

AUSTRALIA / JUDGMENT

Angel v Pemberton

[2026] NSWLEC 1629**COURT**

Land and Environment Court

DECIDED

24 September 2026

BEFORE

Austin AC

CASE / FILE NUMBER

2026/258769

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Land and Environment Court

New South Wales

Medium Neutral Citation: Angel v Pemberton [2026] NSWLEC 1629**Hearing dates:** 21 August 2026**Date of orders:** 24 September 2026**Decision date:** 24 September 2026**Jurisdiction:** Class 2**Before:** Austin AC**Decision:****The Court orders:** (1) The Part 2A application is refused.**Catchwords:** TREES (DISPUTES BETWEEN NEIGHBOURS) — Pt 2A application — neighbouring hedge — applicants purchase date — bamboo — obstruction of sunlight — obstruction not severe — application refused**Legislation Cited:** Land and Environment Court Act 1979 (NSW), s 40
Trees (Disputes Between Neighbours) Act 2006 (NSW), Pt 2A, ss 3, 7, 10, 14A, 14B, 14C, 14D, 14E, 14F
Lake Macquarie Local Environmental Plan 2014
Trees (Disputes between Neighbours) Regulation 2024 (NSW), s 4 (repealed)**Cases Cited:** Barker v Kyriakides [2007] NSWLEC 292
Fang v Li & anor [2017] NSWLEC 1503
McDougall v Philip [2011] NSWLEC 1280
Robson v Leischke (2008) 72 NSWLR 98; [2008] NSWLEC 152
Smith & Hannaford v Zhang & Zhou [2011] NSWLEC 29
Steber v Job [2019] NSWLEC 1308**Category:** Principal judgment

Parties:	Michelle Angel (Applicant) Karen Pemberton (Respondent)
Representation:	M Angel (Self-represented) (Applicant) K Pemberton (Self-represented) (Respondent)
File Number(s):	2026/258769
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JUDGMENT

Background

COMMISSIONER: In these proceedings, Michelle Angel (the applicant) and Karen Pemberton (the respondent) own neighbouring properties in Dora Creek. The parties are in dispute about sunlight obstructions purported to be caused by a hedgerow of bamboo on the eastern boundary of 76 Newport Road, Dora Creek.

This is an application made pursuant to Pt 2A, s 14B of the Trees (Disputes Between Neighbours) Act 2006 (NSW) (the Trees Act), which provides an opportunity to remedy, restrain or prevent a severe obstruction of sunlight to a window of a dwelling or a view from a dwelling situated on neighbouring land.

76 Newport Road, Dora Creek is a single-storey brick residence that has been owned by Karen Pemberton since 2013. The rear yard has a lawn surrounded by hedges including the bamboo hedge subject to this dispute. The bamboo hedge is located next to the eastern boundary. Ms Pemberton resides at the property and has done so since the purchase.

74 Newport Road, Dora Creek is a two-storey residence purchased by Ms Angel around mid-2024. The rear yard has a pool surrounded by paving and a shed near the rear northwestern corner. Ms Angel resides at the property.

Both sites are zoned R2 Low Density Residential under the Lake Macquarie Local Environmental Plan 2014.

The Court has reviewed the applicant's tree dispute application form (Exhibit A), the tree dispute claim detail forms for High Hedges (Exhibit B) and the further evidence provided by Ms Angel (Exhibit C). The Court has also reviewed the Arbor Express arborist report (Exhibit 1), the bundle of documents (Exhibit 2), the response to the tree dispute application (Exhibit 3), Ms Pemberton's affidavit (Exhibit 4) and the Notice of Motion dated 27 July 2026 (Exhibit 5).

The onsite hearing

The hearing took place on-site, allowing the Court to observe the bamboo hedge and both properties. Following introductions on the Newport Road verge, and in the company of two sheriffs, the onsite hearing commenced in the rear yard of the applicant's property. The Court

next inspected the respondent's rear yard and the bamboo. Ms Pemberton did not allow Ms Angel into her rear yard for privacy reasons. On completion of the inspection of the respondent's rear yard, I repeated the observations I made, as well as the oral evidence provided by the respondent to Ms Angel. The parties then returned to Toronto Court House where the hearing resumed, and I formally took the written evidence and then heard submissions from both parties. Both parties were self-represented.

