



TREES

YOU & YOUR NEIGHBOUR



Trees

Section 129C of the Property Law Act 1952 makes property owners responsible for any nuisance or damage their trees cause to neighbours, even if the trees were planted before they bought the property.

Decide first whether the nuisance that the trees are causing is worth the risk of souring relationships with your neighbours. You also need to decide whether the problem outweighs the benefits that the trees give both of you – such as beauty, privacy, shelter and shade. These are the sorts of things that the court will look at if you end up taking the matter through the District Court.

Try to work out a solution tactfully. Give neighbours time to think about what you are suggesting. They might be quite happy to trim or relocate their trees, if it means saving them. It is better to talk over the back fence than in court.

If you reach an impasse, you may need to take legal action. If you do, tell your neighbour first. How would you feel if you received a court order in the name of your neighbour without warning?

Your neighbour may co-operate if there is a legal obligation for them to take some action. If you cannot work it out informally with your neighbour, you may need to take court action and you will have to ask your lawyer to apply to the District Court for an order. Your neighbour will have the opportunity to let the court know of their views as well.

It should be noted that the Upper Hutt City Council does not have a bylaw currently in place with regard to trees growing on private property. Therefore, we are not able to become involved in neighbourhood disputes over trees.

Protected trees

Many trees are protected and you may not remove them or damage them in any way without obtaining a resource consent. What counts as a “protected tree” will vary among councils and may include specimen trees above a certain height, native vegetation or even “blanket protection” of all trees in your area.

Other forms of tree protection include the listing of significant trees in a District Plan and Heritage Orders or Consent Notices following subdivision under the Resource Management Act 1991. There are substantial fines for ignoring these protections, so before you start cutting trees, check with the council as to whether or not you need special permission.

Roots

The roots of a willow tree standing on another property continually block your drains. Twice in 18 months you have had to get a plumber to clear them. The plumber has warned you that this will be a regular exercise and expense unless the cause of the problem is completely removed. Even worse it could mean that you have to get new drains. You approach your neighbour about having the tree removed. They indignantly point out that the tree was well established on their property long before you bought the one next door, and they have no intention of removing the tree for you and your drains. Have you any comeback?

Yes. The law does not accept that a tree planted 30 years ago cannot be a “nuisance” today. If all the facts in this situation were presented in court, the neighbour would probably be ordered to remove the tree.

Some of the roots on your neighbour's macrocarpa tree start to push through your carefully manicured lawn. You ask your neighbour to do something about it but they say there is nothing that they can do. You then ask them to have the

tree removed. They are not prepared to do that. You decide to solve the problem by poisoning the roots on your side of the fence. Unfortunately the poison kills the tree and your neighbour threatens to take you to court for damaging their property. Can they do this?

Yes – the proper thing to do would have been to dig up and cut off the roots on your side of the boundary, or to take court action, rather than use poison that would lead to the death of the tree. You are allowed to remove any part of a neighbour's property that intrudes into your property but your right to take action stops at the boundary line between your property and your neighbour's. Using poison that would have an effect beyond your side of the boundary is illegal.

Leaves

A neighbour's oak tree continually drops leaves in the guttering of your house, forcing you to climb a ladder every few weeks to get the leaves out. Do you have to suffer this inconvenience?

If the branches causing the problem are growing over your side of the fence, you are allowed to prune them back to the boundary. If not, you can ask your neighbour to cut back the trees or remove them. If the neighbour disagrees, you could try and get a court order to solve the problem.

A large conifer growing on the other side of your back fence is obviously dying. You are concerned that at any time the tree, or part of it, could fall on your house. You ask your neighbour to do something about it. They tell you to mind your own business as the tree is doing no harm and in their opinion is unlikely to fall down on you or your house. But you are not convinced. Can you have the tree chopped down?

Yes, but first you must apply for a court order to have the tree removed. If you court agrees that the tree is likely to damage your house or cause a danger to anybody, the neighbour will have no choice but to cut it down once the order is made.

Branches

You buy a section. There is a large chestnut tree growing on the property next door, with branches growing over your side of the boundary fence. The law allows you to cut off the branches on your side, but they are long and thick, making it a major operation. Is your neighbour obliged to do the work or pay for it to be done?

No. Provided the branches are not causing any real nuisance, they are your responsibility if they are growing on your side of the fence.

You remove a large branch from a neighbour's plum tree that is growing over your property. This is quite legal but unfortunately the result of this "amputation" is that the neighbour's tree dies. Can you neighbour demand compensation?

No, you were within your rights when you cut off the branch on your side of the boundary, as long as the method you used was reasonable. It might be that any resulting damage to the tree was the neighbour's fault anyway, because they should have pruned the branch back when the tree was young (so that the life of the tree was less likely to be affected).

If the branches of your neighbour's tree encroach on your land (or the roots are causing a nuisance), you can cut them back to the boundary line. In law this is called "abatement." But unless you have your neighbour's permission, you cannot thin the whole tree yourself, trespass on your neighbour's property or chop down a tree growing on the boundary without an order from the court.

Remember that the parts of the tree removed (including any fruit) belong to your neighbour even if they hang or fall over your property.

If you need advice, ask an independent arboriculturist (a "tree doctor") for an assessment – some will provide this advice free if they are likely to get the work. If you don't want to trim the branches yourself, or cannot reach agreement with your neighbour, you will need to get an order from the District Court for the tree to be trimmed or removed.

Sunlight

Trees on a neighbour's property are blocking sunlight from your house and garden. Is this a good enough reason to ask that they be cut back?

Yes. Talk to your neighbour and try and find a solution both you can live with – does the tree really need to be chopped down? Could it be thinned? A mutually agreed solution is always preferable to a lengthy, costly and potentially bitter legal battle.

Views

When you bought your home 10 years ago, you had a great view from your lounge window. Now a line of trees has grown high enough to block your view completely.

The trees are not on your immediate neighbour's property but on property further down the street. Can you do anything about having them cut back?

It does not matter if the trees are on a neighbour's property or one further away. First, you should try approaching the owner of the property where they are growing – they may agree to trim the tops of the trees. If not, you will need to seek legal advice about taking the case to court to try and get an order – remember, this may be costly, and you may not win.

Fruit

Fruit trees growing on your property branch out over your neighbour's. The neighbour picks all the fruit growing on their side of the fence – can you do anything about it?

Yes. A neighbour must not take your property, even if the branches are hanging well over your neighbour's section. The fruit on them still belongs to you. However, the neighbour could exercise their right to cut off the branches which are "intruding" on to their property. Try working out a compromise with your neighbour.

Who pays?

If you have roots or branches cut back on your side of the boundary, you will probably have to pay. If you have applied for a court order, the presumption is that you will pay for the work to be done, although the court is able to make the other party pay if this is fair.

However, if the tree does damage to your property, the neighbour may have to pay – both for cleaning up the mess and making good on the damage. This is true even if the damage is caused by something beyond their control such as a storm, but only if they should have known their tree was unsafe and they had the opportunity to make it safe but had chosen to do nothing about it.