Appendix 2: Tree Protection Bill – Armagh City, Banbridge and Craigavon Borough Council Draft Response to Call for Evidence

Clause 1 - Tree Preservation Orders: councils

Clause 1 broadens the rules for tree preservation orders (TPOs) under the Planning Act (Northern Ireland) 2011 by allowing councils to make orders not only for amenity reasons but also for ecosystem services, defined as the direct and indirect contributions of ecosystems to human well-being. It also strengthens TPO protections by making it an offence to knowingly permit any prohibited act, such as cutting, damaging, or destroying a tree.

A new set of subsections creates special protection for ancient trees: councils may designate them without needing to meet amenity or ecosystem tests, may commission an arboriculturist's assessment when their status is uncertain, and must issue a TPO if the tree is confirmed as ancient unless it is dead. If a council chooses not to commission an assessment, it must give written reasons.

Finally, Clause 1 changes when a TPO takes effect, allowing it to become operative either on confirmation by the council or automatically when deemed confirmed under section 123 of the 2011 Act.

Do you agree with Clause1 of the Bill?

- Yes
- No
- **Unsure**

Response

Officers consider that there is a lack of clarity around what level of ecosystem services will be considered appropriate as grounds for making a TPO. All trees to some degree contribute to ecosystems services. For this to be a workable provision there is a need to indicate how ecosystem services will be assessed.

Officers would support the intention to make it an offence to knowingly permit any prohibited act such as cutting, damaging or destroying a tree. However, it is not clear how 'knowingly causing or permitting' is to be determined.

Officers would have concern about potential health and safety issues in respect of making a TPO on an ancient tree which is in poor condition. Under current practice the Council, before confirming a Provisional TPO, will commission an arboriculture survey and subsequently exclude any tree which is deemed in poor condition or dangerous.

Clause 2 - Provisional tree preservation orders

Clause 2 updates section 123 of the 2011 Act by changing how provisional tree preservation orders (TPOs) become confirmed. While provisional TPOs still take effect immediately and normally lapse after six months unless formally confirmed, the amendment provides that they will now be deemed confirmed at the six-month point if the council has received no objections or representations and has not issued a decision to revoke the order. This effectively streamlines confirmation where there is no opposition, ensuring smoother protection for affected trees.

Do you agree with Clause 2 of the Bill?

- Yes
- **No**
- Unsure

Response

Officers consider this clause to be unnecessary as the current legislation ensures that when a Provisional TPO is placed on a site protection is in place immediately. In effect Council **never** serve a Full TPO on a site they always serve a Provisional TPO and then confirm this within 6 months. This allows time for an arboricultural survey of the health and condition of trees on the site. The Provisional is almost always **confirmed with modifications** (excluding any dead, dangerous trees or tree in a poor condition as identified in the arboricultural survey of tree health and condition). The proposed update clause takes no account of the current process and would remove checks and balances within the current process, which facilitate the exclusion of trees which may be in poor health, dead or dangerous.

Clause 3 - Penalties for contravention of tree preservation orders

Clause 3 strengthens section 126 of the 2011 Act by expanding the range of conduct that constitutes an offence. While the law already makes it illegal to cut down, uproot, damage, destroy, top, or lop a tree in breach of a tree preservation order (TPO), the amendment adds that anyone who knowingly causes or permits any of these prohibited acts is also guilty of an offence. This mirrors the broader protective approach introduced in Clause 1 and ensures accountability not only for direct actions but also for deliberate facilitation or allowance of TPO violations.

Do you agree with Clause 3 of the Bill?

- **Yes**
- No
- Unsure

Response

Officers welcome closure of this loophole to align legislation in Northern Ireland with England, Scotland and Wales where it is currently an offence to *'cause or permit'* a breach of TPO. This will extend liability to landowners, contractors and others who indirectly enable a breach.

