

AUSTRALIA / JUDGMENT

Cox v Halasz

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Land and Environment Court

New South Wales

Amendment notes

Medium Neutral Citation:

Cox v Halasz [2026] NSWLEC 1575

Hearing dates:

10 July 2026

Date of orders:

03 September 2026

Decision date:

03 September 2026

Jurisdiction:

Class 2

Before:

Galwey AC

Decision:

The Court orders:

- (1) The application is granted to the extent of the following orders.
- (2) Within 14 days of the date of these orders, the Applicants are to provide the Respondents and the owners of 15 Judge Street (No 15) and 8 Dolphin Street (No 8) with a project plan for demolishing and replacing the retaining wall (the works) and a copy of the contractor's relevant insurances. The project plan is to specify the works' commencement date, an expected completion date, and expected dates of any significant stages requiring access to the Respondents' property and to No 15 and No 8. The project plan is to clarify that the new retaining wall will be built roughly in the same location as the existing wall or at least 0.2

metres from the common boundary.

- (3) On reasonable notice from the Applicants, the Respondents are to allow access to their property for the works and maintain any required area clear of their own items during reasonable hours of the day. The Applicants are to organise access to No 15 and No 8 as required.
- (4) Upon completion of the works, the Applicants are to provide the Respondents with a receipted copy of the paid invoice for the works and relevant certificates applying to the works.
- (5) Within 30 days of receiving a receipted copy of the paid invoice for the works, the Respondents are to pay the Applicants \$11,684, or a lesser amount in accordance with the apportionment outlined at [50] in this judgment should the works cost less than the quoted amount.
- (6) Order (5) lapses if the Applicants fail to provide the Respondents with a receipted copy of the paid invoice for the works within 12 months of the date of these orders.
- (7) The exhibits are returned, other than Exhibit A.

Catchwords:

TREES (DISPUTES BETWEEN NEIGHBOURS) — Pt 2 application — neighbouring tree — the tree has been removed — damaged retaining wall requires demolition and replacement — whether the tree caused damage to the applicants' property — other factors contributing to damage — apportioning costs of works — orders for compensation

Legislation Cited:

Trees (Disputes Between Neighbours) Act 2006 (NSW), ss 4, 7, 8, 9, 10, 12

Cases Cited:

Jones v Onisforou [2018] NSWLEC 1451

Texts Cited:

Google Earth data 16/02/2023, viewed 4 August 2026

<https://tinyurl.com/yeyn6vt9>

Randwick Development Control Plan 2013

Randwick Development Control Plan 2025

Category:

Principal judgment

Parties:

Thomas Wesley Cox (First Applicant)

Carolyn Anne Cox (Second Applicant)

Paul Halasz (First Respondent)

Elizabeth Halasz (Second Respondent)

Representation:

Counsel:

T Cox (Self-represented) (First Applicant)

C Cox (Self-represented) (Second Applicant)

P Halasz (Self-represented) (First Respondent)

E Halasz (Self-represented) (Second Respondent)

File Number(s):

2025/481251

Publication restriction:

Nil

Judgment

Background

COMMISSIONER: Thomas Cox and Carolyn Cox have applied to the Court pursuant to s 7 of the Trees (Disputes Between Neighbours) Act 2006 (NSW) (the Trees Act) seeking orders to remedy damage to their Randwick property at 6 Dolphin Street (No 6). They say the damage was caused by a tree on adjoining land at 2 Heath Street (No 2) owned by Paul Halasz and Elizabeth Halasz. The Coxes seek the following orders:

The respondents are to provide all necessary access, including access from Heath Street, for the purpose of demolition and reconstruction of the retaining wall, the taking down and re-erection of the timber fence, and related work.

The respondents are to temporarily relocate enclosures and equipment away from the boundary a sufficient distance for the contractor to carry out the work.

