



TREE PRESERVATION ORDER (1 of 2024) REGARDING TREES AT LAND ADJACENT TO MEYERLING AND LAND AT LITTLE MOSS AND NETHER MOSS, HOWGATE, PENICUIK

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 This report seeks the Committee's approval to confirm Tree Preservation Order (TPO) 1 of 2024 issued on 30 May 2024 for a group of trees (G1) at land adjacent to Meyerling and land at Little Moss and Nether Moss, Howgate, Penicuik.

2 BACKGROUND

- 2.1 At its meeting of 23 January 2024 the Committee determined to issue a TPO regarding a group of trees (G1) at land adjacent to Meyerling and land at Little Moss and Nether Moss, Howgate, Penicuik.
- 2.2 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 following details of the case are set out in the 23 January 2024 Committee report attached as Appendix A:
- Site location and description;
 - Background and justification for issuing the TPO;
 - Details of the TPO proposal;
 - Location plan;
 - Local development context plan; and
 - Site photos
- 2.3 The TPO came into effect on 30 May 2024 and continues in force for six months (until 30 November 2024) or until the Order is 'confirmed', which is the process of making the TPO permanent (until it is removed).
- 2.4 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 and the Howgate Community Council were also notified of the decision to issue the Tree Preservation Order and invited to make a representation. In addition, site notices were attached to gates/fences on site advising of the TPO and the consultation process.

Interested parties were given until 5 July 2024 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.

3 REPRESENTATIONS

- 3.1 No representations were received in response to the TPO notification process.

4 PLANNING ISSUES

- 4.1 The plantation woodland features in views from the west and from the A6094. It adds to the setting and amenity of the area, contributes to local biodiversity and will help to screen the recently approved dwellinghouse (planning applications 21/00775/DPP and 23/00187/DPP) on the adjoining land.
- 4.2 The issuing of a TPO will be a valuable tool in perpetuating canopy cover in the area to help mitigate and address the effects of the climate emergency, protecting the trees for their amenity and place functions and preserving local biodiversity and habitat connectivity. The woodland is of value and suitable for protection by way of a TPO for the following reasons:
- It positively contributes to the landscape character and amenity of the local area and is worthy of retention;
 - It contributes to the wider landscape setting when viewed from the A6094 and from areas to the west including from the A701 and the road approaching Milkhall Pond Local Biodiversity Site;
 - It contributes towards the landscape setting for those existing properties along the A6094 in the local vicinity;
 - It provides visual screening and shelter to existing dwellings at Little Moss and Nether Moss and to the site of the dwelling approved by planning applications 21/00775/DPP and 23/00187/DPP, especially in providing partial screening of long-distance night-time lit views of the dwelling house from the west due to its elevated location on a ridge alongside the A6094;
 - Based on the site history of tree removal, the woodland appears to be at potential risk of felling. The recent approved planning application 23/00187/DPP has also raised concerns that the woodland may suffer either indirect or direct harm, either through tree removal or pruning prior to the start of any construction works, due to construction damage to the trees or their root protection areas, or in future due to perceived or actual conflict with the residential land use (for example due to partial shading leading to pressure for tree removal or pruning);
 - There are no specific measures in place to prevent tree felling prior to the commencement of the approved dwellinghouse, except for the limitations on tree felling imposed by the Forestry and Land Management (Scotland) Act 2018. This means that currently tree felling of up to 5 cubic metres per calendar quarter could take place;

- Plantation blocks and associated shelterbelts are a typical landscape feature of this part of Midlothian, planted to serve the role of providing shelter from south westerly winds in this otherwise exposed undulating landscape. The landscape of the local area affords expansive views meaning that any proposed removal of plantation woodland would be widely visible especially when viewed from the west;
- The plantation is worthy of protection as a tree group related to the domestic and pastoral setting of the adjacent cottage at Nether Moss and the surrounding grazing land and stables;
- The plantation is assessed to be of reasonable condition with a retention period of over forty years; and
- The proposed TPO contributes to wider green network and nature network connections across the wider area, creating links to Milkhall Pond Local Biodiversity Site, the Lead Burn corridor and wider rural tree canopy including Tree Preservation 1 of 2018 Wellington School.

5 PROCEDURES

- 5.1 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 Tree Preservation Order 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). The TPO subject of this report has been made on amenity grounds.
- 5.2 The TPO will continue to remain in effect to the end of the six-month period (ending 30 November 2024). If the local planning authority wishes the TPO to stay in effect beyond the six months it must ‘confirm’ the order.
- 5.3 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).

