1. INTRODUCTION

This report updates Members on the position with regard to the partial revocation of TPO 16/04 on site W1 at 19 to 37 Cumberland Avenue, Helensburgh.

2. RECOMMENDATION

2.1 It is recommended that Members may wish to give consideration to confirming the revocation of the TPO on site W1.

3. DETAIL

3.1 The Helensburgh and Lomond Area Committee, at their meeting in August 2006, considered a report and agreed a motion for the partial revocation of TPO 16/04 at 19 to 37 Cumberland Avenue, Helensburgh to remove an area of trees from the TPO (see Appendix 1 (report) and 2 (extract from minute)).

3.2 Thereafter there was a lengthy debate with both the applicants and their agents and also with the Scottish executive, the Council's own internal Legal Advisers, the Planning Department and also finally with Brodies, Solicitors in regard to the process to be adopted in respect of the proposed revocation Order.

3.3 This note should be considered in the context that objectors to the proposal had a very firm view that a particular process should be gone through to achieve this if the Council were so minded to seek a Revocation of the TPO.

3.4 There was a general agreement amongst all of the parties that Section 275(8) of the Town and Country Planning (Scotland) Act 1997 provided a general power to the Council to revoke or modify a TPO once it had been made. However, thereafter the detailed procedure of how this should be achieved and the circumstances in which there might be reference to the Scottish Ministers in the event of objections being received proved particularly complex and uncertain. As far as can be established no other Council in Scotland has sought to revoke a TPO. As a result it was agreed by the Strategic Policy Committee at its meeting on 19th April 2007 to follow a specific procedure to ensure the least likelihood of any challenge by any of the parties to this matter once the process had been gone through.

3.5 The Council advertised the making of a Revocation Order in a form generally in accord with that which sought to impose the Order originally with a statement that the original TPO 16/04 is revoked to the extent of the removal of one area of trees. An advertisement was submitted to the local press and also placed on site which detailed that the Council proposed to make this Order and inviting objections within a 28 day period to be submitted in writing to the Head of Planning.
3.6 A total of 370 primarily pro-forma letters have been received objecting to the revocation together with 502 primarily pro-forma letters of support. These letters are available for Members inspection. The majority of the letters of objection raise no new issues. Those new issues that have arisen are briefly summarised below.

**New grounds of objection**

a) The TPO was imposed on grounds of amenity. The woodland is still of great amenity value and there has been no change in circumstances that would justify revoking the TPO. The site is protected by an Open Space Protection Area (OSPA) in the Finalised Draft Local Plan and it is hoped any decision into this TPO modification would not prejudice the integrity of the Public Local Inquiry (PLI) into the Local Plan. The Local Authority have so far not given the OSPA status of this site the weight it deserves in the decision making process, so it becomes more crucial if any decision is to appear legitimate that the decision maker has all the facts at his/her fingertips. There is a compelling case for delaying this decision until the report into the Local Plan is published. The reasons why some Councillors want to modify the TPO remains unclear, unsubstantiated and untenable. In the Argyll and Bute advertisement to revoke the TPO the four material considerations given for doing so are either invalid or incorrect reasons. For example, the majority of the trees are Larch, which can be seen as a traditional timber crop, but it is also a native Scots species. No reason has been given as to why this traditional Scottish tree is somehow a problem at this location. The Area Committee dishonestly misquoted the Erskine Tree Surgeons report on this woodland taking the quote “the wrong trees in the wrong place” out of context. Secondly, the site is difficult to access and there is no delineated path but this has not always been the case. The owners have refused to maintain the undergrowth and this lack of maintenance has caused the paths to be covered. Regarding grounds 3(c) there is a woodland nearby at Duchess Wood but that is in greenbelt and has got absolutely nothing to do with the particular amenity value of the site in question. Finally, in terms of reason 3(d) the site is woodland, not a gap site. The TPO recognises that it is a woodland, so it is misleading to suggest by implication that it is a gap site.

