



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. Proper 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.

Neighbouring tree issues are generally a civil matter, and the Council may only become involved where there is clear evidence of danger and reasonable steps have been taken to reach a resolution.

The following information has been provided to help avoid or resolve these issues.



1. General legal implications regarding trees

Some general principles of law may apply in relation to trees on private land. Please note that the following information is provided as general guidance only and may not be applicable in every situation. In the event of doubt or dispute you are strongly encouraged to seek independent 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 from your neighbours' tree remains their property. You are not obligated to let them in to get it. However, if you prune overhanging branches or collect fallen fruit, you are legally required to return this to the neighbour.
- d) If you rent a house, it is recommended you clearly outline the responsibility for trees in a written agreement. If the landlord is responsible for the trees, they generally have the right to access the property to maintain them (subject to the terms of the lease). Tenants should not prune, remove, or otherwise work on trees without the landlord's prior consent.
- e) You are only required to remove branches that spread into a neighbour's property if they are considered to pose a danger, risk causing damage, or if a Court orders the removal. However if branches overhang a public footpath where they can obstruct pedestrians, you are obliged to cut them off. You may also be forced to cut down dangerous or diseased trees. Typically, Council will issue a warning first. If you fail to take action, the Council can carry out work and charge you for the costs incurred.
- f) You may be required by the relevant authority to manage any tree on your property that interferes with powerlines, telephone cables, water, and gas and electricity mains. You are usually given a timeframe to carrying out the necessary pruning. If you fail to do so, the authority concerned may undertake the necessary work and charge you for the cost. In some cases, particularly where the tree existed before the wires, cables or mains infrastructure was installed, the authority may be responsible for the cost. Where this amounts to a significant expense, it is recommended to check the applicable regulations with the relevant authority.
- g) If roots from your trees cause damage to your neighbour's property such as disturbing foundations or swimming pool walls, lift paving, toppling over fences or block drains, your liability will depend on a court determination. Once you become aware of the problem, you have a legal obligation to take reasonable steps to prevent damage from continuing or worsening.
- h) It is your responsibility to prove that a tree owned by a neighbour or the Council is causing damage to your property. A qualified Arboriculturalist will be required to produce a written report confirming the impact and location of the roots. Your neighbour may have an insurance policy that covers legal liability for such damage. It is recommended you check with your own insurer to determine whether your policy covers damage caused by falling trees or branches.



2. Dangerous tree procedure

Disputes relating to trees on private properties are generally considered civil matters between the adjoining owners and do not usually involve local councils. Council may intervene if it can be shown that the tree is a danger to persons or property and that the affected parties 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 to the owners of the offending tree to make the tree safe by either pruning or removal within fourteen (14) days of that Order.

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 yourself) should talk to the neighbour regarding the concerns with the tree(s) to try to come to an agreement on how to address the issue.
2. If an agreement cannot be reached, it is suggested you contact a mediation agency such as the Citizens Advice Bureau (CAB). Using a mediator 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 that they take steps to have the tree made safe, either by pruning or removal, as a final attempt in solving the problem. This letter should be sent by Certified or Registered Post and the delivery confirmation receipt should be retained as proof of service.
4. Please note the complainant (at the complainant's own 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. They will provide a written report of the tree. Qualified Arboriculturlists 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 (such as 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 affected parties 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 outlined above.
7. Once all of the relevant information is received and 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. Final summary

If neighbours' trees or shrubs are overhanging, or a tree is considered dangerous, firstly make every effort to reach an amicable agreement with your neighbour. Use the Mediation Service, which is partially provided by Council. It is a valuable and efficient tool available for you. If an agreement cannot be reached, notify your neighbour in writing of your intended actions and request their cooperation in resolving the problem. If they do want to, respond to any communication from them in a respectful and orderly manner.

The complainant is responsible for proving that the tree is a danger by obtaining a qualified Arboriculturalist Report. Be aware, you may be liable if the tree is harmed or 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 constituted a substantial nuisance.

1. This brochure is a general guide only. Reviewed 07/26

