

General Register of Sasines

TPO

Extract Registered: 24 FEB 2005

TREE PRESERVATION ORDER

by

EAST LoTHIAN COUNCIL

No 107

Clas Rington
Haddington

Subjects: BRAEHEAD & OTHERS

EAST LoTHIAN COUNCIL

Fas 2244

REGISTERS OF SCOTLAND EXECUTIVE AGENCY **FORM 4**
 (Land Registration (Scotland) Rules 1980 Rule 9(2))
 INVENTORY OF WRITS RELEVANT TO APPLICATION FOR
 REGISTRATION (see Note 1)
 (to be completed in duplicate)

Title Number(s)
 (to be completed for a dealing with registered interests in
 land.)

EAST LoTHIAN COUNCIL
 LEGAL SERVICES
 JOHN MUIR HOUSE
 HADDINGTON
 EAST LoTHIAN
 EH41

ELN5113
 ELN519

Subjects (see Note 3)

CLERKINGTON
 HADDINGTON
 EAST LoTHIAN

051257522502

Registration County

EAST LoTHIAN

Applicants Reference

ASW/EN/TP/107

Please complete Inventory overleaf as in this specimen

Particulars of Writs (see Note 4)				
Item No	Please mark "S" against documents submitted	Document	Grantee	Date of Recording
<input type="checkbox"/>	<input type="checkbox"/>	Land Certificate*		
<input type="checkbox"/>	<input type="checkbox"/>	Charge Certificate*		
1	-	Feu Charter*	Upright Builders Ltd	
<input type="checkbox"/>	<input type="checkbox"/>			

*delete if inapplicable

Notes 1-4 referred to are contained in Notes and Directions for Completion of Inventory Writs Relevant to Application for Registration.

FOR OFFICIAL USE ONLY

APPLICATION NUMBER

DATE OF RECEIPT

TITLE NUMBER

05 ELN 00573

LAND REGISTERS
 OF SCOTLAND
 24 FEB 2005
 INTAKE SECTION
 RECEIVED

ELN 519

The Writs marked "S" on this inventory were received on the Date of Receipt stamped on this page.

EFORMS 2005020208:31:24

REGISTERS OF SCOTLAND EXECUTIVE AGENCY
(Land Registration (Scotland) Rules 1980 Rule 9(2))
INVENTORY OF WRITS RELEVANT TO APPLICATION FOR
REGISTRATION (see Note 1)
(to be completed in duplicate)

FORM 4

Title Number(s)
(to be completed for a dealing with registered interests in
land.)

ELN5113
ELN519

EAST LoTHIAN COUNCIL
LEGAL SERVICES
JOHN MuIR HOUSE
HADDINGTON
EAST LoTHIAN
EH41

Subjects (see Note 3) CLERKINGTON
HADDINGTON
EAST LoTHIAN

051257522501

Registration County EAST LoTHIAN

Applicants Reference ASW/EN/TP/107

Please complete Inventory overleaf as in this specimen

Particulars of Writs (see Note 4)				
Item No	Please mark "S" against documents submitted	Document	Grantee	Date of Recording
<input type="checkbox"/>	<input type="checkbox"/>	Land Certificate*		
<input type="checkbox"/>	<input type="checkbox"/>	Charge Certificate*		
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Feu Charter*	Upright Builders Ltd	
<input type="checkbox"/>	<input type="checkbox"/>			

*delete if inapplicable

Notes 1-4 referred to are contained in Notes and Directions for Completion of Inventory Writs Relevant to Application for Registration.

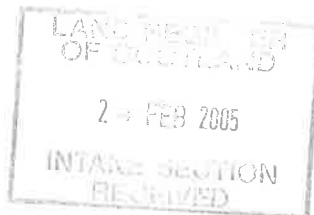
FOR OFFICIAL USE ONLY

APPLICATION NUMBER

DATE OF RECEIPT

TITLE NUMBER

05 ELN 00572



ELN 5113

The Writs marked "S" on this inventory were received on the Date of Receipt stamped on this page.

Registers of Scotland

The Writ hereinafter reproduced is recorded in the General Register of Sasines for publication and also as in the Books of the Lords of Council and Session for preservation as follows:-

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

THE EAST LOTHIAN COUNCIL (Clerkington, Haddington) TREE PRESERVATION ORDER No.107 (20) 2004


East Lothian Council, in this Order referred to as "the planning authority", in exercise of the powers conferred on them by Sections 160, 161 and 163 of the Town and Country Planning (Scotland) Act 1997 (hereinafter referred to as "the Act") and of all other powers enabling them in that behalf and subject to the provisions of the Forestry Act 1967, hereby make the following Order:-

CITATION, COMMENCEMENT AND INTERPRETATION.

