



+61 2 9320 2726  
mail@statewide.nsw.gov.au  
PO Box H25  
Australia Square, NSW 2000  
statewide.nsw.gov.au  
ABN 51 644 247 443

29 November 2016

The General Manager  
Ballina Council  
PO Box 450  
BALLINA NSW 2478

ABN: 69 009 098 864  
Level 11, 66 Clarence Street  
SYDNEY NSW 2000

Tel +61 2 9320 2700  
Direct +61 2 9320 2726  
Mobile +61 413 134 082  
Email Naamon.Eurell@jlta.com.au  
www.jlta.com.au

Dear Sir,

**RE: INSURANCE COVERAGE MORETON BAY FIG AT CASTLE DRIVE, LENNOX HEAD**

We refer to the email of Ballina Council's Kelly Brown dated 28 November 2016.

At the outset we advise that a continuing failure of Ballina Council (Council) to remedy the ongoing nuisance caused by the subject fig tree will prejudice any future claim Council may make for cover under the Statewide Mutual Liability Scheme

On 24 November, 2016 Council resolved to defer a recommendation of its staff to remove a fig tree located within the road reserve at Castle Drive, Lennox Head until advice had been obtained about the impact of its decision on future insurance claims. The reasoning behind our position is as follows.

The report to Council's staff raises the following matters which impact upon issues related to insurance coverage and can be summarised as: -

- Council has received two reports concerning problems with the subject tree in respect of damage, limb loss and tree health in 2005 and 2006;
- Council has been notified of multiple events of root incursion in neighbouring properties between 2008 and 2011;
- There are two current claims for root incursion being prosecuted by property owners; and
- Previous attempts to utilise root barriers have been unsuccessful.

Additionally, we have reviewed our own files and make the following observations:-

- A claim from [REDACTED]  
[REDACTED] and  
[REDACTED]
- A claim from [REDACTED]  
[REDACTED]

On 17 September 2015, JLT wrote to Council advising that the continued failure to abate the nuisance caused by the subject tree to neighbouring properties would prejudice Council's entitlement to cover in any future claims.

A handwritten signature in blue ink, appearing to be "Naamon Eurell", written over a light blue horizontal line.

Further, it was explained that insurance was provided to meet Council's financial losses arising from fortuitous events for which it would be held legally liable, not the ongoing expenses relating to a set of circumstances that without proper intervention would continue to cause ongoing loss.

We also wish to draw Council's attention to the following clauses contained within the Conditions section of the NSW Local Government Mutual Liability Scheme Broad Form Liability Protection Wording; -

**SETTLEMENT OF CLAIM**

4. b) *The Member shall promptly take at its own expense all reasonable steps to prevent other Personal Injury or Damage to Property from arising out of the same or similar conditions, but such expense shall not be recoverable under this Wording.*

**REASONABLE CARE**

7. *The Member shall as far as reasonably practicable:*

- b) *take all reasonable precautions to:*  
*(i) prevent Personal Injury and Damage to Property;*

It is clear that a failure to remove the subject fig tree will lead to further claims from neighbouring residents. Council has been advised root barriers will most likely be ineffective.

If the tree is not removed its roots will continue to encroach upon the residents' land causing further damage thereby constituting an actionable nuisance for which Council will be liable at law. The high degree of likelihood with which future claims may arise takes the matter beyond the realm of a fortuitous loss for which insurance policies respond.

Additionally, the failure to remove the subject tree would to our mind be a failure on the part of Council to undertake reasonable precautions to prevent future loss as the conditions of the Scheme wording require.

Whilst Statewide Mutual strives to assist members in undertaking their business the ongoing preservation of this tree would represent an unfair burden to the other members of the Scheme. We will continue to meet Council's financial obligations in the existing claims, however if similar claims are lodged in the future we do not consider they would be subject to cover under the Statewide Mutual Liability Scheme.

Yours sincerely,



Naamon Eurell  
Manager Statewide