

CITATION: *Inquest into the death of William Bernard Brown* 2016 [NTMC]
004

TITLE OF COURT: Coroner's Court

JURISDICTION: Darwin

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FINDING OF: Mr Greg Cavanagh SM

CATCHWORDS: **Accidental death from falling tree branch, dangerous trees, inspection and maintenance of trees, negligence.**

REPRESENTATION:

Counsel:

Assisting:	Jodi Truman
City of Darwin	Jon Tippett QC
Active Tree Services Pty Ltd	Nikolai Christrup
Perry Park Pty Ltd	
trading as	
Gardens Park Golf Links	Tass Liveris
Territory Insurance Office	Lyma Nguyen

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IN THE CORONERS COURT
AT DARWIN IN THE
NORTHERN TERRITORY
OF AUSTRALIA

No. D0104/2014

In the matter of an Inquest into the death of
**WILLIAM BERNARD BROWN AT ROYAL
ADELAIDE HOSPITAL, ADELAIDE
ON 12 JUNE 2014**

FINDINGS

Mr Greg Cavanagh SM

Introduction

1. Mr William Bernard Brown died on 12 June 2014 at the Royal Adelaide Hospital; six (6) days after being struck by a branch which fell from an African Mahogany Tree on 6 June 2014. The African Mahogany Tree was situated in close proximity to the first tee of the Gardens Park Golf Links (“the golf club”) in Darwin in the Northern Territory of Australia.
2. Mr Brown had attended at the golf club that day to participate in a game with long term friend; Mr Craig Menzies (“Mr Menzies”). The two men walked to the first tee at approximately 4.05pm and a few moments later a “cracking” sound was heard. Mr Brown was struck by a branch estimated to have fallen from a height of three (3) to four (4) metres above him, colliding with his head, shoulder and back and causing him to collapse to the ground. A number of bystanders came to his immediate aid and provided comfort until St John Ambulance arrived. In that time Mr Brown was already stating that he had no feeling in his arms or legs and his ability to breathe began to deteriorate.
3. After initially being taken to the Royal Darwin Hospital (“RDH”) Mr Brown was subsequently transferred to Royal Adelaide Hospital (“RAH”) where his significant injury was confirmed to be quadriplegia. He was advised that his prospects were unfavourable and he would require a tracheostomy and long

term respiratory support just to breathe. Following numerous conversations between Mr Brown, his family and medical staff, Mr Brown stated that he did not wish to continue with treatment and wished to die. He was eventually palliated and extubated and pronounced deceased at 4.00pm on Thursday 12 June 2014. He was 62 years of age at the time of his death.

4. Mr Brown's death was unexpected and thus reportable to me pursuant to s.12 of the *Coroners Act* ("the Act"). This inquest has been held as a matter of the exercise of my discretion under s.15 of the *Act*. Pursuant to s34 of the *Act*, I am required to make the following findings if possible:

“(1) A Coroner investigating:

a. A death shall, if possible, find:

- (i) The identity of the deceased person.
- (ii) The time and place of death.
- (iii) The cause of death.
- (iv) Particulars required to register the death under the *Births Deaths and Marriages Registration Act*.
- (v) Any relevant circumstances concerning the death”

5. Section 34(2) of the *Act* operates to extend my function such that I may comment on a matter including public health or safety connected with the death being investigated. Additionally, I may make recommendations pursuant to section 35 as follows:

“(1) A Coroner may report to the Attorney General on a death or disaster investigated by the Coroner.

(2) A Coroner may make recommendations to the Attorney General on a matter, including public health or safety or the

administration of justice connected with a death or disaster investigated by the Coroner.

(3)”

6. This inquest was held on 9, 10 and 11 March 2016. A total of fourteen (14) witnesses were called to give evidence, namely; Detective Sergeant Kieron Weller, Dennis Plummer, Michael Moylan, Dillon Ehlert, Gregory Hunt, Joseph Marchington, Steven Purser, Christopher Gregg, Tony Simons, Damian Coombs, William Carroll, Rodger Dee, Dr Dean Nicolle and William Sullivan. A brief of evidence containing various statements, together with numerous other reports, medical records and police documentation was tendered. Public confidence in Coronial investigations demands that when police (who act on behalf of the Coroner) investigate deaths that they do so to the highest standard. I thank Detective Sergeant Weller for his detailed investigation.
7. This is not unfortunately the first death involving a branch falling from an African Mahogany Tree. On 2 May 2008 I handed down findings in the *Inquest into the death of Aidan Bott* [2008] NTMC 025. Young Aidan had died during a recess at St Marys Primary School when a branch from an African Mahogany Tree struck him in the school yard. Following that inquest I made a number of recommendations. Due to the death occurring at a school, those recommendations focussed on inspections and tree maintenance at schools. There was however wide public discussion about the death and those findings beyond just the recommendations directed at schools. I note in particular that employees of the City of Darwin (then Darwin City Council) gave evidence in that inquest.
8. As a result, one of the purposes of this inquest was to consider issues relevant to public health and safety and determine whether the recommendations made previously in the *Bott* inquest should be extended to

trees located in publically frequented areas. I will therefore return to this aspect later in these findings.

