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## Trees

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### Forms & brochure

- [Application to Prune / Remove Trees on Private Property](#) (PDF 46KB)
- [Application to Prune / Remove Trees on Public Land](#) (PDF 35KB)

This brochure answers frequently asked questions about the protection, removal and pruning of trees.

- [Mosman Council's Tree Management Information Brochure](#) (PDF 4MB)

### Managing Mosman's Urban Forest

The Urban Forest is defined as the totality of trees and shrubs on all public and private land in and around urban areas (including bushland, parkland, gardens and streets).

Council's Urban Forest Policy recognises that the Urban Forest is a vital component to the urban landscape and ecosystem providing such benefits as natural beauty, climatic influence, reduction in pollution, asset protection and social amenity.

- [Urban Forest Policy](#) (PDF 35KB)

It is Council's policy that the Urban Forest is conserved, replenished and enhanced, using best management and Ecologically Sustainable Development (ESD) principles, while seeking to meet the needs and desires of property owners, residents and other visitors to Mosman.

The instruments used by Council to manage Mosman's Urban Forest include:

- [Tree Preservation Order](#) (PDF 41KB)
- [Street Tree Masterplan](#) (PDF 1MB)
- [Urban Forest Management Register](#) (PDF 4MB)
- [Local Environmental Plan \(LEP\)](#)

### Tree Preservation Order – includes a list of exempt species

The Tree Preservation Order (TPO) is used to manage the pruning and removal of trees on both Council and private land.

- [Tree Preservation Order](#) (PDF 41KB)

*The following information should be read in conjunction with Council's most recent Tree Preservation Order.*

The Tree Preservation Order prohibits the ringbarking, cutting down, poisoning, topping, lopping, pruning, root pruning, removing, injuring or wilful destruction of any tree (unless exempt), except with the prior written consent of Council.

Council consent is required under the TPO to prune or remove the following:

- Any tree that has a height of 5 metres or more (or in the case of heritage conservation areas are 2

- metres or more in height).
- Any tree with a circumference of 450 millimetres or more measured 300 millimetres above ground level.
- Any tree ferns (*Cyathea australis* & *Cyathea cooperi*) with a height of 2 metres or more.
- All vegetation (dead or alive) on Council Land.

On *private* land Council approval is *not* required to:

- Prune or remove a tree or shrub less than 5 metres in height (or in the case of heritage conservation areas, less than 2 metres in height); or which has a circumference of less than 450 millimetres measured 300 millimetres above ground level.
- Remove dead trees or dead wood from trees
- Prune or remove a tree that has been declared a noxious plant under the *Noxious Weeds Act 1993*.
- Remove a tree that poses an imminent hazard to a person or property and there has been visual and written evidence recorded by a qualified professional arborist which justifies the action taken.
- Prune or remove any tree that is harbouring fruit fly as confirmed and recorded in writing by a suitably qualified professional.
- Prune or remove Broad-leafed Privet, Narrow-leafed Privet, Citrus Trees, Camphor Laurel (height <10m), Cotoneaster, Rubber Tree, Willow, Umbrella Tree, Hibiscus spp, Oleander, Prunus, Wild African Olive, Paw Paw, Mulberry, and Hackberry (height<10m).

### Management of trees on private property

Although trees within Mosman are protected under relevant Council policies a property owner is responsible for trees, and vegetation, growing from within the boundaries of their property. This includes branches, and roots, which overhang or grow into adjoining properties.

### Applying to carry out tree work

Application forms for tree work, on either private or public land, are available (see below). Application forms must be completed fully and accompanied by the relevant fee when lodging.

It is the applicants' responsibility to provide sufficient information to support the reasons for the requested tree work, particularly for tree removals. Failure to do so may result in consent for the requested works being denied.

Although any person may apply to prune or remove a tree it is generally required that the owner of the tree sign the application. Applications for trees that are growing on common land (e.g. Strata Plan) must be accompanied by either a letter from the managing agents or minutes of the relevant Strata Plan meeting indicating the majority of owners support the application.

### Pruning overhanging branches from a neighbour's tree

In most cases Council does not have the power to compel a property owner to prune or remove a tree which is, or is perceived to be, impacting on another property (excluding Council land).

Any person who is affected by overhang from a tree growing from within an adjoining property, including Council land, may apply to prune the overhanging branches. All pruning, if approved by Council, must be undertaken to Australian Standards (AS4373-1996).

