

Regulated & Significant Trees



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Introduction

This brochure provides information on what regulated and significant trees are, and what special requirements may apply if a regulated/significant tree exists on your property or a neighbouring property.

What is a “Regulated Tree”?

A “regulated tree” is:

- Any tree that has a trunk with a circumference of 2 metres or more; or
- In the case of trees with multiple trunks, that have trunks with a total circumference of 2 metres or more and an average circumference of 625 millimetres or more.

In both cases, trunk circumference is measured at a point 1 metre above ground level.

What is a “Significant Tree”?

A “significant tree” is:

- Any tree that has a trunk with a circumference of 3 metres or more; or
- In the case of a tree with multiple trunks, has trunks with a total circumference of 3 metres or more and an average circumference of 625 millimetres or more

In both cases, trunk circumference is measured at a point 1 metre above ground level.

Is my tree exempt?

The Development Regulations 2008 list a range of tree species as “exempt” from regulated and significant tree controls. The trees listed are limited to exotic species, trees considered to have a medium-high or high risk of limb failure and infrastructure damage, and common trees planted in urban areas.

These species exempt from controls include:

- a) All trees located within 10 metres of an existing dwelling or existing in-ground swimming pool, **unless** it is one of the two following species of trees:
- *Agonis flexuosa* (Willow Myrtle)
 - *Eucalyptus* (any tree of the species)

Note: The distance between a dwelling or swimming pool and a tree will be measured from the base of the trunk of the tree to the nearest part of the dwelling or swimming pool at natural ground level.

- b) Any of the following 24 listed tree species are also excluded from the controls:

- *Acer negundo* (Box Elder)
- *Acer saccharinum* (Silver Maple)
- *Ailanthus altissima* (Tree of heaven)
- *Alnus acuminata* subsp. *Glabrata* (Evergreen Alder)
- *Celtis australis* (European Nettle Tree)
- *Celtis sinensis* (Chinese Nettle Tree)
- *Cinnamomum camphora* (Camphor Laurel)
- *Cupressus macrocarpa* (Monterey Cypress)
- *Ficus* spp. (Figs), other than *Ficus macrophylla* (Moreton bay fig) located more than 15 metres from a dwelling. *This means that if a Morton Bay Fig is located more than 15 metres from an existing dwelling or in-ground swimming pool, consent from Council is required to undertake any tree-damaging activity.*
- *Fraxinus angustifolia* (Narrow-leaved Ash)
- *Fraxinus angustifolia* ssp. *Oxycarpa* (Desert Ash)
- *Lagunaria patersonia* (Norfolk Island Hibiscus)
- *Melaleuca styphelioides* (Prickly-leaved Paperbark)
- *Pinus radiata* (Radiata Pine / Monterey Pine)
- *Platanus x acerifolia* (London Plane)
- *Populus alba* (White poplar)
- *Populus nigra* var. *italica* (Lombardy Poplar)
- *Robinia pseudoacacia* (Black Locust)
- *Salix babylonica* (Weeping Willow)
- *Salix chilensis* ‘Fastigiata’ (Chilean Willow, Evergreen Willow, Pencil Willow)
- *Salix fragilis* (Crack Willow)
- *Salix X rubens* (White Crack Willow, Basket Willow)
- *Salix X sepulcralis* var. *chrysocoma* (Golden Weeping Willow)
- *Schinus areira* (Peppercorn Tree)

What activities affecting regulated and significant trees require approval?

Anyone who proposes to carry out a “tree damaging activity” to a regulated or significant tree needs to lodge a Development Application with the Council and receive development approval before commencing any work.

Specifically, development approval is required for removal, killing or destruction, branch or limb lopping, ringbarking or topping, or any other substantial damage to a regulated or significant tree, including to its root system, other than maintenance pruning.

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What is maintenance pruning?

Maintenance pruning of less than 30% of a tree crown does not require approval where the pruning is required to remove:

- dead or diseased wood; or
- branches that pose a material risk to a building; or
- branches to a tree that is located in an area frequently used by people and the branches pose a material risk to such people.

If you are unsure whether the activity you wish to undertake is maintenance pruning or a tree damaging activity, you should seek the advice of a professional Arborist or ring the Council to discuss the matter and seek clarification.

What if my neighbour's regulated or significant tree is encroaching on my land?

Pruning back a tree branch or branches that are encroaching on your property can occur without seeking approval provided it meets the definition of "maintenance pruning" outlined above.

Where cutting back the tree would exceed the maintenance pruning requirements above, or would result in root damage likely to affect the health and appearance of the tree, you will be required to seek a Development Approval from the Council for any works on your side of the common property boundary. Council cannot charge an application fee in this situation.

Do I need approval to remove a regulated or significant tree that is dead?

