

National Park Authority

Planning & Access Committee

Agenda Item 4

Tree Preservation Order Recommendation 2020/0002/TPO



1. Introduction

1.1. This report concerns a Tree Preservation Order (TPO) that was put in place by the National Park Authority on 18th June 2020 covering an area of woodland on the north side of Tarbet, Loch Lomond partly including and adjacent to a property know as Ben Cruach Lodge. This was as a result of unauthorised tree felling which resulted in a significant negative impact on native and ancient woodland in this location. The TPO was to increase the protection of the woodland and provide powers should further unauthorised felling occur. Should the National Park Authority wish this TPO to remain in place, there is a statutory requirement to 'confirm' the TPO within six months of it being made.

2. Recommendation

2.1 Members are asked to:

- a) **Note** the making of the TPO on the 18th June 2020– issued with approval of the Chair of the Planning & Access Committee (Reference: 2020/0002/TPO)
- b) **Approve the recommendation to confirm** the TPO with modification (see appendix 1).

3. Background

3.1 Complaints were first received from members of the public in April regarding work being undertaken on the property know as Ben Cruach Lodge. These works were initially around the historic access of the property on to the A82 and involved some tree removal and ground works. Later reports indicated that woodland removal was also being undertaken outside with the property's garden curtilage. As is normal practice, a planning enforcement investigation was commenced.

3.2 At this time, the initial nation-wide pandemic 'lock-down' was in place with Park Authority staff working remotely and with limitations on travel. As a result routine sites visits were not being undertaken by staff. Despite repeated requests from officers for clarification regarding the purpose of the works and for them to be stopped pending the investigation, limited detail was provided and works appear to have continued for a period during exchanges in correspondence.

3.3 The site was initially visited by a Development Management Officer on 4th May, when despite not taking access to the site, there were clear signs of woodland removal to the north of Ben Cruach Lodge outside the garden curtilage.

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- 3.4 Scottish Forestry, which is responsible for Forestry regulation including felling and replanting, was alerted to the situation following this visit. Based on the information provided, Scottish Forestry issued a stop notice to prevent any further felling being undertaken.
 - 3.5 The site was visited by the Park Authority's Tree and Woodlands Officer on 7th May. During this visit the property was accessed and the extent of the woodland loss was recorded.
 - 3.6 Based on the measurements undertaken during this visit, it was calculated that 0.32 ha of woodland had been removed.
 - 3.7 Subsequent to this visit, after a dialogue with the landowner and further consideration of the situation, a TPO was put in place or 'made' by the National Park Authority on 18th June 2020. The assessment that led to this decision is detailed in Section 8 below.
4. Legislative Context of TPOs
- 4.1 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.
 - 4.2 TPOs can also be made in circumstances where it is considered that there is an imminent threat of wilful destruction to trees or woodlands. This can include risk due to development prospecting. The aim of making any TPO is to protect, immediately, individual trees or woodland of particular value, while taking a proportionate assessment of the risk and threat in each individual case.
 - 4.3 If trees or woodlands are protected by a TPO then any works or the removal of them requires 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. It is a criminal offence to contravene a TPO which can lead to a fine of up to £20,000 on conviction.

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5. Site Location and Description

5.1 The woodland forms the northern boundary of the Tarbet village boundary and marks the start of the wooded shores and lower slope of this area of Loch Lomond. The woodland is important for the amenity of this area of Loch Lomond, being clearly visible from both the loch and Ben Lomond as well as the A82. The woodland also contributes to the wider woodland habitat network around Loch Lomond, which includes areas of native woodland of national and European significance for nature conservation. The figures below show the location of the woodland, the nature of the felling and the boundaries of the made and proposed modified TPOs.

Figure 1 – Location Plan – Red Triangle represents the approximate location of the TPO.



