

AUSTRALIA / JUDGMENT

Daniels v Peers

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Land and Environment Court New South Wales Medium Neutral Citation: Daniels v Peers [2026] NSWLEC 1572 Hearing dates: 5 August 2026 Date of orders: 03 September 2026 Decision date: 03 September 2026 Jurisdiction: Class 2 Before: Galwey AC Decision: The Court orders that:

- (1) The application is granted to the extent of the following order.
- (2) In November each year while the juniper hedge remains, beginning November 2026, the respondent is to engage and pay for a suitably qualified and insured arborist or landscape contractor to prune all junipers in the hedge along the respondent's southern boundary, other than the unpruned (at the time of the hearing) tree at the hedge's eastern end, to reduce them to a height no greater than 4.5 metres above ground level measured from the base of each tree. These works are to be done in accordance with the SafeWork NSW (2026) 'Tree works' Code of Practice. Catchwords: TREES (DISPUTES BETWEEN NEIGHBOURS) — zoning of land — Pt 2 application — neighbouring palm trees — whether the trees have caused, are causing, or are likely in the near future to cause, damage to the applicants' property — Pt 2 orders refused — Pt 2A application — neighbouring juniper trees — whether the trees are planted so as to form a hedge — obstruction of views — whether the obstruction is severe — orders to prevent a severe view obstruction Legislation Cited: Trees (Disputes Between Neighbours) Act 2006 (NSW), ss 4, 7, 8, 10, 14A, 14B, 14C, 14D, 14E, 14F Sutherland Shire Local Environmental Plan 2015 Trees (Disputes Between Neighbours) Regulation 2024 (NSW) Cases Cited: Barker v Kyriakides [2007] NSWLEC 292 McDougall v Philip [2011] NSWLEC 1280 Unsworth v Hennessy (2024) 263 LGERA; [2024] NSWLEC 82 Wilson v Clean Investments Pty Ltd [2026] NSWLEC 1035 Texts Cited: SafeWork NSW 'Tree works' Code of Practice (March 2026) Category: Principal judgment Parties: Denis Daniels (First Applicant) Shirley McLaughlin (Second Applicant) Jane Peers (Respondent) Representation: Counsel: D Daniels (Self-represented) (First Applicant) S McLaughlin (Self-represented) (Second Applicant) J Peers (Self-represented) (Respondent) File Number(s): 2026/222581 Publication restriction: Nil

Judgment

Background

COMMISSIONER: Denis Daniels and Shirley McLaughlin live at 13 Bayside Place, Caringbah South. They 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, Mr Daniels and Ms McLaughlin seek orders for the removal of three palms to prevent the palms damaging their property or injuring somebody. Under Pt 2A of the Trees Act, they seek orders for a row of juniper trees to be pruned regularly to restore and maintain a view from their dwelling. The palms and the junipers are all situated on the adjoining property at 358 Burraneer Road, owned by Jane Peers. 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. Zoning of the land Section 4 of the Trees Act limits its jurisdiction to trees on certain land. 4 Act applies to trees on certain land

- (1) This Act applies only to trees situated on the following land—
 - (a) any land within a zone designated “residential”, “rural-residential”, “village”, “township”, “industrial” or “business” under an environmental planning instrument (within the meaning of the Environmental Planning and Assessment Act 1979) or, having regard to the purpose of the zone, having the substantial character of a zone so designated,
 - (b) any land of a kind prescribed by the regulations for the purposes of this section. The Trees Act will only apply to Mrs Peers’ trees if her land is: within a zone designated at s 4(1)(a), or within a zone that, having regard to the purpose of the zone, has the substantial character of one of the designated zones, or is land prescribed by the regulations. The Trees (Disputes Between Neighbours) Regulation 2024 (NSW) does not prescribe any kind of land. Mrs Peers’ property is within Zone C4 – Environmental Living (Zone C4) under the Sutherland Shire Local Environmental Plan 2015 (Sutherland LEP). It is not one of the zones designated at s 4(1)(a) of the Trees Act. Therefore, for the Trees Act to apply to the trees, Zone C4 must have the substantial character of one of the designated zones when one has regard to the purpose of Zone C4. This issue was not raised by the parties. To determine this issue, I take a similar approach to that taken in *Wilson v Clean Investments Pty Ltd* [2026] NSWLEC 1035 by comparing Zone C4’s objectives with those of a zone under the Sutherland LEP that is a zone designated at s 4(1)(a) of the Trees Act with the closest alignment to Zone C4: that is, Zone R2 – Low Density Residential (Zone R2) under the Sutherland LEP. Zone C4’s objectives, which describe its purpose, are similar to those of Zone R2 under the Sutherland LEP. For comparison, they are set out below. Zone C4 Environmental Living Zone R2 Low Density Residential 1 Objectives of zone
 - To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.

