Trees (Disputes Between Neighbours) Act 2006 No 126

New South Wales

The Court has annotated the *Trees (Disputes Between Neighbours) Act 2006* (referred to as the Trees Act or simply the Act) to assist understanding of how the Court has interpreted and applied the provisions of the Act. The annotations are in blue. The annotations are provided for guidance only and do not constitute legal advice or a judgment on the interpretation or application of the provisions of the Act.

The notes provided to s 18 were included by Parliament in the Act and are not an annotation made by the Court.

Long title

An Act to provide for proceedings in the Land and Environment Court for the resolution of disputes between neighbours concerning trees; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Trees (Disputes Between Neighbours) Act 2006*.

In *Robson v Leischke* (2008) 72 NSWLR 98; (2008) 159 LGERA 280; [2008] NSWLEC 152 (*Robson*) at [136], Preston CJ considered the scheme of the Act, stating:

> "The *Trees (Disputes Between Neighbours) Act* 2006 establishes a separate, statutory scheme whereby:
>
> (a) a specified class of person who has suffered, is suffering or is likely to suffer a specified harm may apply to the specified court (the Land and Environment Court of New South Wales) for orders of a specified nature in relation to trees (as defined) situated on specified land;
>
> (b) the Court must be satisfied that certain preconditions have been met before it can make an order under the Act;
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> (c) the Court must consider specified matters in determining the application; and
>
> (d) the Court is given a wide charter to make orders to remedy, restrain or prevent specified harm as a consequence of the tree the subject of the application."

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

The Act originally commenced operation on 4 December 2006. Following a review of the Act by the Department of Justice and Attorney General in 2009, the Act was revised and amended in 2010 to broaden its scope. A copy of the Department of Justice and Attorney General's 2009 report by can be found on the following link: Review of the Trees (Disputes between Neighbours) Act 2006.

3 Definitions

(1) In this Act:

council has the same meaning as it has in the *Local Government Act 1993*.

Crown land has the same meaning as it has in the *Crown Land Management Act 2016*.

interfere with a tree includes cut down, fell, remove, kill, destroy, poison, ringbark, uproot or burn a tree or any part of a tree (including its roots).

owner of land includes the occupier of the land.

the Court means the Land and Environment Court.

tree includes any woody perennial plant, any plant resembling a tree in form and size, and any other plant prescribed by the regulations.

Clause 4 of the *Trees (Dispute Between Neighbours) Regulation 2024* prescribes the following plants for the purposes of the definition of tree at s 3(1) of the Act: bamboo, tiger grass, giant clumping grass and any plant that is a vine.

For a general commentary on the definition of "tree" in the Act, see *Robson* at [137]-[141].

A "tree" includes a tree that has been reduced to a bare trunk or a stump that is still connected to the soil as well as a tree that has died: *Robson* at [147].

window includes a glass sliding door, a door with a window, a skylight and any other similar thing.

Solar panels are not considered windows for the purposes of the Act: see *Hendry & anor v Olsson & anor* [2010] NSWLEC 1302 at [29]-[30].

(1A) For the purposes of this Act:

(a) a reference to land within a zone designated "rural-residential" includes a reference to land within a "large lot residential" land use zone, and

(b) a reference to land within a particular designated zone includes a reference to land within any zone prescribed by the regulations as a zone equivalent to that particular designated zone but does not include a reference to land within any zone prescribed by the regulations as a zone that is not equivalent to that particular designated zone.

(2) Notes included in this Act do not form part of this Act.

4 Act applies to trees on certain land

(1) This Act applies only to trees situated on the following land:

(a) any land within a zone designated "residential", "rural-residential", "village", "township", "industrial" or "business" under an environmental planning instrument (within the meaning of the *Environmental Planning and Assessment Act 1979*) or, having regard to the purpose of the zone, having the substantial character of a zone so designated,

The Court must be satisfied that the tree is situated on land that falls within one of the above-mentioned zones. It is the applicant's responsibility to check the zoning of the land prior to lodging the application to ensure that the tree is situated on land within one of the designated zoning categories.

The Court has sometimes found land within another zone to have the substantial character of a designated zone: for instance, in *Aaron v Haynes*

[2007] NSWLEC 294 (a Living Bushland Conservation Zone) and in *Schutz v Kotsis* [2016] NSWLEC 1026 (a Primary Production Small Lots Zone). On the other hand, the Court has found some land in other zones not to be so characterised: in *Bayley & Waller v Kiernan* [2008] NSWLEC 1291 (a Scenic Protection – Rural Small Holdings Zone), and in *Ednie v Melman* [2019] NSWLEC 1594 (a Rural Landscape Zone).

(b) any land of a kind prescribed by the regulations for the purposes of this section.

No kind of land has been prescribed by the regulations for the purposes of this sub-section.

(2) This Act does not apply to trees situated on:

(a) any land that is vested in, or managed by, a council, or

While the Act does not apply to trees on land owned or managed by a council, it may apply to trees on other Crown land (for example, schools, public housing and hospitals). The Court has determined matters involving trees on Crown land: see *Maguire v Crown in the Right of the State of New South Wales (North Ryde Public School)* [2007] NSWLEC 587; *Taylor v Department of Housing* [2010] NSWLEC 1172.

(b) any land of a kind prescribed by the regulations.

No kind of land has been prescribed by the regulations pursuant to this sub-section.

(3) For the purposes of this Act, a tree is situated on land if the tree is situated wholly or principally on the land.

An owner of land can only apply for orders regarding a tree that is situated wholly or principally on adjoining land. This restriction within the Act differs from the understanding of tree ownership according to common law: see *Robson* at [151]-[155].

The applicant bears the onus of proving, on the balance of probabilities, that the tree is situated wholly or principally on the adjoining land: *Drolz v Sinclair* [2008] NSWLEC 34.

If there is doubt as to where a tree is situated in relation to the boundary, the Court may direct that a survey be undertaken to define the location of trees which appear to be straddling a property boundary (*Vella v The Owners of Strata Plan 8670* [2007] NSWLEC 365) or in situations where the boundary is unclear (*Barnett v NSW Land & Housing Corporation* [2011] NSWLEC 1033). In some instances, the dividing fence between the parties' properties may not be an accurate representation of the actual boundary as it may not have been erected along the boundary: see *Ross v Filactos & anor* [2012] NSWLEC 1315.

The survey must accurately depict the configuration of the base of the tree and its location with respect to the boundary: see *Awad v Hardie (No 2)* [2010] NSWLEC 1258. The Court has found that a tree straddling the boundary, where more than 50% of its stem area at ground level was on the respondent's land, should be regarded as situated principally on the respondent's land: see *Brown & anor v Weaver* [2007] NSWLEC 738 at [7]. In *Chan v McDonald* [2018] NSWLEC 1692, a tree with 61.5% of its stem area situated on the respondent's land was held to be situated principally on the respondent's land.

Nevertheless, as a tree may take different forms, such as a single trunk, multiple trunks, epicormic growth from a lignotuber or suckering from a common root system, it is not possible to give a single definitive statement of when a tree will be situated principally on land.

The Court may also direct that a survey be undertaken in situations where there is uncertainty regarding the ownership of the property alleged to have been damaged by a tree: see *Wazrin Pty Ltd v Pearson* [2009] NSWLEC 1420.

(4) Without limiting subsection (3), a tree that is removed following damage or injury that gave rise to an application under Part 2 is still taken to be situated on land for the purposes of the application if the tree was situated wholly or principally on the land immediately before the damage or injury occurred.

A tree that was removed was considered still to be situated on land in *Baker v Grabovac* [2010] NSWLEC 1289 at [5].

5 Action in nuisance

No action may be brought in nuisance as a result of damage caused by a tree to which Part 2 applies or as a result of an obstruction of sunlight to the window of a dwelling, or of a view from a dwelling, caused by trees to which Part 2A applies.

In *Robson* at [218], [219], Preston CJ noted that this provision limits some, but not all, actions in nuisance and does not affect other common law actions. His Honour said:

> "218. Section 5 of the *Trees (Disputes Between Neighbours) Act 2006* provides that "no action may be brought in nuisance as a result of damage caused by a tree to which this Act applies". Hence, if damage is caused by a tree to which the Act applies, a person whose property is damaged by the tree cannot bring a common law action in nuisance but must instead make application under the *Trees (Disputes Between Neighbours) Act 2006* to the Land and Environment Court. However, if the damage is caused by a tree to which the *Trees (Disputes Between Neighbours) Act 2006* does not apply, a common law action in nuisance can still be brought.
>
> 219. The *Trees (Disputes Between Neighbours) Act 2006* contains no limitation on bringing common law actions in trespass or negligence, regardless of whether the tree concerned is one to which the *Trees (Disputes Between Neighbours) Act 2006* applies. The Land and

Environment Court, however, has no original jurisdiction to hear and determine such common law actions, nor would such actions be ancillary to a matter that falls within jurisdiction such as an application under the *Trees (Disputes Between Neighbours) Act 2006* but rather are separate causes of action: see *National Parks & Wildlife Service v Stables Perisher Pty Ltd* (1990) 20 NSWLR 573 at 582; *Mitchell v Waugh* (1993) 82 LGERA 44 at 49; *Nix and Dunn v Pittwater Council* (1994) 84 LGERA 199 at 203-205."

