



**MARLBOROUGH  
DISTRICT COUNCIL**



Only Marlborough

## **Marlborough District Council Tree Policy**

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## 1.0 Introduction

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The Marlborough District Council (the Council) is responsible for trees in a variety of locations including areas where there is active management such as in parks and reserves, cemeteries and berms on urban streets and in areas where there is little active management i.e. the more remote reserves or reserves along rivers. This Tree Policy has been developed to provide policy guidance and a consistent approach to the planting, monitoring, pruning, trimming, and removal of trees on land that is actively managed by the Parks and Open Spaces Section of the Council's Property and Community Facilities Department.

The Tree Policy highlights the benefits of trees, their multiple functions and the ways in which they contribute to improving the condition of our environment. Equally there are many challenges in managing trees as despite their many positive attributes, trees can also cause nuisance and damage, carry a level of risk and at times lead to disharmony between neighbours, residents, infrastructure providers and the Council. Assessing and managing the condition of trees in public spaces is a key component of tree management.

The Tree Policy also addresses aspects of managing vegetation on private land BUT only in circumstances where:

- this vegetation overhangs public places; and
- notable trees are present.

## 1.1 Purpose

The purpose of the Tree Policy is to:

- ensure planning for managing trees on parks, reserves, roads and other actively managed land throughout Marlborough is balanced enabling long-term benefits to the community while reducing conflict and risk;
- provide a consistent approach for making day to day decisions about management of trees on parks, reserves, roads and other actively managed land;
- manage vegetation overhanging from private land onto public places;
- provide guidance for managing notable trees (outside of the requirements of the Council's resource management plans); and
- provide an effective tool for planning and management of Marlborough's tree resources on actively managed land.

## 1.2 Scope

The document sets out principles and policies to guide, assess and support decision making on the planting, maintenance, protection and removal of trees on Council land in Marlborough, for dealing with overhanging vegetation from private property and for managing notable trees.

The Tree Policy replaces any prior tree policy of the Council as at the date of adoption. Where a reserve management plan is in place that contains specific policy concerning trees that are relevant to the reserve, then the policies of the reserve management plan shall take precedence over those within this document.

The Tree Policy does not apply to Council land where the prime purpose for growing trees is for commercial gain.

The policies for managing notable trees do not repeat any processes already established through the resource management plans.

Under each of the subsequent policy sections of this document, there may be additional matters that are refined as to scope.

## 1.3 Context

There is a range of statutes, plans, policies and other strategies or programmes the Council may need to consider and apply when managing trees. A number of those of particular relevance on a day to day basis are set out below<sup>1</sup>.

### 1.3.1 Reserve management plans

Under the Reserves Act 1977 all administering bodies (in this case the Marlborough District Council) are required to prepare and develop management plans for reserves under their control. The purpose of a reserve management plan as is defined in the Act is to *“provide for and ensure the use, enjoyment, maintenance, protection and preservation, as the case may require, and to the extent that the administering bodies’ resources permit the development as appropriate, of the reserve for the purposes of which it is classified”* (Section 41(3)).

There are some cases where the Council’s reserve management plans have objectives and policies specific to managing trees. Where there may be a conflict between the Tree Policy and the reserve management plan, the reserve management plan takes precedence.

### 1.3.2 Contracts

The Council has several contracts under which the management of trees (and other vegetation) occurs.

Street trees in urban areas are maintained under the Street Tree Maintenance Contract with an annual assessment condition carried out and recorded in an asset database. New plantings, annual maintenance (pruning, mulching, watering) and on occasion tree removal are undertaken as part of the contract. An annual inspection is also undertaken as part of this contract of trees or other vegetation that overhang public places from private land, particularly footpaths and roads. In a number of cases landowners are required to trim or remove this private vegetation.

Trees on parks and reserves are generally managed through open space maintenance contracts for the reserve and where works are required this is undertaken as part of that contract.

### 1.3.3 Resource management plans

The Council has two operative resource management plans, the Wairau/Awatere Resource Management Plan and the Marlborough Sounds Resource Management Plan and a proposed plan, the Marlborough Environment Plan (MEP). These plans have rules and other provisions for managing trees, including heritage/notable trees and indigenous trees. Where the resource management plans have these provisions then they carry more weight than the provisions of this Tree Policy. This means if a tree proposed to be removed or requires major pruning and is a listed tree, then a resource consent will be required before the tree can be removed or pruned.

It is important to note the MEP provisions for notable trees are now effectively operative (with no appeals having been lodged) so this means the equivalent provisions in the Marlborough Sounds and Wairau/Awatere Resource Management Plans no longer need to be considered.

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<sup>1</sup> The provisions described in 1.3 are summarised, so a reader should refer to the appropriate statute, plan or policy to determine whether it is relevant in any particular circumstance, especially in relation to where trees are proposed to be removed.

### **1.3.4 Code of Practice for Subdivision and Land Development**

The Council uses the 'Code of Practice for Subdivision and Land Development – Marlborough District Council' to provide a standard approach to the design and construction of subdivision infrastructure. The code of practice is based on 'New Zealand Standard 4404:2004 Land Development and Subdivision Engineering'. Modifications and amendments to the Standard have been included to suit local conditions and practices in Marlborough.

Of relevance for trees, the code of practice includes provisions for the planting of trees on new streets and where new reserves are created.

### **1.3.5 Local Government Act 1974**

Under section 355 of the Local Government Act, the Council may require the removal of overhanging trees, and other vegetation, in instances where, in the opinion of the Council, the removal, lowering, or trimming is needed to prevent injury to the road or obstruction to traffic, including to pedestrians. There is a process set out in the statute enabling the Council to require landowners to remove overhanging vegetation.

### **1.3.6 Property Law Act 2007**

The Property Law Act provides a process for landowners/occupiers to apply to the Court for trees (including any shrub or plant) growing on neighbouring land to be removed or trimmed. The Court has to take a number of matters into account such as risk to life or health or property, obstruction of a view, interference with the use or enjoyment of their land before deciding whether to issue an order for a tree to be removed.

### **1.3.7 Reserves Act 1977**

There are specific provisions restricting the cutting or destruction of trees on reserves under the Reserves Act. For trees on any historic reserve or scenic reserve or nature reserve or scientific reserve, the consent of the Minister of Conservation is required.

For trees on recreation, government purpose, or local purpose reserves the Council can approve removal. However, the Council has to be satisfied this is necessary for management or maintenance of the reserve, for the management or preservation of other trees or bush, in the interests of the safety of persons on or near the reserve or of the safety of property adjoining the reserve.

Where the removal of trees is on recreation, government purpose, or local purpose reserves the Council has to consider replacement, planting or restoration as part of the decision i.e. before the tree is removed.

### **1.3.8 Electricity (Hazards from Trees) Regulations 2003**

The Council has responsibility to manage trees on its land (and land that it administers) that may come into contact with overhead power lines. The Electricity (Hazards from Trees) Regulations 2003 provide clear regulations that the Council must comply with. In many cases this aspect of tree management occurs through the Street Tree Maintenance Contract.

### **1.3.9 Health and Safety at Work Act 2015**

The Health and Safety at Work Act 2015 is New Zealand's workplace health and safety law. It includes responsibilities for managing work related risks that could cause serious injury, illness or even death. In the context of managing trees there are implications for the Council and its contractors undertaking tree work. Contractors are required to submit health and safety plans as part of contract work and the Parks and Open Spaces Section also has in place a health and safety plan.

