

**CITATION:** *Thomas v Ipswich City Council* [2015] QCATA 97

**PARTIES:** Christine Mary Thomas  
(Applicant/Appellant)  
v  
Ipswich City Council  
(Respondent)

**APPLICATION NUMBER:** APL548-14

**MATTER TYPE:** Appeals

**HEARING DATE:** 11 May 2015

**HEARD AT:** Brisbane

**DECISION OF:** **Member Howard**  
**Member Paratz**

**DELIVERED ON:** 6 July 2015

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

- 1. Leave to Appeal is granted.**
- 2. The Appeal is allowed.**
- 3. The decision of the Ipswich City Council made on 17 September 2014 for the destruction of the dog 'Bruce' is set aside.**

**CATCHWORDS:** APPEALS – GENERAL ADMINISTRATIVE REVIEW – DOG DESTRUCTION ORDER – whether substantial injustice – whether leave to appeal should be granted – where a person suffered bodily harm as a result of an attack by a dog – where the person entered the property where the dog lived and was attacked within the property – where the dog had been declared a dangerous dog – where numerous warning signs were on and within the property

*Animal Management (Cats and Dogs) Act 2008 (Qld), s 3, s 4, s 64, s 97, s 127*  
*Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 143, s 147*

*Fox v Percy* (2003) 214 CLR 118

**REPRESENTATIVES:**

**APPLICANT:** Christine Mary Thomas represented by Mr S Keim SC of counsel instructed by Couper Geysen

**RESPONDENT:** Ipswich City Council represented by Mr A Harding of counsel instructed by Ipswich City Council Legal Services Branch

**REASONS FOR DECISION**

- [1] Ms Thomas is the registered owner of Bruce, a Bull-Arab cross male dog. Bruce was declared to be a 'dangerous dog' under the *Animal Management (Cats and Dogs) Act 2008 (Qld) (AM Act)* by the Ipswich City Council in March 2010. Subsequently, in August 2014, following an incident involving an attack on a meter reader who entered the Thomas' backyard, a Council representative made an order requiring the destruction of Bruce. The decision was confirmed on internal review.
- [2] Ms Thomas then applied to the Tribunal for external review of the decision to make a destruction order. The Tribunal made an order confirming the destruction order.
- [3] Ms Thomas filed an application for leave to appeal or appeal, together with an application to stay the Tribunal's decision pending determination of the application. A stay order was made by the Appeal Tribunal.
- [4] We now consider the application for leave to appeal and appeal.

**Ms Thomas' Grounds of Appeal**

- [5] The Applicant raised five Grounds of Appeal<sup>1</sup> as follows:
- (1) The Tribunal's decision was not the correct and preferable decision and was unreasonable in the circumstances.
  - (2) The Tribunal's decision was based on errors of fact; including incorrectly and unfairly characterising the Applicant as having a history of non-compliance with the dangerous dog rules.
  - (3) The Tribunal placed undue weight on the compliance history of the Applicant.
  - (4) The Tribunal failed to take into account the prejudice caused to the Applicant by failures in the respondent's decision-making processes; including a denial of natural justice and the factual inaccuracies relied upon in the decision to issue the destruction notice,

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<sup>1</sup> Application for leave to appeal or appeal filed 2 February 2015.

- (5) The Tribunal's decision was based on an error of law, that is finding that Bruce should only be out of the enclosure if he is under effective control.
- [6] The first ground of appeal, which Ms Thomas regards as her primary ground of appeal, is, perhaps, not clearly expressed. The ground appears to seek a rehearing in the absence of any identified error. However, as we understand from the submissions made in support of it, the ground agitated is that the Tribunal in reaching its decision erred in failing to take into relevant criteria and/or correctly apply them and in making its conclusions of fact.<sup>2</sup> The alleged errors are discussed later.
- [7] The application raises mixed questions of law and fact, and questions of fact. Ms Thomas characterises ground 5 as an error of law, but as framed, it may raise issues of mixed fact and law. Leave to appeal is required on questions of fact and mixed fact and law.<sup>3</sup>
- [8] Leave to appeal is usually only granted if there is a reasonably arguable case of error in the primary decision and a reasonable prospect the applicant will be granted substantive relief, and it is necessary to correct a substantial injustice to the applicant caused by some error. Findings of fact will not usually be disturbed if there is evidence capable of supporting those conclusions.<sup>4</sup>

**Did the Tribunal err in law and in fact in deciding to confirm the destruction order for Bruce?**

- [9] There are no criteria prescribed for making a destruction order in s 127 of the AM Act.
- [10] The Learned Tribunal Member recognised the lack of specified criteria for making a destruction order and looked to the matters specified in s 59.<sup>5</sup> As to the relevant facts, the learned member made some key findings: that the Thomas' failed to be vigilant by ensuring Bruce was in his enclosure when they were not at home;<sup>6</sup> that the Thomas' had a history of non-compliance as evident by the infringement notices;<sup>7</sup> that Bruce had attacked two people; that Bruce is a declared dangerous dog; and that the Thomas' had failed to comply adequately with the regulatory framework in the AM Act to ensure the protection of the community from dangerous dogs.<sup>8</sup>
- [11] Ms Thomas submits that the criteria must be determined by implication from the context of s127 (which creates the power to make a destruction order) within the AM Act. She submits that the purposes of the AM Act in s 3; the matters in s 59 setting out the purpose of providing for regulated

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<sup>2</sup> Reliance was placed on *House v R* (1936) 55 CLR 499.