6 Authorisation of work or activity regulated by or under other Act

(1) Except as provided by subsection (3), an order under Part 2 or 2A does not authorise or require a person:

(a) to carry out any work or engage in any activity for which a consent or other authorisation must be obtained under any other Act without that consent or authorisation, or

(b) to carry out any work or engage in any activity that is prohibited by or under any other Act.

(2) Except as provided by subsection (3), a person may not apply to the Court for an order under Part 2 or 2A if the carrying out of the work or engagement in the activity concerned is prohibited by or under another Act.

(3) An order under Part 2 or 2A has effect despite any requirement that would otherwise apply for a consent or other authorisation in relation to the tree concerned to be obtained under the *Environmental Planning and Assessment Act 1979* or the *Heritage Act 1977.*

When the Court makes orders for works to a tree, those works can be carried out without obtaining a consent or other authorisation that otherwise might be required under the *Environmental Planning and Assessment Act 1979* or the *Heritage Act 1977* (s 6(3)). For instance, a tree permit from the local council will usually not be required to remove or prune the tree. However, Acts other than the *Environmental Planning and Assessment Act 1979* or *Heritage Act 1977* may require consent or other authorisation to be obtained to carry out the works and if so, this consent or authorisation must be obtained by the affected party (s 6(1)): for example, see *Yam v Tavakoli* [2024] NSWLEC 1781. The differing roles of Court orders and council consents are discussed in *Ghazal v Vella (No. 2)* [2011] NSWLEC 1340.

Part 2 Court orders – trees that cause or are likely to cause damage or injury

7 Application to Court by affected land owner

An owner of land may apply to the Court for an order to remedy, restrain or prevent damage to property on the land, or to prevent injury to any person, as a consequence of a tree to which this Act applies that is situated on adjoining land.

Only an "**owner of land**" may make an application to the Court. An "**owner of land**" is defined in s 3(1) of the Act to include "the occupier of the land" as well as the person who owns the land. As to the potential scope of the concepts of owner of land and occupier of land under the Trees Act, see *Robson* at [158]-[160].

The applicant must be an affected owner of land. An applicant will be affected if the tree situated on the adjoining land causes or is likely to cause damage to property on the affected landowner's land or injury to any person.

The Court's procedure, if an application is made on the basis of a tree causing "damage to property" on land, and more than one parcel of land is affected, is to require separate applications for each affected landowner: for instance, see *Kounavis v Roux; Hickin v Roux* [2021] NSWLEC 1646.

However, if land has multiple owners, any one of them can apply as the application may be made by an owner: see *Treeves v Hedge* [2010] NSWLEC 1344 at [17]-[21].

The necessity to ensure that the affected landowner makes an application regarding damage to property is outlined in *Russell v Parsons* [2009] NSWLEC 1026 at [2]-[4].

A person with a right of carriageway over another person's land might not be an owner or occupier of the land: see *Liu v Morris* [2012] NSWLEC 1345.

The application must concern a tree situated on **"adjoining land**". The Court has applied the decision of the Court of Appeal in *Hornsby Shire Council v Malcolm* (1986) 60 LGRA 429, that 'adjoining' is not limited to meaning 'immediately linked to' or 'contiguous with'. Trees located across a public street (*P. Baer Investments Pty Limited v University of New South Wales* [2007] NSWLEC 128) or separated by a public walkway (*Murray v Shoebridge* [2007] NSWLEC 785) from the applicant's property have been held to be 'on adjoining land'. See also *Robson* at [157].

In *Cavalier v Young* [2011] NSWLEC 1080, the Court held that land joined only by a corner post is adjoining land for the purpose of the Act. In *Murray v Li* [2018] NSWLEC 1209, two properties located on separate corners of a T-junction residential street, were found to be adjoining.

The Court held in *Dive v Lin & anor* [2017] NSWLEC 1348 that properties separated by another residential property were not 'adjoining' for the purposes of the Trees Act. Preston CJ provided further analysis on the appeal in *Dive v Lin and Liu* [2017] NSWLEC 153 at [15]-[51]

Once the Court determines an application by either dismissing it or making orders, the Court's decision is final and cannot be reviewed except on appeal. An applicant cannot seek to re-open the case and seek further or different orders to the orders the Court made, except for the purpose of working out the orders made: see *Urquhart v Hayman (No 2)* [2012] NSWLEC 269 at [83]-[84]. An applicant cannot re-litigate an application that has been dismissed by the Court, unless the circumstances have changed materially: see *Xu v Johns* [2024] NSWLEC 33 at [69]-[83] and see *Hinde v Anderson & Anor* [2009] NSWLEC 1148 at [34]-[38]. Changed circumstances may include deterioration

in the health of the tree or further damage to property since the previous application was determined by the Court.

8 Notice of application for order to be given to owners of affected land

(1) An applicant for an order under this Part must give at least 21 days notice of the lodging of the application and the terms of any order sought to:

The Court has produced 'Service of Documents – A Guide for Self-Represented Litigants', which explains how notice is given to the people specified in s 8(1)(a)-(c).

The period of 21 days is from the time of serving of the application until the date of the preliminary directions hearing. The Court considers that this period is available for parties to negotiate an agreement: see *Ball v Bahramali & Anor* [2010] NSWLEC 1334.

(a) the owner of the land on which the tree is situated, and

The applicant must identify in their application the owner or owners of the land on which the tree is situated. Information on title searches that will establish who owns the property can be found on the NSW Land Registry Services website https://www.nswlrs.com.au/.

An application for compensation for damage to property must be made against the owner of the adjoining land at the time the tree caused the damage. This may not be the current owner of the adjoining land: see *Thornberry & Anor v Packer & Anor* [2010] NSWLEC 1069 at [5]. If the land has changed ownership over the period in which the damage is said to have occurred, an applicant may make an application against the current owner but the former owner may also be joined in the proceedings: see *Smith & Hannaford v Zhang & Zhou* [2011] NSWLEC 29 and *Cincotta v Huang and ors* [2011] NSWLEC 1086.

(b) any relevant authority that would, in accordance with section 13, be entitled to appear in proceedings in relation to the tree, and

The first hearing before the Court is primarily a procedural one which sets a timetable leading up to a final hearing of the application. Appropriate directions in the Court's Usual Directions for tree applications are made. The final hearing will usually be an onsite hearing.

In order to ensure that the relevant local council is aware of this process, the Court will usually require that a copy of the directions be provided to the local council and that the Court be satisfied that this occurs (see Usual Directions 3 and 4). A similar position will apply if the Heritage Council is entitled to be a party to the proceedings.

(c) any other person the applicant has reason to believe will be affected by the order.

While any one owner of the affected property can make an application, all owners of the property where the tree is situated must be identified and will be respondents in the proceedings.

The Court may direct the applicant to give notice to others affected by orders, such as other nearby landowners: see *Carnus v Chiaraglio* [2011] NSWLEC 1133.

(2) The Court may direct that notice of an application be given to a person or that notice be given in a specified manner or within a specified period.

In some circumstances, the Court may make orders for substituted service permitting the applicant to give notice to, for example, the owner of a rented property by giving a copy of the application to the real estate agent who manages the property. This will usually only be done when attempts to give notice of the application directly to the property owner have proved unsuccessful: for example, see *Foran v Khiabany & anor* [2008] NSWLEC 1294 at [24].

(3) The Court may waive the requirement to give notice or vary the period of notice under this section if it thinks it appropriate to do so in the circumstances.

The Court has shortened the requirements for the notice period in a number of cases where an imminent risk of damage or injury justified accelerating the timetable for the hearing process.

9 Jurisdiction to make orders

(1) The Court may make such orders as it thinks fit to remedy, restrain or prevent damage to property, or to prevent injury to any person, as a consequence of the tree the subject of the application concerned.

Preston CJ discussed the Court's power to make orders in *Robson* at [211]-[217]. Although the Court's powers are not unlimited, the Court does have a wide discretion to make those orders it considers appropriate "to remedy, restrain or prevent damage to property, or to prevent injury to any person" in light of the facts of the case.

The Court is not required to make the orders sought by the applicant, but can make orders "as it thinks fit" given the circumstances, the evidence, and the jurisdiction established by the Trees Act. Before making any orders the Court must be satisfied of the matters in s 10 of the Act and must consider the matters in s 12 of the Act.

If the parties have reached agreement and propose consent orders, the Court is still obliged to go through the process outlined above: see *Breen & Anor v Caronna & Anor* [2008] NSWLEC 293. If the Court finds that the proposed orders are appropriate "to remedy, restrain or prevent damage to property, or to prevent injury to any person", the Court will make those orders. However, if the Court considers that some other orders are appropriate, the Court is not required to accept the orders proposed by the parties and can instead make the orders the Court thinks are appropriate: see *Breen & Anor v Caronna &*

Anor (No 2) [2008] NSWLEC 1424.

