

Appendix 1 – Proposed Response to Consultation

Introduction

Peter McReynolds MLA plans to introduce a Private Member's Bill to improve protection for trees across Northern Ireland. This legislation would seek to strengthen the legal protection of individual and groups of trees, as well as ancient and long-established woodland in Northern Ireland.

A proposed Bill would cover three key areas:

- 1) Strengthen existing legal protections for trees, by enhancing Tree Preservation Orders (TPOs) in legislation.
- 2) Protect and support Northern Ireland's oldest and most significant trees by creating a new 'Heritage Tree' designation.
- 3) Safeguard ancient/long-established woodland and legally protected trees from building developments and/or new infrastructure.

Question 1. Are you responding as an individual or on behalf of an organisation?

- Organisation ✓
- Individual

Question 2. If you are responding on behalf of an organisation, what is the name of your organisation?

- Belfast City Council

Section 1: Strengthening Existing Legal Protections for Trees

Currently, a TPO can protect a single tree, or a group of trees, if they are deemed important for an area's appearance. When a tree, or group of trees, is protected by a TPO it means permission must be sought by either the local authority, or the Department for Infrastructure, before cutting or pruning the tree. Breaching a TPO is a criminal offence which can carry a fine relative to the severity of the offence. Despite this, a [2023 report](#) found that despite 369 tree protection breaches reported between 2019 and 2022, only one resulted in enforcement action being taken, and none led to prosecution.

Peter McReynolds MLA is proposing to strengthen TPOs by:

- Introducing 'ecosystem services' as an additional attribute for making a TPO. This would take into account the benefits trees play in all our lives, such as improving air quality and reducing the risk of flooding, rather than just amenity.
- Updating the Planning Act (Northern Ireland) 2011 to make it an offence to 'cause or permit' the breach of a TPO. This would make it easier to enforce and prosecute in cases where a TPO has been breached.
- Include a requirement for those in breach of a TPO to plant a suitable tree in its place and be responsible for its establishment in its formative years.

These measures will strengthen the effectiveness of TPOs by increasing the likelihood enforcement action is taken when breaches of TPOs are identified and reducing the loopholes which enable landowners to evade prosecution.

Question 3. Did you know about TPOs as a mechanism for protecting trees?

- Yes ✓
- No

Question 4. How effective do you think TPOs are for protecting trees and groups of trees?

- Extremely effective
- Very effective ✓
- Somewhat effective
- Not so effective
- Not at all effective

Do you have any further thoughts about the current system for protecting trees and groups of trees?

Specified trees can be protected through a TPO, which requires a statutory process to be undertaken in accordance with planning legislation. In addition, trees that are within a Conservation Area also enjoy a level of protection and planning permissions can include conditions to retain specific trees where appropriate. In all of these cases, prior notification and/or consent is required from the Council before any works are undertaken to such trees.

There are currently 150 confirmed TPOs in Belfast. A TPO can cover a single tree, groups of trees within an area or whole woodlands. The current area of TPOs is approximately 350 hectares. In addition, there are 13 Conservation Areas in Belfast where the trees are subject to protection similar to that of a TPO. These cover an area of approximately 444 hectares. Almost all TPOs and Conservation Areas are within the current settlement boundary, covering almost 8.6% of the built-up urban area. A publicly available map of all TPOs and Conservation Areas is on the Council's website here: [Spectrum Spatial](#).

Applications are made to the Council by persons wishing to carry out works to protected trees (TPOs, Conservation Areas or planning conditions), including pruning and minor surgery works, as well as felling works. On average, the tree officers in the Planning Service deal with around 200 treeworks applications annually. Where felling of trees is permitted, it is a normal requirement that a suitable replacement is planted to ensure no net loss of trees.