No approval is required to remove a dead tree, however you should be certain that the tree is dead in accordance with horticultural standards. If you are unsure whether the tree is dead, you should seek the advice of a professional Arborist.

Obtaining Council Approval

Any person wanting to carry out tree damaging activities or carry out another form of development on the same site as, or on an adjacent site to, a regulated or significant tree will need to lodge a Development Application with the Council.

Such applications should include the following information:

- A completed Development Application form (this includes a page specific to regulated and significant trees and will cover some of the required information listed overleaf);
- The relevant Development Application fees. Applications seeking approval for a tree damaging activity incur a lodgement fee and minimum planning assessment fee only. There are no fees charged for applications involving the pruning of overhanging branches of a regulated or significant tree located on a neighbour's property.
- A description of the affected tree(s) including species and trunk circumference at 1m above ground level (and if multiple trunked tree(s) the circumference measurement of each trunk at 1m above ground level).
- A site plan showing the location of the regulated/significant tree(s) in relation to existing and/or proposed buildings and structures on the site, the boundaries of the land and, if relevant, buildings and structures on adjoining properties.
- The reason(s) for the proposed work.
- Photographs of the tree(s) showing (where relevant) the branches to be removed and/or location of cuts to be made, the particular flaw (if any) that supports removal/pruning etc.
- Details to demonstrate, if applicable, that other alternative proposals were considered prior to lodgement of the application in its current form (for example, alternative building locations or alternative construction methods that may have avoided tree removal).

Replacement Trees

If the Council determines that a regulated or significant tree may be removed, the approval must be subject to a condition that:

- replacement trees be planted and maintained; or
- payment is made into the City of Marion's Urban Tree Fund.

The number of replacement trees required to be planted is:

- 2 trees to replace a regulated tree
- 3 trees to replace a significant tree

The replacement tree cannot be a tree within the list of exempt species, and cannot be planted within 10 metres of an existing dwelling or an existing in-ground swimming pool (located either on the subject land or neighbouring properties).

The trees must be planted and maintained, with the cost of planting to be the responsibility of the applicant, and

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the cost of maintenance to be the responsibility of the owner of the land. Such trees need to be protected and maintained for the entirety of their life, with any dead, dying or diseased trees replaced within a reasonable timeframe.

Given the locational restraints of replacement trees and the burden of ongoing maintenance, it is recommended that payment into the City of Marion's Urban Trees Fund in lieu of planting replacement trees. Further, if replacement trees cannot be accommodated on the land with a 10 metre clearance from existing dwellings and in-ground pools, payment must be made into the Urban Trees Fund.

Payment of \$94.00 is required for each replacement tree that is not planted, as outlined below:

| | Number of Replacement Trees Required | Standard Fee | Pensioner Fee |
|------------------|---|---------------------|----------------------|
| Regulated Tree | 2 | \$188.00 | \$62.80 |
| Significant Tree | 3 | \$282.00 | \$94.19 |

Note: If the owner and occupier of the land where the relevant tree is situated holds a current Pensioner Concession Card, a 66.6% discount applies.

What if a land owner objects to a Council decision?

An applicant has the right to appeal to the Environment Resources and Development Court against a decision made, or a condition attached to an approval, by the planning authority. Such an appeal must be lodged with the Court within two months of the application decision being made.

What if urgent work is needed to make a tree safe?

In an emergency situation, work involving a regulated or significant tree can be undertaken without first having received a development approval (in most cases this work will be done by the State Emergency Service or Council). As soon as practicable after the emergency work is undertaken, the owner of the regulated or significant tree must lodge a development application with the Council for the work undertaken.

What are the penalties and remedies for non-compliance?

Breaches of the provisions relating to regulated trees will be enforced using existing provisions under the Development Act 1993 that apply to all other types of development. Under the existing provisions, the person who undertakes the work to the regulated tree will be the person responsible for the breach. Fines of up to \$120,000 operate if breaches are proven.

Conditions of Past Approvals

In some cases, trees on your property (whether regulated/significant or not) may also be protected by conditions of Development Approvals that have been granted by the Council in the past. For example, when a dwelling or addition was previously approved, the Council may have imposed a condition of approval which requires that a certain tree(s) be retained.

At the time of purchase of your property you may have been provided with copies of relevant Development Approvals if they have continuing conditions as part of a Land and Business (Sale and Conveyancing) Act [Section 7] search. Alternatively, a Section 7 search can be requested from the Council to obtain copies of past approvals with continuing conditions relevant to your property.

Want to Know More?

The above information is advisory only. It is intended to provide a guide and a general understanding of the key points associated with the particular topic. It is not a substitute for reading the relevant legislation or the Development Plan.

It is recommended that if you are intending to undertake development, you seek professional advice or contact the Council for any specific enquiries or for further assistance concerning the use and development of land.

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