

## Members' Library Service Request Form

Date of Document	07/05/25
Originator	Sarah Cheyne
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Document Title	Confirmation of Tree Preservation Order at Whittingehame House [T.P.O. no. 146 (2025)]

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**REPORT TO:** MEMBERS' LIBRARY SERVICE

**MEETING DATE:** N/A

**BY:** Executive Director for Place

**SUBJECT:** Confirmation of Tree Preservation Order at Whittingehame House [T.P.O. no. 146 (2025)]

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## **1 PURPOSE**

- 1.1 East Lothian Council placed a Tree Preservation Order (TPO) on two trees located within parkland to the southeast of Whittingehame House on the 4 March 2025. This report advises members that TPO 146 (2025) has now been confirmed.

## **2 RECOMMENDATIONS**

- 2.1 Members are asked to note that, under delegated powers, the decision has been made to confirm this Order.

## **3 BACKGROUND**

### **Reason for promotion of the order**

- 3.1 A planning application was submitted to the council in 2022 for development within the parkland to the southeast of Whittingehame House. On assessment of the site it was noted there were significant trees within the planning application boundary.
- 3.2 Confirmation of this order has safeguarded the amenity value of these culturally and historically significant mature trees.
- 3.3 These trees are now protected under planning law and could not be legally pruned or removed without the prior agreement of the Council.

### **Historic and Cultural Value**

- 3.4 The trees are located within the Inventory Whittingehame Garden and Designed Landscape. This is noted for its high horticultural value due to its well recorded arboretum and specimen trees.
- 3.5 The TPO trees lie within the parkland of the designed landscape, forming part of this original parkland layout. The designed landscape inventory description notes that only those parkland trees in the park south of

Whittingehame House now remain. This makes these trees of great importance to the integrity of the designed landscape.

- 3.6 Both trees are important specimens, and the eucalyptus is of particular note. It is a direct descendent of a tree grown from seed brought back from Australia in 1854.

#### **Threat**

- 3.7 If these trees were felled, an important part of the cultural and arboricultural history of the Garden and Designed Landscape would be lost.

#### **Future Tree Felling or Tree Work**

- 3.8 The confirmation of this TPO would not prevent the owner of the trees from applying to the Council for permission to do tree management work, if necessary, in the future. However, the TPO would give the Council control over such proposals and this control would be used to ensure retention of these culturally and historically significant mature trees.

#### **Objections to the Order**

- 3.9 The Council was required to consider any objections and representations received, before the Order was confirmed. The property owners and the public had 45 days from the time of making the order in which to object.
- 3.10 No objections or representations to this order were received within the notification period.

### **4 POLICY IMPLICATIONS**

- 4.1 None

### **5 INTEGRATED IMPACT ASSESSMENT**

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy

### **6 RESOURCE IMPLICATIONS**

- 6.1 Financial - None
- 6.2 Personnel - None
- 6.3 Other - None

### **7 BACKGROUND PAPERS**

- 7.1 TPO 146

<b>AUTHOR'S NAME</b>	Sarah Cheyne
<b>DESIGNATION</b>	Senior Projects Officer (Landscape)
<b>CONTACT INFO</b>	01620 828756
<b>DATE</b>	7 May 2025

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**  
**THE EAST LoTHIAN COUNCIL (WHITTINGEHAME HOUSE, HADDINGTON, EAST LoTHIAN)**  
**TREE PRESERVATION ORDER No. 146 (2025)**

East Lothian Council constituted under the Local Government etc. (Scotland) Act 1994 and having their principal office at John Muir House, Haddington and in this Tree Preservation Order ("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:-

**1. Citation, commencement and interpretation**

- (1) This Order may be cited as The East Lothian Council (Whittingehame House, Haddington, East Lothian) Tree Preservation Order No. 146 (2025) and takes effect on 4 March 2025.
- (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;  
"Map" means the map annexed and executed as relative to this Order; and  
"Protected Tree" has the meaning given in Article 2.
- (3) Words importing one gender shall be construed as importing any other gender.
- (4) Words importing the singular shall be construed as importing the plural and vice-versa.
- (5) References to any Act of the Scottish or UK Parliaments shall include any modification, extension or re-enactment thereof for the time being in force and shall include all Instruments, orders, notices, plans, regulations, bye-laws, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom.

**2. Protected Trees**

- (1) A Protected Tree is a tree specified in Schedule 1 annexed and executed as relative to this Order.
- (2) The position of a Protected Tree is identified in the manner indicated in Schedule 1 and on the Map. 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.
- (3) The Planning Authority's reasons for making the Order are set out in paragraph (A) of Schedule 1 annexed to this Order.

**3. Prohibited acts**

- 3.1 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) it is to cut down, top, lop, uproot, wilfully damage or wilfully destroy a Protected Tree ; or
  - (b) is to cause or permit the cutting down, topping, lopping, uprooting, or wilful destruction of a Protected Tree.

