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## **TREE PRESERVATION ORDER (2 of 2021) AT LITTLE MOSS AND NETHER MOSS, NR HOWGATE, PENICUIK**

Report by Chief Officer Place

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### **1 PURPOSE OF REPORT**

- 1.1 This report seeks the Committee's approval to confirm a Tree Preservation Order (TPO) 2 of 2021 issued on 31 March 2021 for three groups of trees (G1, G2 and G3) at Little Moss and Nether Moss, near Howgate, Penicuik.

### **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 31 March 2021 and continues in force for six months (until 31 September 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 and the Howgate 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 14 May 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 One representation was received supporting the issuing of the TPO.

### 3 PLANNING ISSUES

- 3.1 The three groups of trees, G1-G3, subject of this TPO are located at Little Moss and Nether Moss, south of Howgate. Groups 1 and 3 are located along the western side of the A6094. Group 2 is located midway between the A6094 and the Lead Burn, west of the property "Meyerling".
- 3.2 The groups of trees sit within two sloping pastoral fields adjacent to the A6094, south of Howgate. The Lead Burn is located approximately 60 metres to the northwest and Milkhall Road runs approximately 100 metres to the west of the fields. Milkhall Pond (a Local Biodiversity Site) and an associated cluster of dwellings, including Cluny House, Meyerling, Ardraig Venture Fair and the former Howgate Restaurant site, lie to the north of the fields. There is a further cluster of dwellings to the west and southwest of the fields which includes Nether Moss and Mosshouses.
- 3.3 The three tree groups are clearly visible from the A6094. From the west Group 3 is highly visible owing to its elevated position on a prominent ridge to the southeast of the Lead Burn.
- 3.4 The immediate surroundings of the TPO have suffered loss of tree cover over recent years. Between 2010 and 2018 an approximate one hundred linear metre shelterbelt of trees along the A6094 was removed directly to the south of Group 1. This section (predominantly Scots Pine) originally formed part of a continuous roadside shelterbelt from Mosshouses to Cluny House and Venture Fair. On 25 March 2021 there was the partial removal of the shelterbelt identified as Group 1 - approximately 6 trees were removed.
- 3.5 A site which includes Groups 1 and 3 has been the subject of a number of planning applications for residential development between 2002 and 2018. All of the planning applications have been refused planning permission and subsequent appeals and reviews by the Local Review Body dismissed. The report on the most recent planning application, ref. 18/00218/DPP, referred to the impact of the tree removal prior to 2018 and the importance of trees for the local landscape character of the area, an extract from the report states:

*"The existing access is recessed slightly from the A6094 with a gate. Although there are some trees in the area, a number have been removed. Although this did not require planning permission, their loss has had a detrimental impact on the landscape character of the area. This removal appears to be connected to providing adequate visibility and accommodation for the required visibility splays for the vehicular access. It is regrettable that these have been removed as these enhanced the landscape of the area, however as these were not protected the planning authority had no control over these works."*

- 3.6 The trees are semi-mature and are a significant features in the local landscape. Group 3 is important in distant views owing to its location on a visually prominent ridge when viewed from the west and northwest, especially from Milkhall Road and the Lead Burn corridor. Group 3's elevated position means it is seen clearly against the skyline.
- 3.7 Groups 1 and 2 are clearly visible from the A6094 and from dwellings at Mosshouses and the cluster of dwellings to the north, owing to their location immediately adjacent to the A6094. Groups 1 and 2 are roadside trees forming part of what was originally a continuous linear shelterbelt of mixed broadleaf and deciduous trees, including Scots Pine and Beech, running along the west side of the A6094 between Mosshouses and Cluny House. Linear shelterbelts of this type and species are a characteristic historic feature south of Howgate and Penicuik, and were planted to provide shelter due to the exposed nature of the landscape.
- 3.8 Individual Beech trees as at Group 3 are also a characteristic and historic feature of this landscape, being found planted as individual roadside trees and also as in this case on field boundaries.
- 3.9 Groups 1 and 3 form the western side of a tree lined approach to a small cluster of dwellings. They mark the start of a distinct landscape change from the more open exposed land around Leadburn to the south, and the smaller scale, more domestic, planted and wooded setting of the village of Howgate. The roadside trees provide existing dwellings at Mosshouses, and further north at Meyerling and Ardraig, with some visual screening from traffic travelling along the A6094, a national speed limit road, which includes high sided vehicles and agricultural traffic. The Beech trees within Group 3 provide some shelter from the prevailing winds, especially owing to the land's elevated position on the upper slopes of the Lead Burn valley.
- 3.10 The group of trees identified positively contribute to the character of the local landscape and add to the amenity of local residents and visitors and as such there is justification to protect them by way of a TPO.

