Document 6

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
TOWN AND COUNTRY PLANNING (TREE PRESERVATION ORDER AND TREES IN CONSERVATION AREAS) (SCOTLAND) REGULATIONS 2010
WEST ORCHARD WESTER BALLINDEAN INCHTURE TREE PRESERVATION ORDER NO 1 2019

Perth and Kinross Council, in this Order referred to as "the planning authority", make the following Tree Preservation Order in exercise of the powers conferred by section 160 of the Town and Country Planning (Scotland) Act 1997 and all other powers enabling them to do so and subject to the provisions of the Forestry Act 1967.

Reason for making Tree Preservation Order

The following Tree Preservation Order is made as the planning authority considers that the trees form a fruit orchard of significant conservation, historic and cultural importance.

Citation, commencement and interpretation

1 . (1) This Order may be cited as the "West Orchard, Western Ballindean, Inchture Tree Preservation Order No 1 Order 2019" and takes effect on 26 November 2019.

(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. (1) A protected tree is a tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland specified that Schedule.

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

(3) 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:(a) to cut down, top, lop, uproot, wilfully damage or wilfully destroy; or

(b) to cause or permit the cutting down, topping, lopping, uprooting, or wilful damage or wilful destruction of, a protected tree.

Exemptions

4. Nothing in article 3 is to prevent:-

(a) the cutting down of a tree in accordance with a felling licence granted by The Forestry Commissioners under the Forestry Act 1967;

(b) the cutting down, uprooting, topping or lopping of a tree on land in the occupation of a planning authority when this is done by or with the consent of that authority;

(c) the cutting down, uprooting, topping or lopping of a tree having a diameter not exceeding

75 millimetres;

(d) the cutting down or uprooting in a woodland of a tree having a diameter not exceeding 100 millimetres where this is done to improve the growth of other trees;

(e) the cutting down, uprooting, topping or lopping of a tree by, or on behalf of, The Forestry Commissioners on land placed at their disposal in pursuance of the Forestry Act 1967 or otherwise under their management or supervision;

(f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary:-

(i) in the interests of the safe operation of the undertaking;

(ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or

(iii) to enable the statutory undertaker to carry out development for which planning permission is granted by the 1992 Order,

provided that notice in writing of the proposed operations is given to the planning authority as soon as practicable after the operations become necessary

(g) the topping, lopping or pruning of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;

(h) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;

(i) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to carry out works to implement a planning permission (other than an outline planning permission or planning permission in principle) granted on an application under Part 3 or section 242A of the Act, or deemed to have been granted (whether for the purposes of Part 3 of the Act or otherwise); or

(j) the cutting down, topping, lopping or uprooting of a tree by, or at the request of, SEPA to enable SEPA to carry out development for which planning permission is granted by the 1992 Order.

Directions as to replanting

5. (1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of a woodland area, the planning authority may 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 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) number Of trees per hectare;

(c) the erection and maintenance of fencing necessary for the protection of the replanting;

(d) the preparations of ground, draining, removal of brushwood, lop and top; and

(e) protective measures against fire.

Adaption and Modification of the Act

6. (1) The provisions of the Town and Country Planning (Scotland) Act 1997 mentioned in column 1 of Part I 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 Il of Schedule 2 to this Order.

Compensation

7. (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 El ,000.

(5) No compensation shall be payable to a person:-

(a) for loss of 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.

Offences and Penalties

8. 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 E20,000 and on conviction on indictment to a fine. Other contraventions of this Order carry with them on summary conviction a fine not exceeding Level 4 on the standard scale.

9. (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 authorjsed only by virtue of the provisions of section 160(6) 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 as amended shall apply in any such case.

Application of tree preservation order to future planting

10. This Order applies to any tree specified in Schedule 1 to 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.

The foregoing Order together with the Map and Schedules annexed are seated with the seal of the said Perth and Kinross Council and are subscribed for them and on their behalf by Geoffrey David Fogg, one of their Legal Managers and Proper Officer for the purposes hereof all together at Perth on the Twenty-sixth day of November Two thousand and nineteen.