Officers would however take the opportunity to highlight some potential difficulties with this approach which include both evidential challenges in proving actual knowledge and also determining what degree of control amounts to "permitting". Commentary or a definition of "knowingly causes or permits" would be welcomed to ensure consistency in its interpretation and application across councils.

Clause 4 - Replacement of trees

Clause 4 strengthens section 125 of the 2011 Act by tightening requirements for replacing trees removed or damaged in breach of a TPO. It would mandate that any replacement must be a heavy standard tree of an appropriate species, and landowners must notify the council once it is planted. If that replacement dies, is damaged, diseased, or removed within five years, it must be replaced again. New rules also shift responsibility: where someone other than the landowner caused the TPO breach, that person must carry out the replacement duties, though the owner may step in if they fail to act within 18 months and can recover reasonable costs.

Do you agree with Clause 4 of the Bill?

- Yes
- **No**
- Unsure

Response

Officers note that TPOs usually consist of a combination of individual trees, groups of trees and woodlands. While the planting of a Heavy Standard (HS) tree is welcomed although it is not considered appropriate in some circumstances, for example, replanting of a woodland. Officers understand this is because replacement trees in a woodland scenario would never include a heavy standard as that would be considered contrary to good forestry practice.

Officers also consider the current proposal to replant **only** Heavy Standard trees as inflexible and too prescriptive as sites vary in size and a heavy standard tree may not be suitable for every site.

Clause 5 - Council to inspect replacement trees

Clause 5 introduces section 125A, creating a new duty for councils to actively monitor trees planted as replacements under section 125. For five years after planting, councils must carry out annual inspections—either through site visits or by reviewing evidence provided by the landowner—to identify trees needing extra care or further replacement and to inform the landowner of required actions. When remedial work is needed, the council must notify both the landowner and, where known, the person responsible for the original TPO breach. That person is required to carry out the remedial action unless the landowner chooses to do so; if they fail to act within the specified period, the landowner must complete the work and may recover reasonable costs from the person responsible for the breach.

Do you agree with Clause 5 of the Bill?

- Yes
- **No**
- Unsure

Response

Officers consider the duty placed upon it by clause 5 is too onerous. There will be significant resource implications for Council if they must undertake yearly monitoring of replacement trees for up to 5 years. A monitoring framework would need to be established to monitor all 83no TPO sites within the borough. There would be 2 options to monitor – one would be to review evidence provided by a landowner (125A (2 and 3)) which means the Council would be reliant upon the landowner's integrity and good will - in terms of annually supplying information which is accurate and correct. Alternatively, Officers may need to undertake yearly site inspections.

The clause requires the Council to consider the need for any remedial work. This would have to be done by a suitably qualified person such as a landscape architect or arboriculturist and not a planning officer, which could have cost implications for the Council in terms of employing such a professional or alternatively training existing planning officers to undertake the task.

Officers would have reservations that landowners may not have the will or resources to deal with the person responsible for the breach, ensure that a suitable replacement tree is replanted and recover all costs via the courts.

Clause 6 - Enforcement of duties as to replacement of trees

Clause 6 updates section 164 of the 2011 Act by strengthening how councils enforce tree-replacement duties. It first aligns enforcement notices with earlier reforms by requiring that any ordered replacement must be a heavy standard tree, matching the standard introduced in Clause 4. It then adds new powers allowing councils to enter land and plant the required tree themselves if the person responsible for the TPO breach fails to comply, with the council able to recover costs from that person. If the responsible individual cannot be identified, is insolvent or cannot be found, the council may recover costs from the landowner, who in turn retains a right to reclaim those costs from the person who committed the breach.

Do you agree with Clause 6 of the Bill?

- Yes
- No
- **Unsure**

Response

The amendments proposed under Clause 6 would give councils the power to enter land and replant and recover the costs. This would be difficult if the Council could not identify a landowner. The Council would also require additional funding and resources to exercise these new enforcement powers in a meaningful way.

