

AUSTRALIA / JUDGMENT

Wines v Homes NSW

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Land and Environment Court

New South Wales

Medium Neutral Citation:

Wines v Homes NSW [2026] NSWLEC 1640

Hearing dates:

18 August 2026

Date of orders:

29 September 2026

Decision date:

29 September 2026

Jurisdiction:

Class 2

Before:

Austin AC

Decision:

The Court orders:

- (1) The application is granted in part, subject to the following orders.
- (2) Within 28 days of orders being made by the Court, the respondent is to pay the applicant the sum of \$6,253.50 to reimburse the applicant for the bamboo removal works completed to date and to compensate the applicant for the likely cost of the proposed remedial works to the bamboo encroaching onto the applicant's property.
- (3) Within 28 days of orders being made by the Court, the respondent is to share the details of their proposed contractor with the applicant to enable the applicant to make contact with the contractor and obtain a fee proposal.

- (4) Within 60 days of orders being made by the Court, the respondent is to commence remedial works to the bamboo at No 30 Rymill Road in accordance with Phases 1 and 2 in section 5 of the respondent's arborist report by Greg Tesoriero (CPS Planning) dated 27 July 2026 (Exhibit 1). The works are to be completed over an 18-month period through to and including Phase 2 – Mechanical removal.
- (5) Within 60 days of orders being made by the Court, the applicant is to engage the selected contractor to complete the works in accordance with Phases 1, 2 and 3 that are detailed in section 7 of the respondent's arborist report by Greg Tesoriero (CPS Planning) dated 27 July 2026 (Exhibit 1). The applicant will be required to liaise directly with that contractor for the purpose of coordinating the timing of the bamboo treatment on the applicant's property concurrently with the works to be completed on the respondent's land.
- (6) The works in orders (4) and (5) are to be completed in accordance with SafeWork NSW 2026 'Tree works' Code of Practice.

Catchwords:

TREES (DISPUTES BETWEEN NEIGHBOURS) – Pt 2 application – neighbouring trees – whether the trees have caused damage – bamboo – application granted in part – orders for compensation and bamboo removal

Legislation Cited:

Trees (Disputes Between Neighbours) Act 2006 (NSW), ss 3, 5, 7, 8, 9, 10, 12

Trees (Disputes between Neighbours) Regulation 2024 (NSW), s 4

Cases Cited:

Breen & Anor v Caronna & Anor (No 2) [2008] NSWLEC 1424

Brown & anor v Weaver [2007] NSWLEC 738

Granger v Owners Corporation SP 18494 [2012] NSWLEC 1285

Robson v Leischke (2008) 72 NSWLR 98; (2008) 159 LGERA 280; [2008] NSWLEC 152 Robson v Leischke [2008] NSWLEC 152

Yang v Scerri [2007] NSWLEC 592

Category:

Principal judgment

Parties:

Henry Wines (Applicant)

Homes NSW (Respondent)

Representation:

Counsel:

M Miao (Agent) (Applicant)

N Michaelian (Solicitor) (Respondent)

Solicitors:

McCabes Lawyers (Respondent)

File Number(s):

2026/00206196

Publication restriction:

Nil

Judgment

Background

COMMISSIONER: In these proceedings, Henry Wines (the applicant) and Homes NSW (the respondent) own neighbouring residences on Rymill Road, Tregear. Mr Wines resides at his property, and Homes NSW is a landlord with the property tenanted at the date of the hearing. The parties are in dispute about the previous and potential future damage that may be caused by bamboo originating in the rear garden of 30 Rymill Road, Tregear.

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

The Court was provided with the claim details form (Exhibit A) and tree dispute application Form H (Exhibit B), the applicant's submission of further evidence (Exhibit C), and the respondent provided an arborist report by Greg Tesoriero (CPS Planning) (Exhibit 1).

The hearing took place on-site, allowing the Court to observe the bamboo, the claimed damage and both properties. Mr Wines was represented by Maggie Miao as his agent and Narek Michaelian was counsel for Homes NSW.

Application to the Court

Ms Miao applied for orders pursuant to s 7 (Pt 2) of the Trees Act to remedy, restrain and prevent further damage to property.

As detailed in Exhibit B, the applicant seeks orders to:

Have the respondent undertake, at their cost, remedial works to chemically treat, remove and eradicate the bamboo infestation on their land by a suitably qualified arborist or contractor. The works are to be completed with a timeframe specified by the Court.

