QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Cutbush v Scenic Rim Regional Council* [2019] QCAT 80
PARTIES:	**PAUL CUTBUSH** (applicant) **v** **SCENIC RIM REGIONAL COUNCIL** (respondent)
APPLICATION NO/S:	GAR325-17
MATTER TYPE:	General administrative review matters
DELIVERED ON:	28 March 2019
HEARING DATE:	8 October 2018
HEARD AT:	Brisbane
DECISION OF:	Member Gordon
ORDERS:	**1. All outstanding applications of a procedural nature are refused.** **2. In the application for a review of the decision about the dog, the decision made by Scenic Rim Regional Council on internal review on 27 November 2017 to confirm the concurrent regulated dog declaration and destruction order and combined information notice made on 6 November 2017, is confirmed.** **3. There shall be a stay of the destruction order for 28 days from the date of this final decision. The stay is conditional upon the owner of the dog and a responsible person for the dog ensuring that the requirements under schedule 1, section 3, of the *Animal Management (Cats and Dogs) Act* 2008 (Qld) are complied with for the dog the subject of the declaration.** **4. The non-publication order made by the tribunal on 11 May 2018 as varied by the order of 10 September 2018 is continued for a period of 3 years from the date of this final decision except that the non-publication is varied to permit the publication of information which enables the identification of Paul Cutbush and Scenic Rim Regional Council.**
CATCHWORDS:	ADMINISTRATIVE REVIEW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND

ADMINISTRATIVE TRIBUNAL – concurrent regulated dog declaration and destruction order following seizure of the dog – where dog attacked and bit people on three different occasions – where owner shows no acceptance of the events, remorse or insight – where owner shows disrespect for the processes of animal management – whether further risk of noncompliance identified – whether 'last resort' test is the correct one to apply – whether right to confirm destruction order

ADMINISTRATIVE REVIEW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – concurrent regulated dog declaration and destruction order following seizure of the dog – where entry to premises not by warrant or with consent but using additional powers of entry under section 112 of the *Animal Management (Cats and Dogs) Act* 2008 (Qld) and in compliance with section 122 of that Act – meaning of 'place' in those sections – whether entry and seizure was lawful

ADMINISTRATIVE REVIEW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – provision of evidence to parties and to the tribunal – whether such evidence needs to be 'sealed'

Animal Management (Cats and Dogs) Act 2008 (Qld) s 3, s 4, s 59, s 89, s 94, s 95, s 107, s 112, s 122, s 125, s 127A, s 188
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 21, s 33, s 73, s 85, s 86, s 143
Queensland Civil and Administrative Tribunal Rules 2009 (Qld), r 31, r 32, r 35

Bradshaw v Moreton Bay Regional Council [2017] QCATA 139
Cutbush v Scenic Rim Regional Council (No.2) [2018] QCAT 315
Cutbush v Scenic Rim Regional Council (No. 3) [2018] QCAT 350
Furnell v Ipswich City Council [2018] QCAT 369
Naidu v Brisbane City Council [2014] QCAT 420
Nguyen v Gold Coast City Council Animal Management [2017] QCATA 121
Perryman v The Commissioner of State Revenue [2016] QCAT 26
Sanctuary Cove Golf and Country Club Pty Ltd (ACN 120 308 410) v Machon [2019] QCATA 1
Thomas v Ipswich City Council [2015] QCATA 97

APPEARANCES &
REPRESENTATION:

Applicant:	Represented by solicitors from time to time but no appearance at hearing
Respondent:	James Dillon (counsel) instructed by King and Company

REASONS FOR DECISION

[1] This is a review of a decision made by Scenic Rim Regional Council to declare a dog a dangerous dog and to issue a destruction order in respect of it. The dog is a red cattle dog named 'Bandit' and Paul Cutbush is its registered owner.

[2] After a series of interlocutory orders and directions, the matter was listed before me for a two day hearing starting on Monday 8 October 2018. The hearing followed an unusual course. When considering the likelihood of compliance with the requirements of the dangerous dog provisions (as an alternative to the destruction order) I will need to explain this in more detail. For the moment, I need only to explain that despite being ordered by the tribunal to attend the hearing, Mr Cutbush did not do so. Instead, during the hearing he sent a number of emails to the tribunal containing his arguments and material. This largely duplicated material already before the tribunal but some of it was new. Since the hearing he has submitted more material. I confirm that I have accepted in evidence all the material given to the tribunal by Mr Cutbush at any time and in any form, and have taken it and all his submissions into account.

Other matters before me for this final decision

[3] Quite apart from the central issue before me about the future of the dog, there are a number of other matters which I will be dealing with in this final decision. These have come about because Mr Cutbush made numerous applications throughout the proceedings both before and after the hearing – some formal (on approved forms) and some informal (in emails). The option of ignoring any application which is not on an approved form may not always be open to the tribunal. This is because the tribunal should ensure that proceedings are conducted in an informal way[1] and because the tribunal must act with as little formality and technicality and with as much speed as the requirements of the QCAT Act or the rules and a proper consideration of the matters before the tribunal permit.[2] In addition to these requirements, the tribunal may waive compliance with the procedural requirements of the QCAT Act or the *Queensland Civil and Administrative Tribunal Rules* 2009 (Qld) (Rules).[3] And in a case like this one, where a party has caused damage to his own case by not attending a hearing when he was ordered to do so, any way in which that damage can be reduced should as a matter of procedural fairness be considered.

[4] Although in the usual case the tribunal's aims and rules referred to above generally work well, in the case of Mr Cutbush, due to the volume and frequency of

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1 Section 4(c) of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) (QCAT Act).
2 Section 28(3)(d) of the QCAT Act.
3 Section 61(1)(c) of the QCAT Act.

correspondence from him, managing this matter in an efficient way became a problem for the tribunal. The tribunal's resources were being used well beyond the norm for cases of this sort.

[5] In an attempt to minimise these difficulties, many matters have been reserved to this final decision. Only applications which warranted attention prior to this final decision about the dog have been dealt with.

[6] The applications from Mr Cutbush formally decided prior to this final decision can be divided into three categories: those dealt with before the hearing, those dealt with at the hearing, and those dealt with after the hearing.

Applications dealt with before the hearing listed for 8 and 9 October 2018

(a) Application dated 25 September 2018 to attend the hearing on 8 October 2018 by telephone. After receiving submissions from the parties on 4 October 2018 about this, on Friday 5 October 2018 (in the 'first 5 October 2018 order') Member Kanowski refused this application and required Mr Cutbush to attend in person. The directions did however, permit his witness Mrs Cutbush, and possibly another witness to give evidence at the hearing by telephone.

(b) Application dated 27 September 2018 for the hearing to be postponed for 6 months. The grounds were relied on were various, but the main suggestion was that this would allow the dog in question to be assessed by an independent animal behavioural specialist. After receiving submissions from the parties on 4 October 2018 about this, in the first 5 October 2018 order Member Kanowski refused this application and directed that the hearing was to proceed as scheduled.

(c) Application dated 2 October 2018 for the hearing to proceed as a hearing on the papers. After receiving submissions from the parties on 4 October 2018 about this, in the first 5 October 2018 order Member Kanowski refused this application and directed that the hearing was to proceed as scheduled.

(d) In the first 5 October 2018 order, four applications made by Mr Cutbush were postponed to be dealt with at the hearing. They were an application that the hearing be conducted as a closed hearing, an application concerning non-publication, an order seeking production of certain items from the Council's witnesses, and for the exclusion of the evidence of the Council's expert Dr Day.

(e) Mr Cutbush had made other formal and informal applications prior to 5 October 2018. All these were referred to Member Kanowski but none were successful and they were refused in the first 5 October 2018 order.

(f) The tribunal emailed the first 5 October 2018 order to Mr Cutbush at 11.43am on Friday 5 October 2018.

(g) After receiving the first 5 October 2018 order, in an email sent to the tribunal at 3.40pm Mr Cutbush sought again to get the hearing postponed. The grounds relied on appeared to be the same as before, with the possible addition that he wished to seek legal representation. That email was referred to Member Kanowski who made an order later that day confirming that the

hearing on the following Monday would proceed (the 'second 5 October 2018 order'). This order was sent to Mr Cutbush that day and received by him. The order also said that the applications made by Mr Cutbush in his email sent at 3.40pm on 5 October 2018 would be considered at the commencement of the hearing on 8 October 2018.

(h) Mr Cutbush requested written reasons for the second 5 October 2018 order and these were provided by Member Kanowski and published at *Cutbush v Scenic Rim Regional Council (No. 3)* [2018] QCAT 350. In doing so, Member Kanowski also provided some reasoning for his order made earlier on 5 October 2018 in applications covering the same ground.

Applications dealt with at the hearing

(a) On the morning of 8 October 2018 when the hearing commenced before me, Mr Cutbush did not appear. Bearing in mind his applications to postpone the hearing, for the hearing to be conducted 'on the papers', and to attend by telephone had been refused, and that he had been directed to attend the hearing in person, it was inappropriate for the tribunal to telephone him. Instead, for reasons given orally at the hearing, I made a decision to proceed in his absence.

(b) I also dealt with the matters listed in the first 5 October 2018 as reserved to me to be dealt with at the hearing, and various other matters arising from the emails from Mr Cutbush, giving oral reasons for my decision on those matters.

The oral reasons given on that day are available to Mr Cutbush.

Applications dealt with since the hearing

(a) Applications for extension of time to provide written final submissions in the review of the decision about the dog, granted on 9 November 2018, 20 November 2018 and 11 February 2019.

(b) Application to reopen the proceedings filed on 13 November 2018. This application was given file number RE019-18. Directions were given on 21 November 2018. Both parties filed submissions in respect of this application and a final decision refusing this application was made on 11 February 2019.

(c) Application for an interim order seeking an order for daily family and pet visitation and exercise rights to the dog pursuant to 'section 129 of the *Animal Management Act* 2008' and 'Chapter 3 p 1 s 17 of the *Animal Protection Act* 2001'. A final decision refusing this application was made on 11 February 2019. This was made on the grounds that the tribunal has no jurisdiction to make such an order.

(d) Applications from both sides for contempt. These applications have been referred to the President.

[7] Other applications which could fairly be dealt with at the same time as this final decision have been left over to save on the tribunal's resources. This also had the

benefit of limiting work and expense for the Council in needing to understand and making submissions about these matters.

Applications and requests dealt with in this final decision

[8] These are most efficiently dealt with in two parts. In the first part are those applications and requests which can be dealt with in a summary manner, and in the second part are those which require more consideration.

[9] Applications which are appropriately dealt with in a summary manner are:-

(a) A request in the email sent at 3.40pm on 5 October 2018 that the tribunal order the Council not to give to the tribunal (a) any more 'irrelevant and inadmissible material'; and (b) misleading information about whether it carried out an investigation about the incident of 11 September 2017. This is refused because even if there was any such material the tribunal would not be misled by it because the tribunal is able itself to identify the evidence of value in its decision in the review about the dog.

(b) Requests in the email sent at 3.40pm on 5 October 2018 that the tribunal (a) exclude the evidence of Dr Day as being 'out of time' having regard to section 94(2) of the '*Animal Protection Act'*; and (b) deal with non-publication issues. These issues were dealt with at the hearing of the 8 October 2018 and reasons given for the decisions made on that day (which reasons are available to Mr Cutbush). This point is also made in Mr Cutbush's first final submissions. However, it is right for me not to disallow Dr Day's evidence.

(c) On 16 December 2018 Mr Cutbush asked that a minor civil dispute claim in the tribunal which he has brought against the neighbours involved in the incident on 11 September 2017 should be joined to GAR325-17 because it involves the damage to the fence. This is inappropriate and cannot be done under the Rules. This is refused.

(d) At 3.38pm on 8 February 2019 Mr Cutbush applied for GAR325-17 to be heard in private. In so far as this refers to the review of the decision about the dog and not to other matters, this is a repeat of the application which was before me and refused by me on 8 October 2018 for reasons given then. I refuse to deal with this again. In any case there is no public hearing upon which any such direction could impact and it would need to be refused on that basis.

(e) On 13 February 2019 Mr Cutbush asked for reasons for my decision of 11 February 2019 in GAR325-17 in which I refused his application for an interim order seeking an order for daily family and pet visitation and exercise rights to the dog. The reasons for my decision however, appear in the decision of 11 February 2019 itself. They were stated to be: 'because the tribunal has no jurisdiction to make the orders requested, on the grounds given by Scenic Rim Regional Council in its submissions of 10 December 2018'. Hence no further reasons need to be given.

(f) On 15 February 2019 Mr Cutbush requested that the review about the decision about the dog be heard before the contempt proceedings to avoid delays. The application for the review the decision about the dog is separate from the

contempt proceedings. The timing of one does not, or should not, affect the other. This request is refused.