1. (1) This Order may be cited as The East Lothian Council (Clerkington, Haddington) Tree Preservation Order No.107 (20) 2004 and shall come into effect on the date specified in Article 15 to this Order.
- (2) The Interpretation Act 1978 shall apply for the Interpretation of this Order as it applies for the interpretation of an Act of Parliament.

PROHIBITION AGAINST FELLING, ETC. WITHOUT CONSENT.

2. Subject to the provisions of this Order and the exemptions specified in the Second Schedule hereto, no person shall, except with the consent of the planning authority, cut down, top, lop, uproot, wilfully damage or wilfully destroy or cause or permit the cutting down, topping, lopping, uprooting or wilful damage or wilful destruction of any tree specified in the First Schedule hereto or comprised in a group of trees or in a woodland specified therein, the position of which trees, groups of trees and woodlands to which this Order relates is defined in the manner indicated in the said First Schedule on the map annexed and signed as relative hereto, which map shall for the purpose of such definition as aforesaid, prevail where any ambiguity arises between it and the specification in the said First Schedule.

 REGISTERS OF SCOTLAND
GENERAL REGISTER OF SASINES
COUNTY OF EAST LOTHIAN
FICHE 19 FRAME 15
PRESENTED AND RECORDED ON

24 FEB 2005

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APPLICATION FOR CONSENT

3. An application for consent made to the planning authority under Article 2 of this Order shall be in writing and shall specify -
 - (i) the tree or trees to which the application relates;
 - (ii) the reasons for making the application;
 - (iii) the operations for the carrying out of which consent is required;and shall where necessary for the identification of such tree or trees be accompanied by a map or plan of a size or on a scale sufficient for the purpose.
4. If it is desired to fell any of the trees included in this Order, whether included as trees, groups of trees or woodlands, and the trees are trees for the felling of which a licence is required under the Forestry Act 1967, application should be made - not to the planning authority for consent under this Order but to the Conservator of Forests for a licence under Section 15 (5) of that Act.
5. (1) Where an application for consent is made to the planning authority under this Order the planning authority may grant such consent either unconditionally, or subject to such conditions (including conditions requiring the replacement of any tree by one or more trees on the site or in the immediate vicinity thereof) as the planning authority may think fit, or may refuse consent: Provided that where the application relates to any woodland specified in the First Schedule to this Order the planning authority shall grant consent so far as it accords with the principles of good forestry, except where, in the opinion of the planning authority, it is necessary in the interests of amenity to maintain the special character of the woodland or the woodland character of the area and shall not impose conditions on such consent requiring replacement or replanting.

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- (2) The authority shall keep a register of all applications for consent under this Order containing information as to the nature of such applications, the decisions of the planning authority thereon, any compensation awarded in consequence of such decisions and any directions as to replanting of woodlands; and every such register shall be available for inspection by the public at all reasonable hours.
6. Where the planning authority refuse consent under this Order or grant such consent subject to conditions they may when refusing or granting consent certify in respect of any trees for which they are so refusing or granting consent that they are satisfied:
 - (a) that the refusal or condition is in the interests of good forestry; or
 - (b) in the case of trees other than trees comprised in woodlands, that the trees have an outstanding or special amenity value.
7.
 - (1) where consent is granted under this Order to fell any part of a woodland other than consent for silvicultural thinning then unless
 - (a) such consent is granted for the purpose of enabling development to be carried out in accordance with permission to develop land under Part III of the Act, or
 - (b) the planning authority, with the approval of Scottish Ministers, dispense with replanting the authority shall give to the owner of the land on which that part of the woodland is situated a direction in writing specifying the manner in which and the time within which he shall replant such land and where a direction is given and the part is felled the owner shall, subject to the provisions of this Order and Section 166 of the Act, replant the said land in accordance with the direction.
 - (2) Any direction given under paragraph (1) of this Article may include requirements as to

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- (a) species;
 - (b) number of trees per acre;
 - (c) the erection and maintenance of fencing necessary for the protection of the replanting;
 - (d) the preparation of ground, draining, removal of brushwood, lop and top; and
 - (e) protective measures against fire;
- (3) If any question arises between the planning authority and the said owner of the land as to whether any such direction is reasonable having regard to the particular circumstances of the case or to any other material considerations, the question shall, on the application of either party, be determined by Scottish Ministers, whose decision shall be final.

