

TREE PRESERVATION ORDER (1 of 2020) AT 8 ANCRUM ROAD, DALKEITH

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 This report seeks the Committee's approval to confirm a Tree Preservation Order (TPO) 1 of 2020 issued on 17 December 2020 on a single mature common oak tree (*Quercus robur*) within the grounds of 8 Ancrum Road, Dalkeith.

2 BACKGROUND

- 2.1 A TPO was issued by the Executive Director of Place as an 'emergency' using delegated authority powers granted by Midlothian Council's Standing Orders. The TPO was issued on the basis that a report regarding the confirmation of the TPO, once the owner of the land and other interested parties have had the opportunity to make comment, be reported to Committee for consideration. The background and justification for issuing the TPO is set out in the delegated authority report attached as Appendix A.
- 2.2 The TPO came into effect on 17 December 2020 and continues in force for six months (until 17 June 2021) or until the Order is 'confirmed', which is the process of making the TPO permanent (until it is removed).
- 2.3 Following the service of the TPO the landowners were given the opportunity to make representation. Furthermore, in accordance with the Regulations, a notice was published in the Midlothian Advertiser and on the Council's website, a site notice was also attached to a lamp post near the said tree and the Eskbank and Newbattle Community Council were also notified of the decision to issue the Tree Preservation Order and invited to make a representation. Interested parties were given until 11 February 2021 to make representations. Legislation requires that a period of at least 28 days is made available for representation to be submitted to the Council following a decision to make a Tree Preservation Order.
- 2.4 The owners of the tree were granted an extension of time to make comments as they advised the Council that due to Covid-19 it had been difficult to appoint specialists to give an opinion with regard the condition

of the tree. Subsequently, the owner of the tree at 8 Ancrum Road objected to the confirmation of the TPO and submitted formal representation to the Council expressing concern over the health and safety risks from the tree and implications from the tree damaging the property's boundary wall at 8 Ancrum Road and the consequent risk to their family, visitors to the property, passers by using Ancrum Road, as well as damage to their house and property.

- 2.5 The owners civil and structural engineer's report sets out their view that movement in the boundary wall has been caused by the tree and that the wall's long term stability would be a concern if continued tree growth causes further movement. The owners' arboricultural consultant's report states the tree is poorly located, is out growing its location and that its expected useful life expectancy is 10 to 20 years, but that is uncertain and depends on the condition of the adjacent boundary wall. The report suggests the wall be closely monitored and that consideration is given to the tree being removed and that an appropriate replacement tree is planted. The arboriculturalist has also questioned the wider visibility of the tree and the contribution it makes to the local landscape setting of the area. Further details of these reports are set out below.

- 2.6 Summary Findings and Conclusions of the Consulting Civil and Structural Engineer's report:

"The localised nature of the movement to the wall in proximity of the tree strongly suggests that the tree is the source of the movement. It is anticipated that the tree roots have travelled below the wall and causing an upwards lift and resulting rotation of the wall.

An analysis of the theoretical stability of the wall to BS 5628-1 has been undertaken based on the dimensions taken during the visit. Based on this analysis, the wall would accept the calculated wind loads whilst maintaining a factor of safety of over 1.2.

However, further movement of the wall can be expected to create instability which could potentially lead to partial collapse of the wall. We would not be able to provide a timescale on when instability is likely to occur as any further movement is expected to correlate with tree growth, however, specialist advice from an arborist expert may be able to assist.

To ensure term stability, the removal of the tree and rebuilding of the disturbed masonry sections would be recommended. As no foundations are anticipated below the existing wall, it would be prudent to take this opportunity to provide new foundations, which comply with modern standards, during the rebuilding works. Any roots below the new foundations should also be grubbed up before rebuilding to minimise the risk of future settlement.

In conclusion, based on the above assessment, it is strongly suggested that the growth of the tree has caused rotation of the wall directly adjacent. Long term stability would be a concern if the continued tree growth causes further movement therefore it is recommended that remedial measures are undertaken as soon as practical.”

2.7 Summary Findings and Conclusions of the Arboricultural Consultant's report:

“In my opinion, on-growing radial growth of structural roots and of the main stem itself will inevitably continue to exert significant and increasing pressure on the wall. This is a result of the trees position both in relation to the wall and property boundary....

