

TASMANIA

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**NEIGHBOURHOOD DISPUTES ABOUT PLANTS  
BILL 2017**

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**NEIGHBOURHOOD DISPUTES ABOUT PLANTS  
BILL 2017**

*(Brought in by the Minister for Police, Fire and Emergency  
Management, the Honourable Marinus Theodoor Hidding)*

**A BILL FOR**

**An Act to provide for certain rights and responsibilities,  
and the resolution of disputes, related to plants, and for  
related purposes**

Be it enacted by Her Excellency the Governor of Tasmania, by  
and with the advice and consent of the Legislative Council and  
House of Assembly, in Parliament assembled, as follows:

**PART 1 – PRELIMINARY**

**1. Short title**

This Act may be cited as the *Neighbourhood  
Disputes About Plants Act 2017*.

**2. Commencement**

The provisions of this Act commence on a day  
or days to be proclaimed.

**3. Interpretation**

(1) In this Act, unless the contrary intention  
appears –

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***affected land*** means an area of land that is, under section 7, affected by a plant situated in whole or in part on another area of land;

***affected landholder*** means a landholder of land that is affected land;

***Appeal Tribunal*** means the Resource Management and Planning Appeal Tribunal established under the RMPAT Act;

***applicant*** means a person who makes an application;

***application*** means an application under section 23(1);

***cabling*** means the insertion of cables or wire into a plant for the purpose of ensuring the stability of the plant;

***Crown land*** means land that is vested in the Crown and includes land granted in fee simple which has revested in the Crown by way of purchase or otherwise;

***excluded land*** means land specified in section 9;

***Forestry corporation*** means the Forestry corporation continued by section 6 of the *Forest Management Act 2013*;

***government body*** means –

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- (a) a person who holds an office established under an Act and performs functions, under an Act, that relate to the regulation of plants; or
- (b) a State authority that performs functions, under an Act, that relate to, include or require the regulation of plants; or
- (c) a council;

***landholder***, in relation to land, means –

- (a) an owner of the land; and
- (b) an occupier of the land;

***occupier***, in relation to land, means a person who is entitled to the immediate possession and occupation of the land;

***owner***, in relation to land, means –

- (a) every person who jointly or severally, whether at law or in equity, is entitled to the land for any estate in freehold in possession; or
- (b) if the land is common property within the meaning of the *Strata Titles Act 1998* – the body corporate formed under that Act in relation to the land; or

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- (c) if the land is held under a tenancy for life – the person who is the life tenant; or
- (d) if the land is held under a lease for a term of not less than 99 years or for a term of not less than a period that is prescribed – the person who is the lessee of the land; or
- (e) if the land is Crown land and is not land subject to a lease (other than a lease under the *Residential Tenancy Act 1997*) or a relevant licence – the Minister, authority or other person responsible for managing the land; or
- (f) if the land is Crown land and is subject to a lease (other than a lease under the *Residential Tenancy Act 1997*) or a relevant licence – the holder of the lease or licence; or
- (g) any other person who holds a prescribed interest in the land;

***party***, in relation to an application, means –

- (a) the applicant; and
- (b) the owner of the land on which is situated the plant to which the application relates; and

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- (c) any other person who is joined under section 29 as a party to the application;

***person*** includes the Crown;

***plant*** – see section 4;

***relevant licence*** means a licence, in relation to land, that gives to the holder of the licence –

- (a) an exclusive right to occupy the land; or
- (b) responsibilities for the management of vegetation on the land;

***RMPAT Act*** means the *Resource Management and Planning Appeal Tribunal Act 1993*;

***State authority*** means a body or authority, whether incorporated or not, that –

- (a) is established or constituted under a written law or under the royal prerogative; and
- (b) is a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another State authority;

***work***, in relation to a plant, includes –

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- (a) severing and removing any part of the plant, including its branches or roots; and
  - (b) netting the plant; and
  - (c) attaching or removing cabling to a plant or land; and
  - (d) destroying the plant in any way (including by poisoning, uprooting, ringbarking or cutting down the plant) and removing the plant and every part of the plant.
- (2) For the purposes of this Act, but subject to section 8, a person who is an owner of land by virtue of paragraph (c), (d), (f) or (g) of the definition of *owner* in subsection (1) is only to be taken to be an owner of so much of that land as is land to which any of those paragraphs applies and is not to be taken to be an owner of so much of the area of land as is not land to which any of those paragraphs applies.

**4. Meaning of *plant* and *plant situated on land***

- (1) In this Act –
- plant*** means any plant or part of a plant.
- (2) In this Act, ***plant*** includes –
- (a) a tree; and
  - (b) a hedge or group of plants; and

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- (c) fruits, seeds, leaves, or flowers, of a plant; and
  - (d) a bare trunk; and
  - (e) a stump rooted in land; and
  - (f) any root of a plant; and
  - (g) a dead plant.
- (3) Despite subsections (1) and (2), **plant** does not include a member of a class of plants that is prescribed to be a class of plants to which this Act does not apply.
- (4) For the purposes of this Act, a plant is situated on land if –
- (a) the base of the trunk of the plant; or
  - (b) a place at which a stem of the plant connects with the roots of the plant –
- is, or was, situated in whole or in part on the land.

