

<b>DECISION-MAKER:</b>	PLANNING RIGHTS OF WAY PANEL		
<b>SUBJECT:</b>	The application of a felling licence and application to work on trees subject to a tree preservation order at Marlhill Copse		
<b>DATE OF DECISION:</b>	12 <sup>th</sup> March 2019		
<b>REPORT OF:</b>	HEAD OF TRANSACTIONS AND UNIVERSAL SERVICES		
<b><u>CONTACT DETAILS</u></b>			
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<b>STATEMENT OF CONFIDENTIALITY</b>	
None	
<b>BRIEF SUMMARY</b>	
To consider a response from Southampton City Council to the Forestry Commission in relation to the issuing of a felling licence to Southampton International Airport Limited for felling works at Marlhill Copse	
To consider the approval of content within tree work application 19/00006/TPO. The work detailed is required in order to carry out the work within the felling licence application.	
<b>RECOMMENDATIONS:</b>	
(i)	To grant consent to the work as detailed within tree work application 19/00006/TPO for facilitation work at Marlhill Copse with a condition attached for a replacement tree and that it only be completed once a felling licence is received.
(ii)	To offer no objection to the Forestry Commission over the issuing of a felling licence for Southampton Airport to carry out the works at Marlhill Copse.
<b>REASONS FOR REPORT RECOMMENDATIONS</b>	
1.	Under S15 (1)(a) of The Forestry Act 1967, the Forestry Commission have given notice to Southampton City Council in relation to the issuing of a felling licence for Southampton International Airport Limited to carry out felling work at Marlhill Copse.  Southampton City Council have been requested to give comments on the application and to whether or not it wishes to offer an objection.
2.	Although the tree officers have the delegated authority to determine a tree work application for work on trees subject to a tree preservation order. It is considered appropriate to have application 19/00006/TPO considered at the same time as the felling licence as the two are intrinsically linked.
<b>ALTERNATIVE OPTIONS CONSIDERED AND REJECTED</b>	

3.	<p>To object to the Forestry Commission in relation to the issuing of a felling licence to Southampton International Airport Limited to carry out felling at Marlhill Copse.</p> <p>It is the officer's opinion that Southampton International Airport Limited have a legal requirement to manage obstacles that impinge into the flight safety surfaces, therefore the officer feels that it is inappropriate to disregard the legal requirement to carry out the work.</p>
4.	<p>The tree work application 19/00006/TPO is required to facilitate access to the site for vehicles required to conduct the work that is subject of the felling licence.</p> <p>Refusing this application may result in the main felling work not being able to be completed safely and/or the material not being able to be removed from site.</p>
<b>DETAIL (Including consultation carried out)</b>	
5	<p>Marlhill Copse is protected by The Southampton (Townhill Park – Cutbush Lane) Tree Preservation Order 1956 and has a Woodland classification which covers all trees. (See Appendix 1)</p>
6	<p>30/08/2018 – Southampton International Airport Limited (SIAL) purchase Marlhill Copse.</p>
7	<p>October 2018 – SIAL make contact with Southampton City Council (SCC) to discuss the tree preservation order (TPO) on the site and the requirement to carry out work to fell 26 trees. This work was identified and being a requirement is to ensure that SIAL are compliant with their obstacle management strategy (See appendix 2). This is a requirement under the International Civil Aviation Organisation regulations (ICAO) The European Aviation Safety Agency regulations (EASA) and the Civil Aviation Act (CAA) (See Appendix 3)</p>
8	<p>During discussions with SIAL it became apparent that there would be a requirement for a felling licence to be applied for due to the size of the individual trees and the amount of timber to be extracted from site. Therefore SIAL were advised to make contact with the Forestry Commission (FC) to discuss the requirement for a felling licence.</p>
9	<p>SIAL were advised that if the work to fell the trees is to be completed under a requirement for Aviation Safety, and that if this is backed by an Act of Parliament, then there is no requirement to seek the local authorities consent before carrying out the works on the trees subject to the TPO. This is pursuant to regulation 14 (a)(ii) of The Town &amp; country (Tree preservation)(England) Regulations 2017. (See appendix 4)</p>
10	<p>Site meetings were arranged by SIAL to walk through the site and to be able to discuss any relevant issues relating to tree protection, felling licences, ecology and future woodland management.</p>
11	<p>30.10.18 – The officer sent an email to relevant councillors and department heads to provide an update on the situation at Marlhill Copse. Attached to this email was a PowerPoint presentation from SIAL giving the legislation behind the obstacle limitation surfaces and the requirement in law to take appropriate action to mitigate the risk associated with the penetration of the obstacle limitation surfaces, which is included with this report as appendix 3.</p>

