



Civil and Administrative Tribunal New South Wales

Medium Neutral Citation:	Rose v Graham & Wyn [2015] NSWCATCD 92
Hearing dates:	14 July 2015
Decision date:	05 August 2015
Jurisdiction:	Consumer and Commercial Division
Before:	P Boyce, Senior Member
Decision:	<ol style="list-style-type: none">1 The common boundary line between the adjoining lands is to be determined by a registered surveyor and pegged at the applicants' sole expense.2 16 metres of the existing dividing fence between the applicants' and the respondents' adjoining lands is to be demolished and removed and the fence line cleared sufficiently to allow the fencing work to be carried out as part of the fencing work the subject of these orders;3 A hardwood lapped paling fixed from the respondents side of the dividing fence 1.8 metres high 16 metre long is to be erected on hardwood rails and supported by galvanised steel posts core drilled (if necessary) and concreted into the ground to a depth of at least 60cm on the common boundary line between the applicant's and the respondents' adjoining lands;4 The height of the fence is to be measured from the ground level (existing) of the respondent's land;5 If it holds a current contractors license to carry out fencing work, Jacks Timber & Fencing Wholesalers is to carry out the fencing work in accordance with its quote numbered 31919.6 If Jacks Timber & Fencing Wholesalers is not established by the applicants to be licensed to carry out fencing work within 2 weeks of the date of these orders, then: Both the applicants and the respondents are to obtain a quote for the fencing work specified in these orders within 4 weeks of the date of these orders. The applicants and the respondents are to agree on the quote to be accepted. If the applicants and the respondents cannot agree on the quote to be accepted within 6 weeks from the date of these orders, then the quotes are to be referred to the Tribunal so that the

Tribunal will choose which contractor is to carry out the fencing work.

In making its decision the Tribunal will not accept any further submission from the parties as to the suitability of the quote.

The quote to be accepted by order of the Tribunal may not necessarily be the lowest or least costly quote; Acceptance of the quote by the Tribunal will be determined on the basis of compliance with the scope of works as set out in these orders and the license status of the fencing contractor submitting the quote; and, In the absence of either party submitting a quote within 6 weeks of the date of these orders, then the only quote submitted may be accepted by the Tribunal if it otherwise complies with these orders.

7 The applicants must pay the whole cost of the fencing work to the Fencing Contractor and will be the only party to give instructions to the Fencing Contractor in relation to the carrying out of the fencing work.

8 Subject to availability of the fencing contractor, the fencing work is to be completed within three (3) months of the date of these orders.

9 The fencing work is to be carried out in a good and workmanlike manner using new materials.

10 The fencing contractor is to be paid on the day the fencing work is completed;

11 The respondents are to pay to the applicant their contribution, being \$1,124.00 if the fencing works are carried out by Jacks Timber & Fencing Wholesalers in accordance with its quote numbered 31919, or one half of the actual cost of the fencing work if the fencing work is carried out by other than Jacks Timber & Fencing Wholesalers, within seven (7) days of completion of the fencing work, without deduction or allowance.

Catchwords:	Sufficient fence; licensed contractor; dividing fence as an exempt and complying development
Legislation Cited:	Dividing Fences Act 1991 Home Building Act 1989 Home Building Regulation 2014 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
Cases Cited:	Alwiah v Watts and anor [2004] NSWSC 948 Brown v Doyle [2012] NSWSC 1269 Larney v Johannson [2012] NSWSC 1297
Category:	Principal judgment
Parties:	David Rose and Anna Rose (applicants) Andrew Graham and Trish Wyn (respondents)

Representation:	Applicant: Litigants in person Respondent: Litigants in person
File Number(s):	COM 15/10357
Publication restriction:	Unrestricted