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Figure 2 – Site Plan - This plan shows the made TPO boundary

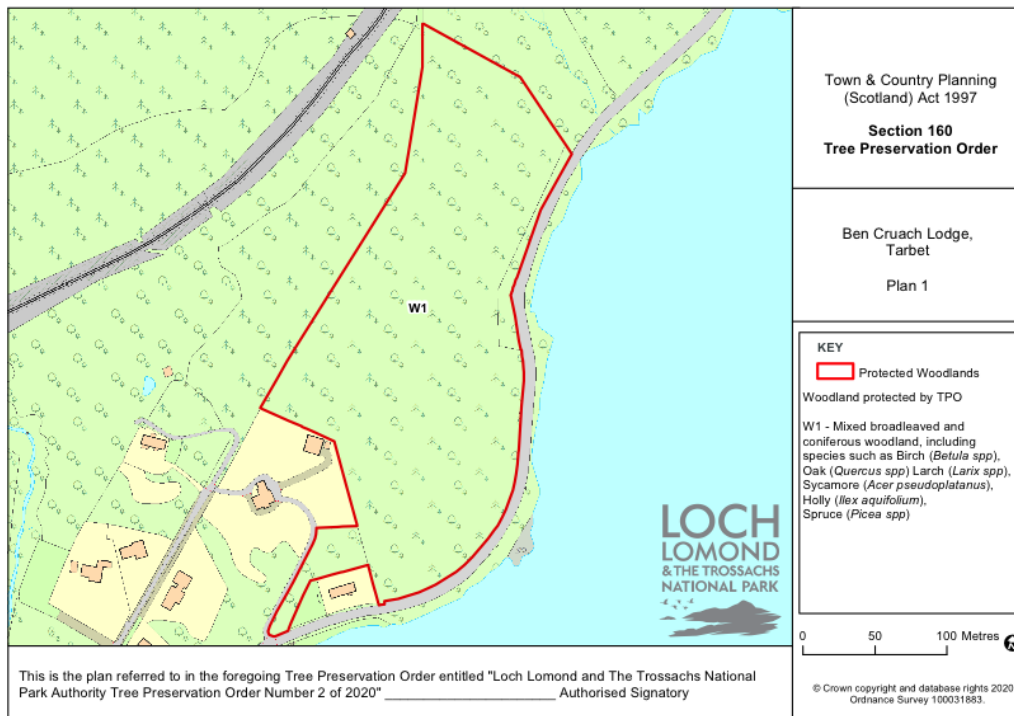
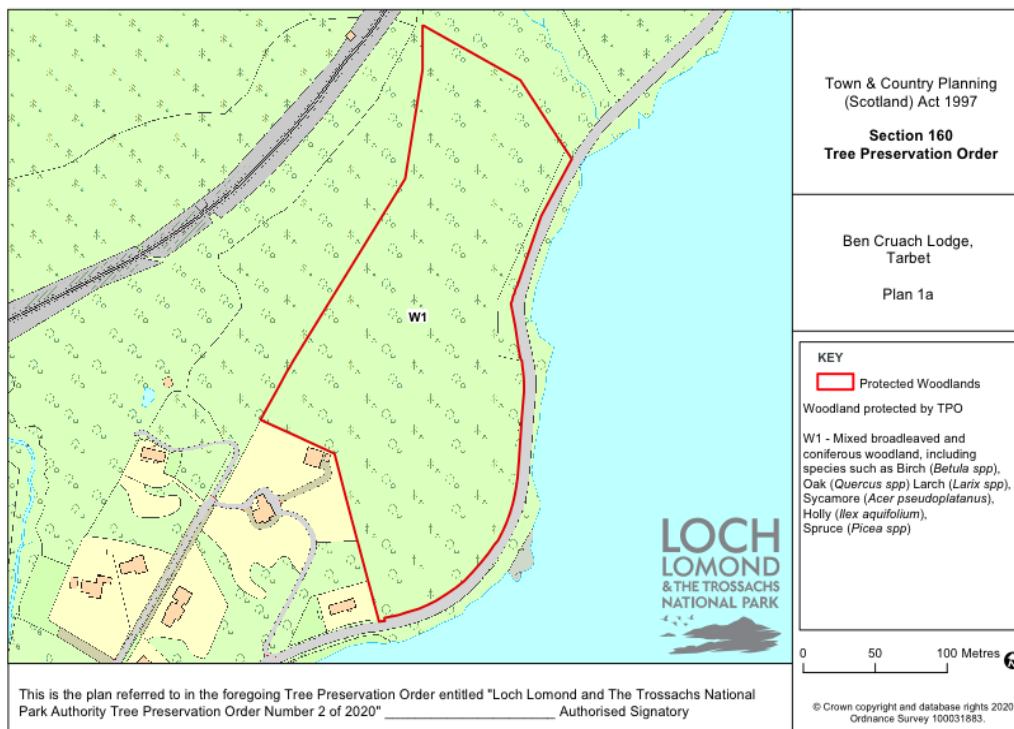