....My own assessment, based on the size of tree, its vigour, and location beside the wall is that instability is likely to arise due to continued root and stem growth, within the short term rather than long term.

It is clear that the tree is growing in a very much restricted environment, both above ground in relation to the crown, which has led to management by crown reduction pruning, and below the ground, where root and stem growth has caused movement of the boundary wall and future growth will inevitably lead to instability.”

I understand from one of the property owners that there has been a history of damage to drainage and more minor landscape features due (copied from report) to tree roots. All in all, the tree is unfortunately, poorly located and outgrowing its location.

To conclude, the tree is in my opinion, not a suitable candidate for Tree Preservation Order. It is in my opinion, of relatively short term life expectancy, due to its location, available space, and effect on the boundary wall.”

2.8 No other representation were received.

3 PLANNING ISSUES

- 3.1 The TPO was issued because the mature oak tree is an integral feature in the local landscape and adds to the character of the Eskbank and Ironmills Conservation Area, which is defined by the historical character of the buildings and streets, but also by the mature trees throughout the conservation area. In the absence of evidence supporting the tree's removal there is a planning policy presumption by way of policy ENV11: Woodland, Trees and Hedges, of the Midlothian Local Development Plan 2017 to support the retention of the tree. The retention of mature trees not only adds to the amenity of an area, but they are of significant importance in terms of biodiversity (a mature oak tree can support over

2000 species) and climate change (an oak tree can absorb over a tonne of CO₂ in a 100 year life).

- 3.2 The property owner and their specialist consultants do not disagree with the amenity, biodiversity and climate change value of the mature oak tree, but instead present a case that this value is outweighed by the trees potential impact on physical structures, in particular the adjacent boundary wall, and an associated risk to structures and individuals being in close proximity to structures if they collapse.
- 3.3 The risks identified are material considerations and are understandable ones which are reasonably raised by the property owner - however these are not immediate risks and the owner's arboriculturalist suggests there is another 10 – 20 years of growth before the tree becomes too big for its location. On this basis it could be considered reasonable that the oak tree has another 10 – 20 years of amenity, biodiversity and climate change benefit before being removed.
- 3.4 It is accepted that at some point in the future the tree will have to be removed or the boundary wall reconstructed around the tree – a judgement to be made with regard which feature, the tree or the boundary wall, contributes most to the conservation area is one to be taken at the appropriate time. However, this process can take place by way of an application in the future, in the meantime it is considered appropriate to confirm the TPO for at least 10 years, in the knowledge that the tree may have to be removed at some point in the future.

4 PROCEDURE

- 4.1 The TPO will continue to remain in effect to the end of the six month period (ending 17 June 2021). If the local planning authority wishes the TPO to stay in effect beyond the six months it must 'confirm' the order.
- 4.2 To 'confirm' the Order the LPA must register the TPO in the Land Registry of Scotland, place a copy on its own TPO register and notify Scottish Forestry (previously the Forestry Commission Scotland), interested persons and any person who has made a representation (in this case no representations were received).