Other applications made in application for interim order of 22 November 2018

[10] On 22 November 2018 Mr Cutbush made an application for a number of interim orders. Applications 5 and 6 concerned access to the dog and were dealt with by the tribunal separately [item (c) under 'Applications dealt with since the hearing' above]. The other applications were reserved to be dealt with by me in this final decision. They were:-

(a) For the Council to serve Mr Cutbush with 'all QCAT sealed evidence in relation to GAR325-17'. This application is refused because evidence does not have to be sealed as explained under 'Allegation about not having received any of the evidence' below.

(b) GAR325-17 hearing on 8 and 9 October 2018 be 'struck out' as Mr Cutbush was 'not served prior to commencement or as at 1000am 22 November 2018'. This seems to be a repeat of (a) and is refused for the same reason.

(c) 'The Tribunal will recommence a Hearing timeline "on papers" commencing from when the Applicant is served'. This is a repeat of the application of 2 October 2018 in which Mr Cutbush sought an on the papers hearing of his application to review the decision about the dog. This was refused by Member Kanowski on 5 October 2018. The only circumstances which have changed have been that Mr Cutbush did not attend the hearing on 8 October 2018. The difficulties arising from this have been reduced by giving him an opportunity to make final submissions, which he has done. So there is no need for an on the papers hearing. This application is refused.

(d) The on the papers hearing will be expedited as the pet has now been held for over 14 months in close confinement 'and it will be conducted by a Member not involved in the 8/9 October 2018 Hearing'. In so far as this application seeks an early resolution of this matter the tribunal has done its utmost to achieve that, to the extent consistent with providing Mr Cutbush with procedural fairness bearing in mind he did not attend the 8 October 2018 hearing. There is no need for any order for an expedited hearing. As for the suggestion that a new member of the tribunal should decide this matter who was not involved in the hearing on 8 October 2018, there are no grounds provided in the application. Such an application would be considered on the grounds of actual or perceived bias or some other reason for disqualification, but such grounds do not seem to be alleged. This application is refused.

(e) 'Scenic Rim Regional Council are to pay the legal costs for the Applicant for the preparation of the re-opening Application due to their non-service of evidence'. As referred to in (a) above, this application is misconceived because it is based on an assumption that such evidence should be 'filed' in the tribunal and therefore sealed, which is not the case. This application is refused.

(f) QCAT of their own initiative will investigate any contempt action due to the SRRC misleading the Tribunal that the Applicant had in fact been served. This is misconceived for the reason given in (e). This application is refused.

[11] On 12 February 2019 Mr Cutbush made an application for interim orders for the Council:-

(a) to supply an affidavit from a ranger explaining why the ranger has provided 'no evidence, no affidavit, no file notes and not attending the hearing in October 2018';

(b) to allow daily access to the dog for exercise and washing;

(c) to advise what measures are being taken to ensure the dog is 'not tortured any further with heat in his kennel at over 40 degrees'.

[12] As for (a), the tribunal is able to call for adequate statement of reasons or additional documents and things in the possession of a respondent to an application for review,[4] may inform itself in a way it considers appropriate, and must ensure as far as is practicable that all relevant material is disclosed to the tribunal.[5] Having considered the reasons for requesting this order however, I am not convinced it would help at all. The fact is that the ranger concerned could not give any evidence going directly to the issue about the behaviour of the dog – that is given by the lay witnesses from whom I have heard and it is that evidence, together with Mr Cutbush's own behaviour, which has been crucial in this review.

[13] As for (b), I dealt with the same application in my decision on the interim application made on 22 November 2018 just one day before this second interim application was made. I could only hear this application if circumstances had changed. It does not appear any factual circumstances have changed. The legal circumstances have however, changed. *Sanctuary Cove Golf and Country Club Pty Ltd (ACN 120 308 410) v Machon* [2019] QCATA 1 has now been published. In that decision the President sitting with Member Traves explained that if a person is not entitled to make an application for particular relief under the relevant enabling Act the tribunal has no such jurisdiction.[6] The relevant enabling Act does not provide for an application for an order of the type sought by Mr Cutbush in this renewed application for an interim order. The tribunal has no jurisdiction to make an order of the type sought.

[14] As for (c), this is of no relevance to the review of the decision about the dog otherwise as a reminder that it is best for the dog for the tribunal to reach a decision as quickly as it can. This application is refused because the tribunal has no jurisdiction to make such an order on the same grounds as for application (b).

Dealing with some points made in Mr Cutbush's final submissions

[15] On 4 March 2019 Mr Cutbush made his final submissions. These refer back to the points made in the application to reopen filed on 13 November 2018 and also make

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4 Section 21 QCAT Act.
5 Section 28 QCAT Act.
6 Paragraphs [33] and [39].

some additional points. Although not provided for in the final directions order, Mr Cutbush has made some further submissions in an email of 22 March 2019 and yet further submissions on 26 March 2019. I confirm that I have taken those submissions into account.

[16] Some of the points made by Mr Cutbush go to the merits of the decision on review about the dog. Those points are dealt with at a later stage in these reasons when considering that review.

[17] Some of the points made are about procedural matters including whether Mr Cutbush has had a fair hearing, which if valid could affect the way I should deal with this final decision. I ought to deal with those points now.

Allegation about not having received any of the evidence

[18] This was one of the points made by Mr Cutbush in his email of 5 October 2018 and it has since been repeated in numerous emails, applications and submissions.

[19] What happened was that at some point Mr Cutbush discovered that under the QCAT Rules, applications and documents are filed in the tribunal when they are sealed. From that time he has complained that the Council's evidential material submitted to him had not been sealed. Hence he says, they were not given to him at all.

[20] On 4 December 2018 Mr Cutbush brought contempt proceedings in the tribunal against the Council and its Mayor and against two of the solicitors who had been handling the case for the Council and also the barrister instructed in the review of the decision about the dog.[7] Those proceedings are still current. In those proceedings he claims (amongst other things) that they are in contempt by failing to serve him with the material as ordered by the tribunal and in proceeding to a hearing on
8 October 2018.

[21] The truth of this matter is that none of the evidentiary material in this case needed to be sealed by the tribunal.

[22] The rules governing filing of documents in the tribunal are in Part 4 of the QCAT Rules.[8] It is clear from these rules and from the QCAT Act itself that the act of 'filing' is required only for applications and certain other formal documents. Section 33 requires that applications for the tribunal to deal with a matter are 'filed'. Section 73 requires that objections to a person who has presided over a compulsory conference hearing the matter are filed. Sections 85 and 86 permit the filing of written terms of settlement in the tribunal. Section 143 requires filing of appeals and applications for leave to appeal. There is no provision requiring evidentiary material to be 'filed'. It is clear from the Rules that filing in the tribunal is a formal act which entails the principal registrar recording the document and stamping it with the tribunal's seal.[9] Since the principal registrar may refuse to do this on various

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7 These contempt proceedings were also brought against two of the Council's witnesses who gave evidence in the review of the decision about the dog and against two other lawyers.

8 *Queensland Civil and Administrative Tribunal Rules* 2009 (Qld).

9 Rule 31.

grounds,[10] it has been held that it requires some consideration and processing of the document which is to be filed, rather than simply receiving it and placing it on the tribunal file.[11]

[23] In reviews of a reviewable decision like this matter, the decision-maker is required by section 21 of the QCAT Act to provide to the tribunal within a reasonable period of not more than 28 days after being given a copy of the application for the review, a written statement of the reasons for the decision and any document or thing in the decision-maker's possession or control that may be relevant to the tribunal's review of the decision.[12] Section 21 does not require that material to be 'filed' in the registry. Instead, section 21 requires such material to be 'provided to' the tribunal. There is nothing in the tribunal rules which requires section 21 material to be given to the applicant for a review, but as a matter of procedural fairness this of course should happen.[13]

[24] During the currency of proceedings, the tribunal may give directions that evidentiary material should be 'filed' in the tribunal and also given to the other parties. Such directions do not use the word 'filed' in the formal sense that it is used in the QCAT rules.[14]

[25] It is clear from the above analysis that evidentiary material does not have to be sealed before it is given to a party.

[26] A matter of concern which appears from the above, and which has some relevance with respect to Mr Cutbush's credibility, is that Mr Cutbush is willing to state quite forcefully and frequently that he has not been served with the Council's evidentiary material. Sometimes this is qualified by adding the word 'sealed', but often it is not, and when that happens he is claiming that he has not been served with the Council's material at all.

[27] For example, in his email of 5 October 2018 on the Friday before the hearing where he sought 'an urgent QCAT President injunction', he stated that he had not received the evidence which had been filed in the tribunal. In passing however, I note that he did refer to the veterinary reports and the report of Dr Day in the same email.

[28] Mr Cutbush also relied on this point in his application to re-open GAR325-17. He filed an affidavit sworn on 13 November 2018 explaining in some detail the technical difficulties he faced downloading, reading and digesting the material served on him.[15] The application to reopen stated:-

> The Applicant has not had proper regard to the Respondent's evidence, due to the inability to open the electronic link to evidence until just before the matter hearing; the volume of the Respondent's evidence; and additional evidence being filed.

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10 As for which, see rule 32 and also section 35 of the Act.
11 *Perryman v The Commissioner of State Revenue* [2016] QCAT 26.
12 Section 21(2).
13 Rule 35 of the QCAT rules requires copies of filed documents to be given to the other parties but as explained above this does not apply to section 21 documents.
14 That is, in Part 4 of the Rules.
15 This affidavit is in the tribunal file RE0016-18.

[29] In an email sent at 9.18pm on 10 December 2018 Mr Cutbush complains of not having been provided with 'filed applications/documents/evidence' for (of relevance) the evidence in GAR325-17 including the Cam Day video. He had made a similar point about the evidence in GAR325-17 in an email of 1 December 2018 at 11.51am.

[30] In the submissions of 18 December 2018 made in support of the application to reopen Mr Cutbush claimed:-

> No provision of evidence to the Applicant.[16]
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> I received the Dr Day video for the first time yesterday. No "filed/served evidence" was provided before the Hearing or to date. As at 18 December 2018 I have not been served with the GAR325-17 evidence.[17] This is contempt of QCAT Directions in December 2017.

[31] It is to be noted however, that in the same document Mr Cutbush refers to the submitted evidence in detail.

[32] Because Mr Cutbush said in his email of 5 October 2018 that he had not received the Council's evidentiary material, the Council came to the hearing ready to show that he had. At the hearing on 8 October 2018 I was given an affidavit sworn by the solicitor conducting the case for the Council which exhibited recent correspondence between the solicitor and Mr Cutbush in the days leading up to the hearing.[18] Mr Cutbush confirmed in an email of 26 September 2018 that he had been provided with the witness evidence relied on by the Council.[19] In none of his emails in the exhibit did Mr Cutbush complain that he had not been provided with the Council's material. I was also given a sequence of emails between the Council's solicitors and Mr Cutbush's then solicitors which demonstrated that service had been effected.[20]

[33] Since after the hearing of 8 October 2018 Mr Cutbush continued to claim non-service, in particular in his application of 13 November 2018 to re-open, on 10 December 2018 the Council's solicitors made an affidavit dealing specifically with this issue.

[34] This showed that until Mr Cutbush ceased to be legally represented on 28 September 2018 the Council's solicitors rightly corresponded with his solicitors. The evidence shows that the section 21 of the QCAT Act documents[21] were served in three batches. The first on 15 January 2018 and the second on 21 May 2018 were served by providing an email with a dropbox link. The evidence shows that this was an agreed method of service. This material included the videos attached to Dr Day's report. The videos were downloaded by Mr Cutbush's solicitors on 21 May 2018. The remainder of the documents were processed by Mr Cutbush's solicitors and forwarded to Mr Cutbush in the form they saw fit. There was a third batch of disclosure material from the Council which was served in the same way between

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16 Page 1 first bullet point.
17 Page 2 paragraph 1.
18 This was marked Exhibit 5.
19 Page 18 of the exhibit to that affidavit.
20 Exhibit 4.
21 That is to say those documents served pursuant to the Respondent's obligation to provide any document or thing in the decision maker's possession or control that may be relevant to the review.

19 July 2018 and 25 July 2018. This contained five further statements of evidence and one from Dr Day exhibiting his report and curriculum vitae. These were acknowledged by Mr Cutbush's solicitors.

[35] In the evidence, the Council's solicitors point out that on 19 September 2018 and 20 September 2018 Mr Cutbush himself sent a dropbox links to videos which he wished to serve on the Council. This shows that he was not only content to use dropbox but that he was able technically to use it.

[36] After Mr Cutbush ceased to be legally represented from 28 September 2018, the Council's solicitors corresponded with him directly by email and Mr Cutbush used email to correspond with them.

[37] Whilst the fact that the Council's material was served on Mr Cutbush is proved from the solicitor's evidence alone, it is also shown conclusively in other ways.

