
AUSTRALIA / JUDGMENT

Brown v Ferrara

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Land and Environment Court

New South Wales

Medium Neutral Citation:

Brown v Ferrara [2026] NSWLEC 1578

Hearing dates:

6 August 2026

Date of orders:

08 September 2026

Decision date:

08 September 2026

Jurisdiction:

Class 2

Before:

Galwey AC

Decision:

The Court orders:

- (1) The application for orders under Pt 2A of the Trees (Disputes Between Neighbours) Act 2006 (NSW) (Trees Act) is refused.
- (2) The application for orders under Pt 2 of the Trees Act is granted to the extent of the following orders.
- (3) Within 30 days of the date of these orders, the Applicant is to provide the Respondent with a plan showing the location of all services on the Applicant's land (No 10) within 4 metres of the common boundary shared with the Respondent's land (No 9).

- (4) Within 30 days of the date of these orders, should the Applicant want to alter the timeframe for the installation of a root barrier as per Order (5), the Applicant is to provide, in writing, the Respondent with a schedule of remedial works at No 10 and an alternative suitable timeframe for installing the root barrier.
- (5) Within 90 days of the date of these orders, or as otherwise informed by the Applicant in Order (4), the Respondent is to engage and pay for a suitably qualified and experienced contractor to install a root barrier on No 10 between the common boundary and the stormwater pipe at No 10, for the length of No 10 from its front boundary to its rear boundary. The root barrier is to be installed as close to the stormwater pipe and pits as is practical without disturbing the pipe and pits, and without damaging other services. The root barrier is to be to a depth of at least 800 mm.
- (6) During November each year beginning November 2026, while the fig trees remain, the respondent is to engage and pay for a suitably qualified (minimum AQF level 3) and insured arborist to:
 - (a) prune the fig trees' branches overhanging No 10, so that branches encroach no more than 500 mm beyond the boundary;
 - (b) reduce the fig trees' height and northward spread if, and as, the Respondent sees fit.
- (7) The works in Order (6) must be done in accordance with the SafeWork NSW (2026) 'Tree works' Code of Practice.
- (8) The Respondent is to provide the Applicant with at least 10 days' notice of the works in Order (5) and each occurrence of the works in Order (6).
- (9) The Applicant is to allow access during reasonable hours of the day for the works in Order (5) and each occurrence of the works in Order (6).

Catchwords:

TREES (DISPUTES BETWEEN NEIGHBOURS) — Pt 2 application — neighbouring fig trees — whether the trees have caused damage to property — whether trees are likely to cause further damage — other factors contributing to damage — no orders for compensation — orders for pruning fig trees and installing a root barrier — Pt 2A application not pressed

Legislation Cited:

Trees (Disputes Between Neighbours) Act 2006 (NSW), ss 6, 7, 8, 9, 10, 12

Cases Cited:

Barker v Kyriakides [2007] NSWLEC 292

Texts Cited:

SafeWork NSW 'Tree works' Code of Practice (March 2026)

Category:

Principal judgment

Parties:

Leonard Brown (Applicant)

Frank Ferrara (Respondent)

Representation:

Counsel:

B Collingwood (Applicant)

J Ferrara (Agent) (Respondent)

Solicitors:

Shaddicks Lawyers (Applicant)

File Number(s):

2026/248572

Publication restriction:

Nil

Judgment

Background

COMMISSIONER: A dispute over trees has arisen in the industrial area of Mulgrave, northwest of Sydney. In or around 2003, Frank Ferrara planted fig trees along boundaries of his property at 9 Hannabus Place ('No 9'). Leonard Brown owns the neighbouring property at 10 Hannabus Place ('No 10'). Each property supports a large industrial building surrounded by driveways, hardstand and unsealed areas. Mr Brown has applied to the Court pursuant to s 7 of the Trees (Disputes Between Neighbours) Act 2006 (NSW) ('Trees Act') seeking orders to remedy damage caused by the trees and to prevent the trees causing further damage. In summary, as clarified during the hearing, Mr Brown seeks:

Compensation of \$8,459.40 for costs already incurred on repairs to his sewer and stormwater infrastructure damaged by the trees;

\$16,563.90 (includes GST, as do other amounts below) as quoted, or another amount as per further quotes, to repair and replace his sewer system damaged by the trees;

\$98,279.50 as quoted, or another amount as per further quotes, to repair and replace his stormwater system damaged by the trees;

\$9,350 as quoted, or another amount as per further quotes, to replace the boundary fence damaged by the trees;

A suitable portion (perhaps slightly less than half) of \$29,625.20 as quoted, or another amount as per further quotes, to replace cladding and guttering on his building damaged by the trees; and

Removal of the trees or, failing that, installation of a root barrier to prevent the trees causing further damage.

Mr Ferrara disputes that his trees have caused the damage Mr Brown alleges.

At the onsite hearing I observed the trees and relevant parts of both properties before hearing submissions. Ms Collingwood of Counsel represented Mr Brown. I granted leave for Mr Ferrara's son, Jeff Ferrara, to represent his father during the hearing.

Mr Brown's original application also sought orders under Pt 2A of the Trees Act on the basis that the trees were obstructing sunlight to his windows. At the outset of the final hearing, Ms Collingwood explained that Mr Brown no longer presses that part of the application. Mr Brown's application under Pt 2A is therefore not considered in this judgment.

Jurisdiction to make orders

The orders that Mr Brown seeks are orders the Court could make pursuant to s 9 of the Trees Act if all jurisdictional tests are met, although the Court may make different orders as it sees fit in the circumstances to remedy, restrain or prevent damage to property.

Reasonable effort to reach agreement; notice of the application

Conditions at s 10(1) of the Trees Act must be met before the Court can make orders in these proceedings.

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
 - (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) ...

From as early as 2017, Mr Brown brought issues regarding property damage to Mr Ferrara's attention via inperson discussions, letters, emails and text messages. Mr Brown unsuccessfully sought mediation through the Community Justice Centres in 2021. Mr Ferrara's responses to letters, emails and text messages revealed his different views on these issues. As per Ms Collingwood's written submissions: "It is clear from the correspondence exchanged between the parties that their views were unlikely to align." Further negotiation was most unlikely to produce

a consensus. I am satisfied that Mr Brown has made a reasonable effort to reach agreement with Mr Ferrara.

Mr Brown has given notice of the application in accordance with s 8 of the Trees Act.

The trees

Along the common boundary shared with No 10, Mr Ferrara planted on No 9 a row of 18 fig trees ('fig trees', or 'trees'). They are *Ficus microcarpa* var. *hillii* 'Flash', commonly sold as *Ficus hillii* 'Flash', or just 'Ficus Flash'. Oleanders (*Nerium oleander*) were planted between the fig trees. The fig trees are 1015 metres tall and in good condition.

Mr Ferrara says the trees were planted in or around 2003. Mr Brown says they were planted during or after 2008, relying on a photograph ('Photograph 1', p 20 of Exhibit B) that he says was taken on 31 August 2008 showing an absence of trees along the common boundary. However, streetview and aerial photographs readily available on the internet show the fig trees were planted before September 2006 and already formed a screen along the boundary by 2007.

Whether the trees have caused damage to property

The hurdle at s 10(2) of the Trees Act must be passed before the Court can make orders in these proceedings.

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

- (1) ...
- (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
 - (b) is likely to cause injury to any person.

Mr Brown claims that the fig trees have damaged the following elements of property at No 10:

Sewer pipes and bathroom floor;

Stormwater pipes;

Boundary fence; and

Building cladding and gutters.

Sewer pipes and bathroom floor

Evidence

Mr Brown alleges that roots from the fig trees grew beneath his building and damaged sewer pipes and the floor of a bathroom. He called a plumber to the site in July 2017 when he experienced plumbing issues with the toilet (par 20 of his affidavit of 28 July 2026); the plumber identified a blockage of the sewer pipes; and “this was the first instance of the tree causing such damage.”

