Lisburn & Castlereagh City Council

Proposed Tree Protection Bill Comments

Planning Act (NI) 2011	Proposed Amendment	Comment
Clause 1 – Tree Preservation Orders: Councils		
S122	Extends the grounds for making a TPO to include ecosystem services	Currently, TPO's are imposed in the interests of amenity and the six criteria (potential threat, individual impact, wider impact, visibility, historical value and rarity) as outlined within the Council's Supplementary Planning Guidance. The term 'Ecosystems Services' is quite vague and should be clarified as it could be argued that every tree provides a positive benefit to people and the environment. Planning Officers do not have the expertise to assess this and would likely lead to additonal resource and financial implications for the Council.
S122 (1)(a)	Extend the scope of a TPO to prohibit a person from 'knowingly causing or permitting' any of the prohibited acts	The Council would be generally supportive of the intention to make it an offence to 'knowingly causing or permitting' a prohibited act to a protected tree however it is unclear how this could be determined. Section 126 of the Planning Act (NI) 2011 already makes it a criminal offence to carry out unauthorised works to a tree in such a manner as is likely to destroy it. Currently, should a breach be identified, the Planning Enforcement Unit will pursue the landowner as well as those who have carried out the works to establsh who the contravener is – there has never been any issues with this approach.
Insertion of new subsections	Provide for the protection of ancient trees into S122. A Council may make a TPO in respect of any tree which is an ancient tree without the need to satisfy the amenity or ecosystem services test. If the tree is found to be an ancient tree, the Council must make a TPO, unless the tree is dead – the condition, health or structural integrity of the tree is not grounds for refusing to make an order.	From a planning perspective, it is considered that ancient trees could already be protected under the existing TPO criteria and adding an additonal criteria is likely to lead to significant resource implications for planners. There would also be additional financial implications for Councils in arboriculturist fees. Councils do not impose a TPO on an unhealthy tree – usually only those trees that are catergorised or A or B by the arboriculturist are protected whilst Category C trees are only protected where they present no danger to the public and are of significant amenity value. Ancient trees should be afforded TPO protection if considered to be under threat however their heritage value should be recognised by a separate designation to safeguard them from neglect. This should be accompanied by financil support for landowners. Councils do not have the resouces to do this.

S122(3)	A TPO takes effect on the earlier date which the order is confirmed by the council or the date on which it is deemed to have been confirmed in accordance with S123(2)(b)(ii).	S3 of The Planning (Trees) Regulations (Northern Ireland) 2015 outlines the procedures for making a TPO and S3(2)(c) advises Councils must allow for at least 28 days to allow for representations to be made. This time also allows the Council to fully assess the TPO and arrange an arboricultural survey. However, the majority of Councils will impose a Provisional TPO first which can give immediate protection if required.
Clause 2 – Provisional Tree Preservation Orders		
S123(2)(b)(i)	Provisional TPO deemed to be confirmed after 6 months where no objections have been received.	This amendment is considered unnecessary. The six month period protects the trees and gives the Council time to fully assess the TPO and then either confirm with or without modifications. Should it be found that the trees are not TPO worthy, it is acceptable to allow the TPO lapse. In some instances, a Provisional TPO is placed on trees that may be considered to be under threat whilst a planning application is being considered. This gives the Council an opportunity to protect non-TPO worthy trees until they can be protected by planning conditions. This proposed amendment would create unnecessary work for planning officers. Councils currently have no powers to revoke a TPO.
Clause 3 – Penalties for contravention of Tree Preservation Orders		
S126(1)	Provides that a person 'knowingly causes or permits' a contravention of the TPO.	As above. The additon of 'knowingly causing or permitting' would require additional resources to prove that a person caused or permitted a breach.
Clause 4 – Replacement of trees		
S125(1)	Replacement tree must be a 'heavy standard of an appropriate species'. Landowner required to inform Council when replacement tree has been planted.	The replacement of a TPO tree with a heavy standard tree in all instances is considered to be too prescriptive. Trees are felled for a variety of reasons and the environment around the tree may have changed since the TPO was initially imposed. It is therefore preferable for each replacement tree to be considered on a site by site basis with suitable replanting that is likely to establish being recommended. There would be significant resource implications involved in monitoring replacement planting. Each Consent Notice will contain conditions relating to replanting. If this is not carried out, the landowner may be investigated by Planning Enforcement.
Insertion of new subsections	If replacement tree is damaged / diseased or removed within 5 years of	This is an extrremely onerous task to place on the Council in relation to requiring the landowner to replant if not carried out by the contravener within 18 months and may have