Have the respondent undertake, at their cost, rectification works to remove bamboo rhizomes encroaching onto the applicant's land, including by herbicide treatment, excavation or mechanical grinding, root barrier installation, and disposal of all bamboo materials by a suitably qualified arborist or contractor. The works are to be completed within a timeframe specified by the court.

Have the respondent, at their cost, repair or replace the damaged sections of the Colorbond fence that are deformed or buckled by the bamboo or by the remedial works.

Have the respondent reimburse the Applicant for costs incurred in repairing, treating and mitigating the bamboo damage on the applicant's property.

Have the respondent provide the applicant and/or their contractors reasonable access to the respondent's property as necessary to undertake inspections, monitoring and follow up treatment for such a period as the Court considers appropriate to ensure there is no bamboo regrowth.

Have the respondent pay the applicants filing fee

Jurisdiction to make orders

Orders 1-5 sought by the applicant are orders the Court could make at 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 proposed order 6 for reasonable costs of the application, Commissioners do not have power to order payment of legal costs, costs of expert reports, application fees to the Court and other expenses. The applicant was informed 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. The notice of motion for costs may only be heard and determined by a Judge or the Registrar.

Notice of the application

The applicant gave notice of the application as required by s 8 of the Trees Act.

Reasonable effort to reach agreement

The applicant first raised the bamboo issue with the respondent's tenant in Mid-March 2026. In early April 2026, the applicant visited the Homes NSW's Mt Druitt office, emailed an inspection request and followed up with a call to the service officer who manages the property. Ms Miao met a Homes NSW Client Services Officer and a representative from Asset Tree Removal on 9 April 2026 to inspect the bamboo infestation at the two properties subject to the tree dispute

application. A follow-up email was sent to Homes NSW on 12 April to which no reply was received. Later in April, Ms Miao contacted Blacktown Council, met with a greenspace officer and was later informed that the Council does not have jurisdiction over the matter as it falls under the Trees Act. It is not contested that the applicant made a reasonable effort to reach an agreement with the respondent and, considering the circumstances, I am satisfied a reasonable attempt to reach agreement has been made as required by s 10(1)(a) of the Trees Act.

The onsite hearing

The hearing took place on-site, allowing the Court to observe the bamboo, the claimed damage and both properties. Following introductions on the footpath, the onsite hearing commenced in the applicant's rear yard where the semi-mature bamboo culms emerging in the lawn, the location of the blocked sewer line and the purported damage to the fence panels were inspected. The respondent's land was not accessible during the 1st hour of the hearing; however, the rear yard of the respondent's land was viewable over the top of the fence without obstruction. The bamboo that was the subject of these proceedings was recently cut to ground level. I was able to observe the extent of the bamboo clump and could see that recently culms were growing immediately adjacent to, as well as under the fence.

The Court then formally received the written evidence and heard submissions from both parties while seated around a table in the applicant's garage.

The tree concerned

The subject tree includes a large clump of Running Bamboo (*Phyllostachys aurea*) that originated on the respondent's land at 28 Rymill Road, Tregear and spread under the fence into the applicant's land at 30 Rymill Road, Tregear. Relying on my own expertise, it is clear that the majority of the bamboo is located within the respondent's land which is evidenced by the greater area and density of cut culms that I was able to observe. The respondent's arborist report by Greg Tesoriero (CPS Planning) (Exhibit 1) also states that the source of the bamboo was 28 Rymill Road Tregear.

Bamboo is prescribed as a tree for the purposes of the definition of tree in

s 3(1) of The Trees Act which is consistent with s 4 of the Trees (Disputes between Neighbours) Regulation 2024 (NSW). Bamboo is increasingly being used for hedges and screening in urban areas and is the subject of many applications to the Court under the Trees Act.

As significantly more than 50% of the bamboo clump is clearly located on the respondent's property, it should be regarded as being "situated...principally" on that property as seen in *Brown & anor v Weaver* [2007] NSWLEC 738.

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

The applicant contends in Exhibit B that the following damage is occurring on the property:

The terracotta sewer was blocked in two locations by bamboo roots in August 2024

The Colorbond fence has been dented, bowed and buckled due to the ongoing pressure from the bamboo culms and underground rhizome growth. The fence has also been pushed out of alignment.

The bamboo has adversely affected the reasonable use and enjoyment of the backyard by diminishing the amenity and functionality of the outdoor area. The ongoing spread of rhizomes and recurrent emergence of shoots requires continual herbicide treatment, which restricts the applicant's ability to use the landscape area as intended.

