

Proposed Late Item 8.5

Ordinary Meeting

Thursday, 10 December 2020

commencing at 9:00am

Please Note - It is proposed that this report be included on Council's Ordinary Meeting Agenda – 10 December 2020.

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8 REPORTS DIRECT TO COUNCIL**8.5 MANAGEMENT OF A DECLARED DANGEROUS DOG**

File No: F2020/88240

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PURPOSE

The purpose of this report is to provide an overview of Council's statutory responsibilities in relation to the management of dangerous dogs and an outline of a recent case in this regard.

EXECUTIVE SUMMARY

In Queensland, when a dog attacks another animal or person the *Animal Management (Cats and Dogs) Act 2008* (AMA) sets out how a local government must deal with the matter, in the context of both the person responsible for the animal involved in the incident and the animal itself. Local Laws put in place by Council require dog owners to effectively manage their pets to ensure they don't pose a risk or nuisance to the community. These types of Local Laws are common throughout Australia.

Following a dog attack there are two parts of the AMA for a local government to consider:

- the prosecution of the person responsible for the dog at the time of the attack to ensure the person is held accountable and to deter other people from committing the same offence and
- managing the risk posed by the dog being kept in the community.

Council considers both these avenues separately when investigating an attack.

Declaring a dog dangerous puts in place management conditions for the dog (see **Attachment 1**) which are designed to reduce the risk to the community where the dog resides. Under section 97 (1) of the AMA, the owner or person responsible for a declared dangerous dog must ensure all conditions imposed are complied with in respect of the dog.

Where a dog owner fails to meet the conditions for keeping a regulated dog the AMA provides options to Council to address the non-compliance, dependent on the risk posed by the dog. This may include the issuing of an infringement notice, prosecution in the Magistrate's Court, seizing the dog and/or issuing a destruction order in relation to the dog.

The action/s taken by Council in a specific instance are determined based on the incident, available evidence, the ongoing risk posed by the dog, history of incidents and the management of the dog. All of these actions include avenues for appeal or review to ensure procedural fairness.

On 3 April 2019, Sunshine Coast Council officers investigated a report of a dog attack. The dog responsible for the attack had previously been declared a dangerous dog by the Noosa Shire Council in 2016 after attacking and killing another dog that was being walked on a lead.

The owner of the dog responsible for the attack in 2019 had notified Sunshine Coast Council that she was the owner of a declared dangerous dog when she moved to Peregian Springs. The declared dangerous dog (named "Sarge") had also previously attacked another dog when being walked without a muzzle (a condition imposed on the keeping of the dog) in March 2018.

Following the April 2019 incident and in the interests of safe-guarding the well-being of all members of the community Council made the decision to seize Sarge and hold him at the Sunshine Coast Animal Pound while the investigation was completed.

The declaration by Noosa Shire Council in 2016 put in place certain conditions to protect the community from Sarge in future and manage any risk of repeat attacks. The conditions included special containment in which the dog must be kept, muzzling when in public, signage at the property where Sarge lived and a special collar and tag to make him easily identifiable.

As indicated above, in 2018 Sarge was involved in an attack on another dog when he was being walked without a muzzle, contrary to the conditions given to the owner at the time of declaration in 2016. In respect of the incident in April 2019, although a regulated dog containment was on the property, Sarge escaped and again attacked another dog through an open garage door. It was apparent that Sarge was not being kept in the regulated dog containment at the time of his escape. This attack resulted in puncture wounds to the dog's neck requiring veterinary treatment.

It became apparent through the investigation that Sarge presented an ongoing risk to the community as a result of his aggression towards other dogs and the repeated failure of his owner to comply with the conditions for keeping a dangerous dog. The investigating officer made the decision to issue an order to euthanise Sarge.

Once an order is issued to euthanise a dog, Council is responsible for holding the dog until the matter is finalised or overturned.

The decision to euthanise a dog is a serious one, and not taken lightly by any Council officer. Through an extended review process, which resulted in Council accruing costs of \$66,998, Council ensured Sarge's owner was afforded every avenue for review and appeal of this decision, including delaying Council action to allow more time for the owner to initiate a review process.

The original decision of Council was subject to internal review and then (when confirmed) reviewed and upheld by the Queensland Civil and Administrative Tribunal (QCAT). The QCAT decision was subsequently reviewed and upheld by the QCAT Appeal Tribunal. The owner subsequently sought leave of the Queensland Court of Appeal to appeal to the decision of the QCAT Appeal Tribunal and that application was refused on 20 November 2020.

Sarge was euthanised by a qualified veterinarian on 26 November 2020, his passing was respectful, peaceful and calm.

This report is provided for the information of Councillors at the request of the Mayor.

OFFICER RECOMMENDATION

That Council receive and note the report titled "Management of a declared dangerous dog".

FINANCE AND RESOURCING

The *Animal Management (Cats and Dogs) Act 2008 section 53* makes provision for the collection of registration fees for dogs and specifies that this registration fee must be used for the purposes of the AMA. This includes the management of regulated dangerous, menacing and restricted dogs.

The costs associated with the management of this matter (see Table 1 below) will first be funded by the Animal Management Restricted Cash reserve in accordance with the AMA and not through the operational budget.

Table 1 – Summary of costs related to matter

Description of Cost [^]	Amount
Daily boarding fee 4 April 2020 to 26 November 2020	\$26,548
Vet fees	\$785
Barrister (External) and Legal Services (Internal)	\$18,750
QCAT preparation and attendance	\$8,701
Officer attendance in holding pen during owner visits, exercising and washing	\$12,214
Total costs as at 4 December 2020	\$66,998.00

CORPORATE PLAN

Corporate Plan Goal: *Service excellence*
Outcome: We serve our community by providing this great service
Operational Activity: S21 - Local amenity and local laws: maintaining and regulating local amenity through local laws, regulated parking, community land permits and management of animals, overgrown land and abandoned vehicles.

CONSULTATION

Councillor Consultation

Councillors have been kept informed of the matter as it moved through the Tribunal and Court processes.

Internal Consultation

Customer Response has engaged with Legal Services and Corporate Governance in managing this matter.

External Consultation

Council has sought the appropriate advice and services from a barrister in managing this matter.

Community Engagement

Community engagement has not been undertaken in relation to this matter.

PROPOSAL

Overview of the legislation for dog management and attacks

In Queensland when a dog attacks another animal or person the *Animal Management (Cats and Dogs) Act 2008* sets out how a local government must deal with the matter, in the context of both the person responsible for the animal involved in the incident and the animal itself. Local Laws put in place by Council require dog owners to effectively manage their pets to ensure they don't pose a risk or nuisance to the community. These types of Local Laws are common throughout Australia.

Following a dog attack, there are two parts of the AMA for Council to consider:

- the prosecution of the person responsible for the dog at the time of the attack to ensure the person is held accountable and to deter other people from committing the same offence and
- managing the risk posed by the dog being kept in the community.

Council considers both these avenues separately when investigating an attack. The decision to prosecute a person is determined by the AMA, *section 194 and 195* and the amount of the penalty is determined by the Magistrate (see **Attachment 1**). This section of the AMA provides a penalty for the responsible person but does not consider the future risk posed by a dog which has been involved in an attack. There are times where a responsible person may have taken all reasonable steps to prevent an attack from occurring and it is not appropriate to prosecute them through the Magistrate's Court.

The decision to regulate a dog is determined under the AMA, *section 89 (Attachment 1)*. This section of the AMA is designed to help Council manage the risk posed by the dog in the future. Under this section, Council may declare a dog dangerous if the dog –

“has seriously attacked or acted in a way that caused fear, to a person or another animal; or may, in the opinion of an authorised person having regard to the way the dog has behaved towards a person or another animal, seriously attack, or act in a way that causes fear to, the person or animal.”

The AMA defines 'seriously attack' as causing bodily harm, grievous bodily harm or death. The AMA outlines that Council officers can take action in cases where a dog attacks, seriously attacks, causes fear or acts in a way that indicates they may do these things. Council officers use this information to assess an incident and determine if it requires a response under the AMA.

Declaring a dog dangerous puts in place management conditions for the dog (see **Attachment 1**) which are designed to reduce the risk to the community where the dog resides. This includes:

- housing the dog at a nominated and approved address
- confining the dog to an approved enclosure
- ensuring the dog wears a special tag and collar to identify it as a regulated dog
- implanting the dog with a microchip (or prescribed permanent implant device 'PPID')
- placing a sign at the entrances to the property where the dog is kept warning of the presence of a dangerous dog
- ensuring the dog is muzzled when outside the approved property and
- ensuring the dog is under adult control at all times.

When Council makes the decision to declare a dog dangerous there is an allowance in the legislation for the dog owner to request a review of the decision both internally and through the *Queensland Civil and Administrative Tribunal*. This process ensures procedural fairness for the dog owner.

In a case where a dog owner fails to meet the conditions for keeping a regulated dog, the AMA provides options to Council to address the non-compliance dependent on the risk posed by the dog. This may include:

- issuing an infringement for failure to comply with conditions. The on-the-spot fine for this offence is \$934 (as at 1 July 2020)
- prosecuting the responsible person through the Magistrate's Court where the maximum penalty is \$10,008 (as at 1 July 2020)
- issuing a compliance notice with directions on correcting any failures
- seizing the dog while any safety issues are addressed
- issuing a notice outlining Council's intention to euthanise the dog, referred to as a destruction order in the AMA (see **Attachment 1**).

The action/s taken by Council is determined based on the incident, available evidence, the ongoing risk posed by the dog, history of incidents and the management of the dog. All of these actions include avenues for appeal or review to ensure procedural fairness.

The AMA, *section 111, 112 and 116* allows Council officers to enter a property for the purpose of ensuring a dog owner is meeting their responsibilities under the AMA or to investigate an offence. Council makes electronic or video recordings when exercising these powers. This acts as a record of the entry and ensures officers are accountable for exercising their responsibilities correctly and fairly.

Timeline relating to the management of the declared dangerous dog "Sarge"

2016

On 18 August 2016 Sarge was declared dangerous by Noosa Shire Council after attacking and killing another dog on 17 July 2016.

The regulation paperwork provided to the registered dog owner by Noosa Shire Council provided a full list of the conditions for keeping a dangerous dog.

Any disputation which the registered dog owner may have had in relation to the cause of death of the other dog is a matter for the Noosa Shire Council. It is noted that disputing the cause of death of the dog in 2016 has only been presented to Sunshine Coast Council since Sarge was euthanised.

