



SCOTTISH EXECUTIVE

The Effectiveness of Tree Preservation Orders in Scotland

Development Department



**THE EFFECTIVENESS OF TREE PRESERVATION
ORDERS IN SCOTLAND**

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CONTENTS

ACKNOWLEDGEMENTS

EXECUTIVE SUMMARY

INTRODUCTION	i
THE EFFECTIVENESS OF TPOS	i
SCOTTISH EXECUTIVE INITIATIVES	ii
LOCAL AUTHORITY INITIATIVES	iv
INITIATIVES BY OWNERS OF SITES CONTAINING PROTECTED TREES	v
OVERALL PRIORITIES	v

CHAPTER ONE **CONTEXT OF THE RESEARCH** **1**

ORIGINS OF THE CURRENT TREE PRESERVATION ORDER (TPO) FRAMEWORK	1
THE CURRENT SCALE AND STANDING OF TPOS IN SCOTLAND	1

CHAPTER TWO **THE FACTORS INFLUENCING RECENT TREE PRESERVATION ORDER WORK** **4**

HISTORICAL PERSPECTIVE	4
------------------------	---

CHAPTER THREE **THE EFFECTIVENESS OF THE CURRENT TREE PRESERVATION ORDER SYSTEM** **5**

THE RELEVANT TESTS OF EFFECTIVENESS	5
-------------------------------------	---

CHAPTER FOUR **CONCLUSIONS** **31**

OVERALL CONCLUSION	31
KEY ISSUES (HIGHEST PRIORITY)	31
SCOTTISH EXECUTIVE	31
LOCAL AUTHORITIES	32
SECONDARY PRIORITIES	33
SCOTTISH EXECUTIVE	33
LOCAL AUTHORITIES	34
OWNERS WHO HAVE PROTECTED TREES WITHIN THEIR GROUND	35

APPENDIX ONE **PARTIES CONSULTED** **36**

APPENDIX TWO **SUMMARY OF THE TPO POSITION IN THE 8 COUNCILS CONSULTED** **38**

APPENDIX THREE **BIBLIOGRAPHY** **40**

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EXECUTIVE SUMMARY

INTRODUCTION

1. This report was commissioned to examine the effectiveness of the current Tree Preservation Order (TPO) system in Scotland and to recommend steps that could be taken to improve the existing procedural, technical and legal framework. A priority was to be accorded to any recommendations that emerged from the 6 month review.

2. The method of study included a series of interviews with 8 councils (4 urban and 4 rural) across Scotland; 6 agencies and official bodies; 6 consultants; one legal firm; 4 private companies; and 9 individuals. In addition, 3 written submissions were received. Details of these points of contact are set out in appendix 1 at the rear of this report. Various site inspections were undertaken of trees with a high amenity value in areas covered by TPOs, in conservation areas and in other urban/rural situations.

THE EFFECTIVENESS OF TPOS

3. As there has been no previous study of TPOs across Scotland, there is no base point from which to measure performance in this sector. My investigations have shown that formal measures to protect trees with a high amenity value started well before the Second World War (some 40 Orders exist for Glasgow in the era prior to the 1947 Act). Since that date, the number of TPOs has risen steadily in a series of independent surges in different parts of Scotland. In all instances, the use of TPO powers has coincided with a rise in development pressure within and around urban areas. In Edinburgh, this phase peaked in the 1970's when up to 30 TPOs per year were initiated. Currently, Aberdeen, Dundee and the Borders are the centres of high activity.

4. The issue of TPOs has to be set in the wider context of a growing public interest in the environment. This trend is reflected most directly by the steady increase in the number of enquiries relating to protected trees. In Edinburgh for example, the arboricultural officer receives 3,200 written and phone enquiries each year (a figure that compares with the 5,000 planning applications per year). In parallel with the expansion of TPO related work, there is a steady growth across Scotland in the number of amenity societies; in the number of nurseries and other commercial companies promoting tree planting; and in the concern for trees among the development orientated professions (planners, architects, landscape architects, surveyors and engineers). Whilst there has been no objective analysis of these trends, journeys through and around Scottish towns indicate that the extent of the tree cover has been rising steadily in recent decades despite parallel trends towards higher densities.

5. Whilst the overall position for trees outlined above is positive, there are a number of negative features. First, at a local scale, the on-going management of many TPO sites has been either non-existent or to a very low standard. This situation arises through a combination of a lack of knowledge, finance and commitment to the maintenance of protected trees. In addition, many buildings, under ground utilities and parking areas have encroached so close to TPO trees that long term damage to root systems and branches has occurred. Similarly, in many cases, replacement trees have not been planted to preserve the original standard of amenity of the protected trees. Overall, these negative elements have

contributed to such a loss of amenity in a significant minority of TPOs (particularly those approved pre 1970) that either amendment or revocation of the original Order is needed.

6. With regard to procedures and technical standards, there is a distinct lack of up-to-date government advice on TPOs. This situation contrasts markedly with England where *'Tree Preservation Orders: A Guide to the Law and Good Practice'*, produced by DETR in 2000, provides a very effective coverage of the key issues. This document, also referred to as the *'Blue Book'*, updates a previous publication produced in 1988, and is in constant use in Scottish councils despite its provisions (notably the legal issues) not being wholly relevant to the situation north of the Border.

7. The lack of an accurate council database means that there is no complete, consistent picture of the extent and the nature of TPOs across Scotland. The level of inaccuracy is such that all councils need to update their records with a view to either amending or revoking a substantial number of the earlier TPOs.

8. Other problems identified with the existing TPO framework include an uneven pattern in the way that the provisions of the 1997 Act and the linked regulations are applied by different councils; the lack of a viable, objective monitoring system that would permit systematic updating to occur; the limited use of GIS technology to assist in creating a modern procedural and legal framework for TPOs; an uneven and very limited record of local authorities pursuing the prosecution of alleged breaches of the provisions of TPOs; and an uneven record among councils in producing pamphlets to guide residents in the procedural, technical and legal provisions that apply in their area.

9. On balance, however, there is no doubt that the positive factors that apply to the protection of trees outweigh the negative influences outlined above. In particular, the total support from the parties consulted for the principles embodied in the existing TPO framework means that no radical re-working of the system in the immediate future is required. There are however a limited number of initiatives that need to be taken in the near future in order to fine tune the current framework. On this basis, if the high priorities that are set out under the main headings below (the 3 proposed initiatives for the Scottish Executive and the 4 proposed for the councils in particular) are implemented, these 7 measures would address all of the immediate concerns identified during this study. As both the 4 secondary priorities identified for the Executive and 3 for the councils would impart a long term balance to the system for the protection of trees, they should be considered as an integral part of the forward programmes for these organisations over the next 3 to 5 years.

SCOTTISH EXECUTIVE INITIATIVES

10. The following 3 high priority and 4 secondary priority tasks are recommended to Scottish Ministers as being necessary to fine tune the current TPO system.

High Priority

11. *Production of a Scottish version of 'Tree Preservation Orders: A Guide to the Law and Good Practice'*. This task (which would involve following the same chapter headings, model forms and code of practice) would be most important initiative that can be undertaken

currently by the Executive. The end product would address the great majority of the concerns raised by parties interviewed during this study.

12. *Commission a study of the application of GIS technology to the recording and the monitoring of all data and maps relevant to TPOs in one urban council (Dundee or Aberdeen) and one rural council (Scottish Borders Council).* The study would develop the initial experiments in this sector to the point where all relevant TPO data and maps could be found within one framework. The end product (which would speed up and improve all work relating to protected trees) could be applied directly to many other local authority responsibilities.

13. *Provide a combined chairman/secretary for STOG (the Scottish Tree Officers Group) for a 2 year period so that this organisation can be resurrected from its current moribund state.* This important initiative would require an initial, part time commitment by one member of the Executive's staff to act as the chairman/secretary for the 3 to 4 meetings held per year in various venues across Scotland.

Secondary Priorities

14. *Prepare a planning advice note (PAN) on best practice in relation to TPOs within the planning system.* The PAN would offer guidance on the most effective procedural, legal and operational methods for handling protected trees in both TPO sites and in conservation areas.

15. *Run a series of Scottish Executive sponsored seminars in Victoria Quay in order to publicise the evolving framework that applies to protected trees.* An initial target of 2 or 3 meetings run by a small team within the Executive would be realistic.

16. *Prepare for the legislative changes that might be introduced in relation to protected trees in an update of the 1997 Planning Acts.* Currently, it is recommended that issues that should be monitored are the concept of introducing a "stop TPO"; the definition of a tree, together with the technical terms of lopping, topping, uprooting, dead, dying, dangerous, destroyed, wilful damage and wilful destruction of trees; the simplification of the language in the Act; the need for councils to monitor TPOs on a regular basis (a consequence of the July 2002 Birmingham court decision); the introduction of a management plan for each new TPO; bringing historic trees within the scope of legislation; redefining the hierarchy of TPOs so that the area category is omitted; and clarifying the position of Crown land.

17. *Ensure that the protection of trees (and TPOs in particular) is given due importance in the on-going workload of government.* This recommendation reflects the growing interest in all sections of society in environmental issues. A specific initiative might be for Ministers to revive the traditional practice of planting a specimen tree when they visit a project (a positive image that always attracts media attention if attached to a popular slogan such as "plant a tree in 2003"). This approach would relate well to the many other environmental initiatives that the government is undertaking as part of the emerging agenda and priorities for the imminent Earth Summit in Johannesburg.

LOCAL AUTHORITY INITIATIVES

18. It is recommended that local authorities act upon the 4 high priority tasks and the 3 secondary priorities summarised below.

High Priority

19. *Ensure that all TPOs in each council are up-to-date, statistically accurate and legally sound.* Based upon the current position at the 8 local authorities visited, about half of all TPOs need to be re-surveyed; a decision made upon the revocation or the amendment of these Orders; and the necessary actions taken to implement a programme that would update all TPOs to the required standard.

20. *Create a management framework and a staffing complement in each council that would allow officials to administer TPOs in the most effective, timeous manner.* As each council's needs vary according to local circumstances, there can be no uniform staffing framework across Scotland.

21. *Include a sound policy framework to protect trees in all local plans.* Currently, the lack of firm guidance from government means that there is a wide range of approaches in local plans. The proposed "Blue Book" and PAN should address this issue in full. In addition, at a local scale, each council should be encouraged to produce practical, informal advice on all tree related operations in illustrated pamphlets. These documents should reflect the particular circumstances in each part of Scotland.

22. *Allow council staff to attend STOG meetings so that they are fully aware of best practice in relation to protected trees in both TPOs and in conservation areas.* This measure would ensure that local authority officials apply the principles and the detail relating to protected trees in a consistent, professional and cost effective manner.

Secondary Priorities

23. *Ensure that future TPOs contain guidance on the long term monitoring and the maintenance of the protected trees identified in the Order.* The options that need to be evaluated include negotiating section 75 agreements; imposing conditions on any planning consent that may be granted as part of a TPO; establishing residents associations; involving the Greenbelt Partnership where appropriate; and creating the framework whereby an informal agreement with owners can be negotiated.

24. *The creation of a small team within each council that can respond rapidly (a one to two day threshold should be the target) to a perceived danger to trees with a high amenity value.* This rapid response approach could be addressed in detail via both the proposed Scottish "Blue Book" and via discussion at STOG.

25. *The introduction of voluntary Tree Wardens to assist officials in managing and improving the tree cover (including protected trees) within each local authority.* A measure that would harness the immense public enthusiasm for environmental issues across Scotland (and thereby contribute significantly to "e-government" at a local scale).

INITIATIVES BY OWNERS OF SITES CONTAINING PROTECTED TREES

26. It is recommended that the owners of sites containing protected trees should be encouraged (via government and local authority advice and guidance) to adopt the following 3 on-going priorities.

On-going priorities

27. *Assisting councils in both updating the data and the maps that relate to existing TPOs and in preparing voluntary management plans for TPOs.*

28. *Supporting a general movement towards open government whereby all data related to protected trees would be readily available to the public via the Internet. The TPO system would provide a useful test bed for implementing this concept.*

29. *Acting timeously and effectively in relation to the maintenance and the replanting of protected trees.*

OVERALL PRIORITIES

30. The key measures are the 3 items summarised in paragraphs 11, 12 and 13 above, namely, the production of a Scottish version of DETR's "Blue Book"; the initiation of research into a GIS based information system for TPOs; and the revitalisation of the STOG group. In total, the 3 initiatives would both address the immediate needs relating to the administration of protected trees and set in motion a re-assessment of the other, longer term concerns that have been identified by the parties consulted as part of this review.

31. It is concluded that the proposed measures for the Scottish Executive, councils and owners would create a TPO system that would be more advanced, more effective and more in tune with society's values than that operating anywhere else in the United Kingdom. On this basis, it is recommended that the 3 priority tasks for the Executive should be initiated within the near future in order to build on the enthusiasm and commitment to the protection of high amenity trees that has been shown by all of the parties consulted during this review. The secondary priorities should be considered carefully with a view to implementing the proposals within 3 years.

