

Trees Policy & Procedures

Section 1—Heritage and Protected Trees on Private Property

1. Council's resource management plans provide that a property owner cannot undertake significant trimming or removal of a heritage tree unless they first have a resource consent authorising the work. A property owner also has to obtain a resource consent if they want to:
 - construct a building within five metres of the base of a heritage tree; or
 - lay overhead or underground services within five metres of the base of a heritage tree; or
 - undertake any other activity that could adversely affect the condition of a heritage tree.

Public queries about heritage trees on private property should be referred to the duty planner.

2. Heritage trees are listed in an Appendix to the Wairau/Awatere Resource Management Plan and the Marlborough Sounds Resource Management Plan.

Minor maintenance including trimming and pruning do not require a resource consent if the work does not adversely affect the condition of the tree. Owners who are unsure can ask for information from the Duty Planner. In the case of a complaint, Compliance will investigate.

3. Protected trees are those in relation to which Council has registered a consent notice or other instrument against the title to the property with the aim of protecting the tree.
4. In general, Council will not take any direct action over any privately owned heritage or protected tree. The role of Council staff is to:
 - maintain a register of heritage trees (Environmental Policy Manager);
 - provide advice on the resource management requirements (including the ability to request that resource consent processing fees be waived) (Duty Planner);
 - provide advice on the heritage tree fund and the process for heritage tree owners to make a claim against the fund (Manager Reserves) as outlined in paragraph 7;
 - obtain the written permission of the landowner, if Council (by itself or through its contractors) intends to undertake an inspection of or undertake work (such as attaching a plaque to the tree) on a heritage tree on private property (Reserves & Amenities Officer);
 - provide the names of suitably qualified and experienced arborists to an owner if asked for a recommendation.
5. Council staff will not:
 - inspect such trees themselves; or
 - engage an arborist to prepare a report on a privately owned heritage tree; or
 - undertake any work or engage anyone else to undertake any work on such a tree (whether it is minor trimming or significant work requiring a consent).

The only exception to this will be in an emergency situation (discussed below).

6. All situations involving privately owned trees need careful consideration and staff should seek advice from appropriate people within Council. Council could face legal claims if it gets involved too directly with providing advice or undertaking the work.

Heritage tree fund

7. A fund was created through the 2013/2014 annual plan process of \$15,000. It is proposed that the fund be used to:

- Fund arborist inspections, reports, and work on heritage trees on Council land;
 - Place plaques on heritage trees, update measurement and condition records and GPS their locations;
 - On the application of the owner of a heritage tree, cover the costs of an arborist's report and resource consent applications where significant trimming is required (removal will not be funded unless the applicant can demonstrate that the tree has been adequately maintained but still needs to be removed);
 - Assess proposals for trees to become heritage trees or to be removed from the heritage tree list;
 - Undertake emergency work where the tree poses a danger to health and safety of the public (e.g. likely to fall onto a road);
 - Include heritage trees on the national notable trees list administered by the Notable Trees Trust.
8. The process for private property owners to have access to the fund is proposed to be:
- The owner obtains a report on the tree from an arborist with a Certificate in Advanced Arboriculture-Level 4 (or better); and
 - The owner applies to Council for a resource consent to undertake the necessary work; and
 - If a consent is granted, the work is undertaken by an arborist with a Certificate in Advanced Arboriculture-Level 4 (or better); and
 - If the tree is removed, a suitable replacement tree is planted in an appropriate place (not necessarily in exactly the same place); and
 - The owner then applies to the fund for reimbursement for all or any of the above costs (explaining why they cannot afford to bear the costs of the work themselves).
9. The Manager of the Assets and Services Department will assess applications and grant them in appropriate circumstances. The amount in the fund is limited so applications will be granted on a first come first served basis.
10. The fund is subject to annual review by Council through the annual plan process. The availability of the fund may vary from year to year.

Felling or trimming a heritage tree in emergency situations

11. In very limited circumstances, Council may decide to take action to remove or trim or prune a privately owned heritage or protected tree where the tree poses an imminent danger to public safety (e.g. it is likely to fall onto a public road). Council will only act if it can rely on the emergency works provisions of the Resource Management Act 1991, has the permission of the owner of the tree or can rely on emergency provisions in the Local Government Act 1974 or the Public Works Act 1981 (discussed below).
12. Section 330 of the Resource Management Act 1991 allows Council to take action to remove the cause of or mitigate any adverse effect (actual or likely) of an emergency without first having to obtain a resource consent. This section allows Council to take action in relation to any natural or physical resource or area for which Council has jurisdiction under the RMA. That includes heritage and protected trees.
13. The heritage or protected tree must be affected by or likely to be affected by an adverse effect on the environment which requires immediate preventive or remedial measures or be subject to a sudden event that causes or is likely to cause loss of life, injury or serious damage to property.

14. No action may be taken in emergency situations until advice has been sought from the District Secretary or the Solicitor as to whether the particular action is empowered by the LGA or PWA and has the benefit of the protections in section 330 and 330A of the RMA.
15. The action can only be taken after consultation with the property owner. Council does not have the right, even in an emergency situation, to enter private property without permission (except where specifically authorised by statute e.g. s135 Public Works Act).
16. In some situations, a resource consent will need to be obtained after the work on the tree has been undertaken (section 330A RMA). Advice from the Duty Planner must be sought immediately after taking the action as to whether a consent will be required. Application for a consent must be made within 20 working days of the work being undertaken.
17. Reimbursement of the costs of the remedial action can be sought and compensation can be required in certain circumstances (section 331 RMA). The District Secretary or the Solicitor can advise whether section 331 is applicable in a given case.

Felling, pruning, poisoning or damage to a heritage or protected tree

18. Council will consider taking enforcement action where a person has felled, pruned, poisoned or otherwise damaged a heritage or protected tree in breach of their obligations under the RMA, the Plan, resource consent, consent notice or other instrument.