

MAINTENANCE AND REMOVAL OF TREES ON VERGES

Residents and ratepayers are not permitted to prune or remove trees growing on land under the direct care, control and management of the City, including those growing on street verges. In accordance with the Local Government Act 1995, City of Cockburn Local Laws 2000, Part III - Reserves, Foreshores and Beaches Division 2 - Prohibited Areas and Activities clause 3.3(s), pruning of street trees is a prohibited activity.

Will the Council remove the tree on my verge?

Generally

The Council will not authorise the removal of trees on land under the direct care, control and management of the City, including those growing on street verges, unless they are:

- Dead;
- In a state of decline to the point that survival is unlikely;
- Structurally unsound, to the point of constituting imminent danger to persons or property;
- Damaging or likely to damage property, where alternatives to prevent damage are not possible;
- Part of a tree replacement program; or
- Obstructing a Council approved works program, such as road and drainage works.

Loss of Amenity

Trees growing on land under the direct care, control and management of the City, that are considered to be unduly interfering with the amenity available to adjacent residents in the use of their land, may be removed at the discretion of the Council.

In such circumstances, trees will not be removed unless:

1. A request in writing for removal of the tree has been received from the adjacent property owner by the City's Officers, clearly stating the reasons for requesting removal,
2. An Officer's report detailing the request and associated issues has been presented to the Council for its consideration, including any consultation undertaken; and
3. The Council has formally resolved to authorise removal of the tree.

Where the Council has resolved to authorise removal of a tree at the request of an adjacent property owner:

1. Removal shall be at full cost to the property owner who made the request for removal,
2. The tree shall be dismantled to the ground, removed from the site and the stump shall be ground out,
3. The tree shall be removed by a suitable contractor engaged by the City for the purpose,
4. The tree shall not be removed until the City has received payment for the full cost of removal; and
5. The City at the Council's cost will plant a replacement tree suitable for the location, within six months of removing the original tree.

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Planning, Building, and Other Approvals

Where a planning, building or other approval has been granted by the City, that necessitates removal of a tree growing on land under the direct care, control and management of the City:

1. Removal shall be at full cost to the property owner who made the request for removal,
2. The tree will be dismantled to the ground, removed from the site and the stump will be ground out,
3. The tree will be removed by a suitable contractor engaged by the City for the purpose; and
4. The City at the Council's cost will plant a replacement tree suitable for the location and as near as practical to the original location, within six months of removing the original tree.

Will the Council prune the tree on my verge?

Generally, trees will be allowed to develop their natural canopy and will not be pruned. Where pruning is essential, pruning will only be carried out in accordance with Australian Standard AS 4373 - 1996, Pruning of Amenity Trees, and for the express purposes of:

- Providing clearance for pedestrian movement
- Improving the safety, structure and health of the tree
- Maintaining clearances for utility services, eg powerlines
- Improving vehicle driver's line of sight along vehicle carriageways; and
- Preventing branches encroaching into neighbouring property from public property.

What constitutes "damaging or likely to damage property"?

For the purpose of determining if a tree should be pruned or removed, "damaging or likely to damage property" is defined as any damage to property caused by or likely to be caused by any part of a tree that is currently attached to the tree.

For example, if the roots of a tree were lifting the foundations of a dividing wall causing the wall to crack, then it would be judged that the tree was causing damage to the wall. Similarly, if the branches of a tree were growing up and through overhead power lines, then it would be judged that the tree was likely to cause damage, particularly in stormy weather.

Uncertainties in how to categorize the effect of tree parts that become detached but do not cause immediate damage often exist. A particular example is that of leaves, twigs, floral parts and bark that fall from trees and block roof gutters. When it rains, if the gutters have not been cleared, overflowing water can enter the house causing damage to ceilings, walls and floor coverings. In these instances, should the damage be judged as having been caused by the tree? For the purpose of determining whether a tree should be pruned or removed, it would more than likely be judged by the City that the tree did not cause the damage. It would be judged that the damage was caused by water overflowing from blocked gutters.

