



World Forum on
Urban Forests
Mantova 2018

*PS 4.2 The Present
Changing People*

Urban forest values recognised in unique legislation

David Galwey
Land & Environment Court
New South Wales

TREE DIMENSIONS
TREES IN THE BUILT ENVIRONMENT



Land and Environment Court

Trees (Disputes Between Neighbours) Act 2006 (NSW)

- The legislation
- How it differs from the Common Law framework
- What makes it unique
- How it works





455 BC and the Laws of the Twelve Tablets. Often cited as the beginning of European law.

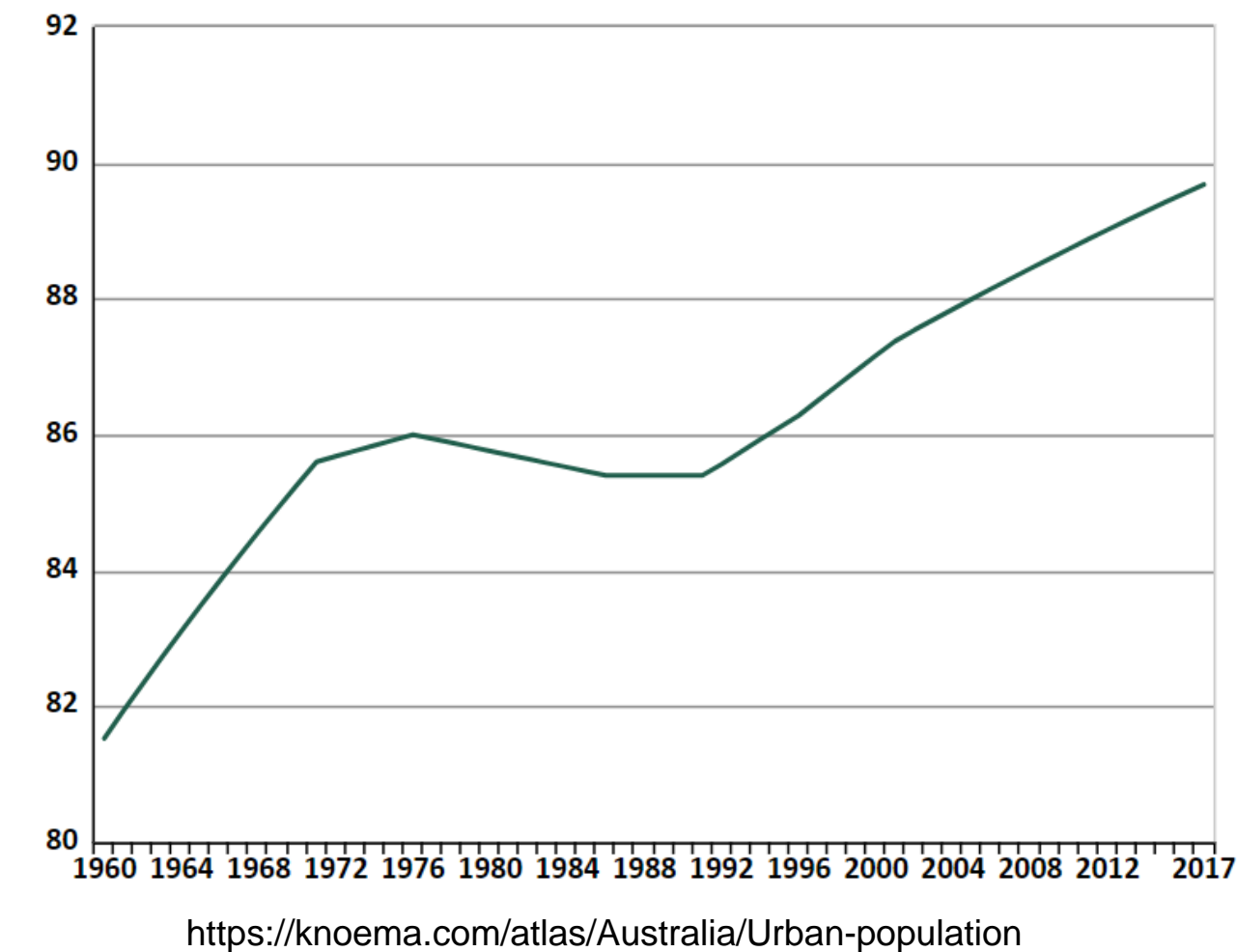
- If a tree from a neighbour's farm has been felled by the wind over one's farm, ... one rightfully can take legal action for that tree to be removed.
- If an overhanging tree causes injury by its branches or its shade, let it be cut off 15 feet from the ground.
- For each illegal cutdown of trees that belong to someone else the culprit shall pay 20 asses.