- To ensure that residential development does not have an adverse effect on those values.
- To allow for development that preserves and enhances the natural landscape setting of the locality.
- To protect and restore trees, bushland and scenic values particularly along ridgelines and in other areas of high visual significance.
- To ensure the character of the locality is not diminished by the cumulative impacts of development.
- To minimise the risk to life, property and the environment by restricting the type or level and intensity of development on land that is subject to natural or man-made hazards.
- To allow the subdivision of land only if the size of the resulting lots makes them capable of development that retains or restores natural features while allowing a sufficient area for development.
- To share views between new and existing development and also from public space.
- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To protect and enhance existing vegetation and other natural features and encourage appropriate bushland restoration particularly along ridgelines and in areas of high visual significance.
- To allow the subdivision of land only if the size of the resulting lots retains natural features and allows a sufficient area for development.
- To ensure the single dwelling character, landscaped character, neighbourhood character and streetscapes of the zone are maintained over time and not diminished by the cumulative impact of multi dwelling housing or seniors housing. Principal objectives of both Zone C4 and Zone R2 include providing for residential development, with Zone C4 giving greater consideration to environmental and aesthetic values. The two zones permit identical uses without consent, and have considerable overlap in their uses permitted with consent. During the onsite hearing, I observed that the character of the surrounding area within Zone C4 was residential. Considering these similarities, and with regard to its purpose, Zone C4 has the substantial character of a residential zone (Zone R2) designated at s 4(1)(a) of the Trees Act. The Trees Act applies to trees situated on Mrs Peers' land. Reasonable effort to reach agreement 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 Mr Daniels and Ms McLaughlin have made a reasonable effort to reach agreement with Mrs Peers and have given the required notice of the application. Mr Daniels

and Ms McLaughlin included in their application copies of correspondence they have sent to Mrs Peers and her partner, Matt Peers, via letter and text messages. I am satisfied that they have made a reasonable effort to reach agreement with Mrs Peers. Mr Daniels and Ms McLaughlin have also given notice of the application in accordance with ss 8 and 14C of the Trees Act. Damage or injury

Submissions

Under Pt 2 of the Trees Act, Mr Daniels and Ms McLaughlin seek the removal of three palm trees that are on Mrs Peers' land next to their common boundary. The palms are taller than Mr Daniels' and Ms McLaughlin's dwelling and fronds overhang their property. They say that: The palms are planted too close to the boundary, with two of them less than 500 mm from the fence. Fronds and other debris from the palms block their gutters, causing the gutters to overflow during heavy rain. Fronds and fruit clusters fall onto their balcony, pool, and the area where their clothesline is situated, posing a risk of damage or injury. The palms' roots might damage their concrete pathway, which is next to the common boundary. Roots of the juniper trees also might damage their pathway. Flying foxes frequently visit the palms, so droppings fall onto their clothesline and elsewhere, and the animals' noise is a nuisance during the night. Shade from the palms prevents them installing solar panels on the section of their roof nearest the boundary. The palms are cocos palms (*Syagrus romanzoffiana*), which are regarded as a weed species by Sutherland Shire Council (Council) and can be removed without a permit. Council subsidises removal of cocos palms nearer to flying-fox camps. Mr and Mrs Peers had agreed to remove the palms, but then failed to do so. Mrs Peers submits that the palms have not damaged Mr Daniels' and Ms McLaughlin's property, nor is there any evidence that the palms are likely to damage property in the near future. Mrs Peers says the palms are unlikely to cause injury, as they have been in this location for the 25 years that Mr Daniels and Ms McLaughlin have lived at their property, without incident. Mrs Peers submits that Mr Daniels' and Ms McLaughlin's gutters are too small to cope with heavy rainfall, causing them to overflow. Findings For each of the three palms, the hurdle at s 10(2) of the Trees Act must be passed before the Court can make orders for that tree. 10 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 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. Mrs Peers' three cocos palms have not caused damage to Mr Daniels' and Ms McLaughlin's property. Even when their gutters have overflowed, Mr Daniels and Ms McLaughlin have not demonstrated that any property was damaged as a result. If palm fronds and other debris are likely to cause gutters to overflow in the near future, and should that result in damage, this situation could be avoided by property

