

AUSTRALIA / JUDGMENT

# James v Sheridan

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Land and Environment Court New South Wales Medium Neutral Citation: James v Sheridan [2026] NSWLEC 1580 Hearing dates: 3 August 2026 Date of orders: 08 September 2026 Decision date: 08 September 2026 Jurisdiction: Class 2 Before: Galwey AC Decision: The Court orders:

- (1) The application is refused. Catchwords: TREES (DISPUTES BETWEEN NEIGHBOURS) — Pt 2A application — neighbouring hedge — Leyland cypress — obstruction of views — whether the obstruction is severe — whether orders are required to prevent a view obstruction Legislation Cited: Trees (Disputes Between Neighbours) Act 2006 (NSW), ss 4, 14A, 14B, 14C, 14D, 14E, 14F Kiama Local Environmental Plan 2011, cl 4.2A Trees (Disputes Between Neighbours) Regulation 2024 (NSW) Cases Cited: Aaron v Haynes [2007] NSWLEC 294 Bayley & Waller v Kiernan [2008] NSWLEC 1291 Unsworth v Hennessy [2024] NSWLEC 82 Wilson v Clean Investments Pty Ltd [2026] NSWLEC 1035 Category: Principal judgment Parties: Allyson Michelle James (First Applicant) Steve McDonald (Second Applicant) Liam Sheridan (First Respondent) Michelle Sheridan (Second Respondent) Representation: Counsel: A James (Self-represented) (First Applicant) S McDonald (Self-represented) (Second Applicant) L Sheridan (Self-represented) (First Respondent) M Sheridan (Self-represented) (Second Respondent) File Number(s): 2026/200899 Publication restriction: Nil

## Judgment

### Background

COMMISSIONER: Allyson James and Steve McDonald have lived at 35 Riversdale Road, Jamberoo (No 35) since late 2020. To their west, Liam Sheridan and Michelle Sheridan have lived at 39 Riversdale Road (No 39) since 2014. Along their long eastern boundary, the Sheridans have a cypress hedge. Ms James and Mr McDonald have applied to the Court pursuant to s 14B (Pt 2A) of the Trees (Disputes Between Neighbours) Act 2006 (NSW) (Trees Act) seeking orders for the Sheridans to prune trees within the hedge that obstruct their view, reducing the trees' height to 3.5-4.0 metres, and to maintain the trees at the reduced height. The Sheridans pruned the trees recently and say they will continue to maintain the trees without the need for Court orders. The on-site hearing allowed the Court to inspect the trees, both properties and all relevant issues. The application is made under Pt 2A of the Trees Act, which provides an opportunity for a land owner to seek orders from the Court to remedy, restrain or prevent the obstruction of sunlight or views caused by neighbouring trees. The framework of Pt 2A also limits the circumstances in which orders may be made. The trees are planted so as to form a hedge The first restriction within Pt 2A

of the Trees Act is found 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) ... Twenty-six Leyland cypress (*Cupressus × leylandii*) (the trees) form a single hedge along the Sheridans' eastern boundary and were clearly planted with the intent to form a hedge. This is not disputed. The trees are 4.0-4.5 metres tall, so the trees meet the criteria at both arms of s 14A(1). Application to Court The next restriction within Pt 2A of the Trees Act is found at s 14B. 14B Application to Court by affected land owner 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. This section restricts an application to the obstruction of sunlight or a view that “occurs as a consequence of trees to which this Part applies being situated on adjoining land.” The Sheridans' land adjoins Ms James' and Mr McDonald's land. Trees to which both Pts 2 and 2A of the Trees Act apply are limited by s 4(1). 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 the Sheridans' trees if the Sheridans' 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. The Sheridans' property is within Zone RU1 - Primary Production (Zone RU1) under the Kiama Local Environmental Plan 2011 (Kiama LEP), which 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 RU1 must have the substantial character of one of the designated zones when one has regard to the purpose of Zone RU1.

