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Part I

Development Plan

Introduction

There is a clear duty on planning authorities to preserve, improve and extend amenities, and the Acts identify a number of mechanisms and objectives which may be pursued by planning authorities. This Part of the Guidelines outlines the way the development plan can assist the planning authority in achieving the preservation and enhancement of the amenity value of trees.

Advice is given on the most effective way to approach the survey and analysis stages of the development plan process and recommendations are made in relation to the manner in which development plan objectives should be framed. Attention is given to the appropriate actions to be taken at the review of a development plan.

Legal Provisions

1.1 The development plan provides the framework within which a planning authority must operate. It must set out the objectives which the authority aims to achieve within the life of the plan. The mandatory objectives include proposals for preserving, improving and extending amenities (section 19(2) of the Local Government (Planning and Development) Act, 1963). Under section 19(3) and the Third Schedule to the 1963 Act, the plan may also indicate objectives relating to -

- reservation of land as open space, whether public or private, (Part IV, paragraph 1(a));
- preservation of views and prospects and of amenities of places and features of natural beauty or interest (Part IV, paragraph 7);
- preservation and protection of woods, trees, shrubs, plants and flowers (Part IV, paragraph 8).

1.2 In including provisions relating to any of the foregoing matters in the development plan, it is desirable that specific objectives should be set out clearly. In this regard, account should be taken of the fact that planning authorities have a positive duty, under section 22 of the 1963 Act, to take such steps as may be necessary for securing the objectives which are contained in the plan.

Formulating objectives

1.3 In formulating objectives for the preservation of trees, consideration should be given to the making of special tree surveys as part of the general process of survey and analysis on which the objectives contained in the development plan are based. Local organisations interested in the environment and the preservation and conservation of amenities, as well as the relevant prescribed bodies, should be involved at an early stage and not just when the draft goes on public display. Such organisations and bodies which have a special interest and expertise in the protection of trees and woodlands may be willing to provide help and assistance to planning authorities in preparing the surveys and formulating appropriate objectives for inclusion in the development plan.

The Forest Service of the Department of Agriculture, Food and Forestry maintains a list of forestry contractors and consultants which may be contacted should the planning authority wish to engage specialist assistance in undertaking the survey. Coillte Teo. can also provide expert assistance in carrying out the survey.

Survey

1.4 In the survey process, planning authorities should avoid making a wholesale inventory of all trees in their areas. Instead, they should concentrate broadly on the trees likely to be of amenity value or of special interest. Appropriate to the survey, for example, would be trees which:

- screen eyesores;
- provide relief in heavily built-up areas;
- are conspicuous in views outward from towns and villages;
- have intrinsic beauty which can be appreciated over a wide public area;
- contribute to the distinctive character of an area;
- are a significant feature of an important scenic view;
- may contribute to the amenity of an anticipated development.

Chapter 3 of *A Manual on Urban Trees* (An Foras Forbartha, 1982), contains much practical advice on methods for surveying trees and completion of data. Planning authorities may also wish to take photographic or video evidence of individual trees or of woodlands to assist the survey process.

Analysis

1.5 In analysing survey material and formulating objectives, the following considerations are relevant:

- form of ownership;
- anticipated lifespan of trees;
- likelihood of survival in changing physical circumstances;
- possible conflict with other objectives or programmes, e.g., road improvements and maintenance;
- cost in terms of development constraints;
- commercial value and compensation implications;
- feasibility of replacing the amenity by new planting in the most favourable locations nearby.

Plan Objectives

1.6 When objectives have been formulated, they should be mapped and listed in the plan. Planning authorities may find the following format useful.

Map Ref	Description and location	Feature(s) of interest	Intended action or restriction
T1	2 Beech 1 Oak 1 Lime at Beechwood Housing Estate	Important screening effect	Tree Preservation Order made, 1992
T2	Beeches, Presbytery grounds	Preserve character of street	Make TPO
T3	"The Big Oak" Grange Demesne	Mature tree of specimen quality	Make TPO
T4	Birch Woodland, Holycross	Important view	Preserve proportion of trees in any proposed development

1.7 Where land, zoned for development, contains trees considered by the planning authority to be of amenity significance, their protection should be a stated objective of the development plan. It would be advisable if the objectives were to distinguish between, on the one hand, trees which have or are likely to have amenity impact over a wide area and are worthy of more or less permanent protection and, on the other hand, trees which may contribute to the amenity of anticipated development and which require protection, in the shorter term, pending the design and approval of the development. Failure to distinguish between the two types of objective may result in public confusion at a later date if the planning authority, in approving a layout, agree to the felling of a number of trees.

Notification to Land Owners

1.8 Where the preservation of trees is to be included as an objective of the development plan, owners and occupiers of the lands containing the trees should be so advised and every effort should be made to enlist their co-operation.

Review of Development Plan

1.9 It should not usually be necessary to carry out a fresh tree survey at every review of the development plan.

However, part of the review process should include consideration of whether existing TPOs need to be revised or updated. The planning authority should also consider whether the circumstances of trees of amenity value, which had previously not been considered to be in need of the protection of a TPO, have changed to an extent which would warrant the inclusion in the new plan of an objective for the making of a TPO for them. In addition, every tree is a living organism and, as such, cannot be retained indefinitely.

Accordingly, it would be appropriate during the review process to identify dead or dying trees formerly of amenity value and make suitable amendments to the development plan and any relevant TPOs. See paragraph 2.29 below also.

Tree Planting programmes

1.10 Tree planting by the planning authority for the improvement of amenity is likely to be, for the most part, a routine, on-going operation and may not, therefore, require to be stated as a specific objective of the plan. However, where a planning authority proposes to carry out new planting which will significantly affect the planning and development of a particular area, e.g., by up-grading or by encouraging investment or new uses, then such proposals might properly be included as specific objectives in the plan. Chapters 7 and 8 of *A Manual on Urban Trees* provide much advice on designing with trees and on tree planting.

Part II

Tree Preservation Order

Introduction

The making of a Tree Preservation Order (TPO) is the primary mechanism available to a planning authority to take the initiative in ensuring that trees are protected and preserved. This Part explains the law and processes involved in the making of TPOs and gives details of the legal requirements for the making of a valid order - see Specimen TPO in Appendix 2. Practical advice is given on the survey requirements arising when making a TPO and on the appropriate approach when dealing with the amenity aspects of commercial woodlands. The Part explores the options open to the planning authority to align procedures for making applications for consent to fell trees with the more familiar development control system. Compensation implications are also set out, including details of the legal position in the case of woodlands.

2.1 When a planning authority wishes to secure the preservation of trees for amenity reasons, whether in pursuance of a specific objective of the development plan or otherwise, they should consider the expediency of making a Tree Preservation Order, having regard to the amenity importance of the trees and to the degree of risk to which they are considered to be exposed.

Legal Provisions

2.2 The law relating to the making of a Tree Preservation Order (TPO) is contained in section 45 of the 1963 Act, as amended by section 14(10) of the 1976 Act, section 3 of the 1990 Act and section 20(1) of the 1992 Act. The compensation provisions replacing section 45(2) of the 1963 Act are contained in section 21 of the 1990 Act, as amended by section 21 of the 1992 Act. See Appendix 1 for consolidated text.

2.3 The felling of a tree does not normally constitute development and does not require planning permission. The purpose of a TPO is to bring such activity within a specific form of control exercisable under the Planning Acts: no tree covered by a TPO may be felled, topped, lopped or destroyed without the consent of the planning authority. It should be noted, however, that the replacement of more than 10 hectares of broadleaf high forest by conifer species is

development requiring planning permission and the submission of an Environmental Impact Statement as part of the planning application - see paragraph 3.9 below.

2.4 A specimen TPO is set out in Appendix 2. Planning authorities may find this useful as a template for their own TPOs. See also paragraphs 2.39 and 2.40.

Considerations when making a TPO

2.5 Section 45(1) empowers a planning authority to make a TPO only if it appears expedient in the interests of amenity to make provision for tree preservation. Amenity is the essential requirement. For example, a TPO cannot be made in respect of trees solely on grounds of ecological, botanical or other similar interest or value unless the amenity aspect is also present.

2.6 A TPO may apply to an individual tree or trees, a group, or groups of trees or woodlands. It may not apply to shrubs or to hedges, although trees within hedges may, of course, be covered. Woodlands are not defined in the legislation, but it may be taken that woodlands in many instances would involve commercial timber production. Apart from cases which come within the EIA requirements, planning authorities should not normally become involved in the control of forestry activity which is exempted development under section 4 of the 1963 Act and subject to regulation under the Forestry Acts, 1946 to 1988 (see paragraph 5.9 and Appendix 4 following). But there may be special amenity considerations relating to particular woodlands, including commercial woodlands, which would justify planning authority intervention. For example, it may be necessary in some locations to seek postponement of felling until a satisfactory replanting programme has been agreed. Equally, it may be desirable to establish arrangements under which consent to felling may be given on condition that certain types of trees are replanted on the cleared lands. Also, amenity considerations may suggest that a certain proportion of the trees in the woodland ought to be preserved or that the felling or extraction of the trees should be phased over a period.

