



North Ayrshire Council  
Comhairle Siorrachd Àir a Tuath

## Planning Committee

A Meeting of the **Planning Committee** of North Ayrshire Council will be held in the **Council Chambers, Ground Floor, Cunninghame House, Irvine, KA12 8EE** on **Wednesday, 22 February 2023** at **14:00** to consider the undernoted business.

### Meeting Arrangements - Hybrid Meetings

This meeting will be held on a predominantly physical basis but with provision, by prior notification, for remote attendance by Elected Members in accordance with the provisions of the Local Government (Scotland) Act 2003. Where possible, the meeting will be live-streamed and available to view at <https://north-ayrshire.public-i.tv/core/portal/home>.

#### 1 **Declarations of Interest**

Members are requested to give notice of any declarations of interest in respect of items of business on the Agenda.

#### 2 **Minutes**

The accuracy of the Minutes of the Meeting of the Planning Committee held on 25 January 2023 will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973 (copy enclosed).

#### 3 **National Planning Framework 4 (NPF4)**

Submit report by the Executive Director (Place) on the adoption of NPF4 (copy enclosed).

#### 4 **Tree Preservation Order: Grouping of Trees adjacent to Wildcat Lane and Summerlea Road, West Kilbride**

Submit report by the Chief Planning Officer regarding confirmation of a Tree Preservation Order (TPO) for a group of trees located along Wildcat Road and Summerlea Road, West Kilbride (copy enclosed).

**5 Tree Preservation Order: Grouping of Trees located at Stevenston High Kirk and Manse**

Submit report by the Chief Planning Officer regarding the process and merits of protecting a group of trees located on the grounds of Stevenston High Kirk and the adjacent Manse (copy enclosed).

**6 Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: Tennox Farm, Kilbirnie**

Submit report by the Chief Planning Officer seeking approval for the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act, 1997 requiring the removal of the unauthorised dwellinghouse, associated outbuildings and ancillary works at Tennox Farm, Kilbirnie and restoration of the land to its former condition prior to development (copy enclosed).

**7 Urgent Items**

Any other items which the Chair considers to be urgent.

**Webcasting**

Please note: this meeting may be filmed/recorded/live-streamed to the Council's internet site and available to view at <https://north-ayrshire.public-i.tv/core/portal/home>, where it will be capable of repeated viewing. At the start of the meeting, the Provost/Chair will confirm if all or part of the meeting is being filmed/recorded/live-streamed.

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Generally, the press and public seating areas will not be filmed. However, by entering the Council Chambers, using the press or public seating area or (by invitation) participating remotely in this meeting, you are consenting to being filmed and consenting to the use and storage of those images and sound recordings and any information pertaining to you contained in them for webcasting or training purposes and for the purpose of keeping historical records and making those records available to the public. If you do not wish to participate in a recording, you should leave the meeting. This will constitute your revocation of consent.

If you have any queries regarding this and, in particular, if you believe that use and/or storage of any particular information would cause, or be likely to cause, substantial damage or distress to any individual, please contact [dataprotectionofficer@north-ayrshire.gov.uk](mailto:dataprotectionofficer@north-ayrshire.gov.uk).

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## Planning Committee Sederunt

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Robert Foster (Chair)  
Timothy Billings (Vice-Chair)  
Scott Davidson  
Stewart Ferguson  
Cameron Inglis  
Amanda Kerr  
Davina McTiernan  
Jim Montgomerie  
Ian Murdoch  
Chloe Robertson

Chair:

Apologies:

Attending:



At a Meeting of the Planning Committee of North Ayrshire Council at 2.00 p.m. involving a combination of participation by remote electronic means and physical attendance within the Council Chambers, Irvine

**Present (Physical Participation)**

Robert Foster, Timothy Billings Stewart Ferguson and Cameron Inglis

**Present (Remote Participation)**

Amanda Kerr, Jim Montgomerie, Ian Murdoch and Chloé Robertson.

**Also Present (Physical Participation)**

Todd Ferguson (Agenda Items 1 – 3).

**In Attendance**

J. Miller, Chief Planning Officer (Planning); R. Lynch, Senior Manager, J. Niven, Solicitor (Legal Services), H. Clancy, C. Stewart and S. Wilson Committee Services Officers (Democratic Services) (Chief Executive's Service).

**Also in Attendance**

G. Cloughley, G. Buckley and J. Martin (Objectors) and K. Murphy, S. Livingston and S. Fallon (Applicant's Representatives) (Agenda Items 1 – 3).

**Chair**

Councillor Foster in the Chair.

**Apologies**

Scott Davidson and Davina McTiernan.

**1. Declarations of Interest**

There were no declarations of interest by Members in terms of Standing Order 11 and Section 5 of the Code of Conduct for Councillors.

**2. Minutes**

The Minutes of the Meeting held on 22 November were confirmed and signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

**3. 21/01174/PPM: Site To North Of Summerlea Road And West Of Snowdon Terrace, Seamill, West Kilbride**

Persimmon Homes have applied for planning permission for the erection of 220 dwelling houses and associated infrastructure and landscaping at the site to the north of Summerlea Road and West of Snowdon Terrace, Seamill, West Kilbride. 158 objections, 1 representation of support and 3 neutral representations were received and detailed in the report.

The Chair advised that he had accepted a request from an Objector to address the Committee in terms of their objections to the application. George Cloughley, Graham Buckley and Janet Martin were in attendance to speak to the terms of their objection. Persimmon Homes, as the applicant, had been invited to respond to the objections raised. Kevin Murphy, Steven Livingston and Simon Fallon were in attendance as representatives of the applicant.

The Senior Manager (Legal Services) outlined the terms of the Procedure for those addressing the Planning Committee and all parties confirmed their understanding and acceptance thereof.

Mr Cloughley addressed the Committee in support of the objections and highlighted there were 175 objections at LDP stage, 158 objections at the planning stage, 700 signatures on a petition, 200 people attended at candlelight vigil, over 100 people signed a letter from West Kilbride Community Council in support of the objections. Mr Cloughley referred to the 684 bedrooms on the developers' drawings but advised 831 were shown when looking at the individual house types. 220 houses were proposed but only 175 recommended by the Scottish Government and the 460 parking spaces stated in the application seemed a high number as the objectors could only see 300 parking spaces on the plans.

Mr Cloughley referred to the population numbers of West Kilbride and the possibility of an additional 1100 people, with a population of 4,700 this represents a 23% rise and advised the town did not have the infrastructure to cope with this. Mr Cloughley also advised the traffic census had been undertaken during lockdown. Mr Cloughley highlighted that the developer's plans showed houses built over the top of the pipe section of Wildcat Burn and also referred to the Reporter's recommendation that the developer should contribute to local infrastructure. Mr Cloughley advised the site entrance should be taken from Portencross road, the Transport Scotland conditions could not be addressed, and the application should be refused.

Mr Buckley also spoke in support of the objections, referring to previous planning applications that had been refused for the same site. He made reference to the Spatial Strategy under Policy One of the Local Development Plan and highlighted the proposed site was prime arable land used to produce 3 crops per year. Mr Buckley expressed the view that housing development should be advantageous and a benefit to the local community, while the proposed development was detrimental to the local community due to the inadequate infrastructure and services required for the development. It was Mr Buckley's position that all local councillors, local MSPs and West Kilbride Community Council were against the development.

Mr Buckley also highlighted the 9 conditions relating to trunk road modifications, crossing points, new footpaths and modifications to existing footpaths which were site specific and would not be relevant to another site and there was no provision for crossing the B7048.

Ms Martin also addressed the committee in support of the objections, advising that the local community do not want to expand the village while diminishing local services. She referred to the regeneration work of the local community over the past 20 years. Ms Martin also highlighted a lack of communication, clarity and consideration in terms of the consultation process.

Mr Murphy then addressed the Committee on behalf of the applicant, in response to the objectors. He referred to the allocation of the site proposed through the LDP in 2019 and the aim of the Spatial Strategy to provide a balance across North Ayrshire in terms of where new developments took place and the balance of the type of sites brought forward. Mr Murphy advised the site was intended in the LDP to play a key role in the delivery of new housing in North Ayrshire and support a number of key objectives, such as attracting inward investment, creating jobs, delivering economic growth, and growing the population of North Ayrshire (particularly with regard to attracting and retaining residents of a working age).

Mr Murphy referred to the mix of housing types on the site being specially designed to provide a range and choice for the local community at each stage of their housing journey, from first time buyers and families to those looking to downsize. He advised that the house types ranged from 2-bed starter homes to 5-bed detached family homes, as well as 16 bungalows designed to meet the needs of older people. Mr Murphy highlighted that, over the past 5 years, 32% of sales from outwith North Ayrshire and 81% of Persimmon Homes purchased in North Ayrshire had been to people under the age for 40 with 45% sold to first-time buyers.

