

## Minute

### Development and Infrastructure Committee

Wednesday, 19 April 2023, 14:00.

Council Chamber, Council Offices, School Place, Kirkwall.



### Present

Councillors David Dawson, Gillian Skuse, Graham A Bevan, P Lindsay Hall, Kristopher D Leask, W Leslie Manson, Raymond S Peace, James W Stockan, Mellissa-Louise Thomson, Owen Tierney, Duncan A Tullock and Heather N Woodbridge.

### Clerk

- Angela Kingston, Committees Officer.

### In Attendance

- Hayley Green, Corporate Director for Neighbourhood Services and Infrastructure.
- Roddy Mackay, Head of Planning and Community Protection.
- Hazel Flett, Service Manager (Governance).
- Jamie Macvie, Service Manager (Development Management).
- Shonagh Merriman, Service Manager (Corporate Finance).
- Karen Bevilacqua, Solicitor.

### Observing

- Lorraine Stout, Press Officer.

### Declarations of Interest

- No declarations of interest had been intimated.

### Chair

- Councillor David Dawson.

## 1. Tree Preservation Order at Grainbank, Kirkwall

After consideration of a report by the Corporate Director for Neighbourhood Services and Infrastructure, copies of which had been circulated, and after hearing a report from the Head of Planning and Community Protection, the Committee:

Noted:

**1.1.** That a Tree Preservation Order was made under delegated authority and took effect on 8 November 2022, covering an area of woodland at Grainbank, Kirkwall, as detailed in the map attached as Appendix 1 to the report by the Corporate Director for Neighbourhood Services and Infrastructure.

**1.2.** That a Tree Preservation Order took effect on such date as might be specified in the order but expired six months after it was made unless it had, within that period, been confirmed by the Planning Authority.

**1.3.** That, once the initial Tree Preservation Order was made and published, a period of 28 days was allowed for the making of objections and representations to the Planning Authority.

**1.4.** That, following public notice of the Tree Preservation Order in The Orcadian, which provided for representations to be made no later than 16 December 2022, five representations were received, attached as Appendix 2 to the report by the Corporate Director for Neighbourhood Services and Infrastructure.

**1.5.** The matters raised by the representations received and officers' response to the representations, as detailed in section 5 of the report by the Corporate Director for Neighbourhood Services and Infrastructure.

Councillor Kristopher D Leask, seconded by Councillor W Leslie Manson, moved that the Orkney Islands Council Tree Preservation Order (Grainbank, Kirkwall) No.1 2022 be confirmed, in the interests of amenity, as the woodland contributed to the character and attractiveness of the area.

Councillor Duncan A Tullock, seconded by Councillor Owen Tierney, moved an amendment that the Orkney Islands Council Tree Preservation Order (Grainbank, Kirkwall) No.1 2022 should not be confirmed.

The result of a recorded vote was as follows:

For the Amendment:

Councillors P Lindsay Hall, Raymond S Peace, Owen Tierney and Duncan A Tullock (4).

For the Motion:

Councillors Graham A Bevan, David Dawson, Kristopher D Leask, W Leslie Manson, Gillian Skuse, James W Stockan, Mellissa-Louise Thomson and Heather N Woodbridge (8).

The motion was therefore carried, and the Committee:

Resolved to **recommend to the Council:**

**1.6.** That the Orkney Islands Council Tree Preservation Order (Grainbank, Kirkwall) No.1 2022, attached as Appendix 1 to this Minute, be confirmed, in the interests of amenity, as the woodland contributed to the character and attractiveness of the area.

## **2. Conclusion of Meeting**

At 15:08 the Chair declared the meeting concluded.

Signed: David Dawson.

**ORKNEY ISLANDS COUNCIL****TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997, AS AMENDED****THE ORKNEY ISLANDS COUNCIL TREE PRESERVATION ORDER  
(GRAINBANK, KIRKWALL) NO.1 2022**


Notice is hereby given that Orkney Islands Council (referred to below as the "Council") as planning authority in exercise of the powers conferred upon them by Section 160 of the above Act (hereinafter referred to as "the Act") have made The Orkney Islands Council Tree Preservation Order (Grainbank, Kirkwall) No.1 2022 (referred to below as the "Order") in respect of a woodland at Grainbank in Kirkwall. The Order takes effect on 8 November 2022. The Order has been made for the reason that in terms of Section 160(1A)(a) it is expedient in the interests of amenity to make the Order as the woodland contributes to the character and attractiveness of the area and there is work proposed which would damage the group and reduce its landscape impact. A tree preservation order will allow the Council to prevent tree work which would harm amenity and place appropriate conditions on any consent for tree work.