Commercial Woodlands

2.7 It must be borne in mind that commercial woodlands, including both coniferous and broadleaf woodlands, are crops which, ultimately, must provide a financial return on the original investment made, perhaps many years later. The proper arboricultural and silvicultural management of these woodlands can provide enhanced amenity benefits but such woodlands must be managed in an active way, with a cycle of planting, maintenance, thinning, felling of mature trees and replanting to repeat the cycle. When making a TPO in relation to part or all of commercial woodlands, the planning authority must, therefore, take due account of the need to allow the felling of some or all of the trees in the woodland over time, within the overall aim of maintaining and enhancing an amenity asset. It will be noted that the 1990 Act provides for this concept and permits the attachment of conditions to consents to fell trees in a commercial woodland which will allow for the preservation and improvement of amenities while, also allowing the commercial operation of woodland.

2.8 It is important that planning authorities consult and co-operate with the Forest Service of the Department of Agriculture, Food and Forestry, and Coillte Teo. in appropriate cases, in respect of TPOs on commercial woodlands, since the primary role and responsibility in relation to afforestation rests with these bodies. It is also advisable to enter into early discussions with the owner of the woodlands; early identification and agreement on areas of commercial woodlands likely to be of high amenity value will help avoid problems and disputes later on.

Main Provisions in a TPO

2.9 The main provisions of a TPO are to

- prohibit, except with a consent under the order, the cutting down, topping, lopping, or wilful destruction of the tree, trees, group of trees or woodlands specified in the order;

- set out the extent to which the provisions of Part IV of the 1963 Act shall apply to the consent procedure.

Instances when a TPO cannot apply

2.10 An order cannot apply to the cutting down, topping or lopping of trees that are dying or dead or have become dangerous or, indeed, to trees cut down, topped or lopped in compliance with some statutory obligation or for reasons of nuisance (section 45(7) of the 1963 Act). Paragraphs 2.31 to 2.38 below give some practical guidance on the selection, identification and description of the trees to be included in a TPO.

Making a TPO

2.11 The making of a TPO is an executive function and a Manager's Order should therefore be made. An order comes into force immediately it is made and, under section 45(8) of the 1963 Act, contravention of an order is an offence. This is the case even if an appeal to An Bord Pleanála against the order is made and is not yet determined.

Service of Notice and Right of Appeal

2.12 Where a planning authority make a TPO, they must serve a notice, together with a copy of the order, in accordance with the provisions of section 45(4) of the 1963 Act, on every owner and occupier of the land affected by the order and on any other person known to have rights to fell trees, groups of trees or woodlands to which the order relates. A suggested form of notice is at Part A of Appendix 3. Any of those persons may appeal to An Bord Pleanála against the order at any time before the day specified in the notice (which must not be earlier than one month after the date of service of the notice - see section 45(5) of the 1963 Act). As the appeal period for other forms of appeal is generally one month, it should not be necessary to provide for a period greater than one month within which to appeal. The Board may confirm the order, with or without modifications, or it may annul the order (section 45(6) of the 1963 Act). Article 6(6)(a) of the Local Government (Planning and Development) (No. 2) Regulations, 1992 (S.I. No. 222 of 1992) provides that an appeal received by the Board outside the specified period is invalid. Provision is, however, made for the validity of an appeal received the day after a weekend, public holiday, etc. if the last day falls when the offices of the Board are closed.

2.13 After notice of the making of a TPO has been served, the planning authority should carry out an early inspection of the area to which the order relates. This precaution would enable the planning authority to give evidence in any subsequent Court proceedings as to what trees were actually on the site after the order was served and the condition of the trees.

Consents under a TPO and Right of Appeal

2.14 The provisions of Part IV of the 1963 Act which are to apply to applications for consents to cut down, lop or top trees covered in the order should be clearly set out in each TPO. Unless section 26(5) of the Act, as amended, is included in the provisions applied, there will be no right of appeal against the decision of the planning authority.

2.15 A right of appeal appears to be fundamental to the whole planning control system and it is recommended that it should be provided for in every TPO. The specimen TPO at Appendix 2 includes the appropriate provisions from Part IV of the 1963 Act. The provision for appeals should confer the same right on third parties, since the public interest and the basic principles underpinning the planning control system require that the position of such parties should be protected. The specimen TPO accordingly makes provision for applicants for consent to publish notice of intent and for the notification of a consent decision to any third party who has made representations, based on the appropriate provisions of the Local Government (Planning and Development) Regulations, 1977 to 1993.

2.16 Article 9 of the 1992 Regulations provides for the application of certain provisions of the 1992 Act to appeals arising from applications for consent under a TPO. These appeals must comply with the time limits and other requirements in the 1992 Act which apply to planning appeals viz. be accompanied by:-

name and address,

the subject matter of the appeal, the site affected by the TPO, name of the planning authority, planning register number and the applicant's name and address (for third party appeals),

the full grounds of appeal and supporting material and arguments,

the correct fee.

Fees

2.17 Applications for consent under a TPO are outside the scope of the regulations made under the Local Government (Planning and Development) Act, 1982, regarding the fees to be charged for planning applications.

2.18 Appeals to An Bord Pleanála, whether in relation to the TPO itself or arising on foot of an application for consent under a TPO, are subject to a fee which must be paid to the Board. For the applicant and third party, the current fee for an appeal is £100 (the higher fee for commercial applicants does not apply in any case) but a reduced fee of £50 applies in the case of any body mentioned in article 22 of the Local Government (Planning and Development) (Fees) Regulations, 1984 (S.I. No. 358 of 1984).

2.19 The specimen TPO in Appendix 2 does not contain any reference to fees. Accordingly, planning authorities should include details of the fees payable in all notifications of the making of a TPO and in all notifications of their decision in the case of applications for consent. (See Part A of Appendix 3).

Relationship to Planning Applications

2.20 It should be clearly understood that the obligation to apply for consent under a TPO is not met by the making of an application for a planning permission to carry out development on the relevant land. Accordingly, any planning permission to develop a site covered by a TPO and which involves the felling of certain trees does not absolve the owner or developer from the requirement to seek appropriate consents under the TPO. Both applications may,

of course, be made and considered together. The need for an application for consent under a TPO should, where necessary, be pointed out to developers.

Compensation Provisions

21. In determining an application for consent, the planning authority (or An Bord Pleanála on appeal) may give consent subject to or without conditions, or refuse it. A refusal to give a consent, or a consent granted with conditions, may, if the applicant establishes that he or she has suffered damage, or that the value of his or her interest in the land has been reduced, give rise to a claim for compensation.

22. The law relating to compensation in the case of TPOs is set out in section 21 of the 1990 Act (as amended) (see paragraph 2.2). It will be noted that the actual making of a TPO does not, in itself, give any right to compensation. The question of compensation arises only in relation to decisions on applications for consent under the TPO.

23. Refusal of consent to fell, top or lop, or granting consent with conditions, can incur a claim for compensation where the person in question can establish a reduction in value of an interest in the land concerned or that damage has been suffered by being disturbed in the enjoyment of the land as a consequence. However, no compensation is payable in the following circumstances:-

- 1) in respect of a refusal of consent to lop, top or fell, or the granting of consent subject to conditions, where the relevant tree, trees or group of trees (not comprised in woodlands) are declared in the TPO to be of *special amenity value* or *special interest*;
- 2) in the case of woodlands, no compensation is payable arising from a replanting condition where the order declares that such a condition is essential in the *interests of amenity*.
- 3) if preservation of a proportion of trees comprised in woodlands, not being greater than 20%, is specified in the TPO as an essential condition of the consent,

because of *special amenity value* or of *special interest*, or

- (4) if phasing of the felling or extraction of trees comprised in woodlands, over a period of up to 20 years, is specified as an essential condition because of *special amenity value* or of *special interest*.

When Compensation will and will not arise

2.24. If an order made in respect of a tree, trees or group of trees expressly declares that all the trees covered by the order are of special amenity value or special interest, no compensation is payable in respect of refusal of a consent. Where an order relates to woodlands, and the planning authority would wish to impose a condition or conditions requiring replanting, the preservation of a proportion of the trees or the phased felling or extraction of trees (over a period of up to 20 years, and in a manner specified in the TPO), the order must make the appropriate declarations; otherwise, any replanting, preservation or phasing conditions attached later to consents given under the order could give rise to compensation claims.