(2) Without limiting the powers of the Court to make orders under subsection (1), an order made under that subsection may:

(a) require the taking of specified action to remedy damage to property, or

The Court may make orders for repairing property which has been damaged by the tree. Examples of orders to remedy damage to property include:

Re-laying of paths or driveway (see *Spence v Syed and Anor* [2008] NSWLEC 1331, *Dean v Ellsworth* [2010] NSWLEC 1032, *Khosravi v Connolly & anor* [2013] NSWLEC 1122, *Ward v Fotu-Moala* [2025] NSWLEC 1032, *Cvitanovic & anor v Spesyvy & anor* [2015] NSWLEC 1365 and *Walker v Gribble* [2016] NSWLEC 1645).

Re-laying of courtyard paving (see *Collaro v Tate and ors* [2008] NSWLEC 1337, *Prince & anor v Davies & anor* [2011] NSWLEC 1087, *Falamaki v Ling* [2024] NSWLEC 1371, *Ebrahim & anor v Vukovic & anor* [2017] NSWLEC 1402 and *Afanasiev v Imbrosciano* [2015] NSWLEC 1172).

Replacement or cleaning of sewer pipes (see *Gan v Anderson & anor* [2008] NSWLEC 1257, *Fairfull v Nichols* [2009] NSWLEC 1247, *Treeves v Hedge* [2010] NSWLEC 1344, *Owners of Strata Plan 7235 v Owners of Strata Plan 9829* [2015] NSWLEC 1277, *Campbell v Brentin* [2022] NSWLEC 1527 and *Kumar & anor v Song & anor* [2015] NSWLEC 1374).

Repair of retaining walls (see *Bentley v Hinchen* [2008] NSWLEC 1348, *Liang & anor v Marsh & anor* [2011] NSWLEC 1026, *Kent v Aquilina* [2025] NSWLEC 1160, *Barwick v Tulloh* [2019] NSWLEC 1650, *Jones v Moser (No 2)* [2021] NSWLEC 1132 and *Adler v Cohen* [2025] NSWLEC 1190).

Repair of dwelling walls (see *Pearson v The Owners – Strata Plan No 12969* [2017] NSWLEC 1110 and *Body v Bracks; Smith v Bracks* [2021] NSWLEC 1614).

Repair or replacement of boundary fence (see *Somuncu v McDowell* [2024] NSWLEC 1089, *Riggio v The Estate of the late Phyllis Annette Lockard* [2011] NSWLEC 1292, *James v Hillier* [2025] NSWLEC 1181, *Mannion v Raven* [2025] NSWLEC 1218 and *Xiao v Ying* [2025] NSWLEC 1417).

(b) require the taking of specified action to restrain or prevent damage or, if damage has already occurred, further damage, to property, or

The Court may make orders for pruning or removing a tree, or other orders to restrain or prevent damage being caused by the tree. Examples of orders to prevent damage to property include:

Pruning (see *Letts v Nikolaidis & anor* [2015] NSWLEC 1117, *Patane v Proops & Anor* [2015] NSWLEC 1222, *Gough v O'Sullivan* [2016] NSWLEC 1178 and *Barstow v Ainsworth* [2023] NSWLEC 1442, *Foster v Norris* [2025] NSWLEC 1364).

Removal of deadwood (see *Gennusa & anor v Dangerfield & anor* [2015] NSWLEC 1194, *Chesters v Oakes* [2016] NSWLEC 1504, *Choi v Buining & anor* [2016] NSWLEC 1024, *Ewen & anor v Whan & anor* [2016] NSWLEC 1501, *Body v Bracks; Smith v Bracks* [2021] NSWLEC 1614, *Hepworth v Trzebiatowsk* [2022] NSWLEC 1093 and *Sallway v Kapoor* [2025] NSWLEC 1386).

Installation of root barriers (see *Sidebottom v Cairney* [2007] NSWLEC 356, *Collaro v Tate and ors* [2008] NSWLEC 1337, *Spillane v Burgess* [2009] NSWLEC 1289, *Zignic v Waistell* [2010] NSWLEC 1188, *Namat v Bargenda* [2022] NSWLEC 1309, *Carter v MKTK Pty Ltd* [2021] NSWLEC 1787 and *Owners - Strata Plan No 50747 v Zavetsanos* [2024] NSWLEC 1671).

Root pruning (see *Mostafiz v Toll* [2020] NSWLEC 1672, *Lees v Primrose* [2014] NSWLEC 1122 and *Tomasetta v Gregory* [2007] NSWLEC 420).

(c) require the taking of specified action to prevent injury to any person, or

The Court may make orders for pruning or removing a tree to prevent a tree causing injury to any person. Examples include on-going removal of large cones on a Bunya Pine (*Adamski v Betty* [2007] NSWLEC 200) and periodic removal of dead wood in the tree (*Sahyoun v Jessop* [2009] NSWLEC 1313).

(d) require the making of an application to obtain any consent or other authorisation referred to in section 6(1)(a), or

Despite s 6(3) of the Act, the Court may still require a party to obtain a consent under any other Act, such as the *Environmental Planning and Assessment Act 1979,* to carry out works ordered by the Court: for example, see *Yam v Tavakoli* [2024] NSWLEC 1781.

(e) authorise the applicant concerned to take specified action to remedy, restrain or prevent damage or (if damage has already occurred) further damage to property, or

In some circumstances, the Court has made orders for the applicant to prune the respondent's tree: for instance, see *Garbutt v Nichols* [2025] NSWLEC 1035 and *Foster v Norris* [2025] NSWLEC 1364.

(f) authorise the applicant concerned to take specified action to prevent injury to any person, or

(g) authorise land to be entered for the purposes of carrying out an order under this section (including for the purposes of obtaining quotations for the carrying out of work on the land), or

Where the carrying out of orders by one party will require access to another party's land, the Court will make orders to grant property access.

Such access may be needed simply because pruning or removal works need to take place in the airspace over the property (see, for example, *Bentley v*

Hinchen [2008] NSWLEC 1348) or access from the applicant's property enables the work to be completed more easily, quicker and at less cost (see *Vieira v Kaleski* [2008] NSWLEC 159) or in a safer and more efficient manner: *Owners Corporation SP11222 v Jones* [2010] NSWLEC 1327.

The Court may also order access for the purpose of enabling inspections by experts retained by the parties to prepare their evidence. Such orders are made prior to a hearing as part of the preliminary hearing process. This access provision is contained in Direction 13 of the Court's Usual Directions for tree applications.

(h) require the payment of costs associated with carrying out an order under this section, or

In most instances, the respondent who owns the tree that has caused the damage, will be ordered to pay for the cost of any tree works ordered by the Court. However, in cases where the applicant was found to have caused damage to, or the death of, a tree, the applicant may be ordered to pay for the cost of the tree works: see *Joaquim v Adamson* [2009] NSWLEC 1312 and *Freeman v Dillon* [2012] NSWLEC 1057.

The order will usually limit the cost in one of three ways:

- by fixing the amount of the cost;
- by setting a limit to the amount of the cost; or
- by requiring the person undertaking the work to get multiple quotations and then setting a limit (as an amount or a proportion) based on those quotations.

The orders will usually specify a time limit for completion of the works, and a time limit for payment after the person paying has been provided with a receipted invoice for the completed work.

(i) require the payment of compensation for damage to property, or

In determining a compensation claim, the Court may consider a wide range of factors on the question of apportionment of any damages. The factors include how long has the person making the application known of the damage; what steps, during that period, have been taken in order to prevent further damage; and what other factors unrelated to the tree might have contributed to or caused some or all of the damage: see *Zhang & anor v Long & anor* [2007] NSWLEC 632 and *Karaboulis & anor v Berbeniuk* [2010] NSWLEC 1191. Importantly, the circumstances that apply to each matter are unique and any question of apportionment of compensation will depend on the facts and circumstances of the individual application.

Compensation only for "damage to property"

The Court is only able to make an order for the payment of compensation for damage to property. As to what constitutes "damage to property", see commentary on s 10 below and *Robson* at [162]-[173]. As a consequence, the

Court has rejected claims for compensation for personal injury or stress (see *Konn v Wisbey & Ors* [2007] NSWLEC 799).

Time limit for compensation claims for past damage

The Court has held that the *Limitation Act 1969* applies to compensation claims under the Trees Act. As a consequence, an application under the Trees Act claiming compensation for past damage to an applicant's property must generally be filed within six years from the time of damage: see *Moroney v John* [2008] NSWLEC 32.

However, the time limit for claims for damage to house foundations may begin from the time when such damage "is first known or manifest": see *Council of the Shire of Sutherland v Heyman* (1985) 157 CLR 424; [1985] HCA 41.

(j) require the replacement of a tree that the Court orders to be removed and for the new tree to be maintained to a mature growth.

For examples of orders for replacement planting, see *Szabo v Ciacchi* [2007] NSWLEC 675 and *Trigas v Jennings* [2022] NSWLEC 1333.

10 Matters of which Court must be satisfied before making an order

(1) The Court must not make an order under this Part unless it is satisfied:

(a) that the applicant has made a reasonable effort to reach agreement with the owner of the land on which the tree is situated, and

For a general discussion of this requirement, see *Robson* at [191]-[196].

Ideally, the applicant should make "a reasonable effort to reach agreement" prior to the lodgement of an application under the Act, but this provision of the Act makes it clear that such an attempt must have occurred prior to the Court making an order: see *Robson* at [194].