Background of William Brown

9. William Bernard Brown was born in Perth in Western Australia on 10 November 1951. His mother was Mary West, who passed away a number of years ago. His father's name is unknown and was not listed on his birth certificate. His birth certificate also registers his name as William Bernard West; however he changed his surname to "Brown" later in life. He was raised by his mother and maternal grandmother.
10. Mr Brown's mother later married and had three (3) more children, namely Julie, Alison and Lester Walker. He received his formal education in Perth and worked a number of jobs before relocating to Darwin, in approximately 1980. He was employed in a number of positions before securing long-time employment (which he continued up until his death) as a truck driver and shot-firer (demolitions) for mining companies. At the time of his death he remained employed as a shot firer and truck driver for Nedrill Blasting Contractors Pty Ltd.
11. Shortly after relocating to Darwin, Mr Brown met his future wife Gail who was his neighbour at the time. Gail had a daughter Kerry and the couple were subsequently married in July 1989. On the material tendered before me, Mr Brown was an avid golf and baseball player; who frequently went on recreational bicycle rides and enjoyed a very active lifestyle. He was described as health-conscious with his eating habits and enjoyed an occasional cold beer. It is clear that Mr Brown was a healthy man who enjoyed a physically active lifestyle and suffered from no significant medical ailments aside from hypertension for which he did not require medication.
12. In terms of Mr Brown's medical history it is largely unremarkable with no recorded admissions to the Royal Darwin Hospital ("RDH") in all his years

in Darwin and there is no evidence to suggest he suffered any significant health issues. His wife Gail recalled that in their many years together; she had never known Mr Brown to suffer anything apart from sports-related strains, etc. Mr Brown was clearly a very much loved man. His wife, daughter, son-in-law and grandchildren attended the inquest together with numerous other friends. It is clear that he is still very much missed by those who knew him.

Events of 6 June 2014 at the Gardens Park Golf Links

13. I had tendered into evidence a number of statements from persons who attended at the Gardens Park Golf Links (“the golf club”) on Friday 6 June 2014. Such persons were not required to give oral evidence as there was no dispute as to how events unfolded. Mrs Gail Brown provided a statement where she recalled that her husband left home that day at approximately 3.45pm to go and play golf with Mr Craig Menzies.
14. Mr Menzies was a close friend of Mr Brown. They had known each other for approximately 25 years and regularly played golf together. Mr Menzies described that he and Mr Brown walked to the first tee at approximately 4:05pm and he rested against the first tee to put his shoes on while Mr Brown stood waiting on the paved area. Whilst putting on his shoes Mr Menzies heard “a very short crack from a branch” and then saw a large branch from an African Mahogany Tree fall onto Mr Brown. Mr Menzies stated that “the tree branch knocked his head to one side and then it pretty much hit him where your neck joins your shoulder and then pushed him down into the ground”. Mr Menzies immediately ran to Mr Brown’s aid along with other bystanders and he observed his friend to be conscious with a graze to his head. No one attempted to move Mr Brown and a call was made to 000.
15. Mr Benjamin Weight was also at the golf club on that day playing a game of golf with his friend Mr Jack Van Alphen. Mr Weight was also an employee of the golf club. He recalled being at the first tee and talking to Mr Brown.

He stated that he then heard a “loud cracking noise” and, as a result of believing it to be the sound of a falling tree, he ran from the location. When he turned around, he saw that Mr Brown had been struck by a tree branch. Mr Weight ran to Mr Brown and saw that he was still conscious but with “a graze on his forehead, a mark across his shoulder, his hand was bleeding and then when the Ambulance medics came, they took his shoes off and his foot was busted open as well”.

16. Mrs Kerrie Sellen was also at the golf club that day having attended a social function at approximately 2.00pm. At the time that the branch fell, she described facing the first tee when she heard a “loud crack” and saw a large tree branch fall and strike “a man” who was “standing next to the trunk of the tree”. She immediately called 000 as she ran towards Mr Brown and recalled that he was “visibly injured” and bleeding from the right side of his head.
17. Whilst waiting for an ambulance, Mr Brown said that he had no feeling in his hands or feet and was experiencing difficulty breathing. Mr Menzies recalled that Mr Brown could still nod or shake his head to answer the paramedics’ questions, but was advised not to move.
18. Mr Brown was transferred to the RDH where he is recorded as having worsening respiratory failure and acidosis. As a result he was intubated and provided with inotropic support. A CT scan revealed a scalp haematoma, a fracture of the C3/4, a fracture of the T5/6/7, a posterior left 3rd rib fracture, a fractured right foot and a left ring finger crush injury. Quadriplegia was strongly suspected from below the shoulders. It was determined that a transfer to RAH for specialist assessment and treatment should occur.
19. On Saturday 7 June 2014 Mr Brown was transferred by CareFlight to the RAH. Another CT scan was performed and also an MRI. These showed the scalp haematoma, but no brain injury, a fracture of the C3/4 and C7/T1 with ligamentous disruption, compression of the T5/6 and possible T7 and partially collapsed lungs. A spinal MRI also taken and showed ligamentous

injury with significant cervical spinal cord oedema and haemorrhage from the C2 to C5, but no thoracic cord injury.

20. On Sunday 8 June 2014 he underwent surgery where the injury to his C3/4 disc was seen and his spinal injury confirmed as quadriplegia. Numerous consultations occurred between Mr Brown, his family and medical specialists, however it was determined that Mr Brown's prospects of rehabilitation were unfavourable and he would require long-term respiratory support, including a tracheostomy.
21. On Wednesday 11 June 2014 Mrs Brown recalled that her husband told her that he wished to die. This wish was conveyed to medical staff and on Thursday 12 June 2014 various assessments were undertaken to confirm that Mr Brown was of sound mind when indicating this wish. Following confirmation, and given the low chances of any form of recovery from his present state, coupled with family support, Mr Brown was palliated and extubated at 2.45pm. He was pronounced deceased at 4.00pm.
22. Given the circumstances leading to Mr Brown's passing, an autopsy was deemed unnecessary due to the attending Medical Practitioner accepting the cause of death as "respiratory failure secondary to a high cervical cord injury". A Forensic Pathologist Review was subsequently conducted by Dr. Stephen Wills on 16 June 2014; which confirmed the cause of death as cervical spinal injury. I note there is no dispute as to cause of death.

African Mahogany Trees in Darwin

23. In the *Inquest into the death of Aidan Bott*; I received evidence of the history of African Mahogany Trees as a species in Darwin and requirements for their maintenance. Mr William ("Bill") Sullivan was an expert witness in those proceedings and again provided assistance to me during this inquest. The African Mahogany Tree is a native plant of West Africa. The particular species involved in this death (as was involved in the death of young Aidan) is the *Khaya Senegalensis* which is a native of Senegal. Its

natural home is therefore dry savannah woodland with an average rainfall of 850mm per annum. Although its natural habitat is a dry climate; it grows extremely well in the tropics.