CHAPTER ONE CONTEXT OF THE RESEARCH

ORIGINS OF THE CURRENT TREE PRESERVATION ORDER (TPO) FRAMEWORK

1.1 Although the origins of TPOs in Scotland are closely associated with the 1948 Planning Act (together with the linked Tree Preservation Order Regulations 1948), there are a limited number of earlier orders prepared in pre war years. In Glasgow, there are detailed records of some 40 TPOs prepared under the 1935 and the 1942 Acts. A major update and consolidation of the earlier TPO legislation occurred in 1972 with the introduction of the Town and Country Planning (Scotland) Act in that year. Sections 57-60 and 98-99 (relating to enforcement) in this Act provided the basic legal framework. In addition section 98 extended the powers of councils by providing a statutory protection for trees growing in conservation areas.

1.2 Currently, the Town and Country Planning (Scotland) Act (notably, sections 160 to 171 in relation to TPOs; sections 172 and 173 with regard to conservation areas; and section 159 covering planning conditions) provides the primary legislative framework that enables local authorities to safeguard the long term future of individual trees, groups of trees or woodlands in an area. The sole test that a council has to apply when evaluating whether a TPO is appropriate to a particular situation is “in the interests of amenity” (section 160 of the 1997 Act). An additional level of control springs from the secondary legislation that is set out in the Town and Country Planning Tree Preservation Order and Trees in Conservation Areas (Scotland) Regulations 1975. Amendments to these regulations were made in 1981 and 1984.

1.3 The scope and the on-going operation of TPOs are strongly influenced by a series of related legislation. The Forestry Acts of 1951, 1967 and 1979 introduced and subsequently refined the requirement for felling licences across Britain. The importance of the overlap between the planning and forestry roles in protecting trees is reflected in the provisions of sections 160, 162 and 166 of the 1997 Act. Other legislative protection for trees is incorporated in the Wildlife and Countryside Act 1981 (the notification procedures for Sites of Special Scientific Interest and the establishment of National Nature Reserves); and the Agriculture Act 1986 (which establishes Environmentally Sensitive Areas).

1.4 General advice on the handling of trees in relation to planning proposals is contained in NPPG 18 “Natural Heritage”; BS 3998 (1966) “Recommendation for Tree Work”; BS 5837 (1991) “Trees in Relation to Construction”; and the National Joint Utilities Group (NJUG) 1995 “Guidelines for the Planning, Installation & Maintenance of Utility Services in Proximity to Trees”.

THE CURRENT SCALE AND STANDING OF TPOS IN SCOTLAND

1.5 Although there is no accurate survey of TPOs covering the whole of Scotland, my interviews with the 4 city councils (Glasgow, Edinburgh, Dundee and Aberdeen) and 4 rural authorities (Scottish Borders Council, East Lothian Council, Stirling Council and Inverclyde Council) demonstrate both the importance of tree related issues in planning work and the continuous workload that this sector creates for local authority staff. In relation to enquiries

from the public, Edinburgh has some 3,200 written, e-mail and telephone enquiries each year; Glasgow has some 500 such requests; Dundee has some 170 written and 600+ telephone requests for works to protected trees (60% of which relate to conservation areas and 40% to TPOs); and Aberdeen has around 110 written and 800 to 900 telephone requests p.a. (70% to conservation areas and 30% to TPO trees). In relation to the 4 rural authorities consulted, the range of formal written requests for TPO and conservation area related consents each year varies from 100 to around 400 (with the heaviest workload being generated by conservation area enquiries).

1.6 This review highlights the fact that there is a steadily growing interest across Scotland in all tree related issues. Four main factors contribute to this trend. First, the public is becoming increasingly aware of environmental issues. The constant references to the environment in the media reflect this mood. Secondly, there has been a rapid increase in the number of environmental groups at a national and a local level. Many of these groups place tree issues at the centre of their on-going priorities. An interesting example of this trend is the amenity society in Haddington which has sponsored a local resident (Roger Kirby) to produce a detailed history of trees in the town. Thirdly, the development-related professions (notably, planners, architects, landscape architects, surveyors and engineers) now accept the need to incorporate mature trees in developments as a matter of course, rather than simply cutting them down. This trend has led to a rapid increase in the number of landscaping companies involved in tree work. Finally, most councils (as the centre point for TPO issues) have set up small professional groups to deal with the increasing workload. The presence of these groups in themselves generates interest both within and outwith the local authority. In addition, some planning departments have produced guidance notes covering the technical and procedural issues raised by both TPOs and by trees in conservation areas. These tree-related booklets are highly popular with the public; they encourage positive contact with officials; and they are having an effective impact upon the tree cover in their respective areas.

1.7 In contrast to the positive trends outlined above, there are a number of concerns about the long-term future of protected trees. First, the site inspections showed that a disturbingly high percentage of TPO sites were not being maintained in a manner that retained the qualities of amenity that led to the original designation. Although the precise reasons for this apparent indifference cannot be established with certainty, it is clear that lack of knowledge, disinterest in trees and financial considerations in some sections of society all play a part. In addition, the perceived indifference of councils through lack of contact and positive guidance is a factor that discourages many owners undertaking maintenance operations.

1.8 Protected trees are often badly affected by the erection of buildings too close to the canopy (domestic garages and house extensions are of particular concern in this respect). The insertion of underground utilities and the creation of parking bays right up to the trunk are additional, well-documented dangers to the long-term health and appearance of trees. The impact upon the sensitive root systems and the balanced form of the canopy are critical in this respect. In other cases, owners have not planted replacement trees where the original specimens have died, been removed or blown over. All of the above negative elements apply most frequently to the pre 1970 TPOs where the documentation and the legal framework has not been completed to the standards that apply currently.

1.9 A final area of concern in Scotland relates to the lack of up-to-date government advice on protected trees. In contrast, in England, there is the DETR "Blue Book" published in March 2000 that defines best practice, outlines key procedures and provides model forms for

the critical elements in the administration of TPOs. This book (as well as its 1988 predecessor) is widely used in Scotland even though there is the legal limitation that all the statutory references are to the English planning acts.

1.10 Despite the limited number of negative elements outlined above, there was complete support from the parties consulted for the well-established principles and procedures that underpin tree preservation. This support comes equally from the private and public sectors and includes (most importantly) development-orientated interests. In this latter group, there is widespread recognition that well sited and maintained trees not only add to the general amenity of an area but also enhance the market appeal of a well-designed project. Among all of these sectors of society, it is widely recognised that a TPO is a legally binding burden on land; that it is a material consideration in evaluating any development proposal; and that there is both a legal and a moral obligation to comply with the requirements of the system that protects trees. On this basis, I conclude that there is no immediate need to introduce immediate, fundamental changes to the current legislative framework.

1.11 Whilst the principles that underpin TPOs are fully supported, my interviews generated various readily achievable and widely supported suggestions for the improvement and the refinement of the current system. These elements (which represent fine tuning rather than radical surgery) are analysed in detail in chapter 3 and the resultant conclusions are developed in chapter 4 below.

CHAPTER TWO THE FACTORS INFLUENCING RECENT TREE PRESERVATION ORDER WORK

HISTORICAL PERSPECTIVE

2.1 The driving force behind most TPOs springs from a council needing to respond rapidly to development pressure within a high amenity, treed area. Although this pattern has existed for 50+ years across Scotland, it has accelerated markedly in the last 3 decades in response to widely differing circumstances. In Edinburgh, the major housing extensions into the green belt in the 1970's led to a maximum of 30 TPOs being created every year. Currently, there are only 2 to 4 Orders per annum as the political priority switches to the use of brownfield sites. This modest TPO programme in the capital city has to be viewed within the context of the council receiving some 5,000+ planning applications a year, roughly half of which contain trees of amenity value. Of these 2,000 sites, about 100 include trees that might justify a TPO (rather than the imposition of planning conditions should a consent be granted). In narrowing the 100 applications down to the 2 to 4 that progress to the formal TPO stage, the factors considered include a rigorous interpretation of the section 160 of the Act ("in the interests of amenity"), together with the health and the position of the trees, the type of development proposed and the land use framework in the local plan. In addition, the council has to be confident that the TPO would be supported at an inquiry if an unsuccessful application is challenged via the appeal procedures.

2.2 In Aberdeen, the greatest pressure to extend the urban area has occurred in the last decade. This position has led the council to promote up to 12 TPOs in each of the last 9 years (94 in total). On this basis, the majority of the 173 confirmed TPOs are of comparatively recent origin and reflect contemporary circumstances. Similar patterns prevail in both Dundee and the Scottish Borders where housing pressure has risen markedly in recent years. A summary of all the above statistics for the 8 councils interviewed is contained in Appendix 3 at the rear of this report.

2.3 As there is an almost complete lack of revocations, the Scottish-wide trend is for the numbers of TPOs being administered by councils to rise steadily every year. This pattern (which is likely to rise markedly in the foreseeable future) generates a considerable management and staffing commitment for councils.

2.4 Other factors that indicate that the work generated by TPOs will require greater input by councils are the rising numbers of applications to carry out work to protected trees; more enquiries from owners seeking advice on best practice; a recognition by many owners that trees need to be maintained to safeguard their long term amenity; the greater influence of local pressure groups; the larger numbers of trees that are being planted in conservation areas; and an enhanced political awareness that amenity issues (such as TPOs) are important factors in securing electoral support. These trends mirror the world-wide increase in interest in all environmental issues following the Earth Summit at Rio in 1992 and the imminent follow up in Johannesburg this summer (the beginning of August).

2.5 The consultations have shown clearly that there are a number of important improvements to the current system that can be introduced in both the short and the longer term. These factors (which apply to government, councils, owners and other interested parties) are best addressed by posing the 11 questions outlined below in chapter 3.

CHAPTER THREE THE EFFECTIVENESS OF THE CURRENT TREE PRESERVATION ORDER SYSTEM

THE RELEVANT TESTS OF EFFECTIVENESS

3.1 As there is no formal method for assessing the “effectiveness” of TPOs, this evaluation has to be based upon 11 tests that emerged from the consultations undertaken as part of this study. In this context, I consider that the main headings should be:-

- (a) whether TPOs have met the test that is set out in section 160 of the Act (“in the interests of amenity”). In particular, whether records demonstrate that the presence of a TPO has at least maintained, and desirably improved, the amenity of the area.
- (b) whether TPOs have made a significant contribution to creating a sound planning framework in the areas where the procedure has been applied.
- (c) whether the TPO framework is well handled within development plans.
- (d) whether the principles and the track record linked to TPOs has secured the support of development interests, amenity societies, pressure groups and the public.
- (e) whether local authorities (elected members and officials) have operated the legislation and the procedures in a balanced, effective and acceptable manner.
- (f) whether the TPO system has generated any undue, unfair or inappropriate financial, legal or other burden for owners affected by Orders.
- (g) whether the costs incurred by councils in making and operating TPOs represent a sound use of public sector resources.
- (h) whether the statutory roles defined for the Scottish Executive and the Forestry Commission have been applied in an effective manner.
- (i) whether the 19 issues raised by individual members of the RTPI warrant specific action by the Scottish Executive, councils or owners of protected trees.
- (j) whether any of the minor criticisms and comments raised during the consultations have identified critical technical or procedural problems.
- (k) whether the priorities for improving effectiveness that have been highlighted during the study can be implemented within a tight timescale and at a reasonable cost.

Test (a): Whether the amenity of the area within and around TPO designations has been maintained and enhanced (the section 160 of the Act test).

The historic perspective

3.2 This factor was assessed principally from the results of the 50 interviews that were carried out with the wide variety of interested parties detailed in Appendix 1, together with the site inspections of specific TPOs in different parts of Scotland. Whilst this approach is not comprehensive, it has drawn extensively on the accumulated knowledge of a wide range of council officials, other professionals engaged in TPO work and knowledgeable members of the public.

3.3 Any judgement on the long-term amenity of a treed area (whether it has TPO protection or otherwise) has to recognise that all plant life grows, matures and eventually dies. For these reasons, it is unrealistic to expect that any protection for trees within the context of the planning acts can preserve the precise character that existed at the time of designation. As the decades pass, even trees that have been professionally maintained grow into larger, denser specimens with a different shape, height, colour, texture and visual appearance. In addition, a limited number of well maintained trees will die from a wide range of natural and man made causes. This constantly evolving position contrasts with the objectives behind the listing of buildings where Historic Scotland and local authorities normally ensure that the original features (down to the smallest details of fenestration, finishing materials and roofing) are preserved to the highest standards.

3.4 Against the background outlined above, the realistic, long-term aim of tree preservation should be to retain the key elements of individual and groups of trees so that they contribute effectively to the dominant character and the amenity of the area. Within this broad framework, the most important factors are to maintain the health of the trees (a critical factor); to allow a balanced growth of trees so that the full size and shape can be achieved in a safe and visually pleasing manner; to retain, in particular, the character of the trunk, its main branches and its foliage; to ensure that individual trees relate well to other nearby specimens; to prevent any harmful change to the root and the linked soil systems that support and feed protected trees (especially within that critical area of ground defined by the outer limits of the canopy and the linked root system); and to ensure that any development in the vicinity of protected trees does not undermine their long term character, health or safety.