REASONS FOR DECISION

BACKGROUND

- 1 The applicants are the owners of [***] Street, Leichhardt (called in these Reasons for Decision “the applicants’ land”).
- 2 The respondents are the owners of [***] Street, Leichhardt (called in these Reasons for Decision “the respondents’ land”).
- 3 The applicants’ and the respondents’ lands adjoin and they share a common boundary.
- 4 Between the adjoining lands is an existing dividing fence being a hardwood lapped paling fence with hardwood posts and a height of about 180cm measured from the applicants’ and about 160cm when measured from the respondents’ land. The rails of the fence face the applicants’ land and the palings are attached from the respondents’ side of the fence. On top of the dividing fence is a timber lattice top of about 60cm.
- 5 That part of the existing fence, being approximately 16 metres long, the subject of this application is alleged by the applicant’s to be in poor condition. The applicants’ evidence is that some posts have rotted at ground level and the fence is leaning towards the applicants’ dwelling. The applicants’ evidence is that the fence fell over during a storm and has been lifted up and then temporarily braced against the applicants’ dwelling.

Notice to Carry Out Fencing Work

- 6 On 4 January 2015 the applicants served a fencing notice pursuant to s 11 of the *Dividing Fences Act 1991* (called in these Reasons for Decision “the Notice”) on the respondents by email. There is no dispute about the method of service of the Notice and the Tribunal finds that the applicants’ have served a notice to carry out fencing work in compliance with the Act on 4 January 2015.
- 7 The Notice proposed that fencing work be carried out as follows:
 - (1) Properties affected (street address)
 - (a) The respondents’ land;
 - (b) The applicants’ land;
 - (2) Position of fencing work:

On the existing fencing line
 - (3) Fencing Work proposed to be carried out:

Length of fence: 16 Metres

Height of fence: 1.8 metres from the higher ground level

Type of fence: treated pine lapped paling

(4) Estimated Cost:

Itemised as per attached quote for the 16 m adjoin section and relevant retaining only. (the quote attached from R & S Company Fencing numbered 1400, dated 2 January 2015 quoted a cost of \$160 to remove the existing fence, and \$1488.00 to supply and erect a treated pine lapped paling fence with galvanised posts at \$83 per lineal metre for the 16 metre length proposed)

(5) Apportionment of Cost:

David and Anna will pay for the fencing work and will be paid half the estimated cost by Andrew and Trish on completion.

8 The respondents did not agree to the proposed fencing work as set out in the Notice.

APPLICATION

9 On 25 February 2015 the applicants filed an Application with NCAT seeking orders for the fencing work proposed by the Notice.

10 The applicants now prosecute that Application.

JURISDICTION AND LEGISLATION

11 The general principles of the *Dividing Fences Act* are set out in s 6, which states:

(1) An adjoining owner is liable, in respect of adjoining lands where there is no sufficient dividing fence, to contribute to the carrying out of fencing work that results or would result in the provision of a dividing fence of a standard not greater than the standard for a sufficient dividing fence.

(2) This section applies whether or not a dividing fence already separates the adjoining lands.

12 Section 4 of the Act sets out the requirements to make a determination of what is a sufficient dividing fence as follows:

In any proceedings under this Act, the Local Court or the Civil and Administrative Tribunal is to consider all the circumstances of the case when determining the standard for a sufficient dividing fence for the purposes of this Act, including the following:

- (a) the existing dividing fence (if any),
- (b) the purposes for which the adjoining lands are used or intended to be used,
- (c) the privacy or other concerns of the adjoining land owners,
- (d) the kind of dividing fence usual in the locality,
- (e) any policy or code relating to dividing fences adopted by the council of the local government area in which the adjoining lands are situated,
- (f) any relevant environmental planning instrument relating to the adjoining lands or to the locality in which they are situated,
- (g) in the case of a dividing fence affecting land the subject of a lease under the Western Lands Act 1901, any order in force under section 18A of that Act.

13 Section 3 of the Act defines the term "fence" as:

fence means a structure, ditch or embankment, or a hedge or similar vegetative barrier, enclosing or bounding land, whether or not continuous or extending along the whole of the boundary separating the land of adjoining owners, and includes:

- (a) any gate, cattlegrid or apparatus necessary for the operation of the fence,

and

(b) any natural or artificial watercourse which separates the land of adjoining owners, and

(c) any foundation or support necessary for the support and maintenance of the fence,

but does not include a retaining wall (except as provided by paragraph (c)) or a wall which is part of a house, garage or other building.