	planting, the owner must plant a replacement tree. Where landowner is not responsible for the breach, duties are imposed on the person responsible for the breach. Landowner becomes responsible for replacement if not carried out within 18 months & may recover costs from contravener.	significant legal costs / implications. A replacement tree is protected by the TPO under which it was replanted and current legisaltion ensures that replacement planting is carried out by the contravener – Planning Enforcment may pursue until this is carried out.
Clause 5 – Council to inspect replacement trees		
S125(a)	Council should carry out annual inspection of replacement planting for 5 years to identify additional care /replacement or advising landowner of actions required to ensure tree beomes established. Landowner becomes responsible for replacement if not carried out within 18 months & may recover costs from contravener.	Planning Officers are not qualified to assess the health of trees or offer advice on tree-care. This would be a resouce intensive requirement and would inevitably lead to additional financial costs to the Council in seeking arboricultural advice. As above, a replacement tree is protected by the TPO under which it was replanted and current legisaltion ensures that replacement planting is carried out by the contravener – Planning Enforcment may pursue until this is carried out.
Clause 6 – Enforcement of duties as to replacement of trees		
S164	Replacement tree must be a 'heavy standard' When a person fails to comply with an enforcment notice, Council may plant & recover costs from landowner. If this is not the contravener, the landowner can recover costs from contravener.	As previous, the replacement of a TPO tree with a heavy standard tree in all instances is not considered to be necessary. Trees are felled for a variety of reasons and the environment around the tree may have changed since the TPO was initially imposed. It is therefore preferable for each replacement tree to be considered on a site by site basis with suitable replanting that is likely to establish being recommended. Council would be reluctant to carry out replanting and recover costs as this would present significant financial, legal and resouce implications.
Clause 7 – Tree Protection Map		
Insertion of new S128A to 128D	Requires DfI to make available online, free of charge, an online TPO map showing all TPOs & CA's	LCCC already has an online map showing all TPO's within the Council area. There should not be any issue with the Council providing GIS shapefiles of all TPO's & CA's to inform an NI wide TPO mapviewer.

	across NI, as well as the number of TPO applications received, approved, rejected by each Council. Each Council required to update every 3 months.	There is no need for Councils to provide TPO application information to DfI as all requests are logged on to MasterGov and DfI would be able to run reports and monitor as per their quarterly Planning Statistics reports.
Clause 8 – Determination of planning applications		
S45	Inserts new sub section to refuse applications that result in loss or deterioration of ancient or long established woodland / developments within 15m of such woodland / cause deterioration of ancient tree subject to TPO.	Generally agree although this would be more suited to inclusion within the Council's own SPG. It is quite prescriptive and it may be better to assess each application that impacts trees / woodland on a site by site basis. The Council is in the process of developing a Planning Validation Checkilist and this will require all applications that impact on trees to be supported by a tree survey and Arb Impact and Method Statement. This should ensure that trees are appropriately protected during and after construction.
Clause 9 – Permitted Development		
Atle 3 of GPDO	Remove PD rights for development that involves the loss or deterioration of ancient or long established woodland or is within 15m of same.	Generally agreeable although this should be limited to only those sites that have been officially designated. Should also be extended to include sites with TPO trees.
Clause 10 – Ecosystem Services		
New Schedule 1A	Sets out the ecosytem services that may justify a TPO	As stated previously, the term 'Ecosystems Services' is quite vague and it could be argued that every tree provides a positive benefit to people and the environment. Planning Officers do not have the expertise to assess this and would likely lead to additonal resource and financial implications for the Council. The current tried and tested criteria for imposing a TPO works well and it is considered there is no need to expand this.