3.5 A further factor to be taken into account in any long-term assessment of amenity is the paucity of records linked to the early TPOs (particularly the pre 1970 Orders). This position arises from a combination of the minimalist professional input at the designation stage in the early TPOs; a sequence of local government reorganisations that involved (in many councils) rapid changes in personnel and the systems of working; inadequate transfer of basic data at critical reorganisation periods; very sketchy monitoring records (if they exist at all); and a marked change in the land use pattern in many of the areas affected by the early TPOs. This historical background means the accuracy of many of the early TPOs is so questionable that they might be difficult to defend at (for example) a planning appeal or in a court.

3.6 In Edinburgh, the council recognised the problems caused by the uneven factual record of the early area TPOs (43 of the 148 Orders in the city). As internal staff resources did not permit the records to be updated by officials, 2 consultants were appointed to re-

survey all of the area TPOs. These large sites were inadequately assessed at the designation stage; were not updated in any meaningful form in the intervening years; and have now changed very markedly in character. The time allocated for this work ranged from half a day to 5 days with the “average” TPO taking 2 days to complete. Once the re-surveying had been completed by the consultants, council staff reorganised the system for area TPOs on a consistent, accurate basis. In addition (and most importantly), the updated system now allows further changes to be inserted in a structured manner.

3.7 Despite the uneven track record across Scotland, the great majority of the early TPOs examined did retain some tree cover, albeit in a very different form from that defined in the initial Order. Whilst there are few TPOs that need to be revoked (perhaps 2 to 5% of the Orders in each local authority), it would be sound practice for most council’s to review and update their TPO records for around 50% of all of their TPOs. This exercise is likely to generate a requirement for the formal amendment of around half of the TPOs in each council area.

The priorities for improving effectiveness (namely, updating the spatial, factual, procedural and monitoring elements linked to TPOs by introducing GIS technology).

3.8 Whilst the great majority of councils (as the centre point for TPO procedures) hold their mapped, statistical and spatial information in the traditional file and hand prepared map form, a few councils are experimenting with a GIS based system. The Forestry Commission is also actively developing an independent, comparable GIS framework for its own purposes. The perceived success of these early ventures has created very strong support from both public and private sector organisations for a refinement and extension of this approach. In the wider context, it has to be recognised that GIS based maps (and the linked text) do not meet the strict legal test for formal, signed documents. Accordingly, there will still have to be a traditional TPO map and typed text in the foreseeable future.

3.9 Currently, the GIS system is most developed in relation to the functions and the responsibilities of the roads and engineering sectors in local authorities (bus stops, sewers and manholes). In a few councils, the TPO data is confined to the mapped outline of the sites involved; the diagrammatic position of individual trees (where this element is relevant); and the basic information relating to dates and file references. For many functions this initial stage GIS package offers on-going advantages. For example, answering enquiries as to whether a property contains protected trees either via a TPO or a conservation area designation; determining whether work can proceed on a specific tree without securing the council’s consent; and establishing whether an objection to a proposed development can be based upon TPO related reasons. However, all parties recognise that there is a wide range of additional, highly relevant information that could be added to the basic system so that all TPO work shares a common database. The advantages in pursuing this process are such that the highest priority should be given to this sector of work.

3.10 The parties consulted during this study have suggested that a modern GIS system (based upon the initial work pioneered in this sector by the Forestry Commission, Scottish Borders Council, Stirling Council and Dundee City Council) should include the following 13 items:-

- (i) the precise boundary of the TPO defined either by reference to site survey work by surveyors or by GPS positioning equipment.

- (ii) the name, area, file reference, date of confirmation of the order and any other relevant procedural data for the TPO.
- (iii) the legal framework under which the council prepared and approved the TPO.
- (iv) the precise position of individual trees (as determined by GPS positioning); the species of tree present; their height, breadth, canopy spread and special features when first surveyed (branch formation, storm damage or minor disease).
- (v) the position and character of any buildings, hard surfaces or other man made features present within and around the TPO when first surveyed.
- (vi) any planning consents granted within or adjacent to the TPO area.
- (vii) any infrastructure inserted below ground level (sewers, drains, water pipes, electricity cables or telecommunication cables).
- (viii) any applications for permission to fell, lop or top any protected tree (together with the outcome of this application).
- (ix) records of trees that have had to be removed as a result of severe disease, death or major storm damage.
- (x) records of any fellings or replanting.
- (xi) any unauthorised work brought to the attention of the council (together with the action to regularise the works or to prosecute the owner).
- (xii) a series of photographs of the protected trees in each TPO (together with specific details relevant to each tree) recorded with a digital camera as part of the site inspections undertaken by council officials in the course of their normal duties.
- (xiii) the incorporation of aerial photographs (copies of which are available from commercial sources) to define the position of individual trees, the canopy spread and the presence of buildings at particular points in time.

3.11 The current operational effectiveness of GIS based TPO systems could be increased markedly, first, by creating a structured system for the above data and, secondly, by making the data more readily accessible than has been the case hitherto. Various consultations highlighted the advantages of using a basic GIS system with a map of each TPO. Attached data and links to the expanded information outlined above would allow all relevant information for each TPO to be concentrated in a single, readily accessible form. This data could be modified, updated and augmented (where necessary) with minimal effort; it would greatly reduce the space occupied by bulky papers stored in traditional filing cabinets; it would allow pictorial records of protected trees to be added on a regular, yearly basis (thereby providing an effective monitoring framework); and it would require far less administrative input by staff (with its associated lower risk of error).

3.12 A system of the kind outlined above would utilise existing technology and could be established relatively quickly by a small team of an IT expert, a planner and an administrator. The most effective method to develop this concept would be for one urban and one rural council to act as prototypes for a Scottish Executive funded research contract. If the prototype proved successful for a self-contained, small scale issue such as TPOs, the model could be extended to cover many of the other statutory duties performed by councils. For example, it is likely that listed buildings, conservation areas, green belts and development control issues could be handled within very similar parameters. In total, the approach outlined above would enable all TPO work to be progressed far more quickly and accurately with no immediate increase in staff. For these reasons, a very high priority is placed upon this proposal.

3.13 In relation to selecting a specific area for a prototype study, from the study and knowledge of the data available within council records, Dundee or Aberdeen might be the most suitable urban test bed given their recent experience. Scottish Borders Council might be suitable as a rural prototype as they have already begun work on developing GIS systems for TPOs.

3.14 In proposing additional research on GIS, it is clear that there are a number of fundamental legal, operational and financial issues that have to be resolved. Most importantly, there is the question of the use of the OS map as the base for each TPO, together with the on-going reproduction of these maps by a wide variety of private individuals, companies and public bodies for their own use. In addition, there is the general issue of whether the public should have open access to all council records on TPOs (irrespective of whether these records are held in a controlled council building or are available openly on the Internet). Finally, there is the question as to whether a planning authority should charge for public access to TPO data (thereby setting a precedent for other, broadly comparable information that has not been readily available to the public to date). As these issues cannot be addressed within the context of this review, I have not attempted to make any judgement on the wider considerations raised by the recommendations summarised above.

Test (b): Whether TPOs have made a significant contribution to creating a sound planning framework in the areas where the procedure has been applied

The historic perspective

3.15 The need for local authorities to respond to development pressure has been a consistent theme underpinning the use of TPOs in urban, urban fringe and rural locations across Scotland. This framework has existed since the earliest planning acts and reflects elected members' and the public's strong desire to retain existing trees that contribute significantly to the character and the amenity of an area. In recent decades, the greatly increased pressure upon brownfield sites has meant that the redevelopment of hospitals; schools, low density suburban villas and the policies attached to large houses has threatened many individual and groups of mature trees. In these circumstances, councils have initiated (or threatened to initiate) TPO procedures as an integral part of the planning process. In addition, pressure from local amenity group and the public has instigated many Orders.

3.16 The timing of the development pressure that triggers TPOs has varied across Scotland. In Edinburgh, the peak period occurred in the 1970's when up to 30 Orders were prepared each year. In Aberdeen, Dundee and the Borders, the highest output has been in the last few years in direct response to rising numbers of housing applications in and around settlements. In most of the above situations, the ready availability of the TPO safeguard has made a major (and widely appreciated) contribution towards maintaining the established standard of amenity. Most importantly, the procedure ensures that protected trees are given their correct planning weight as a relevant material consideration when the merits of a proposed development are being evaluated.

3.17 A number of specific examples support this conclusion. At Gogar (close to Edinburgh Airport), a long standing TPO has been a major determinant in influencing the size, the layout and the design of a proposed new headquarters for the Royal Bank of Scotland. Without the well-defined protection that a TPO gives to the established woodland along one of the major approaches to the city, it is possible that a very different form of development would be proposed. The impact of this TPO has been strengthened recently by an accurate GPS based re-surveying of the tree cover, thereby ensuring that the key trees are precisely located. In Glasgow, the redevelopment of the heavily treed TPO site at the Archdiocese site in Newlands (in the southern suburbs of the city) proceeded via 2 different companies. One well established builder (the Walker Group) held extensive discussions with officials prior to submitting an application that reflected the constraints imposed by the protected trees. This approach led to a well-designed scheme that has been recognised as a model of its kind. In contrast, a second housing scheme within the same overall site was submitted for planning consent without any prior discussion, with little attempt to respect the TPO trees and with a design that attempted to cram in the maximum number of houses. It is not surprising that the overall result from this latter approach is of a far lower standard than the first scheme summarised above.

3.18 Although there is a high correlation between the use of TPOs and sound, long term planning, a number of unsatisfactory situations have arisen. Some of these problems spring from the poor records, lack of monitoring and staff changes that are outlined above. Other factors that have contributed to an undesirable loss of trees include a slowness of reaction by the council when a threat of immediate felling has been brought to the attention of officials; the unstructured approach by the council towards initiating and managing TPO procedures; and by a perceived lack of interest in court action by the Crown Prosecutors.

The priorities for improving effectiveness (notably, by handing delegated powers for TPOs to officials; by increasing staff resources to cope with the expanding workload; by introducing a management structure that enables a rapid, coordinated response by councils; and by creating a relevant prosecution framework).

3.19 Taking each of the above issues in turn, it is clear that the initial danger to trees worthy of protection comes from rapid felling by an irresponsible party prior to a TPO being put in place. This factor can be addressed effectively within a council by a combination of delegating the powers to officials (who are normally capable of reacting very quickly to an emergency) and by setting up a clearly defined management team that can come together very rapidly in order to respond to the need for an Order. This framework can only be made to work effectively if there are adequate and well trained personnel available in the planning, parks, legal and administrative departments who can coordinate (at appropriate speed) the essential inputs from the respective professional backgrounds.

3.20 Whilst many local authorities do operate the framework outlined above, it would be of assistance if the Scottish Executive could endorse this method of working. As a target for most TPOs, it is apparent that some local authorities (Scottish Borders for example) can complete the necessary professional input within one day and serve the Order the next morning (including the attachment of the provisional powers that are set out in section 163 of the 1997 Act). This efficient operation contrasts markedly with the 2 to 8 week approval timescale that can operate elsewhere across the country. If the one day timetable could become standard across Scotland (and was endorsed in principle by the Executive), it would act as a severe deterrent to irresponsible developers who remove high amenity trees prior to a council being able to initiate protection measures. A similar process applies to the use of interdict powers (which has the practical effect of making specified actions against TPO trees a criminal action that can be enforced very quickly by the police).

3.21 In the short term, the process of the dissemination of best practice to local authorities and other parties is best achieved via government guidance. In this context, the production of a Scottish version of the English “Blue Book” is the top priority, followed by the circulation of a PAN. The promotion of a revitalised STOG is an additional priority task as this group has a proven record in promoting high professional standards. In the longer term, the issue of serving “stop TPOs” that would have an immediate effect and which cannot be challenged by an owner, tenant or agent on legal grounds needs to be addressed via a new provision in primary legislation. At this stage, it is only possible to identify the principle of this key measure as the exact scope and content of this new approach would have to be handled within the context of a revised planning act.

3.22 The position in relation to the Crown Prosecution Service is complex. My consultations show that there is no problem with the principles upon which prosecutions relating to alleged breaches of TPOs are based; upon the form of the existing statutory framework; upon the detailed procedures for pursuing court action; or the impact upon the scale of the maximum fine possible (£20,000). The real issue is that both the Sheriff Courts and the prosecution service are too overloaded with other civil and criminal cases to be able to fit in TPO related work. The competition for specialist legal resources and court time means that many local authorities are unwilling to make the necessary input to pursue prosecutions. Even if formal action finally takes place, the delay can be such that events have moved on to the point where prosecution is not the optimum solution. On this basis, only the most severe cases actually reach the courts (an average of one to 2 cases per council per decade).

3.23 The only realistic method for addressing this issue is for the government to expand the capacity of the legal system (and the courts in particular) so that TPO related prosecutions could be progressed rapidly. In practical terms, this upgraded service would have to cope with a TPO workload that local authority officials estimate to be 4 to 5 times the current level of prosecutions.