## **4 PROCEDURE**

- 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 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.

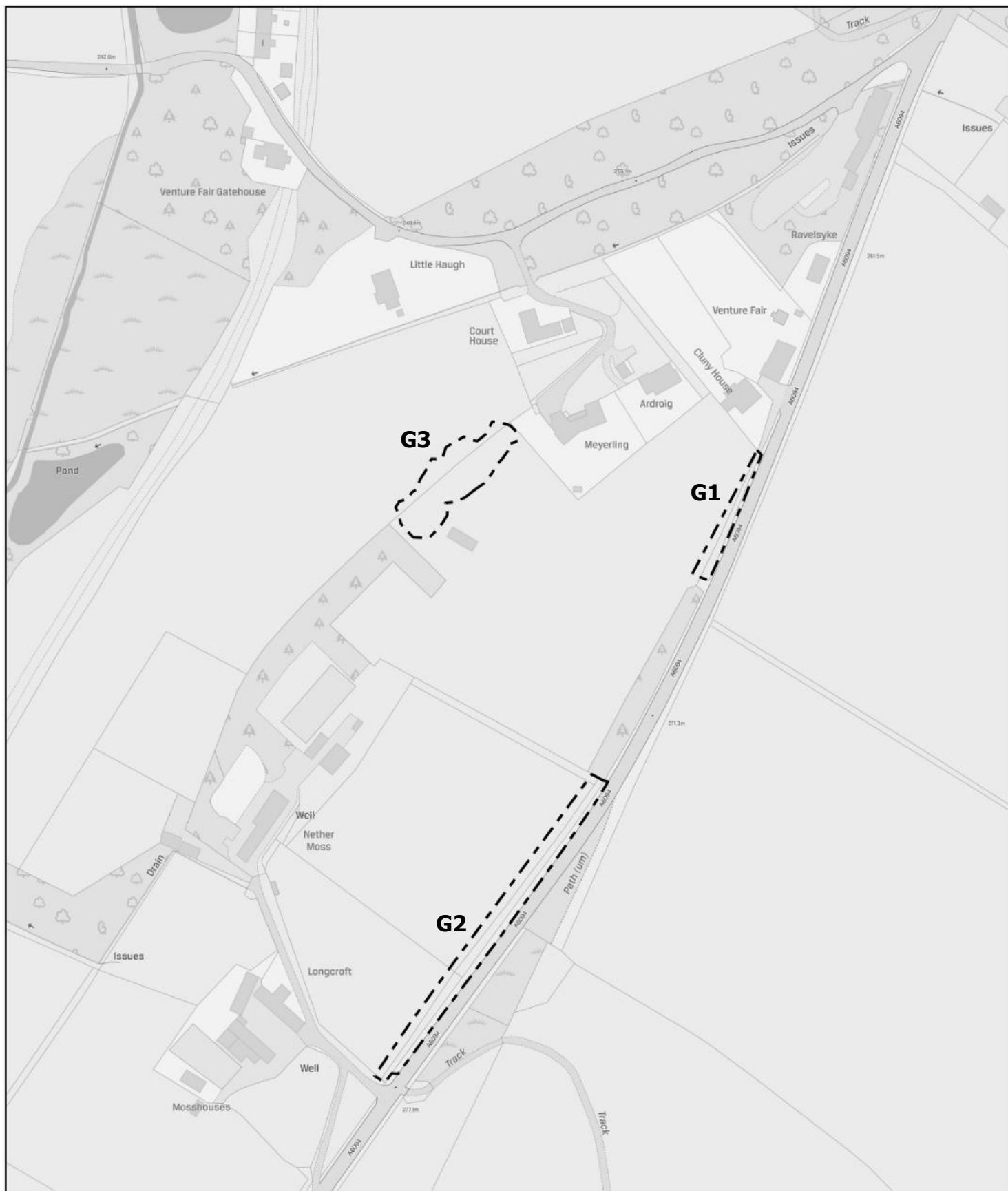
- 4.2 The TPO will continue to remain in effect to the end of the six month period (ending 31 September 2021). If the local planning authority wishes the TPO to stay in effect beyond the six months it must 'confirm' the order.
- 4.3 To 'confirm' the Order the LPA must register the TPO in the Land Registry 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).