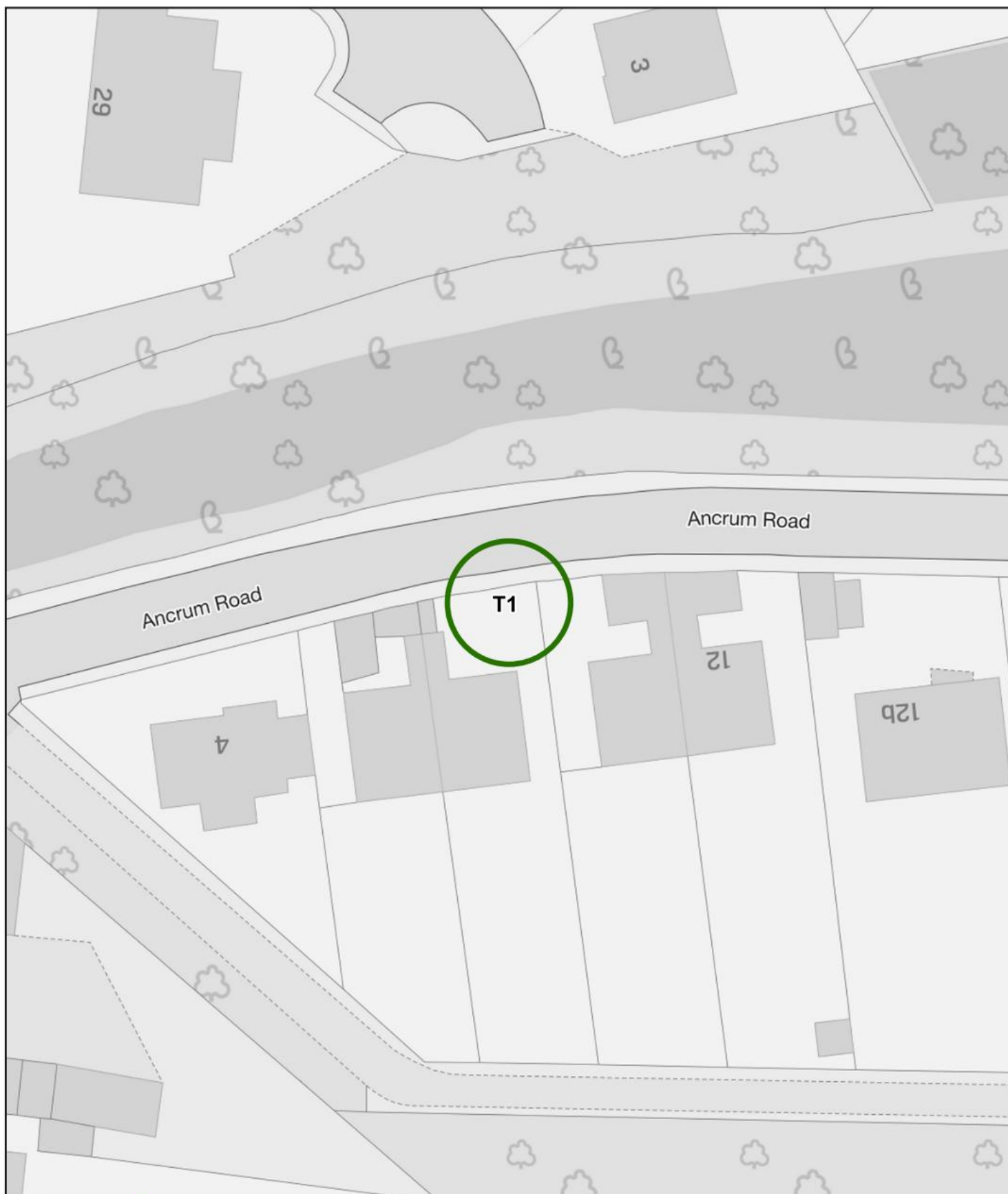
5 RECOMMENDATION

- 5.1 It is recommended that the Committee:
 - a) agrees to confirm the Tree Preservation Order;
 - b) instruct the Planning Manager to carry out the necessary procedures, following confirmation and endorsement of a Tree Preservation Order, that are required by the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010; and

c) review the Tree Preservation Order in 2031.

Peter Arnsdorf
Planning Manager

Date: 8 May 2021
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Background Papers: Delegated Report dated 16 December 2020,
attached as Appendix A



**Planning Service
Place Directorate**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Woodridge, 8 Ancrum Road, Dalkeith, EH22 3AJ.

This is the plan relative to the Midlothian Council Tree
Preservation Order No.1 of 2020

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TREE PRESERVATION ORDER REGARDING AN OAK TREE AT 8 ANCRUM ROAD, DALKEITH

SEEKING DELEGATED AUTHORITY FROM EXECUTIVE DIRECTOR PLACE

Report by Planning Manager – Peter Arnsdorf

1 PURPOSE OF REPORT

- 1.1 This report seeks the Delegated Authority from Executive Director Place in accordance with the Council's Standing Orders to issue a Tree Preservation Order (TPO) on a tree located at 8 Ancrum Road, Dalkeith.

2 LOCATION

- 2.1 The tree is a single mature oak tree (*Quercus robur*) located in the rear garden of 8 Ancrum Road, Dalkeith, EH22 3AJ and shown on the plan accompanying this report.

