

Item: 9

Development and Infrastructure Committee: 12 September 2017.

Review of Tree Preservation Orders.

Report by Executive Director Development and Infrastructure.

1. Purpose of Report

To outline a methodology for the review of Tree Preservation Orders in Orkney.

2. Recommendations

The Committee is invited to note:

2.1.

That, on 13 September 2016, the Committee recommended that the Executive Director of Development and Infrastructure should submit a report, to a meeting of the Committee to be held during 2017, detailing options and costs associated with undertaking a survey of all trees throughout Orkney, with a view to identifying those worthy of, and requiring protection by, Tree Preservation Orders

2.2.

That there are currently two Tree Preservation Orders in place covering St Margaret's Hope and Finstown, which are potentially no longer fit for purpose.

2.3.

That a pilot survey of the St Margaret's Hope Tree Preservation Order has been undertaken.

2.4.

That a number of trees covered by existing Tree Preservation Orders have been removed due to storm damage, disease, natural decline and illegal felling.

2.5.

That, although it is not possible to give an accurate cost to undertake a survey of all trees in Orkney due to the number and dispersed nature of the trees, coupled with the limited season in which surveys are best carried out, it is, however, estimated that such a study could amount to hundreds of thousands of pounds in staff time and legal costs.

2.6.

The proposed methodologies for the designation of new Tree Preservation Orders, as outlined in section 6 of this report.

It is recommended:

2.7.

That, rather than undertake a comprehensive, county-wide survey, the public be encouraged to engage in nominating trees suitable for assessment for Tree Preservation Orders.

2.8.

That the undernoted methodology for the designation of new Tree Preservation Orders be approved:

- Carry out a survey of trees using the Tree Evaluation Method for Preservation Orders.
- Undertake searches with Land Registry of Scotland to determine ownership of each tree identified as being suitable for a Tree Preservation Order designation.
- Tree Preservation Orders drafted for each eligible tree ownership, as follows:
 - Where one property owner owns one eligible tree, one Tree Preservation Order would be created.
 - Where one property owner owns several eligible trees, one Tree Preservation Order would be created with each tree listed individually.

3. Policy Aspects

Identifying and designating Tree Preservation Orders is a statutory duty of the Council.

4. Introduction

4.1.

At its meeting held on 13 September 2016, when considering the consultation draft of the National Environment Supplementary Guidance, the Development and Infrastructure Committee noted inter alia that existing Tree Preservation Orders, which were addressed within Policy 9: Natural Environment of the Proposed Plan, were currently under review, as detailed in section 7 of the report by the Executive Director of Development and Infrastructure.

4.2.

The Committee recommended inter alia that the Executive Director of Development and Infrastructure should submit a report, to a meeting of the Committee to be held during 2017, detailing options and costs associated with undertaking a survey of all trees throughout Orkney, with a view to identifying those worthy of, and requiring protection by, Tree Preservation Orders.

5. Tree Preservation Orders in Orkney

5.1.

There are currently only two Tree Preservation Orders in place, covering St Margaret's Hope and Finstown. These have been in place for some time and are potentially no longer fit for purpose.

5.2.

Other local authorities have carried out reviews in recent years with the result being that a 'blanket' approach to Tree Preservation Orders is no longer considered appropriate.

5.3.

A number of trees under the St Margaret's Hope and Finstown Tree Preservation Orders have been removed over the years either due to storm damage, disease, natural decline or illegal felling. In order to address these issues, it is proposed that the Tree Preservation Orders covering St Margaret's Hope and Finstown be updated using the methodology outlined in section 6 below. A pilot survey of the St Margaret's Hope Tree Preservation Order has been undertaken and it is estimated that 45 designations would need to be made to cover the area under the existing area Tree Preservation Order.

5.4.

It is proposed that, in future, an appropriate system be employed to survey and evaluate trees for Tree Preservation Order purposes. The system in use by many local authorities is called the Tree Evaluation Method for Preservation Orders. This method of evaluating trees was developed in 2002 and is now considered a standard system for assessing potential designations.

