

TOWN AND COUNTRY PLANNING
(SCOTLAND) ACT 1997

**KINCLAVEN ROAD, MURTHLY TREE
PRESERVATION ORDER NO 1 2008**

The Town and Country Planning (Tree
Preservation Order and Trees in
Conservation Areas) (Scotland) Regulations
1975

Reference L/PD/11(3)/048 AS

Made 1 April, 2008

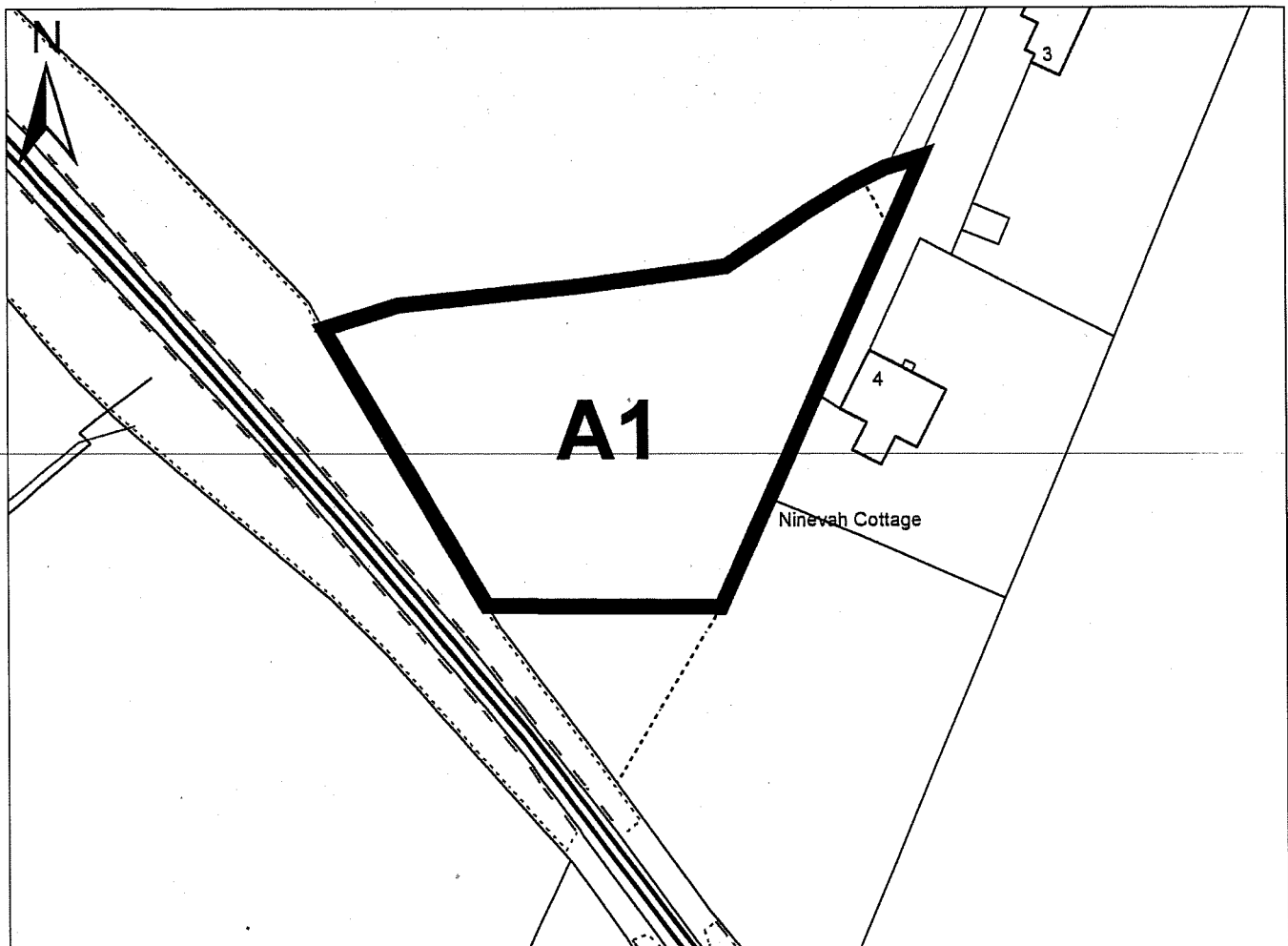
Confirmed 21 August, 2008

2008

Perth & Kinross Council
Council Building
2 High Street
PERTH PH1 5PH

FAS 0847

KINCLAVEN ROAD, MURTHLY TREE PRESERVATION ORDER No. 1 2008



Scale 1:1000

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This is the map referred to in the foregoing order entitled:

Kinclaven Road, Murthly

Tree Preservation Order No. 1 2008

Dated: 1 APRIL 2008



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

KINCLAVEN ROAD, MURTHLY TREE PRESERVATION ORDER NO 1 2008

Perth and Kinross Council, in this Order referred to as "the planning authority", in exercise of the powers conferred on them by sections 160 and 163 of the Town and Country Planning (Scotland) Act 1997 (hereinafter referred to as "the Act") and of all other powers enabling them in that behalf and subject to the provisions of the Forestry Act 1967, hereby make the following Order:-

Citation, Commencement and Interpretation

- 1 (1) This Order is to be cited as the "Kinclaven Road, Murthly Tree Preservation Order No 1 2008" and shall come into effect on the date specified in Article 15 of this Order.
- (2) The Interpretation Act 1978 as amended shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Prohibition against felling, etc., without consent

- 2 Subject to the provisions of this Order and the exemptions specified in the Second Schedule hereto, no person shall, except with the consent of the planning authority, cut down, top, lop, uproot, wilfully damage or wilfully destroy or cause or permit the cutting down, topping, lopping, uprooting or wilful damage or wilful destruction of any tree specified in the First Schedule hereto or comprised in a group of trees or in a woodland specified therein, the position of which trees, groups of trees and/or woodlands to which this Order relates is defined in the manner indicated in the said First Schedule on the map annexed and signed as relative hereto, which map shall for the purpose of such definition as aforesaid, prevail where any ambiguity arises between it and the specification in the said First Schedule.

Application for consent

- 3 An application for consent made to the planning authority under Article 2 of this Order shall be in writing and shall specify -