<sup>3</sup> QCAT Act s 143(3)(b).

<sup>4</sup> *Fox v Percy* (2003) 214 CLR 118.

<sup>5</sup> *Thomas v BCC* [2014] QCAT 681, at [24] and [27].

<sup>6</sup> *Ibid*, at [25].

<sup>7</sup> *Ibid*.

<sup>8</sup> *Ibid*, at [28].

dogs; and protection of the community from damage or injury are relevant.<sup>9</sup> She also submits that it is clear from s 194 and s 195 of the AM Act, that although concerning defences to offences rather than the relevant Part of the AM Act, actions by animals can occur in extenuating circumstances.<sup>10</sup>

[12] Ms Thomas submits that, having regard to those provisions, the relevant criteria include:

- a. Whether destruction of Bruce is necessary for the effective management of Bruce;
- b. Whether destruction of Bruce is necessary to ensure that Bruce does not attack or cause fear;
- c. Whether destruction of Bruce is necessary to protect the community from injury;
- d. Whether destruction of Bruce is necessary to ensure that Bruce is not a risk to community health or safety;
- e. Whether the destruction of Bruce is necessary to meet community expectations as to how dogs should be controlled;
- f. Whether the destruction of Bruce is a form of control consistent with the rights of individuals including members of the community who might be affected by Bruce, on the one hand, and the applicant and her family, on the other.

[13] She argues that destruction of animals which are loved is inherently undesirable and a last resort. She says the legislation does not anticipate that all offending dogs will be destroyed. She says the legislation should be constructed in a manner which recognises the rights of individuals including not only members of the community, but her individual rights and those of her family. She says the discretion is not to be exercised on the basis that a 100% guarantee exists that no future incident can ever occur.

[14] The Council points out that the word 'necessary' is not used in the relevant sections. It disagrees with the criteria articulated by Ms Thomas insofar as the word necessary is interpreted as meaning essential. However, it submits that if 'necessary' is taken to mean 'reasonably appropriate and adapted' it accepts that those are relevant criteria.<sup>11</sup> It also articulates other criteria using the words of the AM Act. It relies on s 3 and s 4, and places some emphasis on the use of the word 'ensure' in s 59 and in s 97(1) of the AM Act. Section 97(1) provides that a relevant person<sup>12</sup> for a dangerous dog, must ensure compliance with permit condition set out in Schedule 1. The Council argues that 'ensure' means make certain or

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<sup>9</sup> Reliance was placed on *George v Brisbane City Council* [2013] QCAT 537.

<sup>10</sup> As taken into account in *Brache v Douglas Shire Council* [2014] QCAT 60.

<sup>11</sup> Relying on *Mulholland v Australian Electoral Commission* (2004) 220 CLR 181.

<sup>12</sup> AM Act s 97(2), defines relevant person for the section as an owner or responsible person for a declared dangerous dog.

guarantee. It also points out that the Tribunal has previously applied the test relating to seizure of dogs provided for in s 125(a)(i) and (ii).<sup>13</sup>

[15] Section 127, which applies to seized dogs,<sup>14</sup> provides for destruction of regulated dogs,<sup>15</sup> in various circumstances, which may be summarised as follows:

- a) an authorised person may immediately destroy a dog if the person reasonably believes the dog is dangerous and the person can not control it, or an owner of the dog has asked a person to destroy it.<sup>16</sup>
- b) an authorised person may destroy a dog after 3 days after the seizure if the dog has no registered owner and no known responsible person for it.<sup>17</sup>
- c) an authorised person may make a destruction order giving 14 days notice, and destroy the dog if no application for internal review is made, or destroy the dog if an internal review is ended and no external review is made, or if an external review is ended.<sup>18</sup>

[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.<sup>19</sup> 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;<sup>20</sup> ensuring that regulated dogs are not a risk to community health and safety;<sup>21</sup> and ensuring regulated dogs are kept in a way consistent with community expectations and the rights of individuals.<sup>22</sup>

[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

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<sup>13</sup> *Gala v Fraser Coast Regional Coast* [2010] QCAT 576, at [30].

<sup>14</sup> AM Act s 126. A dog may be seized under s125.

<sup>15</sup> AM Act s 127(1) provides that s127 applies if a dog is a regulated dog.

<sup>16</sup> AM Act s 127(2).

