

AUSTRALIA / JUDGMENT

Parsons v Barbaro

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Land and Environment Court

New South Wales

Medium Neutral Citation:

Parsons v Barbaro [2026] NSWLEC 1641

Hearing dates:

14 July 2026

Date of orders:

29 September 2026

Decision date:

29 September 2026

Jurisdiction:

Class 2

Before:

Austin AC

Decision:

The Court orders:

(1) Both the Pt 2 and Part 2A applications are refused.

Catchwords:

TREES (DISPUTES BETWEEN NEIGHBOURS) —

Pt 2 application – neighbouring trees – bamboo–alleged damage – insufficient evidence – risk of damage – application refused – Pt 2A application – obstruction of sunlight – obstruction of views – obstruction not severe – applications refused

Legislation Cited:

Dividing Fences Act 1991 (NSW), Pt 2, s 9, Pt 3, s 11

Land and Environment Court Act 1979 (NSW), s 40

Trees (Disputes Between Neighbours) Act 2006 (NSW), Pts 2, 2A ss 7, 8, 9, 10, 12, 14A, 14B, 14E,

Cases Cited:

Campbell v Brentin [2022] NSWLEC 1527

Difford v Davidson [2018] NSWLEC 1612

Haindl v Daisch [2011] NSWLEC 1145

Hinde v Anderson [2009] NSWLEC 1148

Robson v Leischke (2008) 72 NSWLR 98; [2008] NSWLEC 152

Taylor v Joye [2018] NSWCATAP 309

Tenacity Consulting v Warringah Shire Council [2004] NSWLEC 140

Yang v Scerri [2007] NSWLEC 592

Category:

Principal judgment

Parties:

Viviane Parsons (Applicant)

Sarah Barbaro (First Respondent)

Anthony Barbaro (Second Respondent)

Representation:

Counsel:

A Penklis (Applicant)

S Barbaro (Self represented) (First Respondent)

A Barbaro (Self represented) (Second Respondent)

Solicitors:

Penklis Lawyers (Applicant)

File Number(s):

2026/00110411

Publication restriction:

Nil

Judgment

Background

COMMISSIONER: In these proceedings, Viviane Parsons (the applicant) and Sarah and Anthony Barbaro (the respondents) own neighbouring residences in Rozelle. The parties are in dispute about several matters resulting from the removal of and replanting of bamboo on the respondent's land. The applicant claims property damage has been caused by a now removed hedgerow of bamboo and contend that the newly planted hedgerow of bamboo will cause future damage to the property, presents a risk of injury to person(s), and that the new bamboo hedge causes both a severe obstruction to sunlight and a severe obstruction to a nominated view from the dwelling.

This is an application made pursuant to Pt 2, s 7 and Pt 2A, s 14B of the Trees (Disputes Between Neighbours) Act 2006 (NSW) (the Trees Act). Part 2 s 7 provides an opportunity for orders to remedy damage caused by a tree and to prevent the tree causing damage or injury. Part 2A s 14B 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.

The applicant's house at 86 Cecily Street, Lilyfield is a three-storey town house with rear lane access. The applicant bought the house in or around 2016. The site has recently undergone significant renovations including new landscaping with boundary fencing and a pool. The renovations were subject to conditions contained within a development consent with Inner West Council.

The respondents' house at 84 Cecily Street, Lilyfield is a single-storey house also with rear lane access. The rear yard contains two trees including a large clump of *Dyopsis lutescens* (Golden Cane Palms) and a mature *Glochidion ferdinandi* (Cheese tree) both of which are located on the northern boundary as well as a new bamboo hedgerow of *Bambusa textilis* var. *Gracilis* (Slender Weaver's Bamboo) located on the southern boundary. The southern boundary borders the applicant's land. The respondents bought their house in or around 2018 with the bamboo in the original hedge already established.

Both sites are zoned R1 General Residential and are located within the Brennan's Estate Heritage Conservation Area, listed under the Inner West Local Environmental Plan 2022.

The Court has reviewed the applicant's bundle of documents, which includes an arborist report by Catriona Mackensie (Exhibit A), the applicant's written submissions (Exhibit B) and the affidavit of Viviane Parsons (Exhibit C). The Court has also reviewed the first respondent's response to the application (Exhibit 1).

