

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Broadley and Taylor v Moreton Bay Regional Council*
[2020] QCAT 254

PARTIES: **JAMES LEIGH BROADLEY and AMY TAYLOR**
(applicant)
v
MORETON BAY REGIONAL COUNCIL
(respondent)

APPLICATION NO/S: GAR165-20

MATTER TYPE: General administrative review

DELIVERED ON: 9 July 2020

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member King-Scott

ORDERS: **The Tribunal directs**

- 1. Hayley Walker be joined as a party to proceeding GAR165-20.**
- 2. The application for an extension of time is allowed;**
- 3. The Destruction Order of the Moreton Bay Regional Council of 22 February 2020 is stayed until determination of the Application to Review or otherwise lifted;**
- 4. The Moreton Bay Regional Council serve Ms Walker by post or email with all relevant material relating to the Application to Review including these reasons and orders by 24 July 2020;**
- 5. Ms Walker must file two (2) copies and give to the Council one (1) copy a detailed statement undertaking to care for Kesha and detailing her ability to meet the requirements of Schedule 1 of the AM Act including the provision of a compliant enclosure and where that enclosure will be situated (the undertaking) by 4.00 pm 14 August 2020;**
- 6. The Council must file two (2) copies and give to the Council one (1) copy of its response to the proposal by Ms Walker by 4.00 pm 28 August**

2020:

7. **Should Ms Walker not be prepared to give the said undertaking then the stay will be lifted.**
8. **The Application to Review be listed for a Compulsory Conference at a date after 28 August 2020.**

CATCHWORDS:

ANIMALS – VARIOUS STATUTORY PROVISIONS
REGULATION OF COMPANION ANIMALS –
SEIZURE AND DESTRUCTION – where local
government made destruction order pursuant to s.127 of
the *Animal Management (Cats and Dogs) Act 2008* –
where owner applied for external review of the decision –
where absent co-owners offers to care for dog – where
co-owner joined by the tribunal as a party.

PROCEDURE – CIVIL PROCEEDINGS IN STATE
AND TERRITORY COURTS – TIME EXTENSION
AND ABRIDGMENT – application to review 5 weeks
out of time – interests of justice

Animal Management (Cats and Dogs) Act 2008 (Qld) ss.
5, 127, 184, 188, Schedule 1, Schedule 2 s.9

Queensland Civil and Administrative Tribunal Act 2009
(Qld) ss 20, 22, 32, 33 (3), 61 (1) and (3)

Animal Management (Cats and Dogs) Regulations 2009.

Coppens v Water Wise Design Pty Ltd [2014] QCATA
309

*Crime and Misconduct Commission v Chapman and
Anor* [2011] QCAT 229

*Jensen v Queensland Building and Constructions
Commission* [2017] QCAT 232

APPEARANCES:

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

REASONS FOR DECISION

- [1] On 7 April 2019 the Moreton Bay Regional Council (“the Council”) declared the Applicant’s dog, a bitch named Kesha, a Regulated and Dangerous Dog (“the declaration”). The declaration was made relating to an incident that occurred on 16 April 2019. That declaration was not contested by the Applicant.
- [2] On 31 January 2020, because of the Applicant’s alleged failure to comply with the terms of the declaration, the Council made a Regulated Dangerous Dog Destruction Order (“the Destruction Order”) under s.127 of the *Animal Management (Cats and Dogs) Act 2008* (“the AM Act”).

- [3] By an application filed on 13 May 2020, the Applicant seek an external review of the Destruction Order'. The review is of the internal review decision made by the Council on 22 February 2020. The Applicant also seek a stay of the decision under review. As the application to review is out of time the Applicant also seeks an extension of time to bring the application.
- [4] The original application was brought by Mr Broadley as he was the dog owner to whom the correspondence was addressed. Directions of the Tribunal made on 18 May 2020 seek to clarify whether a Ms Amy Taylor, whose name has been added to the proceeding should be a party.
- [5] Ms Hayley Walker, the Applicant's former partner and co-owner of Kesha, in a statement filed in the proceedings, seeks to be heard on the application though again no formal order has been made.

