

AUSTRALIA / JUDGMENT

Zhu v Hergol Holdings Pty Ltd

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Land and Environment Court New South Wales Medium Neutral Citation: Zhu v Hergol Holdings Pty Ltd [2026] NSWLEC 1491 Hearing dates: Conciliation conference 30 June 2026 and 10 July 2026 Date of orders: 07 August 2026 Decision date: 07 August 2026 Jurisdiction: Class 2 Before: Galwey AC Decision: The Court orders:

- (1) The respondent is to remove the two subject trees within sixty (60) days of the date of these orders.
- (2) The respondent must engage a suitably qualified arborist to carry out the works referenced at Order (1) above, and must ensure that they hold current and appropriate public liability insurance. Evidence of such insurance must be provided to the applicant upon request prior to the commencement of works referenced at Order (1) above.
- (3) All costs of removal and disposal of the two subject trees are to be borne by the respondent.
- (4) The applicant and respondent will each grant access as required to their respective properties to enable the respondent's contractor/s to carry out work for the removal of the two subject trees in accordance with Order (1) above. Such access must be exercised on no less than 48 hours' prior written notice at reasonable times that minimise disruption to the applicant, or as otherwise agreed between the parties.
- (5) The respondent is to pay compensation to the applicant in the sum of \$2,640.00, for damage caused by the two subject trees, within fourteen (14) days of the date on which works under Order (1) above are completed. Catchwords: TREES (DISPUTES BETWEEN NEIGHBOURS) — Pt 2 application — conciliation conference — neighbouring trees — falling branches have damaged property — whether the trees likely to cause damage to property — agreement between the parties — orders for tree removal and compensation Legislation Cited: Land and Environment Court Act 1979 (NSW), s 34 Trees (Disputes Between Neighbours) Act 2006 (NSW), ss 4, 6, 7, 8, 9, 10, 12 Texts Cited: Lane Cove Development Control Plan 2010 Category: Principal judgment Parties: Bei Zhu (Applicant) Hergol Holdings Pty Ltd (Respondent) Representation: Counsel: A Huynh (Agent) (Applicant) S Griffiths (Solicitor) (Respondent) Solicitors: Bartier Perry Lawyers (Respondent) File Number(s): 2026/189758 Publication restriction: Nil

