

**GENERAL LANDSCAPING GUIDELINES WITH RESPECT TO TREES,
SHRUBS, PAVING AND SIDEWALKS (AND TREES ON NEIGHBOURS
PROPERTY) May 2016 (final).**

1. PURPOSE

An information brochure to inform the general public on matters regarding trees, shrubs, plants, general beautification and parks.

2. INTRODUCTION

Landscaping refers to manmade (“artificial”) landscapes in the urban environment. It includes planting of trees and gardens, water features and street furniture. Specially cultivated or “sculpted” foliage and structures can add greatly to the general appearance and attractiveness. Although trim-parks, gym-parks, benches and street furniture, as well as play park apparatus forms an integral part of the “landscape”, it is not discussed in any detail here. (suffice to say that play parks are very important to early childhood development.)

Human beings differ vastly in their appreciation of plants in general. One of the biggest topics of discussion in landscaping is trees. People are often strongly divided on tree issues, eg half of George insist that the Seringa trees must come down, whereas the other half is vehemently and passionately opposed to the idea. Some insist that they plant the whole of the sidewalk in front of their properties, while yet others insist that the single tree in front of their property be removed. The list is endless.

George does not have a formal policy document on landscaping, but all council decisions over the years constitute a type of policy. This brochure is NOT a policy document, but an honest attempt to inform.

The municipality receives complaints and requests to remove or severely cut back (form prune) trees on a daily basis. Some of these requests are quite reasonable, and others less so. The reasons furnished why a tree simply MUST be removed are truly infinite, (more detail later). By and large the majority of “problem” trees were not even planted by the municipality, but resulted from injudicious plantings by residents, albeit well intended. The municipality also planted some trees that have since proved to be undesirable – in hindsight. These include bottle brush, seringa, Japanese maple and quite a few others.

IT does not matter WHO planted or plants a tree, ultimately it is the responsibility of both the property as well as of the legal owner/occupier (vicarious). ALL trees on council land are therefore the “property” as well as responsibility of the municipality (al be it on behalf of the whole community !). The municipality has to exercise reasonable control and care over all vegetation on council land.

3. LEGAL CONSIDERATIONS

Trees or plants **not** on municipal property are strictly the responsibility of the owners. Residents quite often expect that the “authorities” must act or give guidance in disputes between neighbours. Because of legal status and delegations, such disputes are very strictly a civil matter between neighbours. This document will explain some of the legal principles involved in “neighbour law”, as the municipality shall not be involved in resolution of such disputes.

There are basically three types of “law” in our judicial system, namely Civil, Private and Criminal procedures. The “rights” of neighbouring entities are contained in “neighbour law”. This in turn resorts under “Common Law.” Common Law in essence is “unwritten law” where case law (ALL similar previous resolutions) provides the foundation for litigation in all future such cases. The general premise has been established by the Romans over many years, adopted by the Dutch and later also employed in the Cape in the 17th and 18th centuries. It is still a major influence in courts in South Africa (and its neighbours), and is commonly referred to as Roman-Dutch Law.

This document only deals with that part pertaining to plants and trees. The most basic underlying principle in neighbour law is that every owner must have a basic right to use and “enjoy” his/her property in an unhindered manner. It follows that his/her general well-being may not be impeded unfairly – it only sounds simple though.

In most situations one or more trees are at the core of a problem or dispute. It should be noted that South African courts in general consider trees as an essential component of the human environment, and that humans are supposed to make some sacrifice in order to accommodate trees. Especially overhanging branches and crawling roots are often at the root of the problem. In most cases these can be accommodated, but it may not cause “undue” nuisance or impediment. One fairly recent case was *Vogel vs Crewe and others* 2003(4)SA509(T). In this particular case the complainant had to prove that the defendant substantially impacted on the “rights” of the complainant.

Fairly recent case law still place significant emphasis on the rights to fair and individualistic privacy of ownership. Case law regarding “nuisances” subscribe to the basic principles above. One such basic principle is “*sic utere tuo ut alienum non laedas*” simply stating that your enjoyment of what is yours, must not infringe upon a neighbour’s rightful enjoyment of his and vice versa. The vertical space above and below a property is considered part of the property although you may not own the underground water or mineral rights. It is also an established principle that neighbours have a duty to inform his neighbour of any grievance or potential infringement or potential pending damages. Such notice should be well **in advance**, and seeking to find resolution. Again the underlying value is **reasonableness** on both sides. The courts emphasise “reasonable” longsuffering towards each other.

