

Development Management Sub Committee

22 November 2023

Confirmation of Tree Preservation Order No. 205 (Brunstane)

Item number

Report number

Wards

17 – Portobello/Craigmillar

Summary

Tree Preservation Order No. 205 (Brunstane) was made on 1 June 2023 to protect woodland areas in the interests of amenity. This Order expires after 6 months unless it is confirmed within this time. The Order must be confirmed before 1 December 2023 to ensure it provides permanent tree protection.

It is recommended that Committee confirms Tree Preservation Order No. 205 (Brunstane).

It is further recommended that Committee revokes associated Tree Preservation Order No. 193 (Brunstane).

Links

[Policies and guidance for this application](#) CDP ENV12

Report

Confirmation of Tree Preservation Order No. 205 (Brunstane)

Recommendations

- 1.1 It is recommended that Committee confirms the Order and revokes the corresponding previous order.

Background

2.1 Site description

The site consists of groups of trees and woodland at Brunstane, Edinburgh. The trees were planted as part of the design for the original Gilberstoun housing development and provides important visual and amenity benefit as well as green corridors surrounding the public footpath network. It is designated as an area of Green Corridors in the 2009 Open Space Audit. The trees have been planted as part of previous landscaping and are thought in general to be around 30 years old.

This site is not within a conservation area.

2.2 Site History

In June 2023 the planning authority made TPO 193 to cover most of the same area that is included in TPO 205. This was a response to concerns raised by members of the public that ad hoc felling in the woodlands could degrade their amenity value.

In 2020 application 20/03651/TPO was received for the removal of eight birch trees on the edge of a woodland. Consent was granted for this work.

Main report

3.1 Description of the Proposal

TPO 193 (Brunstane) was made in June 2020, however, there was a procedural error in the process of confirmation. One representation was received but was not considered as part of the confirmation process. This was raised by the land owner and in response we agreed to remake the TPO. The shape of W2 was changed in response to the representation which pointed out that part of W2 in TPO 193 covered an area which had received planning permission for a house, and the trees had been cleared.

The TPO has been remade with an altered woodland shape in order to account for the representation received. It is also to ensure that the TPO is made following the correct procedure and is valid.

A revocation order for TPO 193 has been included with this report (see appendix 4) and will take effect if TPO 205 is confirmed. This will revoke TPO 193, which will be replaced with TPO 205, in order to avoid confusion.

3.2 Determining Issues

Section 160 of the Town and Country Planning (Scotland) Act 1997 states that a planning authority may make an order specifying any trees, groups of trees or woodlands in their district and providing for their preservation if it is a) expedient in the interests of amenity to make that provision, or b) that the trees, groups of trees or woodlands are of cultural or historical significance.

The planning authority must consider any representations made in accordance with the Tree Preservation Order and Trees in Conservation Areas Regulations before the tree preservation order is confirmed.

3.3 Assessment

To address these determining issues, the Committee needs to consider whether:

- a) the making of the Order is expedient in the interests of amenity or whether the trees, groups of trees or woodlands are of cultural or historical significance;
- b) the proposal complies with the development plan;
- c) equality and human rights issues have been addressed; and
- d) any representations received indicates the Order should be confirmed, confirmed with modifications or abandoned.

a) Amenity, Expediency and Cultural or Historic Interest

The woodlands in question are of high amenity value due to their prominence in the neighbourhood. They provide a green backdrop to many streets in the Gilbertstoun development.

The making of the Order is expedient as there are development pressures in the area, and refusal of planning permission on the grounds of tree loss can result in the removal of trees. In addition, there is a risk that frequent ad-hoc tree removal could diminish the woodlands over time.

The woodlands are not considered to have cultural or historic significance.

b) Development Plan

The supporting text of Policy Env 12 (Trees) of the Edinburgh Local Development Plan states that where necessary to protect trees, the Council will use its powers to make and enforce Tree Preservation Orders.

In view of the amenity provided by the trees, the requirement to apply a Tree Preservation Order complies with the development plan.

c) Equalities and Human Rights

The proposals raise no equalities or human rights concerns.