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The basis for categorising water damage to buildings because of gutters being blocked with leaves, twigs, floral parts and bark, as not having been directly caused by trees, is threefold. In the first instance it would be reasonable to presume that most people know that roof gutters blocked with foliage debris from trees may overflow during rainy weather and cause damage to their residence. In the second it would be reasonable to presume that most people are aware that nearby trees are likely to drop foliage debris into their gutters. And, thirdly, it would be reasonable to presume that most people are aware that if they clean out their gutters before rainy weather they can avoid water damage from overflowing gutters. In summary, in this example it can be reasonably presumed that residents would:

- Be aware of the risk (of water damage from blocked gutters);
- Know the source of the risk (overflowing water from gutters blocked with foliage debris from nearby trees); and
- Know how to avoid the risk (by arranging to have the gutters cleaned out before the onset of wet weather).

Therefore, the City would view the cause of damage as a direct consequence of not cleaning out roof gutters before the onset of wet weather and not as damage caused by trees.

Dealt with separately, under loss of amenity use of land, is the issue of the nuisance and inconvenience of having to clean out roof gutters because of debris from nearby trees.

Who is responsible for damage to persons or property caused by trees growing in the street or on parks?

In the event that damage has been caused to persons or property by a tree growing on land under the direct care, control and management of the City, the Council is generally not liable for the damage. This would include damage caused by any part of a tree currently attached to the tree, such as tree roots lifting the foundations of a dividing wall, causing the wall to crack. It would also include damage caused by any part of a tree that became detached, such as a branch falling onto a parked car.

What sorts of alternatives other than pruning or removal are available to prevent trees damaging property?

Frequently alternatives to removing or pruning trees are available to prevent them from damaging property. Usually, when it is discovered that a tree is lifting the pavers of a driveway, the immediate response is a request to remove the tree. Consideration is not often given to the fact that the tree root can often be removed without adversely affecting the health of the tree, the pavers replaced and a root barrier installed between the tree and the driveway to prevent future damage. In the case of overhead powerlines, the first response is to either request that the tree is removed or heavily pruned. Again, alternatives may be available. If the power line is a service line extending from a street pole to the house, sometimes it is possible to arrange for the line to be shifted to another pole. Or alternatively, arrange for a consumer pole to be installed just inside the property line and the power to be run underground from this pole to the house.

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What is meant by loss of amenity in the use of my land?

Loss of amenity in the use of your land simply means a decrease in the amount, magnitude, or degree of comfort, convenience or enjoyment etc that you have in undertaking and experiencing the usual activities associated with the use of your land.

If a tree growing adjacent to your land was dropping so much floral blossom as to continually block your swimming pool filter to the extent that the cost or effort required by you to keep it operating was significantly greater and disproportionate to others in similar circumstances in the community, it may be said that the tree had caused a loss of amenity to you in the use of your land. In this situation, the Council may determine that the cost or inconvenience to you is an unreasonable burden for you as an individual to endure, when compared with the loss of benefit to the rest of the community if the tree was removed or pruned.

Why should I have to pay full cost for the removal of a tree on Council land?

The Council regards street trees as being highly desirable and integral to the urban landscape, providing a range of social, environmental and economic advantages. As such they are considered to be a primary part of the public landscape amenity affecting and benefiting all residents within a locality. If, at the request of an adjacent resident, the Council resolves to remove a tree that does not meet the requirements for removal listed in position statement PSEW15 Removal and Pruning Of Trees, it has determined that the requestor shall cover the cost of removal and not the broader community.

Why can't I arrange to remove the tree myself?

Because of the limited space in street verges, trees usually occupy the same area as underground services such as gas, water, sewage, drainage, electricity and telephones. In addition, trees are usually growing quite close to footpaths, driveways and road kerbs. In the event that persons inexperienced in the removal of trees use unconventional techniques to remove them, extensive damage can inadvertently occur to these services causing widespread inconvenience to others in the neighbourhood. Even though it might be convenient to have your loader driver push the tree over while he is on site constructing your driveway, it may cause lots of problems for your neighbours and a lot of cost to you for the repairs. For the benefit of everyone, the Council would prefer to ensure that an experienced contractor was engaged for the purpose.

Can I be prosecuted for removing a tree on Council land without permission?

Yes, under provisions of the Local Government Act - Local Laws 2000, a fine not exceeding \$2,000 can be applied.

What is the problem with cutting down a tree and planting another in its place, particularly if I am prepared to pay for it?

It's not the cost. It's the time. Environmental, social and economic benefits of trees generally increase over time as the trees mature. Unlike man-made structures such as walls and paths, which can be removed and replaced almost immediately, a twenty-year old tree takes twenty years of growth time to replace. Additionally, at the conclusion of the twenty-years growing time, if the original tree had not been removed, the community would be enjoying the benefits of a forty-year old tree.