## 1.4 Information

Over time information has been gathered about trees that have been planted on parks, reserves, cemeteries and streets. In collecting the information an assessment of the health and condition of a tree is made and this process sometimes highlights work that may need to be carried out on the tree. When work is carried out on trees this is also recorded and the information is stored in the Parks and Open Spaces Section asset management information system (AMIS) database.

The database is updated on each inspection and includes trees identified as needing pruning or removal or their condition changes. Additionally, where new trees are planted in actively managed areas, these are added to the database. As database information capture is refined and tree history accumulates, accuracy will increase.

## 1.5 Benefits of trees

Trees provide a range of social, environmental, cultural, ecological and economic benefits that enrich the quality of both urban and rural areas.

### 1.5.1 Social

#### *Neighbourhood character and identity*

Trees enhance neighbourhood character and identity and provide seasonal interest and natural beauty through foliage, leaf patterns, flowers, bark, fruit and canopy. They also help to naturalise and humanise built environments through softening hard surfaces and harsh outlines of buildings, complementing building development, and screening unsightly and undesirable views.

#### *Improve health and wellbeing*

Trees contribute to more walkable and liveable towns and can help reduce stress, improve mental health and promote wellbeing. They act as a source of appreciation and provide appealing community, recreational and social spaces.

#### *Provide shade and shelter*

Trees shading playgrounds, public spaces, and cycling and walking routes provide relief from the sun and protect people from harmful ultraviolet (UV) radiation, in turn reducing the risk of heat stroke, sunburn and melanoma. Trees also provide shelter from rain and wind.

#### *Traffic safety*

In the past street trees have been viewed as traffic hazards due to their close proximity to the road and their immovability. More recently trees and roadside landscaping have come to be seen as helping traffic and pedestrian safety by calming the flow of traffic, improving driver vision by blocking glare from the sun and providing a barrier between traffic and pedestrians.

### 1.5.2 Environmental

#### *Improve air quality*

Trees remove carbon dioxide from the atmosphere through photosynthesis, and improve air quality by capturing airborne pollutants (including ozone depleting substances). Trees can also help to moderate extreme temperatures, and reduce noise within urban environments.

#### *Improve water quality*

In the urban environment the leaves and branches of street trees can be effective in intercepting, absorbing and temporarily storing water before it evaporates from tree surfaces or gradually infiltrates into the ground. This reduces the amount of pollutants being washed from hard surfaces into the stormwater system and watercourses.

The presence of medium to large street trees with greater canopy cover can also be effective in reducing the volume of stormwater runoff.

### *Enhance biodiversity*

Trees provide substantial benefits in relation to the ecological health and sustainability of our urban built environments and provide ecological linkages between areas, including within rural areas. They provide habitat and food for our important indigenous insects and bird life. The air, water and nutrient exchange processes undertaken by trees are fundamental to human existence and the continuity of the food web which supports all life on earth.

## **1.5.3 Cultural**

For Maori, mauri is the life force that exists in all things in the natural world, comprising both physical and spiritual qualities. If the environment is to flourish, the mauri within all natural things must be protected and sustained, including our trees.

The natural and cultural values of significant or notable trees, provides an important depth of meaning and history within the landscape. In some locations trees they have been used as way finders to guide travellers or as survey peg markers or have been planted to commemorate people within the community or significant events that have occurred.

Edible fruit and nut trees are planted on public land in Marlborough as part of Council's commitment to providing resources for the community good. Harvesting fruit trees can also connect and strengthen communities.

## **1.5.4 Economic**

The outcome of improving air quality and health and wellbeing will see a reduction in the need for healthcare and associated costs.

Studies have shown that mature healthy trees that enhance neighbourhood aesthetics also increase residential property values and attract buyers and tenants.

## **1.6 Challenges**

### **1.6.1 Planning and decision making**

Many of the decisions made about planting trees on streets, parks and reserves within Marlborough's towns and rural areas were made many decades ago. As a consequence there may be a perception that there is a lack of strategic direction in terms of where trees have been planted. This is particularly so for street trees and in areas where small neighbourhood parks have been developed. In these areas there are some trees that have not been planted in the right location, are not the right species or may have outgrown their location. These trees may have been appropriate at the time of planting but for a variety of reasons they are no longer suitable. While the Council does maintain these trees they can result in additional maintenance costs given their size and at times costs associated with removal.

Currently the Council has little guidance that is publicly and easily available about how the public should be involved in the gifting, planting and/or maintenance of trees in public places. At times the Council has to deal with individuals who plant, prune or interfere with trees in public places, especially on streets. This can have implications over time for the health of the tree, amenity of the street or maintenance costs for the Council.

As identified in the Section 1.4, the Council maintains an asset database to record the location, species and health of trees. While there is robustness to the data, in some cases private trees have been captured in error in the database while in other cases trees have been left out of the database that should be included. This has occurred where it is not clear who has planted the tree, or where the property boundary is not well defined. The database becomes more complete over time and is being extended so that all trees on Council actively managed land are identified as an asset.

## 1.6.2 Nuisance and hazards

Street trees and trees in parks and reserves have potential to adversely impact private landowners and building occupants, and can give rise to a number of operational issues. Large trees have the potential to shade dwellings, result in excessive leaf drop and cause tree root intrusion into footpaths, fences and private property. Some trees can also trigger allergy symptoms and respiratory ailments for residents.

Street trees also have the ability to compromise road user and pedestrian safety by restricting sightlines along roadways, signs and vehicle crossings, blocking footpaths, interfering with electricity lines, and hindering Crime Prevention Through Environmental Design (CPTED) principles. Similarly trees and vegetation on private land can also affect road and footpath users, particularly pedestrians, for the same reasons.

At the extreme end of things trees may at times present a significant hazard to public or private property, although this is not common. This may occur through a tree becoming unhealthy, being subjected to adverse weather conditions or having suffered other damage. These trees need to be pruned or removed to eliminate the danger or threat that they pose. On occasion where the risk is significant enough the emergency works provisions of relevant legislation may need to be invoked to remove the risk.

## 1.6.3 Conflicts with infrastructure

Some trees have proven to be not suitable for their location. Large or vigorous trees planted under powerlines not only cause issues in interfering with powerlines and pose safety and operational risks, but also generate a need for continued maintenance. In time the constant pruning or topping of such trees significantly affects their form and contribution to amenity.

Trees can also affect footpaths where root structures break the pavement surface and may also interfere with kerbs, stormwater channels, underground services and street lights. These all require maintenance or repairs to avoid further problems.

With power and communication cabling and water, storm water and sewer pipes being located in road berms, there is often little or no room for planting of trees. Where possible root barriers can be used to avoid conflicts with these services, however this is not practical in all locations.

## 1.6.4 Perceptions of a loss of trees

All trees have a finite life and at times decisions have to be made about removing them. This is particularly where there is a risk to life or property, a tree is in poor health or the negative impacts of a tree on its surroundings outweighs the benefits of the tree remaining. Often people do not like seeing trees removed from streets or from parks and reserves and there can be a perception that many more trees are being removed than are being planted. However, there is a programme in place where approximately 120 to 150 street trees are planted each year<sup>2</sup>. Where trees are removed from parks and reserves replacement plantings will generally occur.

## 1.6.5 Planning for new subdivision/development

There is a need to ensure the opportunity for planting of street trees is considered during subdivision or street upgrades or other forms of development. Poorly considered or late consideration of trees during the design of subdivision/development can lead to insufficient space for plantings, tree or root damage to existing trees during works or loss of street trees with no replanting.

