



## **Notice of Extraordinary Meeting**

An Extraordinary Meeting of Ballina Shire Council will be held in the Ballina Shire Council Chambers, 40 Cherry Street Ballina on **Tuesday 15 May 2018 commencing at 5.00 pm.**

### **Business**

1. Acknowledgement of Country
2. Apologies
3. Declarations of Interest
4. Deputations
5. Reports

A handwritten signature in black ink, appearing to read 'Paul Hickey', with a long horizontal line underneath.

Paul Hickey  
**General Manager**

## Deputations to Council – Guidelines

- (a) Deputations by members of the public may be made at Council meetings on matters included in the business paper. Deputations are limited to one speaker in the affirmative and one speaker in opposition. Deputations will be limited to a maximum of two items on the agenda per person.

Requests to speak must be lodged in writing or by phone with the General Manager by noon on the day preceding the meeting. Deputations are given five minutes to address Council.

Deputations on the same matter will be listed together with the opposition first and the speaker in affirmation second.

- (b) Members of the public are advised that any documents tabled or given to Councillors during the meeting become Council documents and access may be given to members of the public in accordance with the requirements of the Government Information (Public Access) Act 2009.
- (c) The use of powerpoint presentations and overhead projectors is permitted as part of the deputation, provided that the speaker has made prior arrangements with the General Manager's Office at the time of booking their deputation. The setup time for equipment is to be included in the total time of five minutes allocated for the deputation.
- (d) To avoid conflicts of interest, real or perceived, deputations will not be accepted from:
- Tenderers during a public tender or request for quotation
  - Persons or representatives from organisations seeking financial support from Council that involves an expression of interest
  - Consultants who are engaged by Council on the matter the subject of the deputation.

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1. Acknowledgement of Country
  2. Apologies
  3. Declarations of Interest
  4. Deputations
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**1. Acknowledgement of Country**

In opening the meeting the Mayor provided an Acknowledgement of Country.

**2. Apologies**

**3. Declarations of Interest**

**4. Deputations**

## **5.1 Notice of Motion - Castle Drive - Fig Tree**

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### **5. Notices of Motion**

#### **5.1 Notice of Motion - Castle Drive - Fig Tree**

**Councillor**                      Cr Wright  
    Cr Jeff Johnson  
    Cr Meehan  
    Cr Williams

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We move:

That prior to the removal of the Castle Drive Fig Tree, Council obtain further advice in respect to at least the following matters:

- correspondence from Terra Ark and Cath Russo to Sherrie Yeomans that further information is needed in respect to whether the removal of the tree will result in no further structural damage to the adjoining properties
- advice from Airwalk Tree Services that a tree root barrier can rectify the matter for minimal expense
- a structural engineering report that provides a higher level of certainty that the damage to the properties is being caused by the fig tree.

#### **Staff comments**

A similar motion was lost at the 26 April 2018 Ordinary meeting. This means that to consider this matter again, within a three month period, a notice of motion must include three signatures. This notice complies with the requirements of the Local Government Act.

If the motion is lost again, it cannot be re-considered for three months.

The following information is provided in respect to the motion.

The Castle Drive subdivision was approved by Council in May 1980.

A copy of the deposited plan is included as Attachment 1, with lots three and four, which are the lots closest to the fig tree, designed in a manner to cater for the existence of the tree.

There is no significant building buffer (i.e. 30 metres), as has sometimes been stated, between the fig tree (on Council land) and the newly created private lots, included in the planning approval for the subdivision.

There are also no known restrictions on title in respect to the fig tree.

The two properties immediately adjacent to the tree are:

- 7 Castle Drive (Lot 3, DP 261848) received building approval for the dwelling in 2000 – DA 2000/313. This approval was signed by the Chief Health and Building Surveyor, Mr R.D. Johnson.
- 9 Castle Drive (Lot 4, DP 261848) received building approval in 1991 – DA (BA) 186/91. This approval was signed by the Shire Clerk, Mr G.J. Faulks.

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Due to the Council approving the subdivision in 1980, with no restrictions relating to the fig tree, the owners of the properties adjacent to the fig tree were entitled to build on their privately owned land, without the Council impacting on their properties.