## **5 RECOMMENDATION**

- 5.1 It is recommended that Committee:
- a) Agrees to confirm the Tree Preservation Order (2 of 2021 for three groups of trees G1, G2 and G3 at Little Moss and Nether Moss, near Howgate, Penicuik); and
  - 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.

**Peter Arnsdorf**  
**Planning Manager**

<b>Date:</b>	4 June 2021
<b>Contact Person:</b>	Grant Ballantine grant.ballantine@midlothian.gov.uk
<b>Background Papers:</b>	Delegated Report dated 30 March 2021, attached as Appendix A



**Planning Service  
Place Directorate**  
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8 Lothian Road  
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EH22 3AA

Little Moss and Nether Moss, nr Howgate, Midlothian. This is the plan relative to the Midlothian Council Tree Preservation Order No. 2 of 2021

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#### **TREE PRESERVATION ORDER (2 of 2021) LITTLE MOSS AND NETHER MOSS, HOWGATE, PENICUIK**

#### **SEEKING DELEGATED AUTHORITY TO MAKE ORDER FROM EXECUTIVE DIRECTOR PLACE**

Report by Lead Officer Conservation and Environment, Planning – Grant Ballantine

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### **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 three groups of trees (G1, G2 and G3) at Little Moss and Nether Moss, near Howgate, Penicuik.

### **2 LOCATION AND SITE DESCRIPTION**

- 2.1 The three groups of trees, G1-G3, are located at Little Moss and Nether Moss, south of Howgate. Groups 1 and 3 are located along the western side of the A6094. Group 2 is located midway between the A6094 and the Lead Burn, west of the property "Meyerling".
- 2.2 The groups of trees sit within two sloping pastoral fields adjacent to the A6094, south of Howgate. The Lead Burn is located approximately 60 metres to the north-west and Milkhall Road runs approximately 100 metres to the west of the fields. Milkhall Pond (a Local Biodiversity Site) and an associated cluster of dwellings, including Cluny House, Meyerling, Ardraig Venture Fair and the former Howgate Restaurant site, lie to the north of the fields. There is a further cluster of dwellings to the west and south west of the fields which includes Nether Moss and Mosshouses.
- 2.3 The three tree groups are clearly visible from the A6094. From the west the Group 3 is visible owing to their elevated position on a visually prominent ridge to the south-east of the Lead Burn.

### **3 BACKGROUND**

- 3.1 The immediate surroundings of the proposed TPO has suffered loss of tree cover over recent years. Between 2010 and 2018 an approximately one hundred linear metre shelterbelt of trees along the A6094 was removed directly to the south of Group 1. This section (predominantly

Scots Pine) originally formed part of a continuous roadside shelterbelt from Mosshouses to Cluny House and Venture Fair. Most recently, partial removal of the shelterbelt identified as Group 1 occurred on 25<sup>th</sup> March 2021, where the removal of approximately 6 trees within the group took place. Officers have concerns that the remaining trees in this group may be removed as soon as possible within the limitations on tree felling imposed by the Forestry and Land Management (Scotland) Act 2018.