24. However, as was noted by Mr Sullivan in the *Bott* inquest and repeated in evidence in these proceedings, one of the problems that manifest itself in such trees when growing in a monsoonal climate is the growth of the tree is much quicker. Further; when grown as an amenity tree, it lacks competition from other trees and therefore grows larger and tends to spread more. Mr Sullivan noted that although during its early development an African Mahogany tree would from time to time shed lower branches, the particular tree involved in this death was no longer in its early stages of development and therefore such “shedding” was not “usual”. Mr Sullivan noted the *Khaya Senegalensis* was introduced into the Northern Territory sometime in the late 1950’s or early 1960’s and then with the event of Cyclone Tracey in 1974 it was planted extensively as a tree, park and house yard tree. He estimated the particular tree involved in this death was approximately 40 years of age.
25. Considering all of the evidence received, it appears that the following are particular risks associated with the African Mahogany tree:
 - 25.1 The canopy becomes very dense and therefore top heavy;
 - 25.2 Because of the density of the crown, the foliage becomes restricted to the ends of the branches resulting in older trees developing long and end-weighted primary leaders and branches; and
 - 25.3 The tree itself has a shallow root system therefore in the wet season when the soil becomes loose and saturated; the trees often fall over due to no anchor points being in place for their roots.
26. The evidence also establishes that the African Mahogany Tree, as a large tree, is susceptible to failure due to poor maintenance and care which can

result in the limbs of the tree becoming over-extended and/or heavily “end-weighted”, thus increasing the risk of a limb failing and therefore falling at any time. These particular risks were also identified during the course of the evidence in the *Inquest into the death of Aidan Bott* and were the subject of comment by me during the course of my findings. In particular I noted that the evidence was clear that the risks associated with African Mahogany Trees could be reduced by regular maintenance and regular inspection of at least once every 12 months by a qualified arborist. It was this evidence, in part, that led to the recommendations that were made by me in that inquest.

27. Despite the fact that these risks seem, on the evidence in these proceedings, to have been known to all involved, there does not appear to have been any regular maintenance and inspection program in place for African Mahogany trees at the Gardens Park Golf Links.

Maintenance of the African Mahogany Trees at the Gardens Park Golf Links

Responsibility for maintenance

28. Gardens Park Golf Links is a 9 hole golf course set amongst 55 acres of parkland at 1 Chin Quan Road on the fringe of the Darwin central business district. The land is owned by City of Darwin which is the local government entity that owns and operates significant infrastructure in the Darwin city including, but not limited to, roads, bike paths, park/gardens, community service facilities and office buildings.
29. The entire property on which the golf course is situated is leased to Perry Park Pty Ltd who operates the course and trades as Gardens Park Golf Links. Its Director; Mr Rodger Dee, gave evidence before me. He is also the Manager of the Gardens Park Golf Links and has been so for the last 30 years. A lease with the City of Darwin (previously known as Darwin City Council) has been in place during those 30 years with the most recent lease commencing on 1 July 2010 for a further period of ten (10) years.

30. I received evidence that as landlord, City of Darwin would conduct annual inspections of the property, but that the focus of the inspection was on the buildings (i.e. structures) and condition of the greens. City of Darwin provided evidence that it did not carry out the quarterly inspection schedule of trees that it carries out on the other properties for which it is responsible because the property was the subject of a lease to Perry Park Pty Ltd. It is apparent from the evidence that the City of Darwin is of the opinion that the terms of its lease in relation to Gardens Park Golf Links are such that they do not bear responsibility for the trees on the property, relying particularly upon clause 9.1(b) which provides as follows:

“9.1(b) The Tenant must at all times, at its own cost:

- (i) Ensure the Premises (including any lawns and gardens) are clean and sanitary and that no property or rubbish accumulates in the Premises or on the Land” ...

31. It is clear that responsibility for the trees at the golf club site has been the subject of dispute between the City of Darwin and Perry Park Pty Ltd in the past. Mr Dee gave evidence that he considered the terms relating to the maintenance of large trees on the property to be a “grey area between council and myself as the leasee”. Mr Dee stated that it was his opinion that performing works on a tree that he described in evidence as “50 tonne” was “more than just maintenance”. He gave evidence that he would maintain the trees on the property by “trimming” small trees or the lower branches of the larger trees when he saw them and thought they needed trimming, however he noted that he was not permitted to remove any trees without the City of Darwin either consenting to a request from him, or giving him a direction to do so.

32. In terms of any such directions from City of Darwin, I received evidence that in March 2011, the then Darwin City Council (“DCC”) attended at the Gardens Park Golf Links to carry out an inspection of the property. It appears this was initially as a result of a complaint to DCC from a member

of the public about the state of the grounds. There was no reference to trees within the complaint. As a result, on 4 March 2011 Mr William (“Liam”) Carroll of DCC attended at Gardens Park Golf Links with another DCC representative and met with Mr Dee at the property. At the time of that inspection, concern was raised about the trees and arrangements were made for an inspection to be conducted.

33. I note that Mr Dee stated in evidence that he was the one to raise the issue of the trees at that time; however I am not sure that his memory is accurate in this regard. I had tendered into evidence the documents held by the City of Darwin in relation to maintenance at the property and there is an email dated 4 March 2011 which makes clear that the issue of the trees was in fact raised by one of the representatives of the Council that was present at the meeting, namely Mr Nik Kleine. As a result, an inspection was carried out by arborists employed by the Council on 8 March 2011.
34. Following that inspection a direction was given by Council to Perry Park Pty Ltd that two (2) African Mahogany Trees were to be removed and one (1) was to be pruned. This direction was in fact given under cover of correspondence from Mr Carroll to Mr Dee dated 9 March 2011. The letter was tendered in evidence before me and noted that “this needs to be undertaken as a matter of urgency”.
35. The tree that was directed to be pruned was in fact the tree involved in the death of Mr Brown. I received a copy of the “Tree Hazard Evaluation Form” for that tree which also relevantly noted that there was “no pruning history by qualified arborists”. I note that even at that time the tree was estimated to be 30 metres in height and 25 metres in canopy spread.
36. The evidence shows that the two (2) trees that were directed to be removed were in fact removed promptly and a copy of the invoices issued for that work were tendered into evidence. There was however no evidence tendered showing proof that any work having been conducted upon the African Mahogany tree that was to be pruned. Mr Dee gave evidence that he

recalled asking the company that removed the two (2) trees to also remove “one branch” that was over the carpark and do “some pruning” of the tree “on the side of the carpark”. Whilst I have some misgivings about whether this actually occurred, even if I accepted the evidence of Mr Dee in this regard it is clear that on his own evidence, any work that was conducted was minimal and not in accordance with the direction that had been given by Council.

