

ABERDEEN CITY COUNCIL

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COMMITTEE	Planning and Development Management Committee
DATE	15 <sup>th</sup> February 2018
REPORT TITLE	Confirmation of Tree Preservation Order number 249/2017 Malcolm Road, Peterculter, Aberdeen
REPORT NUMBER	CHI/18/003
DIRECTOR	Bernadette Marjoram
REPORT AUTHOR	Kevin Wright

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## **1 PURPOSE OF REPORT**

- 1.1 To request the confirmation of the provisional Tree Preservation Order entitled 249/2017 Malcolm Road made by the Head of Planning and Sustainable Development under delegated powers. The provisional order currently provides temporary protection for the trees included in the order, but requires to be confirmed by the Planning Development Management Committee to provide long term protection.

## **2 RECOMMENDATION**

- 2.1 It is recommended that Members confirm the making of Tree Preservation Order 249/2017 Malcolm Road subject to modification and instruct the Head of Legal and Democratic Services to attend to the requisite procedures to serve the Order as confirmed upon the interested parties and seek to register the Order with the Registers of Scotland.
- 2.2 Section 4.3 below details the extent of modification.

## **3 BACKGROUND**

- 3.1 The Town and Country Planning (Scotland) Act 1997 places a duty on the planning authority to ensure that adequate provision is made for the preservation of trees. Where the planning authority considers it to be expedient in the interests of amenity they may make provision for the preservation of trees or woodlands by serving a Tree Preservation Order (TPO).
- 3.2 A TPO gives statutory protection to trees and woodlands that are considered to contribute to amenity or are of cultural and/or historical significance. Protecting trees has

the further benefit of contributing to the Council's policies on improving our natural environment, improving citizen wellbeing and combating climate change.

- 3.3 The process of applying for work to protected trees allows for Council officers, Elected Members, Community Councils and members of the public an opportunity to comment on proposed works.
- 3.4 Tree Preservation Order number 249/2017 Malcolm Road was served as a provisional order on 27<sup>th</sup> September 2017. The serving of the provisional order was necessary to prevent the further unauthorised felling of woodland. A felling license application had been made prior to felling works commencing however the Forestry Commission Scotland had refused a license. Based on the unauthorised felling activity the Forestry Commission Scotland has pursued prosecution; the case has been accepted by the Procurator Fiscals office.

The reasons given in the statement of reasons for serving the order are noted in section 3.5 to 3.8 below.

- 3.5 The land on the northeast side of Malcolm Road contains trees which are considered to make significant contributions to the amenity and landscape character of the surrounding area. They present important landscape features which have positive impacts in providing landscaped backdrops and context to the area, including proposed developments bounding the site.
- 3.6 In addition, the site is included in the Scottish Ancient Woodland Inventory (AWI), prepared by Scottish Natural Heritage. This site was designated as such on the basis that it is 'Long Established of Plantation Origin – known to have been wooded since the 1870s'. Ancient Woods are important because;
  - They include all remnants of Scotland's original woodland.
  - Woods and veteran trees are ancient monuments whose value to the local community and historians may be as great as that of the older buildings in a parish.
- 3.7 Scottish Planning Policy identifies Ancient Woodland as an important and irreplaceable national resource that should be protected and enhanced. The Scottish Government's policy on control of woodland removal states that there is a strong presumption against removing ancient semi-natural woodland or Plantations on ancient woodland sites.
- 3.8 The serving of a Tree Preservation Order will allow Aberdeen City Council to consider all future tree work proposals and prevent works that are considered to be unsympathetic. In addition the order will ensure future tree cover in this area of Aberdeen.

## **4 REPRESENTATIONS**

- 4.1 Two representations have been submitted following the serving of the provisional tree preservation order. Copies of both representations are attached.

- 4.2 Whilst the two representations are not identical they raise many of the same issues. The issues raised in each representation can be categorised into two subject areas; the first subject refers to the legal validity of the order and the second subject relates to more general objections to the serving of the order.
- 4.3 Comments 1-5 in the Combined Corporation (BVI) Limited representation and comments a-i in the Churchill Homes representation highlight concerns regarding the legal validity of the order. Legal advice has been provided by the Planning and Environment Legal Team in relation to the above comments. The Team have confirmed that the issues raised within the representations do not impact upon the legal validity of the order. The legal Team have acknowledged the omission of signatures under each schedule; the team have acknowledged that this is common practice but is not a legal requirement. Prior to serving the confirmed order the order will be modified to include signatures under each schedule.
- 4.4 Comments A-D in the Combined Corporation (BVI) Limited representation and comments 1-9 in the Churchill Homes representation relate to general objections to the serving of a tree preservation order, raise a number of concerns relating to the impact of the order and make observations relating to tree stock on neighbouring land.

The comments noted above have been considered by the planning authority; none of the comments are considered to affect the reasons for serving the provisional tree preservation order or seeking the confirmation of the order.

## **5 FINANCIAL IMPLICATIONS**

- 5.1 There are no immediate financial implications. The costs associated with the serving of the provisional TPO and confirming the TPO will be met within existing budgets.

## **6 LEGAL IMPLICATIONS**

- 6.1 There are no direct legal implications arising from the recommendations of this report.

## **7 MANAGEMENT OF RISK**

- 7.1 Environmental/Legal/Reputational Risk

The Town and Country Planning (Scotland) Act and the Scottish Governments Policy on Control of Woodland Removal places a duty on the Council to consider the preservation of trees and woodlands in order to safeguard the multiple benefits that trees and woodlands provide.

- 7.2 The use of a Tree Preservation Order to aid the retention and appropriate management of trees and woodlands allows the council to undertake the above duties. There is a low

to medium risk of environmental, legal and reputational harm if we do not undertake our duties as expected.

7.3 The above risk can be mitigated by giving due consideration to the appropriateness of confirming Tree Preservation Order 249/2017 Malcolm Road.

7.4 There is no Financial, Employee, Customer and Technology risk.

## **8 IMPACT SECTION**

### **8.1 Economy**

The proposal is unlikely to significantly contribute or result in a negative impact on the economy of Aberdeen.

### **8.2 People**

The proposal is unlikely to have any significant impact on people with protected characteristics or any negative impact on the delivery of the Councils Equality outcomes.

### **8.3 Place**

The proposal will have a positive impact on the environment. The proposal seeks to safeguard public amenity and seeks to ensure suitable future management of the trees included within the order.

Trees and woodlands deliver multiple benefits. In addition to their contribution to amenity they play a significant role in improving air quality, assist in mitigating climate change, provide health benefits and help improve social wellbeing. They are an integral habitat feature and directly and indirectly support a wide range of wildlife.

### **8.4 Technology**

The proposal will not advance technology for the improvement of public services.

## **9 BACKGROUND PAPERS**

- Town and Country Planning (Scotland) Act 1997, Part VII Special Controls, Chapter I Trees
- The Scottish Governments Policy on Control of Woodland Removal

## **10 APPENDICES**

- Plan detailing the extent of TPO 249/2017
- Representation on behalf of Combined Corporation (BVI) Limited
- Representation – Churchill Homes

## 11 REPORT AUTHOR DETAILS

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