

**Tonbridge and Malling Borough Council**

**Tree Preservation Orders Protocol**

**June 2021**

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## **1. Introduction and Context:**

- 1.1 This document is intended to provide comprehensive guidance on the administration, assessment, making and confirming of new Tree Preservation Orders (“TPOs”). The Protocol seeks to demonstrate a transparent system for the service and administration of TPOs, from the prioritisation of TPO requests, through the assessment system, to service of the document and confirmation (where the TPO is made permanent).
- 1.2 A TPO is an Order made by the Council in respect of trees or woodlands. The primary effect of a TPO is to prohibit the cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of trees without the Council’s consent.

## **2. Legislation and guidance**

- 2.1 The law on Tree Preservation Orders is contained in Part VIII of the Town and Country Planning Act 1990 as amended and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 which came into force on 6 April 2012.
- 2.2 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.
- 2.3 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.
- 2.4 Guidelines for the making of TPOs are provided by the Government within the National Planning Practice Guidance document (the “PPG”). This document provides a framework for administration of TPOs within the bounds of the legislation. In particular, the PPG advises that individual Local Planning Authority should develop ways of assessing the ‘amenity value’ of trees in a structured and consistent way, which takes account the basic criteria of visibility, individual, collective and wider impact.

## **3. Overarching aims and scope**

- 3.1 The ultimate aims sitting behind the Protocol are as follows:
  - To substantially improve the consistency and robustness of our assessments in considering whether new Tree Preservation Orders should be made and confirmed.
  - To ensure greater transparency in our decision making through clear channels, thorough assessments and schemes of publication

- Increasing public confidence and understanding in the system
- Increase our ability to be proactive through for example, the review of historic Orders

#### 4. An overview

- 4.1 A TPO is made by the Council to protect specific trees or a particular woodland from deliberate damage and destruction. TPOs prevent the felling, lopping, topping, uprooting or otherwise wilful damaging of trees without the permission of the Local Planning Authority (the LPA) and makes it an offence to do so without having first obtained the necessary consent.
- 4.2 It is important to recognise that making TPOs is an entirely discretionary power: meaning that the Council does not have to do it meaning that whether or not to protect trees by way of TPO is a matter of judgement to be made by officers and there is no obligation for us to do so. But once one is made, the Council can enforce it by requiring the landowner to plant another tree of an appropriate size and species (section 206 of the Act).
- 4.3 A TPO can be placed on any tree that has amenity value, and no species of tree is automatically protected. They are used to protect trees that are particularly attractive, are good examples of their species, contribute to the appearance and amenity of an area and/or have any cultural or historic value
- 4.4 All types of tree, but not hedges, bushes or shrubs, can be protected, and a TPO can protect anything from a single tree to all trees within a defined area or woodland.
- 4.5 There are now three types of TPO as follows:
- **Individually specified trees:** An Individual TPO protects trees that have grown up individually and are largely unaffected by competition from nearby trees. These will be individually named and numbered represented as individual black circles on the TPO plan, for example: T1 Oak.
  - **Groups of trees:** A Group TPO protects trees that have grown up as part of a group of trees that have become co-dependant on one another affording each other mutual shelter. These will be represented as a broken black line on the TPO plan and the numbers of each different tree will be recorded, for example: G1 2 Oak and 1 Beech.
  - **Woodlands:** A Woodland TPO protects all trees within the defined area present and future; it is the woodland that is being protected not specific trees. It is expected that in a woodland trees will decline and fall and others will grow up to replace them in a continuous self-perpetuating dynamic. Each woodland will be represented as a solid black line on the TPO plan,

for example: W1

[For the avoidance of any doubt, Ancient Woodlands are not necessarily protected by way of TPO. They are defined within the NPPF as “*an area that has been wooded continuously since at least 1600 AD. It includes ancient semi-natural woodland and plantations on ancient woodland sites*”. Paragraph 175(c) of the NPPF affords ancient woodland specific policy protection.]

