

**To: Communities, Housing and Planning Policy Board**

**On: 15 March 2022**

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**Report by: Chief Executive**

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**Heading: Renfrewshire Planning & Development Tree Policy 2022**

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## **1. Summary**

- 1.1 Trees and woodlands contribute greatly to amenity and the quality of place. They benefit biodiversity and have a pivotal role in mitigating the effects of the climate crisis.
  - 1.2 Following the full Council meeting on the 30 September 2021, an updated policy framework has been prepared which aims to protect and maintain existing trees across Renfrewshire as well as outline the importance of active management of existing trees along with ensuring the appropriate provision for the planting and preservation of trees on new development sites.
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## **2. Recommendations**

- 2.1 It is recommended that the Board:
    - (i) approves the attached Renfrewshire Planning and Development Tree Policy 2022.
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## **3. Right Tree – Right Place**

- 3.1 Trees and woodlands make Renfrewshire a healthier, more attractive place to live. Trees have a vital role to play in the setting, appearance and quality of Renfrewshire's environment and make a significant contribution to the economy, communities and the environment. The attached Planning & Development Tree Policy aims to protect and enhance trees across Renfrewshire.

- 3.2 COVID-19 has led to a substantial shift in our behaviours. A large proportion of the population have been working remotely from home, as well as engaging more in active travel, and minimising travel beyond their local area. This has had a significant effect on the environment and how we view our communities and places.
- 3.3 Enabling a shift toward positive, long-term behaviour patterns as set out in the tree policy provide opportunities to reinforce the ‘climate positive’ behaviours ensuring tree planting in the right locations and supporting opportunities for tree management.
- 3.4 Renfrewshire Council is striving to become carbon-neutral by 2030. Preserving and enhancing the tree stock across Renfrewshire as outlined in this policy framework will assist in meeting this target.

#### **4. Renfrewshire’s Planning & Development Tree Policy**

- 4.1 The policy provides up to date advice on the following areas:
- Works to Council owned trees;
  - Protected trees in conservation areas and trees covered by tree preservation orders;
  - High hedges;
  - Council powers in relation to privately owned trees;
  - Householders common law rights for trees;
  - Trees overhanging roads and footways;
  - Trees in gardens of Council houses;
  - Trees affected by development sites.
- 4.2 In terms of tree works required in relation to operational matters by the Council, this will be considered by a separate policy which will be brought forward by Environment and Infrastructure.

#### **5. Next Steps**

- 5.1 If approved by the Board, the policy will be placed on the Council’s web pages and used as advice for future tree works as well as used as a material consideration when determining applications for tree works and planning applications for development sites ensuring appropriate provision for the planting and preservation of trees when considering development proposals.

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#### **Implications of the Report**

1. **Financial** – None.
2. **HR & Organisational Development** – None.

3. **Community/Council Planning** – The policy aims to support the wellness and well-being of our communities as well as supporting sustainable and connected communities by setting out a framework on trees will enhance the setting, appearance and quality of Renfrewshire’s environment and make a significant contribution to the economy, communities and the environment.
  4. **Legal** – None.
  5. **Property/Assets** – None.
  6. **Information Technology** – None.
  7. **Equality & Human Rights**
    - (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals’ human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council’s website.
  8. **Health & Safety** – None.
  9. **Procurement** – None.
  10. **Risk** – None.
  11. **Privacy Impact** – None.
  12. **COSLA Policy Position** - None.
  13. **Climate Risk** - The Planning & Development Tree Policy sets out a framework to ensure sustainable development, aiming to facilitate the transition to a low carbon economy and adaptation to the climate crisis.
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# RENFREWSHIRE PLANNING & DEVELOPMENT TREE POLICY - 2022

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## Right Tree – Right Place

Trees and woodlands make Renfrewshire a healthier, more attractive place to live. Trees have a vital role to play in the setting, appearance and quality of Renfrewshire's environment and make a significant contribution to the economy, communities and the environment.

COVID-19 has led to a substantial shift in our behaviours. A large proportion of the population have been working remotely from home, as well as engaging more in active travel, and minimising travel beyond their local area. This has had a significant effect on the environment and how we view our communities and places.