3 BACKGROUND

- 3.1 On 13 August 1976 a Tree Preservation Order (TPO Number 15 of 1976) was made protecting an area of woodland on the north side of Ancrum Road, Dalkeith immediately opposite the location of the proposed TPO. The stated TPO protects trees that are contemporaries of the oak tree which is the subject of this proposed TPO.
- 3.2 Planning application 19/00081/DPP for the formation of a new vehicle access and erection of extension at 8 Ancrum Road, Dalkeith was approved subject to conditions on 26 April 2019. This proposal included works within the root protection area of the oak tree subject of this proposed TPO. The planning application proposed the retention of the tree and included a comprehensive Tree Survey and Arboricultural Impact Assessment statement recommending root protection during construction of the vehicular access and extension.
- 3.3 A tree survey undertaken on 12 March 2019 recorded the tree as being in moderate condition. The survey recorded the tree's stem diameter at 1.5 metres as being 640 millimetres, the tree having a crown spread of 14-16 metres and a height of 20 metres. It further noted that the tree had in the past been pruned vigorous. The grant of planning permission

(19/00081/DPP) protects the tree by condition, however this protection only applies if the property owner implements the grant of planning permission – the tree is therefore at risk of removal prior to the implementation of the planning permission.

3.4 On 6 November 2020 a Work to Tree application (20/00768/WTT) was submitted notifying the Council of the intention to fell the said oak tree and replace it with a cherry tree. The reasons given for the felling of the tree are as follows:

- concern tree roots have caused damage to footpaths and boundary walls creating a danger to the health and safety of the property own and persons using the adjoining public footpath;
- the tree's location being too close to the house;
- the fact that the trees root protection area conflicts with the approved house extension;
- damage caused to pipework by tree roots and damage to pedestrian path;
- potential for falling branches;
- local flooding on the path leading to the main house entrance; and
- damage to the neighbour's boundary wall caused by tree roots.

3.5 No specialist reports or supporting evidence other than photographs have been submitted.

4 PROCEDURES

4.1 The provision for issuing a Tree Preservation Order is set out in the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006, and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010. A planning authority may make a TPO if it appears to them to be "expedient in the interest of amenity and/or that the trees, groups of trees or woodlands are of cultural or historic significance" (Scottish Government Planning Circular 1/2011: Tree Preservation Orders).

4.2 Following the service of a TPO the owner of the land and other interested parties have the opportunity to make representation and are given a minimum period of 28 days to do so. However there is no right of appeal against a Tree Preservation Order.

4.3 The TPO shall be in effect for six months, during which time representations from the owner of the land and other interested parties will be considered. If the local planning authority wishes the TPO to stay in effect beyond the six months it must 'confirm' the order. A decision to 'confirm' a TPO will be one for the Planning Committee.

- 4.4 The decision to issue a TPO is usually taken by the Planning Committee, however an emergency TPO can be declared by the Executive Director Place using delegated authority. In this case a report will be prepared in response to the Work to Tree application (20/00768/WTT) notifying the applicant that the decision will be “To make a Tree Preservation Order”. This will mean that the current proposed works through Work to Tree application (20/00768/WTT) will be refused. A decision on the Work to Tree application has to be made by 17 December 2020 and cannot wait until the next available Planning Committee scheduled for 12 January 2021.