[38] Firstly there are several instances where Mr Cutbush has commented on the Council's evidence in detail. For example in an email of 28 August 2018 Mr Cutbush referred to the affidavits and he commented that they omit certain details.[22]

[39] On 18 December 2018 Mr Cutbush sent an email to the tribunal with an affidavit made by him and sworn on 21 June 2018 attached to the email. This affidavit was seemingly about alleged breaches of a non-publication order made on 11 May 2018. In the affidavit of 21 June 2018, Mr Cutbush expressly states that he had received material filed by the Council. It was in these terms:-

> 1. I received advice in relation to the Order on 25 May 2018 from my Lawyer via email as I had been asking for a status update.
> 2. I received the Order of 11 May 2018 on 28 May 2018 via Australia Post.
> 3. I received the material filed by the SRRC on the same day from my Lawyer.
> 4. I did not review the paperwork or CD till 29 or 30 May 2018.
> 5. On reading the order I ensured no information has been published that was supplied.
> 6. I did not read the Order as having to backdate redaction.
> 7. My lawyer advised the restrictions are on the Applicant and Respondent in this matter.
> 8. I am the sole Applicant in this matter.
> 9. No material provided by the SRRC to me on 28 May 2018 has been distributed or published by me.
> 10. The material has not been viewed by any of my witnesses or distributed by them to the best of my knowledge.
> 11. On or about 28 May 2018 a campaign was commenced for blankets as Bandit has no bedding.
> 12. The SRRC PO Box 25 was the mailing address and this is on the SRRC website and I do not believe this is a breach of the non-publication order.
> 13. I have now taken steps to remove any posts or comments that may breach the non-publication order.

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22 Page 85 of the exhibit to the solicitor's affidavit.

[40] It is notable that there is nothing in this affidavit suggesting that some of the material provided by the Council by that date could not in fact be accessed as he has said in his affidavit sworn on 13 November 2018.[23]

[41] Despite sending in this affidavit on 18 December 2018, the very next day Mr Cutbush sent an email saying that the Council had still not filed and served him with the evidence which was required in January 2018.

[42] It is also relevant that although the tribunal made a number of on the papers orders, it also held directions hearings. There were three such hearings before Senior Members of the tribunal. The first was on 29 March 2018. At that hearing Mr Cutbush was represented by his solicitor who attended by telephone, and the Council was represented by counsel in person.

[43] The second was on 21 June 2018. I have listened to the recording of the hearing on that day. Mr Cutbush was represented by his solicitor who appeared on the telephone, and Mr Cutbush was also linked in during the hearing. What Mr Cutbush's solicitor said was that the Council had served statements of evidence from eight witnesses and the Council had indicated there was more material to come. Counsel for the respondent explained that the statements from the main witnesses had been served and also Dr Day's report, and the new material was to be from witnesses about the seizure process. There was no dispute about this and there was certainly no suggestion that the material already provided by the Council had not been received or was not accessible.

[44] The third directions hearing was on 16 August 2018. Mr Cutbush was again represented by his solicitor on the telephone and Mr Cutbush was also linked in and participated in the hearing. I have listened to the recording of that hearing. It was said that the parties had served all their material and they were ready to proceed to a hearing. Mr Cutbush's solicitor explained that Mr Cutbush had some more material to file in relation to a recent house move. There was no suggestion made at the hearing on Mr Cutbush's behalf or by Mr Cutbush himself that there was any material from the Council that was missing or which was inaccessible.

[45] In his email of 11 March 2019 at 4.56am Mr Cutbush referred to what happened on 8 October 2018. He said:-

> And to date I have not been provided with the purported evidence presented at the Hearing which went ahead without us.

[46] This is also likely to be incorrect. He has had access to the audio recording, and may have a transcript,[24] and he has asked for and been given access to the file itself

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23 Paragraph 16.

24 A letter of 26 October 2018 from new solicitors instructed by Mr Cutbush suggested that they were obtaining a transcript. An affidavit was lodged at the tribunal by the new solicitors sworn or affirmed by a law clerk on 12 November 2018 saying that they had been instructed by Mr Cutbush on 12 October 2018, that a transcript of the hearing on 8 October 2018 was applied for on 12 November 2018 and that they were 'required to consider the Respondent's evidence and transcript of the hearing prior to drafting submissions'. On 19 November 2018 Mr Cutbush asked the tribunal for the number of the hearing room where the matter on 8 October 2018 was heard so that he could ask Auscript for the audio of the proceedings. That was provided to him. Subsequently it can be seen from the tribunal file that he did ask Auscript for the audio of the hearing on 8 October 2018.

although it appears that despite making an appointment to view the file he has not done so.

[47] It can be seen from the above that there are good reasons to disbelieve Mr Cutbush's assertions that he had not been served with the Council's material or with the evidence relied on by the Council at the hearing on 8 October 2018. His contention to that effect is highly mischievous at best and dishonest at worst.

[48] Had Mr Cutbush attended the hearing on 8 October 2018 any gaps in the evidence in his possession or with which he was having difficulty could have been addressed. The issue about non-service was certainly no reason for him not to attend that hearing.

[49] It should also be remembered that the tribunal process on review has not occurred in a vacuum. What was provided to Mr Cutbush by the Council from time to time prior to the application for review of the decision about the dog appears from the formal certificate of the Council's Chief Executive Officer.[25] In particular the evidence shows that Mr Cutbush was spoken to after each separate incident and asked for his comments about the attack. On 22 September 2017 he was given a 'Proposed Regulated Dog Declaration Notice' which explained the law which applied, gave the facts on which the Council was relying and gave an opportunity to Mr Cutbush to make written representations to show why the dangerous dog declaration should not be made. In his response of 12 October 2017 Mr Cutbush claimed that the seizure of the dog had been unlawful, that there was a conflict of interest and bias of the officers concerned, that there was no supporting evidence and that there had been no investigation about the fence. As for the three incidents themselves Mr Cutbush made contentions similar to those he relies on in this application to review the decision about the dog and submitted photographs of the damage to the fence, of the dog and of the dog's premises in the kennel.

[50] On 6 November 2017 the Council gave Mr Cutbush a concurrent regulated dog declaration and destruction order and combined information notice for the dog.[26] That also contained a description of the law which applied and the facts relied on by the Council and recited the points made by Mr Cutbush in response and the findings made in respect of those points. The document listed the evidence and other material which the Council had gathered and also included the relevant passages from Dr Day's report and his recommendations as shown to the tribunal a year later on review. It offered Mr Cutbush an opportunity to seek an internal review. This document was given to Mr Cutbush. He did seek an internal review and submitted witness statements from his own witnesses, as well as a number of documents videos and photographs, and made further submissions.[27]

[51] After Mr Cutbush applied for an internal review he was notified of the result of that review. Attached to his email of 6 December 2017 he sent to the tribunal what he then received from the Council. The result of the internal review was dated 6 November 2017 and set out in detail the facts which were relied on by the Council and the Council's considerations which led it to the view the dog should be seized

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25 Signed on 23 July 2018.
26 Page 70 of the exhibit to this certificate.
27 Pages 86 to 247 of the exhibit to this certificate.

and destroyed. The internal review listed all the documents relied on from the complainants and witnesses, without identifying the persons concerned, and it listed the documents relied on provided by Mr Cutbush. Although these witnesses were not named they were known to Mr Cutbush because they were his neighbours. Certainly after receiving the section 21 documents he was aware of their names, as is indicated by his email of 26 September 2018 when he applied to attend the hearing by telephone and for the hearing to be conducted 'on the papers'.

[52] The internal review resulted in a report which was 34 pages long. Mr Cutbush also received this.[28] This set out the law which was relied on by the Council and the facts relied on by the Council and considered with some care the allegations and points made by Mr Cutbush. It also referred to a large amount of correspondence from Mr Cutbush between 10 March 2017 and 25 October 2017 which made various points (which were listed) and also video footage and photographs supplied by Mr Cutbush. The internal review recited the views of Dr Day given on 27 October 2017 having examined the dog, that it was 'an aggressive and dangerous dog and is very likely to cause further injury' and containing the recommendations that a year later were put before the tribunal on review.[29] Each point made by Mr Cutbush was carefully dealt with in the internal review. Hence Mr Cutbush not only knew the Council's case in detail but he also knew from that time what they were saying in answer to his points.

[53] Largely the material referred to in the internal review decision is the evidence before me in this review, except I have also received evidence of the formal procedures followed, evidence of what happened at the time of the seizure, and the expert evidence of Dr Day.

Complaint that there was no compulsory conference

[54] In his final submissions of 4 March 2019 Mr Cutbush complains that there was no compulsory conference held by the tribunal. He also complains about this in his email of 30 November 2018 and asks the tribunal to explain why it never happened.

[55] There was however, a compulsory conference. It was held on 2 February 2018. From the member's notes of that day it can be seen that it was attended by Mr Cutbush's solicitor on his behalf. On the day of the compulsory conference, the member tried to call Mr Cutbush by telephone but the call went to message bank. An officer attended for the Council, and also a solicitor and counsel.

[56] At the directions hearing on 21 June 2018 Mr Cutbush's solicitor told the senior member that he had agreed with the Council's solicitors that there would not be a further compulsory conference. Mr Cutbush was attending that hearing on the telephone so he heard that.

[57] Mr Cutbush has explained why he himself did not attend the compulsory conference in his affidavit of 13 November 2018. His then solicitors advised him not to attend and said it will be a 'very short and pointless exercise'. In the light of this and what was said at the directions hearing, it is very difficult to understand why Mr Cutbush is asking for an explanation why there was no compulsory conference.

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28 Pages 36 to 69 of the exhibit to this certificate.

29 Page 44 of the exhibit to this certificate.

Complaint that there was no experts conclave

[58] By email of 11 December 2018 Mr Cutbush said that he had had notice of expert evidence from three to four vets and he wanted to know on what basis that had been permitted since under the Practice Direction 4 of 2009 only one expert is allowed. He also wanted to know whether an experts conclave as anticipated by the Practice Direction had taken place and if so when he was advised of it. A second email sent nine minutes later, enlarged on this issue. Mr Cutbush said he was not aware that he could have an expert meet with the tribunal member and the Council's expert. He referred to *LSC V Bone* [2013] QCAT 550. In that case the tribunal disregarded evidence from a number of experts because there was more than one expert and there had been no experts conclave.

[59] Mr Cutbush stated that he had not had notice of each expert's name and area of expertise and the issue that each expert would address nor notice of a conclave. He said that he had not been provided with 'the 8 October 2018 report'. In his submissions to reopen (adopted as his final submissions) he says he wanted to receive the experts joint report developed in a conclave with the member and 'have the opportunity for my expert to hold the required conference with Dr Cam Day and Member Gordon only as per QCAT Rules'. He also wanted the Council to be limited to one expert.

[60] In his final submission of 4 March 2019 he said that the Council had around five vets so far as this exceeded the amount of experts allowed by QCAT.

[61] Here it is necessary to point out that Mr Cutbush raised the issue of having his own expert examine the dog with the Council prior to the hearing. Mr Cutbush first raised this with the Council well before the hearing, on 31 August 2018.[30] On 11 September 2018 the Council's solicitors informed him by email that this could be approved for the purpose of producing a report for the tribunal proceedings, conditional upon Mr Cutbush not being present and other reasonable conditions, and a request was made for the identity of the veterinary surgeon so that arrangements could be made. There was no response to this letter.

[62] Since the hearing, Mr Cutbush has raised this again. In his submissions of 18 November 2018 in support of his reopening application he said he wished to present evidence from his own named veterinarian. In his email of 10 December 2018 at 6.14pm he said he was discussing this matter with a particular veterinarian. In his email at 1.04pm on 18 December 2018 he said that he wanted to bring his own expert evidence and cross-examine Dr Day. The Council have said that there continues to be no objection to a visit by Mr Cutbush's vet for the purpose of a report to the tribunal.[31]

[63] There has however, been no formal application to the tribunal about this. Had such evidence been available I am confident that Mr Cutbush would have applied to the tribunal for leave to introduce it bearing in mind the multitude of other applications he has made. It has now been seven months since the matter was first raised. Clearly it is not being pursued.

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30 Page 89 of the exhibit to the Respondent's solicitor's affidavit sworn on 10 December 2018.

31 Paragraph 52 of the affidavit of the Respondent's solicitor sworn on 10 December 2018.

[64] As for the Practice Direction, the limit of experts only applies to those called in the proceeding. Expert evidence that appears from the documents disclosed by a decision making body pursuant to section 21 of the QCAT Act is not of that nature. Dr Day's evidence was different, being presented to assist the tribunal as to the correct and preferable decision in the review, and was expert evidence of the nature contemplated by the Practice Direction. Such evidence was limited to one expert as provided by the Practice Direction. As for the experts conclave, this is only required by the Practice Direction if there are competing experts, which is not the case here.

[65] The reference to the 8 October 2018 report is not understood. If it is to the statement of Dr Day which I accepted in evidence at the hearing on 8 October 2018, then this was received by the tribunal on 19 July 2018 and there is an email on the file showing that the Council's solicitors sent this to Mr Cutbush by dropbox link on the same day. It was his statement and curriculum vitae and his report of 27 October 2017 following his visit to the dog on the previous day.