- 3.2 A site which includes Groups 1 and 3 has been the subject of a number of planning applications between the years 2002 and 2018. All of the planning applications have been refused consent. The Delegated Report (the decision report) for the most recent planning application, ref. 18/00218/DPP, referred to the impact of the tree removal prior to 2018 and the importance of trees for the local landscape character of the area. An extract from that Delegated Report for planning application ref. 18/00218/DPP is below:

- 3.3 *“The existing access is recessed slightly from the A6094 with a gate. Although there are some trees in the area, a number have been removed. Although this did not require planning permission, their loss has had a detrimental impact on the landscape character of the area. This removal appears to be connected to providing adequate visibility and accommodation for the required visibility splays for the vehicular access. It is regrettable that these have been removed as these enhanced the landscape of the area, however as these were not protected the planning authority had no control over these works.”*

## **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 TPO.
- 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.

## **5 PLANNING ISSUES**

- 5.1 The proposed TPO is based on amenity grounds. The trees are semi-mature and are a significant feature in the local landscape. Group 3 is important in distant views owing to its location on a visually prominent ridge when viewed from the west and north-west, especially from Milkhall Road and the Lead Burn corridor. Group 3's elevated position causes it to be seen clearly against the skyline.
- 5.2 Groups 1 and 2 are clearly visible from the A6094 and from dwellings at Mosshouses and the dwellings cluster to the north, owing to their location immediately adjacent to the A6094. Groups 1 and 2 are roadside trees forming part of what was originally a continuous linear shelterbelt of mixed broadleaf and deciduous trees, including Scots Pine and Beech, running along the west side of the A6094 between Mosshouses and Cluny House. Linear shelterbelts of this type and species are a characteristic historic feature south of Howgate and Penicuik, and were planted to provide shelter due to the exposed nature of the landscape.
- 5.3 Individual Beech trees as at Group 3 are also a characteristic and historic feature of this landscape, being found planted as individual roadside trees and also as in this case on field boundaries.
- 5.4 Groups 1 and 3 form the western side of a tree lined approach to a small cluster of dwellings. They mark the start of a distinct landscape change from the more open exposed land around Leadburn to the south, and the smaller scale, more domestic, planted and wooded setting of the village of Howgate. The roadside trees provide existing dwellings at Mosshouses, and further north at Meyerling and Ardraig, with some visual screening from traffic travelling along the A6094, a national speed limit road, which includes high sided vehicles and agricultural traffic. The Beech trees within Group 3 provide some shelter from the prevailing winds, especially owing to the land's elevated position on the upper slopes of the Lead Burn valley.

## **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 make an urgent Tree Preservation Order (ref. 2 of 2021) to cover three groups of trees (Groups 1-3) at Little Moss and Nether Moss, south of Howgate, along and near the A6094 road;
  - b) to inform the Planning Manager of the decision on this request to make an urgent Tree Preservation Order; and
  - c) to note that the 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.