This is the key issue, in that the roots from the Council owned fig tree are causing a nuisance (the legal term) to the private properties.

Council began to receive requests to significantly lop or remove the tree in 2004. In response to this Council commenced a more proactive approach to managing the tree, with lopping undertaken on a number of occasions.

A report was submitted to the 24 November 2005 Council meeting outlining concerns from residents in respect to the impact of the tree on their properties. That report also considered a similar tree in Figtree Hill Drive, Lennox Head

As a result of the report Council resolved as follows:

*That Council resolve to retain the Figtree Hill tree, described in the report and that the Castle Drive fig tree be subject to a specific risk analysis and a further report provided to Council.*

This resolution was largely consistent with the recommendation in the report.

A further report was then submitted to Council at the 25 May 2006 Council meeting where Council resolved as follows:

*That Council resolve to endorse the procedure detailed in this report as satisfactory for the ongoing retention and management of the Castle Drive Fig Tree.*

This resolution was consistent with the recommendation in the report, which was to ensure on-going retention of the fig tree based on a management regime.

Since those reports, and despite on-going maintenance works by Council, there has been a steady flow of complaints in respect to the impact of the tree on the adjoining properties.

These on-going complaints have resulted in two successful insurance claims against Council in respect to damage to the two adjoining properties.

The first claim, relating to 9 Castle Drive, actually originated on 31 August 2007 with the matter being resolved under the policy's excess.

This later resulted in a further claim, commencing 6 April 2016, that was supported by extensive correspondence from the property owner to Council between 2007 and 2016.

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Council's insurance broker (JLT Australia) appointed a loss adjuster, as a result of that claim, who completed an inspection report confirming tree root damage to the property. The claim was settled in January 2017 subject to a confidential deed of release.

The second claim, relating to 7 Castle Drive, originated on or around 18 June 2015.

As a result of the claim JLT appointed a loss adjuster and a structural engineer to assess the damage.

A copy of the structural engineering report, from Peter Lucena & Associates, is included as Attachment 2 to this report.

A key point in that report, as per page two, was the reference that the "*leaning pillar at entry*" and the "*diagonal crack in brick wall (east side)*" may have been due to pre-existing subsidence. The remaining damage was deemed to be tree root related. This comment highlighted some uncertainty in respect to the cause of the damage.

Due to concerns about on-going damage to the property, following correspondence between the claimant, Council, JLT and Statewide Mutual (Council's insurer), on 29 November 2016 Statewide Mutual sent a letter to Council to confirm that while the existing two claims were covered, any future claims, of a similar nature, would not be covered if Council fails to take action to remove the tree.

This point is also important in that the statement relates to similar claims not being covered, i.e. damage related to the adjoining properties. It does not necessarily mean Council is not covered for other claims originating from the fig tree, albeit that they would need to be assessed on a case by case basis.

A copy of that advice is included as Attachment 3, with specific references to the claims redacted, for privacy reasons.

The preference for removal of the tree in that correspondence was based on advice from Council staff that root barriers would not be effective. This was also sourced, in part, from a report prepared in December 2015 by Integral Tree Care as per Attachment 4. This report stated that:

*"Due to the proximity of the tree to the adjacent properties, root pruning for installation of a root barrier would be within the Tree protection zone (TPZ). Ficus species are known to tolerate considerable encroachments into the TPZ, although the incursion into the TPZ in this instance will be major and will require considerable compensatory measures to be diligently executed to maintain a healthy tree".*

This report also identified the structural root zone for the tree of 6.51m radius and the tree protection zone as a 15m radius.

The Integral Tree Care report recommended, as one option, the installation of a root barrier however that recommendation was subject to further qualifications on matters such as confirming the underground services and actual placement due to the property boundaries.

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That further consultation resulted in this option no longer being considered viable based on the magnitude of works having to be undertaken within the structural root zone of the tree, due to the property boundaries.

Based on the information available, on 28 February 2017 Mills Oakley Lawyers, being the legal representatives for Statewide Mutual, provided advice to Council and JLT that the only option was to remove the tree to prevent any further damage to the properties.