Application to the Court

The applicant applied for orders pursuant to s 7 (Pt 2) of the Trees Act on the basis that the trees have caused property damage. The applicant also applied for orders pursuant to s 14B (Pt 2A) on the basis that the bamboo hedges are severely obstructing sunlight to the windows at the rear of the house and are also severely obstructing views of the greater Rozelle Valley. The bamboo hedges are situated on adjoining land.

Proposed Orders

For their Pt 2 application, the applicant seeks the following orders;

For compensation for damage to property – the respondents to pay for repair/replacement costs for sewer and stormwater pipes including management fees, removal of the original bamboo and roots as well as 50% of the cost of the new timber fence.

To restrain or prevent damage or further damage to property by installing a root barrier.

For the payment of costs associated with the carrying out of an order, including the lodgement fee.

To prevent injury to any person from falling sharp bamboo stalks.

For the Pt 2A application, the applicant seeks the following orders:

Pruning the bamboo in Hedge 2 and maintaining them at a 2.5m height and 0.5m away from the dividing fence.

The respondents wish to retain the bamboo in Hedge 2 at the current height due to the amenity and privacy benefits it provides. The respondents contest that the original bamboo in Hedge 1 caused damage, did not agree to its removal and insist the works performed all formed part of the applicant's development works.

The respondents seek an order to have the application dismissed in full. Furthermore, the respondents seek orders for compensation for the costs associated with the unauthorised removal of the bamboo, the trespass and loss of enjoyment of their land, the replacement planting and out of pocket expenses incurred in obtaining advice.

Notice of the application

Mrs Parsons gave notice of her applications to the first respondent and the Council as required by s 8 and s 14 B of the Trees Act. The second respondent was not served within the Court's timeline, and the preliminary directions hearing listed for 11 May 2026 was stood over until 15 June 2026 as the second responded was not served until 11 May 2026. I am satisfied that s 8 and s 14 B of the Trees Act have been met.

Jurisdiction to make orders

The applicant's proposed Pt 2 Orders numbered 1, 2, 4 and partially 3 in paragraph 8, and the applicant's proposed Part 2A Order numbered 1 in paragraph 9 are orders that the Court could make under s 9 of the Trees Act if all jurisdictional tests are met, although the Court may make different orders as it sees fit in the circumstances.

In relation to the proposed order for costs of the lodgement within paragraph 8(3) as well as the respondents' request for compensation, Commissioners do not have power to order payment of legal costs, costs of expert reports, application fees to the Court and other expenses (including personal expenses). The parties were informed during the hearing that, once the tree application has been heard, any party seeking an order for costs of the proceedings must apply for costs by notice of motion filed within 28 days of the final orders in the proceedings. A notice of motion for costs is heard and determined by a Judge or the Registrar.

Reasonable effort to reach agreement

The applicant asserts that she has made reasonable efforts to reach agreement through text exchange with the first respondent in December 2025, and a letter dated 19 January 2026 sent to both respondents. The applicant's solicitor emailed a further letter to both the first and second respondent on 9 July 2026 seeking resolution of the dispute.

It is known to the Court that only the first respondent resides at 84 Cecily Street, Lilyfield and that the location of the second respondent was not known, nor was he readily contactable by the applicant.

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.

Given the circumstances, I find it unlikely that this dispute would have been resolved in the reasonably foreseeable future. I do therefore accept that the applicant has made reasonable efforts to reach agreement with the respondent, as required by s 10(1)(a) of the Trees Act.

The onsite hearing

The hearing took place on-site in the company of the Sheriff, allowing the Court to observe the current bamboo hedge and both properties. Following introductions on the Council footpath, the onsite hearing commenced on the applicant's property. Ms Barbaro (first respondent) indicated she did not wish to enter the applicant's property and needed to stay in her yard to watch her children. Following the inspection of the applicant's land, I repeated the observations I had made

to Ms Barbaro in the rear lane in front of the applicant. Accompanied by the Sherrif, The Court next inspected and assessed the respondent's rear yard and the newly planted bamboo, where only the applicant's solicitor was permitted to enter by Ms Barbaro. Once again, on completion of the inspection, I repeated the observations made to the applicant who was waiting in the rear lane. The second respondent was not present at the site view.

The matter then returned to Court where the applicant and her legal team were present and the first and second respondents dialled in via Audio Visual Link. I formally received the evidence and heard the submissions from the applicant's legal team as well as from the first and second respondents. Ms Penklis acted for the applicant and the first and second respondents were self-represented.