37. Following the removal of the other two (2) trees there was then a dispute between Darwin City Council (i.e. City of Darwin) and Perry Park Pty Ltd as to the cost involved in their removal. Ultimately City of Darwin relied upon its interpretation of the provisions of the lease giving responsibility to Perry Park Pty Ltd and Mr Dee gave evidence that he decided not to pursue the issue further. It is therefore apparent that whilst City of Darwin was advised of their direction having been complied with in relation to the removal of the two (2) trees, it did not receive, nor did it seek, any evidence to confirm that pruning work had been carried out on the relevant African Mahogany tree. Mr Carroll confirmed that he did not do anything to confirm that such work had in fact been carried out and merely “inferred” that it had.

Maintenance undertaken by Active Tree Services Pty Ltd on 21 March 2014

38. According to the evidence; the next occasion that the African Mahogany tree involved in this death had any significant work conducted upon it was on 21 March 2014. That work was carried out by Active Tree Services (“ATS”). Mr Christopher Gregg is the Operations Manager of the Northern Territory for ATS which is a national company. He is also a qualified consultant arborist.
39. Mr Gregg provided a statement to police and gave evidence before me. He stated that a “couple” of weeks before the work was conducted on this tree; he had approached Mr Dee about some work that needed to be carried out on same raintrees also located on the property occupied by Gardens Park Golf

Links. Mr Gregg stated that ATS held the contract with Power and Water to prune trees away from the power lines and wanted to prune the raintrees “harder than they’ve usually been pruned in the past”. He gave evidence that because this was likely to change the aesthetics of the raintrees consent was sought from Mr Dee to carry out such additional works.

40. The evidence provided by Mr Gregg as to the basis upon which discussions commenced with Mr Dee was supported by the evidence of Mr Steven Purser; who is the regional supervisor of the Darwin district for ATS. Mr Purser gave oral evidence that the work sought to be carried out to the raintrees was significant and important to ATS as it would result in the saving of “at least 10 days’ worth of work” if they were able to heavily prune the raintrees in the manner sought.

41. Mr Gregg told police that in order to reach agreement with Mr Dee to have the work carried out he negotiated a:

“... scratch my back, scratch yours thing and we do a little bit of tree work around his yard, you know, for the inconvenience.”

42. Mr Gregg stated in evidence that this was an offer made by him to Mr Dee (tp.94.10):

“No, we offer to - it's a practice that we undertake quite regularly is that we - if we continually cut at somebody's property it's an expensive exercise for us so we may ask them if they wish for the tree to be removed or the power to be removed or if we can prune it harder than we have in the past and it allows us to return less regularly, so we bother them less and we get a better outcome because we can focus our efforts elsewhere.”

43. Mr Gregg confirmed that he offered Mr Dee five (5) to six (6) hours’ worth of work at the property (tp.95.1):

“MS TRUMAN: His Honour has heard - and you just heard - Mr Purser say that in doing what was done to those raintrees, that saved 10 days worth of work?---Yes.

That's a lot of money - agreed?---Yes.

And the work that you did on this one-off occasion for the African Mahogany in return was five to six hours?---Yes.

In an area which you knew was well frequented by golfers - it's the first tee?---Yes.

On a tree that you know African Mahoganies are prone to drop limbs?---I didn't just offer it on the mahogany though. I offered five hours of service and it was discussed what that would get so we discussed the fig tree, we discussed the raintree in the park where people sit and drink and then we discussed the mahogany and it was decided on the mahogany.

The offer that saved you 10 days worth of work was five hours?---Five hours, mm mm.”

44. In terms of the specifications for the work, Mr Gregg gave the following evidence (tp.96.2):

“MS TRUMAN: The African Mahogany is spoken of, ‘we can do five hours worth of work on that’ - what is the specification or the discussion as to what is going to happen in that five hours?---So the immediate - the immediate dangers of that tree or the immediate works that were required, which was the deadwood of the tree?

Yes?---There was - the dead wood was prolific throughout the canopy on almost every limb there would've been deadwood to various sizes, especially over the first tee area and where the steps are to step onto the first tee, there was a lot over there so that was the primary focus and then there was a large dead branches I believe may have stacked in the past. I couldn't see any damage anywhere, that's usually a good indicator of something snapping and no-one had ever mentioned it, it's nothing but it was definitely stubbed and it was dead and that was a very high priority for anybody would want to get that removed.

In relation to his opinion of the danger level of that tree, Mr Gregg gave evidence as follows (tp.96.4):

“MS TRUMAN: Whereabouts is that situation - situated, my apologies?---So where the Astroturf is for the first tee, where every golfer has to tee off to go - to aim for the green, it was directly above that.

HIS HONOUR: So if all this work was undertaken, this tree appears to have been a very dangerous tree indeed, to pass it by - people

walking under the - - -?---It required regular maintenance. I mean, I play golf there regularly.

What you have just told me and what you saw, it appears to have been a very dangerous tree for people passing underneath?---Yes.

Do you agree with that?---I do, yeah.

Yes.

MS TRUMAN: Now, in terms - I asked you what was the discussion or the specifications of what was to be done and you said the immediate dangers that were - or the work that needed to be done was deadwood, was prolific in the canopy especially over the first tee and a large dead branch over the first tee area?

