

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Anwar & Anor v Obst & Anor* [2025] QCAT 212

PARTIES: **BENAZIR ANWAR**
(applicant)

MIRWAIS SULTAN
(applicant)

v

PATRICIA LOUISE OBST
(respondent)

BRUNO ADOLFO GONZALEZ
(respondent)

APPLICATION NO/S: NDR047-22

MATTER TYPE: Other civil dispute matters

DELIVERED ON: 26 May 2025

HEARING DATE: 28 February 2025 & 12 March 2025

HEARD AT: Brisbane

DECISION OF: Member Poteri

- ORDERS:
1. **Patricia Louise Obst and Bruno Adolfo Gonzalez must remove the cheese tree on the common boundary of their property by 4 pm on 30 September 2025 at their cost.**
 2. **The cheese tree must be removed to the ground level and the base of the cheese tree must be poisoned.**
 3. **All parts of the cheese tree, including any cut branches or debris, caused by the removal of the subject tree, must be removed from the property of Benazir Anwar & Mirwais Sultan at the same time that the cheese tree is removed.**
 4. **Any parts of the cheese tree can be retained by and become the property of Patricia Louise Obst and Bruno Adolfo Gonzalez.**
 5. **On the giving of 7 days' notice in writing by Patricia Louise Obst and Bruno Adolfo Gonzalez, Benazir Anwar and Mirwais Sultan must provide reasonable access to their property to allow the cheese tree to be removed.**
 6. **Should the work to remove the cheese tree not be undertaken or completed by Patricia Louise Obst and**

Bruno Adolfo Gonzalez by 30 September 2025, then Benazir Anwar and Mirwais Sultan shall be entitled to have the work to remove and poison the cheese tree (and remove and dispose of any parts/debris of the subject tree) by a suitably qualified tree lopper with appropriate insurance cover.

- 7. Should Benazir Anwar and Mirwais be required to carry out the work to remove and poison the cheese tree in default of it being done by Patricia Louise Obst and Bruno Adolfo Gonzalez, then any tree lopper contracted by Benazir Anwar and Mirwais Sultan shall be entitled to enter the property of Patricia Louise Obst and Bruno Adolfo Gonzalez to carry out any work to remove and poison the cheese tree subject to Benazir Anwar and Mirwais Sultan giving Patricia Louise Obst and Bruno Adolfo Gonzalez 7 days' notice in writing of their intention to have alternate tree loppers remove and poison the subject tree.**
- 8. Any costs, not to exceed \$3,000, incurred by Benazir Anwar and Mirwais Sultan engaging an alternate tree lopper to do the work to remove and poison the cheese tree (and dispose of any parts/debris of the cheese tree) in default of Patricia Louise Obst and Bruno Adolfo Gonzalez carrying out this work shall be recoverable from Patricia Louise Obst and Bruno Adolfo Gonzalez as a debt without further notice being required to be given.**
- 9. The application relating to dividing fence issue can now proceed and a directions hearing can now take place to make orders to progress this application.**

CATCHWORDS:

TREES – VEGETATION AND HABITAT PROTECTION – DISPUTE BETWEEN NEIGHBOURS – where the Applicants allege that a tree situated on their neighbours' property is substantially affecting the use and enjoyment of their property by having caused or being likely to cause serious injury to a person or serious damage to property situated on the Applicants' property – where the Applicants allege that the tree causes substantial ongoing and unreasonable interference with the use and enjoyment of the use of their property by the base and roots of the tree causing growth of suckers from the tree – where the Applicants are seeking an order for the removal of the tree – where the Respondents deny the allegations of the Applicants

Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld), s 46, s 47, s 52, s 66, s 72, s 73

