**Draft Tree Preservation Order [Lock Road, Lucan - Planning Register Reference Number TPO/0005]**

An Emergency Motion was proposed and passed at the Lucan Area Committee Meeting on the 25th November 2014 as follows:

L/495/SUSPENSORY MOTION

At this point it was AGREED to take a Suspensory Motion in the names of Councillors W. Lavelle, E. O’Brien, G. O’Connell, R. Nolan, P. Gogarty, L. O’Toole, D. O’Brien and V. Casserly as follows:-

*That this Area Committee requests the Chief Executive to immediately initiate a statutory process under Section 205 of the Planning and Development Acts in relation to the proposal by residents to make a Tree Preservation Order in respect of 6 no. Hybrid Black Poplars and 1 no. Beech Tree at the Coolamber site, Newcastle Road, Lucan.*

*In initiating this process this Area Committee notes that a period of public consultation will take place and that the elected members of the Council will have to consider the matter further, including any recommendations made by the Chief Executive. In requesting initiation of this process, including the public consultation, the members of this Committee are doing so without prejudice to any future decisions relating to the making of a Tree Preservation Order.*

The motion was **PASSED**.

**Tree Preservation Orders**

Section 205 (1) of the Planning and Development Act, [No. 30.] 2000 provides the context for the making of a Tree Preservation Order:

5.— (1) If it appears to the planning authority that it is expedient, in the interests of amenity or the environment, to make provision for the preservation of any tree, trees, group of trees or woodlands, it may, for that purpose and for stated reasons, make an order with respect to any such tree, trees, group of trees or woodlands as may be specified in the order.

A draft Tree Preservation Order was made in response to the motion referred to above on the 25th April 2015. A notice regarding the draft Tree Preservation Order was published in the Irish Times on the 25th April 2015, inviting submissions to be received on or before the 10th June 2015. A copy of the draft notice was sent by letter dated 27th April 2015 to the registered owners of the lands. This letter advised the owners that the draft notice was effective from the 25th April 2015.

This report relates to the Draft Tree Preservation Order, submissions received and matters relating to the legislation and on an examination of the amenity and environmental attributes of the trees subject to the draft Tree Preservation Order.

**Context**

The site is located on the R120 Newcastle Road (also known as Lock Road). It backs and sides onto the Finnstown Housing Estate as well as the local Finnstown Shopping Centre.

It is the site of the former Coolamber House, demolished some years ago. The site bears evidence of trees having been previously planted for amenity purposes. The site boundaries - hedgerows for the most part - are old and presumably original farm hedgerows and they provide a definition of the site that makes it significant in the area. Although the site is somewhat derelict there are some large trees on the site and together with the hedgerows they provide both the site and the surrounding area with a woodland ambience.

The site is zoned as, Objective A (To Protect and/or preserve Residential Amenity),in the County Development Plan 2010 – 2016.

There are no objectives in relation to trees on the site (e.g. To Protect and preserve Trees and Woodlands).

In compiling the survey and assessing the potential of the trees to be subject to the draft Tree Preservation Order as requested in the Motion, cognisance was taken of two Tree Surveys conducted on the site in 2006 (Tree Force Ltd) and 2014 (CMK Hort and Arb) and which were included in Planning Applications (SD07A/0221 and SD14A/0290 respectively) for development of the site. A Bat Survey of the site conducted in December 2014 by Faith Wilson Ecological Consultant was also referenced.

As part of the process to prepare the draft Tree Preservation Order a site survey was conducted on the 5th March 2015 by the, Senior Executive Parks Superintendent to:

* Inspect the trees
* Survey and map the position of the trees accurately

The proposed trees were surveyed and these are shown on the Drawing PLS 1978-01. It is not clear precisely which Beech tree is referenced in the Emergency Motion referred to above, as a number of Beech trees were observed on the site. In addition, there is a possibility that a Birch tree, Betula pendula that is located close to the “Black poplars” that were requested by the Elected Members to have a TPO status, may have been misrepresented as a Beech tree. To avoid any confusion this Birch tree was included in the survey as was the most significant Beech tree on the site.

The amenity aspect of the trees was also investigated by viewing them from the Finnstown Estate side and looking into the Coolamber site from the open space between Finnsvale and Finnswalk. The site was also viewed from the Newcastle Road and the Finnstown Shopping Centre.