---Yes.

All right, who made that comment? Who said that?---Me.

You did, all right. So you look at it. They've said, 'We want the five hours to be done on this tree' and you have identified what is necessary to be undertaken?

---What can be undertaken within five hours?

In five hours?---Yes.

Now, did you say when you were looking at it, that maybe it needed more than five hours?---In what - in what sense?

All right, I'll take that back because you've correctly identified the issue to the question. Did you think that tree - the tree you've told his Honour was dangerous - needed more than five hours worth of work?

HIS HONOUR: To make it safe?---To make it - yes, to make it - to make that tree 100 percent safe, yes.

Did you say that?---No, I wasn't asked that.

No, no, I didn't ask you that sir. Did you - you had that thought. Did you say that to anyone?---No."

45. In accordance with the agreement reached, Mr Gregg arranged for his workers to attend at the Gardens Park Golf Links on 21 March 2014. I heard

from each of the workers who were involved in carrying out the maintenance on the African Mahogany tree that day. It is apparent from the evidence that Mr Joseph Marchington had been sub-contracted from another company by ATS to carry out climbing duties within the tree and particularly to deadwood the canopy of the tree. Mr Marchington was a qualified tree climber but also a qualified consultant arborist. He gave evidence that he understood that he had been retained that day for his skills as a climber and was not retained to conduct any formal assessment of the tree whatsoever. He understood that the nature of the work that he had been retained to carry out that day was focussed in the tree canopy in an area approximately 15 to 25 metres from the ground with anything below to be worked upon by the other persons at the site that day.

46. I pause to note here that the location where it appears that Mr Marchington was carrying out the majority of his work is significantly higher than where the branch that fell on to Mr Brown was located. That was estimated to be approximately seven (7) metres from the ground. I received evidence that the other workers from ATS on the site that day were Mr Michael Moylan, Mr Dillon Ehlert and Mr Gregory Hunt. Each of those persons gave evidence before me. Whilst I accept that all three (3) men were attempting to recall events as best they could, there was some confusion between them as to precisely where they were carrying out their duties that day, although they were either cutting from the elevated work platform (“EWP”), cleaning up the deadwood from the ground, or chipping.
47. All three (3) however gave clear evidence that they understood that the nature of the work they were tasked to do that day was to remove deadwood from the tree. It is important to note here that whilst each of these men held a Certificate in Arboriculture, they did not hold the Diploma of Arboriculture and were therefore not qualified consultant arborists. All three (3) men also gave clear evidence that when they left that day they did not notice anything “unusual” about the tree and that if they had done so,

they felt confident enough to raise it with their employer (i.e. Mr Gregg) and that they would be listened to.

48. Mr Gregg also gave evidence that during the day that this work was carried out he attended at the site a number of times to see how things were progressing. He stated that he saw Mr Dee whilst he was at the site on one of those occasions and that Mr Dee asked if he could remove another branch so that a spotlight could be located over the first tee for night golf. Mr Gregg stated this was agreed and he instructed his workers to remove the relevant branch. Mr Gregg confirmed that when the "agreed" 5 hour period was coming to an end he attended at the Gardens Park Golf Links and conducted an "audit" of the work, but did not notice anything unusual about the branch that subsequently fell and struck Mr Brown.
49. Importantly, Mr Gregg stated that when he inspected the tree at the end of the day he did consider that the tree required further work to be conducted upon it in order to make it less dangerous, but he said nothing whatsoever about his opinion to Mr Dee:

"MS TRUMAN: After the work was done on 21 March 2014, you're a consultant arborist. You run a national company as the area manager for Darwin. He has relied upon your skills, those of your workers, to come and do some work on a tree?---Mm mm.

Did you ever say after that work, 'By the way, that tree needs some more work done'?---No, I didn't say that, no. Can I add to that?

Did you think it needed more work done on it?---Yes, and the tree had been mature for a long time so the assumption was that tree has - for whoever it was has chosen to keep that tree in that spot, so it's a difficult position to be in to recommend removals a lot because it looks like you're revenue raising and the reason that we were there wasn't in a consultative manner or a recommendation manner, it was to carry out - to carry out work so we could have a gain on our contract basically.

I understand that. Perhaps lawyers understand it more than anyone - -?---Okay.

Because when we give advice we might be accused with being ambulance chasers?

---Right.

But you are a consultant arborist - you are the Northern Territory area manager. You have very special skills. You are working on a tree that you know drops limbs - sometimes healthy limbs. You know, looking at that tree it's dangerous. That's what you told his Honour. 'It needs additional work' - that's the professional opinion you formed - and you don't say a word - is that correct?---Because of the context that I've said - - -

That you didn't want anyone to say 'Are you trying to get money out of me'?---No, because it was - the tree had been there for a long time. We recommended works elsewhere. If every tree that sheds a branch or every tree - and I have to recommend on every tree that I see is potentially dangerous I'd be recommending every tree in the gardens to be removed.

This tree wasn't - you told his Honour wasn't just potentially dangerous it was in your opinion dangerous - correct?---Yeah.

And you didn't say a word - correct?---No, we removed the immediate danger.

And you didn't notify, in your professional opinion - that it needed more work done - correct?---Correct.”

50. In terms of the arrangements for the work being carried out, I note that Mr Dee gave evidence that he was the one to approach Mr Gregg and ask him about the tree. Mr Dee stated he did this (tp.166.2):

“Because there was a couple of reasons. One is there was some, that time of the year where there were storms around and some deadwood falling on top of the artificial tee. That was an issue. The other issue was a couple of tree branches that I thought were inconvenient and should be cut out for different reasons. One was one that was right over the top of the first tree, excuse me, the first tee, was going towards one of the light towers. It wasn't over it. It wasn't impeding it but I thought if years go by while we've got a crane here we'll get that cut out.”