Oliver Thatcher (ed), The Library of Original Sources, Vol. III: The Roman World (Milwaukee University Research Extension Co, 1901) 9–11.



Importance of the urban forest in Australia

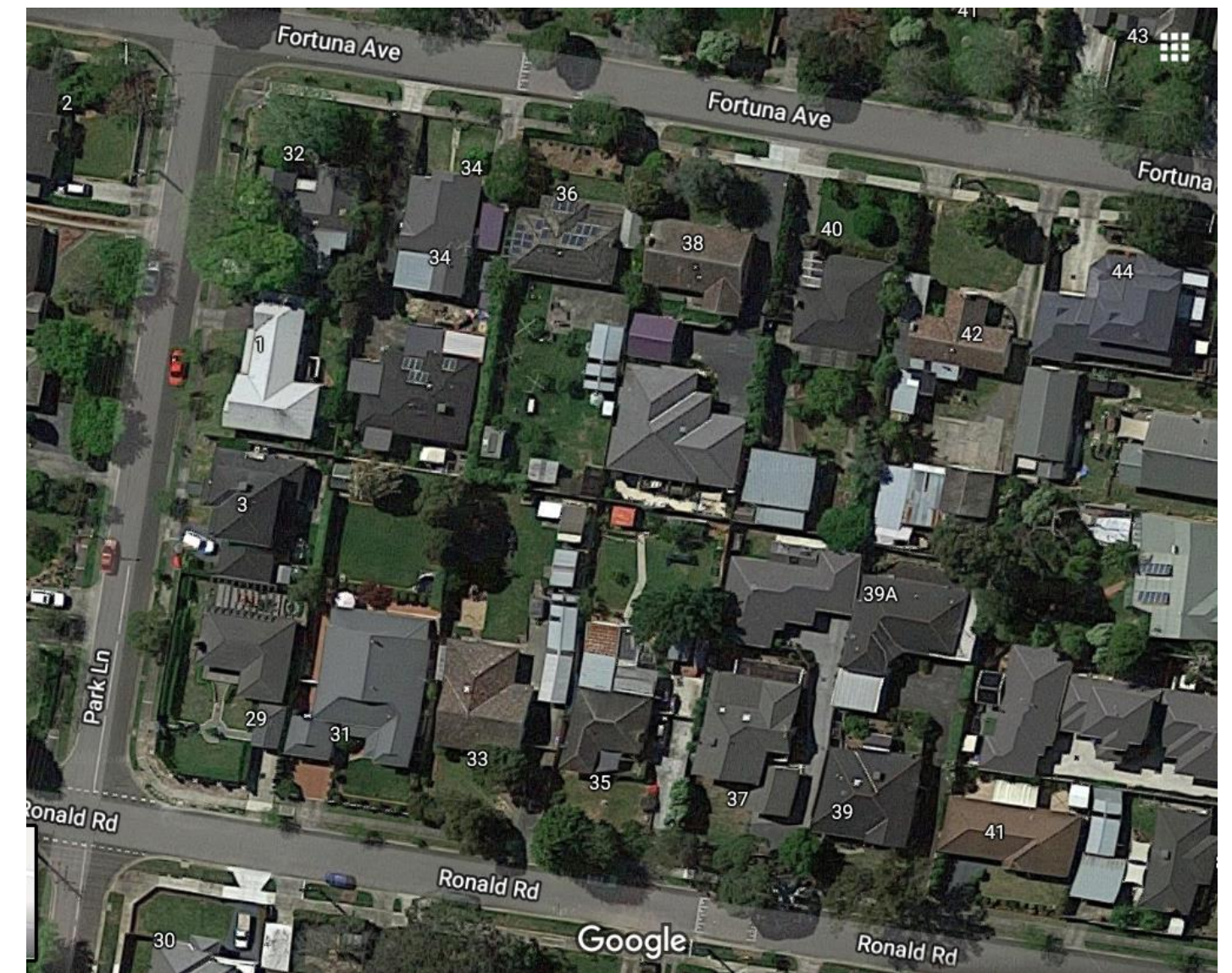
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- Large suburban lot sizes
- Sydney and Melbourne ~15% canopy cover
- Trees on private property e.g. City of Melbourne >30%