The Order can be viewed on the Council's website. A certified copy of the Order will be deposited at Customer Services, Council Offices, School Place, Kirkwall, Orkney, KW15 1NY for inspection by any person without payment on Monday to Friday between 10am and 4pm. An electronic copy of the Order can be provided by email free of charge by sending a request to [planning@orkney.gov.uk](mailto:planning@orkney.gov.uk)

Objections and representations in respect of the Order may be made to the planning authority in accordance with Regulation 5 of the Town and Country Planning (Tree Preservation Order and Trees and Conservation Areas) (Scotland) Regulations 2010. Any objection or representation must be in writing and shall be duly made if it states its grounds, specify the particular trees in respect of which it is made and is received by the planning authority no later than 16 December 2022.

Objections and representations should be sent to the Service Manager, Development Management, Neighbourhood Services and Infrastructure, Council Offices, School Place, Kirkwall, Orkney, KW15 1NY or by email to [planning@orkney.gov.uk](mailto:planning@orkney.gov.uk)

Dated: 8 November 2022



Hayley Green

Corporate Director

Orkney Islands Council

Council Offices

School Place

Kirkwall KW15 1NY

## **ORKNEY ISLANDS COUNCIL**

### **TREE PRESERVATION ORDER**

#### **The Town and Country Planning (Scotland) Act 1997**

#### **The Orkney Islands Council Tree Preservation Order (Grainbank, Kirkwall) No.1 2022**

Orkney Islands Council makes the following Tree Preservation Order in exercise of powers conferred by section 160 of the Town and Country Planning (Scotland) Act 1997, as amended, and all other powers enabling them to do so.

#### **Citation, commencement and interpretation**

1.-(1) This Order may be cited as The Orkney Islands Council Tree Preservation Order (Grainbank, Kirkwall) No.1 2022 and takes effect on 8 November 2022.

(2) In this Order-

“the 1992 Order” means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992;

“the Act means the Town and Country Planning (Scotland) Act 1997, as amended;

“protected tree” has the meaning given in article 2; and

“the map” means the plan annexed and assigned as relative hereto.

#### **Protected Trees**

2.-(1) A protected tree is a tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland specified in that Schedule.

(2) The position of such trees, groups of trees or woodlands is identified in the manner indicated in Schedule 1 and on the map annexed to this Order.

(3) Where any ambiguity as to the identification of a protected tree arises between the map and the specification Schedule 1 to this Order, the map is to prevail.

#### **Prohibited acts**

3.-Subject to the provisions of the Act and the exemption specified in article 5, no person shall, except with and in accordance with, the consent of the planning authority:

(a) cut down, top, lop, uproot, wilfully damage or wilfully destroy a protected tree; or

(b) cause or permit the cutting down, topping, lopping, operating, or wilful damage or wilful destruction of, a protected tree.

## **Application for consent**

4.-(1) An application for consent to the carrying out of any act prohibited by a tree preservation order must be made to the planning authority and must:

- (a) specify the operation for which consent is sought;
- (b) give reasons for carrying out such operation; and
- (c) identify the protected tree or trees which would be affected by such operations.

(2) The protected tree or trees must be identified by means of a map or plan of a size and scale sufficient for the purpose.

## **Exemptions**

5.-Nothing in article 3 is to prevent-

(a) the cutting down of a tree in accordance with a felling permission granted by Scottish Forestry under the Forestry and Land Management (Scotland) Act 2018;

(b) the cutting down, uprooting, topping or lopping of a tree on land and the occupation of the planning authority when this is done by or with the consent of that authority;

(c) the cutting down, uprooting, topping or lopping of a tree having a diameter not exceeding 75 millimetres;

(d) the cutting down or operating in a woodland of a tree having a diameter not exceeding 100 millimetres where this is done to improve the growth of other trees;

(e) the cutting down, uprooting, topping or lopping of a tree by, or on behalf of, Scottish Forestry on land placed at their disposal in pursuance of the Forestry and Land Management (Scotland) Act 2018 or otherwise under their management or supervision;

(f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated as operational land of the statutory undertaker and the work is necessary:

(i) in the interests of the safe operations of the undertaking;

(ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or

(iii) to enable a statutory undertaker to carry out development for which planning permission is granted by the 1992 Order, provided that notice in writing of the proposed operations is given to the planning authority as soon as practicable after the operations become necessary;

(g) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade with such work is in the interests of that business or trade;

(h) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;

(i) the cutting down, topping, lopping or uprooting of a tree that work is immediately required to enable a person to carry out works to implement a planning permission (other than an outline planning permission or planning permission in principle) granted on an application under Part 3 or section 242A the Act, or deemed to have been granted (whether for purposes of Part 3 of the Act or otherwise); or

(j) the cutting down, topping, lopping or uprooting of a tree by, or at the request of, SEPA to enable SEPA to carry out development for which planning permission is granted by the 1992 Order.