The statutory requirement on planning authorities is to make Orders where this is in the interests of amenity. Amenity in this context is interpreted as extending beyond the amenity of an individual party and being of wider public benefit. An Order allows any person to apply for permission to carry out tree pruning, felling etc at any time; at that time the individual circumstances of the case must be assessed and a decision on tree work proposals reached. There is a right of appeal against the decision of a planning authority.

d) Representations

The planning authority is required to consider any objection or representation made within 28 days of making and advertising a Tree Preservation Order. The making of the TPO was advertised in the normal manner. No representations were received.

Conclusion

The blocks of woodlands around Gilbertstoun are part of the design of the neighbourhood and contribute to the character and attractiveness of the area. The Order will ensure that the woodlands are retained and protected.

TPO 205 was made under delegated powers to protect the trees from removal unless with the consent of the Planning Authority.

It is recommended that the Tree Preservation Order be confirmed, along with a revocation of TPO 193, in order to provide permanent protection.

The Tree Preservation Order Schedule and map are enclosed at Appendices 1 and 2 and photographs of the trees at Appendix 3. The revocation order for TPO 193 is enclosed at Appendix 4.

Financial impact

4.1 The financial impact has been assessed as follows:

Costs are accommodated through existing budgets.

Risk, Policy, compliance and governance impact

5.1 Provided Tree Preservation Orders are confirmed in accordance with statutory legislation, the level of risk is low.

Equalities impact

6.1 The equalities impact has been assessed as follows:

The application has been assessed and has no impact in terms of equalities or human rights.

Sustainability impact

7.1 The sustainability impact has been assessed as follows:

This application is not subject to the sustainability requirements of the Edinburgh Design Guidance.

Consultation and engagement

8.1 Pre-Application Process

Not applicable.

8.2 Publicity summary of representations and Community Council comments

The Order was advertised in the local press on 1 June 2023 and displayed at Portobello Library in accordance with regulatory requirements. A copy was also available to view on the Council's website.

Background reading/external references

- [Planning guidelines](#)
- [Edinburgh Local Development Plan](#)
- [National Planning Framework 4 \(www.gov.scot\)](#)
- [Town and Country Planning \(Scotland\) Act 1997 \(legislation.gov.uk\)](#)
- [The Town and Country Planning \(Tree Preservation Order and Trees in Conservation Areas\) \(Scotland\) Regulations 2010 \(legislation.gov.uk\)](#)

Statutory Development

Plan Provision

Where necessary to protect trees, the Council will use its powers to make and enforce Tree Preservation Orders (ENV12).

Date registered

N/A

Drawing numbers/Scheme

N/A

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Links - Policies

Relevant Policies:

Local Development Plan

LDP Policy ENV12 (Trees)

Development will not be permitted if likely to have a damaging impact on a tree protected by a Tree Preservation Order or other tree worthy of retention unless necessary for good arboricultural reasons. Where such permission is granted, replacement planting of appropriate species and numbers will be required to offset the loss to amenity.

This policy recognises the important contribution made by trees to character, biodiversity, amenity and green networks. In assessing proposals affecting trees, the Council will consider their value, taking into account status such as Tree Preservation Order, heritage tree, Ancient Woodland and Millennium Woodland, and information from tree surveys.