Mr Murphy advised that the capacity for the site identified in the LDP was indicative, with the eventual unit numbers coming from a more detailed technical analysis of the site and surrounding infrastructure and could easily accommodate 220 houses. He indicated that Persimmon Homes were also committed to fund works to improve the local primary school.

Mr Murphy then referred to the layout of the site, highlighting the proposed retention of trees on Summerlea Road and Wildcat Lane, the maintenance of views to Arran along the A78 through a series of visual corridors, significant landscaping to the site, retention of the existing stonewall along the boundary and the introduction of new crossing points on the A78. He advised that Persimmon Homes had also addressed all road safety points raised by Transport Scotland and North Ayrshire Council Roads Department to ensure safe routes to the Primary School and village centre. A full flood risk assessment and drainage strategy had been completed, all surface water would be controlled by a sustainable urban drainage system and the site would continue to drain to Wildcat Burn. Eight of the 90 trees on site required to be removed, with a root assessment still required for a further 6 trees, and any tree removal would be offset with new tree planting management. To minimise disruption to the local community, a construction traffic management plan would be implemented, and Persimmon Homes would update the local community as the development advanced.

The objectors were then afforded an opportunity to make brief final comments. Mr Cloughley referred to the number of 2-bed houses and the pipe section of the Wildcat Burn to be accommodated through a field drain.

At the Chair's discretion, Councillor Todd Ferguson, as Local Member was invited to speak and expressed support for the objectors' comments and noted the reduction from 262 to 220 units feel short of the indicative 175 in the Local Development Plan.

Members then asked questions of the objectors and applicant's representatives and received further information on the following: -

- house numbers and the recommendation by the Scottish Government for 175 houses;
- use of adequate garages as parking spaces and the calculation of these spaces;
- the increase of approximately 25% in local population over the last 15 years; and
- the pipe burn and field drain at Wildcat Burn.

The Chief Planning Officer then outlined the terms of the planning report.

The Committee was invited to note that a road construction consent was required by Persimmon Homes to facilitate this development and a further condition, relating to road safety measures was proposed to allow pedestrians to safely cross the B7408.

Members had the opportunity to ask further questions and received clarification on the following: -

- the adequacy of the current local infrastructure to support the application in terms of the anticipated increase in population;
- local primary school improvements and proposed timescales for this;
- ongoing maintenance and additional staff due to the expansion of the local primary school;
- trees on the southern end of the site, and an area of Wild Cat Lane to be covered by a provisional Tree Preservation Order;
- road safety in light of an increased number of people crossing the B7408;
- consultation with the NHS and an apparent conflict between the information presented and the experience of local constituents;
- A detailed drainage assessment to identify any potential flood risk, the outcome of which had been factored into proposed Condition 23; and
- additional Primary School needs to meet the demand of the site.

Councillor Billings, seconded by Councillor Murdoch, moved that the application be refused on the grounds that Committee did not have adequate assurances on the medical practice provision for the local area.

Councillor Foster, seconded by Councillor Montgomerie, moved that the application be granted, subject to (a) the completion of a Section 75 Agreement on the required educational contributions, and (b) the conditions noted within the report

On a division and a roll call vote, there voted for the amendment Councillors Foster, Inglis, Kerr and Montgomerie and (4) and for the motion, Councillors Billings, Ferguson, Murdoch and Robertson (4), and on the casting vote of the Chair, the amendment was declared carried.

On a point of order, Councillor Billings requested clarification whether, in the event of an equality of votes, a casting vote should be used to maintain the status quo, which would in this case mean that the development should not proceed.

In terms of Standing Order 6.8, the Chair agreed that the meeting be adjourned at 3.35 p.m. for the Committee to receive legal advice. The meeting reconvened at 4.10 p.m. with the same Members and officers present and in attendance (as previously by remote electronic means or in person).

The Senior Manager (Legal Services) confirmed to the Committee that, in terms of Part 1(1) Preliminary and specifically Standing Order 19.6 relating to meetings and proceedings of the Council and Committees, a casting vote could be exercised by the Chair in these circumstances and the decision, therefore, stood. In addition, the terms of Schedule 7, paragraph 5(2) of the Local Government (Scotland) Act 1973 and the considerations to determining planning applications under the Town and Country Planning (Scotland) Act 1997 were further referred to.

Accordingly, the Committee agreed (a) to grant the application, subject to the following conditions: -

1. That prior to the commencement of the development, a written scheme of investigation for a programme of archaeological works shall be submitted to the Council, as Planning Authority, for written approval and agreement of the West of Scotland Archaeological Service. Thereafter any programme of works as agreed will be carried out in accordance with the written scheme to the satisfaction of the Council, as Planning Authority.
2. That prior to the commencement of the development, a desk study of the site to assess the likelihood of contamination and assist the design of an appropriate site investigation and subsequent suitable risk assessment, including remediation proposals if required, shall be undertaken. The study shall be verified by a suitably qualified Environmental Consultant and shall be submitted to and approved by the Council, as Planning Authority, prior to commencement of the development.
3. That the presence of any significant unsuspected contamination that becomes evident during the development of the site shall be brought to the attention of NAC Environmental Health. Thereafter a suitable investigation strategy as agreed with North Ayrshire Council shall be implemented and any necessary remediation works carried out prior to any further development taking place on the site, all to the satisfaction of Council as Planning Authority.
4. On completion of the development, written verification detailing what was done by way of any remediation shall be submitted to the Council, as Planning Authority.
5. That prior to the commencement of the development, a Construction Environmental Management Plan (CEMP) shall be submitted for the approval of the Council, as Planning Authority. The CEMP shall include the proposed Dust Mitigation recommended in Appendix 6 of the Air Quality Impact Assessment report by ITP Energised, Project No 4667 v1, submitted as part of this application, dated 25th November 2021. The CEMP shall also include a Construction Traffic Management Plan which will include details of construction vehicle wheel washing. The development will be carried out in accordance with any CEMP as may be approved.

6. That prior to the commencement of the development, the detailed design for the proposed access to the trunk road, shall be submitted to the Council, as Planning Authority, for approval in consultation with Transport Scotland as the Trunk Roads Authority. Detailed designs shall be to a standard compliant with DMRB CD 123.
7. There shall be no access to or from the A78 trunk road until the new access to the trunk road has been constructed and completed in accordance with any details as approved under Condition 6. For the avoidance of doubt no access for construction traffic shall be taken from Summerlea Road.
8. That prior to the commencement of the development, details regarding the design for the proposed geometric alterations to the A78/B7048 priority junction, shall be submitted to and approved in writing by the Council, as Planning Authority, in consultation with Transport Scotland as the Trunk Roads Authority. Any approved works shall be carried out prior to the occupation of any part of the site.
9. That prior to the commencement of the development, detailed design and final location for the proposed signal-controlled pedestrian crossing shall be submitted to the Council, as Planning Authority, for approval in consultation with Transport Scotland as the Trunk Roads Authority. Any crossing as may be approved shall be constructed prior to the occupation of any part of the site.
10. That prior to the commencement of the development, detailed design of the A78 footway between the pedestrian crossing and the A78/B7048 junction shall be submitted to the Council, as Planning Authority, for approval in consultation with Transport Scotland as the Trunk Roads Authority. Any footway as may be approved shall be constructed prior to the occupation of any part of the site.
11. That prior to the commencement of the development, details regarding the design for the proposed geometric alterations to the A78/Summerlea Road priority junction, shall be submitted to and approved in writing by the Council, as Planning Authority, in consultation with Transport Scotland as the Trunk Roads Authority. Any approved works shall be carried out prior to the occupation of any part of the site.
12. That prior to the commencement of the development, detailed design and final location for the uncontrolled pedestrian crossing shall be submitted to the Council, as Planning Authority, for approval in consultation with Transport Scotland as the Trunk Roads Authority. Any crossing as may be approved shall be constructed prior to the occupation of any part of the site.
13. That prior to commencement of the development, a Phasing Plan shall be submitted for approval by the Council, in consultation with Transport Scotland as the Trunk Roads Authority. The development will thereafter be carried out in accordance with any phasing plan as may be approved.
14. That prior to the occupation of any part of the development, a comprehensive Travel Plan that sets out proposals for reducing dependency on the private car has been submitted and approved by the Council, as Planning Authority, in consultation with Transport Scotland as the Trunk Roads Authority.

