



TPO 136

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EAST LoTHIAN COUNCIL  
 E-PAYMENT ACCOUNT  
 LEGAL & PROCUREMENT

JOHN MUIR HOUSE, HADDINGTON  
 EH41 3HA

Keeper of the Registers of Scotland  
 Meadowbank House  
 153 London Road  
 Edinburgh EH8 7AU

VAT Reg No. GB 888 8425 51

Your Ref: IF/JH/10598/211213

Date: 15/02/19

The undernoted writs have been registered in the Land Register.

Payment has been received with thanks.

TITLE NO: ELN2979

GRANTER:

APP'NO(s): 17ELN06237

GRANTEE:



SUBJECTS: DOLPHINGSTONE FARM, TRANENT EH33 1NH.

UID: DL1268191901	FEE £60.00	VAT £0.00	VAT RATE 0%	TOTAL £60.00
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**RECEIPT**  
**This is not an Invoice**

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Date: 15/02/19

The undernoted writs have been registered in the Land Register.

Payment has been received with thanks.

TITLE NO: ELN15771

GRANTER:

APP'NO(s): 17ELN06238

GRANTEE:

SUBJECTS: WALLYFORD and PRESTONPANS.



UID: DL1268192401 FEE £60.00

VAT £0.00

VAT RATE 0%

TOTAL £60.00

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Edinburgh EH8 7AU

VAT Reg No. GB 888 8425 51

Your Ref: IF/JH/10598/211213

Date: 15/02/19

The undernoted writs have been registered in the Land Register.

Payment has been received with thanks.

TITLE NO: ELN5894

GRANTER: .

APP'NO(s): 17ELN06236

GRANTEE: .



SUBJECTS: DOLPHINGSTONE, PRESTONPANS.

UID: DL1268190801    FEE £60.00    VAT £0.00    VAT RATE 0%    TOTAL £60.00

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**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

**THE EAST LoTHIAN COUNCIL (Landed Area West of Prestonpans, East Lothian)**

**TREE PRESERVATION ORDER (TPO) No.136 (2016)**

**EAST LoTHIAN COUNCIL** hereby gives Notice that it appears to them as Planning Authority for East Lothian that it is expedient to make provision for the preservation of the trees specified in the Schedule to the above Order. This Tree Preservation Order is being promoted to secure the retention of specific trees within the landed area west of Prestonpans where it bounds Doctor Gracie Drive, EH32 9GQ, and the East Coast Railway Line, adjacent to Kinnegar, Dolphinstone and the Royal Musselburgh Driving Range and footpath all as more specified on the Map annexed to the Schedule and relative hereto:

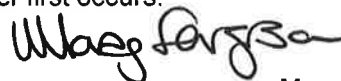
The specified trees are to be safeguarded from unauthorised pruning and or removal. They are a large group of trees with significant visual amenity and biodiversity value. The trees provide an important element of mature screening between the new housing development to the east and the countryside which is in the adopted greenbelt. The trees growing on the disused mineral railway embankment provide an important landscape setting and an important gateway feature to the western edge of Prestonpans, in the transition from countryside to town. The trees provide a visual and physical link to the other protected trees (TPO 1 and 14) to the west and north and as such enhance the green networks.

The protection of these trees will ensure the continued enjoyment of visual amenity value and the unique sense of place that these trees confer to members of the public.

Accordingly the Council have on the 20<sup>th</sup> September 2016 made an Order under Sections 160, 161 and 163 of the Town and Country Planning (Scotland) Act 1997 prohibiting the cutting down, topping, lopping, uprooting, wilful damaging or destruction of the trees specified in the First Schedule thereto. Copies of the Order and the map referred to therein may be inspected by any person, free of charge at Environment Reception, John Muir House, Haddington and Prestonpans library during opening hours. Objections or representations with respect to the Order should be made in writing to the Legal & Procurement Services Manager, East Lothian Council, John Muir House, Haddington, EH41 3HA in accordance with Regulation 5 of the Town & Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 as amended, which provides as follows:-

1. Every such representation made to the Planning Authority in respect of an Order must be made in writing, shall state the grounds thereof and shall specify the particular trees, groups of trees, or woodland in respect of which it is made; and
2. An objection or representation shall be duly made if it complies with Paragraph (1) of this Order and is received by the Planning Authority within 28 days from the date of service of the Notice of the making of the Order, or the date of the publication of the Notice by advertisement as the case may be.