 - (i) the tree or trees to which the application relates;
 - (ii) the reasons for making the application;
 - (iii) the operations for the carrying out of which consent is required;

and shall where necessary for the identification of such tree or trees be accompanied by a map or plan of a size or on a scale sufficient for the purpose.

- 4 If it is desired to fell any of the trees included in this Order, whether included as trees, groups of trees or woodlands, and the trees are trees for the felling of which a licence is required under the Forestry Act 1967, application should be made - not to the planning authority for consent under this Order but to the Conservator of Forests for a licence under section 15(5) of that Act.

- 5 (1) Where an application for consent is made to the planning authority under this Order the planning authority may grant such consent either unconditionally, or subject to such conditions (including conditions requiring the replacement of any tree by one or more trees on the site or in the immediate vicinity thereof) as the planning authority may think fit, or may refuse consent;

Provided that where the application relates to any woodland specified in the First Schedule to this Order the planning authority shall grant consent so far as it accords with the principles of good forestry, except where, in the opinion of the planning authority, it is necessary in the interests of amenity to maintain the special character of the woodland or the woodland character of the area and shall not impose conditions on such consent requiring replacement or replanting.

(2) The authority shall keep a register of all applications for consent under this Order containing information as to the nature of such applications, the decisions of the planning authority thereon, any compensation awarded in consequence of such decisions and any directions as to replanting of woodlands; and every such register shall be available for inspection by the public at all reasonable hours.

- 6 Where the planning authority refuse consent under this Order or grant such consent subject to conditions they may when refusing or granting consent certify in respect of any trees for which they are so refusing or granting consent that they are satisfied:

- (a) that the refusal or condition is in the interests of good forestry; or
- (b) in the case of trees other than trees comprised in woodlands, that the trees have an outstanding or special amenity value.