2.25. Planning authorities may need to differentiate between the different amenity or interest values they attach to different trees, groups of trees or woodlands. It is suggested that the tree survey could be used as the appropriate mechanism for this purpose. Any declaration to exclude the possibility of compensation should not be made in an arbitrary way merely for this purpose but must be capable of substantiation on appeal or otherwise.

Claiming Compensation

2.26. Under section 4(f) of the 1990 Act, a claim for compensation must be made not later than 6 months after the date on which the consent is refused or is granted subject to conditions. There is no provision whereby this time limit may be extended. The claim for compensation must be made to the planning authority and article 4 of the Local Government (Planning and Development) (Compensation) Regulations, 1990 (S.I. No. 144 of 1990) sets

out the form in which the claim should be made. In summary, this article requires the applicant for compensation to state

- his/her interest in the land,
- the matter in respect of which the claim is made,
- the amount claimed and the basis on which it is calculated, and

provide details of all other persons, if any, known to the applicant to have an interest in the land.

2.27 Article 4 also empowers a planning authority to require a claimant to supply any information required by the article. A planning authority must require the claimant to comply with the obligation to provide information on others with an interest in the land, if this does not accompany the application.

Notifications

2.28 Where either the terms of a TPO, or a consent given, or a refusal to give consent under the order preclude compensation, all persons on whom the order or decision is served should be advised of this fact. This will allow them an opportunity to appeal to An Bord Pleanála against the order or the consent decision if they so wish. This is provided for in the suggested form of notification of the making of a TPO at Part A of Appendix 3.

Revocation

2.29 Section 45(3) of the 1963 Act provides that a TPO may be revoked or varied by a subsequent order. Planning authorities are recommended to review their TPOs from time to time in the light of changing circumstances. Where an order was originally made in respect of trees on undeveloped land, and subsequent development has resulted in most of the trees being located on public open space taken in charge by the local authority, it may be appropriate to revoke or vary the original order, since a TPO would not be necessary for trees in the ownership of the authority.

Similarly, it might also be necessary in such a case to make new orders in respect of other plots containing trees of significant public amenity. If, after a period of time, trees covered by a TPO die or are dying or have become dangerous, the TPO should be revoked or amended to exclude the affected trees since a TPO cannot apply to such trees (section 45(7)).

Planning Register

2.30 Particulars of each TPO must be entered in the register (section 45(9) of the 1963 Act). Since section 41(1) of the 1963 Act dealing with particulars to be entered in the register in relation to planning permissions is an integral part of the system of planning control, the inclusion of parallel provisions in a TPO to require the inclusion of details of consent applications and decisions in the register would be appropriate. The Specimen TPO provides for this.

Practical Considerations

2.31 Section 45 of the 1963 Act provides that where it appears to the planning authority that it is *expedient* in the interests of amenity to preserve certain trees, they may make a TPO. Local knowledge and experience should be a useful guide as to whether a TPO is expedient in a particular case, taking account of the risk of possible loss of the trees and their actual amenity value. It is unlikely that it would be expedient to protect all amenity trees, so identified in the development plan, by means of TPOs. But trees visible from a public place and which contribute significantly to the public amenity could be considered as suitable for protection in this way. So, too, might trees which provide screens from wind, dust, eyesores etc., and thus contribute significantly to the amenity of public areas.

2.32 Land zoned for future development may contain trees not yet visible from a public place, but which are likely to enhance the amenity of the area when developed. Planning authorities should consider whether it is expedient to protect such trees by TPO pending design and approval of development layouts. In any event, the making of a TPO on trees considered to be at risk should not be deferred until amenities are threatened by the felling of trees.

Identification and Mapping

2.33 The trees to be covered by a TPO should be clearly identified in the order. This should be done by accurate description of the species using the correct botanical name and by pinpointing precisely the location. The location should also be clearly shown on the map or maps, drawn to a sufficiently large scale, which form part of the order. It is, therefore, essential to have a proper survey carried out by a person who can correctly identify and describe the trees to be protected. A numbering system should be employed where trees or groups of trees are concerned. In areas zoned for development, this is essential so that the provisions of the TPO can be examined properly in conjunction with any application for permission to develop.

2.34 Blanket phrases such as "all beech trees in Area 'A' marked on the map" should be avoided since this could give rise to disputes as to what constitutes a "tree". Inclusion of height or girth provisions will not necessarily get over the difficulty since these could include tall, weak, spindly, dying or dangerous trees unsuitable for protection.

2.35 In the case of an order in respect of a group of trees or a woodland, it may also be appropriate to exempt specified trees from the provisions of an order and these should be clearly identified.

2.36 In addition to a tree survey, an accurate land survey should be carried out to enable the precise location of the trees being protected to be identified. This is essential where land is zoned for development.

2.37 The importance of proper maps and precise descriptions of the relevant trees cannot be too strongly stressed. These should be such as to enable the trees in question to be identified without any ambiguity, not only by the planning authority and the parties on whom the TPO is served, but also by interested members of the public, An Bord Pleanála and the Courts. Ordnance maps to a scale of 1:2,500 or 1:10,560 are usually used to identify the general location of the trees in question and will, in some cases, be of sufficient scale to allow trees to be identified with precision.

However, in other cases they may need to be supplemented by maps of a larger scale on which the precise position of the trees can be plotted and related to identifiable and permanent landmarks. Some planning authorities have found it appropriate to use maps to a larger scale (1:250 down to 1:1,000) which may particularly be required in the case of woodlands.

2.38 Because of the need for precision, blanket TPOs covering a broad area of trees or groups of trees on different lands and possibly in different ownership/occupation are undesirable. Such an order can make the process unnecessarily complicated and may also dilute the deterrent effect of the maximum penalty where the removal of a substantial number of trees at one time could be regarded as a single offence.

Notes on the Specimen TPO in Appendix 2

2.39 The order comprises -

- (i) the main body of the order containing the operative provisions taken from section 45 of the 1963 Act, as amended, and sample declarations based on section 21 of the 1990 Act; (page 20)
- (ii) the First Schedule identifying the tree, trees, etc., which are the subject of the order; (page 22)
- (iii) the Second Schedule setting out the provisions of Part IV of the 1963 Act (as modified and adapted) being applied to the order; (page 26)
- (iv) the Third Schedule dealing with applications for consent and appeals in relation thereto; (page 29).

2.40 The title and description of the planning authority, title of the order based on appropriate place-name, and number in the register should be inserted on the order. The schedules should be inserted above the Manager's signature and the date. The main part of the order, referred to at (i) above, covers a number of possible variables (shown in italics

in the Specimen TPO). In preparing the order, only those parts which are relevant should be included and those which are not relevant should be omitted entirely, rather than crossed out.

Part III

Development Control

Introduction

The development control system also provides mechanisms to protect trees and this Part deals with options for the protection and enhancement of the amenity value of trees. It recommends that development proposals involving sites with important trees should be carefully examined, preferably on the basis of a tree survey of the site, and that appropriate conditions, for protecting important trees or requiring new planting, should be attached as necessary to planning decisions. The Part also outlines the requirement for environment impact assessments in relation to some forestry proposals.

Pre-Planning Discussions

3.1 Planning authorities should encourage discussion about tree preservation prior to formal applications for development permission on sites containing trees of significant amenity value, whether protected by a TPO or not. At this preliminary stage, the planning authority should be in a position to indicate those trees which they consider it essential to retain, those which it is desirable (but not essential) to retain, and those which are not considered worthy of retention. In distinguishing between these categories, the planning authority should take into account

- the age and health or condition of the trees,
- the compatibility of the trees with the type of development proposed,
- the likely costs of retention having regard to the protection or other works involved, and
- the constraints which retention might place on development.

3.2. While such discussions should precede a detailed formal application for permission or approval, they may not be necessary in the case of an outline permission but could take place between outline and approval stages. An accurate survey may be helpful at the preliminary discussion stage, depending on the particular circumstances.

Tree Survey

3.3 In whatever discussions take place with developers, they should be encouraged to have a tree survey prepared. The survey should not be confined to the trees to be retained but should provide sufficient detail also in relation to the trees to be removed. It should include accurate site plans showing the location of all existing trees, indicating those to be retained and those to be felled, showing the existing contours and any proposed alterations to ground level, indicating the position of buildings proposed in the vicinity of trees to be retained, any extensive hard-surfaced areas proposed, the routes of any underground services and details of new tree planting. The full extent of detail to be provided will depend on the particular amenity value of the trees on the site.