A copy of that advice is included as Attachment 5.

That advice is particularly relevant in that it highlights, on page four of five, a case where the Court granted a mandatory injunction against a council to abate the nuisance created by fig trees, and also awarded damages to the adjoining property owner (*Michos v the Council of the City of Botany Bay*).

In addition to this advice, further information was then sought by JLT who asked for another engineering report, to follow up on some uncertainties raised in the original engineering report.

That report, dated April 2017, was prepared by Craig Zerk Consulting Engineer and is included as Attachment 6. This report confirmed that the damage was largely attributable to the tree roots.

Based on the expert reports the second insurance claim was settled in January 2018, subject to a confidential deed of release.

Further to the Craig Zerk Consulting Engineer April 2017 report, an updated report was recently requested from the same expert, to determine whether there had been any additional damage to the property, due to on-going delays in Council not remedying the nuisance.

That report, which is included as Attachment 7, confirmed that the driveway slab and masonry screen fence next to the garage have both lifted a further 10mm.

In respect to reporting to the elected Council, following the original reports in 2005 and 2006, the matter was next formally reported at the 15 December 2016 Council meeting.

That report, which was confidential at that time, outlined that following assessment of the insurance claims, the advice from Statewide Mutual was that Council would no longer have coverage for future claims of a similar nature. This is the advice included as Attachment 3.

The recommendation in respect to that report was for removal of the tree however the actual resolution was as follows:

1. *That, in relation to the Fig Tree in Castle Drive, it is the position of the elected Council that based on the substantial social and environmental amenity provided by the tree, the tree is to be retained.*
2. *That the General Manager implement an ongoing, formal inspection and reporting program in respect of proactive tree management and maintenance, and adjacent property condition assessments.*

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3. *That an investigation into the history of the houses being situated close to the tree be undertaken.*

Another report was then submitted to the 27 April 2017 Council meeting, with that report containing legal advice.

Even though the legal advice was confidential, at that time, due to concerns over on-going litigation, this is the advice included in Attachment 5, which outlines the liability facing Council.

As a result of that report Council resolved to note the legal advice and not take any action in respect to removal of the fig tree.

The next report was submitted to the 23 November 2017 Council meeting where Council was provided confidential legal advice from Mills Oakley in respect to the status of two insurance claims.

That advice, which remains confidential, as it directly references the insurance claims, again reinforced the following point:

*“in the circumstances where we have advised there is no doubt Council would be found liable for the damage sustained” (extract from email dated 16 October 2017 from Michael Down (Mills Oakley Lawyers) to Kelly Brown (Ballina Shire Council).*

The resolution from that meeting was as follows:

1. *That based on the advice from Council’s Insurer that the Council and the community will not have any insurance coverage in respect to future property damage claims arising from the Fig Tree located in Castle Drive, Lennox Head, Council accepts there is no reasonable alternative but to authorise the General Manager to remove Fig Tree and replace it with a suitable mature native species.*
2. *That the General Manager undertake a comprehensive media campaign prior to the removal of the Fig Tree to communicate the reasons for Council having no alternative except to remove the tree.*

This was the first time that Council had accepted the legal and insurance advice and taken responsibility for removal of the tree and removing the nuisance.

A rescission motion, as an urgency motion, was then lodged at the 14 December 2017 Council meeting.

That rescission motion failed.

Council staff proceeded to implement the 23 November 2017 meeting resolution however prior to proceeding to remove the tree, advice was received from the local State Member, Tamara Smith MP, of other expert fig tree arborists, who may be able to provide a solution to save the tree.

Despite there being a resolution to remove the tree, it was accepted that no one supported the removal of the tree, if there was a reasonable solution. Jan Allen from Terra Ark was then engaged to provide a further report on options to remedy the nuisance being caused by the fig tree.

It was initially thought that this report would only take approximately two weeks, however the final report was not received by Council until 23 February 2018.