15. That prior to the commencement of the development details of all boundary treatments both within and on the edges of the site shall be submitted to the Council, as Planning Authority, for approval. Any boundary for the edge of the trunk road will be approved in consultation with Transport Scotland. Any proposed new boundary treatments shall include 13cm x 13cm gaps to allow animal movement.
16. That prior to the commencement of the development details of all existing and proposed landscaping and play areas, including management and maintenance details, shall be submitted to the Council, as Planning Authority, for approval. Landscaping shall include the recommendations set out in Section 7, Paras 3 – 5 and 10 of the Ecological Assessment report by JDC Ecology, submitted as part of this application, dated 1st December 2021.
17. That any landscaping scheme as may be approved under Condition 16 shall be carried out in the first planting season following completion or occupation of the houses within the relevant phases approved under condition 13, whichever is soonest, or unless otherwise agreed in writing by the Council, as Planning Authority. Any trees or plants which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the Council, as Planning Authority, gives written consent to any variation.
18. That the any play area for the southern end of the site approved under Condition 16 shall be erected and available for use prior to the occupation of any houses on Plots 19 to 26 or Plots 56 to 64 unless otherwise agreed in writing by the Council, as Planning Authority.
19. That the any play area for the northern end of the site approved under Condition 16 shall be erected and available for use prior to the occupation of any houses on Plots 181 to 189 or Plots 201 to 204 unless otherwise agreed in writing by the Council, as Planning Authority.
20. That prior to the commencement of the development details of tree protection measures during construction shall be submitted to the Council, as Planning Authority. The details should conform with BS 5837. Prior to the commencement of plots 44-52 an Arboricultural Impact Assessment to agree driveway positions n is to be submitted to and approved by the Council, as Planning Authority. Any details as may be approved will be implemented prior to the commencement of any works.
21. That prior to the commencement of the development details of footway widening on the B7048 to a minimum of 2m, unless otherwise agreed in writing with the Council, as Planning Authority, from the junction of the A78 to No. 30 Portencross Road shall be submitted to the Council, as Planning Authority, for approval. Any details as may be approved shall be carried out prior to the occupation of the development.

22. That prior to the commencement of the development, details of measures to address the runoff entering the northeast corner of the site from the A78 and B7048 road junction are submitted to the Council, as Planning Authority, for approval. Thereafter the development will be carried out in accordance with any details as may be approved.
23. That prior to the commencement of the development, an appropriately detailed drainage assessment identifying any potential flood risk from the proposed surface water infrastructure at times up to and including the 1 in 200 year the critical storm event (plus climate change and urban creep allowances) shall be submitted to the Council, as Planning Authority, for approval. Where flood risk is confirmed, flood flow-paths should be designed and maintained to disperse exceedance flows to the water environment without affecting people and property during times of intense rainfall. Such flood flow-paths should be provided for approval prior to the commencement of the development.
24. That prior to the commencement of the development, the detailed design of the SuDS basin shall be provided to the Council, as Planning Authority, for approval. This should include measures such as a section of reduced crest level that would control overtopping when the holding capacity of the basin is exceeded, either during periods of intense rainfall or when the outfall is blocked. Thereafter the development will be carried out in accordance with any details as may be approved.
25. That prior to the commencement of the development, details of the site levels for the western side of the site shall be submitted to the Council, as Planning Authority, for approval. Thereafter the development will be carried out in accordance with any details as may be approved.
26. That prior to the commencement of the development, full details of water quality treatment measures are submitted to the Council, as Planning Authority, for approval. Thereafter the development will be carried out in accordance with any details as may be approved.
27. That the footpath links on the eastern side of the site shall be formed and open prior to the occupation of the adjacent house. The footpath link on the southern side of the site shall be formed and open prior to the occupation of Plot 53. The footpath link on the southern side of the western side of the site shall be formed and open prior to the occupation of Plots 190 and 191. The footpath link on the northern end of the western side of the site shall be formed and open prior to the occupation of Plot 153.
28. That, prior to the commencement of the development hereby approved, a statement containing details of the heat and power systems for the houses, which shall include low or zero carbon technologies to demonstrate that at least 10% of the current carbon emissions reduction set by Scottish Building Standards will be met, shall be submitted for the written approval of the Council, as Planning Authority. Thereafter, the development shall be implemented in accordance with such details as may be approved unless otherwise agreed in writing with the Council, as Planning Authority.

29. That prior to the commencement of the development hereby approved, the developer shall provide full details of the proposed finishing materials for the written approval of North Ayrshire Council as Planning Authority. Thereafter, the development shall progress in accordance with such details as may be approved.
30. That prior to the commencement of the development details of a pedestrian crossing for the B7048 to the east of the junction with the A78 shall be submitted to the Council, as Planning Authority, for approval. Any details as may be approved shall be carried out prior to the occupation of the development.

Councillors Montgomerie and Murdoch left the meeting at this point.

#### **4. 22/00890/PPP: Site to North Of Kirn Point, Newton Road, Lochranza**

John Thomson Construction Ltd have applied for planning permission in principle for four residential plots and re-aligned access path at the site to the north of Kirn Point, Newton Road, Lochranza. 56 objections, 53 from individuals and 3 on behalf of groups (Lochranza and Catacol Community Association, Arran Civic Trust and Community of Arran Seabed Trust) and 2 expressions of support were received and detailed in the report.

The Committee unanimously agreed to grant the application, subject to the following conditions: -

1. That prior to the commencement of any development on site, a further planning application(s) for the approval of the matters specified in this condition (MSC) must be submitted to and approved by North Ayrshire Council as Planning Authority. These matters are as follows:
  - (a) details of the design, siting and external finishes of the proposed houses;
  - (b) details of the means of de-lination of the individual residential plots;
  - (c) the design and location of all boundary treatments including any walls or fences and hard landscaped areas;
  - (d) the means of drainage and surface water strategy and methodology for sewage disposal, including Sustainable Urban Drainage Systems (SUDS), all set out in a comprehensive Drainage Assessment, including ongoing maintenance details. Such SUDS shall be self-certified by a suitably qualified person;
  - (e) the landscaping and associated maintenance proposals for the site, including details of existing trees, hedgerows and other planting to be retained and any tree protection measures together with proposals for any new planting, specifying number, size and species of all trees and shrubs, a management implementation programme and proposals to replace any landscaping which fails in the first five years following planting; and
  - (f) details of the heat and power systems for the houses, which shall include low and/or zero carbon technologies to demonstrate that at least 10% of the current carbon emissions reduction set by Scottish Building Standards will be met. For the avoidance of doubt, the houses proposed for the site shall be of traditional design and no more than one and a half storeys in height. All of the above shall be to the satisfaction of North Ayrshire Council as planning authority.

2. That prior to the commencement of any development works on the site: (i) intervisible passing places shall be provided and maintained thereafter on the road to the front of the site to the agreement and satisfaction of North Ayrshire Council as Planning Authority; (ii) the existing surfaced turning point at the northwest of the site shall be retained and shall not be included within the curtilage of any house. Full details of the matters above shall be submitted with the subsequent application(s) for detailed planning permission, all to the satisfaction of North Ayrshire Council as planning authority.
3. That the Right of Way (ref:SCU123/1) which runs through the site hereby approved shall not be stopped up or diverted in any way until a Path Diversion Order has been made and confirmed under S.208 of the Town and Country Planning (Scotland) Act.
4. That the recommendations contained in Section 5.3 of the Preliminary Ecological Appraisal, prepared by Starling Learning and submitted with the application hereby approved, shall be implemented in full prior to the commencement of any development works on the site and that the details, conclusions and recommendations of a further otter survey shall be submitted with the subsequent planning application(s) for detailed planning permission, all to the satisfaction of North Ayrshire Council as planning authority.
5. That details of site sections and the finished floor levels of the proposed houses shall be submitted with the subsequent application(s) for detailed planning permission to ensure that no development takes place below 4.22m AOD, all to the satisfaction of North Ayrshire Council as planning authority.

## **5. Urgent Items**

The Chair agreed that the following item be considered as a matter of urgency.

### **5.1 Planning Performance Framework**

Submitted report by the Executive Director (Place) on the feedback from the Scottish Government on the 2021/22 Planning Performance Framework. The Performance Markers report was set out at Appendix 1 to the report.

The Chief Planning Officer advised the Planning Committee that the Scottish Government (SG) PPF audit assessed the 15 performance markers through the RAG rating and provided commentary on each marker. Following representation to the Government, North Ayrshire Council had given a green rating for all of the relevant markers. The Committee commended Officers for their continued best practice in delivering the Planning Service for the benefit of the communities and developers of North Ayrshire.

Noted.

The meeting ended at 4.35 p.m.