- 7 (1) Where consent is granted under this Order to fell any part of a woodland other than consent for silvicultural thinning then unless -

- (a) such consent is granted for the purpose of enabling development to be carried out in accordance with permission to develop land under Part III of the Act, or
- (b) the planning authority, with the approval of the Secretary of State, dispense with replanting,

the authority shall give to the owner of the land on which that part of the woodland is situated a direction in writing specifying the manner in which and the time within which he shall replant such land and where a direction is given and the part is felled the owner shall, subject to the provisions of this Order and section 166 of the Act, replant the said land in accordance with the direction.

(2) Any direction given under paragraph (1) of this Article may include requirements to -

- (a) species
- (b) number of trees per acre;
- (c) the erection and maintenance of fencing necessary for the protection of the replanting;
- (d) the preparation of ground, draining, removal of brushwood, lop and top; and
- (e) protective measures against fire.

(3) If any question arises between the planning authority and the said owner of the land as to whether any such direction is reasonable having regard to the particular circumstances of the case or to any other material considerations, the question shall, on the application of either party, be determined by the Secretary of State, whose decision shall be final.

Adaptation and modification of Act

8 The provisions set out in the Third Schedule to this Order, being provisions of the Act adapted and modified for the purposes of this Order, shall apply in relation hereto.

Compensation

9 Subject to the provisions of this Order, any person who has suffered loss or damage in consequence of any refusal (including revocation or modification) of consent under this Order or of any grant of any such consent subject to conditions, shall, if he makes a claim on the planning authority within the time and in the manner prescribed by this Order, be entitled to recover from the planning authority compensation in respect of such loss or damage.

Provided that no compensation shall be payable in respect of loss or damage suffered by reason of such refusal or grant of consent in the case of any tree or trees the subject of a certificate in accordance with Article 6 of this Order.

10 In assessing compensation payable under the last preceding paragraph, account shall be taken of:

- (a) any compensation or contribution which has been paid whether to the claimant or any other person in respect of the same trees or woodland areas under the terms of this or any other Tree Preservation Order under section 160 of the Act, or under the terms of any Interim Preservation Order made under section 8 of the Town and Country Planning (Interim Development) (Scotland) Act 1943 or any compensation which has been paid or which could have been claimed under any provision relating to the preservation of trees or protection of woodland contained in an operative scheme under the Town and Country Planning (Scotland) Act 1932, and
 - (b) any injurious affection to any land of the owner which would result from the felling of the trees or woodlands the subject of the claim.
- 11 (1) A claim for compensation under this Order shall be made by serving on the planning authority a notice in writing stating the grounds of the claim and the amount claimed.
- (2) The time within which any such claim shall be made as aforesaid shall be a period of six months from the date of the decision of the planning authority or of the Secretary of State, as the case may be, or where an appeal has been made to the Secretary of State against the decision of the planning authority, from the date of the decision of the Secretary of State on the appeal.
- 12 Any question of disputed compensation shall be determined in accordance with the provisions of section 165(2) of the Act.

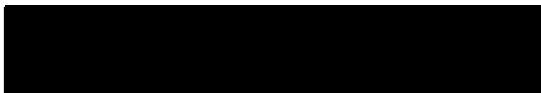
Offences and Penalties

- 13 Under the provisions of section 171 of the Act, any person who in contravention of this Order cuts down, uproots or wilfully destroys a tree, or wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it, shall be guilty of an offence and liable on summary conviction to a fine not exceeding £20,000 and on conviction on indictment to a fine. Other contraventions of this Order carry with them on summary conviction a fine not exceeding Level 4 on the standard scale.
- 14 (1) If a tree other than one which is part of a woodland is removed, uprooted or destroyed in contravention of this Order, or is removed, uprooted or destroyed or dies at a time when its felling is authorised only by virtue of the provisions of section 160(6) of the Act relating to uprooting or felling where urgently necessary in the interests of safety, it shall be the duty of the owner of the land, unless on his application the planning authority dispense with this requirement, to plant another tree of appropriate size and species at the same place as soon as he reasonably can.
- (2) In relation to any tree planted pursuant to paragraph (1) above this Order shall apply as it applied to the original tree.