The Order shall take effect from the 20<sup>th</sup> day of September 2016 and shall continue in force until either the expiration of a period of six months, beginning with the date on which the Order was made, or the date on which the Order is confirmed, whichever first occurs.



Morag Ferguson  
Legal & Procurement Services Manager  
20 September 2016

**TPO 136 (2016) – Landed Area West of Prestonpans, East Lothian  
Schedule 1**

<b>Trees Specified Individually</b> <i>(Coloured black within a black solid line indicating the canopy on the map)</i>		
<b>No. on Map</b>	<b>Description</b>	<b>Situation</b>
T1	Goat Willow	Situated on the land known as and forming part and portion of ALL and WHOLE that area of ground at Dolphinstone, Prestonpans, being the subjects registered in the Land Register of Scotland under Title Number ELN5894 and in part registered under Title Number ELN2979 and subject to a Lease registered in the Land Register of Scotland under Title Number ELN15771 (hereinafter referred to in this Schedule 1 as “ <b>the Subjects</b> ”) T1 is situated in the eastern corner of the field atop an existing embankment on the Subjects. T1 is situated to the north of G2 and south of G1 as shown on the map annexed to this Schedule 1 (“ <b>the Map</b> ”); and
T2	Sycamore	Situated in the eastern corner of the field at the Subjects. 10m to the south east is a fence which borders the East Coast railway line. T2 is approximately 40m to the south east of T1; and  shown located at the point marked ‘ <b>T2</b> ’ on the Map.
T3	Sycamore	T3 is situated atop an embankment in a clearing between a woodland at the Subjects marked on the Map as W1 to the west and a group of trees marked on the Map as G2 to the north east; and  shown located at the point marked ‘ <b>T3</b> ’ on the Map.
T4	Ash	T4 is situated 35m in a broadly west south west direction from T3 at the Subjects. It is atop an embankment along the southern band of trees and path. There is a fence 15m to the south of the tree; and  shown located at the point marked ‘ <b>T4</b> ’ on the Map.
<b>Trees Specified by reference to an Area</b> <i>(within a continuous black line on the map)</i>		