Given the nature of many tree disputes, which might involve disagreement and discussion between neighbours over an extended period, the Court has set relatively low bar when determining if an applicant has made a reasonable effort to reach agreement. Nevertheless, there are instances where the Court has found that an applicant did not make a reasonable effort to reach agreement with the tree owner: see *Dominello v Bosso* [2021] NSWLEC 1641.

(b) if the requirement to give notice has not been waived, that the applicant has given notice of the application in accordance with section 8.

(2) The Court must not make an order under this Part unless it is satisfied that the tree concerned:

(a) has caused, is causing, or is likely in the near future to cause, damage to the applicant's property, or

"satisfied"

Sometimes an applicant assumes that a tree's proximity to a damaged structure is sufficient to show it has caused, is causing, or is likely to cause, damage. However, in *Smith & Hannaford v Zhang & Zhou* [2011] NSWLEC 29, Craig J discussed the obligation created by s 10 for the Court to be satisfied of the causal nexus between the tree and the damage. This requires an assessment of all the evidence before the Court. This evidence may reveal that factors other than the tree might have caused the damage. Craig J stated at [62]:

> "…something more than a theoretical possibility is required in order to engage the power under *Trees (Disputes Between Neighbours) Act…* In the language of Jenkinson J in *MacDonald*, confidence on a "bare preponderance of probability" has not been engendered on the evidence adduced that the Sydney Blue Gum was a cause of damage to the applicants' dwelling. Embracing the language of the applicants' submission, I have not been left in a state of belief, on the balance of probabilities, that the tree is a cause of that damage."

"has caused, is causing, or is likely in the near future to cause…."

Preston CJ discussed the concept of causation in the context of these provisions in *Robson* at [176]-[189]. Importantly, the tree which is the subject of the application does not need to be the sole cause of the damage. An application can still be made under the Trees Act where there are multiple causes of the damage including the tree.

"the tree concerned" must cause damage

However, the tree, the subject of the application must itself be a cause of the damage. The mere fact that the tree might provide habitat for animals or insects which cause damage to property does not mean that the tree itself caused the damage. The Court has decided that damage caused by termites, birds, bees, wasps, possums or other animals or insects attracted to or nesting in a tree is not damage caused by the tree: see *Dooley & anor v Nevell* [2007] NSWLEC 715 at [22]-[23] and *Robson* at [189].

"… in the near future …."

In *Yang v Scerri* [2007] NSWLEC 592, the Court applied a "rule of thumb" that the appropriate timeframe for "in the near future" is 12 months. Since then, this principle has been applied in other cases.

"… damage …"

There must be actual damage to the applicant's property: see *Robson* at [168]-[173]. Mere annoyance or discomfort does not amount to damage. The dropping of leaves, flowers, fruits, seeds, twigs and other debris on the applicant's property does not by itself constitute damage to the property: see *Robson* [171]-[172] and *Barker v Kyriakides* [2007] NSWLEC 292 at [20]. If left on the land, however, such tree debris might lead to damage to property. In *Wilson v Farah* [2017] NSWLEC 91, the massive amount of debris falling from the tree caused physical alteration or change of the water of a swimming pool and algal growth on the fabric of the pool. This constituted "damage to

property": at [18]-[20]. Nevertheless, the Court held such property damage was not caused by the tree directly: at [20]-[29].

"… the applicant's property"

The damage needs to be caused to property on the applicant's land, not the land itself, such as the surface or soil of the land: see *Robson* at [166]. Property includes buildings, fences, retaining walls, paving or other structures built on the land, moveable objects such as vehicles and furniture located on the land, and trees and other vegetation growing on the land: see *Robson* at [164]-[167]. The property must belong to the applicant and must be located on the applicant's land.

(b) is likely to cause injury to any person.

"injury"

Section 3 of the Act does not include any definition of the term injury. In *Tuft v Piddington* [2008] NSWLEC 1249, the Court held that, for the purposes of the Act, injury encompasses allergic reactions (in *Tuft*, the injury was an asthmatic reaction to pollen).

Where an application is made based on injury said to arise from a medical condition, the Court gives specific Supplementary Standard Directions requiring an applicant to provide properly qualified medical or scientific evidence of a link between the injury and the tree that is the subject of the application. These Supplementary Directions are in the following terms:

> 1. Further to Direction (6) of the principal directions in this matter, the applicant is to provide, by the close of business on (date), any statement of medical or arboricultural evidence and any supporting medical or arboricultural peer reviewed literature relied upon in support of a claim that a tree which is the subject of the application is a "likely cause of injury to any person";
>
> 2. Any expert evidence prepared after the date of these directions concerning matters contained in (1) above is to include acknowledgement that the expert has read and agrees to be bound by the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules 2005.

"… any person …"

In contrast to the requirement that damage caused by a tree be to the applicant's property, likely injury can be caused to any person on the applicant's land, not just the applicant, as well as to a person on other land in proximity that might be impacted by the tree or parts of the tree falling: see *Robson* at [175]. As a consequence, an application can be made when an applicant is concerned that a tree on adjoining land is likely to cause injury to persons on public land in the vicinity: see *Ashworth v Joyce* [2007] NSWLEC 357, where the Court made orders to prevent injury to persons on an adjacent public beach reserve.

11 [REPEALED]

12 Matters to be considered by Court

Before determining an application made under this Part, the Court is to consider the following matters:

The Court must consider the matters in s 12 in determining the application and the nature of any orders to be made.

(a) the location of the tree concerned in relation to the boundary of the land on which the tree is situated and any premises,

(b) whether interference with the tree would, in the absence of section 6 (3), require any consent or other authorisation under the *Environmental Planning and Assessment Act 1979* or the *Heritage Act 1977* and, if so, whether any such consent or authorisation has been obtained,

Despite s 6(3) obviating the need for consent under the *Environmental Planning and Assessment Act* and the *Heritage Act* to carry out tree works ordered by the Court, the Court must consider the nature of these requirements for consent and matters that would need to be considered in determining whether to grant the consent. If a consent has been already granted, the Court should consider the terms of that consent.

(b1) whether interference with the trees would, in the absence of section 25 (t) (Legislative exclusions) of the *Native Vegetation Act 2003*, require approval under that Act,

(b2) the impact any pruning (including the maintenance of the tree at a certain height, width or shape) would have on the tree,

Proceedings under the Trees Act are usually allocated to Commissioners with arboricultural expertise and experience. Even in the absence of expert evidence, the Court can, and will, consider the impacts to the tree's health and structure of any pruning of the tree's canopy or roots to restrain or prevent damage or injury.

(b3) any contribution of the tree to privacy, landscaping, garden design, heritage values or protection from the sun, wind, noise, smells or smoke or the amenity of the land on which it is situated,

Trees can provide benefits to landowners, to others in the community, and to the environment. The Court must consider these benefits when determining the application.

(c) whether the tree has any historical, cultural, social or scientific value,

In *Tunsted v Stead* [2009] NSWLEC 1069, the local council's heritage officer advised that the subject tree was included in the property's listing as a heritage item in the Local Environmental Plan.

(d) any contribution of the tree to the local ecosystem and biodiversity,

For examples, see: *Clarke v Halloran* [2009] NSWLEC 1397 (habitat for

koalas); *Stipancic v Macdonnell* [2010] NSWLEC 1261 (tree hollows for nesting fauna); and *Tadros v Alexander* [2010] NSWLEC 1155 (tree being part of an endangered ecological community).

(e) any contribution of the tree to the natural landscape and scenic value of the land on which it is situated or the locality concerned,

(f) the intrinsic value of the tree to public amenity,

Trees may provide benefits to the broader community by their appearance in the broader landscape, viewed from public areas, and through ecosystem services such as cooling, air pollutant removal, and the reduction of water runoff.

(g) any impact of the tree on soil stability, the water table or other natural features of the land or locality concerned,

In *Lee & anor v Waugh* [2012] NSWLEC 1341, the Court found that the tree was likely to be important for soil stability.

(h) if the applicant alleges that the tree concerned has caused, is causing, or is likely in the near future to cause, damage to the applicant's property:

(i) anything, other than the tree, that has contributed, or is contributing, to any such damage or likelihood of damage, including any act or omission by the applicant and the impact of any trees owned by the applicant, and

Preston CJ discussed general issues concerning s 12(h) and (i) in *Robson* at [204]-[210].

The tree was there first

The Court has considered what approach should be taken where the structure that is the subject of a damage claim was erected in the vicinity of an existing tree. The Court has published a Tree Dispute Principle which says, in summary, that the fact that the tree was there first should not impact on whether or not some order should be made about the tree but, subject to a range of matters discussed in the Principle, the prior existence of the tree may be a relevant matter to be considered when deciding who should meet the cost of carrying out any orders which the Court might make: see *Black v Johnson (No 2)* [2007] NSWLEC 513. The Court has applied this principle where appropriate.

