

CITATION: *Lowe v BGC Technical* [2016] QCATA 124

PARTIES: Arthur Lowe
Eileen Mabel Lowe
(Applicant/Appellant)
v
BGC Technical Ltd
(Respondent)

APPLICATION NUMBER: APL472-15

MATTER TYPE: Appeals

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Justice Thomas, President**
Member Browne

DELIVERED ON: 3 June 2016

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. Appeal on ground three refused.**
- 2. Appeal on grounds one and two allowed.**
- 3. The decision of the Tribunal made on 15 October 2015 is set aside.**
- 4. The applicants' application for a tree dispute filed on 24 December 2014 is returned to the Tribunal for consideration according to law and the findings disclosed in these reasons.**

CATCHWORDS: APPEAL – NEIGHBOURHOOD DISPUTE – TREE DISPUTE – JURISDICTION OF TRIBUNAL – where lot owners filed application for a tree dispute – where ‘tree keeper’ owns adjoining property – whether a lot owner subject to the *Building Units and Group Titles Act 1980* (Qld) is a ‘neighbour’ under s 49 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (Qld)

APPEAL – ERROR OF LAW – JURISDICTION

OF TRIBUNAL – where Tribunal considered whether applicants are ‘neighbours’ under the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (Qld) – where Tribunal found ‘land’ affected by the trees is scheme land under the *Building Units and Group Titles Act 1980* (Qld) – where Tribunal found applicants do not have standing – whether error in the Tribunal’s decision to dismiss the applicants’ application

Body Corporate and Community Management Act 1987 (Qld), s 325

Building Units and Group Titles Act 1980 (Qld), ss 7, 8, 9, 21, 37, 123

Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld), Chapter 2, Chapter 3, ss 12, 14, 15, 20, 41, 46, 48, 49, 57, 62, 65, 66, Schedule

Queensland Civil and Administrative Tribunal Act 2009 (Qld), ss 32, 142

Sanctuary Cove Resort Act 1985 (Qld), s 23, sch 9.

Brown & Anor v Wallace [2014] QCAT 461; cited

Lanyon v Lucas [2014] QCAT 180; cited

Lowe v BCG Technical Ltd [2015] QCAT 408

Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355; cited

Wood v Kenyon [2015] QCAT 335; cited

APPEARANCES:

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (‘QCAT Act’).

REASONS FOR DECISION

- [1] Arthur and Eileen Lowe (the applicants) are lot owners of property at Hope Island on the Gold Coast. BGC Technical Ltd (the respondent) owns an adjoining property.
- [2] Both properties owned by the applicants and the respondent are managed by the Body Corporate for Rosebank GTP 3033 (the Body Corporate) and

are subject to the *Building Units and Group Titles Act 1980* (Qld) (the 'BUGT Act').¹

- [3] There is a boundary fence between the applicants and the respondent's property. A number of trees grow on the respondent's property close to the boundary fence.
- [4] The applicant's say that the trees growing on the respondent's property have damaged the boundary fence.
- [5] Under the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (Qld) ('ND Act') the Tribunal has the power to make orders it considers appropriate about a tree or trees '*affecting [a] neighbour's land*' upon application being made by '*the neighbour*'.²
- [6] The applicants filed an application for a tree dispute in the Queensland Civil and Administrative Tribunal seeking an order, amongst others, to remove the trees and repair the fence.³
- [7] The Tribunal at first instance dismissed the application for a tree dispute.⁴ The learned Member found that the applicants do not have standing to bring the application because they are not the Body Corporate and are therefore not '*a neighbour*'.⁵
- [8] The applicants want to appeal the Tribunal's decision. The applicants want the Tribunal's decision set aside and a substituted decision made that they have standing to make an application.⁶
- [9] The application for leave to appeal or appeal identifies three grounds of appeal that raise errors of law for which leave is not required.⁷ Although the applicants' appeal for grounds one and two refer to an error in the Tribunal's findings that the applicants are not a '*neighbour*' under the BUGT Act (ground one); and that only the Body Corporate has standing under the BUGT Act (ground two), the applicants have in written submissions correctly identified the alleged error in the learned Member's findings. That is, the appeal is on the basis that the Tribunal erred in a matter of law by finding that the applicants did not have standing (under the ND Act) '*as it could not be considered a "neighbour"*'.⁸ Finally, the Applicants contend that there is an error in the Tribunal's finding that s 123 of the BUGT Act does not have application to a tree dispute pursuant to the ND Act (ground three).