6 RECOMMENDATION

- 6.1 It is recommended that Committee:
 - a) Confirm the Tree Preservation Order (1 of 2024) for a group of trees (G1) at land adjacent to Meyerling and land at Little Moss and Nether Moss, Howgate, Penicuik; and
 - b) Instruct the Planning, Sustainable Growth and Investment Service 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.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date:	31 August 2024
Contact Person:	Grant Ballantine grant.ballantine@midlothian.gov.uk
Background Papers:	January 2024 Committee Report (attached as Appendix A)



TREE PRESERVATION ORDER REGARDING TREES AT LAND ADJACENT TO MEYERLING AND LAND AT LITTLE MOSS AND NETHER MOSS, HOWGATE, PENICUIK

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 This report seeks the Committee's approval to issue a Tree Preservation Order (TPO) on woodland located at land adjacent to Meyerling and land at Little Moss and Nether Moss, Howgate, Penicuik.

2 LOCATION AND SITE DESCRIPTION

- 2.1 The site is located on land approximately 900 metres south of Howgate, off the A6094 and south of a cluster of dwellings including Cluny House, Meyerling, Ardraig Venture Fair and the former Howgate Restaurant site. The Lead Burn is located approximately 60 metres to the northwest and Milkhall Road runs approximately 100 metres to the west. Milkhall Pond (a local biodiversity site) is 300 metres to the north. There is a further cluster of dwellings which includes Nether Moss and Mosshouses located to the west and southwest of the site. An existing TPO, no 2 of 2021, already exists, protecting other groups of trees in the local landscape.
- 2.2 The proposed subject of the TPO is a shelterbelt woodland; Group 1 (G1) which sits on the western edge of two sloping pastoral fields adjacent to the A6094, south of Howgate. The woodland is clearly visible from the A6094. It is also visible from the west owing to its elevated position on a visually prominent ridge. In the recent past the fields to the east of the proposed TPO have been used for grazing horses. Planning permission for residential development on the field to the north has recently been granted (see Section 3 of the report).

3 BACKGROUND

- 3.1 The immediate surroundings of the proposed TPO have suffered loss of tree cover in recent years. Between 2010 and 2018 an approximate one hundred metre linear shelterbelt of trees along the A6094 was removed. The group of trees the subject of this TPO report (is predominantly Scots Pine) originally formed part of a continuous

roadside shelterbelt from Mosshouses to Cluny House and Venture Fair. More recently, on 25 March 2021, further partial removal of the shelterbelt along the A6094 took place and in response an emergency TPO (TPO 2 of 2021) was made on 31 March 2021 and confirmed by the Committee at its meeting of 15 June 2021. This TPO protected the remaining trees in the shelterbelt running for 370 metres along the A6094 - it also protected individual beech trees on the site's northwest boundary. TPO 2 of 2021 did not include any of the plantation woodland at G1 which is the subject of this proposed TPO.

- 3.2 The site of this proposed TPO 1 of 2024 has been the subject of a number of planning applications between 2002 and 2023 for residential development. All the planning applications were refused, except for the most recent two. Planning application 21/00775/DPP for the erection of dwellinghouse and access off the A6094 was approved by the Council's Local Review Body (LRB) on 21 March 2022. A further application, 23/00187/DPP, proposed an alternative location for the dwellinghouse and was approved by the LRB on 6 July 2023. This application sited the dwellinghouse on raised land closer to the site's southwestern boundary and the plantation woodland the subject of this TPO report. The woodland at G1 provides significant screening along part of the housing site's northwest boundary and is particularly important in partially screening views of the residential development, with additional but incomplete filtering of views being provided by the trees already protected by TPO 2 of 2021.

4 PROPOSAL

- 4.1 It is proposed to issue a TPO covering an area of woodland (Group 1) comprising a semi-mature plantation and shelterbelt woodland including Larch and Scots Pine.

5 PROCEDURES

- 5.1 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 Planning (Scotland) Act 2019, 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).
- 5.2 Following the service of a TPO the owner of the land and other interested parties have the opportunity to make representation. However, there is no right of appeal against a Tree Preservation Order once it is designated by the planning authority.

- 5.3 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.