**APPEARANCES &
REPRESENTATION:**

Applicants: Self-represented
 Respondent: Self-represented

REASONS FOR DECISION

BACKGROUND

- [1] This dispute relates to an application filed in the Tribunal by Benazir Anwar (“Anwar”) on 7 March 2022. Anwar and her partner Mirwais Sultan (“Sultan”) are the owners of a dwelling house situated at 14 Evans Street, Kedron. They live in this dwelling house and their property is described as lot 38 on registered plan number 26066. For the purposes of this decision, I will refer to this property as “Property AS” and both Anwar and Sultan are applicants.
- [2] The respondents in these proceedings are their next-door neighbours, Patricia Louise Obst (“Obst”) and Bruno Adolfo Gonzalez (“Gonzalez”) who are the owners of a dwelling house situated at 16 Evans Street, Kedron. They live in this dwelling house and their property is described as lot 39 on registered plan 26066. For the purposes of this decision, I will refer to this property as “Property OG”.
- [3] The application is part of a suite of disputes between the parties. The relationship between the parties is one of acrimony and distrust. During the hearing, I encouraged the parties on several occasions to engage with each other on a “without prejudice” basis in an attempt to resolve all their disputes, as any agreed compromise would be more cost effective and quicker than relying on the Tribunal to determine the applications. Although the parties had discussions no resolution was reached.
- [4] The disputes between the parties involve the dividing fence, a cheese tree and another tree on Property OG.
- [5] A brief background on these three issues is:
 - a. The cheese tree is a large tree, and it is situated on the common boundary between the parties and is the subject of these proceedings (NDR047/22).
 - b. Another tree on Property OG was the subject of Tribunal matter NDR148/22. During these proceedings evidence was adduced which showed the offending tree in NDR148/22 has been pruned by Obst and Gonzalez. Accordingly, Anwar and Sultan consented to the proceedings in NDR148 being dismissed.
 - c. The dividing fence is the subject of Tribunal file MCDO650/22. As the cheese tree is on the common boundary then the outcome of these proceedings must be resolved before the dividing fence dispute can be addressed.
 - d. Anwar and Sultan filed an application on 19 March 2025 for the construction of the boundary fence to be included in the final orders that may be made in these proceedings. No evidence has been adduced in this application and Obst and Gonzalez have not had an opportunity to address this application. Therefore, this application must be dismissed.
 - e. I propose making orders in these proceedings to progress the fence dispute in Tribunal file MCDO 650/22.
- [6] I accept that all the prerequisites as set out in the provisions of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (Qld) (“NDR Act”) for bringing this

application are satisfied. I also note that the parties are “neighbours” as defined under the provisions of the NDR Act. Further the parties did not raise any jurisdiction issues.

- [7] Anwar and Sultan purchased their property in 2014 and they accept that the cheese tree was there at that time.
- [8] Obst and Gonzalez do not consent to the chess tree being removed. They say that the cheese tree was well established when they purchased their property in 1996, the tree adds to their privacy, provides shade/protection from the afternoon sun and the tree provides habitats for animals (possum box) and birds. They say that they carry out regular pruning and they are prepared to compromise on the impact the roots have on the AS Property.

LEGISLATION

- [9] The legislation that is relevant and should be applied in considering tree disputes between neighbours is the NDR Act. The provisions of the NDR Act that apply to this dispute are ss 46, 47, 52, 66, 72 and 73 of the NDR Act. For the consideration of the parties, I set out these provisions in full.

46 When is land *affected by a tree*

Land is *affected by a tree* at a particular time if—

- (a) any of the following applies—
 - (i) branches from the tree overhang the land;
 - (ii) the tree has caused, is causing, or is likely within the next 12 months to cause—
 - (A) serious injury to a person on the land; or
 - (B) serious damage to the land or any property on the land; or
 - (C) substantial, ongoing and unreasonable interference with the neighbour’s use and enjoyment of the land; and
- (b) the land—
 - (i) adjoins the land on which the tree is situated; or
 - (ii) would adjoin the land on which the tree is situated if it were not separated by a road.