The details of the survey and the comments on the individual trees are detailed in the following table:

|  |
| --- |
| **“ Hybrid Black poplars”**  |
| Identified as Populus x Canadensis in the 2007 survey and as Populus balsamifera in the 2014 survey referred to above. The trees are growing very close together, showing brittle branches, some of which have cracked and fallen onto the ground. The trees are probably nearing the end of their lives. Thinning out the trees will not help as they would be more susceptible to wind damage. Poplars in an urban setting (and this site is zoned Residential) are problematic since the root systems are highly invasive of surface water and foul sewer systems. They also cause uplift and cracking of adjacent path and road systems. Additionally, Poplars are susceptible to wind damage and tend to loose branches because of this. Both the 2006 and the 2014 reports refer to these problems: 2006 report caption to Photo 9: “the retention of the line of hybrid Black poplars should be considered carefully in light of substantially negative attributes attached to the species. In particular, their development of highly invasive root systems associated with disruption and damaged (sic) to underground services as well as a somewhat brittle nature and a predisposition towards failure in high winds and storm conditions may prove troublesome in the future”. 2014 report: Referring to tree number 748 and “the most northerly specimen in a line of even aged poplar. This group of trees may be nearing the end of their useful life expectancy.” A similar comment is added in relation to Tag Number 750, 751 752, 753 and 754. In relation to Tree 754 the comment “Long term potential limited outside current environment” would be applicable to all of the group.  |
| **Betula pendula (Birch) situated adjacent to the Poplars**  |
| This is a medium sized and attractive tree somewhat overshadowed by the adjoining line of poplars. It appears to be in good health. The 2006 Tree Force report states that it is “notably unbalanced to the north”. If the adjoining Populus species were removed it would have a good chance of becoming a valuable tree on the site.  |
| **Fagus sylvatica (Beech)**  |
| This is a large tree on the edge of the former road leading to Coolamber House. It is multi stemmed due to what appears to have been some tree surgery work attempted in the past. However, it is showing signs of internal fungal infection. In addition and apparently since the 2006 survey there has been damage caused through vandalism by the creation of a fire on one side of the tree. This has severely damaged the bark on that side and extending up to 2m from the ground. The 2006 survey states, inter alia, “concerns exist with regard to long-term prognosis especially in light of poor mechanical form. Of questionable suitability for retention.” The 2014 (tree 734) survey makes reference to the fire damage – “Fire damage to base to east has greatly reduced the trees long term potential”. The report also mentions bleeding canker fungus (Phytophthora sp) on the tree with the comment “long term potential if (sic) tree very limited as a result”  |

**Submissions made on the Drat Tree Preservation Order**

Submissions were made on the draft Tree Preservation Order within the period of public consultation by 12 persons as follows:

| **Date**  | **Submitted by**  | **Summary of submission**  |
| --- | --- | --- |
| 26 05 2015  | Caroline McCloskey  | Supports on the basis of: Residential amenity Intrinsic part of Liffey Valley skyline for many decades  |
| 26 05 2015  | Aine O’Shaughnessy  | Supports on the basis of: Residential amenity Part of Liffey Valley skyline  |
| 26 05 2015  | John Coleman  | Supports on the basis of: Residential amenity Intrinsic part of Finnstown skyline  |
| 26 05 2015  | Sandra Coleman  | Supports on the basis of: Residential amenity Intrinsic part of Finnstown skyline  |
| 29 05 2015  | Emma Mulligan and Howard Mulligan  | Supports on the basis of: Residential amenity Beautiful feature in the skyline Provide countryside feel to the area  |
| 29 05 2015  | Matthew O’Donnell  | Supports on the basis of: Residential amenity Intrinsic part of Finnstown skyline  |
| 01 06 2015  | Hazel Smyth  | Supports on the basis of: Residential amenity Intrinsic part of Finnstown skyline Part of reason for purchase of home  |
| 01 06 2015  | Barry Jenkinson  | Supports on the basis of: Residential amenity Part of Finnstown skyline Part of reason for purchase of property  |
| 08 06 2105  | William Lavelle, Councillor  | Supports Draft Tree Preservation Order  |
| 09 06 2015  | Anthony King  | The trees are one of the most important visual amenities in the area. Their importance as/for greenery noise screen biodiversity Hopes they will be incorporated into future development  |
| 10 06 2015  | Frances Fitzgerald TD Minister for Justice and Equality (Two submissions)  | Supports the proposed TPO  |
| 10 06 2015  | Valerie Greaney  | Supports on the basis of: Residential amenity Intrinsic part of Liffey Valley skyline for many decades  |
| 10 06 2015  | Crekav Landbank Investments Ltd  | Objects to the Draft Tree Preservation Order  |

**Assessment of submission**

The public consultation submissions received with the prescribed timeframe can be summarised as follows:

* the amenity value of the trees to the local housing area, the Liffey Valley and Finnstown skyline
* biodiversity
* the value of the trees as a noise screen.

An objection from the landowner can be summarised as follows:

* The landowner was not formally notified of the Draft Tree Preservation Order
* The trees do not meet the criteria due to their condition
* There are a number of anomalies in the trees identified in the Draft Tree Preservation Order
* The trees of value on the site can be retained within a well-designed development proposal and therefore a Tree Preservation Order is not warranted

All owners and occupiers established by the Planning Authority by a reference to the Land Registry were notified.