6 PLANNING ISSUES

- 6.1 The plantation woodland features in views from the west and from the A6094. It adds to the setting and amenity of the area, contributes to local biodiversity and will help to screen the recently approved dwellinghouse (planning applications 21/00775/DPP and 23/00187/DPP) on the adjoining land.
- 6.2 The issuing of a TPO will be a valuable tool in perpetuating canopy cover in the area to help mitigate and address the effects of the climate emergency, protecting the trees for their amenity and place functions and preserving local biodiversity and habitat connectivity. The woodland is of value and suitable for protection by way of a TPO for the following reasons:
- It positively contributes to the landscape character and amenity of the local area and is worthy of retention;
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 - Plantation blocks and associated shelterbelts are a typical landscape feature of this part of Midlothian, planted to serve the role of providing shelter from south westerly winds in this otherwise

exposed undulating landscape. The landscape of the local area affords expansive views meaning that any proposed removal of plantation woodland would be widely visible especially when viewed from the west;

- The plantation is worthy of protection as a tree group related to the domestic and pastoral setting of the adjacent cottage at Nether Moss and the surrounding grazing land and stables;
- The plantation is assessed to be of reasonable condition with a retention period of over forty years; and
- The proposed TPO contributes to wider green network and nature network connections across the wider area, creating links to Milkhall Pond Local Biodiversity Site, the Lead Burn corridor and wider rural tree canopy including Tree Preservation 1 of 2018 Wellington School. The figure below shows Tree Preservation orders in the area (shown in green), indicating how this proposed TPO (shown in red) would help to strengthen green network connectivity. The designation of these other TPOs reflects the significance of the role and contribution to local character of these shelter belt tree groups.