14 “Fencing work” is defined in the Act at s 3 as:

fencing work means:

(a) the design, construction, replacement, repair or maintenance of the whole or part of a dividing fence, and

(b) the surveying or preparation of land (including the trimming, lopping or removal of vegetation) along or on either side of the common boundary of adjoining lands for such a purpose,

and includes:

(c) the planting, replanting and maintenance of a hedge or similar vegetative barrier, and

(d) the cleaning, deepening, enlargement or alteration of a ditch, embankment or watercourse that serves as a dividing fence.

15 Section 4A of the Act defines a “sufficient dividing fence” as:

Determination as to “sufficient dividing fence”

In any proceedings under this Act, the Local Court or the Civil and Administrative Tribunal is to consider all the circumstances of the case when determining the standard for a sufficient dividing fence for the purposes of this Act, including the following:

(a) the existing dividing fence (if any),

(b) the purposes for which the adjoining lands are used or intended to be used,

(c) the privacy or other concerns of the adjoining land owners,

(d) the kind of dividing fence usual in the locality,

(e) any policy or code relating to dividing fences adopted by the council of the local government area in which the adjoining lands are situated,

(f) any relevant environmental planning instrument relating to the adjoining lands or to the locality in which they are situated,

(g) in the case of a dividing fence affecting land the subject of a lease under the Western Lands Act 1901, any order in force under section 18A of that Act.

16 Section 12 of the Act provides for the procedure where agreement cannot be reached between adjoining land owners about a proposed dividing fence as follows:

Procedure when agreement not reached

(1) Adjoining owners may attend a Community Justice Centre in an attempt to reach an agreement concerning the carrying out of fencing work (including the contributions to be made in respect of the work).

(2) If adjoining owners do not agree (within 1 month after one of them has served a notice under section 11) as to the fencing work to be carried out, either owner may apply to the Local Court or the Civil and Administrative Tribunal for an order determining the manner in which the fencing work (if any) is to be carried out.

17 Section 14 of the Act sets out the orders that can be made in respect of an application for fencing work:

Orders as to fencing work

(1) The Local Court or the Civil and Administrative Tribunal may, in respect of an application under this Act, make an order determining any one or more of the following:

- (a) the boundary or line on which the fencing work is to be carried out, whether or not that boundary or line is on the common boundary of the adjoining lands,
- (b) the fencing work to be carried out (including the kind of dividing fence involved),
- (c) the manner in which contributions for the fencing work are to be apportioned or re-apportioned or the amount that each adjoining owner is liable to pay for that work,
- (d) which portion of the dividing fence is to be constructed or repaired by either owner,
- (e) the time within which the fencing work is to be carried out,
- (f) the amount of any compensation (in the form of an annual payment to either of the adjoining owners) in consideration of loss of occupation of any land,
- (g) that, in the circumstances, no dividing fence is required in respect of all or part of the boundary of the adjoining lands.

(1A) Despite subsection (1), no order may be made for the carrying out of fencing work on critical habitat within the meaning of the Threatened Species Conservation Act 1995 without the consent of the Director-General of National Parks and Wildlife.

(2) The occupation of land on either side of a dividing fence, as a result of an order determining that fencing work is to be carried out otherwise than on the common boundary of the adjoining lands, is not taken to be adverse possession as against the owner or to affect the title to or possession of the land, except for the purposes of this Act.