#### **4. Exemptions**

##### **4.1 Nothing in article 3 is to prevent:-**

- (1) the cutting down, uprooting, topping or lopping of a tree on land in the occupation of the Planning Authority when this is done by or with the prior written consent of the Planning Authority;
- (2) the cutting down, uprooting, topping or lopping of a tree by, or on behalf of Scottish Forestry on land placed at their disposal in pursuance of the Forest and Land Management (Scotland) Act 2018 or otherwise under their management or supervision ;

#### **5. Directions as to replanting**

- (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; and/or
  - (e) protective measures against fire.

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

- (1) The provisions of the Act mentioned in column 1 of Part 1 of Schedule 2 annexed and executed as relative 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.
- (2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part 2 of Schedule 2 to this Order.

#### **7. Compensation**

- (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**

- (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;
  - (c) identify the Protected Tree which would be affected by such operations; and
  - (d) the Protected Tree 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 applicant’s contact details, including but not limited to a current email and telephone number.

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

- (1) 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.**

- (1) Section 171 of the Act shall apply:-
  - (a) 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,
- (c) The said person 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.

**IN WITNESS WHEREOF these presents consisting of this and the preceding 3 pages together with the Schedule 1 and Schedule 2 (containing 2 parts) annexed and the Map annexed are subscribed as follows:-**

This Order is sealed with the Common Seal of East Lothian Council and signed for on its behalf at Haddington on 4 March 2025.



Proper Officer  
East Lothian Council  
John Muir House  
Haddington

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 dated 6 May 2025.



CARLO DOMENICO GRILLI  
Proper Officer  
East Lothian Council  
John Muir House  
Haddington

## SCHEDULE 1

This is the Schedule 1 of The East Lothian Council (Whittingehame House, Haddington, East Lothian)  
Tree Preservation Order No. 146 (2025)

### Trees Specified Individually (coloured green on the map)

No on Map	Description	Situation
T1	Oak	shown coloured green and labelled "T1" and "T2" on the Map and forming part and portion of the subjects registered in the Land Register of Scotland under Title Number ELN15099.
T2	Eucalyptus	

### (A) Reasons for making the Order

In terms of Section 160(1) of the Act it appears to the Planning Authority that the requirements of Section 160 (1A) (a) and (b) of the Act are met in regard to both of the Protected Trees T1 and T2 and the making of the Order is therefore necessary for the preservation of Protected Trees T1 and T2. Accordingly, it is expedient in the interests of amenity to make the Order in relation to Protected Trees T1 and T2 and in addition, they are both of cultural and historical significance. Further and in particular, the Protected Trees T1 and T2 are important to the arboricultural heritage of Whittingehame House Garden and Designed Landscape (Reference WHITTINGEHAME GDL00385)



A handwritten signature in blue ink, appearing to read "C. Muir".

Proper Officer  
East Lothian Council  
John Muir House  
Haddington

**SCHEDULE 2 PART I**

**This is the Schedule 2, Part I of The East Lothian Council (Whittingehame House, Haddington, East Lothian) Tree Preservation Order No. 146 (2025)**

**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>Section 36 (Registers of applications etc.)</p> <p>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 -information as to the nature of such applications, the decisions of the planning authority thereon; 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.”</p>
Section 37 (determination of applications: general considerations)	<p>1. In subsection (1)-</p> <p>(a) for “planning permission” where those words first appear, substitute “consent under a tree preservation order”, for “sections 27B(2) and 59(1 ) (b) substitute “subsections (1A) and (1B)”, for “planning permission” in both of the other places (section 37(1 )(a) and (b)) where those words appear substitute “consent under the order”, after “think fit”, insert, “(including conditions limiting the duration of the consent or requiring the replacement of trees)”,</p> <p>After subsection (1) insert -</p> <p>(a) “(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.</p> <p>(1B) Where the planning 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).”</p>

	<p>Omit subsections (2) and (3); and In subsection (4) for paragraphs (a) to (c) substitute –</p> <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>	<ol style="list-style-type: none"> <li>1. for “planning permission” where those words first appear, substitute “consent under a tree preservation order</li> <li>2. for “the permission” substitute “the consent”</li> <li>3. for “to develop land” substitute “to carry out works</li> <li>4. ”after “land” insert “on which the tree or trees to which the consent relates are situated”; and</li> <li>5. Omit subsections (2) and (3)</li> </ol>
<p>Section 47 (right to appeal against planning decisions and failure to take such decisions)</p>	<ol style="list-style-type: none"> <li>1. 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 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”.</li> <li>3. Omit subsections (1A), (2) and (4).</li> <li>4. 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 -</li> </ol>

	<p>(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</p> <p>(b) paragraph (d) of that subsection, the date of expiry of the period mentioned in that paragraph,”</p> <p>(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.”</p>
Section 47A	To apply to the Order.
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 part I of Schedule 3” substitute “section 37(1), (1A) and (1B)”;</p> <p>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>



*Paul Gault*

Proper Officer  
East Lothian Council  
John Muir House  
Haddington

## SCHEDULE 2 PART II

**This is Schedule 2, Part II of The East Lothian Council (Whittingehame House, Haddington, East Lothian) Tree Preservation Order No. 146 (2025)**

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
- (c) 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.

(1 A) 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) enure 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 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 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.



A handwritten signature in blue ink, appearing to read "Paul Gill".

Proper Officer  
East Lothian Council  
John Muir House  
Haddington



