

DECISION

Case number: NDR163-20

Applicants: Colin Lestone
Olive Elizabeth Lestone

Respondents: Arnstein Prytz
Lucia Maria Prytz

Before: Member Deane

Delivered on: 13 January 2025

Date: 11 March 2024; 5 June 2024

Proceeding type: Tribunal Hearing

Initiating document: Application for a tree dispute

IT IS THE DECISION OF THE TRIBUNAL THAT:

1. **Arnstein Prytz and Lucia Maria Prytz** must:

- (a) engage an arborist with a minimum qualification of Australian Qualification Framework level 5 in arboriculture with appropriate insurances to provide a report (Level 5 Report);
- (b) at the time of engagement, give to such level 5 arborist a copy of the Tree Assessor's Report dated 9 December 2022 (Tree Assessor's Report), this Decision and the reasons for decision;
- (c) give a copy of the written engagement to **Colin Lestone and Olive Elizabeth Lestone** within seven days of the engagement;
- (d) file in the Tribunal and give a copy of the Level 5 Report to **Colin Lestone and Olive Elizabeth Lestone** within seven days of receipt and no later than **4:00pm on 28 March 2025**.

2. The Level 5 Report must:

- (a) assess and identify which trees in the area identified as G1 in the Tree Assessor's Report are higher than the level of the floor to the upper floor of **Colin Lestone and Olive Elizabeth Lestone's** house such that they obstruct the view from the upper floor given the relative elevation of the land (the Height Restriction);
- (b) assess and identify which trees in the area identified as G1 in the Tree Assessor's Report have the potential to exceed the Height Restriction and assess whether such trees can be safely pruned so that they do not exceed the Height Restriction and if they can be safely pruned, advise on the method and frequency of required pruning;
- (c) assess and identify which trees in the area identified as G1 in the Tree Assessor's Report have a canopy, which extends no further than four metres from the western side of **Arnstein Prytz and Lucia Maria Prytz's** house (the Canopy Restriction) and assess whether such trees can be safely pruned so that they do not exceed the

Canopy Restriction and if they can be safely pruned, advise on the method and frequency of required pruning;

- (d) advise on appropriate trees which may be planted as replacement trees along the boundary and in G1, which do not have the potential to exceed the Height Restriction, or which can be safely pruned to not exceed the Height Restriction and the Canopy Restriction and if they can be safely pruned, advise on the method and frequency of required pruning.
3. **Arnstein Prytz and Lucia Maria Prytz** must engage an arborist with a minimum qualification of Australian Qualification Framework level 3 in arboriculture with appropriate insurances to perform the following work and must give such arborist a copy of the Level 5 Report and the Tree Assessor's Report, if such arborist does not already have a copy:
- (a) remove all trees identified as Tree 1 – Tree 9 in the Tree Assessor's Report, to the extent they have not previously been removed, on or before **4:00pm on 9 May 2025**;
 - (b) remove all trees identified in the Level 5 Report pursuant to Order 2(a) except for any tree identified pursuant to Order 2 (c) to be within the Canopy Restriction on or before **4:00pm on 9 May 2025**;
 - (c) remove all trees, identified in the Level 5 Report, which in the level 5 arborist's opinion cannot be safely pruned to not exceed both the Height Restriction and the Canopy Restriction on or before **4:00pm on 9 October 2025**;
 - (d) perform pruning of trees including pruning of replacement trees as recommended in the Level 5 Report, or in accordance with AS4373-2007 Pruning of Amenity Trees, not less frequently than the intervals recommended in the Level 5 Report.
4. **Arnstein Prytz and Lucia Maria Prytz** must not plant trees along the boundary or in the area identified as G1 in the Tree Assessor's Report, which have a potential to exceed the Height Restriction or the Canopy Restriction, which cannot be safely pruned to not exceed both the Height Restriction and the Canopy Restriction and must remove any such trees planted contrary to this Order, as soon as practicable and not later than 28 days of written request by **Colin Lestone and Olive Elizabeth Lestone**.
5. **Arnstein Prytz and Lucia Maria Prytz** must not allow trees to grow along the boundary or in the area identified as G1 in the Tree Assessor's Report, which have a potential to exceed the Height Restriction or the Canopy Restriction, which cannot be safely pruned to not exceed both the Height Restriction and the Canopy Restriction and must remove such trees as soon as practicable and not later than 28 days of written request by **Colin Lestone and Olive Elizabeth Lestone**.
6. If **Arnstein Prytz and Lucia Maria Prytz** engage an arborist with a minimum qualification of Australian Qualification Framework level 3 in arboriculture with appropriate insurances to perform planting of recommended replacement trees along the boundary in accordance with the Level 5 Report, on or before 4:00pm on 30 June 2025, then **Colin Lestone and Olive Elizabeth Lestone** must pay 50% of the costs of such replanting, within 28 days of receipt of evidence of the amount paid by **Arnstein Prytz and Lucia Maria Prytz** for such replanting.
7. Except as provided for in Order 6, **Arnstein Prytz and Lucia Maria Prytz** will be responsible for all costs associated with Order 1, Order 2, Order 3, Order 4, Order 5 and Order 6.
8. If required **Colin Lestone and Olive Elizabeth Lestone** must allow the level 5 Arborist or minimum level 3 Arborist with appropriate insurances to access their land to undertake the work outlined in or required by Order 1, Order 2, Order 3, Order 4 and Order 5 upon the giving of at least seven days written notice by **Arnstein Prytz and Lucia Maria Prytz**.