[redacted]



Proper Officer

The foregoing Order was confirmed without modification on the Eighteenth day of March Two thousand and twenty by Perth and Kinross Council as Planning Authority in exercise of the powers conferred on them by Section 161•of the Town Country Planning (Scotland) Act 1997.



[redacted] and

Proper Officer

This is Schedule 1 referred to in the foregoing Order entitled 'West Orchard, Wester Ballindean, Inchture Tree Preservation Order No 1 2019" dated 26 November 2019

SCHEDULE 1

Article 2

Trees Specified Individually (coloured green on the map)		
No. on Map	Description	Situation
NONE		
Trees Specified by Reference to an Area (within a continuous black line on the map)		
No. on Map	Description	Situation
	A collection of Malus, Prunus and Pyrus species and cultivars forming an orchard standing within the area marked Al on the map	Standing within the subjects registered in the Land Register of Scotland under Title Number PTH4544
Groups of Trees (within a broken black line on the map)		
No. on Map	Descri ption	Situation
NONE		
Woodlands (within a continuous red line on the map)		
No. on Map	Description	Situation
NONE		

[redacted]

Proper Officer

This is Part I of Schedule 2 referred to in the foregoing Order entitled "West Orchard, Wester Ballindean, Inchture Tree Preservation Order No 1 2019" dated 26 November 2019

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.)	For subsections (1) to (3) substitute "(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 compensation awarded in consequence of the decisions of the planning authority or Scottish Ministers; and (c) any directions as to the replanting of woodlands."
Section 37 (determination of applications: generaf considerations)	(a) In subsection (1) (d) for "planning permission" where those words first appear;" substitute "consent under a tree preservation order"; (e) for "sections 27B(2) and 59(1)(b) substitute "subsections (IA) and ". (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 "(IA) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice 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. (1 B) 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"(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,"
Section 44 (effect of planning permission)	(a) references to 'planning permission' are to be treated as references to 'consent required by a tree preservation order'; (b) for 'the permission' substitute 'the consent'; (c) for 'to develop land' substitute 'to carry out works'; and (d) after 'land' insert 'on which the tree or trees to which the consent relates are situated'.
	(e) Omit subsections (2) and (3).

Section 47 (right to appeal against plannina decisions and failure to take such decisions)	(a) For subsection (1) substitute "(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 that authority required by such a direction; or (d) have not given notice of 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". (b) Omit subsections (IA), (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)	(a) In subsection (5)(a) (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), (IA) and (1 and (ii) for "planning permission" substitute "consent under a tree preservation order". (b) Omit subsections (5)(b) and (6) to (8).

[redacted]

Proper Officer

This is Part II of Schedule 2 referred to in the foregoing Order entitled "West Orchard, Wester Ballindean, Inchture Tree Preservation Order No 1 2019" dated 26 November 2019

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 (Scotland) Act 1997, as adapted and modified by Part I of this Schedule 2, 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 compensation 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 (IA) 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.

(IA) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice 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 authoritys decision bears to have been signed on behalf of the authority.

Section 44(1)

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

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 that authority required by such a direction; or

(d) have not given notice of 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 exéiry 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 its 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

48.-(1) On an appeal under section 47 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.