## 5. A criteria-based approach

- 5.1 The Town and Country Planning Act does not define 'amenity', nor does it prescribe the circumstances in which it is in the interests of amenity to make a TPO. However, the Government considers that TPOs should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. The Council should therefore be able to show that a reasonable degree of public benefit exists, or would accrue, before TPOs are made or confirmed.
- 5.2 The trees selected for protection, or at least part of them, should normally be visible from a public place, such as a road or footpath, although the inclusion of other trees may be justified, for instance, where back garden trees can be viewed from their properties by a significant number of members of the public.
- 5.3 Trees may be worthy of preservation for their intrinsic beauty, or for their contribution to the landscape. The value of trees may be enhanced by their scarcity. The value of a group of trees or woodland may be collective only. Other factors, such as importance as a wildlife habitat, nature conservation or response to climate change may also be taken into account but these factors alone would be unlikely to be sufficient to warrant a TPO.
- 5.4 The criteria the Council will consider are:
  - (a) Visibility:** the extent to which the trees or woodlands can be seen by the general public will inform the Council's assessment of whether its impact on the local environment is significant. If they cannot be seen or are just barely visible from a public place, a TPO might only be justified in exceptional circumstances, or when land use change such as development is likely to increase the visibility of the tree in the future.
  - (b) Individual, collective and wider impact:** the mere fact that a tree is publicly visible will not itself be sufficient to warrant a TPO. The Council will also assess the tree's particular importance by reference to:
    - Size and form
    - Rarity, cultural or historic value
    - Contribution to, and relationship with, the landscape and

- Contribution to the character or appearance of a Conservation Area

5.5 In terms of individual impact, the fact that a tree is publicly visible will itself not be sufficient to warrant a TPO. The Council will also assess the tree's particular importance by reference to its size and form, its future potential as an amenity, taking into account any special factors such as its rarity, value as a screen or contribution to the character or appearance of a conservation area. In relation to a group of trees or woodland, the assessment is made of its collective impact.

5.6 In terms of wider impact, the significance of the trees in their local surroundings will also be assessed, taking into account how suitable they are to their particular setting, as well as the presence of other trees in the vicinity.

**(c) Other factors:** when assessing the amenity value of trees or woodlands, the Council may also take other factors into account, which would not warrant the making of an order on their own, including importance to nature conservation / response to climate change.

5.7 Although a tree might warrant protection in terms of amenity value, it is also necessary for the protection of the tree by a TPO to be considered 'expedient'. This is a test as to whether the serving of an Order in the public interest is a suitable/appropriate action in the circumstance of a particular case. For example, it is unlikely to be expedient to make a tree the subject of a TPO if it is under good proactive arboricultural or forestry/woodland management. However, if the Council consider that there is a risk of a tree being cut down, pruned or damaged in such a way that would have a significant and adverse impact on amenity, then a TPO may be appropriate.

5.8 The Council may have other reasons to believe that trees may be at risk. Circumstances such as changes in property ownership or management, general development pressure and possible development potential of a site can mean that the protection of trees by a precautionary TPO may be considered expedient. In some instances, because of a lack of accurate information, the risk may be perceived rather than actual. However, the Council has to take a precautionary approach because enquiries (regarding ownership for example) might trigger or accelerate tree removal.

## **6. Scheme of prioritisation**

6.1 The origin of a TPO can stem from many sources including the Council's ongoing historical TPO review, requests or enquiries from members of the public, Council Member or Parish Council requests and internal discussions such as when considering planning applications.

6.2 Requests to make TPOs in all circumstances should be made using the online form (when available) or in writing by emailing

[planning.applications@tmbc.gov.uk](mailto:planning.applications@tmbc.gov.uk). The Council will not normally respond to anonymous requests, unless there is other information that indicates a very serious threat to important trees. Requests should include information that clearly identifies the location and species of the tree(s) in question, explains what criteria the tree(s) are considered to fall within and what threats to the tree(s) are present.

- 6.3 The Council will investigate all alleged threats to trees and all requests for trees to be made the subject of a TPO in the public interest. In prioritising those investigations, Officers will take account of the perceived or real level of threat in any given circumstances. It also follows that the more urgent the threat is perceived to be, and the higher the public amenity value of the tree, then the greater weight should be given in terms of prioritisation.
- 6.4 At this stage, the Council will not enter into discussions with the landowner to ascertain the level of real or perceived threat to the trees. This is to avoid the potential risk arising from landowners accelerating felling programmes when alerted to the Council's interest in trees, which could lead to important trees being lost.
- 6.5 The Council might also directly seek to make a TPO in response to a section 211 notification (a six week notice of intent to carry out tree works within a designated Conservation Area). If the Council considers that the works proposed will be to the detriment of amenity, then a TPO may be served. When it is considered expedient to do so, the Council may also make TPOs to protect existing and/or newly planted trees within new developments, that are initially subject of planning conditions. Whilst the protection of landscaping schemes will normally be provided in the short term by the planning condition itself to maintain long term continuity of the public amenity provided by these trees it may be necessary and expedient for a TPO to be applied.
- 6.6 In all instances, the following processes will be followed in full.