Imbalance caused by Mr Cutbush not being represented

[66] A point made by Mr Cutbush in the application to reopen the proceedings (and adopted in the final submissions) is that he was not legally represented at the time of the hearing, and since the Council was represented, he needed this too.

[67] As far back as 14 December 2017 Mr Cutbush applied for leave to be legally represented and this was granted on 3 January 2018.

[68] Mr Cutbush was then legally represented and his solicitor attended the three directions hearings of 29 March 2018, 21 June 2018 and 16 August 2018. Then he indicated in an email of 5 September 2018 that he had changed solicitors. Then on 28 September 2018 he said he was no longer legally represented and he asked the Council's solicitors to correspond directly with him.[32]

[69] In other emails he indicated that he could not afford legal representation and this appeared to be the situation at the time of the hearing on 8 October 2018. When one side is legally represented and the other is not, the tribunal does its best to ensure that there is a level playing field and will look to solicitors and counsel to assist in this to the extent that their duties to their own client permits.

[70] This issue cannot affect the merits in the decision in the review about the dog.

No working hearing device

[71] In his final submissions Mr Cutbush says that there was no provision of a hearing device at QCAT and he has complained about this to the Anti-Discrimination Commission and to the Attorney.

[72] This issue cannot affect the merits in the decision in the review about the dog. It did not arise in the hearing of 8 October 2018 because Mr Cutbush did not appear.

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[32] Pages 31 and 16 respectively of the exhibit to the affidavit in the tribunal's Exhibit 5.

Cause of delays in disposing of this review about the dog

[73] Mr Cutbush blames the Council, its representatives and the tribunal for the delays in dealing with the review. He is quick to point out that in the meantime his dog is held by the Council and not at home. He describes the conditions in which the dog is being held in emotive terms.[33] I am not able in this decision to identify the cause of delays prior to the hearing of this review on 8 October 2018. But it is clear to me that all the delays since that date have been the fault of Mr Cutbush and no one else. The fact is that if Mr Cutbush had attended the hearing of this matter, as he was ordered to do by the tribunal, it could have been disposed of very quickly – quite possibly by an oral decision on day two of the hearing, and if not, very soon afterwards.

[74] Instead what happened was that in order to be fair to Mr Cutbush since he had not attended the hearing, he had to be given time to make final submissions. Inevitably this process took time because provision has to be given for submissions in reply and possibly for Mr Cutbush to reply to those submissions. The first date for final submissions from both sides was 26 October 2018 with replies by 2 November 2018. Mr Cutbush then instructed solicitors who, by letter of 26 October 2018, indicated that they needed more time to file final submissions. On that basis, time for final submissions was enlarged to 16 November 2018 with replies thereafter with a final decision of the tribunal contemplated after 27 November 2018. But Mr Cutbush applied again for an extension of time and the time for his submissions were enlarged to 30 November 2018 with replies thereafter, contemplating a final decision of the tribunal after 11 December 2018. But on 30 November 2018 Mr Cutbush again applied for more time to make final submissions and so a final order was made with an indication that there would be no further extensions of time except in exceptional circumstances. Unfortunately contempt proceedings were running concurrently and in those Mr Cutbush had indicated that he was under some pressure. Accordingly the final date for his submissions was somewhat relaxed, being 4 March 2019 with provision for replies and contemplating the final decision of the tribunal after 25 March 2019.

Findings of fact

[75] From the Council there was evidence from 13 witnesses of fact and one expert witness Dr Day. Of the 13 witnesses of fact, eight gave direct evidence about the incidents involving the dog. Four were Council officers who gave evidence of the investigation into the incidents and the seizure of the dog, and one Council officer gave evidence about the procedures followed and the care and keep of the dog.

[76] From Mr Cutbush I had his affidavit and that of his wife, a note from his daughter, the material submitted with his application for review, his initial submissions to the tribunal and his final submissions. I also had a multitude of emails with attachments which had been sent to the tribunal both before and after the hearing. In the documents provided by the Council, I had submissions and accompanying documents from Mr Cutbush while the Council was considering this matter and in the internal review. His documents included a number of still photographs. They

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[33] It should be pointed out that the Council denies that the dog is being held in poor conditions.

also included videos. These had not been provided to the tribunal in a form which was easily accessible, but they were all provided subsequently by the Council's solicitors.

[77] Mr Cutbush makes general points about the evidence overall and also makes specific points about each incident.

[78] In general points about the evidence overall he says that none of the non-Council witnesses should be believed. His reasoning is that they have been influenced by the Council officers to tell untruths in their statements and to the tribunal.[34] Why is it said the Council officers would do this? It is, according to Mr Cutbush, a reprisal for various complaints he has made about the Council officers, his taking of legal action and 'ongoing activism versus fact'. He says he has had an 'open complaint in relation to dog registration data integrity over a number of years' and 90 minutes before the dog was seized he had lodged a complaint with the Queensland Crime and Corruption Commission, copied to the Council, in relation to one of the Council's staff members. Also his wife on 26 October 2017 lodged a formal public interest disclosure to the ombudsman copied to the Council, about the Councils' officers alleging theft. These details appear in the submissions for the internal review dated 8 November 2017,[35] and also in the submissions of 18 December 2018.[36]

[79] Hence, says Mr Cutbush, the incidents were either staged, or didn't happen at all, or if they did happen, were caused by the victims and not by the dog.

[80] The obvious problem with this is the intricate manipulation of the evidence that it would require by a large number of people. It is most unlikely to be the truth of this matter.

[81] In the same vein Mr Cutbush challenges the partiality of the various Council officers concerned, and also that of the officer who conducted the internal review.

[82] Another general point made by Mr Cutbush in his final submissions I believe, is that his evidence and the evidence of his witnesses should be given greater weight because there was no opportunity for he and his witnesses to give evidence at the hearing and be cross-examined. However, this is not the case. As explained later in these reasons, Mr Cutbush and his wife were given an opportunity to give evidence by telephone and be cross-examined, but this was not taken up. It was Mr Cutbush's own decision not to attend the hearing and to offer his witnesses for cross-examination. There is no room therefore to say that in some way this strengthens his case.

[83] I deal with the specific points made by Mr Cutbush with respect to each incident when considering the incidents themselves. My findings of fact are as follows.

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34 This is the effect of submissions made in the application to re-open which is adopted in Mr Cutbush's final submissions.

35 Page 86 of the exhibit to the certificate of the Chief Executive Officer signed on 23 July 2018.

36 Paragraphs 9, 38 and 39.

[84] At the time of the incidents Bandit, a red cattle dog, and Nitro, a blue cattle dog, lived at number 2 on the road in question with the Cutbush family. Paul Cutbush was the registered owner of the dogs.

[85] The road concerned is a cul-de-sac. To the left of number 2 viewed from the road is number 1 which is at the end of the cul-de-sac. To the right of number 2 viewed from the road is number 4-6. There is a gate in the fence outside number 2 and boundary fences between number 2 and numbers 1 and 4-6.

First incident – 10 March 2017

[86] A male and a female jogger were running down the road at about 5.30pm on 10 March 2017. When they got to the end of the road, they noticed Nitro barking at them from number 2. They turned to run back up the road. As they turned back, Nitro came out from number 2 into the road having gone through a gap near the gate hinge and ran at them growling and barking and being aggressive. The joggers made loud noises and scared the dog off and back into the property. Then after the joggers continued to run up the road, Bandit came out into the road from under one of the Colorbond fences facing the road having got out of number 2. Bandit was very aggressive and ran from side to side of the joggers and jumped at them growling, barking, lunging and nipping at them. The joggers both yelled to Bandit to go back but then it ran at the female jogger and bit her on the lower left leg. Even after this, Bandit did not give up and still went for them.

[87] At that point people from number 4-6 came out to assist and forced Bandit back towards number 2, one with a broomstick with a nail on the end and one with a garden fork.

[88] Then Mr Cutbush came out of number 2 and took Bandit back into number 2. The male jogger and one of the males from number 4-6 then confronted Mr Cutbush about the incident but Mr Cutbush asked the male jogger 'Who the fuck are you? Get away from my gate'. When the male jogger said that he was the husband of the woman who had just been bitten by his dog, Mr Cutbush said 'What are you doing up here'. When the male jogger explained that they were out running, Mr Cutbush said 'Well what the fuck are you running up here for'.

[89] Mr Cutbush then accused someone of opening the gate.

[90] The female jogger suffered a 1-2cm wound and abrasions to the leg. The neighbours who came out to assist gave her first aid. An ambulance was called and she was given assistance. She was driven to hospital where the wound was cleaned and dressed, and she was given a tetanus injection.

[91] Mr Cutbush's version of events is quite different from my findings. His evidence is in his affidavit and that of his wife, and a note from their daughter. His case is that they saw someone open the gate and let the dog out. They say that this was all part of general taunting by the neighbours of the dogs, which included rattling the gate and opening the gate to let the dogs out. This was because they found the barking from the dogs a nuisance.

[92] The difficulty with the evidence that Mr Cutbush and his family saw someone open the gate and let out the dog is they were alerted to the incident by the shouting and

then saw Bandit in the road, so they would not have been able to see anyone open the gate for Bandit to get out.

[93] Mr Cutbush claims to have audio and video recordings to support the allegation that the neighbours opened the gate. I have listened to all the audio recordings and viewed the videos and there is nothing in the recordings to support what Mr Cutbush says. In fact, in three of the recordings which are alleged to show the neighbours opening the gate, Mr Cutbush adds commentary that his gate was opened by the neighbours but neither the act of opening the gate, nor an open gate appears on these videos.[37]

[94] The joggers' evidence is much better. They both attended the hearing and gave evidence. They had the gate under observation all the time because Nitro had got through it and then retreated back through it. They saw it closed, and saw no one near it. The evidence from the joggers was consistent and there was no reason to disbelieve them. They were passers-by and had no previous connection with Mr Cutbush.

[95] Three people from number 4-6 also gave evidence about this incident on the telephone. None of them saw the gate open.

[96] I also believe the evidence from the joggers that after the female jogger had been bitten, Mr Cutbush was abusive and swore at them. I accept this because the evidence about this was consistent and I could see and hear from the recordings that Mr Cutbush submitted to the tribunal that he is quite capable of such behaviour and language. This differs from Mr Cutbush's contention in final submissions that the female jogger claimed to have a conversation with him which was impossible.

[97] In final submissions Mr Cutbush says that the bite was only a graze and then became a 'serious' attack in the Council's documents. I do not accept this because it is contrary to the medical evidence, what is said by the witnesses and the victim, and contradicts the photograph of the injury.

[98] In his final submissions,[38] Mr Cutbush says he would wish to examine what he calls the 'homemade shiv' used on 10 March 2017. This is a reference to the broomstick with a nail on the end. I dealt with this application at the hearing and refused this.

[99] Mr Cutbush has been inconsistent in his case about this incident. For example, in the past he has suggested that the joggers had their own dog with them which caused the trouble, which is not true. Mr Cutbush has also suggested that the joggers were actors and the whole incident was staged.[39] That suggestion is simply fanciful.

[100] Accordingly I find that the dog attacked the two joggers causing fear and it bit the female jogger puncturing her skin and wounding her. This was a serious attack to a person.

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37 Videos '100318gateopne2IMG_0626.3gp', 'IMG_2869.m4v' and 'IMG_2870 2.m4v'.

38 In fact, in the submissions of 18 December 2018 adopted in the final submissions of 4 March 2019.

39 Email of 25 October 2017, also in the submissions to the Council's internal review.

Second incident – 18 July 2017

[101] This incident occurred when at 8.30am on 18 July 2017 DS delivered a letter to the mailbox at number 1. As DS got out of his car he saw both Nitro and Bandit barking at the gate of number 2. DS left the letter in the letter box and lingered for a little while. Then Bandit, who had escaped from number 2, attacked and bit DS on the rear lower left leg. Bandit continued to attack DS and Nitro joined in.

[102] In order to defend himself from the dogs DS pulled out the star picket holding the letter box to fend them off. After a few seconds Nitro retreated back close to number 2 but Bandit continued to be very aggressive and ready to attack. DS managed to make it back to his car. As he drove off, Bandit chased the car for about 80 metres.

[103] DS was seen by the doctor soon afterwards and the wound was dressed. He was given dressings to change at home and he was given antibiotics.

[104] When asked about this incident, Mr Cutbush suggested that DS may have been trying to enter number 1 illegally using the star picket which held the letter box. He suggested that Bandit was protecting the property bearing in mind that Mr Cutbush had seven horses which were being agisted in number 1, so the dogs were protecting that property.[40] Mr Cutbush was not at home at the time of this incident, returning home some three or four hours later.

[105] In his submissions to the Council for the proposed dangerous dog declaration, Mr Cutbush suggested that DS had been co-opted by others to kill the dog.[41]

[106] In his affidavit, Mr Cutbush might be suggesting that Bandit was not involved in this incident and that it was a red kelpie from another property to blame.[42] He also says that it was a very foggy day that day and 'there would have been no visibility of anything on number 1 due to the fog'.