Further information requests

3.4 The information requirements of the planning authority in relation to trees on a particular development site should be fully explained in the course of any pre-planning discussions with the developer, based as necessary on the preceding paragraph. Where a planning application is made that may not appear complete, a planning authority should carefully consider the material supplied and only in exceptional circumstances seek further information. Where it is necessary to seek further information, it should be done as soon as possible after the application is received.

Planning Authority Assessment

3.5 The planning authority's assessment of tree preservation proposals should be realistic and practical. Landscaping should complement and be consistent with development and should not reduce the enjoyment of occupants by interference with reasonable daylight and other requirements. Large trees can present legal and physical problems and their inclusion within private gardens in modern estate development is rarely practicable. The long-term survival prospects of existing trees under the changed physical conditions of the development should be realistically set against the cost of attempting to secure their retention, both in terms of the works involved and the constraints placed upon the development. Before permission is granted,

the plotting on the site map of trees, the retention of which is considered important, should be carefully checked for accuracy and any works above or below ground which will require special attention at the marking-out stage should be noted.

Conditions attached to Planning Permissions

3.6 When outline permission is being granted, a condition could require the submission of the type of tree survey and site plan described in paragraph 3.3 as an essential part of the approval documents. On some sites, the location of significant trees may be such as to allow the planning authority to attach a condition to the outline permission requiring that open space within the development be so designed as to incorporate those trees. In some circumstances, a planning authority may find it necessary to attach conditions to approvals and permissions requiring the marking of trees for retention prior to the commencement of development and requiring prior written consent for the felling or lopping of any of these trees which are found to be severely damaged or seriously diseased with, if necessary, provision for the replacement of such trees with trees of agreed size and species. In some cases, it may be appropriate to obtain a bond for such replanting and for any new planting proposed. It may also be necessary to attach a condition requiring the erection and maintenance of protective fencing, of at least the radius of the crown of the trees, around some or all of the trees to be retained.

Compliance

3.7 Site inspection to ensure compliance with conditions regarding trees to be retained is essential during the course of development and should be supported, if necessary, by the warning notice procedure (section 26 (as amended) of the 1976 Act - see paragraph 4.2 below).

Advice to Applicants

3.8 Chapter 4 of *A Manual on Urban Trees* (An Foras Forbartha, 1982) gives valuable guidance and advice on dealing with trees on development sites. In particular, the summary of recommendations for protecting trees on

development sites at the end of that chapter contains a useful checklist to aid planning officers and developers alike in protecting trees selected for retention on building sites. In appropriate cases, the developer should be provided with a copy of this chapter and his/her attention drawn to the parts relevant to the issues arising in the development proposal.

Environmental Impact Assessment

3.9 Following transposition of the EC Directive on Environmental Impact Assessment (85/337/EEC) into the planning code, it is now a requirement that planning permission be applied for, and an Environmental Impact Statement be prepared by the developer as part of the application, for proposals for the replacement of broadleaf high forest by conifer species, where the area involved would be greater than 10 ha. (paragraph 1(c) of Part II of the First Schedule of the European Community (Environmental Impact Assessment) Regulations, 1989, S.I. 349 of 1989). Such an application must be considered in accordance with the EIA procedures - advice is contained in the notes which accompanied the Department's circular letter PLP 1/90. Amenity considerations are likely to be a significant factor in relation to such a planning application and the planning authority should ensure that the EIS deals with this aspect in appropriate detail for the woodlands concerned. Where planning permission is refused for all or some of the proposal, it may be necessary for the planning authority to make a TPO for the trees it considers necessary to protect. Where it is considered necessary, this should be done as soon as possible after making the decision on the planning application.

Part IV

Enforcement and Penalties

Introduction

This Part covers the enforcement and penalty provisions that may be availed of by planning authorities in relation to contraventions of TPOs as well as explaining how the more general enforcement provisions of the Planning Acts may be availed of.

Contravention of TPO

4.1 The penalty for contravening the provisions of a TPO is specified in section 45(8) of the 1963 Act, as amended by section 20(1) of the 1992 Act. The maximum penalty is £1,000.

Warning Notice

4.2 Where a planning permission contains conditions regarding the preservation of trees, the warning notice provisions of section 26 of the 1976 Act may be availed of. The maximum penalty on summary conviction under that section is £1,000 and there is also provision for a fine not exceeding £200 per day for a continuing offence, and/or imprisonment for a term not exceeding 6 months (section 20(3) and 20(7)(c) of the 1992 Act). If the planning authority consider that the contravention is particularly serious, they may seek to have proceedings for an indictable offence instituted. Conviction on indictment carries a fine of up to £1,000,000 or up to two years imprisonment or both and continuing offences attract fines of up to £10,000 per day or up to 2 years imprisonment or both, at the discretion of the Court (section 20(3) of the 1992 Act).

Circuit and High Court Orders

4.3 The procedure under section 27 of the 1976 Act (as substituted by section 19(4)(g) of the 1992 Act) involving Circuit and High Court intervention may be invoked in cases where permission to develop land is necessary or has been granted. In the case of development not in conformity with a permission, the Court may order the appropriate person (normally the developer) to comply. In the case of unauthorised development, the Court may order the appropriate person to desist and to restore the land to its prior condition, in so far as this is practicable. The application to the Court is by motion and there is power to make an interim order pending the hearing of the application. The

order of the Court determining the application may contain such provisions as to the payment of costs as the Court considers appropriate. The section does not contain any penalty provisions since it is for the Court to enforce its own order. However, the Court has powers of imprisonment which it can exercise where it considers it appropriate to do so.

4.4 The section 27 procedure does not apply in relation to contravention of a TPO unless, of course, the felling, etc. also involves unauthorised development, or development which is not being carried out in conformity with a permission.

Part V

Other Provisions

Introduction

There are other powers available to a local authority to ensure the amenity worth of trees is enhanced. Planning authorities may enter agreements with landowners/developers for the planting or maintenance of trees or woodlands. Planting initiatives are also open to the local authority. The local authority has a role in relation to the Forestry Acts and various parts of other local government legislation also impinge in this area. These issues are dealt with in this Part.

Section 38 Agreements

5.1 There is power under section 38 of the 1963 Act, as amended by section 39 of the 1976 Act, for a planning authority to enter into an agreement with a landowner for the purpose of restricting or regulating the development or use of land, either permanently, or during a specified period. If it appears desirable to the planning authority, a financial contribution may be made in particular cases to support the agreement. The provisions of this section might usefully be invoked in relation to wooded land of amenity value. An agreement under section 38 may be enforced by the planning authority against the successors in title of the original landowner. A planning authority may also join with any prescribed body in making a section 38 agreement and, in such cases, the agreement may be enforced by either body. It is not necessary that a TPO be made before section 38 is used but where an agreement is made under section 38, a planning authority may also wish to make a TPO.

5.2 The Second Schedule to the Specimen TPO at Appendix 2 provides an adaptation of section 38 for inclusion in any order, if appropriate. This will allow the use of the section 38 procedures in any consent given under such TPO.

Planting of Trees, Shrubs, etc.

5.3 Under section 50 of the 1963 Act, a planning authority may plant trees, shrubs, or other plants or assist any person or body proposing to plant trees or shrubs, either by a cash grant or by providing the trees or shrubs. The section is broadly worded so as to enable a planning authority not only to undertake planting on their own land but also on land not belonging to them, provided, of course, the owner consents;

and where they do plant trees on land not actually belonging to them, the authority may, by agreement with the owner, undertake the management of the land. The giving of assistance by way of grants under the section is a reserved function.

5.4 Section 14 of the 1963 Act enables planning authorities to assist in money or in kind or by the provision of services, staff or facilities, a body or person concerned with the preservation or development of amenities, or in the carrying out of works of local improvement or maintenance of amenities. Assistance under this section is a reserved function.

5.5 Tree planting schemes should be well thought out and designed to ensure compatibility with the site and its environs and to secure maximum amenity value. Chapter 7 (Designing with Trees) of *A Manual on Urban Trees* (An Foras Forbartha, 1982) gives much useful guidance on this subject.

5.6 Advice and assistance with tree planting schemes might be obtained from the Forest Service, Department of Agriculture, Food and Forestry, who will be able to supply details of forestry nurseries, etc.

Other Local Government Legislation

5.7 There are additional provisions in local government legislation enabling local authorities to plant trees or undertake landscaping schemes. One example is the Roads Act, 1993, which contains specific provisions in this regard: section 13(7) and 13(8). Under the Housing Act, 1966, local authorities have powers in relation to the landscaping, etc., of their own housing developments (section 56) and to provide prizes and other incentives for the maintenance, inter alia, of open spaces or amenities (section 113). Attention is also drawn to section 8(1) of the Local Government Act, 1991; which confers wide powers on local authorities to carry out any activities related to or supplementary to any of their specific statutory functions.

