

## DECISION

**Case number:** NDR229-12  
**Applicant:** Dean James Clough & Tania Clough  
**Respondent:** Elizabeth Eunice Kempster  
**Before:** Member Howard  
**Date:** 9 May 2014  
**Proceeding Type:** Hearing

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BY CONSENT, IT IS ORDERED:

### Inspection and Works

1. The registered owner of the lot at 59 Beauvardia Street, Cannon Hill (the tree-keeper) will arrange for a suitably qualified independent AQF Level 5 Arborist from an Arboricultural provider agreed from time to time with the registered owner of lot at 61 Beauvardia Street, Cannon Hill (the neighbour) to be contracted to undertake an initial inspection of the trees and to perform or supervise an AQF Level 3 Arborist to perform the initial works specified as follows:-
  - a. In respect of the Lillypilly Tree (Tree 1) prune the upper crown of the Lillypilly tree and re-pollard the lower limbs 2-3 feet away from the boundary to create pollard points that will maintain a leafy aspect;
  - b. In respect of the Ficus Tree (Tree 2);
    - i. Remove one trunk as marked in red on Attachment A;
    - ii. Prune the aerial roots in the space between the fence and the neighbour's property;
  - c. In respect of the Poinciana Tree (Tree 3), undertake works in accordance with the Tribunal's orders;
  - d. Conduct subsequent inspections and make recommendations for maintenance work required at the time of subsequent inspections and then perform or supervise an AQF Level 3 Arborist to perform those recommended maintenance works.
2.
  - a. That the initial inspection and initial works specified in 1(a) to (c) above must be carried out as soon as possible and within 30 days provided that it is carried out before the tawny frogmouths nest in the Poinciana Tree.
  - b. In the event that it cannot be carried out before the tawny frogmouths commence nesting in the Poinciana tree (Tree 3), then it must be completed by 30 December 2014.
3. That the subsequent inspections and maintenance works be carried out each second year from 2016 in the March to April period, provided that an earlier inspection must be arranged in the event of any significant weather or other event which results in any significant and sudden change to any of the three trees.
4.
  - a. In the event that the tree-keeper and the neighbour are unable to reach agreement about the arboricultural provider/s to be engaged to undertake the inspections and works then the tree-keeper must obtain tenders from 2 providers, from which the neighbour may select the provider to be engaged.
  - b. The AQF Level 5 Arborist must be experienced in VTA (Visual Tree Assessment), ULE (Useful Life Expectancy) and QTRA (Qualified Tree Risk Assessment) or TRAK or similar evaluation model for tree assessments.

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Queensland Civil and Administrative Tribunal

5. a. Assessments and reports of the AQF Level 5 Arborist are to be supplied to both parties for review before the initial work and maintenance work is scheduled/undertaken.
5. b. Both parties shall have equal access to the Arborist to seek clarification on any assessment/report before the work is scheduled/undertaken.
6. All required inspections and works shall be scheduled to suit both parties.
7. The tree-keeper and the neighbour must accept any assessment of the AQF Level 5 Arborist that the Useful Life Expectancy Assessment of a tree/s is such that it no longer warrants retention.
8. The AQF Level 5 Arborist engaged from time to time must be provided with a copy of these consent orders and any other current orders of the Tribunal.

## Costs of Inspections and Works

9. The cost of the initial inspection and initial works shall be shared between the tree-keeper and the neighbour as follows:
  - a. 50% each up to an initial total cost of \$2,000; or
  - b. If the total costs for the inspection and works exceeds \$2,000, then \$1,000 by the neighbour and the balance by the tree-keeper.
10. The cost of subsequent inspections and maintenance works shall be shared between the tree-keeper and the neighbour as follows:
  - a. 50% each up to a total cost of \$1,000; or
  - b. If the total costs for the inspection and works exceed \$1,000, then \$500 by the neighbour and the balance by the tree-keeper.

IT IS THE DECISION OF THE TRIBUNAL THAT:

11. The Poinciana tree must be pruned as may be recommended by the AQF level 5 Arborist engaged so that the anticipated overhang at the time of the 2016 and subsequent second annual inspections is no more than 2 metres over the boundary line of the applicant neighbours, Mr and Mrs Clough.

Signed

**Member Howard**  
**Queensland Civil and Administrative Tribunal**

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