Legislation

- [6] The application to extend time is made under section 61 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act).
- [7] Section 127 of the AM Act relevantly provides:
- (1) This section applies if the dog is a regulated dog.
 - (2) ...
 - (3) ...
 - (4) If subsection (3) does not apply, the person may make an order (a **destruction order**) stating the person proposes to destroy the dog 14 days after the order is served.
 - (5) The destruction order must—
 - (a) be served on—
 - (i) the registered owner of the dog; or
 - (ii) if the dog has no registered owner—any person who owns, or is a responsible person for, the dog; and
 - (b) include or be accompanied by an information notice about the decision to give the destruction order.
 - (6) If a destruction order is made for the dog, the person may destroy the dog 14 days after the order is served if no application for internal review has been made relating to the order.
 - (7) If an application for internal review has been made against the order, the person may destroy the dog if—
 - (a) the internal review is finally decided or is otherwise ended; and
 - (b) no application for external review of the order has been made; and
 - (c) the order is still in force.
 - (8) If an application for external review of the order is made, the person may destroy the dog if—
 - (a) the external review is finally decided or is otherwise ended; and
 - (b) the order is still in force.
- [8] Pursuant to section 33(3) of the QCAT Act an application to review a decision must be made within 28 days after the relevant day. In this case the relevant day was when Mr Broadley received notification of the Order which was 24 February 2020.
- [9] Section 61 of the QCAT Act provides, relevantly:
- (1) The tribunal may, by order—

- (a) extend a time limit fixed for the start of a proceeding by this Act or an enabling Act; or
 - (b) extend or shorten a time limit fixed by this Act, an enabling Act or the rules; or
 - (c) waive compliance with another procedural requirement under this Act, an enabling Act or the rules.
- (2) An extension or waiver may be given under subsection (1) even if the time for complying with the relevant requirement has passed.
- (3) The tribunal can not extend or shorten a time limit or waive compliance with another procedural requirement if to do so would cause prejudice or detriment, not able to be remedied by an appropriate order for costs or damages, to a party or potential party to a proceeding.
- (4)

[10] Section 22 of the QCAT Act provides that the Tribunal can make an order to stay a decision only if it considers it desirable after having regard to the interests of any person whose interests may be affected by the making of, or declining of, a stay order, having regard to any submissions made by the decision-maker and having regard to the public interest.

Background

[11] According to the Council there had been multiple incidents involving Kesha that led to it making the declaration on 7 April 2019. Briefly, they were:

- (a) On 6 July 2017 she was reported as wandering at large;
- (b) On 22 August 2017 a report was received of Kesha biting a person;
- (c) On 25 October 2017 the Council received a report of Kesha menacing a person by barking, growling and advancing towards a person as they retreated to their home to avoid being bitten. Mr Broadley was fined.
- (d) On 15 May 2018 she was reported as wandering at large and menacing other dogs on several occasions. Mr Broadley was issued with a warning.
- (e) On 16 March 2019 the Council investigated a reported attack by Kesha and found that Kesha had attacked and killed another dog;
- (f) On 29 March 2019 Council officers found Kesha wandering at large:
- (g) On 7 April 2019 Kesha was declared a Regulated and Dangerous Dog relating to the incident on 16 April 2019.

[12] Subsequent to the making of the declaration further incidents occurred, namely:

- (a) On 14 April 2019 the Council received a report of Kesha rushing out of the property where she was to be detained and attacking a woman walking two dogs;
- (b) On 11 May 2019 Council received a report of Kesha wandering at large;
- (c) On 24 May 2019 Council received a report of Kesha wandering at large and stalking a person walking a dog. On 30 May 2019 Mr Broadley admitted that he had allowed Kesha to wander outside his property and was issued with a fine for not complying with the dangerous dog permit conditions of retention in a enclosure and muzzled;
- (d) On 2 September 2019 Council received a report of Kesha wandering at large;
- (e) On 16 December 2019 Council received a report of Kesha wandering at large;
- (f) On 17 January 2020 a Council officer sighted Kesha wandering at large and seized her;
- (g) On 20 January 2020 Council officers visited Mr Broadley's property and found that the enclosure for Kesha was non-compliant.

- [13] The decision by the Council's authorised officer to issue the Order was based on the failure of the Applicant to abide the requirements for keeping a Regulated Dangerous Dog in accordance with the AM Act and the *Animal Management (Cats and Dogs) Regulations 2009*.
- [14] Mr Broadley wants to dispute the facts relating to the declaration which are now irrelevant as he did not dispute them at the time and did not contest the making of the declaration. He has not sought a review of that decision. Indeed, it seems clear that he has not complied with the declaration.
- [15] The crux of his case seems to be to rely upon the observations of the RSPCA carers who have cared for Kesha while she has been impounded. Those observations tend to show that in the early days that Kesha displayed some stress and anxiety requiring medication, however, she did not exhibit any aggressive behaviour.
- [16] Mr Broadley's former partner Ms Hayley Walker has offered to take over the care of Kesha. She claims in her signed statement dated 16 June 2020 to be the co-owner of Kesha but following the breakup of their relationship she was not in a position to look after Kesha and left her with Mr Broadley. She now is living on the Sunshine Coast and is able to look after Kesha.