All requests for a TPO are considered by the Planning Service and can be submitted via the new planning portal. In addition, the Council itself may initiate a TPO where considered expedient, for example, as a result of a planning application where there may be a significant threat of felling. The assessment of prospective TPOs is based on a number of key considerations set out in legislation. These include trees of special value in terms of amenity, history or rarity, which may be under threat. Other considerations include the health of the trees, public health and safety issues and the implications for ongoing tree management. The Council has published guidance on protected trees that provides further details on the main considerations for TPO requests and the required statutory process. This is available on the Council's website here: [Tree preservation orders | Belfast City Council](#).

When a TPO is proposed, notice must be served on the landowner and any other relevant interested parties, including adjoining owners. Most commonly, a 'provisional' TPO is applied, which takes immediate effect and lasts up to six months. This allows time for a detailed survey to be carried out by an arborist to record exact positioning, tree species, age and health and any recommended actions. The Council's tree officers will take account of the detailed survey, any representations received and the aforementioned key considerations in resolving whether to confirm the TPO within the statutory six month period. Any provisional TPO and confirmed TPO are required to be referred to Land and Property Services for registering as a statutory charge on the relevant property.

TPOs are subject to review as part of the ongoing work programme to manage these designations in respect of permitted works and current tree health. This review also ensures that unauthorised felling of protected trees can be identified and can result in enforcement action being pursued.

As outlined above, there is a statutory process for the serving of TPOs, including notification and legal procedures and obtaining an expert detailed survey. The process is not designed to provide blanket TPO coverage as it must be applied to specified individual trees or tree groupings. Whilst a TPO can give protection to specified trees, it does not obligate any particular tree management measures. The TPO process and the consequent consenting process, alongside the ongoing review programme, are time and resource intensive and these duties are currently fulfilled by one tree and landscape officer in the Plans and Policy team. The tree officer also provides advice/comments on planning applications and assistance to the public with queries relating to trees and landscaping.

Question 5. Do you support adding 'ecosystem services' as an additional attribute for making a TPO to protect trees or groups of trees?

- Yes
- No
- Unsure ✓

Do you have any further thoughts on which benefits trees provide (ecosystem services) should be considered when making a TPO?

Section 122 of the Planning Act 2011 enables the making of a TPO where “it appears ... that it is expedient in the interests of amenity”. Belfast City Council’s published guidance on TPOs acknowledges that “trees can have a high amenity value and can make an important contribution to the environment...provide wildlife habitat and contribute to the health and wellbeing of humans.” The guidance also sets out the key considerations that we look at when deciding to protect specific trees with a TPO, as follows:

- a) Potential Threat:** priority will be given to the protection of those trees deemed to be at immediate risk from active felling or damage from development on site. We will assess and prioritise all other requests accordingly;
- b) Visibility:** the extent to which the trees or woodlands can be seen by the general public will inform the assessment of whether the impact on the local environment is significant;
- c) Individual Impact:** the fact that a tree is publicly visible will not itself be sufficient to warrant a TPO. The tree’s particular importance will be assessed by reference to its size and form, its future potential as an amenity should also be assessed taking into account any special factors such as its screening value or contribution to the character or appearance of an area. In relation to a group of trees or woodland, an assessment will be made of the collective impact;
- d) Wider Impact:** The significance of the trees in their local surroundings will also be assessed, taking into account how suitable they are to their particular setting, as well as the presence of other trees in the vicinity;
- e) Historical Importance:** Certain trees because of their age, association with the setting of listed buildings or the contribution they make to the special character of a conservation area may require consideration for TPO protection; and
- f) Rarity:** There may be occasions where a tree(s) may be considered for TPO protection solely on the grounds of its rarity. The priority of the consideration will reflect the rarity of the species.

Having regard to the above, the Council already recognises the potential ecosystem services benefits of trees. However it is accepted that the definition of ‘amenity’ is open to

interpretation and can sometimes be applied narrowly and may not specifically include some of the wider benefits of trees and woodland. As is often the case in planning, there is a question of balance and resources and it is ultimately the decision of each planning authority whether to pursue a new TPO. Therefore, the Council is of the view that revised regional guidance could be helpful in setting out how 'amenity' can be interpreted in relation to section 122 of the Act, which could include 'ecosystem services', provided DfI undertakes prior consultation with all councils.