The trees concerned

The subject trees include a recently removed bamboo hedge (Hedge 1) that was located hard against the southern boundary of the respondent's rear yard. Hedge 1 was in existence prior to the renovation at 86 Cecily St. Pictures of the Hedge 1 can be observed in response to question 4 in the Tree Application details Form H (Tab 1, Exhibit A) where a bamboo hedge of 6-7m height can be seen reaching the height of the top floor balcony railing at 86 Cecily Street. Relying on my arboricultural expertise, it is clear that Hedge 1 had been pruned many times, resulting in a dense appearance. Further photos show some culms protruding through the first-floor timber balcony screen and there is also a photo showing culms on the applicant's side of the fence at ground level.

Hedge 2 is a newly planted hedgerow in the same position as Hedge 1. Hedge 2 is now approximately 3.8m in height and is touching the boundary fence, both in the location of the masonry wall next to the pool and the timber fence next to the balcony.

Site Conditions

The renovations and new landscaping have been completed at 84 Cecily Street. The boundary fence between 84 and 86 Cecily Street has been replaced in the rear yard as part of the renovation works. Approximately two-thirds of the fence have been replaced with a masonry wall that is 1.8m in height on a concrete footing. The section between the masonry wall and the dwelling has been replaced as a timber fence. Beyond that, there is a narrow gap between the two brick walls of the dwellings that extends for approximately 10m. It is understood that this land belongs to 84 Cecily Street and access to this gap is extremely difficult. Two tree stumps are present on applicant's property in this narrow gap. (See arborist report Tab 2 in Exhibit A). I also observed a Celtis seedling which will certainly cause issue if not removed.

Part 2 application

The alleged damage

The applicant contends that when landscape works for the rear yard and pool commenced, it was discovered that the sewer line and stormwater line were destroyed by the bamboo from Hedge 1. Furthermore, the applicant contends that the original timber fence was damaged by Hedge 1 as the bamboo culms pushed on the fence, causing it to bend and warp.

The alleged risk of future damage and risk of injury

The applicant contends that the new pool plumbing as well as the new stormwater and sewer lines are at risk of future damage due to the uncontained roots of Hedge 2.

The applicant also contends that there is a risk of injury to any person as the bamboo stalks are already 6m in height and will become heavy and rigid as before, capable of falling or snapping during strong winds and further contends that these tall, spear like stalks pose a serious risk of injury to anyone in the yard.

Whether the trees have caused, or are likely to cause, damage

A key component of this dispute is whether the jurisdiction of the Court is enabled by the satisfaction of s 10(2) of the Trees Act, which contains the following provision:

- (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,
 - (b) is likely to cause injury to any person

Did Hedge 1 cause damage?

Pipe damage

The applicant claims that the stormwater and sewer pipes in her rear yard were damaged by the bamboo in Hedge 1.

The applicant has supplied a letter from AquaFirm Plumbing dated 18 December 2025 (p 29, Tab 1, Exhibit A) where Blake Voysey indicated he located invasive roots and collapsed pipes at the rear of the property due to overgrown/well established bamboo trees from the neighbouring property. The letter does not have any supporting photographs and does not provide the Court with evidence of the purported damage.

The applicant also supplied an email from Braden Jones, the site supervisor for Cronulla pools dated 26 February 2025 (p 30, Tab 1, Exhibit A), where he confirms that “during the construction works at 84 Cecily Street, Lilyfield, he observed bamboo roots in the affected pipework ...” The email is not supported by photos and does not assist the Court in establishing causation.

Photos provided in the Application Form H (Tab 1, Exhibit A) in response to question 4 show the polyvinyl chloride (PVC) stormwater pipe on the surface surrounded by bamboo culms as well as a displaced PVC pipe visible after the fence was removed. The applicant's Arborist Report prepared by Catriona Mackenzie (Tab 2 in Exhibit A) at paragraph 27 states that, relying on images 1-6 (Tab 2, Annexure D in Exhibit A), that she has no doubt that the concentration, density and proximity of the encroaching bamboo rhizomes of Hedge 1 to the stormwater pipework had caused the breaking and displacement of the pipes.