Extension of time

- [17] The Applicant submits that he lodged the application in time, but when he did not hear anything, he called the Tribunal and was advised that he was required to lodge 3 copies and pay a fee. There is no evidence that any such application was filed

other than for Mr Broadley's say so. Indeed, the email he wrote to the Tribunal on 27 April 2020 does not indicate any earlier lodging. At that time, he wrote that email he was 5 weeks out of time. The time for filing an application for review was clearly stated in the Council's Review Notice dated 24 February 2020.

- [18] The second basis for an extension is that he waited to receive the RSPCA file from the pound and was frustrated by the bureaucratic requirements in obtain the information. There is some merit in this submission but the information he was seeking was not essential to his application.
- [19] Under s.61(3) of the QCAT Act the Tribunal must not extend a time limit if that would cause prejudice or detriment to a party to a proceeding which was not able to be remedied by an appropriate order for costs or damages. In *Coppens v Water Wise Design Pty Ltd*¹ the then Tribunal President Justice Thomas described proceeding under s. 61 as:

[8] ... essentially a two stage process.

- a) Consideration of whether s 61(3) applies: whether the making of an order under s 61(1) would cause prejudice or detriment not able to be remedied by an appropriate order for costs or damages to a party or potential party to a proceeding.
- b) In the absence of such prejudice or detriment, consideration of other factors which may be relevant to the exercise of the discretion contemplated by s 61(1).

[9] In terms of the first stage, if such prejudice or detriment is identified then no order can be made under s 61(1). This arises because of the provisions of s 61(3).

- [20] Having satisfied himself that s. 61(3) did not apply His Honour then turned to consider the considerations that applied under stage 2. He referred to the decision of *Crime and Misconduct Commission v Chapman and Anor*² where Thomas AM QC outlined the following factors as being relevant:

- a) Whether a satisfactory explanation (or "good reason") is shown to account for the delay.
- b) The strength of the case the applicant wishes to bring (assuming it is possible for some view on this to be formed on the preliminary material).
- c) Prejudice to adverse parties.³
- d) Length of the delay, noting a short delay is usually easier to excuse than a lengthy one.
- e) Overall, whether it is in the interests of justice to grant the extension. This usually calls for some analysis of the above factors considered in combination.

- [21] The Council submits that allowing an extension would irreparably prejudice it by:

¹ [2014] QCATA 309

² [2011] QCAT 229

³ Because of the operation of s 61(3), the question of prejudice or detriment which cannot be remedied by an appropriate order for costs or damages to a party or potential party to a proceeding is therefore not a factor considered in stage 2. The presence of any such prejudice will mean that the Tribunal has no discretion to extend or shorten a time limit under s 61(1).

- (a) Hampering and detrimentally Council's processes and procedures by requiring Council to either release Kesha to Mr Broadley and knowingly create a risk to community health and safety or alternatively take on the cost of keeping Kesha impounded;
- (b) More broadly, preventing the Council from carrying out its key function in the statutory scheme of the AM Act; and
- (c) Depriving Council of the benefit of the certainty afforded by a statutory limitation period.

[22] Council particularly relied upon statements by Member Traves in the decision of *Jensen v Queensland Building and Constructions Commission*⁴ where she said:

[94] The 28 day time period is there for a reason. In administrative review proceedings it is important that time limits are observed so that the processes and procedures followed by the administrative decision-maker are not hampered or detrimentally affected and so that the statute, more broadly, operates effectively.

...
[99] Finally, there is also prejudice caused by the necessary inefficiency a further review would entail. The time of the Tribunal is a publicly funded resource. Inefficiencies in the use of that resource arising from inordinate time delays are to be taken into account.

[23] The Council concedes that in the case of *Jensen* the delay was 5 years, but it submits, nevertheless, that the principles remain the same.

Intervention of Ms Walker

[24] Ms Walker's intervention is fairly recent, her statement to the Tribunal is dated 16 June 2020 and was received on 22 June 2020. The statement undoubtedly remained in the system a while longer before it made it to the file.

[25] In the statement she claims to be a co-owner of Kesha and states that she only recently became aware of the 'current situation' in early March. She has been visiting Kesha at the pound but her visits have been limited by the Covid 19 pandemic. She lives on the Sunshine Coast and is in full-time employment. She is prepared to take responsibility for Kesha.

[26] Ms Walker claims to be a co-owner of Kesha and, as such, is an 'interested person' as defined in the AM Act.⁵

[27] The AM Act further provides:

- (a) an interested person for an original decision' can apply for an internal review of a decision.
- (b) an interested person for an original decision' is defined as a person who has been given or is entitled to be given an information notice about the decision and if the decision relates to a dog the owner of or a responsible person for the dog.

⁴ [2017] QCAT 232

⁵ Schedule 2 also s.9 definition of 'owner'.

(c) an ‘original decision’ is defined as a decision about which an information notice must be given.

[28] The relevant Part 2 provision is section 188:

A person who is given, or is entitled to be given, a review notice for a decision under part 1 may apply, as provided under the QCAT Act, for an external review of the decision.