March 2018

On 13 March 2018 Sarge attacked another dog when he was being walked for the purpose of exercise. At the time of the incident, Sarge was not under the control of the owner but section 97(1) of the AMA provides that the owner or any responsible person for a declared dangerous dog, must comply with the conditions of the declaration. The owner is at all times, responsible for ensuring compliance with the conditions of the dangerous dog declaration.

At the time of the incident, Sarge was without a muzzle, which was contrary to the conditions outlined to the registered dog owner in 2016. The investigation recorded through witness statements that the other dog retained minor abrasions and the person walking the dog hurt their knee when falling over during the incident. This incident was noted (as follows) in the QCAT decision of 29 November 2019:

"[9] Whether one or both dogs sustained any injury is not certain, but there is no doubt Sarge was the aggressor in this incident. Sarge was not wearing a muzzle while under ...'s control" (see **Attachment 2**).

Walking Sarge without a muzzle is an offence under section 97 of the AMA as it is a breach of the conditions for keeping a dangerous dog (see **Attachment 1**). Council issued a fine to the responsible person for this offence with the value of \$883 (this was the value of the on-the-spot fine at the time of the offence).

As part of the investigation, officers conducted a regulated dog inspection to ensure the registered dog owner was meeting all the relevant conditions. The inspection showed the registered dog owner had the ability to meet the conditions for keeping a dangerous dog although Sarge was not properly managed on the occasion during which the incident took place.

November 2018

Council officers conducted the annual regulated dog inspection at the relevant property. The registered dog owner was found to be fully compliant with the conditions at the time of the inspection. As part of the inspection process, Council officers provided the registered dog owner with an inspection report which included a full list of the conditions and obligations for keeping a regulated dangerous dog.

March 2019

On 29 March 2019, Sarge escaped the property when the garage door did not close correctly. Sarge was not being kept in the regulated dog containment at the time of the escape. Sarge attacked another dog being walked on a leash the other dog's owner, causing injuries requiring veterinary treatment.

April 2019

The attack was reported to Council on 3 April 2019 at 2:23pm. Council conducted initial investigations and confirmed that the dog responsible for the attack was Sarge. On 4 April 2020, a Council officer seized Sarge in accordance with section 125 of the AMA (see **Attachment 1**). This section in the legislation allows Council to seize a dog in cases where Council reasonably believes:

- the dog has attacked, threatened to attack or acted in a way that causes fear to, a person or another animal or
- the dog is, or may be, a risk to community health or safety.

Council had confirmed through initial investigations that Sarge was involved in the attack. This was confirmed by witnesses which included his registered owner. As a declared dangerous dog, Sarge had previously been identified as being a risk to community health and safety. The Council officer made the decision to seize Sarge and the registered dog owner cooperated fully with Council's request to hold the dog while the investigation was completed.

As a result of the investigation, Council made the decision on 18 April 2019 to prosecute the registered dog owner through the Magistrate's Court for this attack under section 194 of the AMA (see **Attachment 1**) as the owner failed to take reasonable steps to prevent the attack from occurring. The Magistrate issued a penalty for the amount \$3,829.40 on 19 August 2019.

On 16 April 2019 Council also made the decision to issue a notice to the registered dog owner advising of the intention to euthanise Sarge. A document (called a 'destruction order') was issued in accordance with section 127 of the AMA (see **Attachment 1**) to the registered dog owner. The reasons for this decision were outlined in the notice:

- On 18 August 2016 Noosa Shire Council declared Sarge as a 'Dangerous dog'.
- Sarge was declared a 'Dangerous dog' as a result of a dog attack that occurred on 17 July 2016. It was found that Sarge attacked another dog causing the death of that animal.
- On 13 March 2018 Sarge attacked another dog. There were no injuries to the other animal¹. The incident occurred in a public place and Sarge was not wearing a muzzle.

¹The original notice noted that there were no injuries to the other dog as a result of this attack. When conducting a review of the matter the Supervisor Prosecutions and

Reviews re-examined this evidence relating to the incident from 13 March 2018. The statement from the complainant identified abrasions to the dog and a graze on the complainant's knee which occurred during the incident. This information was corrected in the internal review documentation and the initial QCAT Hearing.

*As the injury to the dog and person were disputed by the dog owner, QCAT accepted that the incident occurred and that Sarge was the aggressor but did not consider the injury in its decision (see **Attachment 2**)*

- On the 29 March 2019 Sarge escaped the owner's property and attacked another dog causing serious injury to that dog. It was apparent that Sarge was not in his enclosure at the time of the escape.

The notice also outlined the process for the registered dog owner to request a review of the decision.

Once the order to euthanise a dog has been issued, the AMA requires Council to continue to hold the dog until the decision to euthanise the dog is finalised or overturned.

April 2019

Submissions in relation to the review of this decision were required by 30 April 2019, however in consultation with the dog owner's representative, Council agreed to allow an additional 10 days for the submissions in consideration of the public holidays during this period and to allow an animal behaviouralist to finalise their report.

May 2019

On 10 May 2019, Council received a request for review from the registered dog owner.

This review was assigned to the Supervisor Prosecutions and Reviews. The Supervisor Prosecutions and Reviews is not a party to the original investigation or decision and acts as an independent reviewer for these matters.

The review included a submission from the registered dog owner and attachments seeking that Council reconsider the decision to euthanise Sarge. In addition to the submission provided by legal representation, the documents included:

- a veterinary behaviour assessment
- an assessment from an animal behavioural expert and
- testimonials from people who had interacted with Sarge.

In conducting the review of the decision, the Supervisor Prosecutions and Reviews considered:

- the full submission and all attachments
- investigation reports in relation to the attacks from 2018 and 2019
- Regulated Dog Declaration Notice prepared by Noosa Shire Council
- Destruction Order made by Sunshine Coast Council and
- the AMA.

The two behavioural assessments were considered as part of the review. The assessments confirmed that Sarge would require ongoing training and management by the dog owner to be considered safe for the community. One report offered the following prognosis –

“Sarge is an adult dog; his behaviour can be slowly modified with consistent and dedicated effort however his temperament is set. Sarge is unlikely to ever be completely comfortable with unfamiliar dogs. Due to his size and strength, his ability to do harm if an incident does occur is very high. Management and avoidance strategies play a major role in prevention and are likely to always be required. This will require infrastructure, communication, management and interruptions to daily family life and thus is a large investment for his Owners”

Overall, both reports confirmed that Sarge would need to be properly controlled and managed by his owners to manage the risk to other animals.

The Supervisor Prosecutions and Reviews also considered a relevant matter from QCAT which had provided a decision on a key point from the dog owner's submission (Thomas v Ipswich City Council) –

[18] It is clear that the AMA is primarily directed towards the effective management and responsible ownership of dogs and that the destruction of a dog is a 'last resort'. It is generally where the mechanisms in the Act (AMA) for management fail, or at ineffective, that destruction arises. The essential question is whether the dog constitutes, or is likely to constitute, a threat to the safety of other animals or to people, by attacking them or causing fear, to the extent that the threat may only be satisfactorily dealt with by the destruction of the dog.

Based on the full review the Supervisor Prosecutions and Reviews formed the opinion that nothing short of full compliance with the regulated dangerous dog conditions imposed under the AMA would be sufficient to address the threat posed by Sarge to the safety and well-being of other animals and all members of the Sunshine Coast community.

The review also showed that the registered dog owner had demonstrated a repeated lack of compliance with the required conditions for owning a declared dangerous dog and that the conduct of not being diligent in her responsibilities would more likely than not, result in a failure to keep Sarge in accordance with the conditions for managing a declared dangerous dog.

On 23 May 2019 the Supervisor Prosecutions and Reviews subsequently upheld the decision to euthanise Sarge.

The review documentation included information outlining how to seek an external review of the decision from QCAT.

June 2019

On 26 June 2019, Council received directions from QCAT in relation to a request for review submitted by the registered dog owner.

July 2019

On 15 July 2019, QCAT provided leave for Council and the registered dog owner to have legal representation at the QCAT hearing.

On 24 July 2019, Council complied with the directions from QCAT providing the relevant responses to the registered dog owner's submission. The response was prepared in consultation with a barrister and included all relevant information on the case to allow QCAT to make its decision. No erroneous information was presented by Council.

August 2019

On 30 August 2019, the registered dog owner's representative lodged a request for an extension to make submissions to QCAT.

November 2019

On 18 November 2019, the matter was heard by QCAT Member, Dr Allan Collier. The registered dog owner was represented by Barrister Nathan Edridge on behalf of Michael Faltermaier Lawyers and Council was represented by its Supervisor Prosecutions and Reviews in line with the delegations for and the responsibilities of this role.

The QCAT review is a fresh hearing on the merits of the decision to issue a destruction order. On 29 November 2019, QCAT delivered its decision to continue with the euthanasia of Sarge. The full decision is provided at **Attachment 2**.

As part of the decision Member Dr Collier considered the submissions made in relation to the behavioural assessments (See **Attachment 2** [49] – [58]). An excerpt most notable to the decision to issue a destruction order follows:

[50] Based on these tests, ... expressed the view that Sarge was tractable and is capable of responding to dogs previously unknown to him without aggression. However, it was clear from his evidence that the presence of the muzzle on Sarge during the tests was largely responsible for controlling his aggressive instinct...

[53] Second, he opined that Sarge is a fearful dog, not a confident dog, and Sarge is likely to default to aggression if he is exposed to unfamiliar circumstances, certainly if not muzzled.

[54] Third, ... observed that because Sarge has attacked and killed on earlier occasions, this make him more likely to offend.

[58] In her report ... made a number of observations relevant to Sarge, in particular:

- (a) Sarge feels threatened and fearful towards unfamiliar dogs ...*
- (b) Once an aggressive response is performed, it is more likely to occur in the future if faced with a similar situation;*
- (c) I would recommend avoiding all any exposure to unfamiliar dogs. This is likely to be a life-long recommendation, although with time and effort Counter Conditioning, Desensitisation techniques may allow gradually closer proximity to unfamiliar dogs;*
- (d) Sarge is an adult dog; his behaviour can be slowly modified with consistent and dedicated effort however his temperament is set. Sarge is unlikely to ever be completely comfortable with unfamiliar dogs. Due to his size and strength, his ability to do harm if an incident does occur is very high.*

An excerpt from this decision which is most relevant to Council's original decision to issue a destructions order follows:

[80] The consequences of an attack by Sarge remain unchanged from what has happened on three earlier occasions: Sarge will attack with an intention to seriously injure or kill...