Enabling a shift toward positive, long-term behaviour patterns may also provide opportunities to reinforce the 'climate positive' behaviours ensuring tree planting in the right locations and supporting opportunities for tree management.

Renfrewshire Council is striving to become carbon-neutral by 2030. Preserving and enhancing the tree stock across Renfrewshire will assist in meeting this target.

Trees benefit our environment in a variety of different ways including:

- ✓ Improving and sustaining various levels of biodiversity
- ✓ Storing CO<sub>2</sub> from the atmosphere and releasing oxygen to moderate air quality
- ✓ Providing both shelter and shade
- ✓ Enhance amenity within the built environment
- ✓ Health benefits
- ✓ Relieving localised flooding
- ✓ Preventing soil erosion
- ✓ Woodlands offer opportunities for walking and getting close to nature



# Trees in Renfrewshire

## What is a tree?

A tree is not defined within the Planning Acts. It has generally been agreed to be “a woody perennial plant which can attain a stature of 6 metres or more on a single stem”.

## What Tree?

When selecting a tree to plant, thought should be given to the existing surroundings and planting.

You should:

- Aim to plant native species;
- Consider how fast it will grow and how high it could eventually reach;
- Consider the likely effects on both your own property and any immediate neighbouring property in terms of leaf drop, and;
- Consider whether the tree(s) could impinge on your own or your neighbours enjoyment of the garden on their land through acting as a barrier to light and quality of life.

## Renfrewshire's Existing Trees

To ensure that tree cover in our towns and villages is maintained it is important to encourage natural regeneration, and manage existing trees and woodlands.

Active management of trees includes the removal of dead, dying or damaged branches, pruning; and limited felling to allow for succession planting.

## Tree works to Council owned trees

The Council will undertake works to trees in their ownership in the following circumstances:

- to maintain clear sight lines (where reasonably feasible) at road junctions and access points;
- to ensure that trees do not unduly obstruct traffic signals and street signs;
- to clear the illumination zone of streetlights as is reasonably feasible;
- to maintain a minimum 2.5 metres height clearance over a footpath or a minimum of 5m clearance over a roadside as reasonably feasible;
- trees that are visibly damaging a public footpath;
- trees causing damage to a property, a tree officer will attend to conduct an inspection to advise on what course of action is required to mitigate further damage.

# Protected Trees

## Trees in Conservation Areas

Most trees in a conservation area are protected (all trees of 75mm diameter or greater measured at 1.5 meters above ground level).

There are eight conservation areas in Renfrewshire, these can be found on the following link – [Conservation Areas](#).

## Tree Works to trees in Conservation Areas

Anyone proposing to do work on a tree(s) in a conservation area is required to give six weeks' notice to the Planning Authority. Application forms are available from the [ePlanning Scotland website](#).

An application for tree works must be accompanied by a statement detailing the nature and extent of the proposed work and a plan to identify the trees.

Once the application is submitted and registered by the Council, a site visit will be undertaken to assess the proposed works, and a written notification of the outcome will be formally sent to you.

Consent for felling is unlikely to be granted unless the application is accompanied by a report from a reputable tree surgeon confirming that:

- the tree either constitutes, or is likely to become, a danger, or cause damage to property or persons;
- the removal of the tree is necessary for the continued growth of adjoining trees in the interests of maintaining tree cover within a site;
- the removal of the tree is justified in removing a severe adverse effect on the amenity of residential property.

If consent is granted for felling, a suitable replacement tree must be put in place.

Any tree works should be carried out by a reputable tree surgeon.

The planning authority may, if it sees fit, place a tree preservation order on the tree and the tree preservation order procedures would then apply - that is, a formal application for permission would have to be made to the planning authority.

If a tree preservation order has not been made after six weeks, the work may proceed.



Working on trees in conservation areas without giving six weeks written notification is an offence and the planning authority may prosecute. The penalties are detailed below.

The Council will endeavour to process all requests as quickly as possible. Written replies should normally be received well within the six week period. If the written reply is positive, there is no need to wait for the expiry of the six week period before the works can be undertaken.