**5. Act does not apply to certain plants**

- (1) This Act does not apply to, or in relation to, a plant that is situated on –
- (a) excluded land; or
  - (b) a farm within the meaning of the *Primary Industry Activities Protection Act 1995*, if the plant is planted or maintained for a purpose that is

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necessary or desirable for the  
management or operation of the farm.

- (2) This Act does not apply to, or in relation to, a plant that forms a fence in relation to which a notice may be issued under section 48 of the *Boundary Fences Act 1908*.
- (3) This Act does not apply to, or in relation to, plants planted or maintained –
  - (a) for the purpose of enabling the sale of the plant; or
  - (b) under an order of a court or tribunal other than an order for the purposes of this Act.

**6. Act binds Crown**

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

**7. When land is affected by plant**

- (1) Subject to this section, for the purposes of this Act, land (*affected land*) is affected by a plant that is situated on another area of land if –
  - (a) branches of the plant overhang the affected land; or
  - (b) the plant has caused, is causing, or is likely within the next 12 months to cause –

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- (i) serious injury to a person on the affected land; or
  - (ii) serious damage to the affected land or any property on the affected land; or
  - (iii) substantial, ongoing and unreasonable interference with the use and enjoyment by a person of the affected land.
- (2) Without limiting the generality of subsection (1)(b)(iii), a plant may cause substantial, ongoing and unreasonable interference with the use and enjoyment by a person of affected land by virtue of causing sunlight to be severely obstructed from reaching –
- (a) a window (including a window in a door) of a building on the affected land; or
  - (b) a solar photovoltaic panel, or a skylight, situated on a roof of a building on the affected land.
- (3) Without limiting the generality of subsection (1)(b)(iii), a plant may cause substantial, ongoing and unreasonable interference with the use and enjoyment by a person of affected land by virtue of causing a view from a dwelling on the affected land to be obstructed, but only if –
- (a) the plant is at least 2.5 metres high; and

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- (b) the plant causes the view to be severely obstructed; and
  - (c) the person is an owner of the land and the view from the dwelling was not so obstructed when the person took possession of the affected land.
- (4) For the purposes of this Act, land is not affected by a plant, other than as referred to in subsection (2) or (3), if no part of the land is situated within 25 metres from –
- (a) the base of the trunk of the plant; or
  - (b) a place at which a stem of the plant connects with the roots of the plant.
- (5) For the purposes of this Act, land is not affected by a plant if the land is excluded land.
- (6) For the avoidance of doubt, but subject to this section, land may be affected by a plant on other land even if the land does not adjoin the other land.

**8. Where plant situated on more than one area of land**

- (1) If a plant is situated partly on one area of land (the *first area of land*) and also partly on another area of land (the *second area of land*) –
- (a) the first area of land is to be taken to be affected by the plant as if the plant were situated wholly on the second area of land if, were the plant so situated, the first area of land would be taken under

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section 7 to be land affected by the plant, but is only to be so taken to be affected by the plant to the extent to which the plant is situated on the second area of land; and

- (b) the second area of land is to be taken to be affected by the plant as if the plant were situated wholly on the first area of land if, were the plant so situated, the second area of land would be taken under section 7 to be land affected by the plant, but is only to be so taken to be affected by the plant to the extent to which the plant is situated on the first area of land.

(2) Despite subsection (1), a reference in Division 2 of Part 4 to –

- (a) the owner of land on which a plant is situated is to be taken to include a reference to the owner of the first area of land and to the owner of the second area of land; and
- (b) the landholder in relation to an area of land is to be taken to include a reference to the landholder in relation to the first area of land and to the landholder in relation to the second area of land –

and an order under that Division may be issued to both an owner of the first area of land and an owner of the second area of land, as if they were the joint owners of both areas of land, or to

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either an owner of the first area of land or an owner of the second area of land.

**9. Meaning of *excluded land***

In this Act, excluded land is land –

- (a) that is owned or managed by a council and is used as a public park or garden, a reserve or a public open space or for the purposes of conservation; or
- (b) on which is situated the rail network, within the meaning of the *Rail Infrastructure Act 2007*; or
- (c) that is within a corridor, within the meaning of the *Strategic Infrastructure Corridors (Strategic and Recreational Use) Act 2016*; or
- (d) that is within Wellington Park, within the meaning of the *Wellington Park Act 1993*; or
- (e) on which is situated a State highway, or a local highway, within the meaning of the *Local Government (Highways) Act 1982*; or
- (f) that is unalienated Crown land; or
- (g) that is reserved land under the *Nature Conservation Act 2002*; or

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- (h) that is reserved under the *Crown Lands Act 1976* or reserved for a public purpose under any other Act; or
- (i) that is owned by the Forestry corporation; or
- (j) that is permanent timber production zone land within the meaning of the *Forest Management Act 2013* or land, on which timber production occurs, that is a type of land that is prescribed; or
- (k) that is prescribed land.