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**NORTH AYRSHIRE COUNCIL**
**22 February 2023**
**Planning Committee**


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**Title:** **National Planning Framework 4**
**Purpose:** To advise the Planning Committee that Scotland's fourth National Planning Framework (NPF4) has been adopted and the provisions of the Planning (Scotland) Act 2019 which amend the composition of the development plan to include the National Planning Framework have been commenced.

**Recommendation:** To note the adoption of National Planning Framework 4 and that it is now part of the development plan for North Ayrshire.

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**1. Executive Summary**

- 1.1 On 13 February 2023, Scottish Ministers adopted and published National Planning Framework 4 (NPF4). On adoption, NPF4 became part of the statutory development plan for North Ayrshire. Prepared by the Scottish Government, the National Planning Framework is a long-term spatial strategy, establishing the principles and policies which underpin the planning system and guide where and how development should take place.
- 1.2 NPF4 sets out a national spatial strategy looking forward to 2045. It places the twin global climate and nature crises at the heart of a vision for a future Scotland to ensure decisions made today are in the long-term public interest. NPF4 seeks to support the planning and delivery of sustainable, liveable and productive places which reduce emissions; restore and better connect biodiversity; enable us to live better, healthier lives; and create a greener, fairer and more inclusive wellbeing economy. The delivery of the spatial strategy is supported by the designation of eighteen national developments, including Hunterston, regional spatial priorities for five broad regions of Scotland and 33 national planning policies.
- 1.3 Changes to planning legislation in 2019 – which commenced this month alongside the adoption of NPF4 – mean that the National Planning Framework has increased status in decision-making. Decisions on planning applications must be made in accordance with the development plan unless material considerations indicate otherwise: NPF4 now sits alongside North Ayrshire's adopted Local Development Plan (LDP2) as the development plan. Its policies are directly relevant in the assessment and determination of planning applications. The Council's next Local Development Plan (LDP3) and any Local Place Plans prepared by community bodies to inform LDP3 must take account of NPF4.

## 2. Background

- 2.1 *Scotland 2045: our Fourth National Planning Framework*, commonly known as NPF4, is required by law to set out the Scottish Ministers' policies and proposals for the development and use of land. It plays a key role in supporting the delivery of Scotland's national outcomes and the United Nations Sustainable Development Goals. Legislation also requires the NPF to contribute to six outcomes, namely: meeting the housing needs and improving the health and wellbeing of people living in Scotland; increasing the population of rural areas; improving equality and eliminating discrimination; meeting targets relating to the reduction of emissions of greenhouse gases, and; securing positive effects for biodiversity. Aligned with a wider programme of planning reform, work commenced to prepare Scotland's fourth National Planning Framework (NPF4) at the beginning of 2020.
- 2.2 During January to April 2020, the Scottish Government sought early views on NPF4 through a 'Call for Ideas', inviting stakeholders to consider Scotland in 2045 and reflecting on planning policy changes and national developments needed to get there. In November 2020, Government published its Position Statement which reflected on the Call for Ideas and set out thinking on potential policy changes. In November 2021, Draft NPF4 was laid in the Scottish Parliament. Alongside Parliamentary scrutiny of the draft, a public consultation to invite comments on the content of the draft ran until the end of March 2022. Planning Committee approved North Ayrshire Council's input into this process at meetings in March 2020, January 2021 and March 2022.
- 2.3 A Revised Draft National Planning Framework was laid in the Scottish Parliament for approval in November 2022, alongside a Delivery Programme, an Explanatory Report that outlines the changes from Draft NPF4 to the Revised Draft and other supporting documents and assessments. Parliament debated the Revised Draft on 11 January 2023 and voted to approve NPF4. Scottish Ministers moved to formally adopt and publish NPF4 on 13 February 2023 at 9am. The provisions of the Planning (Scotland) Act 2019 which amend the composition of the development plan have also been commenced, making the National Planning Framework part of the development plan.
- 2.4 NPF4 comprises two parts: A National Spatial Strategy for Scotland 2045 and National Planning Policy:

### Part 1 – A National Spatial Strategy for Scotland 2045

- 2.5 NPF4 puts the twin global climate and nature crises at the heart of a national spatial strategy which seeks to maximise the potential of planning as a powerful tool for delivering change on the ground in the long-term public interest. In doing so, the strategy seeks to bring together competing interests to make the right choices about where development should be located in the context of past, present and future challenges. Future places are to be planned in accordance with six overarching spatial principles of just transition; conserving and recycling assets; local living; compact urban growth; rebalanced development and rural revitalisation.
- 2.6 By applying these spatial principles, the national spatial strategy supports the planning and delivery of sustainable, liveable and productive places which reduce emissions; restore and better connect biodiversity; enable us to live better, healthier lives; and create a greener, fairer and more inclusive wellbeing economy.

- 2.7 NPF4 identifies National Developments to support the delivery of the spatial strategy. National Developments are expected to act as exemplars of the place principle and placemaking approaches and be designed and progressed in a way which supports community wealth building. Designation as a National Development means that the principle of the development does not need to be agreed in later consenting processes, providing more certainty for communities, business and investors. Hunterston has been designated as one of 18 national developments in total. Six of the National Developments are Scotland-wide relating to the digital fibre network; a national walking, cycling and wheeling network; facilities to support the Circular Economy and renewable electricity and transmission infrastructure. The Central Scotland Green Network, which extends to North Ayrshire, is also retained as a National Development.
- 2.8 North Ayrshire Council, as set out in the Adopted Local Development Plan – alongside Scottish Enterprise and port owners Peels Ports – have promoted the designation of Hunterston as a National Development within the NPF4. The designation supports the repurposing of Hunterston with the location and infrastructure identified as offering potential for electricity generation from renewables, and a variety of commercial uses including port, research and development, aquaculture, the circular economy, and environmental and economic opportunities around nuclear decommissioning expertise. Following submissions from NAC in response to Draft NPF4, the spatial extent of the National Development has been expanded and is defined as Hunterston Port, nuclear power station sites and marketable employment land at Hunterston Estate.
- 2.9 In recognition the diversity of character, assets and challenges across the country the spatial strategy will be taken forward in different ways across Scotland. To guide this, NPF4 identifies regional spatial priorities for five broad regions. North Ayrshire sits within the Central region where the focus is on climate change and responding to the challenges of the pandemic, driving forward change to tackle inequalities and build a new, greener, future for this part of the country. Although not identified as a National Development, NPF4 does recognise the Ardeer peninsula as a significant site for redevelopment of the wider Ayrshire area within the context of targeting economic investment and building community wealth to overcome disadvantage and support a greener wellbeing economy. As intimated in LDP2, the future development including the environmental and infrastructure capacity of Ardeer will be considered in the preparation of LDP3.
- 2.10 Our representations on the Draft NPF4 highlighted that North Ayrshire’s location within the Central region was not a good fit for our islands, Arran and Cumbrae, which it was considered would be a better placed within the ‘north west and coast innovation’ action area, with a focus on making sustainable use of our coasts and islands to sustain communities and pioneer investment in the blue economy. While not expressly addressed within the final NPF, the principle of Action Areas has been refined. The areas are refocused as Regional Spatial Priorities, with an emphasis on context, challenges, priorities and delivery and the strategic diagram showing boundaries has been removed to allow for flexibility in application. The Carbon Neutral Island project on Great Cumbrae is now specifically referenced within the renamed ‘North and West Coast and Islands’ area.

## Part 2 – National Planning Policy

- 2.11 NPF4 incorporates updated Scottish Planning Policy which contains detailed national policy on a number of themes. For the first time, spatial and thematic planning policies are brought together in one place at a national level as part of the development plan. Aligned with the creation of sustainable, liveable, productive places, NPF4 sets out 33 national planning policies. For each theme, the policy intent, outcomes, role of the Local Development Plan and policy is provided, with the latter for use in the determination of planning applications. Key policy connections and the spatial principles the policy will deliver are also highlighted. Significant concern was expressed at Draft stage that the wording of these policies was imprecise and lacked robustness, for example stating development 'should' rather than 'must'. This has largely been addressed in the Adopted NPF4.
- 2.12 In relation to the delivery of housing, The Planning (Scotland) Act, 2019 requires Scottish Ministers, in preparing the National Planning Framework to include 'targets for the use of land in different areas for Scotland for housing'. This has been addressed in NPF4 by the establishment of a ten-year Minimum All Tenure Housing Land Requirement (MATHLR) for each planning authority. The MATHLR set for North Ayrshire in Annex B is 2950 homes which is the minimum figure for new housing in the Plan period. For reference, this compares to the target of 4071 homes between 2019-2029 set out in LDP2.