If access is required into the adjoining property to undertake the work correctly the property owner must sign the application. If the pruning does not require access to the tree owner's property the owner of the tree is not required to sign the application. In such cases, if Council consent is granted for the works, the consent does not give authorisation to the applicant, or engaged contractor, to enter the tree owner's property.

In some circumstances Council may insist that the applicant consult with, or inform, the tree owner of the intention to prune their tree prior to Council consent being granted.

### Pruning or removing of trees contained within a neighbouring property

If a person wishes to prune or remove a tree contained within a property which they do not own, they will be required to have that property owner sign the application before it will be assessed by Council.

Disputes between neighbours regarding trees are civil matters. Council has no role to play in solving such disputes. If a dispute cannot be resolved amicably residents may wish to contact the Community Justice Centre on 9262 7844.

### Trees located on Council land

All vegetation on Public Land is protected under the *Local Government Act* and Council permission is required to undertake any work on Public Land. Any person or organisation can apply to undertake work on Council trees and the application will be assessed as outlined below.

### Trees protected within a Development

Council will not accept a TPO application to remove a tree which is protected under a Development Consent. In such cases a Section 96 Application must be submitted to amend the Development Consent Conditions.

If pruning of a tree is required on a development site a TPO application must be submitted outlining the pruning work required.

### Assessment of a TPO Application

Council's Tree Management Officer will assess the application and mail the determination to the applicant. This process may take up to 10 working days. The assessment and determination is based on a visual inspection of the subject tree and consideration of the documentation provided with the application. Council does not provide a tree consultation service and the assessment is not a tree hazard assessment.

### What will Council Consider When Assessing TPO Applications?

The assessment and determination of the application will address, but not be restricted to, the following;

- The health and or condition of the tree or trees; including safe useful life expectancy and previous pruning record;
- Amenity value of the tree including visual amenity, ecological value, heritage significance, and the tree's value as habitat;
- Severity and relevance of problem reported;
- The number of healthy trees that a parcel of land can support;
- The impact that the proposed work, whether pruning or removal, will have of the tree or the landscape as a whole.

There are a number of other factors that *do not* usually warrant pruning or removing trees. These include:

- A tree is shedding leaves, fruit, bark, cones or twigs, particularly where fouling gutters and pools.
- A tree is causing minor shading.
- Unsupported fears about healthy trees/ branches failing
- A tree is causing minor structural damage, such as to footpaths or driveways.
- A tree is causing blockage to pipes, unless the damage is serious and recurring.

Generally Council will not permit the removal of trees to improve views.

### What happens following assessment of a TPO Application?

Once an application has been assessed, the determination will be mailed to the applicant. Any work is to be undertaken in accordance with the determination detailed on the assessment. Council will not contribute to the cost of any approved tree works.

For approved tree work on public land the applicant must engage one of Council's approved contractors. The work and payment are to be organised directly with the contractors.

Whether on private or Council land the applicant is encouraged to contact several contractors and compare prices before appointing someone to undertake the work.

It should be noted that tree work can be a dangerous task requiring extensive training and specialised equipment. Indiscriminate lopping or pruning can also reduce the long-term safety and health of a tree. For these reasons it is recommended that a professional tree worker or arborist, who is adequately qualified and insured, be engaged to undertake the work. Both the National Arborists Association of Australia (NAAA) and the Tree Contractors Association of NSW Inc. (TCA) have extensive lists of companies.

Unless otherwise indicated on the assessment all pruning must conform to Australian Standards (AS4373-1996 Pruning of Amenity Trees).

### Appealing a TPO Assessment

If you are not satisfied with the assessment you may appeal in writing, accompanied by an independent arborist's report. The matter will be reported to Council for a final determination. A fee is required as per Council's pricing policy.

### Planting Replacement Trees

It is Council policy that a replacement tree be planted to replace any tree removed. Exceptions to this may be made at the discretion of Council's Tree Management Officer and will be noted on the assessment. Specifications for the replacement will be shown on the assessment form.

## Leightons Green Cypress

At the Council meeting on 15 August 2006 Council formalised its position to discourage the planting of Leightons Green Cypress, *Cupressocyparis leylandii*. At times these trees have been planted to the detriment of neighbours' views and solar access. The Leightons Green Cypress is a particular problem as it is readily available in advanced sizes, it is fast growing and has a dense habit.

Since formalising its position in regard to Cypress Leighton Green, Council has:

- Continued to eliminate the species from landscape plans through the development application process.
- Made the tree exempt from Council's Tree Preservation Order.
- Forwarded information to property owners outlining the detrimental effects Cypress Leightons Green can have on neighbours.
- Advertised Council's position regarding the species in the Council Column in the Mosman Daily.