### Tree Preservation Orders

Tree preservation orders can be made on important groups of trees, woodland areas and single trees where they have a significant impact on the public amenity of an area.

The Council has powers to make a tree preservation order in the interest of amenity or where trees are considered to be of historical or cultural importance.

Current tree preservation orders can be found using the following link – [Tree Preservation Orders](#).

Tree preservation orders are made by a Planning Authority under Section 160 of The Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc (Scotland) Act 2006, and within the procedures set out in the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2011.

The effect of an order is that any proposed tree works will require the Council's consent. A tree preservation order is not intended to prevent the sound management of trees and

woodlands, but to allow the Council to control works which affect them. The effect of an order is that any proposed tree works – cutting down, uprooting, topping, or lopping of any branches – will require the Council's formal written consent.

There is no transfer of ownership or responsibility for trees when they are covered by a tree preservation order. As with any other trees, liability for their safety, their condition, and any damage is the responsibility of the landowner.

### Works to Trees covered by a TPO

Anyone proposing to do work on trees covered by a tree preservation order is required to submit an application to the planning authority for consideration. Application forms are available from the [ePlanning Scotland website](#).

An application for tree works to trees covered by a TPO must:

- specify the operations for which consent is sought;
- give reasons for carrying out such operations; and
- identify the protected tree or trees which would be affected by such operations. The protected tree or trees must be identified by means of a map or plan of a size and scale sufficient for the purpose.

Once the application is submitted and registered by the Council, a site visit will be undertaken to look at the proposed works to the trees, considering them in the context of the site and surrounding area. A report of handling regarding the tree works will then be undertaken which will provide recommendations and the decision on the proposed works.

A formal decision notice from the planning authority will then be issued.

Consent for felling is unlikely to be granted unless the application is accompanied by a report from an accredited tree expert confirming that:

- the tree either constitutes, or is likely to become, a danger, or cause damage to property or persons;
- the removal of the tree is necessary and desirable for the continued growth of adjoining trees in the interests of maintaining tree cover within a site;
- the removal of the tree is justified in removing a severe adverse effect on the amenity of residential property.

If consent is granted for felling, a suitable replacement tree must be put in place. Any tree works should be carried out by an accredited tree expert.

### Penalties

Deliberate destruction of a protected tree without permission or in contravention of conservation area legislation, or damage in a manner likely to destroy it, can incur a fine up to £20,000 on conviction in a sheriff court.

Serious cases may be taken to the High Court, where there is no limit to any fine that may be imposed on conviction.

### Emergency Work to Protected Trees

If a tree is protected, but urgently requires work to be undertaken for safety reasons, professional advice should be sought.

The planning authority should be informed of the proposed emergency tree works as soon as possible. In order to justify the actions, proof will be required providing the following evidence:

- photographs indicating the tree's condition;
- report from a qualified tree surgeon stating why the works are necessary;
- independent witness statements, for example affidavits, confirming that the tree is dangerous.

## How are Tree Preservation Orders made?

New tree preservation orders can be made at any time. Contact should be made in the first instance to [dc@renfrewshire.gov.uk](mailto:dc@renfrewshire.gov.uk) The flowchart below outlines the process.

Once approved, a provisional order is served on the owner of the land which comes into effect immediately; this will lapse after six months unless it is confirmed.

The Order will be served in writing on the owners and anyone else with a legal interest in the land. It is also advertised in the local press.