3.24 In the short term, more efficient use of the existing capacity in the courts could be made by upgrading the 1999 publication “Reports to the Procurator Fiscal: A Guide to Non Police Reporting Agencies” (Third Edition). Whilst the basic principles appear to be widely understood, there is a need to fine-tune the various stages so that officials (and other interested parties) can focus their efforts in a productive form. As a first stage, it would be useful if the prosecution service could organise a series of seminars for interested parties and thereby receive a direct feedback as to subsequent needs.

Test (c): Whether TPOs are well handled within the development plan system.

The historical perspective

3.25 As TPOs are normally promoted in response to local planning issues, the approved structure plans do not cover this issue. Similarly, in replacement structure plans, the highly focussed nature of the strategic framework means that the whole of the environmental sector is often covered by a limited number of policies. In the emerging replacement Lothian Structure Plan for example, in response to Executive pressure, there are only 40 policies in total with 12 devoted to the whole of the environmental sector. Against this background, there can be no justification for promoting TPOs as an issue that justifies specific mention at the strategic scale.

3.26 In local plans, tree preservation is handled in a wide variety of ways. This position is best illustrated by comparing the situation in Edinburgh and West Lothian, 2 adjoining local authorities. In the adopted local plans (which apply across the city), Edinburgh shows the location of its 148 confirmed TPOs either precisely (where they are large enough) or by a symbol for small areas. Whilst there is a generalised, all embracing policy that indicates support for the protection of trees that have an important impact upon amenity, there is no appendix defining the approved TPOs. Similarly, there are no defined criteria against which the council would assess a potential TPO should development threaten trees of high amenity value.

3.27 For West Lothian, the adopted local plan does not define any TPOs; it does not have a TPO policy; and there is no appendix relating to the 40+ confirmed TPOs. For the finalised replacement local plan this position changes in that there is a single, broadly phrased TPO policy.

3.28 There are a variety of reasons why councils give a low priority to TPOs in local plans. Most notably, it is believed that TPOs vary so greatly in size that representation on the proposals map is difficult; that they clutter up the proposals map (and thereby obscure more important land use issues); that the precise boundaries are not always known for some of the older TPOs; and that the relative planning weight given to TPOs in the overall planning system does not warrant their inclusion.

3.29 The areas where future TPOs could be introduced as an integral part of a proposed development are not highlighted in any of the local plans consulted. This issue is of marked concern to development interests as proposals to invest in greenfield and brownfield sites with mature trees can be hindered by the uncertainty as to the council's long term intentions. If the likelihood of this planning constraint is known at the outset, developers believe that a less confrontational approach would be possible. In contrast, officials submit that the indication of a TPO simply forewarns irresponsible companies and enables them to cut down trees well in advance of any pre application discussions. Once this type of mature tree cover is removed, there is no mechanism available to the planning authority to regenerate the former standard of amenity. Whilst planning conditions can require major landscaping (including the planting of replacement trees) to be implemented prior to the occupation of the first house, there is no comparison between the size of trees planted at this point in time and the forest trees that created the historic amenity for the area.

3.30 With regard to policies in the local plan, most of the up-to-date documents contain a generally phrased intent to pursue tree protection measures where appropriate. This broad framework is expanded in the text linked to the general policy (or policies). Whilst this flexible framework allows a council to act in a wide variety of circumstances, development interests comment that there would be distinct professional benefits if the policies in the local plan were more tightly defined. From a private sector perspective, features worthy of inclusion in the plans would be the locations where TPOs would be promoted if development proposals emerge; the criteria that a planning authority would apply in defining which trees should be protected (and which could be considered for felling); the standards of management that would be appropriate to protected trees; and the measures that a council would take in the event of unauthorised felling (or other inappropriate works).

3.31 From a wide reading of adopted local plans, it appears that the “trees, woodlands and hedgerows” section in the Cowdenbeath Area Local Plan – Consultation Draft offers the most comprehensive framework for the protection of trees. Here, 5 policies (COU12, 13, 14, 15 and 16) and 2 proposals (PR12 and 13) define (in sequence) a framework that promotes the protection of trees from development; the principle that TPOs will be used to protect the amenity value of important trees (when they are under threat); a series of criteria against which proposed works to protected trees will be assessed; the issues that a developer should address when assessing the planning merits of a site containing trees; the council’s desire to seek management agreements with owners of woodlands that are important for amenity, wildlife or public access; the council’s support for sustainable planting in line with the indicative forestry strategy; and the principles that should apply to commercial afforestation (in association with the Forestry Commission).

3.32 In total, these policies and proposals create a sound framework against which all parties can assess the impact of a proposed development upon high amenity trees. On this basis, the merits of the opposed arguments for the protection of trees and their removal as part of the development process can be balanced on objective criteria.

The priorities for improving effectiveness (the need for a consistent approach; the merits of including a comprehensive framework for TPOs in local plans; and the use of site development briefs)

3.33 The first priority for improving the effectiveness of local plans in relation to TPOs is to ensure that there is a measure of consistency across Scotland. The current wide variety of approaches does not generate confidence in the important principle that it is in society’s interests to protect trees with a high amenity value. For such a message to gain its rightful position in the planning system, it is important that the issue is addressed in guidance from the Scottish Executive.

3.34 With regard to the specific content in local plans (based upon the specific viewpoint of tree protection), there are 2 fundamentally opposed viewpoints. At the one extreme, some of the parties consulted consider that there are 8 TPO issues that should be included in local plans. This approach would create a formal statutory authority for individual TPOs and thereby ensure that every development control decision (whether by a council or at appeal) would be taken after a full consideration had been given to the amenity value of trees. The 8 headings are:-

- (i) the definition of every approved TPO on the proposals map either via a definitive outline or by a stylised symbol on the proposals map.
- (ii) the cross-referencing of the above TPOs with an appendix at the end of the plan. This appendix would allow an interested party to make specific enquiries with the council, thereby minimising the time spent by officials.
- (iii) the inclusion of policies that define the framework for protected trees (both for the council area as a whole and any specific sites where special considerations apply).
- (iv) the definition of the criteria against which a TPO proposal would be assessed (thereby allowing owners to participate meaningfully in any initial discussions).
- (v) the arboricultural principles that a council would apply to protected trees (for example in relation to diseased, damaged or replacement trees).
- (vi) the actions that a council would take if inappropriate damage or removal of protected trees occurs.
- (vii) the standards that a council would apply in relation to development close to protected trees (for example, Edinburgh states in its guidance notes for trees in conservation areas that “an undeveloped zone measured 10 metres from the outermost edge of the tree canopy or 20 metres from the bole of the tree whichever is the greater” should be allowed for).
- (viii) any other council publications (pamphlets on the care of trees for example) or government guidance (British Standards or PAN’s) that would take into account in making formal decisions upon development within or close to protected trees.

3.35 In setting out the above framework, it has to be recognised that the current Scottish Executive priority is to ensure brevity in local plan documents. On this basis, there is an alternative approach that concentrates the policies and proposals onto the key land use issues and allocates the detail relating to environmental factors such as TPOs, listed buildings, conservation areas and SSSI’s to other procedural measures. Adopting this approach, Edinburgh Council has not included any TPOs in the most recent replacement local plans (a reversal of former practice). The preferred system involves a 3 pronged referral system based upon:-

- (i) the highlighting of expansion areas around the city in the proposals map (such as the South East Wedge, the Waterfront, Gogar and Granton in Edinburgh) and a framework is set out identifying the situations where TPO powers will be used to ensure an appropriate land use framework.
- (ii) the plan defines area where a development brief will be prepared by the council in order to protect high amenity trees. The brief would identify the trees worthy of protection well in advance of any definitive development proposals.

- (iii) the preparation of a council policy document to act as a citywide development control mechanism for trees (broadly comparable to the open space plan that has served Edinburgh well over many decades).

3.36 In deciding upon a preferred approach towards TPOs in local plans, it is important that this issue is handled in a form that is consistent with the wider government objectives for the development plan system. On this basis, it is not appropriate for this study to make any firm recommendation upon the Executive's priorities for future replacement local plans.

Test (d): Whether the principles behind and the record of applying TPO legislation has secured the support of development interests, amenity societies, pressure groups and the general public.

The historical perspective

3.37 There can be no doubt that the principles behind TPOs are universally accepted in Scotland. This position of strong political, public and legislative support for the retention of important trees mirrors the general situation that prevails in Europe and in North America. A brief examination of the systems that prevail in France, Germany, the USA and Canada support the view that there is a general acceptance in the western world that central and local government should have appropriate powers to protect high amenity trees from development; that local authorities should have powers to act rapidly to protect endangered trees when required; that councils should be able to control the way in which the tree cover evolves (including replanting where necessary); and that fines should be imposed for non compliance with the statutory framework.

3.38 In Scotland, the development interests consulted support TPOs on the basis that attractive trees add to the amenity and the value of a project. This conclusion applies most directly to the housing sector where trees (provided that they are not so close to dwellings that they exclude light and undermine foundations) impart a sense of maturity and character to a new development. In any site, a council has the choice of protecting existing trees either by means of a TPO or via planning conditions. The great advantage of the TPO route is that the procedure is very focussed and precise in its objectives; it can be acted upon rapidly; it is in perpetuity (and is normally administered by officials on this basis); it sets out a planning related framework that can be monitored independently by the public; and all major arboricultural work has to be approved in advance by officials (thereby promoting higher standards of work). Whilst planning conditions cover the same sectors, in practice, the lower profile of conditions means that they are less effective in relation to the long-term protection of trees. In addition, as new planting normally relates to standard (or smaller) trees, the environmental impact is far lower than that achieved by the retention of the existing, mature specimens.

3.39 Relatively few examples of flagrant or unintentional breaches of either TPOs or tree related planning conditions were identified during the consultations. In general, the high level of compliance with Orders reflects the fact that the great majority of the population respects trees and is willing to cooperate fully with councils in order to achieve shared objectives. Many owners take pride in the fact that TPOs apply to their property and go to great lengths to maintain the standard of amenity. This situation means that most TPOs attract little publicity and operate in a low-key manner. In complete contrast, a very small

minority of owners and developers act irresponsibly for various reasons. For individuals, an extreme dislike of trees, fear of falling branches or an obsession with a view can initiate irresponsible felling. For developers (and there appears to be at least one suspect company in every council area), the key factor is normally a desire to increase the density of a proposed development or to impose a design solution that would not be possible if mature trees remain in place. For these groups, the presence of a TPO is not necessarily an effective deterrent. A wide variety of subterfuges can be put in place to enable felling to occur. In these cases, no changes to the form, the content or the fines in TPOs would make a significant difference to the effectiveness of the procedure. A similar position exists in relation to works on listed buildings and in SSSI's.

The priorities for improving effectiveness (production of guidance by central government; re-activating STOG; making explanatory leaflets available in council offices; the improvement of reaction times by officials; and the appointment of voluntary Tree Wardens)

3.40 Whilst the principles that underpin TPOs are widely supported (as noted above), there is a paucity of technical and procedural guidance from the Scottish Executive. In this situation, most councils now use the most recent version of the DETR publication "Tree Preservation Orders: A Guide to the Law and Good Practice" (March 2000). This document (universally known as "The Blue Book") is an excellent summary of all the relevant issues, the procedures and the legal framework. Whilst all of the 14 chapters apply in principle to Scottish conditions, particular significance should be attached to the 9 model forms that refer to various aspects of TPO procedure. If Scottish versions of these forms could be prepared and endorsed by the Executive, this measure alone would speed up many of the time consuming administrative processes linked to TPOs.

3.41 Given the current popularity and widespread use of DETR's "Blue Book", it would be extremely valuable if the Scottish Executive could issue its own version of this publication. This process (which is examined in greater detail in paragraph 3.94 below) should be given the highest priority.

3.42 At a local scale, a number of councils have produced excellent pamphlets relating to the care of trees. Specific problems addressed in these documents include identifying the official responsible for trees; extracting a response within a reasonable time scale; and gaining access to the documents that are relevant to a specific TPO (the adopted local plan; any replacement local plan; the original TPO designation papers; council policy statements; comparable cases; the planning history of the area; and application forms). The productions by Edinburgh and Stirling set high standards in this sphere. In both areas, officials comment that the pamphlets are so popular that the display boxes at the public counter have to be refilled constantly. This position indicates that there would be distinct advantages if the Scottish Executive could encourage all councils to produce comparable local guidance. As pamphlets of this type can be produced, for example, by a summer student, the time and cost involved would be modest in comparison with the time saved by reducing the number of telephone and written enquiries.

3.43 A further measure to improve the effectiveness of TPO guidance would be for councils to make local plan material, policy documents, planning guidance and technical publications available via the Internet. This approach would encourage citizens to take the first steps in analysing situations themselves, thereby creating on-going benefits for planning staff.

3.44 In many councils, there is a need to improve the reaction times when an immediate threat is posed to a tree of high amenity. As trees can be felled very rapidly, a council should be able to put a TPO in place within one day. Currently, there is a wide variance in the performance in this sector. Enhanced speed can be achieved by a combination of factors, namely, officials should have delegated powers (so that the delays linked to committee cycles are avoided); a team of relevant officers from the planning, forestry and legal departments should be in place to minimise reaction times; all procedures and model forms relating to TPOs should be prepared in advance; and the critical site survey stage should proceed at maximum speed. Given the wide variation in the standards that exist currently, additional guidance from the Scottish Executive would make a significant impact in this sector.