## **7. The Assessment Process**

- 7.1 The Council must be able to explain to landowners why their trees or woodlands have been protected by a TPO or why the Council considers those criteria have not been met when a TPO is not made. The PPG advises Local Planning Authorities to develop a structured and consistent way of assessing the amenity value of trees. All assessments will take place through the undertaking of a Tree Evaluation Method for Preservation Orders (a "TEMPO" assessment) which is a common tool to assist decision making in this respect. A copy of the survey data sheet is produced at Annex 1. The assessment process will always be undertaken in accordance with the published guidance notes for users which can be found via the link below:

- 7.2 This is designed to be a structured guide and record of the assessment process for determining the value of trees for the purposes of a TPO. It is designed only for the assessment of trees for the purpose of either 'Individual' or 'Group' classifications.
- 7.3 It is designed to be a simple and structured document for recording the justification process of whether a TPO should be made or not. It comprises both subjective and specialist objective arboricultural elements. The input of a qualified and suitably experienced Arboriculturist is therefore a prerequisite of its effective use.
- 7.4 For the purposes of transparency and consistency all decisions must be given due justification at every stage where indicated on the form. Failure to do so reduces the effectiveness of the assessment as a coherent record of the TPO decision making process.
- 7.5 This will be completed in all cases, along with a recommendation as to whether a TPO should be made via the pro forma officer report which is produced at Annex 2. It should be recognised that detailed amenity assessments for the service of 'Area' TPOs cannot normally be carried out, as they are usually fully surveyed and then modified prior to confirmation, to only include individual trees or groups of trees. Woodlands are assessed for their amenity value on a separate basis distinct from individual trees or groups due to the diverse qualities of the trees usually present within woodlands.

## **8. Exceptions**

- 8.1 There are a number of exceptions to the powers the Council hold for making a TPO, which are specifically detailed within The Town and Country Planning (Tree Preservation) (England) Regulations 2012. In summary the main exceptions are that no TPO can prevent the cutting down, topping, lopping or uprooting of a tree:
- which is dead (or the removal of dead branches from a living tree);
  - to the extent that such works are urgently necessary to remove an immediate risk of serious harm, or to such other extent as agreed in writing by the Council prior to the works being undertaken;
  - so far as is necessary to implement a full planning permission;

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<sup>1</sup> CBA Trees owns the copyright for TEMPO, however the method is freely available, including via internet download through the Arboricultural Information Exchange [www.aie.org.uk](http://www.aie.org.uk)

- in compliance with any obligation under an Act of Parliament;
- as far as may be necessary to prevent or abate a legal nuisance;
- by or at the request of a Statutory Undertaker; or
- where the tree is part of a commercial orchard.

8.2 In the event that requests are made for TPOs to be made on trees covered by any of these exceptions, the person making the request will be advised in writing.

## **9. Making a new Tree Preservation Order**

9.1 In all instances, the completed assessment, along with supporting evidence (for example, photographs), should be provided. In the case of recommendations to make Orders, draft Orders, plans and details of land ownership and details of who needs to be notified should also be included. These reports will include formal recommendations by the assessing officer and endorsed by the DPHEH or Development Control Manager (under responsibilities delegated via the DPHEH) in all cases.

9.2 Having considered it appropriate to make an Order through the prioritisation and assessment process set out above, the Council will serve a copy of the TPO together with a formal Notice (the Regulation 5 Notice) to the owner or occupier of the land, and to any 'persons interested' in the land, or persons who may be entitled to carry out works to the tree affected by the TPO. All relevant persons will be clearly identified as part of the recommendation processes. The Regulations clearly defines a person interested in relation to an order being every owner and occupier of the land affected by the order and every other person whom the authority knows to be entitled to

(a) to cut down, lop or top any of the trees to which the order relates; or

(b) to work by surface working any minerals in, on or under the land affected by the order.

9.3 Dependent on the urgency assigned to the TPO, the documents will be either delivered by hand to the owner or occupier, left at the usual or last known address of the owner or occupier, or sent by 1<sup>st</sup> class post to the last known address of the owner or occupier. In the case of registered companies the documents may be served on the company's secretary or clerk at the registered or principal office. A comprehensive land registry search is usually necessary to achieve full service.

9.4 When the affected land is unoccupied, or when ownership of the land affected by the TPO cannot be ascertained, or when it is necessary to alert other parties who may be working on the land, the Council may also affix the documents

conspicuously to some object on the land - such as the tree itself, a gatepost of the property concerned, or its fence. Again, where this is considered to the case, the recommendation process will make the need for this clear.