That report, which is included as Attachment 8, did not provide any conclusive recommendations, other than Council should defer the removal of the tree until the following further investigations are undertaken:

- *a site survey to mark the actual property boundary locations.*
- *Mapping of the distribution of the fig tree roots.*
- *Determination of soil type and profile and the location of any buried obstacles or existing barriers to root growth*
- *Discussion with the local energy authority to determine the exact position and depth of electrical assets and options for repositioning them to the southern side of the tree*
- *Engagement of a large tree relocation specialist to provide a feasibility and cost estimate for relocation of the tree to the reserve opposite (pages 26 – 27 report dated February 2018).*

In response to that report Council engaged The Tree Doctor as the large tree relocation expert.

The Tree Doctor provided a preliminary report to Council dated 9 March 2018 which recommended as follows:

*It is recommended that a well-designed and correctly installed root barrier be installed.*

*As a result of the assessment, I am of the opinion that the tree could be transplanted at significant expense, however, retention of the specimen in its existing location is the preferred outcome.*

*I do not believe removal of what is a highly significant specimen can be justified on the basis of damage resulting from poor design and construction (page 15 report dated 9 March 2018).*

A copy of that report is included as Attachment 9. The estimated cost to relocate the tree in that report is \$450,000 (excluding GST) (page 12) along with other post relocation costs of \$72,000 for on-going maintenance.

In respect to the root barrier proposal the methodology recommended in the report (page 14) was as follows:

### **Methodology**

1. *Mulch the root zone to a depth of 150mm and a minimum radius of 15m outside the property boundaries.*
2. *Irrigate and maintain for 3 months to stimulate root growth.*

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3. *Root prune tree using a high pressure water cutter along line of proposed root barrier.*
4. *Excavate outside line of water cut and remove roots and basalt floaters.*
5. *Drive interlocked sheet piles to maximum depth or into heavy clay.*
6. *Backfill outside barrier using compacted crusher dust and inside barrier using coarse washed river sand.*
7. *Construct concrete cap over barrier edge to prevent burial of the structure. It should be noted that many barriers fail due to roots being allowed to grow over the structure.*

The methodology outlined is not a standard root barrier installation, as it involves the insertion of interlocked sheet piles and this method is more typically used on “roads and other civil works” (page 13).

Based on this proposal, The Tree Doctor was asked to provide a quotation for this work and also clarification whether the firm could actually undertake that work.

To date that quotation and confirmation has not been received despite numerous follow up requests from Council.

Council staff are not prepared to undertake this type of project as their experience is with traditional root barrier systems, which is why there is a preference for The Tree Doctor to provide a quotation for the work.

The Tree Doctor report also makes mention that the “underground services may require relocation” (page 14).

In response to this Council sought a quotation from a qualified tradesperson, who deals with Essential Energy (EE), who provided the following advice to Council’s Team Leader Open Spaces:

*After discussion with yourself and visiting the site I have prepared a budget costing to relocate the existing LV distribution mains outside #7 and 9. As you told me roots of fig on road side of tree will be encouraged to grow to offset the damage done on the house side, I thought it best we do not trench through them So budget price involves relocating the mains to the other side of Castle Drive.*

*The price makes allowance for all Essential Energy fees, design work, materials and construction. It also includes the install of new service mains to supply houses at 7 and 9. It is based on a concept we believe will be acceptable to Essential, but cannot guarantee this until initial paperwork is submitted to EE and they respond with their requirements.*

*No allowance made for any re-turfing of footpaths. Have priced to under bore roads and footpaths to save reinstating works on roads and existing driveways.*

*Budget Costing \$150,000.00 Exc GST.*

The Council staff assessment is that if any root barrier is installed on Council land the underground services will have to be relocated due to the limited space available.

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The narrow space in and between the Council owned land and the adjoining private property is another of the obstacles in providing an effective root barrier.

Attachment 10 is a series of photos with the white pegs marking the private property boundary. The power box is also highlighted in a couple of photos.

This limited space is why Council staff have not proceeded with the standard root barrier installation.

Also the underground services have to be addressed and based on the quotation from the EE sub-contractor, the total cost of the root barrier system proposed by The Tree Doctor could be in the vicinity of \$200,000 if not more, with no guarantee of success.

The Tree Doctor report also states that “the commonly used high density polythene barriers are inadequate for these works” (page 13). This comment is important as some of the comments from other arborists make mention of installing root barriers.