The applicants are to engage and pay for a contractor to carry out the demolition of the existing retaining wall, disposal of waste material off-site, the construction of the new retaining wall, and the taking down and re-erection of the timber fence to be completed within 25 weeks.

Within 7 days of the receipt of invoices the respondents are to reimburse the applicants for the costs of the surveyor, structural engineer, architectural/project management, Complying Development Application preparation and lodgement (including 10.7(2) and (5) certificates and title searches), and the Principal Certifying Authority.

Within 7 days of the receipt of an invoice for the completed work, the respondents are to reimburse the applicants for the cost of the demolition and reconstruction of the retaining wall, disposal of waste material off-site, and the taking down and re-erection of the timber fence .

The Halaszses dispute that their tree caused damage to the Coxes' property. The Halaszses propose alternative orders that the Coxes obtain all permits and engage contractors at their expense to demolish and rebuild their retaining wall.

The orders that the Coxes seek 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.

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) ...

The Coxes first wrote to the Halaszses in 2012 after noticing damage to their retaining wall. The Coxes offered at that time to pay half the cost of removing the Halaszses' tree. The Coxes raised the issue again in 2015 during fence discussions with the Halaszses. The Coxes wrote to the Halaszses again in March 2024, describing the damage and the need, by that stage, to demolish and rebuild the wall. Correspondence between the parties continued, with disagreements about the cause of damage and the need to remove the tree. I am satisfied that the Coxes have made a reasonable effort to reach agreement with the Halaszses. The timeframe set down by the Court allowed for notice of the application in accordance with s 8 of the Trees Act.

Whether the tree has caused damage

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.

The tree

Some years ago, the Halaszses bought a Norfolk Island pine (*Araucaria heterophylla*) (the tree) in a pot as a Christmas tree (Exhibit A, p 39 of 89). After it had fulfilled its festive purpose, the Halaszses planted the tree near a corner of their back garden, close to the section of their side boundary that is shared with the Coxes. The tree grew to reach a height of between 15 and 20 metres by 2023 and was in good condition at that time (Google Earth data 16/02/2023, viewed 4 August 2026). A 2025 feature survey (Exhibit C) reported the tree's stem diameter as 0.50 metres. The Halaszses engaged contractors to remove the tree on 14 May 2025. Pursuant to s 4(4) of the Trees Act, the tree is still taken to be situated on No 2 for the purposes of this application.

The retaining wall

The rear boundary of the Coxes' long and narrow property, only about 6 metres across, abuts two properties: the Halaszses' side boundary at No 2 (approximately 70% of the Coxes' rear boundary) and the side boundary at 15 Judge Street (No 15) (approximately 30% of the Coxes' rear boundary). No 2 and No 15 each share only a small portion of their side boundaries with the Coxes. The land on the Coxes' side of the boundary is more than a metre lower than the adjacent land on No 2 and No 15. On the Coxes' side of the boundary, a brick wall bedded on natural sandstone supports the higher land to their south. A two-storey studio on the lower ground of the Coxes' property is close to the retaining wall. A timber paling fence sits on the higher ground above the retaining wall, close to the common boundary.

Malcolm Bruce, an arborist engaged by the Coxes, reported that a retaining wall is visible in the same location as the existing retaining wall in aerial imagery from 1955 (Exhibit B). The Halaszses, who have lived at No 2 for some 40 years, say the existing retaining wall was constructed on No 6 around 1982.

Damage to the wall

Damage to the wall is shown in photographs provided by the Coxes. I also viewed the damage during the on-site hearing. The brick wall is severely cracked, it is rotating towards the Coxes' studio, and its base is lifted above the natural sandstone foundation. The Coxes have installed temporary horizontal bracing between the wall and their studio to prevent the wall falling into their property.

The parties have provided no expert evidence regarding the condition of the wall. The Coxes submit that the wall is unsafe and needs to be demolished and rebuilt. They say that, if the wall collapses, it will damage their studio and lead to the Halaszses' higher ground collapsing into their property. My on-site observations support these submissions.