Comment: The TPO designation is separate from the OSPA designation. Consequently, it is not considered that a decision purely on the modification/revocation is premature in advance of the Reporters’ findings on the PLI. Under the Town and Country Planning (Tree Preservation Orders and Trees in Conservation Areas (Scotland) Regulations 1975, Schedule 3 gives planning authorities powers to revoke or modify a consent under this order where it is expedient to do so having regard to the development plan and to any other material considerations. It is for the decision-maker to assess the weight to be attached to each material consideration.

3.7 Following completion of the advert process the representations were sent to the Scottish Ministers. They advised on 11 December 2007 that they no longer had a locus in this matter and have referred it back to the Council for decision.

4. **CONCLUSION**

4.1 Members will recall that officers have previously recommended against modifying the TPO on this site. It is not considered that there has been a material change in circumstances that would change this position. However, Members previously took a different view and therefore may wish to give consideration to confirming the modification of the TPO at this site.

5. **IMPLICATIONS**

Policy: None.
Financial: None.

Legal: The process may give rise to at least the possibility of a challenge.

Equal Opportunities: None.

Angus J Gilmour
Head of Planning
25 January 2008
1.0 SUMMARY

1.1 At the June meeting of the Helensburgh and Lomond Area Committee Councillor G Mulvaney asked that a report be submitted to the August Committee to enable Members to give consideration to the merits of modifying the Tree Preservation Order (TPO) on land between 19 and 37 Cumberland Avenue, Helensburgh.

2.0 POWER TO REVOKE OR MODIFY A TPO

2.1 A Planning Authority, where they consider it expedient and having regard to the development plan and other material considerations, may present an Order to modify or revoke a TPO. Any owners, occupiers and lessees of the land in question must be served notification and be afforded the opportunity of appearing before, and being heard by, a person appointed by the Scottish Executive. If the Order is unopposed by those with an identified interest then the Planning Authority shall also advertise the Order for a period of not less than 28 days. Anyone affected by the Order may give notice to the Scottish Executive that they wish an opportunity of appearing before, and being heard by, a person appointed by the Scottish Executive. If no representations are received then the Order to revoke or modify may take effect not less than 14 days from the expiration of the 28 day period.

3.0 RECOMMENDATION

3.1 That the Area Committee agrees that the site between 19 and 37 Cumberland Avenue, Helensburgh should not be removed from the TPO and that no Order to revoke or modify the TPO should be made.

4.0 BACKGROUND

4.1 Until last year this site (C2) and three others in the immediate locality (C1, C3 and C4 - see attached map) were within the ownership of the Ministry of Defence (MOD) who had repeatedly refused requests from the Council to cover the sites by a TPO. The areas of woodlands in question were thought to have been planted in the 1960s and mainly comprise conifers planted at a high density. When the sites changed hands the Council immediately promoted a provisional TPO which was later confirmed by Members. This reflected a longstanding instruction from elected Members who have been seeking to impose a TPO on all four sites since 1997. Subsequent to this, the landowner made an application to the Council to fell a number of trees on the grounds that they were diseased and dangerous. These trees were marked on site by the applicant and inspected by the Council’s Horticultural Services Officer who agreed that they posed Health and Safety issues and should be felled. This permission was given and almost all of the marked trees have been removed.

4.2 In terms of the planning history all four sites have been or are currently the subject of planning applications. In 2002 an outline planning application for residential development on the site between 19 and 37 Cumberland Avenue (i.e. C2) was refused on the following grounds:-

1. The proposal, by virtue of its anticipated adverse impact upon established woodland area, is contrary to the provision of Policy DC 1 (part 2), Policy H 5 (part b) and NHL 5 of the Dumbarton District Wide Local Plan as Adopted, all of which seek to protect trees and landscape features where it is considered that they make a significant contribution to the character and visual appearance of the established environment. It is considered that the extensive vegetation and tree cover is a key characteristic of the adjacent residential area and that the group value of the area of woodland in question is
important to the setting of the wider locality. The residential development of the site will result in the loss of the majority of the woodland which comprises the application site which will have in an unacceptable detrimental impact upon the setting and character of the immediate locality.