5.5.

It is not possible to give an accurate cost to undertake a survey of all trees in Orkney due to the number and dispersed nature of the trees, coupled with the limited season in which surveys are best carried out. It is, however, estimated that such a study would likely amount to hundreds of thousands of pounds in staff time and legal costs.

5.6.

Tree Preservation Orders may be proposed by members of the public where they consider a particular tree, group of trees or woodland to be of merit. They can also be used to protect trees where it is felt that pressure from development could be detrimental to trees of merit. Tree Preservation Orders of this nature could be considered in tandem with planning applications and designated in advance of development commencing on site.

5.7.

There is no dedicated budget at present for the review of existing, or the proactive designation of new Tree Preservation Orders, although any trees requiring to be subject of an order on a reactionary basis, for example in relation to a tree to be affected by a planning application or a request to fell a tree in a conservation area, could be designated using existing Development Planning revenue budgets.

5.8.

Rather than undertake a comprehensive, county-wide survey, it is recommended that the public be encouraged to nominate trees they believe suitable for assessment for Tree Preservation Orders. This would include establishment of a dedicated page on the Council website with a Tree Preservation Order nomination form and would be accompanied by a press release and local media campaign.

6. Proposed Future Methodology

6.1.

Carry out a survey of trees using the Tree Evaluation Method for Preservation Orders as described in section 5.4 above.

6.2.

Undertake searches with Land Registry of Scotland to determine ownership of each tree identified as being suitable for a Tree Preservation Order designation.

6.3.

Tree Preservation Orders should be drafted for each eligible tree ownership, namely where one property owner owns one eligible tree, one Tree Preservation Order would be created. Where one property owner owns several eligible trees, one Tree Preservation Order would be created with each tree listed individually.

7. Equalities Impact

An Equality Impact Assessment has been undertaken and is attached as Appendix 1 to this report.

8. Financial Implications

8.1.

The main financial implications will be the cost of legal services as the surveying of trees would be covered as part of the day to day duties of the Development and Marine Planning Function.

8.2.

Legal Services have advised that it would be extremely difficult to find the necessary capacity inhouse to carry out the work. However, outsourcing the legal work using the Council's Legal Services Framework Agreement is an option.

8.3.

It is anticipated that each Tree Preservation Order will take one half day of work under the Council's Legal Services Framework Agreement at an estimated current cost of £294 per half day. The initial pilot assessment undertaken by Development and Marine Planning has indicated that there are likely to be forty five new Tree Preservation Orders in St Margaret's Hope.

8.4.

The Tree Preservation Orders must also be registered against the title of each property at a cost of £60 per property.

8.5.

The title of each property must be established in order to record the Tree Preservation Order against it. The cost of this will be between £18 per property and a search cost of £80 per hour if a more complicated search of the Register of Sasines is required.

8.6.

The total cost for each Tree Preservation Order will therefore be between £372 and £434, with the cost for the St Margaret's Hope phase being between £16,740 and £19,530. It should be noted that the potential costs will vary considerably depending upon how straightforward it is to establish titles.

8.7.

Due to the significant costs involved, and the fact that there is no identified budget available, it is not proposed that existing Tree Preservation Orders be reviewed in their entirety at this time. A piecemeal approach could, however, be taken as and when resources permit.

9. Legal Aspects

9.1.

Section 160(1) of the Town and Country Planning (Scotland) Act 1997 gives a planning authority power to make a Tree Preservation Order if it appears to them to be:

- Expedient in the interests of the amenity, and/or,
- That the trees, groups of trees or woodlands are of cultural or historical significance.

9.2.

Any significant review of existing Tree Preservation Orders or introduction of new Tree Preservation Orders would require substantial legal input, which could be procured externally via the Council's Legal Services Framework Agreement.

10. Contact Officers

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11. Appendix

Appendix 1: Equality Impact Assessment.