Mr Brown provided invoices for repairs to sewer pipes from 2020 onwards:

An invoice for \$440 from P&C Plumbing dated 14 February 2020 included inspection, removal of two toilets, clearing blockage with water jet, checking the pipe with CCTV camera. The invoice stated: “Pipe broken – root penetration.”

P&C Plumbing invoice for \$365 dated 21 May 2020 was for similar works but did not mention root penetration.

P&C Plumbing invoice for \$440 dated 30 March 2021, for similar works, stated: “Note, pipe broken and tree root penetration caused blockage.”

P&C Plumbing invoice for \$280 dated 3 November 2021 was for clearing a blocked sewer pipe with water jet and poison, with no mention of tree roots.

P&C Plumbing invoice for \$440 dated 16 January 2023 was for clearing a blocked sewer pipe with water jet, with no mention of tree roots.

Two P&C invoices for \$440 dated 19 June 2023 and 5 December 2023 repeated the works and stated: “Tree roots caused blockage again.”

P&C Plumbing invoice for \$445 dated 14 August 2024 repeated the works, with no mention of tree roots.

P&C Plumbing invoice for \$465 dated 1 April 2026 repeated the works and stated: “Tree roots caused blockage.”

An invoice for \$677.40 from Asset Plumbing Solutions also dated 1 April 2026 was for CCTV inspection.

A quote from Asset Plumbing Solutions, dated 23 April 2026, covers the removal of a section of the concrete slab in the bathroom, removal of the defective sewer pipe and installing approximately 12 metres of sewer pipe, testing the pipe and new joints, and reinstating the concrete slab. The quote states the works are to replace “approximately 12 metres of defective sewer line caused by tree root damage.” The quoted cost of these works is \$16,563.90.

Mr Brown engaged Marcus James, a consulting arborist with Independent Consulting Arboriculturalists, to prepare a report (in Exhibit B). Mr James inspected the site on 24 or 26 January 2026 (pp 4 and 3 respectively). His undated report does not claim to be an expert witness statement. Under ‘Site Analysis and Observations’, Mr James wrote:

“By far the most deleterious effects of this Ficus sp. hedgerow are not immediately visible to the naked eye... Over the last six years records show numerous instances of plumbers responding to sewerage blockages have had to remove the building’s toilet bowls, in order to access sewage pipes clearly blocked by Ficus roots again.

...The regular leakage of water and wastewater from the building’s compromised infrastructure has resulted in visible ‘rising damp’, failure of the building’s foundations, and the raising and resulting cracking of paved areas, tiled and concreted, both abutting and inside No 10.”

Under ‘Executive Summary’, Mr James wrote:

“There is no doubt at all that the significant damage visible to the building and infrastructure at 10 Hannabus Place is directly as a result of the unbridled growth of the completely inappropriate Ficus sp. hedge.”

Mr Ferrara provided photographs showing trucks and heavy machinery on the unsealed area between the building at No 10 and the common boundary, as well as on other areas around the building at No 10.

Submissions

Mr Brown submits that roots from the fig trees first damaged his sewer pipes in 2017, and have continued to cause damage since then. He relies on the plumbing invoices to demonstrate this, supported by the Court’s observations of the toilet floor area during the onsite hearing. Mr Brown says it is reasonable for Mr Ferrara to pay for all sewer repairs to date, and for the cost of demolishing and excavating beneath the bathroom floor, replacing the sewer pipes and reinstating the bathroom floor.

Mr Brown refutes Mr Ferrara’s suggestion that trucks and heavy machinery on hardstand and unsealed areas of No 10 caused damage to sewer pipes. He says the sewer pipe blockages were beneath his building. Mr Brown submits that Hawkesbury City Council (Council) required the area between the building and common boundary be kept clear for truck movement, but was unable to provide any evidence to support this.

At par 43 of his affidavit, Mr Brown says he is not in a position to quantify the cost of all rectification works due to the prohibitive cost of professional excavation and assessment.