4.3 In 2005 a detailed application for the erection of three dwellinghouses on the same site was refused on the following grounds:-

1. The application site has significant amenity value in the immediate area and wider setting of Helensburgh due to its mature tree cover and woodland appearance. The proposed development will result in the loss of this important woodland area, which occupies a prominent position within the locality and which successfully integrates and softens the impact of existing residential development into its wider landscape setting. The total loss of these trees and other vegetation cover and their replacement with substantial dwellings, access road, hardstanding, fences and other associated suburban development will be visually intrusive, visually discordant and will not maintain or enhance the character of the area. The planting of replacement trees 1-1.5 metres in height around part of the perimeter will not be sufficient to retain the woodland character of the site in either the short or the long term. The site is covered by a Tree Preservation Order and the proposal will prevent significant regeneration and replanting of trees by substantially reducing the areas available for tree cover and changing the character of the site from woodland to suburban garden. This in turn will further undermine the amenity value of the site, will be further visually intrusive and will further contribute to its detrimental impact on adjoining properties and the wider area. The proposal is therefore contrary to the terms of Structure Plan Policy STRAT FW2 and Policies DC1, H5 NHL5 and NHL6 of the Dumbarton District, District Wide Local Plan, which seek to prevent the loss of trees and to maintain and enhance the character of existing residential areas.

2. The proposed dwellinghouses will be two storeys with an integral double garage underneath and the ground here would be excavated to allow access to these garages. A section of each property would therefore be fully 3 storeys in height. They also combine a prominent three storey gable feature that also includes a large high level feature window that gives the impression of an additional 4th storey. The level changes across the site also necessitate the proposed houses having underbuilding. This underbuilding will add to the height and increase the impact of development upon the streetscene. The use of blue/buff/red brick is also untypical of the area. Consequently, when juxtaposed with the existing properties the proposed development will be visually dominant, incongruous and intrusive and will look out of place in the established streetscene. This effect will be exacerbated by the loss of all the mature trees. As such the development will have a detrimental impact upon the amenity and character of adjoining properties and the wider area. The proposal is therefore contrary to the terms of Policies DC1 and H5 of the Dumbarton District, District Wide Local Plan that seek to maintain and a current application (06/00361/DET) for the erection of three dwellinghouses on the same site was continued from the June Area Committee to allow for consideration of this report into the merits of the TPO on this site. Members will also be aware that planning permission for the erection of 8 dwellinghouses on land at Rhu Road Higher, Helensburgh was granted last year under reference 05/00511/DET. Two separate TPO applications to fell trees on three of the four sites (C1, C2 and C3) were also submitted under references 05/00774/TPO and 05/02133/TPO. However, both were withdrawn before being considered by Members.

5.0 PROPOSED REPLANTING/MANAGEMENT

5.1 The applicant has previously submitted a supporting Woodland Management Plan/Survey which is relevant to the consideration of the merits of the TPO. This recommended that three of the four woodlands (C1, C2 and C3) be clear felled. With regard to the hardwoods, it is argued that they are all suffering from the effects of light competition. As they have had to grow rapidly in order to maintain enough light to sustain their growth, all the trees have poor crown form and growth habits. Most of the trees show no characteristic form and habit of growth for their species, all being tall and thin with poor crowns. It is further argued that when the Larch trees are removed the remaining hardwoods will more than likely become wind damaged due to windbreak as they will no longer be sheltered by the Larch trees. The risk of sun scorch is also great as the majority of hardwoods within the woodland are thin barked trees such as sycamore.
Replanting proposals have been based on woodland and native species indigenous to the area and these comprise the following:

<table>
<thead>
<tr>
<th></th>
<th>Birch</th>
<th>Oak</th>
<th>Beech</th>
<th>Willow</th>
<th>Hawthorn</th>
<th>Elder</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site C2 – land between 19 and 37 Cumberland Avenue</td>
<td>126</td>
<td>126</td>
<td>126</td>
<td>67</td>
<td>67</td>
<td>38</td>
<td>550</td>
</tr>
</tbody>
</table>

The planting density would be 3m x 3m spacing / 1100 per hectare. All trees would be whips, 90/120 cm in height, with a stem furnished from ground level up, with a single leader. The trees would be planted using the notch method at staggered spacing of 3 metres in mixed planting tree groups.

