

Excessive Noise Directions on the persons responsible, requiring that the problem be resolved.

This is usually a simple matter of turning down the volume dial on a stereo, but there are other issues such as industrial noise which are not so simple to resolve.

We are also able to issue an Abatement Notice where a problem is considered unreasonable.

There are major differences between the two remedies. Excessive Noise Directions last just 72 hours, while Abatement Notices last until either we are willing to remove them or until an appeal is lodged and decided on by the Courts.

Where these notice procedures are ignored, we have the right to enter property and either prevent the noise or remove the equipment. Equipment is only returned as and when we are satisfied there will be no repetition of the problem.

Council funds an out of hours service (0800 801 350) that is always available to respond to noise complaints outside of normal business hours. During normal office hours, please contact Council's main office (03 419 0200).

### Summary

All the disputes outlined in this brochure can usually be resolved with a combination of goodwill and compromise.

Try to work out a solution tactfully. Give your neighbour time to think about what you are suggesting. They may be happy to work in with you, or compromise if it means saving them time and money. After all, it is far easier to talk over the fence than it is in court.

If you can't reach an agreement, you may need to contact us or to take legal action. However, please remember that all Council can do is enforce the law as it stands - we can't make people be good neighbours!

If you have any questions on any of the information outlined in this brochure, please do not hesitate to contact us on 03 419 0200 and one of our staff members will be happy to help.



### Clutha District Council

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Clutha District Council

## Trees, fences and noise

- a guide to common neighbourly disputes



## **Introduction**

Disputes between neighbours can arise from a number of causes, but the most common issues tend to be trees, fences and noise.

The law provides a solution in many cases, but does not cover every case in which disagreements arise.

## **Tree Branches**

If tree branches hang over the boundary fence, they can be cut or trimmed back to the boundary by the neighbour. The owner of the tree cannot be asked to pay for the cost of removing the branches, unless the branches were causing damage or nuisance (for example, damaging the fence).

However, remember that if the amount of trimming is excessive or affects the health of the tree, the owner may be able to claim compensation if the tree dies.

Fruit or flowers growing on overhanging branches do belong to the owner of the tree and should not be picked by the neighbour.

## **Tree Roots**

Roots that cross the boundary can also be cut or trimmed by the neighbour. However, the roots cannot be poisoned because this could harm the whole tree.

The neighbour's right to deal with the tree ends at the boundary, so if the roots are poisoned and the tree dies, the owner could claim compensation.

If the roots are causing damage to the neighbour's property, then the neighbour can claim the cost of repairs from the tree's owner at the Disputes Tribunal, or apply to the District Court for an order to have the tree removed. An example of damage to property caused by roots is the blocking of drains.

## **Obstructed view**

The District Court has the power to order removal or trimming of any tree.

If any tree has grown so high that it is blocking your view, or enjoyment of your land, you may take the matter to Court. The Court will consider elements of danger,

obstruction of view, interference in the enjoyment of land, as well as environmental and public amenity factors.

If the Court does grant an order requiring the obstruction to be removed, then the neighbour, not the tree owner, is responsible for the costs of that work.

## **'Acts of God'**

If a tree blows over in a storm and damages a neighbour's property, this is an 'act of god' and the damage cannot be blamed on either neighbour.

The neighbour who suffered the damage should make a claim with their insurance company.

## **Trees on or overhanging public land**

Please remember that trees and shrubs on private property are the responsibility of the landowner.

If trees overhang onto public land - for example, footpaths and roads - and are considered a danger to the public, then we will request that you maintain the trees. If you do not, we can complete any necessary work and charge the landowner.

Similarly, the Electricity Authority can prune any trees on private land which are interfering with overhead power lines.

If a tree on public land is creating a problem, then you can apply to Council to have the tree trimmed or removed.

We have a criteria we use when determining whether a tree on road reserve may be trimmed and at whose cost. Please refer to our 'Trees Shading or Overhanging Road Reserve' brochure for more information on trees overhanging onto public land, and trees on public land.

## **Fences**

Property owners can enter into agreements or covenants covering fencing matters. These may be registered against the titles of the land affected, so that future owners will also be bound for up to 12 years after registration. An agreement or covenant covering fencing matters may be a useful way to help prevent any future misunderstandings.

But unless there is an agreement to the contrary with your neighbours, then:

- All fences must be on the boundary line;
- In accordance with the Fencing Act 1978 the cost of erecting and maintaining a boundary fence is shared equally between the affected land owners. In the case where the landowners cannot agree on any matter arising from the proposed fence, an application can be made to the District Court for the Judge to give orders. This is obviously time consuming and costly and should only be used as a last resort when the parties cannot agree on an outcome;
- Where an existing fence is damaged by a landowner or occupier and a dispute arises regarding the costs of repair, either party can take the disagreement to the Disputes Tribunal. There is a maximum limit which can be claimed if you wish to use this process;
- A compulsory contribution to the cost of a fence cannot be obtained unless a fencing notice under the Fencing Act has been served on the adjoining owner and other procedures followed;
- Usually in a new subdivision, the subdividing owners exempt themselves from contributing towards the cost of a fence;
- An occupier of a residential property may apply to the District Court for an order to remove or alter a fence where the fence is harming the neighbour's land or unduly obstructing a view.

All disputes concerning a fence such as its type and cost can be dealt with by the court, but it is obviously better to reach an agreement if you can.

## **Noise**

Council is responsible for maintaining a service to control excessive or unreasonable noise. Noise, simply put, is unwanted sound and it can be a real problem if it interferes with normal living. If someone is unable to concentrate or if their sleep is disturbed through noise it can be a significant stress factor.

We are able to issue short term notices known as