[107] In his final submissions,[43] Mr Cutbush says that no action had been taken about this incident in July 2017 but only later in November 2017 when it was upgraded to a 'serious' attack and he would wish to question this. He would question how the dog exited the property on that day when he Mr Cutbush was at home and that if that had happened he would have seen/heard the commotion as he was in the front bedroom with line of sight. He said that the Council's solicitor lied in her affidavit when she said he was not at home. It was pea soup fog that day and there was nothing for sale on number 1 and 'we were agisting our stock on that property'. He queried how DS could know it was Bandit when there were two to three other dogs including a kelpie, a blue cattle dog and others in the street at any time. Mr Cutbush presumes that DS had been shown a photograph to identify the dog which was 'suggestive and constructive'.

[108] I heard from DS who gave evidence in person. DS had had no prior involvement with Mr Cutbush or the dog. This evidence was much better than the case presented

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40 Email of 25 July 2017 (page 150), repeated in numerous subsequent emails.
41 Submissions of 12 October 2017.
42 Paragraph 89 of affidavit of 5 July 2018.
43 In fact, in the submissions of 18 December 2018 adopted in the final submissions of 4 March 2019.

by Mr Cutbush, which is simply fanciful conjecture. I am satisfied that this incident occurred in the way DS describes in his statutory declaration of 8 August 2017. I also accept from DS that it was not foggy at all that day where this incident occurred.

[109] Accordingly I find that the dog attacked DS causing fear and it bit DS, puncturing his skin and wounding him. This was a serious attack to a person.

Third incident – 11 September 2017

[110] This incident occurred when BC who lives at number 4-6, was walking along a path at the back of number 4-6 with his dog, and heard Nitro and Bandit barking from number 2 from behind the boundary fence. His dog had gone up to a gap under the fence and was barking at Nitro and Bandit on the other side. BC went up to the gap and tried to close it by pressing in dirt with his foot. Nitro and Bandit were pushing the fence and making the gap bigger, and Bandit managed partially to get through and bit BC on the foot. BC stepped back and Bandit then got through completely and entered number 4-6 and bit BC a second time. Bandit then jumped onto BC's chest and knocked him to the ground. BC's dog and Bandit then fought, but Bandit continued to attack BC until BC's stepson arrived and they were able to chase Bandit away. The latter part of this incident was witnessed by BC's wife.

[111] Mr Cutbush arrived at the property and retrieved Bandit. BC was taken to hospital and admitted for three hours. He had three deep lacerations to the left foot and ankle each 1½ to 2 cms long together with some minor lacerations and abrasions. He was bleeding profusely. The wounds were medically treated and sutured, and BC was given antibiotics and pain killing medication. The wounds needed redressing every day or two days and he was advised to return in seven to ten days.

[112] Mr Cutbush's case is quite different. It was initially given in an email sent later that day.[44] He said that the people at number 4-6 had damaged the fence and BC's dog had put its head through the fence and Bandit was therefore protecting Mr Cutbush's property when it entered number 4-6 and fought with BC's dog and bit BC. He said that in the circumstances he would be seeking compensation for the 'disproportionate and retaliatory action' of Bandit's seizure (which had happened later that day). This was repeated in an affidavit made on 13 September 2017.[45] Meanwhile on 12 September 2017, Mr Cutbush made a complaint to the police of malicious damage to the fence which had happened on 10 March 2017 caused by those at number 4-6 and he explained in his email that this had allowed their dog 'enter our property yesterday and cause a dog fight which ended up next door'.[46]

[113] Mr Cutbush's case in an email sent to the tribunal on Sunday 7 October 2018 was different. He submitted that BC fabricated the dog bite altogether. This he says, was shown by the absence of blood on the dog. Therefore it was more likely that the foot injury occurred when BC kicked the fence, or that he was injured by his own

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44 Email of 11 September 2017 page 162.
45 Page 215.
46 Page 234.

dog. That theme is also taken up in his final submissions.[47] On that basis it is suggested that it is BC's own dog which should have been seized, not his dog.

[114] The submissions also said that on 11 September 2017 he was less than four feet away from BC when he allegedly fell and was pinned by the dog but Mr Cutbush said he heard 'no scream, no shout for help, no growling, no thud at all'. He says that he only heard shouting until many minutes later when BC was shouting to his wife. He also suggests that his dog was too small to knock BC to the ground and pin him and this behaviour is not typical for the breed.

[115] He queries why the Council's rangers refused to take photographs or investigate the joint fence on 11 September 2017 or inspect the dog for blood. He says that when he entered the front yard of the victim's property the victim and witnesses were nowhere to be seen until later in the day. Also there was no damage to the victim's black jeans or no visible blood. He would wish to examine the black jeans and homemade shiv used on that day. He hints that this incident happened because of a public interest disclosure which he had lodged with the Crime and Corruption Commission against the Council that very day just hours before the alleged attack.

[116] Mr Cutbush therefore bases his case on the neighbours taunting the dog and encouraging it to escape from number 2, and damaging the dividing fence to create an escape through. As corroboration for this suggestion he has provided some still pictures showing damage to the fence. He also has provided a video which he says shows the neighbours damaging the Colorbond fence.

[117] There is no reason for me to disbelieve BC and his wife and also the two other people from number 4-6 who witnessed the incident or its immediate aftermath. The hospital records the injury as 'dog bite' and the note taken by the hospital just 20 to 30 minutes after the event is consistent with BC's evidence.[48] There are photographs of the injury.[49] The suggestion by Mr Cutbush that BC was bitten by his own dog is fanciful.

[118] I agree that the photographs show some damage to the fence. At the hearing the neighbours explained that this was damage done when children accidently drove a ride-on lawnmower into the fence. I accept this evidence. The damage that can be seen in the photographs is of such a nature that it is very unlikely that it could or would have been done by anyone on purpose, and even more unlikely that it was done to make a way through for a dog. It seems much more likely that the neighbours' explanation is correct.

[119] As for the video, Mr Cutbush says it show the neighbours damaging the fence but it does not show this at all.[50]

[120] Mr Cutbush says that he wants the opportunity to provide detailed maps and evidence to show that the fence was suitable until the fence was opened on 10 March 2017 and 11 September 2017. There is nothing submitted now of this nature and Mr

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47 In fact, in paragraphs 14 to 27, 46 and in the 'Refusal of Visitation' section of the submissions of 18 December 2018 adopted in the final submissions of 4 March 2019.

48 Pages 188 - 189.

49 Pages 190 to 195.

50 Video 'Neighbour damaging fence 110317.mov', which is also named 'FENCE1IMG_0629.3gp'.

Cutbush has had some 18 months to do this. I have made a decision on the evidence already submitted.

[121] Accordingly I find that the dog attacked BC causing fear and it bit BC puncturing his skin and wounding him. This was a serious attack to a person.

Action of Scenic Rim Council

[122] After the first incident the Council gave notice of intention to declare Bandit to be a menacing dog. But then the second incident happened so a decision was made to upgrade the notice of intention to a dangerous dog declaration. After the third incident, this was upgraded to a concurrent regulated dog declaration and destruction order.

Evidence of Dr Cam Day

[123] Evidence was given by Dr Cam Day, an experienced veterinarian who has worked in the area of behaviour therapy for animals for 36 years and who consults in the behaviour management of dogs and cats on a day-to-day basis as part of his veterinary behaviour management consultancy.

[124] He visited the dog on 26 October 2017 with a view to conducting a series of tests on it. The first test was the dog's greeting behaviour (initial reaction to strangers). Dr Day said:-

> Bandit showed aggressive behaviour at the cage door the moment he saw me. He followed my hand, attempting to bite it. He also rose upwards to attempt to bite my hand when I raised it. He did not retreat. His behaviour was characterised by lunging, barking, showing teeth and growling at me.

[125] Because of the aggressive behaviour shown by the dog, Dr Day had to abandon or amend some of his tests. He abandoned the normal test of a dog's behaviour running free in a room (to test the dog's general social manners and broad temperamental parameters in early stages of meeting and assessment). He also abandoned the tests for resilience to handling and the run and freeze test for safety reasons. Some of the tests could only safely be done through the cage door, such as the manners and command-response (it being unsafe to place the dog on a lead), the predatory aggression and prey drive test using a squeaky tug-toy, and the aggression involving food test. One test Dr Day found particularly concerning – the aggression to humans test. This compared any aggressive behaviour towards a doll looking like a child, with the behaviour towards the same doll with and without its face covered by a bag.

[126] In his discussion Dr Day said:-

> Having conducted many of these tests, Bandit was unique in that he failed every test conducted. The response to the tug-toy is the most worrisome as it shows his ability to 'lock on' to an object and not let go. His predatory aggression for this test was profound. But (what) makes that test more worrisome is his switch from the tug-toy to my free hand when it was offered.
>
> It is concerning that during most of the tests, he seemed to look for every possible opportunity to bite my hands when they were close to the cage.

[127] Dr Day concluded that:-

> Sadly, at the time of testing, Bandit appeared to be a very aggressive dog with a dangerous demeanour.
>
> Considering the:-
>
> 1. Level of aggression seen towards me during my assessment
> 2. The nature of the three injuries caused to the people involved
> 3. That all the events involve Bandit exiting from the owner's property
>
> it is quite reasonable to presume that Bandit is an aggressive and dangerous dog and is very likely to cause further injury.
>
> Recommendations
>
> a. Bandit should be declared dangerous
> b. if he was one of my client's dogs, I would advise compassionate destruction as the safest next step
> c. if Bandit is not destroyed, he should only go back to a location which:-
> i. is fully secure to prevent his further escape thus no longer endangering members of the public
> ii. a 'moat' fence (a fence within a fence) is essential
> iii. doors to that moat must be locked
> iv. the accommodation must ensure his quality of life and welfare is optimised
> v. and further behavioural therapy would be essential.

[128] Dr Day also expressed this opinion in his statement of evidence:-

> If Bandit is not destroyed, it is vital that the location Bandit is kept at is made extremely secure. Bandit should not be permitted to have any form of access to any members of the public, including any visitors to any residence at which he is maintained.

[129] Dr Day told me that Bandit was one of the most aggressive dogs he had seen recently, and it was worrying from the grasp of the toy that the dog could do serious harm.

[130] In his final submissions,[51] Mr Cutbush says that Mr Day's evidence should not have been accepted in evidence because it was out of time under section 94(2) and therefore not admissible, as was the other expert evidence. I dealt with this point at the hearing and admitted the evidence.

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[51] In fact, in paragraphs 40 to 45 of the submissions of 18 December 2018 adopted in the final submissions of 4 March 2019.

[131] In his final submissions Mr Cutbush challenges Dr Day's evidence in various ways including the way the dog was kept, and whether he was sufficiently qualified and independent to express the opinion that he did. At the hearing Dr Day was asked about the effect of confinement on the dog but opined that it was not the cause of the dog's aggressive behaviour – it would just mean that the dog's behaviour would not have had a chance to improve. I am satisfied that Dr Day was sufficiently qualified and independent to give the opinion which he expressed.

The legislative provisions

[132] The decision under review was a concurrent regulated dog declaration and destruction order, made under section 127A of the *Animal Management (Cats and Dogs) Act* 2008 (Qld) (AM Act). That section, added to the Act as from 21 October 2013, permits a destruction order for a dog to be made if it is appropriate to do so where there is already a dangerous dog declaration which has not been notified to the owner. Hence effectively, section 127A permits a concurrent regulated dangerous dog declaration and destruction order to be made.

[133] The matter comes to the tribunal under section 188, which permits an application for an external review by a person entitled to a review notice. A person who has applied for an internal review of the decision is entitled to a review notice.[52] Mr Cutbush applied to the tribunal for a review of the section 127A decision.

[134] The tribunal is required to deal with the application for a review under the QCAT Act. The review is a fresh hearing on the merits with the purpose to produce the correct and preferable decision.[53] In making that decision the tribunal has all the functions of the original decision maker.[54]

[135] The purposes of the AM Act are given in section 3. Of relevance is the purpose to provide for the effective management of regulated dogs and to promote the responsible ownership of cats and dogs. By section 4, of relevance the purposes are to be primarily achieved by imposing obligations on regulated dog owners, imposing obligations on particular persons to ensure dogs do not attack or cause fear.

[136] Chapter 4 governs regulated dogs and the purpose of that chapter is to protect the community from damage or injury, or risk of damage or injury, from particular types of dogs called 'regulated dogs', and to ensure that dogs are not a risk to community health or safety and controlled and kept in way consistent with community expectations and the rights of individuals.[55]

[137] Those purposes are to be achieved primarily by the following (of relevance): providing for local governments to declare dogs to be dangerous dogs, menacing dogs or restricted dogs; imposing conditions on keeping, and requirements for the control of, regulated dogs; and allowing authorised persons to seize or destroy dogs in particular circumstances.[56]

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52 Section 187.
53 Section 20.
54 Section 19.
55 Section 59(1).
56 Section 59(2).

