

DECISION

Case number: NDR087-23
Applicant: Herbert Thorley
Respondent: Wayne McGee
Kerry Boyle

Before: Member Deane
Date: 26 August 2024
Proceeding type: On-Papers Hearing
Initiating document: Application for a tree dispute

IT IS THE DECISION OF THE TRIBUNAL THAT:

1. Wayne McGee and Kerry Boyle, at their cost, must remove or prune branches of the mock orange hedge:
 - (a) so that no tree is taller than 3.3 metres;
 - (b) so that no branches of any tree extend past the common boundary,by 4:00pm on 31 October 2024.
2. Wayne McGee and Kerry Boyle, at their cost, must undertake ongoing maintenance at least annually so that the trees forming the mock orange hedge are maintained at a height of not more than 3.3 metres and so that no branches of any tree extend past the common boundary. The initial maintenance will occur not later than 31 October 2025, if required.
3. If required, Herbert Thorley must allow Wayne McGee and Kerry Boyle's elected arborist or contractor with appropriate insurances access to his land to undertake the work set out in order no 1 and 2, subject to the giving of three (3) days' written notice of that intention to Herbert Thorley or as agreed between the parties.
4. If Wayne McGee and Kerry Boyle fail to comply with order no 1 or 2, then:
 - (a) Herbert Thorley is entitled to engage an arborist with a minimum qualification of Australian Qualification Framework level 3 in arboriculture with appropriate insurances to obtain a quote to carry out the work set out in order no 1 or 2 in accordance with AS4373-2007 Pruning of Amenity Trees and to dispose of the branches removed or pruned and such arborist may enter Wayne McGee and Kerry Boyle's land between 8.00am and 5.00pm for the purposes of formulating the quote subject to the giving of three (3) days' written notice of that intention to Wayne McGee and Kerry Boyle;
 - (b) Herbert Thorley is entitled to engage an arborist with a minimum qualification of Australian Qualification Framework level 3 in arboriculture with appropriate insurances to carry out the work set out in order no 1 or 2 in accordance with AS4373-2007 Pruning of Amenity Trees and to dispose of the branches removed or pruned and such arborist may enter Wayne McGee and Kerry Boyle's land between 8.00am and 5.00pm for the purposes of carrying out such work subject to the giving

of fourteen (14) days' written notice of that intention to Wayne McGee and Kerry Boyle;

- (c) If Wayne Mc Gee and Kerry Boyle undertake all of the outstanding work set out in order no 1 or 2 prior to the fourteen (14) days written notice period expiring, Herbert Thorley's entitlement to engage an arborist to perform the works and enter Wayne McGee and Kerry Boyle's land is extinguished;
 - (d) The cost incurred by Herbert Thorley in engaging an arborist to undertake any works in accordance with these orders in default of Wayne McGee and Kerry Boyle shall be recoverable from Wayne McGee and Kerry Boyle as a debt without further notice being required to be given.
5. Any Application for costs of the proceedings by a party is to be made by filing in the Tribunal two (2) copies and providing to the other party one (1) copy of any submissions and evidence in support of the Application for costs, by 4:00pm on 27 September 2024.
6. If any such Application for costs is made:
- (a) the other party must file in the Tribunal two (2) copies and provide one (1) copy of any submissions and evidence in response to the party making the Application for costs, by 4:00pm on 25 October 2024;
 - (b) the party making the Application for costs may file in the Tribunal two (2) copies and provide one (1) copy of any submissions and evidence in reply to the other party, by 4:00pm on 8 November 2024;
 - (c) the Application for costs will be determined on the papers based on any documents filed unless a party requests an oral hearing not before 4:00pm on 8 November 2024.
7. If no Application for costs is made in accordance with Order 5 then there shall be no order as to costs.

Signed



Member Deane
Queensland Civil and Administrative Tribunal