[82] Assessing the risk and being cognisant of the intention of the AM Act, I am satisfied that the threat posed can only be dealt with satisfactorily by the destruction of Sarge.

[83] The balance struck by the Council in its decision to have Sarge destroyed is appropriate. It is the correct decision, and it is the preferable decision.

[84] The decision of Sunshine Coast Regional Council to destroy Sarge is confirmed

December 2019

On 20 December 2019, the registered dog owner made an application for leave to appeal the QCAT decision on the basis of two questions of fact and law. However, the grounds involved only questions of law. The following day, QCAT advised Council to place a hold on the matter while a decision was made.

January 2020

On 21 January 2020, the QCAT Appeal Tribunal provided directions on the Appeal Hearing to Council, the registered dog owner and her representatives.

May 2020

On 28 May 2020, the QCAT Appeal Tribunal heard the full submissions in relation to the matter. The dog owner was represented by Barrister Nathan Edridge on behalf of Michael Faltermaier Lawyers and Council was represented by its Supervisor Prosecutions and Reviews in line with the delegations for and the responsibilities of this role.

June 2020

On 3 June 2020, the QCAT Appeal Tribunal delivered its decision and reasons for upholding the original decision to euthanise Sarge. The Appeal Tribunal found that there were no errors of law evident in the case put forward by the registered dog owner and her representatives.

The full decision of the QCAT Appeal Tribunal is included as **Attachment 3**.

July 2020

On 31 July 2020, the registered dog owner filed a request for leave to appeal with the Queensland Court of Appeal. The Proposed Grounds for Appeal were outlined as follows:

- *Ground one: That the Queensland Civil and Administrative Tribunal fell into error by failing to rule that the decision of the Tribunal at first instance had denied procedural fairness to the Appellant by relying on irrelevant matters, being the attitude and history of a Council officer regarding the destruction of dogs;*
- *Ground two: That the Queensland Civil and Administrative Tribunal fell into error by failing to rule that the decision of the Tribunal at first instance had denied procedural fairness to the Appellant by showing undue deference to the evidence of a Council officer;*
- *Ground three: That the Queensland Civil and Administrative Tribunal fell into error by failing to rule that the decision of the Tribunal at first instance had denied procedural fairness to the Appellant by making findings without evidence, specifically that the dog in question was a danger to children or the infirm;*
- *Ground four: The Appellant will seek to put further evidence before the Court, of new fencing installed at her property to contain the dog.*

November 2020

Both Council and the registered dog owner made submissions (through barristers) to the Court of Appeal both prior to and during the hearing on 20 November 2020. The Court of Appeal ruled that no error of law had been made and therefore, it refused the application for leave to appeal. The Court of Appeal's order is provided as **Attachment 4**.

The Court of Appeal was presented with all relevant information on the case to make its decision and no erroneous information was presented by Council.

Post Court of Appeal ruling

The registered dog owner was permitted a final visit with Sarge on Monday 23 November 2020. In the interests of safety and well-being of Council staff at the animal pound, no further visits were able to be facilitated.

Council allowed the registered dog owner and her representatives until 5:00pm on 25 November 2020 to initiate any final legal action on this matter through the relevant Court. No directions were received from any Court or the registered dog owner's representatives by that time.

On 26 November 2020 at 9:00 am Sarge was euthanised by a qualified veterinarian. His passing was peaceful, and calm surrounded by his carers. Council arranged with the registered dog owner to have Sarge transferred to a pet crematorium service of her choosing.

Legal

Council is responsible for addressing the management of animals under:

- the *Animal Management (Cats and Dogs) Act 2009*
- *Sunshine Coast Regional Council Local Laws, and Sunshine Coast Regional Council Subordinate Local Laws (Local Laws)*.

The Local Laws outline responsibilities for pet owners to manage their animals in such a way that they don't cause a risk or a nuisance to the community. This includes:

- effectively managing pets both within and outside the property where they are kept
- providing property containment
- managing noise or other nuisances
- requiring permits or registration in certain circumstances.

In a case where a dog is involved in an attack, this is regulated by the AMA. The AMA outlines both penalties for the person responsible for managing the dog at the time of the attack and the ways in which the dog needs to be managed in the future to mitigate the risks to the community and their pets.

Where the responsible person for a dog can't or won't meet these requirements, the AMA provides powers for Council to regulate this behaviour through penalties, notices, seizure of animals and euthanasia of animals.

There are 3 categories of regulated dog under the AMA:

- declared dangerous dog
- declared menacing dog
- restricted dog.

A dangerous dog declaration may be made for a dog if the dog:

- has seriously attacked someone or another animal
- has acted in a way that causes fear to someone or another animal
- may, in the opinion of an authorised person, seriously attack someone, or another animal, or
- may act in a way that causes fear to someone or another animal.

Seriously attack means causing bodily harm, grievous bodily harm or death.

Sarge was classified as a dangerous dog and from Council's perspective, that declaration was lawfully made by Noosa Shire Council in 2016.

A menacing dog declaration may be made for a dog if it behaved in a way defined as 'dangerous' except the attack was not serious.

A dog is considered a restricted dog if it is one of the following breeds:

- American Pit Bull Terriers (not American Staffordshire Terriers)
- Dogo Argentino
- Fila Brasileiro
- Japanese Tosa.

A restricted dog requires a permit from Council to be kept in the Sunshine Coast region. There are currently no restricted dogs registered on the Sunshine Coast.

Sarge was not considered a restricted dog. The AMA specifically excludes American Staffordshire Terriers from the restricted dog classification.

Council's actions and decision making has been reviewed and considered by QCAT, the QCAT Appeal Tribunal and the Court of Appeal. While complying with the AMA and directions from QCAT, the QCAT Appeal Tribunal and the Court of Appeal, Council has also given consideration to the sensitivity of this matter ensuring that the dog owner and her representatives had appropriate time to make submissions and exhaust every viable appeal option for the destruction order.

Policy

Council's Compliance and Enforcement Policy 2018 identifies how Council is to meet its statutory obligations and exercise its compliance and enforcement actions. Officers will use the Compliance and Enforcement Policy 2018 in conjunction with the AMA or Local Laws in assessing the most appropriate enforcement action in response to an attack or non-compliance with the conditions for keeping a regulated dog.

Risk

Council is required under the AMA to protect the community from damage or injury, or risk of damage or injury, from particular types of dogs called 'regulated dogs'; and ensure the dogs are:

- not a risk to community health or safety and
- controlled and kept in a way consistent with community expectations and the rights of individuals.

Failure to take reasonable action in response to ongoing non-compliance from a regulated dog owner and the regulated dog may be considered negligent.

In the first instance the registered dog owner failed to manage Sarge in accordance with the Noosa Shire Local Laws to prevent Sarge from attacking and killing another dog.

After Sarge was declared a dangerous dog the registered dog owner was compliant in having the relevant structures and equipment to comply with those aspects of the conditions for keeping a regulated dog. However, the full conditions were not met whilst the dog was accommodated in the Sunshine Coast local government area on at least two occasions, resulting in incidents where Sarge was the aggressor to other dogs being walked on a lead.

The history of the registered dog owner managing Sarge and the subsequent attacks demonstrated to Council that asking the registered dog owner to meet her obligations and issuing an infringement to the person controlling Sarge for failing to do so in 2018, has proven to be insufficient to manage the risk of Sarge attacking another animal in the future. In each case where Sarge attacked another dog, the incident was a result of failure by the registered owner to properly manage the dog and the obligations with which she was required to comply in owning and managing a declared dangerous dog.

In this case, to manage the risk, the most appropriate course of action was the euthanasia of Sarge.

Previous Council Resolution

There is no previous Council resolution relevant to this report.

Related Documentation

- *Animal Management (Cats and Dogs) Act 2008*
- *Animal Management (Cats and Dogs) Regulation 2019*
- Compliance and Enforcement Policy 2018

Critical Dates

There are no critical dates relevant to this report.

Implementation

There is no implementation relevant to this report.

Excerpts from the *Animal Management (Cats and Dogs) Act 2008*

Note: These sections have been provided for ease of reference. While complete sections have been extracted from the *Animal Management (Cats and Dogs) Act 2008* they should be read within the context of the full copy of the legislation.

89 Power to make declaration

- (1) Any local government may, by complying with the requirements of this part—
 - (a) declare a particular dog to be a declared dangerous dog (a *dangerous dog declaration*); or
 - (b) declare a particular dog to be a declared menacing dog (a *menacing dog declaration*); or
 - (c) declare a particular dog to be a restricted dog (a *restricted dog declaration*).
- (2) A dangerous dog declaration may be made for a dog only if the dog—
 - (a) has seriously attacked, or acted in a way that caused fear to, a person or another animal; or
 - (b) may, in the opinion of an authorised person having regard to the way the dog has behaved towards a person or another animal, seriously attack, or act in a way that causes fear to, the person or animal.
- (3) A menacing dog declaration may be made for a dog only if a ground mentioned in subsection (2) exists for the dog, except that the attack was not serious.
- (4) A restricted dog declaration may be made for a dog only if the local government is satisfied the dog is of a breed mentioned in section 63(1).
- (5) The declaration may be made even if the dog is not in the local government's area.
- (6) A declaration under this section is a *regulated dog declaration*.
- (7) In this section—

seriously attack means to attack in a way causing bodily harm, grievous bodily harm or death.

97 Declared dangerous dogs

- (1) A relevant person for a declared dangerous dog must ensure each permit condition imposed under schedule 1, sections 2 to 6 and 8 in relation to the dog is complied with for the dog.

Maximum penalty—75 penalty units.

- (2) In this section—

relevant person, for a declared dangerous dog, means the owner of, or any responsible person for, a declared dangerous dog.

111 General power to enter places

- (1) An authorised person may enter a place if—
- (a) an occupier of the place consents to the entry; or
 - (b) it is a public place and the entry is made when it is open to the public; or
 - (c) the entry is authorised by a warrant; or
 - (d) it is mentioned in a licence as a place of business and is—
 - (i) open for carrying on the business; or
 - (ii) otherwise open for entry; or
 - (iii) required to be open for inspection under the licence; or
 - (e) the entry is—
 - (i) to inspect the place to process an application for a restricted dog permit; and
 - (ii) made other than at night; or
 - (f) the entry is—
 - (i) to find out whether the conditions on which a restricted dog permit or notice was issued have been or are being complied with; and
 - (ii) made other than at night; or
 - (g) the entry is—
 - (i) to inspect work carried out under a lawfully imposed condition of a dangerous dog declaration, menacing dog declaration, restricted dog permit or compliance notice; and
 - (ii) made other than at night; or
 - (h) the entry is—
 - (i) under an approved inspection program; and
 - (ii) made at any reasonable time of the day or night.

