

National Park Authority

Planning & Access Committee

Agenda Item 6

Tree Preservation Order Recommendation 2018/0010/TPO



1. Introduction

1.1. This report concerns a Tree Preservation Order (TPO) that was put in place by the National Park Authority on the 22nd March 2018 covering an area of woodland on the north shore of Drumkinnon Bay, Loch Lomond. This was as a result of unauthorised tree felling which resulted in a significant negative impact on the amenity and setting of Drumkinnon Bay. The TPO was to increase immediate protection and powers should further unauthorised felling occur. In parallel, the National Park Authority as a leaseholder of part of the area affected, reported the incident to Police Scotland and to Forestry Commission Scotland. Should the National Park Authority wish this TPO to remain in place, there is a statutory requirement to 'confirm' the TPO within six months.

2. Recommendation

2.1 Members are asked to:

- a) **Note** the making of the TPO on the 22nd March 2018– issued with approval of the Chair of the Planning & Access Committee (Reference: 2018/0010/TPO)
- b) **Approve the recommendation to confirm** the TPO.

3. Background

3.1 On or around the weekend of 17th March 2018 circa 0.17 ha of established native woodland, comprising mainly birch and alder with occasional oak, birch cherry, rowan and sycamore, on the north shore of Drumkinnon Bay, Loch Lomond was felled. The felling was on land leased by the National Park Authority from Scottish Enterprise, and also on a small piece of ground in private ownership. The works had been undertaken without the knowledge or consent of either the National Park Authority as tenant, Scottish Enterprise as landowner of the site or the private owner – Flamingo Land Limited. The National Park Authority became aware of the felling on Monday 19th March.

3.2 The matter was reported to Police Scotland due to the potential criminal offences which may have been undertaken and the investigation by Police Scotland began. In parallel, Forestry Commission Scotland initiated an investigation due to the volume of timber having been felled being estimated to be greater than the permitted 5 m³ per calendar quarter. These investigations both started on 20th March 2018.

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- 3.3 It appeared to the National Park Authority that the remaining trees were in imminent danger of being cut down or wilfully damaged or destroyed. Following an assessment of the affected area and surrounding woodland it was considered expedient to make the TPO in order to put in place further sanctions should further unauthorised felling be undertaken and also discourage any further unauthorised works. The TPO was made on the 22nd March 2018.
- 3.4 The Police Scotland investigation resulted in an individual being charged with malicious mischief on the 11th June 2018. Further, a report has been issued to the Procurator Fiscal and a warrant is out for the arrest of a second male who Police also believe to have been involved in the illegal felling.
- 3.5 Planning authorities can make a Tree Preservation Order (TPO) if it appears to be expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area. TPOs can also be made in circumstances where it is considered that there is an imminent threat of wilful destruction to trees or woodlands.. The aim of making any TPO is to protect individual trees or woodland of particular value, while taking a proportionate assessment of the risk and threat in each individual case.
- 3.6 If trees or woodland are covered by a TPO then any works or the removal of those trees require the prior written consent of the Planning Authority. This must be applied for and approval given in advance of the works occurring. If this does not happen then such works would be illegal and the presence of a TPO enables the Planning Authority to begin enforcement action to remedy any breach of the TPO.

4. Site Location and Description

- 4.1 The woodland forms a prominent backdrop to Drumkinnon Bay and hosts a number of woodland visitor experiences which contribute to the amenity of the area. The felling has had a significant negative impact on the amenity and setting of Drumkinnon Bay, and the local visitor and tourist destination of Loch Lomond Shores.