5.8 Attention is also drawn to section 70 of the Roads Act, 1993, which deals with the powers of road authorities to deal

with dangerous roadside trees, shrubs and vegetation. A statutory obligation is placed on landowners and occupiers to ensure that roadside trees do not present a danger to road users and it empowers road authorities to take enforcement action where they consider a hazard exists. The Guidance Notes on the Roads Act, 1993, issued by the Department of the Environment, deal comprehensively with section 70, including the need for the road authority to be aware of their responsibility in relation to the environment and the preservation of amenities.

Forestry Acts, 1946 to 1988

5.9 Under the Forestry Acts, 1946 to 1988, the consent of the Minister for Agriculture, Food and Forestry is required for the felling of trees (with certain exceptions) on land outside a county borough, other borough or urban district. Appendix 4 contains a summary of the relevant provisions of the Act, including penalties for infringements. Planning authorities are requested to bring these provisions, where relevant, to the notice of persons seeking permission to develop sites containing trees:- they should be advised that such trees may be subject to the Forestry Acts, irrespective of any decision of the planning authority on a planning application or an application for a consent under a TPO.

Appendix I

Section 45 of the Local Government (Planning and Development) Act, 1963, as amended by section 14(10) of the Act of 1976, Section 3 of the Act of 1990 and Section 20(1) of the Act of 1992.

- (1) If it appears to the planning authority that it is expedient in the interests of amenity to make provision for the preservation of any tree, trees, group of trees or woodlands, they may for that purpose make an order with respect to any such tree, trees, group of trees or woodlands as may be specified in the order; and, in particular, provision may be made by any such order -
- (a) for prohibiting (subject to any exemptions for which provision may be made by the order) the cutting down, topping, lopping or wilful destruction of trees except with the consent of the planning authority, and for enabling that authority to give their consent subject to conditions;
- (b) for applying, in relation to any consent under the order, and to applications therefor, any of the provisions of Part IV of this Act relating to permission to develop land, and to applications for such permission, subject to such adaptations and modifications as may be specified in the order.
- (2) *(Subsection (2) repealed by section 3 of the 1990 Act and replaced by section 21 of 1990 Act (as amended) - see II below).*
- (3) Any order under this section may be revoked or varied by a subsequent order under this section.
- (4) Where a planning authority make an order under this section, they shall serve a notice of the making of the order and a copy of the order on every person who is the owner or occupier of any land affected by the order, and on any other person then known to them

to be entitled to fell any tree, trees, group of trees or woodlands to which the order relates.

- (5) Any person on whom a notice and a copy of an order is served under this section may, at any time before the day specified in that behalf in the notice (not being earlier than one month after such service), appeal to the Board against the order.

(Appeal to An Bord Pleanála instead of the Minister is provided in section 14(10) of the 1976 Act).

- (6) Where an appeal is brought under this section against an order, the Board may confirm the order with or without modifications or annul the order.

- (7) Without prejudice to any other exemption for which provision may be made by an order under this section, no such order shall apply to the cutting down, topping or lopping of trees which are dying or dead or have become dangerous or the cutting down, topping or lopping of any trees in compliance with any obligation imposed by or under any statute or so far as may be necessary for the prevention or abatement of a nuisance.

- (8) If any person contravenes the provisions of an order under this section (other than an order which has been annulled), he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000.

(Amount of penalty amended by section 20(1) of the 1992 Act).

- (9) Particulars of an order under this section shall be entered in the register.

- (10) Any reference in this Act to a tree preservation order shall be construed as a reference to an order under this section (other than an order which has been annulled).

II **Section 21 of the Local Government (Planning and Development) Act, 1990, (as amended by Section 21 of the Act of 1992)**

If, on a claim made to the planning authority, it is shown that, as a result of any decision of the authority or the Board¹ to refuse a consent required under an order under section 45 of the Principal Act, or to grant any such consent subject to conditions, the value of an interest of any person in the land to which such decision relates existing at the time of the decision is reduced, or that any person having an interest in the land at that time has suffered damage by being disturbed in his enjoyment of the land, such person shall, subject to the provisions of this Act, be entitled to be paid by the planning authority by way of compensation the amount of such reduction in value or the amount of such damage, but -

- (a) where the order declares that, as respects any tree, trees or group of trees not comprised in woodlands, the tree, trees or group is or are of special amenity value or special interest no compensation shall be payable in relation to the tree, trees or group;
- (b) where the order declares that, as respects any trees comprised in woodlands, a condition comprising a requirement to replant is an essential condition for attachment in the interests of amenity to any consent given under the order no compensation shall be payable in relation to such a condition attached to any such consent;
- (c) where the order declares that, as respects any trees comprised in woodlands, a condition comprising a requirement to preserve a specified proportion of the trees, not being greater than twenty per cent., is an essential condition for attachment, because of special amenity value or of special interest, to any

consent given under the order, no compensation shall be payable in relation to such a condition attached to any consent;

- (d) where the order declares that, as respects any trees comprised in woodlands, a condition comprising a requirement to phase the felling, or extraction of trees over a period of up to 20 years in such manner as may be specified in the order, is an essential condition for attachment, because of special amenity value or of special interest, to any consent given under the order, no compensation shall be payable in relation to such a condition attached to any consent.

¹ Words in italics inserted by section 21 of the Local Government (Planning and Development) Act, 1992

Appendix 2

Specimen Tree Preservation Order

LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS, 1963 TO 1993

Tree Preservation (.....) ² Order 199.

Reference No. in Register

WHEREAS it appears to the _____¹ (hereinafter called the "planning authority"), being the planning authority for the _____ of _____, that it is expedient in the interests of amenity to make provision for the preservation of the (tree), (trees), (group of trees), (woodlands) respectively specified in the First Schedule to this order and more particularly delineated on the (map) (maps numbered) annexed hereto.

NOW THEREFORE in exercise of the powers conferred on them by section 45 of the Local Government (Planning and Development) Act, 1963, as amended by section 14 of the Local Government (Planning and Development) Act, 1976, by section 3 of the Local Government (Planning and Development) Act, 1990 and by section 20 of the Local Government (Planning and Development) Act, 1992, the planning authority hereby order that the cutting down, topping, lopping, or wilful destruction of (the tree), (any of the trees), (any tree), (any tree comprised in the group(s) of trees), (any tree comprised in the woodlands), specified in Part(s)..... of the First Schedule and delineated on the (map) (maps numbered) annexed to this order is prohibited, subject to the exemptions set out in Part..... of the First Schedule, except with the consent of the planning authority given in accordance with the provisions of Part IV (as amended) of the Local Government (Planning and Development) Act, 1963, specified in the Second Schedule (as therein adapted and modified) and the procedure set out in the Third Schedule.

The planning authority hereby declare that the (tree), (trees), (group of trees) specified in Part(s)..... of the First Schedule (is) (are) of (special amenity value) (and) (special interest).³

The planning authority hereby declare that a condition comprising a requirement to replant is an essential condition for attachment in the interests of amenity to any consent given in relation to any of the trees comprised in the woodlands specified in Part..... of the First Schedule.⁴

The planning authority hereby declare that a condition comprising a requirement to preserve a proportion of the trees, not greater than 20 per cent., is an essential condition for attachment, because of (special amenity value) (and) (special interest), to any consent given in relation to any of the trees comprised in the woodlands specified in Part..... of the First Schedule.⁵

The planning authority hereby declare that a condition comprising a requirement to phase the felling or extraction of the trees at a rate of..... per year over a period of up to 20 years is an essential condition for attachment, because of (special amenity value) (and) (special interest), to any consent given in relation to any of the trees comprised in the woodlands specified in Part..... of the First Schedule.⁶

THIS ORDER may be cited as the Local Government (Planning and Development) Acts, 1963-1993

Tree Preservation (.....) ² Order, 199.

Here insert Schedules

Dated this day of 199.

Signed _____

City Manager/County Manager

NOTE (attached as an addendum to the order)

Section 45(8) of the Local Government (Planning and Development) Act, 1963, as amended by section 20 of the Local Government (Planning and Development) Act, 1992, provides that any person contravening the provisions of this order shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000.

