DATED 16th October 2006

CONFIRMATION ORDER

BOROUGH OF CASTLE MORPETH
(136 EASTERN WAY, DARRAS HALL)
TOWN AND COUNTRY PLANNING ACT 1990

TREE PRESERVATION ORDER relating to
Trees at 132 Eastern Way, Darras Hall, Ponteland

SALLY ROW
SOLICITOR
CASTLE MORPETH BOROUGH COUNCIL
(Tree Preservation Order)

CONFIRMATION ORDER
BOROUGH OF CASTLE MORPETH

TOWN AND COUNTRY PLANNING ACT 1990

THE BOROUGH OF CASTLE MORPETH
(132 EASTERN WAY, DARRAS HALL)
TREE PRESERVATION ORDER 2006

The Borough Council of Castle Morpeth in this Order called "the Authority", in pursuance of the powers conferred in that behalf by Sections 198, 201 and 203 of the Town and Country Planning Act 1990, hereby make the following Order:-

1. In this Order:-

| | |
|---|---|
| "the Order" | means The Borough of Castle Morpeth (132 Eastern Way, Darras Hall) Tree Preservation Order 2006 |
| "the Act" | means the Town & Country Planning Act 1990. |
| "the Owner" | means the owner in fee simple, either in possession or who has granted a lease or tenancy of which the unexpired portion is less than three years; lessee (including a sub-lessee) or tenant in possession, the unexpired portion of whose lease or tenancy is three years or more; and a mortgagee in possession; and |
| "the Secretary of State" | means the Secretary of State for the Environment. |

2. The authority hereby direct that section 201 (provisional tree preservation orders) shall apply to this Order and, accordingly, this Order shall take effect provisionally on 16th October 2006.

3. Subject to the provisions of this Order and to the exemptions specified in the Second Schedule hereto, no person shall, except with the consent of the Authority and in accordance with the conditions, if any, imposed on such consent, cut down, top, lop, uproot, wilfully damage or wilfully destroy or cause or permit the cutting down, topping, lopping, uprooting, 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 therein specified, the position of which trees, groups of trees and woodlands is defined in the manner indicated in the said First Schedule on the map annexed 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.

4. An application for consent made to the Authority under Article 2 of this Order shall be in writing stating the reasons for making the application, and shall by reference if necessary to a plan specify the trees to which the application relates, and the operations for the carrying out of which consent is required.

5. (1) Where an application for consent is made to the authority under this Order, the 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 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 Authority shall grant consent so far as accords with the principles of good forestry, except where, in the opinion of the 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 the application, the decision of the Authority thereon, any compensation awarded in consequence of such decision 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 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 a group of trees or in a woodland, that the trees have an outstanding or special amenity value; or

(c) in the case of trees which are comprised in a group of trees or in a woodland, that the group of trees or the woodland, as the case may be, has an outstanding or special amenity value,

but a certificate shall not be given in the case of trees falling within (c) above if the application in respect of them has been referred by the Forestry Commissioners under Section 15 (1) (b) or 15(2) (a) of the Forestry Act 1967.

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 a permission to develop land under Part III of the Act, or

(b) the 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 such a direction is given and the part is felled the owner shall, subject to the provision of this Order and Section 204 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 as to:-

(a) species

(b) number of trees per acre (hectare)

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

(d) the preparation of ground, draining, removal of brushwood, lop and top; and

(e) protective measures against fire.

8. On imposing any condition requiring the replacement of any tree under Article 5 of the Order, or on giving a direction under Article 7 of this Order with respect to the replanting of woodlands, the Authority shall if such conditions or directions relates to land in respect of which byelaws made by the National Rivers Authority, an internal drainage board, a water undertaker or a sewerage undertaker (as defined in the Water Act 1989) or any other Authority whose functions are now exercised by the above bodies, restrict or regulate the planting of trees, notify the applicant or the owner of the land, as the case may be, of the existence of such byelaws and that any condition or direction has effect subject to the requirements of the byelaws, and the condition or direction shall have effect accordingly.

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

10. (1) If, on a claim under this article, a person establishes that loss or damage has been caused or incurred in consequence of:-

(a) the refusal of any consent required under this Order; or
(b) the grant of any such consent subject to conditions, he shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.

(2) No claim, other than a claim made under paragraph (3), may be made under this article:-

(a) if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or
(b) if the amount in respect of which the claim would otherwise have been made is less than £500.00.