3.45 Over the longer term, the question of councils being able to respond very rapidly to a threat to trees of high amenity needs to be addressed by changes within the legislation. Currently, the need to follow all of the procedural elements in serving an Order means that a determined developer can often circumnavigate the intentions of the local authority. This is particularly the case when court cases have established that an incorrectly served TPO is not valid. On this basis (and given the pressures that arise from the £1m. per acre housing site), a developer can afford to employ the highest level of expertise in order to challenge one or more of the many elements that form a legally binding Order.

3.46 Against the above background, the long-term priority is for councils to be given a new power to issue a “stop TPO” that would prohibit all operations in relation to defined trees. The stop order would cease to operate after a specified time unless the council put in place a conventional TPO that incorporated the legal requirements of advertisement, right of objection and full political consideration. As this kind of approach raises a wide range of legal issues at a time when human rights are under detailed consideration, this fundamental change to the legislation needs to be evaluated as part of an updated planning act.

3.47 Two further measures that would improve the effectiveness of TPOs would be to re-activate STOG and for councils to appoint voluntary Tree Wardens. Initially, STOG proved a great success by bringing together local authority expertise. As the meetings ceased solely because of the promotion of key office bearers, the injection of a chairman/secretary from the Scottish Executive for one or 2 years would re-activate meetings. Given the proven value of the group, a high priority should be accorded to this initiative. Similarly, the use of voluntary Tree Wardens (as pioneered by Perth and Kinross) would have a marked impact upon the effectiveness of all tree protection measures given the great latent interest in the environment in Scotland. In relation to trees, the wardens should have, as their first priority, the positive role of improving amenity rather than be seen as policemen spying on owners of protected trees.

Test (e): Whether local authorities (elected members and officials) have operated the legislation and procedures in a balanced, effective and acceptable manner.

The historical perspective

3.48 Although the Acts do not provide for an appeal to the Scottish Executive in relation to the serving of a TPO, councils have to take into account any objections lodged. This framework mirrors the principles that apply to many local authority functions. For TPOs, as there has been no fundamental criticism of the existing objection procedure, no change to this

sector of the legislation is proposed. In relation to appeals that can follow a council's refusal of consent for any felling, lopping, topping or other works to a protected tree, the records of the Scottish Executive Inquiry Reporters Unit indicate that very few such appeals are lodged (around one or two per year). Similarly, no technical or procedural problems have emerged as a result of the judgements of individual Reporters.

The priorities for improving effectiveness

3.49 All of the above issues can be addressed in the proposed Scottish "Blue Book"; by councils issuing pamphlets on tree protection; by reactivating STOG; by improving internal practices within councils; and by using Tree Wardens.

Test (f): Whether the TPO system has generated any undue, unfair or inappropriate financial, legal or other burden for the owners affected by Orders

The historical perspective

3.50 Whilst a TPO does not in itself require an owner to undertake any tasks, there is a duty in perpetuity to secure consent for maintenance work on the protected trees. In practice, this constraint leads to very uneven standards. At one extreme, many owners do nothing and simply allow trees to mature in their own form. For this reason, a high percentage of the sites visited contained trees with broken branches, blown out crowns, fungal growths and ivy growing around the main trunk. Whilst all of the above factors occur naturally in forests, they are not compatible with the fundamental purpose of protecting trees "in the interests of amenity". At the other extreme, many tree owners implement rigorous management regimes, thereby creating well-formed, healthy specimens that replicate the standards that are set in Botanic Gardens across Scotland, in the policies of many of the larger estates, in the majority of private gardens and in a significant number of public parks.

3.51 The promotion of higher management standards for protected trees was a constant theme highlighted during the various consultations undertaken as part of this study. In many instances, this view did not reflect an understanding of the technical, financial and management input that is required to maintain trees to a high standard. In botanic gardens and the larger estates, it is normal practice for a formal review of the management of each tree to be undertaken at least once a year. This analysis would highlight the tasks that needed to be undertaken over the next 12 months, together with a phased programme of works. In addition, much shorter examinations would follow periods of high winds and heavy snowfalls (both of which can cause serious damage that needs immediate action). The full labour and equipment costs of all of the above stages is substantial.

3.52 If local authorities were to be given additional powers to prepare and enforce management plans for protected trees within privately owned ground, there would be major legal, manpower, financial and political implications. As it is highly unlikely that these issues could be resolved in the foreseeable future, any short term change in this sector must spring from powers of persuasion and education.

The priorities for improving effectiveness (each new TPO should be accompanied by a management plan; this plan could be implemented in 5 different forms; council officials should monitor and act upon this plan; in some councils, consideration needs to be given to strengthening the management framework that applies to TPOs)

3.53 Some of the parties consulted (including the RTPI) lay such great stress on management that they propose that the term TPO should be replaced by the broader heading “Tree Management Orders”. In addition, it is suggested that each TPO should be accompanied by a management plan prepared by the council (in consultation with interested parties) and that this plan should become an integral part of the formal TPO. To achieve the objectives set out in such plans, there are 5 options available to a council at the present point in time:-

- (i) the responsibility for carrying out the works defined in the management plan can be placed upon the owners.
- (ii) the responsibility for on-going maintenance can be given to a residents committee. To be effective, the elected committee must have fund raising and executive powers. The legal framework can be written into individual owners’ missives and would exist in perpetuity.
- (iii) a section 75 agreement can be concluded between the owner and the council (on a voluntary basis) to cover the maintenance of the TPO area to an agreed standard for a stated number of years (normally 5).
- (iv) councils could create direct works departments to maintain protected trees on behalf of owners.
- (v) the Greenbelt Partnership as an independent company established to promote environmental objectives can, in a limited range of circumstances, be brought in to undertake all aspects of TPO maintenance work.

3.54 Given the wide range in the size, character and ownership of land covered by TPOs, none of the above solutions would apply equally across Scotland. Since each approach has its own advantages and in-built problems, all options need to be considered in each circumstance. In addition, for private owners, the emerging Human Rights rulings indicate that a highly prescriptive management plan (whilst it might be effective for the implementation of the council’s objectives) would impinge upon an individuals’ freedom to enjoy their own property. This is particularly the case when primary legislation does not make forestry (or any other work on trees) “development” requiring planning consent. In addition to these important legal considerations, the creation and the operation of large numbers of management plans would generate a high, on-going workload for council staff. The existence of 148 TPOs in Edinburgh and 74 in Glasgow is an indication of the continuous professional input that would be required.

3.55 Against the background outlined above, the only short-term method for upgrading the existing, highly variable standards of management would be for central government to issue guidance on the options that are available for TPO trees. This framework would permit councils and owners to debate the most appropriate solution for each TPO during the initial stages in the Order. As the track record for such government guidance in other sectors of

planning is positive, this approach should offer immediate benefits in improving overall standards. In addition, the effectiveness of such guidance would be increased if a photographic record of recent good and bad practice could be included as part of the text.

3.56 Residents committees can only operate where one company has control of both the residential and the TPO ground. This situation allows the builder to impose a legal burden in each title in perpetuity. From site inspections of TPOs where residents committees operate, it is clear that satisfactory results occur in the great majority of cases. In some sites, very high standards prevail. The on-going maintenance of the long tree belt along the northern side of the Queensferry Road to the east of the Barnton Roundabout is a specific example of a committee framework proving to be very effective over a 12 year span. In this instance, the council prepared an initial management plan (in association with the committee) and, thereafter, the plan was implemented in accordance with the agreed phasing. The works have included removal of all of the dying elms; the replanting of the areas cleared; the removal of the older, poorer quality trees of all species; their replacement with new planting; and the construction of a high quality footpath. A grant from the Forestry Commission assisted the financial viability of this work.

3.57 Residents committees are not always successful, most notably where the title does not allow a smooth and unchallengeable collection of the annual subscription. This unfortunate position exists in Queen Street Gardens East in Edinburgh as a result of the original Georgian titles not being clear as to the rights of the garden association. The standard of maintenance reflects this untidy legal framework.

3.58 The third option relates to the use of a section 75 agreement drawn up voluntarily between the council and a developer. This framework has been used in relation to the TPO trees at the Kestrel Hotel in Balerno. Here, a low-density redevelopment abuts an attractive, protected woodland. This wood has been surveyed in great detail as part of the planning application and an agreed 5 year management plan prepared. The plan defines (year by year) the required fellings, replanting, footpath creation and maintenance work. Whilst the section 75 agreement was signed by the developer, the implementation of the various elements will be transferred to the residents committee when the houses are occupied. All of the defined works will have to be completed in full before the council signs off the agreement in 5 years time. In the meantime, any breaches of the terms in the section 75 agreement will be monitored by officials and enforcement action taken where appropriate.

3.59 It is apparent from this Balerno experience that there are situations where a developer and a council can reach agreement on both the technical content of a management plan and the means for achieving the stated objectives. In practice, the voluntary nature of section 75 agreements means that both the developer and the council have to perceive a worthwhile gain from the situation. A mutually agreed balance between allowing a small number of extra houses for a long term, enhanced tree cover is often the worldly basis for discussion between parties. If the positive aspects for this framework could be promoted via government advice, it is likely that the tightly controlled legal structure provided by section 75 agreements could be applied more widely to protected trees.

3.60 The fourth option of using a form of direct labour workforce employed by councils would represent a return to principles that operated in previous decades. Whilst, in theory, there ought to be considerable operational advantage in this approach, the track record has not been satisfactory. The cost effectiveness of employing specialist groups of skilled

workers for 12 months of the year has been a key consideration in the decline of this working method. In addition, the lack of any ring fencing safeguards for council funds allocated for TPO work has been a particular problem in some local authorities. For these reasons, a direct labour force could only work successfully in relation to ground that lies within public ownership (parks, road verges and public rights of way). As very few TPOs fall within this category, the scope for council led maintenance is very limited.

3.61 Finally, the study has shown that there is considerable scope for creating a framework whereby the Greenbelt Partnership could become involved in a limited number of types of TPO maintenance. Currently, this independent, commercially orientated organisation has the legal, professional and operational capacity to undertake major landscaping works and is expanding this role across Britain. The track record at major projects such as the Eurocentral industrial complex (which lies alongside the M8 close to Motherwell) indicates that high professional standards for maintenance are applied on a regular basis. In a wider context, the many land reclamation and other environmental improvement schemes undertaken by the Partnership demonstrate the breadth of the in-house expertise.

3.62 The principle behind the Partnership's involvement in projects is that an agreed capital sum is paid to the company in return for maintenance in perpetuity. This sum is normally around 18 times the cost of each annual maintenance budget. In many instances, the transfer of the ownership of the ground also takes place at the initial stages. Thereafter, staff visit the ground for which it is responsible and carry out the necessary works in a manner comparable to that carried out by any privately run landscape company. The safeguard to ensure that the long-term standards will be upheld is provided by the legal framework that defines the responsibilities of the Partnership, together with the fact that the great majority of the management is drawn from responsible positions in local government and public agencies.

3.63 From my consultations, it is apparent that there is support in principle for the involvement of the Greenbelt Partnership in the maintenance of protected trees. The main concern among councils and amenity bodies relates to the insertion of adequate, long-term safeguards to prevent the company's large land bank becoming a development asset. Subject to this factor, certain types of TPO could be managed effectively by the Partnership, notably where woodland without commercial value needs to be maintained as an integral part of the land use framework in the area. This pattern exists most frequently where housing development is proposed on the periphery of settlements and there are sound planning grounds for the preservation of woodlands for their amenity value (rather than for forestry or sporting purposes). Without such a management system, such woodlands on the urban periphery can deteriorate rapidly through a combination of windblow, fire and vandalism.

3.64 In the absence of any other independent group that could both own and maintain large groups of protected trees, there would be advantages if the Scottish Executive could make councils, developers, amenity societies and the public aware of the existence of the Partnership, together with the constraints under which the organisation has to work. As part of this process, there are a number of legal issues that would have to be examined in depth. For example, the capacity of the Partnership to receive direct grants from public agencies would have to be clarified; the methods by which development groups and individuals paid capital sums to the Partnership specifically for TPO maintenance would need clarification; and the long term future of assets handed to the company would need to be resolved. A further factor to be considered is the level to which the government could endorse the use of

one company in a sector where there is no direct competitor. All of these issues could be explored as part of a PAN issued by the Executive.

3.65 A key element in making any of the 5 management frameworks identified above effective is the establishment of an appropriate monitoring system for TPOs. Such monitoring systems are an integral part of all aspects of the planning system and are routinely carried for such key land uses as housing land, industrial estates and open space provision. In all cases, the results of such monitoring are of benefit in both the development control and forward planning tasks of planning departments. The scope, content and benefits of such a system for TPOs (using GIS, digital cameras, on-going site visits by officials and openness of information) has already been discussed above.

Test (g): Whether the costs incurred by councils in making and operating TPOs represent a sound use of public sector resources.