In relation to street design and tree planting, the 'Code of Practice for Subdivision and Land Development – Marlborough District Council' contains provisions that need to be considered in any subdivision or development before the Council and importantly at the early stages of design.

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<sup>2</sup> The levels of service for the planting of new street trees is set out in the Council's Long Term Plan.



## 1.6.6 Climate change

Predictions of climate change for Marlborough will see increases in mean temperature, a drier climate, increased frequency of droughts and an increase in westerly winds, especially in winter and spring. There are likely to be impacts on trees in our parks and reserves and on our streets as a consequence of this. Some species may not survive longer term and there will be a need to understand what the implications are for existing trees and ensure that future plantings are more resilient to environmental change. The effects of recent droughts and higher temperature events have been evident with increased tree loss.

## 1.6.7 Maintaining levels of service for managing trees

As explained earlier in this document the Council has several contracts under which the management of trees occurs in parks and reserves and on streets. Qualified arborists are engaged to assess, prune and maintain trees and there are costs associated with this. There are also expectations from the Marlborough community that trees on our parks and reserves and on streets are well maintained, however in some cases these expectations may not be sustainable.

## 1.7 Balancing benefits and risk

The benefits of trees in our parks and open spaces are undeniable – they are fundamental to our wellbeing and quality of life. As living organisms trees shed leaves and limbs and eventually die and fall. The point in the continuum of a tree's lifecycle at which there becomes a risk to life or property can for the most part be determined through regular inspection, maintenance and pruning. While there will from time to time be an incident where a limb may fail or a tree falls unexpectedly, this is not common.

To determine the extent of risk posed by trees, understanding the context for the environment within which trees are managed and the relationship of people to that context is required. This is a significant reason why the Council will require an arborist report before making significant decisions about trees. It is also why the Council has determined that some species of trees are not appropriate in certain locations, such as in street berms where there is frequently underground infrastructure or where people are constantly moving around either in vehicles or walking/cycling. Planning for appropriate species in the right location is therefore a key component in managing future risk, along with regular inspection and maintenance.

While it is possible to reduce the risks posed by trees it is not possible to remove all risk without removing the tree, thereby taking away the benefits. It is the balancing of the two, ie, risks and benefits that is central to managing trees.

## 2.0 Overall principles for managing trees

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The following principles form the basis for managing trees on Council actively managed land in Marlborough. They provide the high level guidance for the subsequent policies. Operational standards and procedures have not been included in the Tree Policy although the documents dealing with these are mentioned for reference purposes.

- *A balanced approach acknowledging both the benefits of trees and the challenges raised by them is taken in making decisions about their management.*
- *Create and enhance experiences for people to enjoy areas with trees.*
- *Reinforce identity, character, landscape quality and enhance visual amenity.*
- *Improve the visual appeal and environmental conditions of towns, key road corridors and neighbourhoods.*
- *Biodiversity values are maintained or enhanced through tree planting.*

- *Trees with notable values contributing to the character of Marlborough are protected and managed.*
- *The right tree is planted in the right location.*
- *Property and human safety are not placed at risk from tree planting or from existing trees.*
- *Consistent and justifiable decisions are made when making day to day decisions about managing trees.*
- *Design and planting of trees is coordinated with the management of new subdivisions, parks, roads and services infrastructure.*
- *Tree work is carried out in accordance with established industry standards and best practice.*
- *Reliable and up-to-date information on Council owned trees is retained to enable safe, sustainable and cost-effective management.*

## **3.0 Planning and decision making**

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While the amenity and environmental benefits of trees are acknowledged, a range of factors need to be considered to ensure the planning, development and management of our tree resource occurs in a responsible, sustainable, and cost effective way.

Having adequate information on these trees and their current health is one of the most important aspects of planning. The Parks and Open Spaces Section maintains a database in which information about trees on actively managed land is recorded, including a tree's condition and the condition of the environment around them.

There are a wide range of factors to consider when planning for trees on Council actively managed land including the location in which trees are to be planted. Given both the benefits and challenges of managing trees within our townships, planning for the lifecycle management of trees must be undertaken in a proactive, organised and cost effective manner.

There are a range of decisions made in managing the Council's tree portfolio including from day to day maintenance activities, planting new trees on Council actively managed land and where trees are proposed to be removed. It is important there is a consistent and balanced approach to decision making in these circumstances and there are appropriate delegations in place.

### **3.1 Scope**

There are no additional matters as to scope.

### **3.2 Policies**

#### **Data capture**

- 3.2.1 The Council will maintain a database of the trees on its actively managed land that will provide sufficient asset information to enable the effective management of the Council's tree resource. The asset data will include the following:
- (a) tree location (town, street and position)
  - (b) species
  - (c) age classification

- (d) size
- (e) whether the tree is a notable tree, is a commemorative tree or a donated tree
- (f) tree condition
- (g) environmental condition around the tree
- (h) safe useful future life expectancy
- (i) last inspection date

3.2.2 The database information will be used to determine maintenance schedules and for advanced planning, projected work programming and budgeting purposes.

## **Planning for trees on Council actively managed land**

3.2.3 Ensure trees are seen as essential assets in our urban landscapes and are provided for in future urban development at the early stages of planning.

3.2.4 Where new reserves are proposed either through subdivision or other acquisition, planning for trees will ensure:

- (a) trees are appropriate for their surroundings in terms of character, form, amenity and ecological value;
- (b) the foreseeable effects of the trees in relation to property boundaries, from shading, on views, leaf drop and potential damage and risk to people, built structures and infrastructure are considered;
- (c) potential impacts on, and operational and safety risks to, underground or overhead services are avoided;
- (d) existing trees on land to be developed are removed where these are unsuitable to remain;
- (e) appropriate species are planted; and
- (f) maintenance, including means of irrigation, is planned.

3.2.5 Where new subdivisions are proposed Parks and Open Spaces Section staff will engage with developers and the Council's Assets and Services staff in planning for street trees to ensure:

- (a) potential impacts on, and operational and safety risks to, underground or overhead services are avoided;
- (b) sufficient space is provided for successful tree planting;
- (c) existing trees on the land to be developed are removed where these are unsuitable to remain;
- (d) appropriate species are planted; and
- (e) maintenance, including means of irrigation, is planned.

3.2.6 The Council will plant street trees in accordance with the levels of service set out in the Long Term Plan.

3.2.7 Planning for planting trees in existing streets will be targeted to areas where:

- (a) trees will enhance the quality of the streetscape;
- (b) there is sufficient support shown by residents to have street trees;
- (c) there is sufficient space to accommodate root zone development (the minimum berm requirement is 1.2 metres wide);
- (d) trees are unlikely to cause significant long term management and or maintenance problems;
- (e) trees are unlikely to adversely affect underground services or overhead transmission lines and street lighting;
- (f) no service upgrades are planned;
- (g) the effect on vehicular and pedestrian access and sight visibility is minimal; and
- (h) there is little likelihood of alternative roading plans occurring, such as road widening and intersection improvements, such that trees would need to be removed.

3.2.8 Consultation with affected parties, including local residents, property owners and infrastructure providers will be undertaken before any formal street tree planting is undertaken. The level of consultation will be commensurate with the size of the works and the level of public interest in the area. Wider public consultation will be undertaken in commercial areas and/or areas of high public use, as necessary.

3.2.9 Consideration will be given to written requests where:

- (a) residents advise they do not want a street tree outside their property; or
- (b) infrastructure providers advise tree planting will adversely affect their infrastructure, including the operation of that infrastructure.

and a decision will be based on how critical the tree is to the overall design for the street.

