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## NORTH AYRSHIRE COUNCIL

22 March 2023

### Planning Committee Report

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| <b>Title:</b>          | <b>Grouping of Trees in the grounds surrounding Moorpark House, Kilbirnie</b>                                                                                               |
| <b>Purpose:</b>        | To advise Committee regarding the process and merits of protecting a group of trees located on the grounds of Moorpark House, Kilbirnie via a Tree Preservation Order (TPO) |
| <b>Recommendation:</b> | That the Council serves a Tree Preservation Order (TPO) under S.160 1997 Town and Country Planning Act.                                                                     |

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#### 1. Executive Summary

- 1.1 This report is in response to a request from a member of the public relating to the protection offered to a grouping of trees in and around the grounds of Moorpark House. It was brought to the Council's attention that works have taken place on some of the trees.
- 1.2 Some of the trees are afforded some protection by a planning condition in terms of the Planning Permission (ref: 06/00001/PP). The Council has received complaints that works were taking place on the trees.
- 1.3 It is considered that the trees meet the criteria for a Tree Preservation Order (TPO). A TPO would formalise and provide clarity to the level of protection offered. It is therefore recommended that a TPO is served in the interests of protecting public amenity. This report outlines the reasons for this recommendation and the procedures involved.

#### 2. Background

- 2.1 Concerns have been raised from a member of the public about the protection afforded to the trees, some of which are currently subject to works, located within the grounds of Moorpark House. Following receipt of this request, Council Officers conducted a site visit and desk top analysis to assess the suitability of a Tree Preservation Order under relevant legislation.
- 2.2 The Council as the Planning Authority has the power under S160 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc 2006 (Scotland) Act) to make an order specifying any trees, groups of trees or woodlands in their district and providing for their preservation. The Council can exercise these powers providing the tree (or grouping of trees) meets either or both the following requirements:

- (a) that it is expedient in the interests of amenity to make that provision,
- (b) that the trees, groups of trees or woodlands are of cultural or historical significance.

It should be noted that under the legislation, a TPO cannot be served due to the trees being at risk alone. The only two criteria in which a Planning Authority can create a provision are as noted above.

- 2.3 The site surrounding Moorpark House has been subject to a variety of Planning Permissions. Planning Permission (ref: 06/00001/PP), which approved the use of a hotel with associated landscaping, is considered most relevant relating to the protection of the trees. The consent was subject to a condition which requires written approval from the Council as the Planning Authority before any works taking place to any trees within the site. As some time has passed since this consent and the site has been subject to other consents, the validity and extent of protection afforded has been disputed by the owner. Therefore, in the interests of expediency, consideration is required to provide formal protection of the woodland to provide clarity to the level of protection. The Council can create such an order under sc160 of the 1997 Town and Country Planning (Scotland) Act.
- 2.4 Following the desktop assessment, Officers conducted a site visit to determine whether the trees and woodland have the potential to meet the criteria for formal protection. Within the former grounds of Moorpark House, the species and ages of trees found were mixed, ranging from Scots Pine, Sycamore, Lime, Larch and Horse Chestnut to name a few. It is noted that the former grounds of Moorpark House are now in separate ownerships. The area identified for the proposed TPO reflects both physical boundaries at the site, and historic Planning Permissions.
- 2.5 Attention now turns to the criteria for creating TPOs. With regards to contribution to public amenity, it is clear the trees contribute significantly. The trees are an important characteristic of the local area and are visible from various parts of Kilbirnie and its fringes. The western part of the proposed TPO area is directly adjacent to a Core Path, which leads from the edge of the town centre to the more rural northwest fringes of the settlement. The site is also allocated as Open Space within the Local Development Plan, which green infrastructure such as trees play a significant role in contributing to amenity and setting.
- 2.6 Taking the above into account, it is considered that the trees meet the criteria for a Tree Protection Order as trees contribute significantly to public amenity.
- 2.7 The legislation states that a Tree Preservation Order may, in particular, make provision—
  - (a) for prohibiting (subject to any exemptions for which provision may be made by the order) the cutting down, topping, lopping, uprooting, wilful damage, or wilful destruction of trees except with the consent of the planning authority, and for enabling that authority to give their consent subject to conditions.

(b) for securing the replanting, in such manner as may be prescribed by or under the order, of any part of a woodland area which is felled in the course of forestry operations permitted by or under the order.

(c) for applying, in relation to any consent under the order, and to applications for such consent, any of the provisions of the 1997 Town and Country Planning (Scotland) Act.

2.8 The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 outlines the procedures in which Planning Authorities can exercise their powers. If the Council serves a TPO, it is required to be confirmed within 6 months of the date of that notice. Within this time, all interested parties such as Landowners, Occupiers and Lessees must be notified and given a time to respond to the notice of no less than 28 days. The notice is required to be advertised locally in the relevant newspapers that serve the area.

2.9 The six-month period would allow the Council to consult with stakeholders and gain direction from Committee on whether to confirm the TPO (or amend it) and put it in place in perpetuity.

2.10 It should be noted that protection of the trees under a TPO does not provide absolute protection to all the trees on the site. Protection via a TPO only means that permission is required to cut down, top, lop, uproot trees from the Council. Should the removal of trees be part of any future planning consent, then that would supersede the TPO. Should a TPO be created however, then the impacts upon the trees may become a material consideration when determining a planning application.

### **3. Proposals**

3.1 It is proposed that the Council serves notice of a Tree Preservation Order in the interests of public amenity. It is then proposed that Council will seek the views of stakeholders and advertise the notice in the local newspapers.

3.2 Once the Tree Preservation Order has been created. The Council has 6 months to confirm the TPO when the Order will be placed within the Scottish Land Register.