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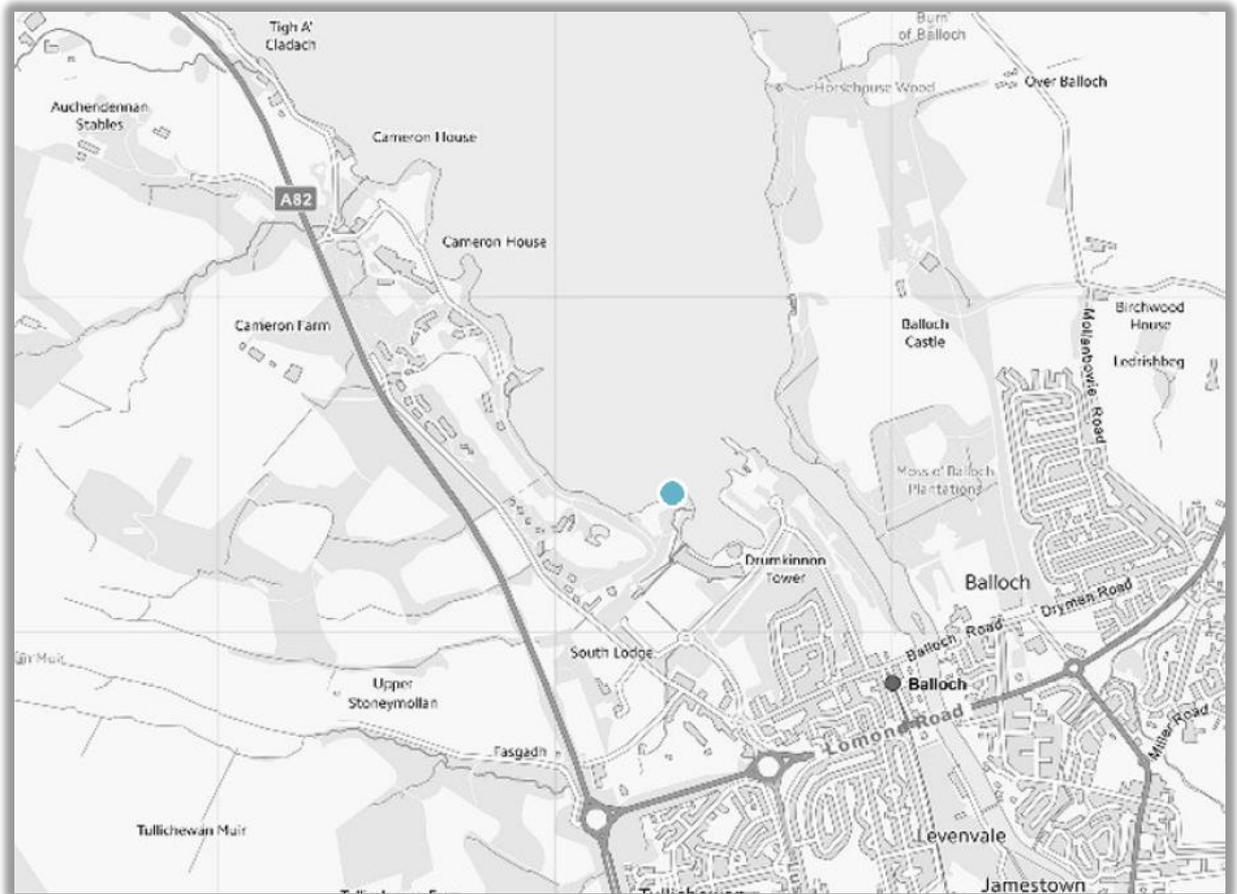


Figure 1 – Location Plan – Blue circle represents the approximate area of the trees felled

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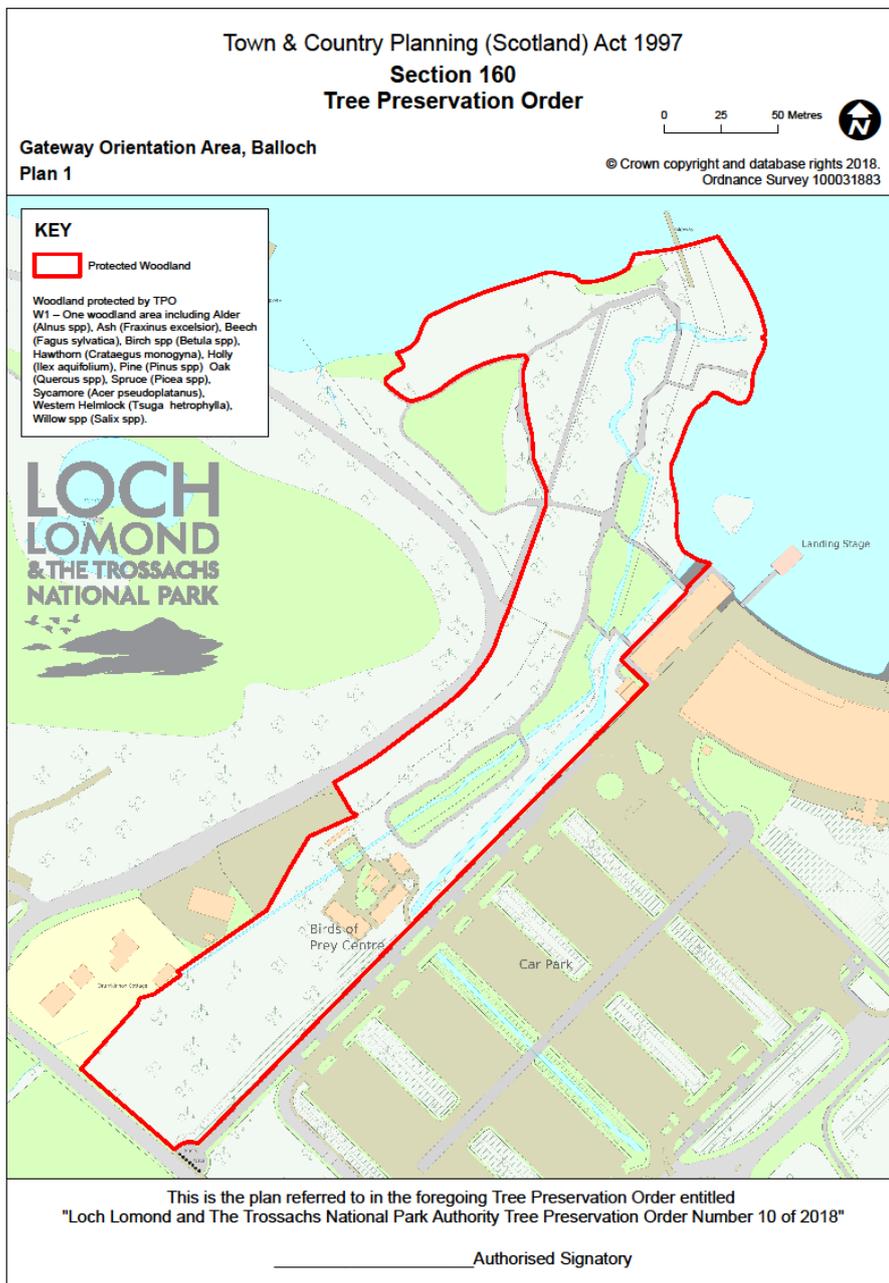