APPLICANTS EVIDENCE AND SUBMISSIONS

18 The Applicants evidence is contained in the bundle of documents filed by the applicants with the Tribunal on 1 May 2015, 8 May 2015, 29 May 2015 and a copy of an email dated 9 July 2015 to and from the applicants to the Compliance Officer of Leichhardt Municipal Council, all admitted as exhibits as follows:

- (a) Exhibit 1 May 2015:
 - (i) Applicants' unsigned 7 page submission;
 - (ii) A copy of the notice to carry out fencing work dated 4 January 2015;
 - (iii) A copy of the email to which the Notice was attached dated 4 January 2015;
 - (iv) A copy of the quote of from R & S Fencing dated 2 January 2015;
 - (v) A copy of letters to a from the applicants to the respondents dated 6, 21, 23, 25 and 29 January 2015 in an attempt to reach agreement about the proposed fencing work;
 - (vi) A copy of emails to and from the applicants and the respondents dated 7, 8, 9, 10, 11, 12, 16, 19, 23, 25, 28, 29 and 30 January 2015 in a further attempt to reach agreement about the proposed fencing work;
 - (vii) A copy of "screen shots" of the applicants mobile telephone screen showing text messages sent from the applicants to the respondents and their responses comprising more than 61 messages between 2 January and 18 February 2015;

- (viii) A copy of the application made to NCAT with attachments;
- (ix) 7 Photographs taken by the applicants of the subject fence and a further 3 photographs of fences in the locality depicting the style of paling fence with steel posts proposed;
- (x) A copy of the website www.alldayfencing.com.au describing the types of commonly available fencing;
- (xi) A copy of the website www.landscapesupplies.com.au describing treated pine steel post fence types and hardwood paling fence types with standard and steel posts;
- (xii) A copy of the Australian Timber Importers Federation "Timber, Durability & External Applications" (www.timber.net.au/images/downloads/exterior/timber_users_guide_01);
- (xiii) A copy of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 Reg 2.33 and 2.34 Development Standards ("SEPP");
- (xiv) 5 Photographs taken by the applicant of paving laid against the existing fence, 20cm submerged fence and excavation along the fence line at the rear of the property;
- (xv) A copy of the Australian Timber Importers Federation "TimberFences"(www.timber.net.au/images/downloads/exterior/timber_fences);
- (xvi) A copy of the Department of Primary Industries Technical Publication Forest Resources Research Number 22 ISSN: 0155-7548-Termites in New South Wales;
- (xvii) A copy of a survey sketch by Hill and Blume Consulting Surveyors dated 13 March 2015 showing selected detail and levels over the applicants' land (it is noted that the common boundary is not identified, plotted or pegged);
- (xviii) A copy of emails to and from the applicants and Leichhardt Municipal Council 23 March 2015 confirming that a stop work order issued by the council did not affect the proposed dividing fence and this application;
- (xix) Copies of the relevant deposited plans and the title searches for both the applicants' and the respondents' land;
- (xx) A copy of an email from the Compliance Officer at Leichhardt Municipal Council dated 9 July 2015 stating that due to the compliance with the stop work order and subsequent development approval the orders have been finalised.
- (xxi) A quote for a hardwood fence from Jacks Timber & Fencing Wholesalers numbered 31919 including 1.8 metre high paling hardwood fence 3 x 75mm x 50mm, hardwood rails, 15mm thick hardwood palings 50mm x 50mm galvanised steel posts, concrete removal of existing fence and core drilling for a total price of \$2,248.00.
- (xxii) A quote from Jacks Timber & Fencing Wholesalers for the similar fence in treated pine for a total price of \$1949.20;
- (xxiii) A copy of the Notice of Determination of Development Application for landscape works at the rear of the applicants land dated 18

May 2015;

- (b) Final submission filed 17 July 2015 in compliance with the Tribunal direction to file them by that date.

RESPONDENTS EVIDENCE AND SUBMISSIONS

19 The Respondents' evidence is contained in the documents that they have submitted to the Tribunal on 9 June 2015 and admitted as the respondents exhibit the Tribunal notes late compliance with the direction of the Tribunal to file the documents on which they rely by 8 June 2015. The Tribunal grants leave to file the documents notwithstanding the failure to comply. The documents include (but where a documents is duplicated with the applicants documents it is not included in the list):