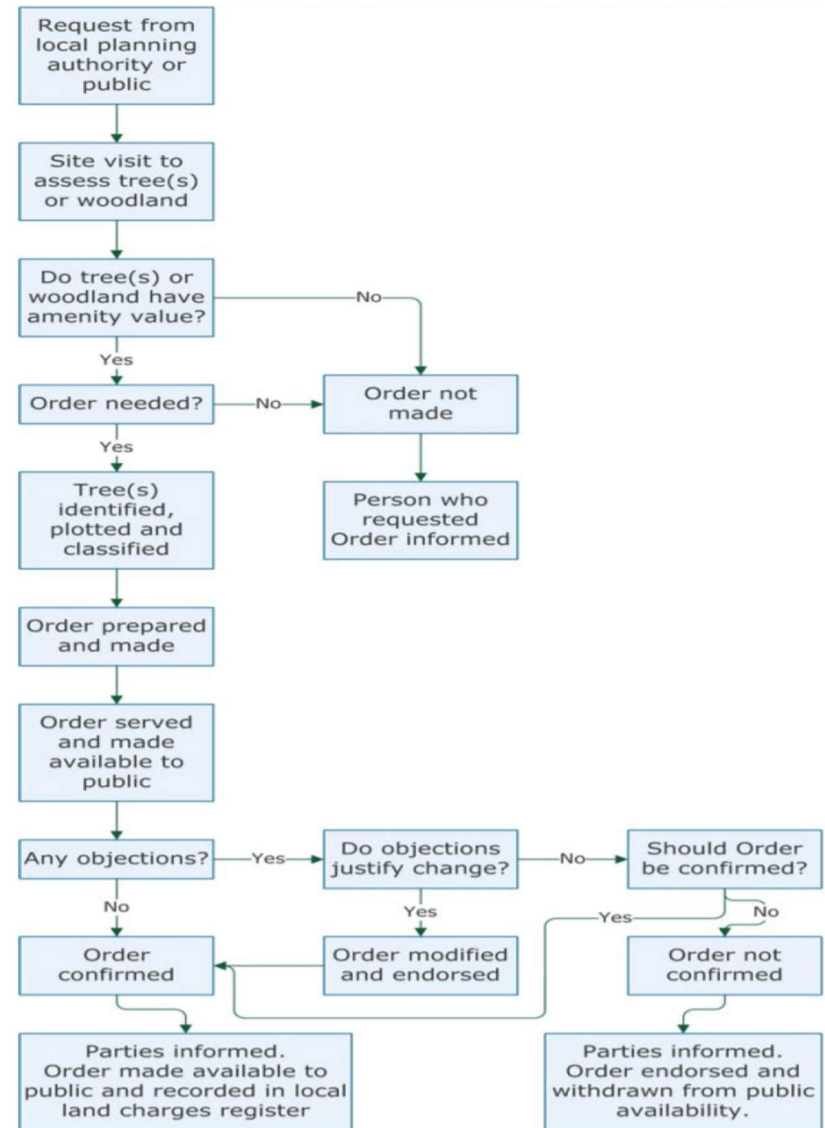
There is then a period of 28 days for objections or other representations to be made in writing to the Council explaining the nature of their concerns. If no objections are received the Council can proceed with the formal confirmation of the order. Once confirmed the tree preservation order will remain in effect until it is revoked.

Where objections or representations have been made to the Council these will be taken into consideration when the decision is made whether or not to confirm it.

Once confirmed tree preservation orders are recorded by the Keeper of Register of Sasines (Scotland) or in the Land Register of Scotland.

They then become legal burdens on the land occupied by present and future owners so that when land is sold on the title is passed on together with the tree preservation order.

Flowchart 1: Making and confirming a Tree Preservation Order



# FAQs - Trees

## High Hedges

The High Hedges (Scotland) Act 2013 came into force on 1 April 2014. The purpose of the legislation is to consider issues in relation to high hedges which interfere with the reasonable enjoyment of domestic property and where the issue has not been able to be resolved amicably between neighbours.

The legislation gives homeowners and occupiers a right to apply for a high hedge notice and gives the Council the authority to make and enforce decisions in relation to high hedges.

National guidance can be accessed at the [Scottish Government website](#).

A High Hedges Application form is available from the [ePlanning Scotland website](#).

After receipt of your proposal and after verification against the requirements of the legislation that the application is competent, we will advise you of the appropriate fee required for assessing the high hedge application.

## Council powers in relation to privately owned trees

The Council does not have the power to compel private owners to remove a dangerous tree unless it threatens a public road or footpath, nor does it have powers to compel owners to carry out tree work on the basis of light deprivation, encroachment or damage to property.

These are matters that require to be resolved through negotiation between private parties or, failing that, by resort to civil legal action.