Mr Halasz says that in his opinion there is no risk of the wall collapsing (Exhibit 1, p 7). The Halaszses say that the retaining wall's condition has not changed in the last six years (Exhibit 2, p 2). Neither my on-site observations nor the Coxes' photographs support these submissions.

I find that damage to the wall is significant. For the continued support of the Halaszses' land, the wall needs to be demolished and rebuilt.

Causes of damage

Mr Bruce inspected the retaining wall from within the Coxes' property on 10 March 2026. Mr Bruce noted large roots in the soil behind the retaining wall and wrote that pressure of the roots was pushing the wall outwards (Exhibit B, p 3). Mr Bruce observed large roots growing beneath the retaining wall and wrote that those roots had lifted the retaining wall off the sandstone bedrock, as well as fracturing some of the sandstone bedrock. Mr Bruce included photographs of the roots in his report and identified all of these roots as being typical of the genus *Araucaria*. Mr Bruce concluded (on p 8): "The Structural Roots of the Norfolk Island Pine have deformed, cracked and lifted the brick retaining wall at the rear of 6 Dolphin Street, Randwick."

The Coxes submit that the roots growing behind, within and beneath their retaining wall are from the Halaszses' Norfolk Island pine. They say there were no roots visible when they first noticed cracking in the retaining wall in 2012. Over time, the roots grew against, through and beneath the wall, causing the wall to rotate, crack and lift as the roots grew larger. The Coxes say that the wall was solidly founded on the sandstone bedrock in 2012.

The Halaszses submit that the retaining wall has been damaged by two factors, neither of which is their tree. First, they say the wall's construction was structurally inadequate, lacking a proper foundation and drainage. This allowed water to flow beneath the wall, washing out supporting material that supported the wall. Second, they say that roots from another tree, a *Celtis sinensis* (Chinese hackberry) growing nearby on 15 Judge Street, rather than roots from their own tree, have damaged the wall.

Regarding the retaining wall's construction, the Halaszses submit that the wall was built without a proper foundation. They say the wall was left without support after waterflow from the ground at No 2 washed away supporting material. Mr Halasz submits that he installed a drainage pipe behind the wall some 30 years ago. Mr Halasz asked the Court to compare the retaining wall with a wall on the other side of the Halaszses' property, saying the other wall was properly constructed and has withstood the site conditions.

Regarding damage by tree roots, the Halaszses rely on an email they received on 28 October 2024 from Walter Chan, an arborist with Arbor Express. The Halaszses call this email "a report from an independent arborist" (Exhibit 1, p 7). I copy the email here.

"Hi Paul,

Based on the visit at 2 Heath St, Randwick NSW 2031, I have identified a tree from 15 Judge St, Randwick NSW 2031 has an extensive root system and protruding towards your property. It is *Celtis sinensis* that is famous for its aggressive roots. Some of the roots have damaged the fence, the structures around your pool, the pump and part of your pavement. It may have also contributed to the damage related to the retaining wall with 6 Dolphin St, Randwick NSW 2031.

Kind regards,

Walter Chan"

Mr Chan's email provides no information that assists the Court. Further, the Halaszses' reliance on it to support their submission is baseless. Mr Chan failed to mention the Norfolk Island pine growing closer to the wall than the *Celtis sinensis* at 15 Judge Street, so it is hardly an objective and complete assessment of the circumstances. Mr Chan did not inspect the retaining wall from within No 6, so did not see the Norfolk Island pine's roots growing against, through and beneath the wall.

My observations confirm Mr Bruce's conclusion that the Norfolk Island pine's roots have caused significant damage to the retaining wall. All large roots that I observed to be in contact with parts of the retaining wall, particularly where the wall's damage is most severe, were Norfolk Island pine roots, not hackberry roots. Pursuant to s 10(2) of the Trees Act, orders can be made in these proceedings. Before determining the application, the Court must consider the matters at s 12 of the Trees Act.