**Grant Ballantine**  
**Lead Officer Conservation and Environment, Planning**

**Date: 30 March 2021**

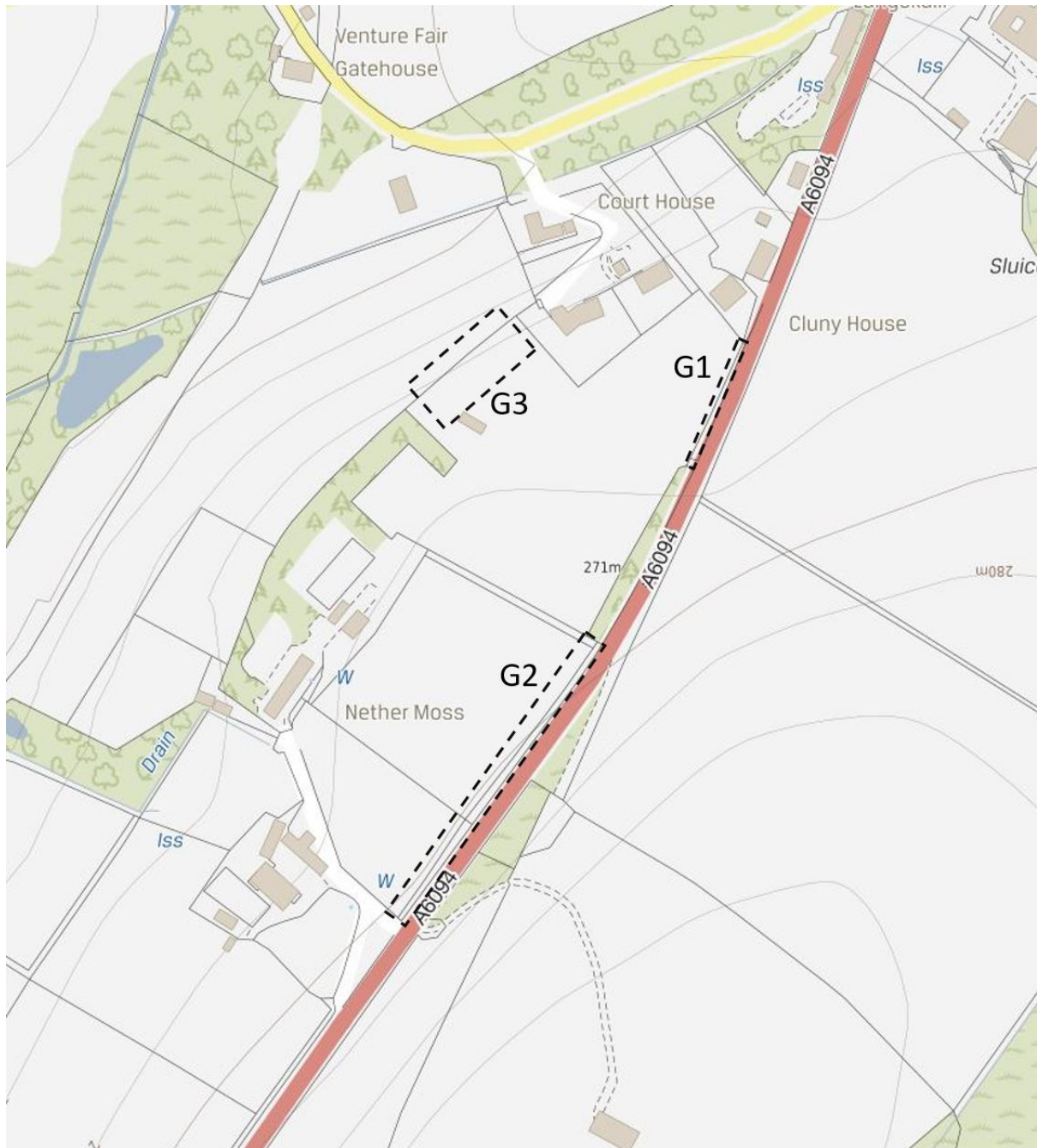
**Contact Person:**                    **Grant Ballantine**  
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**Background Papers:**           **Site Location Plan and Site Photographs**

## LOCATION PLAN

### MIDLOTHIAN COUNCIL PROPOSED TREE PRESERVATION ORDER 2 OF 2021

#### LITTLE MOSS AND NETHER MOSS, HOWGATE, PENICUIK



29<sup>th</sup> March 2021

## Tree Preservation Order 2 of 2021: Site Photographs

### Group 1: Looking north along A6094



Group 1: Mixed Coniferous and Broadleaf; predominantly Scots Pine, also including Willow and Beech



Group 1: Mixed Coniferous and Broadleaf; predominantly Scots Pine, also including Willow and Beech