9.5 It is important to note that provided the documents have been correctly or 'duly' served, it is not necessary for the owner to actually be aware of the TPO for the TPO to be in force. It is therefore advisable for anyone wishing to carry out works to trees to first check with the Council that permission is not required.

9.6 At this point, the Ward Councillors will be sent a copy of the officer report and relevant enclosures for their continued information. Similarly, in the event a conclusion is reached that a TPO should not be made, the Ward Councillors will be sent all paperwork setting out how that decision was reached.

## 10. Consideration of representations

10.1 The Council recognises that the statutorily defined interested parties as described above must be given the opportunity to make representations on new Tree Preservation Orders. These are considered by the Council to be "duly made" if:

- They are made in writing (to [planning.applications@tmbc.gov.uk](mailto:planning.applications@tmbc.gov.uk) or by post if email is not possible)
- delivered to, or could reasonably be expected to be delivered to, the authority not later than the date specified in the Regulation 5 notice which will be a 28-day period
- specify the particular trees, groups of trees or woodlands in question;
- in the case of an objection, state the reasons for the objection;

10.2 Any subsequent correspondence made by defined interested parties **cannot** be taken into account to influence the decision whether to confirm the TPO unless the Council believes that the 28-day period for objections could not have been reasonably met.

10.2.1 Furthermore, any representations received will only be taken into account in deciding whether to confirm an Order where a clear interest is demonstrated in accordance with the relevant legislation. Where wider representations are made these will not be taken into account in the final decision as to whether an Order will be confirmed.

10.3 Provided they fall within these specified parameters, objections to a TPO will be formally taken into account in deciding whether to confirm or modify a TPO. These will be summarised as part of second pro-forma officer report provided at Annex 3.

## **11. Confirmation of a Tree Preservation Order**

- 11.1 All TPOs are made on a provisional basis, which runs for a period of six months, and the TPO must be confirmed before the six-month period expires otherwise it will lapse and cease to take effect.
- 11.2 At any time following the making of a provisional TPO, and especially after objections have been made, the Council encourages discussion with the owner of the trees to take place. Discussion can lead to greater mutual understanding of the issues and can help clarify matters before the decision whether or not to confirm the Order is made. Discussions can also lead to the withdrawal of objections. However, the ultimate decision to confirm or modify an Order with unresolved objections lies with the Council and for the vast majority of cases will be exercised by Director of Planning, Housing and Environmental Health (DPHEH) under delegated authority.
- 11.3 Provisional Orders are unlikely to be withdrawn because a perceived level of risk has reduced, however they may be withdrawn if, on further assessment, it is considered that the trees fail the test of public amenity or are exempt from the TPO legislation for one of the reasons outlined above.
- 11.4 There can remain disagreements surrounding the real threat to trees. However, it is considered that once work has been prioritised and assessments made that the trees are of the required quality in the public interest for a TPO to be justified, it would be a failure not to continue to the service of a confirmed Order. Owners of trees may consider that they have no intention of carrying out any detrimental work to their trees. However, trees can have a considerable lifespan, often far in excess of land ownership and it is considered that having established that a tree is of a quality worthy of protection it would be imprudent not to carry through the work because a potential threat was not immediate.
- 11.5 Subject to confirmation, the TPO will remain in force until it is reviewed or until the tree(s) have been removed without replacement or become subject to an exemption within the legislation.
- 11.6 The placing of a TPO on land or individual trees does not place a moratorium on works to a tree, nor does it prevent a tree being removed. It does however require a person, wishing to undertake work to a protected tree, to apply to the Council for approval that the proposed work is acceptable.
- 11.7 Again, at this point the Ward Councillor will be provided with the second officer report and any further associated paperwork.

## **12. Review of historic Tree Preservation Orders**

- 12.1 The Council has a number of old TPO's that are becoming out-of-date in relation to land use and public amenity value. There are a number of TPOs that

contain 'area' or blanket designations that apply to all the trees within a designated area that existed at the time when the order was made. However, trees planted since the order was made are not protected and this can create confusion for local communities in such areas. The purpose of keeping TPOs under review is to ensure that all TPOs are appropriate, relevant, up-to-date and enforceable.

12.2 With this in mind, and where resources allow, the Council intends to instigate a review of these, to be prioritised, concentrating initially on:

- TPOs made over 25 years ago;
- TPOs containing area designations.

12.3 Further reviews will subsequently be brought forward, to be informed by availability of necessary resources and scoping work in liaison with Borough Councillors.

