

NEIGHBOURING TREES

Legal Implications

Trees are a highly desirable and important part of our local landscape. They soften the impact of human development, increase property values, provide fauna habitat and contribute to our sense of place. Correct pruning of trees will ensure the tree's safety while improving its vigour.

In some situations trees growing on private properties may have the potential to cause damage to neighbouring properties. This can lead to unpleasant disputes and possible legal action. The following information has been provided to help avoid or resolve these issues.

Issues relating to trees on private properties are a civil matter between the adjoining owners and do not generally involve local councils. Council will become involved if it can be shown that the tree is in fact a danger to persons or property and that the ratepayers concerned have taken all reasonable steps to come to an amicable agreement. Under the *Local Government Act 1995* Councils have the power to issue an order on the owners of the offending tree to make the tree safe by either pruning or removal within fourteen (14) days of that Order.

1.0 General Legal Implications Regarding Trees

Some general principles of law may apply in relation to trees on private land. You should however note that the following is general advice and may not be applicable. In the event of doubt or dispute you are simply urged to seek your own legal advice.

- a) You are responsible for any trees growing on your land; to be sure where your land ends, you may have to obtain a survey report (at your expense). If a tree straddles the boundary, it is hoped you and your neighbour can agree on who is responsible for it, or share its upkeep.
- b) **You have the right to cut off branches overhanging your property (at your own expense)**, as long as you do not cut beyond the boundary line, and the tree is not protected by a Tree Preservation Order. The act of pruning must not damage the tree. The branches however remain the property of the tree owner.
- c) Fruit that falls into your yard from branches is your neighbours' property and you are not obligated to let them in to get it, but you do have to return to them the fruit or branches you have cut off their tree.
- d) If you rent a house, it is best if the responsibility of trees is set out in a written agreement. If the landlord is responsible for them, he/she generally has (subject to whatever is agreed) the right to come and attend to them and the tenant can not work on them without the landlord's consent.
- e) You are only obliged to remove branches that spread into a neighbour's property if they are considered a danger or may cause damage, or if a court orders you to. However if branches overhang a public footpath, where they can obstruct people, you do have to cut them off. You may also be forced to cut down dangerous or diseased trees. The Council usually warns you. If you do not act, Council can do it and is entitled to charge you for the work.

- f) You can also be required by the appropriate authority to deal with any tree on your property that may interfere with powerlines, telephone cables, water, and gas and electricity mains. You are normally given time to trim. If you do not, the authority concerned will do the necessary work and charge you. In some cases, if the tree was there before the wires, cables or mains were put in; the authority may have to pay for the work. Where this amounts to a significant cost, it is worth checking the regulations with the authority.
- g) If roots from your trees disturb your neighbour's foundations or swimming pool walls, lift their paving, tip over fences, or block their drains; your liability depends on a court determination. There is a legal obligation on your part not to allow the damage to continue or worsen once you have become aware of the problem.
- h) It is up to you to prove that a tree owned by a neighbour or the Council is causing damage to your foundations or mains. A professional Arboriculturalist will be required to produce a written report proving where the roots are situated. Your neighbour may have an insurance policy that covers legal liability for damage to your foundations. Check with your insurance company to see whether you are covered for damage by falling trees or branches.

2.0 Dangerous Tree Procedure

If you consider that a tree/s on a neighbour's property is a danger to people or property on your land, then the procedure outlined below should be followed.

1. Firstly you (or the property owner if not you) should talk to the neighbour regarding the concerns with the tree/s to try to come to an agreement about what should be done.
2. If an agreement can not be reached then you should contact the Citizens Advice Bureau (CAB) Mediation Coordinator, Perth Main Office, on **9221 5711**. This service is provided and partly funded by Council in order that residents have the opportunity to work out civil matters concerning private property amongst themselves. The CAB Mediation Service is a process to help people to talk and settle their differences in a fair and acceptable manner. Mediation is low cost, quick, and more relaxed than Court procedures. The mediator will inform you of any relevant information that you may need and advise you of your rights so that you may be adequately prepared.
3. If necessary and advised by the Mediator, the Ratepayer/Occupier should write a letter in duplicate to the owner of the property upon which the tree is situated and request him / her to take steps to have the tree made safe, either by pruning or removal as a final step in solving the problem. This letter should be sent by Certified or Registered Post and the delivery confirmation receipt should be retained.
4. Please note the complainant (at the complainant's expense) must provide clear evidence of the trees condition and/or location being dangerous by obtaining a Arboriculturalist Report. An Arboriculturalist is a person with a Diploma Level of Arboriculture, five years experience and indemnity insurance, who will provide a written report on the tree. Qualified Arboriculturists can be sourced from the Perth Yellow Pages under *Arboriculturalist*.

5. If no action is taken by the neighbour within a reasonable time (eg. 21 days) the complainant may then write to Council enclosing a copy of the letter sent to their neighbour, proof of service (ie. certified or registered mail receipt), and the qualified arboriculturalist written report stating that the tree is dangerous. Council may then be asked to investigate the complaint and take action on their behalf.
6. Under the *Local Government Act 1995* Councils have the power to act if a tree on the land endangers any person or thing on adjoining land. Council will only become involved if it can be shown that the tree is in fact a danger to persons or property and that the ratepayers concerned have taken all reasonable steps to come to an amicable agreement with regard to the offending tree/s, and a result has not been achieved. Residents and Ratepayers who consider they have a dangerous tree problem at their property should follow the recommended procedure as set out above.
7. Once all of this information is received and if Council determines the tree to be a danger, then it may issue an Order on the owners of the offending tree to make the tree safe by either pruning or removal within fourteen (14) days of that Order.
8. If Council does not consider the tree is a danger the complainant will be advised accordingly.

3.0 A Final Summary

If neighbours trees or shrubs are overhanging, or a tree is considered dangerous, firstly try hard to reach an amicable arrangement with your neighbour. Use the Mediation Service provided in part by Council, it is a valuable and speedy tool available for you. If this is impossible, notify your neighbour of what you intend to do in writing and ask them to help resolve the problem. If they do want to, respond to them in an orderly fashion. The complainant is responsible for proving that the tree is a danger by obtaining a qualified Arboriculturalist Report. You may be liable if the tree is killed as a result of pruning branches or roots. Legal action against the neighbour might succeed if it can be established that the tree constituted a danger to the property, or was a substantial nuisance.

This brochure is a general guide only – for specific information dealing with your own situation you should contact the Citizens Advice Bureau (CAB) Mediation Coordinator, Perth Main Office, on **9221 5711** or source your own legal advice.