



# NORTHERN MIDLANDS COUNCIL

## POLICY MANUAL

### OVERHANGING TREES

<b>Originated Date:</b>	Adopted March 2015 – Min. No. 79/15 (as Policy 76)
<b>Amended Date/s:</b>	Amended 20 February 2017 – Min. No. 49/17
<b>Applicable Legislation:</b>	<i>Local Government Act 1993</i> <i>Local Government (Highways) Act 1982</i>
<b>Objective</b>	To provide a fair and consistent approach to the reduction of potential nuisance caused by overhanging trees within the settlement areas of the Northern Midlands.
<b>Administration:</b>	Community and Development
<b>Review Cycle/Date:</b>	Next review 2021.

#### INTRODUCTION

The land between the boundary of a property and the carriageway of a road is variously referred to as the footpath or nature strip. Depending on its location, this land can frequently be used by pedestrians, cyclists and horse riders. Each of these users has a reasonable expectation that that they can use this area safely.

Vegetation extending beyond a property boundary can create a potential hazard for users.

Protruding vegetation may be considered as *causes, or likely to cause, danger or harm to the health, safety or welfare of the public* and thus constitute a nuisance according to the *Local Government Act 1993*.

#### DEFINITIONS

<i>Boundary</i>	refers to the property boundary as shown on the property title.
<i>Overhanging trees</i>	for the purpose of this policy, overhanging trees refers to all vegetation, including but not limited to trees, shrubs and plants, that extends beyond the property boundary and into, over or under a highway.
Highway	is all that land encompassing the road and land between the property boundaries on each side

#### APPLICATION

This policy applies to all properties located within the town boundaries of the municipality of the Northern Midlands.

#### OPERATION

##### 1 EXPECTATION

Overhanging trees are to be:

- Cut back to boundary; and
- Provide a clear height above an area intended mainly for the use of pedestrians of 2.5 metres; and
- Provide a clear height above an area designated as a horse trail of 3.0 metres; and
- Provide a clear height above the nature strip, on the carriage-way side of a constructed foot path of 4.5 metres.

##### 2 INSPECTION

Every residential street shall be inspected twice per year.

In addition, Councils authorised officer will respond and inspect all sites where an overhanging tree concern is brought to Councils attention.



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### 3 *PROCESS*

- i *Advertise:*

Council will place a time to trim your foliage advertisement in newspapers circulating in the municipality, twice a year. The advertisements are also to be shared on Council's Facebook page.
- ii *Inspection:*

the authorised officer will conduct an inspection of all residential streets, twice yearly, as well as any properties brought to Council's attention outside of those times.
- iii *Friendly Reminder:*

where, in the opinion of the authorised officer, there is an overhanging tree, a letter will be sent to the owner or occupier of the land requesting the nuisance to be removed within 14 days of the date of the letter.
- iv *Review of decision:*

The owner or occupier who receives the letter referred to in paragraph iii above, may apply to Council in writing, requesting Council exercise its discretion to remove the overhanging tree based on:

  - Heritage grounds; and/or
  - Such action will result in the death of the overhanging tree.

An application will be considered by Council's Works & Infrastructure Manager and Senior Planner and discussed with the property owner. If a resolution cannot be reached between the parties, a report is to be presented to Council for a determination to be made.
- v *Inspection:*

the authorised officer will conduct a follow up inspection of all properties where a friendly reminder letter has been sent after the expiration of 14 days of the date of the letter.
- vi *Abatement Notice:*

where, in the opinion of the authorised officer, there is an overhanging tree, a notice will be served upon the owner or occupier of the land requiring the nuisance to be abated within 14 days (section 200 *Local Government Act 1993*).
- vii *Appeal or carry out work:*

the owner or occupier of the land must abate the nuisance or appeal to a magistrate within 14 days of the service of the notice, in accordance with the provisions of the *Local Government Act 1993*.
- viii *Nuisance not abated:*

if the owner or occupier does not abate the nuisance or lodge an appeal within the prescribed 14 day period, a letter will be sent to the owner or occupier advising that Council will carry out the works at the owner or occupier's expense.
- ix *Send Contractor:*

once the letter referred to in step (vi) is sent, the authorised officer will engage a contractor do anything reasonably necessary to remove the nuisance.
- x *Charge to owner:*

All costs associated with the contractor, plus an administration fee, will be invoiced to the owner or occupier. This cost will be incurred even if the owner or occupier abates the nuisance, after the expiry of the prescribed period, but prior to the arrival of Councils contractor.
- xi Infringement notices may be issued in accordance with s.204A of the *Local Government Act 1993*.