In review of images 1-6 provided in the Application form H (Tab 1, Exhibit A), I am not convinced that the bamboo was the cause of the pipe damage. Photo 6 shows a spade and excavator bucket mark next to the damaged pipe. Photos from 16 and 19 July 2025 provided by the respondents (Exhibit 1) show a small excavator in the rear yard. The damage shown in images 1-6 (Tab 2, Annexure D in Exhibit 1) were taken once the bamboo removal works and excavations had commenced. It is plausible that the damage to the stormwater pipe could have been caused by the works.

Furthermore, the build quality of the PVC stormwater piping and whether the sewer piping is terracotta or PVC are unknown. Leaking pipes as well as old, degrading terracotta pipes are exploited by tree roots. The Cronulla Pools log list for 11 July 2025 (Tab 2, pp 82-84, Exhibit A) indicates that the main stormwater pipe coming out of the gutter is also blocked with roots and an agricultural drain installed incorrectly into the stormwater piping covers three fourths of the pipe. This finding suggests that the stormwater pipe was incorrectly installed.

Galwey AC describes this common situation in *Difford v Davidson* [2018] NSWLEC 1612 at [14];

"The Court has on many occasions considered the issue of tree roots growing in ageing terracotta sewer pipes. Cracks in joints of such pipes allow fine roots to enter and proliferate. They may then contribute to damage but are rarely the initial cause. There is no evidence here that roots caused any damage in the first instance, only that they were inside, and blocked, the pipes."

Typically, in these situations, the Court would be provided with a Plumbers Report, samples or photos of the roots in the pipe, and/or CCTV images or footage supporting the claims made. DNA testing of roots is also available to confirm the species of tree that the root originates from. Such evidence allows for informed decisions. While the photos presented (images 1-6 provided in the Application Form H, at Tab 1, Exhibit A) bamboo roots next to the pipe, and the Cronulla Pools log list for 11 July 2025 (Tab 2, pp 82-84, Exhibit A) show some CCTV photos of roots in a pipe, it is not possible to ascertain whether the roots have entered through degrading joints or if the pipe was previously cracked or had collapsed.

In paragraph 28 of the Arborist report, Ms Mckenzie indicates that as she was only able to rely on the applicant's images 1-6 and log list images for evidence and was unable to confirm that the bamboo was the cause of the damage or infiltration to the sewer line. I align with Ms Mckenzie and find there is insufficient evidence to satisfy the Court that the bamboo in Hedge 1 was the cause of sewer pipe damage.

Ms Penklis submits that the situation is similar to what was found in *In Campbell v Brentin* [2022] NSWLEC 1527 (“Campbell”), by Douglas AC at [48]:

"Excavation of the sewer pipes exposed root penetration in pipes at multiple locations. While the trees responsible have not been specifically identified, in the absence of trees on the applicants' property, or growing elsewhere in sufficiently close proximity to the damage, I am satisfied that a causal link between roots of the respondent's trees and the sewer pipes damage has been established, and the jurisdiction of s 10(2)(a) of the Trees Act is therefore engaged"

While the finding in *Campbell* may have been suitable for that situation, I do not find it applicable in this dispute. It is unknown whether the trees in the gap between the houses (evidenced by the stumps that remain observed in photos in Tab 3, pp 153 and 154, Exhibit A) could have had an impact on the pipes. In paragraph 30 of Ms Mackensie's report, it is stated that "given the proximity of the larger, dead tree stump to the piping alignment, the possibility of roots and basal expansion of this tree may have contributed to the pipe displacement and damage cannot be discounted." I align with Ms Mackensie's opinion.

It is noted that there was no complaint from the applicant about damage to the fence or to the sewer or stormwater prior to the works commencing onsite in July 2025. While the photos in the application show a damaged pipe, it is unknown whether the pipes were functional.

With a review of the evidence adduced, I have not been satisfied that the bamboo that formed Hedge 1 was the cause the stormwater pipe or sewer pipe damage.

Fence Damage

The applicant asserts that the lateral pressure from the previous expanding bamboo pushed against the dividing fence causing it to lean and warp, with a risk of collapse into her backyard.

During the onsite hearing, the Court observed a newly constructed landscape including a pool and masonry boundary fence, and I had no ability to verify that the Hedge 1 was the cause of the damage to the original fence.