**TPO 136 (2016) – Landed Area West of Prestonpans, East Lothian**  
**Schedule 1**

NONE

**Groups of Trees** *(Within a broken black line on the map and denoted with a G)*

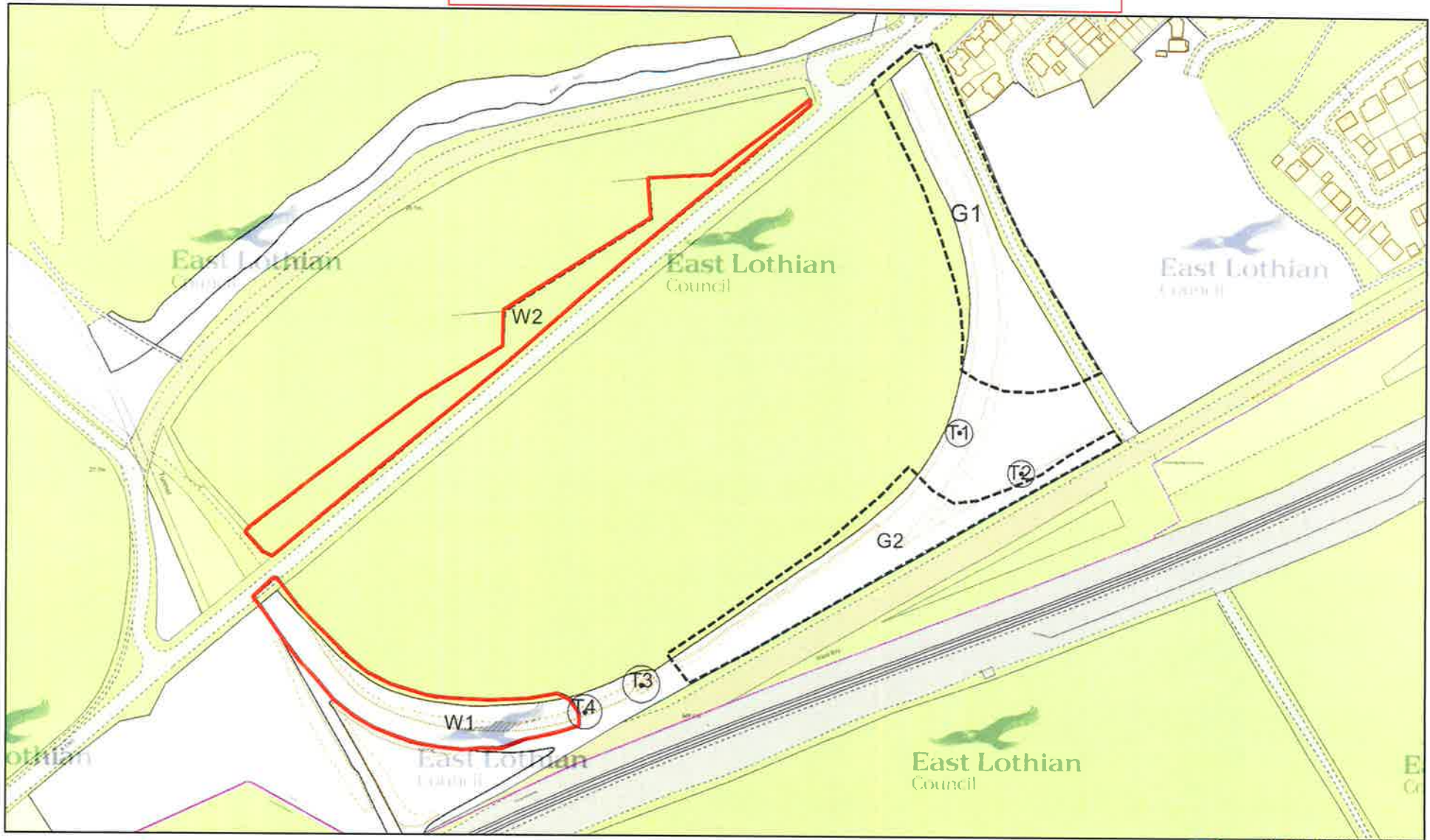
No. on Map	Description	Situation
G1	14No. Oak, 13No. Ash, 15No. Hawthorn, 2No. Sycamore, 1No. Goat Willow, 1No Crab Apple, 1No. Cotoneaster	G1 is situated at the Subjects and due southwest of house numbers 24 to 33 Doctor Gracie Drive EH32 9GQ. An access road from the road B1361, to the north) and runs parallel to the eastern embankment of G1; and  shown marked as 'G1' on the map
G2	38No. Hawthorn, 1No. Goat Willow, 1No Oak, 1No Ash, 1No Sycamore.	G2 is situated on an old mineral line railway embankment forming part of the Subjects, which is parallel and due northwest of the East Coast railway line;  shown marked 'G2'on the map

**Woodlands** *(Within a solid red line on the map denoted with a W)*

W1	Oak, Hawthorn, Elm, Elderflower, Holly, Sycamore, Ash, Hawthorn, Willow	Situated in the south west corner of the Subjects on arable land, and adjacent to G1 in TPO 14 Kinnegar, Dolphingstone
W2	Mountain Ash, Plum, Hawthorn, Scots Pine, Lime, Ash, Birch, Hazel, Apple, Oak	Situated on the north western side of the Subjects and running parallel to the road B1361 a long strip of trees running parallel sandwiched between the boundary fence of the Royal Musselburgh driving range and a footpath adjacent to the road B1361

*U. MacFarlane*

# TPO 136 Landed Area West of Prestonpans



0 0.025 0.05 0.075 0.1 kilometres

Co-ordinates:  
337720, 673133

LOCATION PLAN SCALE  
1:2000 @ A3

Inset Map Scale  
[1:8,000]@ A3

Grid Reference: NT 378730



*W. G. G. G. G.*



**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

**THE EAST LoTHIAN COUNCIL (LANDED AREA WEST OF PRESTONPANS, EAST  
LoTHIAN )**

**TREE PRESERVATION ORDER No. 136 (2016)**

East Lothian Council, in this Order referred to as "the planning authority", in exercise of the powers conferred on them by section 160 of the Town and Country Planning (Scotland) Act 1997 and of all other powers enabling them in that behalf hereby make the following Order:-

**Citation, commencement and interpretation.**

- (1) This Order may be cited as The East Lothian Council (Landed Area West of Prestonpans, East Lothian) Tree Preservation Order No. 136 (2016) and takes effect from the 20th day of September 2016.
- (2) In this Order –  
“the 1992 Order” means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992  
“The Act” means the Town and country Planning (Scotland) Act 1997;  
“Protected Tree” has the meaning given in Article 2.