maintenance, as per the principle established in *Barker v Kyriakides* [2007] NSWLEC 292 (“Barker”), at [20]. The final sentence of the principle in *Barker* states: “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.” Fronds and fruit clusters falling over the last 25 years have not directly caused damage or injury. With no evidence of any change resulting in an increased risk, I cannot be satisfied that falling fronds and fruit clusters are likely to cause damage in the near future, nor that they are likely to cause injury. Mr Daniels and Ms McLaughlin provided no evidence that roots of the palms or the junipers are likely to damage their concrete path in the near future. The nuisance caused to Mr Daniels and Ms McLaughlin by flying foxes does not amount to damage or injury, so does not enliven the Court’s power to make orders at s 10(2) of the Trees Act. Similarly, if shade from the palms prevents Mr Daniels and Ms McLaughlin installing more solar panels, that nuisance does not amount to damage. The cocos palms’ weed status is not causing damage to their property.

Conclusion

For the reasons set out above, the Court cannot be satisfied that the cocos palms on Mrs Peers’ land have caused, are causing, or are likely in the near future to cause, damage to Mr Daniels’ and Ms McLaughlin’s property, nor that they are likely to cause injury to a person. Pursuant to s 10(2) of the Trees Act, orders cannot be made under Pt 2. Obstruction of views Whether Pt 2A of the Trees Act applies to the junipers Eight Chinese junipers (*Juniperus chinensis*) grow in a straight row on Mrs Peers’ land in a raised garden bed along the common boundary she shares with Mr Daniels and Ms McLaughlin. One tree at the row’s eastern end has not been pruned and is approximately 8 metres tall; the other seven trees have been pruned and are approximately 4.0-4.5 metres tall. Mr Daniels and Ms McLaughlin say the trees form a hedge, while Mrs Peers says they do not. The jurisdiction of Pt 2A of the Trees Act is limited at s 14A: 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).
- (2) ... The junipers were planted in 1991 (Exhibit 1) in a straight line parallel with the common boundary, at relatively close and regular spacings. They quickly grew to form a single continuous screen of foliage along the boundary. I am satisfied that they were planted with an intent to form a hedge, and that they form a hedge in the present. The junipers are more than 2.5 metres tall. Part 2A of the Trees Act applies to the junipers. Whether the trees severely obstruct a view