47 When is a tree *situated on land*

- (1) A tree is *situated* on land if the base of the tree trunk is, or was previously, situated wholly or mainly on the land.
- (2) Without limiting subsection (1), if a neighbour applies to QCAT for an order under section 66 in relation to a tree and the tree is completely removed from the land, the tree is taken to be situated on the land for the purpose of the application.

Note—

See section 68 for an order QCAT may make in relation to a tree that has been removed.

52 Responsibilities of a tree-keeper

- (1) A tree-keeper is responsible for cutting and removing any branches of the tree that overhang a neighbour's land.
- (2) A tree-keeper is responsible for ensuring that the tree does not cause—
 - (a) serious injury to a person; or
 - (b) serious damage to a person's land or any property on a person's land; or
 - (c) substantial, ongoing and unreasonable interference with a person's use and enjoyment of the person's land.
- (3) This section does not create a civil cause of action based on a breach of a tree-keeper's responsibilities.

Note—

This section is intended to help a tree-keeper and neighbours resolve any issues about a tree without a dispute arising. However, this section does not create a separate cause of action. This chapter provides ways of dealing with some issues that fall within a tree-keeper's responsibilities under this section.

66 Orders QCAT may make

- (1) Division 4 states the matters for QCAT's consideration in deciding an application for an order under this section.
- (2) QCAT may make the orders it considers appropriate in relation to a tree affecting the neighbour's land—
 - (a) to prevent serious injury to any person; or
 - (b) to remedy, restrain or prevent—
 - (i) serious damage to the neighbour's land or any property on the neighbour's land; or
 - (ii) substantial, ongoing and unreasonable interference with the use and enjoyment of the neighbour's land.
- (3) However, subsection (2)(b)(ii) applies to interference that is an obstruction of sunlight or a view only if—
 - (a) the tree rises at least 2.5m above the ground; and
 - (b) the obstruction is—
 - (i) severe obstruction of sunlight to a window or roof of a dwelling on the neighbour's land; or
 - (ii) severe obstruction of a view, from a dwelling on the neighbour's land, that existed when the neighbour took possession of the land.
- (4) Despite the *Property Law Act 1974*, section 178, QCAT may make an order under subsections (2)(b) and (3) that is intended to result in the access of light to land.

- (5) Without limiting the powers of QCAT to make orders under subsection (2), an order may do any of the following—

- (a) require or allow the tree-keeper or neighbour to carry out work on the tree on a particular occasion or on an ongoing basis;

Examples—

- an order that requires the removal of the tree within 28 days
 - an order that requires particular maintenance work on the tree during a particular season every year
 - an order that requires particular work to maintain the tree at a particular height, width or shape
- (b) require that a survey be undertaken to clarify the tree's location in relation to the common boundary;
- (c) require a person to apply for a consent or other authorisation from a government authority in relation to the tree;
- (d) authorise a person to enter the tree-keeper's land to carry out an order under this section, including entering land to obtain a quotation for carrying out an order;
- (e) require the tree-keeper or neighbour to pay the costs associated with carrying out an order under this section;
- (f) require the tree-keeper to pay compensation to a neighbour for damage to the neighbour's land or property on the neighbour's land;
- (g) require a report by an appropriately qualified arborist.

- (6) In this section—

window includes a glass door, window forming part of a door, skylight or other similar thing.

72 Removal or destruction of living tree to be avoided

A living tree should not be removed or destroyed unless the issue relating to the tree can not otherwise be satisfactorily resolved.