**PART 2 – RIGHTS AND RESPONSIBILITIES IN  
RELATION TO PLANTS**

*Division 1 – Responsibilities generally*

**10. Responsibilities in relation to plants**

- (1) An owner of land on which a plant is situated is responsible for severing and removing any branches of the plant that overhang another area of land.
- (2) An owner of land on which a plant is situated is responsible for ensuring that the plant does not cause –
  - (a) serious injury to a person on another area of land; or
  - (b) serious damage to another area of land or any property on another area of land; or
  - (c) substantial, ongoing and unreasonable interference with the use and enjoyment of another area of land.
- (3) This section does not create a civil cause of action based on breach of a responsibility referred to in this section.

**11. Joint liability of landholders for plants situated on their land**

If there is more than one owner of land on which a plant is situated –

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- (a) each of the owners of the land is jointly and severally responsible and liable for and in relation to the plant; and
- (b) a notice that may or must be given under this Act to an owner of the land may be given to any of the owners of the land.

**12. Common law right of abatement**

- (1) This Act does not affect the common law right of abatement in relation to a plant other than as provided under subsection (2).
- (2) A person who exercises the common law right of abatement by removing a part of a plant may, but is not required to, return the part of the plant to the landholder of the land on which the plant is situated.

**13. Right to enter land**

- (1) A person may enter land owned by another person if –
  - (a) the person is authorised under subsection (3) to enter the land; and
  - (b) the person has, at least 7 days before the entry, in a branch removal notice under section 20(1) –
    - (i) given notice in writing to the other person; and

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- (ii) if the person believes there is a lessee in relation to the land, given notice in writing to the lessee –

that the person is intending to enter the land on a day specified in the notice.

- (2) Subsection (1)(b) does not apply in relation to an entry authorised by a permission given pursuant to section 20(2)(c).
- (3) A person is authorised to enter land owned by another person if –
  - (a) the entry is pursuant to a permission given, pursuant to section 20(2)(c), in a branch removal notice under section 20(1); or
  - (b) the person has agreed with the other person to carry out work relating to plants or is acting on behalf of a person who has entered into such an agreement; or
  - (c) the Appeal Tribunal has ordered that work be carried out by the person or a person acting on behalf of the person.
- (4) A person may only enter land under this section if the entry is made at a reasonable time and is made only to the extent necessary to carry out the work for which the entry on the land is required.

- (5) A person is not authorised under this section to enter a dwelling on any land.
- (6) If a person is authorised to enter land under this section, the owner of the land must take reasonable steps to ensure that it is safe for the person to enter the land, including by ensuring, if necessary to ensure such safety, that any animal on the land is restrained.

#### **14. Requirements under other laws not affected**

This Act does not –

- (a) authorise work to be carried out that would otherwise be unlawful under another Act; or
- (b) otherwise limit the operation of another law requiring a consent or authorisation to be obtained before work may be carried out.

#### ***Division 2 – Responsibilities where sale or proposed sale of land***

#### **15. Interpretation of Division 2**

In this Division –

***application*** means an application that has not been decided, dismissed, struck out or withdrawn;

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*order* means an order, that is in force, requiring work to be carried out in relation to a plant.

**16. Person selling land to give buyer copy of application or order, &c.**

(1) An owner of land to which an application or an order relates must not, before the owner enters into a contract of sale of the land with a person, fail, without reasonable excuse, to give to the person a copy of –

(a) the application and any additional information filed with the Appeal Tribunal in relation to the application; or

(b) the order.

Penalty: Fine not exceeding 400 penalty units.

(2) An owner of land to which an application relates must, as soon as practicable after a person who intends to purchase the land to which the application relates enters into a contract of sale in relation to the land, notify the Appeal Tribunal that the person is joined under section 29(2) as a party to the application.

Penalty: Fine not exceeding 400 penalty units.

**17. Consequences before transfer of failure to give copy of application or order to prospective purchaser**

(1) This section applies in relation to a proposed sale of land if, before a person who proposed to

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purchase land enters into a contract of sale of the land –

- (a) the owner of the land is given a copy of an application or an order; and
  - (b) the owner of the land does not give a copy of the application or order to the person.
- (2) If this section applies in relation to a proposed sale of land, the person who has entered into a contract of sale in relation to the land may, at any time before the settlement of the sale occurs, terminate the contract of sale by giving, to the owner of the land or the owner's agent, a signed and dated notice of termination specifying that the sale is terminated under this section.
- (3) If a contract of sale of land is terminated under subsection (2) by a person, the owner of the land to which the contract related must, within 14 days, refund to the person any deposit paid under the contract by the person.

Penalty: Fine not exceeding 150 penalty units.

- (4) If an owner of land, in pursuance of subsection (3), instructs a person who holds the deposit paid under a contract of sale to refund the deposit to the other person who entered into the contract, the person holding the deposit must immediately refund the deposit to the other person.