ADAPTATION AND MODIFICATION OF ACT.

8. The provisions set out in the Third Schedule to this Order, being provisions of the Act adapted and modified for the purposes of this Order, shall apply in relation hereto.

COMPENSATION

9. Subject to the provisions of this Order, any person who has suffered loss or damage in consequence of any refusal (including revocation or modification) of consent under this Order or of any grant of any such consent subject to conditions, shall, if he makes a claim on the planning authority within the time and in the manner prescribed by this Order, be entitled to recover from the planning authority compensation in respect of such loss or damage.

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Provided that no compensation shall be payable in respect of loss or damage suffered by reason of such refusal or grant of consent in the case of any tree or trees the subject of a certificate in accordance with Article 6 of this Order.

10. In assessing compensation payable under the last preceding paragraph account shall be taken of:-
 - (a) Any compensation or contribution which has been paid whether to the claimant or any other person in respect of the same trees or woodland areas under the terms of this or any other Tree Preservation Order under Section 160 of the Act, or under the terms of any Interim Preservation Order made under Section 8 of the Town and Country Planning (Interim Development) (Scotland) Act 1943 or any compensation which has been paid or which could have been claimed under any provision relating to the preservation of trees or protection of woodland contained in an operative scheme under the Town and Country Planning (Scotland) Act 1932; and
 - (b) Any injurious affection to any land of the owner which would result from the felling of the trees or woodlands the subject of the claim.
11. (1) 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.
(2) The time within which any such claim shall be made as aforesaid shall be a period of six months from the date of the decision of the planning authority or of Scottish Ministers as the case may be, or 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.
12. Any question of disputed compensation shall be determined in accordance with the provisions of Section 165(2) and (3) of the Act.

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OFFENCES AND PENALTIES, ETC.

13. Under the provisions of Section 171 of the Act any person who in contravention of this Order cuts down, uproots or wilfully destroys a tree, or wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it, shall be guilty of an offence and liable on summary conviction to a fine not exceeding £20,000; or on conviction on indictment to an unlimited fine. Other contraventions of this Order carry with them on summary conviction a fine not exceeding level 4 on the standard scale.
14. (1) If a tree other than one which is part of a woodland is removed, uprooted or destroyed in contravention of this Order, or is removed, uprooted or destroyed or dies at a time when its felling is authorised only by virtue of the provisions of Section 160 (6) (a) of the Act relating to uprooting or felling where urgently necessary in the interests of safety, it shall be the duty of the owner of the land, unless on his application the planning authority dispense with this requirement, to plant another tree of appropriate size and species at the same place as soon as he reasonably can.
- (2) In relation to any tree planted pursuant to paragraph (1) above, this Order shall apply as it applied to the original tree.
- (3) If it appears to the planning authority that the provision in paragraph (1) above has not been complied with in the case of any tree or trees, they may, at any time within two years from the date on which failure to comply with this provision came to their knowledge, serve on the owner of the land a notice requiring him, within such period as may be specified in the notice, to plant a tree or trees of such size and species as may be so specified, and the provisions of Section 168 of the Act shall apply in any such case.

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PROVISIONAL TREE PRESERVATION ORDERS.

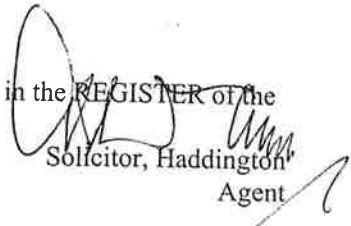
15. The provisions of Section 163 (2) of the Act (which makes provision for a tree preservation order to take effect immediately without previous confirmation by the planning authority) shall apply to this Order and the Order shall take effect on the

Dated this - 5 OCT 2004



Corporate Legal Advisor
Proper Officer
John Muir House
Haddington

REGISTER on behalf of the within named EAST LoTHIAN COUNCIL in the REGISTER of the
COUNTY OF EAST LoTHIAN



Solicitor, Haddington
Agent

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FIRST SCHEDULE

Trees Specified Individually
(coloured green on the map)

NONE

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 said map)