[138] When a dog is declared to be a dangerous dog, it is a 'regulated dog' within the Act.[57] Such a declaration can be made only if the dog:-[58]

> (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.

[139] 'Seriously attack' means to attack in a way causing bodily harm, grievous bodily harm or death.[59]

[140] 'Bodily harm' and 'grievous bodily harm' have the meaning given to them in the Criminal Code. Bodily harm means 'any bodily injury which interferes with health or comfort'. Grievous bodily harm means: (a) the loss of a distinct part or an organ of the body; or (b) serious disfigurement; or (c) any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health.[60]

[141] While an external review (that is, a review by the tribunal) is underway by section 127 of the AM Act, a seized dog cannot be destroyed. At an early stage the tribunal also made stay orders on Mr Cutbush's application to preserve the position.

Whether seizure of the dog was lawful

[142] The AM Act prescribes certain procedures to be followed when making a dangerous dog order and when seizing a dog and when exercising the power to destroy a dog. In this case the concurrent regulated dog declaration and destruction order was made following the seizure of the dog.

[143] Mr Cutbush has claimed that the seizure was unlawful. His reasons for saying this are somewhat obscure. On 13 September 2017 he brought District Court proceedings against the Council seeking an injunction to restrain the destruction of the dog and its immediate release. One of the grounds of that application was that the seizure was unlawful. In the Statement of Claim in that action he simply said that there was unlawful access to his property and unlawful impoundment, seemingly on the basis that the dog was innocent of any attack.[61] In his final submissions,[62] Mr Cutbush suggests that the seizure was unlawful because the Council had no suitable facility to house the dog.

[144] It is accepted on behalf of the Council however, that if the seizure was unlawful then the correct and preferable decision for the tribunal is to set aside the concurrent regulated dog declaration and destruction order. This is because the Council is only

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57 Section 60(a).
58 Section 89(2).
59 Section 89(7).
60 Schedule 2 of AM ACT and section 1, Criminal Code.
61 The District Court documents are exhibited to the affidavit of the Council's solicitor sworn on 14 August 2018.
62 In fact, in the submissions of 18 December 2018 adopted in the final submissions of 4 March 2019 (paragraph 37).

able to make a concurrent regulated dog declaration and destruction order under section 127A of the AM ACT if 'an authorised person has, under section 125 or a warrant, seized a dog'.[63]

[145] For this reason it is necessary for me to review the lawfulness of the seizure generally in the light of the legislative provisions.

[146] Section 125, and in particular section 125(1)(a) is the provision relied on by the Council here. It provides that:-

> (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;

[147] I accept the evidence of the authorised person, in this case the Council's officer, that at the time of the entry to Mr Cutbush's property he did have the belief set out in paragraph (a) in this subsection. I confirm that such belief was reasonably held. This means that the second part of section 125(1) is satisfied. I am also satisfied that the authorised person reasonably suspected that the dog in question was at the place entered.

[148] As for the first part of that subsection, it is important that the authorised person must have entered the place 'under part 2'.

[149] Part 2 of the AM ACT provides three main circumstances in which an authorised person may enter the place where the dog is kept for the purposes of seizing it, if that place is a residential place and not a public place. The first is where the occupier of the place consents to the entry.[64] The second is if a warrant has been issued.[65] And the third, which is relied on here, is under section 112. That provides as follows:-

> **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—

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63 Section 126.
64 Section 111(1)(a).
65 Section 111(1)(c).

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.

[150] I confirm that I accept the evidence from the authorised officer that he suspected the dog in question was at the place and that any delay in entering the place would result in a risk to community health or safety. I confirm that this belief of the authorised officer was reasonable.

[151] Division 2 of Part 2 makes provision for 'Entry procedures'. Of relevance here, section 122 applies where the entry is under section 112 and the occupier of the place is present at the place. The relevant part of section 122 provides as follows:-

122 Procedure for other entries

(2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—

(a) comply with section 107 for the occupier;

(b) tell the occupier the purpose of the entry;

(c) tell the occupier the authorised person is permitted under this Act to enter the place without the occupier's consent.

[152] Section 107 requires the authorised officer to produce an identity card or have it displayed.

[153] Here what happened is that the authorised officer stopped outside Mr Cutbush's front gate and upon it appearing that Mr Cutbush was present at the property, he attempted to get Mr Cutbush's attention by shouting. This was unsuccessful, so the authorised officer opened the gate which was unlocked, and walked up to the front door of the house which Mr Cutbush opened.

[154] The first thing for me to consider here is whether the 'place' referred to in section 122 is number 2, as delineated by the boundary of that property and the gate, or whether it is the house situated on that property. One possibility is that they could both be a 'place' for the purpose of section 122.

[155] It is quite clear to me that 'place' in section 122 refers to number 2, as delineated by the boundary of that property and the gate. I say that because this is how the word 'place' is used throughout the Act. I do not think that 'place' in section 122 could refer to two places one situated inside the other. Such a construction I think would be contrary to the use of the word place in other parts of the Act, and is unnecessary when considering the objective intention of the legislature.

[156] The result of this analysis is that the authorised officer entered the place when he went through the gate. I find that he had made a reasonable attempt to comply with section 122(2) by shouting out to whoever was occupying the house and waiting for a response. It follows that in the absence of a response, the authorised officer was entitled to enter the place as he did. After doing so, there was no further obligation under section 122(2).

[157] The effect of my finding is that in circumstances such as these, where the attention of the occupier of premises prior to entering those premises is difficult to achieve,

the safeguards set out in section 122 come to nothing. I need to consider whether in some way I should construe the provisions purposively so that those safeguards are restored.

[158] In this respect the need for such safeguards was recognised and referred to in the explanatory notes when the *Animal Management (Cats and Dogs) Bill* was introduced. These notes referred to the fundamental legislative principle in section 4(3)(e) of the *Legislative Standards Act* 1992 (Qld) which provides that:-

> (3) Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation –
> (e) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

[159] The explanatory notes to the Bill explained that section 122 was an exception to this and the reason why the exception was required was that the powers 'are necessary to ensure the legislation is enforced and to protect the public from dogs which demonstrate a risk to community health and safety'. The notes said that there has been sufficient regard to the principle in section 4(3)(e) by the appropriate checks and balances which must be followed.

[160] Since section 122 specifically provides for satisfaction of these checks and balances by an authorised officer making a reasonable attempt to do the things required before entering the place, and it being readily foreseeable that the circumstances pertaining here could happen, it seems to me that there is no need to construe the provision in any way other than the way in which I have done.

[161] In addition to these arguments, if I were to try to apply checks and balances, it seems to me that this would require the addition of provisions which would usurp the legislature's role. I would need to say that the requirements of section 122 are revived, having entered the place, upon meeting the occupant of the place. This is not what section 122 says. And I note that such a requirement is in section 121 where there is a warrant, and indeed appears in other Queensland statutes with similar powers.[66]

[162] I note also that there are several Queensland statutes with similar provisions where the words have been repeated – it can only be assumed that the words were intentionally used.[67]

[163] Going back to the submissions made by Mr Cutbush in this matter, I cannot see that what is said could affect the lawfulness of this seizure. In the circumstances I am satisfied that the entry into number 2 was lawful and the subsequent seizure of the dog was also lawful. This means in turn, that the concurrent regulated dog declaration and destruction order was lawfully made, subject of course to reconsideration in this review.

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66 For example, the *Public Health (Medicinal Cannabis) Act* 2016 (Qld) and the *Racing Integrity Act* 2016 (Qld).

67 For example, the *Stock Route Management Act* 2002 (Qld), s 253; the *Waste Reduction and Recycling Act* 2011 (Qld), s 203; the *Food Act* 2006 (Qld), s 204, and the *Strategic Cropping Land Act* 2011 (Qld), s 186.

Making destruction orders – the correct test to apply

[164] It was pointed out in *Thomas v Ipswich City Council* [2015] QCATA 97 that there is no guidance in the AM Act about how the discretion whether or not to destroy a dog should be applied. In those circumstances, the importance of ensuring that the legislative intent of the Act is applied when exercising that discretion was emphasised. The Appeal Tribunal identified that legislative intent as follows:-

> [16] In the absence of any specific criteria, the legislative intent must be ascertained from the legislative scheme. Section 3 provides that the purposes of the AM Act include providing for effective management of regulated dogs.[68] Section 4 specifies how the purposes are primarily to be achieved. These means include imposing obligations on regulated dog owners; appointing officers to monitor compliance with the AM Act; and imposing obligations on some persons to ensure dogs do not attack or cause fear. Section 59 sets out that the purposes of 'Chapter 4 Regulated Dogs' include protecting the community from damage or injury, or risk of damage or injury, from regulated dogs;[69] ensuring that regulated dogs are not a risk to community health and safety;[70] and ensuring regulated dogs are kept in a way consistent with community expectations and the rights of individuals.[71]
>
> [17] Section 97 requires an owner or person responsible for a declared dangerous dog to ensure that permit conditions as provided for in Schedule 1 are adhered to. The conditions include enclosure requirements; implantation with a PPID and wearing an identifying tag of a specified type; for a dangerous dog, muzzling and being effectively controlled if not at its registered address; and signage. Section 125 sets out circumstances in which dogs can be seized by Council.[72] Under s 127, if a regulated dog cannot be controlled it may be immediately destroyed. It also provides for a destruction order to be made, as it was in Bruce's case under s127(4). We do not consider that the defences to the offence provisions assist.
>
> [18] It is clear that the AM Act 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 for management fail, or are 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.

[165] Paragraphs [16] and [18] of the above passages in *Thomas* were cited with approval in *Bradshaw v Moreton Bay Regional Council* [2017] QCATA 139.

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68 AM Act s 3(c).
69 AM Act s 59(1)(a).
70 AM Act s 59(1)(b)(i).
71 AM Act s 59(b)(ii).
72 AM Act s 125(1)(a) provides for seizure if there is a reasonable belief the dog has attacked, threatened to attack or acted in a way causing fear to a person or animal, or is (or may be) a risk to community health and safety, and under 125(1)(c), for a regulated dog a compliance notice has not been complied with.

[166] In *Nguyen v Gold Coast City Council Animal Management* [2017] QCATA 121 Senior Member Brown sitting in the Appeal Tribunal, said that he would pose the question slightly differently from that in *Thomas*:

> [31] … the essential question is whether the dog can be controlled taking into consideration the threat, or likely threat, to the safety of other animals or to people by attacking them or causing fear, posed by the dog.
>
> [32] Determining whether a dog can be controlled will require a consideration by a decision maker of a range of matters which might include:
>
> a) The relevant history of the behaviour of the dog giving rise to consideration of the making of a destruction order;
>
> b) Any other relevant history of the behaviour of the dog including the circumstances giving rise to the declaration that the dog is a regulated dog;
>
> c) The current behaviour of the dog including whether the behaviour of the dog has been, and/or could be, modified through appropriate training;
>
> d) The arrangements for the dog at its place of residence including the security of any enclosure and whether any interaction by the dog with persons, including household members and other persons entering upon the property, poses a threat of harm to such persons;
>
> e) The risk the dog poses to community health or safety including the risk of harm to people and other animals outside the place of residence of the dog;
>
> f) Compliance by the owner of the dog with any permit conditions imposed as a result of the dog being declared a regulated dog;
>
> g) Whether the owner of the dog demonstrates insight into, and understanding of, the dog's behaviour and has acted appropriately to mitigate any risk posed by the dog to people or animals;
>
> h) The rights of individuals, including the owner of the dog.
>
> [33] The decision maker must also take into consideration the purposes of the Act generally, the purposes of Chapter 4 specifically, and how the Act states those purposes are to be achieved. As the Appeal Tribunal said in Thomas any decision must be made in the context of the legislative scheme, and specifically Chapter 4 of the AM Act, in which the protection of the community is clearly given a higher priority than individual rights of dog owners.
>
> [footnotes omitted]

[167] The 'last resort' test and the 'the threat posed by the dog can only satisfactorily be dealt with by its destruction' test in *Thomas* have been cited in subsequent tribunal decisions. In some of them the tests have been referred to but not obviously applied in their bare form; in others, they have been applied directly. The 'ability to control' test in *Nguyen* has not been cited as far as I am aware.

[168] Overall the tribunal's discretion must be exercised to achieve the correct and preferable decision on the merits, in a fair and just way, and in accordance with the

statute concerned, which includes the objects of the statute. Whilst attempting to lay down some criteria to be applied in these cases may help to achieve consistency, the tests must be approached with caution. There is a danger that the tribunal may apply a test which it itself has devised, instead of applying the discretion given to it by the statute and in accordance with the statute.

[169] In the case of an incident or incidents involving an unregulated dog which has resulted in a concurrent dangerous dog declaration and destruction order, an owner may well wish to argue that they should be given an opportunity to prove that the dog can be controlled as a dangerous dog. In other words, that the dog should spend time as a dangerous dog rather than be destroyed.