Penalty: Fine not exceeding 150 penalty units.

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(5) If this section applies in relation to a proposed sale of land and the contract of sale in relation to the land is terminated under subsection (2) by a person –

- (a) the owner of the land; and
- (b) the person, if any, who was acting for the owner of the land and who prepared the contract of sale in relation to the land –

are jointly and severally liable to the person who terminated the contract of sale for the reasonable legal and other expenses incurred, by that person in relation to the contract of sale, after that person signed the contract of sale.

**18. Consequences after transfer of failure to give copy of order to prospective purchaser**

(1) If –

- (a) an order is made in relation to land before a person who is the owner of the land enters into a contract of sale for the land; and
- (b) the person fails to give the prospective purchaser of the land a copy of the order before the prospective purchaser enters into a contract of sale in relation to the land; and
- (c) the person has not, before the day on which the settlement of the sale occurs,

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carried out the work required under the order –

the person remains liable to ensure that work required under the order to be carried out is carried out.

- (2) Subsection (1) applies in relation to a person even though the person has ceased to be the owner of the land.
- (3) If subsection (1) applies to a person in relation to an area of land, the owner of the area of land must not unreasonably restrict the person from ensuring that the work is carried out on the land.

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**PART 3 – INFORMAL DISPUTE RESOLUTION**

**19. Neighbours to attempt to resolve dispute**

(1) A landholder of land that is affected by a plant situated on another area of land may request the owner of the other land, verbally or in writing, to take action to ensure that the affected land ceases to be affected by the plant.

(2) Both –

(a) a landholder of land that is affected by a plant; and

(b) the owner of the land on which the plant is situated –

are to make reasonable attempts to prevent the affected land being affected by the plant, or to minimise the degree to which the affected land is being, or will be, affected by the plant.

**20. Branch removal notice may be given**

(1) A landholder of affected land over which extends, from other land, a branch, from a plant, that –

(a) is 2.5 metres or less above the ground level of the affected land; and

(b) extends at least 50 centimetres from the boundary of the affected land with the other land –

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may give to the owner of the other land a notice in writing (a ***branch removal notice***).

- (2) A branch removal notice from an affected landholder to an owner of other land on which a plant with overhanging branches is situated must –
  - (a) specify a day by which the owner is required to ensure that the overhanging branches are removed from the affected land; and
  - (b) ask the owner to give to the affected landholder a notice for the purposes of this paragraph; and
  - (c) give the owner, and any person, acting on the owner's behalf, who is specified in a notice given under paragraph (b), permission to enter the affected land between 8 a.m. and 5 p.m. on the day, specified in that notice in accordance with subsection (4)(b), to sever and remove the branches.
- (3) The day specified, in accordance with subsection (2)(a), in a notice under subsection (1) is not to be less than 30 days after the day on which the notice is given.
- (4) A person may, for the purposes of subsection (2)(b), give a notice in writing specifying –

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- (a) the name of the person who will enter the affected land and sever and remove the branches; and
  - (b) the day on which the person will enter the affected land and sever and remove the branches.
- (5) The notice to be given for the purposes of subsection (2)(b) is to be given no later than 24 hours before the overhanging branches are to be removed from the affected land.
- (6) A notice given under subsection (1) is to be accompanied by –
  - (a) at least one written quotation stating the estimated cost of entering, severing and removing the branches; and
  - (b) a copy of this Part.
- (7) Subsection (6)(a) does not apply if the affected landholder and the owner of the other land have agreed that the branches are to be severed and removed without payment being required to be made to another person.
- (8) A permission, given in accordance with subsection (2)(c) in a notice under subsection (1), to enter affected land does not include –
  - (a) permission to enter any dwelling situated on the affected land; or

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- (b) permission for a person who is not suitably qualified to carry out work on the land, unless the person giving the permission agrees.
- (9) A notice may not be given by an affected landholder under subsection (1) to an owner of land within the 12-month period after a day on which a previous notice was given by the affected landholder, under that subsection, to an owner of the land, in relation to overhanging branches of the same plant.
- (10) Subsection (9) does not apply in relation to a notice to a person if the person was not the owner of the land when the previous notice, referred to in that subsection, was given in relation to the land.

**21. Action that may be taken if branch removal notice not complied with**

- (1) If overhanging branches to which a branch removal notice under section 20(1) relates are not removed by the day specified, in accordance with section 20(2)(a), in the notice, the affected landholder who gave the notice –
  - (a) may, but is not required to, sever and remove the overhanging branches or arrange for another person to sever and remove them; and
  - (b) may, but is not required to, return the branches to the owner of the land on which the plant is situated.