(3) Where the authority refuse consent under this Order for the felling in the course of forestry operations of any part of a woodland area, they shall not be required to pay compensation to any person other than the owner of the land; and such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.

(4) In any other case, 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, having regard to the statement of reasons submitted in accordance with article 6(c) and any document or other evidence submitted in support of any such statement, was not reasonably foreseeable when consent was refused or was granted subject to conditions;

(c) for loss or damage reasonable foreseeable by the person and attributable to his 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 Secretary of State against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

(5) Subsections (3) to (5) of section 11 (terms of compensation on refusal of licence) of the Forestry Act 1967 shall apply to the assessment of compensation under paragraph (3) as it applies to the assessment of compensation where a felling licence is refused under section 10 (application for felling licence and decision of Commissioners thereon) of that Act as if for any reference to a felling licence there were substituted a reference to a consent required under this Order and for reference to the Commissioner there were substituted a reference to the authority.

(6) In this article -
" development value" means as 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; and
"owner" has the meaning given to it by section 34 of the Forestry Act 1967.

11. Any question of disputed compensation shall be determined in accordance with the provisions of Section 205 of the Act.

12. (1) The provisions of Sections 201 of the Act shall apply to this Order and the Order shall take effect on the sixteenth day of October 2006.

(2) This Order shall apply to any tree specified in the First Schedule hereto, which is to be planted as mentioned therein, as from the time when that tree is planted.

Given under the Common Seal of the Borough Council of Castle Morpeth this sixteenth day of October 2006

NOTE: Any person contravening the provisions of this Order by cutting down, uprooting or wilfully destroying a tree, or by wilfully damaging, topping or lopping a tree in such a manner as to be likely to destroy it is guilty of an offence and liable on summary conviction to a fine not exceeding the prescribed sum or twice the sum which appears to the Court to be the value of the tree, whichever is the greater, or on indictment to a fine. The penalty for any other contravention of this Order is a fine not exceeding Level 4 on the standard scale on summary conviction and, in the case of a continuing offence when the contravention is continued after conviction, a person is liable on summary conviction to an additional fine not exceeding £5.00 for every day on which the contravention is so continued.

If a tree is removed, uprooted or destroyed in contravention of an Order or, except in the case of a tree to which the Order applies as part of a woodland, is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by Section 198 (6) (a) of the Town and Country Planning Act 1990 relating to trees which are dying or dead or have become dangerous, it is the duty of the owner of the land, unless on his application the local planning authority dispense with the requirement, to plan another tree of appropriate size and species at the same place as soon as he reasonably can. Except in emergency, not less than 5 days previous notice of the removal etc, should be given to the Authority to enable the latter to decide whether or not to dispense with the requirement. In respect of trees in a woodland it is sufficient to replace the trees removed, uprooted or destroyed by planting the same number of trees either on or near the land on which the trees removed, uprooted or destroyed stood or on such other land as may be agreed between the Authority and the owner of the land, and (in either case) in such places as may be designated by the Authority.

This Order was confirmed by the Castle Morpeth Borough Council subject to the modifications contained within Schedule 1 namely trees being specified individually and an amendment in relation to the woodlands which are included.

Dated 4th February 2008

Authorised by the Council to sign on their behalf

## First Schedule

The plan referred to is at a scale of 1:1000 (with a 1:10000 location inset) and is based on the Ordnance Survey of Northumberland Edition Digitised Data Sheet No. NZ 1570. The trees covered by the Order stand immediately South of Nos. 3, 5, 7 & 36, Hawthorn Way, immediately North of Nos. 18, 19 & 20, Queensway, immediately West of No. 132, Eastern Way and immediately East of Nos. 29 & 31, Woodlands on the Eastern side of the Darras Hall Estate. The site is approx. 2km South of the centre of the village of Ponteland and approx. 11.5km North West of the centre of the City of Newcastle upon Tyne. The site is wholly within the Parish of Ponteland, Borough of Castle Morpeth and County of Northumberland.