The Local Government Association (LGA) has resolved to make a submission to the NSW Department of Primary Industry to have Leightons Cypress Green added to the Noxious weeds list due to the impact it can have on neighboring properties.

Council requests property owners consider their neighbours' solar access and views in planting trees on private property and keep hedges of Cypress Leighton's Green pruned to a suitable height.

## Pruning

 [Pruning of Trees on Public Land](#) (PDF 56KB)

### Unauthorised Tree Work

Any person who carries out tree work without Council's consent may be liable to substantial fines and/or conviction in a court of law. A person may also be liable for a penalty for engaging or allowing another person to remove or prune a tree without Council's consent.

### Reporting unauthorised tree work

If unauthorised tree work is suspected the details of the incident should be noted and reported immediately to Council on 9978 4000.

## Trees (Dispute Between Neighbours) Act 2006

Put simply this Act provides property owners a legal avenue to have tree issues they believe are unreasonably affecting them or their property considered by the Land and Environment Court. Information on the Land and Environment Court website [states](#):

The purposes of the Act are to enable the Court to make orders to remedy, restrain or prevent damage to property or to prevent injury to any person when a tree that is situated on adjoining land might cause that damage or injury. The Act also permits the Court to order compensation for or rectification of damage caused by a tree.

*The Act does not allow the Court to make orders solely for other purposes (such as lopping or removing trees which block views).*

However, the Attorney General has recently undertaken a review and made a number of recommendations which will modify the act. Information on the NSW Government Lawlink website states that under the new laws to commence on August 2, 2010, the Act will:

- empower the Land and Environment Court to hear disputes about high hedges that severely block sunlight to a window of a dwelling on adjoining land, or views from such a dwelling;
- support the enforcement of court orders by allowing councils to recover the cost of trimming or removing any trees plus a prescribed administration fee;
- give the subsequent owner of the property the right to enforce certain orders made under the Act;
- give the court authority to hear disputes over trees that have caused damage but have since been removed;
- allow the court to make orders in relation to problem trees and damaged dividing fences;
- enable the court to hear tree disputes on land zoned 'rural-residential' but only where a tree is causing damage or risking injury;
- include vines as a prescribed plant under the Act.

Before The Court will hear a case it must first be satisfied that the applicant has made a reasonable effort to resolve the matter with the owner of the land on which the hedge is situated. Where resolutions prove difficult, residents can now apply to have the court intervene without the

requirement for a lawyer. The Court will have the power to intervene in cases where a hedge has severely impacted a neighbour's views or access to sunlight.

The legislation will empower the Court to determine the appropriate height at which a hedge should be maintained through making a balanced judgment regarding the right to privacy versus the broader benefits of maintaining healthy urban vegetation.

Should the land owner upon which the hedge is located choose to ignore the Court's order, councils will be given the power of enforcement and be able to charge the cost of enforcement and a prescribed administration fee to the resident.

Both the [Land and Environment Court website](#) and the [NSW Government Lawlink website](#) provide information on the *Trees (Disputes between Neighbours) Act 2006* and are useful resources for anyone with an interest in the purpose and application of the new legislation.

Cases which have been determined by the Court in the past have been based on expert advice and resident submissions and all involve site inspections. The Court also uses Acting Commissioners with arboricultural or related expertise. A review of cases displayed on the Land and Environment Court website shows the Court is taking a balanced and considered approach to matters which it addresses.

The community of Mosman values its trees and Urban Forest assets. Council protects and manages trees on public and private property in Mosman through its Urban Forest Policy and Tree Preservation Order. While Council is happy to provide information to residents on tree management in Mosman it will not become involved in disputes between neighbours. Council will provide assessments on trees where an application has been submitted under Council's Tree Preservation Order for pruning or removal.

Council will provide the following information to the Court for its consideration in matters involving trees on private land in Mosman. (Note the following documents are available on Council's website or under Council's open file policy).

- A copy of Council's Urban Forest Policy.
- A copy of Council's Tree Preservation Order.
- Advice on whether the subject trees are covered by Council's Tree Preservation Order.
- Advice on whether the subject trees are included in Council's Urban Forest Management Register.
- Any valid TPO applications or assessment documents on the subject trees. (TPO assessments are valid for 12 months).