Officers would also have some concern in relation to the Council's ability to recover costs which could lead to expensive legal proceedings for the Council as well as potential loss of finances if costs cannot be recovered.

Officers' concerns about the requirement for replacement trees to be heavy standard in size, are set out in the response to Clause 4.

Clause 7 - Tree Protection Map

Clause 7 adds new sections 128A–128D to the 2011 Act, creating a digital, publicly accessible system for tree-preservation information across Northern Ireland. Section 128A requires the Department to provide an online map showing all active TPOs, conservation-area boundaries, and council-level statistics on TPO applications. Section 128B places duties on councils to upload their existing records within an initial upload period and then update the map at least every three months. Section 128C allows the Department to make regulations governing how Tree Protection Map information is made available and clarifies that, aside from personal-data protections, processing this information does not breach confidentiality. Section 128D reinforces that none of these duties permit processing personal data in violation of data-protection legislation.

Do you agree with Clause 7 of the Bill?

- Yes
- No
- **Unsure**

Response

Officers have no objection in principle to this clause (the introduction of a Regional TPO Map viewer). However, they do have concerns that the Council's GIS Officer (Planning) would be responsible for updating the register on a quarterly basis and as such there would be resource implications for the organisation. Notwithstanding those concerns, Officers accept this was a recommendation (Recommendation.8) of the Northern Ireland Public Sector Ombudsman's Report '*Strengthening Our Roots'* (November 2023).

Clause 8 - Determination of planning applications

Clause 8 adds a new section 45(1A) to the 2011 Act, requiring councils to refuse planning permission where a proposed development would cause the loss or deterioration of ancient or long-established woodland, involve building within 15 metres of such woodland, or harm an ancient tree protected by a TPO, unless the applicant can demonstrate wholly exceptional circumstances. This creates a strong presumption against development that threatens Northern Ireland's most ecologically significant trees and woodlands.

Do you agree with Clause 8 of the Bill?

- Yes
- **No**
- Unsure

Response

Officers are of the opinion that matters in clause 8 do not require legislation but rather these issues should be addressed by Supplementary Planning Guidance (SPG).

An SPG should also identify the location of ancient or long-established woodland and who is responsible for producing and updating the mapping for such areas. If these matters are not addressed the Council could be at risk of making legally incorrect decisions based on inaccurate information (that is ancient woodlands that are incorrectly identified or inaccurately plotted) which would could result in legal challenges.

Officers consider that the 15 m buffer between ancient or long-established woodland and new development as proposed in Clause 8 is open to interpretation. Without clarification, councils may apply the requirement inconsistently, leaving decisions vulnerable to legal challenge. An SPG should include a diagram clearly showing where the 15 m buffer starts (for example is it from the trunk or edge of crown spread) and ends (for example is it at the property boundary or elevation of a building).

Clause 9 - Permitted Development

Clause 9 tightens permitted development rules under the Planning (General Permitted Development) Order (Northern Ireland) 2015 by removing automatic permission for any development that would harm ancient or long-established woodland. A new paragraph (5A) in Article 3 makes clear that permitted development rights no longer apply where a project would cause the loss or deterioration of such woodland or involve development within 15 metres of it.

Do you agree with Clause 9 of the Bill?

- Yes
- **No**
- Unsure

Response

Officers note that the proposed legislation goes further than the provisions in England, Wales and Scotland. Unlike the proposed blanket restriction in Northern Ireland, England's General Permitted Development Order (GPDO) does not automatically remove minor permitted development rights for homeowners or farmers solely because a site lies within 15 metres of ancient or long-established woodland. Scotland relies largely on NatureScot guidance, allowing local planning officers to vary the buffer according to the type and impact of the development. A low-impact, non-invasive project may therefore be permitted within 15 metres where it poses no ecological threat. By contrast, Clause 9 would impose a fixed legal boundary in Northern Ireland requiring a full planning application, regardless of the project's actual impact.

