

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Browne v Council of the City of Gold Coast* [2020]
QCAT 70

PARTIES: **SHELLEY BROWNE**
(applicant)

v

COUNCIL OF THE CITY OF GOLD COAST
(respondent)

APPLICATION NO/S: GAR456-18

MATTER TYPE: General administrative review matters

DELIVERED ON: 3 March 2020

HEARING DATE: 24 October 2019

HEARD AT: Southport

DECISION OF: Member Poteri

ORDERS: **The decision of the Council of the City of Gold Coast made on 23 November 2018 to declare ‘Indie’ a regulated dangerous dog pursuant to the provisions of the *Animal Management (Cats and Dogs) Act 2008 (Qld)* is confirmed.**

CATCHWORDS: ADMINISTRATIVE LAW – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – animals – where attacks caused bodily harm – where a regulated dangerous dog declaration was made – where since the alleged attack the dog has undergone an assessment by an experienced veterinarian and dog behaviour specialist – where there is evidence of good behaviour of the dog before and since the serious attacks

Animal Management (Cats and Dogs) Act 2008 (Qld), s 89, s 90, s 94
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 19, s 20

Cutbush v Scenic Rim Regional Council [2019] QCAT 80
Imbrogno and Anor v Brisbane City Council [2017] QCATA 148
Lee v Brisbane City Council [2012] QCA 284

**APPEARANCES &
REPRESENTATION:**

Applicant: B McMillan of Counsel instructed by Anderson
Fredericks Turner, Lawyers

Respondent: N Hatcher of Woods Hatcher, Solicitors

RELEVANT MATERIAL

Exhibits

1. Bundle of Documents filed by Woods Hatcher, Solicitors for the Respondent filed 24 April 2019.
2. Bundle of Documents filed by Anderson Fredericks Turner, Solicitors for the Applicant dated 17 May 2019.
3. Addendum to the report of Dr Cam Day dated 12 June 2019.
4. Statement of Diane Clare (Peterson) dated 10 July 2019.
5. Affidavit of Karin Jansma dated 26 July 2019.
6. Affidavit of Augustine Patrick Cahill dated 8 November 2018.

Submissions

1. Applicant's submissions dated 8 January 2020.
2. Respondent's submissions dated 24 January 2020.
3. Applicant's submissions in reply dated 3 February 2020.

REASONS FOR DECISION

Background

- [1] The Applicant, Ms Shelley Browne, is the owner of two dogs by the name of 'Indie' and 'Posie'. Indie is a desexed female Bull Arab/Mastiff cross and Posie is a Labrador cross. Both animals weigh approximately 30 kilograms each.
- [2] The complainant is Ms Diane Clare/Peterson who is the owner of a female Shar Pei dog named 'Agatha' being some thirteen years of age and weighing approximately 25 kilograms. Agatha has only one good eye.
- [3] Around 10 am on 18 September 2018 an incident took place in Gladys Moncrieff Park ('the Park') on the Gold Coast where Agatha, Indie and Posie were involved in an incident where both Indie and Agatha were injured. Further, as a result of the incident Ms Clare was injured and became distressed.
- [4] Ms Clare made a complaint to the Council of the City of Gold Coast ('Council') who conducted an investigation of the incident. As a result of this investigation on 11 October 2018 the Council decided to give notice pursuant to s 90 of the *Animal Management (Cats and Dogs) Act 2008 (Qld)* ('AM Act') that it proposed to declare Indie a dangerous dog. Ms Browne responded to this notice by providing material

(including a report from Dr Cam Day dated 18 October 2018) to the Council on 23 and 24 October 2018. On 26 October 2018 the Council decided pursuant to s 94 of the AM Act to declare Indie a dangerous dog. On 8 November 2018 pursuant to s 181 of the AM Act Ms Browne applied to the Council for an internal review of the Council's decision of 26 October 2018. After conducting an internal review, the Council decided ('the Decision') on 23 November 2018 to confirm the original decision.