The trees concerned

The bamboo concerned is comprised of a hedge of 13 clumps of bamboo growing adjacent to the rear yard's eastern fence at 76 Newport Road, Dora Creek. While the specific species of bamboo is not known, the bamboo observed had a clumping (sympodial) habit, as opposed to running (monopodial) bamboo which has rhizomes that spread out from the clump.

On the day of the hearing, the bamboo was approximately 4–4.5m in height and there was a 40cm gap between the culms and the boundary fence. A few juvenile culms of <20cm in height were observed touching the fence at the southern end. Utilising my own expertise, I could see the bamboo had been pruned to the current height and that culms within 40cm of the fence had been cut to ground level.

Bamboo is prescribed as a tree for the purposes of the definition of tree in s 3(1) of the Trees Act in accordance with s 4 of the Trees (Disputes Between Neighbours) Regulation 2014 (NSW). Bamboo is increasingly being used for hedges and screening in urban areas and is the subject of many applications to the Court under Pt 2A of the Trees Act.

Application to the Court

Ms Angel applied for orders pursuant to s 14B (Pt 2A) to prevent a severe obstruction of sunlight to nominated windows on her dwelling. The bamboo subject to the application is situated on adjoining land.

Proposed Orders

The applicant seeks the following orders in the Pt 2A Application:

To completely remove and destroy all bamboo.

The applicant seeks additional orders involving fencing, privacy screens and a restriction on physical contact between the parties.

The respondent likes the bamboo and the privacy it affords her. The respondent wishes to retain the bamboo and maintain it at 4m height and current extent.

The respondent seeks additional orders including additional fencing, trespass, limitations on fire use and dog control.

Jurisdiction to make orders

The order for complete bamboo removal sought by the applicant is an order that the Court could make under s 14D of the Trees Act if all jurisdictional tests are met, although the Court may make different orders as it sees fit in the circumstances.

The Court has a limited jurisdiction for Pt 2A applications, and the additional orders sought by both parties that do not relate to the bamboo cannot be made under the Trees Act.

Reasonable effort to reach agreement

The parties have a history of heated disputes extending to mid-2025, when the parties were involved in a dispute that resulted in an undertaking that involved no contact between the parties. This undertaking was stamped at Toronto Local Courthouse on 21 July 2025.

On 6 July 2026, Ms Angel served the Tree Dispute Application documents upon Ms Pemberton by placing the envelope in the letter box at 76 Newport Road, Dora Creek.

Ms Pemberton asserts that she was not served notice of the Tree Dispute Application in accordance with s 8 of the Trees Act. After seeing her name on the Court list, Ms Pemberton contacted the Court on the 13 July 2026 and received the Tree Dispute Application directly from the Court on the 15 July 2026. Ms Pemberton signed her notice of appearance on the 17 July 2026. On 7 August 2026, Ms Pemberton filed a Notice of Motion (NOM) to have the application dismissed or vacated as she claimed that she was not given the 21 days' notice before the preliminary hearing listed for 27 July 2026. The NOM was dismissed by Duggan J and it was determined that the applicant had placed the application in the letter box of the respondent on the 6 July 2026, satisfying s 14C of the Trees Act.

In *Robson v Leischke* (2008) 72 NSWLR 98; [2008] NSWLEC 152 ("Robson"), Preston CJ provides guidance in ascertaining whether the applicant has made 'a reasonable effort to reach agreement'. At [195] of Robson, I note that "a reasonable effort" is considered less demanding than "all reasonable attempts" which can be found in other statutory enactments such as s 40(2)(d) of the Land and Environment Court Act 1979 (NSW). To meet this test, the applicant need not negotiate exhaustively to a consensus which involves concessions they may deem not to be in their best interests. It is apparent that irrespective of Ms Pemberton's submission, the applicant brought these proceedings to Court as the request to remove the bamboo was extremely unlikely to have been accepted.

At [195(e)] of Robson, Preston CJ indicates that:

"The requirement is satisfied when objectively it is extremely unlikely that further negotiations will produce a consensus within the reasonably foreseeable future".

Given the background of disputes, I find it extremely unlikely that this tree dispute would have been resolved in the reasonably foreseeable future. I therefore accept that the applicant has made a reasonable effort to reach agreement with the respondent, as required by s 14E(1)(a) of the Trees Act.

