

# Vegetation Encroachment Policy

Classification:	Council Policy
Policy Name:	Vegetation Encroachment Policy
First Issued / Approved:	May 2003
Last Reviewed:	19 June 2007 24 February 2015, C10062 20 February 2018, C11590 14 July 2020, C12604
Next Review:	14 July 2024
ECM tracking number:	987614
Responsible Officer:	General Manager Corporate and Development
Relevant Legislation:	<i>Local Government Act 1999</i> <i>Disability Discrimination Act 1992</i> <i>Disability Inclusion Act 2018</i> <i>Development Act 1993</i> <i>Roads (Opening and Closing) Act 1991</i>
Related Policies:	Community Access, Inclusion and Participation Policy Footpath Policy Order Making Policy Risk Management Policy Road and Traffic Management Policy Streetscape Policy Urban Tree Management Policy Verge Development Policy

## 1. Introduction

- 1.1. The City of Burnside acknowledges that living hedges add to the character of the streetscape and provide environmental benefits to the area.
- 1.2. The City of Burnside is committed to providing safe and well-maintained footpaths and streetscapes. Council Vegetation Encroachment Policy provides guidelines for:
  - 1.2.1 The maximum allowable Hedge encroachment.
  - 1.2.2 Authorisation under section 221 of the *Local Government Act 1999* where appropriate.
  - 1.2.3 Agreements for the maintenance of Hedge encroachments.
  - 1.2.4 Agreements for the relocation of infrastructure or partial closure of a road reserve to accommodate an existing Hedge encroachment.

1.2.5 Agreements for the maintenance of Overhanging Vegetation.

2.1 Subject to items 6.2 and 6.12 this Policy does not apply to vegetation that is planted within a road reserve (see Verge Development Policy).

## **2. Strategic Plan Desired Outcomes**

2.2 Conservation and enhancement of the historic character of the area.

2.3 Sustainable, engaging, healthy and functional public spaces and streetscapes.

2.4 An effective transport network that supports safe and efficient movement, connecting people and places.

2.5 Environmentally sustainable development which complements the City's character

## **3. Our Approach**

3.1 Support the protection of the City's local heritage, character-built heritage, and natural heritage.

3.2 Provide an accessible network of public spaces that respond to the needs of the community.

3.3 Maintain and enhance streetscapes for improved amenity, character, and environmental outcomes.

3.4 Local traffic management to enhance safety and neighbourhood amenity.

3.5 Provide pedestrian and cycle connections that link our neighbourhoods, facilities and open space and make our communities walkable

3.6 Balance future development and existing historic character

3.7 Enhance the character amenity, safety, and accessibility by promoting sympathetic and sustainable development.

## **4. Legislative Requirements and Corporate Policy Context**

4.1 Council is the owner of roads including footpaths and is required to ensure that all road reserves are well maintained and safe for users.

4.2 Council is responsible for ensuring that public places are, as far as is reasonably practicable, accessible to all members of the community regardless of age or ability.

4.3 The encroachment of Hedges and Overhanging Vegetation can impact on these requirements and must be carefully regulated. This should be done in the context of a balance between road useability and streetscape amenity.

4.4 Under Section 254 of the *Local Government Act 1999*, the Council is empowered to order the removal of certain overgrown vegetation, to cut back certain overhanging branches, or to remove certain trees.

## 5. Interpretation

- 5.1 For the purpose of this Policy:
- 5.1.1 “Disability Legislation” means the *Disability Discrimination Act 1992 (Cth)* and the *Disability Inclusion Act 2018 (SA)* and includes any regulations or guidelines published under those Acts and replacement of those Acts.
  - 5.1.2 “Hedge” means a fence or boundary formed by closely growing bushes and shrubs.
  - 5.1.3 “owner” in relation to a Hedge or Overhanging Vegetation means the owner of the property on which the Hedge or Overhanging Vegetation is planted.
  - 5.1.4 “Overhanging Vegetation” means vegetation other than a Hedge that encroaches from private property into a road reserve.
  - 5.1.5 “road” means a public road owned by the Council within the meaning of the *Local Government Act 1999* and includes a footpath.
  - 5.1.6 “road reserve” has the same meaning as “road” and includes any footpath, verge, kerb and water table and carriageway.
- 5.2 Nothing in this policy derogates from any of the Council’s powers under the *Local Government Act 1999*.

