

# Property Law Act 2007

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## 335 Matters court may consider in determining application for order under section 333

- (1) In determining an application under section 334, the court may make any order under section 333 that it thinks fit if it is satisfied that—
  - (a) the order is fair and reasonable; and
  - (b) the order is necessary to remove, prevent, or prevent the recurrence of—
    - (i) an actual or potential risk to the applicant's life or health or property, or the life or health or property of any other person lawfully on the applicant's land; or
    - (ii) an undue obstruction of a view that would otherwise be enjoyed from the applicant's land, if that land may be used for residential purposes under rules in a relevant proposed or operative district plan, or from any building erected on that land and used for residential purposes; or
    - (iii) an undue interference with the use of the applicant's land for the purpose of growing any trees or crops; or
    - (iv) an undue interference with the use or enjoyment of the applicant's land by reason of the fall of leaves, flowers, fruit, or branches, or shade or interference with access to light; or
    - (v) an undue interference with any drain or gutter on the applicant's land, by reason of its obstruction by fallen leaves, flowers, fruit, or branches, or by the root system of a tree; or
    - (vi) any other undue interference with the reasonable use or enjoyment of the applicant's land for any purpose for which it may be used under rules in the relevant proposed or operative district plan; and
  - (c) a refusal to make the order would cause hardship to the applicant or to any other person lawfully on the applicant's land that is greater than the hardship that would be caused to the defendant or any other person by the making of the order.
- (2) In determining whether to make an order under section 333, the court must—
  - (a) have regard to all the relevant circumstances (including Māori cultural values and, if required, the matters specified in section 336); and
  - (b) if applicable, take into account the fact that the risk, obstruction, or interference complained of was already in existence when the applicant became the owner or occupier of the land.
- (3) Despite subsection (2)(b), an order may be made under section 333 if, in all the circumstances, the court thinks fit.

Compare: 1952 No 51 s 129C