Evidence of the damaged fence is limited to the images provided in the Application form H (Tab 1, Exhibit A) where a slight lean in what appears to be an otherwise fit for purpose boundary fence is located. I am not convinced that the bamboo was the sole cause of the fence lean. There is no description of the fence build, nor is the age or the condition of the fence understood. The applicant also supplied an email from Braden Jones, the site supervisor for Cronulla Pools dated 26 February 2026 (p 30, Tab 1, Exhibit A), where he confirms that during the construction works at 86 Cecily Street, Lilyfield, he observed that sections of the boundary fence were leaning towards the site where the bamboo was pressing against it. The email is not supported by photos and does not assist the Court in establishing causation.

I am not satisfied that the bamboo in Hedge 1 was the cause of the fence damage.

The likelihood of future damage

Regarding the likelihood of future damage, evidence relied upon by the applicant includes the Arborist report by Ms Mackensie at paragraphs 36 to 39 (Tab 2 in Exhibit A). In paragraphs 36 and 37, Ms Mackensie indicated that she was informed that the boundary wall sits on a concrete footing between 500mm and 800mm deep. If this is the case, Ms Mackensie asserts that future damage to property caused by Hedge 2 is unlikely.

At Paragraph 38 of that report, it is noted there is a gap between the end of the masonry boundary wall and the wall of the residence at number 84. Ms Mackensie states that this area is vulnerable to encroachment by bamboo rhizomes. At paragraph 39, Ms Mackensie indicated that she was unable to determine the modified route for storm water or sewer pipes and then suggests that if the pipes are located in the narrow space between the buildings, then the gap in the fence will eventually allow for rhizome ingress into the gap between the buildings with the potential for damage to the pipes in the future.

In *Yang v Scerri* [2007] NSWLEC 592, at [14], the Court established a principle that ‘the near future’ (at s 10(2)(a) of the Trees Act) might best be considered in tree disputes as a period of 12 months. The Court has consistently relied upon this principle. In conclusion Ms Mackenzie at paragraph 49 indicates that Hedge 2 is unlikely to cause damage to the applicant’s property in the near future. Utilising my own expertise, I align with Ms Mackensie’s conclusion.

While it would be considered prudent to install a root barrier to stop bamboo encroachment onto the neighbouring property, mere encroachment is not considered “damage” under the Trees Act. The respondent is effectively on notice, in that if they do not install a root barrier as described by Ms Mackensie, the roots are likely to cross into the neighbouring property where they will eventually cause damage. At this unknown later date, the cost of removing the bamboo, installing the root barrier and compensating the applicant for any damage caused would be significantly greater than the cost to install the root barrier would be now.

If the circumstances change, and the damage to the applicant’s land is caused, or is demonstrated that it will occur in the near future, the applicant may make a new application to the Court as described in *Hinde v Anderson* [2009] NSWLEC 1148.

Hedge 2 has not caused, is not causing and is not likely in the near future to cause, damage to the applicant’s property. Therefore, the Court cannot make orders in these proceedings and there is no need for me to consider the matters at s 12 of the Trees Act.

The likelihood of causing injury to any person

The applicant claims that the bamboo stalks in Hedge 2 will quickly become heavy, rigid and capable of snapping in high winds. The tall spear like stalks pose a serious risk of injury to anyone in the yard (Tab 1 Exhibit A). Ms Mackensie details at paragraph 40 that bamboo culms are fibrous rather than woody and do not commonly break, even when very tall and affected by high winds. Ms Mackensie concludes at paragraph 50 that Hedge 2 is unlikely to cause injury to a

person. I align with Ms Mackensie's conclusion and s 10(2)(b) is not engaged and again, there is no need for me to consider the matters at s 12 of the Trees Act.

Part 2A Application

Whether the trees are severely obstructing a view

The applicant also applied for orders pursuant to s 14B (Pt 2A) on the basis that the bamboo forming Hedge 2 is severely obstructing views of the wider Rozelle Valley from the back deck. The Court has accepted that decks and balconies attached to a dwelling are part of that dwelling. Thus, views from a dwelling can be views from a deck or a balcony.

The view concerned includes city glimpses though the large figs at Eastern Park, and wider views of the Rozelle Valley. The hedge interrupts a part of the view to the northeast. The large clump of *Dypsis lutescens* (Golden Cane Palms) and a mature *Glochidion ferdinandi* (Cheese tree) both of which are located on the northern boundary of the respondent's land also block the view to the northeast from this viewpoint. These two trees are located behind the bamboo hedge when looking at the view from the deck and would create a similar view obstruction even if the bamboo was removed.