## Common Law Right

Householders have a common law right to remove the nuisance associated with trees encroaching onto their property.

The following advice is given in relation to the exercise of common law rights with respect to encroaching trees:

- You can only consider removing those parts of the tree from where they cross the boundary of your property. You have no legal right to cut or remove any part of a tree that does not overhang or is beneath your property (i.e. the roots).
- You must not carry out any tree works on branches or roots that foreseeably may result in the tree becoming unsafe or

results in the decline or death of the tree. It is advised that you seek appropriate competent advice before carrying out any pruning, especially when severing tree roots.

- You do not necessarily have the right to enter on to land not belonging to you in order to carry out the removal of branches etc. You do have the right to carry out these works from your own land.
- For your own safety you are strongly advised to consult a professional tree surgeon for guidance on how best to prune back encroaching trees, unless the works are very minor, meaning you could do the works with hand secateurs, loppers or similar.
- Before you consider doing any works to a tree/trees you should find out if they are protected by a tree preservation order or are within a conservation area. If the trees are protected, you will require to gain consent by making an application/giving notice to the Council.
- You are advised to discuss with your neighbour your intention to prune encroaching branches. Legally you do not own the encroaching branches and you should offer these to your neighbour. But in all likelihood, you should consider disposing of the cuttings yourself.

### Trees overhanging roads and footways

If a tree overhangs the highway or footway, causing a danger by obstructing the passage of vehicles or pedestrians or interfering with sight lines or lights, the Council may require the owner or occupier to deal with the tree in order to remove the problem.

There are similar provisions for dealing with dead or diseased trees, which are likely to fall on the highway or footpath.

If the owner fails to comply, then the Council may do the work and charge the owner retrospectively.

### Trees in Council Houses

If you need to carry out work to trees within the garden of a house or flat rented from the Council, you should check with your local [Neighbourhood Services](#).

# Trees & Development

In considering proposals for new development Renfrewshire Council will make appropriate provision for the planting and preservation of trees.

Planning applications must be accompanied by sufficient information to allow the Council to accurately assess the trees affected by the proposals, whether that is during site masterplanning or detailed planning application stage.

The amount and type of information will vary on the type of application and should be discussed with the Council at as early a stage as possible.

Below is a brief breakdown of what is required depending on the type of application. More information may be requested by the case officer as appropriate, depending on the potential impact on trees and the nature of the proposed development.

## Pre-Planning Application

The pre-application stage in any development is crucial, particularly where there are a large number of trees on a development site.

The Council's development briefs for sites will guide development to the right places.

## Masterplanning

At the start of the masterplanning process, consideration must be given to the retention of existing trees and the planting of new trees as part of the development layout.

Early consideration should also be given to the enhancement of the existing tree stock and how areas of new tree planting can be linked to existing green networks.

## Planning Applications in Principle and Detailed Planning Applications

Where trees are present on sites that will be subject to planning applications in principle and detailed planning applications, then all trees within the application site and within 15 metres of the red line boundary should be included in the tree survey submitted with the planning application.

The tree survey should be undertaken to BS5837:2012 and must include:

- Survey schedule;
- Tree Constraints Plan;
- Arboricultural Impact Assessment;
- Tree Protection Plan;
- Tree Planting/Landscaping Plan and,
- Arboricultural Method Statements



This information is fundamental to the proper assessment of the planning application. Failure to provide this information from the outset will lead to delays in the processing of the application.

## Requirements for Surveys, Plans and Assessments

### Tree Survey

A survey should be the starting point for any development. The survey will include all of the trees present on site, any trees overhanging the site and trees up to 15 metres from the site.

The exact location of the existing trees and the full extent of their crowns should be accurately plotted. Typically, this survey will include a written statement together with a detailed site plan.

A tree survey has to be carried out by a competent arboriculturalist and include the following information:

- reference number/tag number;
- tree species, height, stem diameter, crown spread, crown clearance, age class, physiological and structural condition;
- management recommendations estimated remaining contribution and category grading as per BS 5837.