- (i) A 12 page unsigned statement by the respondents;
- (ii) A chronology of events;
- (iii) Letters and emails repeated from the applicants bundle and including letter dated 29 January 2015 from the respondents to the applicants
- (iv) 6 photographs taken by the respondents showing alleged encroachment of boundary by applicants decking and other structure and erosion of soil;
- (v) Copy of letter from respondents to Leichhardt Municipal Council dated 15 April 2015 about proposed landscaping and retaining wall the subject of the applicants' development application.
- (vi) A copy of the letter from Leichhardt Municipal Council dated 18 May 2015 to the respondents;
- (vii) A copy of the development application assessment;
- (viii) 9 photographs taken by the respondents purporting to address their privacy concerns if lattice on top of the fence is removed;
- (ix) 2 photographs taken by the respondents purporting to address their security concerns addressed by lattice on top of the fence;
- (x) A photograph taken by the respondents of a new section of hardwood paling fence installed on the applicants rear boundary;
- (xi) A copy of emails dated 8 May 2015 already exhibited to the Tribunal;
- (xii) 3 quotes from Crescent Timber dated 5 May 2015 for:
 - 1. Metal posts and brackets for \$475.42;
 - 2. Treated pine paling 1.8 metres high with treated pine posts 2.4m long, rails and concrete for \$822.90;
 - 3. Harwood palings, 1.8 metres high with hardwood posts and rails and concrete \$1,276.90
- (xiii) Letter showing proposed mediation at the Community Justice Centre cancelled;
- (xiv) Copies of emails after the first Tribunal hearing firstly to propose terms of settlement and then also to identify an issue about the legal status of a right of way benefiting the respondents land and

burdening the applicants land not shown on the Real Property Act Register.

- 20 The respondent sought to comply with the directions of the Tribunal permitting the filing of submissions by the respondents by 24 July 2015. The respondents sought to email their submissions on that day. The submissions included with the email were not accepted by the Registry. The respondents delivered their submissions to the Registry on 28 July 2015. Notwithstanding the late filing of the respondents' submissions the Tribunal has read those submissions and considered them in coming to its determination.

FINDINGS

- 21 The Tribunal has considered all the submissions placed before it and the evidence tendered.
- 22 If the Tribunal finds that there is no sufficient dividing fence then the jurisdiction granted by the Act to make fencing orders is triggered. This finding is fundamental to making any orders under s 14 of the Act.
- 23 Malpass M (as he then was) found in *Alwiah v Watts and anor* [2004] NSWSC 948:
The content of the Act demonstrates that jurisdiction to make orders is dependent upon a finding that there is an insufficient dividing fence between the adjoining lands. Unless the finding is made, no orders can be made. Such a finding gives rise to the liability referred to s6 and enables the making of orders pursuant to s14.
- 24 Hidden J in *Brown v Doyle* [2012] NSWSC 1269 and Adams J in *Larney v Johannson* [2012] NSWSC 1297 both cite with approval the above passage.
- 25 Once the Tribunal finds that there is no sufficient dividing fence for the subject of an application before it, it is then open to the Tribunal to determine the standard of a sufficient dividing fence for which adjoining land owners should contribute in accordance with the Act.
- 26 The Tribunal is satisfied that the existing dividing fence for the 16 metres of the dividing fence the subject of this application is not a sufficient dividing fence for the purpose of the Act. The Tribunal is satisfied that it has jurisdiction to consider the application.
- 27 Section 12(2) of the Act permits either land owner to make an application for an order determining the manner in which the fencing work is to be carried. That phrase "the fencing work" contemplates the work proposed in the notice to carry out fencing work.
- 28 The applicants are entitled to bring an application to the Tribunal based on a notice to carry out fencing work served by them on their adjoining land owners.
- 29 The respondents in defence of the application seek to agitate a number of issues beyond the jurisdiction of the Tribunal.
- 30 Notably the issue of the retaining wall to be constructed by the applicants within their land. The evidence before the Tribunal is that whether the fence is erected on timber or steel posts they will be concreted into holes dug or drilled for the purpose. It is not necessary for the proposed retaining wall to support the respondents' land to be an integral member of the fences structure.