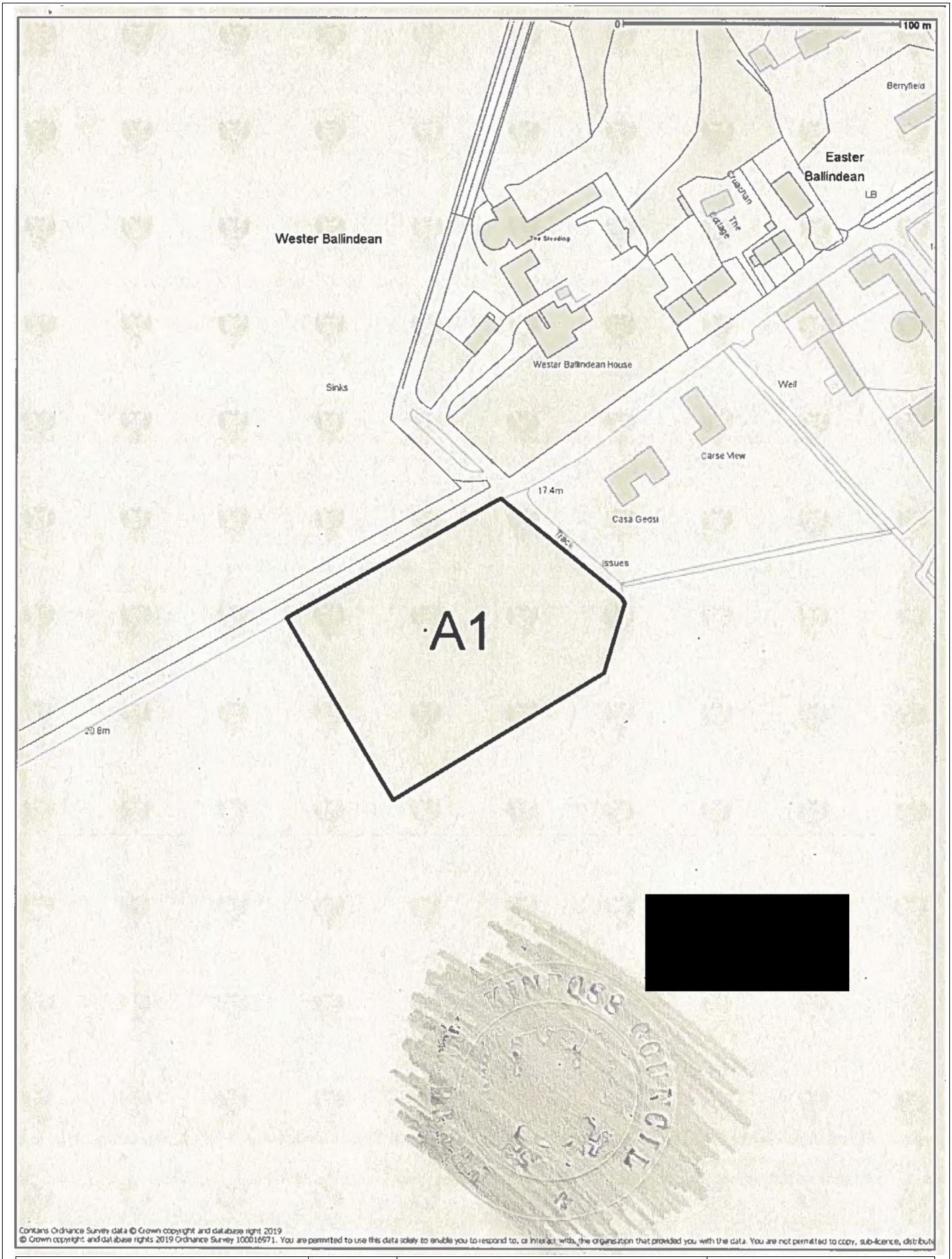
(3) If the Scottish Ministers propose to reverse or vary any part of the decision of the planning authority to which the appeal does not relate, they shall give notice of their intention to the planning authority and to the appellant and shall give each of them an opportunity of making representations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

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

(a) sections 37(1), (IA) and (1 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.





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West Orchard, Wester Ballindean,

Inchture

Tree Preservation Order No. 1 20F1[t]

PERTH & KINROSS COUNCIL

CmaOd Uarlln An&rson on 1$ 2019

TOWN AND COUNTRY PLANNING
(SCOTLAND) ACT 1997

TOWN AND COUNTRY PLANNING (TREE PRESERVATION ORDER AND TREES IN CONSERVATION AREAS) (SCOTLAND) REGULATIONS 2010

WEST ORCHARD WESTER BALLINDEAN INCHTURE TREE PRESERVATION ORDER NO 1 2019

Reference: LE/RE/121/TPO/019/003 AS

Made: 26 November 2019

Confirmed:

2019

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