Derry City and Strabane District Council

Proposed Tree Protection Bill - Commentary on Clauses associated with the proposed Bill

Existing Legislation	Proposed change	Comment
Clause 1 – Tree preservation orders: councils		
122 allows council to make a TPO where it appears expedient in the interests of amenity	This clause extends the grounds for making a TPO where it appears expedient in the interests of amenity or 'eco-system services'	Don't agree. What level of ecosystem will be considered necessary i.e. would a full arboriculturist report be required? Concern that large quantity of trees would qualify as being an important ecosystem. Resource and financial implications should majority of trees within district meet threshold.
N/A – proposed addition of (1A) to (1D)	Councils may TPO trees that are ancient without having to meet other criteria. If Council believes a tree to be 'ancient' it may commission an assessment by an arboriculturist, and if confirmed as so, the council must impose a TPO, unless the tree is dead The condition, health or structural integrity of that tree is not to be considered a ground for refusing to make an order	Don't agree. Such trees would already be likely to be TPO worthy under existing criteria. Don't agree. Significant cost implication for council. Don't agree. Who then is liable for any health and safety issue associated with such a tree? Condition, health and structural integrity would continue to be important considerations especially when there could be associated risks to life, limb and property.

Clause 2 – Provisional tree preservation orders		
	Proposed amendment to make a pTPO confirmed after six months where no representations received and council has not issued a decision to revoke	Don't agree. Considered unnecessary - current process ensures trees are protected whilst being considered, and the council will confirm with/without modifications or decide not to proceed based on health and conditions survey. The proposal could actually create further work should any modifications be necessary, which usually are in most cases.
Clause 3 – Penalties for contravention of tree preservation orders		
	Now includes 'knowingly causes or permits a tree to be cut down, uprooted or wilfully destroyed, or wilfully damaged, topped or lopped in such a manner to be likely to destroy it'	Unsure. The principle of the proposed provision is broadly welcomed but it is not known how this can this be determined by councils or whom they would prosecute.
Clause 4 – Replacement trees		
125 requires planting of replacement tree of appropriate size/species where a tree is removed, uprooted or destroyed in contravention of a TPO	Replacement tree must be a 'heavy standard tree of an appropriate species'. The owner of the land is required to inform the council when a replacement tree has been planted.	Don't agree. Significant extra resources would be required to check this. A blanket heavy standard replacement for all sites and trees is not suitable; replacements need to be site specific.
	New addition to provide that if a replacement tree becomes damaged/diseased or is removed within 5 years of planting, the owner must plant a subsequent replacement. And by virtue of other additions, the person who was responsible for the breach must replant. The tree must be planted within 18 months of being notified to do so – the owner can recover reasonable costs from the person responsible for the	Don't agree. Huge resource commitment on the council to monitor this, firstly in respect of the 18-month limit for planting, then each year up to five years, and repeating for each tree as replaced. Not considered feasible. What if a person moves house or dies?

	breach if the person responsible has not carried out the planting.	Presents huge onus on owner to deal with contravener to plant or to take to court to recover costs.
Clause 5 – Council to inspect replacement trees		
N/A – new section proposed	Duty placed on council to monitor replacement trees – for five years from date of planting – to carry out an annual inspection, with a view to Identifying any tree needing additional care or replacement; Informing the owner of actions required to ensure the tree becomes established	Don't agree. Massive resource requirement on councils. Will inevitably require arboriculturist support to identify 'additional care/replacement' as will differ for individual species.
Clause 6 – Enforcement of duties as to replacement of trees		
N/A – new section proposed	New powers to allow Council to enter land and plant required trees and recover costs later.	Don't agree. Significant resource and legal implications for Councils.
Clause 7 – Tree Protection Map		
N/A – proposes new sections	Requires DFI to make available online, free of charge, digital map showing all TPOs in effect across NI, and boundaries of conservation areas, as well as number of TPO requests received, approved and rejected by each council. Each council required to update this system upload existing records and update them every three months.	Don't agree. This Council does not have an interactive map and this will have significant resource implications.
Clause 8 – Determination of planning applications		
N/A – proposes new sections	Planning permission to be refused where the grant of planning permission would result in a) The loss or deterioration of ancient or long-established woodland;	Don't agree. This is considered too prescriptive to be included in legislation. Councils should rather include in policy and apply accordingly and be prescriptive in

	b) Development within 15m of ancient or long-established woodland; or Deterioration of an ancient tree which is subject to a TPO, unless the applicant demonstrates that there are "wholly exceptional circumstances" justifying grant of permission.	Validation Checklists/Policy or SPG as to requirements How is deterioration to be determined, and over what timeline?
Clause 9 – Permitted Development		
Article 3 of GPDO	PD rights not to apply to any development which requires or involves… the loss or deterioration of ancient or long-established woodland; development within 15m of ancient or long-established woodland	Agree. This proposed provision is welcomed. How is an owner to determine if their site contains this type of woodland, if not protected?
Clause 10 – Ecosystem services		
	Sets out the ecosystem services that may justify the making of a TPO. A new Schedule 1A lists three categories, namely cultural services, regulating services, and supporting services, and specifies examples of what these categories include.	Don't agree. It is considered that any member of the public could make this argument about any single tree. How is council to determine the extent to which a tree complies or otherwise? A refusal to serve a TPO based on council's consideration will subject the councils to criticism, correspondence and complaints. The word 'including' means there are other potential 'services' falling under this ecosystem phrase – how is council to consider? Given trees are known for their absorption of CO2, then every request for a TPO will be claimed to be under 'air quality' regulation.

		There is no accompanying explanation as to how these categories have been considered appropriate.