Group No. (refer to plan)	Description	Situation
G1	Group comprising Acer spp., Betula spp., Carpinus spp., Crataegus spp., Fagus spp., Fraxinus spp., Sorbus spp., Ulmus spp	ALL the trees (ONE) within the garden of 19 Knowes Road being the land and dwellinghouse forming and known as 19 Knowes Road, Haddington in the County of East Lothian more particularly described or referred to in Land Certificate in favour of Iain McSporrán and Hilary McSporrán and registered in the Land Register for Scotland under title number ELN 5113 (TWO) within the garden of Braehead, West Road being the land and dwellinghouse forming and known as Braehead, West Road, Haddington in the County of East Lothian more particularly described or referred to in Disposition in favour of Marguerita Eunice McKinnon or Raine dated Twenty eighth September and recorded in the Division of the General Register of Sasines for the County of East Lothian on Thirtieth December both months in the year Nineteen hundred and ninety two and (THREE) on the banks and immediately to the north of St Lawrence House Bridge Haddington being the land more particularly described or referred to in Disposition in favour of John G Gray (Homes) Limited dated Twenty ninth July and recorded in the Division of the said Register on Fourth August both in the months in the year Nineteen hundred and Ninety three.
G2	Group comprising Acer spp., Fagus spp., Fraxinus spp., Fagus spp., Pinus spp., Prunus spp., Ulmus spp	ALL the trees immediately to the south of St Lawrence House Bridge Haddington being part and portion of ALL and WHOLE (ONE) the subjects more particularly described or referred to in Disposition in favour of George Bain dated Sixth January and recorded in the Division of the said Register on First July both months in the year Nineteen hundred and Seventy seven; (TWO) the subjects more particularly described or referred to in Disposition in favour of Kathleen Martin Bain, Andrew George Bain, Moira Bain or Swan and

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		Vivian Bain as Trustees therein mentioned dated Twenty fourth August and recorded in the Division of the said Register on Fifteenth September both months in the year Nineteen hundred and eighty nine and (THREE) the subjects more particularly described or referred to in Disposition in favour of Andrew George Bain, Moira Bain or Swan and Vivien Bain or Sylvestre as Trustees therein mentioned dated Thirteenth March and recorded in the Division of the said Register on Thirtieth June both months in the year Nineteen hundred and Ninety nine.
G3	Group comprising Fagus spp., Tilia spp.	ALL the trees at the confluence of St Lawrence House Burn and Letham Burn, Haddington being part and portion of ALL and WHOLE (ONE) the subjects more particularly described or referred to in Disposition in favour of George Bain dated Sixth January and recorded in the Division of the said Register on First July both months in the year Nineteen hundred and Seventy seven; (TWO) the subjects more particularly described or referred to in Disposition in favour of Kathleen Martin Bain, Andrew George Bain, Moira Bain or Swan and Vivien Bain as Trustees therein mentioned dated Twenty fourth August and recorded in the Division of the said Register on Fifteenth September both months in the year Nineteen hundred and eighty nine and (THREE) the subjects more particularly described or referred to in Disposition in favour of Andrew George Bain, Moira Bain or Swan and Vivian Bain or Sylvestre as Trustees therein mentioned dated Thirteenth March and recorded in the Division of the said Register on Thirtieth June both months in the year Nineteen hundred and Ninety nine.
G4	Group comprising Acer spp., Fagus spp., Tilia spp.	ALL the trees immediately to the west of the junction between Clerkington Road, Haddington and the A6093 Haddington to Pencaitland Road being part and portion of ALL and WHOLE (ONE) the subjects more particularly described or referred to in Disposition with consent therein mentioned in favour of Drygrange Estate Agriculture & Forestry Company Limited dated Twenty ninth November Nineteen hundred and Ninety six and recorded in the Division of the said Register on Thirteenth March Nineteen hundred and Ninety seven and (TWO) the subjects more particularly described or referred to in Disposition in favour of the County Council of the County of East Lothian dated Sixteenth October and recorded in the Division of the said Register on Sixteenth November both months in the year Nineteen hundred and seventy.

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Woodlands
(within a continuous red line on the map)