The proposed motion now seeks further advice in respect to the matters listed in that motion.

Attachments 11 to 15 relate to correspondence received in connection with the motion and comments on the contents of those attachments are as follows.

- Attachment 11 – Terra Ark – 29 April 2018 – This correspondence provides the following caveat “Although the nature of my work does require an understanding of construction principles, it is beyond my professional expertise to assess built structures”.

The correspondence then provides an opinion by stating that the “movement and cracking structures that appeared, in my opinion, to be consistent with soil subsidence”.

It also includes the comment that “the movement was most likely due to an inadequacy in the engineering of the house footings and a failure of the house build to adequately address the site constraints posed by the imported fill, reactive clay soils and the effect of the Fig tree on the soil moisture”.

In response to these comments Council has sought a further structural engineering report on the property.

This report is included as Attachment 16. Floor plans included in the report have been removed for privacy reasons.

As per that report, from a structural engineer, who is qualified to comment on these matters, the engineering opinion does not support the comments from Terra Ark as the report concludes that:

*“Our investigation indicates that the damages have most likely been caused by mechanical lifting from the roots of the fig tree.” (page 6).*

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The previous reports from Craig Zerk Consulting Engineer also do not support the Terra Ark comments.

The original report from Terra Ark recommended Council seek further advice, which subsequently has occurred, and the major deficiency in the Terra Ark reports is that they do not provide a solution to the nuisance being caused by Council.

Council has addressed the majority of the recommendations raised in the original Terra Ark report, through a survey of the site and the engagement of another expert, and the one other recommendation that could possibly assist the debate is the application of ground probing radar (GPR).

Council staff have sought to obtain quotations for this work and may now have a contractor available to commence the week commencing 14 May 2018 (still to be confirmed).

The report will take approximately three to four weeks to prepare at an estimated cost of \$5,000.

From a staff perspective this recommendation is considered unnecessary as the existence of the fig tree roots and the damage being caused has been confirmed by Council staff and the structural engineering reports.

Further to this, the owners of 7 Castle Drive have decided to have the damaged caused to their property repaired, even though there is a risk that further damage will be caused by the fig tree.

This work, which is scheduled to commence Monday 14 May 2018, may help provide photographic evidence of the tree root system to assist the debate.

- Attachment 12 – The Tree Doctor – This correspondence makes reference primarily to poor design and substandard maintenance practices with the commentary also stating that the owner has failed to effectively “maintain the property under the common law “Right of Abatement”.

The commentary makes reference to root control measures however it is silent on how those root control measures are to be implemented, particularly when the previous report from The Tree Doctor outlined the methodology needed to install a potentially effective root barrier.

The poor design comments in this correspondence are also inconsistent with the structural engineering reports.

Unfortunately The Tree Doctor has still not provided Council with details of the cost of installing their non-standard root barrier system, or a methodology surrounding this option. At this stage it is still unknown as to whether this is a feasible option that will resolve our liability issues and protect the tree.

- Attachment 13 – Catherine Russo – This correspondence starts with the initial qualification “I have not been privileged to inspect the property” and then provides commentary on the physiology and capacity of tree roots.

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The correspondence ends with a reference to the tree being “condemned to appease one household”.

That comment is inappropriate as this matter has not arisen from a problem created by the property owner.

The comment also reflects a very disappointing part of this debate, where the adjoining property owners (two) are, at times being vilified by a very small sample of people, when all they are asking is for Council to manage the nuisance that is being caused to their land.

In previous correspondence to Council, dated 13 December 2017, Ms Russo recommended the following options:

1. *Leave the tree alone, but have it professionally maintained.*

There is no clarification as to what this statement actually means and the subsequent reports from experts such as The Tree Doctor have not, to date, identified a reasonable solution.

2. *Build a structurally engineered retaining wall to suppress root elongation in the direction of number 7 and 9 Castle Drive.*

This does not appear to be a feasible option based on the other arborist reports, particularly the assessment from The Tree Doctor.