(3) If it appears to the planning authority that the provision in paragraph (1) above has not been complied with in the case of any tree or trees, they may, at any time within two years from the date on which failure to comply with this provision came to their knowledge, serve on the owner of the land a notice requiring him, within such period as may be specified in the notice, to plant a tree or trees of such size and species as may be so specified, and the provisions of section 168 of the Act as amended shall apply in any such case.

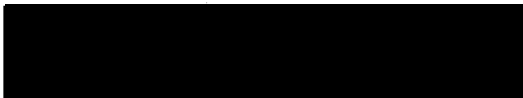
- 15 The provisions of section 163(2) of the Act (which makes provision for a tree preservation order to take effect immediately without previous confirmation by the planning authority or the Secretary of State) shall apply to this Order and the Order shall take effect on the First day of April Two thousand and eight.

The foregoing Order together with the Map and Schedules annexed are sealed with the seal of the said Perth and Kinross Council and are subscribed for them and on their behalf by Linda Mary Whiteford their Proper Officer for the purposes hereof all together at Perth on the First day of April Two thousand and eight.



Proper Officer

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



Proper Officer

This is the First Schedule referred to in the foregoing Order entitled "Kinclaven Road, Murthly Tree Preservation Order No 1 2008" dated 1 April, 2008.

FIRST SCHEDULE

Trees specified individually (coloured green on the map)

NONE.

Trees specified by reference to an Area (within a continuous black line on the map)

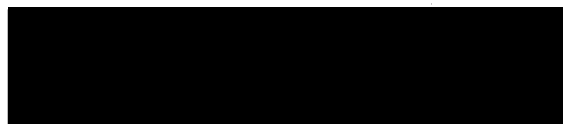
<u>No on Map</u>	<u>Description</u>	<u>Situation</u>
A1	The several trees of whatever species standing in the area marked A1 on the map	Standing within ALL and WHOLE the subjects registered in the Land Register under title number PTH24361.

Groups of Trees (within a broken black line on the map)

NONE.

Woodlands (with a continuous red line on the map)

NONE.



This is the Second Schedule referred to in the foregoing Order entitled "Kinclaven Road, Murthly Tree Preservation Order No 1 2008" dated 1 April, 2008.

SECOND SCHEDULE

This Order shall not apply so as to require the consent of the planning authority to -

- 1 the cutting down of any tree on land which is subject to a forestry dedication agreement where -
 - (a) any positive agreements on the part of the owner of the land contained in the same deed as the forestry dedication agreement and at the time of the cutting down binding on the then owner of the land are fulfilled;
 - (b) the cutting down is in accordance with a plan of operations approved by the Forestry Commission under such deed.
- 2 the cutting down of any tree which is in accordance with a plan of operations approved by the Forestry Commission under the approved woodlands scheme or other grant scheme under section 4 of the Forestry Act 1967.
- 3 the uprooting, felling or lopping of any tree if such uprooting, felling, or lopping is urgently necessary in the interests of safety, or is necessary for the prevention or abatement of a nuisance, so long as notice in writing of the proposed operations is given to the planning authority as soon as may be after the necessity for the operation arises, or if such uprooting, felling or lopping is carried out in compliance with any obligation imposed by or under any Act of Parliament.
(**NOTE:** section 167(1) of the Act requires, unless on the application of the owner the planning authority dispense with the requirement, that any tree removed or destroyed under section 160(6) of the Act shall be replaced by another tree of appropriate size and species. In order to enable the planning authority to decide whether or not to dispense with the requirement, notice of the proposed action should be given to the planning authority which except in the case of emergency should be of not less than 5 days.)
- 4 the uprooting, felling or lopping of a tree -
 - (a) in pursuance of the powers conferred on the Post Office by virtue of section 5 of the Telegraph (Construction) Act 1908 and section 21 of the Post Office Act 1969, or by or at the request of the Post Office where the land on which the tree is situated is operational land as defined by the Post Office Operational Land Regulations 1973 and either works on such land cannot otherwise be carried out or the uprooting, felling or lopping is for the purpose of securing safely in the operation of the undertaking;
 - (b) by or at the request of