For instance, the Court may order that a respondent pay for works ordered by the Court where the size of an applicant's property constrains the applicant's decision as to where to place a structure (*Zadel v Cox* [2012] NSWLEC 1040 at [15]), but may decide against doing so where it was open to the applicant to place a structure elsewhere on their property (*Boustany v Kondos* [2018] NSWLEC 1194 at [10]). In *Foster v Norris* [2025] NSWLEC 1364, the applicants bought the property with the knowledge that the house had been

built not in accordance with the approved plans, next to the tree on the adjoining land that overhung and caused damage to the house. In these circumstances, the applicant was ordered to pay the cost of the pruning works: at [47]-[49].

How the structure was built might also be relevant. The Court may refuse to order that the respondent pay the costs of any works despite an applicant having no choice but to build a structure in the vicinity of a tree, if the applicant fails to construct that structure in a manner that considers the potential impacts of the tree: see *White v Blacket* [2018] NSWLEC 1386 at [29].

What is to be considered a 'structure' is broad, as the principle has been applied to gardens (*Webster v O'Brien* [2008] NSWLEC 1439) and pools (*Sait v Mason* [2007] NSWLEC 293). The principle has also been applied to upgrades to existing structures in instances where the existing structure predated the tree (*Bertalli v Hutton* [2020] NSWLEC 1060).

The principle has been applied in respect of all parts of a tree, including the roots (*Truong v Bolluk and Biber* [2018] NSWLEC 1378).

This consideration also applies with respect to compensation: see *Sait v Mason* [2007] NSWLEC 293 and *Li v Richardson* [2024] NSWLEC 1634.

Poor design

Following on from 'the tree was there first' principle, structures that are built beneath an existing tree may be of a design that fails to take account of the tree and thus exacerbate problems – see *Hodgson v Woodward* [2009] NSWLEC 1283 (box gutters); *Smith v Miller* [2010] NSWLEC 1063 (cricket nets); and *Tadros v Alexander* [2010] NSWLEC 1155 (play area in a child care centre).

A certain amount of wear and tear is expected for any structure over time. The Court considers a structure's age and the contribution of weather or wear and tear to its condition: Examples include *McGregor v Hatcher* [2025] NSWLEC 1381 and *McLeod & anor v Bruce* [2010] NSWLEC 1322 (timber fence), *Bradshaw v Roberts* [2025] NSWLEC 1425 (pool cover), *Mercieca v Swenson & anor* [2017] NSWLEC 1578 (concrete slab), *Strata Plan 16538 v Chandos Nursing Home* [2008] NSWLEC 1423 (driveway) and *Bentley v Hinchen* [2008] NSWLEC 1348 (retaining wall).

Identification of the right tree

The applicant must identify the particular tree on the respondent's property that is the cause of the damage: see *Lewis and anor v Tilney and anor* [2009] NSWLEC 1042 at [48]-[53].

Failure to give notice to the tree owner when damage was noticed

The Court may consider how promptly an applicant informs the tree owner of property damage: for examples, see *Osborne v Hook* [2008] NSWLEC 1231 and *McGregor v Hatcher* [2025] NSWLEC 1381.

Failure to give the tree owner an adequate opportunity to respond to the damage

If an applicant repairs damage to their property without providing the tree owner any opportunity to assess the damage, or to be consulted about the method and cost of repairs, this can be taken into account by the Court when considering whether or not to make orders relating to the damage: for example see *Osborne v Hook* [2008] NSWLEC 1231 and *Turner v O'Donnell* [2009] NSWLEC 1349.

Failure of an applicant to maintain their own property

The Court has taken into account the time delay after applicants became aware of damage and the failure of the applicants to maintain their own property: see *Zhang & anor v Long & anor* [2007] NSWLEC 632.

If debris from a tree has caused, is causing, or is likely in the near future to cause, damage to the applicant's property, the Court will consider the applicant's maintenance of their own property. The Court has consistently applied the principle established in *Barker v Kyriakides* [2007] NSWLEC 292 at [20]:

> "For people who live in urban environments, it is appropriate to expect that some degree of house exterior and grounds maintenance will be required in order to appreciate and retain the aesthetic and environmental benefits of having trees in such an urban environment. In particular, it is reasonable to expect people living in such an environment might need to clean the gutters and the surrounds of their houses on a regular basis.
>
> The dropping of leaves, flowers, fruit, seeds or small elements of deadwood by urban trees ordinarily will not provide the basis for ordering removal of or intervention with an urban tree."

In *Hendry & anor v Olsson & anor* [2010] NSWLEC 1302, the Court found that ordinary maintenance included the cleaning of surfaces such as paving and paths. As a result, the accumulation of mould, moss and slime on those surfaces as a consequence of shading by tree does not constitute damage: at [12]-[14].

In *Johnson v Budden* [2021] NSWLEC 1749, the Court found that the cleaning of mould from walls and ceilings, the pruning and disentangling of overhanging branches interfering with the roof and solar panels on a dwelling, the cleaning of leaves from gutters and the killing of seedlings are all ordinary maintenance actions that are expected of an applicant: at [27]-[46]. In *McCann v Zheng* [2018] NSWLEC 1239, cleaning leaves from gutters was held to be ordinary maintenance.

> (ii) any steps taken by the applicant or the owner of the land on which the tree is situated to prevent or rectify any such damage,

The Court considered the tree owner's routine tree maintenance and inspection in *The Owners – Strata Plan No 17467 v The Owners – Strata Plan No 22319* [2024] NSWLEC 1596 at [68], in determining that the Court need not make orders for regular, ongoing pruning.

(i) if the applicant alleges that the tree concerned is likely to cause injury to any person:

(i) anything, other than the tree, that has contributed, or is contributing, to any such likelihood, including any act or omission by the applicant and the impact of any trees owned by the applicant, and

(ii) any steps taken by the applicant or the owner of the land on which the tree is situated to prevent any such injury,

See annotations above for s 12(h).

(j) such other matters as the Court considers relevant in the circumstances of the case.

13 Appearance by local council or Heritage Council

A local council or the Heritage Council (a ***relevant authority***) may appear before the Court in any proceedings under this Part in relation to a tree if the consent or other authorisation of the relevant authority to interfere with the tree would be required, in the absence of section 6 (3), under the *Environmental Planning and Assessment Act 1979* or the *Heritage Act 1977*.

14 Court to provide copy of order to local council and Heritage Council

The Court must provide a copy of any order it makes under this Part (other than an order dismissing an application) to:

(a) the council of the local government area in which the tree is situated, and

(b) the Heritage Council if the Heritage Council appeared in the proceedings concerned under section 13.

The Court has a standard letter which is sent to the council of the local government area in which the tree is situated with a copy of the Court's orders to inform the council of its obligations to make the appropriate notation on the database for planning certificates which are issued under s 10.7(2) of the *Environmental Planning and Assessment Act 1979*. This notation of the Court's orders under this Act is required by s 290 and Schedule 2(18) of the *Environmental Planning and Assessment Regulation 2021*. To assist with this, the standard form of orders made by the Court under this Act includes not only details of the street address of the property but also the relevant lot and deposited plan numbers to give the formal title details.

Part 2A Court orders — high hedges that obstruct sunlight or views

14A Application of Part

(1) This Part applies only to groups of 2 or more trees that:

(a) are planted (whether in the ground or otherwise) so as to form a

hedge.

Section 14A(1) describes a state of affairs that must have happened in order for the trees to be trees to which Part 2A applies. First, the trees must be in a group of two or more trees that are planted so as to form a hedge (paragraph (a)) and second, the trees must rise to a height of at least 2.5m above existing ground level: *Unsworth v Hennessy* [2024] NSWLEC 82 at [37].

As to the first condition, Preston CJ in *Johnson v Angus* (2012) 190 LGERA 334; [2012] NSWLEC 192 (*Johnson*), Preston CJ provided a detailed analysis of what is required in order for the trees to be planted so as to form a hedge. For Pt 2A of the Act to apply to the trees, the trees must:

- be in a group of at least two trees,
- be planted by human agency, rather than being self-sown as a result of wind, birds, animals or otherwise,
- be planted for the purpose of forming a hedge, and
- in fact, form a hedge: at [15]-[43].

Whether trees are planted for the purpose of forming a hedge may be deduced by reference to the planting arrangement, proximity, species and function of the planting and whether the trees were planted in a single e vent: see *Catlin v King & anor* [2016] NSWLEC 1603 at [14] and *Wood v Barnes & anor* [2017] NSWLEC 1106 at [14]-[15].

The Trees Act does not provide a definition of hedge. To determine if the trees form a hedge, the Court may consider factors such as those discussed in *Wisdom v Payn* [2011] NSWLEC 1012 at [45]:

> "We are satisfied that the words forming a hedge mean that there must be a degree of regularity and arrangement, in a linear fashion, of the trees being considered. Whilst such an arrangement may be more than one tree deep and does not need to be in a perfectly straight line, the impression that is given by the planted arrangement of the trees must be one that, in an ordinary English language understanding of the word, would be perceived to be a hedge."

