



Fruit

Problem: Fruit trees growing on your property branch out over your neighbour's. The neighbour picks all the fruit growing on her side of the fence. Can you do anything about it?

Advice: A neighbour must not take from your property without permission. Even if the branches are hanging well over your neighbour's section, the fruit on them still legally belongs to you. However, in the interests of neighbourly relations and the health of the tree, it's probably better to let them have any overhanging fruit - the neighbour could exercise the right to cut off the branches which are "intruding" on her property.



Fence damage

Problem: A pine tree growing on your neighbour's side of the fence has grown so large that its trunk is now pushing the fence over onto your property. As far as you are concerned this has already made it impossible to plant anything on your side of the fence near the tree, in case the fence topples onto your plants. You complain to your neighbour, but to no avail. The neighbour says the tree is on his property and apart from any branches that might grow out over your side, it is none of your business. Is he right?

Advice: No! The law is on your side in a dispute involving a plant or a construction on a neighbour's property which is damaging yours. The cost and upkeep of a boundary fence is normally halved between you and your neighbour, but in this case he is liable for the damage and must repair the fence or compensate you for the damage. However, the law goes further than this and says that if something is a continuing nuisance - and of course this tree will simply go on growing and pushing over the fence - then the cause of that continuing nuisance must be removed. In this case the neighbour could find he has to lose his tree.



Obstructed views

Problem: When you bought your home 10 years ago you had a great view from your lounge window. But now a line of trees has grown high enough to block your view completely. Can you do anything about having them cut back?

Advice: If negotiation with the tree owner fails, you can make an application under the Property Law Act to have the trees removed or trimmed. The Court can consider the obstruction, but also other issues such as the value of the trees to the wider community. This process could be costly and you may not win, so it is important to consider how much the tree is affecting you and your property and what the tree owner can reasonably be expected to do on his or her own land.



Local Arborist services

ALFA Contracts NZ Ltd: Tree Services: 07 308 7650
A1 Stump & Tree Services: 07 308 6963
Boyd Tree Services: 07 308 2096
Greenfingers Pruning Services - 07 308 4575 |
Hi-Trim Contractors Ltd: 07 308 7200
Treewise Tree Surgery: 027 286 8036

FURTHER INFORMATION:

This brochure is published by the Whakatāne District Council and is intended to provide general information only. It is not intended as a legal document and may not be applicable to all circumstances. In the case of inconsistency between this brochure and the District Plan, the District Plan takes precedence. The Operative Whakatāne District Plan & application forms are available from Whakatāne District Council Offices, Public Libraries and on the Council website www.whakatane.govt.nz

Whakatāne District Council

Civic Centre, Commerce street, Private Bag 1002, Whakatāne 3158
Phone: 07 306 0500 Fax: 07 307 0718
Website: www.whakatane.govt.nz

Murupara Service Centre

Civic Square, Pine street, Murupara
Phone: 07 366 5896 Fax: 07 366 5897

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Whakatāne District Council

Nuisance Trees - Useful Advice



www.whakatane.govt.nz



The Whakatāne District Council generally does not control the effects of nuisance trees on private property. Instead Council defers to the Property Law Act.

The Property Law Act 2007 says property owners are responsible for any nuisance or damage their trees cause to neighbours, even if the trees were planted before they bought the property. If a neighbour's tree is causing a nuisance, you have a range of options available, from a friendly chat through to a court order.

You should first approach your neighbour and try to explain the problem as you see it, as you might be able to reach an amicable solution.

If you do seek a court order to have a tree trimmed or removed on your neighbour's property, in most circumstances you will be required to meet the cost of the work. You will also have to provide evidence of the nuisance and convince the court of the merits of the action you seek.

Whakatāne has a number of well qualified arborists who can provide good advice and services to deal with tree issues. Please see overleaf for a list of local arborists.



Roots

Problem: A willow tree's roots on a neighbour's property continually block your drains. Twice in 18 months you have to get a plumber to clean them. He warns you that this will be a regular exercise - and expense - unless the cause of the problem is completely removed. Even worse, it could eventually cost you new drains. You approach your neighbour about having the tree removed. He indignantly points out that the tree was well established on his property long before you bought your property, and says he has no intention of removing his tree or helping you solve your drain problem. Have you any comeback?

Advice: Definitely. 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.

Problem: Some roots of your neighbour's macrocarpa tree have started pushing up your carefully manicured lawn. You ask your neighbour to do something about it, but she says there is nothing she can do. You then ask her to have the tree removed. She is 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 her property. Can she do this?

Advice: Yes. You should have dug up and cut off the roots, or taken court action, rather than use a poison which could cause the death of the tree. You are allowed to remove any part of a neighbour's property that intrudes into yours, 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

Problem: 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?

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



Branches

Problem: You buy a section. There is a large chestnut tree growing on the next door property, with branches growing over onto 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?

Advice: No. Provided the branches are causing no real nuisance, they are your responsibility if they are growing on your side of the fence.

Problem: 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 your neighbour demand compensation?

Advice: No. You were within your rights when you cut off the branch on your side of the boundary. It could be argued that any resulting damage to the tree was the neighbour's fault because he did not prune the branch when it was young and the life of the tree was less likely to be affected.



Sunlight

Problem: Trees in a neighbour's property are blocking sunlight from your house and garden. Is this a good enough reason to insist they be cut back?

Advice: Yes. If neighbourly sweet reason fails, then you can take legal action. You will have to convince a court that the trees are having an adverse effect on your property and your enjoyment of it. If the court agrees, the neighbour will have to cut those trees back.