FOOTNOTES

1. Insert name of planning authority.
2. Insert location name.
3. This provision is not appropriate for use in cases where the trees are comprised in woodlands. Refusal of consent, or the attachment of conditions thereto by reason of this provision, will not attract compensation.
4. The declarations in these paragraphs rule out compensation under section 21 of the Local Government (Planning and Development) Act, 1990 (as amended) where a consent required under the order is granted subject to conditions. The declarations should only be used where the tree(s) or trees comprised in woodland(s) fulfil the specified criteria and they should be capable of substantiation on appeal to An Bord Pleanála against the order or the decision in relation to an application for consent, or otherwise. The appropriate choices should be made from the words in brackets and words in italics should be amended as appropriate.
5. Section 21(c) of the 1990 Act provides for the attachment of a condition to a felling consent so as to ensure that a specified proportion of the trees, not exceeding 20 per cent., of the trees comprised in the specified woodland may be preserved without incurring compensation providing the order declares that such a condition is essential because of special amenity value or special interest.
6. Section 21(d) of the 1990 Act provides for the attachment to a consent under an order, without liability for compensation, of a condition comprising the requirement to phase the felling or extraction over a period of up to 20 years, *in a manner specified in the order*; provided the order declares that such a condition is essential because of special amenity value or special interest.

First Schedule

Part _____

Tree(s) of Special Amenity Value

No. on Map(s) attached hereto	Description	Situation
A.1, A.2	2 <i>Fagus sylvatica</i> (Beech)	In townland of Delvin adjoining the N1 road and boundary of Beechwood Housing Estate and outlined in red and marked A.1 to A.4 on map.
A.3	1 <i>Quercus robur</i> (Oak)	
A.4	1 <i>Tilia europaea</i> (Lime)	
A.5	1 <i>Fagus sylvatica</i> 'Purpurea' (Copper Beech)	At entrance to village of Newcastle and indicated in red and marked A.5 on map.

Part _____

Tree(s) of Special Interest

No. on Map(s) attached hereto	Description	Situation
B.1 to B.10	Line of <i>Quercus acuta</i> (Evergreen Oak) (comprising 10 trees)	In townland of Drum and located 6 metres from the field boundary adjoining county road No. 82 and indicated in red and marked B.1 to B.10 on map.

Part _____

Other Tree(s)

No. on map(s) attached hereto	Description	Situation
C.1	1 <i>Quercus robur</i> (Oak)	In townland of Whitebridge and shown edged red on map. Trunk standing 10 metres from northern field boundary and marked C.1 on map.
C.2	1 <i>Quercus robur</i> (Oak)	Adjoining main road N3 at its junction with county road No. 52 in the townland of Belvue and indicated in red and marked C.2 to C.5 on map.
C.3 to C.5	3 <i>Fagus sylvatica</i> (Beech)	

Part _____

Group(s) of Trees of Special Amenity Value

No. on map(s) attached hereto	Description	Situation
D.1	Line of 10 <i>Populus nigra</i> 'Italica' (Poplar)	In townland of Rath along boundary of public road at southern end of village of Greyrock and outlined in red and marked D.1 on map.
D.2	Mixed stand comprising 3 <i>Sorbus aucuparia</i> (Rowan) 2 <i>Fraxinus excelsior</i> (Ash) 6 <i>Ilex aquifolium</i> (Holly)	In townland of Kill on bank of Owenbue River adjoining industrial estate and outlined in red and marked D.2 on map.

Part _____

Group(s) of Trees of Special Interest

No. on map(s) attached hereto	Description	Situation
E.1	Group (10 trees) of <i>Taxus baccata</i> (Common Yew)	In townland of Ballymore and located in walled field to the rear of Grange House, indicated in red and marked E.1 on map.

Part _____

Other Group(s) of Trees

No. on map(s) attached hereto	Description	Situation
F.1	3 <i>Betula pendula</i> (Birch) 3 <i>Sorbus aucuparia</i> (Rowan)	In the townland of Doon adjoining the approach to village of Kill on road N22 and shown outlined in red and marked F.1 on map.
F.2	3 <i>Quercus robur</i> (Oak) 6 <i>Fraxinus excelsior</i> (Ash) 4 <i>Ilex aquifolium</i> (Holly)	In townland of Newbridge on minor road and adjoining industrial estate. All trees where trunks lie within the boundary of the area hatched red and marked F.2 on map.

Part _____

Woodlands where a requirement to replant is an essential condition for attachment, in the interests of amenity, to any consent.

No. on map(s) attached hereto	Description	Situation
G.1	<i>Quercus</i> (Oak) woodlands, including <i>Ilex aquifolium</i> (Holly) and <i>Sorbus aucuparia</i> (Rowan), covering approximately 5 acres. Known as Taylor's Wood.	In townlands of Moyne and Rath outlined in red and marked G.1 on map.

Part _____

Woodlands of special amenity value where a requirement to preserve a proportion of the trees, not greater than twenty per cent., is an essential condition for attachment to any consent.

No. on map(s) attached hereto	Description	Situation
	Mixed <i>Fagus sylvatica</i> (Beech) and <i>Aesculus hippocastanum</i> (Chestnut) covering 4 acres. Known as Doon Wood.	In townland of Ross outlined in red and marked H.1 to H.269 on map.
H.1	<i>Fagus sylvatica</i> (Beech)	
H.2	<i>Fagus sylvatica</i> (Beech)	
H.3	<i>Aesculus hippocastanum</i> (Chestnut)	
H.269	<i>Aesculus hippocastanum</i> (Chestnut)	

Part _____

Woodlands of special interest where a requirement to preserve a proportion of the trees, not greater than twenty per cent., is an essential condition for attachment to any consent.

No. on map(s) attached hereto	Description	Situation
J.1 J.2 J.3	<i>Quercus Petraea</i> (Oak) woodlands covering approximately 5 acres.	In townlands of Rahan and Coole outlined in red marked J.1 to J.163 on map.
J.163		

Part _____

Woodlands of special amenity value where a requirement to phase the felling or extraction of the trees at a rate of _____ per year over a period of up to 20 years is an essential condition for attachment to any consent.

No. on map(s) attached hereto	Description	Situation
K.1 K.2	Mixed <i>Betula pendula</i> (Birch), <i>Sorbus aucuparia</i> (Rowan) and <i>Quercus robur</i> (Oak) on approximately 5 acres.	In townland of Moyne, outlined in red and marked K.1 to K.202 on map.
K.202		

Part _____

Woodlands of special interest where a requirement to phase the felling or extraction of the trees at a rate of _____ per year over a period of up to 20 years is an essential condition for attachment to any consent.

No. on map(s) attached hereto	Description	Situation
L.1 L.2 L.362	Mixed deciduous and coniferous trees covering approximately 6 acres and known as Ryan's Wood.	In townland of Kill outlined in red and marked L.1 to L.362 on map.

Part _____

Other Woodlands

No. on map(s) attached hereto	Description	Situation
M.1 M.2 M.85	Mixed deciduous and coniferous trees. See also Part _____ Exemptions.	In townland of Kill adjoining boundary with minor road on lands of Drumgoole House and outlined in red and marked M on map.
N.154 N.155 N.298	<i>Corylus avellana</i> (Hazel) copse approximately 2 acres. Known as Doon Wood.	In townland of Rath and outlined in green and marked N on map.

Part _____

Exemptions

No. on map(s) attached hereto	Description	Situation
A.1 to A.4	The lopping of any part of the trees numbered A.1 to A.4 in Part _____ which overhang any driveway.	In townland of Delvin adjoining N1 road and boundary of Beechwood Housing Estate and outlined in red and marked A.1 to A.4 on map.
H.270 to H.319	50 trees to which felling licence No. _____ applies and located in oak wood described at H in Part _____	In townland of Ross and marked and numbered in white by Forestry Inspector.
M.86 to M.153	All <i>Ilex</i> (Hollies) and <i>Alnus glutinosa</i> (Alders) included in the woodlands described at M in Part _____	In townland of Kill adjoining boundary with minor road on lands of Drumgoole House and included in area outlined in red and marked M on map.

Second Schedule

Provisions of Part IV of the Local Government (Planning and Development) Act, 1963, as amended by the Local Government (Planning and Development) Acts, 1976, 1982, 1983, and 1992, which (as adapted and modified) apply to applications for consents under this order.

Section 26 (1) Where application is made in writing to the planning authority for consent to the cutting down, topping or lopping of any tree, trees, group of trees or woodland the subject of this order, the authority may decide to give such consent subject to or without conditions or to refuse it; and in dealing with any such application the planning authority shall be restricted to considering the proper planning and development of the area of the authority, (including the preservation and improvement of the amenities thereof), regard being had to the provisions of this order, the provisions of the development plan, the provisions of any special amenity area order relating to the said area and the matters referred to in subsection (2) of this section.