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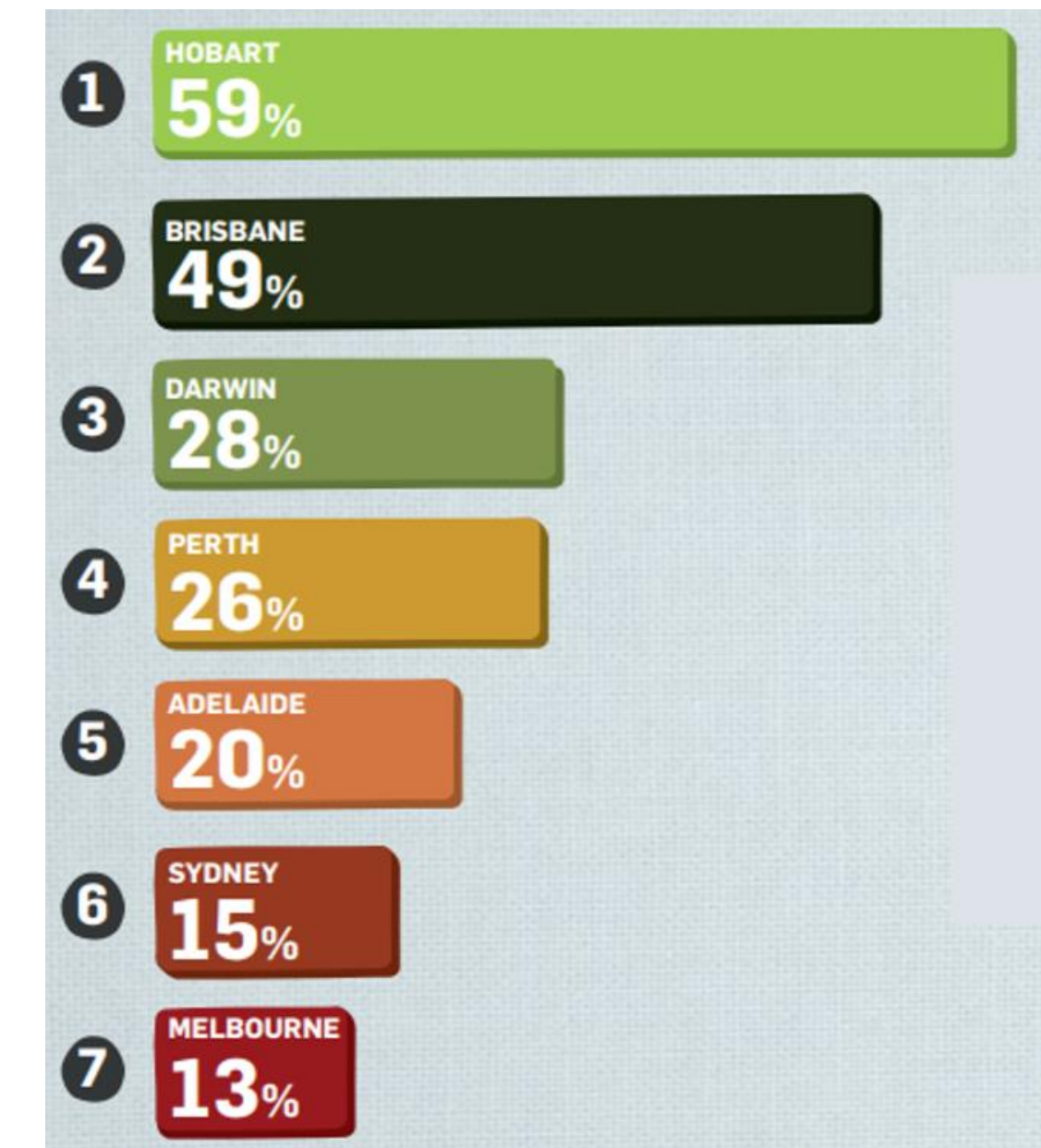


Googlemaps 2018



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2020VISION: Where are all the trees?