3.2.10 Species listed in Appendix 3 are deemed to be unsuitable to be used as street trees.

3.2.11 Use of tree species that will be resilient to the effects of climate change will be promoted.

3.2.12 Master plans prepared for the Fairhall, Omaka, Picton, Havelock, Rai Valley, Tua Marina, Seddon and Ward cemeteries will guide the placement and species of trees to be planted in these cemeteries.

3.2.13 Lifecycle planning for trees including succession planning for new planting will be undertaken to ensure:

- (a) there is continuity of the benefits of trees described in Section 1.5; and
- (b) appropriate budgetary provision is made.

3.2.14 Where a tree(s) on a road berm has not been identified as a street tree and the owner of the tree is unknown, the Council may consider:

- (a) taking over management of the tree(s) having regard to the matters in Policy 3.2.7; or
- (b) removing the tree(s) where ongoing maintenance would be significant or the species is not appropriate.

## Decision making

- 3.2.15 Requests from the public in relation to pruning of trees (where this is more than minor pruning or trimming), planting new trees or the removal of trees, will be required to be in writing.
- 3.2.16 A consistent approach in managing and responding to requests for tree work from the public will be applied through the use of this Tree Policy, relevant legislation, resource management plans and reserve management plans where these are in place.
- 3.2.17 The delegations in place for making decisions about tree work are set out in Appendix 4.

## 4.0 Planting

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Planting of trees occurs in a number of locations in public places, including on street berms, in parks and reserves and in central business areas.

### Planting on road reserve/street berms

Managing trees and vegetation on the road reserve/street berm is important in providing community benefits for amenity and stormwater control, as well as maintaining a safe and efficient transport network for vehicle and pedestrian movements. Generally, most street tree planting in new streets take place as part of the construction or reconstruction of roads in areas undergoing land subdivision and development. Tree planting also occurs in existing streets although the street design and location of the services may be restricting or prohibiting factors.

While street trees can significantly contribute to improving the urban environment and enhancing residential development they can at times be the subject of public concern. It is important to ensure there is sufficient local support prior to undertaking new plantings and then to ensure that trees are chosen and placed where there is a high chance of success with limited long term management problems.

### Planting on other Council actively managed land

Parks, reserves and cemeteries fulfil a variety of functions and trees and other vegetation are important in these areas. They are often fundamental to achieving the required function of the location. Opportunities exist in these areas to maintain and further develop trees where there is often less potential conflict with physical infrastructure than on other Council land. Notwithstanding these opportunities care is still needed in choosing appropriate species for the particular environment whilst also having regard to nearby residents.

### Commemorative and donated trees

Trees have been planted in public places throughout Marlborough to commemorate specific people and events. Trees have also been donated by groups and organisations as a contribution to the district. Commemorative trees hold a special significance to people and their management is, therefore, particularly sensitive.

## 4.1 Scope

There are no additional matters as to scope.

## 4.2 Policies

### Planting in all locations and circumstances

4.2.1 The Council will plant trees to ensure:

- (a) only quality plant stock is used;
- (b) standardised specifications and techniques and practices will be used in planting trees;
- (c) the correct species is chosen in relation to the limitations of the site, including consideration of the size of the tree at maturity; and
- (d) native species are used where practicable to promote biodiversity including the creation of ecological connections for native birds.

4.2.2 Preference will be given to planting species that:

- (a) are pest and disease resistant;
- (b) provide maximum environmental/ecological benefits;
- (c) do not contribute to allergy symptoms for residents;
- (d) have a proven track record for establishment and sustainability where this is known; and
- (e) require less maintenance.

4.2.3 Tree planting in all areas will consider the sensitivity of local landowners to views, shade, leaf drop and other relevant concerns.

4.2.4 Tree planting will not occur where it may interfere, compromise or adversely affect the safety, efficiency and integrity of infrastructure such as flood protection and river control works, radio and telecommunications networks, roading networks, water, sewer and stormwater networks and overhead lines, ground mounted transformers and pillar boxes.

4.2.5 Tree species and other plants officially categorized as being pests in the Council's Regional Pest Management Strategy or the Ministry for Primary Industries National Pest Plant Accord will not be planted.

4.2.6 In addition to Policies 4.2.1 to 4.2.5, when planting trees in cemeteries the following matters are to be considered:

- (a) Good access to the graveside for funeral vehicles is needed, including when the plantings are mature;
- (b) Good low level wind shelter should be provided for those attending funeral/burial services;
- (c) Trees will not be planted near burial sites to avoid roots disrupting graves and damaging headstones or burial beams and to avoid the hazard of damage from falling branches; and
- (d) All other vegetation should be sufficiently clear of the graves that it will not encroach low over them when mature.

4.2.7 The Council will work with local communities to encourage community involvement in tree planting.

- 4.2.8 CPTED principles are to be incorporated into species choice and location of trees on Council actively managed land.
- 4.2.9 The contract for Maintenance of Street and Carpark Plots and Trees sets out requirements for how street trees are to be planted.
- 4.2.10 Unauthorised planting of trees on Council actively managed land is not permitted and this will be actively discouraged.

## **Commemorative and donated trees**

- 4.2.11 Planting trees or other special plantings on Council actively managed land to commemorate a significant event in the life of the district will be supported including for:
  - (a) visits by royalty, heads of state and other dignitaries;
  - (b) commemoration of international, national and local events;
  - (c) anniversaries of community of organisations; and
  - (d) other events of a civic nature considered appropriate for formal recognition.
- 4.2.12 The location of commemorative trees planted and any associated plaques on Council actively managed land will be identified by the Parks and Open Spaces Section.
- 4.2.13 Structures, plaques or similar will need to be approved by the Council and be of a design suitable for the character of the site, and made of durable and vandal resistant materials that will require little or no maintenance by the Council.
- 4.2.14 Commemorative trees will not be allowed to be planted on road berms.
- 4.2.15 Commemorative trees that have died or need to be removed may be replaced, although a more suitable species and/or site may be selected for the replacement tree.
- 4.2.16 Trees to commemorate family members, friends, or events purely of personal interest to those concerned, may be approved having regard to the following:
  - (a) Policies 4.2.1 to 4.2.5 to the extent they are relevant;
  - (b) the location is not a high profile location;
  - (c) no plaques, other structures or objects are to be installed with the tree; and
  - (d) costs associated with maintenance of the tree.
- 4.2.17 Trees approved under Policy 4.2.16 will not be replaced by the Council should they die or need removal.
- 4.2.18 The Council may approve sponsored and donated trees on Council actively managed land subject to:
  - (a) consideration of the matters in Policies 4.2.1 to 4.2.5 to the extent they are relevant;
  - (b) the tree species approved for the site being suitable for the existing conditions;
  - (c) the tree being of a species that is compatible visually, ecologically and functionally with the existing tree and vegetation species use of the site; and

- (d) the plantings will not be established in locations that will create a hazard for road users, cyclists or pedestrians.

4.2.18 Trees approved under Policies 4.2.11, 4.2.16 and 4.2.18 will be:

- (a) recorded in the Council's asset register; and
- (b) be added to the Council's maintenance contracts.

## **5.0 Maintenance and Protection**

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There are several aspects to the maintenance of trees on Council actively managed land including:

- regular inspections of approximately 6500 street trees with follow-up work, which is managed through the Maintenance of Street and Carpark Plots and Trees Contract;
- regular inspections of approximately 7500 trees on parks and open spaces;
- day to day maintenance of trees on parks and reserves through the various open space contracts in place;
- condition assessments of trees on high profile sites;
- recording information from inspections;
- responding to enquiries, requests and complaints about trees and to emergency events.