[170] This is of course a legitimate argument, and the tribunal would need to balance the chances that the owner will control the dog sufficiently so that it is 'not a risk to community health or safety', which is the stated purpose of the relevant provisions in Chapter 4 of the AM Act,[73] against the risk posed by the dog.

[171] The difficulty with the 'last resort' test and the 'the threat posed by the dog can only satisfactorily be dealt with by its destruction' test plainly stated, is that they appear to tip the merits of such an argument in favour of the owner by suggesting that the owner ought in every case be given an opportunity to demonstrate they can control the dog as a dangerous dog.

[172] In the submissions made by Mr Cutbush on 22 March 2019 he seems to take that very point. He refers to *Naidu v Brisbane City Council* [2014] QCAT 420 which he says has many hallmarks similar to this matter on review. In that decision, a destruction order was set aside on review by the tribunal. The dog had previously been declared a dangerous dog but it was alleged that the owner had allowed it to escape from the enclosure and that it had attacked another dog. The Council did not however, adduce any direct evidence of the attack. The main witness was not called to give evidence and so this witness could not be cross examined, with the result that the tribunal was unable to test the veracity of the claim about the attack.

[173] Judging from the submissions made by Mr Cutbush, he is suggesting that *Naidu* shows that a two stage process is required – a dangerous dog declaration followed by a further incident. He seems to be saying that in the case of the dog in question, since no dangerous dog declaration was made in respect of incidents 1 and 2, therefore it is only such a declaration that could be made after incident 3.

[174] The point seemed to have been accepted in *Furnell v Ipswich City Council* [2018] QCAT 369. In that case too, the Council's destruction order was set aside. The victim attended a house to deliver a parcel. When the door was opened by the householder, two large dogs ran passed her, knocked the victim to the ground and started to maul her on the ankle, head and right forearm. The owner was unable to control them. As a result of the injuries, the victim was seriously wounded and was detained in hospital for six days and underwent two surgical procedures. The member found that victim had been understandably in fear of her life in the attack. The member also found the dog owner's approach to the litigation to be self-serving, lacking insight and without merit, and demonstrating that the applicant would go to

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[73] Section 59(1)(b).

any length to justify her dogs' behaviours, that she had not shown any objectivity but had continued to blame others for what had occurred, with no apparent reflection on her own lack of diligence and responsibility for ensuring that her dogs were properly restrained. Despite these findings, since (following *Thomas*) destruction of the dog was a 'last resort' and the dog owner had had no opportunity to demonstrate that she could control the dog as a dangerous dog so as not to constitute a danger to the community, the Council's decision to destroy one of the dogs was set aside to provide that opportunity.[74]

[175] The result is that if these tests are applied literally, a dog could never be destroyed unless it had already been declared a dangerous dog and the owner had demonstrated that it had failed to control it a second time. In other words there would need to be two incidents before a dog could be destroyed, the first causing the dog to be declared a dangerous dog and the second occurring during the currency of the dangerous dog declaration.

[176] But the Act does not say this.

[177] The result also seems to ignore the fact that a responsible keeper of an unpredictable and potentially dangerous dog will need to be vigilant to keep it under control to keep the community safe. The AM Act provides a deterrent to encourage this responsible behaviour. That deterrent effect is likely to be weakened if a dog could never be destroyed unless it had already been declared a dangerous dog and the owner had demonstrated that it could not be controlled a second time.

[178] Such a result is not only contrary to the AM Act as originally enacted. It also ignores the addition in 2013 of section 127A in the Act which enabled the making of a concurrent regulated dog declaration and destruction order.[75]

[179] The explanatory notes for the amendment Bill which added section 127A explain the purpose of this amendment:-

> Amendments to the Animal Management (Cats and Dogs) Act 2008 will streamline review processes before a local government may destroy a dog and will provide that decisions by a local government and an authorised officer to make regulated dog declarations and destruction orders respectively will be made concurrently.
>
> Currently, for a local government to destroy a dog, separate decisions have to be made for a regulated dog declaration and a destruction order, with each decision able to be both internally and externally reviewed. The amendments will provide that the decision to make a regulated dog declaration and a destruction order can be made concurrently with notice of those decisions to be sent to the registered owner together with an information notice for each decision.

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74 Paragraphs [33] to [37], [52].

75 This was introduced by section 51 of the *Agriculture and Forestry Legislation Amendment Act* 2013 as from 21 October 2013.

> These amendments make the process of decision and review concurrent rather than consecutive. The current process for making a regulated dog declaration and issuing a destruction order means that two separate review processes (including two separate QCAT hearings) may need to be exhausted before a dog can be destroyed. This process may run into months or even years, during which time the dog is held in local government impoundment, imposing considerable costs on local government (and ultimately ratepayers). Providing for two separate external reviews also increases QCAT's caseload and imposes additional costs on both dog owners and local governments.
>
> However, overall there is no diminution of a dog owner's substantive appeal rights as each decision is still subject to a merits review, both internally by the local government and externally through QCAT. Whilst it is acknowledged the concurrent approach abridges the total length of time a dog owner may have in order to have both decisions reviewed, the considerable benefits to local governments, ratepayers and the Queensland Civil and Administrative Tribunal (QCAT) through reduced costs and caseloads, justify dealing with both decisions in the one process.
>
> It can also be argued that the concurrent process benefits dog owners as it will alleviate some of the expense to them for preparing for a separate review of each decision. It will also benefit dog owners who are successful following QCAT review, as the overall length of time they are deprived of their dog will be reduced.

[180] When describing the amendment:-

> Clause 51 inserts a new section 127A (Concurrent regulated dog declaration and destruction order) which is pivotal to achieving the policy objective of streamlining review processes as it provides for a concurrent regulated dog declaration and a dog destruction order to be made by a local government. New section 127A provides that where a local government has made a regulated dog declaration decision but has not yet provided notice of that decision to the dog's owner, an authorised person within the local government may then make a destruction order for the dog if it is appropriate to do so. Following the decision to make the destruction order, the provision requires the authorised person to serve the dog's owner with a combined notice for each decision as soon as practicable.

[181] Although the purpose of the amendment to add section 127A was to streamline processes, it is clear that it is contemplated that one or more incidents involving an unregulated dog in an appropriate case can properly result in a destruction order. It is not necessary for the dog to have a period as a declared dangerous dog.

[182] It is also notable that when disposing of the appeals, neither *Thomas* nor *Bradshaw* applied either the 'last resort' test or the 'whether the threat posed by (the dog) can only be satisfactorily dealt with by the destruction of the dog' test in their bare forms. Instead, in both of those appeals there was a consideration of the balance between the extent of the danger posed by the dog, having regard to the enclosure and other requirements of the dangerous dog provisions, and the likelihood of those requirements being observed by the dog's keeper or owner in the future.[76]

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[76] Paragraphs [40] to [50] in *Thomas* and paragraphs [35] to [40] in *Bradshaw*.

[183] Unlike *Thomas* and *Bradshaw* there is no pre-seizure time in this case which can be examined to see whether there has been a demonstrated failure to comply with the enclosure and other requirements of the dangerous dogs provisions.

[184] Instead, I need to balance the extent of the danger posed by the dog, and the degree of confidence that the dog's keeper will comply with the dangerous dog requirements, against the objects of the AM Act.

[185] As for the extent of the danger posed by the dog, this is a particularly dangerous dog with strangers. Dr Day said it should never be allowed to have any form of access to a member of the public.

[186] This is also shown by the viciousness of the three attacks, in which the dog persisted despite the calamity which it caused and the humans' attempts to fight it off. The dog continued to attack the joggers despite having already bitten the female jogger in incident 1; it chased DS into his car and chased the car after he was able to drive it away in incident 2; and it grabbed BC's leg and continued to attack him even after biting him in incident 3.

[187] The danger posed by the dog means that the tribunal must lean more towards having to confirm the destruction order.

Likelihood of compliance with the requirements of the dangerous dog provisions

[188] The owner and persons responsible for a declared dangerous dog must ensure that the permit conditions in section 97 of the AM Act are complied with. Section 97 requires that the permit conditions imposed under sections 2 to 6 and 8 of Schedule 1 of the Act to be complied with.

[189] The provisions require the implantation of a PPID (prescribed permanent identification device) and the wearing of a collar with an attached identifying tag (in the form specified) at all times. A sign complying with regulations must be placed at or near each entrance to the registered place for the dog notifying the public that a relevant dog is kept at the place. The dog must usually be kept at the registered place. If the dog is at its registered place it must usually be kept in an enclosure unless there is a reasonable excuse. The enclosure must be childproof and stop the dog from escaping and be of the dimensions specified in the regulations. It must not require a person seeking entrance to the front entrance to the dwelling house to go through it. It must have a weatherproof area for a dog, for example a kennel. If the dog is in a vehicle it must be enclosed and restrained to stop the dog hanging out. If the dog is not at its registered place, it must be muzzled and under the effective control of someone who also has the control of no more than one other dog. And any change of address must be notified to the relevant authority within seven days.

[190] I accept that Mr Cutbush has constructed or purchased an enclosure which appears to be compliant with these provisions.[77]

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[77] Mr Cutbush refers to his plan to do this in paragraph 178 of his affidavit of 5 July 2018. In an email of 2 October 2018 sent at 1.38pm (page 73 to the exhibit of his affidavit of 13 November 2018) he says it is being delivered and installed 'this Saturday', meaning 6 October 2018. At the hearing on

[191] The difficulty here is that although Mr Cutbush has shown good faith in purchasing and erecting this enclosure, we cannot rely on him to comply with all the other requirements to make the public safe from this dog. The dog will need exercise for its own welfare and it cannot realistically be kept in the cage for the rest of its life. Mr Cutbush has certainly been complaining about the lack of exercise of the dog so he appreciates this.

[192] My concern here is that Mr Cutbush:-

(a) continues unreasonably to deny his own or the dog's contribution to the events which occurred;

(b) has little insight or appreciation of the danger posed by the dog;

(c) displayed little or no sympathy for those who were attacked by the dog and continues to claim they are lying;

(d) seems to have a strongly held disrespect for those who make decisions about the dog laws, and those who enforce those laws, and the tribunal; and

(e) seems to have little control over his reactions to events to the point of irresponsibility.

[193] As for (a) and (b), a clear pattern appears.

[194] In incident 1, Mr Cutbush's perception is that the dog did not itself escape from number 2 (as actually happened), but must have been let out by the joggers or by the neighbours. In Mr Cutbush's view the dog was not at fault for this attack because the joggers were actors and the incident was staged in order to get it into trouble. The dog was not at fault for the attack because the joggers should not have been jogging there anyway (which was the nature of the conversation Mr Cutbush had with the joggers at the time). The dog was not responsible for this attack because it was being taunted by the neighbours.

[195] In incident 2, the dog was not at fault because DS must have been trying to steal something from next door which the dog sensed (which was not the case). Also the dog was not at fault because DS was using the star picket to attack it (when in reality DS was merely defending himself with the star picket).

[196] In incident 3, the dogs did not force open the gap in the fence it was the neighbour who did so intentionally (which is not the case). Also the dog was not at fault in entering number 4-6 and biting BC because it was defending itself from BC and other neighbours who were trying to kill it (which also is not true).

[197] In the view of Mr Cutbush, the Council's decision to declare the dog a dangerous dog and make a destruction order was not because it was dangerous but because the

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8 October 2018 I was given a photograph of the enclosure (this was marked Exhibit 7). It had been attached to his email of 7.28am on 8 October 2018. Mr Cutbush confirms in his emails that it was erected in 'the middle of a fully fenced 2 acre block, not attached to our house or our pool area'. He describes it as a purpose-built enclosure, fully welded and with a covered area, 4760 long x 2350 wide and 1810 high, with spring loaded self-latching door and deadbolt.

decision makers were acting in reprisal against Mr Cutbush for certain complaints and public interest disclosures he and his wife had made.

[198] Mr Cutbush continues to dispute the expert view of Dr Day that the dog is dangerous and seems strongly to believe that any aggression shown by the dog is because of the conditions in which it is being kept. He has said several times in recent emails that once the dog is released back to him it can start a period of rehabilitation.[78] This is contrary to the view of Dr Day.

[199] As for (c), the lack of sympathy for victims, I have recited above the reaction of Mr Cutbush to the three incidents. It is striking that instead of expressing any regret about any of the incidents, despite the evidence of their occurrence at the time being overwhelming, on each occasion he has blamed the victims in one way or another, even to their face immediately after the incident. This has been his spontaneous, automatic reaction.

[200] I need to deal with (d) and (e) together. What happened has clearly shown that Mr Cutbush has a strongly held disrespect for those who make decisions about the dog laws, and those who enforce those laws, and for the tribunal. This disrespect seems to be fuelled by the same approach to the actions of the Council's officers and to Dr Day as appears in Mr Cutbush's reactions to incidents 1, 2 and 3 but also by Mr Cutbush's natural reaction to adversity which is simply to fight back with all available ammunition.