### **Directions as to the planting**

6.- (1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of the woodland area, the planning authority may 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 the owner must replant trees on the land.

(2) Where a direction is given under paragraph (1) of this article and trees on the relevant land are felled (pursuant to the consent), the owner of that land must replant trees on the land in accordance with the direction.

(3) Any direction given under paragraph (1) of this article may include requirements as to:

(a) species;

(b) number of trees per hectare;

(c) the erection and maintenance of fencing necessary for the protection of the replanting;

(d) the preparations of ground, training, removal of brushwood, lop and top; and

(e) protective measures against fire.

### **Adaptation and modification of the Act**

7.- (1) The provisions of the Town and Country Planning (Scotland) Act 1997 mentioned in column 1 of Part 1 of Schedule 2 to this Order are to have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications specified in column 2 of Part 1 that Schedule.

(2) The provisions referred to in paragraph (1) of this article, as so adapted and modified, are set out in Part 2 of Schedule 2 to this Order.

## Compensation

8.-(1) Subject to paragraphs (2) to (5) of this article, any person who has suffered loss or damage caused or incurred in consequence of:

- (a) any refusal of consent required under this Order; or
- (b) any grant any such consent subject to conditions, is entitled to recover from the planning authority compensation in respect of loss or damage.

(2) A claim for compensation under this Order shall be made by serving on the planning authority a notice in writing stating the grounds of the claim and the amount claimed.

(3) The time within which any such notice shall be given as a period of six months:

- (a) from the date of the decision of the planning authority; or
- (b) where an appeal has been made to Scottish Ministers against the decision of the planning authority, from the date of the decision of Scottish Ministers on the appeal.

(4) No claimant may be made under this article if the amount in respect of which the claim would otherwise have been made is less than £1,000.

(5) No compensation shall be payable to a person:

- (a) for loss of development value or other diminution in the value of the land;
- (b) for loss or damage which was not reasonably foreseeable when consent was refused or was granted subject to conditions;
- (c) for loss or damage reasonably foreseeable by that person and attributable to failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or
- (d) for costs incurred in appealing to the Scottish Ministers against the refusal of any consent required under this Order of the grant of any such consent subject to conditions.

(6) In this article:

“development value” means an increase in value attributable to the prospect of development; and, in relation to any land, the development of it shall include the clearing of it.



**Application of tree preservation order to future planting**

9. This Order applies to any tree specified in Schedule 1 of this Order which is to be planted in pursuance of a condition imposed by virtue of section 159(a) of the Act as from the time when those trees are planted.

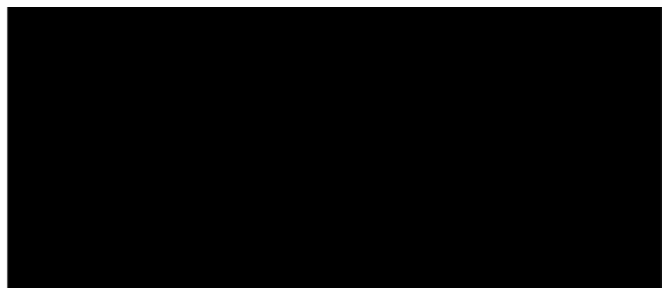
**IN WITNESS WHEREOF** these presents consisting of this and the preceding six pages together with the Schedules and map annexed are Sealed with the Seal of Orkney Islands Council and signed on its behalf by Sheila Tulloch, Service Manager (Legal Services) at Kirkwall, Orkney on the Eighth day of November Two Thousand and Twenty Two.