Whether the trees are severely obstructing sunlight – Part 2A

Ms Angel contends the bamboo is causing a severe sunlight obstruction to one bedroom and two-bathroom windows on the second storey of the dwelling. These windows face directly north towards her pool area. Ms Angel claims that the windows have rotted out and mould has grown in the bedroom due to the excessive shading caused by the bamboo.

Part 2A Jurisdictional requirements

In Pt 2A matters, the Court must consider a number of jurisdictional tests before any orders can be contemplated.

Do the trees form a hedge?

The first test is whether s 14A(1) is satisfied, namely, whether the trees form a hedge. Section 14A(1) states:

- (1) This Part applies only to groups of 2 or more trees that—
 - (a) are planted (whether in the ground or otherwise) so as to form a hedge, and
 - (b) rise to a height of at least 2.5 metres (above existing ground level).

The bamboo has been planted to form a hedge which now creates a hedge of touching canopies. I am satisfied that s 14A(1) is engaged.

Section 14B states that an owner of land may apply to the Court for an order to remedy, restrain or prevent a severe obstruction of:

- (a) sunlight to a window of a dwelling situated on the land, or
- (b) any view from a dwelling situated on the land,

if the obstruction occurs as a consequence of trees to which this Part applies being situated on adjoining land.

The applicant owns her property and claims that sunlight to nominated windows is severely obstructed by the respondent's hedge. This satisfies s 14B.

Relevant Issues

The relevant issues to be determined in these proceedings are:

Whether the trees are severely obstructing sunlight to the applicant's nominated windows: s 14E(2)(a)(i).

How consideration of the relevant matters at s 14F of the Trees Act should influence any orders to be made under Pt 2A.

Whether the applicant's purchase date impacts the Court decision on the sunlight obstructions.

The severity of the sunlight obstruction

At the time of the hearing, the bamboo in the hedge was 4–4.5m in height and a 40cm gap between the fence and the culms was observed. The Bamboo is approximately 6m west of the applicant's dwelling.

Ms Angel suggests that a minimum of 5 hours of sunlight is lost to these windows per day as a result of the bamboo (Exhibit B). No shadow diagrams detailing the claimed loss of sunlight hours were provided.

Photos contained within Exhibit C were provided by the applicant to demonstrate the sunlight obstruction. The photos are undated, have no time stamps and do not show shadows caused by the bamboo on the three nominated windows.

Photo 5 in Exhibit C shows shading of the pool area and the shed, and is described in separate text as being from mid-winter at approximately 1:30 pm. The same photo has sun glare in the lens which can be observed in the top left of the image. When questioned, Ms Angel suggested this photo was taken from the first-floor balcony, next to the nominated windows. This photo demonstrates that sunlight is still reaching the first floor of the residence in the afternoon.

Photo 9 in Exhibit C shows the three nominated windows covered in shade. All three windows are bordered over in the image. The photo is neither dated nor timestamped, and the bamboo is not in the image. This photo does not assist the Court in ascertaining the severity of the sunlight obstruction.

Photo 11 in Exhibit C shows the bamboo at approximately 8m – 9m height, substantially leaning over the applicant's land and lawn. It appears this photo has been taken on a day when the wind was blowing from the west. Photo 13 in Exhibit C shows the bamboo growing significantly higher than the shed. Photo 18 in Exhibit C shows the height of the bamboo in relation to the fence. These photos are undated, nor are they timestamped and the nominated windows are not in the images. These photos do not assist the Court in ascertaining the severity of the sunlight obstruction.

Shading of the lawn, pool area and washing line are depicted in several images; however, the jurisdiction of Pt 2A applications under the Trees Act does not apply to these landscape features.

In a number of decisions, the Court has considered the dictionary meaning of 'severe'. Perhaps the most suitable in 'hedge' cases are the words 'extreme' or 'harsh'. Therefore, the Court has set a high bar in using the word 'severely' in Pt 2A of the Trees Act.

Following a review of the evidence adduced, as well as what was observed during the site view, the Court is not satisfied that sunlight has been blocked by the bamboo for more than a short period of the day and therefore, the bamboo does not constitute a severe obstruction to sunlight to the nominated windows. Consequently, s 14E(2)(a)(i) is not engaged.

Matters to be considered by Court at 14F

Before determining an application made under Pt 2A, the Court is to consider relevant matters at s 14F of the Trees Act.