Preston CJ stated in *Johnson* at [40] and [41]:

> "The criterion of being sufficiently close is … relevant to determining whether the trees are planted so as to form a hedge. What is sufficiently close will depend upon the species of tree planted, the age of the tree, the health and growth of the tree, and the scale of the landscape.
>
> But the criterion of sufficient proximity does not exhaust the relevant criteria to be considered in determining whether trees are planted so as to form a hedge. Section 14A(1)(a), construed in its own terms and in the context of Part 2A, does not so circumscribe the criteria that may be considered in determining whether the trees are planted so as to form a hedge. Other criteria are relevant, including the species of trees planted; whether the trees are all of one species or different species and, if different species, the similarity or dissimilarity and compatibility or incompatibility of

the different species in terms of morphology (the form and structure of the trees), function and growth of the trees; the planting arrangement of the trees, such as whether the trees are planted in a linear, curvilinear, or another spatial relationship conducive to the trees forming a hedge."

In *Black v Jeihooni (No 2)* [2024] NSWLEC 13, Pain J considered that "[t]he relationship of foliage of trees planted in a linear manner is likely to be relevant to the question of whether there is a hedge": at [47]. In that case, the distance between the trees (palms) and the relationship of the foliage of the trees were such that the trees were not planted so as to form a hedge: at [48].

(b) rise to a height of at least 2.5 metres (above existing ground level).

As to the second condition, the trees in a group of two or more trees must rise to a height of at least 2.5m above existing ground level at the time of making the application in order for Part 2A to apply to the trees. But this state of affairs need not exist at the time of determination of the application. The pruning of the trees to a height lower than 2.5m before the hearing of the application does not deprive the Court of jurisdiction to determine the application: see *Unsworth v Hennessy* [2024] NSWLEC 82 at [28], [60]. The Court can consider the height of the trees at the time of making the application, at the time of the hearing after the trees have been pruned and the likely height of the trees if left to regrow: *Unsworth v Hennessy* [2024] NSWLEC 82 at [28]-[60] and [64].

Although at least some of the trees must rise to a height of at least 2.5 metres at the time of making the application, not all of the trees need rise to that height in order for the trees in the group to be found to be planted so as to form a hedge: see *Wisdom v Payn* [2011] NSWLEC 1012 at [66].

However, the height of 2.5 metres is not the prescribed 'legal' height to which hedges must be maintained: see *McLaren v Lewis* [2011] NSWLEC 1170 at [34].

(2) Despite section 4, this Part does not apply to trees situated on Crown land.

The application of Part 2A is more restricted than Part 2.

14B Application to Court by affected land owner

An owner of land may apply to the Court for an order to remedy, restrain or prevent a severe obstruction of:

(a) sunlight to a window of a dwelling situated on the land, or
(b) any view from a dwelling situated on the land, if the obstruction occurs as a consequence of trees to which this Part applies being situated on adjoining land.

In strata schemes an "**owner of land**" may include the owners corporation and individual lot owners: see *The Owners – Strata Plan No 52378 v Huang* [2025] NSWLEC 1125.

"**Severe**" sets a relatively high bar for the extent of an obstruction of sunlight or a view to be met before the Court can make orders. The assessment of

severity involves consideration of both quantitative and qualitative elements: *Haindl v Daisch* [2011] NSWLEC 1145 at [64]. The Court has applied the stepped approach to assessing view impacts suggested in *Tenacity Consulting v Warringah Shire Council* (2004) 134 LGERA 23; [2004] NSWLEC 140 at [26]-[29], as adapted to the assessment required by s 14B(b): *Haindl v Daisch* [2011] NSWLEC 1145 at [65]-[69], *Hough & anor v Rettenmaier & anor* [2010] NSWLEC 1354 at [8]-[21]; and *Sheehy & anor v Jufferman & anor* [2011] NSWLEC 1135 at [23]-[27]

The Court has interpreted the word "**sunlight**" to be direct sunlight rather than just daylight: see *Drewett v Best* [2010] NSWLEC 1305 at [17].

In the case of sunlight obstruction, the trees must obstruct sunlight to a "**window"** of a dwelling on the applicant's land. A "**window**" is defined in s 3 to include "a glass sliding door, a door with a window, a skylight and any other similar thing." A solar panel is not a window within this definition: see *Hendry & anor v Olsson & anor* [2010] NSWLEC 1302 at [29]-[30]. The Trees Act does not apply to sunlight obstruction to anything other than a window, including a deck, a clothesline, an outdoor seating area or a garden.

In the case of a view obstruction, the view must be obstructed from "**a dwelling**" situated on the applicant's land, which includes a deck or porch if it forms part of the dwelling. The Trees Act does not apply to a view obstruction from a garden or a driveway: see *Campbell v Voller* [2010] NSWLEC 1351 at [7], [13] and [14].

A "**view**" refers to the totality of the view from a particular viewing location: *Haindl v Daisch* [2011] NSWLEC 1145 at [26], *Liddell v Jones* [2014] NSWLEC 1183 at [30], and *Black v Jeihooni (No 2)* [2024] NSWLEC 13 at [70]. Nevertheless, the Court can have regard to the importance of particular elements in the total view, such as a view of an iconic building like the Sydney Harbour Bridge or Opera House, in assessing the degree of obstruction of the view: see *Shargrin v O'Neil* [2010] NSWLEC 1368 at [19], [24] and *McPherson v Alper* [2024] NSWLEC 1258 at [26].

For the meaning of "**adjoining land**", see annotation for s 7 above.

14C Notice of application for order to be given to owners of affected land

(1) An applicant for an order under this Part must give at least 21 days notice of the lodging of the application and the terms of any order sought to:

(a) the owner of the land on which the trees are situated, and
(b) any relevant authority that would, in accordance with section 14G, be entitled to appear in proceedings in relation to the trees, and
(c) any other person the applicant has reason to believe will be affected by the order.

(2) The Court may direct that notice of an application be given to a person or that notice be given in a specified manner or within a specified period.

(3) The Court may waive the requirement to give notice or vary the period of

notice under this section if it thinks it appropriate to do so in the circumstances.

See annotation for s 8 above.

14D Jurisdiction to make orders

(1) The Court may make such orders as it thinks fit to remedy, restrain or prevent the severe obstruction of:

(a) sunlight to a window of a dwelling situated on the applicant's land, or
(b) any view from a dwelling situated on the applicant's land, if the obstruction occurs as a consequence of trees that are the subject of the application concerned.

The Court may make orders relating to all the trees in a group of trees that form a hedge, regardless of whether each tree in that group is found to severely obstruct sunlight or a view: see *Unsworth v Hennessy* [2024] NSWLEC 82 at [76]-[77].

The Court is not obliged to make the orders sought by the applicant and can make orders "as it thinks fit" to remedy, restrain or prevent a sunlight or view obstruction.

If the parties have reached agreement and propose consent orders, the Court is still obliged to consider the evidence, and make a determination in accordance with Pt 2A of the Trees Act: see *Breen & Anor v Caronna & Anor* [2008] NSWLEC 293. If the Court finds that the proposed orders are appropriate in the circumstances, the Court may make those orders. However, if the Court considers that some other orders are appropriate, the Court is not required to accept the orders proposed by the parties.

(2) Without limiting the powers of the Court to make orders under subsection (1), an order made under that subsection may do any or all of the following:

(a) require the taking of specified action to remedy the obstruction of sunlight or of a view,
(b) require the taking of specified action to restrain or prevent the obstruction of sunlight or of a view,
(c) require the taking of specified action to maintain a tree or trees at a certain height, width or shape,

The Court may make orders to prune trees to a nominated height, specified by reference to a height above ground level, a height relative to an adjacent reference point such as a fence, or by an elevation such as a Reduced Level (RL). The Court may require the initial pruning to be lower than the height at which the hedge is to be maintained, recognising that the trees will grow, and to minimise the frequency and cost of subsequent pruning: see *Tonoli v Rappo* [2010] NSWLEC 1320 at [31] and *Atkinson v Matherson* [2011] NSWLEC 1121 at [21], [26]. The Court may order ongoing pruning at regular intervals to

maintain the trees at the nominated height.

When determining the height and frequency for any pruning orders, the Court will consider the species of tree, the nature, extent and location of the obstruction, any relevant history, and any factors particular to the circumstances of the proceedings.

The Court may order pruning of the trees forming the hedge to a uniform height, regardless of whether all of the trees that form the hedge severely obstruct sunlight or a view, or limit the pruning order to only those trees in the hedge that severely obstruct sunlight or a view: *Unsworth v Hennessy* [2024] NSWLEC 82 at [76]-[81] and *Sheehy v Jufferman* [2011] NSWLEC 1135 at [30]-[31].

(d) require the removal of a tree or trees and the replacement of the tree or trees with a different species of tree,

The Court may order only the removal of a tree with no replacement (*Shargrin v O'Neil* [2010] NSWLEC 1368) or removal and replacement with other trees, which are to be maintained at a specified height (*Ingram v Sebel* [2011] NSWLEC 1010). In some cases, the Court has ordered tree removal despite the applicant only seeking orders for pruning: for instance, see *Hatherly v Georgalas* [2020] NSWLEC 1562. In that case, the Court also made orders to restrict the height of any replacement planting along the boundary.

(e) require the making of an application to obtain any consent or other authorisation referred to in section 6 (1) (a),
(f) authorise the applicant concerned to take specified action to remedy, restrain or prevent the obstruction of sunlight or of a view,
(g) authorise land to be entered for the purposes of carrying out an order under this section (including for the purposes of obtaining quotations for the carrying out of work on the land),
(h) require the payment of costs associated with carrying out an order under this section.