73 General matters to consider

- (1) QCAT must consider the following matters—
- (a) the location of the tree in relation to the boundary of the land on which the tree is situated and any premises, fence or other structure affected by the location of the tree;
- (b) whether carrying out work on the tree would require any consent or other authorisation under another Act and, if so, whether the consent or authorisation has been obtained;

- (c) whether the tree has any historical, cultural, social or scientific value;
 - (d) any contribution the tree makes to the local ecosystem and to biodiversity;
 - (e) any contribution the tree makes to the natural landscape and the scenic value of the land or locality;
 - (f) any contribution the tree makes to public amenity;
 - (g) any contribution the tree makes to the amenity of the land on which it is situated, including its contribution relating to privacy, landscaping, garden design or protection from sun, wind, noise, odour or smoke;
 - (h) any impact the tree has on soil stability, the water table or other natural features of the land or locality;
 - (i) any risks associated with the tree in the event of a cyclone or other extreme weather event;
 - (j) the likely impact on the tree of pruning it, including the impact on the tree of maintaining it at a particular height, width or shape;
 - (k) the type of tree, including whether the species of tree is a pest or weed (however described) or falls under a similar category under an Act or a local law.
- (2) For subsection (1)(c), the circumstances where a tree has historical, cultural, social or scientific value include where the tree—
- (a) is, or is part of, Aboriginal cultural heritage under the *Aboriginal Cultural Heritage Act 2003*; or
 - (b) is, or is part of, Torres Strait Islander cultural heritage under the *Torres Strait Islander Cultural Heritage Act 2003*; or
 - (c) is, or is situated in, a Queensland heritage place under the *Queensland Heritage Act 1992*.
- (3) For this Act, no financial value or carbon trading value may be placed on a tree.

CHEESE TREE

- [10] David Gunter (“Gunter”), arborist, provided a joint report of his inspection of the cheese tree on 15 May 2023 and filed in the Tribunal on 15 June 2023. He gave evidence at the hearing. A summary of his evidence:
- a. The cheese tree is an Indigenous tree but is not native to this area. It is a semi-mature tree and can grow into a canopy tree but is more generally a small tree of 10–15 metres. The cheese tree is smaller than expected, given the size of the trunk. This indicates that the tree has been lopped in the past.
 - b. The positioning of the cheese tree is problematic because it is on the common boundary and the presence of the trunk makes building a fence difficult but not impossible.

- c. The canopy of the cheese tree extends over both properties. The natural growth of the trunk is at a slight upwards angle over Property AS.
- d. The cheese tree does contribute to the local ecology and biodiversity and provides food for native wildlife.
- e. The cheese tree has no impact on the level of moisture in the ground.
- f. The result of the past lopping has created a “pollard effect”. This effect is created when the entire upper canopy consists of regrowth after earlier lopping or pruning.
- g. One of the issues raised by Anwar and Sultan is that the cheese tree causes an impediment to the overland flow of water from Property AS to Property OG. It was the opinion of Gunter that the cheese tree does not cause any impediment.
- h. Gunter is of the opinion that the cheese tree was initially in Property OG and over the years has gradually grown into Property AS.
- i. On page 3 of the report, Gunter says that the roots, leaf litter and/or falling branches are not considered excessive and the canopy of the tree can be controlled by pruning. He believes that the sucker growth from the cheese tree can be relatively easily controlled by cutting and pruning.
- j. If the larger roots (over 50 mm) in Property AS are removed then the tree may become unstable in the ground.
- k. A root barrier would allow the tree to remain, but this process would be expensive and the root barrier would be visible.

WHO IS THE TREEKEEPER

- [11] The cheese tree is situated on the common boundary and the existing dividing fence is built around the cheese tree. See photographs filed in the Tribunal with the application on 22 March 2022.
- [12] A two-page survey of the common boundary was prepared by Sonto, surveyors, in 2022. At the hearing Peter Van Landgren (“Van Landgren”), surveyor, of Sonto gave evidence.
- [13] Van Landgren stated that although he did not perform the actual survey, he had access to the surveyor’s notes, and he could give evidence. He stated that the base of the cheese tree is approximately 0.9 m in diameter and grows principally on Property OG. The distance that the base of the cheese tree grows into Property AS is 0.06m.
- [14] Gunter gave evidence that the cheese tree started life in Property OG. Obst and Gonzalez say that the cheese tree was near the common boundary when they purchased their property in 1996. Anwar and Sultan accept that the cheese tree was near the common boundary when they purchased their property in 2014.
- [15] Section 47(1) of the NDR Act outlines where a tree is situated for the purposes of this application. The wording of this provision uses the words “situated wholly or mainly on the land”. In these proceedings, the base is approximately 0.9 m in diameter and the distance that the base extends onto Property AS is 0.06m. Therefore, approximately 6.7% of the base of the cheese tree extends into Property AS.