- (2) However, an authorised person may enter a place at night for a purpose mentioned in subsection (1)(e), (f) or (g) if—
 - (a) the entry is at a time asked by the occupier; or
 - (b) the entry is in accordance with the times provided for in a compliance notice under section 132(3)(a).
- (3) For subsection (1)(d) to (h), a place does not include a part of the place where a person resides.

112 Additional entry powers for particular dogs

- (1) An authorised person may enter at a place if—
 - (a) the person reasonably suspects a dog is at the place and—
 - (i) the person reasonably suspects the dog is a restricted dog—no restricted dog permit has been issued for the dog; or
 - (ii) any delay in entering the place will result in—
 - (A) a risk to community health or safety; or
 - (B) the dog being concealed or moved to avoid a requirement under chapter 4; or
 - (b) its occupier has been given a compliance notice and the entry is made at a time stated in the notice to check compliance with the notice.
- (2) A power under subsection (1) can not be exercised using force.

Note—

For power to enter using force, see section 118.

- (3) However, for subsection (1)(a)(ii), an authorised person may enter the place, or part of the place, with the help and using the force that is necessary and reasonable in the circumstances if the place is not a place where a person resides.

116 Entry with consent

- (1) This section applies if an authorised person intends to ask an occupier of a place to consent to the authorised person or another authorised person entering the place under section 111(1)(a).
- (2) Before asking for the consent, the authorised person must tell the occupier—
 - (a) the purpose of the entry; and
 - (b) that the occupier is not required to consent.
- (3) If the consent is given, the authorised person may ask the occupier to sign an acknowledgement of the consent.
- (4) The acknowledgement must state—
 - (a) the occupier has been told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
 - (b) the purpose of the entry; and
 - (c) the occupier gives the authorised person consent to enter the place and exercise powers under this part; and
 - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgement, the authorised person must immediately give a copy to the occupier.
- (6) If—
 - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
 - (b) an acknowledgement complying with subsection (4) for the entry is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.
- (7) If the occupier gives permission, the authorised person may stay on the property and exercise the powers that the occupier has agreed to be exercised on the property.
- (8) However, the right to stay on the property—
 - (a) is subject to any conditions that the occupier imposes including, for example, about the times when the property may be entered; and
 - (b) may be cancelled by the occupier at any time.

125 Seizure powers for dogs

- (1) If an authorised person has, under part 2, entered a place and the person reasonably suspects a dog mentioned in the part is at the place, the person may seize the dog if—
 - (a) the person reasonably believes the dog—
 - (i) has attacked, threatened to attack or acted in a way that causes fear to, a person or another animal; or
 - (ii) is, or may be, a risk to community health or safety; or
 - (b) the dog is a restricted dog and—
 - (i) a permit application to keep the dog at the place has been refused; or
 - (ii) no restricted dog permit has been issued for the dog and the person reasonably believes there is a risk the dog may be concealed or moved to avoid a requirement under chapter 4; or

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Authorised by the Parliamentary Counsel

Animal Management (Cats and Dogs) Act 2008
Chapter 5 Investigation, monitoring and enforcement

[s 126]

- (c) if the dog is a regulated dog—a compliance notice has been given in relation to the dog and the person reasonably believes the notice has not been complied with.
- (2) Also, if the place is a public place, the person may seize the dog if it is not under anyone's effective control.

127 Power to destroy seized regulated dog

- (1) This section applies if the dog is a regulated dog.
- (2) The authorised person may, without notice, immediately destroy the dog if—
 - (a) the person reasonably believes the dog is dangerous and the person can not control it; or
 - (b) an owner of the dog has asked the person to destroy it.
- (3) The person may destroy the dog 3 days after the seizure if—
 - (a) the dog—
 - (i) was not seized under section 125(1)(b)(i); and
 - (ii) has no registered owner, or apparently has no registered owner; and
 - (iii) is not the subject of a regulated dog declaration by the relevant local government; and
 - (b) the person or the relevant local government does not know of anyone who owns, or is a responsible person for, the dog.
- (4) If subsection (3) does not apply, the person may make an order (a ***destruction order***) stating the person proposes to destroy the dog 14 days after the order is served.
- (5) The destruction order must—
 - (a) be served on—
 - (i) the registered owner of the dog; or
 - (ii) if the dog has no registered owner—any person who owns, or is a responsible person for, the dog; and
 - (b) include or be accompanied by an information notice about the decision to give the destruction order.
- (6) If a destruction order is made for the dog, the person may destroy the dog 14 days after the order is served if no application for internal review has been made relating to the order.
- (7) If an application for internal review has been made against the order, the person may destroy the dog if—
 - (a) the internal review is finally decided or is otherwise ended; and
 - (b) no application for external review of the order has been made; and
 - (c) the order is still in force.

- (8) If an application for external review of the order is made, the person may destroy the dog if—
- (a) the external review is finally decided or is otherwise ended; and
 - (b) the order is still in force.

194 Relevant person must ensure dog does not attack or cause fear

- (1) A relevant person for a dog must take reasonable steps to ensure the dog does not attack, or act in a way that causes fear to, someone else or another animal.

Maximum penalty—

- (a) if the attack causes the death of or grievous bodily harm to the person—300 penalty units; or
 - (b) if the attack causes the death of or grievous bodily harm to the animal—100 penalty units; or
 - (c) if the attack causes bodily harm to the person or animal—50 penalty units; or
 - (d) otherwise—20 penalty units.
- (2) In this section—

animal does not include vermin that are not the property of anyone.

Examples of vermin that are someone's property—

- a pet mouse or guinea pig
- vermin that are protected animals under the *Nature Conservation Act 1992* (See section 83 of that Act.)

relevant person, for a dog, means—

- (a) the owner of the dog; or
- (b) any responsible person for the dog.

195 Prohibition on allowing or encouraging dog to attack or cause fear

- (1) A person must not allow or encourage a dog to attack, or act in a way that causes fear to, a person or another animal.

Maximum penalty—

- (a) if the attack causes the death of or grievous bodily harm to the person—300 penalty units; or
- (b) if the attack causes the death of or grievous bodily harm to the animal—100 penalty units; or
- (c) if the attack causes bodily harm to the person or animal—50 penalty units; or
- (d) otherwise—20 penalty units.

- (2) In this section—

allow or encourage, without limiting the Criminal Code, sections 7 and 8, includes cause to allow or encourage.

animal does not include vermin that are not the property of anyone.

Examples of vermin that are someone's property—

- a pet mouse or guinea pig
- vermin that are protected animals under the *Nature Conservation Act 1992* (See section 83 of that Act.)

Schedule 1 Permit conditions and conditions applying to declared dangerous and menacing dogs

sections 81, 93, 97 and 98

1 Definitions for sch 1

In this schedule—

relevant dog means—

- (a) if the dog is a declared dangerous dog or a declared menacing dog—a declared dangerous dog or a declared menacing dog; or
- (b) if the dog is a restricted dog the subject of a restricted dog permit—a restricted dog the subject of a permit.

relevant place, for a relevant dog, means—

- (a) if the relevant dog is a declared dangerous dog or a declared menacing dog—the place stated in the registration notice as the address for it; or
- (b) if the relevant dog is a restricted dog—the place for which a restricted dog permit has been issued.

2 Identification

- (1) A relevant dog must be implanted with a PPID.
- (2) A relevant dog must, at all times, wear a collar with an attached identifying tag.
- (3) The tag must be of the type, and contain the information prescribed under a regulation.

3 Muzzling and effective control in place that is not relevant place

- (1) A relevant dog must not be in a place that is not the relevant place for the dog unless it is—

- (a) muzzled; and
 - (b) under the effective control of someone who has the control of no more than 1 dog at the same time.
- (2) However, subsection (1) does not apply for a relevant dog in a vehicle that is in a place that is not the relevant place for the dog if the dog is—
- (a) in an enclosed part of the vehicle; and
 - (b) enclosed or restrained in a way that prevents the dog or any part of it from being outside the enclosed part of the vehicle.
- (3) In subsection (1)(a)—
- relevant dog*—
- (a) does not include a declared menacing dog or a dog the subject of a proposed declaration notice for a menacing dog declaration; but
 - (b) includes a dog the subject of a proposed declaration notice for a dangerous dog declaration or restricted dog declaration.

4 Enclosure

- (1) An enclosure for a relevant dog must be maintained at or on the relevant place for the dog.
- (2) The dog must, unless there is a reasonable excuse, be usually kept in the enclosure.
- (3) The enclosure must—
 - (a) be childproof; and
 - (b) stop the dog from leaving the enclosure.
- (4) Also, the enclosure and the area enclosed must—
 - (a) be of the dimensions, quality and type prescribed under a regulation; and
 - (b) comply with other requirements prescribed under a regulation.

5 Public notice

- (1) A sign must be placed at or near each entrance to the relevant place for a relevant dog notifying the public that a relevant dog is kept at the place.
- (2) The sign must be of the dimensions, quality and type, and contain the information prescribed under a regulation.

6 Place where relevant dog is usually kept

A relevant dog must not be usually kept at a place other than the relevant place for the dog.

7 Notice of other restricted dog permit for dog

If a permit holder obtains another restricted dog permit for a restricted dog the subject of the holder's permit, the holder must immediately give the relevant local government notice of the other permit.

8 Notice of change of address

- (1) If a relevant person changes residential address, the person must give the relevant local government notice of the person's new residential address within 7 days after making the change.
- (2) If the new residential address is in another local government's area, the person must also give the notice to the other local government.
- (3) In this section—
relevant person means—
 - (a) if a permit condition applies to a declared dangerous dog or a declared menacing dog—the owner of the dog;
or
 - (b) if a permit condition applies to a restricted dog—the permit holder for the dog.