W1	<p>Woodland comprising</p> <p>Acer spp., Alnus spp., Betula spp., Crataegus spp., Fagus spp., Fraxinus spp., Ilex spp., Larix spp., Picea spp., Pinus spp., Prunus spp., Sorbus spp., Taxus spp., Tilia spp., Ulmus spp.</p>	<p>Woodland to the eastern side of the private road leading from the A6093 Haddington to Pencaitland Road to Clerkington being part and portion of ALL and WHOLE (ONE) the subjects more particularly described or referred to in Land Certificate in favour of Ross William Duff Langlands and Deborah Ruth Strachan and registered in the Land Register of Scotland under title number ELN 519 and (TWO) the subjects more particularly described or referred to in (First) Disposition with consent therein mentioned in favour of Charles Carew Livingston Stevenson and Jocelyn Stevenson dated Fourth February and Fourth and Sixteenth March and recorded in the Division of the said Register on First April all in the year Nineteen hundred and ninety two and (Second) Disposition in favour of Charles Carew Livingston and Jocelyn Stevenson dated Twenty seventh and Twenty ninth February and recorded in the Division of the said Register on Eighth April both months in the year Nineteen hundred and ninety six.</p>
W2	<p>Woodland comprising</p> <p>Acer spp., Alnus spp., Betula spp., Crataegus spp., Fagus spp., Fraxinus spp., Ilex spp., Larix spp., Pinus spp., Picea spp., Populus spp., Prunus spp., Sorbus spp., Tilia spp.</p>	<p>Woodland to the western side of the private road leading from the A6093 Haddington to Pencaitland Road to Clerkington being part and portion of ALL and WHOLE (ONE) the subjects more particularly described or referred to in Land Certificate in favour of Ross William Duff Langlands and Deborah Strachan and registered in the Land Register of Scotland under title number ELN 519 (TWO) the subjects more particularly described or referred to in (First) Disposition with consent therein mentioned in favour of Charles Carew Livingston Stevenson and Jocelyn Stevenson dated Fourth February and Fourth and Sixteenth March and recorded in the Division of the said Register on First April all in the year Nineteen hundred and Ninety two and (Second) Disposition in favour of Charles Carew Livingston Stevenson and Jocelyn Stevenson dated Twenty seventh and Twenty ninth February and recorded in the Division of the said Register on Eighth April both months in the year Nineteen hundred and ninety six; (THREE) the subjects more particularly described or referred to in Disposition by Andrew Blackie Ritchie in favour of William McDonald Ritchie and Audrey Gwen Ritchie in liferent and Crawford Arnold Ritchie and Douglas Ritchie in fee dated Eighth and recorded in the Division of the said Register on Twenty seventh both days of July Nineteen hundred and eighty eight; (FOUR) the subjects more particularly described in (First) Disposition in favour of John Archibald Donachy dated Twenty sixth August and recorded in the Division of the said Register on Nineteenth September both months in the year Nineteen hundred and eighty and (Second)</p>

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		Disposition in favour of Gillian Donachy dated Twenty first and recorded in the Division of the said Register on Twenty ninth both days of November Nineteen hundred and ninety four and (FIVE) the subjects more particularly described or referred to in Disposition in favour of Michael John Tidd and Veronica Kathleen Tidd dated Twenty third October and recorded in the Division of the said Register on Seventh November both months in the year Nineteen hundred and seventy five.
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This is the First Schedule of the East Lothian Council (Clerkington, Haddington) Tree Preservation Order No.107 (20) 2004

Hishie MacNeill
Corporate Legal Advisor
Proper Officer

- 5 OCT 2004

TPO 107 (REVISED)

ELN 05 19

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East Lothian Council LA 100023381 2004