### Trees Specified Individually

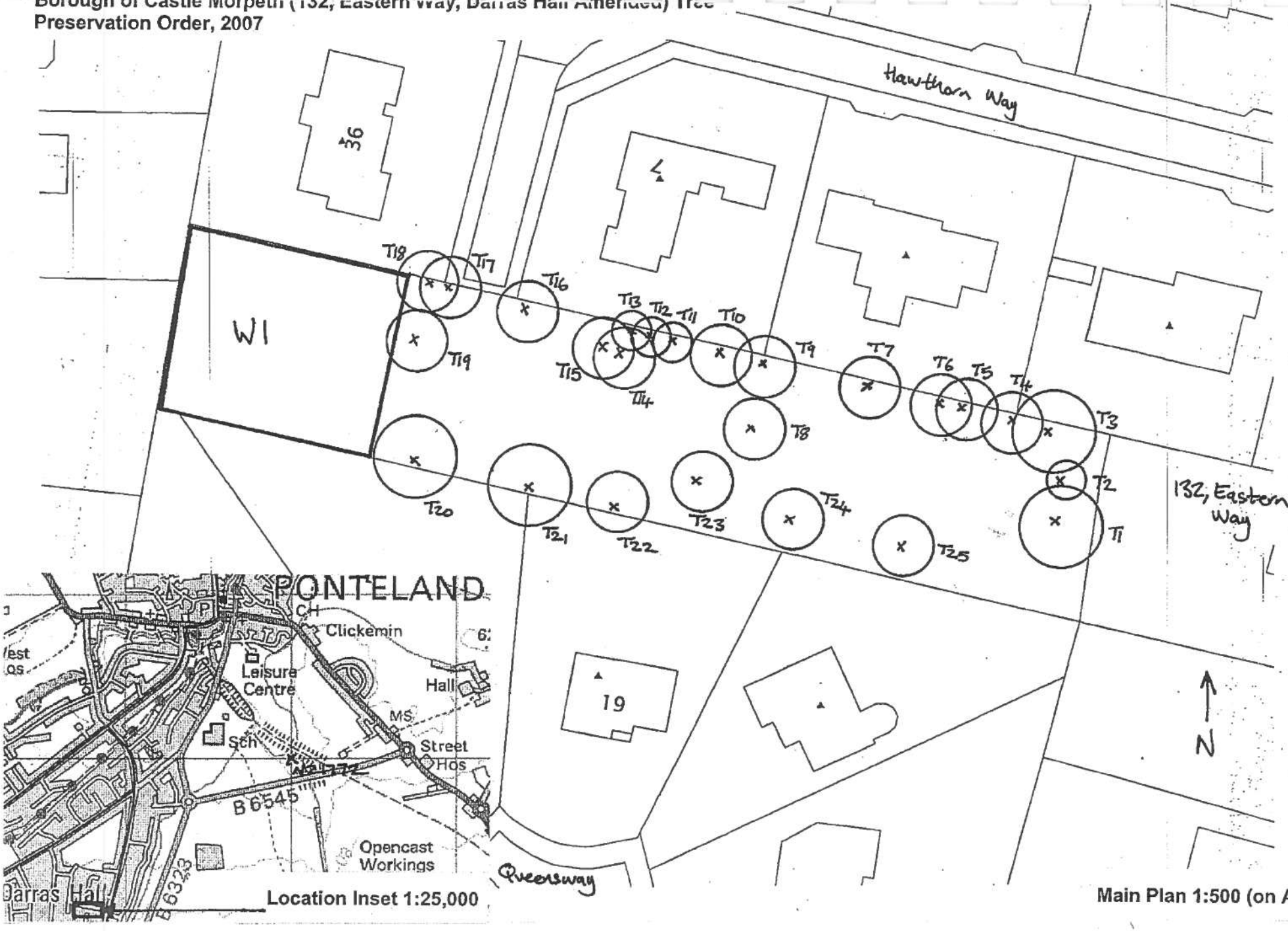
(Encircled Black on the Plan)

| | | |
|---|---|---|
| **T1** | Willow | Approx 11.5m South South West of the North East corner of the area |
| **T2** | Apple | Approx 7.5m South West of said corner |
| **T3** | Ash | Approx 7.0m West of said corner |
| **T4** | Ash | Approx 11.5m West North West of said corner |
| **T5** | Ash | Approx 17.5m West North West of said corner |
| **T6** | Ash | Approx 20.0m West North West of said corner |
| **T7** | Ash | Approx 28.5m West North West of said corner |
| **T8** | Willow | Approx 41.0m West of said corner |
| **T9** | Ash | Approx 40.5m West North West of said corner |
| **T10** | Ash | Approx 45.5m West North West of said corner |
| **T11** | Ash | Approx 51.0m West North West of said corner |
| **T12** | Ash | Approx 53.5m West North West of said corner |
| **T13** | Ash | Approx 56.0m West North West of said corner |
| **T14** | Willow | Approx 3.0m South South West of T13 |
| **T15** | Willow | Approx 4.0m South West of T13 |
| **T16** | Sycamore | Approx 68.0m West North West of said corner |
| **T17** | Ash | Approx 77.0m West North West of said corner |
| **T18** | Ash | Approx 79.5m West North West of said corner |
| **T19** | Sycamore | Approx 30.0m East North East of the South West corner of the area |
| **T20** | Sycamore | Approx 29.5m East South East of said corner |
| **T21** | Sycamore | Approx 43.0m East South East of said corner |
| **T22** | Sycamore | Approx 53.0m East South East of said corner |
| **T23** | Willow | Approx 10.0m East North East of T22 |
| **T24** | Ash | Approx 72.5m East South East of said corner |
| **T25** | Sycamore | Approx 86.0m East South East of said corner |

