



It is not uncommon for people to landscape their property by planting trees along or near the border of their property. As the trees grow, branches can overhang a neighbouring property and root systems can intertwine with pipes or undermine pathways or house structures.

If you reside in Armidale, the Armidale Dumaresq Council requires that trees should not be removed or trimmed without the prior consideration of Council. Although there are circumstances where Armidale Dumaresq Council Approval is not required, (fact sheets are available on the Council web site), it is prudent to seek the advice of council in the first instance.

Noxious weeds are managed differently. A list of noxious weeds can be found on the NSW Department of Primary Industries website or by consultation with the local council. Noxious weeds are not to be grown and owners are expected to remove or control the growth of these plants. If an offending neighbouring plant is actually a noxious weed, the local council may be able to issue a weed control notice pursuant to Noxious Weeds Act 1993.

It is prudent before any legal action between neighbours is taken to:

- Advise the neighbour that owns the tree or has noxious weeds of the problem.
- Negotiate for a solution. The court will not make orders unless a reasonable effort to negotiate has been made first. These types of disputes between neighbours are very common and ideally resolved by negotiation.
- Request the advice and permission of Council before any tree is pruned or removed. Local Councils protect certain Trees with preservation orders made under the Environmental Planning and Assessment Act 1979. These orders mean that no one can alter the tree without the Councils consent or they will risk a large fine.
- Engage an Arborist. Any damage caused to a tree as the result of trimming or pruning will be the responsibility of the person who prunes the tree. Trimming tree roots may also

undermine the stability of the tree.

In some minor cases, an adjoining property owner who is troubled by a neighbouring tree, or tree roots should firstly notify their neighbour of the issue (and propose a solution). After discussing the proposed Tree trimming with the tree management officer at the local Council they may organise to trim the neighbour's tree branches or tree roots back to the boundary line only. An owner of a tree is not liable to contribute toward the cost of the trimming of their tree back from a neighbouring fence unless an order has been made.

If a neighbour is made aware of concerns with a tree but fails to address these concerns and prevent any potential damage, then the owner of that tree may be found liable for any damage subsequently caused by the tree.

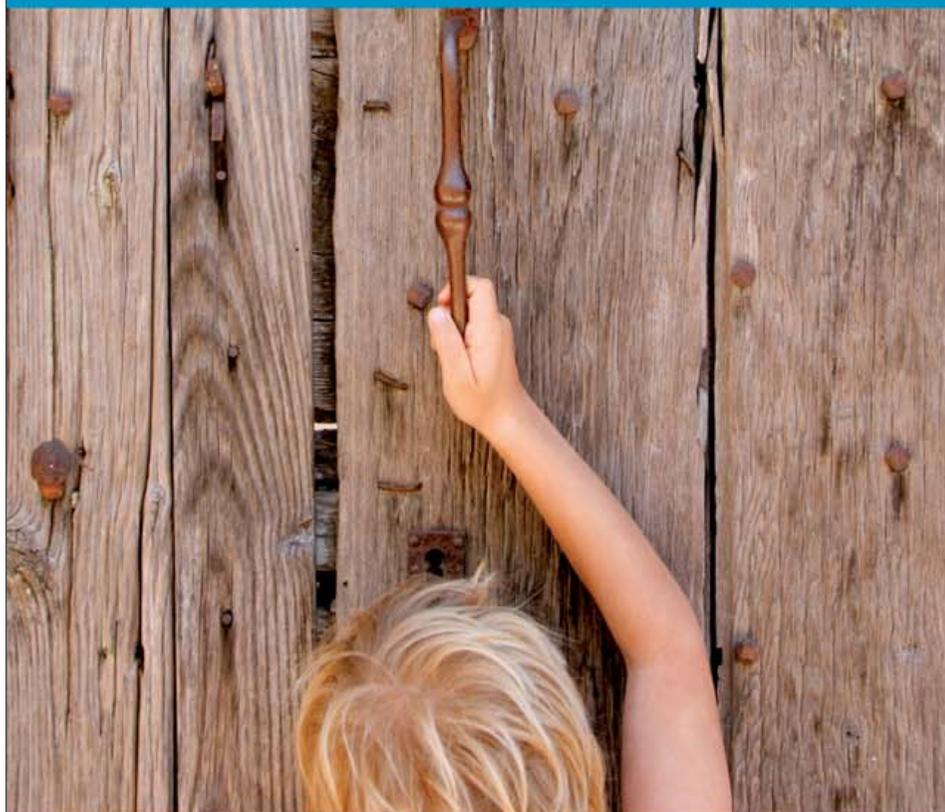
If after consultation with the Council and all negotiations with the adjoining neighbour have failed to address trees that are dangerous or cause actual property damage, it may be time to seek legal advice to consider an application to the Land and Environment Court to make orders for the trimming or removal of the tree. Council is to be notified and given a copy of the application. This application is made pursuant to The Trees (Disputes Between Neighbours) Act 2006 (NSW).

The Court will consider Council's position and authorisation, and any relevant regulation or preservation order, any historical or cultural significance of the tree, the value of the tree to public amenity or scenery, how the tree affects the eco system, retaining wall or soil stability and finally the actual threat of potential damage which could be caused by the tree.

The Court can then also make orders to account for any damage caused to the property of others by the tree. A Court can also make orders for the trimming or removal of the tree if required. Heavy fines can be imposed for a failure to comply with Court orders.

Jane C. Pfister
Solicitor

Thinking property



EstatePlus

more than just conveyancing

Solicitors

From commercial, insurance and business transactions to family, employment and estate matters.

Conveyancers

Fast, accurate detailing of all property transactions.

Mediation

Sensitive dispute negotiation to help you avoid going to court.

Notary Public

Witnessing and certifying the validity of documents, affidavits and depositions.

Migration Agent

Negotiating with government on your behalf for family, lifestyle or career reasons.

LEGALMINDS
thinking together



www.legalminds.com.au

T 1300 642 166

E talktous@legalminds.com.au

157 Beardy Street Mall, Armidale