

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 10 JUNE 2025

THE ANGUS COUNCIL (3 MARYWELL BRAE, KIRRIEMUIR) TREE
PRESERVATION ORDER 2025 NO. 1

REPORT BY SERVICE LEADER – PLANNING & SUSTAINABLE GROWTH

1. ABSTRACT

- 1.1 In terms of Section 160 of the Town & Country Planning (Scotland) Act 1997, The Angus Council (3 Marywell Brae, Kirriemuir) Tree Preservation Order 2025 No. 1 came into effect on 8 January 2025. The Order preserves a tree that is of significant amenity value. It is recommended that the Order be confirmed.

2. RECOMMENDATION

- 2.1 It is recommended that The Angus Council (3 Marywell Brae, Kirriemuir) Tree Preservation Order 2025 No.1 be confirmed.

3. BACKGROUND

- 3.1 Section 159 of the Town and Country Planning (Scotland) Act 1997 places a duty on planning authorities to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made for the preservation of trees. Section 160 of the Act empowers planning authorities to make an order providing for the preservation of any trees, group of trees or woodlands where it is considered expedient in the interests of amenity and/or where the trees are of cultural or historical significance.
- 3.2 Angus Local Development Plan Policy PV7 Woodland, Trees and Hedges provides Angus Council's policy on the matter and states:

Ancient semi-natural woodland is an irreplaceable resource and should be protected from removal and potential adverse impacts of development. The council will identify and seek to enhance woodlands of high nature conservation value. Individual trees, especially veteran trees or small groups of trees which contribute to landscape and townscape settings may be protected through the application of Tree Preservation Orders (TPO).

Woodland, trees and hedges that contribute to the nature conservation, heritage, amenity townscape or landscape value of Angus will be protected and enhanced. Development and planting proposals should:

- protect and retain woodland, trees and hedges to avoid fragmentation of existing provision;*
- be considered within the context of the Angus Woodland and Forestry Framework where woodland planting and management is planned;*
- ensure new planting enhances biodiversity and landscape value through integration with and contribution to improving connectivity with existing and proposed green infrastructure and use appropriate species;*
- ensure new woodland is established in advance of major developments;*
- undertake a Tree Survey where appropriate; and*

- *identify and agree appropriate mitigation, implementation of an approved woodland management plan and re-instatement or alternative planting.*

Angus Council will follow the Scottish Government Control of Woodland Removal Policy when considering proposals for the felling of woodland.

4. CURRENT POSITION

- 4.1 The house at 3 Marywell Brae sits within the historic part of Kirriemuir and the Conservation Area abuts the garden to the north and is around 60m to the west of the property. The house currently has pedestrian access from Marywell Brae and vehicular access from Brown's Lane (off Brechin Road). The house is on the high ground overlooking the Gairie Burn, with the front garden sloping steeply towards the south. The Giant sequoia or Wellingtonia (*Sequoiadendron giganteum*) is within the front garden. The tree is around 28m in height and has a trunk diameter of 1.75m. The tree, which is in good health, is widely visible particularly from Marywell Brae and Elm Road, but also from other parts of Kirriemuir when not obstructed by buildings. It is also visible as part of the distinctive Kirriemuir skyline with roofs and trees combining in views from the south-west and higher ground to the north, including the cemetery on the Hill of Kirriemuir.
- 4.2 Planning application 23/00489/FULL relates to the formation of garage structure including the formation of vehicular access and driveway from Marywell Brae. The impacts on the tree have been an important factor in the consideration of the application and given the contribution of the tree towards visual amenity was considered appropriate to protect it from damage through the making of a tree preservation order. A smaller Copper beech tree within the garden is not covered by the order.
- 4.3 Using delegated authority and under Sections 160 and 161 of the Town & Country Planning (Scotland) Act 1997 a Tree Preservation Order (TPO) was made to preserve the areas of trees (A1) given their contribution to the amenity of the area. The TPO came into effect on 8 January 2025. Under Section 161 the Order took effect immediately without previous confirmation by the Planning Authority in order to safeguard the trees from a risk of felling.
- 4.4 The Order continues in force for a period of six months or until the date the Order is confirmed by the Planning Authority, whichever first occurs. Under Section 161 if the Order is not confirmed within six months it expires.

5. CONFIRMATION OF TREE PRESERVATION ORDER

- 5.1 The Tree Preservation Order that has been made remains in force until 8 July 2025 unless it is confirmed by the Planning Authority. The Giant sequoia tree is considered to merit protection under the provisions of the Act and their protection is consistent with Policy PV7 of the Angus Local Development Plan.
- 5.2 A period of 28 days was allowed for the making of objections and representations to the Planning Authority. Before deciding whether to confirm the Order, the Council must take into consideration any objections and representations duly made.
- 5.3 The 28 day period has now expired and no representations have been received.
- 5.4 If the Order is not confirmed it will expire and the tree could be at threat from felling. This would be detrimental to the amenity of the area. Confirmation of the Order will ensure that the trees of high amenity value are protected.

6. FINANCIAL IMPLICATIONS

- 6.1 There are no financial implications on the Council as a result of this report.

7. HUMAN RIGHTS IMPLICATIONS

- 7.1 The recommendation to confirm the Tree Preservation Order has potential implications in terms of the proprietors entitlement to peaceful enjoyment of their possessions (First Protocol, Article 1) and/or in terms of alleged interference with home or family life (Article 8). For the reasons referred to elsewhere in this report justifying the present recommendation in planning terms, it is considered that any such actual or potential infringement of such Convention rights is justified. Any actual or alleged infringement is in accordance with the Council's legal powers under the Planning Acts and is necessary in the general interest for the protection of amenity in Angus. The interference is also proportionate given that the felling of the trees is on the information available, not considered to be one, which would be approved by Angus Council. Further, the interference will be the minimum required to achieve the objective of protecting the amenity of Angus.

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

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Appendix 1: Location Plan