To manage and reduce the level of risk that trees carry, the Council aims to ensure arborist inspections on every recorded tree and new tree occur at least once every three years. Trees that are looking unhealthy or have suffered damage or are over 10 metres tall are inspected annually.

### **Protection of trees**

A number of trees on streets, parks and reserves, private property and other public places such as schools are significant enough to have been singled out for protection in the MEP – approximately 460 trees. The protection means the tree cannot be removed, trimmed or pruned in a significant way without resource consent. Nor can land use activities occur close to the tree that may affect its ongoing health.

There are also a number of trees that have been protected by way of a registered consent notice or other instrument against the title of a property with the aim of protecting the tree. Maintenance of these trees may require resource consent and is the responsibility of the landowner. While not having a formal protection mechanism in place through the MEP, there are also many larger trees that do have a level of protection by virtue of being located on reserve land eg, Pollard Park.

Protected trees on private land are the responsibility of the landowner. However, from time to time the Council assists landowners in managing protected trees through the Fund for Maintaining Notable Trees.

### **Overhanging vegetation**

Where trees or other plants overhang a footpath or road from private property, there can be safety and/or accessibility issues for people using these areas. To ensure our footpaths are safe and accessible for everyone, including the postie, kids on scooters, the sight-impaired or less able, the Council's contractors undertake inspections of footpaths and roads around



Marlborough's townships each year. Property owners are then advised of their obligations to prune or remove the overhanging trees or vegetation.

## 5.1 Scope

The provisions for maintenance and condition assessment are limited to trees on street berms, in parks and reserves or other Council actively managed land.

Policies for dealing with trees or other vegetation on private land are limited to where:

- funding assistance may be sought to help manage notable trees;
- in emergency situations where a tree poses a serious threat to people and/or property; and
- overhanging growth is affecting the safe and efficient movement of those using footpaths and roads.

## 5.2 Policies

### Maintenance and inspection

- 5.2.1 A consistent procedure for assessing and managing hazards from trees on street berms, in parks and reserves or other Council actively managed land will be used.
- 5.2.2 A regular pruning and maintenance programme for trees growing within street berms will be undertaken to ensure accessibility, safety, maintenance and/or visibility of:
- (a) footpaths, shared paths or roads;
  - (b) street/traffic lighting;
  - (c) vehicle and pedestrian access to public areas;
  - (d) traffic signage and visibility at intersections; and
  - (e) access to adjacent property.
- 5.2.3 Pruning of street trees will also occur to ensure there is minimal encroachment into private property or interference with buildings and structures, including infrastructure.
- 5.2.4 Trees will be form pruned as they grow to maintain good form and will be pruned to retain a strong balanced attractive form and not encroach excessively into private property.
- 5.2.5 Work on trees will be carried out to recognised and accepted contemporary arboricultural standards and consistent with current industry practices, including the New Zealand Arboricultural Association (NZAA) and International Society of Arboriculture (ISA) guidelines.
- 5.2.6 Tree maintenance on Council actively managed land will only be carried out by approved contractors who are qualified arborists or who are supervised by a qualified arborist.
- 5.2.7 Inspection and pruning will be undertaken to ensure clearance requirements around power lines/cables in accordance with the Electricity (Hazards from Trees) Regulations 2003.

### Notable trees

- 5.2.8 Assist the Environmental Policy Section of the Council in the identification and assessment of notable trees on public and private land.

- 5.2.9 Support the inclusion of adding trees to the Notable Tree register in the MEP where these meet the criteria for listing in the MEP.
- 5.2.10 Trees with listings in the MEP will be identified with a plaque provided by the Parks and Open Spaces Section of the Council.
- 5.2.11 The health and safety of the Council's notable trees is more frequently assessed (on a biennial basis or after significant wind events) as these trees have been identified with significant values and are often older and larger than other trees in these public areas.
- 5.2.12 Maintenance of notable trees on private property is the responsibility of the landowner with the Council's role being limited to:
- (a) providing information about the listing;
  - (b) providing information through the Council's Duty Planner Service on the provisions of the resource management plans as they relate to notable trees;
  - (c) providing a plaque for identification purposes; and
  - (d) managing the Fund for Maintaining Notable Trees.
- 5.2.13 Maintain a Fund for Maintaining Notable Trees to assist in managing notable trees protected under Schedule 13 of the MEP or have protection through consent notice or other instrument registered against the title of a property.
- 5.2.14 The Fund for Maintaining Notable Trees may be used:
- (a) where proposed work to a notable tree is for enhancement of the tree's health or for safety reasons;
  - (b) to fund a qualified arborist inspection, reports, resource consent applications and work on notable trees on Council actively managed land;
  - (c) on an application by a private property owner, for the preparation of a qualified arborist's report, resource consent application where significant trimming is required;
  - (d) to assess proposals for trees to become notable trees or to be removed from the register in the MEP;
  - (e) to undertake emergency work where the tree poses a danger to health and safety of the public (eg, likely to fall onto a road);
  - (f) for including notable trees on The New Zealand Tree Register;
  - (g) for placing plaques on notable trees, updating measurement and condition records and recording GPS locations.
- 5.2.15 Applications received will be assessed on a case by case basis having regard to:
- (a) the extent of work proposed;
  - (b) recommendations of a qualified arborist (if an arborist's report has been obtained);
  - (c) what is known about the significance of the tree; and
  - (d) the amount of financial assistance available through the Fund.

5.2.16 Recommendations for approving assistance through the Fund may be made for one or more of the actions set out in 5.2.14 and will be made by a Parks Officer in conjunction with the Manager, Parks and Open Spaces.

5.2.17 Where the work is not undertaken within one year of the financial assistance being granted then the financial assistance shall lapse.

## Overhanging vegetation

5.2.18 Maintenance of trees and vegetation on private land is the landowner's responsibility.

5.2.19 Landowners will be required to remove overhanging vegetation in accordance with the Council's powers under Section 335 of the Local Government Act 1974.

5.2.20 Trees and vegetation on private property must be kept clear of footpaths and roads in accordance with the following guidelines and diagram.

- (a) If the footpath is directly adjacent to a private property boundary, all vegetation should be trimmed back to the boundary (including hedges) to ensure the entire footpath width is clear of vegetation as per the diagram. In all other locations, the entire footpath width should be clear of vegetation.
- (b) A clear space of 2.5 metres above the footpath, berm or walkway is required.
- (c) A clear space of 4.5 metres above the road to allow truck or bus clearance is required.
- (d) Where there is only a grass berm, clearance of overhanging vegetation is required to allow safe access for users.



5.2.21 An annual inspection of streets in Marlborough's townships (Blenheim, Picton, Renwick, Spring Creek, Havelock and Seddon) will be undertaken to determine areas where overhanging vegetation needs to be removed with landowners being advised.

5.2.22 A consistently applied procedure will be maintained setting out:

- (a) landowner responsibilities for removing overhanging vegetation; and
- (b) how complaints received from the general public about overhanging vegetation will be managed.

5.2.23 Where a notable tree has been identified as being overhanging vegetation and the trimming or pruning does not meet the permitted activity rules of the resource management plans, a resource consent will be required by the owner of the tree before work can occur.

## 6.0 Tree Removal

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The Council looks after over 13,000 trees planted on road reserve, in parks and reserves and on other Council actively managed land within Marlborough's towns and rural areas. While trees provide a number of benefits, they are a living resource and their care requires ongoing decisions about maintenance and sometimes removal.