### Groups of Trees

None

Borough of Castle Morpeth (132, Eastern Way, Darras Hall Amended) Tree Preservation Order, 2007



**Trees Specified by Reference to an Area**

None

**Woodlands**

(Indicated by the continuous black line)

**W1** – an approximately square area extending approx 25.0m East South East by approx 21.0m South South West from the North West corner of the site with No.36, Hawthorn Way, including several ash, sycamore, willow, horse chestnut, hawthorn, oak, poplar, Scots pine and birch.

## SECOND SCHEDULE

This Order shall not apply so as to require the consent of the Authority to:-

(1) the cutting down of any tree on land which is subject to a forestry dedication covenant where

(a) any positive covenants on the part of the owner of the land contained in the same deed as the forestry dedication covenant 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 a grant scheme under Section 1 of the Forestry Act 1979 except a scheme which applies to a forestry dedication covenant.

(3) the cutting down, uprooting, topping or lopping or a tree

(a) by or at the request of the Post Office where the land on which tree situated is land which has been acquired for the purpose of the Post Office's undertaking and either works on such land cannot otherwise be carried out of the cutting down, uprooting, topping or lopping is for the purpose of securing safety in the operation of the undertaking; or the lopping in pursuance of the power conferred on any operator of a telecommunications code system by virtue of paragraph 19 of Schedule 2 to the Telecommunications Act 1984;

(b) by or at the request of

(i) a statutory undertaker or a holder of a licence under Section 6(1) of the Electricity Act 1989 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 cutting down, uprooting, topping or lopping is for the purpose of securing safety in the operation of the undertaking

(ii) a licence holder within the meaning of Part 1 of the Electricity Act 1989, where such tree obstructs the construction by the licence holder of any electric line within the meaning of Part 1 of the said Act of 1989 or interferes or would interfere with the maintenance or working or any such line;

(iii) the National Rivers Authority or an internal drainage board established under the Water Act 1989, where the tree interferes or would interfere with the exercise of any of the functions of such authority or drainage board in relation to the maintenance, improvement or

construction of water courses or of drainage works or a water undertaker or sewerage undertaker appointed under Section 11 of the Water Act 1989 in relation to their duties as such Undertakers; or

(iv) the Environment Agency to enable the Agency to carry out developments permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;

(v) the Secretary of State for Defence, the Secretary of State for Transport, the Civil Aviation Authority, or in relation to any airport managed by a Company to which any property, rights or liabilities have been transferred in pursuance of a scheme made under Section 1 or 15 of the Airports Act 1986, the person for the time being having the management of the airport, where in the opinion of such Secretary of State, Authority or person the tree obstructs the approach of aircraft to, or their departure from, any airport 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 the planning permission (other than an outline planning permission or, without prejudice to paragraph (a) (iii), a permission granted by or under the Town and Country Planning (General Permitted Development Order 1995) granted on an application made under Part III of the Act, or deemed to have been so granted for any of the Purposes of that Part;

(d) which is a fruit tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade and the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit

## THIRD SCHEDULE

Provisions of the following parts of Part III of the Town and Country Planning Act 1990 as adapted and modified to apply to this Order

69 (1) Every local planning authority shall keep a register containing information with respect to matters relevant to tree preservation orders made by the authority

(2) The register shall contain, as regards each such order -

(a) details of every application under that order and of the authority's decision (if any) in relation to each such application, and
(b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State's determination of it.

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

70 (1) Subject to subsections (1A) and (1B), where an application is made to the authority for consent under a tree preservation order -

(a) 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 or 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 the woodland character of the area.

(1B) Where the authority grant consent for the felling of trees in a 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).

75. (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 authority on the granting of such consent, shall (except in so far as the consent otherwise provides), ensure for the benefit of the land and of all persons for the time being interested in it.