**Overall Consideration**

In commenting on the Draft Tree Preservation Order, the direction of Section 205 (1) of the Act in relation to amenity or the environment are considered. The trees which are the subject of this proposed TPO form but a small part of the overall tree fabric of the site. In themselves they could not be considered to be an “intrinsic” part of the local or wider skyline. Indeed some of the surrounding hedgerows could be said to contribute more to the local skyline. In themselves the trees would not be a major contributor as a noise barrier and the biodiversity value of the trees is questionable. Indeed there may be more biodiversity potential in the trees as they reach the end of their lives and decline.

**Amenity consideration**

This proposal for a TPO on this site as proposed by the Elected Members of the Lucan Area Committee concerns a small number of trees within the site. There are other trees on the site that could be considered to be of more significance in amenity terms in the long term and in the context of probable future housing development. The Poplar trees referred to in the L/495/SUSPENSORY MOTION are growing very close together, are damaged and some have lost limbs. The Council would agree with the opinions offered in both Tree Surveys referred to above that the trees are unsustainable in the longer term and accordingly have very limited amenity potential.

This group of Poplar trees when viewed from the open space at Finnsview and Finnswalk do contribute to an ambience that places the estate itself in a location that is somewhat surrounded by trees. It should also be noted that in the open space at Finnview/ Finnswalk there are a number of Lime trees (Tilia species) that have been planted. These will form very large trees in the future.

The Birch tree is not a major contributor to the view or amenity of the area since it is much smaller and not as easily visible.

However, this amenity could also be said to be contributed to as much or more significantly by the surrounding other trees and hedgerows on the site. Indeed it is the entirety of the trees and hedgerows on the site that make this contribution.

The contribution of the Beech tree to the view from Finnsview and Finnswalk is slightly less since it is situated further away from the open space and there are other trees growing there also which make a significant contribution to the view and ambience. The Beech tree is of more significance as viewed from the Newcastle Road side as it is one of the largest trees on the site.

The Poplar trees are not as significant as viewed from the Newcastle Road side since they are at the back of the site as viewed from this location and it is the other trees which would be considered to make the greater contribution.

Overall, the Poplar trees would not be considered to be of significant amenity value when considered in the context of the other vegetation on the site and also given that they have suffered some decline and storm damage and are spaced very close together. The Beech tree could be considered to be of amenity value but it is not considered that it should require the protection afforded by a Tree Preservation Order since it is diseased and has been damaged by fire and will ultimately not survive for long on this site. The Birch tree would not be considered in amenity terms to be as significant a tree on this site as some of the other surrounding trees.

**Environment consideration**

The Bat Survey by Faith Wilson and which also references a previous survey undertaken by Brian Keeley in 2005 states that there are no confirmed bat roosts on the site (but that “it is extremely difficult to confirm tree roosts for bats”) but that the site is of significance as a foraging area for them. The survey also states that “in particular the Beech trees all have high potential to support roosting bats”. The report makes recommendations on how to deal with the presence of bats in the context of the application for housing on the site and the probable felling of a large number of trees.

In environmental terms the site is somewhat isolated because of recent housing developments but there are still a number of hedgerows that make a contribution to the protection of both flora and fauna.

In relation to the specific trees proposed to be protected by a Tree Preservation Order:

The Poplars would not be considered to have the environmental value that the other surrounding trees would have but may form part of the foraging route for bats. However, their life expectancy would be considered to be limited and they are already suffering significant limb loss.

The Birch tree is also part of the foraging route for bats and would only have some environmental potential for harbouring insects.

The Beech tree is considered to be a non native tree. It may be a roosting site for bats but this has not been confirmed. It is damaged by fire and is subject to fungal infection. Whilst the fungal infection may be considered to be a positive environmental attribute, the long term sustainability of the tree and its long term environmental contribution is doubtful.

**The site in context**

The site is zoned Objective A – to protect and/or improve Residential Amenity in the South Dublin County Development Plan 2010 – 2016. It is probable that this site will be developed in some manner in the future. There have already been a number of applications on this site and the current one SD14A/0290 is the latest. It is considered that having regard to the zoning of the site and the comments above that the protection of local amenity and the contribution of the existing vegetation to the environment is best achieved through providing for the retention trees as part of the formal planning process.

**Additional Note:**

Members should be aware that while it is acknowledged that the Council is not bound by the expert advice provided to the Council, by the Executive of the Council, that if they do not wish to follow that advice, then per the High Court decision in *Child v Wicklow County Council and Wicklow County Manager [1995] 2 I.R.447* they must: -

*“…adduce some logical basis for failing or refusing to follow it, such as another expert opinion or a “reasoned judgment”…”*

*Source: Browne, David The Law of Local Government Roundhall Published 2014 Page 109*

**Recommendation**

It is recommended that this Draft Tree Preservation Order should not be confirmed, as the trees are considered not to meet the required criteria. It is therefore not expedient, in the interests of amenity or the environment, to make provision for the preservation of the proposed trees in the Draft Order for reasons set out above in the report.