- [5] Ms Browne made an application to this Tribunal on 14 December 2018 pursuant to s 188 of the AM Act for a review of the Decision. The hearing of this application took place before me at Southport on 24 October 2019. The parties did not raise any jurisdiction issues, so I proceeded to hear the application. This review was undertaken pursuant to s 19 and s 20 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act'). That is, the review was heard by way of a fresh hearing on the merits and the Tribunal has all the functions of the Council.
- [6] I will outline the evidence where there is agreement between the parties:
- (a) Ms Clare was walking Agatha on a lead in the Park on a path when Indie and Agatha became involved in an incident that can be described as a dog fight. The Park is a designated off leash area for dogs.
 - (b) The place where the incident took place is shown in a photograph on page 31 of Exhibit 1 and marked with an orange spot. Indie and Posie approached Agatha through the railings from the grassed area as shown in the photograph.
 - (c) At the time of the incident Mr Augustine Patrick Cahill, who is a trained dog handler and walker, was employed by Ms Browne to walk, train and supervise Indie and Posie. At the time of the incident Indie and Posie were off leash.
 - (d) The incident lasted for some time and other people became involved and an ambulance was called for Ms Clare as she was injured in the incident and became distressed. Ms Clare was treated at the scene by the ambulance officers. Mr Cahill also sustained minor injuries in the incident, but he did not require any medical treatment.
 - (e) The incident was witnessed by Ms Karin Jansma who provided an affidavit (Exhibit 5) and gave evidence at the hearing.
 - (f) As a result of the incident Agatha suffered injuries. There are photographs of these injuries on pages 4 to 7 (inclusive) of Exhibit 1. The injuries were treated by Doctor Kevin Cruickshank who gave evidence at the hearing. Agatha has recovered from the injuries. The progress of the healing of Agatha's injuries is shown on pages 11 to 15 (inclusive) of Exhibit 1.
 - (g) Indie was also injured in the incident, but her injuries were not as serious or extensive as the injuries to Agatha. There are photographs of Indie's injuries attached to the affidavit of Ms Browne dated 16 May 2019 – part of Exhibit 2.
- [7] Ms Browne acknowledges that Indie is an important part of her family. She is concerned that the dangerous dog declaration would mean that Indie always has to be muzzled when she is outside her property and Indie will not be able to properly interact with any other person or animal.
- [8] Ms Browne was not present during the incident at the Park. Ms Browne gave oral evidence and Ms Browne has provided an affidavit dated 16 May 2019 (part of

Exhibit 2) and another statement dated 3 October 2018 (page 43 of Exhibit 1). In her statement dated 3 October 2018 Ms Browne says that in respect to Indie's injuries there 'were several superficial puncture wounds to her face around her right eye. Swelling of her right eye was present which caused the eye to appear "half closed" however as the injuries appeared minor, no veterinary [sic] visit was undertaken'.

- [9] I found Ms Browne to be an open and honest witness who is very passionate about her dogs. She stated that Indie and Posie are always well behaved and play peacefully with her children. She could not recall any previous incidents of aggression from Indie or Posie. She stated that the injuries to Indie were superficial and they have healed. The photographs of the wounds were taken some 10 days after the incident. She also stated that since the incident there have been no signs of aggression or bad behaviour from Indie and Posie and she has sought the services of Dr Cam Day, an experienced veterinarian and dog behaviour specialist, to provide general advice about her dogs. Ms Browne stated that she has complied with the requirements for keeping a dangerous dog. This was accepted by the Council.
- [10] Ms Browne has provided written testimonials about the disposition of Indie and Posie before the incident. These testimonials in summary note that Indie and Posie have never shown any signs of aggressive behaviour to people, including small children, and other dogs. These testimonials were provided by friends of Ms Browne and by Enrique Vanderhoven, manager of Pets Wonderland Doggy Daycare.
- [11] Ms Clare, who is the owner of Agatha, gave oral evidence. She says that on 18 September 2018 she was walking Agatha on a lead in the Park and she acknowledged that Agatha is sometimes a little nervous because of her age and because she only has one eye. She says that she was near the railing in the Park when she noticed two dogs begin to circle her and Agatha. She says they came through the railing fence and without provocation one (Indie) of the dogs attached itself to Agatha. She says that she tried to pull Agatha away from Indie. She says the interaction lasted some one to two minutes by which time Mr Cahill and another person assisted in finally keeping the dogs apart.
- [12] Ms Clare says that Indie appeared to be totally obsessed with Agatha. She could not say that Posie took any part in the physical interaction between the dogs but Posie was very excited and barking and at one stage she remembered kicking Posie away. She recalls that at one stage during the incident the dogs were able to be separated but somehow Indie became loose, Indie once again attached herself to Agatha's back leg and Agatha received an injury on her back leg from that particular interaction.
- [13] Ms Clare admitted that before the dogs came together Agatha was alarmed and nervous, but she did not accept that her dog was overly nervous. As a result of the incident Ms Clare says that she was distressed and received some injuries, but she is not certain how they occurred. An ambulance was called and she was treated at the scene. I found Ms Clare to be a convincing witness who gave clear evidence.
- [14] Because of the apparent conflict of evidence in regard to the initial interaction between Agatha and Indie I asked her if she was certain about this issue. In giving evidence Ms Clare gave responses to questioning as follows:

'...and is it right to say that your dog initiating [sic] the fight by biting the brown dog? ...

No, definitely not.

Are you sure about that? ...

I – 100% sure.

You are absolutely certain? ...

Yes. Absolutely.

Never in my mind was there a thought that Agatha...

No, no, but from your ...? ...No.

“From your memory of the day, you’re absolutely certain that the first bite was from the brown dog to the ear of your dog. Is that what you’re saying? ...

Yes, 100%.

See there’s been a suggestion in this tribunal that the dogs approached – the two dogs approached your dog to have a sniff and your dog reacted badly by biting the brown dog. Is that what you – what do you say about that? ... I totally disagree.

Are you absolutely certain? ...Yes’. (T1 – 87:18 – 43)

[15] Ms Karin Jansma gave evidence that she was having lunch approximately 10 metres from the incident, was facing the incident and saw the incident from start to finish. She says that she noticed the two dogs playing together before the incident and then the two dogs went over to the smaller dog. In giving oral evidence she was referring to Agatha as the smaller dog. She says that she heard some growling and saw the smaller dog trying to pull away or being pulled away from the other dog. She says that she didn’t see the dogs circling the smaller dog. She says that she didn’t think that there was going to be any violent interaction between the dogs but then saw the lady desperately trying to pull the smaller dog away with the lead. She says that the bigger dog had latched on to the smaller dog which was stuck in the middle of the bigger dog and the lady trying to pull it away with the lead. She was not sure how long the incident lasted but she estimated it went on for some time, perhaps two to three minutes.

[16] Ms Jansma also stated in her evidence that she did not see the smaller dog participating in the conflict. In cross-examination by Ms Browne’s counsel, Ms Jansma gave the following responses:

‘ ... did notice the dogs going towards the other one.’ (T1 – 92:30 – 31)

Regarding the position of Mr Cahill: ‘...wasn’t super close to them at the start. I did notice that they were playing beforehand. They came from kind of like behind me and the dogs went down first.’ (T1 – 93:3 – 5)

Ms Jansma then goes on to say she heard a growl or some growling. (T1 – 93:26 – 28)

Regarding Agatha’s participation in the incident: ‘No. So what I do remember is the other dog – there was – the little dog was just minding its own business, sniffing down on the ground. I did notice that big dog head straight towards the other one.’ (T1 – 94:3 – 6)

‘So would you agree that the smaller dog was, by that stage, participating in conflict between the two dogs?’

...No. I did not see the other – it was almost like – like, it was being pulled one direction, and being pulled the other way. I don’t think that poor dog really –

it was stuck in the middle. It was like, not trying, to fight back. I don't remember not seeing that – the dog was quite – surrendering, in a way. It was not – the little dog just wasn't – I just felt – saw it was – didn't have that...

You've answered the question?

...It was like surrendering.' (T1 – 95:34 – 39)

[17] In my summarising Ms Jansma's evidence she responded as follows:

'...you didn't see the dog – the smaller dog taking much part. It was just trying to defend itself – trying to get away. Is that how you saw it ...? ...Yes.'
(T1 – 99: 3 – 6)

I found Ms Jansma to be a convincing and an independent witness whose recollection of the incident was very clear.

[18] Mr Cahill gave oral evidence that he is a Certificate 3 dog walker and trainer and is employed by Ms Browne to walk and train Indie and Posie. On 18 September 2018 he says that he was conducting off leash training when Indie and Posie approached Agatha. He says that Ms Clare and Agatha approached from behind and he saw the first interaction between Agatha and Indie. His evidence is that Agatha bit Indie first and then Indie reacted. From there he ran over to assist and it took some time to separate the dogs. He says that at one stage he separated the dogs when Indie's collar somehow unclipped. He also says the incident 'wasn't very long, like maybe 10, 20 seconds or something like that'. (T1-54:25 – 26).