**Protected Trees**

2. A Protected Tree is a tree specified in Schedule 1 of this Order or comprised in a group of trees or in a woodland specified in that Schedule, to secure the retention of specific trees within the landed area west of Prestonpans, East Lothian where it bounds Doctor Gracie Drive, EH32 9GQ and the East Coast Railway Line, adjacent to Kinnegar, Dolphinstone and the Royal Musselburgh Driving Range and footpath all as more particularly defined in the Schedule 1 and the Map annexed thereto.

The position of such trees, groups of trees, areas and or woodlands is identified in the manner indicated in Schedule 1 and on the map annexed to this Order.

Where any ambiguity as to the identification of a Protected Tree arises between the map and the specification in Schedule 1 to this Order, the map is to prevail.



### **Prohibited acts**

3. Subject to the provisions of the Act and the exemptions specified in Article 4, no person is, except with, and in accordance with, the consent of the planning authority -
- (i) to cut down, top, lop, uproot, wilfully damage or wilfully destroy; or
  - (ii) to cause or permit the cutting down, topping, lopping, uprooting, or wilful destruction of;  
a Protected Tree.

### **Directions as to replanting**

4. (1) Where consent is granted under this Order for the felling of any tree, in the event that the provisions of Section 167(i)(a) and (b) of the Act apply the planning authority may give to the owner of the land on which the tree (s) are situated a direction in writing specifying the manner in which and the time within which the owner must replant trees on that land.
- (2) Where a direction is given under paragraph (1) and trees on the relevant land are felled (pursuant to the consent), the owner of that land must replant trees on the land in accordance with the direction.
- (3) Any direction given under paragraph (1) may include requirements as to –
- (a) species;
  - (b) quantities;
  - (c) the erection and maintenance of fencing necessary for the protection of the replanting;
  - (d) the preparations of ground, draining, removal of brushwood, weed control, and beating up;
  - (e) protective measures against fire.

### **Adaption and Modification of the Act**

5. (1) The provisions of the town and Country Planning(Scotland) Act 1997 mentioned in column 1 of Part 1 of Schedule 2 to this Order are to have effect, in relation to

consents under this Order and applications for such consent, subject to the adaptations and modifications specified in column 2 of Part 1 of that Schedule.

- (2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part 2 Schedule 2 to this Order.

## **Compensation**

6. (1) Subject to paragraphs (2) to (5), any person who has suffered loss or damage caused or incurred in consequence of –
- (a) any refusal of consent required under this Order; or
  - (b) any grant of any such consent subject to conditions, is entitled to recover from the planning authority compensation in respect of such loss or damage.
- (2) A claim for compensation under this Order shall be made by serving on the planning authority a notice in writing stating the grounds of the claim and the amount claimed.
- (3) The time within which any such notice shall be given is a period of six months –
- (a) from the date of the decision of the planning authority; or
  - (b) where an appeal has been made to Scottish Ministers against the decision of the planning authority, from the date of the decision of Scottish Ministers on the appeal.
- (4) No claim may be made under this Article if the amount in respect of which the claim would otherwise have been made is less than £1,000.
- (5) No compensation shall be made payable to a person-
- (a) for loss or development value or other diminution in the value of the land;
  - (b) for loss or damage which was not reasonably foreseeable when consent was refused or was granted subject to conditions;
  - (c) for loss or damage reasonably foreseeable by that person and attributable to failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or
  - (d) for costs incurred in appealing to the Scottish Ministers against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.
- (6) In this Article-

“development value” means an increase in value attributable to the prospect of development; and in relation to any land, the development of it shall include the clearing of it.8.

### **Applications for consent**

7.

- (1) Any application for consent of the Planning Authority for all non exempt tree management works must be submitted in advance in writing (“Application”). The Application must provide the following:
  - (a) specify the tree management work for which consent is sought;
  - (b) give reasons for carrying out such operations; and
  - (c) identify the Protected Tree or trees which would be affected by such operations.
  - (d) The Protected Tree or trees must be identified by means of a map or plan of a size and scale sufficient for the purpose.

The Application may be sent by electronic communications.

All Applications must include the applicants contact details, including but not limited to a current email and telephone number.