See annotation for s 9 above.

(3) However, the power to make an order under subsection (1) does not extend to an order that requires the payment of compensation.

For example, the Court cannot order the payment of compensation for a perceived loss of property value resulting from a loss of view or sunlight.

14E Matters of which Court must be satisfied before making an order

(1) The Court must not make an order under this Part unless it is satisfied:

(a) that the applicant has made a reasonable effort to reach agreement with the owner of the land on which the trees are situated, and

(b) if the requirement to give notice has not been waived, that the

applicant has given notice of the application in accordance with section 14C.

See annotation for s 10(1) above.

(2) The Court must not make an order under this Part unless it is satisfied that:

(a) the trees concerned:

(i) are severely obstructing sunlight to a window of a dwelling situated on the applicant's land, or

See s 14B above for annotations on "severely", "sunlight" and "window of a dwelling".

The onus is on the applicant to prove that the obstruction of sunlight to a window is severe. Shadow diagrams may be helpful in establishing the severity of obstruction of sunlight to a window, but the Court does not require an applicant to provide them.

When assessing the degree of sunlight obstruction, the Court considers a range of matters, including the window's aspect and its access to direct sunlight. The Court may consider the remaining sunlight relative to the usual minimum development standards for sunlight (solar amenity) required by most councils for new developments.

The Court may find that the trees are severely obstructing sunlight to a window even if the sunlight to the window is not severely obstructed on the day of the hearing: see *Unsworth v Hennessy* [2024] NSWLEC 82 at [28]-[60]. A hedge of deciduous trees, for example, might obstruct sunlight in mid-summer, when the trees have a dense canopy of leaves, but not in mid-winter when the trees are leafless: at [31], [43] and [46]-[49]. The assessment of the degree of sunlight obstruction as a consequence of the trees can, therefore, have regard to the state of the trees over a longer time scale: at [60].

In *Unsworth v Hennessy*, the trees that formed the hedge were pruned two days prior to the hearing. Despite the condition of the trees being altered before the hearing, the Court considered what was the most "likely ongoing state of affairs", being the obstruction caused by the trees prior to being pruned, which degree of obstruction would re-occur once the trees regrew.

(ii) are severely obstructing a view from a dwelling situated on the applicant's land, and

See s 14B above for annotations on "severely", "view" and "dwelling".

When assessing the degree of obstruction of a view, the Court has applied the approach to assessing view impacts suggested in *Tenacity Consulting v Warringah Shire Council* [2004] NSWLEC 140 at [26]-[29] – see annotations to s 14B.

The Court considers the totality of a view – see *Haindl v Daisch* [2011] NSWLEC 1145 at [26] – but may also consider the importance of particular

elements within the view: see *McPherson v Alper* [2024] NSWLEC 1258 at [26].

As the Court's consideration of the view obstruction caused by a tree goes beyond the condition of the tree and obstruction caused at the time of the hearing, the Court may find that the trees are severely obstructing a view from a dwelling even if that view is not severely obstructed at the time of the hearing: see *Unsworth v Hennessy* [2024] NSWLEC 82 at [28]-[60].

(b) the severity and nature of the obstruction is such that the applicant's interest in having the obstruction removed, remedied or restrained outweighs any other matters that suggest the undesirability of disturbing or interfering with the trees by making an order under this Part.

The Court must, in effect, weigh in the balance the reasons for and against interfering with the trees. The Court must consider not only the severity of any obstruction, but also the nature of the obstruction. The Court must consider the potential benefits for the applicant in making orders to interfere with the trees. The Court must also consider matters that weigh against ordering interference with the trees, such as the trees' benefits to the respondent, to the broader community, and to the environment. The Act prescribes some of these matters for consideration at s 14F. The Court may only make orders if it finds that the applicant's interests outweigh the reasons against interfering with the trees.

14F Matters to be considered by Court

Before determining an application made under this Part, the Court is to consider the following matters:

The Court must consider the matters in s 14F in determining the application and the nature of any orders to be made.

(a) the location of the trees concerned in relation to the boundary of the land on which the trees are situated and the dwelling the subject of the application,

(b) whether the trees existed prior to the dwelling the subject of the application (or the window or part of the dwelling concerned where the dwelling has been altered or added to),

The Court will consider the timeline of tree planting and dwelling construction.

(c) whether the trees grew to a height of 2.5 metres or more during the period that the applicant has owned (or occupied) the relevant land,

The Court will consider the growth of the trees during the period that the applicant has owned or occupied their property.

(d) whether interference with the trees would, in the absence of section 6 (3), require any consent or other authorization under the *Environmental Planning and Assessment Act 1979* or the *Heritage Act 1977* and, if so, whether any such consent or authorisation has been obtained,

Despite s 6(3) obviating the need for consent under the *Environmental Planning and Assessment Act* and the *Heritage Act* to carry out tree works ordered by the Court, the Court must consider the nature of those requirements for consent and the matters that would need to be considered in determining whether to grant consent. If a consent has already been granted, the Court should consider the terms of that consent.

(e) any other relevant development consent requirements or conditions relating to the applicant's land or the land on which the trees are situated,

The Court will consider whether a development consent for the respondent's property required the trees to be planted and if so, whether the trees have in fact been planted in accordance with the terms of the development consent and the reasons for requiring the planting of the trees, such as to afford privacy and prevent overlooking between the properties.

(f) whether the trees have any historical, cultural, social or scientific value,

(g) any contribution of the trees to the local ecosystem and biodiversity,

(h) any contribution of the trees to the natural landscape and scenic value of the land on which they are situated or the locality concerned,

(i) the intrinsic value of the trees to public amenity,

(j) any impact of the trees on soil stability, the water table or other natural features of the land or locality concerned,

Subsections 14F(f)-(j) outline some of the benefits that trees may provide and that the Court will consider.

(k) the impact any pruning (including the maintenance of the trees at a certain height, width or shape) would have on the trees.

Pruning trees to a height that would restore access to sunlight or views might adversely impact the trees. In some cases, this adverse impact might weigh against making orders to interfere with the trees; in others, it might lead to orders for tree removal rather than pruning: see *Fardouly v Zeritis* [2012] NSWLEC 1355 at [39], [50] and *McPherson v Alper* [2024] NSWLEC 1258 at

[34].

(l) any contribution of the trees to privacy, landscaping, garden design, heritage values or protection from the sun, wind, noise, smells or smoke or the amenity of the land on which they are situated,

This subsection outlines further benefits that trees may provide and that the Court will consider.

(m) anything, other than the trees, that has contributed, or is contributing, to the obstruction,

The Court will consider other elements that might be contributing to the obstruction of sunlight or a view, including the roof and eaves of the dwelling, pergolas (*Hendry v Olsson* [2010] NSWLEC 1302 at [32]-[40]), walls and fences, other buildings on the land or adjoining land (*Campbell v Voller* [2010] NSWLEC 1351 at [26]-[29]) and other trees on the applicant's land or nearby land (*Boddington v Julian & anor* [2011] NSWLEC 1172 at [34]-[36] and *Wiesner v McCormack* [2024] NSWLEC 1500 at [56]). This could weigh for or against reasons for interfering with the trees.

(n) any steps taken by the applicant or the owner of the land on which the trees are situated to prevent or rectify the obstruction,

The Court will consider any effort made by the applicant and the respondent to prevent or rectify the obstruction, including the extent, frequency and timing of past pruning of the trees.

(o) the amount, and number of hours per day, of any sunlight that is lost as a result of the obstruction throughout the year and the time of the year during which the sunlight is lost,

Shadow diagrams can assist the Court. If shadow diagrams are not provided, the Court will rely on the available evidence and its expertise to determine the number of hours and the times of the year during which sunlight is lost to a window. The Court considers the additional importance of sunlight access during winter, and may consider this within the context of relevant planning controls: see *Lock v Sidoti* [2024] NSWLEC 1345 at [30]-[37].

(p) whether the trees lose their leaves during certain times of the year and the portion of the year that the trees have less or no leaves,

The Court will consider whether trees are deciduous and how that affects the obstruction of sunlight or views: see *Unsworth v Hennessy* [2024] NSWLEC 82 at [31], [43] and [49].

(q) the nature and extent of any view affected by the obstruction and the nature and extent of any remaining view,

See the annotation to s 14B on assessing an obstruction of a view.

The Court will consider not only the view that is obstructed, but also the view that remains. For example, the nature of the remaining view weighed against making orders in *Freckleton v Carrington* [2024] NSWLEC 1849 at [24]-[25].

Although the *Tenacity* principle (see above) includes at its first step consideration of the relative value of a view and whether the view includes iconic elements, the Court has made orders to restore urban landscape views and sky views: see, for example, *Hennessy v Unsworth* [2023] NSWLEC 1773.

(r) the part of the dwelling the subject of the application from which a view is obstructed or to which sunlight is obstructed,

The Court will generally give greater weight to an obstruction caused to living areas, where people are likely to spend a greater amount of time, and less weight to an obstruction caused to utility areas or other areas where people are likely to spend less time: see *Haindl v Daisch* [2011] NSWLEC 1145l at [108], [111]-[112], [114]-[116], [118] on obstruction to views and *Voeten v Adams* [2011] NSWLEC 1106 at [44]-[45] on obstruction to sunlight.