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Chaplin v Sunshine Coast Regional Council* [2019] QCAT 371

PARTIES: **KARA ROSE CHAPLIN**
(applicant)
v
SUNSHINE COAST REGIONAL COUNCIL
(respondent)

APPLICATION NO/S: GAR226-19

MATTER TYPE: General administrative review matters

DELIVERED ON: 29 November 2019

HEARING DATE: 18 November 2019

HEARD AT: Maroochydore

DECISION OF: Member Dr Collier

ORDERS: **The decision of the Respondent is confirmed.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – regulated dogs – declared dangerous dog – dog destruction order – where one animal was killed and another two injured as a result of three separate attacks by a dog

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 19, s 20(1), s 20(2), s 24
Animal Management (Cats and Dogs) Act 2008 (Qld), s 3, s 3(d), s 4, s 59(1), s 59(2), s 89(1), s 89(2)(a), s 89(2)(b), s 89(7), s 104, s 127, s 127(4), Chapter 4, Schedule 1 – s 4, Schedule 2

Balens v Moreton Bay Regional Council [2018] QCAT 297
Bradshaw v Moreton Bay Regional Council [2017] QCATA 139
Briginshaw v Briginshaw (1938) 60 CLR 336
Lee v Brisbane City Council (No 2) [2012] QCATA 64
Nguyen v Gold Coast City Council Animal Management [2017] QCATA 121
Thomas v Ipswich City Council [2015] QCATA 97

APPEARANCES &
REPRESENTATION:

Applicant: N Edridge, of counsel
Respondent: G Lalor, Supervisor, Prosecutions and Reviews

REASONS FOR DECISION

- [1] Kara Chaplin owns a 7-year old neutered male dog, 'Sarge'. Sarge is a 27kg American Staffordshire (or Pit Bull) Terrier cross. Ms Chaplin also owns other animals, including an older female dog, 'Nala'. But this decision involves only Sarge.
- [2] Ms Chaplin has a partner, Eli Madigan, and, together, they care for three children: one aged 8, and two infants.
- [3] Unfortunately, Sarge attacked, inflicted injury to, or caused the death of, other dogs on three occasions: in 2016, 2018, and 2019.
- [4] In 2016 Ms Chaplin and her family, along with dogs Nala and Sarge, lived in a rental property in Cooroy. On 18 August 2016 Nala and Sarge escaped from the property through a faulty gate that was not properly closed, and Sarge attacked and killed a small dog being walked on a leash in front of the property.
- [5] Ms Chaplin was distressed by this incident and consoled and compensated the owners of the small dog for the incident.
- [6] As a result of this incident Sarge was declared by the local authority, in this case Noosa Shire Council, as a Regulated Dangerous Dog ('RDD'). Ms Chaplin also took Sarge for some obedience lessons, but the dog did not complete the course of training.
- [7] Ms Chaplin and her family subsequently moved to Peregian Springs on the Sunshine Coast and informed the local authority about her ownership of Sarge and his RDD classification.
- [8] Owning a RDD imposes a number of particular obligations on the owner of the dog. These include:
 - (a) Housing the dog at a nominated and approved residential address;
 - (b) Confining the dog to an approved enclosure;
 - (c) Ensuring that the dog is identifiable as a RDD by having the dog wear a distinctive collar and tags;
 - (d) Having the dog implanted with a Prescribed Permanent Implantation Device ('PPID');
 - (e) Placing a sign at every entrance to the property where the dog is kept warning of the presence of a dangerous dog;
 - (f) Ensuring that the dog is muzzled at all times when outside the approved property;

- (g) Ensuring that the dog is under adult control at all times.
- [9] The second incident took place on 13 March 2018 when Mr Madigan took control of Sarge for the purpose of exercising the dog. This involved Mr Madigan riding a bicycle while holding Sarge's leash as Sarge walked or trotted beside Mr Madigan. At this time another dog was being walked by its owners on a leash and under control when Sarge became startled by their presence. Sarge then charged off, dislodged Mr Madigan from his bicycle, broke free of his control, and attacked the other dog. Whether one or both dogs sustained any injury is not certain, but there is no doubt that Sarge was the aggressor in this incident. Sarge was not wearing a muzzle while under Mr Madigan's control.
- [10] As a result of this incident Mr Madigan was charged and fined \$883 in the Magistrates Court.
- [11] On 29 March 2019 Sarge was being kept at his approved premises when he managed to escape from the house through a garage door that had failed to close completely because it became stuck due to children's toys preventing its complete closure. Being within the house Sarge was not wearing a muzzle. Once outside the property Sarge attacked and savaged a dog being walked on a leash by its owner, causing serious injuries to the innocent dog.
- [12] Again, Ms Chaplin was very remorseful for the incident and paid \$881.38 for the veterinary bills of the innocent party. She was also charged as a result of the incident and fined and penalised \$3,829.40 in the Magistrates Court.
- [13] Following notification of this incident to the Sunshine Coast Regional Council (the 'Council'), on 4 April 2019 Mr Michael Gilbert, Senior Response Services Officer for the Council, attended Ms Chaplin's property and seized Sarge. Sarge has been in Council custody since that date.
- [14] On 16 April 2019 the Council, through its authorised officer, Michael Gilbert, issued Ms Chaplin a notice for the destruction of Sarge.
- [15] On 9 May 2019 Ms Chaplin requested the Council to undertake an internal review of its decision to order the destruction of Sarge. The request to review the decision was accompanied by several documents including:
- (a) a 7-page submission in support of her request for review prepared by solicitors for Ms Chaplin;
 - (b) a veterinary behaviour assessment by Rimini Quinn dated 26 April 2019;
 - (c) a dog behavioural assessment by David Haywood dated 9 May 2019; and
 - (d) 8 personal references for Ms Chaplin.
- [16] The review of the decision made by Mr Gilbert was undertaken by Mr Guy Lalor of the Council. Mr Lalor, Supervisor Prosecutions and Reviews for the Council, conducted the review and, in his decision dated 23 May 2019, confirmed the earlier decision to order Sarge's destruction.
- [17] Ms Chaplin now seeks to have this Tribunal set aside the decision of the Council to confirm the order to have Sarge destroyed.

Legal framework

- [18] In reviewing a decision, the Tribunal does so by way of a fresh hearing on the merits.¹ The Tribunal must decide the review in accordance with the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) and the Act giving jurisdiction to hear the matter.² The Tribunal stands in the shoes of the decision maker and is required to produce the correct and preferable decision.³
- [19] The Tribunal may confirm or amend the decision, or set aside the decision and substitute a new decision, or set aside the decision and return the matter for reconsideration to the decision-maker for the decision, with the directions the tribunal considers appropriate.⁴
- [20] The principal legislation regulating domestic cats and dogs which gives the Tribunal power to hear this matter is the *Animal Management (Cats and Dogs) Act 2008* (Qld) ('AM Act').
- [21] Section 3 of the AM Act sets out the purpose of the Act, which includes to promote the responsible ownership of cats and dogs.⁵
- [22] The AM Act empowers a local government to declare a particular dog a dangerous dog⁶ if the dog has seriously attacked, or acted in a way that caused fear to a person or another animal,⁷ or may, in the opinion of an authorised person having regard to the way the dog has behaved towards a person or another animal, seriously attack, or act in a way that causes fear to the person or animal.⁸
- [23] A serious attack means to attack in a way causing bodily harm, grievous bodily harm or death.⁹
- [24] Section 127 of the AM Act gives an authorised person¹⁰ the power to destroy a regulated dog.¹¹
- [25] When making a decision as to whether to destroy a dog, the decision-maker must take into consideration:¹²
- a) the purposes of the AM Act generally;¹³
 - b) the purposes of Chapter 4 of the AM Act specifically,¹⁴ and

¹ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 20(2).

² *Ibid* s 19.

³ *Ibid* s 20(1).

⁴ *Ibid* s 24.

⁵ AM Act, s 3(d).

⁶ *Ibid* s 89(1).

⁷ *Ibid* s 89(2)(a).

⁸ *Ibid* s 89(2)(b).

⁹ *Ibid* s 89(7); Schedule 2, Dictionary.

¹⁰ *Ibid* s 104.

¹¹ *Ibid* Chapter 4.

¹² *Nguyen v Gold Coast City Council Animal Management* [2017] QCATA 121, [33].

¹³ AM Act, s 3

¹⁴ *Ibid* s 59(1)

c) how the AM Act states those purposes are to be achieved.¹⁵

- [26] Whether a dog was acting in response to being attacked, provoked or teased is 'not irrelevant' and 'all the circumstances need to be taken into account in the exercise of the discretion.'¹⁶
- [27] When reviewing a destruction order the Tribunal is required to undertake extensive enquiry before exercising its discretion under section 127(4) of the AM Act.¹⁷
- [28] The standard of proof required in findings of fact by the Tribunal is that the Tribunal must be 'comfortably satisfied' having regard to the nature and consequence of the facts to be proved.¹⁸

Evidence for the Council

- [29] Sarge has been the aggressor in each of three documented instances where he has been involved in an altercation with other dogs.
- [30] As a result of the attack on 29 March 2019, Sarge was taken into the custody of the Council on 4 April 2019 and has been held at the Council pound since that date.
- [31] Michael Gilbert, Senior Response Services Officer, an authorised officer of the Council, issued an order on 16 April 2019 for the destruction of Sarge. Mr Gilbert testified that he has been in his position with the Council for five years and this is only the second occasion in that time that he has ordered the destruction of a dog.
- [32] When asked why he seized Sarge on 4 April 2019 Mr Gilbert replied that Sarge was not in his prescribed enclosure.
- [33] In his testimony Mr Gilbert agreed that Ms Chaplin had:
- (a) When she moved into the Council's region, informed the Council in a timely manner that she possessed a RDD, Sarge;
 - (b) Always paid her animal registration fees on time;
 - (c) Demonstrated considerable remorse at Sarge's aggression and injury to other dogs; and
 - (d) Appeared to him as an honest person in her comments and dealings.
- [34] Exhibit 1, a 3-page extract from the Council's website describing 'Regulated dogs' was shown to Mr Gilbert. He was not familiar with the extract. The extract does not mention the obligation on the owner of a RDD to confine their dog to a suitable enclosure.¹⁹
- [35] Exhibit 2, a copy of the Regulated Dangerous Dog Registration renewal notice issued for Sarge dated 1 September 2018, was tendered by the Council. It comprised two A4 pages: page 1 dealing with the registration; and page 2 being headed 'Mandatory

¹⁵ Ibid ss 4, 59(2).

¹⁶ *Lee v Brisbane City Council (No 2)* [2012] QCATA 64.

¹⁷ *Bradshaw v Moreton Bay Regional Council* [2017] QCATA 139.

