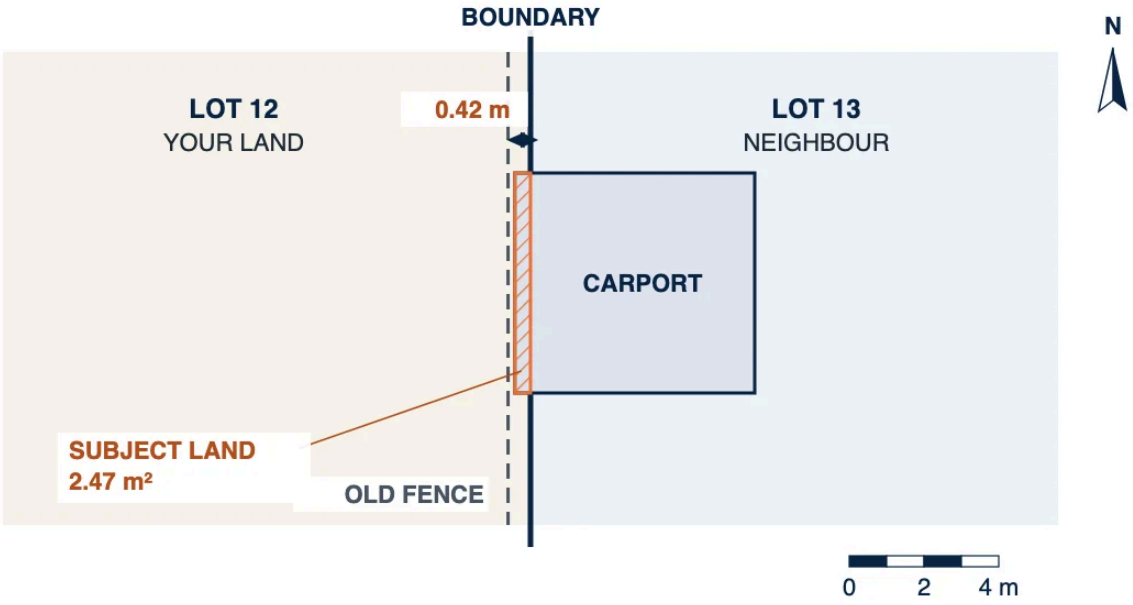


By Sydney Surveyor Solutions | 24 November 2026

Encroachment in NSW: what courts ordered when a building crossed the boundary

In NSW, an encroachment is a building, wall, eave or footing that crosses the boundary onto a neighbour's land. The Encroachment of Buildings Act 1922 lets either owner ask the Land and Environment Court to order compensation, an easement or transfer of the land under the building, or removal. In each of the five recent cases below, a survey plan showed where the boundary runs and where the building sits.

This is general information about how the NSW Act works and what courts have done. It is not legal advice, and every case turns on its own facts.

> **Key takeaways**
>
> - The Act covers a "substantial building of a permanent character", including a wall, and counts overhangs and footings as well as walls on the ground.

> - Either owner can apply. The court can order compensation, an easement, lease or transfer of the land under the building, or removal.
> - A transfer can only cover the land directly under the encroaching part, not a wider strip.
> - In each of the five cases below, a survey plan showed where the boundary runs and where the building sits.
> - If something looks over the line, get a boundary survey first, then talk to your neighbour, then get legal advice.

What counts as an encroachment in NSW

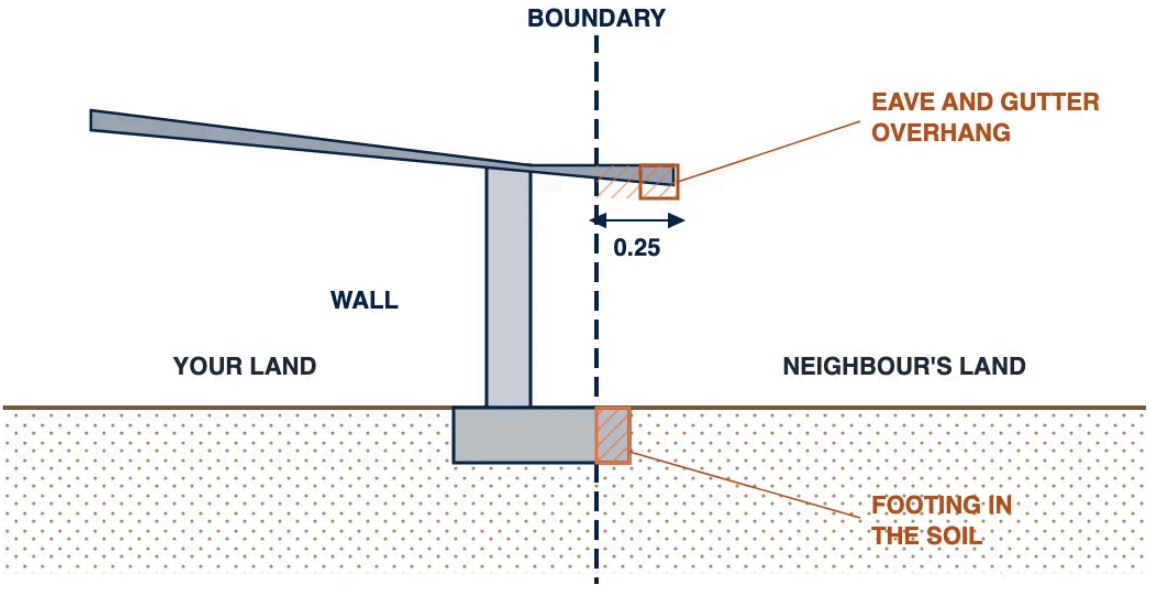
The Act has its own definitions, and NSW judges quote them word for word. As set out in a 2022 Land and Environment Court decision:

- **Building** "means a substantial building of a permanent character and includes a wall".
- **Encroachment** "means encroachment by a building, and includes encroachment by overhang of any part as well as encroachment by intrusion of any part in or upon the soil".
- **Subject land** "means that part of the land over which an encroachment extends".
- The **Court** is the Land and Environment Court.

So a brick garage wall a few centimetres over the line counts. So does an eave or gutter hanging over the neighbour's side, and a footing that runs under the boundary.

The Act is about buildings that cross the boundary. The High Court decided in 1993 ([1993] HCA 16; (1993) 176 CLR 471) that it does not cover a building standing wholly on the neighbour's land, a point a 2025 decision repeated ([2025] NSWLEC 1482).

Other states have their own laws, such as South Australia's Encroachments Act 1944. This guide covers NSW only.



What a court can order under the Encroachment of Buildings Act

Under section 3, either the owner whose land is built on (the "adjacent owner") or the owner of the building (the "encroaching owner") can apply. The court can make orders about:

- compensation to the adjacent owner
- a transfer or lease of the land under the building to the encroaching owner, or an easement or other right over it
- removal of the encroachment

It decides by weighing a list the Act sets out: who applied, where the land is and what it is worth, how far the building goes over, what the building is and what it is used for, the loss each owner would suffer, and how the encroachment came about.

Two money rules sit in section 4, for when the court orders a transfer, lease or easement. Where the encroaching owner shows the encroachment was not intentional and did not arise from negligence, the minimum compensation is the land value of the strip. In any other case, the minimum is three times that land value. The court can order more.

The Act also lets the court refer any question to a registered land surveyor or a valuer. In the cases below, it was a survey plan that showed where the boundary runs and how much land the building covers.

Think a wall, carport or eave is over the boundary, or been told yours is over theirs? Send us the address and we will send a free quote for a boundary survey that shows where the line runs and where the building sits.

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On the form, describe the structure in the project description and upload any old survey or plan you have.

Five NSW cases and what the survey showed

These five Land and Environment Court decisions show the main outcomes the Act allows. Each is cited by its court number and linked to the full judgment on NSW Caselaw.

Case	What crossed the line	What the survey showed	What the court ordered
Rose Bay, 2022	A laundry, a three-bay brick carport and a paling fence on the access handle of a battleaxe block	Carport and laundry 1.435 m to 1.51 m over, 16.9 m²; fence up to 1.79 m over, 43.1 m²; 60 m² in all	Remove all of it within six months, then build a new fence on the true boundary
Retaining wall, 2024	A failing brick and stone retaining wall on a shared boundary	Brick section up to 160 mm over, stone section up to 330 mm, a low wall corner 110 mm	Rebuild the wall along the boundary, costs shared equally; leave the 110 mm corner
Earlwood, 2026	A driveway outside a registered right of carriageway, and a neighbour's new works going the other way	Two areas, A and B, drawn on a registered surveyor's plan	Agreed easements over both areas and $24,000 compensation
Shed, 2023	An old timber and metal shed	11 m² over the rear boundary; the old fence stood 3.4 m inside the neighbour's land	Transfer of 34.5 m² refused; remove the encroaching part

Case	What crossed the line	What the survey showed	What the court ordered
Studio, 2025	A studio, with a toilet building and grey water tank serving it	Studio up to 5.57 m over, including eaves	Remove the encroaching studio, toilet building and tank within 60 days at the owners' cost

Buildings likely older than the boundary (Rose Bay, 2022)

In [2022] NSWLEC 1243, the laundry, toilet and carport on the neighbouring flat site were most likely built before the land was subdivided in 1951. They became encroachments when the subdivision drew a boundary through them, onto the 1.83 m wide access handle of the battleaxe block next door. With the fence, the encroachment came to 60 m², about 9% of that 676 m² block. Both sides agreed the structures should go. The argument was about whether a new laundry had to be built first, and the court said it did not.