Ms Collingwood argued that the Court has no evidence that sewer pipes were in poor condition before tree roots damaged them, but has an abundance of evidence showing tree roots were in the pipes. She says the Court should give Mr James’ report considerable weight.

Ms Collingwood opines that Council anticipated heavy vehicles would use the unsealed area between No 10’s building and the common boundary when it required the installation of stormwater pits there. Ms Collingwood says that if there is dispute over compliance with development consents, this is not the appropriate forum to resolve that dispute.

Mr Ferrara does not dispute that fig tree roots were found within and blocked sewer pipes at No 10. Mr Ferrara submits that it is most likely that roots entered pipes that were already cracked and so were not the principal cause of damage. He says that the original building at No 10 was smaller than its current size, with correspondingly small sewer and stormwater systems. He says Mr Brown then extended the building, without properly upgrading the sewer and stormwater systems.

Mr Ferrara submits that the area on No 10 between the building and the common boundary was never meant to be used by vehicles. He says approved plans show it as a landscaped area. The area was never concreted. Photographs show that trucks and heavy machinery accessed and were parked in this area over many years. This began when Mr Brown purchased No 10, but increased when Alltrack Engineering, a business for servicing plant and heavy machinery, became the tenant. Heavy machinery also accessed and was parked on the concrete apron in front of the building, cracking and damaging the concrete. Mr Ferrara submits that sewer pipes near the front corner of the building were most likely cracked by the weight and movement of trucks and heavy machinery, allowing tree roots to enter via the cracks. He says this would lead to roots blocking the sewer pipe between the building's corner and the toilet in the bathroom, as happened. I copy here pars 4 and 5 from 'Respondent's position and proposed alternative orders' (Exhibit 1), where Mr Ferrara outlines the history of this issue:

"4. The Council records identify a different approved circulation arrangement. Earlier plans identify the common boundary strip as landscaping. DA208/94 required previously approved landscaping to be reinstated. DA146/98 stated that the truck manoeuvre area was at the rear, and condition 10 required the rear turning area and approved accessways to be constructed, drained, sealed and marked. The later modification approved an additional crossover and a turning area in front of the existing building, described in Council's engineering material as a circular driveway connecting the two front driveways. The amended stamped plan continued to mark the long common boundary strip as 'Turf'.

5. No Council originating document located in the supplied records describes the long common boundary strip as the 'western driveway', states that trucks were required to travel along it, or refers to 'gate one' and 'gate two'. The general 1998 letter stating that building access and egress satisfied Council and Building Code requirements does not identify a vehicle route and does not convert the turfed strip into a truck driveway."

Mr Ferrara submits that proper repair of the pipes, in the first instance, rather than repeated clearing of a blockage, would have avoided Mr Brown's numerous callouts to plumbers over the years. He says that tree roots were not causing further damage, but were just repeatedly regrowing in pipes that were cracked by other means, and then remained cracked.

Mr Ferrara submits that Mr Brown has provided no evidence to demonstrate that the fig trees' roots caused the initial cracking of the sewer pipes; nor has Mr Brown identified which of the fig trees has roots in the sewer pipe.

For these reasons, Mr Ferrara says there is no basis for him to pay for repairs to Mr Brown's sewer pipes.

Findings

I am satisfied that the fig trees' roots have blocked sewer pipes at No 10. I observed fig tree roots growing against No 10's building in the vicinity of the sewer pipe. No other large trees are nearby. Roots that were cleared from the pipes were no doubt from the fig trees. For the purposes of s 10(2)(a) of the Trees Act, this amounts to damage to Mr Brown's property. Orders can be made on this element of Mr Brown's application.

Before making orders, the Court is to consider matters at s 12 of the Trees Act. Relevant to this element of the application is s 12(h):

12 Matters to be considered by Court

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

...

- (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
- (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,

...