(2) Conditions under subsection (1) of this section may, without prejudice to the generality of that subsection, include all or any of the following conditions:

- (a) conditions requiring the planting of trees in the interests of amenity adequate in number and species to replace trees to be felled in accordance with the consent,
- (b) conditions requiring preservation of a specified proportion of trees because of special amenity value or special interest,
- (c) conditions comprising a requirement to phase felling or extraction of trees in a specified manner because of special amenity value or special interest,
- (d) conditions for requiring the giving of security for satisfactory compliance with any condition for replanting, preservation of a proportion of trees, or the phased extraction or felling of trees attached to the consent.

(4) (a) Where-

- (i) an application for consent is made to a planning authority in accordance with this order,
- (ii) any requirements relating to the application of or made under this order are complied with, and
- (iii) the planning authority do not give notice to the applicant of their decision within the appropriate period,

a decision by the planning authority to grant the consent shall be regarded as having been given on the last day of that period.

(b) In paragraph (a) of this subsection "the appropriate period" means-

- (i) in case any notice or notices requiring the applicant to publish any notice, to give

further information or to produce evidence in respect of the application has or have been served by the planning authority pursuant to this order within the period of two months beginning on the day of receipt by the planning authority of the application - within the period of two months beginning on the day on which the notice or notices has or have been complied with.

- (ii) in any other case - within the period of two months beginning on the day of receipt by the planning authority of the application.

(4A) If, but only if, before the expiration of the appropriate period within the meaning of subsection (4)(a) of this section the applicant for a consent under this section gives to the planning authority in writing his consent to the extension by them of that period, the planning authority may extend the period and in case, pursuant to the foregoing, a planning authority make an extension, subsection (4)(b) of this section shall, as regards the particular case to which the extension relates, be construed and have effect in accordance with the extension.

(5) (a) Any person may, at any time before the expiration of the appropriate period, appeal to An Bord Pleanála against the decision of the planning authority on an application for consent.

(b) Subject to the following provisions of this subsection, where an appeal is brought from a decision of the planning authority and is not withdrawn, the Board shall determine the application as if it had been made to the Board in the first instance and the decision of the Board shall operate to annul the decision of the planning authority as from the time when it was given; and the provisions of subsections (1) and (2) of this section shall apply, subject to any necessary modifications, in relation to the determination of an application by the Board on appeal under this subsection as they apply in relation to the determination under this section of an application by a planning authority.

(c) Notwithstanding any other provision of this section, the Board in determining an appeal under this subsection shall, where it considers it appropriate, have regard to either or both of the following, namely-

(i) the probable effect which a particular decision by it on the matter would have on any place or area which is outside the area of the relevant planning authority, and

(ii) any other consideration relating to development outside the area of that authority.

(e) Paragraph (b) of this subsection shall be construed and have effect subject to sections 11, 14 and 15 of the Local Government (Planning and Development) Act, 1992.

(f) In paragraph (a) of this subsection 'the appropriate period' means the period of one month beginning on the day of the giving of the decision of the planning authority.

(8) A decision given under this section and the notification of such decision shall -

(a) in case the decision is made by the planning authority and is one by which consent is refused or is

granted subject to conditions, comprise a statement specifying the reasons for the refusal or the imposition of conditions, and

- (b) in case the decision is made on appeal, comprise a statement specifying the reasons for the decision.
- (9) (a) Where the planning authority decide under this section to grant a consent -
- (i) in case no appeal is taken against the decision, they shall make the grant as soon as may be after the expiration of the period for the taking of an appeal,
 - (ii) in case an appeal or appeals is or are taken against the decision, they shall not make the grant unless the appeal or appeals is or are withdrawn and, in that case, they shall make the grant as soon as may be after the withdrawal.
- (b) Where An Bord Pleanála decides on appeal to grant a consent, it shall make the grant as soon as may be after the decision.
- (11) A person shall not be entitled solely by reason of a consent under this section to cut down, top, lop or wilfully destroy any tree.

Section 38(1) The planning authority may enter into an agreement with the applicant for a consent to fell, cut down, lop or top trees for the purpose of regulating the cutting down, lopping, topping, felling or extraction of trees on a phased basis during such period as may be specified in the agreement, and any such agreement may contain such incidental and consequential provisions (including provisions of a financial character and provisions requiring replanting of trees or phasing of the felling or extraction of trees) as appears to the planning authority to be necessary or expedient for the purposes of the agreement.

- (2) An agreement made under this section with any person interested in land may be enforced by the planning authority against persons deriving title under that person in respect of that land.

Section 41(1) The planning authority shall enter in the register kept in accordance with the provisions of section 8, (as amended), of the Local Government (Planning and Development) Act, 1963:

- (a) particulars of any application for consent to cut down, top or lop made to them under this order, including the name and address of the applicant, the date of receipt of the application and particulars of the tree or trees forming the subject of the application,
- (b) the decision of the planning authority in respect of any such application and the date of the decision,
- (c) the date and effect of any decision on appeal of An Bord Pleanála in respect of any such application.

Third Schedule¹

Applications for Consent

1. Prior to the making of an application for a consent to cut down, top or lop (hereinafter referred to as an "application for consent"); the applicant shall publish notice of his intention to make such application in a newspaper circulating in the district in which the relevant tree, trees, group of trees or woodlands is or are situate.
2. A notice published in a newspaper pursuant to paragraph (1) shall contain as a heading, the name of the city, town or county in which the tree, trees, group of trees or woodlands is or are situate and shall state -
 - (a) the name of the applicant,
 - (b) the location of the tree, trees, group of trees or woodlands to which the application relates,
 - (c) the nature and extent of the proposed topping, lopping or cutting down.
3. The application for consent shall, in addition to the matters prescribed in paragraph (2), be accompanied by particulars of the interest held in the tree, trees, group of trees or woodlands by the applicant, the address of the applicant and a copy of the newspaper in which notice of the application has been published pursuant to paragraphs (1) and (2) and in the case of trees comprised in woodlands
 - (i) proposals (if any) for replanting,
 - (ii) whether trees are to be preserved, and if so, the proportion to be preserved,
 - (iii) whether the phasing of felling or extraction of trees is proposed, and if so, the period over which it is proposed to fell or extract trees.
4. On receipt of an application for consent, the planning authority shall stamp the documents with the date of receipt and send to the applicant or the person acting on his behalf an acknowledgement stating the date of receipt of the application.
5. If a period of more than 2 weeks has elapsed between the publication in a newspaper of a notice in accordance with paragraphs (1) and (2) and the making of the relevant application for consent or if the planning authority are satisfied that the provisions of paragraphs (1) and (2) have not been properly complied with, the planning authority may require the applicant to publish such further notice in such manner and in such terms as they may specify and to submit to them such evidence as they may specify in relation to compliance with any such requirement.
6. Notice of every application for consent and of the date of its receipt shall be published by the planning authority by inclusion in a weekly list² of which copies -
 - (a) shall be made available to the members of the authority in such manner as they may by resolution direct,
 - (b) shall be displayed in or at the offices of the planning authority for a period of not less than four weeks in a position convenient for public inspection during normal office hours, and
 - (c) where the planning authority by resolution so decide, may be displayed for public inspection in any other place which the planning authority considers appropriate or published in a newspaper circulating in the district, or made available to any body, group or persons likely to be interested.
 - (I) Where the planning authority receive an application for consent they may, by notice in writing, require the applicant to do any one or more of the following-
 - (a) to submit such further particulars, plans, drawings or maps as they may require,
 - (b) to provide not more than two additional copies of any plan, drawing or map submitted,

¹These procedures are adapted from the Local Government (Planning and Development) Regulations, 1977-1993. Appropriate changes should be made in the light of any further amendments made in the future.

²This requirement may be satisfied by inclusion as part of the normal weekly planning list. A separate list will not be necessary.

- (c) to submit any further information relative to the application (including any information as to any estate or interest in or right over land or trees),
 - (d) to produce any evidence which they may reasonably require to verify any particulars or information given by the applicant in or in relation to the application.
- (2) The planning authority shall not require an applicant who has complied with a requirement under subparagraph (1) to submit any further particulars, plans, drawings or information save as may be reasonably necessary to clarify the matters dealt with in the applicant's response to the said requirement or to enable them to be considered or assessed.
 - (3) Where an applicant fails or refuses to comply with any requirement under this paragraph within one month of such requirement, the planning authority may, if they think fit, determine the application in the absence of the particulars, plans, drawings, maps, information or evidence specified in the requirement.
8. (1) Where an application for consent is received by the planning authority, any document mentioned in section 6(a) of the Local Government (Planning and Development) Act, 1992 received or obtained by the planning authority in relation to the application shall be made available for inspection by members of the public during office hours at the office of the planning authority from the date of receipt of the document until the giving of the decision of the authority in respect of the application.
- (2) Where an application for consent is granted (whether by the planning authority or the Board) the documents mentioned in section 6 of the Local Government (Planning and Development) Act, 1992 shall be made available for inspection by members of the public during office hours at the office of the planning authority from the expiration of the period mentioned in section 5(1) of that Act.
9. Without prejudice to any other provision of this order, the planning authority shall not decide to grant or to refuse a consent to cut down, top or lop until after the expiration of a period of fourteen days beginning on -
- (a) in case the applicant has been required pursuant to paragraph (5) to publish a further notice of the relevant application, the day on which that requirement has been complied with,
 - (b) in any other case, the day of receipt by the planning authority of the application.
10. Where any person or body has submitted submissions or observations in writing to the planning authority in relation to an application for consent, the planning authority shall, within seven days of making a decision on the application, notify such person or body of the said decision or publish notice thereof in a newspaper circulating in the district.

