

AUSTRALIA / JUDGMENT

Arnaldi v Winters

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Land and Environment Court New South Wales Medium Neutral Citation: Arnaldi v Winters [2026] NSWLEC 1582 Hearing dates: 2 September 2026 Date of orders: 2 September 2026 Decision date: 02 September 2026 Jurisdiction: Class 2 Before: Galwey AC Decision: The Court orders:

- (1) The application for orders under both Part 2 and Part 2A of the Trees (Disputes Between Neighbours) Act 2006 (NSW) is refused.
- (2) The exhibits are returned, other than Exhibit A. Catchwords: TREES (DISPUTES BETWEEN NEIGHBOURS) — Pt 2 application — neighbouring trees — whether trees are likely to cause damage — no orders under Pt 2 — Pt 2A application — whether Pt 2A applies to the trees — whether trees severely obstruct sunlight or views — no orders under Pt 2A Legislation Cited: Trees (Disputes Between Neighbours) Act 2006 (NSW), ss 7, 8, 9, 10, 12, 14A, 14B, 14C, 14D, 14E, 14F Cases Cited: Drewett v Best [2010] NSWLEC 1305 Steber v Job [2019] NSWLEC 1308 Wisdom v Payn [2011] NSWLEC 1012 Yang v Scerri [2007] NSWLEC 592 Category: Principal judgment Parties: Christine Arnaldi (First Applicant) Daniel Arnaldi (Second Applicant) Nicholas Winters (First Respondent) Erin Winters (Second Respondent) Representation: Counsel: C Arnaldi (Self-represented) (First Applicant) D Arnaldi (Self-represented) (Second Applicant) N Winters (Self-represented) (First Respondent) E Winters (Self-represented) (Second Respondent) File Number(s): 2026/276900 Publication restriction: Nil

Judgment

This decision was given as an extemporaneous decision. It has been revised and edited prior to publication.

Background

COMMISSIONER: Chistine and Daniel Arnaldi, of Hamlyn Terrace, have applied to the Court pursuant to both s 7 (Pt 2) and s 14B (Pt 2A) of the Trees (Disputes Between Neighbours) Act 2006 (NSW) (Trees Act) seeking orders relating to neighbouring trees. Under Pt 2 of the Trees Act, they seek orders for a root barrier to be installed to prevent the trees damaging their property. Under Pt 2A of the Trees Act, they seek orders for trees to be maintained or removed to prevent the trees obstructing views from their dwelling. The trees are all situated on the adjoining property owned by Nicholas and Erin Winters. At the final hearing, held on-site, I observed the trees and relevant parts of both properties before hearing submissions from the self-represented parties. Framework for this decision The Arnaldis and the Winters are not on friendly terms. Evidence

and submissions on both sides went to issues well beyond the Court's power to resolve disputes, where possible, within the jurisdiction of the Trees Act. This decision is made within, and is limited to the matters relevant to, the framework of the Trees Act. That framework is summarised briefly here. The orders that the Arnaldis seek are orders the Court could make pursuant to ss 9 (Pt 2) and 14D (Pt 2A) of the Trees Act, although the Court can make different orders as it sees fit. The Court must not make orders unless conditions at ss 10 (Pt 2) and 14E (Pt 2A) of the Trees Act are met. Further, pursuant to s 14A, Pt 2A only applies to certain trees. Before determining the application, the Court is to consider matters set out at ss 12 (Pt 2) and 14F (Pt 2A) of the Trees Act. Reasonable effort and notice of the application Pursuant to both ss 10(1) and 14E(1) of the Trees Act, the Court must not make an order under Pts 2 and 2A respectively unless it is satisfied that the Arnaldis have made a reasonable effort to reach agreement with the Winters and have given the required notice of the application. Copies of correspondence between the parties demonstrate the Arnaldis' repeated requests to the Winters as well as the poor nature of the relationship between these neighbours. The Arnaldis were unlikely to get the Winters to agree to all of their requests. I am satisfied that the Arnaldis have made a reasonable effort to reach agreement with the Winters. The Arnaldis have also given notice of the application in accordance with ss 8 (Pt 2) and 14C (Pt 2A) of the Trees Act. Whether trees are likely to cause damage (Part 2) Evidence and submissions Palms Under Pt 2 of the Trees Act, the Arnaldis seek an order for the Winters to install a root barrier along their common boundary to prevent roots of the Winters' palms and bamboo damaging the Arnaldis' property. They also want the Winters to remove any parts of the palms and bamboo encroaching onto their property and to prevent any future encroachment. The palms are Bangalow palms and golden cane palms ("the palms") growing along the Winters' rear and side boundaries. The Arnaldis' pool and paved pool surrounds are on the other side of this section of the side boundary. The Arnaldis have lifted some of the pavers surrounding their pool. Under one paver they found a root less than 10 mm in diameter in the sand base layer approximately 10 cm below the paver. The Arnaldis submit that pavers have not been damaged, but now that they have found a root beneath the pavers they are concerned that roots will soon disrupt the paving. They want any roots on their property removed and a root barrier installed along the boundary to prevent roots causing any damage. The Winters submit that they installed a root barrier along the boundary when they planted the palms. The barrier was installed to a depth of 400-500 mm. They submit that the exposed root on the Arnaldis' land could be from poolside plants on the Arnaldis' own property or from nearby golden cane palms on the adjoining property behind the Arnaldis' property. Bamboo The Winters planted bamboo in two planter boxes next to the common boundary. The bamboo is not planted into the ground. Findings The hurdle at s 10(2) of the Trees Act must be passed before the Court can make orders under Pt 2. 10 Matters of which Court must be satisfied before making an order

