

PART 1 – DUTY OF CARE OF TREE OWNERS**1.1****PURPOSE**

This “Handbook on Tree Management” (HTM) is developed by the Greening, Landscape and Tree Management Section (GLTMS) of the Development Bureau (DEVB). It provides the guidelines and standards of good practice in management of tree assets. The key objectives are:

- Raise public awareness of tree safety.
- Promote good standards of practice in arboricultural works.
- Enhance the quality of tree management works in private properties.

1.2**WHO IS THIS HANDBOOK FOR?**

This Handbook has been developed to assist Tree Owners, Property Managers and Qualified Professionals to better understand how to care for tree assets. Every management personnel or professional who is involved in tree management works should understand and incorporate proper arboricultural practice in planning and implementation of tree works.

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PART 1 – DUTY OF CARE OF TREE OWNERS**1.3 HOW THIS HANDBOOK CAN HELP****For Tree Owners**

- Understand your legal responsibilities for tree safety on your property.
- Understand the importance of routine tree inspections, quality tree maintenance and engaging Qualified Professionals to implement tree works.

For Property Managers

- Understand the role you play in tree management on behalf of your Tree Owners.
- Engage Qualified Professionals for undertaking tree works.

For Qualified Professionals

- Recognise your role and responsibilities in delivering quality tree works.
- Follow the HTM.
- Demonstrate competency and professionalism in your tree risk assessments and tree works.

PART 1 – DUTY OF CARE OF TREE OWNERS**1.4 HANDBOOK STRUCTURE**

The Handbook comprises the following three parts, together with a list of supplementary appendices.

- **Part 1** highlights the legal provisions in tree management and essentials for Tree Owners to undertake proper tree management;
- **Part 2** provides the key steps in tree risk management, which includes knowing the tree stock, undertaking tree risk assessment, mitigating tree risk and keeping tree inspection records; and
- **Part 3** emphasises the importance of general tree care through appropriate tree planting practices and regular tree maintenance.

While the HTM has broad coverage, it cannot be a comprehensive list of all tree management considerations, as tree management practices continue to improve as new technology, management practices and resources develop. The HTM is not intended to undermine new techniques or approaches that aim to add value to existing tree practices.

PART 1 – DUTY OF CARE OF TREE OWNERS**1.5 KNOW YOUR TREE ASSETS****1.5.1 Trees are Valuable Assets**

Effective tree management and maintenance is an investment for your property. Structurally stable and healthy trees can:

- Provide you a comfortable living environment.
- Add value to your property over time.
- Secure the safety of residents, owners and the public.
- Enhance our physical, emotional, intellectual and cultural well-being.
- Facilitate owners in procuring third party risks insurance and negotiating more favourable premium.

1.5.2 Trees are Living Organisms

Trees are living organisms that naturally grow and age with time. As trees grow, they may:

- Increase in size.
- Shed leaves and drop some branches.
- Deteriorate in health.
- Become susceptible to pest or disease and become weak.
- Be structurally damaged.
- Die.

Structural and health conditions of trees may deteriorate with age and change with surroundings. Poor management and improper arboricultural practices will accelerate their deterioration.

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Favourable growing conditions are the key to ensuring healthy tree growth. The following examples will affect your trees:

- Bad design: mismatch of tree species and growing place
- Bad growing condition: such as confined root space
- Bad supply: poor stock quality
- Bad installation: planting too deep
- Bad management: poor assessment of tree health and tree risk
- Bad maintenance: cutting the main root; lack of water; bad pruning; damaged by construction.

To Tree Owners:

You can contribute to tree safety and enjoy a beautiful landscape by good management of your tree assets.

1.6 MANAGE TREE SAFETY

To ensure human safety, Tree Owners should:

- Undertake management diligently to keep trees in healthy and structurally sound condition.
- Recognise hazardous trees.
- Take proper mitigation measures in a timely manner to reduce tree risk.

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1.7 LEGAL PROVISIONS FOR TREE MANAGEMENT**1.7.1 Common Law Duty of Care**

The Owner of a land has a common law duty of care to maintain his / her land, including trees growing on the land, so as to ensure that they will not pose danger to his / her neighbours and the public. The Owner can be held liable for personal injury and / or property damage arising from failure to observe the duty.

1.7.2 Building Management Ordinance (Chapter 344)

Where owners of a building have formed an owners' corporation (OC) under the Building Management Ordinance (BMO) (Chapter 344, Laws of Hong Kong), the responsibility for management of the common parts of the building, including gardens and trees, rests with the OC.

Under the BMO, an OC has a duty to maintain the common parts of the building in a state of good and serviceable repair and clean condition. Hence, an OC must properly manage and maintain landscape areas, such as lawns, gardens and trees, within the common parts of the building.