Despite Ms Collingwood's urging, I give little weight to Mr James' report. Mr James undertook no investigations of his own, but simply referred to the numerous instances of sewer blockages over the years. Mr James attributes failure of the building's foundations and paved areas to "the regular leakage of water and wastewater from the building's compromised infrastructure". The building at No 10 lacks gutters and downpipes, which were removed after being in disrepair for a considerable period of time. Mr James makes no mention of water runoff from the extensive roof area onto the ground next to the building. And finally, Mr James' statement that there "...is no doubt at all that the significant damage visible to the building and infrastructure... is directly as a result of the unbridled growth of the completely inappropriate Ficus sp. hedge" ignores significant factors that have contributed to damage.

In my mind, primary damage to sewer pipes by trucks and heavy machines is most likely, as per Mr Ferrara's submissions. The photographs Mr Ferrara provided are persuasive. The area between the building and common boundary is unsealed. Heavy trucks and machinery have

passed through and been stored in this area. Wheel ruts in the ground can be seen in some photos. Whether this area's use as a driveway for trucks and machinery was approved or anticipated by Council is irrelevant. The area is not concreted, unlike the hardstand areas in front of the building and on its southern side. On the evidence before me, I cannot be satisfied that tree roots caused the initial damage to sewer pipes near the front of the building. Cracking to hardstand areas on No 10 demonstrates the potential impacts of heavy plant and machinery.

If the weight of trucks and machinery damaged sewer pipes, as is most likely, then fig tree roots have entered the already cracked pipes and caused blockages. Mr Brown has repeatedly dealt with the symptoms arising from this, but has not fixed the cause.

For these reasons, Mr Ferrara should not pay for the cost of past sewer repairs. For the same reasons, he should not pay for works to replace sewer pipes and reinstate the bathroom floor.

No orders will be made on this element of the application.

Stormwater pipes

Evidence

During the onsite hearing, Mr Brown showed the Court several stormwater pits around the building at No 10. Tree roots could be seen growing into a pit from the edge of a stormwater pipe entering the pit. A stormwater pit behind the building at No 10 was entirely buried beneath soil, debris and leaf litter.

A quote from Dexcon Civil Sewer and Water Contractors, dated 16 January 2026, includes excavation of the areas behind the building at No 10 (330 m²) and beside the building (186 m²), placing compact road base over both areas, removing and reinstalling stormwater pipes and pits, removing and replacing concrete driveway and paving (area unspecified – possibly in front of the building), and excavating and returfing the front garden. The quoted cost of these works is \$98,279.50.

As discussed earlier, Mr James attributed all damage to the trees.

Submissions

Mr Brown submits that fig tree roots have damaged and cracked stormwater pipes at No 10 by growing against them, and have then entered the pipes through the resulting cracks. Mr Brown says debris from the trees covered the stormwater pit behind his building, making it non functional. Mr Brown submits that the Court's observations of stormwater pits and pipes during the onsite hearing should support his claim.

Mr Ferrara submits that it is more likely that trucks and heavy machinery using the unsealed areas beside and behind the building at No 10 have damaged stormwater pipes, allowing tree roots to then grow into the pipes. His submissions on this have been covered above at [25].

Mr Ferrara submits that Mr Brown has not maintained the area behind his building, allowing dirt and other debris, not just from the trees, to fill and cover the stormwater pit there.

Findings

My findings on this element of the application align with findings regarding the sewer pipe damage. Again, I cannot be satisfied that tree roots caused the initial damage. Photographs of trucks and heavy machinery in the unsealed area of the stormwater pipes and pits are persuasive – their weight on the unsealed ground was most likely the primary cause of damage to stormwater pipes, which then allowed fig tree roots to enter the pipes through cracks.

The blocked pit behind No 10's building is not caused by tree root growth, but is a result of the pattern of use and lack of maintenance in this area. The pit is filled with and covered by soil and debris.

The quote for stormwater works includes replacement of paving and hard surfaces at the front of No 10's building. Photographs show heavy plant and machinery that were parked on those areas are more likely than tree roots to have caused damage there.

For these reasons, Mr Ferrara should not pay for the cost of works to repair or replace the stormwater pipes and pits, nor for other works included on the Dexcon Civil quote.

No orders will be made on this element of the application.