51. Whilst I accept that Mr Dee was doing his best to recall events, I am persuaded on the evidence that it is more likely than not that it was ATS via

Mr Gregg and Mr Purser who first approached Mr Dee, rather than the manner in which Mr Dee described. Even if I am wrong in this regard as to which party approached the other initially, the fact remains that it is clear on the evidence that both Mr Dee and Mr Gregg considered there were issues associated with the branches of that African Mahogany and deadwood and both men agreed they considered that to be dangerous.

52. Mr Dee gave further evidence that when the work was being carried out on 21 March 2014 he recalled that Mr Carroll attended at the Gardens Park Golf Links. Mr Dee stated that whilst Mr Carroll was present he said to him that he thought “the whole tree should go”. Mr Dee alleged that Mr Carroll responded by stating that he was simply to ensure “you cut out all the deadwood”.
53. In relation to this conversation I note that Mr Carroll gave the following evidence (tp.150.8):

“MR LIVERIS: Can I take you now then to 21 March 2014? That was the day that tree 1 was pruned - dead wooded by Active Tree Services. You were there at the club at the time it was going on and saw the works being done by Active Tree Services?---I don't recall that.

You don't recall. I suggest that you were - that you had a discussion with Rodger Dee and he again expressed to you that he believed that tree 1 should be removed. Do you recall discussions with Mr Dee of that nature on that day or around that time?---I recall discussions - general discussions with Rodger in regards to the trees, yes.

About his desire to have tree 1 removed?---Yes, but general discussions. I don't actually recall being there on that day.

Just so that we're clear, in fairness to you, you recall having discussions with Mr Dee around March 2014 when he expressed to you his desire to have tree 1 removed?

THE CORONER: But it may not have been on the day?---It may not have been on the day, yeah.

MR LIVERIS: Around that time.

THE CORONER: You recall subsequent discussions?---I do, yes, in general, yes.

MR LIVERIS: And that the responses that you gave him in the discussions were that that wasn't to be the case, that it was simply to be dead wooded, pruned - - -?
---That I gave him that response?

Yes, the tree wasn't to be removed?---No, I did not say that.

So, as far as you were concerned, where did those general discussions - where were they left as far as you were concerned?---I would've advised Rodger the best thing to do would be to write to council to that effect.”

54. Whilst I accept that Mr Carroll was doing his best to recall events as truthfully as possible, given that he could not recall even attending at the golf club on 21 March 2014, I place little weight upon his recollection of events in terms of what he said to Mr Dee about the removal or otherwise of that tree at or about that time.

The cause for the limb to fail

55. As stated previously, Mr Sullivan provided an expert report to police for the purposes of this inquest. I note that ATS, as a result of receiving that report, also retained its own expert, namely Dr Dean Nicolle, to provide a response to that report. The fact that his report was in response to that provided by Mr Sullivan was conceded by Dr Nicolle during his evidence.
56. It was the thrust of Dr Nicolle’s report and evidence that the failure of the branch on 6 June 2014 resulting in Mr Brown being struck was “characteristic of a ‘sudden limb failure’ event”. Dr Nicolle highlighted the overall structure of the branch and noted that the branch was “over-extended” and “end-weighted”. He in fact went on to note that “all branches had an increased likelihood of structural failure” and also highlighted that the branch was “spreading to near horizontal habit” with such branches being “much more prone” to failure due to the increased force upon them.

57. I note that these two (2) aspects were agreed upon by Mr Gregg and Mr Sullivan as being relevant to the potential cause for the branch failing. I also received evidence from Mr Damien Coombs who was employed as an arborist at the time of this death by the City of Darwin, who also highlighted these aspects as relevant. Mr Coombs is also a qualified consultant arborist.
58. Where the evidence of Mr Gregg, Mr Coombs and Mr Sullivan differed from that given by Dr Nicolle was in relation to the potential for there to have been some “decay” or “rot” (depending on the description of the individual witness) evident that weakened the branch even further and therefore increased its likelihood of risk of failure. I note that in this regard, Mr Gregg, Mr Coombs and Mr Sullivan all gave evidence that they could see what they thought to be decay or rot in the portion of the branch at its point of failure. They also all noted a distinct delineation in the branch indicating decay.
59. I note that Mr Coombs and Mr Sullivan both inspected the branch itself in the days following Mr Brown being struck and confirmed their opinion that it was decay that was seen by them. Mr Gregg considered the photographs provided to him by police, rather than the branch itself, however I note that he did not withdraw his comments to police about seeing decay in those photographs when he gave his evidence before me.
60. Dr Nicolle also considered certain photographs provided to him by the lawyers for ATS and also what remained of the branch. I note however that his examination of that branch was some 21 months after it fell from the tree. Mr Coombs highlighted that this would have meant that the branch would have dried out over time and therefore would have

“lost its colouration and would've lost - you know, it would've been harder to define things like the xylem, sapwood, the heartwood and things like that.”

61. As a result, Mr Coombs gave evidence that it would likewise have been harder to define decay on the branch. I accept Mr Coombs' evidence in this regard.

62. I note that Mr Sullivan opined within his report that:

“(t)he decayed area on the failed branch should have been obvious to any qualified inspector and also should have been obvious to whoever pruned the tree on the last occasion. The decayed portion and the distinctive delineation between living and dead tissue would have been visible from the ground as well as by a tree worker in the tree”.

63. Mr Coombs also stated that it should have been evident to the “trained eye”. Whilst I accept the opinion of Mr Sullivan and Mr Coombs that it should have been evident, it is unfortunately the evidence of all persons who conducted maintenance on that tree on 21 March 2014 that they did not see anything that they considered “unusual” with any particular branch before completing the maintenance on that date. Similar evidence was given by Mr Gregg in relation to his “audit” of the work conducted.

64. I consider it important to note however that I find that the real focus of the workers, namely Mr Marchington, Mr Moylan, Mr Ehlert and Mr Hunt, on that day was upon removing the deadwood from the tree. As Mr Marchington put it in his evidence; the deadwood was “prolific” and he “could have spent days” removing deadwood from the tree. I find that this may have caused such workers to have had too little time to be able to carry out a proper consideration of the tree as they carried out their work, as they were too busy attempting to remove as much deadwood as they could in the five (5) hours that were allowed, and did what they could in that time.

