

Trees

Trees & Neighbours, Damage from trees

This information is provided as a guide to damage caused by trees either on your property or on a neighbour's property. Specific situations may vary. This information provides general information only. The information is not legal advice and should not be relied on. If you require specific advice you should seek your own legal advice.

Tree Preservation

All trees in the Penrith Area that are over 3 metres tall are protected by a Tree Preservation Order and cannot be removed or pruned (including root pruning) without consent from Council.

Damage Caused by Trees

Trees are affected by the natural environment and they will, randomly and inexplicably, shed branches, fall over, drop foliage or their roots can affect underground structures.

The owner of a tree may be held responsible for their tree and for any damage that is *directly* caused by the tree if there is evidence that the owner of the tree has been negligent in its maintenance, or knows of a specific problem with a tree, has failed to rectify it, and due to that problem the tree causes damage.

Who owns the Tree

A tree is owned by you if its main stem/ trunk at ground level is on your property. If the boundary line bisects the tree, it is jointly owned despite its original planting location. It does not matter if the tree was planted by you, a previous owner or neighbour or is a remnant (original native) tree.

Falling Branches

Trees shed branches on occasion. Dead branches should be removed from a tree before they fall. Trees, like any living organism, benefit from regular maintenance and care. Regular maintenance of trees, undertaken by a qualified Arborist/ Tree Surgeon can ensure that trees are as safe as possible.

Fallen Trees

The bulk of the tree roots exist only in a fairly shallow soil layer to a distance of more than three times the crown spread. Tree structures are affected by storms but the effect of the weather may not be apparent to the owner. Trees may fall during storms or in periods of

calm. Trees damaged by storms should be assessed to by a qualified tree surgeon if that tree requires attention.

Foliage

Whilst leaves in gutters are an annoyance, regular property maintenance (including cleaning gutters) is part of owning a property. Special gutter cleaning scoops are available from hardware stores. Some scoops can be used with an extension/ broom handle from the ground. There are also hose attachments mechanical water blasters/ cleaners and leaf blowers/vacuums that can be used to clean gutters. Modern leaf/ gutter guards should also be considered, as the problem of leaves in gutters is not sufficient justification for permission to remove a tree.

Similarly leaf drop from a neighbour's tree is also insufficient justification to warrant tree removal. Leaf drop is a part of our natural environment as it is a major part of soil makeup. Thus, unless the problem is extreme Council is unlikely to grant removal permission but will suggest other alternatives such as pruning or leaf-guards.

Tree Roots

Tree root growth is opportunistic. Tree roots do not seek out water, are not aggressive and do not invade.

The cutting of a tree's roots requires permission from Council. This is because a significant cause of tree failure (fallen trees) is previous root damage. Thus, if a tree's roots are damaging paths, paving or fencing then repair/ replacement of the structure must be considered before the tree's removal.

Similarly, if a tree has damaged a fence or is in the path of a proposed fence the fence must be built to accommodate the tree and should include space for future growth. If the tree is removed in the future the missing section of the fence can be replaced.

Sewers

Sydney Water is responsible for the management of the sewer and water mains systems in Sydney, Blue Mountains and Illawarra. It is the responsibility of the property owner to maintain their underground pipes. Refer to www.sydneywater.com.au

Penrith City Council is responsible for most stormwater lines in the Penrith area.

Common drainage lines are the responsibility of all residents who benefit from them.

This is likely to be mentioned on your Land title deeds.

If there is evidence of roots in a sewer there must be an entry point/ hole. The owner of the sewer must replace or repair the damage. If this cannot be done without removing or seriously damaging the tree and there are no alternatives (i.e. moving the pipes, directional boring) consideration will be given to removal of the tree. All plants including grass can enter leaky, old or damaged pipes so removal of a tree may not solve the problem. Drain clearing devices like electric eels only prune roots and will not eliminate the problem. It is highly likely that soon after clearing a root blocked drain with an eel, the root will

regrow and block the sewer again. The re-entry will be facilitated because the pipes are faulty.

Cutting roots to repair sewers must only be done as a last resort as the damage caused to the tree and the potential to make the tree unstable are significant problems. In any case, damage to sewers or structures that appear to be caused by a tree may in fact have been caused by other factors, and whilst trees can contribute to damage, they may not be the sole cause of it.

Tree Inhabitants

Termites

Termites are an important part of Australia's natural ecology. Like all wood/ cellulose, trees can be damaged by termites. However, the termites eat the dead wood in a tree, not the live tissue. Thus, termites do not affect the health (vigour) of the tree. Termites can eat a significant amount of heartwood in a tree and not cause the structure of the tree to be **weakened**. Internationally recognised research indicates that trees can be up to 70% hollow and still be strong. Wood should not be stored on the ground and it is recommended stumps be removed.

Council is not responsible for damage to property caused by termites. Property owners should ensure that they maintain and inspect their properties. Pest inspections are recommended at least every 2 years and even more frequently if termites are known to be in the area. Appropriate pest barriers and cultural methods may inhibit termites. A suitably qualified pest inspector should be employed for advice and control.

Borers

Borers eat sapwood (the living part of tree wood) and can cause significant decline in an otherwise healthy tree. The presence of borers is usually indicated by sawdust or bleeding. Other insect pests including leaf eating insects can attack trees however; healthy trees are not usually adversely affected. Frequent repeated attacks by any insect can cause a tree to decline and may lead to the death of the tree.

Other Inhabitants

All native animals and birds are protected by wildlife legislation.

It is not the tree owners responsibility to try to manage the natural existence of other inhabitants of trees such as bees, wasps, birds (aggressive, pest or otherwise), or animals nor is such inhabitation a valid justification for the removal of a tree.

Overhanging Branches

Generally, the common law right of abatement of nuisance allows the removal of overhanging branches from a neighbouring tree to the boundary line and states that the owner of the tree must be asked if they would like to have the removed material returned to

them. However, Council's Tree Preservation Order overrides the common law and prohibits any pruning without Council's consent.

This is because if trees are incorrectly pruned it may cause more problems than before because:

- regrowth can be vigorous, may be weakly attached and within a short time may exceed the original growth and/or
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- the balance of the tree may be affected and become unstable.

To correctly prune trees, branches must be cut back to a branch collar (near the fork). This should be done by a professional Arborist or Tree surgeon, who can eliminate or reduce future problems. In any case, simply cutting (lopping) branches to the property boundary is not considered correct pruning and would not be approved by Council.

If it becomes necessary to prune a neighbour's tree, it is desirable to gain the tree owners written approval however, if this is not possible or if the neighbour is uncooperative there are other options available. (Reasonable efforts must be made to reach agreement prior to Council intervention.) You can;

- Seek permission from Council to prune within your common law rights. Application forms are available at the Penrith Civic Centre and the St Marys Council office. This pruning must be done within your property and must be done with due regard to the health of the tree, correct pruning techniques and the safety of nearby people and property.
- Seek mediation by contacting the Community Justice Centre on (02) 4732 1933.

Further help

The Community Justice Centre may be able to help where neighbours are having problems resolving their differences.

The Trees (Disputes Between Neighbours) Act 2006 is designed to help people where a tree has, is or is likely to cause damage or injury. See their website for details or contact them for further information.

Contact Information

Community Justice Centre
1800 990 777 <http://www.cjc.nsw.gov.au/>

LawAccess - Legal information and advice
1300 888 529

Tree Disputes Between neighbours Act- NSW Land and Environment Court
(02)9113 8200
http://www.lawlink.nsw.gov.au/lawlink/_lcc/_ll_lcc.nsf/pages/LEC_tree_disputes_information