### Delivery

- 2.13 A key focus of planning reform is delivery, however, Draft NPF4 was not accompanied by detailed proposals for delivering the spatial strategy. This has been addressed with version 1 of the National Planning Framework 4 Delivery Programme published in November 2022. The first Delivery Programme considered governance; delivery mechanisms; infrastructure funding and finance; skills resources and performance; and monitoring and evaluation before setting out a number of actions. To be updated within six months and thereafter on an annual basis, the Delivery Programme acknowledges the concerns raised over a lack of resources in terms of headcount and skills to implement and support the delivery of NPF4.

## **3. Proposals**

- 3.1 It is recommended that the Committee notes the adoption of National Planning Framework 4 and that it is now part of the development plan for North Ayrshire.

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

### Financial

- 4.1 NPF4 is accompanied by a Final Business and Regulatory Impact Assessment (BIRA) which identifies 14 areas of policy that may have a resourcing and skills impact on planning authorities, for example through the requirement to consider new or expanded policies, evidence or assessments. RTPI Scotland have stated the BRIA has not fully considered the real-world costs of the revised NPF4 on planning authorities and underestimates the potential for resourcing and skills impact. Resourcing the planning system is likely to remain a key consideration with NPF4's

Delivery Programme. We anticipate that NPF 4 can be delivered within existing budget.

### **Human Resources**

4.2 See above, and note that we anticipate that NPF 4 can be delivered within existing staff resources.

### **Legal**

4.3 National Planning Framework 4 forms part of the development plan for North Ayrshire, in addition to the Adopted Local Development Plan (LDP2). Decisions on planning applications must be made in accordance with the development plan unless material consideration indicate otherwise.

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

4.4 A number of statutory and non-statutory assessments have informed the preparation of NPF4 and an Integrated Impact Assessment Report has been published alongside the draft NPF4. These include a Strategic Environmental Assessment and Society and Equalities Impact Assessment, incorporating an Equalities Impact Assessment (EQIA), including human rights considerations, Child Rights & Wellbeing Impact Assessment (CRWIA), Fairer Scotland Duty assessment (FSD) and Island Communities Impact Assessment.

### **Environmental and Sustainability**

4.5 See above.

### **Key Priorities**

4.6 NPF4 aligns with wider national priorities, programmes and strategies, including on infrastructure and economic investment. These align with many the Council's key priorities, including a sustainable environment; affordable, modern and well-designed homes; and effective infrastructure.

### **Community Wealth Building**

4.7 References to Community Wealth Building are made throughout NPF4. This includes Policy 25 that seeks to encourage, promote and facilitate a 'new strategic approach to economic development that also provides a practical model for building a wellbeing economy at local, regional and national levels' by supporting local economic development that focuses on community and place benefits as a central and primary consideration.

## **5. Consultation**

5.1 A comprehensive engagement programme has informed the preparation of the National Planning Framework, including three rounds of consultation: Call for Ideas

(2020), Position Statement (2020) and Draft NPF4 (2021). Planning Committee approved North Ayrshire Council's input into this process at these stages.

RUSSELL McCUTCHEON  
Executive Director (Place)

For further information please contact **Alistair Gemmell, Strategic Planning Manager**, on **01294 324021**.

### **Background Papers**

Adopted National Planning Framework 4 and supporting documents

[Approved NPF4 | Transforming Planning](#)

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**NORTH AYRSHIRE COUNCIL**

**22 February 2023**

**Planning Report Committee**

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**Title:** **Grouping of Trees adjacent to Wildcat Lane and Summerlea Road, West Kilbride**

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**Purpose:** To seek Committee approval regarding the Confirmation of a Tree Preservation Order (TPO) for a group of trees located along Wildcat Road and Summerlea Road, West Kilbride.

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**Recommendation:** That the Committee confirms a Tree Preservation Order (TPO) under S.160 1997 Town and Country Planning (Scotland) Act in the interests of protecting public amenity.

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**1. Executive Summary**

- 1.1 This report updates members on the process of creating a Tree Preservation Order (TPO) on a grouping of Trees along Wildcat Road and Summerlea Road in West Kilbride. The TPO, which was created in September 2022 following the approval from the Planning Committee, was subject to a public consultation period in line with relevant legislation. The report summarises the representations made and makes recommendations on further action, upon consideration of those representations.
- 1.2 After analysing the representations received, it is recommended that the TPO is confirmed unmodified as the grouping of trees contribute to wider public amenity.

**2. Background**

- 2.1 The Planning Committee on 28 September 2022 agreed to serve a Tree Preservation Order (TPO) along Wildcat Road (sometimes referred to as Wildcat Lane) and Summerlea Road in West Kilbride. Committee was advised at that meeting that the Council is required to confirm a TPO within 6 months of the Order being created following a consultation period of no less than 28 days.
- 2.2 Prior to the September Committee, independent analysis from an Arboricultural specialist was undertaken to determine the suitability of a TPO on the grouping of trees. It concluded that there was merit in creating a TPO due to the contribution the trees make to public amenity. The analysis separated the trees into two distinct groupings referred to as Compartment 1 which mainly adjoined Summerlea Road and Compartment 2 which mainly adjoined either side of Wildcat Road.
- 2.2 During the consultation period, notice was served on interested parties and an advert was placed in the local newspaper. A consultation period of 28 days started from the

date of the notice (7 October 2022) which attracted three letters of representation (two of objection and one of support).

### 3. Representations

3.1 The representations are summarised below with the Officer's response.

3.2 Persimmon Homes objected to the creation of a TPO on several grounds including:

- In compartment 2, the creation of a TPO is not required for the trees as they are not at risk
- Should the TPO be created, compartment 1 should be excluded as it would be more appropriate to protect the trees via a planning condition to be included in planning application reference 21/01174/PPM.
- The trees in Compartment 1 are not of sufficient health to be protected as per the representees own assessment which was made as part of their planning application submission.
- The representee has concerns over public safety and amenity (via lighting) and the potential additional time it would take to maintain the trees to protect public safety.

3.3 *Response: the representation is noted. It is considered at that the trees should be considered for protection under the criteria listed in S.160 of the Town and Country Planning (Scotland) Act 1997, namely (a) that it is expedient in the interests of amenity to make that provision and (b) that the trees, groups of trees or woodlands are of cultural or historical significance. It is noted that the independent analysis notes the risk to the trees. However, the decision was made by officers to assess the analyse the trees on their own merit. To determine expediency, it was noted that the independent report states that the woodland as a whole has a "moderate to high amenity value". In response to concerns regarding the health of the trees, the independent report states that the trees in compartment 1 contain dense ivy and show presence of fungal pathogen tar-spot. However, the analysis also notes that this disease of the foliage is of little agricultural concern and all the trees in compartment 1 "display normal vitality".*

3.4 *The concerns over public safety and amenity are noted. However, should there be any immediate risk to public safety, the legislation allows emergency works to take place to trees without permission from the Council if they were protected via a TPO. Some routine maintenance is also be permitted without gaining consent from the Council.*

3.5 *It is accepted that the potential adding of a planning condition may offer some protection to the trees in the future. However, this was considered an undesirable option when determining the suitability of a TPO. Reasons for this include that a planning condition may not offer sufficient protection after any consented development takes place. A TPO would ensure that the trees are protected whatever future land use occupies nearby sites. It is also noted that the trees have been considered as whole and any planning condition would only apply to that within the boundary of any future planning consent.*

3.6 Brisbane Glen Estates Company LTD objects to the creation of a TPO in this instance

for the following reasons:

- For compartment 1 - The representee quotes the Informed Tree Services report, which states that if planning consent is not granted for the adjoining field of Summerlea Road and Wildcat Road, then it would not be expedient to create a TPO and that if the consent was granted then the trees could be protected via carefully worded planning condition.
- For compartment 2 – the trees in compartment 2 do not form part the proposed development and will remain in the ownership of the representee. The representee further states that the trees require regular maintenance due to the nature of the site being close to a main Scottish Water Drain. To carry out this management will lead to “extra bureaucratic delays” being imposed. The representation also highlighted that compartment 2 was located on the North Ayrshire Core Paths Network.