The historical perspective

3.66 Traditionally, responsibility for TPO work in councils has been allocated to the planning department with occasional inputs from officials in the parks department and the legal department. Lawyers deal principally with the drafting and the approval of Orders; the processing of fines; and court work. For a forestry input on the health of trees, the effect of the lopping proposed or replacement trees, the views of the parks department are sought. The larger councils employ at least one tree officer who acts as the centre point for TPO work. Smaller councils allocate TPO work to an officer who undertakes a wide variety of duties. In this situation, TPOs can take as little as 5% of this official's time (thereby reflecting the priority that tree protection is given in a few hard pressed planning departments). For all TPOs, an administrative input is required in order to co-ordinate the various enquiries that are constantly generated by TPOs. This workload can be substantial – for example, at one extreme, Edinburgh Council receives 3,200 written and telephone enquiries about protected trees per annum (roughly between 15 and 50 enquiries every working day with the higher figure relating directly to gale force winds). Most of the other councils consulted receive between 300 and 900 enquiries a year.

3.67 Historically, TPOs did not require a heavy staff commitment. Currently, the rising work pressure in councils means that TPO responsibilities have to be combined with development control cases, landscaping advice and environmental education in general. As the number of TPOs rises, these factors are likely to justify the creation of specialist groups in most of the larger councils. On this basis, there is a need to undertake a full examination of the optimum management structures that are appropriate to the efficient handling of all protected tree work. The range of possible solutions to this issue can be best addressed via the Scottish Executive PAN system.

3.68 The cost of preparing and approving a TPO has been assessed in some detail by Scottish Borders Council. Although staff time is affected directly by the size of the site, the number of trees involved and the number of owners, a working (gross) figure per TPO of £10,000 is used for internal accounting purposes. This sum (which the council regards as being a substantial commitment) can be broken down into around £5,000 direct costs and £5,000 for the salaries of staff in the planning, legal and administrative sections. The direct costs include materials, printing, and publicity; mailing the papers (first class, recorded

delivery) at the provisional and the full Order stages to owners, tenants, occupiers and other interested parties; displaying the draft Order in council offices and libraries; committee time at the initial and the approval stages (including handling objections); and the registering of the Order at the Land Register for all owners. This latter stage is a legal requirement and attracts a fee for each title according to the levels proscribed in the Registers of Scotland Order 1995.

3.69. A key consideration in evaluating costs has to be the issue of any liability to a local authority that may arise from its TPO system. In this context, the recent court case in Birmingham (15 July 2002) provides a warning. Here, after 3 people were killed by a TPO protected tree that fell onto the street in 1999, a fine of £150,000 and costs of £56,000 were imposed upon the city council for not keeping its survey data on trees up-to-date. The judge commented “the condition and the danger the tree presented would have been obvious to anyone making a close inspection of that tree”. Although the fact that the tree was protected had little bearing on the award, the case nevertheless establishes the important principle that a local authority needs to survey TPO trees within its area on a regular basis and to initiate appropriate action to prevent a health and safety danger occurring. On this basis, there are strong legal and financial reasons for developing a framework that meets the long term health and safety requirements for protected trees.

The priorities for improving effectiveness (the production of a Scottish Executive “Blue Book”; the introduction of a GIS system; the need for clarity and precision in policies in local plans; the production of local authority guidance on TPOs; and the creation of clearly defined, multi disciplinary teams to address TPO related issues).

3.70 These headings have already been highlighted previously.

Test (h): Whether the statutory roles defined for the Scottish Executive and the Forestry Commission have been applied in an effective manner

The historical perspective

3.71 The Executive’s role in relation to TPOs involves updating primary legislation; issuing technical and procedural advice; monitoring the Scottish wide impact of TPOs; and using the reserve powers provided in section 164 of the Act to make an Order. With regard to the legislation, the 1997 Act represents the most up-to-date statement of the government’s position. During the consultations, no party submitted that there is an urgent need to rewrite the statutory framework that applies to TPOs. There are however a number of fine-tuning aspects that are worthy of inclusion in any new statute. These issues are discussed below.

3.72 For technical and procedural advice, there is no co-ordinated Scottish document that equates to the comprehensive guidance in the DETR’s “Blue Book” “Tree Preservation Orders: A Guide to the Law and Good Practice” dated March 2000. The absence of such a government publication in Scotland means that councils have adopted a wide range of individual approaches to both the procedures and the technical content of TPOs. This uneven position could be greatly improved if the Executive gave a high priority to producing a Scottish version of this guidance.

3.73 A further initiative to promote uniformity and to raise standards relates to the re-activation of the “Scottish Tree Officers Group” (STOG). Until recently, this group met 3 or 4 times a year and discussed a wide range of TPO issues. Meetings ceased when key personnel moved to other posts and no volunteers were forthcoming to fill the time consuming duties of chairman and secretary. My consultations indicate that there is a very strong support for this group as it enables best practice to be disseminated; it provides a forum for officials to meet to establish professional linkages; and it allows specific technical problems to be inspected on site.

3.74 As the monitoring of TPOs on a Scottish scale requires an up-to-date database within all councils, this function cannot operate effectively until local authorities have a uniform framework in place. In order to initiate such a system, there is a need for a research project to develop the initial work that has been undertaken in this sector. Once in place, such a system would allow information from the 52 councils to be drawn together on a uniform basis and offer practical advantages at both a local and a central government scale. The involvement of the Scottish Executive in this initiative would create the necessary momentum to move the concept forward.

3.75 In relation to the power of the Scottish Executive to make, amend or revoke an Order, this power appears not to have been used in recent years (if at all). As it is widely recognised that there could be circumstances where Scottish Ministers might want to intervene in a controversial development in order to protect an individual or group of trees in perpetuity, none of the parties consulted wished to see any modification of the existing framework.

3.76 Turning to the role of the Forestry Commission, the responsibilities set out in sections 160, 162 and 166 define the interests of land where the Forestry Commissioners have an interest. As these powers are not questioned by any of the parties consulted, there is no foreseeable need to change the status quo. This view is endorsed by the Commission itself.

The priorities for improving effectiveness (in future legislation, a “stop TPO” should be introduced; a “tree” and other technical terms should be defined; the area TPO should be removed; the position of Crown land should be clarified; the wording in the act should be simplified; the text should be updated. The guidance in DETR’s “Blue Book” should be applied to Scotland and a PAN should be produced)

3.77 For future legislation, the advantages of introducing a “stop TPO” have already been highlighted above. Of the other measures proposed, the most important concerns the legal definition of a tree. If this aspect were to be clarified in statute, it would assist all parties in applying the tree protection framework. Critically, many local authorities noted that section 1.1 in the “Blue Book” defines 6 actions that are covered by the existing English TPO legislation (cutting down; uprooting; topping; lopping; wilful damage; and wilful destruction). The major omission of “the roots” is highlighted at the end of section 1.1 where the text states “The cutting of roots, although not expressly covered in the first 4 operations noted above, is potentially damaging and so, in the Secretary of State’s view, requires the LPA’s consent”.

3.78 It would be extremely useful for all TPO work if a definition of a tree could be included in the “interpretations” that are set out in section 277 of the 1997 Act. These definitions are referred to on a regular basis in development control work and provide a sound framework for defending decisions at planning inquiries and in court. In the context of

TPOs, “tree” should be defined so as to include “the trunk, all branches, the leaves, the entire root system, the soil linked to the root system and the existing ground levels within the canopy”. In this form, potentially damaging operations to protected trees (cable laying close to the trunk, installing sewers or electricity cables, building foundations close to the trunk, surfacing the area under the canopy with tarmac, building up the soil levels with surplus material, or removing branches) could only be undertaken after a formal reference to the council. A number of specific examples of bad practice in all of the above sectors have been drawn to my attention. In most cases, whilst there is no immediate damage to the protected tree that can be detected by an observer, the operations set in motion a long term decline in the health of a tree that contributes significantly to the amenity of the area in its existing form.

3.79 The position of planning powers in relation to Crown land is an on-going issue that needs to be clarified in the longer term. This issue is important given the extensive land owned by the Crown (much of which lies within urban areas) and the wider pressures to reduce the area in line with the falling size of the armed forces.

3.80 DETR has indicated that area TPOs are no longer applicable, principally because of the difficulty of protecting very large numbers of trees, none of which are defined in sufficient detail to permit monitoring on an effective basis. A similar difficulty is well documented across Scotland in that a significant number of the area TPOs have many thousands of individual trees (up to 40,000 at Mortonhall in Edinburgh). Forested areas of this scale can often be protected by means of a specific designation in the local plan rather than by the more cumbersome TPO framework. In addition, as the felling licence framework will control the extraction of 5 cubic metres of timber or more (roughly 2 to 3 average sized trees), there are other statutory controls that will prevent clear felling in an unacceptable form.

3.81 With regard to simplifying the text of the Act, several parties noted the complexity of the wording and the linked difficulty in understanding the precise meaning of some of the sections. Sections 160(4)(a), 173(4) and 174(1b) are highlighted in this context in that they do not meet the test of being capable of being understood by a lay person. On this basis, there are strong grounds for simplifying the wording in any revision of primary legislation.

3.82 Many parties consulted noted the advantages of clarifying the terms “cutting down, topping, lopping, uprooting, wilful damage or wilful destruction” in section 160 of the Act; and “removed, uprooted or destroyed” in section 174 of the Act. Other technical expressions that should be clarified are “dead”, “dying” and “dangerous”. In addition, it is uncertain as to whether a council has the right to require automatic replanting when natural forces (such as strong winds) uproot or destroy protected trees. As most of the above terms are drawn from the forestry sector, other professions and individuals can (either genuinely or on purpose) misinterpret the action required. It would be extremely useful if all of these terms could be defined either via the “interpretations” heading in section 277 of the 1997 Act noted above or via guidance. By using this latter format, a series of photographs could be included in order to illustrate the relevant standards in a compact and meaningful manner.

3.83 An additional sector where legal clarification would be useful relates to the status of trees that were not growing when the TPO was first approved. Now that many Orders have been in existence for 50 years, the rate of natural regeneration and secondary growth is marked. As the protection does not normally apply to these unrecorded trees, the degree of

change from the original TPO can be so great that the council has minimal control over the evolving amenity of the area. Whilst an amendment to the original Order could be made, it would be preferable for the council to be able to nominate new trees (whether seeded or planted) as being specific replacements for the original specimens.

3.84 As the 1997 Act pre-dates the devolution of planning powers to the Scottish Parliament, there are a number of references to the Secretary of State in the TPO related legislation. The updating of this sector would be a relatively simple procedure given that there have been no recorded problems relating to any of the TPO related sections in the Act.

3.85 The technical and procedural benefits that would flow from the Scottish Executive preparing and circulating a Scottish version of the “Blue Book” have been stressed previously.

Test (i): Whether the 19 issues raised by individual members of the Royal Town Planning Institute warrant specific action by the Scottish Executive, councils or by the owners of protected trees.

The submitted comments

3.86 In relation to the general framework within which TPOs operate, RTPI members submit that the practice in this sector “leaves a great deal to be desired”. The problems identified relate to the updating of legislation, the guidance in PAN’s and the Regulations; the excessive bureaucracy (including the priority given to TPOs within council hierarchies); the lack of clarity in local plans; the lack of long term management teeth in order to implement necessary arboricultural works; the lack of expertise and adequate staffing levels within councils; the under-use of the procedure when mature trees are under threat; and the problems of enforcement for both TPOs and tree related conditions.

3.87 Other specific issues highlighted include the problems with modification of Orders if section 160 of the 1997 Act is used (rather than the provisional section 163); the removal of the exemptions from the power to make TPOs under section 160(6) of the Act; the need to clarify the position in relation to Crown land; the need to ensure that all replacement trees are subject to planning controls; the need to distinguish between conservation area and TPO procedures; and the need to simplify the registration of TPOs with the Sasines.

3.88 There are 3 short-term measures that can be taken to address the concerns of RTPI members. First (as noted previously), the production of a Scottish version of DETR’s “Blue Book” should be given the highest priority as this document would provide definitive, unified guidance on most of the procedural, technical and legal issues highlighted. This single initiative would have the fastest, the most effective and the most cost efficient impact upon the whole of the TPO system. In coming to this view, it is accepted that there are a limited number of detailed areas where this book could not introduce fundamental change to the current system. In particular, in the legal sector, government guidance can only identify relevant court decisions, appeal letters and local authority practice and offer a general commentary upon the implications of these issues based upon past practice. This constraint is accepted in DETR’s “Blue Book”.

3.89 The second highest priority should also be given to researching a GIS system based upon the existing initiatives in Aberdeen, Dundee and Scottish Borders Councils. Such a framework would transform the database in local authorities across Scotland and would ensure that TPOs are given their correct weight within the planning system. This measure (which is discussed in more detail above) would meet one of the main comments raised by RTPI members. Thirdly, the reactivation of STOG would enable council officials and other interested parties to identify and disseminate best TPO practice to all of the 52 councils in Scotland.

3.90 In total, I conclude that these 3 key measures would address the great majority of the concerns identified in the RTPI's correspondence (as well as the issues highlighted by the 49 other parties consulted during this 6 month study).