It is **vital** that the tree survey is carried out independently of and prior to any development proposals being drawn up.

Where trees form groups or woodlands, it may be more appropriate for the arboriculturalist to identify and consider these as groups and woodlands. If the groups are close grown, it will be more appropriate to assess their quality and value as a whole rather than individuals.

### Tree Constraints Plan

Following the completion of the tree survey, a tree constraints plan needs to be produced by the arboriculturalist. This is a design tool that is used to inform the proposed layout of the new development.

When this is submitted with the planning application, this will be used to show how due consideration has been given to the retention of trees as part of the proposed layout.

The tree constraints plan will include information highlighting the constraints above and below ground posed by the trees. This will require to consider the movement of trees in the wind, future growth, perceived safety concerns, shade cast by the trees and the existing crown spread.

The constraints below ground are represented by the root protection area. The root protection area is used to inform the construction exclusion zone.

Included in the tree constraints plan should be areas where proposed new tree planting will be carried out. These areas should also be protected from damage, particularly the movement of construction traffic, storage of materials and soil compaction.

While trees are only one consideration during the planning process, certain trees or groups of trees can be of such importance and sensitivity that they should significantly modify the design and layout or prevent developments altogether.

### Arboricultural Impact Assessment and Design Considerations

Once the detailed design proposals have been drawn up, an arboricultural impact assessment needs to be carried out in order to assess the trees against the proposals.

This assessment should detail:

- that structures are not sited within root protection areas;
- the presence of statutory tree protection;
- opportunities for new tree planting;
- that new buildings/structures are sited clear of ultimate crown spread;
- sufficient space is given for construction work, access, erection of scaffolding and storage of materials;
- the effect of the proximity of trees to buildings, on daylight into windows and gardens, existing and future tree height and spread, perceived risks to safety and dominance of trees over properties (see the section below on the proximity of structures and infrastructure to trees for further information);
- requirements for infrastructure, above and below ground services, roads and footpaths, visibility splays,

CCTV requirements, refuse stores, substations, lighting and signage;

- changes in ground levels, including existing, proposed and temporary stages;
- the effect of the proposed development on amenity values of trees on and near the site;
- mitigation measures for any tree loss;
- future pruning requirements.

Particular attention should be given to large old or veteran trees are important and valuable to sites. These trees are less resilient to the likely impacts of construction activity within close proximity and are therefore more likely to die or become unsafe. It may be more appropriate to incorporate them into open space.

The arboricultural impact assessment will be a written statement to accompany the tree constraints plan. It may be the case that additional plans will need to be produced in order to demonstrate how the above issues are intended to be dealt with (for example, cross sections, alternative proposals and specific construction methods).

### Construction within Root Protection Areas

BS5837:2012 states that the default position for structures should be outwith the root protection area of trees to be retained.

An incursion into the root protection area will only be considered where there is an acceptable overriding justification for construction within the root protection area and

where adequate technical information is submitted to support the technical solution proposed and that the technical solution will prevent damage to the tree.

For an overriding justification to be accepted the proposal must be considered to deliver social, economic or environmental benefits that benefit the wider community.

### Proximity of Structures and Infrastructure to Trees

BS5837:2012, Subsection 5.3 outlines the need to consider the ultimate height, canopy spread and the available rooting environment of existing and proposed trees.

Buildings and structures require to be sited to allow adequate space for a tree's natural development and at the same time reduce future pressure for removal of trees.

Buildings and associated infrastructure, including garden ground, should generally be located out with the zone of influence of existing and proposed trees.

The zone of influence is generally considered to be the distance from the bottom of a tree that is equal to the mature height of an existing or proposed tree.

In certain cases the zone of influence may need to be increased to account for particular development site scenarios or to help retain important characteristics associated with individual or groups of trees and woodlands.

It is an offence to fell trees without a felling permission and where exemptions do not apply. This can be mean, upon

conviction, a fine of up to £5000 per tree and a criminal record for all involved in the felling.

In certain cases, whether or not a felling permission is needed, permission or prior notice may be required for proposed felling. Examples include sites of special scientific interest, conservation areas and tree preservation orders.