[19] Mr Cahill provided very few details of what happened after Indie's collar became unclipped in his statement to Council dated 3 October 2018. This issue was not mentioned at all in his affidavit of 8 November 2018. This part of the incident was explored further when Mr Cahill was cross-examined. He gave the following evidence:

'...continued to do what she was doing before that, which was fighting?

...Yes.

Okay. So you broke the fight up. You lost control of the dog. I'm just putting this to you? ...I wouldn't say the fight was broken up, I was pulling Indie away.

Pulling Indie away? ...and while I had her...

Okay? ...you know the – the collar released itself'. (T1 – 44:1 – 22)

[20] The fact that Indie's collar somehow became unclipped or Indie broke free of Mr Cahill and then went back to latch onto Agatha's back leg is confirmed by all the eye witnesses who gave evidence at the hearing. There is further confirmation in one of the annexures to Dr Day's report under the heading 'Event' (part of Exhibit 2). Here Dr Day outlines the details of the incident as described to him by Mr Cahill. Dr Day records 'He grabbed Indie by the collar but the collar broke (or buckle came undone) and she interacted with Agatha a second time and bit Agatha onto the leg and locked on'.

[21] I found Mr Cahill was vague in some of the details in giving evidence. However, I believe he is an honest witness who was trying to do the right thing on the day of the incident. It is my view that this applies to all the witnesses to the incident. The incident would have been a very confronting and chaotic scene to deal with for all

persons and animals involved. Therefore, I am not surprised there are some discrepancies and differences in the versions of events of the witnesses. Notwithstanding these discrepancies and differences, I believe that the witnesses basically corroborate each other's version of how the incident unfolded. That is:

- (a) Indie and Agatha came together and a dogfight ensued;
- (b) Very shortly after the initial interaction between the dogs, Indie latched onto Agatha; Agatha was caught between Indie and Ms Clare trying to pull Agatha away from Indie. At some stage during the struggle Mr Cahill joined in and tried to pull Indie off Agatha while Ms Clare was trying pull Agatha away from Indie in the opposite direction;
- (c) At one stage during the incident whilst Mr Cahill had hold of Indie's collar, the dogs were separated. At this point whilst Mr Cahill had hold of Indie's collar, the collar somehow became unclipped or came undone and Indie lunged toward Agatha and latched onto Agatha's back leg;
- (d) Although there are conflicting versions of which dog initiated the interaction between the dogs, it is clear that at some stage Agatha bit Indie causing superficial injuries, whilst Indie bit Agatha a number of times causing significant injuries to Agatha; and
- (e) There is a divergence of views of the duration of the incident. Estimates are 20 seconds to three minutes. Even if I was to accept that the duration of the incident lasted '20 seconds or something like that', this incident lasted for a considerable period of time in terms of a highly charged emotional and physical interaction involving people and dogs. Ms Clare was injured and became distressed and Mr Cahill was also injured.

[22] There is conflicting evidence as to which dog initiated the incident. However, for this review, given the above evidence, it is not necessary for me to make any findings in regard to which dog initiated the interaction.

[23] Dr Kevin Cruickshank gave evidence about the treatment that he provided to Agatha after the incident. The treatment consisted of cleaning and suturing the wounds. He said that the wounds were extensive and were concentrated in five main regions, including a wound to the back leg. His report dated 21 September 2018 with photographs of the injuries are on pages 4 to 7 (inclusive) of Exhibit 1. His report states that 'these injuries are consistent with a sustained and very vicious attack involving multiple bites and probably more than one dog'. Further his report states that the duration of the operation to flush and suture Agatha's injuries lasted two hours and 45 minutes.

[24] Mr Arthur Adams gave evidence that he is a Council animal management officer of some four years' experience and investigated Ms Clare's complaint, prepared the report and recommendation to declare Agatha as a dangerous dog. He says that he did not see the injuries to Indie but saw the photos of the injuries supplied by Ms Browne. He was questioned about whether he considered issuing an infringement notice to Mr Cahill for a possible breach of s 194 of the AM Act. In this provision a relevant person must ensure a dog does not attack or cause fear. In the end Mr Adams was of the view that there was insufficient evidence to sustain any compliance action.