### **Application of Tree Preservation order to future planting**

8. This Order applies to any tree specified in Schedule 1 of this Order which is to be planted in pursuance of a condition imposed by virtue of section 159(a) of the Act as from the time when those trees are planted. 10. Offences and Penalties. Section 171 of the Act shall apply

- (1) If any person, in contravention of a tree preservation order –
  - (a) Cuts down, uproots or wilfully destroys a tree. Or
  - (b) Wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it,

He shall be guilty of an offence.

- (2) A person guilty of an offence under subsection (1) shall be liable
  - (a) On summary conviction to a fine not exceeding £20,000 and
  - (b) On conviction on indictment, to a fine.
- (3) In determining the amount of any fine to be imposed on a person convicted of an offence under subsection (1), the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

(4) If any person contravenes the provisions of the tree preservation order otherwise than as mentioned in subsection (1), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

9. This Order shall take effect from the 20<sup>th</sup> day of September Two thousand and Sixteen.

**EAST LOTHIAN COUNCIL IN EXERCISE OF THE POWERS CONFERRED ON THEM BY SECTION 160 OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 CONFIRMED THE FOREGOING ORDER AND ATTACHED MAP.**

This Order is sealed with the Common Seal of East Lothian and signed for and on its behalf at Haddington on this 20th day of January Two thousand and Seventeen by:



Morag Ferguson

Proper Officer

Legal and Procurement Services Manager

John Muir House

Haddington



This is Schedule 1 of the East Lothian Council (Landed Area West of Prestonpans, East Lothian) Tree Preservation Order No. 136 (2016)

## SCHEDULE 1

<b>Trees Specified Individually</b> <i>(Coloured black within a black solid line indicating the canopy on the map)</i>		
<b>No. on Map</b>	<b>Description</b>	<b>Situation</b>
T1	Goat Willow	Situated on the land known as and forming part and portion of ALL and WHOLE that area of ground at Dolphingstone, Prestonpans, being the subjects registered in the Land Register of Scotland under Title Number ELN5894 and in part registered under Title Number ELN2979 and subject to a Lease registered in the Land Register of Scotland under Title Number ELN15771 (hereinafter referred to in this Schedule 1 as " <b>the Subjects</b> ") T1 is situated in the eastern corner of the field atop an existing embankment on the Subjects. T1 is situated to the north of G2 and south of G1 as shown on the map annexed to this Schedule 1 (" <b>the Map</b> "); and
T2	Sycamore	Situated in the eastern corner of the field at the Subjects. 10m to the south east is a fence which borders the East Coast railway line. T2 is approximately 40m to the south east of T1; and  shown located at the point marked ' <b>T2</b> ' on the Map.
T3	Sycamore	T3 is situated atop an embankment in a clearing between a woodland at the Subjects marked on the Map as W1 to the west and a group of trees marked on the Map as G2 to the north east; and  shown located at the point marked ' <b>T3</b> ' on the Map.

T4	Ash	<p>T4 is situated 35m in a broadly west south west direction from T3 at the Subjects. It is atop an embankment along the southern band of trees and path. There is a fence 15m to the south of the tree; and</p> <p>shown located at the point marked 'T4' on the Map.</p>
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**Trees Specified by reference to an Area** *(within a continuous black line on the map)*

NONE

**Groups of Trees** *(Within a broken black line on the map and denoted with a G)*

No. on Map	Description	Situation
G1	14No. Oak, 13No. Ash, 15No. Hawthorn, 2No. Sycamore, 1No. Goat Willow, 1No Crab Apple, 1No. Cotoneaster	<p>G1 is situated at the Subjects and due southwest of house numbers 24 to 33 Doctor Gracie Drive EH32 9GQ. An access road from the road B1361, to the north) and runs parallel to the eastern embankment of G1; and</p> <p>shown marked as 'G1' on the map</p>
G2	38No. Hawthorn, 1No. Goat Willow, 1No Oak, 1No Ash, 1No Sycamore.	<p>G2 is situated on an old mineral line railway embankment forming part of the Subjects, which is parallel and due northwest of the East Coast railway line;</p> <p>shown marked 'G2' on the map</p>

**Woodlands** *(Within a solid red line on the map denoted with a W)*

W1	Oak, Hawthorn, Elm, Elderflower, Holly, Sycamore, Ash, Hawthorn, Willow	Situated in the south west corner of the Subjects on arable land, and adjacent to G1 in TPO 14 Kinnegar, Dolphingstone
W2	Mountain Ash, Plum, Hawthorn, Scots Pine, Lime, Ash, Birch, Hazel, Apple, Oak	Situated on the north western side of the Subjects and running parallel to the road B1361 a long strip of trees running parallel sandwiched between the boundary fence of the Royal Musselburgh driving range and a footpath adjacent to the road B1361