Timing of the property purchase

In s 14F(c), the subsection asks for consideration of whether the trees grew to a height of 2.5m or more during the period that the applicant has owned (or occupied) the relevant land. The bamboo was more than 8m in height at the time the applicant purchased her property (p 3, Exhibit C). The intent of the Trees Act is not to provide an applicant with greater access to sunlight or views than that was previously available to them.

In *Steber v Job* [2019] NSWLEC 1308, Galwey AC at [5] indicates that Pt 2A provides a limited jurisdiction and does not assume one should have a right to sunlight or views.

In this situation, the applicant seeks orders that would substantially increase the sunlight to her dwelling, and, in effect, access sunlight that was not available to her when she moved in. It is the Court's position that this is not aligned with the intent of the amendment to the Trees Act in August 2010. As described by Fakes C in *McDougall v Philip* [2011] NSWLEC 1280 at [20]-[23]:

"[20] The applicant seeks orders that would substantially increase the view from her dwelling, and in effect, create a view that was not available to the applicant when she moved in. This, in my opinion, is not why the Act was amended in August 2010. The amendment gave the Land & Environment Court a strictly limited new jurisdiction to hear disputes about high hedges that severely block sunlight to a window of a dwelling or views from a dwelling."

[21] Pursuant to s 34(2) of the Interpretation Act 1987, the Court is entitled to have regard to a limited range of extrinsic material that may assist in the determination of the meaning of a provision of an Act. In this matter I refer to the second reading speech on the introduction into parliament of the Trees (Disputes Between Neighbours) Amendment Bill 2010 as recorded in Hansard on 18 May 2010 [page 22821]. The relevant passages refer to the review of the Act in accordance with s 23 of the Act.

The review received over 230 submissions from residents, community groups, professional associations, councils and Government agencies.

The review found that the policy objectives of the Act remained valid. However, recommendations were made to improve the operation of the Act.

The Government accepted all of the recommendations of the review. The aim of this bill is to implement recommendations arising out of the review.

- [22] Relevantly, the “Review of the Trees (Disputes Between Neighbours) Act 2006” undertaken by the NSW Department of Justice and Attorney General and published in November 2009, makes the following recommendation (Recommendation 9) in relation to high hedges that block sunlight or views. [This report has been on the Court's web site since the amended Act came into force - see http://www.lawlink.nsw.gov.au/lawlink/lec/ll_lec.nsf/pages/LEC_tree_disputes_information]
- a) That the Trees (Disputes Between Neighbours) Act 2006 be amended to allow the Land and Environment Court to hear and resolve disputes between neighbours about high, dense hedges which are causing a severe impact on views from, or solar access to, a dwelling.
 - b) That this jurisdiction be strictly limited, with applications restricted to hedges which:
are both high and give the effect of a solid barrier, and
are causing severe impact for a dwelling, and
have caused the impact to the applicant (not to the previous occupant), and
are located between neighbours on adjoining land.
 - c) That in determining the dispute, the Court balance the respective rights of neighbours to use and enjoy their land, having regard to privacy and other considerations, and the broader benefits of urban vegetation.
 - d) That the new procedure be drafted so as not to create a right to light or views.
 - e) That orders not be enforceable by the applicant's successors in title, and that they are only enforceable against the respondent's first successor in title.
 - f) That hedges on land zoned 'rural-residential' be excluded from this jurisdiction.

[23] The discussion relating to Recommendation 9 [page 35] states in part that:

The Court would only have the power to hear matters regarding: cases where the applicant themselves has lost the light or view. It would not be appropriate, for example, for a person to purchase a property knowing there is a high hedge next door and then be able to seek orders against their neighbours so as to gain additional solar access [or in this case a view] which had not existed at the time of the purchase.”

With consideration of Recommendation 9(d) and the discussion on p 35 along with the photos contained within the respondent's submission (Photos, 11, 13 and 18 in Exhibit C), I find the bamboo had substantially greater height than that observed during the onsite hearing. I see no capacity for the Court to order a reduction in hedge height to satisfy the applicant's desire for reduced sunlight obstruction as the current bamboo height is lower than the bamboo height at the time of the applicant's purchase date.