The applicant also contends that the bamboo is now only 6.5m from the main dwelling and due to the uncontrolled nature of the bamboo, there is a foreseeable risk of the bamboo reaching the main dwelling where it could cause structural damage.

Jurisdictional Requirement

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.

Findings

Fence damage

Ms Miao asserted that the Colorbond fence has been damaged by the bamboo. I observed some dents and bulges; however, similar dents and bulges were observable in sections of the fence away from the bamboo. I do not find that the dents are caused by the bamboo. The fence appeared to be in a fair condition, suffering typical wear and tear, yet still suitable for its purpose.

Ms Miao indicated that the fence was previously on a lean due to the pressure of the bamboo culms pressing on the panels. Photos 1 & 8 in Exhibit C show the bamboo pushing through the fence panels with some misalignment from the pressure of the bamboo. The respondent's arborist report by Greg Tesoriero (CPS Planning) (Exhibit 1) also describes some minor structural displacement in section 3 and provides a photo of the cut culms hard against the fence in figure 5.

While the fence was not on a lean during the site inspection, I did observe the presence of culms hard up against the fence base which would have grown while exerting pressure of the fence. I am satisfied that if the bamboo was to regrow, pressure would again be placed on the fence resulting in misalignment to the applicant's land and s 10(2)(a) of the Trees Act is engaged.

In *Granger v Owners Corporation SP 18494* [2012] NSWLEC 1285 at [12], Commissioner Fakes indicates that even relatively minor damage engages the Court's jurisdiction. However, Commissioner Fakes suggests the extent of the damage may influence the orders the Court makes.

Sewer Pipe Damage

The applicant asserts that the terracotta sewer was blocked in two locations in August 2024. A section of the pipe was replaced by a plumber for \$3,500 cash. Other than some photos of the replaced section of pipe (Annexure 1 in Exhibit B), the applicant has not provided any evidence of the purported damage to the sewer. Typically, in these situations, the Court would be provided with a Plumber's Report, root samples or photos of the roots in the pipe, and/or some CCTV images 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 show some bamboo roots in the soil next to the 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.

Acting Commissioner Galwey 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."

Due to the absence of other large trees in the immediate area, I am satisfied that the bamboo roots have previously blocked the applicant's sewer pipe. For the purposes of s 10(2)(a) of the Trees Act, this amounts to damage to the applicant's property. Orders can be made on this element of the application.

However, before making orders, the Court is to consider matters at s 12 of the Trees Act. Relevant to this element of the application is s 12(h):

12 Matters to be considered by Court

Before determining an application made under this Part, the Court is to consider the following matters—

...

- (h) if the applicant alleges that the tree concerned has caused, is causing, or is likely in the near future to cause, damage to the applicant's property—
- (i) anything, other than the tree, that has contributed, or is contributing, to any such damage or likelihood of damage, including any act or omission by the applicant and the impact of any trees owned by the applicant, and
- (ii) any steps taken by the applicant or the owner of the land on which the tree is situated to prevent or rectify any such damage,

The respondent was not notified of the sewer blockage on 14 August 2024 until April 2026. The respondent was therefore unable to initiate any preventative action to reduce the risk of damage to the neighbouring property.

With respect to the proposed compensation for past root intrusion into the pipe (the August 2024 plumbing works paid for in cash), I have had regard to the comments of Preston CJ in *Robson v Leischke* (2008) 72 NSWLR 98; (2008) 159 LGERA 280; [2008] NSWLEC 152 ('*Robson v Leischke*') 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."

In review of these comments by Preston CJ, I note that the respondent has not contributed to the pipe damage, pipe degradation or blocked pipes through any act or omission of their own. The fact the applicant did not put the respondent on notice of root intrusion into the pipe until April 2026 has disentitled the applicant to any compensation prior to that date. The claim for compensation for the August 2024 Plumbing expense is refused.

As sections of the terracotta sewer line remain in situ, with continued expansion of the bamboo clump and the degrading nature of terracotta pipes, it is foreseeable that future blockages are likely to occur again without intervention.

The bamboo has blocked the sewer pipes and is likely to do so again. Consequently, s 10(2)(a) of the Trees Act is engaged and orders can be made to prevent further damage to property.