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- (2) Subsection (1) does not authorise a person to enter the land on which is situated the plant to which the overhanging branches are attached.
- (3) The owner of the land to whom a branch removal notice is given under section 20(1) is liable for the reasonable expenses incurred by the affected landholder under subsection (1) in –
  - (a) severing and removing the overhanging branches; or
  - (b) arranging for another person to sever and remove them –but only to an amount that is not more than the prescribed maximum amount.
- (4) The affected landholder may recover from the owner of the land to whom a branch removal notice is given under section 20(1), as a debt due and payable to the affected landholder, the amount for which the owner is liable under subsection (3).
- (5) An owner of land to whom a branch removal notice is given under section 20(1) may apply to a magistrate to determine whether an amount for which the owner is liable under subsection (3) is fair and reasonable.
- (6) A magistrate to whom an application is made under subsection (5) may, if he or she determines that the amount to which the application relates is not fair and reasonable, determine another amount to be the amount for

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which the owner of land is liable under subsection (3).

- (7) If a magistrate determines another amount under subsection (6) in relation to an owner of land, the amount determined is taken to be the amount for which the owner is liable under subsection (3).

**22. Notice about land affected by plant**

- (1) A landholder of land that is affected by a plant situated on another area of land may give notice in writing to an owner of the other land.
- (2) A notice under subsection (1), from a landholder of land that is affected by a plant situated on another area of land is to –
- (a) specify the grounds on which the affected landholder believes the land is being affected by the plant; and
  - (b) specify the action that the affected landholder considers the owner of the land should take, or ensure is taken, so that the affected land will cease to be affected by the plant; and
  - (c) request the owner of the land to respond in writing to the notice within a period, of not less than 14 days, specified in the notice.

**PART 4 – APPLICATIONS TO APPEAL TRIBUNAL**

*Division 1 – Applications*

**23. Application to Appeal Tribunal**

- (1) A person who is a landholder of affected land may apply to the Appeal Tribunal for an order under this Part.
- (2) An application is to be accompanied by the prescribed fee, if any.
- (3) The chairperson of the Appeal Tribunal may waive, reduce or refund all or part of the fee payable under subsection (2) by a person if the chairperson is satisfied that paying all or part of the fee may cause financial hardship to the person.
- (4) An application may only be made in relation to affected land by a landholder who is not an owner of the land if –
  - (a) the person has, in writing to the owner, requested the owner of the land to make an application; and
  - (b) the owner has refused to comply with the request within 42 days after the request was made.
- (5) An application –
  - (a) must be made in writing to the Appeal Tribunal; and

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- (b) must include information or evidence (which may be photographic evidence) sufficient to identify the affected land, the type, scale and height of the plant and the precise location on the affected land of the plant to which the application relates and a copy of a certificate of title in relation to the affected land; and
  - (c) must set out in detail the grounds on which the applicant has made the application; and
  - (d) must state the general nature of the relief that the applicant seeks; and
  - (e) must set out the details of the persons or bodies whom the applicant intends to notify, under section 24(1), in relation to the application; and
  - (f) where the relief sought, if granted, would be of a kind the carrying out of which would require the consent or approval of a government body, is to set out details of the type of consent or approval that would be required.
- (6) The Appeal Tribunal may allow the amendment of an application on the conditions the Appeal Tribunal thinks fit.

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**24. Notice of application to be given**

- (1) The applicant must give notice in writing of an application, the grounds of the application and the nature of the relief sought, to –
  - (a) a person who is the owner of the land on which is situated the plant to which the application relates; and
  - (b) any interested government body that is entitled under section 27 to appear in proceedings in relation to the application; and
  - (c) any other person who would be affected if the relief sought in the application were granted.
- (2) The Appeal Tribunal may, if it thinks fit, give notice, of an application, to a person or body referred to in subsection (1) and, if it gives such a notice, the notice is to be taken to have been given by the applicant under subsection (1).

**25. Appeal Tribunal may require further information**

- (1) The Appeal Tribunal may require an applicant –
  - (a) to provide further information, or materials, that the Appeal Tribunal requires for determination of the application; or
  - (b) to provide a more formal application that –

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- (i) identifies with greater particularity the grounds on which the application is founded and the nature of the relief sought; and
  - (ii) complies with any other requirements imposed by the Appeal Tribunal.
- (2) The Appeal Tribunal may decline to proceed with an application until the applicant has complied with a requirement under subsection (1).

**26. Attempts to resolve dispute to be made before hearing of application**

- (1) Before hearing an application, the Appeal Tribunal –
- (a) must consider whether reasonable attempts to resolve the matter to which the application relates have been made by the parties; and
  - (b) if the Appeal Tribunal is not satisfied that reasonable attempts to resolve the matter to which the application relates have been made by the parties, may direct the parties to an application to attempt to resolve the matter to which the application relates.
- (2) For the purposes of determining whether reasonable attempts to resolve a matter have

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been made, the Appeal Tribunal may take into account –

- (a) whether a request under section 19(1) has been made, or a branch removal notice under section 20(1) or a notice under section 22(1) has been given, in relation to the matter; and
  - (b) whether the owner of the land on which a plant is situated has refused to carry out work in relation to the plant because the owner reasonably believes that the work may affect –
    - (i) the health or structural stability of the plant; and
    - (ii) the safety of land or persons and property on the land.
- (3) In considering whether to issue a direction under subsection (1)(b) or section 16A or 17 of the RMPAT Act, the Appeal Tribunal may take into account whether –
- (a) there have been any threats of violence made by any of the parties to the application to any other party; and
  - (b) there are any orders of a court or tribunal in relation to a party for the purpose of restraining any behaviour of the party that may affect another party to the application or a person who is acting on behalf of another party to the application; and

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(c) the parties have participated in any form of alternative dispute resolution in relation to the matter.