(s) such other matters as the Court considers relevant in the circumstances of the case.

A person seeking a remedy for damage to property must make an application under Pt 2 of the Act. However, in determining an application made under Pt 2A of the Act, if the Court finds that trees cause a severe obstruction of sunlight or a view, the Court may also consider whether the trees are causing or are likely to cause damage.

14G Appearance by local council or Heritage Council

A local council or the Heritage Council (a ***relevant authority***) may appear before the Court in any proceedings under this Part in relation to trees if the consent or other authorisation of the relevant authority to interfere with the trees would be required, in the absence of section 6 (3), under the *Environmental Planning and Assessment Act 1979* or the *Heritage Act 1977*.

14H Court to provide copy of order to local council and Heritage Council

The Court must provide a copy of any order it makes under this Part (other than an order dismissing an application) to:

(a) the council of the local government area in which the trees are situated, and
(b) the Heritage Council if the Heritage Council appeared in the proceedings concerned under section 14G.

The Court has a standard letter which is sent to the council of the local government area in which the tree is situated with a copy of the Court's orders.

14I Review of Part

(1) The Minister is to review this Part to determine whether the policy objectives of the Part remain valid and whether the terms of the Part remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 2 years from the date of commencement of this Part.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.

Part 3 Enforcement of orders

Notes on enforcement of judgments and orders of the Court are provided on the Court's website: https://lec.nsw.gov.au/decisions-and-heard-matters/enforcement.html#Enforcement3

15 Failure to comply with order

(1) A person must not fail to comply with any requirement imposed on the person by an order under Part 2 or Part 2A.

Maximum penalty: 1,000 penalty units.

(2) Proceedings for an offence under subsection (1) may be taken before the Court in its summary jurisdiction.

Failure to comply with orders made by the Court under Part 2 or Part 2A of the Trees Act can not only be an offence under s 15, but also a contempt of court, leading to a conviction and a fine.

16 Successors in title bound by order

(1) If the Court makes an order under Part 2 requiring a person who is an owner of land on which a tree is situated (an ***original owner***) to carry out work in relation to the tree within a specified period and the original owner ceases to be the owner of the land before the work is carried out, a successor in title to the owner:

(a) is required to carry out that work, and

(b) to that extent, is bound by the order in the same way as the original owner (except as provided by this section).

(1A) If the Court makes an order under Part 2A requiring a person who is an owner of land on which 2 or more trees are situated (an original trees owner) to carry out work in relation to a tree or trees within a specified period and the original trees owner ceases to be the owner

of the land before the work is carried out, the immediate successor in title to the owner:

(a) is required to carry out that work, and

(b) to that extent, is bound by the order in the same way as the original trees owner (except as provided by this section).

(2) The successor in title is bound by the order only if the applicant for the order, or the immediate successor in title of the applicant who is entitled to the benefit of the order under section 16A gives a copy of the order to the successor in title.

(3) For the purposes of this section the specified period within which the work is required to be carried out under the order is taken to commence from the date on which the copy of the order is given to the successor in title.

When the Court sends a copy of its formal orders to an applicant, it does so with a standard letter advising the applicant of the provisions of this section and, as a consequence, the steps that the applicant must take to ensure that the orders remain in force if the tree owner sells the property on which the tree is situated.

16A Immediate successor in title to benefit from certain tree orders

If the Court makes an order under Part 2 in relation to a tree that has caused, or is causing, damage to the applicant's property, or is likely to cause injury to any person, a person who is the immediate successor in title to the applicant is entitled to the same benefits and rights as the applicant in respect of the order.

17 Carrying out of work by local council

(1) If the Court has made an order under Part 2 or 2A requiring the owner of land on which a tree is situated to carry out work in relation to the tree within a specified period, a person authorised by the council of the local government area in which the tree is situated (an ***authorised person***) may enter the land for the purpose of either or both of the following:

(a) ascertaining whether the owner has carried out the work in accordance with the order,

(b) carrying out the work if the owner has failed to carry out the work in accordance with the order.

(2) An authorised person may enter land under this section only if the applicant for the order concerned has requested the council to act under this section.

(3) Before an authorised person enters land under this section, the council must give the owner of the land written notice of the intention to enter the land.

(4) The notice must specify the day on which the authorised person intends to enter the land and must be given before that day.

(5) This section does not require notice to be given:

(a) if entry to the land is made with the consent of the owner of the land, or

(b) if entry to the land is required because of the existence or reasonable likelihood of a serious risk to safety, or

(c) if entry is required urgently and the case is one in which the general manager of the council has authorised in writing (in the particular case) entry without notice.

(6) An authorised person may not enter or inspect, or carry out work on, land under this section unless the authorised person is in possession of an authority and produces the authority if required to do so by the owner of the land.

(7) The authority must be a written authority that is issued by the council and that:

(a) states that it is issued under this Act, and

(b) gives the name of the person to whom it is issued, and

(c) describes the land to which the authority applies, and

(d) states that the person has the power to enter the land and states either or both of the following:

(i) that entry to the land is required for the purpose of ascertaining whether the owner has carried out work in accordance with an order under Part 2 or 2A of this Act,

(ii) that the person has the power to carry out work in accordance with such an order, and

(e) identifies this section as the source of the powers referred to in paragraph (d), and

(f) states the date (if any) on which it expires, and

(g) bears the signature of the general manager of the council.

(8) The council may recover, in a court of competent jurisdiction, the following from a person who is bound by an order under Part 2 or 2A:

(a) the reasonable costs of carrying out work under this section,

(b) the amount prescribed by the regulations as the administrative cost for arranging the carrying out of work under this section.

17A Registration of judgment debt as charge on land

(1) The council may, after obtaining an order of a court in proceedings against an owner of land for the recovery of costs in accordance with

section 17 (8), apply to the Registrar-General for registration of the order in relation to that land.

(2) An application under this section must define the land to which it relates.

(3) The Registrar-General must, on application under this section and lodgement of the court order, register the order in relation to the land in such manner as the Registrar-General thinks fit.

(4) There is created by force of this section, on the registration of the order, a charge on the land in relation to which the order is registered to secure the payment to the council of the amount payable under the order.

(5) Such a charge ceases to have effect in relation to the land:

(a) if the council certifies in writing that the amount payable under the order has been paid to the council or that the council has otherwise agreed to the cancellation of the charge—on registration of the cancellation of the charge by the Registrar-General, or

(b) on the sale or other disposition of the property with the consent of the council, or

(c) on the sale of the land to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge, whichever first occurs.

(6) Such a charge is subject to every charge or encumbrance to which the land was subject immediately before the order was registered and, in the case of land under the provisions of the Real Property Act 1900, is subject to every prior mortgage, lease or other interest recorded in the Register kept under that Act.

(7) Such a charge is not affected by any change of ownership of the land, except as provided by subsection (5).

(8) If:

(a) such a charge is created on land of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, land of that kind, and

(b) the charge is so registered,

a person who purchases or otherwise acquires the land after the registration of the charge is, for the purposes of subsection (5), taken to have notice of the charge.

(9) If such a charge relates to land under the provisions of the Real Property Act 1900, the charge has no effect until it is registered under that Act.

(10) A council that makes an application under this section for registration of a court order may, by notice in writing, require the person against whom

the order was made to pay all or any of the reasonable costs and expenses incurred by the council in respect of the registration of the court order. The council may recover any unpaid amounts specified in the notice as a debt in a court of competent jurisdiction.

(11) In this section, a reference to an order of a court includes a reference to a judgment of a court.

Part 4 Miscellaneous

18 Rights under other Acts or laws

Except as provided by section 5, nothing in this Act affects the rights that a person has under any other Act or law to interfere with any tree that is not owned by the person.

Note.

For example, under the *Access to Neighbouring Land Act 2000*, a Local Court may make a neighbouring land access order that authorises an owner of land to access, and carry out work on, adjoining land for any of the following purposes:

(a) ascertaining whether any hedge, tree or shrub is dangerous, dead, diseased, damaged or insecurely rooted,

(b) replacing any hedge, tree or shrub,

(c) removing, felling, cutting back or treating any hedge, tree or shrub.

By way of another example, under the *Electricity Supply Act 1995*, an electricity network operator may, in certain circumstances, trim or remove a tree if the operator has reasonable cause to believe that the tree:

(a) could destroy, damage or interfere with its electricity works, or

(b) could make its electricity works become a potential cause of bush fire or a potential risk to public safety.

19 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

20 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations have been made, the current one being the *Trees (Disputes Between Neighbours) Regulation 2024*. The regulation can be accessed here: https://legislation.nsw.gov.au/view/html/inforce/current/sl-2024

0389#statusinformation.

21 Savings, transitional and other provisions

Schedule 1 has effect.

22 [REPEALED]

23 Review of Act

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 2 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.

Schedule 1 Savings, transitional and other provisions

(Section 21)

1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2 Proceedings relating to liability in nuisance

Section 5 does not apply in respect of any proceedings commenced in a court before the commencement of that section.

Schedule 2 (Repealed)