### **13. Summary**

13.1 The Council aims to:

- Investigate all requests for TPOs and real or perceived threats to trees
- Make assessments and serve provisional TPOs as necessary having regard to the Tree Evaluation Method for Preservation Orders (TEMPO)
- Have full regard to objections raised during the 28-day notification period in determining whether to confirm or modify a TPO
- Liaise with relevant Ward members in the event of unresolved objections to new TPOs
- Advise all interested parties when a TPO is confirmed or modified
- At all stages, serve the relevant statutory documents

**ANNEX 1**

**TREE EVALUATION METHOD FOR PRESERVATION ORDERS – TEMPO**

**SURVEY DATA SHEET**

Date:	Assessing Officer
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<b>Tree Details</b>		
TPO Ref (if applicable):	Tree/Group No:	Species:
Owner	Location:	

**REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS**

**Part 1: Amenity Assessment**

**a) Conditions & suitability for TPO**

- |                          |                         |
|--------------------------|-------------------------|
| 5) Good                  | Highly suitable         |
| 3) Fair/satisfactory     | Suitable                |
| 1) Poor                  | Unlikely to be suitable |
| 0) Dead/dying/dangerous* | Unsuitable              |

**Score & Notes**

*\* Relates to existing context and is intended to apply to severe irremediable defects only*

**b) Retention span (in years) & suitability for TPO**

- |           |                 |
|-----------|-----------------|
| 5) 100+   | Highly suitable |
| 4) 40-100 | Very suitable   |
| 2) 20-40  | Suitable        |
| 1) 10-20  | Just suitable   |
| 0) <10*   | Unsuitable      |

**Score & Notes**

\*Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality.

**c) Relative public visibility & suitability for TPO**

Consider realistic potential for future visibility with changed land use

- |  |                     |
|--|---------------------|
| 5) Very large trees with some visibility, or prominent large trees | Highly suitable     |
| 4) Large trees, or medium trees clearly visible to the public      | Suitable            |
| 3) Medium trees, or large trees with limited view only             | Suitable            |
| 2) Young, small or medium/large trees visible only with difficulty | Barely suitable     |
| 1) Trees not visible to the public, regardless of size             | Probably unsuitable |

**Score & Notes**

**d) Other factors**

*Trees must have accrued 7 or more points (with no zero score) to qualify*

- 5) Principal components of formal arboricultural features, or veteran trees
- 4) Tree groups, or principal members of groups important for their cohesion
- 3) Trees with identifiable historic, commemorative or habitat importance
- 2) Trees of particular good form, especially rare or unusual
- 1) Trees with none of the above additional redeeming features (inc. those of indifferent form)
- 1) Trees with poor form or which are generally unsuitable for their location

<b>Score &amp; Notes</b>
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**Part 2 – Expediency assessment**

*Trees must have accrued 10 or more points to qualify*

- 5) Immediate threat to tree inc. s.211 Notice
- 3) Forseeable threat to tree
- 2) Perceived threat to tree
- 1) Precautionary only

<b>Score &amp; Notes</b>
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**Part 3 – Decision guide**

- Any 0 Do not apply TPO
- 1-6 TPO indefensible
- 7-11 Does not merit TPO
- 12-15 TPO defensible
- 16+ Definitely merits TPO

<b>Add Scores for Total:</b>
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**Annex 2  
Officer Report 1  
Assessment of request to make new Tree Preservation Order**

**1. Summary of request:**

1.1

**2. Assessment of priority**

2.1

**3. The Site:**

3.1

**4. Assessment of tree(s)**

4.1

**5. Risk assessment**

5.1

**6. Legal implications**

6.1

**7. Recommendation:**

7.1

**8. Enclosures**

8.1 [including but not limited to the completed TEMPO assessment form, supporting officer notes and photographic evidence, drafted Order and Plan (in the event an Order is recommended above)]

Signed.....

Endorsed By.....Dated

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Concluding Remarks of Endorsing Officer

**Annex 3  
Officer Report 2  
Assessment of confirmation of Tree Preservation Order**

**1. Summary of notification process and responses received:**

1.1

**2. Commentary on responses received:**

2.1

**3. Risk assessment**

3.1

**4. Legal implications**

4.1

**5. Recommendation:**

5.1 [Confirm/Modify/Not Confirm]

**6. Enclosures**

6.1 [including but not limited to the completed TEMPO assessment form, supporting officer notes and photographic evidence, drafted Order and Plan (in the event an Order is recommended above)]

Signed.....

Endorsed By.....Dated

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Concluding Remarks of Endorsing Officer