## Submissions

Ms James and Mr McDonald submit that No 39 has the substantial character of a rural-residential zone. They say No 39 is principally used as a residence and is surrounded by properties with established dwellings; eight properties adjoining No 39 are relatively small lots. They say the

hedge's purpose is residential boundary screening rather than any association with primary production. They point out that Zone RU1 permits dwelling houses and secondary dwellings with consent. They submit that No 39 has the substantial character of rural-residential land for the purposes of s 4(1)(a) of the Trees Act. Ms James and Mr McDonald refer to two cases where the Court considered the issue of zoning in relation to s 4(1)(a) of the Trees Act: Aaron v Haynes [2007] NSWLEC 294 ("Aaron") and Bayley & Waller v Kiernan [2008] NSWLEC 1291 ("Bayley"). Ms James and Mr McDonald say that in Aaron, the Commissioners found that the surrounding land within a 'Living Bushland Conservation Zone' had a residential character, even though the zone was not residential by name. In Bayley, although the Commissioners found a 'Scenic Protection - Rural Small Holdings Zone' was not residential in its character, the Commissioners considered the allotment pattern in the subject land's immediate neighbourhood when making their determination. Ms James and Mr McDonald say the same approach ought to be taken in these proceedings. Considering the settlement and allotment pattern immediately surrounding No 39, the Court should find that the land at No 39 has the substantial character of a rural-residential zone. The Sheridans submit that Zone RU1 does not have the substantial character of any of the zones designated at s 4(1)(a) of the Trees Act. They say Zone RU1's objectives are focused on agriculture and primary production, encouraging sustainable primary industry and protecting agricultural land, notwithstanding that it permits dwelling houses with consent. They argue that the presence of a dwelling on their land and dwellings on surrounding properties does not change Zone RU1's underlying purpose. The Sheridans point out that the objectives of cl 4.2A of the Kiama LEP are to minimise unplanned rural residential development in three specific zones, including Zone RU1. The Sheridans submit that their property is surrounded by extensive open paddocks and agricultural land. As well as living in their dwelling, they keep and graze alpacas in paddocks on their land. The Sheridans note the Court's findings on the zoning issue in other tree dispute cases, and say that these cases turned on circumstances particular to each case. Findings For the Trees Act to apply to the Sheridans' trees, pursuant to s 4(1)(a), Zone RU1 must have the substantial character of one of the designated zones when one has regard to the purpose of Zone RU1. To determine this, I take a similar approach to that taken in Wilson v Clean Investments Pty Ltd [2026] NSWLEC 1035 by comparing Zone RU1's objectives with those of a zone under the Kiama LEP that is a zone designated at s 4(1)(a) of the Trees Act with the closest alignment to Zone RU1: that is, Zone R5 Large Lot Residential (Zone R5) under the Kiama LEP. (The Kiama LEP does not include a 'rural-residential' zone.) Zone RU1 Primary Production Zone R5 Large Lot Residential 1 Objectives of zone

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

- To protect agricultural land for long term agricultural production.
- To provide opportunities for employment-generating development that adds value to local agricultural production through food and beverage processing.
- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones. The objectives of Zone RU1 are markedly different from those of Zone R5, such that it does not have the substantial character of Zone R5. Zone RU1's purpose is focused on primary production and maintaining agricultural land. Zone R5's principal purpose is to provide for residential housing and urban development. The difference in the two zones' purposes is reinforced by their contrasting permitted and prohibited uses. In Zone RU1, extensive agriculture is permitted without consent and agricultural produce industries are permitted with consent. In Zone R5, agriculture is prohibited. Zone RU1 does not have the substantial character of a residential zone or any of the zones designated at s 4(1)(a) of the Trees Act. This is not to say that the Court cannot consider other factors, such as the character of the subject land, or the surrounding landscape and allotment pattern, as it has sometimes done: see above at [10]. But s 4(1)(a) of the Trees Act requires the principal test to be whether the subject zone (emphasis added), having regard to its purpose, has the substantial character of a designated zone. Local Environmental Plans set out in writing the purpose of each zone they cover. Within Local Environmental Plans, zones and their purposes can change over time, so referring principally to the surrounding landscape and allotment layout seen at a point in time might not demonstrate the current zone's purpose. This is demonstrated by the wording of Kiama LEP's cl 4.2A, to which the Sheridans referred, and which aims to minimise unplanned rural residential development (and to enable the replacement of certain dwelling houses) within Zone RU1 (and Zones RU2 and C3). At subcl 4.2A(3), consent must not be granted for a dwelling house unless, inter alia, the land is at least a certain size, or the lot was created and a dwelling house was permissible on the lot before the Kiama LEP commenced, or the lot resulted from a development consent granted for subdivision before the Kiama LEP commenced. The wording shows that planning controls change over time. What is seen in the landscape might not reflect the purpose of a current planning instrument. For this reason, the purpose of Zone RU1, as written in the Kiama LEP, should be the principal test when determining whether it has the substantial character of a zone designated at s 4(1)(a) of the Trees Act. On my analysis, it does not. Therefore, the Trees Act does not apply to the trees that are subject of this application. Despite this finding, for completeness, I consider the application under the