[25] Mr Adams was cross-examined by Ms Browne’s counsel regarding his investigation report. In this cross-examination Mr Adams did concede that the injuries to Agatha were also consistent with Agatha being involved in a dog fight. Mr Adams did, however, confirm that the relevant factors in formulating his recommendation were as follows:

‘No, I conducted the investigation and decided, due to the severity of the attack, that the dog had multiple injuries all over its body – it was a sustained attack, the dog walker, Gus, stated that he pulled the dog back. It broke forward.’ (T1 116: 31 – 34)

[26] Dr Day provided a report dated 18 October 2018 (pages 60 to 66 of Exhibit 1 and part of Exhibit 2) and an addendum to this report dated 12 June 2019 (Exhibit 3). Dr Day also gave oral evidence where he stated that he is an experienced veterinarian and dog behaviour specialist with significant experience. It was accepted by both parties that Dr Day is an expert witness on the behaviour of dogs. He stated that he has written many articles on dog behaviour and works with local authorities to advise them on dog behaviour. In his report Dr Day says that he took Indie through tests and filmed the interaction. He concludes that Indie has met ‘hundreds of other dogs’ where there was no indication of aggression. He says that Indie’s response to Agatha appears to be a ‘one in several hundred response’. He says ‘[i]t appears that if Agatha had not acted in the way she did, that Indie would not have responded in the way she did’. Dr Day says that ‘this is further confirmed by Indie’s anxious-retreat response to the severe challenge presented by the German Shepherd and her forward predatory response towards the Red Dog’s presence’.

[27] Dr Day makes a final comment in his report that it was his opinion that a dog with a dangerous propensity would:

...Have shown aggression to many of ‘the hundreds of other dogs met’;

Would have shown aggression in the dog-day care centre, considering the number of dogs present;

Would have shown aggression to all three of the test dogs we used, and especially to the German Shepherd’.

Dr Day concludes his report by saying ‘From the behaviour profile I observed, and from the information I have received, I cannot confirm Indie is a dangerous dog’.

[28] When pressed Dr Day confirmed that he cannot recreate the exact circumstances of what occurred at the Park on September 2018 and he was reluctant to concede the possibility that Indie may show aggression again. In the addendum to Dr Day’s report dated 12 June 2019 (Exhibit 3) he states in point 1(a): ‘...Behaviour assessments can never duplicate the “location or environment stresses” which evoke in an animal’s behaviour at the time it occurred. To do so would require a “time machine” to go back in time’. Further, in giving oral evidence Dr Day was asked about the possibility that Indie may show aggression again: ‘but you can’t rule it out, can you?’ His response was ‘but I feel very confident that she would have shown aggression with the level of testing we did. It can’t be ruled out. It can’t be ruled in’. (T1-24:5-6)

[29] Dr Day’s opinion assumes that Agatha made the first move and Indie was reacting to Agatha’s aggression. The report was prepared on the basis of information provided by Mr Cahill and his version of how the incident began in the Park. Mr Cahill’s version of what sparked the interaction between the dogs is challenged by the

Council and conflicts with Ms Clare’s version. For example, in section 4.5 of his report – page 65 of Exhibit 1 – ‘So why did Indie respond to Agatha in the manner described?’ In 4.5.6 of the report Dr Day says:

‘The only difference I can pick from the information on hand is that it was Agatha who “activated” a response to Indie by biting Indie. Indie appeared to respond to Agatha’s activation by being aggressive in return. She then turned to her predatory tendencies and “locked onto” Agatha twice’.

- [30] In preparing his reports, Dr Day has not addressed the issue of the level of aggression of Indie’s participation in the incident, even if this aggression was provoked. This issue is connected with the alleged duration of the incident. The issue of the alleged duration of the incident is only briefly referred to in the ‘Event’ in Dr Day’s report (part of Exhibit 2). Here the following is outlined: ‘Indie responded to that activation and bit her back and locked on. Mr Cahill grabbed Indie quickly and “choked” her off the dog. He grabbed Indie by the collar but the collar broke (or buckle came undone) and she interacted with Agatha a second time and bit Agatha onto the leg and locked on’. Further, Dr Day was not provided with copies of the photographs of the injuries sustained by Agatha in the incident. The photographs of Agatha’s significant and extensive injuries would have shown Dr Day the level of aggression required to cause such injuries. This issue was referred to in the report of Dr Cruickshank who treated Agatha’s injuries after the incident.
- [31] Therefore, what weight should be given to Dr Day’s reports and evidence given this is an opinion on how a dog may or may not behave in the future based on information supplied to Dr Day, Dr Day’s experience and the staged tests undertaken by Dr Day?
- [32] Similarly, what weight should be given to the testimonials of Indie’s good and non-aggressive behaviour before September 2018?