Removal of trees is sometimes required to avoid unacceptable risk of harm or interference with physical infrastructure and underground services. Often there is also considerable pressure from individuals within the community to remove or retain certain trees on Council actively managed land, including for reasons related to shading, leaf fall and blocking of views. A consistent and credible process needs to be followed by the Council in making decisions about whether to remove trees.

### 6.1 Scope

The policies/procedures for removing trees apply to all trees that are owned and/or managed by the Council. A tree that has any part of its trunk growing from Council actively managed land that is accessible to the public is covered by these policies.

Trees that were intentionally planted for harvest are excluded from these policies and subsequent procedures.

For the sake of clarity these policies do not apply to the removal of notable trees on private land.

The policies cover instances where the request to remove trees is initiated by the Council or by any individual or group within the community.

Different decision making mechanisms apply depending on whether it is a street tree or a park/reserve tree.

### 6.2 Policies

6.2.1 The Council will plan and prioritise the removal of trees where they:

- (a) are dead, dying or severely diseased;
- (b) pose a significant threat to public safety or property that cannot otherwise be avoided or mitigated through other management techniques;
- (c) cause a significant disruption or damage to essential services, including roads, footpaths or overhead or underground services;
- (d) have been adversely affected by inappropriate pruning, vandalism or disfigurement and offer little or no amenity value; or
- (e) have been planted without permission from the Council.

6.2.2 A tree may be removed from land actively managed by the Council where it has been established there is an immediate risk to human life and/or property. The Council will arrange for the tree's removal.

6.2.3 A request to remove a tree from land actively managed by the Council must be submitted using the Request for Tree Removal form. This includes situations where a street tree is proposed to be removed as a consequence of subdivision or development.

6.2.4 The following matters will be considered when determining whether it is appropriate to remove a tree from land actively managed by the Council:

- (a) reasons why tree removal is proposed;
  - (b) the health of the tree as determined by a suitably qualified arborist;
  - (c) options of tree pruning and/or remedial works as an alternative to removal;
  - (d) historical, cultural, scientific and/or species significance of the tree and whether it is a protected tree in the resource management plans;
  - (e) whether there is a relevant reserve management plan in place for the tree's location and the provisions that apply to trees in that plan;
  - (f) value of the tree relative to the following:
    - local amenity
    - area character
    - local ecology and ecological connections;
  - (g) whether within any street berm the tree imposes unacceptable maintenance costs;
  - (h) any actual or potential risk to human health, life and/or property and infrastructure, and any evidence relevant to these risks as determined by a suitably qualified arborist using industry standard hazard identification;
  - (i) replacement and/or remediation planting;
  - (j) tree removal methods and environmental impacts; and
  - (k) the operation, maintenance and development requirements of the National Grid.
- 6.2.5 To the extent they are relevant, the Council will also have regard to the matters set out in Sections 334 and 336 of the Property Law Act 2007 and Section 42 of the Reserves Act 1977, in making a decision on a request to remove a tree<sup>3</sup>.
- 6.2.6 Where the removal of a tree has the potential to be of significant interest to people within the community, consultation will occur. (An exception to this is in circumstances where trees have been assessed as being hazardous, in which case the tree can be removed without consultation.) The extent of notification and consultation will be proportionate to the level of interest in the tree.
- 6.2.7 Where a tree is to be removed under Policy 6.2.1 or the removal is otherwise initiated by the Council, the costs of this will be met by the Council.
- 6.2.8 Where a healthy tree is removed in circumstances other than as in Policy 6.2.1, the following criteria are to be assessed in determining whether an applicant should pay the costs<sup>4</sup> for the removal of a tree, the level of contribution to be decided on a case by case basis:
- (a) The tree is healthy and is not presenting any immediate danger to people, property or services.
  - (b) The Council would not have scheduled the removal of this tree as part of its works without the application.

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<sup>3</sup> See Appendix 2 for these provisions.

<sup>4</sup> Costs include those associated with obtaining an arborist report, resource consent if the tree is a heritage tree, traffic management plan, removal of the tree itself and establishment of a replacement tree.

- (c) The Council is able to demonstrate that the planting and maintenance of the tree has been appropriate.
- (d) The tree was a pre-existing amenity at the time the property was purchased, development proposed and/or building(s) put onto the site.
- (e) The removal of the tree benefits one or a few individuals and not the larger public.

## Appendices

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1. Glossary
2. Legislation
3. Delegations
4. Trees not suitable for locating in street berms



## Appendix 1 - Glossary

Term	Explanation
Actively managed land	means land on which trees are subject to a programme of regular maintenance by the Parks and Open Spaces Section. Such land may include parks (including sports parks), reserves of all types, cemeteries, road berms and civic spaces.
Council	Marlborough District Council
Council land	means land that is either owned or administered by the Marlborough District Council and includes road reserve and street berms, reserves created under the Reserves Act 1977, other fee simple land and where cemeteries are located.
CPTED	Crime Prevention Through Environmental Design is a crime prevention philosophy based on proper design leading to a reduction in the incidence and fear of crime, as well as an improvement in quality of life. These principles can be equally applied to the planning of how reserves and parks are developed including with trees and other vegetation.
Duty Planner Service	means the Duty Planner Service run by the Council, assists people with general information about the resource management plans and resource consent process.
Heritage tree	means a tree identified in Appendix A of the Wairau/Awatere Resource Management Plan and of the Marlborough Sounds Resource Management Plan.
MEP	Marlborough Environment Plan
Minor trimming or pruning	means: <ul style="list-style-type: none"> <li>(a) crown clearing, being the removal of dead, dying, diseased, crowded, weakly attached, low-vigour branches and watersprouts from a tree crown;</li> <li>(b) canopy lifting, being the balanced removal of lower branches from a tree;</li> <li>(c) minor clearing of light branches (less than 50mm in diameter) from proximity to existing power lines;</li> </ul> and must only be done in accordance with accepted arboricultural practices.
National Pest Plant Accord	is an accord between the Ministry of Primary Industries, Councils, plant producers and the Department of Conservation to prevent the sale, distribution and propagation of a set list of pest plants (the Accord list) within New Zealand. The list of plants can be found at <a href="https://www.mpi.govt.nz/protection-and-response/long-term-pest-management/national-pest-plant-accord/">https://www.mpi.govt.nz/protection-and-response/long-term-pest-management/national-pest-plant-accord/</a> .
Notable tree	means a tree identified in Appendix 13 of the Marlborough Environment Plan.
Protected tree	means a tree that has been protected by way of consent notice or other instrument registered against the title of a property.
Public place	within this Tree Policy, means land owned and/or administered by the Marlborough District Council.
Qualified arborist	means New Zealand Certificate in Horticulture (Arboriculture)(Level 4).
Regional Pest Management	means a strategy prepared by the Council under the Biosecurity Act 1993 to

Term	Explanation
Strategy	manage pests.
Resource Management Plans	means the Wairau/Awatere Resource Management Plan, the Marlborough Sounds Resource Management Plan and the Marlborough Environment Plan.
STEM (Standard Tree Evaluation Method)	STEM refers to a point system used for tree assessments and establishing a threshold for the inclusion of trees on the Council's Schedule of Notable Trees in the Marlborough Environment Plan. Points allocated rate 20 tree attributes (3 to 27 points for each attribute) in three general categories of condition, amenity, and notable (special merit) qualities. The threshold set for the Marlborough Environment Plan is 150 points.
Street trees	means trees located on the grass verge or berm, or located on any part of a public road.
Tree	means a perennial woody plant at least 3 metres in height having an erect stem/s or trunk/s.
Tree Protection Zone	means a specified area above and below ground and at a given distance from the trunk, set aside for the protection of a tree's roots and crown to provide for the viability and stability of a tree to be retained where it is potentially subject to damage by development. The radius of the Tree Protection Zone (TPZ) is calculated for each tree by multiplying its diameter at breast height (DBH) x 12 where the DBH is the trunk diameter measured at 1.4m above ground. (TPZ = DBH x 12).