- (2) The Court must not make an order under this Part unless it is satisfied that the tree concerned—
 - (a) has caused, is causing, or is likely in the near future to cause, damage to the applicant's property, or

- (b) is likely to cause injury to any person. Palms The root that the Arnaldis found beneath their pavers is small and deep enough that it has not displaced pavers, nor is it likely to do so in the near future. In tree disputes, the Court has generally considered since *Yang v Scerri* [2007] NSWLEC 592 that a period of 12 months reasonably represents the “near future” at s 10(2)(a), and I do the same here. The root’s origin has not been identified. Although the Winters’ palms are nearest to the Arnaldis’ lifted paver, the root could easily have grown here from the Arnaldis’ own poolside plants or from palms on the adjoining property to their east. Despite their best efforts to uncover roots, this one small root is the only root that the Arnaldis were able to find on their property in the vicinity of the Winters’ palms. I cannot be satisfied, to the extent required by the Trees Act, that the root is from the Winters’ palms, nor that any palm roots are likely to cause damage to the Arnaldis’ paving or other property in the near future. Pursuant to s 10(2) of the Trees Act, orders cannot be made on this element of the application. Bamboo Because the bamboo is not planted in the ground, its roots and rhizomes are unlikely to grow through the soil, beneath the dividing fence, and cause damage the Arnaldis’ property in the near future. Pursuant to s 10(2) of the Trees Act, orders cannot be made on this element of the application.

Conclusion

The Winters’ trees have not caused damage to the Arnaldis’ property, nor are they likely to do so in the near future. The Court cannot make orders under Pt 2 of the Trees Act. I therefore have no need to consider matters at s 12, nor any need to consider the Winters’ proposed alternative orders. Whether Pt 2A of the Trees Act applies to the trees The jurisdiction of Pt 2A of the Trees Act is limited at s 14A(1): 14A Application of Part

- (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).

Submissions

The Arnaldis and the Winters each made submissions regarding tree height and the timing of tree pruning because not all trees are more than 2.5 metres tall. The Arnaldis submit that the trees have all been more than 2.5 metres tall and most were more than 2.5 metres tall at the time they commenced these proceedings, so Pt 2A of the Trees Act applies to the trees. The Winters submit that many of the trees were less than 2.5 metres tall when the Arnaldis commenced these proceedings, so they do not fall within Pt 2A’s jurisdiction. Findings The Court has found that not all trees in a hedge must be 2.5 metres tall for Pt 2A to apply and for the Court to make orders over the entire hedge and all trees within it: for instance, see *Wisdom v Payn* [2011] NSWLEC 1012 at [66]. The Court has also found that trees do not need to be 2.5 metres tall at the time of the hearing if the trees otherwise have or might reach that height: for instance, see *Steber v Job* [2019] NSWLEC 1308 at [11]. When the Winters planted the bamboo it was more than 2.5 metres

tall. If not maintained, it will be more than 2.5 metres tall again. It is planted in a row along the boundary to provide privacy screening – that is, the bamboo is planted so as to form a hedge. Part 2A applies to the bamboo. Bangalow palms and golden cane palms are interplanted to form a continuous screen along the Winters' rear and side boundaries. The Winters planted the palms to form a screen to minimise overlooking from double storey dwellings to their east – that is, the palms are planted so as to form a hedge. Many of the palms, though not all, are more than 2.5 metres tall. Part 2A applies to the palms. Whether the trees severely obstruct a view (Part 2A) The Arnaldis claim that the Winters' trees obstruct their views. They do not claim the trees obstruct sunlight, but say the trees obstruct ambient daylight. In relation to sunlight obstruction, Pt 2A of the Trees Act applies only to the obstruction of direct sunlight: see *Drewett v Best* [2010] NSWLEC 1305 at [17]. Therefore, only the trees' obstruction of views is considered below. The Arnaldis' Pt 2A application included a row of four lilly pillies in the Winters' front setback. At the outset of the hearing, the Arnaldis stated that those trees do not obstruct their sunlight or views, but were included for other reasons. Those trees do not require consideration within this judgment. Pursuant to s 14E(2)(ii) of the Trees Act, the Court can only make orders if the trees severely obstruct a view from the Arnaldis' dwelling. 14E Matters of which Court must be satisfied before making an order

(1) ...