Relevant Legislation and Law

- [33] Definitions of ‘bodily harm’ and ‘grievous bodily harm’ are outlined in s 1 of Schedule 1 of the *Criminal Code Act 1899* (Qld) (‘the Criminal Code’).
- [34] ‘Bodily harm’ means any bodily injury which interferes with health and comfort.
- [35] ‘Grievous bodily harm’ means:
- (a) loss of a distinct part of an organ of the body; or
 - (b) serious disfigurement; or
 - (c) any bodily injury of such a nature that if left unattended would endanger life, or be likely to cause permanent injury to health whether or not treatment is or could have been available.
- [36] In the applicant’s submissions the issue of the definition of ‘attack’ has been raised. I have been referred to the definition that is outlined in the Macquarie Dictionary, especially the words ‘begin hostilities against’. There is no definition of ‘attack’ per se in the AM Act. There is a definition of ‘seriously attack’ as contained in s 89(7) of the AM Act.
- [37] The definition of an ‘attack’ in the Macquarie Dictionary also contains the following words:
- ...to make an attack; begin hostilities.

The act of attacking; onslaught; assault.

[38] The relevant legislative framework of the AM Act is set out in [3] to [6] of *Imbrogno & Anor v Brisbane City Council* [2017] QCATA 148 as follows:

[3] The purposes of the AM Act include providing for the effective management of regulated dogs and promoting the responsible ownership of cats and dogs. The purposes of the Act are achieved through, among other things, imposing obligations on regulated dog owners, imposing obligations on persons to ensure dogs do not attack or cause fear, and prohibiting anyone from allowing or encouraging a dog to attack or cause fear to people or other animals.

[4] A regulated dog is: a declared dangerous dog, a declared menacing dog or a restricted dog. A local government may declare a dog to be dangerous, menacing or restricted. A declared dangerous dog includes a dog declared to be dangerous under s 94 of the AM Act. A dangerous dog declaration may be made if a dog:

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

[5] ‘Seriously attack’ means to attack in a way causing bodily harm, grievous bodily harm or death. ‘Grievous bodily harm’ and ‘bodily harm’ have the meaning given by the Criminal Code Act 1899 (Qld) (“Criminal Code”), s 1.

[6] If a local government proposes to make a regulated dog declaration it must first give to the owner of the dog a proposed declaration notice. The local government must consider any written representations and evidence submitted by the dog owner. If the local government is satisfied that a ground for making the declaration still exists, it must make the regulated dog declaration.

Findings and Decision

[39] At approximately 10am on 18 September 2018 an incident took place at the Park where Agatha and Indie were involved in a dogfight. At the time Agatha was on a lead and under the supervision of her owner, Ms Clare and Indie and Posie were off leash and under the supervision of Mr Cahill.

[40] Mr Cahill and Ms Clare attempted to separate the dogs and at one stage they were able to do so. However somehow Indie’s collar became unclipped or came undone and Indie went back to Agatha again and latched onto Agatha’s back leg.

[41] I am satisfied that the incident lasted for some considerable period of time. Estimates range from 20 seconds up to three minutes.

[42] I am satisfied that Indie was the aggressor for almost the entirety of the incident until the dogs were first separated. During this initial part of the incident Agatha played only a very minor part in any aggressive behaviour, probably trying to defend herself. This finding is supported by the independent evidence of Ms Jansma who states that Agatha was ‘surrendering’ and Ms Clare was trying to pull Agatha away from Indie.