(4) This section does not limit the application of section 16A or 17 of the RMPAT Act.

**27. Interested government bodies may appear in proceedings**

A government body may appear in proceedings in relation to an application if the carrying out of work on the plant to which the application relates may require the consent of, or other authorisation by, the government body.

**28. Application of RMPAT Act**

(1) A reference in the RMPAT Act –

(a) to an appeal is to be taken to include a reference to an application; and

(b) to an appellant is to be taken to include a reference to an applicant; and

(c) to a party to an appeal is to be taken to be a reference to –

(i) the applicant; and

(ii) the owner of land on which is situated the plant to which the application relates; and

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- (iii) any other person joined as a party under section 29.
- (2) Sections 13(1), (2A) and (4), 14, 23(1), (2) and (7) of the RMPAT Act do not apply in relation to an application.
- (3) For the purposes of the RMPAT Act as it applies in relation to an application, a reference in section 21(a) of that Act to the person who made the decision is to be taken to include a reference to the owner of the land on which is situated the plant to which the application relates.
- (4) The powers of the Appeal Tribunal under this Part are in addition to any powers that the Appeal Tribunal has under the RMPAT Act in relation to a decision.
- (5) If a provision of this Act is inconsistent with a provision of the RMPAT Act, the provision of this Act prevails.

**29. Parties to applications**

- (1) The Appeal Tribunal may, on the application of a person whose interests are affected by the matter to which an application relates, by order, make the person a party to the proceedings to which the application relates.
- (2) A person who is given a copy of an application under section 16(1) in relation to an area of land is joined as a party to the application when the person enters into a contract of sale in relation to the land.

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***Division 2 – Determination of applications***

**30. Matters generally to be considered by Appeal Tribunal**

Without limiting the matters to which the Appeal Tribunal may have regard in considering an application in relation to a plant situated on an area of land, the Appeal Tribunal must, to the extent that they are relevant in relation to the application, consider the following:

- (a) the provisions of a planning scheme, within the meaning of the *Land Use Planning and Approvals Act 1993*, that applies to the land, including –
  - (i) the zone, under the *Land Use Planning and Approvals Act 1993*, of the land; and
  - (ii) any designation, and requirements, that apply in relation to plants; and
  - (iii) any height restrictions, or requirements as to set-back, that apply under that scheme in relation to the land;
- (b) the location of the plant in relation to the boundary of the land;
- (c) any risks associated with soil instability, or changes to the water table, that may be

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caused by the work required under a proposed order;

- (d) whether the plant, or any risk, obstruction or interference related to the plant, existed before the applicant purchased or first began to occupy the land that is affected by the plant;
- (e) if it is alleged that sunlight is severely obstructed from reaching a structure referred to in section 7(2)(a) or (b) because of the plant –
  - (i) the amount of sunlight obstructed; and
  - (ii) the number of hours per day during which the sunlight is obstructed; and
  - (iii) the period of the year during which the sunlight is obstructed; and
  - (iv) whether the plant loses its leaves at certain times of the year and the proportion of the year during which leaves are lost;
- (f) if it is alleged that a view from a part of a dwelling is obscured because of a plant –
  - (i) the nature and extent of the view that is obscured; and

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- (ii) the uses to which the part of the dwelling is put;
- (g) whether any work in relation to the plant would require any consent or other authorisation under any other Act;
- (h) the type of plant, including whether it is a pest or weed under any other Act;
- (i) the extent to which the plant contributes to the amenity of the land, including by providing privacy, protection from sun, wind, noise, odour or smoke or by contributing to the landscaping or garden design on the land;
- (j) any risk associated with the plant due to weather or in the event of a storm or other extreme weather event;
- (k) the likely effect on the plant of pruning it.

**31. Matters to be considered if threat of serious injury or serious damage**

- (1) In addition to any matters that the Appeal Tribunal must consider under section 30 in relation to an application, if an affected landholder alleges that a plant situated on another area of land has caused, is causing or likely to cause serious injury to a person, or serious damage to the affected landholder's land or property on the affected landholder's land, the Appeal Tribunal may consider –

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- (a) anything, other than the plant, that has contributed, or is contributing, to the injury or damage or likelihood of injury or damage, including any act or omission by the affected landholder and the effect of any plant situated on the affected landholder's land; and
  - (b) any steps taken by the affected landholder, or the owner of the area of land on which the plant is situated, to prevent or rectify the injury or damage or the likelihood of injury or damage.
- (2) In making an order under this Part to carry out work that involves destroying a plant, the Appeal Tribunal may consider –
- (a) how long the affected landholder has known of the injury or damage; and
  - (b) any steps that have been taken by the affected landholder, or the owner of the land on which the plant is situated, to prevent further injury or damage; and
  - (c) anything other than the plant that may have caused, or contributed to, some or all of the injury or damage; and
  - (d) any other matter the Appeal Tribunal considers relevant.