Importance of the urban forest in Australia

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Neighbourhood disputes

- Fences, noise and trees
- Dispute Settlement Centre of Victoria
 - Trees are the third most common subject of inquiries (~17%)
 - >3,000 cases relating to trees, shrubs and creepers per year, 2011 to 2017

(Victorian Law Reform Commission 2017. *Neighbourhood Tree Disputes: Consultation Paper* December 2017)



The Trees Act

- Unique legislation – for resolving tree disputes between neighbours **cheaply, quickly and fairly**
- Jurisdiction
 - Tree must be on neighbouring land,
 - Tree must satisfy the jurisdictional test for
 - Causing damage or injury (Part 2), or
 - Obstruction of sunlight or views by a hedge (Part 2A).





Matters to consider

- The Court must consider the benefits of the tree,
not only to the tree's owner, but also to
 - the broader community (*social benefits*) and
 - the environment (*ecological benefits*).
- Major difference to common law framework



12 Matters to be considered by Court

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

- (a) the location of the tree concerned in relation to the boundary of the land on which the tree is situated and any premises,
- (b) whether interference with the tree would, in the absence of section 6 (3), require any consent or other authorisation under the Environmental Planning and Assessment Act 1979 or the Heritage Act 1977 and, if so, whether any such consent or authorisation has been obtained,
- (b1) whether interference with the trees would, in the absence of section 25 (t) (Legislative exclusions) of the Native Vegetation Act 2003, require approval under that Act,
- (b2) the impact any pruning (including the maintenance of the tree at a certain height, width or shape) would have on the tree,
- (b3) any contribution of the tree to privacy, landscaping, garden design, heritage values or protection from the sun, wind, noise, smells or smoke or the amenity of the land on which it is situated,
- (c) whether the tree has any historical, cultural, social or scientific value,
- (d) any contribution of the tree to the local ecosystem and biodiversity,
- (e) any contribution of the tree to the natural landscape and scenic value of the land on which it is situated or the locality concerned,
- (f) the intrinsic value of the tree to public amenity,
- (g) any impact of the tree on soil stability, the water table or other natural features of the land or locality concerned,
- (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,
- (i) if the applicant alleges that the tree concerned is likely to cause injury to any person:
 - (i) anything, other than the tree, that has contributed, or is contributing, to any such likelihood, 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 any such injury,
- (j) such other matters as the Court considers relevant in the circumstances of the case.



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How else is the Act unique?

- Matters are heard and determined by commissioners who have expertise in arboriculture
- Onsite hearings
- Self-representation
 - Both sides self-represented in >70% cases
 - One side used lawyers in 22% cases
 - Both sides used lawyers 8% of cases
- Trees are also personal





Tree Dispute Principles

The tree was there first	Matters to be considered when determining who should pay for any works or removal of a tree	Black v Johnson (No 2) [2007] NSWLEC 513
Urban trees and ordinary maintenance issues	The dropping of leaves, flowers, fruit, seeds or small elements of deadwood by urban trees ordinarily will not provide the basis for ordering removal of or intervention with an urban tree.	Barker v Kyriakides [2007] NSWLEC 292



Access to sunlight and views

The Sydney Morning Herald

NATIONAL NSW

Neighbours spar over 'cracker of a view' at Birchgrove

By [Michaela Whitbourn](#)
31 December 2016 – 5:00pm



It is the most Sydney of court cases, heard in one of the harbour city's most exclusive makeshift courtrooms.



A dispute between neighbours over trees – par for the course in the Land and Environment Court – was heard by the water in Birchgrove so the court could take in the spectacular views of the harbour.

TODAY'S TOP STORIES

AIRPORTS

Major delays at Sydney Airport as wind cuts services
1 hour ago



BANKING ROYAL COMMISSION

'What do we have to lose': Email exposes 'do nothing' corporate regulator



ENERGY

Big business turns on Scott Morrison over 'ad hoc and extreme' energy policy
1 hour ago



BANKING ROYAL COMMISSION

The 'Macquarie Model' struts its stuff on royal commission catwalk



Streets in Birchgrove offer spectacular views of Sydney Harbour and the Harbour Bridge.





Readily available information

Land and Environment Court

Home	Your legal problem is about ...	Types of cases	Resolving disputes	Coming to the court	Practice & Procedure	Forms & Fees	Land and Environment Court Decisions
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Land and Environment Court > Types of cases > Class 2: tree disputes and local government appeals > Trees or hedge dispute process

Listen A A Normal

Types of cases

- Class 1: environmental planning and protection appeals
- Class 2: tree disputes and local government appeals**
- Miscellaneous appeals process
- Trees or hedge dispute process**
- What is a tree dispute?
- Who can make an application? When can it be made?
- How to start the

Helpful materials



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