It should be noted that this replanting schedule is separate from the current planning application for three dwellinghouses (06/00361/DET) which also proposes some replanting.

6.0 PREVIOUS CONSULTATION RESPONSES

As indicated above the applicant has previously considered felling all the trees on three of the four sites and this was the subject of two TPO applications. Both of these were withdrawn prior to consideration by Members. However, they were the subject of consultation responses which are relevant to the current deliberations.

**Service Officer Ground and Horticulture** (memo dated 13/4/05): The report provided by the landowner has assessed the condition of the broadleaves individually and has given a general condition report on the conifers. The plan does not outline the overall long term aim of the landowner, although the inclusion of a replanting programme would indicate that the longer term aim would be to establish a broadleaved woodland on the site.

The age of replants should be varied from 90 – 120cm to standards and heavy standards to create a broadleaved woodland of multi age. Planting will require to be done in pits as well as notch planting using this size range. The maintenance programmes all tasks consistent with managing newly planted woodland. A more detailed map of the replanting proposals should be prepared using a grid or similar to pinpoint locations giving a more detailed picture.

The TPO on this site serves to protect the concept of woodland in this area and will ensure that the management of the site conserves the tree cover in a planned and structured manner. The works already carried out on site for safety reasons have resulted in a number of trees becoming more at risk of falling than may otherwise have occurred. Retention of the remaining trees with no further management is not the best solution in conserving this area as a woodland amenity. The condition of these conifers will deteriorate further both as individual specimens and in their contribution to the overall woodland concept. The felling of conifers and those broadleaves in poor condition offers an opportunity to create a well planned woodland which will continue to retain woodland cover in the longer term offering a safe and well managed woodland environment for the community to use for informal recreational purposes.

**Woodland Officer, Forestry Commission** (letters dated 9/3/05 and 30/3/2005): The description of the condition of the standing crop is reasonably accurate and fair. However, the retention of as many of the broadleaves as possible would help retain some woodland presence.
The condition of the Larch crop does give some cause for concern due to the proximity of housing and public roads. The lack of crown depth and the recent thinning exercise is more likely to lead to wind snap rather than wind throw as the woodlands are low lying, relatively sheltered and have soils that are conducive to good root depth.

The replanting proposals and choice of species do not appear to have been based on any ecological assessment (soils and vegetation) of the woodland sites and it is suggested that the species choice be based on a combination of the owner’s objectives and an ecological assessment. This should be determined in consultation with the local community and, in particular, neighbours who may have concerns regarding the views from their properties, possible reduction of light and leaf fall.

The owner’s objectives for the woodland are still not clearly stated. The management plan makes no reference to any discussion with the local community regarding their preference for the management of the woodland. This, considering the close proximity of the housing and high amenity value of the woodlands, is a highly important aspect of the planning process and should not be overlooked.

The management plan refers to fencing and the exclusion of the public from the woodlands. The woodlands appear to be heavily used by the public for informal recreation and again the use of the woodlands is a matter that should be discussed with the local community. The intended exclusion of the public is likely to be contrary to the new access legislation.

**Erskine Tree Surgeons: Detailed Tree Survey Safety Inspection (report dated 19 May 2005):** Further to this survey it was established that there were a total of 664 trees on the three sites (C1, C2 and C3) of which 435 were Larch trees. It is the professional opinion of Erskine Tree surgeons that site C1 out of all the three sites contributes the most aesthetic value to the surrounding area. Site C2 compliments site C1 due to its positioning and site C3 due to extensive pruning works has lost most of its shape and form. All the trees within each three sites from an aboricultural definition are healthy. Minor problems are noted in the tree survey schedule.