## Appendix 2 - Legislation

### Local Government Act 1974

#### 355 Council may require removal of overhanging trees, etc

- (1) The Council may, by notice in writing under the hand of the chairman or the principal administrative officer, require the owner of any land abutting upon any road within the district to do any of the following acts:
  - (a) to remove, lower, or trim to the satisfaction of the Council any tree or hedge overhanging or overshadowing the road in cases where, in the opinion of the Council, the removal, lowering, or trimming is necessary in order to prevent injury to the road or obstruction to the traffic thereon or to any channel, ditch, or drain appertaining thereto:
  - (b) to cut down or grub up, as the Council directs, and remove all obstructions to traffic or drainage arising from the growth of plants or the spreading of roots upon or under the road up to the middle line thereof along the whole frontage of the land occupied or owned by him:
  - (c) to remove, lower, or trim to the satisfaction of the Council any tree or hedge, or to lower any fence or wall, if in the opinion of the Council the tree, hedge, fence, or wall is likely, by reason of its obstructing the view, to cause danger to the traffic on that or any other road.
- (2) Within 10 days after service of the notice, the owner may apply to the District Court for an order setting aside the notice.
- (3) On the hearing of the application, the court, whose decision shall be final, shall determine whether the notice should or should not be set aside, and in the former case the notice shall be deemed to be void.
- (4) In the case of a notice which is not set aside as aforesaid, if the owner fails to do any such act in compliance therewith within 1 month from the service thereof, or, where application as aforesaid has been heard, then within 1 month after the giving of the decision of the court, he commits an offence and is liable on conviction to a fine not exceeding \$5 for every day during which the failure has continued, and the Council, by its officers or agents, may enter on the land and do that act and recover the cost from him.
- (5) The said cost shall be a charge upon the land.
- (6) In any case where the Council might give any such notice as aforesaid in respect of any land, any resident of the district may, by notice in writing, request the Council to do so.
- (7) If for the space of 28 days after the receipt of the last-mentioned notice the Council fails to comply therewith, the resident making the request may apply to the District Court for an order requiring the Council to comply with that notice.
- (8) On the hearing of the application, the court shall determine whether and to what extent the notice shall be complied with by the Council, and the decision of the court shall be final.
- (9) The Council may remove, lower, cut down, grub up, or trim, as the case may be, any fence, wall, tree, hedge, or plant to which subsection (1) applies, after giving oral notice to the occupier, or, where there is no occupier, to the owner, of the land, if life, property, or any road is in imminent danger. The cost of the work shall be a charge against the land as if notice had been given under subsection (1) and had not been set aside by the District Court.
- (10) For the purposes of this section the term cut down means cutting down and keeping cut down or removing or controlling by chemical means the stem and roots of any plants so as to prevent their throwing out any leaf, offshoot, or flower.

## **Property Law Act 2007**

### *Subpart 4—Trees and unauthorised improvements on neighbouring land*

#### **332 Application of this subpart**

This subpart applies to—

- (a) any structure that was erected on any land except a structure that—
  - (i) was erected with a building permit or building consent issued by the relevant territorial authority; or
  - (ii) was erected by the Crown, for which a building permit or building consent was not necessary, but would have been necessary had it been erected by a person other than the Crown; and
- (b) any tree, shrub, or plant (tree) growing or standing on any land.

#### **333 Court may order removal or trimming of trees or removal or alteration of structures**

- (1) A court may, on an application under section 334, order an owner or occupier of land on which a structure is erected or a tree is growing or standing—
  - (a) to remove, repair, or alter the structure; or
  - (b) to remove or trim the tree.
- (2) An order may be made under subsection (1) whether or not the risk, obstruction, or interference that the structure or tree is causing—
  - (a) constitutes a legal nuisance; and
  - (b) could be the subject of a proceeding otherwise than under this section.
- (3) Subsection (4) applies if—
  - (a) the applicant's land may be used for residential purposes under rules in the relevant proposed or operative district plan; and
  - (b) the application is made in relation to the use or enjoyment of the land for those purposes; but
  - (c) no building intended for residential purposes has been erected on the land.
- (4) The court may not make an order under subsection (1) unless satisfied that the building will be erected on the land within a reasonable time and, if the court makes the order,—
  - (a) the order does not take effect unless and until the building is erected; and
  - (b) if the building is not erected within a reasonable time, the order may be vacated on the application of any interested person.

#### **334 Owner or occupier of land may apply for order under section 333**

- (1) An owner or occupier of any land may apply for an order under section 333.
- (2) If an order is sought against the occupier of any land, the owner of the land must be joined as defendant.

#### **335 Matters court may consider in determining application for order under section 333**

- (1) In determining an application under section 334, the court may make any order under section 333 that it thinks fit if it is satisfied that—

- (a) the order is fair and reasonable; and
  - (b) the order is necessary to remove, prevent, or prevent the recurrence of—
    - (i) an actual or potential risk to the applicant's life or health or property, or the life or health or property of any other person lawfully on the applicant's land; or
    - (ii) an undue obstruction of a view that would otherwise be enjoyed from the applicant's land, if that land may be used for residential purposes under rules in a relevant proposed or operative district plan, or from any building erected on that land and used for residential purposes; or
    - (iii) an undue interference with the use of the applicant's land for the purpose of growing any trees or crops; or
    - (iv) an undue interference with the use or enjoyment of the applicant's land by reason of the fall of leaves, flowers, fruit, or branches, or shade or interference with access to light; or
    - (v) an undue interference with any drain or gutter on the applicant's land, by reason of its obstruction by fallen leaves, flowers, fruit, or branches, or by the root system of a tree; or
    - (vi) any other undue interference with the reasonable use or enjoyment of the applicant's land for any purpose for which it may be used under rules in the relevant proposed or operative district plan; and
  - (c) a refusal to make the order would cause hardship to the applicant or to any other person lawfully on the applicant's land that is greater than the hardship that would be caused to the defendant or any other person by the making of the order.
- (2) In determining whether to make an order under section 333, the court must—
- (a) have regard to all the relevant circumstances (including Māori cultural values and, if required, the matters specified in section 336); and
  - (b) if applicable, take into account the fact that the risk, obstruction, or interference complained of was already in existence when the applicant became the owner or occupier of the land.

### **336 Further considerations relating to trees**

- (1) A court determining an application under section 334 for an order for the removal or trimming of a tree under section 333 must have regard to the following matters:
- (a) the interests of the public in the maintenance of an aesthetically pleasing environment:
  - (b) the desirability of protecting public reserves containing trees:
  - (c) the value of the tree as a public amenity:
  - (d) any historical, cultural, or scientific significance of the tree:
  - (e) any likely effect of the removal or trimming of the tree on ground stability, the water table, or run-off.
- (2) Except for a purpose referred to in section 335(1)(b)(i), the court may not make an order under section 333 relating to any tree that is the subject of a requirement lawfully made by a heritage protection authority under the provisions of Part 8 of the Resource Management Act 1991.
- (3) Despite subsection (2)(b), an order may be made under section 333 if, in all the circumstances, the court thinks fit.