3. *Buy back number 7 and 9 Castle Drive, relocate/remove the houses and return the area to parkland as it should have been in the first place. In doing so, let this significant Fig have pride of place for all to enjoy including the generations that follow.*

The estimated cost of this proposal is \$1.7m or more, assuming that the owners were interested in selling.

This is not recommended as it is an unreasonable use of Council's limited resources and property owners should not be expected to sell their properties just because Council is not able to manage a nuisance on its own land.

4. *Move the Fig across the road to the adjacent vacant land.*

The estimated cost of this proposal is approximately \$600,000 plus, once the relocation of underground services is included, excluding post relocation costs.

This is also not recommended as it is an unreasonable use of Council's limited resources.

- Attachment 14 - Airwalk Tree Services – This correspondence makes reference to installing a root barrier within the resident's property.

This would require the two property owner's permission and it would then be appropriate to have an easement over the properties to ensure that an adequate inspection and maintenance program is in place.

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The advice from Council's technical staff is that the root barrier would need to be placed as far from the tree as physically possible and basically against the wing walls and driveway.

This would still impact on the Tree Protection Zone, but would be closer to acceptable limits.

This proposal compromises the privately owned property and it is unreasonable for Council to be asking a private owner to compromise their own property for a nuisance being caused by Council.

It is also wrong for anyone to assert any form of public pressure on the private property owners to consider this option when they have not created the nuisance.

In respect to the various "expert" comments on standard root barriers, Council's horticultural staff, which include an arborist with level five Australian Qualifications Framework (AQF) qualifications, as well as a number of other staff with similar qualifications, plus extensive practical experience in managing trees in a public environment, would have proceeded with the installation of a standard root barrier, on the Council owned land, if they felt this would have provided a solution to the intrusion of the tree roots.

Council staff have installed root barriers in other locations where they have the space and confidence that the barrier will provide a viable solution.

This has not occurred for a number of reasons, including

- a) The very limited space available, as highlighted in the photographs in Attachment 10
- b) The relevant standards advise that incursions up to 10% into the Tree Protection Zone (TPZ) are acceptable. In this instance to place the barrier on the Council land we are right on the Structural Root Zone which is at 6.51m from the tree, and the TPZ is at 15m for this tree, based on the Integral Tree Care report, as per Attachment 4.
- c) This incursion is much larger than the 10% recommended as a maximum variance
- d) We would also need to root prune at least 180 degrees around the tree, which makes the incursion significant in terms of area
- e) The power relocation cost is estimated at \$150,000 alone, excluding any other infrastructure relocation costs, in order to place the root barrier on the Council property
- f) There has not been a viable solution provided by one of the consultants or contractors that can provide a high degree of certainty of success and can also provide Council full insurance coverage if there is a failure.

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- Attachment 15 – Veteran Tree Group – This correspondence again references the lack of information to make the decision to remove the tree and asks for a review of the process. The correspondence does not provide any solution to the nuisance being caused by the tree.

It is not agreed that there is a lack of information as demonstrated by the numerous attachments to this report.

What is missing is absolute certainty on some of the options proposed, as it is not possible to provide that level of certainty as Council has to rely on expert, opinion based, reports.

In summary these latest items of correspondence tend to direct the problem at poor house construction and / or that the problem is not being caused by the fig tree.

In response to these comments Council engaged Forensic Engineers Pty. Ltd. to provide another independent engineering assessment of the property damage. This firm specializes in damage investigations of houses, townhouses and units in Brisbane and South East Queensland.

A copy of their report is included as Attachment 16.

A few of the key comments in that report are:

- *The tree roots can be expected to continue to spread and cause additional damages to the driveway and the house*
- *Recommended that either the tree is removed or the roots are trimmed and a structural root barrier (not a conventional moisture barrier) is constructed to isolate the tree roots from the house and driveway*
- *There is no requirement therefore to delay repairs once the tree and / or roots are removed (extracts from page 6).*

This report reaffirms the tree roots are causing damage to the property and it also contradicts comments from a number of the arborists in respect to the damage being caused by other factors such as poor house design.

Many of the expert arborist reports make references to the issue having arisen due to poor planning approvals. There is no disagreement in respect to this and for many years Council has been demanding significant setbacks from iconic trees in assessing subdivision applications.