65. Thereafter, and unfortunately, when Mr Gregg conducted his audit of the work, despite the fact that he considered more needed to be done to the tree, he said nothing. As Mr Dee stated in his evidence, Mr Gregg was the “expert” and he relied upon his expertise in relation to the work that was carried out. It is also clear however that at no time was it discussed with, or

even suggested to, Mr Dee that the work being undertaken by ATS would include a full assessment of the tree, and discussions held were only to the effect that the deadwood and specific branches would be removed in the agreed time period.

66. In terms of the *precise* cause of the branch to fail, I do not consider it necessary for the purpose of these findings to make a determination as to whether it was decay (or rot) that caused this branch to fall and strike Mr Brown, or something else. The fact of the matter is that the evidence from Mr Gregg, Mr Coombs, Dr Nicolle and Mr Sullivan is clear that the particular branch involved in Mr Brown's death was growing almost horizontal and had excessive weight at its end (aka "excessive end weight") placing additional strain upon it. It was therefore a limb that had risks associated with it and, due to its location in a heavy traffic area, it required proper assessment and maintenance. It is apparent that such proper assessment and maintenance simply did not occur.

Issues for consideration

67. At the commencement of the inquest counsel assisting asked that consideration be given to the following matters:
- 67.1 The adequacy of the maintenance arrangements for the relevant African Mahogany tree at Gardens Park Golf Links;
 - 67.2 The appropriateness of the work actually carried out on 21 March 2014;
 - 67.3 Whether the recommendations made by me in the *Inquest into the death of Aidan Bott* should be extended.

The adequacy of the maintenance arrangements for the relevant African Mahogany tree at Gardens Park Golf Links

68. Taking into account the evidence as outlined above it is apparent that there was no real maintenance program in place for the trees, including this

specific African Mahogany tree, at the Gardens Park Golf Links. This is particularly concerning as it is clear that all parties relevantly involved in the maintenance of the property, to the limited extent that it was occurring, were aware of the risks associated with African Mahogany trees and/or the findings made in the *Bott* inquest in relation to the necessity for regular inspections and maintenance of such trees.

69. The City of Darwin in particular was aware of those matters as they provided evidence in the *Bott* inquest and highlighted their quarterly tree maintenance program utilising the services of qualified arborists to attempt to ensure any safety issues with trees, including African Mahogany trees, were addressed quickly. It is unfortunate indeed that despite having this awareness, the City of Darwin did not ensure that in the lease of property / parkland owned by them, there was no specific terms in relation to the inspection and maintenance of trees. Mr Dee also acknowledged that he was aware that a previous death had occurred as a result of an African Mahogany tree dropping a limb.
70. There is no evidence before me that despite both City of Darwin and Perry Park Pty Ltd being aware of the general dangers of large trees and specifically of the dangers of African Mahogany trees when there had been no regular maintenance, that there had been any attempt by either party to ensure those dangers were being appropriately addressed.
71. I find that with respect to both City of Darwin and Perry Park Pty Ltd that the maintenance arrangements (such as they were) for trees at Gardens Park Golf Links, including the relevant African Mahogany tree, were inadequate in all of the circumstances and particularly in light of the knowledge possessed by both parties about the dangers associated with African Mahogany trees.

The appropriateness of the work actually carried out on 21 March 2014

72. As noted earlier, the work that was actually carried out upon the African Mahogany tree on 21 March 2014 was conducted by ATS. Mr Gregg gave evidence that the scope of the work was to remove deadwood from the tree and to remove a dead branch. The time period in which that work was to be carried out was five (5) hours. During that period there were some additional branches removed, resulting in perhaps a total of four (4) branches removed in all.
73. Mr Gregg subsequently provided an email to Mr Dee (at Mr Dee's request) on 12 June 2014 that outlined the work carried out as:
- "Removal of deadwood throughout canopy.
 - Prune low branches over car park to 4 metres.
 - 20% risk reduction prune of the canopy.
 - Remove large stubbed branch over the first tee".
74. There is no reference within that brief email provided almost three (3) months after the work was carried out (and coincidentally the very same day that Mr Brown passed away) to any recommendation for further works to be carried out upon the tree, or Mr Gregg's opinion that he considered there was a need for further work to be done. I do not accept, in the context of an issue of public safety, and particularly in light of Mr Gregg's attempts in his evidence to portray himself as having concerns about that particular tree, that he did not express this opinion because he was worried he might be seen to be "chasing" money.
75. There are several ways Mr Gregg could have conveyed his opinion without portraying it as relating to revenue raising for his business. Further, as a consultant arborist who also regularly attended at that location and was aware of the use of the area; it would be reasonable to expect that Mr Gregg

would wish to ensure the safety of those he was aware were utilising that area on a regular basis, rather than concern himself with any possible negative comments about his desire to chase money.

76. Whilst there was no criticism of the actual work that was carried out on 21 March 2014 during these proceedings, it was the opinion of Mr Sullivan that the decayed area on the failed branch should have been “obvious” to any qualified inspector and to those who pruned the tree on the last occasion. As previously noted, the evidence of those involved in that prune on the last occasion is that they did not see any such decay.
77. I was not impressed by the nature of the evidence given by each of the ATS workers as to what specifically each person was doing in each area. Their evidence was vague at best and confusing as to what their actual duties were that were undertaken. Mr Marchington recalled that he considered they were under significant time restraints that day and I find that this impacted on the ability of the workers involved to keep a proper lookout for any issues with the tree beyond attempting to remove as much deadwood as possible.
78. I note however that after that work was undertaken in the time allowed, Mr Gregg then conducted an “audit” of the tree. That was an opportunity for him to take a closer look at the health of the tree. I do not suggest he should have conducted a formal assessment as that is clearly a very lengthy and involved process; however there is no evidence before me as to what he *actually* did when he conducted that audit or how long he spent conducting such an audit. The fact remains that even after he conducted such audit he did not express his ultimate opinion of the need for further work to be carried out upon that tree in order to make it safe.
79. In all the circumstances whilst I find that the removal of deadwood was done to a very basic standard in the time allowed, I also find that ATS failed to ensure that Perry Park Pty Ltd were properly advised as to the risks associated with that tree as identified by Mr Gregg via his own very cursory

look whilst conducting his “audit”. I find that at a minimum this information should have been provided by Mr Gregg, or advice given at the very least that there had been no time available to properly consider the health of the tree to confirm its safety.