## Urban Forest Management Register

This Register is used by Council as a tool to manage specific trees within the Municipality. The trees listed may be single or groups of trees, on both public or private property, and are considered to have an exceptional value (visually, culturally, naturally or ecologically) within the Urban Forest.

 [Urban Forest Management Register](#) (PDF 4MB)

The Register is reviewed wholly every 6 years although trees may be added to the register, including nominations from the public, at any time.

## Trees and their Effect on Assets

Due to the large number of trees in Mosman most residents live in close proximity to a street or park tree and unfortunately associated conflicts can arise. Council has therefore decided to develop and implement uniformed practices to address problems of impacts from Council trees.

Damage to sewer and stormwater pipes in particular is a difficult and time consuming issue. To assist residents and Council the following information has been prepared to enable all parties to resolve such issues in an efficient and consistent manner.

Trees are an important part of the character of Mosman and the community values the amenity trees provide. Council understands that trees can sometimes affect privately and publicly owned assets near them. The following information is provided to clarify Council's position and provides advice on the course of action residents should take when there is a concern that private property has been damaged by a tree growing on public land.

### Who is responsible for private in-ground services?

A property owner is responsible for the upkeep and maintenance of in-ground services, such as sewer and storm water pipes, even though they may run through or adjoin private and public land. That is a resident is responsible for pipes servicing their property, not only within their property boundary but also, for example; to the sewer main.

### How do trees affect in ground services?

Tree roots can enter in ground services causing the pipes to be blocked. While it is possible for a tree root to crack a pipe this is uncommon if the pipe has been installed and maintained correctly. Tree roots often enter a pipe as a result of the pipe failing, usually through deteriorated seals in older pipes.

### Why do tree roots enter in ground services?

Tree roots are opportunistic and grow towards wherever conditions are favorable. They do not actively search for water. Tree roots will follow a pattern of growth where, when they come in to contact with water/nutrients, they will grow towards an increasing concentration of water/nutrients. Tree roots will only usually enter pipes that have a fault and are leaking water.

### Why might my in ground services be leaking?

Sewer or storm-water services may crack for a number of reasons including the age of the pipe (old terracotta), failure at a joint, ground movement, etc.

### What process should I follow if it is alleged the damage or blockage is caused by a tree growing on Council land and I wish to make a formal claim for the cost of repairs?

- You should obtain 3 written quotations for the necessary repair works.
- If excavation through a council road or footpath is required, you will need to obtain a road opening permit which is available from Council.
- Necessary repair work can be undertaken to avoid any further damage and/or reduce the hazard. Note that at this stage Council has not accepted any liability for damages and the decision to undertake repairs is made by the owner of the asset.
- During the course of the works you must arrange for a council officer to inspect the exposed pipe and confirm if Council tree roots have caused the problem or whether the pipe has been damaged for some other reason.
- While on site the council officer will take photos as a record to be referred to later if necessary.
- It is recommended that you also keep your own records.
- If you would like to take further action it will be necessary to make a formal claim against Council for the cost of repairs if you are of the opinion that Council has been negligent in some way. All information gathered above should be included in your claim.

### What happens if it appears that the roots are the cause of the problem?

The matter will be referred to Council's insurers for assessment of liability including the cost for the repairs. For Council to be considered liable for any damages the asset owner will need to provide evidence of negligence of Council and how any such negligence resulted in the damage.

### Why does Council take this approach?

It is important to follow the process above as the works relate to a private asset and may involve spending public funds on the repair. The above process needs to be followed for both insurance and governance purposes. This information is provided to advise of the importance of having clear evidence to forward to insurers if there is a claim in the future, particularly if there is a chance the initial damage may have been the result of other causes. The clearer the evidence provided the greater the likelihood of a positive result through any insurance claim.

### How can I manage my in ground services so that I can prevent this happening in the future?

The most efficient way to prevent root damage to your services is to replace the old terracotta pipes with new PVC or UPVC ones and use pressure seals. Other methods include the type and compaction of the backfill around these services which help prevent root growth in these areas. Also using chemical or mechanical forms of plumbing equipment to control root development in the pipes, but this may only be a short term solution and might not prevent root ingress in the future.

## Further information and contacts

All initial enquiries and requests for TPO Application forms should be directed to Council's Corporate Support Team on 9978 4000 between the hours of 8.30am and 5.00pm Monday to Friday.

For further information on the Tree Preservation Order, nominations for the Urban Forest Management Register or other tree management issues contact Council's Tree Management Officer on 9978 4000.

*Enquiries about Council's [bushland](#) should be directed to the Bushland Officer.*