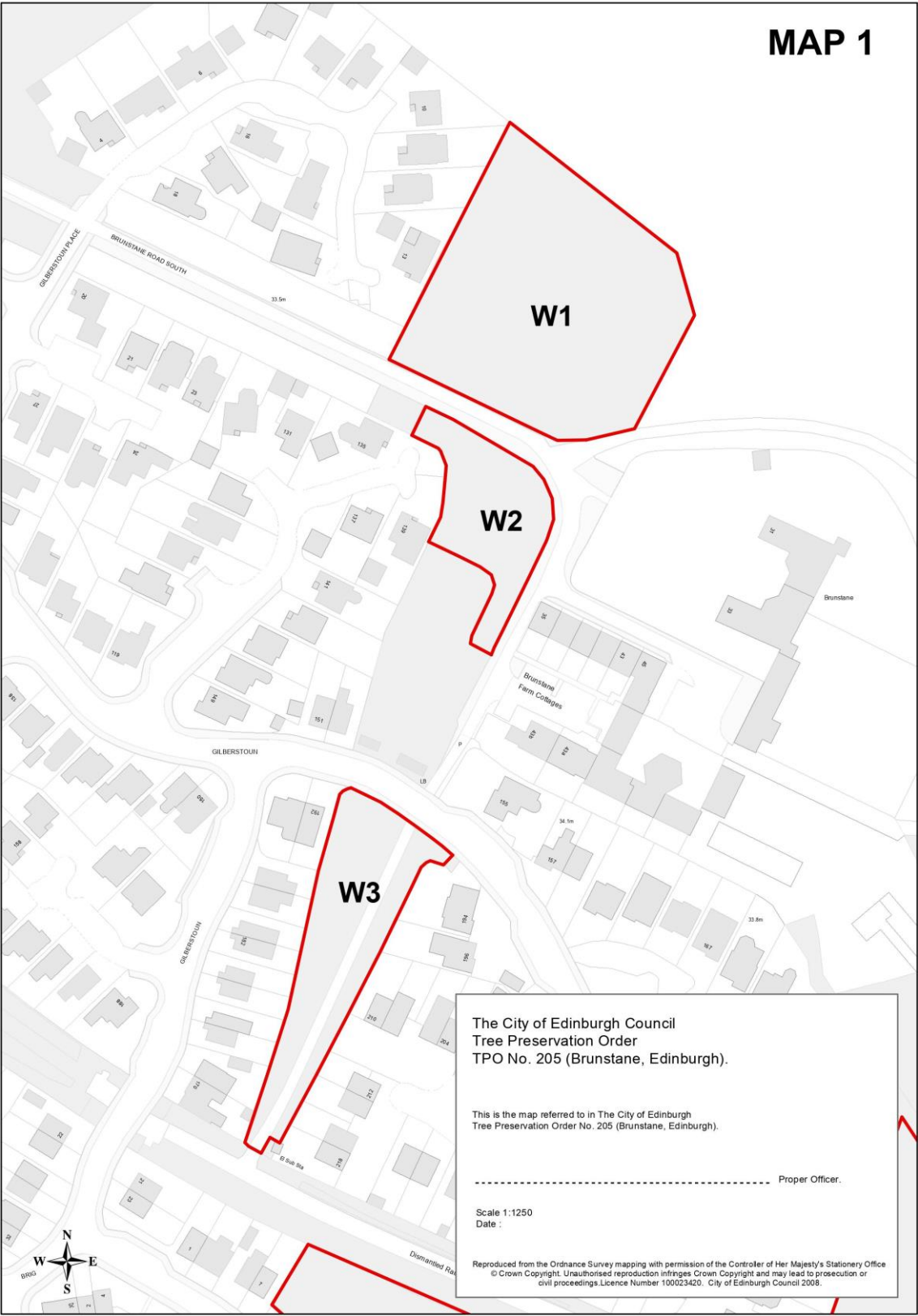
Where necessary to protect trees, the Council will use its powers to make and enforce Tree Preservation Orders.