Test (j): Whether any of the minor criticisms and comments raised during the various consultations have identified critical technical or procedural problems

The historical perspective

3.91 During the consultations, a wide range of comments suggested changes to the current TPO framework. The following list represents those that warrant serious consideration at this point in time:-

- (i) broadening the definition of “in the interests of amenity” in the Act to include botanical rarity; wildlife interest; historic value; and relationship to listed buildings.

Comment: although each of these factors can be relevant to TPOs, there has been no record of the procedure failing because of an over precise interpretation of “amenity”. On this basis, there is no immediate need for any change. The position should be reviewed when the planning acts are reviewed. It is apparent that there is a rapidly growing interest in trees that are closely linked to the history of the area (for example, the first Douglas Fir in Perthshire; the (alleged) link between the Poker Tree at Aberfoyle and Rob Roy; and an oak tree associated with the exile of Haille Selassie at Wemyss Bay. This type of tree contributes significantly to the history of an area; adds to local identity and civic pride; and is appealing to tourists.

- (ii) making TPOs valid for a specific 5 year period so that a local authority has to update them within the same time span that applies to local plans.

Comment: this framework would commit councils to a regular programme of monitoring and updating of TPOs. The main problem arising from this procedure would be the staff input required to carry out the required programme. For example, in Edinburgh, around 35 TPOs would have to be updated each year. At this point in time, monitoring and amendments to TPOs would be better handled via the proposals for a GIS system.

- (iii) the introduction of a regular audit by the Scottish Executive of each local authority's TPO system.

Comment: General planning audits are already conducted by the Scottish Executive. This measure should be held in reserve in order to establish whether the other measures proposed to improve effectiveness achieve the required result.

- (iv) making government grants available to owners so that they can maintain TPO trees to a high standard.

Comment: whilst the principle of making government grants for specific elements in the built environment has been established in the listed building sector, it would be more difficult to define and administer a system for protected trees. A significant increase in staff at both central and local government would be required to administer such a system. The other measures to improve effectiveness outlined in this report are regarded as being a higher priority than introducing grants for TPOs.

- (v) making a specific category of TPOs to cover historic gardens/landscapes and ancient woodlands.

Comment: these sectors are materially different from TPOs and could only be brought within planning control as part of new legislation. In the short term, the issue can be addressed via relevant policies for ancient woodlands and historic gardens/landscapes in local plans.

- (vi) bringing hedges within the scope of TPO controls. Specific mention is drawn to hedges containing unusual species such as yew or Scottish laburnum; where specimen trees are part of the hedge; and where hedges contribute to the traditional landscape.

Comment: currently, only the trees within hedges can be protected. There is political pressure to control the height of fast growing hedge species (such as leylandii) via the planning acts. Any review of extending TPOs over hedges needs to be assessed within this wider context.

- (vii) making all work on trees “development”. Planning consent would be required unless the council opts to take no action upon notification of an intention to fell, lop or top.

Comment: this implementation of this concept would mean that all trees would be controlled by planning legislation and that local authorities would have a right to refuse or modify all operations relating to existing trees. As such, it would alter fundamentally the thrust of all previous Acts and generate a huge, additional workload for council staff. No immediate action is recommended.

- (viii) introducing a policy of allowing the felling of TPO trees provided that “a 3 for one” replacement policy applied.

Comment: this approach is advocated by some housebuilders who wish to maximise the development potential of TPO sites by creating an alternative form of treescape. Breaking into a TPO treebelt in order to create a road access with modern visibility splays is a situation quoted in this context. This may be an avenue that could apply to a very limited number of situations. Any reaction should be via an advice note or a local plan rather than by

legislation. A dangerous precedent could emerge from a widespread use of a concept that would involve replacing mature trees with standards.

- (ix) introducing Environmental Courts to administer breaches of amenity legislation (such as the TPO framework): Allowing councils to have direct access to the Sheriff Courts to pursue prosecutions.

Comment: both concepts have been widely discussed in various journals as a means of addressing the prosecution backlog that is perceived to affect many planning related sectors. As any change would require fundamental alterations to the current legislative framework, it is premature to pursue either of these options.

The priorities for improving effectiveness in relation to the other comments received during the consultation stage (the long term review of measures to control hedges and historic trees)

3.92 As part of the longer term monitoring of environmental issues, the planning significance of hedgerows and historic trees needs to be evaluated. For hedges, these elements in the landscape are of particular importance in maintaining the traditional character of greenbelts. As the viability of farming diminishes, there is a serious long term threat to the qualities that led to the zoning of these areas as greenbelt in the first instance. This factor needs to be evaluated in the coming years with the objective of framing a TPO type of protection for critical hedgerow sections.

3.93 A similar situation applies to historic trees. Currently, there is an incomplete record of the trees that have either a real or a tenuous link with historic events. Accordingly, a great deal more research needs to be undertaken to review the issue at a Scottish scale prior to formulating any legislative proposal. Despite this reservation, it is accepted that the concept is worthy of consideration as residents quickly build up a strong loyalty to a tree that has a proven historic provenance. The Corstorphine Sycamore is a classic example of this situation.

Test (k): Whether the identified priorities for improving the effectiveness of TPOs can be implemented within a tight timescale and at a reasonable cost

3.94 In this context, I note that there are 3 key priorities for improving the effectiveness of TPOs, namely, the production of a Scottish version of DETR's "Blue Book"; the organisation of a research project to develop the current standard of the GIS database into a full information and monitoring system; and the re-activation of the STOG group along very similar lines to those that existed until one year ago.

3.95 All 3 projects centre upon an input by the Scottish Executive. For the "Blue Book", contributions from a planner, a lawyer, a forester and an administrator would be required for a six month period. This view is based upon the assumption that a Scottish "Blue Book" followed the content and the style of the DETR production.

3.96 For the proposed GIS study, the calculation of both the timescale required is much harder. In particular, as the technology linked to GIS is evolving so rapidly, it is difficult to establish the exact nature of the technical input required. Whilst Liverpool, Wrexham and

Tameside Councils have pioneered major advances (in association with commercial companies such as The Woodland Stewardship Company Limited), an additional input is required to meet the full TPO requirements. If it is assumed that this technological advance can be made in a matter of months, the 2 test bed council areas could be run through the system in a broadly comparable timescale. This judgement would depend upon the full co-operation of the council staff familiar as part of their contribution to the study. For the project to be completed and written up within a year, this framework would allow around 3 months for the final report writing stage.

3.97 The staff input from the Scottish Executive to this research (either directly or via consultants) would comprise (as a minimum) IT expertise (with back up as required), a planner, a lawyer and an administrator. Whilst the IT and planning commitment would be full time, the latter 2 would be part time. Considerable computing equipment, travel and liaison would be involved in order to co-ordinate a project of this scale.

3.98 A general analysis of all the above factors indicates that the full exercise (including the time to set up the 2 council inputs) would involve at least a year's work. The end product would be a state of the art system of data collection and storage for protected trees that could be applied across all 52 of the councils in Scotland. In addition, considerable on-going savings in local authority time would occur.

3.99 Turning to the proposed STOG input, this element can be defined with relative precision. A chairman/secretary function performed 4 times a year for 2 years would involve attendance at 8, day long meetings in various venues across Scotland. In addition, time has to be allocated to the preparation of agendas, the co-ordination of speakers, pre-event communication with participants; the writing up of the minutes; and post meeting correspondence. A 4 day commitment per meeting would be realistic for all of these components (a 32 day commitment in total). On this basis, a staff member would be involved for 40 working days over 2 years and would require an appropriate allocation for travel, subsistence and materials. This input would represent a sound use of resources given the very high levels of attendance from local authority staff when STOG held its initial series of meetings and the consequent benefits from the dissemination of best practice across Scotland.

CHAPTER FOUR CONCLUSIONS

OVERALL CONCLUSION

4.1 Having reviewed all of the 11 issues addressed in chapter 3 above, I consider that the most important conclusion from my research is that the current TPO system is basically sound; that there are no overriding reasons for making any fundamental change to the existing framework in the immediate future; and that a series of fine tunings drawing upon current best practice would provide an up-to-date structure for administering protected trees across Scotland within an 18 month period. If this approach is adopted, there would be ample opportunity to consider a wider range of possible improvements over the next 3 to 4 years and to introduce these as part of the updating of the 1997 Act in a few years time. It is concluded that the following short list of key issues needs to be addressed; that these can all be completed within a tight timescale; and that a commitment by the Scottish Executive to complete the “Blue Book”, a GIS system and a revitalised STOG would represent a very effective use of public sector resources.

KEY ISSUES (HIGHEST PRIORITY)

SCOTTISH EXECUTIVE

4.2 *The need for additional government guidance on the procedural, technical and legal frameworks that apply to the protection of trees in both TPOs and in conservation areas.* The end product would address many of the urgent issues identified during this review, notably the need to provide one authoritative source in Scotland for all work related to protected trees; best practice in areas where there is uncertainty; an indication of how grey areas in the legislation and current regulations have been interpreted by the courts, in appeals and in day-to-day local authority decisions; model flow charts for the administrative steps in TPO work; and an indication of where future legislative change may be appropriate.

4.3 Recommended Action (highest priority): the Scottish Executive should consider preparing a Scottish version of ‘*Tree Preservation Orders: A Guide to the Law and Good Practice*’, using the same 14 chapter headings, 9 model forms, code of practice and style of presentation. A 6-month workload is anticipated by a small team of professionals (principally a planner assisted by appropriate legal and forestry advice, together with a part time administrator).

4.4 *The widely expressed need for guidance on the accurate recording of the data that applies to protected trees.* A new Scottish wide, GIS based system would have to provide for rapid updating as well as continuous monitoring. The basic form would comprise an OS map base for each TPO; the position of each tree recorded by a GPS system; the statutory documents relating to each TPO; the procedures for administering the Order; the planning history of the site and its immediate environs; monitoring records (as defined by a series of digital camera and aerial photographs); and the contact points in the relevant council.

4.5 Recommended Action (highest priority): the Scottish Executive should commission a study of the use of GIS technology for the recording and monitoring of all data and maps relevant to TPOs. The study should concentrate on both urban and rural authorities, and it is

likely that a small team comprising IT expertise, a planner, a lawyer (part time) and an administrator (part time) would be required. Current GIS technology (as viewed in Scotland at the Forestry Commission, British Geological Survey and councils, together with the pioneering work in Liverpool, Wrexham and Tameside in England) would allow this exercise to be completed in approximately a year.

4.6 The end product (which would act as a model for other areas of council work) would offer considerable savings in staff time; in the accuracy of the database; in offering definitive guidance for developers and the public; in projecting a modern, professional image for councils (“e-government” at a local scale); and create a system that would speed up all TPO related work. In addition, the health and safety issues raised by the recent Birmingham City Council case indicate that all local authorities must have a balanced tree monitoring system in situ within the near future.

4.7 *The re-activating of STOG so that council officials (and other interested parties) could meet 3 or 4 times a year in order to discuss best practice in relation to protected trees.* This group would provide a highly focused, cost effective and popular framework for disseminating best practice in relation to all tree related issues.

4.8 Recommended Action (highest priority): The Scottish Executive provides a chairman/secretary for a 2 year period so that the group is re-established in a structured form. Thereafter, council staff could take over the running of the group.

LOCAL AUTHORITIES

4.9 *the updating of the database for TPOs in each area in a form that enables officials to record this information on the most up-to-date GIS technology.* Based upon Edinburgh’s recent experience in re-surveying 43 Area TPOs, each Order would require a 2 day input by a 2 man team. This conclusion is based upon the use of GPS technology (allowing each tree to be located within a one metre accuracy) and a survey rate of 100 to 200 trees per day (a realistic target). If each of the 32 councils in Scotland administer (on average) between 50 and 60 TPOs and half of these need to be re-surveyed, some 60 days work would be involved in this exercise.

4.10 Recommended Action (high priority): The Scottish Executive makes available the outcome of the GIS research outlined above in order to promote the re-surveying work within each council. The GIS system would mean that the recording of all TPO data could be kept up-to-date thereafter with relatively modest inputs of staff time. All the stored data should be available to the public via the Internet. The end product from this Scottish wide updating of survey material would offer marked on-going benefits for all parties involved in TPO work. In addition (and most importantly), the legal parameters established by the recent Birmingham court case would be met.

4.11 *Creating a management framework within each council that would allow officials to administer and implement TPO measures in the most effective form.*

4.12 Recommended Action (high priority): an issue that each council has to address within the context of its own standing orders, its staff complements and its annual budgets. A Scottish “Blue Book”, together with the discussions at STOG, would assist in providing

guidance as to both the principles and the fine detail that should underpin best practice across Scotland.

4.13 *The preparation of a sound policy framework for the protection of trees in local plans.* The local plan framework needs to be supplemented by the production of additional local authority guidance on the successful, long-term maintenance of trees with a high amenity value. This guidance needs to be tailored to the particular circumstances in each council area, highlighting the organisations, private companies and individuals that have a direct interest in tree management at the local scale.