Timing of the current pruning regime

In relation to s 14F(n) of the Trees Act, the respondent asserts that she pruned the bamboo to the heights seen during the site view in September 2025. The bamboo was then trimmed again during the month of April 2026. During submissions, the respondent indicate she was willing to maintain the hedge to approximately 4m in height and maintain a 40cm gap between the culms and the fence. Maintaining the bamboo within such parameters without culms overhanging the applicant's land will eliminate the applicant's ability to interfere with the bamboo, utilising the common law right of abatement.

Maintenance Impost

The applicant raises issues caused by mould and debris as a result of the bamboo. This is an application made pursuant to Pt 2A, s 14B of the Trees Act, which only provides an opportunity to remedy, restrain or prevent a severe obstruction of sunlight to a window of a dwelling or a view from a dwelling situated on neighbouring land.

A Pt 2 application under s 7 would provide an opportunity for orders to remedy damage caused by a tree and to prevent the tree causing damage or injury. While a Pt 2 application has not been made, I find it relevant to indicate that a significant number of applications are made to the Court based on annoyance or discomfort associated with the dropping of leaves, fruit, twigs and other material naturally shed from trees.

A tree dispute principle has been developed to describe the common position of the Court when dealing with falling debris and the maintenance impost. In Robson at [171], with respect to "annoyance or discomfort to the occupier of the adjoining land occasioned by nuisances of the third kind," Preston CJ states that this is not "damage to property on the land" within s 7 of the Act, and that "leaves, fruits, seeds, twigs, bark or flowers of trees blown onto a neighbours land might cause annoyance or discomfort to a neighbour, but unless they also cause damage to property on the neighbour's land they will not be actionable under s 7."

In Robson, at [56], discussing the issue of nuisance, his Honour states that "mere encroachment is insufficient to complete a cause of action."

Furthermore, the issue of the maintenance impost from falling tree debris is addressed in Barker v Kyriakides [2007] NSWLEC 292, which, at [20], establishes the tree dispute principle:

“For people who live in urban environments, it is appropriate to expect that some degree of house exterior and grounds maintenance will be required in order to appreciate and retain the aesthetic and environmental benefits of having trees in such an urban environment. In particular, it is reasonable to expect people living in such an environment might need to clean the gutters and the surrounds of their houses on a regular basis.

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.”

There are many examples of the application of this principle. To date it has been adopted consistently and there have been no examples where the applicant has convinced the Court of exceptional circumstances. As a result of this tree dispute principle, the photos and claims regarding the maintenance impost of the quantity of leaves collected would not enable the Court to make orders under the Pt 2 of the Trees Act.

In relation to purported damage to the window frames caused by shading from the bamboo, no evidence has been adduced to support this claim. In *Smith & Hannaford v Zhang & Zhou* [2011] NSWLEC 29, Craig J discussed at [38] the need for a causal nexus to exist between the tree and the damage to, on the balance of probabilities, satisfy the test at s 10(2)(a) of the Trees Act. The principle of *Fang v Li & anor* [2017] NSWLEC 1503 (“Fang”) at [58]-[59] sets out the type of investigations and evidence that might assist a party to demonstrate a causal nexus, where one exists. The burden of proof lies with the applicant and is explained in *Fang* at [60]:

“To the extent to which the Court must be satisfied of causation, the burden of proof lies with the applicant. Such investigations would ordinarily be expected of an engineer engaged by an applicant to demonstrate the cause of structural damage. It would be unusual for an engineer to be able to demonstrate cause by simply recording the locations of cracking and noting the proximity of trees and locations of tree roots. Reports that include consideration of the above matters [58]-[59], with photographs and plans that clearly show their findings, would greatly assist the Court.”

If an application under Pt 2 of the Trees Act is to sufficiently satisfy the Court that the bamboo is the cause of the purported damage, the application undoubtedly requires the consideration of the points in the preceding paragraphs.

Conclusion

The bamboo does not cause a severe obstruction of sunlight to the applicant’s nominated windows. Pursuant to s 14E(2)(a)(i) of the Trees Act, no orders can be made in these proceedings.

The fact that the applicant bought the property with a sunlight obstruction does not give her access to greater sunlight through Pt 2A of the Trees Act to the amount of sunlight that was available to her at the time of purchase.

The Court has no jurisdiction to consider the matter further.

Orders

For the reasons explained above, the Court orders:

The Part 2A application is refused.

A Austin

Acting Commissioner of the Court

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