

REPORT TITLE: CONFIRMATION OF TREE PRESERVATION ORDER 2221 –
LAND ADJACENT TO WATER CLOSE, WINCHESTER

26 JULY 2018

PORTFOLIO HOLDER: Councillor Caroline Brook, Portfolio Holder for Built
Environment

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WARD(S): ST MICHAEL

PURPOSE

To consider confirmation of Tree Preservation Order 2221 to which one letter of objection and 15 letters of support has been received.

RECOMMENDATIONS:

1. That having taken into consideration the representations received, Tree Preservation Order 2221 is confirmed with modification (to accurately plot the location of T2)

IMPLICATIONS:1 COMMUNITY STRATEGY OUTCOME

- 1.1 The confirmation of this Tree Preservation Order (TPO) will contribute to the High Quality Environment outcome of the Community Strategy by maintaining the environmental quality and character of the area.

2 FINANCIAL IMPLICATIONS

- 2.1 There are no financial implications for the City Council at this stage. Compensation is potentially payable only where sufficient evidence has been provided by an applicant to support an application to carry out works to the protected tree and where that application is refused.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 None

4 WORKFORCE IMPLICATIONS

- 4.1 None

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 None

6 CONSULTATION AND EQUALITY IMPACT ASSESSMENT

- 6.1 There has been one letter of objection and 15 letters of support to the TPO which is summarised in this report.

7 DATA PROTECTION IMPACT ASSESSMENT

- 7.1 None Required

8 RISK MANAGEMENT

Risk	Mitigation	Opportunities
<i>Property N/A</i>		
<i>Community Support N/A</i>		
<i>Timescales N/A</i>		
<i>Project capacity N/A</i>		
<i>Financial / VfM N/A</i>		
<i>Legal N/A</i>		
<i>Innovation N/A</i>		
<i>Reputation N/A</i>		
<i>Other</i>		

9 SUPPORTING INFORMATION:

- 9.1 This matter comes to Planning Committee because one objection to making the TPO has been received
- 9.2 The TPO was served on 21 February 2018 and will expire on 20 August 2018 unless the TPO is confirmed at this committee.
- 9.3 The letter of objection to TPO 2221 is submitted on behalf of the tree owner by his appointed arboricultural consultant.
- 9.4 Summary of the Objection Letter

The objection raises the following concerns:

The objector states that in his opinion there is nothing about either of the trees to suggest the removal of the trees would have a negative effect on the local environment. He considers that both trees are not of sufficient amenity value to warrant protection from a TPO.

The trees may be under general pressure in the future from development however he considers that it is not expedient to serve the TPO as the trees are not under immediate threat and are located within the Conservation Area.

The objector states that pruning work is now needed to address the abrasion of the adjacent building by branches from the trees and the implementation of this work structurally compromises the trees and therefore the trees would not meet the criteria for protection by a TPO.

The letter of objection also raises the following points:

“T2 is plotted in the wrong location.”

“Human Rights: The Council is both the proposer of the TPO and the decision maker. Public Authorities are required under the Human Rights Act 1998 to comply with Article 6 of the European Convention on Human Rights. This provides that a person’s civil rights should be determined by ‘an independent and impartial tribunal’. For the Council to be the decider for its own proposition does not appear to comply with the notion of impartiality and independence”.

“The TPO covering letter suggests that the Council will consider whether the Order should be confirmed, but it does not say who does the considering or on what terms those considerations are made. In the absence of information about the decision-making process, the objection is that the process of making this TPO is not compliant with Article 6 of the European Convention on Human Rights”.

9.5 Comments from 15 Letters of Support for TPO 2221

“As a local tour guide I know how much it enhances the public realm in this area & I always pause with groups here. The beauty of this historic corner of Winchester would be much reduced if it was lost or its future threatened”.

“I would like to record my support for this TPO as it will not only assist the correct maintenance of the trees but also maintain the view to the public which is so important for the community. I understand, however, that a TPO will not inhibit essential and informed maintenance of the trees”.

“Though privately owned, much of the garden is very visible to both the local community and tourists in the City and as such is regarded as a local treasure, which I am sure the Council would wish to see maintained. Any damage or removal of the trees would seriously affect the whole garden”.

“I urge Winchester City Council to make this TPO permanent and protect the Magnolia tree in Water Close. It is an integral part of visual amenity provided to the public – both residents and visitors - as they walk through from Colebrook Street to the Cathedral precinct. Its loss would be keenly felt and in addition to being part of overall environment of Water Close its regular flowering is one of the delights of Winchester”.