A retaining wall that had failed (2024)

In [2024] NSWLEC 1079, a geotechnical report found the wall was deflecting and degrading, and two boundary surveys measured how far each section sat over the line. The court found both properties benefited from the wall and ordered it rebuilt along the boundary, strong enough to carry a dividing fence, with each owner paying half. A low concrete corner 110 mm over was left alone as negligible.

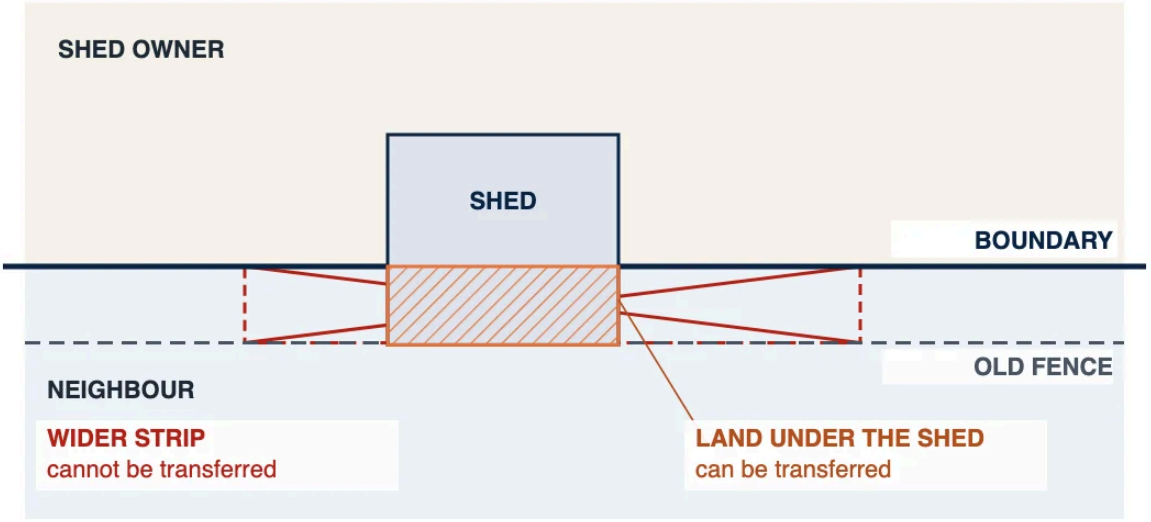
A driveway and a renovation, settled by easements (Earlwood, 2026)

In [2026] NSWLEC 1722, each owner had something on the other's land. At a conciliation conference they agreed on two easements, each drawn as an area on a registered surveyor's plan, so the driveway and the new works could stay. The owner who had done the new works agreed to pay $24,000, get a structural engineer's report on the retaining wall under the driveway, and share the survey and registration costs.

A shed and a fence that was in the wrong place (2023)

In [2023] NSWLEC 85, the shed's owner had used the land behind an old paling fence for years and asked the court to transfer 34.5 m² of the neighbour's land. The fence stood 3.4 m inside the neighbour's land, and the survey annexed to the judgment showed only 11 m² of the shed was over. The court held it had no power to transfer more than the land directly

under the encroachment, then declined to transfer even that, and ordered that part of the shed removed.



A studio drawn in the wrong place on council plans (2025)

In [2025] NSWLEC 1482, a buyer suspected an encroachment after exchanging contracts in 2016, and the buyer's surveyor confirmed it in March 2017. The neighbours' studio ran up to 5.57 m onto the buyer's land. A site plan they had lodged with council years earlier showed it wholly on their own lot, and the council had not asked for a survey. The court said that did not excuse them from taking reasonable steps to find the true boundary. It ordered the encroaching studio removed from the buyer's land within 60 days, together with the toilet building and tank, which both sides accepted were part of the studio encroachment. In a later costs decision ([2025] NSWLEC 130), the neighbours were ordered to pay the buyer's legal costs.

What the cases have in common

The survey plan is the evidence. In four of the five cases, the orders themselves point to a survey: "as depicted in the survey", "shown as Area A on the plan of survey", "marked as 'studio' on the survey". In the fifth, the judgment worked from the survey annexed to it. An order to remove part of a wall, or to register an easement, needs a plan saying exactly which part and how much.

