

DECISION

Case number: NDR006-26
Applicant: Karen Kennedy
Steven Fuller
Respondent: Raymond Bacchiella
Josephine Bacchiella

Before: Member Chapple
Date: 30 September 2026
Proceeding type: Compulsory Conference
Initiating document: Application for a tree dispute filed on 15 January 2026

IT IS THE DECISION OF THE TRIBUNAL THAT:

1. The Respondents must pay to the Applicants \$392.40, being the filing fees for this application, by:
4:00pm on 30 October 2026.
2. The Respondents must pay to the Applicants \$600.00 by way of reimbursement for the Respondents' half share of the cost of the Tree Assessment Report, prepared by Mr Pieter (Willem) Taylor and dated 23 August 2026, by:
4:00pm on 30 October 2026.
3. The Respondents must cause the removal of the tree the subject of this application (being the Poinciana tree located close to the south-western boundary of 13 Ann Street, Ingham) at the Respondents' expense, by:
4:00pm on 30 October 2026.
4. In the event the Respondents or their contractor requires access to the Applicants' property at 10 Francis Street, Ingham to quote on and/or carry out the tree removal, the Applicants must grant access provided the Respondents have given the Applicants three days' prior written notice, by letter, email or text message.
5. The Respondents will be responsible for the cost of rectification of any damage caused to the Applicants' property by or as a result of the tree removal.

REASONS FOR DECISION

- a) The Tribunal directed the appointment of an appropriately qualified arborist to carry out an inspection and provide an assessment report in relation to the tree. The Applicants paid the full cost of the inspection and report, being \$1200.00. The Tribunal directed the Respondents to advise the Applicants and the Tribunal whether they were willing to contribute to the cost, however the Respondents failed to comply with the Tribunal's direction and have not made a contribution to the cost.

- b) Arborist Mr Pieter (Willem) Taylor carried out an inspection of the tree on 8 August 2026 and prepared a Tree Assessment Report dated 23 August 2026.
- c) The Tribunal directed that the Tree Assessment Report would be the only expert evidence from an arborist in the proceeding and neither party would be allowed to produce further expert evidence from an arborist without leave of the Tribunal. No such leave has been sought and no other expert evidence from an arborist is before the Tribunal.
- d) A compulsory conference was scheduled initially for 17 July 2026 however was rescheduled to 30 September 2026 to allow time for the tree inspection to be carried out and the Tree Assessment Report to be prepared and considered by the parties. The purpose of the compulsory conference is to give the parties the opportunity to have the matter mediated by a Tribunal member in an effort to settle the matter and finalise the proceeding by consent.
- e) A notice of the compulsory conference issued by email to the parties on 8 September 2026. The notice advised the parties they must attend the conference either in person or remotely. At the appointed commencement time of 9:15am on 30 September 2026, a Tribunal hearing support officer first checked that neither party had attended the Tribunal in person, then opened the Teams link sent to the parties and ascertained that neither party was waiting in the virtual lobby. The officer then called the Applicants who requested to attend the conference by telephone. I consented to this request. The officer then called the Respondents on two separate occasions, several minutes apart, leaving messages that the conference would proceed in their absence. The Respondents failed to respond and failed to attend the compulsory conference.
- f) I proceeded to conduct the compulsory conference with the Applicants. I discussed the contents of the Tree Assessment Report with the Applicants and that I intended to make an order for the removal of the tree by the Respondents at the Respondents' expense on the basis of the safety risk due to the tree's poor condition resulting from its structure and vulnerability to wind force and extensive decay.
- g) Section 72 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('the QCAT Act') provides that if a party to a proceeding does not attend a compulsory conference, the conference may proceed in the party's absence, and the member presiding may, provided they are satisfied the absent party has been served, make a decision adverse to the absent party and make any appropriate orders, including orders about costs.
- h) Further, section 48 of the QCAT Act provides that if the Tribunal considers a respondent is acting in a way that unnecessarily disadvantages the applicant by not complying with a Tribunal order or direction or failing to attend a mediation without reasonable excuse, the Tribunal may make its final decision in the proceeding in the applicant's favour and make an order under section 102 for reasonable costs incurred unnecessarily.
- i) I am satisfied the requirements of sections 72 and 48 of the QCAT Act have been met.
- j) The Tribunal derives its jurisdiction to determine tree disputes from the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (Qld) ('the Enabling Act').

- k) I am satisfied on the evidence the Tribunal has jurisdiction to determine this proceeding under the Enabling Act.
- l) Section 71 of the Enabling Act states the Tribunal's primary consideration is the safety of any person. Under section 66, the Tribunal may make orders it considers appropriate in relation to a tree to prevent serious injury to any person or serious damage to the neighbour's (the Applicants') land or property, including an order to remove the tree. Section 72 provides that a living tree should not be removed or destroyed unless the issue relating to the tree can not otherwise be satisfactorily resolved.
- m) The Tree Assessment Report comprehensively addresses the issues the Tribunal is required to consider under the Enabling Act. I accept the report. I summarise the report's key observations and findings as follows:
 - i. Previous pruning of the tree has resulted in an unbalanced structure that tends towards the Respondents' property with epicormic regrowth posing a future safety risk.
 - ii. Removal of the lower and outer branches of the tree has left the leader branches and crown exposed to wind load.
 - iii. There is extensive decay in the tree's roots, root collar, trunk and lower canopy.
 - iv. There is fungal disease (Brown Root Rot) on a root on the north-west side of the tree. This is common in poincianas making them susceptible to failure; eventually, the disease kills the tree.
 - v. The tree could fail by falling under wind load and/or the buckling of the trunk due to internal decay and fungal disease.
 - vi. There is a high likelihood of damage to either or both parties' properties.
 - vii. Overall, the tree is of poor condition, and no work would rectify its structure or remedy the disease/decay. It is recommended that the Respondents plan for the removal of 'the hazard', thus preventing potential damage and cost of repair.
- n) On the basis of the Tree Assessment Report, I am satisfied it is appropriate to make an order for the removal of the tree by the Respondents at the Respondents' expense and related orders regarding access and the payment of the tree assessment costs and filing fees.

Signed



Member Chapple
Queensland Civil and Administrative Tribunal