes to the Town & Country Planning (Scotland) Act 1997 and the Tree Preservation Order and Trees in Conservation Areas Regulations which deal with the formal procedures for the making of TPOs. The consultation paper seeks views on 12 specific proposals. The full list of proposals and the recommended response respect of each is attached as an Appendix to this report.
- 6.2 In general the proposals in the consultation paper, subject to the comments made in this report, will improve the effectiveness of tree preservation orders and are largely supported. Copies of the consultation paper can be found in the Members Lounges

and on the Scottish Executive website at:
<http://www.scotland.gov.uk/consultations>

- 6.3 In Scotland the legislation relating to trees has changed little since 1975, and in 2002 research was commissioned by the Scottish Executive to examine whether the TPO procedures in Scotland are still effective. The research report '*The Effectiveness of Tree Preservation Orders in Scotland*' published in December that year, 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. The proposals for legislative change presented in the consultation paper are based on the findings of this report and subsequent discussions with stakeholders.
- 6.4 The principles of tree preservation are long established and the consultation does not seek views on the many wider issues relating to trees. The 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 paper states that these proposals would improve the effectiveness of TPOs and simplify a sometimes complicated system. Following full consideration of all the responses, the Scottish Executive proposes that changes to the legislation be taken forward through the forthcoming Planning Bill and new regulations.

7 CONSULTATIONS

- 7.1 The Chief Executive, Depute Chief Executive (Support Services), Depute chief Executive (Finance) and the Director of Leisure and Arts and the Director of Contract services have been consulted and are in agreement with the terms of the report.

8 BACKGROUND PAPERS

Scottish Development Department Consultation Paper: Tree Preservation Orders
December 2004

Mike Galloway
Director of Planning & Transportation

Ian G S Mudie
Head of Planning

IGSM/IAR/RJ

18 February 2005

Dundee City Council
Tayside House
Dundee

APPENDIX

Scottish Executive Development Department Consultation paper: Trees in Conservation Areas

Question	Recommended Council Response
<p>1 We propose 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?</p> <p>2</p>	<p>Agreed. As stated in the Consultation Paper, it is common practice for Authorities to automatically commence all TPOs on a provisional basis. This would merely tidy up the process in a formal manner. Dundee adopts this procedure already.</p>
<p>3 We propose 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?</p> <p>4</p>	<p>This proposal is supported. This would be akin to a form of "Stop Notice" for trees. It would have the effect of protecting trees whilst preparatory work was undertaken prior to the Order being served and taking effect. How effective such notices will be will depend on how they are to operate and this needs to be carefully considered. It is assumed that details of how and when such a notice can be used, including the potential for compensation payments liability will be laid out in the amended Regulations and there should be prior consultation on such proposals.</p>
<p>3 In the forthcoming planning bill, we propose 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?</p>	<p>It appears appropriate that, when planning authorities make Tree Preservation Orders, that they keep such Orders up to date to ensure they are enforceable and relevant. Such a duty would however have resource implications for planning authorities, as sufficient and suitably qualified staff would be required for monitor and review duties.</p>
<p>4 We propose 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</p>	<p>This is strongly supported. Any simplification of procedures that would assist planning authorities in monitoring and updating TPOs is supported particularly those in respect of the revocation of Orders which are particularly complex.</p>

Question	Recommended Council Response
TPO document and be made available for public inspection. These procedures would be set out in secondary legislation. Do you agree with these proposals?	
5 We propose 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?	<p>This proposal is strongly supported. There would therefore need to be some mechanism that would enable a planning authority to raise with the statutory undertaker, in a meaningful way, any concerns it has over the proposals so notified. While it is acknowledged that statutory undertakers may enjoy powers which allows it to carry out certain tree work, at the very least a duty should be placed on statutory undertakers, in the proposed new Planning Bill and ultimately through other legislation, to take reasonable steps to ensure that, in carrying out their operations, adequate regard is given to protecting trees and the amenity they provide.</p> <p>The Act places no duties on statutory undertakers to replace trees that they fell. Where replacement planting is possible at or close to the site of the original trees there should be introduced a duty to replace such trees.</p>
6 We propose that TPOs should remain in force for all replacement trees, including those required as a condition of consent. Do you agree with this proposal? 7	It is important that trees of whatever standard which replace those authorised to be felled under TPO provisions gain equal protection to those which remain.
8 Do you consider the existing provisions to be adequate for the protection of trees of cultural or historic significance?	The case is not made for any essential change. If the flexibility of existing legislation is to be retained to allow the word "amenity" to apply to trees of these types then protection would be adequate. Nevertheless, it is appreciated that some trees of little or no amenity value are important. To offer these types of tree TPO style protection could lead to issues of definition of "cultural..... and "historic".
9 We propose 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	This proposal is not supported. It is considered that arrangements where one Committee of a Council were to consider and determine the proposed actions of another Committee as landlord (ie owner and custodian of the trees in question) would not be practicable nor be in the best interests of democratic decision making. The present Committee structures of Dundee City Council would not make this process practicable for this authority.

Question	Recommended Council Response
<p>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?</p>	
<p>10 We propose 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?</p>	<p>This proposal is not supported. The Council's experience is that the arrangements for publicity under the current legislation are adequate. Establishing the ownership of neighbouring land would be problematic without expensive and time consuming legal searches.</p>
<p>11 We propose to remove the exemption from compensation established by Article 6 certificates creating a general right to compensation for such loss or damage caused by a Planning Authority 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?</p> <p>12</p>	<p>This proposal is not supported. The legal provisions relating to compensation are complex although it is considered that the Council's best interests are served by retaining the current provisions of Article 6 which requires either special/outstanding amenity or arboricultural reasons to be specified when it refused to grant permission for the undertaking of works to a tree covered by a TPO. The removal of the provisions appear solely based on the issues that Article 6 Certificates are rarely used and that their use in England has been removed.</p>
<p>13 We want 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?</p>	<p>Although Tree Preservation Orders by their nature must necessarily be legal documents it ought to be possible to find a formula which ensures their legal robustness whilst also ensuring that those reading and interpreting them understand what is proposed and the implications for landowners in particular. For example a non legally binding advice note written in layman's terms could be attached to each draft and confirmed TPOs .</p>
<p>14 We propose to make the Forestry Commission a statutory consultee for applications that involve more than 0.25ha of felling. Do you agree with this proposal? Would a requirement to notify Scottish Ministers also be necessary?</p>	<p>Although this proposal does not relate to Tree Preservation Orders per se it is nevertheless supported. A requirement to notify the Scottish Ministers is not seen as necessary.</p>