[201] So when the Council's officers have decided that the dog should be declared a dangerous dog and should be destroyed, this is not because the dog is dangerous and cannot be controlled, but it is because they are acting in reprisal for certain complaints and public interest disclosures he and his wife had made. And the correct reaction to that according to Mr Cutbush, is to make complaints to the police, to the Council and to the local government minister about the Council officers, accusing them in strong terms of acting unlawfully.

[202] And when the non-Council witnesses, including the victims, complain about the dog, it was not anything the dog did or the fact that it had escaped, but instead was because those witnesses had been influenced by the Council officers to lie to the tribunal about what happened. In turn those non-Council witnesses deserved various complaints to be made about them, for example a complaint to the police that they had maliciously damaged the fence and that one of them had possibly shot at him with a gun.[79]

[203] And when Dr Day expresses the view that the dog was aggressive, this was not because the dog was aggressive, but was because Dr Day had been 'unlawfully co-opted to provide a detrimental assessment of' the dog. And this deserved a complaint by Mr Cutbush to the Department of Agriculture and Fisheries about Dr Day, and also to the Veterinary Surgeons Board of Queensland in which he said that Dr Day's assessment was like something out of Nazi Germany, and that 'this so called vet is not fit to practice'.[80]

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78 An example is in his very latest submissions of 22 March 2019 (item 17).
79 Complaint of 12 September 2017.
80 Complaint of 7 November 2018.

[204] Mr Cutbush published such complaints on social media and this resulted in an application by the Council for a non-publication order on 11 May 2018 in respect of personal information of the Council's witnesses. In her reasons for making that order, Member Deane found that:-[81]

> The evidence is that Mr Cutbush has written to a potential witness' club, place of employment and regulatory body making serious allegation and has encouraged supporters to write to a potential witness.
>
> Objectively viewed, the correspondence, circulating flyers and social media publications make public personal information about individuals associated with the decisions under review, make derogatory comments about them and severely criticise them, including by making unparticularised allegations of corruption.
>
> The social media publications in evidence before me, including by Mr Cutbush's wife and supporters demonstrate a propensity to vilify anyone who disagrees with Mr Cutbush in relation to the decisions under review.

[205] Member Deane inferred that the communications were designed to target and pressure potential witnesses who were the subject of the communications, and she accepted evidence from the Council that the communications had had an adverse effect on the mental health of some of those witnesses. One of the witnesses had in fact declined to participate further.[82]

[206] Mr Cutbush has quite freely and frequently sent the subject matter of his complaints to the tribunal in support of his case in the review. I can only assume that he seeks to persuade the tribunal that all his challenges and attacks on those involved in the proceedings are true. The very latest example of this approach is in Mr Cutbush's further final submissions sent to the tribunal on 26 March 2019. Basically this is a verbal attack on BC, the victim of incident 3, who gave evidence before me on 8 October 2018. It covers all the complaints that Mr Cutbush has with BC. It demonstrates not only considerable lack of judgement on Mr Cutbush's part to send this to the tribunal but also that he is unlikely to put the matters he raises to rest.

[207] Mr Cutbush has demonstrated a lack of respect for the tribunal. What happened between Friday 5 October 2018 to Monday 8 October 2018 illustrates this:-

(a) Despite receiving the first 5 October 2018 order which refused Mr Cutbush's applications to postpone the hearing, and for him to attend by telephone, and for the hearing to be held on the papers, Mr Cutbush did not accept this. Instead at 3.40pm that day he applied again for the hearing to be postponed. This was in stronger terms – marked for the attention of the 'QCAT Principal Registrar, Deputy President and QCAT President' requesting an 'urgent QCAT President injunction by 5.00pm today' to adjourn the hearing on Monday. This also purported to be a contempt application.

(b) Despite Member Kanowski dealing with this second application for a postponement of the hearing, Mr Cutbush has complained continuously and frequently in subsequent emails that since it was an application for an

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81 *Cutbush v Scenic Rim Regional Council* [2018] QCAT 139, [15] to [17].

82 Paragraphs [18], [22] and [23].

injunction and for contempt it should not have been dealt with by the member but should have been referred to the President.

(c) Despite receiving the second order of 5 October 2018, which for the second time refused his application to postpone the hearing of 8 October 2018, Mr Cutbush did not accept this. Instead he said that he had not heard back about his application for an injunction, which he assumed was 'due to the size of the files'. He re-submitted his application for an injunction in the evening of Friday
5 October 2018 at 10.46pm saying that he would 'await the re-casting of a date for a Directions Hearing'. It is difficult to understand what Mr Cutbush expected the tribunal to do at 10.46pm on Friday or over the weekend. The hearing was due to commence on the Monday at 9.30am and it appears that Mr Cutbush was oblivious to the fact that he ought to attend the hearing to achieve the best outcome for the dog.

(d) This theme continued over the weekend. Mr Cutbush sent his application for an injunction again at 7.28am on Saturday 6 October 2018 and again at 7.33am that day. At 12.51am on Sunday 7 October 2018 he sent an email to the tribunal with a request 'that the matter be heard on the papers or adjourned so that daily visitations can commence'. This seemed to be a revision of the informal application made at 3.40pm on 5 October 2018 which had been dealt with by Member Kanowski. At 11.37pm on Sunday 7 October 2018 he sent an email to the tribunal about not having received documents and being unable to access the electronic copies through the link sent to him by the Council. A further email sent at 11.41pm on Sunday 7 October 2018 stated that the hearing the following day could not proceed and provided further submissions to support the injunction application.

(e) On 8 October 2018 the hearing proceeded in the absence of Mr Cutbush. For the hearing on that day he sent to the tribunal and copied to the Council's solicitors, 47 emails.[83] These all had attachments, or forwarded earlier email correspondence, and were more in the nature of written submissions which Mr Cutbush wanted the tribunal to take into account. The Council's solicitors printed out this material and it filled two large loose-leaf folders.[84] Potentially these emails could have been very disruptive at the hearing because they needed to be looked at to see if some insight into the reason for Mr Cutbush's non-attendance appeared. However, none of them did explain this other than repeating points already made. By sending the emails containing the case that he wanted the tribunal to consider, he seemed to be content for the tribunal to proceed to hear the matter without him. This also appeared to be the case from one of his applications, which was for the matter to be dealt with on the papers.

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83 They were sent on Sunday night (7 October) at 10.22pm, 11.41pm, and 11.46pm; then on Monday (8 October) at 5.24am, 5.40am, 6.01am, 6.14am, 6.22am, 6.23am, 6.14am, 6.22am, 6.23am, 6.33am, 7.28am, 7.47am, 7.55am, 8.08am. 8.10am, 8.18am, 8.50am, 9.26am, 10.25am, 10.30am (x 2), 10.31am, 10.34am, 10.35am, 10.36am, 10.38am, 10.40am, 11.05am (x3), 11.07am, 11.19am, 11.23am, 11.24am, 11.44am, 11.45am, 11.48am, 11.51am, 12.08 pm, 12.20pm, 12.25pm, 12.26pm (x 2), 1.11pm, and 1.25pm.

84 These were marked Exhibits 1, 2 and 3.

(f) In the light of the fact that the tribunal had permitted Mrs Cutbush and possibly one other witness to give evidence by telephone, the tribunal sent an email to Mr Cutbush at 1.28pm on 8 October 2018, explaining that the hearing had commenced and enquiring of him whether he was offering himself and Mrs Cutbush for cross-examination, and explaining that this could happen on the telephone at 9.30am on 9 October 2018 if he wished. However, Mr Cutbush did not answer this query directly. Instead, at 3.30pm he replied asking about his injunction application. Then at 3.52pm that day Mr Cutbush telephoned the tribunal and spoke to a tribunal officer. He wanted to know why his application for an injunction had not been considered. And at 4pm he sent an email to the Deputy President of the tribunal and the Principal Registrar repeating some points, requesting the evidence that he had provided be given to the Member and requesting an urgent directions hearing.[85] Since this was a direct query by the tribunal of Mr Cutbush, he should have answered it.

(g) Instead of co-operating and participating in the tribunal's processes, at 4.41pm on 8 October 2018 Mr Cutbush sought to lodge an appeal in GAR325-17 on Form 39. Mr Cutbush said that he would send a separate email dealing with the fee for the appeal. This was never done it seems. So this is why the appeal was not regarded as having been formally filed with the tribunal.

(h) At 6.41pm on 8 October 2018 Mr Cutbush also applied for a "stay on the decision to proceed to Hearing without the Applicant". From the grounds submitted it can be seen that this was effectively a renewal of his application for a postponement of the hearing.

(i) On 13 November 2018 Mr Cutbush applied for a reopening of the proceedings. This was dealt with formally as described above.

(j) On 22 November 2018 despite having received my decision refusing to make an order for visitation for the dog on the grounds that the tribunal did not have jurisdiction to make such an order, Mr Cutbush did not accept this. The day after, he applied again for this.

(k) There have been repeated applications for the same thing as demonstrated by the applications and matters dealt with before the hearing, at the hearing and since the hearing, and the other applications dealt with in this final decision as recited near the beginning of these reasons.

(l) Mr Cutbush has on many occasions tried to pretend that he has not been served with the Council's evidence. Patently this is incorrect. It is a blatant attempt to mislead the tribunal.

[208] The above indicates more than a misunderstanding of the tribunal's processes. It is a disrespect for those processes. On several occasions Mr Cutbush has not accepted decisions made by the tribunal, and simply sought to achieve the required result by a different route.

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85 I did not see this email until after closure of the hearing on day 1.

[209] This also happened on 8 February 2019, after Mr Cutbush had appeared before the President at a directions hearing for the contempt matters. He had applied for that hearing to be in private, and this was dealt with by the President and refused with reasons. Instead of accepting this, Mr Cutbush later that day applied again on Form 40 for all proceedings in GAR325-17 to be heard in private. Although this was a slightly different application because it was for all proceedings instead of just the directions hearing to be heard in private, it was obvious that the President's reasoning in rejecting one also applied to the other. In any case it was the same application that was before me on 8 October 2018 and refused by me on that day.

[210] Again, when on 11 February 2019 the tribunal refused Mr Cutbush's application for a tribunal order that he may visit the dog, the very next day Mr Cutbush applied for this again, on no new grounds.

[211] Overall the above difficulties (a) to (e) far outweigh the good faith shown by Mr Cutbush in establishing the enclosure.

[212] It is clear that despite the three incidents and the expert evidence of Dr Day, Mr Cutbush simply does not accept that the dog is dangerous and needs to be handled as such. The strong likelihood, having regard to his persistence on that issue, is that he will continue to hold that view.

[213] It is also clear that Mr Cutbush has no appreciation or understanding of the fear and vulnerability of members of the public who encounter the dog. Therefore he is unlikely to be careful to protect them from the dog.

[214] It is also clear that Mr Cutbush's priority is to continue his campaigns against those who have participated in the action taken against the dog. His priority is not public safety.

[215] The persistence and repetition of his communications with the tribunal demonstrates a lack of control over his own actions to the point of irresponsibility. In the circumstances, Mr Cutbush is unlikely to comply with the requirements for keeping a dangerous dog. He is also likely to challenge those who will need to check that he is complying with the safeguards for dangerous dogs, making it difficult to enforce those requirements. He cannot be relied upon to keep the public safe from the dog.

Conclusion in the application for a review of the decision about the dog

[216] In the circumstances, balancing the extent of the danger posed by the dog which is high, and the likelihood of the enclosure and other requirements of the dangerous dog provisions being observed by the dog's keeper or owner in the future being very low, I have no choice but to confirm the decision made by the Council in the internal review on 27 November 2017 to confirm the concurrent regulated dog declaration and destruction order and combined information notice made on 6 November 2017.

Stay

[217] It seems very likely that Mr Cutbush will wish to appeal this order so I shall stay its operation until 28 days from the date of the final decision. Mr Cutbush should bear in mind that this stay will not automatically continue if he lodges an appeal. If he wishes to apply for the stay to continue pending a final decision in an appeal, he will

need to make a stay application giving the Appeal Tribunal sufficient time to deal with it before the current stay expires.

[218] By section 189(2) of the AM Act such a stay must be on the condition that the requirements of Schedule 1 section 3 are complied with (muzzling and effective control in place that is not a relevant place).

Non-publication order

[219] I am continuing the non-publication order for three years from today's date. The order was made to protect the Council's witnesses. It seems to me that having regard to the attitude of Mr Cutbush to the events described above that protection is required after this decision as much as it was required before the decision.

[220] Non-publication orders of this type ought not to have permanent effect. I am giving it a time limit longer than I would normally do because the approach to this litigation by Mr Cutbush leaves me with no confidence that this decision will end the current litigation.

[221] As pointed out by Member Kanowski in *Cutbush v Scenic Rim Regional Council (No.2)* [2018] QCAT 315, [8], the non-publication order was alterable and it remains alterable if it becomes inappropriate or needs to be amended or extended.