12	11.01.19 - An application was received from SIAL, reference number 19/00006/TPO (See appendix 6) in which the applicant has applied to carry out work to facilitate access to the site in order to be able to carry out the main felling, as detailed in the felling application to FC. The work in the application is for a crown lift of a number of trees over the access path to provide a 3.5 to 4m clearance aboveground level and the felling of a single leaning and suppressed London Plane.
13	SIAL held a public open day on the 26 <sup>th</sup> of January at The Gregg School. This was to discuss concerns that the public may have and to give clear information as to why the work is required. The officer attended this meeting as a representative of SCC tree team. The meeting received a good turn out from the public and many issues were discussed and residents informed.
14	A site visit has been undertaken and it is the officer's opinion that the crown lifting will have very little impact to the visual amenity to the local street scene, therefore this work should be permitted. The London Plane tree is a suppressed tree and is predominantly beneath the canopy of a much larger and prominent London Plane. The loss of the tree would not have a significant impact to the visual amenity to the local street scene. As the more prominent tree is of the same species, it is considered that the loss of the suppressed tree will go largely unnoticed from the public street. Arboriculturally, the tree is also of poor form and will continue to grow outward from the dominant canopy above. This will increase the end weight of the canopy which will apply additional stress to the stem. It is consider that the removal of the tree is not objectionable due to its poor form and the question over its suitability for long term safe retention.
15	It is the officer's opinion that the whole application should be approved with a condition that seeks a replacement tree for the single felling of the London Plane. A further condition would be applied that stated that the work can only be completed once a valid felling licence has been received.
16	The Forestry Commission (FC) have made contact with SCC and have requested comments from SCC in relation to the issuing of a Felling Licence to SIAL for the felling of the trees at Marlhill Copse.
17	It's the officer's recommendation that SCC offer no objection to the issuing of the felling licence to SIAL based on the following reasons.
18	The work that is subject of the felling licence is to be completed so that SIAL can be compliant with international & European regulations and also the UK legislation of the Civil Aviation Act.
19	If SCC were to offer an objection to the issue of the felling licence, then under S(2)(a)(a) of the Forestry Act 1967, the Forestry Commission shall not deal with the application but shall transfer it to the Minister, and the matter will be dealt with under the Town & Country Planning Act as if it were an application for consent under the TPO to fell the trees.
20	It is worth noting that in 2003, SCC refused the felling of a Pine tree in Midanbury Lane in relation to airport safety. The decision was made to refuse the felling and the matter was referred to the Secretary of State to determine.
21	The outcome of this case was that Southampton City Council's refusal over the tree felling was overruled by the Secretary of State and the tree was subsequently felled in compliance with aviation safety