A further principle is the degree to which an event can or should have been foreseen, in other words the general **foreseeability**, as well as the general **preventability** – or at least pro active mitigating of possible future problems. Coupled to that the onus to inform of pending “problems”. In light of the above, an opinion must be formed as to the degree of negligence, both on account of certain specific actions, as well as failing to act - timeously or at all. (Eg. *dolus eventualis* – premeditated, purposefully and intended act of damage, hurt or negligence – gross negligence ? Shouldn't the party or parties have known better ?)

There are a great many examples on the internet dealing with these issues and which illustrate the courts' approach and thinking. Circumstances relating to the case at hand differ vastly, and the merits of each case have to be considered and taken into account. The law also guards against over-zealous claims of individuals. However, fact remains that most nuisances are not so easily litigated or resolved. Once a case has reached the courts, the actual process should be respected and not be underestimated.

From the above it is obvious that it would be impossible to cover every eventuality in this little document. Neighbour law covers much more than just undesired or problem vegetation.

4. PROBLEMS

Before the negative characteristics of trees are discussed, perhaps one should briefly consider the advantages. These are inter alia:

- The cultural role that trees have played throughout civilisations cannot be denied. Trees harboured schools, governments, courts, housing, beacons, post trees, spiritual rites (indications are that Yeshua was nailed to a tree !) and many more. Few things in life are so integral to a sense of place. (Highly recommended would include “Remarkable Trees of the World” by Thomas Pakenham, ISBN 0 297 84300 1, and “Remarkable Trees of South Africa” by Neels Esterhuyse et al with ISBN 1 875 093 28 1. Truly “remarkable” books!)
- Trees are an embellishment and improve the general aesthetics of any built environment. Property values in those residential areas with a high tree population are generally always higher. (eg. Heatherlands and Fernridge)
- Trees have a markedly positive psychological effect on humans. (Rehabilitation and therapy centres recognise this fact)
- Trees reduce the carbon footprint by taking up carbon-dioxide gasses and giving off oxygen.
- Trees acts like filters that reduce impurities (toxins) in the soil and air.
- Trees act as windbreaks.
- Trees provide shade – also for livestock
- Trees provide shelter and nesting to whole range of birds and other animals – some of whom may be undesirable.

- Trees arrest dust particles and noise – just ask the people next to the N2 in Wilderness
- Trees play an important part in the development of children when climbing and playing in it – it is in fact critically important to their development
- Trees provide all kinds of fruits that support whole farming communities and assist in food security. Many trees (and plants) have medicinal qualities that are extracted and used in medicine. Trees also provide a basic building material with really astounding qualities.

Unfortunately trees are often the cause of “problems” which include:

- General traffic visibility becomes obscured
- Obstruct or impair street lighting
- Obstruct road signs, pedestrians, robots etc
- Obstruct DSTV and other signals
- Obstruct a preferred view, i.e. onto lakes, mountains, sea, etc
- Obstruct sun in winter – cause rising damp etc
- Shelter or vantage point for criminals and evildoers – rape and breaking and entering, posters etc
- Shelter and food for undesired animals – including some birds, bats, vervets, baboons, harvester ants, snakes, bees, etc.
- Some trees produce excessive oils, resins, pollen and leaves that settle on cars and roofs.
- Trees sometime carry diseases and pests that affect other desirable plants
- Flowers, pollen, seed, fruits and leaves can sometimes cause health problems, block drains and swimming pool filters and be of a general nuisance
- During and after every windstorm dead or weak branches come down
- Tree roots causes damage to underground services such as sewage, waterpipes, Telkom lines, drainage, paving, foundations, etc.
- Some species are really poisonous or detrimental to human health, such as “Malpitte”, Lantana and Oleander, etc (contrary to popular belief, Seringa is not such a great threat.)
- Leaves and seeds lodge in gutters and generally dirty peoples yards – (some residents actually welcomes the leaves). Some leaves can seriously cause discoloration

Complaints of a very general nature concerning leaves, flowers, fruits, seeds, pollen and such, will not readily constitute any significant nuisance. It is generally accepted that trees are an integral part of human existence, and in order to have some resemblance of natural elements in the built up areas implies some sacrifices. For most significant or substantial problems there at least some degree of remedy. It would be most important to act pro-actively and mitigate well in advance. Paving is often laid right up to trees after the top layer (feeder layer) of soil has been removed and gravel compacted. The tree usually take a serious knock, and the roots go frantically in search of moisture. Inevitably

the paving gets lifted after a few years by these roots, and soon after the owner attempts to claim for damages. The situation might have been avoided by root barriers (ordinary gunplass damp proof membrane) and grassblocks.

