

# Dealing with Trees on a Neighbour's Property

## A simple guide for homeowners

If you live in a non-rural area<sup>1</sup> and have concerns about a tree located on a neighbour's property or on the boundary between your property and a neighbour's property, you may need to obtain the consent from the neighbouring property's owner and from Council before any works can be undertaken.

This fact sheet will provide you with the answers to frequently asked questions and offer some useful communication tips about how to approach your conversation with your neighbour.

### **The tree is on the boundary between my property and my neighbour's – Can I submit to Council an application for its removal?**

When the trunk of the tree is on the boundary between two properties, the tree is considered to be jointly owned. Any Tree Permit Application submitted to Council requires the consent of both property owners.

### **The branches of my neighbour's tree overhangs my property – Can I prune them without consent?**

When a tree is growing on your neighbour's property, but its branches overhang your property, you have a common law right to prune the overhanging branches to the property boundary, as long as the tree is not made dangerous or unstable in doing so. A Council issued permit will be required to prune more than 10% of the tree. All pruning must be carried out in accordance with the Australian Standard for the Pruning of Amenity Trees.

### **My neighbour's tree doesn't encroach on my property, but I am still concerned about the risk it poses – What can I do?**

A tree does not necessarily need to encroach on an adjoining property to present a risk to that property. You can speak with your neighbour with a view to coming to an agreed position about the tree management or removal.

### **I would like to discuss options for managing a tree with my neighbour – How should I approach it?**

The first step is to contact your neighbour and politely share with them your thoughts. Think about how you can clearly define the issue and what impact the

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<sup>1</sup> Your property must be zoned either R1, R2, R3, R4, R5, B1, B2, B3, B4, B5, B7, IN2, IN4, RU5, SP1, SP2, RE1, RE2, E2, E3, or E4 to be classified as non-rural. You can find your property zoning by entering your address into the online eSpatial Planning Viewer: <https://www.planningportal.nsw.gov.au/spatialviewer/#/find-a-property/address>

issue is having on your property and lifestyle. You may like to use the table below to collect your thoughts before approaching your neighbour.

Issue	Impact on my property and lifestyle	Why is it so important?
Overhanging branches	Risk of branches falling	My kids need a safe yard to play in.
Unhealthy tree – signs of decline	Risk of tree falling	If the tree were to fall with the prevailing winter winds, it would crash into my bedroom roof.
Large tree with vigorous canopy	Lots of shading	Impacting on the effectiveness of my solar panels and shading my living room too much.

When you are ready, indicate your concerns clearly to your neighbour and provide them with the information they need to progress the conversation (perhaps consider sharing this fact sheet and Council’s fact sheet on tree removal permits).

This can be done verbally or in writing. It is always a good idea to keep a record of your conversations; noting what was communicated, who it was communicated with, and the date and time of the communication.

Remember, the aim of this initial discussion is to reach an agreement everyone can be satisfied with. Stay open-minded about options for managing the tree, be willing to listen to your neighbours ideas and concerns, and remain calm and polite.

Options you may like to discuss with your neighbour could include:

- Regular pruning of the tree
- Root pruning
- Installation of root barriers
- Removal of the tree
- Replanting of alternative trees and/or in alternative locations
- Property management arrangements, e.g. installation of a pool cover, alternative fence design, assistance with the relocation of moveable structures (e.g. cubby house, clothesline, solar panels, etc)

Some key points to remember when discussing the matter with your neighbour:

- There is a duty of care from the owner of the tree to ensure the tree is in a safe and healthy condition. You may consider engaging a qualified arborist to assess the tree on your behalf and expense, and then provide a copy of the arborist’s report to the owner or property manager of the neighbouring property.

- There is no legal obligation of the owner of the tree to prune or remove a tree which overhangs the boundary, as long as the tree is in a safe and healthy condition.
- Costs of tree maintenance work and removal may be difficult for the owner of the neighbouring property to meet. While the owner of the tree is responsible for maintaining the safety of the tree, cost-sharing arrangements can be negotiated to expedite a good outcome.

### **The neighbouring property is a rental property, holiday house, or otherwise infrequently occupied – How can I get in contact with my neighbour?**

There are two options available to you if you are finding it difficult to get in contact with the owner of the neighbouring property: 1) You can contact the property manager about your concerns. The details of the property manager can be obtained by asking the occupier of the neighbouring residence. 2) You can contact Council and request a reverse notification, whereby Council contacts the neighbour on your behalf.

### **I can't reach an agreement with my neighbour – How can I get resolution?**

If you are unable to reach an agreement with your neighbour on how to manage the tree(s), you will need to contact Community Justice Centre by telephoning 1800 990 777 to resolve the issue through mediation. You can find more information about the Community Justice Centre online at: <https://www.cjc.justice.nsw.gov.au/>

### **My neighbour and I want to pursue removal of the tree – What do we do now?**

Depending on the tree and circumstances, you may need to obtain a Council issued permit before you can remove the tree. Please consult Council's fact sheets on "Removing Trees without Council Permission" and "Council Issued Permits for Tree Removal".

### **Need further assistance?**

Contact Council at on 02 4988 0255 or email [vmo@portstephens.nsw.gov.au](mailto:vmo@portstephens.nsw.gov.au)