**SCHEDULE 1****Article 2**

<b>Trees Specified Individually (coloured green on the map)</b>		
No. on Map	Description	Situation
None		
<b>Trees Specified by Reference to an Area (with a continuous black line on the map)</b>		
No. on Map	Description	Situation
None		
<b>Groups of Trees (with a broken black line on the map)</b>		
No. on Map	Description	Situation
None		
<b>Woodlands (within a red line on the map)</b>		
No. on Map	Description	Situation
W1	Woodland comprising mainly of Sycamore	Woodland comprising the curtilage of Grainbank, Kirkwall, principally to the east and south of the buildings, with a narrow strip to the north boundary, and being part of the Title currently registered in the Land Register with the Title Number OAZ2156.

This is Schedule 1 referred to in the foregoing Tree Preservation Order by Orkney Islands Council dated 8 November 2022.



## SCHEDULE 2

### PART 1

#### PROVISIONS OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 APPLIED WITH ADAPTATIONS OR MODIFICATIONS

Provision of the Town and Country Planning (Scotland Act 1997)	Adaptation or Modification
Section 36 (Registers of applications etc.)	<p>For subsections (1) to (3) substitute:</p> <p>“(1) The planning authority shall in relation to this Order keep a register of all applications for consent under this Order, containing:</p> <p>(a) information as to the nature of such applications, the decisions of the planning authority thereon,</p> <p>(b) information as to any appeal to Scottish Ministers and the decisions of Scottish Ministers thereon, any compensation awarded in consequence of the decisions of the planning authority or Scottish Ministers; and</p> <p>(c) any directions as to the replanting of woodlands.”</p>
Section 37 (determination of applications: general considerations)	<p>(a) In subsection (1):</p> <p>(d) for “planning permission” where those words first appear; substitute “consent under a tree preservation order”;</p> <p>(e) for “sections 27B(2) and 59(1)(b)” substitute “subsections (1A) and (1B)”;</p> <p>(f) for “planning permission” in both of the other places where those words appear substitute “consent under the order”;</p> <p>(g) after “think fit”, insert “(including conditions limiting the duration of the consent requiring the replacement of trees)”;</p> <p>(b) After subsection (1) insert-</p> <p>“(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland of the woodland character of the area.</p> <p>(1B) Where the authority grant consent for the felling of trees any woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).”</p> <p>(c) Omit the subsections (2) and (3); and</p> <p>(d) In subsection (4) for paragraphs (a) to (c) substitute-</p> <p>“(a) consent under a tree preservation order; or</p> <p>(b) any consent, agreement or approval required by a condition imposed on the grant of such consent,”</p>
Section 44 (effect of planning permission)	<p>(a) references to ‘planning permission’ are to be treated as references to ‘consent required by a tree preservation order’;</p> <p>(b) for ‘the permission’ substitute ‘the consent’;</p>

	<p>(c) for 'to develop land' substitute 'to carry out works'; and</p> <p>(d) after 'land' insert 'on which the tree or trees to which the consent relates is situated'.</p> <p>(e) Omit subsections (2) and (3).</p>
Section 47 right to appeal against planning decisions and failure to take such decisions)	<p>(a) For subsection (1) substitute-</p> <p>“(1) Where a planning authority-</p> <p>(a) refuse an application for consent under a tree preservation order or grant it subject to condition;</p> <p>(b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order;</p> <p>(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or</p> <p>(d) failed to determine any such application as is referred to in paragraphs (a) to (c) within the period of 2 months beginning with the date on which the application was received by the authority,</p> <p>the applicant may notice of appeal to the Scottish Ministers against the decision”.</p> <p>(b) Omit subsections (1A), (2) and (4).</p> <p>(c) for subsection (3) substitute-</p> <p>“(3) Any appeal under this section shall be made in writing, specifying the grounds on which the appeal is made; and such notice shall be served-</p> <p>(a) In respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1) within the period of 28 days from the receipt of notification of the authority’s decision or direction or within such longer period as the Scottish Ministers may allow;</p> <p>(b) In respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant will stop”</p> <p>For subsection (5) substitute-</p> <p>“(5) For the purposes of the application of section 48(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.”</p>
Section 48 (determination of appeal)	<p>(a) In subsection (5)(a)-</p> <p>(i) for "sections 33, 37(1) to (3), 38(1) to (3), 41(1) and (2) and 42 of Part I of Schedule 3" (section 37(1), (1A) and (1B)"; and</p> <p>(ii) for "planning permission" substitute "consent under a tree preservation order".</p> <p>(b) Omit subsections (5)(b) and (6) to (8).</p>



**This is Part 1 of Schedule 2 referred to in the foregoing Tree Preservation Order by Orkney Islands Council dated 8 November 2022.**

## **SCHEDULE 2**

### **PART 2**

#### **PROVISIONS OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997, AS ADAPTED AND MODIFIED BY PART 1**

The following provisions of the Town and Country Planning Act 1997, as adapted and modified by Part 1 of this Schedule, apply in relation to consents, and applications for consent, under this Order.