*Magazza*

This is the Schedule 2 Part I of the East Lothian Council (Landed Area West of Prestonpans, East Lothian) Tree Preservation Order No. 136 (2016)

## SCHEDULE 2

### PART I

#### PROVISIONS OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 APPLIED WITH ADAPTATIONS OR MODIFICATIONS

Provision of the Town and Country Planning (Scotland) Act 1997	Adaptation or Modification
Section 36 (Registers of applications etc.)	<p>For subsections (1) to (3) substitute –</p> <p>“(1) The planning authority shall in relation to this Order keep a register of all applications for consent under this Order, containing –</p> <p>(a) Information as to the nature of such applications, the decisions of the planning authority thereon,</p> <p>(b) information as to any appeal to Scottish Ministers and the decisions of Scottish Ministers thereon, any compensation awarded in consequence of the decisions of the planning authority or Scottish Ministers; and</p> <p>(c) any directions as to the replanting of woodlands.”</p>
Section 37 (determination of applications: general considerations)	<p>(a) In subsection (1) –</p> <p>(d) for “planning permission” where those words first appear,” substitute “consent under a tree preservation order”,</p> <p>(e) for “sections 27B(2) and 59(1)(b)</p>

substitute “subsections (1A) and (1B)”,  
(f) for “planning permission” in both of  
the other places where those words  
appear substitute “consent under the  
order”,

(g) after “think fit”, insert, “(including  
conditions limiting the duration of the  
consent or requiring the replacement of  
trees)”, and

(b) After subsection (1) insert –

“(1A) Where an application relates to an  
area of woodland, the authority shall  
grant consent so far as accords with the  
practise of good forestry, unless they are  
satisfied that the granting of consent  
would fail to secure the maintenance of  
the special character of the woodland or  
the woodland character of the area.

(1B) Where the authority grant consent  
for the felling of trees in a woodland area  
they shall not impose conditions  
requiring replacement where such felling  
is carried out in the course of forestry  
operations (but may give directions for  
securing replanting).”

(c) Omit subsections (2) and (3); and

(d) In subsection (4) for paragraphs (a) to  
(c) substitute –



	<p>“(a) consent under a tree preservation order; or</p> <p>(b) any consent, agreement or approval required by a condition imposed on the grant of such consent,”</p>
<p>Section 44 (effect of planning permission)</p>	<p>(a) references to ‘planning permission’ are to be treated as references to ‘consent required by a tree preservation order’,</p> <p>(b) for ‘the permission’ substitute ‘the consent’,</p> <p>(c) for ‘to develop land’ substitute ‘to carry out works’, and</p> <p>(d) after ‘land’ insert ‘on which the tree or trees to which the consent relates are situated’.</p> <p>(e) Omit subsections 92) and (3).</p>
<p>Section 47 (right to appeal against planning decisions and failure to take such decisions)</p>	<p>(a) For subsection (1) substitute –</p> <p>“(1) Where a planning authority –</p> <p>(a) refuse an application for consent under a tree preservation order or grant it subject to conditions;</p> <p>(b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order;</p> <p>(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or</p>

(d) have not give notice or their decision on such an application within the period 2 months beginning with the date on which the application was received by the authority [or within such extended period as may at any time be agreed upon in writing between the applicant and the authority].

The applicant may by notice appeal to the Scottish Ministers”.

(b) Omit subsections (1A), (2) and (4).

(c) For subsection (3) substitute –

“(3) Any appeal under this section shall be made in writing, specifying the grounds on which the appeal is made; and such notice shall be served on the Scottish Ministers within a period of three months beginning with, in the case of an appeal made under –

(a) an appeal under paragraphs (a) to (c) of subsection (1), the date of the decision notice or the direction, as the case may be; and;

(b) paragraph (d) of that subsection, the date of expiry of the period mentioned in that paragraph,”

(d) For subsection (5) substitute –

	“(5) For the purposes of the application of section 48(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.”
Section 47A	
Section 48 (determination of appeals)	<p>(a) In subsection (5)(a) –</p> <p>(i) for “sections 33, 37(1) to (3), 38(1) to (3), 41(1) and (2) and 42 and Part I of Schedule 3” “section 37(1), (1A) and (1B)”; and</p> <p>(ii) for “planning permission” substitute “consent under a tree preservation order”.</p> <p>(b) Omit subsections (5)(b) and (6) to (8).</p>

*W. Magowan*

This is the Schedule 2 Part II of the East Lothian Council (Landed Area West of Prestonpans, East Lothian) Tree Preservation Order No. 136 (2016)

## PART II

### PROVISIONS OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997, AS ADAPTED AND MODIFIED BY PART I

The following provisions of the Town and Country Planning Act 1997, as adapted and modified by Part I of this Schedule, apply in relation to consents, and applications for consent, under this Order.