¹⁸ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

¹⁹ As an owner is required to do: *Animal Management (Cats and Dogs) Act 2008*, Sch 1, s 4.

conditions for keeping a Regulated Dangerous Dog'. Mr Lalor for the Council stated that the two pages of Exhibit 2 are sent to dog owners on one A4 leaf with the registration details on the front and the mandatory conditions on the back.

- [36] Ms Chaplin testified that she has no recollection of having seen page 2 of Exhibit 2.
- [37] Mr Gilbert testified that premises where each RDD known to the Council lives is inspected annually for compliance. The Council tendered Exhibit 3, a copy of a notice sent by post to Ms Chaplin detailing the results of an audit of her premises pertinent to Sarge conducted on 15 November 2018. This notice discloses that, at the date of the audit, Ms Chaplin's premises were compliant. A portion of the letter containing the notice read:

Council has attached an information sheet in relation to the mandatory conditions for keeping a regulated dangerous dog. Please ensure that you are aware of and adhere to the referenced conditions.

- [38] Exhibit 3 contains eight pages, including two pages headed 'Mandatory conditions for a Declared Dangerous Dog', and one page headed 'Other important laws for keeping a declared dangerous dog'. Ms Chaplin testified that she recalled receiving pages 7 and 8 of the notice disclosed as Exhibit 3, but not the remainder of the document.
- [39] I am satisfied that Ms Chaplin had received several notices describing accurately and in detail her obligations as the owner of a RDD. She failed either to read, understand, or comply with her obligations under the AM Act on a regular or continuing basis up to the occasion of the third attack by Sarge.
- [40] Ms Tamara Brumby, Supervisor, Business Operations for the Council, gave evidence about the occasion when, on 18 October 2019, she had control of Sarge while returning him to his enclosure within the pound after a visit by Ms Chaplin. Ms Brumby testified that, on that occasion, Sarge responded aggressively when challenged by a dog confined to a cage as she and Sarge passed by. A portion of video was played to the Tribunal showing the instance described.
- [41] While it appears from the video that Sarge responded aggressively to the challenge of the other dog, I place little weight on this evidence because Ms Brumby only controlled Sarge on the one occasion, Sarge's response was at the lower end of aggressive behaviour in all the circumstances, and it showed Sarge's behaviour on one occasion only, whereas Sarge had been at the pound at that stage for almost 6 months.
- [42] Ms Brumby noted in her testimony that there was no apparent reason why Ms Chaplin would not have received the original of the documents tendered as Exhibit 2 (dog registration renewal) and Exhibit 3 (the result of the annual audit of the premises at which Sarge resided).

Evidence for Kara Chaplin

- [43] There is no doubt that Sarge is a dog who forms a part of a close family group and presents no especial threat to members of the family or other animals with which he is familiar.

- [44] Ms Chaplin provided testimony to the Tribunal which demonstrated that Sarge is placid and docile among family members and animals with which he is familiar.
- [45] In his Statement of issues and contentions Ms Chaplin's counsel stated the Applicant's case in the following terms (reference omitted):²⁰
- (a) It is accepted that Sarge poses a threat to the safety of other animals, that is, unfamiliar dogs. Sarge therefore poses a related threat of causing fear to other persons.
 - (b) The threat posed by Sarge can be satisfactorily managed by full compliance with the mandatory conditions of dangerous dog ownership.
 - (c) That despite Ms Chaplin's history of non-compliance, she has evinced an intention by her words and conduct to fully comply with the mandatory conditions.
 - (d) That Ms Chaplin is immediately able and willing to comply with all conditions of mandatory dangerous dog ownership, as well as all proposed training.
- [46] Put briefly, Ms Chaplin does not deny that Sarge is a threat to other animals but, despite the history of the dog, she now intends to comply with the mandatory obligations imposed upon the owners of a RDD and, in this way, the risk posed by Sarge to others will be minimised.
- [47] Mr David Busby, a veterinarian of 21 years' experience gave evidence concerning his knowledge of Ms Chaplin and her dealings with animals. He has known Ms Chaplin as a client for eight years and clearly holds her in high regard.
- [48] Mr Busby has not attended Sarge as a patient since Sarge was declared a RDD. Nonetheless, Mr Busby said that Ms Chaplin was one of his best clients because of her willingness to adhere to his advice and instructions, and that he has been impressed by Ms Chaplin's devotion to animals, describing her as an exceptional animal owner. He expressed the view that Ms Chaplin would do anything to promote the welfare of her dogs.
- [49] Mr David Haywood, a professional dog trainer and dog behaviour specialist, gave evidence concerning his experience with Sarge. At Ms Chaplin's request Mr Haywood undertook an assessment of Sarge's demeanour and behaviour through a series of tests involving interactions with other dogs. Officers from the Council also attended these tests. All the tests were performed while Sarge was muzzled. Mr Haywood prepared a report on Sarge that forms part of the evidence I have considered.²¹
- [50] Based on these tests, Mr Haywood expressed the view that Sarge was tractable and is capable of responding to dogs previously unknown to him without aggression. However, it was also clear from his evidence that the presence of the muzzle on Sarge during the tests was largely responsible for controlling his aggressive instinct. In his report Mr Haywood drew the following conclusion from his test:²²

²⁰ Statement of issues and contentions – the applicant, dated 17 November 2019.

²¹ Report: 'Re: "Sarge" Chaplin (7 Year Old American Staffordshire X) dated 9 May 2019, by The Canine Classroom.

²² Ibid (no page or paragraphs numbered in the original).

... what it did do was highlight the fact that if he was appropriately muzzled, his drive to defend and protect property would be significantly reduced, thus reducing the perceived threat to the community. Of course, the onus of this falls on the shoulders of the relevant person to ensure that this is adhered to.

- [51] It was also evident from Mr Haywood's evidence that Sarge's behaviour would be improved through a regime of training for at least four weeks, with follow-up training on a continuing basis.
- [52] During his testimony Mr Haywood made three comments that are pertinent to the decision to be made here. First, that Sarge is becoming 'kennel crazy' because he has been in the pound for many months with limited stimulation, although he believed that this condition could be overcome.
- [53] Second, he opined that Sarge is a fearful dog, not a confident dog, and Sarge is likely to default to aggression if he is exposed to unfamiliar circumstances, certainly if not muzzled.
- [54] Third, Mr Haywood observed that because Sarge has attacked and killed on earlier occasions, this makes him more likely to offend.
- [55] Mr Haywood expressed the view that Ms Chaplin and Mr Madigan have the ability to control Sarge and that the prognosis for the dog's behaviour is good.
- [56] Both Messrs Busby and Haywood expressed their professional view that they did not believe that there were grounds for the destruction of Sarge.
- [57] A report on Sarge's behaviour prepared by Rimini Quinn after assessing the dog was filed by Ms Chaplin.²³ Ms Quinn is a veterinarian who specialises in animal behaviour.
- [58] In her report Ms Quinn made a number of observations relevant to Sarge, in particular:²⁴
- (a) Sarge feels threatened and fearful towards unfamiliar dogs...;
 - (b) Once an aggressive response is performed, it is more likely to occur in the future if faced with a similar situation;
 - (c) I would recommend avoiding all and any exposure to unfamiliar dogs. This is likely to be a life-long recommendation, although with time and effort Counter Conditioning and Desensitisation techniques may allow gradually closer proximity to unfamiliar dogs;
 - (d) Sarge is an adult dog; his behaviour can be slowly modified with consistent and dedicated effort however his temperament is set. Sarge is unlikely to ever be completely comfortable with unfamiliar dogs. Due to his size and strength, his ability to do harm if an incident occurs is very high.

²³ Veterinary Behaviour Assessment for Sarge Chaplin by Rimini Quinn, dated 26 April 2019.

²⁴ Ibid (no page or paragraphs numbered in the original.)

- [59] On each occasion when Sarge has been involved in injury to other animals Ms Chaplin has been sympathetic to the affected people and animals involved and paid the costs of veterinary treatment for injured dogs.
- [60] Ms Chaplin has been a regular visitor to Sarge during his time confined to the pound, visiting him several times a week.
- [61] Ms Chaplin stated that her premises have been audited by the Council because of Sarge, and she has not received any adverse comment or breach notice. She also made the following relevant comments and observations:
- (a) Sarge has never posed any threat or concern to the children at home or her other dog, Nala;
 - (b) During the Council audits of the property she was not provided with any advice about her handling of Sarge;
 - (c) She now has a clearer understanding of her obligations as the owner of a RDD;
 - (d) She has made the house more secure by providing two self-closing and locking child-proof gates to confine Sarge when he is in the house, a padlock on the dog's enclosure, and a gate to restrict access from the rear of the property to the side;
 - (e) The training given to Sarge after the 2016 incident, although it was not completed, is evidence that she is willing to undertake whatever is needed to protect Sarge; and
 - (f) She proposes to have Sarge attend behavioural courses conducted by Mr Haywood which she and Mr Madigan would both attend. The costs associated with this would be met by her parents;
- [62] Ms Chaplin testified that the stress incurred by the three violent incidents involving Sarge has had adverse health repercussions on her, and that she has a special bond with Sarge that provides her with great comfort.
- [63] In cross-examination Ms Chaplin made the following observations and comments:
- a) She previously had the understanding that Sarge was permitted to live largely as a normal dog while at the approved property, and that he had been confined to the laundry at night; and
 - b) On the occasions when Sarge had not been confined and handled as a RDD previously it had been because Ms Chaplin had been in denial about the risks associated with Sarge.
- [64] Mr Madigan, the partner of Ms Chaplin, gave testimony to the Tribunal. Mr Madigan confirmed the details described above concerning the second incident involving Sarge, in 2018. He also stated that he was willing to abide by the directions of Ms Chaplin in the handling of Sarge.
- [65] Mrs Madonna Chaplin, the mother of the Applicant, gave testimony to the Tribunal. Mrs Chaplin opined that the Applicant has a kind nature and has spent a great deal of

time caring for animals. She observed that the Applicant has an especially close bond with Sarge.