- 31 The Tribunal finds that the retaining wall is not necessary for the support or foundation of the fence and is therefore not within the jurisdiction of the Tribunal under the Act. The Tribunal will not consider this issue of the respondents further.
- 32 The respondents also sought to have the Tribunal consider the issue of the privacy and security screen installed on the top of the existing dividing fence and for it to be considered for the proposed dividing fence.
- 33 The exempt and complying development provisions of SEPP 2008 at reg 2.34 relate to a dividing fence of less than 1.8 metres. That is the application now before the Tribunal. If the Tribunal is to consider a higher fence, then the parties must satisfy the Tribunal that they have development consent to erect a fence structure higher than 1.8 metres. There is no evidence before the Tribunal any such consent has been obtained. The Tribunal will not consider the issue of the increase in height of the fence above 1.8 m proposed by the respondents' caused by the addition of the lattice screening. If the respondents seek to have lattice screening above the dividing fence , then they will need to obtain development approval from the consent authority and the applicants to attach any additional structure to the dividing fence otherwise it will need to be supported by its own structural members from within the respondents' land.
- 34 The respondents also wish to include for consideration in determining the application an issue of gates on the common boundary of the alleged right of way servicing each parcel of land. The application for the 16 metres of fence does not extend to those gates. It is the applicants' application. They have not sought orders in relation to the gates. The Tribunal must deal with the application before it. The issue of gates is not determined in these proceedings. In ruling against consideration of the gates on the applicants' objection, the respondents may have a cause of action in relation to them in this Tribunal or in another jurisdiction and the finding of the Tribunal does not limit that cause in any way.
- 35 The respondents further contend that the height of the fence should not be measured from the top of their paving, but from ground level. They adduce no evidence to assist the Tribunal in determining the point from which the height of the fence should be measured. SEPP 2008 Reg 2.34 provides for a complying development to be no more than "1.8m above ground level (existing)". That is, no more than 1.8m above the natural ground level before the proposed development. The effect is that the fence should be measured from the ground level below the respondents' brick paving so that the finished height of the fence is no more than 1.8 m above that ground level.
- 36 The respondents also contend that any proposed fencing should be constructed of hardwood and hardwood posts. The applicants contend that if so, then such a fence is above the specification of a sufficient dividing fence and any additional cost should be borne by the respondents pursuant to s 7 (2) of the Act. The Tribunal has no evidence before it that allows it to make a finding that the standard of a sufficient dividing fence in the locality is a treated pine fence, merely because it is cheaper does not satisfy the test that it is of a standard that it is a sufficient dividing fence. The photographs of other

treated pine paling fences in the locality do not of themselves support a finding that treated pine fences are of a type usual in the locality. Of the criteria in s 4A, the Tribunal finds that the existing fence is hardwood; the fence type usual in the locality is unable to be determined although the Tribunal notes that the applicants have a section of new hardwood fence at the rear of their land and the respondents concerns for the preferred use of hardwood other than treated pine because of the respondents susceptibility to the chemicals used to treat pine. As such the Tribunal finds that a hardwood fence is a sufficient dividing fence.

- 37 Another issue is whether a sufficient dividing fence should use steel or hardwood posts. The respondents object to the durability of steel posts. The applicants have adduced material in their evidence that suggests that galvanised posts will have similar durability as timber posts. Their advantage is that they take up a lesser “footprint” than the cross section of a timber post. Thereby reducing the land taken up by the width of the fence. The Tribunal has regard for the inner city densely settled area where the lands are located and finds that galvanised steel posts are the preferred posts so as to preserve as much of the little land there is to use.
- 38 As to the line of the fence, the application originally sought orders for the dividing fence to be placed on the line of the existing fence. The applicants now seek to have the line of the fence to be on the common boundary line. There is no evidence before the Tribunal as to the line of location of the common boundary line. The applicants have submitted that since the hearing they have had the common boundary line marked by a registered surveyor. The Tribunal is satisfied that new dividing fence must be erected on the line of the common boundary.
- 39 The Tribunal makes no determination in regard to the location of the common boundary line having regard to the unknown location of the right of way. Both parties informed the Tribunal that issue of the legality of the right of way had been resolved between them and is not considered further by the Tribunal.
- 40 As to the quotes for the proposed fencing works tendered to the Tribunal, the quote for a hardwood fence from:
- (a) The applicants’ contractor, Jacks Timber & Fencing Wholesalers; the Tribunal notes that the quote is for supply and install of the fencing work although there is no evidence before it that the contractor is licensed to carry out fencing work.
 - (b) The respondent’s contractor, Crescent Timber & Hardware; is a wholesaler of timber and does not display any contractors license to carry out fencing work and there is no evidence on the documents tendered to the Tribunal that it is licensed or not.
- 41 Fencing falls within the prescribed trade category of residential building work under Regulation 13(b) of the *Home Building Regulation 2014*. Section 4 of the *Home Building Act 1989* prescribes that unlicensed contractors must not carry out residential building work.
- 42 In the absence of evidence of a preferred licensed contractor, then the Tribunal is