Consideration of s 12 matters

Location

The Norfolk Island pine was close to the common boundary between No 2 and No 6 and close to the damaged retaining wall.

Consent

Under the Randwick Development Control Plan 2025 (2025 DCP), Randwick City Council's (Council) consent via a Tree Works Permit would be required to remove the tree. According to Council's website, the 2025 DCP was to commence on 27 July 2026. But from 2013, soon after the Coxes informed the Halaszses that the tree was causing damage, until the time the tree was removed, the relevant parts of the Randwick Development Control Plan 2013 (2013 DCP) still applied. Under the 2013 DCP, the tree met the following exemption: "The removal of any tree growing within two (2) metres of any building (excluding an outbuilding) measured horizontally from the closest point of the trunk at one (1) metre from ground level to the closest point of the vertical alignment of the building structure which may be the eave, guttering or fixed awning of the building." (I note that at the time of writing this judgment in August 2026 Council's website still refers to the 2-metre exemption for tree removal on their 'Removing & pruning trees' page despite the updated Development Control Plan.)

The issue of Council's consent requirements was in dispute between the parties and, for some time, Mr Halasz appears to have used the issue to further delay taking action. Mr Halasz applied to Council on 18 March 2024 seeking permission to remove the tree. Council's determination of 15 April 2024 refused approval for tree removal because the tree was seen as significant and in good health, with insufficient reasons to support its removal. It seems that Mr Halasz failed to include in his application any information about the tree's impacts to the retaining wall and the tree's proximity to the Coxes' studio. As a result, Council did not inspect the damaged retaining wall when making its determination in 2024, nor did Council consider the tree's proximity to the Coxes' studio.

After Mr Cox contacted Council and further explained the situation, he received a letter from Council's Tree Management Services Supervisor dated 9 July 2024 stating (with my emphasis in bold):

"RE; Tree Preservation Order - 2 Heath St RANDWICK

I refer to your letter dated 6 March 2024, requesting permission to remove the Araucaria heterophylla (Norfolk Island Pine) growing within the above property and advise as follows.

Under the provisions of Randwick City Council's Tree Preservation Order 2005, consent is not required for the removal of any tree –

- Growing within 2 metres of any building comprising a residential dwelling (detached, attached or multi-unit housing) or any retail, commercial, factory, warehouse or storage building (not being an out building) measured horizontally from the closest point of the trunk at one (1) metre from ground level to the closest point of the vertical alignment of the building structure which may be the eave, guttering or fixed awning of the building.

The pruning and/or removal of the subject tree is therefore at the discretion of the tree owner."

Mr Cox attached a copy of the letter to an email sent on 16 July 2024 to Mr Halasz, saying:

“[Council] phoned me last week, and confirmed that the tree was exempt (i.e. did not require consent in order for it to be removed) under Randwick DCP and the provisions of Council’s Tree Preservation Order because it is within two metres of a building. [Council] has sighted the tree and its proximity to our building. I enclose a copy of the letter from Council that permits removal of the tree.

Soil abuts the retaining wall on its southern side to the top of the wall, and the wall is surmounted by a 1.8m high fence. The damage to the wall is very evident when viewed from the northern [Coxes’] side. I supplied you with photographs in March. I am inviting you to see it in the flesh. Please come and have a look when you are feeling better. Shall we plan for one day next week?”

This was not the first time the Coxes had invited the Halaszses to come and view the damage from within the Coxes’ property where it could be plainly seen. Mr Halasz replied via email 5 days later:

“Have you contacted the owner of the large Hackberry tree proximity of your house [sic]? The Hackberry tree (Celtis sinensis) is primarily responsible for the damage in the retaining wall.”

Here I take into consideration that Mr Halasz did not acknowledge Council’s letter, did not accept the invitation to view the damage from within the Coxes’ property, and asserted without good reason that another tree was the primary cause of the damage.