“This is such a special place due to this magnificent tree in one of the prettiest corners of Winchester which visitors always enjoy and admire”.

“May I please write in support of the TPO relating to the Magnolia tree in the so-called Water Garden, Colebrook Street, Winchester. It is a significant part of an area of Winchester that provides aesthetic pleasure, beauty and character to thousands of people every year. The tree itself is magnificent and is the focus of a garden which is hugely historical. I know I’m not alone in having appreciated this garden enormously for years”.

“I very much hope that this tree can be preserved so that future locals and visitors can enjoy it”.

“My reasons to keep the tree are for its public visual amenity and the enhancement of the public realm. It would be such a shame to lose this truly wonderful Magnolia which really does enhance the public realm with its beautiful display of flowers in the summer and is appreciated by visitors and residents alike”.

“I have often brought visitors to this spot and nearly always there is an amazed joyous response to seeing such a lovely tree in full bloom”.

9.6 Arboricultural Officer’s Response

Both trees are of reasonable health with an even distribution of active twig and bud formation throughout their canopies, demonstrating that they have high dynamic mass ratio over a static mass ratio, with sufficient energy levels to continue their biological functions for many years to come. They are good examples of their species.

They are in full public view from the public highway. The garden is included in the city walking tour where guides pause to talk to groups of tourists in front of the trees

The trees form an integral part of the street scene and make a significant contribution to the visual public amenity value of the area.

With regard to the complaint's view that there are no obvious objective measures by which could be said that the two trees have been selected for protection, amenity is not defined in law, however on this occasion the officer made a visual assessment and subsequently undertook a Tree Evaluation Method for Preservation Orders (TEMPO) assessment. The results of the TEMPO assessment are as follows:

Condition & suitability for TPO	Fair	suitable	3 points
Retention span (in years)	20-40	suitable	2 points
Relative public visibility & suitability	Large trees, or medium trees clearly visible to the public	suitable	4 points
Other factors	Principle components of formal arboricultural features, or veteran trees	N/A	1 point
Expediency assessment	Perceived threat to tree	Foreseeable	3
Total			14 points awarded- TPO defensible.

- 9.7 The TEMPO assessment above confirms that the trees are of sufficient public benefit and public visual amenity value to be protected from a TPO. Central Government guidance states via the Secretary of State that “*orders should be used to protect selected trees if their removal would have a significant negative impact on the local environment and its enjoyment by the public.*” Due to the location of both trees and their reasonable health, the central Government guidance is applicable to this case.

The TPO does not prevent maintenance such as cutting of the tree growth away from the adjacent dwelling and gutters to abate structural damage from being carried out, as long as the Council receives a valid application which justifies the works requested. The Secretary of State’s view is that the higher amenity value of the tree or woodland and the greater any negative impact of proposed works on amenity, the stronger the reasons needed before consent is granted

There is no history of failure by the trees and no reports of structural damage being caused to the adjacent dwelling of the neighbouring property.

- 9.8 A site meeting was held at the site on 24th April 2018. In attendance was the tree owner’s appointed Arboricultural consultant, architect and the Council’s Principal Tree office, where the TPO and a proposal to build a single storey dwelling on the site were discussed.
- 9.9 T2 has now been plotted in the correct location of which a copy of the modified plan is shown as Appendix 1.
- 9.10 With regards to the Council making and serving the TPO, the advice from the Secretary of State is that people must be given the opportunity to object to, or comment on a new Tree Preservation Order. Before deciding whether to confirm an order, the local authority must take into account all duly made objections and representations that have not been withdrawn. The objector has raised an issue over Article 6 of the European Convention on Human Rights (ECHR) which requires a person’s civil rights to be determined by an independent and impartial tribunal Under the Town and Country Planning Act 1990 (including the Town and Country Planning (Tree Preservation)(England) Regulations 2012 which govern the making of TPOs), this right is secured by the right to bring an appeal to the Secretary of State and thereafter to the High Court against a local authority’s decision to make and confirm a TPO, The procedure of making and bringing this TPO confirmation to Planning Committee complies with the Secretary of State’s guidance and Article 6 of the ECHR.
- 9.11 It is recommended that this TPO is confirmed with a modification (to accurately reflect the location of T2) because of the high amenity value of both trees and the threat posed to them.