Boundary fence

Evidence

I was asked to inspect the wire mesh boundary fence during the onsite hearing. A quote from C&S Fencing and Excavation, dated 1 February 2026, includes installation of 80 linear metres of new wire fencing. The quoted cost of these works is \$9,350.

Submissions

Mr Brown submits that tree branches have fallen and damaged parts of the fence, and that the trees' proximity has contributed to the fence's poor condition. Mr Brown says the fence needs replacing and that Mr Ferrara should pay for it.

Mr Ferrara submits that the wire fence on their common boundary is in the same condition as the wire fence around the other sides of No 10 where there are no trees. He says the fence remains functional but, even if it were no longer functional, it does not need replacing as the fig trees form a suitable barrier between the properties.

Findings

If trees have damaged the fence on the common boundary, their contribution to the fence's condition is very minor. The common boundary fence is in a similar condition to the fence on the other boundaries at No 10 where there are no trees. I accept Mr Ferrara's submission that there is no need for fencing orders within these proceedings.

No orders will be made on this element of the application.

Cladding

Evidence

A quote from Finial Access Pty Ltd, dated 16 June 2026, includes removal of existing cladding around three sides of the building at No 10, installation of new cladding around those three sides, and installation of 100 metres of new gutters with downpipes. The quoted cost of these works is \$29,625.20.

Submissions

Mr Brown submits that the fig trees' branches extended across the boundary and reached the building at No 10. The proximity of the trees' branches and foliage, along with debris they dropped, caused the deterioration of gutters and cladding along the building's side nearest the boundary, and gutters had to be removed. He says he will replace cladding and gutters around all sides of his building other than the front, and the compensation should be apportioned accordingly. (Mr Brown says the trees' branches also damaged truck mirrors and antennas on No 10.)

Mr Ferrara submits that Mr Brown is seeking to have his building upgraded at Mr Ferrara's expense. He says the cladding is old and rusted around all three sides of the building, and that gutters have been removed on the side away from the trees, where branches, foliage and debris have had no effect. He says he was denied the opportunity to inspect the guttering, which has been removed from the site.

Findings

I observed cladding on all side of No 10's building to be aged and rusted. The building's southern side is well away from and was not affected by the fig trees. The condition of cladding on the northern side, near the trees, is not significantly worse than other cladding. Gutters have been removed from the building's southern side, away from the trees. Cladding and gutters near the trees have not required replacement earlier than those on other parts of the building. If debris from the trees settled in, and contributed to deterioration of, the gutters, this could have been avoided through reasonable property maintenance, as per the principle in *Barker v Kyriakides* [2007] NSWLEC 292 at [20]. The need to replace cladding and guttering has not been caused by the fig trees.

For these reasons, no orders will be made on this element of the application.

Whether the trees are likely to cause damage to property

Mr Brown says the fig trees will cause further damage to his sewer and stormwater infrastructure, his building and the boundary fence. In addition, he says roots are likely to damage an underground oil/water separator behind his building.

Evidence

Mr James did not recommend the removal of the fig trees. Mr James concluded that the fig trees' roots could be cut without compromising the trees, and a root barrier could be installed.

Submissions

Mr Brown submits that the trees should be removed to prevent them causing further damage. He says that if the trees are retained, a root barrier should be installed on No 9 rather than on his own land.

Mr Ferrara submits that removing the fig trees would be disproportionate to the issues and to the trees' benefits. The trees provide heat reduction and contribute to amenity. If the Court finds roots are likely to cause damage to property, Mr Ferrara's preference is that a root barrier be installed, but it cannot be installed on his land as that would require the severing of large structural roots near the tree's stems. Mr Ferrara also stated during the hearing that he is willing to prune and maintain the trees at the boundary line to prevent branches causing damage.

Findings

Fig tree roots can be seen against the building at No 10. Despite the lack of any root investigation or root mapping, it is clear that all of the fig trees have roots on land at No 10. Fig tree roots have grown into sewer and stormwater pipes. If any defects remain in those pipes, roots will cause further blockages. For this reason, I am satisfied that the fig trees are likely to cause damage to property at No 10 in the near future.