Mr Cox replied to Mr Halasz two days later via email with photos of the Norfolk Island pine’s roots against and beneath the wall, reminding him of the invitation to view the wall from the Coxes’ property and re-extending the invitation by asking Mr Halasz to call him to arrange a time. During the next few months, some correspondence regarding arborist inspections passed between the parties.

By March 2025, it seems the Halaszses acknowledged that their tree was causing some damage, but they still believed that the hackberry was also affecting the wall. Nevertheless, they told the Coxes they were making arrangements to have the Norfolk Island pine removed. Mr Cox offered to provide, and then sent via email, three quotes from tree contractors for removing the tree. On 3 April 2025, Mr Cox followed up via email to Mr Halasz, asking when the tree would be removed. Mr Halasz replied via email on the same day: “Unfortunately, the letter you have obtained from the council has no reference number for trees larger than six metres. I have emailed the council before your visit for the reference number.”

Here I note that Mr Halasz’s sudden concern about the absence of a reference number is more than eight months after Mr Cox sent Mr Halasz a copy of Council’s letter noting the permit exemption. Further emails from Mr Halasz through to May 2025 continued his argument that he had no valid letter from Council, despite Mr Cox again sending the relevant DCP section and Council’s letter. During this period, both parties were in contact with Council.

Despite the exemption, Council issued a permit to Mr Halasz dated 17 April 2025 for removal of the Norfolk Island pine. Mr Halasz told Mr Cox he received Council's permit on 1 May 2025. The Halaszses then arranged removal of the tree, more than a year after the Coxes' letter to the Halaszses of 6 March 2024.

Benefits of the tree

The Court is required at ss 12(b3)-(g) to consider various benefits and values of the tree. The tree contributed to the amenity of the Halaszses' land and provided ecosystem services. Over time, its adverse impacts to property outweighed its benefits.

Other factors contributing to damage

Where a tree has caused damage to property, the Court is to consider at s 12(h) of the Trees Act:

- (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,

After first being notified of damage to the retaining wall in 2012, the Halaszses assumed no responsibility for the damage and took no action to prevent damage. At that time, it seems that the damage was relatively minor. By 2024, the damage to the retaining wall was significant to the extent that the wall might fail.

The Coxes' act and omissions since 2012 include:

Informing the Halaszses of the tree's impacts to the retaining wall in 2012;

Offering to pay half the cost of removing the tree in 2012 if the Halaszses removed the tree promptly;

Providing photographs of the damage when the Halaszses failed to inspect the retaining wall from within the Coxes' property;

Asking the Halaszses to remove the tree and to contribute to the cost of repairing the retaining wall;

Informing Council fully of the circumstances surrounding the Halaszses' tree removal application when the Halaszses had failed to do so;

Obtaining a letter from Council explaining the relevant tree permit exemption and providing a copy to the Halaszses;

Obtaining a report from a qualified arborist; and

Obtaining and providing to the Halaszses quotes for removing the tree.

Perhaps the Coxes could have made greater effort to engage with the Halaszses between 2012 and 2024, but given the Halaszses' unwillingness to resolve the situation, this is unlikely to have made a difference to the present situation.

The Halaszses' acts and omissions since 2012 include:

Failing to consider their tree's impact to the Coxes' retaining wall after having it brought to their attention in 2012;

Failing to accept the Coxes' invitations to inspect the retaining wall from within the Coxes' property;

Failing to take their own steps to discover that Council consent was not required to remove the tree;

Failing to inform Council of the reason they wanted to remove the tree when applying for a permit in 2024;

Asserting without good reason that another tree was damaging the retaining wall;

Failing to remove the tree when first receiving Council's written acknowledgement that doing so would not require Council's consent.

Had the Halaszses taken a different course of action, the extent of damage to the retaining wall might have been minimised.