¹ By operation of the transitional provisions in the *Body Corporate and Community Management Act 1997* (Qld), see ss 324 and 326 and the *Sanctuary Cove Resort Act 1985* (Qld).

² *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (ND Act), ss 66, 62, 49.

³ Application filed on 24 December 2014.

⁴ *Lowe v BCG Technical Ltd* [2015] QCAT 408.

⁵ Reasons, [48]-[51].

⁶ Application for leave to appeal or appeal filed on 12 November 2015.

⁷ Ibid.

⁸ Submissions filed on 23 December 2015, p 2.

- [10] In written submissions the applicants say they have standing because they are the registered owner of a lot under the *Land Title Act 1994* (Qld) for the purposes of s 49(1)(a)(i) of the ND Act.⁹ The applicants say their property and the respondent's property form part of the scheme Rosebank GTP 3033 which is within the Sanctuary Cove Resort under the *Sanctuary Cove Resort Act 1985*.¹⁰ The applicants say that they are lot owners of their property in accordance with the *Land Title Act 1994* (Qld) whereby they are the registered owners of their property, which includes property being administered under the BUGTA.¹¹
- [11] The applicants say they are also owners pursuant to s 14 of the ND Act.¹² The applicants submit that because they are lot owners under both the *Land Title Act 1994* (Qld) and the ND Act they are therefore considered to be neighbours pursuant to s 49(1)(a) of the ND Act.¹³ The applicants submit that they have standing to bring an application before QCAT and QCAT has jurisdiction to hear it.¹⁴
- [12] The respondent did not file any written submissions in response to the appeal.¹⁵

Who can file an application for a tree dispute?

- [13] Under s 62 of the ND Act the '*neighbour*' may apply to QCAT for an order in relation to a tree affecting the neighbour's land.¹⁶ Relevantly, s 46 provides land is '*affected by a tree*' if (at a particular time), amongst others, the tree has caused, is causing, or is likely within the next 12 months to cause '*serious damage to...any property on the land*'; or '*substantial ongoing and unreasonable interference with the ... use and enjoyment of the land*'; and (as provided in subsection (b)) the land '*adjoins the land on which the tree is situated*'.¹⁷ Section 46 of the ND Act provides:

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

⁹ Ibid, p 1.

¹⁰ Submissions filed 18 September 2015, [12].

¹¹ Submissions filed 23 December 2015, p 4.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid, p 1.

¹⁵ See Appeal Tribunal Directions dated 27 November 2015.

¹⁶ QCAT may make orders under s 66 of the ND Act.

¹⁷ ND Act, s 46 and see Schedule, s 4.

(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.

[14] For the purposes of s 46, '*land*' is not defined under the ND Act but under s 4 of the Schedule, '*adjoining land*' is '*the land on either side of a common boundary*'.¹⁸

[15] The ND Act provides '*who is a neighbour*' for a particular tree- a registered owner of a lot recorded in the freehold register under the *Land Title Act 1994* (Qld); the body corporate for the plan if land affected by the tree is a parcel of land the subject of a plan under the BUGT Act. Section 49 of the ND Act provides:

49 Who is a neighbour

(1) Each of the following entities is a ***neighbour*** in relation to a particular tree or the tree-keeper for a particular tree—

(a) if land affected by the tree is a lot recorded in the freehold land register under the *Land Title Act 1994*—

- (i) a registered owner of the lot under that Act; and
- (ii) an occupier of the land;

(b) if land affected by the tree is scheme land under the *Body Corporate and Community Management Act 1997*—the body corporate for the community titles scheme;

(c) if land affected by the tree is a parcel of land the subject of a plan under the *Building Units and Group Titles Act 1980*—the body corporate for the plan.

(2) However, subsection (1)(a)(ii) does not apply for part 4.