22	It is the thoughts of the City Councils tree team that this tree felling is required for aviation safety, which is the same reason for the felling at Midanbury Lane in 2003. As such, to object to the issue of this felling licence and refer the matter to the Minister, has a high probability in the end result being the same response from the Secretary of State, as in the Midanbury Lane case of 2003.
23	A further point that has been highlighted by objectors to the proposal is that previous works at Marlhill Copse had been objected to by the tree officer's in post at the time. There were two cases cited. One was in 1983 and the other in 2003. Both cases were presented to councillors to vote on the proposal.
24	In the 1983 case, there was an application submitted to fell trees at Marlhill Copse by Air UK-Ltd.
25	It was the recommendation of the tree officer in post at the time of the meeting that the City Council should refuse the application.
26	When looking through the history of the case, the officer is in agreement with the tree officer's recommendation of refusal of the 1983 application.
27	Based on the information supplied in a letter from the Civil Aviation Authority, dated 7 <sup>th</sup> July 1983, (See appendix 7) it states on paragraph 4 that the trees at Marlhill Copse do not penetrate the approach surfaces slope. This clear statement gives support to the tree officer's recommendation in 1983 to refuse the felling of the trees in Marlhill Copse as the work was not considered to be in relation to aircraft safety.
28	There was a second case for tree felling at Marlhill Copse and this was presented to the Planning & Rights of Way panel (PROW) on the 11 <sup>th</sup> of March 2003.
29	It is important to know that the felling of the trees at Marlhill Copse in 2003 was also cited to be for aviation safety and obstacle management.
30	In the conclusion of the PROW report of the 11 <sup>th</sup> of March 2003 (See appendix 8), the officer has stated that BAA have not been able to provide evidence to show that they have statutory undertaker's rights to remove the trees outside of their control of their operational land.
31	Further comments were given regarding the significant impact to the local environment and its enjoyment by the public.
32	The officer is in support of the comments made in the March 2003 PROW report in relation to the felling of the trees at Marlhill Copse as the officer also agrees that the loss of the trees would have a significant impact to the local environment and its enjoyment by the public.
33	The officer is also in support of the comments made at the March 2003 PROW report in relation to BAA not being able to provide evidence to show that they have statutory undertaker's rights to remove the trees outside of their control of their operational land. It is the officer's opinion that Marlhill Copse, now being in the ownership of SIAL, may still not be regarded as 'Operational' land and therefore still may not qualify as being an exemption in the TPO legislation for a statutory undertaker.
34	If a situation occurred in the future where this was to be tested, the officer would wish to be satisfied that the land can properly be considered as 'operational land' and if this also extends to airspace.

35	The officer at the time of the March 2003 PROW panel had highlighted that a felling licence would be required from the Forestry Commission to carry out the felling at Marlhill Copse. It is the opinion of this officer that this is still the situation and therefore they are in support of this comment from the 2003 PROW report.
36	It is the officers understanding that the decision on the felling of the trees at Marlhill Copse at the March 11 <sup>th</sup> 2003 PROW panel, be deferred to a later date as legal interpretation of the Town & Country Planning Act 1990 was required. The matter was deferred to the 8 <sup>th</sup> of July 2003 PROW meeting.
37	The report submitted for consideration at the 8 <sup>th</sup> of July 2003 PROW meeting (See appendix 9) gives details in section 3.1 that the matter regarding the felling of trees at Marlhill Copse is to be decided by the Forestry Commission under S9 of the Forestry Act 1967.
38	Due to this, section 3.3 of the same report gives guidance to the panel that the felling of the trees at Marlhill Copse cannot be considered by the Council and therefore was not voted upon.
39	It is the officers understanding that the felling licence application to the forestry Commission was later withdrawn and therefore was never determined.
40	The officer considers that there are differences between the 2003 applications and the current case. The differences are as follows.
41	There is no tree work application for the main felling work to be considered under the Town & Country Planning Act. The main felling work is being applied for via a felling licence from the FC.
42	The City Council are not the deciding body in this case. The City Council are a consultee within the felling licence process and have been requested to pass comments and if it intends to offer an objection over the issuing of the licence.
43	The officer is in agreement with the opinion of the tree officer in 2003 that the work should not be carried out by the airport under the TPO exemption as a statutory undertaker. It is still the opinion of the officer that Marlhill Copse is not regarded as 'Operational land', which is a requirement within the statutory undertaker's exemption.
44	It is the officer's opinion that the work will have a significant impact to the local area, however, the officer also has to consider all merits of the requirement for the felling before being able to pass an informed decision to the FC in relation to the issuing of a felling licence.
45	The officer has considered all information supplied by SIAL that has been given to demonstrate that there is a legal requirement to carry out the felling of the trees as part of obstacle management strategy and that this is a requirement by law.
46	It is the officer's opinion that the legal requirement for SIAL to carry out the main felling is being requested due to legislation. Therefore the officer has to accept that the legislation has to give guidance on whether or not to object to the felling licence. The officer has to accept that the legislation is the overriding justification for felling and therefore it is recommended that the City