Tree roots that are behind, within and beneath the retaining wall are visually identifiable by their bark as Norfolk Island pine roots. If the hackberry on another property contributed to the wall's condition, that contribution was minor at most. The Norfolk Island pine is the principal cause of damage to the retaining wall. (The Norfolk Island pine at No 2 and the hackberry at No 15 have now both been removed.)

If the retaining wall was constructed in 1982, as per the Halaszses' submissions, it is now more than 40 years old. The Coxes submit that the wall was solidly founded and in good condition before roots began causing damage in 2012. The Halaszses submit that the wall's poor construction allowed site conditions, including waterflow beneath the wall, to damage the wall. The presence of tree roots between the bottom of the wall and the natural sandstone base suggests that damage results more from tree roots than from other site conditions. I accept that the wall was not constructed to current standards for such a wall and that, over time, the wall is likely to have deteriorated somewhat due to site conditions other than tree roots. However, in the absence of tree roots, such deterioration would be unlikely to result in the situation where the wall is now at risk of falling and needs urgent replacement. It is possible that the wall may otherwise have remained functional for a few more decades.

These reasons support the Coxes’ submission that the Halaszses should pay for the replacement of the retaining wall, as the Halaszses’ tree was the primary cause of damage to the wall.

Other relevant matters

Collapse of the existing retaining wall would have significant adverse impacts for both the Coxes’ and Halaszses’ properties, as well as for No 15. A properly engineered replacement retaining wall will provide permanent support of the higher land at No 2 and No 15 and will prevent damage to the Coxes’ property. Replacing the wall now will result in a better wall and will benefit both parties (and, to a lesser extent, the owners of No 15, who share less than 2 metres of their side boundary with the Coxes). For this reason, the Coxes should also contribute to the cost of replacing the retaining wall, but due to ‘Other factors contributing to damage’ at [33] to [41] above, their contribution should be less than the Halaszses’ contribution. The owner of No 15 might benefit from this, but they are not a party to these proceedings and will not be included in any compensation orders. The Halaszses’ tree was the principal cause of damage to the short section of wall that the Coxes share with No 15.

The Coxes have done a considerable amount of work obtaining specifications, certification and construction quotes. They filed their application with the Court on 11 December 2025. Not long before then, they sent the Halaszses an email on 21 November 2025 outlining costs they had incurred to that date as follows:

Surveyor	
	\$1,635.00
Structural engineer	
	\$990.00
Architectural and project management (say)	
	\$4,400.00
Principal Certifying Authority (CDA)	
	\$2,140.00
10.7(2) and (5) certificates x 2	
	\$356.00
Title searches	
	\$43.78
TOTAL	
	\$9,564.78

The Coxes provided invoices for the above costs other than for the architectural and project management, being the Coxes' estimated cost for their own time as architects and project managers. The Coxes also provided copies of the survey, plans, certificates and titles searches that incurred these costs.

The Coxes obtained and provided copies of three quotes for demolishing and replacing the retaining wall from landscaping contractors, ranging from \$10,257.50 to \$20,465.50. In their email to the Halaszses on 21 November 2025, the Coxes stated that they intended to engage PG Hardscapes, the contractor with the cheapest quote of \$10,257.50, to carry out the works.

In their email to the Halaszses on 21 November 2025, the Coxes offered to waive their architectural and project management costs of \$4,400 if the Halaszses would agree to reimburse them the remaining costs incurred to date (\$5,164.78) and the cost of the works (\$10,257.50), a total sum of \$15,422.28, without the need for an application to the Court; otherwise, they intended to claim in Court the full \$19,822.28.

Although the work done by the Coxes to date is significant, their 'architectural and project management costs' have, or will, cost them time rather than money. Their estimate of \$4,400 for this is probably not unreasonable, but the 'cost' of this will not be passed on to the Halaszses.