**32. Matters to be considered if unreasonable interference**

In addition to any matters that the Appeal Tribunal must consider under section 30 in relation to an application, if the applicant alleges that a plant has caused, is causing, or is likely to cause, substantial, ongoing and unreasonable interference with the applicant's use and enjoyment of the affected land, the Appeal Tribunal may consider –

- (a) anything other than the plant that has contributed, or is contributing, to the interference; and
- (b) any steps taken by the applicant, or the owner of the land on which the plant is situated, to prevent or minimise the interference; and
- (c) the size of the land on which the plant is situated; and
- (d) whether the plant existed before the applicant owned or occupied the affected land; and
- (e) for interference of a kind to which section 7(2) or (3) relates – any contribution the plant makes to the protection of revegetation of a waterway or foreshore or against landslip or soil erosion; and
- (f) any other matter the Appeal Tribunal considers relevant.

**33. Appeal Tribunal to determine application**

- (1) The Appeal Tribunal must decide an application by –
  - (a) dismissing the application; or
  - (b) making one or more orders under this section in relation to the application.
- (2) The Appeal Tribunal may make the orders in relation to an application that it considers appropriate to –
  - (a) ensure that a part of a plant does not overhang another person's land; or
  - (b) prevent, or reduce the likelihood of, serious injury being caused to a person by a plant; or
  - (c) prevent, restrain, or reduce the likelihood of, serious damage being caused by a plant to a person's land or any property on a person's land; or
  - (d) prevent, or reduce the likelihood of, substantial, ongoing and unreasonable interference with a person's use and enjoyment of a person's land being caused by a plant; or
  - (e) remedy damage caused to a person's land, or any property on a person's land, by a plant.

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- (3) The Appeal Tribunal may make any one or more of the following orders in relation to an application:
- (a) an order that the determination of the application is to be deferred until an application for a permit under the *Land Use Planning and Approvals Act 1993* is made or determined, or both, in relation to a plant or until any appeal to the Appeal Tribunal under that Act is determined;
  - (b) an order that, despite section 61(5) of the *Land Use Planning and Approvals Act 1993*, the owner of land on which a plant is situated in whole or in part may, within the period specified in the order, appeal under that section against a decision in respect of an application for a permit that relates to a plant on the land;
  - (c) an order that a permit under the *Land Use Planning and Approvals Act 1993* that relates to a plant is to be amended as specified in the order.
- (4) The Appeal Tribunal may, if it is satisfied that a plant is causing an immediate risk of injury to persons or property, make an interim order under subsection (2) or (3) in relation to the plant, pending a subsequent determination of the application under this section.
- (5) An order is not to be made requiring the removal or destruction of a living plant to which an

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application relates unless the Appeal Tribunal is satisfied that the purpose for which the application was sought could not otherwise be attained.

- (6) Without limiting the generality of subsection (2), an order under that subsection in relation to a plant may do any of the following:
- (a) require or allow an owner of land on which a plant is situated, or an affected landholder, to carry out work on the plant on a particular occasion or on an ongoing basis;
  - (b) require a survey to be undertaken to clarify the plant's location in relation to a boundary of land;
  - (c) require a person to apply for a consent, or other authority, in relation to the plant, from a government body;
  - (d) authorise a person to enter land to carry out an order under this section, including so as to obtain a quotation in relation to work in respect of the plant;
  - (e) require the applicant or the owner of the land on which the plant is situated to pay costs associated with carrying out an order under this section;
  - (f) require the owner of land on which the plant is situated to pay compensation to an affected landholder for damage to the land or property on the land;

- (g) require a report to be obtained from an appropriately qualified arborist.

**34. Effect of orders**

- (1) An order made for the purposes of this Act in relation to an application is only binding on a person who was a party to the proceedings in relation to the application.
- (2) Despite subsection (1), if a purchaser of land is, under section 16(1), given by the owner of the land a copy of an order made for the purposes of this Act, the purchaser becomes, on the day on which settlement of the sale of the land to the purchaser occurs, bound by the order as if –
  - (a) the purchaser were the person to whom the order applied; and
  - (b) any period, specified in the order, for carrying out the order began on that day –

but only to the extent that the owner of the land has not, before that day, carried out the work to which the order relates.

- (3) The Appeal Tribunal, within 14 days after making an order for the purposes of this Act, is to give a copy of the order to –
  - (a) the council, if any, in relation to the land on which is situated the plant to which the order relates; and

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- (b) any other government body or party who appeared in the proceedings to which the order relates.

