

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 13 NOVEMBER 2018

**THE ANGUS COUNCIL (LAND AT CARLOGIE, CARNOUSTIE)
TREE PRESERVATION ORDER 2018 NO. 3**

REPORT BY SERVICE LEADER – PLANNING & COMMUNITIES

ABSTRACT

In terms of Section 160 of the Town & Country Planning (Scotland) Act 1997, The Angus Council (Land at Carlogie, Carnoustie) Tree Preservation Order 2018 No. 3 came into effect on 5 September 2018. The Order preserves trees that are of significant amenity value. It is recommended that the Order be confirmed.

1. RECOMMENDATION

It is recommended that The Angus Council (Land at Carlogie, Carnoustie) Tree Preservation Order 2018 No.3 be confirmed.

2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN/CORPORATE PLAN

This report contributes to the following local outcome(s) contained within the Angus Local Outcomes Improvement Plan and Locality Plans:

- An enhanced, protected and enjoyed natural and built environment

3. BACKGROUND

3.1 Section 159 of the Town and Country Planning (Scotland) Act 1997 places a duty on planning authorities to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made for the preservation of trees. Section 160 of the Act empowers planning authorities to make an order providing for the preservation of any trees, group of trees or woodlands where it is considered expedient in the interests of amenity and/or where the trees are of cultural or historical significance.

3.2 Angus Local Development Plan Policy PV7 Woodland, Trees and Hedges provides Angus Council's policy on the matter and states:

Ancient semi-natural woodland is an irreplaceable resource and should be protected from removal and potential adverse impacts of development. The council will identify and seek to enhance woodlands of high nature conservation value. Individual trees, especially veteran trees or small groups of trees which contribute to landscape and townscape settings may be protected through the application of Tree Preservation Orders (TPO).

Woodland, trees and hedges that contribute to the nature conservation, heritage, amenity townscape or landscape value of Angus will be protected and enhanced. Development and planting proposals should:

- *protect and retain woodland, trees and hedges to avoid fragmentation of existing provision;*
- *be considered within the context of the Angus Woodland and Forestry Framework where woodland planting and management is planned;*
- *ensure new planting enhances biodiversity and landscape value through integration with and contribution to improving connectivity with existing and proposed green infrastructure and use appropriate species;*
- *ensure new woodland is established in advance of major developments;*

- undertake a Tree Survey where appropriate; and
- identify and agree appropriate mitigation, implementation of an approved woodland management plan and re-instatement or alternative planting.

Angus Council will follow the Scottish Government Control of Woodland Removal Policy when considering proposals for the felling of woodland.

4. CURRENT POSITION

- 4.1 The woodlands are part of allocation C6 within the Angus Local Development Plan. That allocation identifies an area of 15ha at Carlogie for the development of an employment area. The Angus Settlements Landscape Capacity Study (2015), undertaken to inform the Angus Local Development Plan, emphasises the importance of these woodlands in contributing to a landscape framework for development to take place to the south. The study further notes that the condition of the woodlands has declined in recent years and that management would be required to secure the future of the woodland. It is considered that the continued existence of the woodland through appropriate management is fundamental to the acceptability of employment development within allocation C6.
- 4.2 Planning permission in principle 14/00043/PPPM was granted for the development of an employment area on this site in August 2014. Subsequently approval 17/00661/MSCM was granted by the Development Standards Committee for detailed matters specified in conditions attached to the permission in principle. The information submitted with both applications recognised the value of the existing woodland and the drawings approved in association with 17/00661/MSCM make specific reference to the retention of existing woodland but did not provide details in relation to the ongoing maintenance of those existing woodland areas. These are important in providing an established landscape setting for the site and a condition attached to the permission requires a scheme for their ongoing management and maintenance. The report to the Development Standards Committee of 24 April 2018 stated that given the importance of the landscaping a Tree Preservation Order will be promoted to ensure their retention (Report [138/18](#) refers). Within part of the woodland there has been deposition of agricultural waste which has caused damage to trees within the woodland. This is currently the subject of a planning enforcement investigation but the land owner has indicated that the material will be removed before the end of this year and work has commenced in that regard.
- 4.3 Using delegated authority and under Sections 160 and 161 of the Town & Country Planning (Scotland) Act 1997 a Tree Preservation Order (TPO) was made to preserve the woodlands given their contribution to the amenity of the area. The TPO came into effect on 5 September 2018. Under Section 161 the Order took effect immediately without previous confirmation by the Planning Authority in order to safeguard the trees from a risk of felling. The route of the re-aligned A930 Carlogie Road has been excluded from the order where the intended route passes through the woodland.
- 4.4 The Order continues in force for a period of six months or until the date the Order is confirmed by the Planning Authority, whichever first occurs. Under Section 161 if the Order is not confirmed within six months it expires.