relevant framework. Jurisdiction to make orders The orders that Ms James and Mr McDonald seek to remedy and prevent a view obstruction are orders the Court can make at s 14D of the Trees Act. However, the Court is not required to make the orders they seek, but can make orders as it sees fit to remedy, restrain or prevent a severe obstruction of a view, having considered all relevant parts of the Trees Act. Reasonable effort to reach agreement and notice of the application Pursuant to s 14E(1) of the Trees Act, the Court must not make an order in these proceedings unless it is satisfied that Ms James and Mr McDonald have made a reasonable effort to reach agreement with the Sheridans and have given notice of the application in accordance with s 14C. Ms James and Mr McDonald included in their application copies of correspondence they have sent the Sheridans over several years seeking to have the trees pruned to restore their view. I am satisfied that they have made a reasonable effort to reach agreement with the Sheridans. Ms James and Mr McDonald have also given notice of the application in accordance with s 14C of the Trees Act. Whether the trees severely obstruct a view Subsection 14E(2) of the Trees Act further restricts the circumstances in which the Court can make orders. 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.
- Ms James and Mr McDonald provided photographs of the trees taken from their dwelling in 2020, when the trees were shorter and did not obstruct their view, and in 2026 when the trees were taller. From their dwelling, the broad, western outlook is across a valley to distant mountains – a pleasant bucolic view. The view is from their living areas. The later photographs show the land view almost entirely obstructed by the trees, to the extent that I regard the trees' obstruction of their view at that time to be severe. By the time of the hearing, the Sheridans had engaged contractors to prune the hedge and the trees no longer obstruct the view. That is, the trees had severely obstructed a view from the dwelling at No 35, but were not severely obstructing the view on the day of the hearing. In *Unsworth v Hennessy* [2024] NSWLEC 82, Chief Justice Preston considered the temporal conditions of the sunlight or view obstruction within Pt 2A of the Trees Act, saying at [51]: “[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. 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... The Sheridans have pruned the hedge in the past. Significantly, before receiving a copy of Ms James’ and Mr McDonald’s application in these proceedings, the Sheridans had arranged for contractors to prune the hedge although, for various reasons, the contractors were unable to prune the hedge for several weeks. The Sheridans submit, and their actions demonstrate, that they are willing to maintain their hedge at a height that allows for the view from No 35. The Sheridans explained the site conditions that limit the window for pruning the hedge. Recent pruning works reduced the hedge’s height well below earlier pruning works. The Sheridans submit that the hedge’s height was reduced more than they had intended, leaving bare branches at the tops of some trees, but this now provides an opportunity for them to maintain the hedge more easily. The Sheridans demonstrated during the hearing that they understand the importance of regular and frequent pruning to maintain an attractive hedge with foliage along its top and sides. One of the advantages of the Court holding on-site hearings is that the Court sees the situation in greater detail than photographs might show, and sees the parties in their environment. To the extent that the Court can perceive and consider the parties’ intentions, I found the Sheridans to be genuine in their intent to maintain the hedge. As a result, it is unlikely that the hedge will cause a severe view obstruction from No 35 in future and there is no need to make orders to prevent a severe obstruction of the view. For these reasons, even had I found differently on the zoning issue at s 4(1)(a) of the Trees Act, I would make no orders in these proceedings.

## Orders

The Court orders: The application is refused. D Galwey Acting Commissioner of the Court

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