3.7 *Response: It is considered that the trees should be assessed against the criteria set in relevant legislation to determine the suitability of a TPO. Therefore, the suitability of a TPO should be assessed against the value of trees on their own merit and in their current context. The issue of using a planning condition to protect the trees is responded to in para. 3.5. With regards to delays, it is accepted that some works will now be subject to gaining permission from the Council as the Planning Authority. As stated above, should there be an immediate risk to public safety, then the responsible person can carry out appropriate works to ensure trees are made safe. With regards to planned maintenance, it is not considered that it would be a significant burden to seek consent from the Council as part of the wider management of the trees. Advice and support is available from the Council, either by visiting the Council’s webpage or by contacting the Planning Services team.*

3.8 A member of the public submitted a response via an elected Member of the Council. The resident suggested that the submitted tree survey that was conducted as part of planning application reference 21/01174/PPM should be considered as it contains valuable information regarding trees which are worthy of protection but not included in the area included within the newly created TPO. A tree of particular concern that the responder feels should be protected is located where Summerlea Road and the A78 meet. The responder also notes that there are many other trees in the area that should be part of the Tree Protection Order including trees that border Summerlea Road and Merlewood Road and then on to Fullerton Drive towards the coast.

3.9 *Response: The response is noted and the overall support for the creation of the TPO is welcomed. It is accepted that there are trees in the vicinity of the TPO which may also contribute to the amenity of the area and are useful landscape features of this part of West Kilbride. With regards to the survey that was conducted as part of the planning application submission, it is accepted that the survey of trees relating to that proposed development provides some useful information. However, the report and assessment was conducted in a manner to satisfy the requirements of submitting a planning application as opposed to the analysis procured by the Council which was carried out solely with gaining an opinion on the suitability of a Tree Preservation Order. It is accepted that there is potential for nearby trees to contribute to public amenity. However, in this instance, the trees highlighted by the resident are considered to be more fragmented than the proposed TPO and the relationship between the trees proposed. If it was considered that these additional trees should be protected, then a*

further TPO would be required. It is considered that creating a TPO as originally proposed would be the most appropriate course of action at this time.

#### **4. Proposals**

- 4.1 It is proposed that the Council confirms the Tree Preservation Order unmodified in recognition of the significant contribution the trees and woodland make to public amenity.

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

### **Financial**

5.1 None. The TPO can be confirmed within existing budgets.

### **Human Resources**

5.2 None. The TPO can be confirmed within existing staff resources.

### **Legal**

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

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

5.4 Assessments carried out highlight impact on wider public amenity.

### **Climate Change and Carbon**

5.5 Trees can make a contribute to carbon sequestration, removing Carbon Dioxide from the Earth's atmosphere.

### **Key Priorities**

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

### **Community Wealth Building**

5.7 None.

## **6 Consultation**

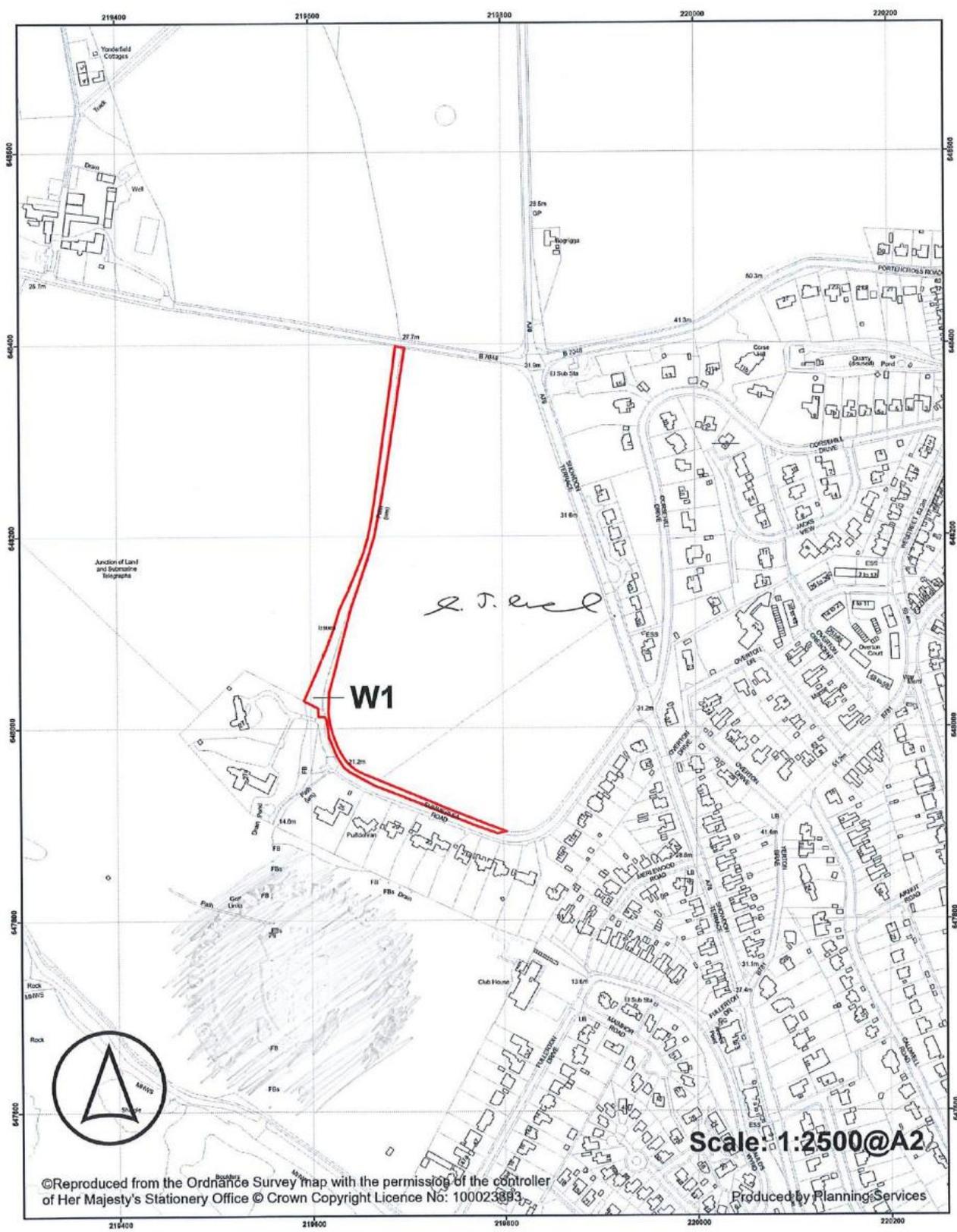
6.1 Consultation was carried out as required under the relevant legislation. The comments received were summarised in this report.

James Miller  
Chief Planning Officer

For further information please contact **Thom Ledingham, Planning Officer**, on **01294324623**.

## **Background Papers**

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**This is the Plan referred to in the foregoing  
 THE NORTH AYRSHIRE COUNCIL (WILDCAT ROAD & SUMMERLEA ROAD,  
 WEST KILBRIDE) TREE PRESERVATION ORDER 2022**

## NORTH AYRSHIRE COUNCIL

22 February 2023

### Planning Committee Report

---

<b>Title:</b>	<b>Grouping of Trees Located at Stevenston High Kirk and Manse</b>
<b>Purpose:</b>	To advise Committee regarding the process and merits of protecting a group of trees located on the grounds of Stevenston High Kirk and the adjacent Manse.
<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 made by a member of the public to assess whether a grouping of trees in and around the grounds of Stevenston High Kirk should be subject to formal protection via a Tree Preservation Order (TPO).
- 1.2 It is considered that the trees meet the criteria for a Tree Preservation Order (TPO), and it is recommended that a TPO is served in the interests of protecting public amenity and cultural heritage. 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 that there is currently a lack of protection for trees located within the grounds of Stevenston High Kirk and adjoining Manse. Following receipt of this request, Council Officers conducted a site visit and desk top analysis to assess the suitability of a Tree Preservation Order and 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 can not be served due to the trees being at risk alone. The only two criteria in which a Planning Authority can create a provision are the two above.