Officers consider that an ancient and long-established woodland database is essential to support the proposed legislative change. The Tree Protection Bill should identify an appropriate Northern Ireland government department with the necessary expertise to maintain it. Unlike many planning departments in England, Wales and Scotland, this council and most others in Northern Ireland do not have an inhouse qualified arboriculturist and therefore do not have access to in-house expertise.

If councils are expected to develop, monitor and review the database, central government should provide the additional expertise and resources required for its delivery.

Clause 10 - Ecosystem services

Clause 10 introduces a new Schedule 1A that defines the ecosystem services which can justify issuing a TPO. The Schedule groups these services into three categories—cultural, regulating, and supporting—and provides examples of the types of benefits each category covers. This gives councils a clearer, more structured basis for protecting trees on ecological and societal grounds beyond traditional amenity considerations.

Do you agree with Clause 10 of the Bill?

- Yes
- **No**
- Unsure

Response

Officers consider that including 'ecosystem services' would qualify all trees as eligible for TPO protection, potentially leading to a substantial increase in TPOs across the borough. Rather than strengthening protection for trees, this could dilute and undermine the purpose of TPOs.

Officers consider that justifying a TPO based on 'regulating services', such as carbon sequestration, microclimate regulation or flood mitigation, would require specialist input from ecologists and arboriculturists which would come at a financial cost to the Council.

Officers also consider that processing, verifying and defending TPOs under the new 'ecosystem services' criteria would place additional pressure on Council resources and affect the delivery of planning functions.

Clause 11 - Interpretation: 2011 Act

Clause 11 adds several new definitions to section 250(1) of the 2011 Act: an “ancient tree” is defined using criteria set by the Ancient Tree Forum and Woodland Trust (or similar bodies, or as prescribed by regulations); “ancient woodland” refers to land continuously wooded since at least 1600 AD, including both semi-natural woodland and planted sites on ancient woodland; a “heavy standard tree” meets the specification in British Standard 8545:2014 (or any successor or prescribed standard); and “long-established woodland” means land continuously wooded since the 1830–1844 Ordnance Survey maps but without evidence of woodland cover before 1600.

Do you agree with Clause1 of the Bill?

- **Yes**
- No
- Unsure

Response

The Council agree with the proposed definition of the following:

- Ancient tree.
- Ancient Woodland.
- Long- established woodland.
- Heavy Standard Tree

It is noted that these definitions are from the NI Ancient Woodland Inventory and BS 5845:2014.

Clause 12 - Interpretation: 2015 Order

Clause 12 adds definitions of “ancient woodland” and “long-established woodland” to Article 2 of the 2015 Order, using the same wording and meaning as those introduced into the 2011 Act by clause 11.

Do you agree with Clause 12 of the Bill?

- **Yes**
- No
- Unsure

Response

Officers have no concerns about the definitions but remain concerned about reliably identifying the location of the woodlands, as outlined in the response to Clause 8.

Clause 13 - Interpretation: general

Clause 13 sets out general interpretation provisions for the Act, defining the “2011 Act” as the Planning Act (Northern Ireland) 2011 and the “2015 Order” as the Planning (General Permitted Development) Order (Northern Ireland) 2015, and clarifying that references to Parts, numbered sections, and Schedules refer to the 2011 Act unless otherwise specified.

Do you agree with Clause 13 of the Bill?

- **Yes**
- No
- Unsure

Response

No comments

Clause 14 - Commencement

Clause 14 provides that the Act comes into operation twelve months after the day on which it receives Royal Assent.

Do you agree with Clause 14 of the Bill?

- Yes
- No
- **Unsure**

Response

Officers note that certain new statutory duties imposed on Councils (including notably inspections and mapping obligations) may require additional resources that have not yet been budgeted for.

Officers also not that there is an absence of any transitional provisions.

There needs to be enough time for these points to be addressed before Royal Ascent is received.