Submissions

To their northwest, Mr Daniels and Ms McLaughlin have a view of Port Hacking and beyond to Yowie Bay from their living area, kitchen and deck. They say they had the view when they came here 25 years ago. After the junipers grew to obstruct the view, Mr Daniels obtained Mr and Mrs Peers' permission to prune the trees. When the task became too difficult, Mr Daniels and Ms McLaughlin engaged a contractor to prune the trees. However, they say that Mr and Mrs Peers should take responsibility for maintaining the hedge, so they seek orders accordingly. Mrs Peers submits that the junipers were planted in 1991 and were already well established when Mr Daniels and Ms McLaughlin bought their property. They say the junipers do not obstruct the view at present, but they object to them being pruned in future. They consented to Mr Daniels pruning the trees in the past, but say the pruning has reduced the trees' effectiveness for screening between the properties. Mrs Peers submits that no orders should be made under Pt 2A of the Trees Act. Findings The application concerns trees obstructing a view. Pursuant to s 14E(2) of the Trees Act, the Court can only make orders in certain circumstances. 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)... (ii) are severely obstructing a view from a dwelling situated on the applicant's land, and
 - (b) the severity and nature of the obstruction is such that the applicant's interest in having the obstruction removed, remedied or restrained outweighs any other matters that suggest the undesirability of disturbing or interfering with the trees by making an order under this Part. Mr Daniels and Ms McLaughlin provided photographs showing the view from their deck before and after the trees were pruned. Before the trees were pruned, they entirely obstructed all parts of their views of Port Hacking, leaving only the higher ground of Yowie Bay visible above the trees. After the trees were pruned, they had water views. At the on-site hearing, the water view from their deck was still available. In *Unsworth v Hennessy* (2024) 263 LGERA 104; [2024] NSWLEC 82 ("Unsworth"), Preston CJ considered the temporal conditions of sunlight and view obstruction within Pt 2A of the Trees Act, saying at [51]: "The words "are severely obstructing" in s 14E(2)(a) need to be construed in this context that an applicant can seek and the Court can make an order to prevent a severe obstruction of sunlight or a view occurring as a consequence of the trees concerned. The Court's assessment of whether the trees concerned "are severely obstructing" can have regard to not only any obstruction that has occurred or is occurring but also any obstruction that will occur. The assessment of the severity of the obstruction under s 14E(2)(a) will vary according to when the obstruction occurs: backward-looking for obstructions that have occurred, present-looking for obstructions that are occurring and forward-looking for obstructions that are yet to occur. So too, the orders the Court may make will vary depending on when the severe obstruction occurs: orders to remedy or restrain an

obstruction that has occurred and is occurring, and an order to prevent an obstruction that is yet to occur.” The absence of a severe view obstruction on the day of the hearing does not prevent the Court making orders in these proceedings. At s 14D of the Trees Act the Court can make orders to “remedy, restrain or prevent” a severe obstruction. There is currently no severe obstruction to remedy or restrain in these proceedings, but the Court may make orders to prevent the hedge causing a severe obstruction of the view in future. Consideration of relevant matters The Court is required to consider a range of matters at s 14F before determining this application. Among those matters is s 14F(n):

- (n) any steps taken by the applicant or the owner of the land on which the trees are situated to prevent or rectify the obstruction... As I understand the Peers’ position, they never wanted to prune the junipers and do not intend to prune the trees in future. They allowed Mr Daniels to prune the trees. Mr Daniels is no longer able to prune the trees and says his contractor had difficulty reaching across the boundary to prune the trees. Even if Mr Daniels’ contractor could prune the trees, it is unclear if the Peers would allow that arrangement to continue. All things considered, the trees are unlikely to be maintained as they have been and, as a result, will once again grow into the view from Mr Daniels’ and Ms McLaughlin’s dwelling. That is, the likely state of affairs is that the trees will be severely obstructing the view. In light of the Chief Judge’s words in Unsworth, the view obstruction is severe and the Court can make orders to remedy the obstruction. At s 14F(c) of the Trees Act, the Court is to consider whether the trees grew to a height of 2.5 metres or more during the period that the applicants have owned or occupied their property. The Court has also considered whether the applicant has lost access to sunlight or views during their period of ownership: *McDougall v Philip* [2011] NSWLEC 1280 at [20], per Fakes C. Mrs Peers submits that Mr Daniels and Ms McLaughlin were fully aware of the trees when they purchased their property 25 years ago, and at that time the trees already obstructed the view. Mr Daniels and Ms McLaughlin say their photographs support their submission that the junipers did not obstruct the view when they purchased their property. Mrs Peers provided some photographs (in Exhibit 1) in which the junipers can be seen. One of those photographs, from 1994, appears to show the junipers in the background as a relatively low hedge with a flat top, suggesting they were maintained as a hedge at that time. It therefore seems feasible that the junipers did not obstruct the view in 2001 when Mr Daniels and Ms McLaughlin arrived here. A photograph from 2008 appears to show that the trees were no longer pruned at that time. Mr Daniels and Ms McLaughlin provided a photograph from 2010 showing the water view from their deck, so perhaps by then the trees had already been pruned. The junipers were most likely already more than 2.5 metres tall when Mr Daniels and Ms McLaughlin purchased their property, but during their period of ownership the junipers have grown to obstruct a view that they had enjoyed when they first came here. The Court is to consider at s 14F(k) the impact any pruning would have on the trees, and at s 14F(l) the trees’ contribution to privacy. Mrs Peers stresses the importance of the screen that the junipers provide next to a dwelling on her land, preventing overlooking from Mr Daniels’ and Ms McLaughlin’s higher dwelling. She says that pruning the trees any lower, as per the