unable to make an unconditional decision as to the choice of contractor and orders will be framed conditional upon the contractor to carry out the work to be licensed.

43 The Tribunal will make orders for fencing work as set out below.

ORDERS

44 The Tribunal Orders:

- (1) The common boundary line between the adjoining lands is to be determined by a registered surveyor and pegged at the applicants' sole expense.
- (2) 16 metres of the existing dividing fence between the applicants' and the respondents' adjoining lands is to be demolished and removed and the fence line cleared sufficiently to allow the fencing work to be carried out as part of the fencing work the subject of these orders;
- (3) A hardwood lapped paling fixed from the respondent's side of the dividing fence 1.8 metres high 16 metre long is to be erected on hardwood rails and supported by galvanised steel posts core drilled (if necessary) and concreted into the ground to a depth of at least 60cm on the common boundary line between the applicant's and the respondents' adjoining lands;
- (4) The height of the fence is to be measured from the ground level (existing) of the respondent's land;
- (5) If it holds a current contractor's license to carry out fencing work, Jacks Timber & Fencing Wholesalers is to carry out the fencing work in accordance with its quote numbered 31919.
- (6) If Jacks Timber & Fencing Wholesalers is not established by the applicants to be licensed to carry out fencing work within 2 weeks of the date of these orders, then:
 - (i) Both the applicants and the respondents are to obtain a quote for the fencing work specified in these orders within 4 weeks of the date of these orders.
 - (ii) The applicants and the respondents are to agree on the quote to be accepted. If the applicants and the respondents cannot agree on the quote to be accepted within 6 weeks from the date of these orders, then the quotes are to be referred to the Tribunal so that the Tribunal will choose which contractor is to carry out the fencing work.
 - (iii) In making its decision the Tribunal will not accept any further submission from the parties as to the suitability of the quote.
 - (iv) The quote to be accepted by order of the Tribunal may not necessarily be the lowest or least costly quote;
 - (v) Acceptance of the quote by the Tribunal will be determined on compliance with the scope of works as set out in these orders and the license status of the fencing contractor submitting the quote; and,
 - (vi) In the absence of either party submitting a quote within 6 weeks of the date of these orders, then the only quote submitted may be accepted by the Tribunal if it otherwise complies with these orders.
- (7) The applicants must pay the whole cost of the fencing work to the Fencing

Contractor and will be the only party to give instructions to the Fencing Contractor in relation to the carrying out of the fencing work.

- (8) Subject to availability of the fencing contractor, the fencing work is to be completed within three (3) months of the date of these orders.
- (9) The fencing work is to be carried out in a good and workmanlike manner using new materials.
- (10) The fencing contractor is to be paid on the day the fencing work is completed;
- (11) The respondents are to pay to the applicant their contribution, being \$1,124.00 if the fencing works are carried out by Jacks Timber & Fencing Wholesalers in accordance with its quote numbered 31919, or one half of the actual cost of the fencing work if the fencing work is carried out by other than Jacks Timber & Fencing Wholesalers, within seven (7) days of completion of the fencing work, without deduction or allowance

P Boyce

Senior Member

Civil and Administrative Tribunal of New South Wales

5 August 2015

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar

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Decision last updated: 18 September 2015