

AUSTRALIA / JUDGMENT

Walker v Newling [2025] NSWLEC 1018

Source: caselaw.nsw.gov.au · Research copy typeset by Esheria. Not court-issued or certified.

Land and Environment Court New South Wales

Medium Neutral Citation: Walker v Newling [2025] NSWLEC 1018 Hearing dates: 6 January 2025
Date of orders: 6 January 2025 Decision date: 06 January 2025 Jurisdiction: Class 1 Before: Galwey
AC Decision: The Court orders:

- (1) The application is granted.
- (2) The respondent is to engage and pay for a suitably qualified and insured horticultural contractor to remove the bamboo along the common boundary shared with the applicants within 60 days of the date of these orders.
- (3) The respondent is to give the applicants 7 days' notice of the works in Order (2) via registered post.
- (4) The respondent is to take all reasonable steps required to prevent the bamboo regrowing.
- (5) If the respondent plants another hedge along the common boundary, it must be of a species that reaches no more than 3 metres in height at maturity and must be maintained at a height no greater than the top of the boundary fence.
- (6) The exhibits are retained. Catchwords: TREES (DISPUTES BETWEEN NEIGHBOURS) – Pt 2A application – neighbouring hedge – bamboo – obstruction of sunlight – whether the obstruction is severe Legislation Cited: Trees (Disputes Between Neighbours) Act 2006, Pt 2A, ss 14A, 14B, 14D, 14E, 14F Category: Principal judgment Parties: Sandra Walker (First Applicant) John Walker (Second Applicant) Brad Newling (Respondent) Representation: S Walker (Self-represented) (First Applicant) J Walker (Self-represented) (Second Applicant) B Newling (Self-represented) (Respondent) File Number(s): 2024/403813 Publication restriction: Nil

Judgment

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

Background

1. COMMISSIONER: Sandra and John Walker (the applicants) and Brad Newling (the respondent) own neighbouring residential properties in Charlestown. The Walkers' rent out their property; Mr Newling lives at his property with his mother. From the outset of these proceedings, it was clear that the relationship between the parties has been hostile for some time, with disputes ranging across several issues. These proceedings deal only with the dispute around a bamboo hedge on Mr Newling's property. The Walkers claim the hedge obstructs sunlight to windows of their dwelling and seek orders for its removal.
2. The hearing took place onsite, allowing the Court to inspect the trees, both properties and all relevant issues. The parties were self-represented.

The trees

1. Several years ago, Mr Newling planted a row of slender weavers bamboo (*Bambusa textilis* var. *gracilis*) in the narrow bed between his driveway and the dividing fence on the common boundary shared with the Walkers. The bamboo forms a continuous screen for 20–25 metres along the boundary and reaches a height of up to 7 metres.

Framework for this decision

1. The Walkers have applied to the Court pursuant to s 14B (Pt 2A) of the Trees (Disputes Between Neighbours) Act 2006 (the Trees Act). Trees covered by the Trees Act include bamboo. The bamboo is planted to form a hedge and is more than 2.5 metres tall, so Pt 2A of the Trees Act applies to the bamboo: s 14A(1). The orders sought are orders the Court can make pursuant to s 14D of the Trees Act.
2. Before making orders in these proceedings, I must be satisfied that: * The Walkers made a reasonable effort to reach agreement with Mr Newling: s 14E(1)(a); * The trees severely obstruct sunlight to windows of the Walkers' dwelling: s 14E(2)(a)(i); * The severity and nature of the sunlight obstruction outweigh reasons to avoid interfering with the trees: s 14E(2)(b).

Reasonable effort to reach agreement

1. The parties reached an earlier agreement around other issues through mediation at the Community Justice Centres (CJC). The Walkers wrote to Mr Newling in June 2024 bringing their complaints about the bamboo to his attention. Mr Newling submitted that the CJC would not provide further mediation services to resolve the bamboo dispute after the failure of the earlier agreement. Communications between the parties during the hearing indicated to me that they have little hope of resolving issues between themselves. As it is unlikely that any further effort by the Walkers would end in an agreement, rather than simply escalating the dispute further, I am satisfied that they made a reasonable effort to reach agreement.

The trees severely obstruct sunlight

1. The Walkers' dwelling is separated from the common boundary to the east by only a narrow path. The bamboo grows against and along the dividing fence, reaching above and over the Walkers' roof. It forms a relatively dense screen that fills the vertical distance between the top of the dividing fence and the Walkers' eaves. Although Mr Newling provided photographs showing some sunlight on a window, and submitted that sunlight can pass through the bamboo, it was plain from my own observations that the bamboo obstructs most of the morning sunlight that would otherwise reach windows on the eastern side of the Walkers' dwelling. The three affected windows are bedroom windows – the Walkers did not press the issue of sunlight obstruction to their garage window. As a result, these three bedrooms receive almost no direct sunlight. In the absence of the bamboo, they would receive generous amount of sunlight during the morning throughout the year. I find this is a severe obstruction of sunlight.

Balancing of interests

1. I have considered the relevant matters at s 14F of the Trees Act.
2. The bamboo is close to the boundary. It overhangs the Walkers' dwelling and is close to the dwelling's bedroom windows. It was planted and grew to a height of 2.5 metres while the Walkers have owned their property. Interfering with the trees would not require consent from Lake Macquarie City Council.
3. The Walkers submitted that shading by the bamboo has contributed to a mould problem within their dwelling. Mr Newling submitted that the mould problem predated the bamboo. The presence of mould is not a determinative factor in my decision.
4. The bamboo provides screening between the properties. Despite the potential for this to quell the dispute, it only seems to have provided a point of focus. The Walkers have security cameras along the eastern side of their dwelling. Mr Newling finds this an invasion of his privacy. He submitted that, if not for the bamboo, his mother would not feel safe when gardening in front of their dwelling. I accept that the presence of cameras contributes to the dispute, but I have no powers under the Trees Act to make orders regarding the cameras. The Walkers submitted, and I accept, that a 7-metre hedge that overhangs their dwelling is not required for privacy. Opportunities are available to Mr Newling to create some privacy on his property through other means.
5. The bamboo otherwise has limited environmental value.
6. Other issues raised, including car vandalism, vermin, debris from the bamboo and plant poisoning, are not relevant to my decision.
7. While a shorter hedge might restore sunlight access and maintain some privacy, factors including the nature of the dispute, the behaviour demonstrated by the parties, and the bamboo's rapid growth rate, make it unlikely that such an arrangement would be successful in the long term. For this reason, to remedy the sunlight obstruction, I am inclined to order removal of the bamboo rather than order its ongoing maintenance. To prevent the

obstruction recurring, a further order will limit the height of any replacement hedge planted by Mr Newling.

Orders

1. The Court orders:
 1. The application is granted.
 2. The respondent is to engage and pay for a suitably qualified and insured horticultural contractor to remove the bamboo along the common boundary shared with the applicants within 60 days of the date of these orders.
 3. The respondent is to give the applicants 7 days' notice of the works in Order (2) via registered post.
 4. The respondent is to take all reasonable steps required to prevent the bamboo regrowing.
 5. If the respondent plants another hedge along the common boundary, it must be of a species that reaches no more than 3 metres in height at maturity and must be maintained at a height no greater than the top of the boundary fence.
 6. The exhibits are retained.

D Galwey

Acting Commissioner of the Court

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated. Decision last updated: 16 January 2025

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.caselaw.nsw.gov.au/decision/1946cb632d947976170bc852>

CASE PAGE <https://chat.esheria.ai/case-law/australia/walker-v-newling-2025-nswlec-1018-2025>

Prepared on 26 October 2026 · Esheria