5 PLANNING ISSUES

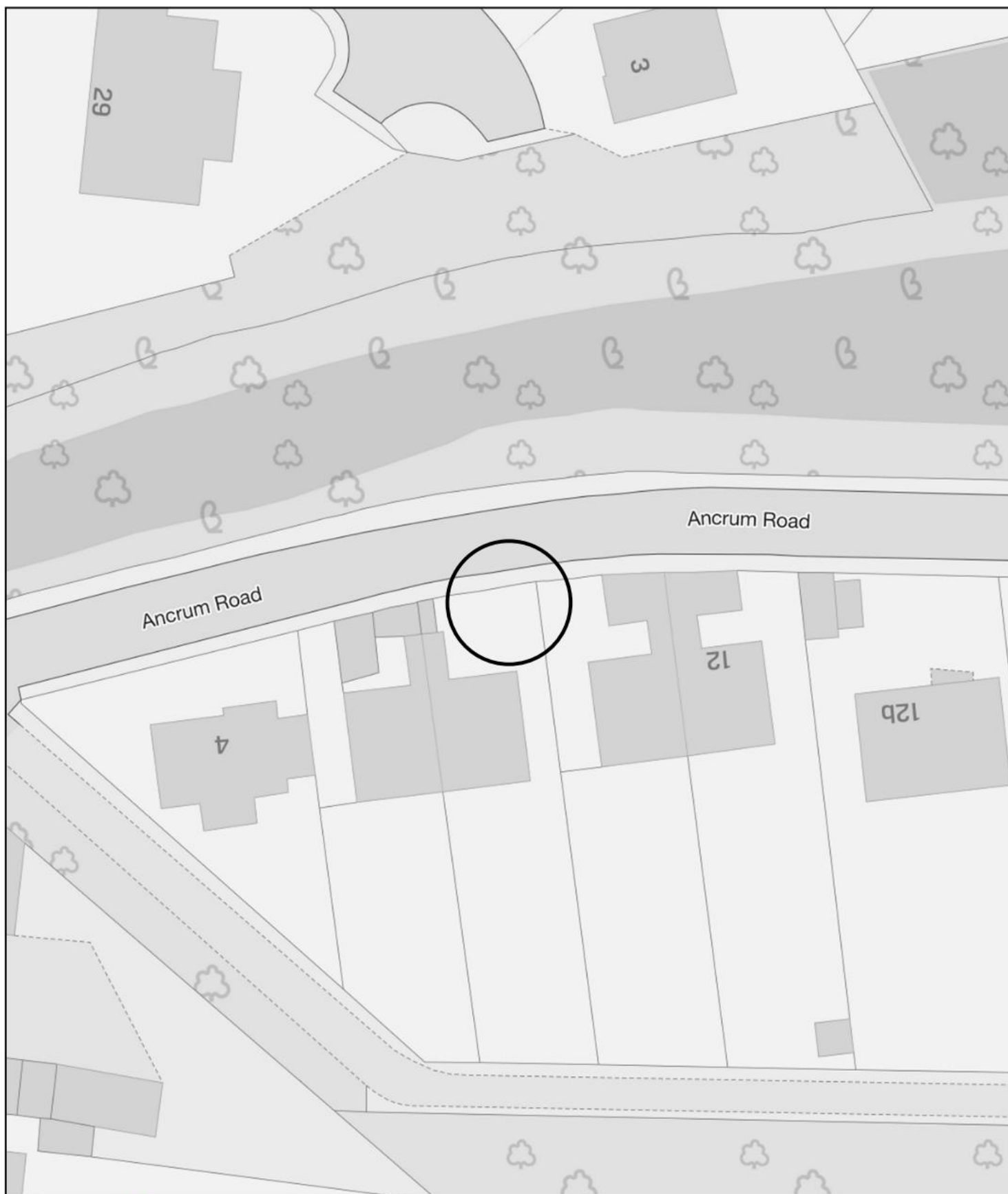
- 5.1 The proposed preservation of the mature oak tree is based on amenity grounds. The tree is an integral feature in the local landscape and adds to the character of the Eskbank and Ironmills Conservation Area. In the absence of evidence supporting the tree’s removal there is a planning policy presumption by way of policy ENV11 of the Midlothian Local Development Plan 2017 to support the retention of the tree.

6 RECOMMENDATION

- 6.1 It is recommended that the Executive Director Place use Standing Order (item 3.22(e) of the Scheme of Delegations to Chief Officials) implemented by the Council on 27th September 2016:
- a) to declare an emergency Tree Preservation Order to cover a single mature oak tree at 8 Ancrum Road, Dalkeith;
 - b) to inform the Planning Manager of the decision on this request to declare an emergency Tree Preservation Order;
 - c) note that if an emergency Tree Preservation Order is declared, a report will be prepared in response to Work to Tree application 20/00768/WTT notifying the applicant that the decision will be “To make a Tree Preservation Order”; and
 - d) to note that the emergency Tree Preservation Order will be subject to a period of at least 28 days during which the making of the Order will be advertised and representations can be made on whether the Tree Preservation Order should be confirmed. Following the period for representations, a report will be presented to the Planning Committee to consider any representations made and whether to confirm the Tree Preservation Order.

Peter Arnsdorf
Planning Manager

Date: 16 December 2020
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Background Papers:



**Planning Service
Place Directorate**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Proposed Tree Preservation Order
8 Ancrum Road, Dalkeith

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8 Ancrum Road Photographs





T1 Common Oak

Adjacent TPO



Photo showing
cracks to paving in
gateway adjacent
to T1



T1 Showing
proximity to walling

