

REPORT TITLE: CHANGES TO THE PROCESS FOR CONFIRMING NEW TREE PRESERVATION ORDERS WHICH RECEIVE 5 OBJECTIONS OR LESS.

23 OCTOBER 2019

REPORT OF CABINET MEMBER: Cllr Jackie Porter Cabinet Member for Built Environment and Wellbeing

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WARD(S): ALL

PURPOSE

To seek approval to request amendments to the Constitution which increase the number of objections required to trigger a referral of the decision to make a Tree Preservation Order (TPO) to Planning Committee, from 1 objection to 6.

To delegate the responsibility for the decision to confirm a Tree Preservation Order for which 5 or less objections are received from separate households (where they raise relevant considerations) to the Service Lead - Environmental Services or Service Lead – Built Environment.

RECOMMENDATIONS:

1. That it be recommended to Council that an amendment be made to the Constitution as follows:
 - a. Increase the number of objections received from separate households where they raise relevant considerations, which trigger referral of a decision to make a Tree Preservation Orders by Planning Committee from 1 objection to 6.
 - b. Delegate to the Service Lead - Environmental Services and Service Lead – Built Environment determination of the decision to make a Tree Preservation Order on which 1 to 5 objections are received by the Council.
 - c. Representations made by Members or Parish Councils will continue to be heard by the Planning Committee.

IMPLICATIONS:1 COUNCIL STRATEGY OUTCOME

- 1.1 Agreeing the recommendation outlined above will help deliver Objective Four of the Council Strategy – Improving the quality of the District’s environment. Trees are a crucial component of the District’s environment, providing a number of key benefits including landscape, biodiversity, pollution filtering and mitigating the effects of climate change and weather. By adopting an effective and appropriate method of identifying trees in need of protection through Tree Preservation Orders, the City Council will be ensuring key trees and the benefits they provided are retained.

2 FINANCIAL IMPLICATIONS

- 2.1 No implications identified.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The report requests amendments to the Constitution to increase efficiencies to the Planning Committee’s considerations. The key areas of law relating to the Tree Preservation Order determinations are:-
- a) Part VIII of the Town and Country Planning Act 1990 as amended;
 - b) The Town and Country Planning (Tree Preservation) (England) Regulations 2012 which came into force on 6 April 2012.
 - c) Section 192 of the Planning Act 2008 made further amendments to the 1990 Act which allowed for the transfer of provisions from within existing Tree Preservation Orders to regulations.
 - d) Part 6 of the Localism Act 2011 amended section 210 of the Town and Country Planning Act 1990 concerning time limits for proceedings in regard to non-compliance with Tree Preservation Order Regulations.
- 3.2 Central government guidance is clear that anyone with an interest must be given the opportunity to object to, or comment on, a new Tree Preservation Order. The local authority must take into account all duly made objections and representations. Central government guidance continues to state that authorities should bear in mind that, since they are responsible for making and confirming Orders, they are in effect both proposer and judge.
- 3.3 Human rights considerations require that decisions are determined at both the “making” and “confirmation” of an order with a degree of separation of the decision makers and that such decision occurs in a transparent, even-handed and open manner.
- 3.4 A challenge may occur to the actual steps undertaken in the process, for example, a failure to take appropriate account of objections; and /or to the

Council's procedure, for example, a lack of transparency or separation. The recommended procedure will entail the Tree Officers and Landscape and Open Spaces Manager determining the "making" of an Order and the Service Lead the "confirmation" of an Order.

- 3.5 If the recommendation is accepted, there will need to be a change to the Constitution by Full Council.

4 WORKFORCE IMPLICATIONS

- 4.1 The recommended procedural amendment will enable the Planning Committee to focus on the determination of planning applications which are core to the heads of terms of the Committee, currently increasing the time constraints on Officers and Members.

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 None

6 CONSULTATION AND COMMUNICATION

- 6.1 None

7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 Trees are a crucial component of the District's environment, providing a number of key benefits including landscape, biodiversity, pollution filtering and mitigating the effects of climate change and weather. By adopting an effective and appropriate method of identifying trees in need of protection through a Tree Preservation Order, the City Council will be ensuring key trees and the benefits they provided are retained and protected.