If the jurisdiction requirements of s 14A(1) are satisfied, before the Court can an order in these proceedings, it must also be satisfied that the trees that form a hedge are severely obstructing a view from the applicant's dwelling: s 14E(2)(a)(ii) of the Trees Act.

In determining severity of impact, the Court often has regard to the Planning Principle on view sharing published in *Tenacity Consulting v Warringah Shire Council* [2004] NSWLEC 140. The first three steps of this Principle are particularly applicable to applications made under Pt 2A. The first step considers the nature of the view, the second the location from which the view is seen, including views available from the whole of the property, and the third considers the use of the rooms from which the views may be affected. The Planning Principle includes a scale of impact ranging from negligible, to minor, moderate, severe to devastating.

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.

In *Haindl v Daisch* [2011] NSWLEC 1145 the Court considered the nature of 'a view'. The Commissioners at [26] state:

"However, we are of the opinion that the words a view relate to the totality of what can be seen from the viewing location and does not permit some slicing up of that outlook – thus requiring separate assessment of the severity of the obstruction of the view from a particular viewing location on some incremental, slice by slice basis."

For the purposes of Pt 2A of the Trees Act, this is a view with various elements contained within it, while I accept that the obstructed part of the view is a part of the Rozelle Valley, I find the obstruction as a consequence of the bamboo in Hedge 2 is minor to moderate at most and well below the threshold of 'severe' required by s 14E(2)(a)(ii). As the obstruction to the view is not severe, the Court's jurisdiction is not enlivened to make the orders sought by the applicant.

Whether the trees are severely obstructing sunlight

The applicant contends that Hedge 2 has the potential to cause a severe sunlight obstruction to the living room window. The applicant asserts that seven hours of sunlight are lost in summer and five hours are lost in winter. The applicant did not provide any shadow drawings or other evidence to assist the Court. Ms Mackensie does not cover this part of the application in her report.

On the day of the hearing, the bamboo in Hedge 2 did not appear to cause more than a minor a sunlight obstruction to the applicant's nominated windows. As per the provision in s 14E(2)(a)(i) of the Trees Act, the Court must not make an order unless the sunlight obstruction is severe.

The Pt 2A application is therefore refused and there is no need to consider the matters at s 14F.

The current pruning regime

The first respondent asserts that she has and will continue to prune the bamboo to the 3.8m height seen during the site view. Relying on my own arboricultural expertise, I was able to see recent cut points suggesting this hedge had recently been pruned. Pruning the hedge at this height will prevent any future severe sunlight or view obstructions occurring.

The applicant can prune the bamboo that is overhanging her property back to the boundary utilising the common law right of abatement.

Respondents Compensation

Plumbing Expenses

The Cronulla Pools log list for 10 July 2025 (Tab 2, p 84, Exhibit A) indicates that the sewer and stormwater run through the area of works.

The Cronulla Pools log list for 11 July 2025 (Tab 2, pp 82-84, Exhibit 1) indicates that the sewer will need to be relocated. The plumber also found that the sewer was blocked with tree roots. Two CCTV photos are provided with what appears to be tree roots in the pipe. The same log indicates that the main stormwater pipe coming out of the gutter is also blocked with roots and an agricultural drain installed incorrectly into the storm water pipe covers three-fourths of the pipe.

The Cronulla Pools log list for 16 July 2025 (Tab 2, pp 76 and 77, Exhibit A) indicates that the trench was excavated for the sewer diversion. Furthermore, the same log indicates that the plumber located the stormwater which "will need to be diverted as well due to broken fittings near the house. The existing stormwater also runs through the footing we will need to put in to

support the masonry boundary wall". Upon review of this log, it is apparent that both the sewer and the stormwater required rerouting due to the pool and footing for the masonry wall. Photos in the exhibit are small and blurry and do not assist the Court.

The Cronulla Pools log list for 17 July 2025 (Tab 2, pp 77 and 75, Exhibit A) indicates that the plumber was onsite for the sewer diversion. Furthermore, the same log indicates that the plumber ran a 100mm stormwater line while the trench was open through the rear yard. Photos in the exhibit are small and blurry and do not assist the Court.

The landscape and pool work contained in the DA approved plans required the relocation of the sewer and the stormwater irrespective of whether they were damaged by the bamboo. If this were not the case, it may have been considered reasonable to request compensation for the damage, and further evidence could have been produced to prove the case. Additionally, quotes could have been obtained to provide some fairness in the amounts claimed. The current amounts claimed do not clarify whether the costs are for the rerouting and whether this rerouting would have been more expensive than only repairing/replacing the damaged section(s) of pipe.