9. If **Arnstein Prytz** and **Lucia Maria Prytz** fail to undertake any of the work outlined in or required by Order 1, Order 2, Order 3, Order 4 and Order 5 ('Incomplete Work') **Colin Lestone** and **Olive Elizabeth Lestone** shall be entitled to undertake any of the Incomplete Work in accordance with these Orders. **Colin Lestone and Olive Elizabeth Lestone's** elected arborist shall be entitled to enter **Arnstein Prytz** and **Lucia Maria Prytz's** land and carry out any of the Incomplete Work subject to **Colin Lestone** and **Olive Elizabeth Lestone** giving 14 days written notice of that intention to **Arnstein Prytz** and **Lucia Maria Prytz**.
10. If **Arnstein Prytz** and **Lucia Maria Prytz** undertake all the outstanding Incomplete Work prior to the 14 days written notice period expiring as outlined in Order 9, **Colin Lestone** and **Olive Elizabeth Lestone's** entitlement to enter **Arnstein Prytz** and **Lucia Maria Prytz's** land is extinguished.
11. The costs incurred by **Colin Lestone** and **Olive Elizabeth Lestone** engaging an arborist to undertake any of the Incomplete Work in default of **Arnstein Prytz** and **Lucia Maria Prytz** shall be recoverable from **Arnstein Prytz** and **Lucia Maria Prytz** as a debt without further notice being required to be given.
12. **Colin Lestone** and **Olive Elizabeth Lestone** must pay to **Arnstein Prytz** and **Lucia Maria Prytz** costs fixed in the amount of \$776.98 (incl GST) within 14 days of compliance by **Arnstein Prytz** and **Lucia Maria Prytz** with both Order 3(a) and Order 3(b) or in default of that compliance within 14 days of payment of the amount owing by **Arnstein Prytz** and **Lucia Maria Prytz** in compliance with Orders 10 and 11.
13. Any Application for other costs of the proceedings by a party is to be made by filing in the Tribunal two (2) copies and providing to the other parties one (1) copy of any submissions and evidence in support of the Application for costs by **4:00pm on 28 February 2025**.
14. If any such Application for other costs is made:
 - (a) the other parties 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 21 March 2025**;
 - (b) the party making the Application for costs must file in the Tribunal two (2) copies and provide one (1) copy of any submissions and evidence in reply to the other parties by **4:00pm on 11 April 2025**;
 - (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 **4:00 pm on 11 April 2025**.
15. If no Application for costs is made in accordance with these orders, then there shall be no order as to other costs.

Signed



Member Deane
Queensland Civil and Administrative Tribunal