The Halaszses submit that the survey obtained by the Coxes for \$1,635 covers the entire property at No 6, rather than just relevant parts of the property near the retaining wall. However, I note that the survey plan includes no details for the front half of the Coxes' property, but does include greater detail than is required for the retaining wall issue. For this reason, in calculating compensation, the cost for the survey will be reduced to 50% of the invoice amount, or \$817.50.

Other costs incurred by the Coxes will be used in calculating compensation, as will the cost of replacing the retaining wall. Considering reductions at [47] and [48] above, this results in total costs of \$14,604.78, rounded to \$14,605 to be apportioned.

Apportioning costs between the parties requires the consideration of all relevant matters: for example, see *Jones v Onisforou* [2018] NSWLEC 1451 at [16]-[21]. Considering findings above at [41] and [42] on apportionment of the costs, it seems reasonable for the Halaszses to contribute 80% of the costs and for the Coxes to contribute 20%. That is, if the Coxes complete the works within a specified timeframe, the Halaszses are to reimburse them \$11,684 or proportionally less if the actual cost of works is less than the amount in the PG Hardscape quote. This is significantly less than the amount that the Coxes claim, but I consider too that the Halaszses incurred the cost of removing a tree that provided benefits beyond their own property.

For two reasons, orders will provide for the Coxes to arrange the works and for the Halaszses to reimburse them. First, the Coxes have done all the necessary work to date and are familiar with the process of certification and project management. Second, the Halaszses have to date shown some resistance to dealing with the issue in a timely manner.

The PG Hardscapes quote includes: “Excavate behind the wall and push the fence and the wall back to the newly marked boundary line.” The survey plan shows the existing retaining wall is located on the Coxes’ land, approximately 0.5 metres in from the boundary at its eastern end and 0.3 metres at its western end. The timber paling fence is on the boundary at its western end and otherwise close to the boundary but within the Coxes’ land. The Halaszes submit that they have installed some pipes on their land that might be affected by excavation works at the boundary. Also, new drainage pipes are likely to be required behind the replacement retaining wall. Therefore the new wall is to be built roughly in the same location as the existing wall or at least 0.2 metres from the common boundary.

Works include the temporary removal of the boundary paling fence to facilitate the wall’s demotion and reconstruction, and the fence’s reinstatement once the wall is rebuilt.

Orders will consider that works will affect, and may require access to, properties at 15 Judge Street and 8 Dolphin Street.

The parties’ submissions on matters that are not relevant to this decision are not addressed within this judgment.

Orders

The Court orders:

The application is granted to the extent of the following orders.

Within 14 days of the date of these orders, the Applicants are to provide the Respondents and the owners of 15 Judge Street (No 15) and 8 Dolphin Street (No 8) with a project plan for demolishing and replacing the retaining wall (the works) and a copy of the contractor’s relevant insurances. The project plan is to specify the works’ commencement date, an expected completion date, and expected dates of any significant stages requiring access to the Respondents’ property and to No 15 and No 8. The project plan is to clarify that the new retaining wall will be built roughly in the same location as the existing wall or at least 0.2 metres from the common boundary.

On reasonable notice from the Applicants, the Respondents are to allow access to their property for the works and maintain any required area clear of their own items during reasonable hours of the day. The Applicants are to organise access to No 15 and No 8 as required.

Upon completion of the works, the Applicants are to provide the Respondents with a receipted copy of the paid invoice for the works and relevant certificates applying to the works.

Within 30 days of receiving a receipted copy of the paid invoice for the works, the Respondents are to pay the Applicants \$11,684 or a lesser amount in accordance with the apportionment outlined at [50] in this judgment should the works cost less than the quoted amount.

Order (5) lapses if the Applicants fail to provide the Respondents with a receipted copy of the paid invoice for the works within 12 months of the date of these orders.

The exhibits are returned, other than Exhibit A.

D Galwey

Acting Commissioner of the Court

Amendments

04 September 2026

-

Jurisdiction corrected to Class 2

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Decision last updated:

04 September 2026

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Prepared on 27 October 2026 · Esheria