### **337 *Court may impose conditions in making order under section 333***

- (1) In making an order under section 333, the court may impose any conditions it thinks fit, including conditions for either or both of the following:
  - (a) requiring the defendant to make good, or pay compensation to the applicant for, any damage caused to the land of the applicant or any property on that land, in the course of removing or trimming any tree ordered to be removed or trimmed, or the doing of any other work required to be done to eliminate or reduce the risk, obstruction, or interference complained of:
  - (b) requiring the applicant or the defendant, or both of them, to give security for any expenses or damage.
- (2) The reasonable cost of any work necessary to give effect to an order made under section 333 must be met by the applicant, unless the court—
  - (a) is satisfied, having regard to the conduct of the defendant, that it is just and equitable to require the defendant to pay the whole or any specified share of the cost of the work; and
  - (b) gives a direction as a condition of the order accordingly.
- (3) Subsection (2) is subject to section 338(6).

### **338 *Completion of work required by order under section 333***

- (1) The work necessary to carry out an order made under section 333 must be completed within—
  - (a) 20 working days after the date of the making of the order; or
  - (b) a later time specified in the order or subsequently allowed by the court for the completion of the work.
- (2) However, the order may specify that a tree must be kept trimmed, or that a structure to which this subpart applies must be kept in good repair, or that any other work required to be done to eliminate or reduce the risk, obstruction, or interference complained of must be done—
  - (a) as often as is necessary; or
  - (b) at intervals specified in the order.
- (3) Despite subsection (2), a person who is subject to an order of the kind referred to in that subsection may apply to the court for the order to be varied if there has been a change in the circumstances that, had the change occurred before the making of that order, could reasonably be expected to have resulted in the order being different from the one that was made.
- (4) The court may, on an application made under subsection (3), vary the order to reflect the change in circumstances that has occurred since the order was made.
- (5) If the order is not duly complied with within the time specified in this section or in the order, or subsequently allowed by the court, the applicant, with the agreement of the defendant or with the leave of the court, may, in person, or through the applicant's employees, agents, or contractors, enter onto the defendant's land and carry out any work necessary to give effect to the order.
- (6) If work is done by or through the applicant under subsection (5), then, unless the parties otherwise agree or the court otherwise orders, the applicant is entitled to recover from the defendant the whole of the reasonable cost of the work necessary to give effect to the order.
- (7) In granting leave to an applicant under subsection (5), the court may impose any conditions it thinks fit in relation to—

- (a) the time by which, and the manner in which, any work necessary to give effect to the order must be carried out:
- (b) security or indemnity against any expenses or damage:
- (c) the avoidance or making good of any injury or damage:
- (d) the disposal of all or part of any tree or structure:
- (e) any other relevant matters.

## **Reserves Act 1977**

### **42 *Preservation of trees and bush***

- (1) The trees and bush on any historic reserve or scenic reserve or nature reserve or scientific reserve shall not be cut or destroyed, except in accordance with a permit granted under section 48A or with the express consent in writing of the Minister and subject to such terms and conditions as the Minister may determine, including (as appropriate) the method of cutting, extraction, and restoration.
- (2) The trees or bush on any recreation reserve, or government purpose reserve, or local purpose reserve shall not be cut or destroyed, except in accordance with a permit granted under section 48A or unless the administering body of the reserve is satisfied that the cutting or destruction is necessary for the proper management or maintenance of the reserve, or for the management or preservation of other trees or bush, or in the interests of the safety of persons on or near the reserve or of the safety of property adjoining the reserve, or that the cutting is necessary to harvest trees planted for revenue producing purposes.
- (3) Where in the case of any recreation reserve or government purpose reserve or local purpose reserve the administering body is satisfied that the cutting or destruction of trees or bush is necessary for any of the reasons mentioned in subsection (2), the administering body shall not proceed with the cutting or destruction and extraction except in a manner which will have a minimal impact on the reserve and until, as circumstances warrant, provision is made for replacement, planting, or restoration; and the administering body shall not proceed to authorise the cutting or destruction, except subject to conditions as to the method of cutting or destruction and extraction which will have minimal impact on the reserve and, as circumstances warrant, replacement, planting, or restoration; and any other conditions which the administering body considers to be appropriate in the circumstances.

## Appendix 3 - Trees not suitable for locating in street berms

Scientific Name	Common Name	Major Problems
<i>Acer negundo</i>	Box Elder	Seeds
<i>Acer pseudoplatanus</i>	Sycamore	Seeds
<i>Aesculus hippocastanum</i>	Horse Chestnut	Roots, nuts, dense wide crown
<i>Albizzia</i>	Silk Tree	Root damage (no narrow berm)
<i>Alnus glutinosa</i>	Alder	Root damage
<i>Arbutus unedo</i>	Strawberry Tree	Fruit, shade
<i>Betula</i> sp	Birch	Drops honeydew (aphids)
<i>Camellia japonica</i>	Camellia	Visibility problems for traffic
<i>Eucalyptus</i> spp – most	Gums	Shading, root damage, debris
<i>Gleditzia tricanthos</i>	Honey Locust	Wind damage
<i>Hoheria sextylosa</i>	Lacebark	Gall disease
<i>Juglans regia</i>	Walnut	Nuts, leaves
<i>Malus</i> spp.	Crab Apples	Disease, fruit
<i>Maytenus boaria</i>	Mayten	Suckers
<i>Melia</i> spp.	Bead Tree	Fruit drop
<i>Pittosporum egenoides</i>	Lemonwood	Shading causing frost patches
<i>Pittosporum tenuifolium</i>	Kohuhu	Shading causing frost patches
<i>Platanus hispanica</i> ( <i>acerifolia</i> )	London Plane	Anthraco disease (causes small branches to be shed)
<i>Populus</i> spp.	Poplars	Root damage, fluff, sticky bud deposits
<i>Psuedopanax</i> Spp.	Lancewood	Wind damage
<i>Racosperma</i> ( <i>Acacia</i> ) sapp	Wattles	Wind damage, shading, short lived, galls
<i>Robinia pseudoacacia</i>	Black Locust	Wind damage
<i>Robinia</i> spp.		Wind damage and root stock problems
<i>Salix</i> spp.	Willow	Root and wind damage
<i>Sorbus aucuparia</i>	Rowan	Disease
<i>Tilla x europaea</i>	Common Lime	Drops honeydew (aphids), suckers
<i>Ulmus procera</i>	English Elm	Roots



## Appendix 4 - Delegations for making decisions about tree work

Activity	Delegation
Planting of street tree	Parks Officer in conjunction with Assets and Services staff
Planting of tree on parks, reserves, cemeteries	Parks Officer, Gardens Manager or Contractor as specified in the open space maintenance contracts for Blenheim, Renwick, Marlborough Sounds, Picton and Awatere
Maintenance of tree	Parks Officer, Gardens Manager or Contractor as specified in the open space maintenance contracts for Blenheim, Renwick, Marlborough Sounds, Picton and Awatere or Contractor for Maintenance of Street and Carpark Plots and Trees
Removal of tree, including notable trees	<p>Assets and Services Committee – for trees over 6 metres in height on parks, reserves, and cemeteries</p> <p>Chair of Assets and Services Committee and Manager, Property and Community Facilities Department – for street trees over 6 metres in height</p> <p>Manager, Parks and Open Spaces in emergency situations</p> <p>Parks Officer in all other circumstances</p>
Notable trees	<p>Parks Officer – minor pruning in accordance with permitted activity rules in resource management plans</p> <p>Parks Officer – significant pruning requiring resource consent</p>