Other relevant matters

The Court is to consider matters at s 12 of the Trees Act before determining the application. Some of those matters have been considered above, where relevant to particular elements of the application. Others that are relevant are considered here.

The trees are close to the common boundary. The trees' branches and roots extend across the boundary. In the past, branches have reached to the building at No 10. Fig tree roots grow against the building.

Council's consent would ordinarily be required to prune or remove the trees. Pursuant to s 6(3) of the Trees Act, Council's consent is not required for any treerelated works ordered in these proceedings.

The trees will tolerate severe branch and root pruning. This cultivar is commonly sold, grown and maintained as a hedge. Root pruning at the boundary would remove close to 50% of each tree's roots and would sever structural roots close to the trees, affecting both tree health and tree stability. However, the trees should tolerate root pruning close to the stormwater pipe at No 10, especially if their crowns are reduced at the same time.

The trees contribute positively to shading and cooling, amenity of the land at No 9, public amenity, and reduction of wind and dust. They provide habitat in an area that otherwise has minimal tree canopy.

Mr Ferrara planted the trees close to the boundary. Encroachment of the trees' roots and branches across the boundary, and their potential to cause damage, were foreseeable. Mr Ferrara should pay for works required to prevent damage.

Considering these matters, tree removal is unnecessary if a root barrier is installed and maintained on No 10, alongside the stormwater pipe. Successful maintenance of a root barrier requires its upper edge to remain at or above the ground surface to prevent roots growing over the top of it. The root barrier's longterm efficacy will therefore depend on regular maintenance by the owner or tenant of No 10.

An order will be made for Mr Brown to provide Mr Ferrara with a plan showing the location of services that could be impacted by the installation of a root barrier. Mr Ferrara will have a period of 90 days in which to install a root barrier. To avoid other works at No 10 disturbing the root barrier, Mr Brown may wish to carry out works to stormwater, sewer or other infrastructure before the root barrier is installed. If so, within 30 days Mr Brown is to inform Mr Ferrara in writing of his work schedule and an alternative suitable timeframe for installing the root barrier.

Orders

The Court orders:

The application for orders under Pt 2A of the Trees (Disputes Between Neighbours) Act 2006 (NSW) (Trees Act) is refused.

The application for orders under Pt 2 of the Trees Act is granted to the extent of the following orders.

Within 30 days of the date of these orders, the Applicant is to provide the Respondent with a plan showing the location of all services on the Applicant's land (No 10) within 4 metres of the common boundary shared with the Respondent's land (No 9).

Within 30 days of the date of these orders, should the Applicant want to alter the timeframe for the installation of a root barrier as per Order (5), the Applicant is to provide, in writing, the Respondent with a schedule of remedial works at No 10 and an alternative suitable timeframe for installing the root barrier.

Within 90 days of the date of these orders, or as otherwise informed by the Applicant in Order (4), the Respondent is to engage and pay for a suitably qualified and experienced contractor to install a root barrier on No 10 between the common boundary and the stormwater pipe at No 10, for the length of No 10 from its front boundary to its rear boundary. The root barrier is to be installed as close to the stormwater pipe and pits as is practical without disturbing the pipe and pits, and without damaging other services. The root barrier is to be to a depth of at least 800 mm.

During November each year beginning November 2026, while the fig trees remain, the respondent is to engage and pay for a suitably qualified (minimum AQF level 3) and insured arborist to:

prune the fig trees' branches overhanging No 10, so that branches encroach no more than 500 mm beyond the boundary;

reduce the fig trees' height and northward spread if, and as, the Respondent sees fit.

The works in Order (6) must be done in accordance with the SafeWork NSW (2026) 'Tree works' Code of Practice.

The Respondent is to provide the Applicant with at least 10 days' notice of the works in Order (5) and each occurrence of the works in Order (6).

The Applicant is to allow access during reasonable hours of the day for the works in Order (5) and each occurrence of the works in Order (6).

D Galwey

Acting Commissioner of the Court

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Decision last updated:

08 September 2026

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