

Trees on Private Property

Trees on private property can create a nuisance for your neighbour and have the potential to cause damage to property when branches and/or roots encroach onto the adjoining neighbour's property. This fact sheet provides general information and is intended as a guide only.

Whose responsibility is a tree on private property?

Please note that trees are living organisms and over time their condition may change. It is a property owner's responsibility, therefore, to inspect their trees regularly and to ensure that they are in a safe condition.

The City has no authority regarding trees on private property unless they are deemed an acute hazard, such as the potential to cause injury or damage to a person or thing.

What can I do about leaves from my neighbour's tree falling onto my property?

The City recommends that you first talk with your neighbour to try and resolve the issue.

You can ask your neighbour to trim or, if required, remove the tree, however the City does not classify falling leaves as a hazard or legitimate reason for removing a tree.

There is no law that states that residents are responsible for removing leaves which fall onto neighbouring property. Whilst the City acknowledges that this may cause some frustration, the dropping of leaves is a natural occurrence, especially on a windy day, and is a part of living in an urban environment.

What can I do about a branch or root from my neighbour's tree?

Cutting Back

Where a branch or root from a neighbouring property encroaches upon your land, you are entitled to cut and remove the offending branch or root at any point up to the boundary of your land. You must not cut the branch or root on your neighbour's side of the boundary without their agreement. Nor are you entitled to enter the neighbouring property to do this without prior permission.

If a branch or root comes onto your side of the fence you are permitted to:

- cut off the branch to the point where it overhangs your property
- dig up the root and remove it up to the boundary of your land.

However, you must also take care to observe the following:

- Do not cut the branch or dig up the root on your neighbour's side without their prior agreement.
- Do not cause unnecessary damage to the health of the tree.

You are not required to tell your neighbour of your intention to cut their trees back from your property; nevertheless, it is a good idea to let them know beforehand that there is a problem and what you intend to do about it.

Under common law a tree usually belongs to the land on which it is growing and is the property of the owner of the land, regardless of how it came to be there.

Disposal

Any branch or root, or any flower or fruit growing on a branch that you cut back still belongs to the tree's owner and should be returned to your neighbour.

Be careful about how the cuttings are returned — you are responsible for any damage or littering that might occur as a result of your work. It is advisable to let your neighbour know what you intend to do with the cuttings. If the tree's owner agrees, you may dispose of the cuttings yourself (during the City's bulk rubbish collection might be a convenient time for both parties).

Responsibilities for payment of works and/or damage caused by a neighbour's tree

Repairing damage caused by a neighbour's tree can be costly, as can specialist arboricultural work. Roots can damage foundations, fences, block drains or raise brick paving, while overhanging branches can drop leaves into your gutters or prevent your own trees and crops from growing. Costs for work or repairs carried out on your property should be met by the owner of the tree.

If you need to have repairs done or need to seek the services of a specialist to remove roots or branches, first write a letter to your neighbour setting out what the damage to your property is and requesting that your neighbour take steps to remedy the situation. The following would be useful to include in your letter:

- copies of quotes for repairs and/or specialist work required
- a request that your neighbour pay to fix the problem and prevent it from happening again.

You should keep a copy of your letter.

Once your neighbour has been made aware of the problem they have a legal responsibility to fix it and/or to prevent the problem from worsening.

If there is a cost involved in fixing the problem, you should reach an agreement with your neighbour about who will pay the costs before work is commenced.

If you cannot reach an agreement with your neighbour you may have to apply to court for an order that legally obliges your neighbour to have the branches or roots removed and/or the damage to the property fixed.

Legal action against neighbour's can lead to bad relationships that are difficult to repair. Wherever possible, think about negotiating an agreement with your neighbour, or going to a dispute resolution service instead of taking court action.

What is the role of local government regarding trees on private property

The City advises that trees on private property are a civil matter and may only become involved once it is satisfied that the tree represents an acute hazard such as the potential to cause injury or damage to a person or thing and that the property owner or occupier has failed to take appropriate action to remove the hazard.

The complainant should follow the process listed below before requesting the City to intervene:

1. Approach the owner of the tree and attempt to arrive at an amicable solution to the matter of concern.
2. If the above does not resolve the issue a written request must be supplied to the tree owner requesting the required work to be undertaken on their tree. Ensure that you keep a copy of this letter – see above under 'Payment for damage caused by a neighbour's tree'.
3. If this does not resolve the issue, obtain a written report from a qualified arboricultural consultant (must hold a QTRA qualification or a Level 5 arboricultural certificate). This will determine whether the tree is structurally sound or represents a potential danger. Supply the owner of the tree with a copy of this report with a further request to carry out the required work.
4. The City may become involved if the consultant finds the tree to be unsound and in need of pruning or removal, and if the tree owner does not carry out the obligation on their part to remove or prune the tree and the complainant cannot resolve the issue by themselves.

5. If it is open to the City to form the view that the tree endangers any person or thing on adjoining land and is required to be made safe then Council may elect to issue a notice under section 3.25 of the *Local Government Act 1995*, which sets in train certain procedures that hopefully will eventually achieve compliance with the law. If compliance is not achieved then it may become necessary for the City to initiate a prosecution in the Court of Petty Sessions to achieve the desired outcome.

Further information

For further information please contact the City's Infrastructure Services on **1300 369 972**.

If you are in dispute with your neighbour, it may be advisable to undertake mediation with your neighbour. The City, via the Citizens Advice Bureau, offers a mediation service to residents and property owners of the City of Joondalup. Further information is available by contacting the City's Customer Relations Advocate on **9400 4942**.

Further reference is available on the Legal Aid website www.legalaid.wa.gov.au

Should you wish to seek legal advice you may contact Legal Aid WA through their information line on **1300 650 579**.