- (i) a statutory undertaker where the land on which the tree is situated is operational land as defined by the Act and either works on such land cannot otherwise be carried out or the uprooting, felling or lopping is for the purpose of securing safety in the operation of the undertaking;
 - (ii) an electricity board within the meaning of the Electricity Act 1974 where such a tree obstructs the construction by the Board of any main transmission line or other electric line within the meaning respectively of the Electricity (Supply) Act 1919 and the Electric Lighting Act 1882, or interferes or would interfere with the maintenance or working of any such line;
 - (iii) the Secretary of State for Defence, the Secretary of State for Trade or the Civil Aviation Authority where in the opinion of such Secretary of State or Authority the tree obstructs the approach of aircraft to, or their departure from, any aerodrome or hinders the safe and efficient use of aviation or defence technical installations;
-
- (c) where immediately required for the purpose of carrying out development authorised by a planning permission granted on an application made under Part III of the Act, or deemed to have been granted for any of the purposes of that part.


Proper Officer

This is the Third Schedule referred to in the foregoing Order entitled "Kinclaven Road, Murthly Tree Preservation Order No 1 2008" dated 1 April, 2008.

THIRD SCHEDULE

Provisions of the Act as adapted and modified to apply to this Order:-

- 44(1) Without prejudice to the following provisions as to the revocation or modification of consents, any consent under the Order, including any direction as to replanting given by the planning authority on the granting of such consent, shall (except in so far as the consent otherwise provides), endure for the benefit of the land and of all persons for the time being interested therein.
- 46(1) The Secretary of State may give directions to the planning authority requiring applications for consent under the Order to be referred to him instead of being dealt with by the planning authority.
- 46(2)(b) A direction under this section may relate either to a particular application or to applications of a class specified in the direction.
- 46(3) Any application in respect of which a direction under this section has effect shall be referred to the Secretary of State accordingly.
- 46(4) Where an application for consent under the Order is referred to the Secretary of State under this section, the provisions of Articles 5 and 6 of the Order shall apply as they apply to an application for such consent which falls to be determined by the planning authority.
- 46(5) Before determining an application referred to him under this section the Secretary of State shall, if either the applicant or the planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- 46(7) The decision of the Secretary of State on any application referred to him under this section shall be final.
- 47(1) Where an application is made to the planning authority for consent under the Order and that consent is refused by that planning authority, or is granted by them subject to conditions or where any certificate or direction is given by the planning authority, the applicant if he is aggrieved by their decision, or by any such certificate or direction may by notice under this section appeal to the Secretary of State.
- 47(2) Where an application for consent under the Order is made to the planning authority then unless within two months from the date of the application or within such extended period as may at any time be agreed upon in writing between the applicant and the planning authority the planning authority either:-

- (a) give notice to the applicant of their decision on the application; or
- (b) give notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 46 above; the provisions of section 48 shall apply in relation to the application as if the consent to which it relates had been refused by the planning authority and as if notification of their decision had been received by the applicant at the end of the said period of two months, or at the end of the said extended period, as the case may be.

47(3) Any appeal under this section shall be made by notice served within such time and in such manner as may be prescribed by regulations.

47(4) The time prescribed for the service of such a notice must not be less than:-

- (a) twenty-eight days from the date of the notification of the decision.

48(1) On an appeal under section 47 the Secretary of State may:-

- (a) allow or dismiss the appeal or
- (b) reverse or vary any part of the decision of the planning authority (whether the appeal relates to that part of it or not) and may deal with the application as if it had been made to him in the first instance.

48(2) Before determining an appeal under this section, the Secretary of State shall, if either the applicant or the planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

48(3) If the Secretary of State proposes to reverse or vary any part of the decision of the planning authority to which the appeal does not relate, he shall give notice of his intention to the planning authority and to the appellant and shall give each of them an opportunity of making representations about his proposals.