One of the many points of contention in the current court case with the Cumbalum Urban Release Area (CURA A) proposal from Intrapac Pty. Ltd. relates to setbacks. There are similar discussions occurring with respect to the Skennars Head development application.

What is not being provided in all the external arborist reports is a viable solution.

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If it is accepted that the root barrier is to be installed on the Council owned land, the photographs included in this report highlight how close the root barrier will be to the root system. This is the reason why The Tree Doctor has recommended the installation of a non-standard root barrier system.

Questions have also been asked about recent costs which include:

- Terra Ark report - \$1,200 (paid)
- The Tree Doctor - \$4,200 (not paid as Council has not been supplied with the completed report, along with the quotation and clarification for the sheet piling)
- Craig Zerk Consulting Engineer – recent report - \$1,144 (paid)
- Forensic Engineers - \$2,680 (invoiced and in the process of being paid).

The estimated cost of the tree removal is approximately \$30,000 which consists of the direct removal costs (approximately \$14,000), stump grinding (\$3,500), staff and plant costs (\$2,500) and waste fees paid to Council (\$10,000 based on 100 tonne of green waste which is an estimated weight mentioned in The Tree Doctor report).

In conclusion Council has had structural engineering reports that confirm the fig tree is causing damage to the adjoining properties. This has resulted in insurance claims being paid by Council's insurer, and Council being advised that it will have no insurance for similar claims to the adjoining properties.

One matter outstanding is confirmation from The Tree Doctor whether there is an option to use steel piling, what the cost of that work would be, whether that firm could do the work and whether there will be adequate insurance coverage for Council. It is unclear when and if this information will be available as Council's emails and calls are not being returned.

Council is causing the nuisance in this situation and as a responsible statutory authority Council needs to be remedying that nuisance.

The options available remain:

- Relocation of the tree – Estimated at \$600,000 plus if the underground services are relocated
- Root Barrier – This may be an option however to date The Tree Doctor has not provided a quotation for that work. The estimated cost is uncertain, albeit that the cost of relocating the underground services is \$150,000, if necessary. The likelihood of success of this proposal is also debatable and this is clearly demonstrated by the limited space available as highlighted in the photographs in Attachment 10.
- Removal and replacement of the tree – Estimated at \$30,000.

Taking no action is not an option. Council is causing a nuisance to the adjoining property(s) leaving Council liable for legal action, which our legal advice confirms that Council would lose. The onus is on Council to remedy this nuisance.

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Finally, Mr Michael Down, from Mills Oakley Lawyers, will be in attendance at this meeting. Mills Oakley act for Statewide Mutual in providing legal advice and defending insurance claims against NSW councils. Mr Down will be able to provide expert advice in respect to this claim.

### **COUNCILLOR RECOMMENDATIONS**

That prior to the removal of the Castle Drive Fig Tree, Council obtain further advice in respect to at least the following matters:

- correspondence from Terra Ark and Cath Russo to Sherrie Yeomans that further information is needed in respect to whether the removal of the tree will result in no further structural damage to the adjoining properties
- advice from Airwalk Tree Services that a tree root barrier can rectify the matter for minimal expense
- a structural engineering report that provides a higher level of certainty that the damage to the properties is being caused by the fig tree.

### **Attachment(s)**

1. DP 261848 - Subdivision Plan
2. Peter Lucena & Associates - 19 August 2015
3. Statewide Mutual - 29 November 2016 - Insurance Advice
4. Integral Tree Care - December 2015
5. Mills Oakley - 27 February 2017 - Legal Advice
6. Craig Zerk Consulting Engineer - 20 April 2017
7. Craig Zerk Consulting Engineer - 27 April 2018
8. Terra Ark - February 2018
9. The Tree Doctor - 9 March 2018
10. Survey Photos
11. Terra Ark - 29 April 2018
12. The Tree Doctor - 29 April 2018
13. Catherine Russo - 28 April 2018
14. Airwalk Tree Services - 26 April 2018
15. Veteran Tree Group - 29 April 2018
16. Forensic Engineers Pty Ltd