#### **Section 36**

36. (1) The planning authority shall in relation to this Order keep a register of all applications for consent under this Order, containing:

- (a) information as to the nature of such applications, the decisions of the planning authority thereon,
- (b) information as to any appeal to Scottish Ministers and the decisions of Scottish Ministers thereon, and any compensation awarded in consequence of the decisions of the planning authority or Scottish Ministers; and

any directions as to the replanting of woodlands.

(4) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

#### **Section 37**

37. (1) Where an application is made to a planning authority for consent under a tree preservation order:

- (a) subject to subsections (1A) and (1B) they may grant consent under the order, either unconditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent requiring the replacement of trees); or

- (b) they may refuse consent under the order.

(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or David and character of the area.

(1B) Where the authority grant consent for the felling of trees in the woodland area they shall not impose conditions requiring replacement with such felling is carried out in the course of forestry operations (but may give directions for securing replanting).

(4) The date of grant or refusal of:

- (a) consent under a tree preservation order; or

(b) any consent, agreement or approval required by a condition imposed on the grant of such consent,

shall be the date on which the notice of the planning authority's decision bears to have been signed on behalf of the authority.

### **Section 44(1)**

44.-(1) [Without prejudice to the provision of this Part as to the duration, revocation or modification of consent required by a tree preservation order], any grant of consent required by a tree preservation order shall (except in so far as the consent otherwise provide) enure for the benefit of the land on which the tree or trees to which the consent relates is situated and all persons for the time being interested in it.

### **Section 47**

47.-(1) Where the planning authority:

(a) refuse an application for consent under a tree preservation order or granted subject to conditions;

(b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order;

(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or

(d) has not given notice of their decision on such an application within the period of 2 months beginning with the date on which the application was received by the authority [or within such extended period as may at any time be agreed upon in writing between the applicant and the authority],

the applicant may by notice of appeal to Scottish Ministers.

(3) Any appeal under this section shall be made in writing, specifying the grounds on which the appeal was made; and such notice shall be served on the Scottish Ministers within a period of three months beginning with, in the case of an appeal made under:

(a) an appeal under paragraphs (a) to (c) of subsection (1), the date of the decision notice or the direction, as the case may be; and;

(b) paragraph (d) of that subsection, the date of expiry of the period mentioned in that paragraph."

(5) For the purposes of the application of section 48(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.

**Section 47A**

47A.-(1) in an appeal under section 47(1), a party to the proceedings is not to raise any matter which was not before the planning authority at the time of the decision appealed against was made unless that party can demonstrate:

- (a) that the matter could not have been raised before that time, or
- (b) that its not being raised before that time was a consequence of exceptional circumstances.

(2) Nothing in subsection (1) affects any requirement or entitlement to have regard to-

- (a) the provisions of the development plan, or
- (b) any other material considerations.

**Section 48**

48.-(1) Appeal under Section 47 the Scottish Ministers may:

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to them in the first instance.

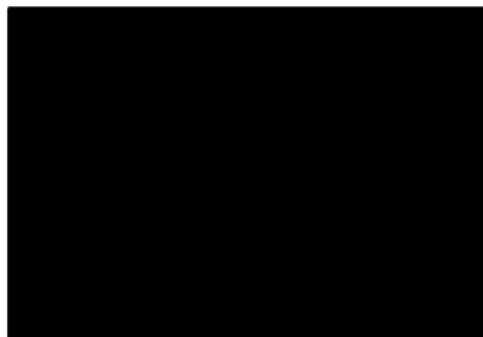
(3) If the Scottish Ministers proposed to reverse or vary any part of the decision of the planning authority to which the appeal does not relate, they shall give notice of their intention to the planning authority and to the appellant and shall give each of them an opportunity of making representations about the proposal.