48(6) The decision of the Secretary of State on any appeal under this section shall be final.

61(1) If it appears to the planning authority that it is expedient to revoke or modify any consent granted on an application made under Article 3 of the Order they may (by order) revoke or modify the permission to such extent as they consider expedient.

65(2) In exercising their functions under sub-section (1) above the authority shall have regard to the development plan and to any other material considerations.

65(3) The power conferred by this section may be exercised at any time before the operations for which consent has been given have been completed: provided that revocation or modification of consent shall not affect so much of these

operations as has been carried out before the date on which the Order was confirmed as aforesaid.

- 66(1) Except as provided in section 67, an Order under section 65 shall not take effect unless it is confirmed by the Secretary of State.
- 66(2) Where a planning authority submits such an Order to the Secretary of State for confirmation they shall serve notice on:-
- (a) the owner of the land affected,
 - (b) the lessee and the occupier of the land affected, and
 - (c) any other person who in their opinion will be affected by the Order.
- 66(3) The notice shall specify the period within which any person on whom it is served may require the Secretary of State to give him an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- 66(4) If within that period such a person so requires, the Secretary of State shall, before he confirms the Order, give such an opportunity both to that person and to the planning authority.
- 66(5) The period referred to in sub-section (3) must not be less than twenty-eight days from the service of the notice.
- 66(6) The Secretary of State may confirm an Order submitted to them under this section without modification or subject to such modifications as he considers expedient.
- 67(1) This section applies where the planning authority have made an Order under section 65 above revoking or modifying any consent granted on an application made under a Tree Preservation Order but have not submitted the Order to the Secretary of State for confirmation by him and the owner, lessee and occupier of the land and all persons who in the planning authority's opinion will be affected by the Order have notified the authority in writing that they do not object to the Order.
- 67(2) Where this section applies, instead of submitting the Order to the Secretary of State for confirmation the authority shall advertise in the prescribed manner the fact that the Order has been made and the advertisement must specify:-
- (a) subject to sub-section (4) the period (being not less than Twenty-eight days from the date on which the advertisement first appears) within which persons affected by the Order may give notice to the Secretary of State that they wish to have an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose, and

- (b) subject to sub-section (5) the period (being not less than Fourteen days from the expiration of the period referred to in paragraph (a) of this sub-section) at the expiration of which if no such notice is given to the Secretary of State, the Order may take effect by virtue of this section without being confirmed by the Secretary of State.

67(3) The authority shall also serve notice to the same effect on the persons mentioned in sub-section (1).

67(4) The authority shall send a copy of any advertisement published under sub-section (2) to the Secretary of State not more than three days after the publication.

67(5) If:-

- (a) no person claiming to be affected by the Order has given notice to the Secretary of State under sub-section (2)(a) within the period referred to in that sub-section, and

- (b) the Secretary of State has not directed within that period that the Order be submitted to him for confirmation,

the Order shall take effect at the expiry of the period referred to in sub-section (2)(b) without being confirmed by the Secretary of State as required by section 66(1).

67(6) This section does not apply to an Order revoking or modifying a consent granted or deemed to have been granted by the Secretary of State under Part III or Part VI of the Act.

68(1) If it appears the Secretary of State that it is expedient that an Order should be made under Section 65 he may himself make such an Order.

68(2) Such an Order made by the Secretary of State shall have the same effect if it had been made by the Planning Authority and confirmed by the Secretary of State.

68(3) The Secretary of State shall not make such an Order without consulting the Planning Authority.

68(4) Where the Secretary of State proposes to make such an Order he shall serve notice on the Planning Authority.

68(5) The notice shall specify the period (which must not be less than twenty-eight days from the date of its service) within which the Authority may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

68(6) If within that period the Authority so require, the Secretary of State shall, before making the Order, give the Authority such an opportunity.

68(7) The provisions of this part and of any regulations made under this Act with respect to the procedure to be followed in connection with the submission by the Planning Authority of any Order under Section 65, its confirmation by the Secretary of State and service of copies of it as confirmed shall have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State to make such an Order by virtue of sub-section(1), its making by him and the service of copies of it.