With respect to the proposed compensation for past damage to the pipes, I have had regard to the comments of Preston CJ in Robson at [207]:

"The considerations that arise in the tort of nuisance concerning fault, the nature of the conduct and the state of knowledge of a person on whose land a tree which causes a nuisance is situated (see discussion above at paragraphs 44-90), would be relevant in ascertaining whether any act or omission of that person has contributed or is contributing to the damage or injury."

Upon review of these comments by Preston CJ, I note that the respondents have not contributed to the pipe damage, pipe degradation or blocked pipes through any act or omission of their own.

The claim for compensation for plumbing expenses is refused.

Fence compensation

The applicant claims for the 50% cost (\$1,375.00) of a timber fence for the whole common boundary in the rear yard. It is important to note that two thirds of the boundary was constructed as a masonry boundary wall as the applicant arranged to have the masonry wall to be built to beautify her back yard. Ms Penklis submitted that the compensation claimed amounted to one half of a timber fence to be built on the whole rear common boundary (Tab 4 in Exhibit A).

Upon review of the evidence adduced as well and again considering Preston CJ's comments in Robson at [207], I note that the respondent has not contributed to the fence damage through any act or omission of their own.

Ms Penklis submitted that the applicant would claim for compensation under the Dividing Fences Act 1991 (NSW) (Dividing Fences Act). Part 3 Procedure and implementation of the Dividing Fences Act provides the following provisions:

11 Notice to carry out fencing work

- (1) An adjoining owner may require the other adjoining owner to contribute, under this Act, to the carrying out of fencing work by serving a notice in writing to that effect on the other owner.
- (2) The notice is to specify the following:
 - (a) the boundary line on which the fencing work is proposed to be carried out or, if it is impracticable to carry out fencing work on the common boundary of the adjoining lands, the line on which it is proposed to carry out the work,
 - (b) the type of fencing work proposed to be carried out,
 - (c) the estimated cost of the fencing work.
- (3) The owner serving the notice may propose that the cost of the fencing work is to be borne otherwise than in equal proportions. In such a case, the notice is to state the proposed proportions.
- (4) The description of land in a notice need not particularly define the land if it allows no reasonable doubt as to what land is referred to in the notice.
- (5) An adjoining owner is not liable to contribute to the cost of any fencing work in respect of a dividing fence:
 - (a) carried out before a notice under this section is served on the adjoining owner (unless section 9 applies or the notice is served in accordance with section 22), or
 - (b) carried out after the service of the notice on the adjoining owner and before agreement is reached by the adjoining owners concerning the fencing work (including the contributions to be made in respect of the work) or before the matter has been determined by the Local Court or the Civil and Administrative Tribunal.

The Court has not been provided with any evidence that a notice was provided to the respondents. I am not satisfied that the circumstances of the fence required urgent fencing work notwithstanding the extent of the applicants' argument that it was. I am also not satisfied that it was impracticable to serve a notice under s 11 of the Dividing Fences Act in respect of the dividing fence.

Part 2 s 9 of the Dividing Fences Act provides the following:

9 Contribution when urgent fencing work is required

- (1) This section applies to a dividing fence that has been damaged or destroyed (in whole or in part) and in the circumstances requires urgent fencing work.

- (2) If it is impracticable to serve a notice under section 11 in respect of a dividing fence to which this section applies, an adjoining owner may, without serving such a notice, carry out the urgent fencing work required to restore the dividing fence.
- (3) The other adjoining owner is liable for half the cost (or a greater proportion if section 8 applies) of the urgent fencing work.
- (4) Any such liability may be reviewed by the Local Court or the Civil and Administrative Tribunal on the application by that owner to the Court or the Tribunal within 1 month after the work has been completed (or within such later period as the Court or the Tribunal may allow).

As to the alleged urgency, the applicant had been entering into discussions with the first respondent since at least July 2025 about the replacement of the fence. If the applicant sought to rely on the Dividing Fences Act for orders that the respondents contribute to the cost of the work that they claimed to be fencing work, then it was open to them to serve a notice under s 11. The intent of the Dividing Fences Act is to allow a landowner to give a notice of proposed fencing work to the adjoining land owner so that an opportunity for both parties to enter into discussion about the proposed fencing work may commence before an application is filed with the Local Court or the Tribunal.