(5) In relation to an appeal to the Scottish Ministers under section 47:

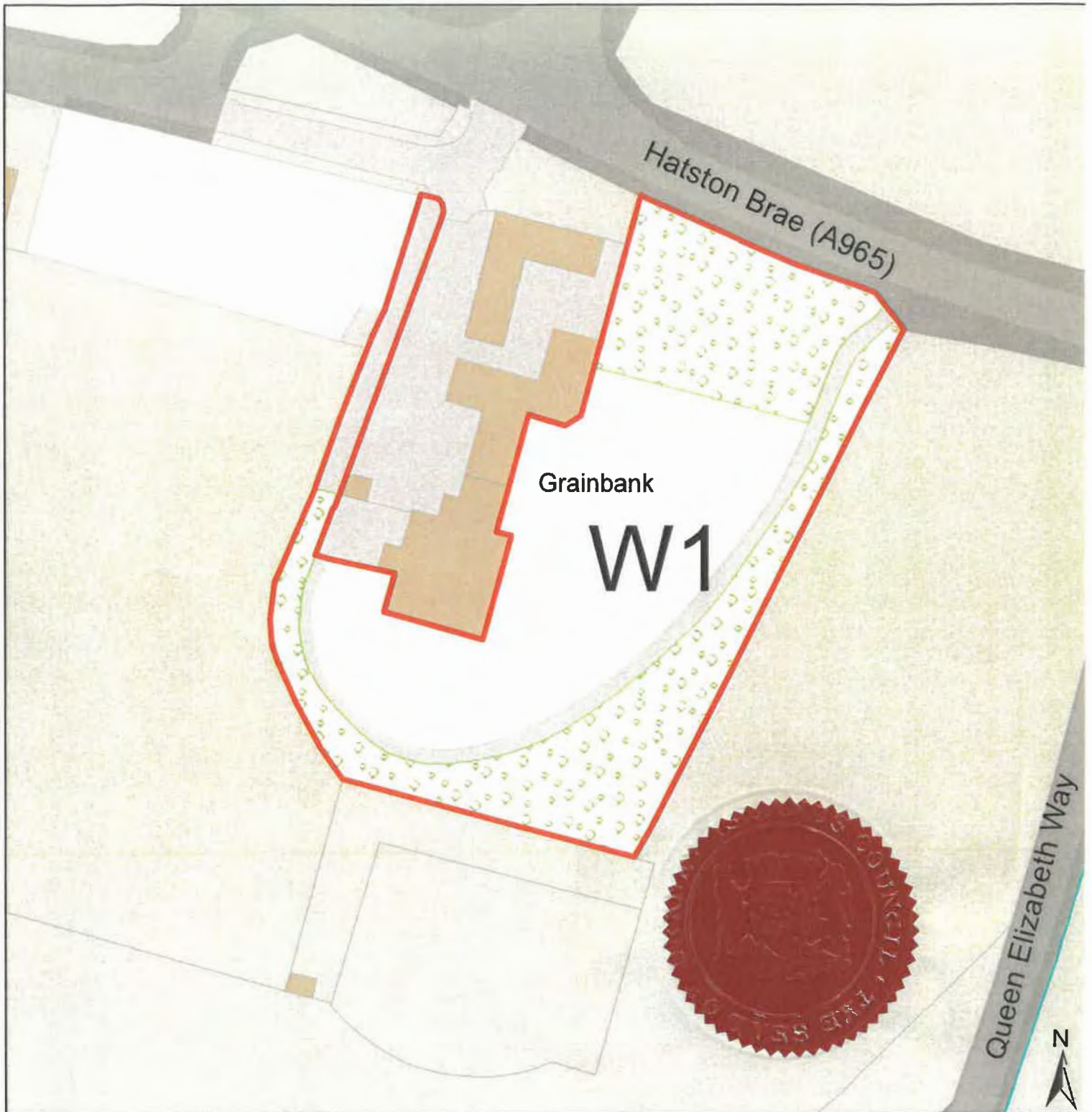
(a) sections 37(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Scottish Ministers under section 47 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

(9) Schedule 4 applies to appeals under section 47, including appeals under that section as applied by or under any other provision of this Act.

**This is Part 2 of Schedule 2 referred to in the foregoing Tree Preservation Order by Orkney Islands Council dated 8 November 2022.**



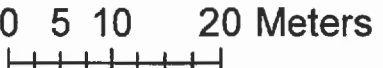
2396  
This is the map referred to in the foregoing The Orkney Islands Council  
Tree Preservation Order (Grainbank, Kirkwall) No.1 2022



The Orkney Islands Council  
Tree Preservation Order  
(Grainbank, Kirkwall) No.1 2022

Date: 8 November 2022

 W1

Scale 1:700 

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