[16] The word '*lot*' for a lot recorded (in the register) and the word '*parcel*' for a parcel of land as provided under s 49 of the ND Act are not defined (under the ND Act). Under the *Land Title Act 1994* (Qld) the word '*lot*' includes a '*lot under the [BUGT Act]*' as defined under Schedule 2. Under the BUGT Act the word '*parcel*' means '*the land comprised in a plan*' and the word '*plan*' means '*a building units plan or a group titles plan*'.¹⁹ Schedule 2 of the *Land Title Act 1994* (Qld) provides:

lot means a separate, distinct parcel of land created on—

- (a) the registration of a plan of subdivision; or
- (b) the recording of particulars of an instrument;

and includes a lot under the *Building Units and Group Titles Act 1980*.

¹⁸ ND Act, s 15, see '*adjoining land*' in Schedule, s 4.

¹⁹ BUGTA, s 7.

What did the Tribunal find?

- [17] The Tribunal found the applicants do not have standing to bring the application because only a *'neighbour'* may apply to the Tribunal.²⁰ The Tribunal found that the applicants' property is a parcel of land the subject of a plan under the BUGT Act and the applicants are not the Body Corporate.²¹ The Tribunal also found that s 123(2) of the BUGT Act is limited in its application to dividing fences.²²
- [18] Section 123 of the BUGT Act says that for the purposes of the ND Act the body corporate is the owner of the parcel the subject of that plan and for common boundaries between lots in a group titles plan the ND Act applies *'as if the proprietors of the lots were the owners of adjoining land'*. The relevant s 123 of the BUGT Act set out in the Tribunal's reasons is as follows:

123 Dividing fences

- (1) For the purposes of the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 the body corporate in respect of a plan shall be deemed to be the owner of the parcel the subject of that plan, other than such part (if any) of that parcel which is the subject of a lease accepted or acquired by the body corporate under section 21.
- (2) The provisions of the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 apply in respect of the common boundaries between lots in a group titles plan as if the proprietors of the lots were the owners of adjoining land.
- [19] The Tribunal considered the *'scope'* of s 123 of the BUGT Act *'by reference to the operation of the ND Act'*.²³ The Tribunal found that s 123(1) of the BUGT Act applies to the *'entire parcel of scheme land comprising individual lots and common property'*.²⁴
- [20] The Tribunal also considered s 123(2) of the BUGT Act as being *'concerned with common boundaries'* between lots in a group titles plan. The Tribunal found, as provided in s 9(5) of the BUGT Act, that in a building units plan, the common boundary of any lot with another lot or with common property is the centre of the wall, floor or ceiling. The Tribunal, in determining the meaning of *'common boundary'*, applied *'its ordinary meaning'*. The Tribunal said (footnotes deleted)²⁵:

...There is no definition of *'common boundary'* or other guidance as to the meaning of that term contained in the BUGTA relating to group titles plans. The term should be given its ordinary meaning – *'common'* meaning *'shared by'* and *'boundary'* meaning *'a line that marks the limits of an area.'*

²⁰ Reasons, [49].

²¹ Reasons.

²² Ibid, [22], [38].

²³ Ibid, [25].

²⁴ Ibid, [27].

²⁵ Ibid, [28].

- [21] The Tribunal found that for the definitions of ‘owner for land’, ‘adjoining owners’ and ‘adjoining land’ contained in Chapter 2 of the ND Act refers to the obligations of ‘owners’ and ‘adjoining owners’ in respect of fencing separating ‘adjoining land’ and those provisions do not ‘extend in their application’ to Chapter 3 of the ND Act.²⁶ The relevant extract from the Tribunal’s reasons is as follows:²⁷

The definitions of ‘owner for land,’ ‘adjoining owners’ and ‘adjoining land’ are contained in chapter 2 of the NDR Act. Chapter 2 refers to the obligations of ‘owners’ and ‘adjoining owners’ in respect of fencing separating ‘adjoining land’. These provisions do not extend in their application to Chapter 3 of the NDR Act.

- [22] The Tribunal found that what is central to Chapter 3 of the ND Act is not common boundary between lots, but the presence of a ‘tree’ on land which may affect adjoining land.²⁸ The relevant extract from the Tribunal’s reasons is as follows (footnotes emitted)²⁹:

Chapter 3 of the ND Act, rather than referring to adjoining owners, sets out the obligations of ‘tree keepers’ and the rights and entitlements of ‘neighbours’ whose land is ‘affected by a tree.’ Whilst land must adjoin in order to be affected by a tree...it is not the “common boundary” between two parcels of land that is at the heart of Chapter 3. Rather, it is the ‘tree’. In Chapter 3, the common boundary between parcels of land is relevant to the extent that the land must adjoin, branches may overhang the boundary or a tree may be growing on or over the boundary.