- 2.3 Following a preliminary assessment of the trees, it was considered that the trees add to the Local Landscape Character and contribute to amenity. It was also noted that the trees are located mostly in the grounds of Stevenston High Kirk, a Category B-Listed church and cemetery which is still in regular use. The site is also designated in the Local Development Plan as Open Space. Further considerations included the existence of a Core Path located East of the Kirk which leads to the Town Centre, then down to the Coast.
- 2.4 Following the desktop assessment, Council Officers, including the Arboricultural Officer, conducted a site visit to determine whether the trees and woodland have the potential to meet the criteria for formal protection. Numerous trees species were recorded within the grounds including Sweet Chestnut, Beech, Norway Maple, Lime, Larch, Hawthorn, and Willow to name a few. A particular tree of note is a Tulip Tree found within the rear garden of the Manse. These types of trees are normally only found within botanical gardens, and it is likely to be the only specimen found in Stevenston. It is evident that some of the trees are requiring some maintenance, however they are considered to be of reasonable health for their age and location.
- 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 to amenity. The trees are visible from various parts of Stevenston including from the cross at the town centre. The Kirk itself is a prominent building within the setting of the town and it is considered that the trees form an important backdrop. The nearby Core Path acts as a key link from many households to the town centre and the coast. The Kirk, with its backdrop of trees plays a key role in providing a pleasant setting along this section.
- 2.6 With regards to cultural and historical heritage, the grounds and building itself are important to cultural and historical heritage and a working church, B-Listed building, and cemetery. The contribution the trees make to that heritage is considered significant. From the arrival to the church, the trees and green infrastructure are considered to be a large part of the experience of visiting this area. When arriving at the church from the north, the trees create a welcoming avenue that leads to the church and manse and provides screening from the car park to the A738. The trees also add tranquillity to the experience of visiting the church and cemetery an important function, when considering the current land use.
- 2.7 Consideration was also given to including the wider allocated Open Space that includes land either side adjacent to Stevenston Burn within the proposed TPO. It is considered that while this area contributes to public amenity, it is under active management by, and ownership of the Council, and not expedient to have formal protection in place. In terms of trees and woodland, this area is also slightly more sporadic in nature and not as significant a feature as within the area proposed for the Order.
- 2.8 Taking the above into account, it is considered that the trees meet the criteria for a

Tree Protection Order. The trees contribute significantly to public amenity and contribute significantly to the site being of cultural and historical importance.

- 2.9 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.
- 2.10 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.
- 2.11 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.
- 2.12 It should be noted that protection of the trees via 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.
- 2.13 The Council's Sustainability, Transport and Corporate Property service is currently required to maintain the ground of the Kirk and cemetery. There are proposals to carry

out some works to the trees within the cemetery after it was discovered that some of the trees are either of poor health, or are causing an obstruction to the boundary walls, resulting in concern for public safety. Should the desired works take place following the creation of the TPO, then consent would be required from the Council as the Planning Authority. These works, as currently proposed, are considered to be minor when considering the site as a whole and would not comprise the suitability of the TPO. Once planned works are confirmed, the Council will liaise with relevant colleagues to ensure that the trees are given due protection and consideration in line with legislation.

### **3. Proposals**

- 3.1 It is proposed that the Council serves notice of a Tree Preservation Order in the interests of public amenity and cultural heritage. 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 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

RUSSELL McCUTCHEON  
Executive Director (Place)

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

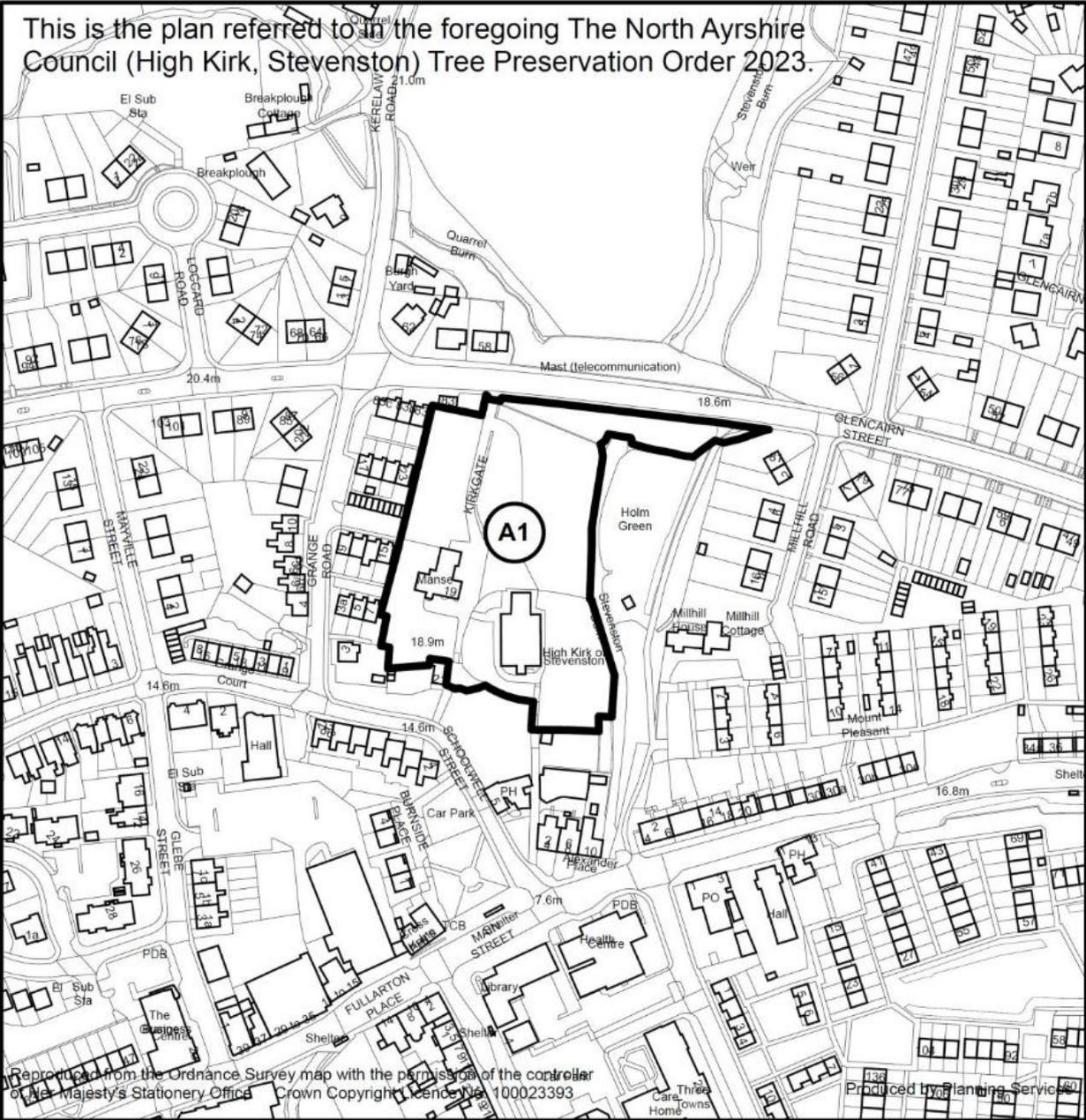
#### **Background Papers**

Appendix 1 – Proposed Tree Preservation Order

# TREE PRESERVATION ORDER

## High Kirk, Stevenston

# APPENDIX 1



Address:	High Kirk, Stevenston	 <p><b>Scale: 1:2500</b></p>
Grid Ref:	NS 2660.4220	
Area:	A1 - 1.165Ha	
Description:	Mainly mixed deciduous mature trees	

## NORTH AYRSHIRE COUNCIL

22nd February 2023

### Planning Committee

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**Title:** Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: Tennox Farm, Kilbirnie

**Purpose:** To seek authority to serve notices under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring:

1. the removal of the unauthorised dwellinghouse, associated outbuildings and ancillary works at Tennox Farm which was refused planning permission under reference 22/00331/PP;
2. The restoration of the land within the boundary of the site (ref. 22/00331/PP) to its former condition prior to the development taking place.

**Recommendation:** That the Committee grants authority for the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring the removal of the unauthorised dwellinghouse, associated outbuildings and ancillary works at Tennox Farm (ref. 22/00331/PP) and the restoration of the land to its former condition prior to the development taking place

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### 1. Executive Summary

- 1.1 The Council has received a number of reports in recent years that land at Tennox Farm near Kilbirnie has been developed with a number of unauthorised buildings as well as formation of a large yard area.
- 1.2 An enforcement notice under Section 33A of the Act was served on the owner of the land in March 2022. Among other matters, the notice required the submission of a planning application in respect of a dwellinghouse and ancillary outbuildings, the construction of which took place during 2020/21.
- 1.3 An application for the house was duly submitted, considered and refused planning permission during 2022 under ref. 22/00331/PP.
- 1.4 A review of the decision was undertaken by the Local Review Body of the Council on 25<sup>th</sup> January 2023. The review was dismissed. The consequence of the review decision is that the development remains unauthorised.