There are a great many remedies for most of the problems. If one consults the internet, it is soon obvious how common all the problems associated with fruit bats are. Besides the internet, information has become very accessible with the latest technologies and libraries and magazines, etc.

5. POLICY CONSIDERATIONS

With all the problems associated with trees, it stands to reason that injudicious plantings should be avoided in order to prevent or minimize later problems. Just one of many such examples is the row of exotic waterberry (*Syzigium paniculatum* or *Eugenia paniculatum*) next to the wall of Lancelot Terraces in Fichat Street. In this instance the developer needed some fast growing hardy greenery, but could not foresee future problems. If this now has to be remedied with taxpayers monies, surely the municipality should try and act proactively before any damages occur and before the remedy becomes costly. Recently, during 2013 and 2014 a number of cars were seriously damaged by falling trees – fortunately none of those were from trees on council land, and fortunately it did not result in any serious injury or death.

Landscape architecture is a very specialised and recognised discipline these days. It stands to reason that the municipality should have a clear and strong policy on landscaping. Although there is not such a “formal” document, all previous council resolutions make up existing policy. The provision of street furniture and playpark apparatus, should perhaps be covered in public amenities policy. A standard set of conditions for civil and other contracts should ideally form part of all contracts.

Some decisions taken includes

A.) Minutes of Civil and Technical Services Committee of 2nd Desember 2003 where it was resolved :

- a.) that all trees on pavements, regardless by whom it was planted, be treated as municipal property;
- b.) that the traffic division instruct owners to prune their trees/shrubs should they cause an obstruction;
- c.) that the Parks Section prune the trees/shrubs if the owner did not respond within one week;
- d.) that the owner pays the cost in (c) for the work through his account;
- e.) that at least one meter be kept clear on the pavement where a kerb is present; and
- f.) that at least two meters be kept clear on the pavement where there is no kerbing.

Until recently, 2003, there was a special ad-hoc “tree committee” to consider borderline cases and requests from residents. A number of these requests deal with problem trees on

property NOT under the parks section, or even private property – including some indigent cases. The idea is that a comprehensive landscaping policy must eventually be compiled, from whence by-laws and rules will follow.

6. PROCEDURES IN CASE OF DAMAGES

In by and large the majority of cases where trees later present problems, it is normally found that these trees were never planted by the municipality. Significant amounts of (taxpayers) money is then spent on addressing these problems, mostly injudicious plantings. Hence the municipality not only has a duty to act proactively, but also to prevent such from happening. For any damages a loss adjuster will consider amongst others the following;

- a.) is the problem on council land – if so, what is the legal status of the property (and of course which section has jurisdiction or responsibility for the property.)? If not on council land the municipality may not incur any real costs, except perhaps indigent cases.
- b.) Who is the likely body responsible for planting the tree/shrub in question, i.e. the owner, previous resident, municipality or natural regeneration
- c.) Was the planting “injudicious”?
- d.) What exactly is the problem and how long has the problem been existing, or for how long has it been a problem ?
- e.) Which parties are involved, and what measures have they taken to date ?
- f.) How old is the tree or shrub ?
- g.) For how long has the structures been endangered ?
- h.) If structures were erected after the trees have been planted, was the problem foreseen and was any provision made to mitigate ?
- i.) If the trees were planted after the structures have been erected, was provision made by “whoever” planted them ?
- j.) Was structures erected according an approved plan and built according acceptable standards ?
- k.) Is or was the problem foreseeable ?
- l.) Was the damage preventable and/or avoidable ?
- m.) Is the problem of a temporary nature ?
- n.) Was there any measures that could have been taken in the meantime ?
- o.) Are there any practical solutions now ?
- p.) Which parties will be responsible for such remedy ?
- q.) Are any of the parties insured against damages ?
- r.) Was the property recently acquired, or is it currently on the market ?

Obviously many more considerations depending on the particular situation.

7. GUIDELINES WITH RESPECT TO PLANTING

The most basic consideration is quite simply - that what will this plant look or be like when it is mature? What characteristics must be avoided or mitigated in advance? Generally speaking trees or plants that are “constricted” will develop quite differently

from those of the exact same species under more favourable conditions, i.e. the swamp cypresses (*Taxodium distichum*) and Liquidambers (*Liquidambar styraciflua*) at the bottom end of York Street. General considerations would include;