#### **Section 36**

36 – (1) The planning authority shall in relation to this Order keep a register of all applications for consent under this Order, containing –

- (a) information as to the nature of such applications, the decisions of the planning authority thereon,
- (b) information as to any appeal to Scottish Ministers and the decisions of Scottish Ministers thereon, any compensations awarded in consequence of the decisions of the planning authority or Scottish Ministers: and any directions as to the replanting of woodlands.”

(4) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

#### **Section 37**

37 – (1) Where an application is made to a planning authority for consent under a tree preservation order –

- (a) subject to subsections (1A) and (1B) they may grant consent under the order, either unconditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent or requiring the replacement of trees); or
- (b) they may refuse consent under the order.

- (1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practise of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.
- (1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).
- (4) The date of the grant or refusal of –
- (a) consent under a tree preservation order; or
  - (b) any consent, agreement or approval required by a condition imposed on the grant of such consent, shall be the date on which the notice of the planning authority's decision bears to have been signed on behalf of the authority.

#### **Section 44(1) Effect of planning permission**

44 – (1) [Without prejudice to the provision of this Part as to the duration, revocation or modification of consent required by a tree preservation order], any grant of consent required by a tree preservation order shall (except in so far as the consent otherwise provides) ensure for the benefit of the land on which the tree or trees to which the consent relates are situated and all persons for the time being interested in it.

#### **Section 47 Right to appeal against planning decisions and failure to take such decisions**

47 – (1) Where a planning authority –

- (a) refuse an application for consent under a tree preservation order or grant it subject to conditions;

- (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order;
- (c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of or by that authority required by such a direction; or
- (d) have not given notice or their decision on such an application within the period of 2 months beginning with the date on which the application was received by the authority [or within such extended period as may at any time be agreed upon in writing between the applicant and the authority],

the applicant may by notice appeal to the Scottish Ministers”.

“(3) Any appeal under this section shall be made in writing, specifying the grounds on which the appeal is made; and such notice shall be served on the Scottish Ministers within a period of three months beginning with, in the case of an appeal made under –

- (a) an appeal under paragraphs (a) to (c) of subsection (1), the date of the decision notice or the direction, as the case may be; and;
- (b) paragraph (d) of that subsection, the date of expiry of the period mentioned in that paragraph,”

(5) For the purposes of the application of section 48(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.

#### **Section 47A**

**47A – (1)** In an appeal under section 47(1), a party to the proceedings is not to raise any matter which was not before the planning authority at the time the decision appealed against was made unless that party can demonstrate –

- (a) that the matter could not have been raised before that time, or

(b) that it's not being raised before that time was a consequence of exceptional circumstances.

(2) Nothing in subsection (1) affects any requirement or entitlement to have regard to

(a) the provisions of the development plan, or

(b) any other material consideration.

### **Section 48 Determination of appeals**

**48 – (1)** On an appeal under section 47 of the Scottish Ministers may –

(a) allow or dismiss the appeal, or

(b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to them in the first instance.

(3) If the Scottish Ministers propose to reverse or vary any part of the decision of the planning authority to which the appeal does not relate, they shall give notice of their intention to the planning authority and to the appellant and shall give each of them an opportunity of making representations about their proposals.