- [23] The Tribunal ultimately found that if land affected by a tree is a parcel of land ‘the subject of a plan’ under the BUGT Act, the ‘neighbour is the body corporate for the plan’.³⁰ The learned Member said³¹:

As I have observed, if land affected by a tree is a parcel of land the subject of a plan under the BUGTA, the neighbour is the body corporate for the plan...

- [24] The Tribunal found that the applicants’ property is land that is the subject of a plan under the BUGT Act and the applicants are not the Body Corporate.³² The Tribunal found that the applicants’ are ‘therefore not a “neighbour” and do not have standing.’³³

Grounds one and two – error in the Tribunal’s finding of who is ‘a neighbour’ under s 49 of the NDR Act?

- [25] The applicants’ contentions for grounds one and two raise a question of law because the Tribunal made findings about who has standing to bring

²⁶ Reasons, [30].

²⁷ Ibid.

²⁸ Ibid, [39].

²⁹ Ibid, [40].

³⁰ Ibid, [48].

³¹ Ibid, [48].

³² Ibid, [49].

³³ Ibid.

an application under the ND Act. Under s 62 of the ND Act only the ‘neighbour’ may apply to QCAT.

- [26] There are earlier decisions of the Tribunal that have considered the issue of whether the registered owner of a lot can bring an application for a tree dispute about trees said to be affecting land and property (on the land) that is common property and in another case land that is a parcel of land under the BUGT Act.
- [27] In *Lanyon v Lucas*³⁴ the Tribunal held that land that is common property (affected by the tree) is scheme land in accordance with the BCCM Act and the ‘neighbour’ is the Body Corporate and not the registered lot owners. The relevant extract from *Lanyon’s* case is as follows:³⁵

The land affected by the tree in this case is common property of the Body Corporate and that is not affected by the fact that it may be subject to an exclusive use by-law. As the land is common property it is scheme land in accordance with the BCCM Act and the neighbour is then the Body Corporate and not Ms Lanyon.

- [28] In *Brown & Anor v Wallace*³⁶ the Tribunal found that the ‘land affected’ (by a tree) relates to an area that encompasses common area. The Tribunal found that the registered owners of the lot because they are ‘natural persons’ are also not the body corporate for land under the BUGTA and are therefore not the neighbour as defined by the Act. The relevant extract from the Tribunal’s reasons is as follows (footnotes emitted)³⁷:

The findings in the report relate to an area that encompasses Unit 16, other units and the common area. Lots and land comprising Fig Tree Court are registered under the *Building Units and Group Titles Act* 1980 (Qld) by Group Titles Plan No. 3904... This includes Unit 16 owned by Ms Brown and Mr Dimond. Ms Brown and Mr Dimond are therefore not a registered owner or occupier of land under the *Land Title Act* 1994 (Qld).

Because they are natural persons, they are also not a body corporate for land under the *Building Units and Group Titles Act* 1980 (Qld).

Ms Brown and Mr Dimond are therefore not a “neighbour” as defined by the Act.

- [29] In *Wood v Kenyon*³⁸ the Tribunal did not make findings about whether the property affected by the tree or trees was common property managed by the body corporate but did find that the property (of the applicants) is a parcel of land the subject of a plan under the BUGT Act. The Tribunal found that the applicants (the registered owners of the lot) are not the Body Corporate and are therefore not the ‘neighbour’. The Tribunal found that only the neighbour may apply to the Tribunal in respect of land

³⁴ [2014] QCAT 180.

³⁵ *Lanyon v Lucas* [2014] QCAT 180, [9].

³⁶ [2014] QCAT 461.

³⁷ *Brown & Anor v Wallace* [2014] QCAT 461, [9]-[11].

³⁸ [2015] QCAT 335.

affected by a tree.³⁹ The relevant extract from the Tribunal's reasons is as follows (footnotes deleted)⁴⁰:

It is clear from the material before the Tribunal that the property of Mr and Mrs Wood is a parcel of land the subject of a plan under the *Building Units and Group Titles Act* 1980 (Qld) ("BUGTA"). Land may be subdivided into lots and common property by the registration of a plan under the BUGTA... The description of Mr and Mrs Wood's property on the relevant certificate of title is Lot 14 on Group Titles Plan 70358.