It is recommended that specific attention is made in retaining sites C1 and C2. Site C3 has lost most of its shape and form and its positioning within the urban community is less than ideal. It is believed that sites C1, C2 and C3 were not originally planted for their aesthetic values as the majority of trees within the sites are larch, leading to the conclusion that they were planted for their timber yield. Although that may have been the original intent the middle aged woodlands now exist in an urban environment and it is thought that they offer great amenity value to the surrounding location, act as an interlinking wildlife corridor and act as a sound barrier for the local community.

The trees should therefore be retained and managed accordingly. It is the professional opinion of Erskine Tree Surgeons that no major characteristics were noted that would validate the woodland’s removal. Where works are required a schedule has been produced identifying the tree and detailing the proposed works. These works include recommendations to fell eleven trees which are considered to be dangerous.

### 7.0 ARGYLL AND BUTE FINALISED DRAFT LOCAL PLAN

#### 7.1
Since the TPO was imposed Members have subsequently agreed to designate the sites at C1, C2, and C4 as Open Space Protection Areas under the Argyll and Bute Finalised Draft Local Plan. This reinforces the amenity value of these spaces to the wider community and presumes against their redevelopment.

### 8.0 CONCLUSION

#### 8.1
The three consultees in respect of this application have somewhat differing views on the best way forward for these sites. However, all would appear to agree that there is some value in having woodlands in these locations.
8.2 Erskine Tree Surgeons have, however, carried out the most detailed examination of the trees and have concluded, with a few exceptions, that the trees are in reasonable condition and do not pose a health and safety risk sufficient to warrant their removal. The area of woodland is valuable as groups of trees in terms of their contribution to the amenity of the immediately surrounding residential area as well as providing a backdrop for a wider part of Helensburgh. Given this, the previous planning history and the designation under the Finalised Draft Local Plan, I am not persuaded that there are any health, safety or other reasons which would justify removing this piece of woodland from the TPO. Consequently, it is recommended that the TPO should not be revoked or modified in terms of the site between 19 and 37 Cumberland Avenue, Helensburgh.

9.0 IMPLICATIONS

Policy: None
Financial: None.
Personnel: None
Equal Opportunities: None

Angus Gilmour
Head of Planning
12 July 2006

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Appendix 2

(m) TREE PRESERVATION ORDER DESIGNATION ON SITE AT CUMBERLAND AVENUE, HELENSBURGH

A report outlining the merits of modifying the Tree Preservation Order on land between 19-37 Cumberland Avenue, Helensburgh.

Motion
The Area Committee make an Order to modify the Tree Preservation Order in respect of this particular site. Since the Tree Preservation Order was confirmed, a number of inspections have been undertaken by Members, Officials and tree specialists on this and others sites within the entire Tree Preservation Order area. In respect of this site, it is noted that:-

a) The majority of trees on this site are Larch – a traditional timber crop, which Erskine Trees surgeons concluded were not planted for their aesthetic value, describing them as wrong trees in the wrong place.

b) The site is particularly difficult to access, set several feet on a steep bank below the adjacent public pavement. It is covered by vegetation and there is no delineated path through the trees.

c) A community managed woodland exists nearby in Duchess Woods, offering superior amenity value and all abilities access.

d) The site represents a gap between two residential developments on the same road.

These material considerations above detract from any amenity value that these trees or this site may have and in effect mean that the trees and site are not worthy of the special protection that a Tree Preservation Order confers.

Moved by Councillor Mulvaney, seconded by Councillor Thomson.

Amendment
Agrees that the site between 19 and 37 Cumberland Avenue, Helensburgh should not be removed from the Tree Preservation Order and that no Order to revoke or modify the Tree Preservation Order should be made.
Moved by Councillor Reay, seconded by Councillor Stewart.

Decision
The Motion was carried by 5 votes to 2 and the Committee resolved accordingly.

(Reference: Report by Head of Planning dated 12 July 2006)