(5) In relation to an appeal to the Scottish Ministers under section 47 –

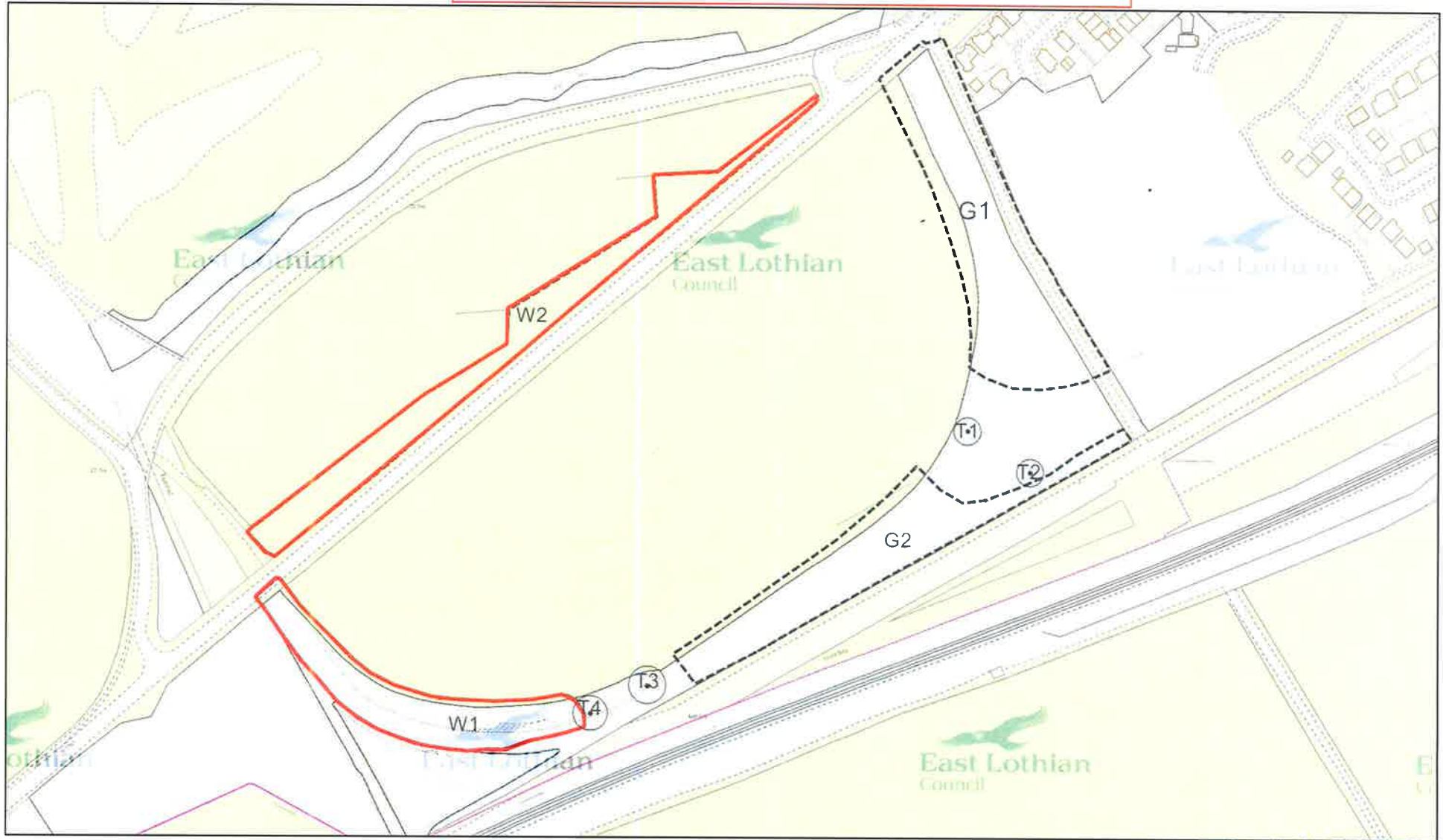
(a) sections 37(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Scottish Ministers under section 47 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

(9) Schedule 4 applies to appeals under section 47, including appeals under that section as applied by or under any other provision of this Act.

*William Ferguson*

*This is the Map referred to in the foregoing TPO 136(2016)* *W. J. Ferguson*

**TPO 136 Landed Area West of Prestonpans**



0 0.025 0.05 0.075 0.1 kilometres

Co-ordinates:  
337720, 673133

LOCATION PLAN SCALE  
1:2000 @ A3

Inset Map Scale  
[1:8,000]@ A3

Grid Reference: NT 378730





DL1268190801 DL1268191901  
DL1268192401

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

THE EAST LoTHIAN COUNCIL  
(LANDED AREA WEST OF  
PRESTONPANS, EAST LoTHIAN)  
TREE PRESERVATION ORDER NO.  
136 (2016)

LEGAL AND PROCUREMENT  
SERVICES MANAGER  
EAST LoTHIAN COUNCIL  
JOHN MUIR HOUSE, HADDINGTON