Appeals to An Bord Pleanála

11. Every notification given by the Board of a decision on an appeal relating to an application for consent shall specify-
- (a) the reference number relating to the relevant application in the register of the planning authority,
 - (b) the nature of the decision,
 - (c) the lopping, topping, felling or extraction of trees to which the decision relates,
 - (d) the date of the decision,
 - (e) in the case of a decision to grant any consent - any conditions attached thereto, and
- shall state or be accompanied by a statement of the reasons for the decision (including, in the case of any decision to grant consent subject to conditions, the reasons for the imposition of the conditions).

Appendix 3

Part A

Notification to land owners and others with felling rights in the trees re making of TPO

_____ Register Ref. No.

_____ Council

Dear Sir/Madam,

I hereby notify you that _____ Council decided on _____ to make a Tree Preservation Order (TPO) in relation to the (tree(s), group of trees, trees in woodlands)¹ at _____ entitled _____ under section 45 of the Local Government (Planning and Development) Act, 1963, as amended by section 14 of the Local Government (Planning and Development) Act, 1976, section 3 of the Local Government (Planning and Development) Act, 1990 and section 20 of the Local Government (Planning and Development) Act, 1992.

A copy of the TPO is enclosed.

You are advised that an appeal may be made to An Bord Pleanála, Floor 3, Block 7, Irish Life Centre, Lower Abbey Street, Dublin 1 against the order. For an appeal to An Bord Pleanála to be valid, the appeal must be received by the Board within one month beginning on the day of the making of the decision by the planning authority and be accompanied by:

- your name and address,
- the subject matter of the appeal, viz. the site affected by the TPO, the name of the planning authority, the planning register number (shown above),
- the full grounds of appeal and supporting material and arguments,
- the full amount of the fee payable (£100).

The effect of this TPO is to preclude the cutting down, topping, lopping or wilful destruction of the (tree(s), group of trees, trees in woodlands) without the prior consent of the planning authority or on appeal to An Bord Pleanála. You are advised that in the event of an application for consent to cut down, lop, top or destroy the (tree(s), group of trees, trees in woodlands) being refused or made subject to conditions that the planning authority will not be liable for the payment of compensation:- this is by virtue of the terms of the TPO and the provisions of section 21 of the Local Government (Planning and Development) Act, 1990 (as amended by section 21 of the Local Government (Planning and Development) Act, 1992).

You will note that the order provides for the right of appeal to An Bord Pleanála by any party against the decision of the Council in relation to any application for consent to lop, top or fell any of the trees covered in the order within the period provided for in section 26(5), (as amended), of the Local Government (Planning and Development) Act, 1963, as adapted and modified for the order, and set out in the second schedule to the order.

A copy of this notification of the making of the TPO and a copy of the TPO are being served on

_____ of _____ and

_____ of _____ etc.,

being persons (who are the owners or occupiers of any of the land affected by the order) (other persons) (known to the Council to be entitled to fell any tree, trees, group of trees or woodlands to which the order relates).

Yours sincerely,

The notification should be drafted to include/exclude the parts in brackets as appropriate.

Part B

Notification of decision of planning authority on application for consent to lop, top or fell trees covered by a TPO

_____ Register Ref. No.

_____ Council

Application by or on behalf of _____ of _____ on _____
_____ for a consent to (lop) trees

(top)

(fell)

at _____ under (TPO name). Consent has been
(granted) to the works described above subject to the following condition(s)-

(refused) for the following reason(s)

(1) Condition and/or Reason

(2) Condition and/or Reason

etc.

In accordance with the terms of the second and third schedules of the _____ (TPO name) the applicant or any other person may appeal to An Bord Pleanála, Floor 3, Block 7, Irish Life Centre, Lower Abbey Street, Dublin 1 against this decision. For an appeal to An Bord Pleanála to be valid, the appeal must be received by the Board within one month beginning on the day of the making of the decision by the planning authority and be accompanied by:

- your name and address,
- the subject matter of the appeal, viz. the site affected by the TPO and the decision to grant/refuse consent, the name of the planning authority, the planning register number (shown above), the applicant's name and address (if you are a third party),
- the full grounds of appeal and supporting material and arguments,
- the correct amount of the fee payable. In the case of any body mentioned in article 22 of the Local Government (Planning and Development)(Fees) Regulations, 1984, the fee is £50 and in any other case it is £100.

Appendix 4

Relevant provisions of the Forestry Acts, 1946 to 1988

Notwithstanding the granting of planning permission involving the removal of trees, the following provisions of the Forestry Acts, 1946 to 1988 apply to the felling or uprooting of trees:-

- (1) It is not lawful for any person to uproot any tree over 10 years of age or to cut down any tree unless the owner of the lands on which the tree stands, or his predecessor in title, or somebody on his behalf, has, not less than 21 days and not more than 2 years before the commencement of the uprooting or cutting down of the tree, given to the Sergeant-in-Charge of the Garda Síochána Station nearest to the tree a notice of intention to uproot or cut down the tree.
- (2) The law set out in paragraph (1) above does not apply to any hazel, apple, plum, damson, pear or cherry tree grown for the value of its fruit, or any osier. Nor does it apply to (a) a tree standing in a County Borough or other Borough or an Urban District; (b) a tree standing within 100 feet of any building other than a wall or temporary structure; (c) a tree which is being felled under section 70 of the Roads Act, 1993 or section 98 of the Electricity Supply Act, 1927; (d) a tree certified by a local authority as dangerous to road traffic on account of age or condition; (e) a tree uprooted or cut down by direction of the Minister for Transport, Energy and Communications on the ground that it is a danger or obstruction to telegraph or telephone wires; or (f) a tree cut down by a local authority in connection with road construction, etc. With the above exceptions the law applies to every tree of any age or any stage of growth.
- (3) Notice of intention to fell or uproot trees must be given in writing on a form known as a Felling Notice. Felling Notice Forms are available at Garda Stations.
- (4) Trees specified in a Felling Notice may be felled after the expiry of 21 days from the date on which the Felling Notice is lodged with the Gardaí, unless a Prohibition Order is issued by the Minister for Agriculture, Food and Forestry. A Prohibition Order may prohibit the felling of all or any of the trees specified in a Felling Notice. A Prohibition Order is normally followed by an inspection of the trees and the Minister then decides whether or not to grant a Limited Felling Licence for the felling of all or any of the trees.
- (5) The Minister may terminate or suspend a Limited Felling Licence if the terms on which it was issued are not observed.
- (6) The Minister may not refuse a Felling Licence solely on the ground of preserving amenities unless the appropriate planning authority has consented to such refusal. The owner may then require the planning authority to acquire the site of the protected tree.
- (7) It is unlawful to ring bark or otherwise injure trees in such a manner as to cause them to die or to decay. It is unlawful to remove timber from any tree otherwise than in accordance with the practice of good forestry, or for the purpose of preventing grave damage to crops.
- (8) If the Minister refuses a Licence for the felling for any trees, he must, if requested by the owner, state the ground for refusal.
- (9) Felling Notices, where no Prohibition Orders have been served, and Limited Felling Licences, are valid for 2 years.
- (10) The Act provides for penalties not exceeding £50 on summary conviction in respect of every tree illegally injured, felled or uprooted or used for unauthorised purposes. Failure to comply with replanting or preservation conditions is a continuing offence and carries a fine not exceeding £50 on first conviction, and not exceeding £100 on each subsequent conviction. Offences may also be tried on indictment (s 6(3) of Forestry Act, 1988) and on conviction the maximum fines are £2,000 plus an additional £50 for each tree in respect of which an offence is committed or, at the Court's discretion, imprisonment of up to 2 years, or both. In the case of illegal felling, in addition to any fine which may be imposed by the Court, the Minister may by order require the person convicted to replant.
- (11) The fact that the felling of a tree specified in a Felling Notice is not prohibited, or that a limited felling licence is issued in respect of it, does not convey any title to ownership.