- a.) is the area suited to this type and size of tree at all ?
- b.) can this planting cause ANY problem or nuisance later, and if so, can it be mitigated ?
- c.) is the pavement at all wide enough for this tree/plant ?
- d.) how will it affect pedestrians ?
- e.) is the species deciduous, semi-deciduous or evergreen ?
- f.) is any part of the tree, seeds flowers, leaves, etc likely to give rise to any problems in the future ?
- g.) does the tree bear fruit, is it dioecious or monoecious, will it give rise to problems, especially fruit bats and ramoren pigeons (*Columba arquatrix*), and house sparrows? Some of the fruits are very sticky and fleshy and can cause serious damage to carpets.
- h.) Does the specie hold any threat of poisoning or negative effects on health (i.e. seeds of pampas grass – *Cortaderia selloana* – the later is also a weed.)?
- i.) How big will the crown be at maturity?
- j.) Will the crown of the plant negatively impact other services, signposting, traffic lights, street lights etc?
- k.) Will the roots impact any underground services?
- l.) Is the plant well anchored – with deep root system?
- m.) Is there any likelihood of future development?
- n.) Does it have the potential to interfere with signals (internet & dstv etc)?
- o.) Will it block or obstruct any views, the sun etc?
- p.) Are the species likely to attract any pests or diseases?
- q.) Does the species have the potential to be or become invasive?

In general, services on pavements are usually situated close to the kerb or close to the boundaries of erven. Trees or small trees should NOT be planted on pavement any narrower than at least five meters. If it is a main route at least 8 meters. If shrubs are planted, it might attract homeless people and criminal elements who will also use the shrubbery to relieve themselves. Any planting should stay well clear of any existing or future driveways and paving. Medium to bigger sized trees should not be planted closer than 10 to 12 meter to each other. If there any doubt as to possible damages, a root barrier should be installed at the time of planting.

8. RECOMMENDED SPECIES

There are a great many knowledgeable people at our local nurseries and information is readily available through various other sources. The climate of George is such that virtually anything will grow here, but the soils are generally leached out. The ideal tree will be very hardy, require no or little care and maintenance, will not easily blow over (well anchored or rooted), will not have excessive rooting, not cause any sacrifices to be made, etc, but such a tree does not exist. Prospective gardeners or tree planters must

choose their trees wisely, especially if they intend planting on the pavement. ALL characteristics of the plant must be considered, and it must be borne in mind that the municipality reserves the right to minimise any possible future problems.

As it happens George has many yellowwoods in the streets, of which the “female” trees periodically bears excessive fruits as is the case in 2014. This in turn attracts fruit bats and leaves a sticky mess on the pavements. The municipality also planted some species that in hindsight were not a very good choice. These include Seringas, Bottlebrushes (Callistemon), Canadian elder, Ash leaved maples (north American box elder), Elderberry, Privet, the Myrtle tea bushes and a few others. Other problem trees include exotic Acacias, Gums, Pines, exotic Chestnuts, some Cypresses, Norfolk pines, some Ashes, the exotic White Stinkwood, and few others.

9. VEGETATION ON SIDEWALKS

General guidelines;

- a.) Medium sized and bigger trees should not be closer than 12 – 15 meters from another, this allows for a total crown width of 12 to 15 meters. (The tree with the biggest crown of some 33 meters is the English Oak in front of the NG Moeder Church in Courtenay street.)
- b.) Trees must be planted well away from streetlights, road signs, robots, information boards and signage, drive ways – existing and future, etc
- c.) NO hedges are to be planted on ANY council land, and should be contained well within the erf boundary of the owner, AND should be kept neat.
- d.) On pavement trees should be planted more or less in the middle, but the existence or not of services should be ascertained before planting.
- e.) Trees should be planted away from underground services, especially sewage lines
- f.) Pavement should be kept “open” in appearance as far as possible. A walkway of at least one meter from the kerb must be kept open for pedestrians. Exotics such as Yuccas, Agave, (sisal), Cotoneaster berries, etc should be avoided.
- g.) Owners wishing to plant on their pavements should preferably obtain input from relevant municipal officials – the municipality absolutely reserves the right to remove problems on the pavement without any prior notice or compensation and might even recover costs.
- h.) The owner is responsible for any branches stretching from his/her/its property into the road an impeding pedestrians or trucks.
- i.) No plants listed in the applicable acts or ANY other with invasive qualities may be planted, either on pavements or within yards.
- j.) In general, indigenous species without heavy fruiting would be more desirable

10. CONCLUSION

The public is encouraged to report any trees (on council or private land) that may pose a danger or threat to property or life at telephone 044 801 6300, 044 801 6365, or e-mail to celeste@george.org.za or eugenem@george.org.za or karin@george.org.za or

avrilene@george.org.za in order for an official to investigate. The more complete the information, the easier to follow up. Precise information and even photographs will greatly assist.