- [16] The word “mainly” is not defined in the NDR Act. The usual meaning(s) of the word “mainly” are expressions such as “mostly”, “for the most part”, “largely”, “principally” and “to a great degree”. In these proceedings, only 6.7% of the base of the cheese tree extends into Property AS and Gunter gave evidence that probably the cheese tree started life in Property OG and has gradually grown into Property AS. Therefore, I find that Obst and Gonzalez are the tree keepers of the cheese tree for the purposes of these proceedings.

APPLICATION

- [17] The application has been filed by Anwar and Sultan and they must prove their case on the balance of probabilities.
- [18] To succeed in their claim, Anwar and Sultan must demonstrate pursuant to s 46 of the NDR Act that their property is affected by the cheese tree at a particular time. That is their property is affected if any of the following apply:

- (i) Branches from any of the trees overhang Anwar and Sultan’s property.
- (ii) The trees have caused, is causing, or is likely within the next 12 months to cause–
 - (A) serious injury to a person on their property; or
 - (B) serious damage to their land or property on her land; or
 - (C) substantial, ongoing and unreasonable interference with Anwar and Sultan’s use and enjoyment of her land.

EVIDENCE

- [19] Anwar and Sultan raise the following issues with the cheese tree:
- a. It interrupts the overland flow of water across both properties. Gunter provided evidence that the cheese tree is unlikely to interrupt the flow of water. Therefore, I find that the cheese tree does not interrupt the flow of water.
 - b. The photographs attached to the application filed in the Tribunal on 7 March 2022 and further photographs filed during the hearing shows. See Exhibit 2. The canopy of the cheese tree extends some distance into Property AS as is shown in the various photographs submitted at the hearing.
 - c. The base of the cheese tree extends into Property AS and has caused some damage to the concrete garden edging. Photographs of the base of the cheese tree are also attached to a submission from Anwar and Sultan filed in the Tribunal on 8 May 2024.
 - d. The roots of the cheese tree are fibrous and some of the roots are visible above ground level.
 - e. The new shoots of the cheese tree are shown to grow in various places in Property AS. Some offshoots extend to an area under back steps of Property AS. Anwar states that there are up to 31 offshoots of the cheese tree growing into Property AS. See photographs and submission filed in the Tribunal on 22 May 2023.

- f. Anwar has sworn an affidavit on 27 February 2025 where she alleges a branch of the cheese tree fell on her on 25 February 2025 and caused her an injury. Anwar sought medical attention for this injury. A photograph of the fallen branch is annexed to the affidavit.

[20] Obst and Gonzalez say:

- a. The cheese tree has been on the common boundary of both properties for many years and was on their property when they purchased it in 1996.
- b. When Anwar and Sultan complained about the cheese tree in 2019, they proceeded to prune the tree and there were no complaints from Anwar and Sultan until the current issues in dispute arose in or about 2022.
- c. The cheese tree is healthy and adds to the ambience and shade to their property. It also provides protection from the afternoon sun. It also contributes to the biodiversity and habitat protection/food of many native animals and birds. This was confirmed by Gunter. Obst and Gonzalez have a possum box in the cheese tree to encourage native animals and birds to nest in the tree.
- d. Obst and Gonzalez are prepared to agree to pay the cost of regular pruning of the tree and to contribute to cost of reducing the root system of the cheese tree on Property AS.
- e. On 12 March 2025, Obst and Gonzalez provided a copy of a quote dated 6 March 2025 from Clint Collins in the sum of \$1,760 to remove and poison the cheese tree.