(2) The Court must not make an order under this Part unless it is satisfied that—

(a) the trees concerned—

(i) are severely obstructing sunlight to a window of a dwelling situated on the applicant's land, or (ii) are severely obstructing a view from a dwelling situated on the applicant's land, and

The Arnaldis submit that the bamboo obstructs the outlook of sky from their kitchen window. The bamboo is not directly outside their kitchen, but is outside their craft room window further to the east. Standing at the kitchen sink, as I was asked to do, I observed that the tops of the bamboo's culms can be seen if I leant over the sink and looked sideways to the rear of the property, but they do not severely obstruct the outlook from this window. Even as the bamboo's foliage fills in to form a denser screen, it will not severely obstruct the outlook from the kitchen. Craft room The bamboo is outside the Arnaldis' craft room window. A steel panel fence on the common boundary is around 2 metres tall. The bamboo reaches not far above this – it is less than 2.5 metres above ground level at present. At its current height, the parts of bamboo above the fence only interfere with a view of the Winters' roof from the craft room window – the sky outlook remains available. The Winters submit that they want to keep the bamboo at its current height for privacy, to prevent overlooking into their living room from the Arnaldis' craft room, so they will be maintaining it at this height as they have done since they planted it. The bamboo would provide no greater privacy for the Winters if it were taller; their history of maintaining it at less than 2.5 metres tall demonstrates their intent. I accept that the Winters are unlikely to let the bamboo grow taller. The bamboo does not severely obstruct a view from the Arnaldis' craft room, nor is it likely to do so. The Arnaldis expressed their concern about the Winters

looking into the craft room while pruning the bamboo, affecting the Arnaldis' privacy. While noting this here, because it was a recurring theme in the Arnaldis' submissions, I also note that this does not give the Court a reason for making orders at s 14E(2) of the Trees Act. The palms can be seen to the southeast from Arnaldis' craft room window. From here, the palms obstruct a small part of the overall sky view. The extent of the palms' view obstruction from the craft room is too little to be regarded as severe, nor is it likely to become so even as the palms continue to grow. Home office The Arnaldis' home office is at the back of their dwelling; its window faces east toward their rear boundary. The principal outlook is of the double-storey dwellings on adjoining properties to their east. When one sits at the desk, which is against this window, the palms obstruct part of the sky view when one looks sideways toward the Arnaldis' side boundary, to the southeast. The Arnaldis submit that the palms severely obstruct sky and district views from their home office, making them feel boxed in. The palms' obstruction of the sky view is less than 20% of the available sky view from the home office's window, although numerical expression of the obstruction is not entirely useful. The impression from the home office is that the palms are not close and they obstruct a small part of the overall sky view. A photograph provided by the Arnaldis (Exhibit B, p 4, photo 6) shows the outlook to the southeast from their home office window before the palms were planted. The outlook includes mostly nearby dwelling roofs and the tops of some trees, but no "district view". The palms' obstruction of the view from the home office is not severe, nor is it likely to become so even as the palms continue to grow. Sunroom The principal outlook from the sunroom at the back of the Arnaldis' dwelling is to the east and northeast, but if one sits in the chair in the sunroom's corner, one looks to the southeast. From here, the palms again obstruct only a minor portion of the overall sky view. The obstruction is not severe Other palms obstructing the view I note here that two Bangalow palms on an adjoining property to the east of the Winters would continue much of the existing view obstruction from the Arnaldis' home office and sunroom even in the absence of the Winters' palms. Outdoor areas The Arnaldis' application includes the palms' obstruction of views from their garden and pool area. These areas are not part of their dwelling, so do not fall within the jurisdiction of Pt 2A of the Trees Act.

Conclusion

The Winters' trees do not severely obstruct a view from the Arnaldis' dwelling. The Court cannot make orders under Pt 2A of the Trees Act. I therefore have no reason to consider the Winters' proposed alternative orders. Except where I have considered matters at s 14F in evaluating the view obstruction, I have no need to consider other s 14F matters, despite extensive submissions from both sides on issues of amenity, privacy and security cameras.

Orders

The Court orders: The application for orders under both Part 2 and Part 2A of the Trees (Disputes Between Neighbours) Act 2006 (NSW) is refused. The exhibits are returned, other than Exhibit A.
D Galwey Acting Commissioner of the Court

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