

## CAIRNGORMS NATIONAL PARK AUTHORITY

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**Title:** Response to Scottish Executive (SE) Consultation Paper on Tree Preservation Orders

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**Purpose:** CNPA Response to SE Consultation Paper

### Recommendations

It is recommended that the following comments be submitted to the Scottish Executive with a covering letter setting down the Park's statutory aims.

### INTRODUCTION

1. This paper is in response to a consultation from the Scottish Executive on Tree Preservation Orders.
2. Trees are protected by the Town and Country Planning (Scotland) Act 1997 through Tree Preservation Orders (TPOs) (Section 160) Conservation Areas (Section 172) and planning conditions (section 159).
3. As noted by the consultation document the principal effect of a TPO is to prohibit the cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of trees without the authorities consent.
4. The consultation paper notes that legislation relating to trees has changed very little since 1975 and research commissioned by the Executive in 2002 found that the procedures are basically sound, but that a series of fine tunings would provide an up to date structure for protecting trees. The proposals presented in the consultation paper are based upon the findings of a research report called "*The Effectiveness of Tree Preservation Orders in Scotland*" and subsequent discussions with stakeholders.
5. As with other recent planning consultation papers from the Scottish Executive the paper sets down a series of issues followed by a question. This response should be read in tandem with the issues and questions presented in the consultation paper attached at the back of the report.

6. With regard to TPOs the National Park has shared powers with the four constituent Local Authorities within the Park, but the detailed mechanisms and processes in relation to the operation of Tree Preservation Orders has not yet been established. Research and legal advice will need to be sought on these issues and a paper to outline roles, responsibilities and mechanisms would be brought before the Board or Planning Committee in due course.
7. Because the detailed mechanisms for Tree Preservation Orders within the National Park have not yet been established what follows is a general response to what are relatively minor changes in the way in which TPOs are administered in Scotland.

## ISSUES/QUESTIONS FOR CONSIDERATION

8. **Question 1:** We propose that all TPOs should take effect immediately, and remain in force provisionally for a period of six months or until they are confirmed. Do you agree with this proposal?
9. **CNPA Response:** Agree
10. **Question 2:** We propose to introduce provisions that would give Planning Authorities an emergency power to prohibit tree operations. The notice would be publicised by a site notice identifying the trees in question and their location. The notice would stay in force for a maximum of 28 days. Do you agree with this proposal?
11. **CNPA Response:** Agree. It is often essential that action is taken quickly when tree operations that may be damaging are being carried out, often a query may be made by a member of the public in relation to operations that are already being carried out, so powers that can have immediate effect are essential. However, the CNPA would consider that unlike a stop notice for unauthorised development compensation is not warranted should the Tree Preservation Order subsequently be revoked.
12. **Question 3:** In the forthcoming planning bill, we propose to introduce a general duty on planning authorities to monitor and review TPOs. Do you agree with this proposal? What do you think would be the implications of such a duty?
13. **CNPA Response:** It is agreed that the monitoring and review of Tree Preservation Orders accords with what is generally considered to be best practice and would be welcome. However, to implement a system of monitoring and review of existing TPOs may involve dealing with a considerable backlog. Given that the CNPA has TPO powers, but the implementation of these powers is not as yet defined in detail it is difficult how such a measure would affect workload and resources. Any monitoring and review would have to be carried out in partnership with Local Planning Authorities. However, it is most likely that local authorities within the Park area would retain monitoring and review responsibilities for their existing TPOs.

14. **Question 4:** We propose to introduce much simpler procedures, which will not require Planning Authorities to invite objections and representations or confirm any decision to revoke a TPO. Nor will they have to confirm any decision to vary a TPO in cases where no new trees or woodlands are being added to the order. Instead the decision to vary or revoke the TPO in these circumstances will take immediate effect. The Planning Authority will still be required to inform the owners affected by the revocation or variation of their decision. Any decision to vary or revoke a TPO will also have to be recorded formally on the TPO document and be made available for public inspection. These proposals would be set out in secondary legislation. Do you agree with these proposals?

15. **CNPA Response:** The CNPA would have some concern with this suggestion. While the proposal would result in more efficient procedures sometimes TPOs come about from public requests, particularly from neighbours who may notice important trees on a neighbouring site. Resulting Tree Preservation Orders have been placed because of this local knowledge from individuals and Community Councils. This approach could lead to TPOs being changed with the very people that applied pressure to get TPOs placed not being notified of proposed changes to the TPO.

16. **Question 5:** We propose that statutory undertakers should be required to notify planning authorities when undertaking operations on a tree, group of trees or woodland covered by a TPO. Do you agree with this proposal? What do you think would be the implications of this requirement?