FINDINGS

- [21] The tree keepers of the cheese tree are Obst and Gonzalez.
- [22] Regarding both the subject properties, the cheese tree does not cause any problems with the soil moisture or the overland flow of water.
- [23] The cheese tree is a mature healthy tree that was growing on Property OG prior to 1996.
- [24] The cheese tree contributes to the local ecosystem and biodiversity. It also provides habitat/food protection for native animals and birds.
- [25] Gunter confirmed that the cheese tree probably began life as a sapling in Property OG and has gradually grown over the years, so the base of the cheese tree now extends by some 6 mm into Property AS.
- [26] The roots of the cheese tree now grow extensively into Property AS. The roots extend above and below the surface of Property AS and shoots of the cheese tree grow from these roots. Evidence shows that there were at times some 30 separate shoots growing from the roots. One of the shoots was growing near the back steps of Property AS. Removal of the shoots requires constant maintenance.
- [27] Gunter gave evidence that cutting the roots of the cheese tree on Property AS may cause damage and make the cheese tree unstable. Gunter also gave evidence that a root barrier may be a solution, but the root barrier would have to be positioned in Property AS and would be visible above the ground. This option was also expensive and none of the parties were prepared to explore this option.

- [28] The canopy of the cheese tree is extensive and overhangs the boundary fence by a distance much greater than 50 mm. Anwar gave evidence that a branch from the tree fell on her while she was in her back yard. Anwar stated that she had to seek medical evidence for this injury.
- [29] As tree-keepers, pursuant to s 52 of the NDR Act, Obst and Gonzalez are responsible for ensuring that the cheese tree does not cause serious injury to a person, does not seriously damage a person's land and does not cause substantial, ongoing and unreasonable interference with a person's use and enjoyment of the land.
- [30] In these proceedings it is not clear to me if the branch that Anwar alleges fell on her from the cheese tree is a "serious injury" as defined in the NDR Act. However, I find that the base of the cheese tree that has gradually grown into Property AS, the fibrous and invasive roots of the cheese tree that extend into Property AS and the requirement to regularly deal with all the offshoots of the cheese tree is a substantial and ongoing interference with the ongoing use and enjoyment of their property by Anwar and Sultan.
- [31] I make the above finding notwithstanding Gunter's evidence that the shoots of the cheese tree can be easily removed. It is my view that it is the combination of the base of the cheese tree, the fibrous roots above and below the surface, the extent of the roots of the cheese tree in Property AS and the requirement to regularly remove the shoots that amounts to substantial, ongoing and unreasonable interference with the use and enjoyment of Property AS.
- [32] Section 73 of the NDR Act outlines the general matters that I must consider in deciding this application. The cheese tree does contribute to the local ecosystem and biodiversity, it adds to the landscape and ambience of Property OG, and it adds privacy and shade to Property OG.
- [33] Pursuant s 72 of the NDR Act a living tree should not be removed or destroyed unless the issue relating to the tree can not otherwise be satisfactorily resolved.
- [34] Notwithstanding that the cheese tree does make the contributions as referred to previously, it is my view that the issues (i.e., the issues set out in s 46(a)(C) of the NDR Act) that the cheese tree has caused and is continuing to cause to Anwar and Sultan can only be resolved by removal of the tree.
- [35] Property AS is land affected by the cheese tree as set out in s 46(a)(C) of the NDR Act because the cheese tree at a particular time has caused, is causing or is likely to cause in the next 12 months substantial, ongoing and unreasonable interference with the use and enjoyment of Property AS by Anwar and Sultan.
- [36] I propose making orders for the removal of the tree by Obst and Gonzalez.
- [37] I will also make orders that the files relating to the dividing fence dispute is set down for a directions hearing so this dispute can progress.
- [38] As mentioned, the parties have an extremely strained relationship. During the hearing I encouraged the parties to attempt to resolve their differences in discussions as this would be more time and cost effective. Regarding the dividing fence, I again recommend that the parties should make efforts to attempt to resolve their differences collaboratively.