Potential for main dwelling structural damage

Regarding the likelihood of future damage to the main dwelling, there is no evidence to satisfy the Court that structural damage is likely in the near future. Providing a measurement between the bamboo and the house is inadequate evidence and I see no other basis for finding that damage to the structural integrity is likely.

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. I do not see the potential for structural damage to the dwelling as likely to occur in the near future.

Reasonable use and enjoyment of the backyard

The applicant contends that as a result of the bamboo rhizomes and culms rising in the backyard, that the reasonable use and enjoyment of the backyard is diminished. This is not considered to be damage under s 10(2) of the Trees Act. The Trees Act prescribes a more limited jurisdiction than the tort of nuisance.

In *Robson v Leischke*, Preston CJ explored the meaning of “damage” within the context of the Trees Act at [162]-[173]. At [166], his Honour explained:

“[166] The reference in s 7 to ‘property on the land’, insofar as it refers to land, therefore, may be a reference to corporeal hereditaments (‘things corporate’) rather than incorporeal hereditaments (‘things collateral to things corporate’) and furthermore only to those corporeal hereditaments other than the surface layer of the land (the solum). If this be correct, the Trees (Disputes Between Neighbours) Act 2006 would apply to damage to physical and tangible property constituting corporeal hereditaments but excluding the surface of the land itself. Hence, damage caused by a tree’s roots to buildings, fences, paving or other structures, or to fruit trees, crops, ornamental gardens or other vegetation growing on a neighbour’s land, may be covered by the Trees (Disputes Between Neighbours) Act 2006 but damage to the surface of the land, such as raising a mound of earth or drying soil without consequential damage to other property would not be covered by the Trees (Disputes Between Neighbours) Act 2006: N Foster, ‘Trees and Nuisance in New South Wales’ (2007) 81 ALJ 291 at 292.”

Further clarity is provided by Preston CJ in *Robson v Leischke* at [169]-[171] with my emphasis in bold:

“[169] At common law, although damage is necessary to complete the cause of action in nuisance, the type of damage required varies depending on the kind of nuisance involved. For nuisances of the first kind, causing encroachment as by roots and branches of trees, actual damage to the land (including property attached to or inherent in the ground) must be proved: see paragraph 56 above. For nuisances of the second kind, causing physical damage, actual physical damage to land (including property attached to or inherent in the ground) is also required: see paragraph 67 above. For nuisances of the third kind, causing unreasonable interference with the use and enjoyment of the neighbour’s land, however, no actual financial loss or injury to health need be involved. The damage consists of the annoyance and discomfort caused to the occupier of the neighbouring land, such interference being of a material character: Clerk & Lindsell on Torts, 19th ed, Sweet & Maxwell, London, 2006, [20-27], p 1178.

[170] The types of actual damage required at common law for nuisances of the first and second kind would also constitute “damage to property on land” within s 7 of the Trees (Disputes Between Neighbours) Act 2006, with the possible exception noted earlier (at paragraph 166) that damage to the surface layer of the land may not be damage to property on land.

[171] However, annoyance or discomfort to the occupier of the adjoining land occasioned by nuisances of the third kind is not ‘damage to property on the land’ within s 7 of the Trees (Disputes Between Neighbours) Act 2006. Hence, leaves, fruits, seeds, twigs, bark or flowers of trees blown onto a neighbour’s land might cause annoyance or discomfort to a neighbour, but unless they also cause damage to property on the neighbour’s land, they will not be actionable under s 7.”

I acknowledge that the applicant finds the enjoyment of the land is diminished by the bamboo rhizomes and culms, as per the third kind of nuisance described at [169] above. However, Preston CJ made it clear at [171] that, although this might be covered by the tort of nuisance, this does not amount to damage and therefore does not satisfy the test at s 10(2) of the Trees Act.

According to s 5 of the Trees Act, because Pt 2 now applies to this bamboo clump, the applicant is unable to pursue an action in nuisance elsewhere.

Partial Agreement

At the commencement of the hearing, the parties indicated that partial agreement had been reached. Primarily, the tree agreement included a \$10,000 compensation payment to the applicant to cover costs to date including the plumbing repairs, arborist poisoning costs, and costs of glyphosate purchase, as well as the future costs of staged bamboo removal on the applicant’s land.

The agreement was not finalised due to lack of detail surrounding the completion of the staged bamboo removal works on the respondent’s land, details outlining the requirement for concurrent bamboo removal works, contractor qualifications, property access and monitoring requirements, and the potential for future regrowth and what action should then occur.