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In performing its duties and exercising its powers under the BMO, an OC is guided by the “Code of Practice on Building Management and Maintenance” issued by the Secretary for Home Affairs under section 44(1)(b) of the BMO. The purpose of the Code of Practice is to give guidance and direction as to the standards and practices of management and safety in relation to the common parts of a building for OC to observe and follow. Failure to observe the Code of Practice may be relied upon as tending to establish or to negative any liability which is in question in a civil or criminal proceeding.

The HTM forms part of the Code of Practice (in progress). OCs are advised to follow the HTM to achieve effective tree management and maintenance.

1.7.4 Occupiers Liability Ordinance (Chapter 314)

In the event of tree failure causing injury or fatality to a third party, the Owner can be held legally liable for a breach of the Occupiers Liability Ordinance (Chapter 314, Laws of Hong Kong)¹.

¹ The Occupiers Liability Ordinance (Cap. 314) imposes on occupier of premises, that is the person in control of the premises, a duty to his visitors to take such care as is reasonable in the circumstances to see that his visitors will be reasonably safe in using the premises for the permitted purposes.

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In the sale or grant of a plot of land, the Lands Department (LandsD) executes a lease with the purchaser / grantee, who will then be the owner of the land and is required to comply with the lease conditions. Leases executed at different times contain different conditions prevailing at that time. Lot owners (including the above purchasers / grantees and their subsequent assignees) have to check and comply with the lease conditions.

For lease of a private lot containing a tree preservation clause, the lot owner has to, except in an emergency situation, obtain written consent from LandsD for tree removal and severe pruning works. The application shall meet the requirements specified in the Lands Administration Office Practice Note No. 7/2007 or its subsequent updated version – Tree Preservation and Tree Removal Application for Building Development in Private Projects or its subsequent updated version. In granting a written consent, the relevant District Lands Office of LandsD (DLO) may impose conditions such as transplanting, compensatory landscaping or replanting as deemed appropriate.

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For the sake of public safety, emergency tree pruning or removal within a private lot can first be carried out by Qualified Professional(s) appointed by the lot owner if the tree within the lot is considered to pose an imminent danger where public safety is at risk after assessment by a professional employed by the lot owner meeting the requirements of the Lands Administration Office Practice Note Issue No. 7/2007 or its subsequent updated version. The lot owner or his / her representative has to submit a detailed report prepared by the professional to LandsD within 21 days after the pruning or removal of the tree. Submission of compensatory planting proposal should also be submitted to LandsD for approval. Maintenance of compensatory planting is including but not limited to conducting tree risk assessment at appropriate time to facilitate proper tree management and maintenance. Section 2.4.2 in this handbook is relevant.

In accordance with the lease conditions, if a lot owner is found in breach of the tree preservation clause without the prior consent of LandsD, appropriate action will be taken by DLO upon detection. Such action includes issuing warning letters to the lot owner, requiring the lot owner to carry out compensatory planting and / or pay a premium.

The information in this Section is for general reference only and should not be relied on as professional legal advice. Tree Owners are advised to seek assistance from your lawyers should you have doubts about your duties and liabilities in your specific case.

PART 1 – DUTY OF CARE OF TREE OWNERS**1.8 ESSENTIALS OF GOOD TREE MANAGEMENT****1.8.1 Engage Qualified Professionals for Tree Works**

Tree inspection, tree risk assessment and mitigation works involve arboricultural knowledge and require professional input. Tree Owners should:

- Engage Qualified Professionals to advise, supervise and handle all matters in relation to tree works.
- Select Qualified Professionals with good reputation and demonstrated experience for quality results.

Appendix 1 – Requirements of Qualified Professionals for Arboricultural Works

Appendix 2 – Sample Brief for Procurement of Arboricultural Services

1.8.2 Follow Standards and Best Practices

The GLTMS promulgates good standards in tree management and promotes professionalism of the arboriculture industry. Tree Owners should:

- Follow the GLTMS guidelines on tree management.
- Attend public talks and seminars on tree management arranged by the GLTMS or other professional associations.
- Visit the GLTMS website at www.greening.gov.hk to get up-to-date information on tree management.

PART 1 – DUTY OF CARE OF TREE OWNERS**1.8.3 Perform Routine Tree Inspection**

Routine tree inspection can help to identify early symptoms of deterioration in trees. Tree Owners should:

- Carry out regular tree inspection as part of day-to-day tree maintenance work.
- Undertake tree inspection after inclement weather to ensure tree stability.
- Undertake tree risk assessment before the onset of the wet season every year.

1.8.4 Purchase Third Party Risk Insurance

Section 28 of the BMO requires an OC to procure and keep in force in relation to the common parts of the building a policy of third party risks insurance to protect the interests of owners and third parties.

Owners of buildings with other building management bodies (e.g. owners' committee) should also as far as possible procure third party risks insurance to reduce their risks in times of accidents.

For details on Building Management (Third Party Risk Insurance) Regulation, please refer to the website on building management of the Home Affairs Department at www.buildingmgt.gov.hk