Figure 3 – Site Plan - This plan shows the proposed modified TPO boundary



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Figure 4 – Photographs taken on the 8th May 2020 of the land where felling had occurred, now within the TPO.



Figure 5 – Photograph taken from summit of Ben Lomond on 6th June 2020 showing location circled in red and the extent of the felling.



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6. Relevant Planning History

- 6.1 The TPO as made included areas both within and outside the village boundary, as defined for planning terms in the Local Development Plan. The proposed modification to the TPO would only include the area outside the village boundary.
- 6.2 There is one registered Statutory Pre-application Consultation within or close to the extent of the TPO area. This is:
- 2019/0209/PAC - Formation of a village square and erection of a tourism and mixed use development (incorporating and not limited to accommodation, retail, food and drink uses) with associated traffic calming measures, infrastructure and landscaping.
- 6.3 There were no live planning applications pending determination at the time of making the TPO.
- 6.4 Since the TPO was made, the National Park Authority has received a planning application for planning permission on land adjacent to the modified TPO. This was at the request of the Park Authority following the Enforcement investigation.
- 2020/0130/HAE - Formation of enlarged bellmouth entrance, engineering works to form new driveway and erection of wall and gates. Temporary retention of timber fence and gates (retrospective)
- 6.5 This planning application was refused on 19th October 2020. The applicant has a period of three months from the planning application decision in which to submit a request for a Review to the Park Authority's Local Review Body. At the time of writing, no such Review has been submitted.

7. Consultations and Representations

- 7.1 The following statutory consultations were undertaken in relation to the making of the TPO:
- a) Scottish Forestry
 - b) The owner 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.

In addition, an advert was placed in the Helensburgh Advertiser on the 2nd July 2020 and the Arrochar, Tabert and Ardlui Community Council was notified.

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7.2 *Responses to consultation:*

7.3 Seven representations **supporting** the making of the TPO were received and these are summarised below.

7.4 A representation **supporting** the making of the TPO was made by Mr and Mrs Williams.

The following is a summary of the points raised:

- They wished the TPO extended to include the tree cover adjacent to their property.

Officer response: *The extension of the TPO as requested is not relevant in relation to the reason why the TPO was made. The remit of this TPO is to protect the native woodland rather than trees within the garden curtilage which is not considered to form native woodland, hence not be of sufficient quality in terms of this TPO.*

7.5 A representation **supporting** the making of the TPO was made by Mr and Mrs Furness.

The following is a summary of the points raised:

- They supported the TPO being put in place and subsequently confirmed due to the woodland being ancient and native with high biodiversity; its importance in the wider woodland connectivity along with its visible location and concern about potential future felling.

Officer response: *This point is noted*

7.6 A representation **supporting** the making of the TPO was made by Mr. and Mrs. Liddell.

The following is a summary of the points raised:

- They supported the TPO be in put in place.

Officer response: *This point is noted*

7.7 A representation **supporting** the making of the TPO was made by Ellen Greenwood.

The following is a summary of the points raised:

- She supported the TPO be in put in place.

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Officer response: *This point is noted*

- 7.8 A representation **supporting** the making of the TPO was made by Fiona Millar.

The following is a summary of the points raised:

- She supported the TPO to protect ancient woodland from future felling due to impact on habitats and wildlife, increased risk of rainwater run-off and destabilisation of the site threatening the A82 should further felling occur.

Officer response: *These points are noted*

- 7.9 A representation **supporting** the making of the TPO was made by the Arrochar and Tarbet Community Development Trust.