#### **4. Implications/Socio-economic Duty**

##### **Financial**

4.1 None. The TPO can be created and advertised within existing budgets.

##### **Human Resources**

4.2 None. The TPO can be created and advertised within existing staff resources.

##### **Legal**

4.3 Should a TPO be confirmed, a notice is required to be written and recorded in the Scottish Land Register.

##### **Equality/Socio-economic**

4.4 Trees can have numerous benefits for those seeking tranquillity. The grounds, that the trees are located in, play a significant role in society and are part of a community that use the church and the grounds.

##### **Climate Change and Carbon**

4.5 Trees can have positive impacts on the climate through carbon sequestration.

##### **Key Priorities**

4.6 The proposed TPO would align with the Council Plan Priorities of 'Vibrant, welcoming, and attractive places' and 'A sustainable environment.'

##### **Community Wealth Building**

4.7 None.

#### **5. Consultation**

5.1 Consultation is required with landowners, occupiers and lessees and published in a local paper with at least 28 days given for response.

JAMES MILLER  
Chief Planning Officer

For further information please contact **Thom Ledingham, Planning Officer (Strategic Planning)**,  
on **01294 324 623**

#### **Background Papers**

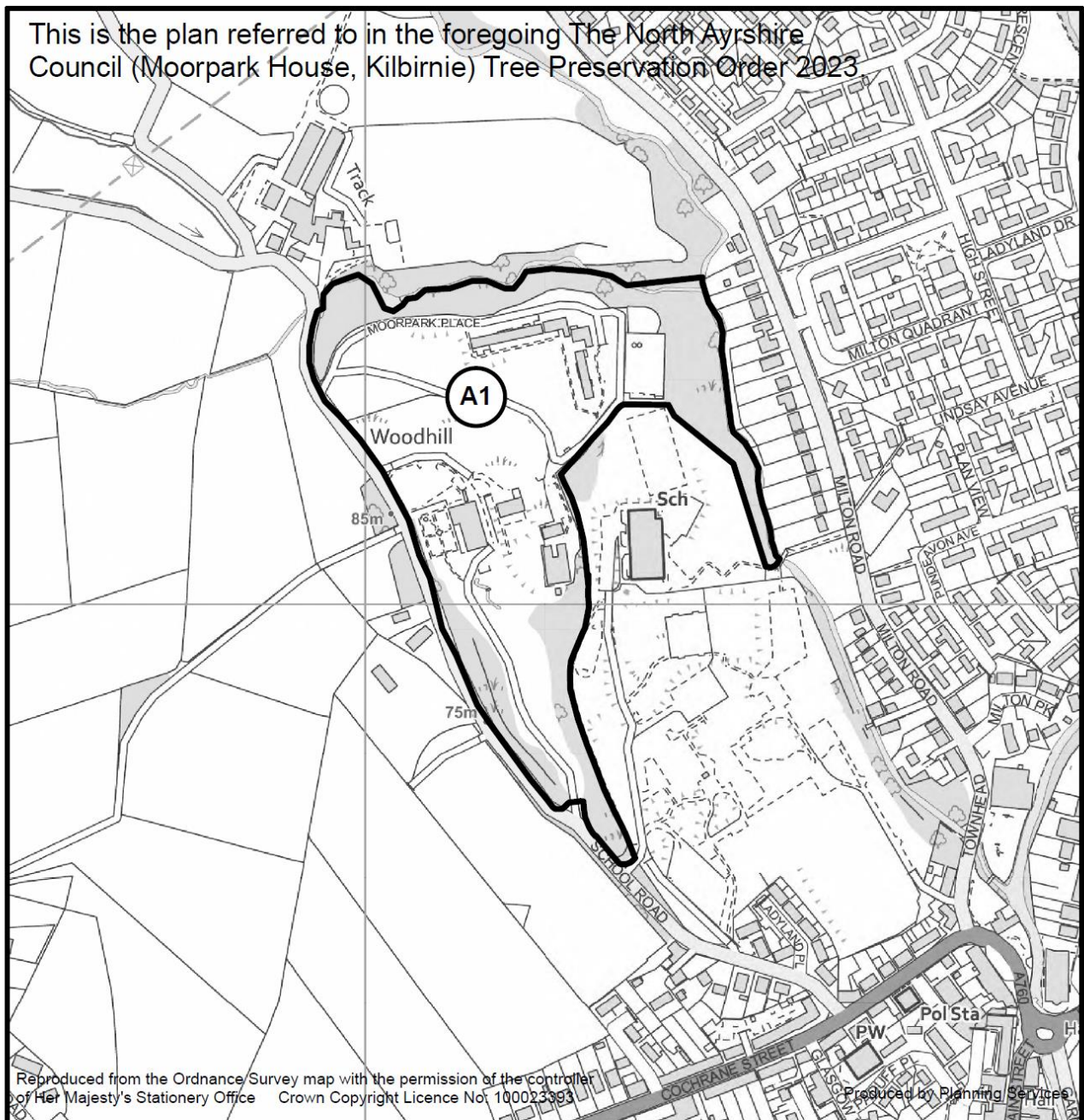
Appendix 1 – Proposed Tree Preservation Order

# TREE PRESERVATION ORDER

## Moorpark House, Kilbirnie

## APPENDIX 1

This is the plan referred to in the foregoing The North Ayrshire Council (Moorpark House, Kilbirnie) Tree Preservation Order 2023



Address: Moorpark House, Kilbirnie

Grid Ref: NS 3114.5512

Area: A1 - 8.567Ha

Description: Mixed deciduous trees



**Scale: 1:5000**