Under English law, the Town and Country Planning Act 1990 makes it an offence to 'cause or permit' the breach of a TPO. In Northern Ireland, the Planning Act (Northern Ireland) 2011 addresses only causing a breach, referring to 'any person, in contravention' of a TPO. However, the subordinate Planning (Trees) Regulations (Northern Ireland) 2015 expand this to include both causing and permitting a breach, creating a significant discrepancy between different pieces of legislation.

Question 6. Do you support updating the Planning Act (Northern Ireland) 2011 to make it an offence to cause or permit the breach of a TPO?

- Yes ✓
- No
- Unsure

Do you have any further thoughts on making it an offence to cause or permit the breach of a TPO?

It is noted that there is a discrepancy between the wording in the Planning Act and the standard Form of a TPO set out in the schedule to the Trees Regulations. The Act creates the offence of breaching a TPO and currently this does not include "permitting" any relevant unlawful activity. It is agreed that consideration should be given by the Department to the scope of the offence in the Act and whether it should be amended to include 'permitting', in addition to 'causing'. However it should also be noted that even if the Planning Act is revised there will still be an onerous evidential burden to cross in proving that a person permitted a breach. Nonetheless the amendment would be a useful addition to the legislation as it would widen the scope of the offence for future prosecutions.

Question 7. Do you support the requirement to plant and maintain a tree if a TPO has been breached?

- Yes ✓
- No
- Unsure

Do you have any further thoughts on the requirement to plant and maintain a tree if a TPO has been breached?

The Planning Act already addresses the issue of replacement trees in the above circumstances. The replanting of a suitable tree is normally a requirement of any removal of a TPO tree, whether with consent (through a treeworks application) or retrospectively where a breach of control has occurred. The species, size and location of the replacement tree may be suggested by the council. However, the responsibility to plant the tree rests with the landowner.

Section 2: Heritage Trees

Unlike our oldest and most significant buildings, most of our oldest and most significant trees are not legally protected. In Northern Ireland, there are over 2,000 recorded ancient and veteran trees. A major concern is stopping the loss of these trees due to development and neglect because, once they are lost, they cannot be replaced.

A Tree Protection Bill would propose Northern Ireland's oldest and most significant trees could be designated as 'Heritage Trees'. These would be identified and listed because of their age, ecological value, historical, or cultural significance. Once designated as Heritage Trees, they would receive similar protections to trees under a TPO. Local councils would be responsible for issuing Heritage Tree Protection Orders, ensuring there are strict measures to prevent any unauthorised removal or damage.

Question 8. Do you agree with the creation of a new heritage tree designation to protect our oldest and most significant trees?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree ✓
- Strongly disagree

Do you have any further thoughts on the creation of a new heritage tree designation to protect our oldest and most significant trees?

The existing mechanism for TPOs could be used to protect important heritage trees. Whilst the current TPO process is relatively onerous for councils to initiate and conclude, the addition of a separate mechanism for tree protection does not appear to offer any significant benefits, presuming any designation process would be similar to that of a TPO. Any move for a significant increase in the number of TPOs (whether defined as heritage trees or under TPO mechanisms) is likely to have a very significant impact on the resources of councils. This includes the designation process itself, as well as the subsequent increase in number of treework applications for consent for works to protected trees.

Further to the above, we would suggest that, when considering `oldest` trees, it is important to consider the age of an individual tree relative to what is expected of the species. Clarification may be required in terms of individual tree species being considered for this designation.

Question Title 9. Please rank the criteria you think should be used to determine whether a heritage tree qualifies as a heritage tree, from 1 being the most important to 4 being the least important.