The following is a summary of the points raised:

- The Trust was in favour of the TPO.

Officer response: *This point is noted*

- 7.10 A representation **supporting** the making of the TPO was made by Ann & Chris Huggans.

The following is a summary of the points raised:

- They supported the TPO to protect ancient woodland from further felling, highlighting the importance of the woodland for wider connectivity and the visual impact if future felling occurred.

Officer response: *These points are noted*

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8. Assessment

- 8.1 Members are being asked to approve the recommendation to confirm the Tree Preservation Order, made on 18th June 2020 with modifications.
- 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 modified TPO totals 4.35 ha with included areas of ancient semi natural woodland and native woodland as well as the area felled without Felling Permission. This also includes the wider site included in the Pre-Application Consultation.
- 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
- The score attributed provides a guide to the need for making a TPO, but is not the sole basis for assessing the need. A score of 21 or over shows that a TPO is definitely merited.
- 8.5 When the TPO was made in June 2020 the woodland scored 28. This score is comprised of:
- 8 (out of 10) for condition – this was a weighted score based on the relative size of the cleared and uncleared areas.
 - 10 (out of 10) for naturalness -the majority of the area was recorded on the Ancient Woodland Inventory as well as being included in the Native Woodland Survey of Scotland.
 - 2 (out of 10) for size (4.5 ha for the made TPO). The proposed modified TPO would be 4.35 ha which would have the same score
 - 5 (out of 10) for cultural factors due to the habitat and landscape importance of the woodland
 - 3 (out of 5) for expediency due to recent clearance works and the existence of a Pre-Application Consultation which included the area.

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- 8.6 The conclusion of the assessment was that this was a significant area of native woodland in generally good condition, of high biodiversity value and with a risk of further significant loss, considering the clear development aspirations outlined in the Pre-Application Consultation that included this area.
- 8.7 After the TPO was made, Scottish Forestry served a Restocking Direction for the area cleared, which amounts of 0.32 ha. While most of the area cleared will be replanted under this Direction as native woodland, a small area to the north of Clattochbeg, the property directly on the A82, is required to be replanted with individual specimen trees.
- 8.8 It is recommended that the original TPO be modified to remove the small area of specimen trees, which amounts to 0.15 ha. That part of the proposed replanting would be outside the intended scope of the TPO, i.e. to protect native woodland. However these trees would be covered by the Restocking Direction for a period of 10 years.
- 8.9 The intention of the landowner in relation to the area covered by the modified TPO remains unclear, with no planning application having been submitted since the Pre-Application Consultation process. The need for the TPO can be reviewed in the future, as per the normal review process.
- 8.10 The support for the TPO by the representations received is acknowledged.
- 8.11 The modified TPO would protect native woodland which makes a significant contribution to the amenity of Loch Lomond, being clearly visible from both the loch and Ben Lomond as well as the A82.
- 8.12 The modified TPO would protect 4.35 ha of native woodland of which 0.32 ha is due for replanting as native woodland under the Restocking Direction. The remaining 0.15 ha of the made TPO would also be due for replanting with specimen trees and protected for 10 years under the Restocking Direction. A robust and valid TPO can be put in place to cover the woodland because it is all still present, even if parts are cut stumps, and can therefore be adequately defined in a TPO. The specimen tree area doesn't have any trees present and in order to be protected by a TPO, details such as the tree species and location must be provided in the TPO document and associated plan. As a consequence we have to rely on the protection provided by the Restocking Direction for the specimen trees.

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9. Conclusion

- 9.1 It is recommended that the modified TPO be confirmed in order to protect 4.35 ha of native woodland that is important for the amenity of this area of Loch Lomond. Whilst the requirement for Felling Permission under Forestry legislation protects large areas of woodland from being cleared in a short period of time, it does not prevent incremental tree clearance. Accordingly, it is considered prudent to take a precautionary approach and confirm this TPO at this time to ensure that additional protection remains in place for the important native woodland to the north of the property known as Ben Cruach Lodge.

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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Appendix 1 – Recommended Modifications

Appendix 2 – TEMPO guidance