proposed orders, would affect privacy for the dwelling. She submits that the proposed pruning would adversely impact the junipers, some of which already have bare tops as a result of recent pruning. Mr Daniels and Ms McLaughlin submit that the proposed pruning orders would not affect the Peers' privacy. The most recent pruning of the junipers appears to have reduced their height significantly. Trees at the hedge's eastern end are recovering slowly, with bare branches still visible at their tops. However, I observed no loss of privacy for the Peers' property. The trees are approximately 4 metres tall at present and do not severely obstruct a view from Mr Daniels' and Ms McLaughlin's dwelling. Mr Daniels and Ms McLaughlin seek an order that the trees are maintained at a height of 3 metres or less, partly to provide more light to their back yard. This seems unnecessary and would adversely impact the trees. Maintaining the trees at their current height would have several advantages. First, this would prevent the trees obstructing the view. Second, it would avoid the need to cut large branches, allowing new foliage to develop at the top of the recently cut branches. Third, this would maintain privacy for the Peers. And fourth, maintaining the hedge at this height would be less onerous than maintaining it at a greater height. The trees' other benefits, as per subsections of s 14F, would not be impacted by such ongoing maintenance. The Court is to consider at s 14F(q) the nature of the obstructed view and the nature of the remaining view. The obstructed view is the valued water view of Port Hacking. The remaining view includes no water view. The Court is to consider at s 14F(r) the affected part of the applicants' dwelling. The junipers obstruct the view from Mr Daniels' and Ms McLaughlin's living area, kitchen and deck. These are areas where they are likely to spend considerable amounts of time, so the view obstruction significantly impacts them. Returning to s 14E(2)(b) of the Trees Act (see above at [24]), for the reasons set out above, Mr Daniels' and Ms McLaughlin's interests in restraining the view obstruction outweigh reasons to avoid interfering with the junipers. As is usual in such cases, the trees' owner will be responsible for maintaining the trees. Before making orders, I note several points. Mr Daniels and Ms McLaughlin say they do not seek orders for the taller unpruned juniper at the eastern end of the hedge, so pruning orders will not apply to that tree. The extent of the trees' view obstruction due to regrowth between pruning events will be minimised if the trees are pruned annually in November after the spring growth flush. Mr Daniels submits that he can maintain branches that grow across the boundary if the trees are maintained at a manageable height, so no order will be made for the Peers to prune the hedge's southern side.

Orders

The Court orders that: The application is granted to the extent of the following orders. In November each year while the juniper hedge remains, beginning November 2026, the respondent is to engage and pay for a suitably qualified and insured arborist or landscape contractor to prune all junipers in the hedge along the respondent's southern boundary, other than the unpruned (at the time of the hearing) tree at the hedge's eastern end, to reduce them to a height no greater than 4.5 metres above ground level measured from the base of each tree. These works are to be

done in accordance with the SafeWork NSW (2026) 'Tree works' Code of Practice. D Galwey Acting Commissioner of the Court

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