

# Don't Cop it if you Lop it: A Guide to Dealing with Protected Trees

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Whether carrying out leisurely weekend gardening or undertaking a wholesale redevelopment of land, before taking a saw to any tree, consider whether that tree is protected!

## **What does 'protected' and 'tree' mean?**

Under the Planning and Building (Jersey) Law 2008 ("the Planning Law"), the Minister for Planning and Environment is required to maintain a list of protected trees, any tree that is detailed on that list falls within the scope of the relevant provisions of the Planning Law and is deemed to be 'protected'. Any such tree may not be cut down, uprooted, lopped, willfully damaged, destroyed, otherwise altered, harmed or interfered with without the Minister's permission.

The definition of 'tree' includes: a single tree of whatever age, genus, species, cultivar or variety; a group of trees; a shrub; a bush and a hedge, so it would be incorrect to assume that it is only trees that

are the subject of protection.

## **How do I know if my tree is protected?**

The Minister is required to make the list of protected trees available for inspection by the public at all reasonable hours. A Register of Trees may be viewed at [www.gov.je/PlanningBuilding/TreesHedges](http://www.gov.je/PlanningBuilding/TreesHedges). Although note the disclaimer that, "*not all trees that enjoy some form of protection provided by the planning law are on the list of protected trees. Some may be protected through a condition on a planning permit.*" It is recommended that if you have concerns as to whether a tree is protected or not, you should check with the Planning Department before undertaking any work.

## **How does the Minister decide what trees to protect?**

The Planning Department advises that trees are protected, "*where they have a high amenity value and where they make a valuable and important contribution to*

*the local environment.”*

If the Minister considers that a tree requires protection, he shall serve notice of his intention to list the relevant tree on the owner of the land on which the tree is growing or by displaying it in a conspicuous place on or near the tree. Anybody may make written representations to the Minister in respect of a proposal to list a tree. When considering whether to list a tree, the Minister must take in to account any such representations insofar as they relate specifically to the proposed inclusion of the tree on the list and may consult any person that the Minister considers has relevant expert knowledge.

Once the Minister has decided to include the tree on the list, he shall as soon as practicable thereafter serve notice of his decision on the owner, and (if different) the occupier, of the land on which the tree is growing.

### **How do you remove a tree from the list?**

If you have a listed tree on your property and wish to have it removed from the list, you need to satisfy the Minister that the relevant tree ceases to exist (but note below the penalties for unlawfully harming a tree!) or that it is no longer in the interests of the amenity of Jersey that it should be so protected. It would appear that the Minister considers the following as influential in this regard: the tree's size, life expectancy, position, the presence of other trees, its relation to its setting, its form and other special features e.g. if it is rare, of exceptional landscape value, if it screens an unpleasant view or if it is

important in a larger composition.

If the Minister agrees that it is no longer appropriate that a tree is listed, he will serve notice on the owner or display the notice in a conspicuous place on or near the tree advising of his intention to de-list that tree.

### **Getting the Minister's permission**

If you are dealing with a protected tree, you must obtain the Minister's permission before you carry out any work to that tree. You must provide: details about the protected tree (its species, location and site address details), details of the work that you wish to carry out and a statement as to the need for such work, any technical information which might be available, your contact details and the details of the owner of the tree, if different.

### **Penalties for breach of the Planning Law**

If a person breaches these requirements of the Planning Law, he shall be guilty of an offence and shall be liable to a fine. In determining the amount of the fine, the court shall have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence. An owner of land may also be ordered to plant a suitable tree or trees in a specified place on his land.

It is a defence for a person charged with an offence to prove that the tree was dead or dying or that it had become dangerous. The Planning Department advise that, nonetheless, they should be informed of this fact and of the intention to carry out work and

that is it advisable to secure the professional view of a qualified arboriculturalist in order to adequately justify the requirement for the work to the tree in question.

responsibility for that tree. It is easy to establish whether your trees are protected and if in doubt, contact the Planning Department or your lawyer before you carry out any works.

## **Conclusion**

Failure to consider whether a tree is protected may have significant consequences to the person with

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