Nat Grid Ref: NT 5073

*This is the plan referred to
in the foregoing order*

Kirstie MacNeill
Corporate Legal Advisor
Proper Officer
- 5 OCT 2004

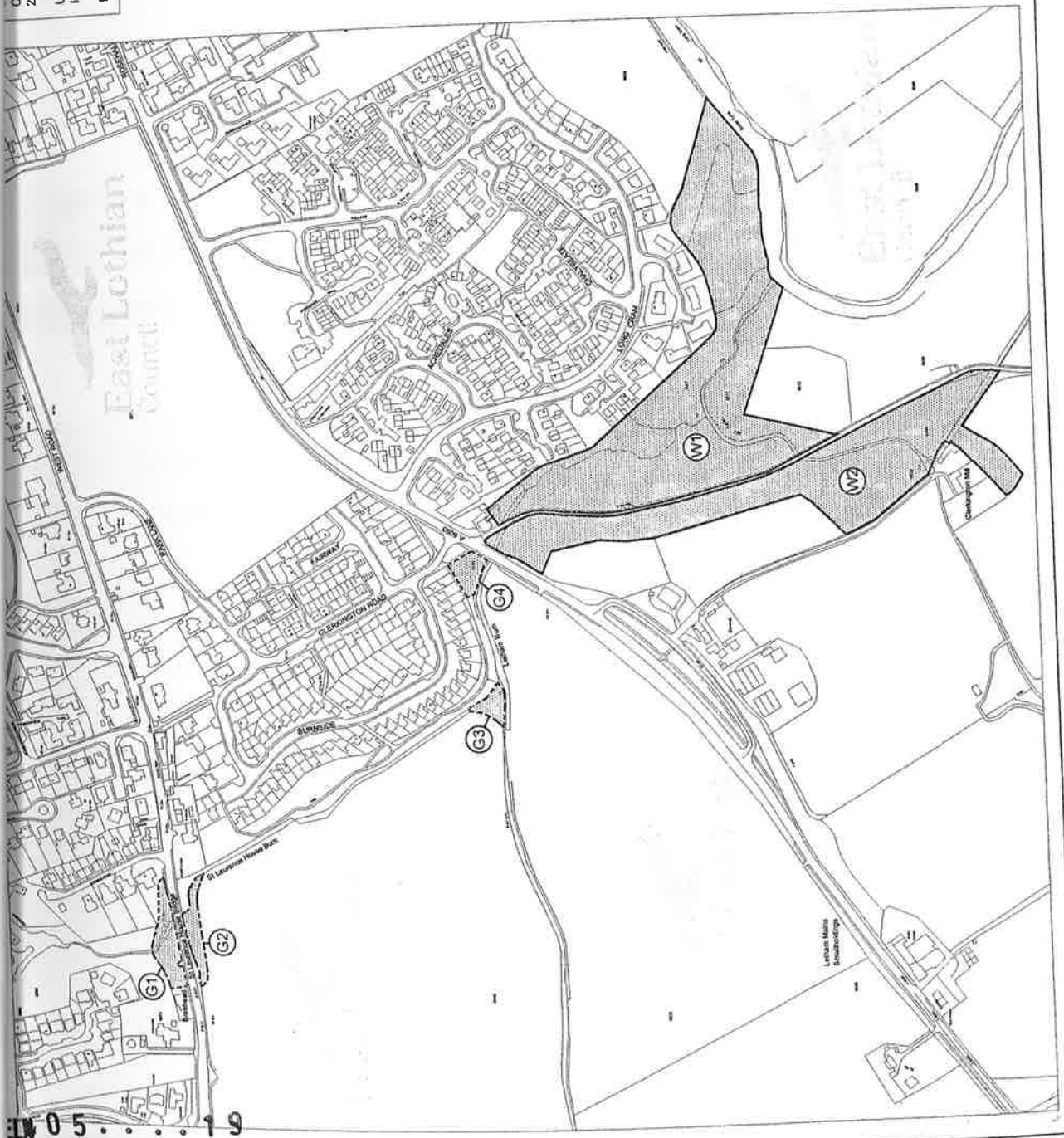
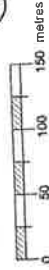


**East Lothian
Council**

CLERKINGTON, HADDINGTON
TPO 20 (2004)



Scale - 1:5000 (at A4 size)



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SECOND SCHEDULE

This Order shall not apply so as to require the consent of the planning authority to -

- (1) the cutting down of any tree on land which is subject to a forestry dedication agreement where:-
 - (a) any positive agreements on the part of the owner of the land contained in the same deed as the forestry dedication agreement and at the time of the cutting down binding on the then owner of the land are fulfilled;
 - (b) the cutting down is in accordance with a plan of operations approved by the Forestry Commission under such deed.
- (2) the cutting down of any tree which is in accordance with a plan of operations approved by the Forestry Commission under the approved woodlands scheme or other grant scheme under Section 4 of the Forestry Act 1967.
- (3) the uprooting, felling or lopping of any tree if such uprooting, felling or lopping is urgently necessary in the interests of safety, or is necessary for the prevention or abatement of a nuisance, so long as notice in writing of the proposed operations is given to the planning authority as soon as may be after the necessity for the operation arises, or if such uprooting, felling or lopping is carried out in compliance with any obligation imposed by or under any Act of Parliament. *(NOTE: Section 167 (1) of the Act requires, unless on the application of the owner the planning authority dispense with the requirement, that any tree removed or destroyed under Section 160 (6) (a) of the Act shall be replaced by another tree of appropriate size and species. In order to enable the planning authority to decide whether or not to dispense with the requirement, notice of the proposed action should be given to the planning authority which except in the case of emergency should be of not less than 5 days.)