Proposed Works

Both the applicant and the respondent agree that the bamboo clump should be removed to prevent issues reoccurring and future issues developing. Reviewing the situation, I find this proposal appropriate and necessary.

Utilising my own expertise, I find that the works proposed in the Recommended Treatment Plan (No 30 Rymill Road) detailed in section 5, as well as the Recommended Treatment Plan (No 28 Rymill Road) detailed in section 7 of the respondent’s Arborist Report by Greg Tesoriero (CPS Planning) (Exhibit 1), are an appropriate approach with a great chance of successful bamboo eradication from both sites.

The Recommended Treatment Plan (No 30 Rymill Road) includes Phases 1-3 which are detailed as follows;

Phase 1 has five proposed visits (Phase 1a – Phase 1e) which include monitoring and spraying the bamboo with a systemic herbicide over an 18-month period

Phase 2 includes the mechanical excavation of the dead bamboo rhizomes after the completion of phase 1

Phase 3: Rhizome Containment recommends the installation of a root barrier to 60cm depth after the completion of phase 2

I find the detail in proposed Phases 1 & 2 necessary; however, I find the root barrier proposed in Phase 3 to be unnecessary, as the primary objective is the eradication of the bamboo.

Mr Tesoriero suggests the reasonable costs of Recommended Treatment Plan (No 30 Rymill Road) in section 6 of this report (Exhibit 1) for Phase 1 is between \$2,500 and \$3,500 and the estimated costs of works in Phase 2 is between \$3,000 and \$4,000. I find these estimates to be reasonable.

The Recommended Treatment Plan (No 28 Rymill Road) includes:

Phase 1: Spot Chemical Treatment: Concurrent spot-treating of rogue shoots emerging in the rear lawn of No 28 during Phase 1 of the No 30 Rymill Road proposed works.

Phase 2: Localised Rhizome Removal: Minor manual spade tracing and removal of dead rhizome lines once subterranean chemical treatment is complete.

Phase 3: Lawn Rectification- Topdressing and re-turfing (if necessary) to localised excavated areas.

Mr Tesoriero suggests the reasonable Costs of Recommended Treatment Plan (No 28 Rymill Road) in section 8 of this report (Exhibit 1) for Phase 1 is between \$1,600 and \$2,400, Phase 2 is between \$1,000 and \$2,000 and Phase 3 is \$600-\$900. I find these estimates to be reasonable.

Requirement for Concurrent Works

For the eradication of the bamboo to be successful, the proposed works need to be completed concurrently to ensure the systemic herbicide is effectively absorbed by the whole bamboo clump. Ideally the same contractor performs the works on both properties on the same days.

Mr Michaelian asserted that Homes NSW is unable to complete works on private land due to insurance restrictions. Therefore, the applicant will need to organise the timing payment for the works at No 28 Rymill Road. Mr Michaelian indicated that Homes NSW will provide the contact details of their chosen contractor directly to the applicant giving them sufficient time to organise the fee proposal and schedule the systemic herbicide treatments in Phase 1 concurrently.

Consideration of relevant matters at s 12

I have considered all matters at s 12 of the Trees Act and discuss the relevant matters below.

Location of the bamboo

It is clear that the majority of the bamboo is located within and originated on the respondent's land and has spread onto the applicant's land (s 12(a)).

Council consent is not required to remove the bamboo

The properties are within the City of Blacktown Council (Council) area. Council would not require consent for either party to remove bamboo as bamboo is a listed weed species by the Department of Primary Industries

(s 12(b)).

Impacts of pruning

Pruning the bamboo would not prevent it causing damage, so impacts of pruning need not be considered (s 12(b2)).

Various benefits of the bamboo

No benefits or values have been created by this clump of bamboo (s 12(b3), (c), (d), (e), (g)).

Actions of the applicant

The applicant has repaired and replaced a section of the sewer pipe with PVC piping without notifying the respondent for approximately 18 months. Culms that have risen in the lawn have been cut and poisoned without success:

(s 12(h)(ii)).

Actions of the respondent

The respondent commissioned the Arborist Report by Greg Tesoriero (CPS Planning) (Exhibit 1) which details the issues and provides recommendations for both properties. The respondent's tenant recently cut all the bamboo on their land to ground level to prevent it causing damage in the short term (s 12 (h)(ii)).

Other Relevant Matters

The parties do not dispute that the bamboo should be removed. The Court may make orders for its removal. Even though the respondent will be ordered to pay for its removal, each party will need to make an effort to successfully eradicate the bamboo (s 12 (j)).