	Council should not object to the felling licence application, or to the approval of application 19/00006/TPO.
47	If application 19/00006/TPO is approved, it will be on the condition that the work is only to be completed once the applicant has received a felling licence approval.
48	As of the 4 <sup>th</sup> of March, there were 31 objections received in relation to the application 19/00006/TPO. However there are many comments on this application that are in relation to the main work covered by the felling licence application. I have therefore informed the Forestry Commission of these comments so they are aware of the public opinion. Some of the comments posted have not made it clear as to what the objection is regarding as where the objector raises concern over the crown lifting and single felling, or the work within the felling licence. In total, the officer reviewed the objections and considered that 6 related to the TPO application. 13 were in relation to the felling licence and the remaining 12 were not clear as to whether the comments related to the 19/00006/TPO or the felling licence.
<b>RESOURCE IMPLICATIONS</b>	
<b><u>Capital/Revenue</u></b>	
49	Cost will be those associated with the administration of confirming the Order and administration of any subsequent applications made under the Order.
<b><u>Property/Other</u></b>	
50	Compensation may be sought in respect of loss or damage caused or incurred in consequence of the refusal of any consent required under the TPO or of the grant of such consent which is subject to condition. However, no compensation will be payable for any loss of development or other value of the land, neither will it be payable for any loss or damage which was not reasonably foreseeable.
<b>LEGAL IMPLICATIONS</b>	
<b><u>Statutory power to undertake proposals in the report:</u></b>	
51	Under the tree preservation order legislation, the local authority have the legal duty to determine a valid application within 8 weeks from registration of the application.
52	Under Section 15(1)(a) of the Forestry Act 1967, Southampton City Council are a consultee within the felling licence process. We have formally been requested to provide comments on the application. In the event the council object to the felling licence, the matter will be dealt with under the Town & Country Planning Act by the Minister as if it were an application for consent under the TPO to fell the trees and the TPO regulations and the same compensation rules would apply.
<b><u>Other Legal Implications:</u></b>	
53	
<b>RISK MANAGEMENT IMPLICATIONS</b>	
54	NONE

<b>POLICY FRAMEWORK IMPLICATIONS</b>	
55	NONE

<b>KEY DECISION?</b>	<b>Yes/No</b>
<b>WARDS/COMMUNITIES AFFECTED:</b>	
<u>SUPPORTING DOCUMENTATION</u>	
<b>Appendices</b>	
1.	
2.	

**Documents In Members' Rooms**

1.	Copy of the tree preservation order
2.	Southampton International Airport Aerodrome Safeguarding Obstacle Management Strategy
3.	Southampton International Airport Aerodrome Safeguarding Obstacle Management Strategy
4.	The Town & Country Planning (Tree preservation)(England) Regulations 2012
5.	Application 19/00006/TPO
6.	Letter from Civil Aviation Authority July 1983
7.	Report and minutes from Planning & Rights of Way panel March 2003
8.	Report and minutes from Planning & Rights of Way panel July 2003

**Equality Impact Assessment**

<b>Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.</b>	<b>No</b>
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**Data Protection Impact Assessment**

<b>Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.</b>	<b>No</b>
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**Other Background Documents**

**Other Background documents available for inspection at:**

<b>Title of Background Paper(s)</b>	<b>Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)</b>
1.	
2.	