4.14 Recommended Action (high priority): most councils need to give greater thought to the tree protection issue in local plans. Long term development control and environmental benefits would flow from having such a framework in place. Practical guidance for owners is best handled via a series of illustrated pamphlets covering key issues. These documents could be completed as a neatly defined, readily supervised task for a summer student. The well thought out booklets produced by Edinburgh and Stirling Councils provide a useful starting point in this context.

SECONDARY PRIORITIES

SCOTTISH EXECUTIVE

4.15 *An important secondary priority relates to the need to update the planning advice on tree protection that is given to local authorities.* The proposed advice note (which would fill a gap in the current series) should include the preferred framework for protecting trees in both local plans and in other council policy documents (a high priority); the dissemination of best practice in relation to the proposed GIS research into the recording and the updating of TPO databases (a high priority); the optimum staff structure for TPO work within councils; the most effective method for serving TPOs rapidly in emergency situations; how court action can be initiated speedily and effectively in relation to unauthorised works to protected trees; the role of government agencies (the Forestry Commission and Scottish Natural Heritage in particular), professional bodies (the Arboricultural Association and the Institute of Chartered Foresters), amenity bodies and the public can play in tree protection; the use of voluntary Tree Wardens to achieve environmental objectives; and a commentary on the legal issues that have not been fully resolved in legislation, in the courts, in appeal decisions and in local authority practice.

4.16 Recommended Action (secondary priority): a small team based in Planning Services in the Scottish Executive could produce a PAN once the high priority work summarised in section A above had been completed.

4.17 *The dissemination of technical and procedural advice from central government should be made more effective by running a series of Scottish Executive seminars in Victoria Quay.*

4.18 Recommended Action (secondary priority): an initial programme of 3 seminars would publicise the key messages from central government, namely, the benefits that would flow from the proposed Scottish version of the “Blue Book”; the opportunities for accurate data

recording by GIS (based on the conclusions of the research study proposed above); and the effective, timeous use of enforcement powers for protected trees in the courts.

4.19 *Preparing for an updated TPO framework in a new planning act should be an on-going process within the Scottish Executive.* The current priorities for review include the use of a new “stop TPO” power; the legal definition of a tree, together with an explanation of the forestry terms of lopping, topping, uprooting, dead, dying, dangerous, destroyed, wilful damage and wilful destruction (all of which are open to widespread interpretation by different interests). Other important changes should centre upon the simplification of the English in any new act; the introduction of a requirement for councils to monitor and to update TPOs on a regular basis; the introduction of a requirement for TPOs to contain a management plan within 6 months of the Order being confirmed; bringing historic trees within the scope of the legislation; omitting the area classification for TPOs (in line with the English framework); and clarifying the position of Crown land.

4.20 Recommended Action: an on-going Scottish Executive function that is related to the wider planning objectives behind the updating of the 1997 Act.

4.21 *Ensure that trees in TPOs and conservation areas are given their due weight in the on-going workload of central government.* Examples of this process might be Ministers referring to tree preservation in policy speeches at conferences; Reporters running planning and local plan inquiries in a form that acknowledges the importance of protected trees; Scottish Executive officials defining TPOs as an agenda item in liaison meetings with council officials; and defining council budgets in a form that allows for adequate financial resources to be devoted to this issue.

4.22 Recommended Action: as environmental issues are gaining ever greater publicity, both central and local government should be conscious of the benefits of projecting a concern for protected trees. A specific initiative might be for Ministers and local councillors to revive the traditional practice of planting a specimen tree when opening a new project. This kind of image always attracts media attention and could be promoted via a re-working of an old slogan “plant a tree in 2003”. The longer term benefits from Ministers complying with the spirit of the imminent Earth Summit in Johannesburg is a further factor that needs to be taken into account in this context.

LOCAL AUTHORITIES

4.23 *Ensure that all future TPOs include a mechanism for monitoring and maintaining the standard of amenity that prevailed when the Order was first prepared.* The range of mechanisms available to councils include use of section 75 agreements; the imposition of conditions if a planning consent is involved; ensuring that a legally sound and financially viable residents association exists (by agreement); involving the Greenbelt Partnership (in a limited number of situations); and by informal collaboration with owners.

4.24 Recommended Action: councils need to establish an internal management framework (including the full use of delegated powers) that allows TPO work to be undertaken in a co-ordinated form; in a manner that promotes the long term health and the shape of all the protected trees within each Order; and within a framework that encourages monitoring and management to be undertaken at appropriate intervals in perpetuity.

4.25 *The creation of a council team that can respond rapidly to the limited number of situations where development pressure requires a formal protection for high amenity trees to be in place within 2 days.*

4.26 Recommended Action: the capability to respond rapidly to a perceived danger to protected trees needs to be addressed. The initial analysis of best practice within the confines of the current legislation should be undertaken via the Scottish “Blue Book” with further debate on the detailed processing of individual Orders taking place at STOG. Thereafter, each council would conduct an internal review of its own procedures.

4.27 *The establishment of a staff structure in all councils that reflects the constant (and growing) workload associated with protected trees.*

4.28 Recommended Action: an issue that each council needs to address in its own manner.

4.29 *The use of voluntary Tree Wardens to assist officials in managing the tree cover (including protected trees) within each council area.*

4.30 Recommended Action: as this measure would harness the immense amount of enthusiasm for environmental issues in Scottish society, each council should evaluate the most effective framework within its own area. The emphasis should be placed firmly upon positive planning and environmental schemes rather than on heavy handed policing of TPOs and conservation areas.

OWNERS WHO HAVE PROTECTED TREES WITHIN THEIR GROUND

4.31 *Assisting local authorities in updating the data and the maps that relate to existing TPOs.* As part of this process, owners could be encouraged to enter into a voluntary agreement with the council in order to prepare a management plan that would assist in preserving the long term amenity of protected trees. These inputs (which already exist in a few sites across Scotland) should flow naturally and widely from the publicity associated with the production of the Scottish “Blue Book”, the GIS database, STOG and the council initiatives outlined above.

4.32 Recommended Action: the initiatives from central and local government outlined above is likely to generate a positive response from the majority of owners of protected trees. Councils have to anticipate this enthusiasm so that a momentum is built up to improve the amenity of protected trees.

4.33 *Supporting a general movement towards open, “e-government” whereby all local authority data and documents can be made available to the public via the Internet.* The use of the TPO sector to initiate this trend would highlight the benefits that could accrue if other local government functions were to be opened up in the same manner.

4.34 Recommended Action: the issue of making local authority data available for public inspection needs to be reviewed by both central and local government. Within this context, the TPO framework offers a useful, self contained sector of work that could be used as a test bed for the much wider, more politically sensitive range of information held by councils.

APPENDIX ONE PARTIES CONSULTED

Meetings/Discussions

Local Authorities

City of Edinburgh Council: Planning Department (Messrs B Farrell & G Hinshelwood)
Glasgow City Council: Planning Department (Messrs M Curzon & L Gibbons)
Aberdeen City Council: Planning Department (Mr S Milne)
Dundee City Council: Planning Department (Mr D McLeish)
Scottish Borders Council: Planning & Legal Depts. (Mr J Knight, Mr B Frater & Mrs A Isles).
East Lothian Planning Department: Planning Department (Mr A Martin)
Inverclyde Council: Planning Department (Mr M Martin)
Stirling Council: Planning Department (Mr Oteniya)

Agencies & Official Bodies

Scottish Natural Heritage (Mr R Ferguson)
Forestry Commission: (Messrs J Ogilvie & H Davies)
Homes for Scotland (Messrs A Lundmark & B Melville)
Arboricultural Association (Messrs E Hamilton, D Rodger, I Hope, M Foy & C White)
Institute of Chartered Foresters (Messrs N Elstone, A Motion & S Stuart)
Forth Valley GIS: (Mr J Stewart)

Consultants (Planning, Landscape Architecture & Forestry)

Lovejoy & Partners: (Mr J Welsh)
Hirst & Partners: (Mr P Miller)
McInally & Partners: (Mr T McInally)
Tillhill Forestry: (Mr N Hammond)
Chesterton: (Mr P Neaves)
Planning Solutions (B Boyd)

Legal Firms

Paul & Williamsons: (Mr B Smith & Mrs E Farquharson Black)

Private Companies

Cala: (Mr A White)
Walker Group: (Mr G Patrick)
Greenbelt Partnership: (Mr E Roe)
Tree Line: (Mr G Marshall)
Positioning Resources Limited, Aberdeen

Written Commentaries

Royal Town Planning Institute (Mr G Uren)

The Woodland Stewardship Company Limited (Mr M Jones)

Eamonn Wall & Co (Mr S Stuart)

Julian Schad: Tree Surgeon, Dunblane

Individuals (owners of property with protected trees in their grounds)

P Mellor

W Tait

R Wilson

C Bird

M Simmonds

C Fyffe

P Fleming (Canada)

H Poepel (Germany)

J Ledos (France)

APPENDIX TWO SUMMARY OF THE TPO POSITION IN THE 8 COUNCILS CONSULTED

Edinburgh Council

- 148 approved TPOs; 3 in course of preparation; none revoked; average output of 2 to 4 new TPOs per annum; maximum output 70 TPOs per annum in the 1970's; 3,200 enquiries relating to protected trees per annum (70% for conservation areas, 30% for TPO trees); the daily enquiry rate varies from 15 to 50; one staff member in the planning department (50% time on tree issues, 50% on development control); largest TPO area has 40,000 trees; 3 prosecutions in courts in last 10 years.

Glasgow City Council

- 74 approved TPOs; 2 in course of preparation; 3 to 6 new TPOs confirmed per annum on average (staff shortages have restrained output); none revoked; 20 conservation areas; 450 enquiries relating to protected trees from the public each year (60% from CA's and 40% from TPOs); 3.5 staff (3 landscape architects and planning technician); largest TPO at Gartloch Hospital, Easterhouse with 4,000+ trees; one court case in last 10 years (up to 10 incidents per year could be acted upon if resources available).

Aberdeen City Council

- 173 approved TPOs; 6 in course of preparation; an average of between 9 and 10 over the last 10 years (94 in total in this decade); no revocations; 108 written and 800 to 900 telephone enquiries relating to protected trees from the public each year (a clear majority for TPO trees); 20 breaches per annum reported; 3 cases taken to court in last 10 years; team of 3 officials (planner, forester and lawyer) as required (one full time).

Dundee City Council

- 46 approved TPOs; 5 advertised and 3 about to be advertised; none revoked; average output of 1 to 5 TPOs per annum in the past but now rising fast to a target of 15 in 2001 to 2002; team of 2 officials; 170 written and 600+ telephone enquiries from the public last year (60% for trees in conservation areas, 40% for TPO trees); 50 breaches brought to the council's attention last year, of which 8 led to formal action; no record of TPOs being the subject of court action in the last 10 years; largest TPO at Liff Hospital (3,200 trees).

Scottish Borders Council

- 57 approved TPOs; 1 in course of preparation; 4 revoked; output has varied from one per year to 6 per year (the highest figures being post 2000); team of 3 professionals (planner, 2 P/T landscape officers and lawyer); 150 letters per annum from public (65% relating to TPO trees); 41 Conservation Areas: one court action in last 10 years; 2 to 3 breaches reported per year.

East Lothian Council

- 103 approved TPOs; 3 in course of preparation; none revoked; average output of 3 to 4 per year; maximum output per annum in; 116 written enquiries relating to protected trees per annum (80% in conservation areas, 20% for TPO trees; team of 3 qualified staff (landscape architects and planner) but all share in a wide variety of work; one appeal against refusal of TPO consent in last 10 years; 2 court actions in last 10 years.

Inverclyde Council

- 21 approved TPOs; none revoked; 450 enquiries relating to protected trees per annum; 5 conservation areas; team of 4 progress TPO work (a planner, lawyer, landscape architect and a technician); one court case in 10 years.

Stirling Council

- 75 approved TPOs; 3 to 4 in course of preparation; average output of 3 per annum; none revoked; 300+ enquiries per annum (clear majority for CA's); one full time official (but support from legal and planning sections); no court action in recent years.

APPENDIX THREE BIBLIOGRAPHY

Town and Country Planning (Scotland) Act 1997

Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

Forestry Acts 1951, 1967 and 1979

Town and Country Planning Tree Preservation Order and Trees in Conservation Areas (Scotland) Regulations 1975, 1981 and 1984

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NPPG18: Natural Heritage

Circular 9/1992: Enforcement of Tree Preservation Orders

BS 3998 (1966) "Recommendations for Tree Work"

BS 5837 (1991) "Trees in relation to Construction"

National Joint Utilities Group (NJUG) "Guidelines for the Planning, Installation & Maintenance of Utility Services in Proximity to Trees"

The City of Edinburgh Council: City Development Planning: Development Quality Handbook

The City of Edinburgh Council: Planning Charter: Tree Protection

Forestry Commission: Tree Felling: Getting Permission

Greenbelt Group of Companies: Tenth Anniversary Report

Structure Plans: Lothian, Strathclyde, Tayside

Local plans: Edinburgh, West Lothian, Dundee, Aberdeen, Scottish Borders and Fife

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