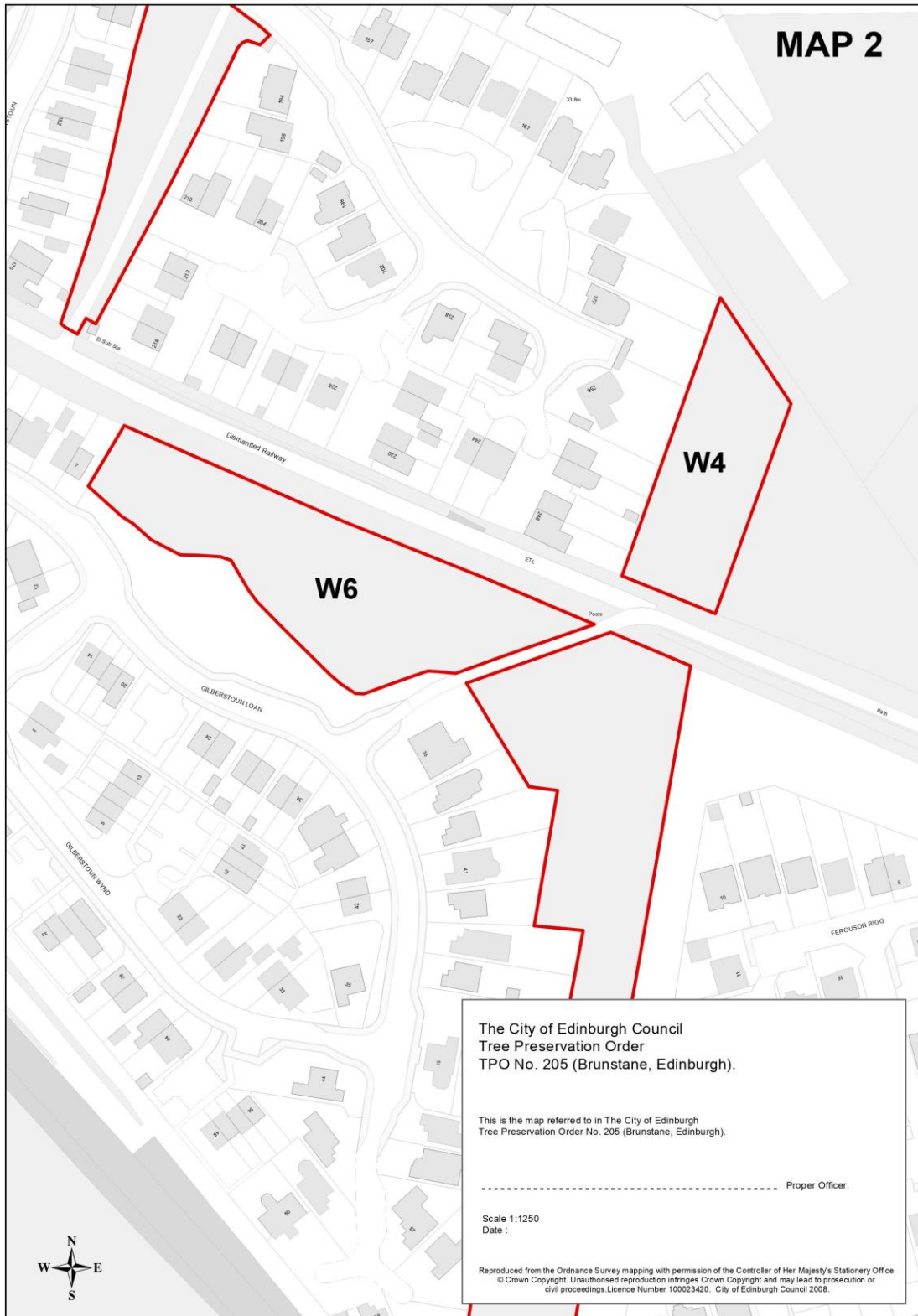
Appendices

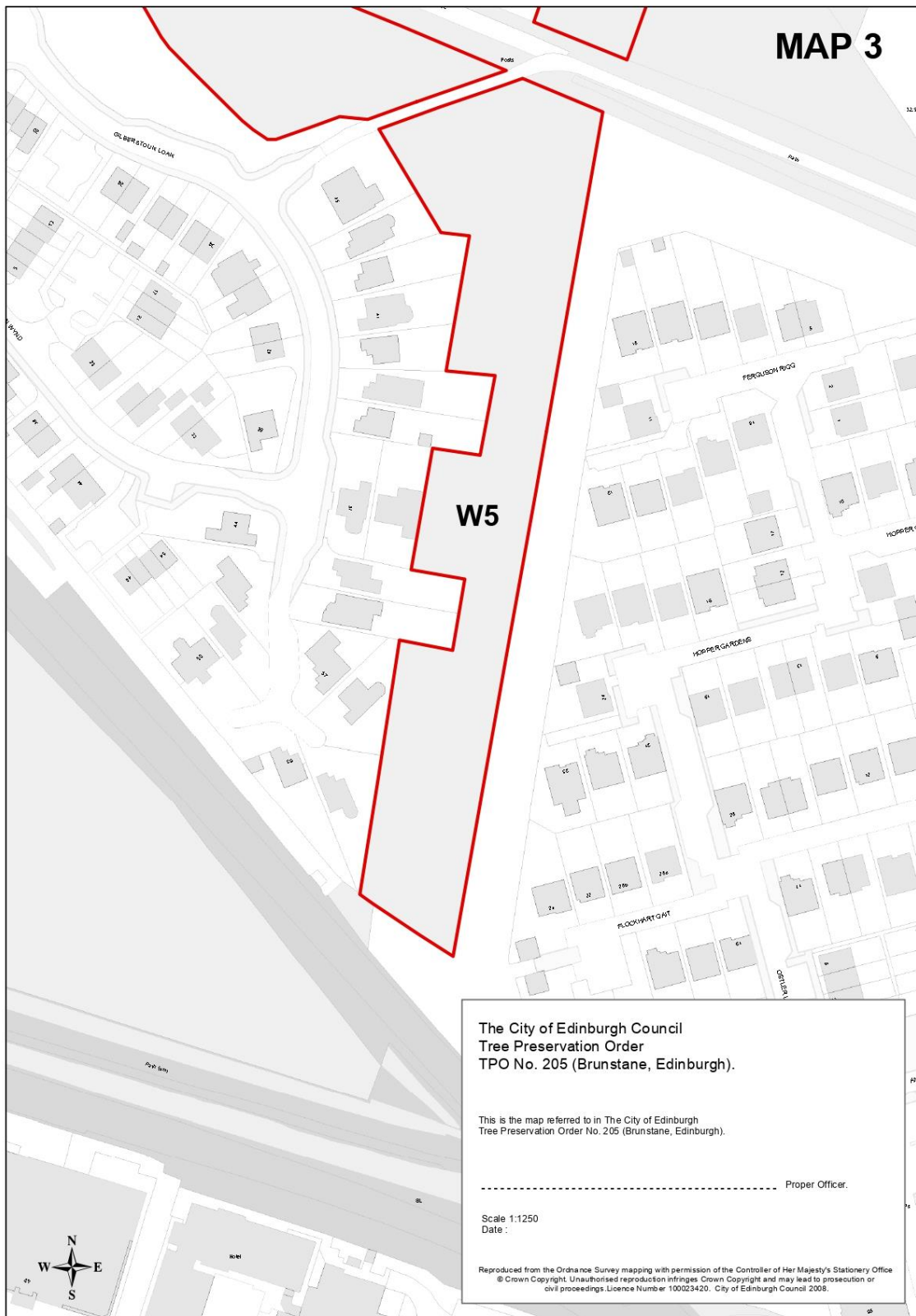
APPENDIX 1 Tree Preservation Order First Schedule

Trees Specified Individually (marked in green on the maps)		
No. on Map	Description	Situation
	None	
Trees Specified by Reference to an Area (within a solid black line on the maps)		
No. on Map	Description	Situation
	None	
Groups of Trees (within a broken black line on the maps)		
No. on Map	Description	Situation
G1	A closely grown group of trees consisting mainly of cherry and hawthorn.	On the land at BRUNSTANE BURN, BRUNSTANE, EDINBURGH and being part of the Titles currently registered in the Land Register of Scotland with Title Number MID95174.
Woodlands (Within a red line on the maps)		
No. on Map	Description	Situation
W1	Comprising trees of mixed species	On the land at BRUNSTANE BURN, BRUNSTANE, EDINBURGH and being part of the Titles currently registered in the Land Register of Scotland with Title Number MID95174.
W2	Comprising trees of mixed species	
W3	Comprising trees of mixed species	
W4	Comprising trees of mixed species	
W5	Comprising trees of mixed species	
W6	Comprising trees of mixed species	

APPENDIX 2 Tree Preservation Order Map







APPENDIX 3 Photographs



Fig. 1: Woodland W6



Fig. 2: Woodland W3



Fig. 3: Woodland W2



Fig. 4: Woodland W3

APPENDIX 4

Revocation order for TPO 193

THE CITY OF EDINBURGH COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

The City of Edinburgh Council make the following Tree Preservation Revocation Order in exercise of the powers conferred by Section 275 of the Town and Country Planning (Scotland) Act 1997 and of all other powers enabling them to do so.

This Order revokes the Tree Preservation Order No. 193 (Brunstane, Edinburgh) which was made on 10 June 2020.

This Revocation Order was confirmed by The City of Edinburgh Council on 22 November 2023.

Morven Kirsty Coulter
Proper Officer

STATEMENT OF REASONS FOR MAKING THE ORDER

The City of Edinburgh Council considers that the Tree Preservation Order made by The City of Edinburgh Council on 10 June 2020 and served on trees and woodland at Brunstane, Edinburgh contained a procedural error which needs to be remedied.