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- (4) the uprooting, felling or lopping of a tree:-
- (a) in pursuance of the powers conferred on the Post Office by virtue of Section 5 of the Telegraph (Construction) Act 1908 and Section 21 of the Post Office Act 1969, or by or at the request of the Post Office where the land on which the tree is situated is operational land as defined by the Post Office Operational Land Regulations 1973 and either works on such land cannot otherwise be carried out or the uprooting, felling or lopping is for the purpose of securing safety in the operation of the undertaking;
- (b) by or at the request of (i) a statutory undertaker or holder of a licence under Section 6 (1) of the Electricity Act 1989 where the land on which the tree is situated is operational land as defined by the Act and either works on such land cannot otherwise be carried out or the uprooting, felling or lopping is for the purpose of securing safety in the operation of the undertaking: (ii) a licence holder within the meaning of Part I of the Electricity Act 1989 where such a tree obstructs the construction by the licence holder of any electric line within the meaning of Part I of the said Act of 1989, or interferes or would interfere with the maintenance or working of any such line: (iii) the Secretary of State for Defence, the Secretary of State for Trade or the Civil Aviation Authority where in the opinion of such Secretary of State or Authority the tree obstructs the approach of aircraft to, or their departure from, any aerodrome or hinders the safe and efficient use of aviation or defence technical installations;

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- (c) where immediately required for the purpose of carrying out development authorised by a planning permission granted on an application made under Part III of the Act, or deemed to have been granted for any of the purposes of that part.

This is the Second Schedule of the East Lothian Council (Clerkington, Haddington) Tree Preservation Order No.107 (20) 2004

Kirstin MacDuff
Corporate Legal Advisor
Proper Officer

5 OCT 2004

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THIRD SCHEDULE

- (1) Provisions of the Act as adopted and modified to apply to this Order

PROVISIONS AS TO EFFECT OF CONSENT UNDER THE ORDER:-

44. (1) Without prejudice to the following provisions as to the revocation or modification of consents, any consent under the Order, including any direction as to replanting given by the planning authority on the granting of such consent, shall (except in so far as the consent otherwise provides), enure for the benefit of the land and of all persons for the time-being interested therein.

REFERENCE OF APPLICATIONS TO SCOTTISH MINISTERS

46. (1) Scottish Ministers may give directions to the planning authority requiring applications for consent under the Order to be referred to them instead of being dealt with by the planning authority.
46. (2)(b) A direction under this Section may relate either to a particular application or to applications of a class specified in the direction.
46. (3) Any application in respect of which a direction under this Section has effect shall be referred to Scottish Ministers accordingly.
46. (4) Where an application for consent under the Order is referred to Scottish Ministers under this section, the provisions of Articles 5 and 6 of the Order shall apply as they apply to an application for such consent which falls to be determined by the planning authority
46. (5) Before determining an application referred to them under this Section Scottish Ministers shall, if either the applicant or the planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by Scottish Ministers for the purpose.

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- (6) The decision of Scottish Ministers on any application referred to them under this Section shall be final.

APPEALS AGAINST REFUSAL OF CONSENT OR CONDITIONAL CONSENT:-

47. (1) Where an application is made to the planning authority for consent under the Order and that consent is refused by that planning authority, or is granted by them subject to conditions or where any certificate or direction is given by the planning authority, the applicant if he is aggrieved by their decision or by any such certificate or direction may by notice under this section appeal to Scottish Ministers.
47. (4) Any notice under this Section shall be served in writing within twenty-eight days from the receipt of notification of the decision, certificate or direction, as the case may be, or such longer period as Scottish Ministers may allow.
48. (1) Where an appeal is brought under this Section from a decision, certificate or direction of the planning authority, Scottish Ministers, subject to the following provisions of this Section, may allow or dismiss the appeal, or may reverse or vary any part of the decision of the planning authority, whether the appeal relates to that part thereof or not or may cancel any certificate or cancel or vary any direction and may deal with the application as if it had been made to them in the first instance.
48. (3) Provided that where 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 applicant and shall afford to them an opportunity to make representations thereto.

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48. (2) Before determining an appeal under this Section, Scottish Ministers shall, if either the applicant or the planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by Scottish Ministers for the purpose.
48. (6) The decision of Scottish Ministers on any appeal under this Section shall be final.

APPEAL IN DEFAULT OF DECISION ON APPLICATION FOR CONSENT:-

- 47 (2). Where an application for consent under the Order is made to the planning authority, then unless within two months from the date of the application, or within such extended period as may at any time be agreed upon in writing between the applicant and the planning authority, the planning authority either:-
- (a) give notice to the applicant of their decision on the application; or
 - (b) give notice to him that the application has been referred to Scottish Ministers in accordance with directions given under Section 46 above; the provisions of the last foregoing Section shall apply in relation to the application as if the consent to which it relates had been refused by the planning authority, and as if notification of their decision had been received by the applicant at the end of the said period of two months, or at the end of the said extended period, as the case may be.