## 2. Background

- 2.1 As noted above, an enforcement notice was served on the owner of Tennox Farm in March 2022 in relation to unauthorised building works comprising of a dwellinghouse, outbuildings and ancillary works.
- 2.2 Whilst the notice also related to various other matters at Tennox Farm, this report considers only matters relating to the erection of a dwellinghouse (under the terms of planning application ref. 22/00331/PP).
- 2.3 In response to the Section 33A Notice, served on 7<sup>th</sup> March 2022, an appeal was lodged with Scottish Ministers by the owner of Tennox Farm. The appeal was duly considered and dismissed by a Reporter appointed by Scottish Ministers on 22<sup>nd</sup> July 2022.
- 2.4 To meet the terms of the Section 33A Notice, a planning application was submitted for the consideration of the Council and subsequently determined by the Chief Planning Officer under delegated powers on 6<sup>th</sup> September 2022. The application was refused for the following reasons:

1. *The proposed development would be contrary to the provisions of the North Ayrshire Local Development Plan Strategic Policy 1 (The Countryside Objective) in respect of the following:*

- *The locational need for a new house has not been established, given the presence of other domestic buildings at Tennox Farm;*
- *The site is not within an established grouping of at least 4 dwellings which existed in January 2005;*
- *The site is not a gap site between existing buildings, nor would the development consolidate or round-off the established grouping, and the house has encroached onto agricultural land beyond the original steading at Tennox;*
- *In architectural terms, the design is not considered exceptional, bespoke nor site specific in terms of the associated 'Housing in the Countryside Note' of June 2021.*

2. *The proposed development would be contrary to the provisions of the North Ayrshire Local Development Plan Strategic Policy 2 (Placemaking) in respect of the following qualities of a Successful Place:*

### *Safe and Pleasant*

*The policy highlights that proposed development "sufficiently investigates and responds to any issues of ground instability." In response to the submitted risk assessment report, significant concerns have been raised by The Coal Authority due to historic coal working and transient mine gas. The suitability of the chosen site for the house in terms of the health and safety of current and future occupants is therefore inconclusive.*

### *Resource Efficient*

*The policy highlights that resource efficiencies can be achieved "by re-using or sharing existing resources and by minimising their future depletion." With regard to the submitted information, it does not appear that consideration has been given to*

*re-using or sharing existing building resources at Tennox to meet the applicant's requirements for on-site accommodation to manage the business enterprises. The failure to consider alternatives at an early stage in the design process has resulted in the erection of a dwellinghouse on previously undeveloped agricultural land which cannot be supported in policy terms.*

- 2.5 At the request of the applicant, a review of the case was undertaken by the Local Review Body. On 25<sup>th</sup> January 2023, the Local Review Body determined not to grant planning permission following consideration of all matters pertaining to the review. The consequence of the decision is that the development remains unauthorised.
- 2.6 The Council's LDP supports housing in the countryside only in exceptional circumstances. As noted, Tennox Farm is within a rural area of North Ayrshire. The impact of the unauthorised development of a dwellinghouse, outbuildings and ancillary development on the land is considered to be harmful to the amenity of the countryside, and contrary to the Local Development Plan, for the reasons given above.
- 2.7 Given the foregoing, it is recommended that authority for the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997, as amended, (an "Enforcement Notice") be granted. An Enforcement Notice would require the removal of the unauthorised dwellinghouse, associated outbuildings and ancillary works within the boundary of planning application site 22/00331/PP and restoration of the land to its former condition prior to the development taking place. Such a Notice would take effect not less than 35 days from the date on which it is served. There is a right of appeal to Scottish Ministers within the period between the service of the Notice and the date it becomes effective.

### **3. Proposals**

- 3.1 In the interest of the amenity of the area and to remove inappropriate unauthorised development from a rural area (development which, following assessment, is contrary to Strategic Policy 1: The Countryside Objective and Strategic Policy 2: Placemaking), it is recommended that the Committee approve the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 to require the following:
  - (i) The removal of the unauthorised dwellinghouse, associated outbuildings and ancillary works within the boundary of planning application site 22/00331/PP and restoration of the land to its former condition prior to the development taking place.
- 3.2 In these circumstances, the timescale for compliance with the notice should be no greater than 6 months from the date of service.

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

## **Financial**

- 4.1 Serving Enforcement Notices can be met from within existing budgetary provision of the Planning Service.

## **Human Resources**

- 4.2 Serving Enforcement Notices can be met from within existing staff resources of the Planning Service.

## **Legal**

- 4.3 The proposed Enforcement Notice would be served in accordance with statutory procedures. There is a right of appeal to Scottish Ministers. Non-compliance with an Enforcement Notice is an offence which the Council could report to the Procurator Fiscal.

## **Equality/Socio-economic**

- 4.4 None.

## **Environmental and Sustainability**

- 4.5 The proposed Enforcement Notice would help to address the ongoing matter of unauthorised development and use of land at Tennox Farm, Kilbirnie in the interests of safeguarding the amenity of North Ayrshire's rural area.

## **Key Priorities**

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

## **Community Wealth Building**

- 4.7 Any direct action taken under the Planning Acts can support progressive procurement.

## **5. Consultation**

- 5.1 None.

RUSSELL McCUTCHEON  
Executive Director (Place)

For further information please contact **Mr A. Hume, Senior Development Management Officer**, on **01294 324318**.

## **Background Papers**

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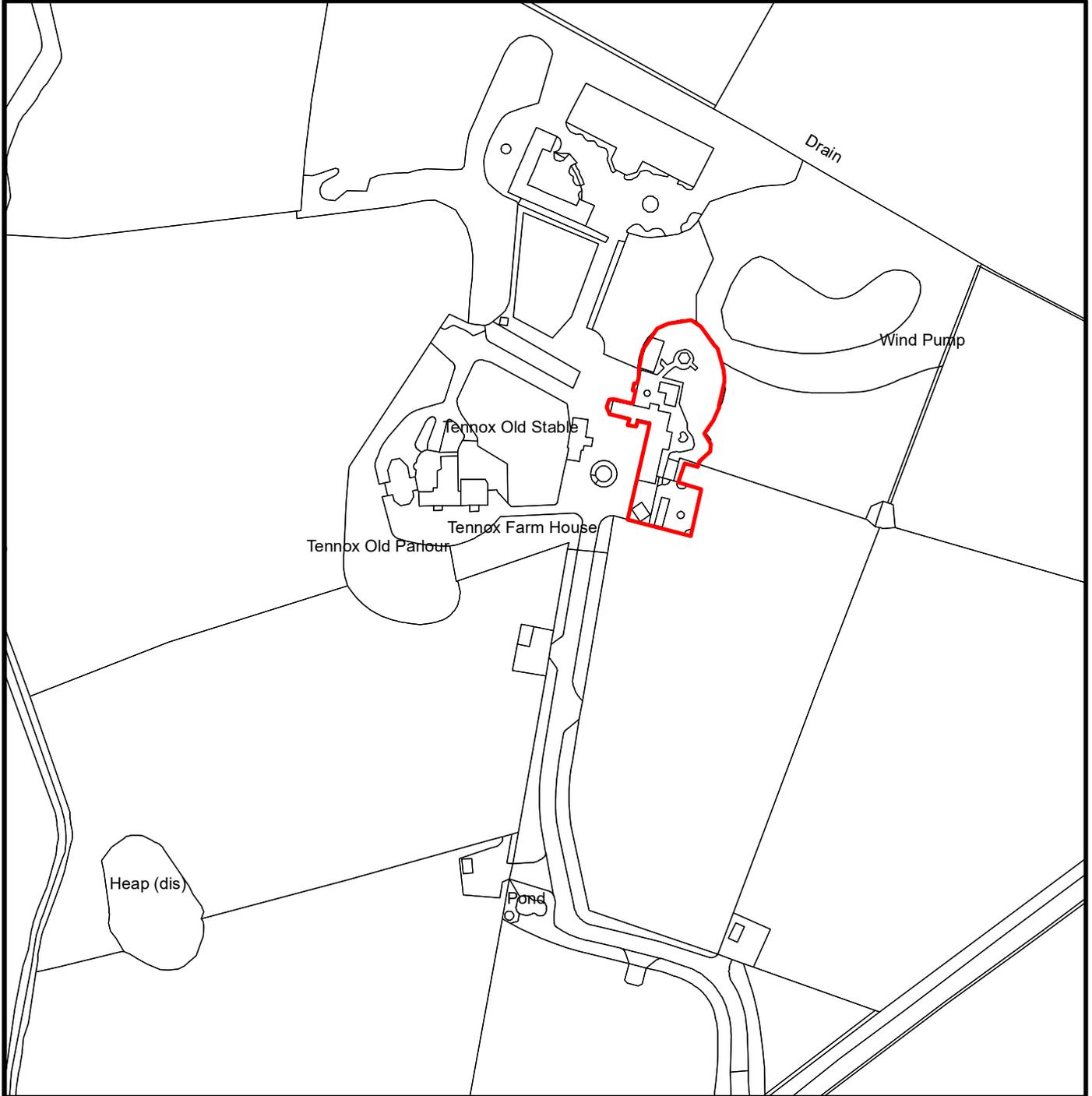


NORTH AYRSHIRE  
COUNCIL

# Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: Tennox Farm, Kilbirnie



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