77. Reference of applications to the Secretary of State:-

(1) The Secretary of State may give directions to the Authority requiring applications for consent under the Order to be referred to him instead of being dealt with by the Authority.

(2) A direction under this Section may relate either to particular application or to application of a class specified in the direction

(3) Any application in respect of which a direction under this Section has effect shall be referred to the Secretary of State accordingly

(4) Where an application for a consent under the Order is referred to the Secretary of State under this Section, the provisions of Articles 4 and 5 of the Order shall apply as they apply to such an application which falls to be determined by the Authority.

(5) Before determining an application referred to him under this Section the Secretary of State shall, if either the application or the Authority wish, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose

(6) The decision of the Secretary of State on any application referred to him under this Section shall be final

78. (1) Where the authority -

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

(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) fail to determine any such application as is referred to in paragraph (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority,

the application may by notice approval to the Secretary of State.

(2) A person who has made an application for consent under the Order may also appeal to the Secretary of State if the Authority have neither:-

(a) given notice to the application of their decision on the application; nor

(b) given notice to him that the application has been referred to the Secretary of State in accordance with directions given under Section 77 above

(3) Any appeal under this section shall be made by notice in writing addressed to the Secretary of State, specifying the ground on which the appeal is made; and such notice shall be served -

(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 Secretary of State may allow;

(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 that authority have informed the application 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.

(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).

(5) For the purpose of the application of section 79(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.

79. Determination of Appeals.

(1) On an appeal under Section 78 the Secretary of State may :-

(a) allow or dismiss the appeal

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

(c) cancel any certificate or cancel or vary any direction and may deal with the application as if it had been to him in the first instance

(2) Before determining an appeal under Section 78 the Secretary of State shall, if either the appellant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(4) Subject to subsection (2), the provisions of section 70(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for consent under a tree preservation order which fall to be determined by the authority.

(5) The decision of the Secretary of State on such an appeal shall be final.

97. Power to revoke or modify the consent under the Order.

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

(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.

(4) The revocation or modification of consent shall not affect so much of those operations as have been previously carried out.

98. Procedure for S.97 Order: Opposed cases

(1) Except as provided in Section 99, an Order under Section 97 shall not take affect unless it is confirmed by the Secretary of State.

(2) Where an Authority submit such an Order to the Secretary of State for confirmation, they shall provide the Secretary of State with a statement of their reason for making the Order and shall service notice together with a copy of the statement on:-

(a) the owner of the land affected

(b) the occupier of the land affected, and

(c) any other person who in their opinion will be affected by the Order

(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.

(4) If within that period such a person so requires, before the Secretary of State confirm the Order he shall give such an opportunity both to him and to the local Planning Authority.

(5) The period referred to in subsection (3) shall be 28 days from the service of the Notice.

(6) The Secretary of State may confirm an Order submitted to him under this Section either without modification or subject to such modifications as he considers expedient.

(7) Where a Notice has been served in accordance with the provisions of subsection (2) of this section, no operations of further operations as the case may be, in pursuance of the consent granted, shall be carried out pending the decision of the Secretary of State under this Section.

99. Procedure for S.97 Order: unopposed cases:-

(1) This Section applies where:-

(a) the Authority have made an Order under Section 97 above; and

(b) the owner and occupier of the land and all persons who in the Authority's opinion will be affected by the Order have notified the Authority in writing that they do not object to it.

(2) Where this section applies, instead of submitting the Order to the Secretary of State for confirmation the Authority shall advertise the fact that the Order has been made and the advertisement must specify:-

(a) the period within which persons affected by the Order may give notice to the Secretary of State that they wish for an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose; and

(b) the period 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.

(3) The Authority shall also serve notice to the same effect on the persons mentioned in subsection (1) (b).

(4) The period referred to in subsection 2(a) must be not less than 28 days from the date the advertisement first appears.

(5) The period referred to in subsection 2(b) must not be less than 14 days from the expiration of the period referred to in subsection (2) (a).

(6) The Authority shall send a copy of any advertisement published under subsection (2) to the Secretary of State not more than three days after the publication.

(7) 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 subsection, 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 98 (1)

(8) 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, Part VII or Part VIII of the Act.

Seal no 9132



THE COMMON SEAL OF THE MAYOR )

COUNCILLORS & INHABITANTS OF )

THE BOROUGH OF CASTLE MORPETH )

was hereunto affixed in the presence of :- )

MAYOR

CHIEF EXECUTIVE