

#### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

#### Overview of Bill

The object of this Bill is to amend the Trees (Disputes Between Neighbours) Act 2006 (the principal Act) (and certain other Acts and an instrument) to implement the recommendations arising from the statutory review of the principal Act. In particular, the Bill:

- (a) extends the operation of Part 2 of the principal Act to trees situated on land zoned "rural-residential", and
- (b) gives the Land and Environment Court (the LEC) jurisdiction to hear disputes about high hedges that severely obstruct sunlight to a window of a dwelling on adjoining land or views from such a dwelling, and
- (c) gives the LEC jurisdiction to hear and determine matters under the Dividing Fences Act 1991 in certain circumstances where a related application has been made under the principal Act, and
- (d) makes it clear that an application for an order under Part 2 of the principal Act can still be made following the removal of the tree that caused the damage or injury on which the application is based, and

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- (e) allows a local council to recover the amount prescribed by the regulations as an administrative fee where it enforces an order under the principal Act (in addition to the costs of carrying out the work required to enforce the order), and
- (f) enables a local council to register an order for costs as a charge on the land concerned, and
- (g) enables the immediate successor in title to an applicant to benefit from certain orders made under Part 2 of the principal Act, and
- (h) provides for plants that are vines to be treated as trees for the purposes of the principal Act, and
- (i) makes other minor statute law revision amendments.

#### Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act (except for the amendments relating to the proposed high hedge jurisdiction which are to commence on 2 August 2010).

#### Schedule 1 Amendment of Trees (Disputes Between Neighbours) Act 2006 No 126

Schedule 1 [3] extends the operation of Part 2 of the principal Act to trees situated on land zoned "rural-residential". As a result of this extension of operation, the Native Vegetation Act 2003 may presently also apply in respect of a native tree to which the principal Act applies. However, Schedule 2.3 makes an amendment to the Native Vegetation Act 2003 so that it does not apply to any clearing of a native tree in accordance with an order under the principal Act.

Schedule 1 [4] makes it clear that the removal of a tree following damage or injury caused by the tree that gives rise to an application under Part 2 of the principal Act does not prevent a person from making such an application.

Schedule 1 [11] inserts new Part 2A into the principal Act. The new Part gives the LEC jurisdiction to hear and resolve disputes in relation to high hedges that obstruct sunlight or views.

Proposed section 14A provides that the new Part applies only in relation to groups of 2 or more trees that are planted so as to form a hedge and that rise to a height of at least 2.5 metres. Proposed section 14B enables an owner or occupier of land to apply

to the LEC for an order to remedy, restrain or prevent a severe obstruction of sunlight to a window of a dwelling situated on the land, or any view from a dwelling situated on the land, if the obstruction occurs as a consequence of trees to which the new Part applies being situated on adjoining land. An owner of land is to give notice of the

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lodging of such application in accordance with proposed section 14C (unless the LEC waives the requirement in accordance with that proposed section).

Proposed section 14D gives the LEC jurisdiction to make such orders as it thinks fit to remedy, restrain or prevent a relevant obstruction (apart from an order that requires the payment of compensation). However, proposed section 14E provides that the LEC must not make an order unless the applicant has made a reasonable effort to reach agreement with the owner of the land on which the trees are situated. The LEC must also be satisfied that the severity and nature of the obstruction in question is such that the applicant's interest in having the obstruction removed, remedied or restrained outweighs any other matters that suggest the undesirability of disturbing or interfering with the trees. Proposed section 14F sets out various matters that are to be considered by the LEC before determining an application under the new Part (including whether the trees existed prior to the dwelling concerned, whether the trees grew to a height of 2.5 metres or more during the applicant's occupancy and the nature and extent of any view affected by the obstruction).

Proposed section 14G provides for the appearance of a local council or the Heritage Council in certain proceedings under the new Part and proposed section 14H requires the LEC to provide a copy of any order made under the new Part to the local council and the Heritage Council (if the Heritage Council appeared in the proceedings).

Proposed section 14I requires a review to be carried out in relation to the operation of the new Part.

Schedule 1 [5] provides that no action may be brought in nuisance as a result of an obstruction of sunlight to the window of a dwelling, or of a view from a dwelling, caused by trees to which new Part 2A applies. Schedule 1 [13] allows an order under the new Part to be enforced against an immediate successor in title to the owner of land on which the trees concerned are situated. Schedule 1 [1], [6], [7], [8], [12], [16] and [18] make amendments consequential on the insertion of the new Part.

Schedule 1 [15] enables an immediate successor in title to an applicant to benefit from certain orders made under Part 2 of the principal Act in favour of the applicant.

Schedule 1 [14] makes a consequential amendment.

Section 17 of the principal Act allows a local council to enter land and carry out work in accordance with an order under the principal Act where the owner of that land has failed to carry out the work. Schedule 1 [17] provides that in such circumstances a council may recover in a court of competent jurisdiction, from the owner of the land, a prescribed administrative cost in addition to the reasonable costs of carrying out the work. Schedule 1 [19] enables the council to register such an order for costs as a charge on the land and sets out the procedure for registration.

Schedule 1 [2] makes a minor amendment to clarify that a reference in the principal Act to land zoned "rural-residential" includes a reference to land zoned "large lot residential" and to insert a regulation-making power to enable such clarification to be included in the regulations in relation to other zones referred to in the principal Act if necessary.

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Schedule 1 [9] makes a minor amendment in relation to the matters that may be considered by the LEC in making an order under Part 2 of the principal Act.

Schedule 1 [10] makes a minor amendment to make it clear that the requirement to provide a copy of an order made under Part 2 of the principal Act to a local council and, in certain circumstances, the Heritage Council does not extend to an order dismissing an application.

Schedule 2 Amendment of other Acts and instrument

Schedule 2.1 gives the LEC jurisdiction to hear and determine matters under the Dividing Fences Act 1991 in certain circumstances where an application is made under the Trees (Disputes Between Neighbours) Act 2006 in relation to:

(a) a tree that has caused, is causing, or is likely in the near future to cause damage to a dividing fence, or

(b) a tree that is part of a dividing fence and has caused, is causing, or is likely in the near future to cause damage to the applicant's property or is likely to cause injury to any person.

Schedule 2.2 makes a consequential amendment to the Land and Environment Court Act 1979.

Schedule 2.3 provides that the Native Vegetation Act 2003 (which prohibits the clearing of native vegetation except in accordance with that Act) does not apply to any clearing of native vegetation in accordance with an order under the principal Act.

Schedule 2.4 amends the Trees (Disputes Between Neighbours) Regulation 2007 so that any plant that is a vine is considered to be a tree for the purposes of the principal Act.