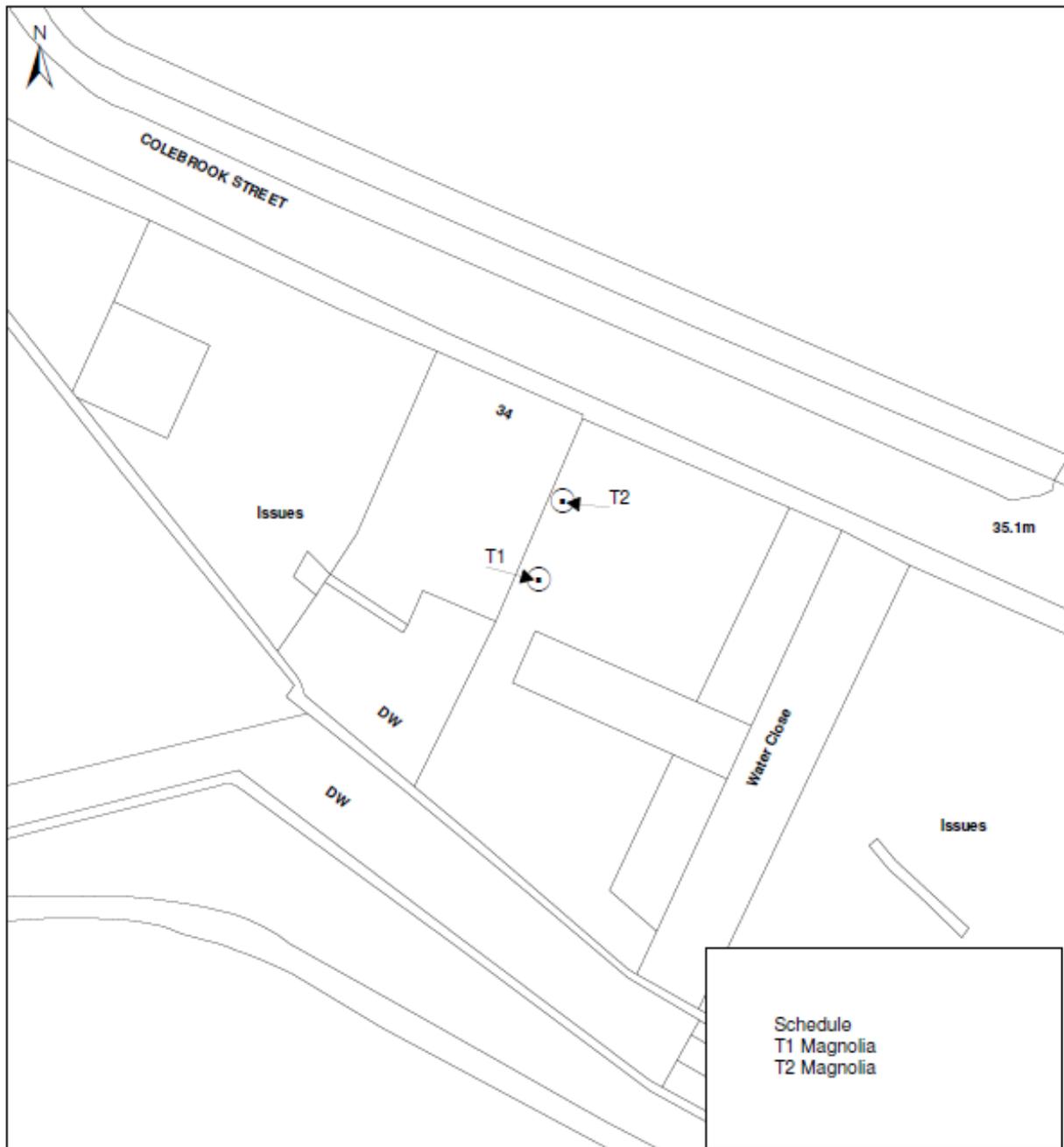
BACKGROUND DOCUMENTS:-

None

APPENDICES:

Appendix 1 Plan

Appendix 1 Plan



-  Area
-  Group
-  Woodland
-  Tree

TOWN AND COUNTRY PLANNING ACT 1990
Section 198 - 201

Tree Preservation Order No. 2221

Location: **Land adjacent Water Close
Colebrook Street
Winchester**

OS Grid: 4629 Scale: 1:300 Date: 10 July 2018



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