Judgment

Background

COMMISSIONER: Bei Zhu applied to the Court pursuant to s 7 of the Trees (Disputes Between Neighbours) Act 2006 (NSW) (Trees Act) seeking orders to prevent two trees on adjoining land causing damage to his Lane Cove property and to remedy damage caused by the trees. Hergol Holdings Pty Ltd (Hergol) owns the adjoining property on which the trees are situated. Conciliation and agreement between the parties The Court arranged a conciliation conference between the parties under s 34(1) of the Land and Environment Court Act 1979 (NSW) (LEC Act), which was held on 30 June 2026 and 10 July 2026, and at which I presided. The conciliation conference commencing on 30 June was adjourned to an on-site conference on 10 July, allowing the Court to view the trees and both properties. The parties have filed an agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. This decision involves the Court granting the application and making orders in accordance with the agreement. The application Pursuant to s 7 of the Trees Act, Bei Zhu applied to the Court for orders to prevent trees on adjoining land causing damage to his property and to remedy damage caused by the trees. Bei Zhu is the owner and occupier of 62 Phoenix Street, Lane Cove (No 62). The trees are on adjoining land at 64 Phoenix Street (No 64), which is within a Low Density Residential Zone. Pursuant to s 4 of the Trees Act, the trees are situated on land to which the Trees Act applies. Jurisdiction to make orders The parties have agreed on an outcome that involves Hergol Holdings Pty Ltd removing the two trees and paying compensation to Bei Zhu for damage caused by the trees. The orders to which the parties have agreed are orders the Court could make pursuant to s 9 of the Trees Act if all jurisdictional tests are met. Reasonable effort to reach agreement Pursuant to s 10(1) of the Trees Act, the Court must not make an order in these proceedings unless it is satisfied that Bei Zhu has made a reasonable effort to reach agreement with Hergol and has given notice of the application in accordance with s 8. Bei Zhu wrote to the managing agent of No 64 on 27 January 2026, outlining damage caused by falling branches to the roof at No 62, requesting compensation for repairing the damage and asking the owner of No 64 to apply to Lane Cove Council (Council) for permission to remove the trees. Bei Zhu sent a follow-up email on 9 February 2026. The parties held further ‘without prejudice’ discussions after the proceedings were commenced and ultimately reached agreement. Bei Zhu has made a reasonable effort to reach agreement. Documents filed with the Court demonstrate that Bei Zhu has given notice of the application to Hergol and to Council in accordance with s 8 of the Trees Act. Trees have caused and are likely to cause damage The Court may only make orders in these proceedings if the hurdle at s 10(2) of the Trees Act is passed. Each tree must be considered individually for orders to be made for that tree. 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. Two Sydney blue gums (*Eucalyptus saligna*) (the trees) are situated on No 64 near the common boundary shared with No 62: T1 is taller and closer to the common boundary than T2. T1's crown extends well past the common boundary while T2's crown extends slightly beyond the boundary. The trees' crowns overlap each other significantly. Bei Zhu claims, and my site observations confirm, that: Both trees have large dead branches in their crowns; Broken branch stubs indicate branches have broken and fallen from both trees; The trees have not been pruned recently; Dead branches and live over-extended branches are likely to fall from the trees onto property at No 62; Inosculation of large branches between the two trees has occurred; and Removal of only T1 would increase the risk of branches falling from T2. In addition, Bei Zhu provided photographs showing: Branches that had fallen from the trees onto his property; and Damaged roof tiles that had been struck by branches. I am satisfied that falling branches have damaged roof tiles at No 62. Considering the extent of T1's crown spread above No 62, those branches are most likely to have fallen from T1. I am satisfied that T1 has caused damage to Bei Zhu's property; therefore, pursuant to s 10(2) of the Trees Act orders can be made for T1. The parties have agreed on the removal of T1, so pursuant to s 34(3) of the LEC Act the Court must make orders for T1 in accordance with their agreement. I am satisfied that branches are likely to fall from both trees onto Bei Zhu's property. Branches from T2 may damage his roof tiles and are likely to damage the dividing fence. In addition, once T1 is removed, branches falling from T2 will be more likely to damage roof tiles at No 62. I am satisfied that T2 is likely in the near future to cause damage to Bei Zhu's property; therefore, pursuant to s 10(2) of the Trees Act orders can be made for T2. The parties have agreed on the removal of T2, so pursuant to s 34(3) of the LEC Act the Court must make orders for T2 in accordance with their agreement. The parties have agreed that Hergol will compensate Bei Zhu for the cost of repairing damage caused by branches to the roof and ceiling at No 62. Bei Zhu provided two invoices totalling \$2,640 for the repairs. The parties had agreed to include in the compensation amount the cost of Bei Zhu's Court filing fee of \$307, but agreed to exclude this after I explained that Commissioners of the Court can not make an order for costs. Consideration of other matters Before making orders the Court must consider matters at s 12 of the Trees Act. Those matters include the trees' location, their benefits and contribution to amenity and to the environment, and any relevant acts or omissions of the parties. I have considered the s 12 matters. The Court has discretion in the way these matters are considered, so their consideration cannot prevent the Court disposing of these proceedings in accordance with the parties' decision. It follows that there is no need to divulge my consideration of the s 12 matters in this judgment, but for clarity I include the following paragraph. At s 12(b), the Court must consider whether interference with the trees would ordinarily require Council's consent and whether any such consent has been obtained. According to the Lane Cove Development Control Plan 2010 (DCP), a permit from Council would be required to prune or remove the trees. *Eucalyptus saligna* is indigenous in this

locality. According to Section 4.5(a) of the DCP: “The clearing (removal) or pruning (canopy or roots) of any indigenous trees will not generally be permitted. Information outlined in Sections 4.2.1, 4.2.2 and/or 4.3 will generally be requested to support an application.” Section 4.3 of the DCP outlines the requirements of arborist reports and other documentation in support of an application to remove a tree. No application for removing T1 and T2 has been made to Council. Pursuant to s 6(3) of the Trees Act, Hergol will not require Council consent to carry out the trees’ removal in accordance with orders in these proceedings.

Conclusion

The parties have reached agreement as to the terms of a decision that are acceptable to the parties (being a decision that the Court could have made in the proper exercise of its functions). Pursuant to s 34(3) of the LEC Act, I am required to dispose of these proceedings in accordance with the parties’ agreement.

Orders

The Court orders that: The respondent is to remove the two subject trees within sixty (60) days of the date of these orders. The respondent must engage a suitably qualified arborist to carry out the works referenced at Order (1) above, and must ensure that they hold current and appropriate public liability insurance. Evidence of such insurance must be provided to the applicant upon request prior to the commencement of works referenced at Order (1) above. All costs of removal and disposal of the two subject trees are to be borne by the respondent. The applicant and respondent will each grant access as required to their respective properties to enable the respondent’s contractor/s to carry out work for the removal of the two subject trees in accordance with Order (1) above. Such access must be exercised on no less than 48 hours’ prior written notice at reasonable times that minimise disruption to the applicant, or as otherwise agreed between the parties. The respondent is to pay compensation to the applicant in the sum of \$2,640.00, for damage caused by the two subject trees, within fourteen (14) days of the date on which works under Order (1) above are completed. D Galwey Acting Commissioner of the Court

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Prepared on 26 October 2026 · Esheria