## 6. Policy

### Hedge Encroachment onto Road

- 6.1 Hedges will not ordinarily be permitted to encroach onto a road, other than in accordance with this policy.
- 6.2 The Council may enter into an agreement (including, where appropriate, an authorisation under section 221 of the *Local Government Act 1999*) with the owner of a Hedge permitting the Hedge to encroach onto a road.
- 6.3 An agreement permitting a Hedge encroachment under clause 6.2 must set out the maximum permitted encroachment for the Hedge and any other conditions specified by the Council including whether a pruning plan is required for the Hedge.
- 6.4 The maximum permitted encroachment agreed to by Council will be determined on a case by case basis after undertaking a risk analysis and having regard to the following matters:
- 6.4.1 public safety;
  - 6.4.2 pedestrian access;
  - 6.4.3 any relevant requirements, plans, regulations, or guidelines under Disability Legislation;
  - 6.4.4 the health and structural integrity of the Hedge;
  - 6.4.5 the heritage value of the Hedge (as determined by the Council); and

- 6.4.6 the extent to which the Hedge can be pruned without destroying its integrity.
- 6.5 Subject to clause 6.4 above, encroachments should generally not be permitted to extend closer than 2.5m to the current or proposed kerb alignment in the street. This minimum distance is required to provide an adequate footpath width (1.5m) and satisfactory clearance between the path and kerb (1m).
- 6.6 An agreement under clause 6.2 may include a pruning plan to meet and maintain the maximum permitted encroachment. The pruning plan may be developed with the assistance of a qualified arborist. The pruning plan should include recommendations (if any) in relation to staged pruning and in relation to the ongoing maintenance of the hedge in order to maintain the maximum permitted encroachment and empower the Council to take the steps required by the pruning plan, at the owner's expense, should they fail to comply with the requirements of the plan.
- 6.7 The owner of an encroaching Hedge will be required to indemnify Council against any claims to any person resulting from injury caused by the Hedge encroachment and may be required to take out and provide evidence of an insurance policy covering the above risks.
- 6.8 The owner of an encroaching Hedge will be required to maintain the Hedge in accordance with an agreement under clause 6.2 with regular pruning, and if relevant, in accordance with an agreed pruning plan.
- 6.9 Subject to clauses 6.10 below, in the event that an encroaching Hedge cannot be pruned such that it will be at least 2.5 metres from the kerb alignment (or such other distance as is agreed by the Council), the Hedge should generally be removed.
- 6.10 The Council may enter into an agreement with the owner of a Hedge to relocate infrastructure that is impacted by the Hedge and the cost of relocating infrastructure (including a footpath and any services located under, over or within the footpath) must be met by the owner of the Hedge.
- 6.11 A register of encroaching Hedges and the relevant details (including the details of any agreement made under this Policy and any agreed pruning plan) is to be developed and maintained by Council.

### **Overhanging Vegetation**

- 6.12 The Council may enter into an agreement (including, where appropriate, an authorisation under section 221 of the *Local Government Act 1999*) with the owner of Overhanging Vegetation that encroaches onto a road regarding the pruning and maintenance of the Overhanging Vegetation.
- 6.13 An agreement under clause 6.12 must be made having regard to the following matters:
- 6.13.1 public safety;
  - 6.13.2 pedestrian access;
  - 6.13.3 any relevant requirements, plans, regulations, or guidelines under Disability Legislation;
  - 6.13.4 overhead clearance;

- 6.13.5 the health and structural integrity of the Overhanging Vegetation and the overall health and structural integrity of the relevant tree or plant;
  - 6.13.6 whether the Overhanging Vegetation relates to or forms part of a Significant or Regulated Tree (in accordance with the *Development Act 1993* or any other relevant legislation from time to time); and
  - 6.13.7 any other relevant matters (as determined by the Council).
- 6.14 An agreement under clause 6.12 may include a pruning plan. The pruning plan may be developed with the assistance of a qualified arborist. The pruning plan should include recommendations (if any) in relation to staged pruning and in relation to the ongoing maintenance of the Overhanging Vegetation and empower the Council to take the steps required by the pruning plan, at the owner's expense, should they fail to comply with the requirements of the plan.
- 6.15 The owner of Overhanging Vegetation may be required to indemnify Council against any claims to any person resulting from injury caused by the Overhanging Vegetation and may be required to take out and provide evidence of an insurance policy covering the above risks.

### Legislative Provisions

- 6.16 Under Section 254 of the *Local Government Act 1999*, the Council is empowered to order the owner or occupier of land to:
- 6.17 remove overgrown vegetation, cut back overhanging branches, or to remove a tree if the vegetation, branches, or tree create, or are likely to create, danger or difficulty to persons using a public place; and
  - 6.18 to take action necessary to protect the road or to remove a hazard to road users where a situation exists that is causing, or is likely to cause, damage to the road or a hazard to road users.
- 6.19 Except in cases where a Hedge or Overhanging Vegetation constitutes, or is likely to constitute, a threat to life or an immediate threat to public health or public safety, or an emergency situation otherwise exists, Council will have regard to the provisions of this Policy before determining whether or not to issue an order under Section 254 of the *Local Government Act 1999* relating to a Hedge or Overhanging Vegetation.

## 7. Availability

- 7.1 The Policy is available to be downloaded, free of charge, from Council's website [www.burnside.sa.gov.au](http://www.burnside.sa.gov.au)
- 7.2 The Policy will be available for inspection without charge at the Civic Centre during ordinary business hours and a copy may be purchased at a fee as set annually by Council.

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