5. CONFIRMATION OF TREE PRESERVATION ORDER

- 5.1 The Tree Preservation Order that has been made remains in force until 5 March 2019 unless it is confirmed by the Planning Authority. The woodlands are considered to merit protection under the provisions of the Act and their protection is consistent with Policy PV7 of the Angus Local Development Plan.
- 5.2 A period of 28 days was allowed for the making of objections and representations to the Planning Authority. Before deciding whether to confirm the Order, the Council must take into consideration any objections and representations duly made.
- 5.3 The 28 day period has now expired and one representation has been received from the landowner which is appended to this report. The objection letter opines that the vast majority of the trees are approaching the end of their natural life. Many are damaged and dying. The letter further describes incidents where six years ago 15–20 trees blew down in a gale into fields and a more recent incident which temporarily closed the A930. The owner

fundamentally disagrees with the imposition of the Order on the grounds of public safety. A copy of the objection is attached as Appendix 2.

- 5.4 In response to the letter of objection it is relevant to note that information submitted by the land owners representatives in relation to recent planning applications recognised the value of the existing woodland and proposed its retention. In that respect the retention of the existing woodland area which would be secured by the Tree Preservation Order is consistent with the terms of the recently approved planning permission for development of the site. It is accepted that management of the woodland is necessary to secure the future of the woodland. The woodlands are being progressively lost due to an absence of active management and deposition of material. The up-rooting of trees is likely at least in part due to lack of active management on the part of existing and previous land-owners. It should however be emphasised that the Tree Preservation Order does not in itself preclude good woodland management but ensures that the Council generally has control over tree works. The submission of proposals to actively manage the woodland would be welcomed.
- 5.5 If the Order is not confirmed it will expire and the trees could be at threat from felling or being lost without effective management to perpetuate the woodlands. This would be detrimental to the amenity of the area and would lead to substantial and potentially unacceptable landscape and visual impacts associated with development of the C6 allocation. Confirmation of the Order will ensure that woodlands of considerable amenity value are protected.
- 5.6 It should be noted that it is intended that tree and woodland planting which will be carried out as part of planning permission associated with the development of allocation C6 will be the subject of a further tree preservation order following planting.

6. FINANCIAL IMPLICATIONS

There are no financial implications on the Council as a result of this report.

7. OTHER MATTERS

HUMAN RIGHTS IMPLICATIONS

The recommendation to confirm the Tree Preservation Order has potential implications in terms of the proprietors entitlement to peaceful enjoyment of their possessions (First Protocol, Article 1) and/or in terms of alleged interference with home or family life (Article 8). For the reasons referred to elsewhere in this report justifying the present recommendation in planning terms, it is considered that any such actual or potential infringement of such Convention rights is justified. Any actual or alleged infringement is in accordance with the Council's legal powers under the Planning Acts and is necessary in the general interest for the protection of amenity in Angus. The interference is also proportionate given that the felling of the trees is on the information available, not considered to be one, which would be approved by Angus Council. Further, the interference will be the minimum required to achieve the objective of protecting the amenity of Angus.

**KATE COWEY
SERVICE LEADER - PLANNING & COMMUNITIES**

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

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List of Appendices:

Appendix 1: Location Plan
Appendix 2: Letter of Objection

1

Woodland



Distance from shore (m)	Number of fish
0	~10
50	~50
100	~150
150	~220
200	~260
250	~280
300	~280