- Ecological value
- Age
- Historical significance
- Cultural significance

It is not possible to rank these criteria in any meaningful way as all are clearly important and each case will depend on individual merit. However, the natural life stages and lifespan of different species of tree must also be considered, as well as the health and condition of candidate trees. It must be acknowledged that most trees will require (and benefit from) appropriate maintenance, including canopy reductions, pruning, etc., and many veteran trees may also require to be assessed in terms of public safety with appropriate remedial measures.

All such works require the consent of councils as is currently the case for TPO trees, and this again has significant implications for council resources.

Heritage Tree status would introduce 'Heritage Tree Partnership Agreements' which would encourage co-operation between tree owners and responsible organisations to ensure the best care and maintenance of important trees. These agreements could include small grants or advice to help protect them for future generations.

Question 10. Do you agree with the proposal to support landowners who have heritage trees on their property?

- Yes
- No
- Unsure ✓

Do you have any further thoughts on the proposal to support landowners who have heritage trees on their property?

Notwithstanding the comments made above that do not specifically support the identification of heritage trees separately from TPO trees and the lack of clarity as to what entities would be regarded as “responsible organisations”, in the event that a heritage tree designation is taken forward separately by a government department, then it would appear beneficial to offer advice and grant aid on appropriate tree management practices. The cost of providing advice and grant aid will require to be adequately resourced. This would appear to be a matter that the Department of Agriculture, Environment and Rural Affairs would be best placed to deliver.

Further recognition of the importance of all trees, including heritage trees and ancient woodlands, could be achieved through education and information programmes across a wide variety of sectors. Information on the benefits provided by trees and their significance to the wider ecosystem services should help foster stewardship and appropriate management. The availability of financial support to help deliver the desired outcomes will undoubtedly assist.

Question 11. What kind of support do you think should be provided to landowners who have heritage trees on their property?

- Financial incentives
- Expert advice on tree care
- Both
- Neither
- Other

If other, please specify what support you think should be provided to landowners who have heritage trees on their property.

This question is difficult to answer in the absence of information as to how heritage trees may be designated, including by whom and under what legislative mechanism. Further to the answer to question 10 above, if a government department proposes to take the heritage tree designation forward across Northern Ireland, then it should be adequately resourced. The provision of general or specific tree management advice would clearly be useful but has significant implications for resources. Naturally, the provision of grant aid has even greater implications for resources and budgets, including in grant administration and follow up verification.

Section 3: Safeguarding Ancient and Long Established Woodland

Ancient woodland, which has been around since the 1600s, and long-established woodland, which dates back to at least 1830, have developed unique and complex ecosystems over time. These woodlands are shaped by factors like the type of soil, the local climate, and how people have interacted with them. Ancient woodland makes up just 0.04% of Northern Ireland's landscape, and once its gone, it cannot be replaced.

Permitted developments allow specific works by statutory undertakers like utilities or telecoms without formal planning permission. A Tree Protection Bill would propose adding ancient and long-established woodland, legally protected trees (those with a TPO) and heritage trees, to the list of criteria in which development is not automatically permitted. This measure would provide these irreplaceable assets with the same protection as Areas of Special Scientific Interest or sites of archaeological interest to ensure they will not be lost to development without the necessary authorisation.

Question 12. Do you support the proposal to restrict permitted developments from sites with ancient and long-established woodland, legally protected trees and heritage trees?

- Yes
- No
- Unsure ✓

Do you have any further comments on protecting ancient and long-established woodland, legally protected trees and heritage trees from permitted development?

Once again, this question is difficult to answer in the absence of information as to how ancient and long-established woodlands and heritage trees may be designated and by what authority. In principle, the removal of permitted development rights where the proposal would damage or result in the loss of a protected tree is supported. Indeed, where a TPO is in place, consent is still required for works to the protected trees irrespective of whether the proposed development is permitted development. Similarly, there is precedent in current Planning Regulations that remove permitted development rights in limited cases where the development would result in tree removal (Permitted Development Regulations: Part 9 Class C – Industrial hardstandings and Part 16 Class A – Mineral exploration).