The evidence in this case shows similarities to *Taylor v Joye* [2018] NSWCATAP 309 (“Taylor”), where the reasoning of the tribunal is clear. The tribunal found that “urgent fence work” would apply when “some external force had broken or eliminated the structure. The damaged or destroyed language used in s 9 of the Dividing Fences Act is more fitting to cover an event such as a tree branch falling onto a fence and damaging it; or the fence being swept away by a flood or burnt out by a fire. In those cases, the urgency is obvious.” On the contrary, “the section would not usually be applicable to a dividing structure that was slowly dilapidating even to the point of near failure,” (Taylor, at [40]).

On this basis, the applicants’ fencing work was not “urgent”, and their application for 50% costs for the work completed is refused.

I also note the text message from the applicant to the first respondent on 16 July 2025 indicating (Exhibit 1) that the “builders will have to take our joining fence down today and will replace with temporary fencing until I build and ‘pay’ for a new fence.”

I further note an additional email on 26 August 2025 between Cronulla Pools and the first respondent indicating that if the parties come to agreement, the applicant will cover the cost of the new fence.

Bamboo removal compensation

The applicant is claiming the cost of the bamboo removal works. The first respondent asserts that permission for removal of the bamboo was never given prior to its removal by the applicant's contractor.

The landscape plan by Surround Landscape Design, Rev G dated 25 June 2025 (Annexure K, Tab 2 Exhibit 1 p 78) shows the "existing neighbouring screen planting along boundary." It seems that the respondent's bamboo was to be retained as part of the design.

The Cronulla Pools log list for 14 July 2025 (Tab 2, p 82, Exhibit 1) indicates that Cronulla Pool spoke with the neighbour with the bamboo, "she is attached to the bamboo and asked we only prune what we need to. She is aware that it will be pruned."

The Cronulla Pools log list for 18 July 2025 (Tab 2, p 72, Exhibit 1) indicates that the bamboo is to be removed as it sits on the boundary, and the neighbour has signed off on its removal.

The bamboo was removed on 18 July 2025. The applicant contends that a meeting was held on that morning where the removal of the bamboo and fence was agreed to. The first respondent asserts that the bamboo was first to be assessed by an arborist and that consent for its removal was not given. On 23 July 2025, the first respondent indicated she contacted Inner West Council, NSW Civil and Administrative Tribunal and The Department of Fair trading to complain about the removal of the fence and bamboo.

I note an email from Cronulla Pools to the first respondent on 7 August 2025 where it was stated "as a good will gesture and in good faith, we will render your side of the brick wall once constructed and we also propose to install 6 x 300mm non-invasive bamboo plants.... After the existing stumps are removed".

In review of the evidence before me, I cannot identify any approval from the respondents that their bamboo could be removed. In light of this finding, the applicant's claim for the cost of bamboo removal is refused.

Respondents' compensation

The respondents propose that they should be awarded compensation for the costs associated with the unauthorised removal of the bamboo, the trespass and loss of enjoyment of their land, replacement planting and out of pocket expenses incurred in obtaining advice. In this situation, and if I found it appropriate, I would only have the ability to issue compensation for the costs of the replacement plantings; however, no evidence in the form of receipts has been provided; therefore, I am unable to award compensation to the respondents.

Conclusion

The evidence adduced is inadequate to satisfy the Court that the bamboo in Hedge 1 was the cause of damage to the applicant's property. The Bamboo in Hedge 2 is not likely to do so in the near future. Pursuant to s 10(2) of the Trees Act, no orders can be made in these proceedings for the Pt 2 application.

The attempts to recover expenses by the applicant commenced some 6 months following the identification of the damaged property. The costs incurred by the applicant fall within the scope of their renovation works, and the Court is unable to make orders for compensation.

The bamboo in Hedge 2 has not caused a severe sunlight obstruction to the applicant's nominated windows, nor has it caused a severe view obstruction to the nominated windows. Pursuant to s 14E(2)(a) of the Trees Act, no orders can be made in these proceedings for the Pt 2A application.

The Court has no jurisdiction to consider the matter further.

Orders

The Court orders:

Both the Pt 2 and Part 2A applications are refused.

A Austin

Acting Commissioner of the Court

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Decision last updated:

29 September 2026

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