Applying the law and evidence

- [66] Ms Chaplin has owned Sarge since he was about eight months old – he is now seven years old. There is a special bond between them.
- [67] Whether by disposition or arising from his early experiences, Sarge is a fearful dog – he is not confident. One manifestation of this is his aggressive behaviour with unfamiliar dogs and in unfamiliar situations.
- [68] In familiar surroundings Sarge is complaisant and docile. He presents no greater threat to the human and other members of his family than any other dog, at least while in his usual domicile.
- [69] At the same time, there is no doubt that, outside the confines of his family and home, Sarge is an aggressive dog that causes fear to people who are near him. This can be controlled by the use of a muzzle. Without a muzzle Sarge must never be allowed outside his approved property.
- [70] While each of the three incidents in which Sarge has acted aggressively could be said not to be the fault of the dog, this neither diminishes the seriousness of the incidents nor gives confidence that if Sarge was to be at large outside his approved property and not under adult control and fitted with a muzzle, that another violent incident would not occur. In fact, if Sarge escaped again, a fourth violent incident would be highly likely.
- [71] In none of the three incidents involving him so far has Sarge acted in protection of his family or their property but, on each occasion, escaped from the property or adult control and attacked another dog with the evident intention of causing injury or death to that other dog. There can be no confidence that, once set upon a course of aggressive behaviour Sarge would not do the same thing again if the opportunity was presented, with the risk that, on a future occasion, it could involve other animals or a child.
- [72] I am comfortably satisfied that Sarge engaged in three serious attacks and that he has the ability and willingness to attack again if the opportunity is presented. This possibility remains irrespective of any training or behavioural management that Sarge may be given.
- [73] I was impressed by the evidence and conduct of Mr Michael Gilbert of the Council, who not only had to seize Sarge but issue the destruction notice. The audio recording of Mr Gilbert with Ms Chaplin and Sarge after the third incident, when Sarge was seized by Mr Gilbert, demonstrated his kindness, empathy, and sympathy with Ms Chaplin and the dog. Mr Gilbert would not lightly issue a destruction notice on a dog – indeed Sarge is only the second notice in his work for the Council over the course of five years. His decisions and actions should not be lightly overturned.

- [74] The relevant test to be applied by this Tribunal in this instance is set out in the case of *Bradshaw v Moreton Bay Regional Council*:²⁵

The general discretion under s 127(4) to order that an animal be destroyed is not limited to a consideration of the seriousness of the attack and the risk of another serious injury occurring by the dog giving rise to seizure. As determined in Thomas's case, the question, and the exercise of discretion that follows, is to be based on whether the dog constitutes, or is likely to constitute, a threat to the safety of other animals or to people, by attacking them or causing fear, to the extent that the threat may only be satisfactorily dealt with by the destruction of the dog.

- [75] On the evidence before me I am satisfied that Ms Chaplin understands the gravity of Sarge's offending and that she has a strong desire to protect her dog.
- [76] I am satisfied as to the earnest intent of Ms Chaplin to maintain her premises in such a condition that Sarge will, in the future, be properly contained. Similarly, Ms Chaplin has a genuine current intention to have Sarge trained in order to reduce the likelihood of an attack in the future.
- [77] But, as the first and third of the attacks demonstrated, there are events outside the control of Ms Chaplin and Mr Madigan that could lead to Sarge being at large without adult control or muzzle. In the third instance, the dog escaped control as a result of actions by the household children done innocently and without malice or understanding of the consequences.
- [78] There are two principal factors to consider when assessing risks generally: probability; and consequence.
- [79] The fact that Ms Chaplin has taken steps, somewhat belatedly, to confine Sarge in accordance with the requirements of the AM Act may limit the probability that Sarge will escape in the future. But there remain many feasible scenarios in which Sarge could escape from his approved premises despite the best intentions or conduct of Ms Chaplin as demonstrated by the inadvertent actions of the children. If Sarge were to become at large again the evidence before the Tribunal leads me to conclude that there is a high probability of a further attack.
- [80] The consequences of an attack by Sarge remain unchanged from what has happened on three earlier occasions: Sarge will attack with an intention to seriously injure or kill. If a dog being attacked by Sarge was under the control of a child or infirmed person there is a risk that such child or person also could be attacked. This is a different scenario to that where a wandering RDD has no obvious propensity to violence.²⁶
- [81] Section 59(1) of the AM Act dealing with RDD provides as follows:
- (1) The purposes of this chapter are to—
 - (a) protect the community from damage or injury, or risk of damage or injury, from particular types of dogs called 'regulated dogs'; and

²⁵ *Bradshaw v Moreton Bay Regional Council* [2017] QCATA 139; also *Thomas v Ipswich City Council* [2015] QCATA 97.

²⁶ Such as in *Balens v Moreton Bay Regional Council* [2018] QCAT 297

- (b) ensure the dogs are—
 - (i) not a risk to community health or safety; and
 - (ii) controlled and kept in a way consistent with community expectations and the rights of individuals.

[82] Assessing the risks, and being cognisant of the intention of the AM Act, I am satisfied that the threat posed can only be dealt with satisfactorily by the destruction of Sarge.

[83] The balance struck by the Council in its decision to have Sarge destroyed is appropriate. It is a correct decision, and it is the preferable decision.

Decision

[84] The decision of Sunshine Coast Regional Council to destroy Sarge is confirmed.

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Chaplin v Sunshine Coast Regional Council* [2020]
QCATA 83

PARTIES: **KARA ROSE CHAPLIN**
(appellant)

v

SUNSHINE COAST REGIONAL COUNCIL
(respondent)

APPLICATION NO/S: APL357-19

ORIGINATING APPLICATION NO/S: GAR226-19

MATTER TYPE: Appeals

DELIVERED ON: 3 June 2020

HEARING DATE: 28 May 2020

HEARD AT: Brisbane

DECISION OF: Senior Member Aughterson (Presiding)
Member Kanowski

ORDER: **The decision of the Tribunal made on 29 November 2019 is confirmed.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – INTERFERENCE WITH DISCRETION OF COURT BELOW – IN GENERAL – WRONG PRINCIPLE – GENERALLY – where in review proceeding tribunal commented on character of original decision-maker – where tribunal said original decision-maker’s decision should not be lightly overturned – whether irrelevant matter taken into account – whether wrong principle applied

APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – INTERFERENCE WITH JUDGE’S FINDINGS OF FACT – FUNCTIONS OF APPELLATE COURT – OTHER FINDINGS – where tribunal found a risk of dog attacking humans – whether there was evidence to support that finding

Animal Management (Cats and Dogs) Act 2008 (Qld), s 127(4)

Queensland Civil and Administrative Tribunal Act 2009
(Qld), s 20

Fox v Percy (2003) 214 CLR 118
House v The King (1936) 55 CLR 499

APPEARANCES &
REPRESENTATION:

Appellant: N Edridge instructed by Michael Faltermaier Lawyers
Respondent: G Lalor, Supervisor, Prosecutions and Reviews, Sunshine
Coast Regional Council

REASONS FOR DECISION

- [1] This is an appeal by Ms Chaplin against the decision of the Tribunal made on 29 November 2019 to confirm the decision made by Sunshine Coast Regional Council to destroy her dog named Sarge.¹

Background

- [2] Noosa Shire Council declared Sarge a dangerous dog in 2016, after he fatally attacked another dog.
- [3] In 2018, while out for a run with Ms Chaplin's partner, Sarge was involved in a confrontation with another dog. The other dog was not injured. However, Sarge was not muzzled at the time. Muzzling of a declared dangerous dog in public is required under the *Animal Management (Cats and Dogs) Act 2008* (Qld) ('Animal Management Act').²
- [4] There was a third incident, one evening in 2019. Unknown to Ms Chaplin, her garage roller door had not fully closed after her children left some toys lying under it. Also, an internal door between the garage and the house had not been shut. Sarge got out. As he had been indoors, he was not muzzled. He attacked and seriously injured a dog that was being walked nearby on a leash.
- [5] Sunshine Coast Regional Council then decided to destroy Sarge (the decision has not yet been carried out). The decision was made by Mr Michael Gilbert. He is a Senior Response Service Officer authorised by the Council to make such decisions. Ms Chaplin then applied for a review of the destruction decision. Mr Guy Lalor, a Council supervisor, conducted the internal review. He confirmed the destruction decision.
- [6] Ms Chaplin next applied for a review by the Tribunal. The evidence provided by Ms Chaplin included evidence of Mr David Haywood, a 'professional dog trainer and dog behaviour specialist',³ and two veterinarians. One of the veterinarians, Ms Rimini Quinn, specialises in animal behaviour. Ms Quinn said Sarge is fearful of unfamiliar dogs. She said this can result in 'erratic behavioural responses'.⁴ On the other hand,

¹ *Chaplin v Sunshine Coast Regional Council* [2019] QCAT 371.

² Schedule 1, s 3.

³ *Chaplin v Sunshine Coast Regional Council* [2019] QCAT 371, [49].

⁴ Ms Quinn's report of 26 April 2019, 1.

Ms Quinn said that Sarge ‘behaves appropriately with familiar dogs’⁵ and is neutral toward other species. It is clear that Ms Quinn meant humans as one of the other species. She added: ‘Fear of unfamiliar dogs is neurologically different to a fear of people or children. The 2 conditions can co-exist, but one does not predict the other.’⁶

- [7] Ms Chaplin acknowledged in the review proceeding that Sarge poses a threat to the safety of unfamiliar dogs, and that ‘he therefore poses a related threat of causing fear to other persons’.⁷ She argued that these threats can be satisfactorily managed by ‘full compliance with the mandatory conditions of dangerous dog ownership’.⁸ These conditions include that the dog is ‘usually kept’ in a childproof enclosure,⁹ and that the dog is muzzled in public.¹⁰
- [8] Ms Chaplin acknowledged that she had not fully complied with the conditions. However, she argued that she could be relied upon to fully comply in the future. She pointed to her strong motivation, her increased awareness of the risks posed by Sarge, and her fuller knowledge of the required conditions.
- [9] The evidence provided by the Council included a statement and oral evidence from Mr Gilbert.
- [10] The learned member who heard the matter discussed in the reasons for his decision whether the threat posed by Sarge could be satisfactorily dealt with only by his destruction.¹¹ It was concluded that destruction was the only satisfactory outcome. He commented that ‘there remain many feasible scenarios in which Sarge could escape from his approved premises despite the best intentions or conduct of Ms Chaplin’.¹² It was further considered that if Sarge were to escape, there would be a high probability of a further serious attack. The learned member confirmed the Council’s decision to destroy Sarge.
- [11] Ms Chaplin has appealed on two grounds. Originally, these involved questions of fact as well as of law. However, as ultimately argued, the grounds involve questions of law only, so that leave to appeal is not required.¹³

First ground of appeal: irrelevant matter and wrong principle

- [12] Ms Chaplin submits that the learned member took into account an irrelevant matter and acted upon a wrong principle.¹⁴
- [13] Ms Chaplin submits that these errors become apparent from a consideration of the following paragraph in the reasons for the decision:

I was impressed by the evidence and conduct of Mr Michael Gilbert of the Council, who not only had to seize Sarge but issue the destruction notice. The audio recording of Mr Gilbert with Ms Chaplin and Sarge after the third

⁵ Ms Quinn’s report of 26 April 2019, 1.