Figure 2 – Site Plan - This plan shows the TPO boundaries

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Figure 3 – Photographs taken on the 19th March 2018 of the part of the site felled

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5. Relevant Planning History

5.1 There are a number of planning applications and one registered Statutory Pre-application Consultation within or close to the extent of the TPO area. The most relevant include:

- 2017/0331/PAC - Erection and operation of a tourism and leisure led mixed use development with associated infrastructure - Major Development
- 2017/0186/DET Erection of timber clad external stores to front and rear of building
- 2017/0036/DET Change of Use from Visitor Centre to conference/function area and spa with restaurant
- 2013/0314/DET Erection of aerial adventure ropes course and associated infrastructure
- 2013/0062/DET Erection of 5No. aviaries and pens and reception/education room.

5.2 There were no live planning applications pending determination at the time of making the TPO.

5.3 Since the TPO was made the National Park Authority has received a planning application for planning permission in principle which incorporates land within the extent of the TPO area (subsequent to 2017/0331/PAC):

- 2018/0133/PPP Erection and operation of a tourism and leisure led mixed use development – full description and details of the proposed development can be viewed by searching the Authority's online e-planning portal.

5.4 This application is currently pending determination.

6. Consultations and Representations

6.1 The following statutory consultations were undertaken in relation to the making of the TPO:

- a) Forestry Commission Scotland – Conservancy
- b) The owner, lessee and occupier of the land on which the trees are situated, and any party entitled to:
 - i) fell, top, lop, uproot or otherwise damage or destroy any tree to which the tree preservation order relates; or
 - ii) work by surface working any materials in, on or under such land.

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In addition, an advert was placed in The Lennox Herald (Dumbarton) on the 28th March 2018 and the Balloch and Haldane Community Council was notified.

Responses to consultation:

6.2 A single representation **supporting** the confirmation of the TPO was made by Balloch and Haldane Community Council.

7. Legislative Context

7.1 The National Park Authority, as Planning Authority, may make a TPO to protect individual tree(s), groups of trees or woodland where it appears expedient in the interests of amenity and/or that the trees/groups of trees/woodland are of cultural or historical significance. The Park Authority has a duty from time to time to review any TPO, as required by the Planning etc. (Scotland) Act 2006 section 28(1)(d). Further information on the legislation and procedures can be found in Planning Circular 1/2011: Tree Preservation Order.

8. Assessment

8.1 Members are being asked to approve the recommendation to confirm the Tree Preservation Order, made on 22nd March 2018.

8.2 The assessment of the woodland and the need for a TPO includes a structured evaluation. This is known as the Tree Evaluation Method for Tree Preservation Orders (TEMPO).

8.3 The woodland covered by the TPO totals circa 2.5 ha with 1.15 ha being recorded as Long Established Plantation Origin (LEPO). The area felled was outwith this LEPO area and comprising native woodland established since 1860 which is recorded on the Native Woodland Survey of Scotland.

8.4 The TEMPO method scores a woodland on a number of categories which are as follows:

- Condition (relates to current management and health);
- Naturalness (age of woodland cover);
- Size of woodland;
- Cultural factors. (historic, natural heritage designation and public use)
- 'Expediency assessment' - the level of threat

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The score attributed provides a guide to the need for making a TPO, but is not the sole basis for assessing the need as highlighted in paragraph 3.5.

When the TPO was made in March 2018 the woodland scored 19 - a score between 16 and 20 indicating a TPO was defensible. A score of 21 or over advises that a TPO is definitely merited. The conclusion being this was a small area of woodland in reasonable condition, heavily used, of high amenity value with a risk of further partial loss. The support for the TPO by the Community Council is acknowledged and despite the Police investigation progressing as noted earlier, it is considered that there remains a risk of further trees being cut down, wilfully damaged or wilfully destroyed.

9. Conclusion

- 9.1 Since the making of the TPO on 22nd March 2018, while there may have been a reduction in the risk to this area of woodland given the current status of the Police investigation, it is considered prudent to take a precautionary approach and confirm this TPO to ensure additional protection remains in place.

10. Background Documents

- 10.1 The original TPO schedule and plan are available on line on The Park Authority's website <http://www.lochlomond-trossachs.org/planning/planning-applications/make-an-application/tree-preservation-orders-national-park/>

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