- [43] I am satisfied that the aggressive and sustained initial action or reaction of Indie satisfies the definition of ‘attack’. For example, the definition contains the words ‘begin hostilities against’ and ‘the act of attacking; onslaught and assault’. Further, in *Lee v Brisbane City Council* [2012] QCA 284, [11] the Court held: ‘...but as a matter of law there is nothing in s 89 which precludes a finding of an attack where the behaviour of the dog in question is a response to aggression from its victim.’
- [44] I am satisfied that at one stage during the incident the dogs were separated but Indie’s collar somehow became unclipped or came undone and Indie went back and latched onto Agatha’s back leg. The injury to Agatha’s back leg is shown on pages 6 and 7 of Exhibit 1. This injury is significant. All witnesses, including Mr Cahill, confirm how this interaction took place. There is no doubt that the actions of indie in latching onto the back leg of Agatha satisfies the definition of ‘attack’.
- [45] The extensive and significant injuries to Agatha compared with the superficial injuries to Indie support the view that Indie was the aggressor for almost the entirety of the incident, before and after the dogs were first separated.
- [46] The injuries to Agatha (including the injury to Agatha’s back leg) satisfy the definition of ‘bodily harm’ as set out in the Criminal Code.
- [47] I am satisfied that in the incident Indie attacked Agatha twice and these attacks were serious as defined in s 89 of the AM Act.
- [48] I have already referred to the testimonials from Mr Cahill, Ms Browne’s friends and a dog-day carer that Indie has never shown aggressive tendencies and was always well behaved before the incident in September 2018. Ms Browne has also given evidence that Indie did not show any aggressive tendencies before the incident and Indie has been well behaved since the incident. Unfortunately, I cannot give this evidence any real weight because this evidence of good behaviour is no guarantee that Indie will not act or react aggressively in the future.
- [49] I have previously commented on the evidence of Dr Day and his opinion that he does not believe that Indie is an aggressive or dangerous dog. I cannot give this opinion any real weight because this is an opinion of an expert based on some tests. In giving evidence Dr Day accepts that there is a possibility, however unlikely, that Indie may show aggression again. Also Dr Day’s evidence and opinion is based on details of the incident provided to him by Mr Cahill which is open to conjecture. Accordingly, Dr Day has not addressed the possibility that Indie may have been the instigator of the incident. Further in his reports, Dr Day has not addressed the issue of the duration of the incident, the significant and extensive injuries to Agatha and the level of aggression required to cause such injuries.
- [50] Ms Browne submits that I should take Dr Day’s into account and directs me to the decision of *Cutbush v Scenic Rim Regional Council* [2019] QCAT 80 where the Tribunal referred to Dr Day’s assessment in the making of concurrent regulated dangerous dog and destruction orders. In *Cutbush*, Dr Day’s assessment was used to support the decision of the Scenic Rim Regional Council. The circumstances in these proceedings are very different to the circumstances in *Cutbush*.
- [51] For Ms Browne to succeed in this review it would be necessary for me to find that Dr Day’s opinion and the other evidence of good behaviour of Indie (before and after the incident) should be given greater weight than the evidence of sustained serious attacks, the significant injuries to Indie and the possibility, albeit unlikely, that Indie could attack another dog in the future. Such a finding is contrary to the

legislative constraints of the provisions of the AM Act and the requirement of the Council to administer the provisions of the AM Act for the benefit of the community generally.

- [52] I am reviewing the Decision which was made under s 94 of the AM Act; that is, if the Council after reviewing any written representations and any evidence accompanying the representations is satisfied that the relevant grounds under s 89 of the AM Act still exist the Council 'must' make a dangerous dog declaration. I am standing in the shoes of the Council decision-maker in considering the Decision. That is, I must consider all the material, evidence and documentation that was before the Council in the making of the Decision. Further I must consider all the material, evidence and documentation that was before the Tribunal at the hearing. I am satisfied that the Council made the correct and preferable decision in declaring Indie a dangerous dog. After considering all the material, evidence and documentation I am satisfied that the relevant grounds under s 89 of the AM Act still exist; therefore, I must declare Indie a regulated dangerous dog.
- [53] This is an unfortunate outcome for Ms Browne who is very passionate about Indie. However, the legislation and the facts of this matter do not allow for any other outcome.

Order

- [54] The decision of the Council of the City of Gold Coast made on 23 November 2018 to declare 'Indie' as a regulated dangerous dog pursuant to the provisions of the *Animal Management (Cats and Dogs) Act 2008* (Qld) is confirmed.