⁶ Ibid.

⁷ *Chaplin v Sunshine Coast Regional Council* [2019] QCAT 371, [45(a)].

⁸ Ibid, [45(b)].

⁹ Animal Management Act, Schedule 1, s 4.

¹⁰ Ibid, Schedule 1, s 3(1).

¹¹ *Chaplin v Sunshine Coast Regional Council* [2019] QCAT 371, [74-82].

¹² Ibid, [79].

¹³ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 142(3).

¹⁴ See *House v The King* (1936) 55 CLR 499, 505.

incident, when Sarge was seized by Mr Gilbert, demonstrated his kindness, empathy, and sympathy with Ms Chaplin and the dog. Mr Gilbert would not lightly issue a destruction notice on a dog – indeed Sarge is only the second notice in his work for the Council over the course of five years. His decisions and actions should not be lightly overturned.¹⁵

- [14] Ms Chaplin referred to section 20 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act'):

20 Review involves fresh hearing

(1) The purpose of the review of a reviewable decision is to produce the correct and preferable decision.

(2) The tribunal must hear and decide a review of a reviewable decision by way of a fresh hearing on the merits.

- [15] We also note that there is no presumption that a decision being reviewed is correct, and that there is no onus which an applicant for review must discharge.¹⁶

- [16] Ms Chaplin submits that her case was finely balanced, and that the character of Mr Gilbert was an irrelevant consideration that could not have operated in her favour. Mr Gilbert's personal qualities, Ms Chaplin submits, did not bear on the real issues concerning the risk posed by the dog and her ability to manage that risk.

- [17] Further, Ms Chaplin submits that the comment that Mr Gilbert's decisions and actions should not be lightly overturned suggests that 'something other than a fresh hearing on the merits took place or that some standard other than the balance of probabilities applied'.¹⁷ Further, 'it has the effect of erroneously shifting the standard of proof because of the perceived reasonableness of the original decision-maker'.¹⁸

- [18] We note that a similar phrase of not lightly overturning a decision was used in the decision of the Full Court of the Supreme Court of South Australia in *David Paul Avon v Administrative Appeals Court*.¹⁹ The legislative provision that operated in that case spoke of an appeal being conducted as a review.²⁰ The appeal was from a specialist tribunal. Justice Olsson said that the reviewing body:

... will necessarily bear well in mind and give due regard to the fact that the decision appealed against is that of a specialist tribunal, which ought not, lightly, to be overturned.²¹

- [19] Justice Matheson quoted observations from another case to the effect that a reviewing body starts not with a blank page but with an existing formal decision.²²

- [20] We also note that QCAT is not bound by the rules of evidence, and may inform itself in any way it considers appropriate.²³ Further, in a review proceeding, the original

¹⁵ *Chaplin v Sunshine Coast Regional Council* [2019] QCAT 371, [73].

¹⁶ *Queensland Building and Construction Commission v Mudri* [2015] QCATA 78, [10-12].

¹⁷ Submissions on behalf of Ms Chaplin filed on 8 April 2020, [13].

¹⁸ *Ibid.*

¹⁹ [1997] SASC 6619.

²⁰ *Ibid.*, [80].

²¹ *Ibid.*, [96].

²² *Ibid.*, [25].

²³ QCAT Act, s 28(3)(b),(c).

decision-maker ‘must use his or her best endeavours to help the tribunal so that it can make its decision on the review’.²⁴

- [21] In our view, there is no reason why the tribunal reviewing a decision to destroy a dog cannot place some reliance on the experience, expertise and judgment of a Council officer who has dealt with similar situations. However, ultimately, the tribunal must reach its own conclusions on relevant issues and on whether destruction is the correct and preferable decision.
- [22] It was open to the learned member to place reliance, as he did, on the evidence of Mr Gilbert, based on an assessment of his expertise and credibility. This did not involve taking into account an irrelevant matter. The observations about Mr Gilbert’s character, while of limited relevance, helped to explain why the learned member saw fit to place some reliance on his evidence.
- [23] Ms Chaplin submits, in effect, that there was no proper basis for reliance to be placed on Mr Gilbert’s views, as there is scant information about his experience and record. While there is evidence he had worked for the Council for almost five years, there had been no exploration in the evidence about how much of that time involved decision-making responsibilities relating to dog destruction.
- [24] Further, Ms Chaplin submits in effect, the comments of the learned member about Mr Gilbert cannot be explained away as mere asides or innocuous observations about evidence. First mention of Mr Gilbert’s period of employment and the number of destruction decisions was made earlier in the reasons, under the heading ‘Evidence for the Council’.²⁵ Significantly, the passage quoted at paragraph 13 above was set out in a key section of the reasons, toward the end, headed ‘Applying the law and evidence’.
- [25] It is true that there was little information about Mr Gilbert’s experience and record, but we do not consider that the learned member placed a heavy or undue reliance on his evidence.
- [26] The learned member’s reasons ran to 84 paragraphs. He noted that a fresh review on the merits was to be conducted.²⁶ He also noted that the Tribunal was ‘required to undertake extensive enquiry before exercising its discretion under section 127(4) of the [Animal Management Act]’.²⁷ Section 127(4) is the provision which enables a dog destruction decision to be made. It is noteworthy that reference was made to the Tribunal itself exercising the discretion.
- [27] The reasons show that the learned member carefully considered the history of the matter, the risks posed by Sarge, the steps Ms Chaplin has taken to further mitigate the risks, Ms Chaplin’s strong desire to avoid any further incidents, and the submissions of both parties. The evidence was discussed in detail, including the substantial amount of evidence gathered since Mr Gilbert made his decision.
- [28] The risks were also assessed in some detail, in terms of probability and consequence. It was concluded that there was a high probability of a further attack by Sarge,

²⁴ QCAT Act, s 21(1).

²⁵ *Chaplin v Sunshine Coast Regional Council* [2019] QCAT 371, [31].

²⁶ *Ibid*, [18].

²⁷ *Ibid*, [27].

involving serious consequences. The section in the reasons ‘Applying the law and evidence’ was concluded as follows:

Assessing the risks, and being cognisant of the intention of the [Animal Management Act], I am satisfied that the threat posed can only be dealt with satisfactorily by the destruction of Sarge.²⁸

The balance struck by the Council in its decision to have Sarge destroyed is appropriate. It is a correct decision, and it is the preferable decision.²⁹

- [29] It is clear that despite placing some reliance on Mr Gilbert’s views, the learned member engaged in his own process of reasoning: weighing up the risks, the other evidence, and the purposes of the legislation. It was not a case of simply adopting some analysis articulated by Council staff.
- [30] It is apparent from the reasons as a whole that the role of the Tribunal was properly understood, including the need to independently exercise the discretion in section 127(4) of the Animal Management Act. The learned member performed that task. The comment about not lightly overturning Mr Gilbert’s decisions and actions, read in isolation, could suggest undue deference and a failure to grasp the required task. However, we are satisfied that this concern is removed by a consideration of the reasons as a whole.
- [31] We do not consider that there was an error of law as contended in the first ground of appeal.

Second ground of appeal: finding without evidence

- [32] Ms Chaplin notes the following passages in the learned member’s reasons:

There can be no confidence that, once set upon a course of aggressive behaviour Sarge would not do the same thing again if the opportunity was presented, with the risk that, on a future occasion, it could involve other animals or a child.³⁰

The consequences of an attack by Sarge remain unchanged from what has happened on three earlier occasions: Sarge will attack with an intention to seriously injure or kill. If a dog being attacked by Sarge was under the control of a child or infirmed person there is a risk that such child or person could also be attacked.³¹

- [33] Ms Chaplin submits there was no evidence to support the conclusion that Sarge poses a risk of attacking a child or an infirmed person. Ms Chaplin also took us to passages in *Fox v Percy*³² as to the role of an appellate body in relation to factual findings.
- [34] We accept that the expert evidence, from Ms Quinn and Mr Haywood, indicated that the threat posed by Sarge was to unfamiliar dogs, rather than to humans. While it was uncontentious that an attack by Sarge on a dog could cause fear to humans, there was no suggestion in the evidence generally – not just the expert evidence – or the submissions that there was a risk of Sarge targeting humans.
- [35] The first passage quoted in paragraph 32 above, read alone, does appear to embody a finding that Sarge poses a risk of attacking a child independently of attacking a dog.

²⁸ *Chaplin v Sunshine Coast Regional Council* [2019] QCAT 371, [82]

²⁹ *Ibid*, [83].

³⁰ *Ibid*, [71].

³¹ *Ibid*, [80].

³² (2003) 214 CLR 118.

However, when the second, more detailed, passage is taken into account, it is evident that the learned member identified the risk as an attack by Sarge on a dog, with the risk to a child or infirmed person being a collateral risk. It is easy to imagine situations where a person trying to protect their pet dog from an attack by Sarge could themselves be injured by him, intentionally or otherwise. We consider that the finding made by the learned member of a collateral risk to humans was open as a matter of inference. It did not have to be supported by specific evidence.

- [36] We do not consider that there was an error of law as contended in the second ground of appeal.

Conclusion

- [37] In our view, errors of law have not been demonstrated. We confirm the decision made at first instance.

Duplicate

FINAL ORDER

IN THE COURT OF APPEAL
SUPREME COURT OF QUEENSLAND

APPEAL NO. 8275/20

BETWEEN:

KARA ROSE CHAPLIN
(Plaintiff)
Appellant

AND:

SUNSHINE COAST REGIONAL COUNCIL
(Defendant)
Respondent

ORDER

JUDGES: Morrison JA, Philippides JA and Boddice J

DATE: 20 November 2020

INITIATING DOCUMENT: Notice of Appeal: 31 July 2020

THE ORDER OF THE COURT IS THAT:

1. Application to adduce further evidence refused.
2. Extend the time to make an application for leave to appeal, to 10 August 2020.
3. Leave to appeal refused.
4. The applicant is to pay the respondent's costs of and incidental to the application on the standard basis.

DEPUTY REGISTRAR

*Prepared in the Office
of the Registrar*



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