68(8) Part II of Schedule Three shall effect in relation to Orders made by the Secretary of State by virtue of sub-section (1) as it has effect in relation to Orders made by the Planning Authority under Section 65.

76(1) Where consent is revoked or modified by an Order under section 65, then if, on a claim made to the planning authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the land:-

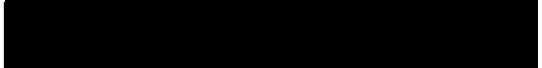
- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification, or
- (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the planning authority shall pay to that person compensation in respect of that expenditure, loss or damage.

76(2) For the purposes of this section any expenditure incurred in the preparation of plans for the purposes of any work or upon other similar matters preparatory to it, shall be taken to be included in the expenditure incurred in carrying out that work.

76(3) Subject to sub-section (2) of this section, no compensation shall be paid under this section in respect of:-

- (a) any work carried out before the grant of the consent which is revoked or modified or
- (b) any other loss or damage arising out of anything done or omitted to be done before the grant of that permission (other than loss or damage consisting of depreciation of the value of an interest in land).


Proper Officer

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
TOWN AND COUNTRY PLANNING (TREE PRESERVATION ORDER AND TREES
IN CONSERVATION AREAS) (SCOTLAND) REGULATIONS 1975 AS AMENDED
KINCLAVEN ROAD, MURTHLY TREE PRESERVATION ORDER NO 1 2008

TAKE NOTICE that Perth and Kinross Council as planning authority by virtue of the powers conferred on them in terms of the Town and Country Planning (Scotland) Act 1997 and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975 as amended have made a Tree Preservation Order entitled "Kinclaven Road, Murthly Tree Preservation Order No 1 2008" affecting the trees therein specified. The Order comes into effect on the First day of April Two thousand and eight.

The grounds for making the Order are that the planning authority considers that the removal of the trees specified in the Order would prejudice the amenity of the area.

Certified copies of the Order and relevant map have been deposited at Council Building, 2 High Street, Perth and may be inspected there during normal business hours.

Article 7 of the Regulations makes provision with regard to objections and representations to this Order as follows:-

- 7 (1) Every objection or representation to the planning authority with respect to an order shall be made in writing, shall state the grounds thereof, and specify the particular trees, groups of trees, or woodlands in respect of which it is made.
- (2) An objection or representation shall be duly made if it complies with paragraph (1) of this regulation and is received by the planning authority within 28 days from the date of the service of the notice of the making of the order or the date of the publication of the notice by advertisement as the case may be.

The planning authority shall, before deciding whether to confirm the Order, take into consideration any objections and representations duly made in accordance with Article 7 above.

The Order contains a direction under section 163(2) of the Town and Country Planning (Scotland) Act 1997 which has the effect of bringing it into provisional effect from the date specified in the Order, namely the First day of April Two thousand and eight.

IAN T INNES
HEAD OF LEGAL SERVICES

Council Building
2 High Street
PERTH
PH1 5PH

4 April, 2008

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
TOWN AND COUNTRY PLANNING (TREE PRESERVATION ORDER AND TREES
IN CONSERVATION AREAS) (SCOTLAND) REGULATIONS 1975 AS AMENDED

KINCLAVEN ROAD, MURTHLY
TREE PRESERVATION ORDER NO 1 2008

NOTICE IS HEREBY GIVEN that Perth and Kinross Council, as Planning Authority, by virtue of the powers conferred on them in terms of the Town and Country Planning (Scotland) Act 1997 and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975 as amended have confirmed a Tree Preservation Order entitled "Kinclaven Road, Murthly Tree Preservation Order No 1 2008". Certified copies of the Order, as confirmed and relative map have been deposited at The Environment Service Reception Desk at Pullar House, Kinnoull Street, Perth and may be inspected there between the hours of 8.45 am to 5.00 pm on Monday to Friday inclusive in each week.

I T INNES
Head of Legal Services

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2 September, 2008