8 EQUALITY IMPACT ASSESSEMENT

- 8.1 None

9 DATA PROTECTION IMPACT ASSESSMENT

- 9.1 None required.

10 RISK MANAGEMENT

- 10.1 Not applicable

Risk	Mitigation	Opportunities
<i>Property</i>	N/A	N/A
<i>Community Support</i>	N/A	N/A
<i>Timescales</i>	N/A	Ensure the timely confirmation of TPO's.

<i>Project capacity</i>	N/A	N/A
<i>Financial / VfM</i>	N/A	N/A
<i>Legal</i>	Ensuring the opportunity for an internal review and secondary determination by a separate Officer decrease the risk of a challenge to the decision.	N/A
<i>Innovation</i>	N/A	N/A
<i>Reputation</i>	By ensuring that a separate officer considers the original TPO and confirmation if objections are received, reduces the risk to reputation.	
<i>Other</i>		

11 SUPPORTING INFORMATION:

11.1 Back ground

11.2 A Tree Preservation Order (TPO) is made by Winchester City Council where it considers it expedient and in the interests of amenity to protect specific trees, groups of trees, areas of trees or woodlands. The order prohibits a range of work including cutting down, lopping, topping or wilful damage. However, once a TPO has been confirmed, an application for works on the tree can be made to the City Council for consideration.

11.3 When making an Order, the City Council is required to consider what 'amenity' and 'expedient' means in practice and how to assess amenity value. As 'amenity' is not defined in law, the City Council exercises its judgement accordingly when deciding whether it is within its power to make an Order.

11.4 When the City Council considers it expedient to make a provisional Order, it is required to serve notice on anyone who has an interest in the land, inviting representations about any of the trees covered by the Order. A copy of the Order is also made available for public inspection. It is a statutory requirement that people are given the opportunity to object to, or comment on a provisional TPO before it is decided. When deciding whether to confirm an Order, the City Council must take into account all 'duly made' objections and representations that have not been withdrawn.

11.5 Current procedure for confirming a TPO

11.6 When the City Council receives 1 or more objections to a provisional TPO, the decision as to whether the Order is confirmed and made permanent is made by the Planning Committee. This is not in line with other planning applications which require 6 objections or more (from separate households) before they are referred to the Planning Committee for a decision.

- 11.7 Ward Members and Parish Councils can also request that a TPO confirmation is made by the Planning Committee. In accordance with the current procedure for planning applications, they are required to complete a standard form setting out their reasons for a Committee determination.
- 11.8 Request for a change in procedures for confirming a provisional TPO
- 11.9 Members of the Planning Committee have requested that the existing procedure be changed in line with other planning applications and that TPO's should only be put before Planning Committee where they receive 6 objections or more (from separate households), or where there is a request from a Ward Member and/or Parish Council via a standard form.
- 11.10 Where there are between 1 and 5 objections received, the decision as to whether a new Order should be confirmed or not will be delegated to officers for a decision. To ensure transparency, the officer who considers the objections (Service Lead – Built Environment or Service Lead – Environmental Services) will not be the officer who approved and signed off the provisional Order (Landscape and Open Spaces Manager).
- 11.11 If the owner of a tree protected by a provisional TPO which has been newly confirmed and made permanent, considers it to be unfair and unjust following their original objection, they are within their rights to submit an application to carry out works (including felling) to the protected tree. Any fresh application will be considered on its merits but will likely be refused unless adequate supporting information is submitted to justify the proposed works. At this point the applicant has the right to appeal against the Council's decision in line with other planning applications, and that appeal would be decided by a Government appointed Inspector.
- 11.12 The decision as to whether a provisional Order should be confirmed where there are 6 objections or more (from separate households) will continue to be heard by the Planning Committee.
- 11.13 Representations made by Ward Members or Parish Councils will continue to be heard by the Planning Committee. In accordance with the current procedure, they will be required to complete a standard form setting out their reasons for a Committee determination.
- 11.14 Implications
- 11.15 This change in procedure is anticipated to result in a significant reduction in TPO's being heard at Planning Committee as the majority receive less than 5 objections.

12 OTHER OPTIONS CONSIDERED AND REJECTED

12.1 None

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

None

Other Background Documents:-

None

APPENDICES:

None