17. **CNPA Response:** Agree. Works can be carried out on trees by statutory undertakers without notifying the Local Planning Authority this could lead to concerns from the general public and enforcement investigations being initiated to find out what the works relate to, this can result in a waste of officer time and dissatisfaction from the public in terms of lack of information. Such a proposal would also ensure that Local Authority and the National Park databases could be kept more up to date. Such an approach may also ensure that undertakers give more careful consideration to their proposals if they are to be scrutinised at some level. It would be crucial that ample time is given in any notification process to ensure that proposals can be properly assessed. The CNPA would also wish to be notified of such works given its statutory aims.

18. **Question 6:** We propose that TPOs should remain in force for all replacement trees, including those required as a condition of consent. Do you agree with this proposal?

19. **CNPA Response:** Agree that this anomaly should be removed, although it must be recognised that often replacement trees will be in a different location to one's removed and this would result in additional workload in terms of keeping records up to date.
20. **Question 7:** Do you consider existing provisions to be adequate for the protection of trees of cultural or historical significance?
21. **CNPA Response:** The current provisions could be strengthened; they currently focus on amenity interests, which, it could be argued encompasses cultural interest, but not necessarily historical interest. It should be made clear that historical includes individual trees of natural history interest, such as veteran trees. The CNPA has a particular role in terms of protecting natural and cultural heritage and the strengthening of these provisions would be welcome in helping the CNPA to achieve its statutory aims.
22. **Question 8:** We propose that before carrying out work on protected trees, Planning Authorities will have to publicise their proposals by displaying a site notice on or near the site on which the trees are situated. The site notice will have to give details of the proposal, the Planning Authority's reasons for it, and will have to specify a date (at least 21 days from the date of the site notice) by which comments on the proposal should be received. Any comments received will have to be considered before the Planning Authority can make a decision on the proposal, and this decision should not be made by a committee or officer of the Authority responsible for managing the land in question. Do you agree with this proposal? What do you think would be the implications of this procedure?
23. **CNPA Response:** The CNPA has no general responsibility for carrying out works to trees. However, would generally tend to agree that the process by which Local Authorities carry out tree works should be subject to public notification (and that the CNPA should be notified) and that the consideration of representations is seen to be independent. However, it is recognised that such an arrangement may hinder the undertaking of relatively routine work such as the pruning of street trees.
24. **Question 9:** We propose to extend notification to the owners and occupiers of any land adjoining the land on which a TPO is being served. This requirement would also apply to related appeals procedures. Do you agree with this proposal? What do you think would be the implications of this?
25. **CNPA Response:** Generally agree with this proposal as neighbours to a site can often be important in identifying valuable trees and also in terms of reporting any unauthorised works to the relevant Council or National Park Authority. Making neighbours aware of the existence of a Tree Preservation Order can help in terms of monitoring and also in terms of gaining information on incremental works being carried out without the relevant authority being notified.
26. There may be implications in terms of identifying what is adjoining land but this could be defined in a similar way to neighbour notification requirements under the Planning Acts.

27. **Question 10:** We propose to remove the exemption from compensation established by Article 6 Certificates, creating a general right to compensation for such loss or damage caused by a Planning Authority's decision. Do you agree with this proposal? What do you think would be the implications for Planning Authorities? Is there a need to restrict minor compensation claims in Scotland?
28. **CNPA Response:** The CNPA does not see why the public purse should be used to compensate landowners when the underlying point of a TPO is to articulate the public interest in terms of the conservation or wider amenity value of a particular tree or groups of trees. However, compensation should be payable where the Planning Authority's refusal renders the land subject to the TPO incapable of reasonably beneficial use or frustrates the carrying out of development for which planning permission has already been granted.
29. **Question 11:** We want to make the content and language of TPOs clearer, easier to understand and easier to use. How do you think this can be achieved and what essential information do you think should be conveyed in the model order?
30. **CNPA Response:** The form of TPOs tends to be complex and legalistic in terms of its language, the suggestion of simplification is welcome. The TPO document should also effectively be a guide to what the basic implications of the TPO actually are pointing out that no lopping topping or felling should be carried out without Planning Authority consent. Greater use of Geographical Information Systems would also be beneficial.
31. **Question 12:** We propose to make the Forestry Commission a statutory consultee for applications that involve more than 0.25ha of felling. Do you agree with this proposal? Would a requirement to notify Scottish Ministers be necessary?
32. **CNPA Response:** It is agreed that the Forestry Commission should become a statutory consultee; although careful definition would be required regarding what constitutes 0.25 ha of felling. There should be no general requirement to notify Scottish Ministers unless there are outstanding objections from the Forestry Commission that cannot be resolved.

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