An old fence does not prove where the boundary is. One fence stood 3.4 m inside the neighbour's land. Another was itself an encroachment of up to 1.79 m. Our guide to building a fence on the right line explains why fences drift.

A council approval does not fix the boundary. A site plan that council accepted still put the studio in the wrong place. Only a survey of the land shows where a building sits against the title boundary.

You cannot use an encroachment to gain a wider strip. The land the court can transfer is the land under the building, and no more.

Size alone does not decide it. A retaining wall a few hundred millimetres over was ordered rebuilt because it had failed, while a 110 mm corner of another wall was left in place. In Earlwood, structures on both sides of the line stayed because the owners agreed to easements. The section 3 factors guide the court, but its discretion is broad, and owners can settle by agreement.

What to do first if a wall, slab or eave looks over the line



1. **Get a boundary survey.** A registered surveyor finds the boundary from the deposited plan and the survey marks, then measures the wall, slab, eave or footing against it. Our identification survey is a lighter check for fencing and minor works; where the line is disputed, a boundary survey is the right one.
2. **Share the plan with your neighbour.** Both of you then work from the same measurements. In the cases above, one encroachment most likely dated from before a 1951 subdivision, and in another the owners had built without checking where the boundary was.
3. **Talk about the options the Act allows.** Removal, an easement, a lease, or a transfer of the strip under the building with compensation. An easement or transfer usually

needs a surveyor's plan before it can be registered, as in the Earlwood case.

4. **Get legal advice before applying to court.** A lawyer can tell you whether the Act applies and what the costs risk is. If the argument is about where the boundary itself runs, the State Library of NSW's legal guide Neighbours and the law explains that you can ask the Registrar-General for a boundary determination under Part 14A of the Real Property Act 1900, with an appeal to the Land and Environment Court within 28 days.
5. **If you are buying**, ask for a survey before you exchange. In the studio case the buyer only found the encroachment after exchange. Our identification survey guide explains what that survey shows.

Frequently asked questions

What is an encroachment?

In NSW property law it is a building, wall or part of one that crosses the boundary onto a neighbour's land. Under the Encroachment of Buildings Act 1922 that includes an overhang, like an eave or gutter, and a footing in the neighbour's soil.

How do I deal with a neighbour's encroachment on my land?

Start with a boundary survey so you know exactly what is over and by how much. Then talk to your neighbour and get legal advice. Either of you can apply to the Land and Environment Court, which can order removal, compensation, or an easement or transfer of the land under the building.

Can my neighbour make me sell them the land under their building?

They can apply for a transfer, but it is up to the court, and it can only cover the land directly under the encroaching part. In a 2023 case the court refused a transfer and ordered the shed's encroaching part removed.

Does the Act cover fences?

A building under the Act "includes a wall", and courts have ordered encroaching fences removed alongside buildings, as in the Rose Bay case. Fence building and cost sharing between neighbours are covered by the Dividing Fences Act 1991; our fence survey guide covers that process.

How much compensation is paid for an encroachment?

For a transfer, lease or easement, the minimum is the land value of the strip under the building if the encroaching owner shows the encroachment was not intentional or negligent, and three times that value otherwise. The court can order more. In the Earlwood case the owners agreed on $24,000.

Which survey do I need for an encroachment?

A boundary survey, which locates the title boundary from the deposited plan and survey marks and measures the structure against it. It is the kind of plan the court orders refer to.

How much does a boundary survey cost in Sydney?

Our guide price for a boundary survey starts from $1,540 including GST. The final price depends on the block, the survey marks nearby and what needs to be measured. Our boundary survey cost guide explains what moves the price, and we will quote free on your address.

Before you write to your neighbour

- Note what is over: wall, slab, eave, gutter, footing or fence.
- Find out when it was built and whether council holds plans for it.
- Take dated photos from your side of the line.
- Keep copies of the survey plan and of everything you send.

Want to know for sure where the line is? Send us the address and the structure you are worried about, and we will send a free quote for a boundary survey with measurements to the building.

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Sources checked 24 November 2026: NSW Caselaw, Land and Environment Court decisions [2022] NSWLEC 1243, [2024] NSWLEC 1079, [2026] NSWLEC 1722, [2023] NSWLEC 85, [2025] NSWLEC 1482, [2025] NSWLEC 130 and [2021] NSWLEC 1479 (the Encroachment of Buildings Act 1922 sections 2, 3 and 4 as quoted in them); State Library of NSW, Neighbours and the law, chapter 5: Boundaries. General information only, not legal advice.