Mr and Mrs Wood are not the Body Corporate for Group Titles Plan 70358. They are therefore not a 'neighbour'. Only a neighbour may apply to the Tribunal in respect of land affected by a tree.

The description of Mr and Mrs Wood's property on the relevant certificate of title is Lot 14 on Group Titles Plan 70358

- [30] In this case the applicants and the respondent's property form part of the scheme Rosebank GTP 3033 which is subject to the *Sanctuary Cove Resort Act* 1985 (Qld). That Act is a 'specified Act' for the purposes of s 326 of the *Body Corporate and Community management Act* 1997 (Qld) (BCCM Act) and (because there is a 'specified Act') the BUGT Act still applies.⁴¹
- [31] The applicants are the registered owners of a lot that is, for the purposes of the *Land Title Act* 1994 (Qld), a 'lot' under the BUGT Act.⁴² Section 49(1)(a)(i) of the ND Act says that a registered owner 'of the lot' is 'a neighbour'
- [32] The land is a parcel of land the subject of the plan under the BUGT Act. The body corporate for the plan is 'a neighbour' as contemplated by s 49(1)(c) of the ND Act.
- [33] The common property is also a parcel of land the subject of the plan under the BUGT Act, for which the body corporate is 'a neighbour'.
- [34] Section 49 when defining who 'is a neighbour' says that 'each of the entities' listed is a neighbour. Use of the word 'each' suggests that more than one entity can be 'a neighbour'. It does not, for example, use words like 'any one of the following' which would lead to the conclusion that there can only be one neighbour. It is possible that, for a particular tree or the tree keeper of a particular tree, there may be more than one 'neighbour' who has standing to apply under s 62.
- [35] If both the registered owner and the Body Corporate are affected and the Body Corporate elects not to bring an application there would be a serious injustice to the registered owner of land (or a lot) if the registered owner

³⁹ Ibid, [9].

⁴⁰ *Wood v Kenyon* [2015] QCAT 335, [8]-[10].

⁴¹ As provided under s 327(1) of the *Body Corporate and Community management Act* 1997 (Qld).

⁴² *Land Title Act* 1994 (Qld), Schedule see s 49(1)(a). See submissions filed 23 December 2015, p4, part C [3].

was denied standing. An interpretation of s 49 which excludes the registered owner of land (or a lot) that is a parcel of land the subject of a plan under the BUGT Act is not consistent with the language and purpose of the provisions of the ND Act viewed as a whole.⁴³ The objectives of the ND Act, set out under s 3 include, amongst others, to resolve issues about dividing fences and trees; and '*facilitate resolution of any disputes*' about dividing fences and trees that '*do arise between neighbours*'.

- [36] The aim of s 49 is clearly to ensure that any person affected by a tree has the right to apply. Another example of this can be found in the words of s49(1)(a)(i) and s49(1)(a)(ii) where both the owner and occupier can be neighbours and are entitled to apply.
- [37] Section 49 of the ND Act must be read together with s 46 which sets out the circumstances in which '*land is affected by a tree*'. This is because s 49 refers to '*land affected by the tree*'.
- [38] The circumstances under which land is affected by a tree, includes if there is serious damage to the land; and substantial and an unreasonable interference with the use and enjoyment of the land.⁴⁴ This may include a situation where (as in the present matter) the use and enjoyment of the registered owner's land (or lot) is '*affected by a tree*' because there is a boundary fence damaged by trees and there may be consequences (to the registered owner's use and enjoyment of the land) as a result of such damage.
- [39] In this case, the applicants as the registered owners of land (or a lot) have filed an application seeking orders amongst others, for the tree-keeper to remove the trees growing on the adjoining property and to repair the boundary fence. Because the applicants are the registered owners of land (or a lot) under the *Land Title Act* 1994 (Qld) that may be '*affected by a tree*' for the purposes of s 46 they are a '*neighbour*' and may therefore apply to the Tribunal for an order about a tree or trees if '*land is affected by a tree*'.⁴⁵ It is a matter for the Tribunal in determining the appropriate orders to be made under s 66 of the ND Act to be satisfied that the land (or property on land) is '*affected*' (under s 46) and to have regard to all of the relevant matters for consideration under the ND Act.
- [40] There is an error in the Tribunal's finding that the applicants do not have standing under the ND Act because they are not a neighbour (under the ND Act). This is because the registered owner falls within the description in s 49(1)(a)(i) of the ND Act.
- [41] The decision of the Tribunal to dismiss the applicants' application for a tree dispute should be set aside and the application returned to the Tribunal so that it can proceed to a final hearing.