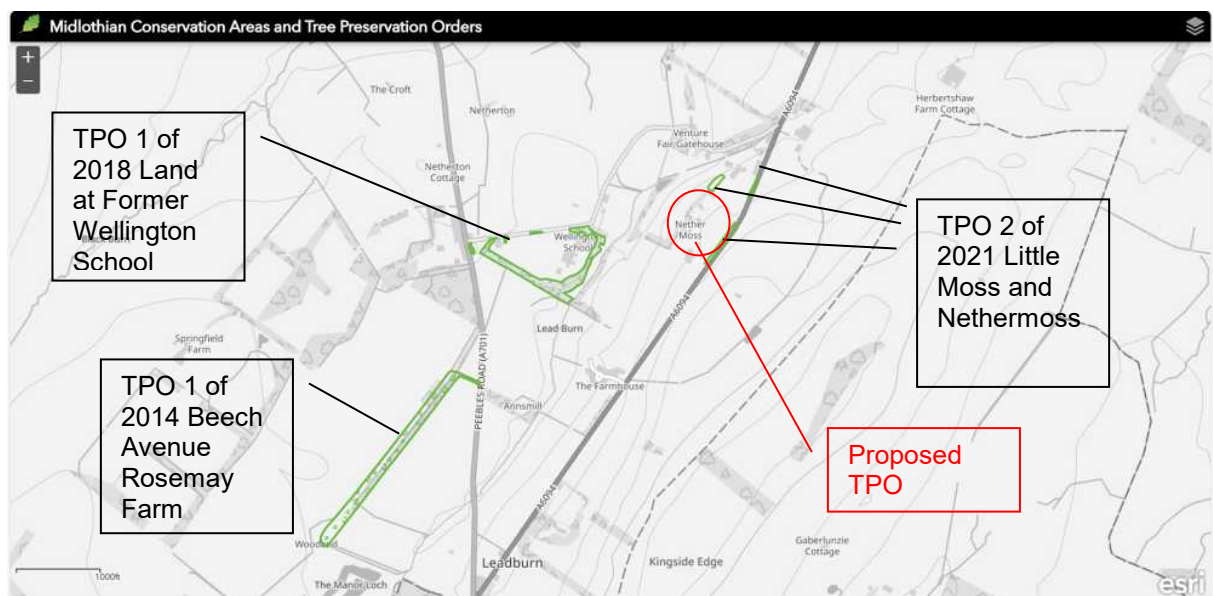


Figure 1: Tree Preservation Orders and Proposed TPO Context

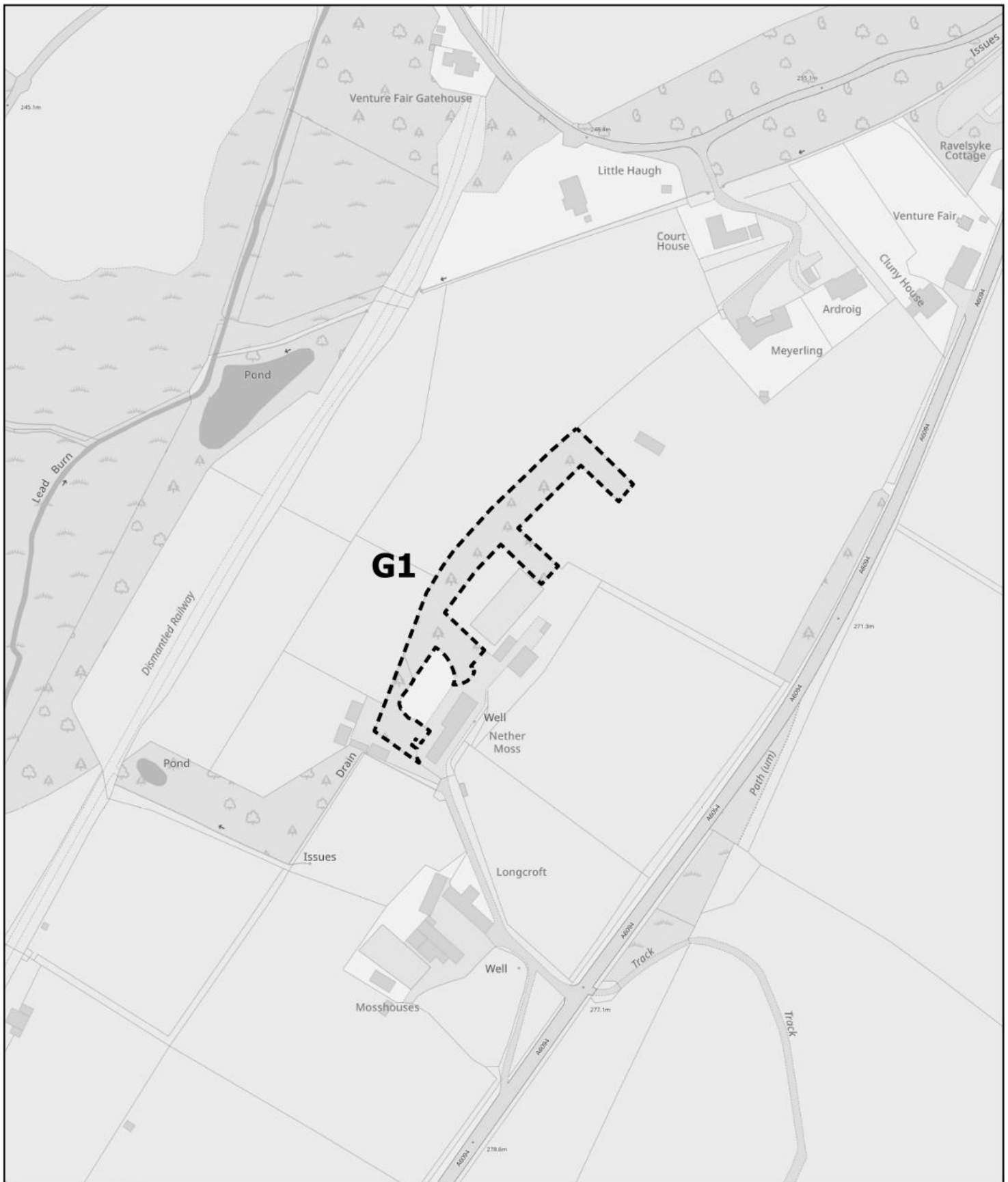
7 RECOMMENDATION

7.1 It is recommended that the Committee:

- Agrees to the issuing of a TPO to protect the identified trees at land adjacent to Meyerling and land at Little Moss and Nether Moss, Howgate, Penicuik; and
- Agrees to receive a further report to consider confirming the TPO once the owner(s) of the land and other interested parties have had the opportunity to make comment.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 12 January 2023
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Background Papers: Site location plan and site photographs



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Land adjacent to Meyerling and land at Little Moss and Nether Moss, Howgate, Penicuik, Midlothian.

This is the plan relative to the Midlothian Council Tree Preservation Order No. 1 of 2024

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Site Photographs

Trees at Nethermoss and Little Moss near Howgate 04/05/2023

Group G1: All trees visible form part of G1 except the young saplings in tree shelters in the foreground



View looking south-west from within Nethermoss close to boundary fenceline

Group G1: All trees visible form part of G1 except
the young saplings in tree shelters in the foreground



**Looking west. Broadleaved young tree planting on boundary line between
Nethermoss and Little Moss. Plantation G1 in background**

Group G1: All trees visible form part of G1



Group G1: Looking southwest from within Little Moss

Group G1: All trees visible form part of G1



**Edge of Group G1 looking south from just next to the stable block.
Distant views to the Pentland Hills glimpsed in background.**

Group G1

G3 of TPO 2
of 2021



Showing proximity of stable location to edge of G1 and distant views to the Pentlands.

Group G1

Court House



Western edge of G1 seen looking north along the boundary fenceline looking towards Court House

Group G1



Boundary line between Little Moss and Nethermoss