

ABERDEEN CITY COUNCIL

COMMITTEE	Planning Development Management Committee
DATE	18 th April 2019
REPORT TITLE	Confirmation of Tree Preservation Order Number 256/2018 Malcolm Road
REPORT NUMBER	PLA/19/233
DIRECTOR	
CHIEF OFFICER	Gale Beattie
REPORT AUTHOR	Kevin Wright
TERMS OF REFERENCE	15

1 PURPOSE OF REPORT

- 1.1 To request the confirmation with modifications of provisional Tree Preservation Order entitled 256/2018 Malcolm Road made by the Chief Officer Strategic Place Planning under delegated powers. The provisional order currently provides temporary protection for the trees identified within 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 256/2018 Malcolm Road and instruct the Chief Officer - Governance 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.

3 BACKGROUND

- 3.1 The land included in this tree preservation order has previously been submitted to PDMC as two separate tree preservation orders. Committee requested that the two orders be combined. The attached revised order combines both areas of land into a single order.
- 3.2 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).

- 3.3 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.
- 3.4 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.
- 3.5 Tree Preservation Order number 256/2018 Malcolm Road was served as a provisional order on 11th November 2018. The order requires to be confirmed by 11th May 2019. The reasons for serving the order are noted in section 3.5 below.
- 3.6 This tree preservation order is being made in the interests of amenity to make provision for the preservation of trees and woodlands. The land on the northeast side of Malcolm Road contains trees which are considered to make significant contributions to the amenity and landscape of the 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.
- 3.7 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.
- 3.8 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.
- 3.9 The group of trees to the southwest on the opposite side of Malcolm Road are considered to complement the larger woodland to the northeast and are considered to contribute to the overall amenity and landscape of the local area.
- 3.10 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.
- 3.11 One representation was received in relation to this order on behalf of CC & Pumps (BVI) Ltd. The representation raised 8 points in relation to the order; points 1-4 and points A-D.

3.12 Points 1-4 raised questions pertaining to the legal validity of the order. These points have been reviewed by our Planning and Environmental legal team, their supplied response to the representation is noted below;

'With regards to points 1 to 4 raised in your letter we are surprised to learn that the copy of the Order served on your client appears to be incomplete. Having reviewed the signed Order and Statement of Reasons that we hold for viewing by members of the public it would appear that all of the information which you have advised is not included within your clients copy of the TPO is contained within the versions that we hold here. We enclose herewith a copy of the Order and Statement of Reasons that can be obtained by the public which contains all the information required by the 1997 Act. We have received no comments from the Conservator of Forests (a statutory recipient of the Order) or the Registers of Scotland regarding missing information. In any event, as your client has now submitted representations, we consider that any defect in service (which is denied) has now been cured. In light of the foregoing we do not agree with your view that the TPO is not legally enforceable.'

It is concluded that points 1-4 are not a barrier to confirming the TPO. A modified notice served as part of confirming the order, as permitted in the regulations, will be served and will include a plan detailing the extent of land covered by the order.

3.13 Point A referred to criteria for serving a TPO. The representation noted that the Regulations allow an order to be served where trees are of cultural and/or historical significance. The representation suggests that the trees are of no cultural and/or historical significance.

The Regulations also allow for an order to be served where it is expedient in the interests of amenity. The Statement of Reasons that accompanied the provisional order is clear that the order was made in the interests of amenity.

3.14 Point B referred to the claim made in the Statement of Reasons that the woodland is designated as Ancient Woodland; classification 'Long Established of Plantation Origin'. This designation does not infer that the current tree stock is of ancient origin; only that it is included in the Scottish Natural Heritage Ancient Woodland Inventory as being of ancient woodland origin.

The current birch woodland is unlikely to be self-seeded. It is more likely that the woodland has generated from the existing seedbank within the soil disturbed during the previous harvesting operations. This goes some way to explain the importance of appropriate management of Ancient Woodland sites and why such designations exist.

3.15 Point C refers to concerns relating to anti-social behaviour and comments that confirming TPO 256/2018 will result in the felled timber being unable to be removed from the site.

This statement is not accurate. The TPO will not necessarily prevent such works. The TPO requires the landowner to apply for consent to undertake specific works prior to undertaking them to ensure appropriate management of the site. Discussions have taken place in relation to future management of the site, including the removal of existing tree stock. No firm proposal has been submitted to Aberdeen City Council for consideration or approval.

3.16 Point D raises concerns over an area of ground to the South-west of property title ABN69460 not being included in TPO 256/2018.

The area of land highlighted is included in TPO256/2018.

3.17 It is considered that points A-D are addressed and have no bearing on the committees ability to approve, with modification, TPO256/2018.

4 FINANCIAL IMPLICATIONS

4.1 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.

5 LEGAL IMPLICATIONS

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

6 MANAGEMENT OF RISK

	Risk	Low (L), Medium (M), High (H)	Mitigation
Financial	n/a		
Legal	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	Low	The risk can be mitigated by giving due consideration to the appropriateness of confirming the Tree Preservation order.

	multiple benefits that trees and woodlands provide. The risk is associated with not undertaking our duties as required/expected.		
Employee	n/a		
Customer	n/a		
Environment	See comments under legal risk.	Low	The risk can be mitigated by giving due consideration to the appropriateness of confirming the Tree Preservation order.
Technology	n/a		
Reputational	See comments under legal risk.	Low	The risk can be mitigated by giving due consideration to the appropriateness of confirming the Tree Preservation order.

7. OUTCOMES

Local Outcome Improvement Plan Themes	
	Impact of Report
Prosperous Economy	The proposal is unlikely to significantly contribute or result in a negative impact on the economy of Aberdeen.
Prosperous 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.
Prosperous 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.

Enabling Technology	The proposal will not advance technology for the improvement of public services.
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8 IMPACT ASSESSMENTS

Assessment	Outcome
Equality & Human Rights Impact Assessment	Full EHRIA not required
Data Protection Impact Assessment	Not required
Duty of Due Regard / Fairer Scotland Duty	Not applicable.

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 (if applicable)

TPO256/2018 Site Plan
Representation – CC & Pumps (BVI) Ltd

11 REPORT AUTHOR CONTACT DETAILS

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