⁴³ *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, 381.

⁴⁴ ND Act, s 46(a)(ii).

⁴⁵ ND Act, ss 46 and 66.

Ground three – applicability of s 123 of the BUGT Act to the ND Act

[42] There is no error in the Tribunal’s findings about the applicability of s 123 of the BUGT Act to the ND Act. Section 123 refers to ‘*dividing fences*’ and effectively mirrors similar provisions that appear in the ND Act (Chapter 2) relevant to disputes about dividing fences.

[43] The Tribunal correctly found that s 123 of the BUGT Act was limited in its applicability and does not have application in respect of a dispute relating to trees under Chapter 3 of the ND Act. The learned Member said:⁴⁶

Section 123 BUGTA is limited in its application to dividing fence disputes under chapter 2 of the NDR Act. The provisions of Chapter 2 of the NDR Act insofar as the Act relates to fencing disputes between adjoining group titles plan scheme lot owners under the BUGTA, must be read subject to s.123 BUGTA.

If the intention of the legislature had been to bring tree disputes within s.123 BUGTA, the opportunity to do so in clear and unequivocal terms presented itself at the time of the amendment to s.123 BUGTA upon the commencement of the NDR Act. The legislature did not do so.

That the amendment to the s.123 BUGTA was limited to the omission of the reference to the *Dividing Fences Act* 1953 and the insertion of the reference to the NDR Act reinforces my view that s.123 BUGTA does not have application in respect of disputes relating to trees under Chapter 3 of the NDR Act.

[44] The Tribunal has set out the relevant sections of the ND Act and the BUGT Act. The learned Member correctly said that the references in the s 123 to ‘*common boundaries*’ and ‘*owners*’ of ‘*adjoining land*’ are significant.⁴⁷ The learned member correctly said that s 123 was amended upon the enactment of the ND Act and s 123 does not have application in respect of disputes relating to trees under Chapter 3.⁴⁸

[45] As we have said the applicability of relevant sections of the ND Act such as who is ‘*a neighbour*’ will depend on the nature of the application and the land being affected (is a parcel of land) and how the land or property (on the land) is affected. In this case, the applicants have filed an application seeking orders for the tree keeper to remove the trees and repair the boundary fence. Chapter 3 of the ND Act clearly applies and the Tribunal in determining the appropriate orders to be made (under s 66) must be satisfied that the criteria in relevant provisions such as s 46 are met. There is no error in the Tribunal’s finding that s 123 of the BUGT Act applies to Chapter 2 but not Chapter 3 of the ND Act. The appeal on ground three is dismissed.

⁴⁶ Reasons, [45]-[47].

⁴⁷ Ibid, [31].

⁴⁸ Ibid, [33].

Conclusion

- [46] We have found that there is an error on grounds one and two of the appeal in the Tribunal's finding that the applicants have no standing because they are not the Body Corporate and are not the '*neighbour*' for the purposes of s 49 of the ND Act. Because there is an error in the Tribunal's finding that the applicants do not have standing, there is an error in the Tribunal's ultimate decision to dismiss the application for a tree dispute filed on 24 December 2014. The appeal on grounds one and two is allowed.
- [47] In relation to ground three of the appeal, we have found that there is no error in the Tribunal's finding about the applicability of s 123 of the BUGT Act to Chapter 3 of the ND Act. The appeal on ground three is refused.
- [48] The Tribunal has the power under s 146(c) of the QCAT Act to set aside the Tribunal's decision and return the matter to the Tribunal. Because there is an error in the Tribunal's finding on grounds one and two of the appeal the Tribunal will make the appropriate orders under s 146(c) of the QCAT Act to set aside the Tribunal's decision and remit the matter back to the Tribunal so that appropriate directions can be made to prepare the matter for a hearing. We make those orders accordingly.