[29] It follows that Ms Walker can be added as an Applicant.

[30] I intend to join Ms Walker as a party to the application to review. I do so under s.42 of the QCAT Act as I consider her a person whose interests may be affected by the proceeding.

[31] Ms Walker does not say in her statement that she is prepared to undertake the onerous obligations that attach to the Order. Pursuant to Schedule 1 of the AM Act those obligations require the dog to:

- (a) be implanted, with a prescribed permanent implantation device (PPID);
- (b) wear a prescribed tag;
- (c) be muzzled, and under effective human control at all times when in a public place;
- (d) be accommodated in a specified enclosure;
- (e) not usually be kept at a place, other than the place specified in the dog’s registration notice;
- (f) be kept at a place that is prominently sign-posted with a warning ‘BEWARE – DANGEROUS DOG’ and any changes of address for the declared dog must be notified to the local government authorities within seven days.

[32] The AM Act binds all persons and applies throughout the state of Queensland.⁶ A declaration made under the Act in regard to a dog in the Moreton Bay Regional area applies with equal force no matter that the dog may be relocated to the Sunshine Coast.

Extension of time

[33] In view of Mr Broadley’s record of failure to comply with the requirements of the declaration made by the Council there is a basis for the Council’s concern that there would be a risk to the community if Kesha was released into his care. I agree that the Council could have no confidence in Mr Broadley complying with the requirements of the declaration, which he appears to never have taken very seriously. That would not necessarily be the case with Ms Walker, at least that should be explored.

⁶ AM Act s.5

- [34] The Council submits that if time is extended it is prevented from carrying out its key functions in the statutory scheme of the AM Act. Further, it submits that an extension would deprive the Council of the statutory limitation period. It goes without saying that is a consequence of any successful claim for an extension.
- [35] However, I do not think that in extending time the Council is prejudiced in the manner it claims. If time is extended, I am hopeful that the matter can be determined fairly promptly, irrespective of the outcome. I do not think that prejudice or detriment under s.61(3) is made out.
- [36] I turn now to Stage 2 discretion to extend time under s.61. Clearly, no satisfactory claim has been made by Mr Broadley for the delay. The strength of the case if Mr Broadley remained the sole party would be weak. However, Ms Walker's intervention has changed the case. The prejudice to the Applicants (including Ms Walker) if Kesha is destroyed outweighs the prejudice to the Council which is minimal in the scheme of things. The length of delay is not great and it in my opinion the interests of justice warrant that an extension should be granted.

Other parties

- [37] The Tribunal in its directions of 18 May 2020 directed that if an extension of time was granted that a direction be made clarifying whether Amy Taylor was entitled to seek a review and a stay of the decision (given the correspondence from the Council was addressed to Mr Broadley only).
- [38] Ms Taylor has not provided any statement of her involvement. The only reference in the filed material is a handwritten note attached to the Application to Review and the Application to Stay with her name and address stating that she is the '2nd person'. Mr Broadley signed both applications. There is no evidence that she was the owner or person responsible for Kesha. The declaration and penalties imposed in respect of Kesha have all been directed to Mr Broadley. Therefore, I am of the opinion that Ms Taylor has no standing before the Tribunal.

Stay

- [39] I intend to stay the Order on conditions which I will outline below and on Ms Walker giving certain undertakings. I am empowered to do so under s.22 of the QCAT Act and s.184 of the AM Act.
- [40] The undertakings to be provided by Ms Walker are that she file a statement in these proceedings confirming that she will take full responsibility for Kesha, that she will comply with all the obligations under Schedule 1 of the AM Act and will implement same as soon as practicable.
- [41] Should Ms Walker not be prepared to comply with these conditions or give the undertakings sought then the stay will be lifted.

Formal orders

- [42] I make the following orders

(a) Hayley Walker be joined as a party in this proceeding.

- (b) The application for an extension of time is allowed;
- (c) The Order of the Council of 22 February 2020 is stayed until determination of the Application to Review or otherwise lifted;
- (d) The Council serve Ms Walker with all relevant material relating to the Application to Review including these reasons and orders by 24 July 2020;
- (e) Ms Walker must file two (2) copies and give to the Council one (1) copy a detailed statement undertaking to care for Kesha and detailing her ability to meet the requirements of Schedule 1 of the AM Act including the provision of a compliant enclosure and where that enclosure will be situated (the undertaking) by 4.00 pm 14 August 2020;
- (f) The Council must file two (2) copies and give to the Council one (1) copy of its response to the proposal by Ms Walker by 4.00 pm 28 August 2020;
- (g) Should Ms Walker not be prepared to give the said undertaking then the stay will be lifted;
- (h) The Application to Review be listed for a Compulsory Conference at a date after 28 August 2020.