**35. Duration of order**

An order for the purposes of this Act lapses after the period of 10 years from the day on which the order was made unless the order expressly states otherwise.

**36. Variation or revocation of order**

- (1) A landholder of affected land to which an order for the purposes of this Act relates, or an owner of land on which is situated a plant to which such an order relates, may apply to the Appeal Tribunal for a variation of the order.
- (2) An application under subsection (1) is to be accompanied by the prescribed fee, if any.
- (3) The Appeal Tribunal may, on application under subsection (1) for a variation of an order, vary the order by altering the terms of the order or by substituting any other order that the Appeal Tribunal may make for the purposes of this Act.
- (4) The Appeal Tribunal must give notice in writing of the variation or revocation under this section of an order in relation to a plant to –
  - (a) the affected landholder to whom the original order relates; and

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- (b) each owner of the land on which the plant is situated; and
  - (c) the council, if any, in relation to the land on which is situated the plant to which the order relates; and
  - (d) any government body, or other person, that the Appeal Tribunal considers to have an interest in the matter.
- (5) A variation under this section of an order in relation to a plant is of no effect until notice of the variation has been given to the affected landholder of the land that is affected by the plant and each owner of the land on which the plant is situated.
- (6) Without limiting the circumstances in which the Appeal Tribunal may make an order revoking an order made under this Act, the Appeal Tribunal may, on application or on its own initiative, by order, revoke an order that it considers has been satisfied.

**37. Database of orders to be kept**

- (1) The Appeal Tribunal is to establish and maintain, in the form (which may be an electronic form) that it thinks fit, a database of –
- (a) orders made for the purposes of this Act; and
  - (b) any applications made under this Act.
- (2) The database is to contain information as to –

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- (a) whether an application, or an order for the purposes of this Act, has been made in relation to an area of land; and
  - (b) the details specified in an application; and
  - (c) if an order has been made for the purposes of this Act –
    - (i) the terms of the order; and
    - (ii) when the order takes effect; and
    - (iii) when any action required by the order to be taken is required to be carried out; and
    - (iv) who is required by the order to carry out action under the order.
- (3) The database is to contain –
- (a) within 14 days after an order is made, information in relation to the order; and
  - (b) within 14 days after a variation or revocation of an order is made, information as to the variation or revocation.
- (4) A person may, on payment of the prescribed fee, if any, search the database and obtain a certified copy of any information set out on the database in relation to an order or an application for an order.

**PART 5 – MISCELLANEOUS**

**38. Regulations**

- (1) The Governor may make regulations for the purpose of this Act.
- (2) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may –
  - (a) provide that a contravention of any of the regulations is an offence; and
  - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units; and
  - (c) prescribe the form of a notice for the purposes of this Act or that a notice for the purposes of this Act is to be in a form approved by a person specified in the regulations.

**39. Review of Act**

- (1) The Minister is to cause an independent review of the operation of this Act to be carried out as soon as practicable after the fourth anniversary of the commencement of this section.
- (2) The persons who carry out the review are to give the Minister a written report on its outcome.

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Part 5 – Miscellaneous

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(3) The Minister is to cause a copy of the report to be tabled in each House of Parliament within 10 sitting-days of the House after it is given to the Minister.

(4) In this section –

*independent review* means a review carried out by persons who –

- (a) in the Minister’s opinion, are appropriately qualified for that task; and
- (b) include one or more persons who are not State Service employees or State Service officers or employees of any agency of the State.

**40. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

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**PART 6 – BOUNDARY FENCES ACT 1908 AMENDED**

**41. Principal Act**

In this Part, the *Boundary Fences Act 1908\** is referred to as the Principal Act.

**42. Section 48 amended (Notice to cut live fences and to clear adjoining land)**

Section 48 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “or to a height of 1.8 metres, or both” after “lands”;
- (b) by inserting in subsection (2) “, or height, or both,” after “width”.

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\*No. 40 of 1908

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Part 7 – Local Government (General) Regulations 2015 Amended

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**PART 7 – LOCAL GOVERNMENT (GENERAL)  
REGULATIONS 2015 AMENDED**

**43. Principal Regulations**

In this Part, the *Local Government (General) Regulations 2015\** are referred to as the Principal Regulations.

**44. Schedule 6 amended (Questions)**

Schedule 6 to the Principal Regulations is amended by inserting after paragraph (b) in item 11 in the fourth table in Part 2 the following items:

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<b>No.</b>	<b>Question</b>	<b>Answer</b>
11A.	Orders	
	(a) Has the council a record of an order that has been issued by the Appeals Tribunal under the <i>Neighbourhood Disputes About Plants Act 2017</i> in relation to the specified land?	
	(b) If YES to (a), provide particulars.	

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\*S.R. 2015, No. 37

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Part 7 – Local Government (General) Regulations 2015 Amended

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**IMPORTANT:** *Further information regarding orders and applications made under the Neighbourhood Disputes About Plants Act 2017 is available from the Resource Management and Planning Appeal Tribunal.*