The applicant was unable to obtain a formal quotation for the proposed works within the Court's timeframe due to access issues with the respondent's tenant. (Exhibit C). In the absence of a formal quotation, I find the cost estimates for the proposed works in the Arborist report by Greg Tesoriero (CPS Planning) (Exhibit 1) to be sufficient to guide the parties to the likely costs involved:

(s 12(j)).

Review of proposed orders

In line with s 9 of the Trees Act, If the Court agrees that the proposed orders are appropriate “to remedy, restrain or prevent damage to property, or to prevent injury to any person”, the Court will make those orders. However, if the Court considers that some other orders are more appropriate, the Court will make those orders which it considers appropriate and is not required to accept the orders proposed by the parties (see *Breen & Anor v Caronna & Anor (No 2)* [2008] NSWLEC 1424).

Due to the reasons set out above, I will not order compensation for the previous sewer pipe blockage and repair. The proposed orders for compensating the applicant for bamboo eradication on their property are reasonable.

I do not find the proposed root barrier at 30 Rymill Road, Tregear necessary, as the primary goal is to eradicate the bamboo from both properties.

For the bamboo eradication to be successful, the works on both properties need to be completed concurrently; otherwise, I consider it foreseeable that the bamboo will not be effectively eradicated and this situation will redevelop.

Proposed compensation

As reasoned above, the proposed \$10,000 compensation that has been agreed in principle between the parties is not supported due to the inclusion of the \$3,500 cash plumbing cost from August 2024.

Reimbursement for the bamboo removal works and glyphosate completed in mid-April 2026 as well as the need to cover the expenses of the proposed bamboo eradication works at 28 Rymill Road, Tregear, is considered reasonable.

The applicant’s costs to date include the arborists initial treatment \$330, and glyphosate purchase \$93.50 totalling \$423.50 (excluding the \$3,500 cash for plumbing works).

I find the cost estimates for the proposed works in the Arborist report by Greg Tesoriero (CPS Planning) (Exhibit 1) to be sufficient to guide the parties to the likely costs involved for the works on the applicant’s land. Mr Tesoriero suggests the reasonable costs of Recommended Treatment Plan (No 28 Rymill Road) in section 8 of this report (Exhibit 1) for Phase 1 is between \$1,600 and \$2,400, Phase 2 is between \$1,000 and \$2,000 and Phase 3 is \$600-\$900. Taking the estimated costs at their highest, the proposed works may cost the applicant \$5,300 (excluding GST).

Costs to be reimbursed for works to date include \$423.50 and expected costs for the bamboo treatment fall in at \$5,830 (including GST). A total of \$6,253.50 is to be paid to the applicant by the respondent.

Conclusion

As detailed in the preceding paragraphs, the bamboo concerned has caused and is likely to cause in the near future, damage to the applicant's property. Therefore, the Court can make orders in these proceedings.

Orders

The Court orders:

The application is granted in part, subject to the following orders.

Within 28 days of orders being made by the Court, the respondent is to pay the applicant the sum of \$6,253.50 to reimburse the applicant for the bamboo removal works completed to date and to compensate the applicant for the likely cost of the proposed remedial works to the bamboo encroaching onto the applicant's property.

Within 28 days of orders being made by the Court, the respondent is to share the details of their proposed contractor with the applicant to enable the applicant to make contact with the contractor and obtain a fee proposal.

Within 60 days of orders being made by the Court, the respondent is to commence remedial works to the bamboo at No 30 Rymill Road in accordance with Phases 1 and 2 in section 5 of the respondent's arborist report by Greg Tesoriero (CPS Planning) dated 27 July 2026 (Exhibit 1). The works are to be completed over an 18-month period through to and including Phase 2 – Mechanical removal.

Within 60 days of orders being made by the Court, the applicant is to engage the selected contractor to complete the works in accordance with Phases 1, 2 and 3 that are detailed in section 7 of the respondent's arborist report by Greg Tesoriero (CPS Planning) dated 27 July 2026 (Exhibit 1). The applicant will be required to liaise directly with that contractor for the purpose of coordinating the timing of the bamboo treatment on the applicant's property concurrently with the works to be completed on the respondent's land.

The works in orders (4) and (5) are to be completed in accordance with SafeWork NSW 2026 'Tree works' Code of Practice.

A Austin

Acting Commissioner of the Court

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Decision last updated:

29 September 2026

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