POWER TO REVOKE OR MODIFY CONSENT UNDER THE ORDER:-

65. (1)(2) If it appears to the planning authority, having regard to the development plan and to any other material considerations, that it is expedient to revoke or modify any consent granted on an application made under Article 3 of the Order, they may (by

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order) subject to the following provisions of this Section revoke or modify the consent to such extent as (having regard to those matters) they consider expedient.

66. (1) Except as provided in Section 67 of the Act, an order under this Section shall not take effect unless it is confirmed by Scottish Ministers; and Scottish Ministers may confirm any such order submitted to them either without modification or subject to such modifications as they consider expedient.
66. (2)-(5) Where the planning authority submit an order to Scottish Ministers for their confirmation under this Section they shall furnish Scottish Ministers with a statement of their reason for making the order and shall serve notice, together with a copy of the aforesaid statement on the owners, lessees and occupiers of the land affected and on any other person who in their opinion will be affected by the order; and if within such period as may be specified in that notice (being not less than twenty-eight days from the service thereof) any person on whom the notice is served so requires Scottish Ministers, before confirming the order, shall afford to that person and to the planning authority an opportunity of appearing before, and being heard by, a person appointed by Scottish Ministers for the purpose.
65. (3)(4) The power conferred by this Section to revoke or modify consent may be exercised at any time before the operations for which consent has been given have been completed: Provided that revocation or modification of consent shall not affect so much of these operations as has been carried out before the date on which the order was confirmed as aforesaid.

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UNOPPOSED REVOCATION OR MODIFICATION OF CONSENT:-

67. (1)(2) The following provisions shall have effect when the planning authority have made an order under Section 42 above revoking or modifying any consent granted on an application made under a Tree Preservation Order but have not submitted the Order to Scottish Ministers for confirmation by them, and
- (a) the owner, lessee and occupier of the land and all persons who in the planning authority's opinion will be affected by the order have notified the authority in writing that they do not object to the order; and
 - (b) it appears to the planning authority that no claim for compensation is likely to arise under Section 76 of the Act on account of the order.
67. (2)(4)(5) The planning authority shall advertise in the prescribed manner the fact that the order has been made, and the advertisement shall specify:-
- (a) the period (being not less than twenty-eight days from the date on which the advertisement first appears) within which persons affected by the order may give notice to Scottish Ministers that they wish for an opportunity of appearing before, and being heard by, a person appointed by Scottish Ministers for the purpose; and
 - (b) the period (not being less than fourteen days from the expiration of the period referred to in paragraph (a) of this subsection) at the expiration of which, if no such notice is given to Scottish Ministers, the order may take effect by virtue of this Section and without being confirmed by Scottish Ministers.
67. (3) The planning authority shall also serve notice to the same effect on the persons mentioned in subsection (a) above, and the notice shall include a statement to the effect that no compensation is payable under Section 76 of the Act in respect of an

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order under Section 65 of the Act which takes effect by virtue of this Section and without being confirmed by Scottish Ministers.

67. (6) The planning authority shall send a copy of any advertisement published under subsection (2) above to Scottish Ministers not more than three days after the publication.
67. (7) If within the period referred to in subsection (a) above no person claiming to be affected by the order has given notice to Scottish Ministers as aforesaid, and Scottish Ministers have not directed that the order be submitted to them for confirmation, the order shall, at the expiration of the period referred to in subsection (b) above, take effect by virtue of this Section and without being confirmed by Scottish Ministers as required by Section 66(1) above.
67. (8) This Section does not apply to an order revoking or modifying a consent granted or deemed to have been granted by Scottish Ministers under Parts III or VI of the Act.

COMPENSATION WHERE CONSENT REVOKED OR MODIFIED:-

76. (1) Where consent is revoked or modified by an order under Section 65 above then if, on a claim made by the planning authority in writing within the period of six months from the date of the confirmation of the order by Scottish Ministers, it is shown that any person interested in the land:-
- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or
- (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,
- the planning authority shall pay to that person compensation in respect of that expenditure, loss or damage.

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76. (2) For the purposes of this Section any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out that work.
76. (3) Subject to subsection (2) of this Section, no compensation shall be paid under this Section in respect of any work carried out before the grant of the consent which is revoked or modified, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that consent.

This is the Third Schedule of the East Lothian Council (Clerkington, Haddington) Tree Preservation Order No.107 (20) 2004



Corporate Legal
Advisor
Proper Officer

- 5 OCT 2004

TPO 107 (REVISED)
LN 05 19

EXTRACTED by me having commission to that effect from the
Keeper of the Registers of Scotland