80. I do not accept the submission made on behalf of ATS by Mr Christrup that there was “no point” in advising Mr Dee that the tree should be removed because Mr Dee “already thought that” and City of Darwin “was never going to allow it”. That submission is simply not made out on the evidence. Whilst I accept that it appears on the evidence that the City of Darwin had previously stated in 2011 that the tree was to remain, there is no evidence that it had previously ignored advice from a qualified arborist about work being required to be undertaken upon a tree.

Whether the recommendations made by me in the *Inquest into the death of Aidan Bott* should be extended

81. Due in part to the evidence given by then Darwin City Council (now the City of Darwin) as to its quarterly tree inspections by a senior arborist or “Urban Forest Management (“UFM”) team leader, I determined during the *Bott* inquest to limit my recommendations to schools. It appeared on the evidence that the Council was ensuring proper arrangements were being made with respect to the management and maintenance of trees for which it held responsibility.
82. The evidence received at this inquest suggests that the issue of “responsibility” for the maintenance of the trees at Gardens Park Golf Links had unfortunately been a “grey area” or an area of dispute between City of Darwin and Perry Park Pty Ltd for some time. Further, despite this being an issue of dispute and despite both parties being aware of the real dangers of inadequate management and maintenance of such trees, neither party sought to clarify the issue or to resolve the dispute which would have resulted in the much needed and required management and maintenance of the trees.

83. The terms of the lease between City of Darwin and Perry Park Pty Ltd for the property at which Gardens Park Golf Links is situated are far more akin to a commercial property lease over structures rather than parkland. There is no direct reference to trees, and the reference to “lawns and gardens” is in the context of ensuring they are “clean and sanitary”. I do not consider that appropriate. In such circumstances I intend to make a recommendation that City of Darwin reconsider their current leases and ensure they make specific provision as to who bears responsibility for the management and maintenance of trees in accordance with the City of Darwin quarterly tree inspections protocols and the costs of the same.
84. I also intend to extend the recommendations made by me in the *Inquest into the death of Aidan Bott* to ensure there is no room for doubt as to the necessity for such maintenance and management to be undertaken.

Final Comments

85. I find, on the basis of all the evidence provided to me during this inquest, that the specific African Mahogany tree involved in the death of Mr Brown being in the location in which it was, situated next to the first tee, and having had no proper management or maintenance of it, was dangerous.
86. It is a great pity that there was some dispute between City of Darwin and Perry Park Pty Ltd as to who was responsible for the proper management and maintenance of that dangerous tree as I consider that proper management and maintenance is the very thing that would have addressed those dangers, and/or at least minimised the risks. To leave that particular tree as it was, in the location in which it was, without any protective measures being put in place for patrons was, in the broader sense, negligent. As I stated at the end of the evidence, I have little doubt that this death was preventable if there had not been that negligence.

87. As Mr Sullivan stated in his evidence, such trees can continue to be used as amenity trees but they *must* be appropriately managed and maintained with regular inspections (tp.195.1):

“I mean, a maintenance program from when the tree’s in its intermediate stage or even its early development stage is important and that way you can have a big influence on how the tree turns out when it’s a large tree. Leaving a tree till it’s 30 year old before you start to do something with it is virtually a waste of time.”

88. That was also the tenor of his evidence given in the *Bott* inquest which led to the recommendations that were made. Unfortunately it is clear that such appropriate management and maintenance did not occur here and such failure led to Mr Brown’s death. His family have my deepest sympathies and I hope that by virtue of the recommendations made as a result of this inquest that no such failures occur again in future.

Formal Findings

89. On the basis of the tendered material and oral evidence given at this inquest, I am able to make the following formal findings:

- i. The identity of the deceased person was William Bernard Brown who was born on 10 November 1951 in Perth in the State of Western Australia.
- ii. The time and place of his death was approximately 4.00pm on 12 June 2014 at the Royal Adelaide Hospital, Adelaide in the State of South Australia.
- iii. The cause of death was respiratory failure secondary to a high cervical cord injury.
- iv. Particulars required to register the death:
 - a. The deceased’s name was William Bernard Brown.
 - b. The deceased was of Caucasian descent.

- c. The death was reported to the Coroner.
- d. The cause of death was confirmed by Dr Stephen Willis on 16 June 2014.
- e. The deceased's mother was Mary West (deceased). His father was unknown.
- f. The deceased was employed as a shot firer and truck driver at the time of his death.

RECOMMENDATIONS

- 90. That there be compulsory inspection of all trees on property owned by City of Darwin at least every six (6) months.
- 91. That such compulsory inspection is conducted by qualified arborists.
- 92. That the City of Darwin conduct an audit of all current leases and ensure inclusion within their terms for:
 - 92.1 the compulsory inspection of all trees on such property/ies at least every six (6) months;
 - 92.2 such compulsory inspections to be conducted by a qualified arborist;
 - 92.3 specific provision as to who bears responsibility for the costs of such inspections and/or any works recommended to be carried out as a result of the same.
- 93. That the City of Darwin ensure all future leases include within their terms:
 - 93.1 the compulsory inspection of all trees on such property/ies at least every six (6) months;
 - 93.2 such compulsory inspections to be conducted by a qualified arborist;

93.3 specific provision as to who bears responsibility for the costs of such inspections and/or any works recommended to be carried out as a result of the same.

Dated this 21st day of April 2016

GREG CAVANAGH
TERRITORY CORONER