However, the removal of permitted development rights has a consequential impact on councils as a significant increase in planning applications would result, including many by statutory undertakers. There will also be requirements for special provisions for emergency and safety works, such as after storm damage. Furthermore, consideration would also require to be given to the exact wording of any limitations on permitted development. This includes whether any works to trees would be the limitation (e.g. pruning or lopping) as well as felling/removal. Consideration may also require to be given to situations where permitted works may result in significant damage to adjacent protected trees, including over a longer period of time.

Any proposed changes need to be very carefully considered, including in terms of wording of any limitations and exemptions to facilitate effective outcomes that meet the overall intended objectives in a balanced way. In addition to impacts on time and resources for councils and developers/utility providers, there may well be significant implications for enforcement and legal processes.

Question 13. Do you support the proposals to require developers to prove that there are no other viable options for development in cases where development would result in the removal or alteration of ancient and long-established woodlands, and heritage trees?

- Yes ✓
- No
- Unsure

Do you have any further comments on the proposed requirements for developers?

Once again, this question is difficult to answer in the absence of information as to how heritage trees may be designated and by what authority. However, in the event that the designation is taken forward, it is clearly important that developers carefully consider appropriate tree protection measures at the outset of the site selection and design process. The onus will be on developers to demonstrate that full and genuine consideration has been given to the trees from the outset and that suitable alternatives exist that would avoid the loss of trees and that this is only acceptable in cases of over-riding public or strategic/national interest. For many larger proposals, this will form an integral part of any Environmental Impact Assessment.

Belfast City Council's Local Development Plan includes a clear policy to protect trees from new development. Policy TRE1 seeks to protect existing trees and states a presumption in favour of retaining and safeguarding trees that make a valuable contribution to the environment and amenity, including through the adoption of the precautionary principle when considering the impacts of a proposed development on trees of visual, biodiversity or amenity quality and significance. It also seeks to secure a net gain in tree numbers as a result of built development.

Question 14. When balanced against the benefits of this legislation, do you think that any cost of implementing and enforcing the proposed bill is acceptable?

- Yes
- No
- Don't know ✓
- Other (please specify)

The council acknowledges the high importance and value of trees to the environment, including their multi-functional benefits as a key element of our green and blue infrastructure. It is accepted that any consenting regime requires adequate resources for effective and meaningful delivery of its objectives and that a greater level or extent of tree protection will bring wide socio-economic and well and environmental benefits. Nevertheless, the proposals to date are silent on where the duties will lie and how they will be delivered and funded. Therefore it is not possible to say whether 'any cost' is acceptable, particularly given the extreme budgetary constraints across all Northern Ireland government departments and councils.

Question 15. Please tick any of the following options that you believe these proposals will positively benefit:

- The Environment ✓
- The Climate ✓
- Biodiversity ✓
- Public Health ✓
- Other (please specify)

The appropriate protection and proper management of trees, which are an important part of our green and blue infrastructure resource, will bring benefits across a wide range of areas and

metrics. Belfast City Council's Green and Blue Infrastructure Plan (2020) fully acknowledges this and sets out the range of benefits across our city and society.

Question 16. Do you have any additional comments on the proposed legislative changes to enhance the legal protection of trees and ancient/long-established woodland in Northern Ireland?

The Council fully acknowledges the importance of appropriate and effective tree protection and this is evidenced in the Green and Blue Infrastructure Plan 2020 and the Belfast Local Development Plan Strategy 2035 (adopted May 2023). The recognition of the value and importance of heritage trees and ancient woodland in this consultation is welcomed by the Council. Many of the comments made above reflect the need for more detail on the proposed legislative changes, particularly how they will be implemented and funded.