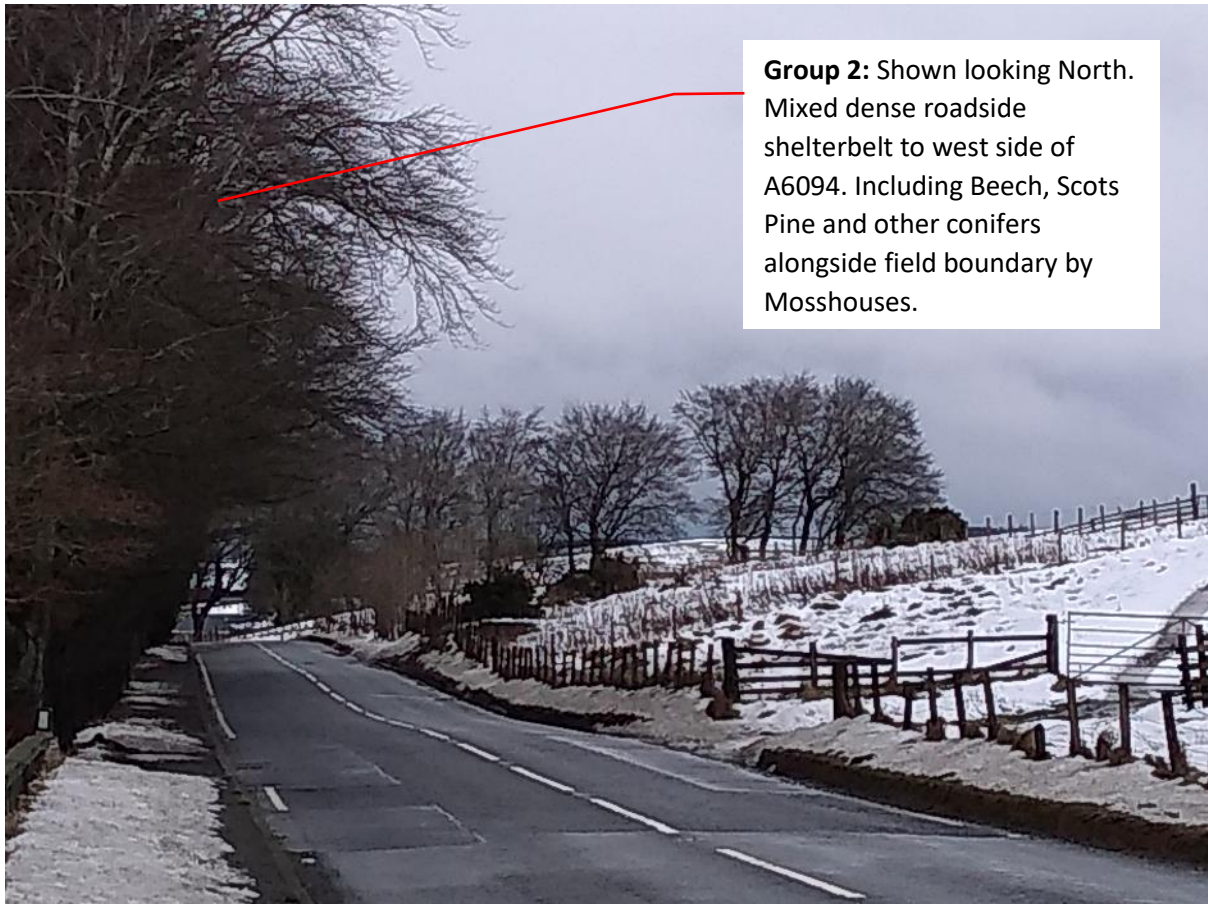


**Group 1: Showing tree removal felling works in progress 25/03/21 and mature beech to north end**



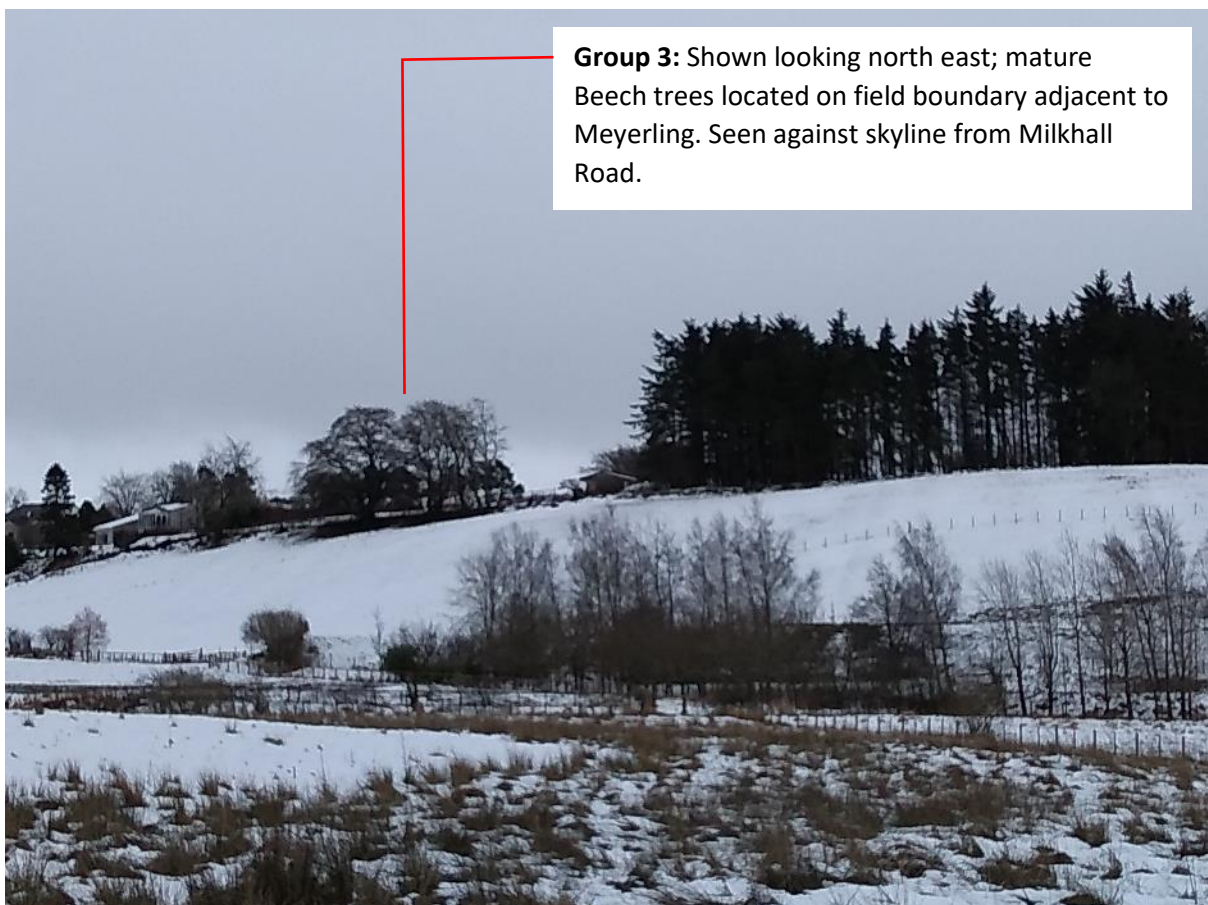
Group 1: Remaining mature Beech forms northernmost end of group. Foreground shows area where between 5 to 6 Scots Pine felled on 25/03/21

**Group 2: Looking north along A6094 adjacent to Mosshouses**



**Group 2:** Shown looking North. Mixed dense roadside shelterbelt to west side of A6094. Including Beech, Scots Pine and other conifers alongside field boundary by Mosshouses.

**Group 3: Viewed from Milkhall Road to the south west, seen against the skyline looking north east (Leadburn in foreground)**



**Group 3:** Shown looking north east; mature Beech trees located on field boundary adjacent to Meyerling. Seen against skyline from Milkhall Road.



**Group 3 Viewed from south west**