<sup>17</sup> AM Act s 127(3). Note that despite s 127(1) providing that the section applies if a dog is a regulated dog, s 127(3)(a)(iii), refers to a dog which is not regulated. This apparent inconsistency is not relevant for current purposes.

<sup>18</sup> AM Act s 127(4) to (8).

<sup>19</sup> AM Act s 3(c).

<sup>20</sup> AM Act s 59(1)(a).

<sup>21</sup> AM Act s 59(1)(b)(i).

<sup>22</sup> AM Act s 59(b)(ii).

out circumstances in which dogs can be seized by Council.<sup>23</sup> 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.
- [19] The learned Member did not articulate the construction he placed on any particular words used. That said, on a fair reading it is sufficiently clear that he applied as criteria those matters set out in s 59(1).
- [20] In constructing the legislation, Ms Thomas has introduced additional words, including 'necessary', which does not appear in any of the relevant sections. The learned Member directed his mind to the actual words of s 59(1). That said, although he did not articulate it, it is implicit from his reasons that the learned Member considered that a destruction order was to be resorted to when the arrangements prescribed for dangerous dogs could not be relied upon to adequately protect the community.<sup>24</sup> He did not explicitly consider the rights of the Thomas'. However, it is plain from the legislative scheme that the protection of the community is given a higher priority, than individual rights of dog owners. On a fair reading of his decision, it is sufficiently clear that he approached the decision from this perspective, without disregarding the rights of the Thomas family.
- [21] The learned member did not directly refer to s 3, s 4, s 97, s125, or Schedule 1. However, on a fair reading of his reasons, the learned Member had regard to the broader legislative scheme, in reaching his conclusions about the criteria to be applied. We do not think he erred in determining the test to be applied in determining when a destruction order should be made.
- [22] That said, we turn now to consider the facts found. Ms Thomas submits that the Tribunal made a crucial omission in making no finding about whether, as Mr Thomas deposed, in about mid-2013, Council officers approved the arrangements put in place by them for Bruce as compliant.<sup>25</sup>

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<sup>23</sup> 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.

<sup>24</sup> *Thomas v BCC* [2014] QCAT 681,[26] wherein he refers to the Thomas' history of non-compliance as the basis for concluding that their future conduct is unlikely to adequately protect the community.

<sup>25</sup> *Ibid*, at [7]-[9] where the arrangement is set out.

This failure, she submits, goes to the heart of the subsequent findings that they had failed to be vigilant<sup>26</sup> and have a history of non-compliance.<sup>27</sup>

- [23] She says the arrangement was that Bruce was effectively secured between the upper front veranda of the house (which was not used as an entry to the house) and the backyard, both of which were secured against accidental entry (and internal fences prevented Bruce from accessing the front yard and the side yard entrances to the property). Bruce went into a (smaller) enclosure only when no-one was at home.<sup>28</sup> The Council says that even if the evidence was accepted on this point and a finding made, the Thomas' were not at home when the incident occurred. That said, it is not controversial, and the Tribunal found, that their adult son was at home, although asleep when the incident occurred.<sup>29</sup>
- [24] The Tribunal acknowledged that the arrangement Ms Thomas refers to was in place.<sup>30</sup> The learned Member went on to say, correctly, that the dangerous dog regulations require the dog to be in its enclosure unless there is reasonable excuse.<sup>31</sup>
- [25] In finding a history of non-compliance, the learned Member relied upon the *infringement notices* issued to Ms Thomas.<sup>32</sup> Given the discussion which precedes his finding in this regard, on a fair reading he is referring to the compliance notices issued, rather than infringement notices (there were no infringement notices of which we are aware). He discussed the compliance notices at paragraphs [6]-[9]. In May 2011, a notice issued because Bruce had not been de-sexed, nor had an identification device implanted. Although reference is made in the notice to general non-compliance with Schedule 1 of the AM Act, only de-sexing and identification tag are nominated. The option regarding non-compliance with enclosure requirements is not nominated as applicable.<sup>33</sup>
- [26] On 8 July 2013, a Council inspection occurred and the arrangements for Bruce relied upon by Ms Thomas as compliant were referred to in the Council representative's notes, but he also recorded that 'backyard enclosure ...appeared to be tool shed under house.'<sup>34</sup> The records note that the inspector considered the enclosure did not meet requirements.<sup>35</sup> Mr Thomas evidence acknowledged that this was so.<sup>36</sup>
- [27] Mr Thomas says that about two weeks later a Council representative visited again, and Mr Thomas says that on this occasion he was told by the Council representative that the arrangements in place for Bruce were

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<sup>26</sup> Ibid, at [25].

<sup>27</sup> Ibid, [26] and [28].

<sup>28</sup> Ibid, at [22].

<sup>29</sup> Ibid, at [12].

<sup>30</sup> Ibid, at [18]-[19] and [22].

<sup>31</sup> Ibid, at [23] and AM Act Schedule 1, s4(2).

<sup>32</sup> Ibid, at [25].

<sup>33</sup> Affidavit of Kylie Jane Goodwin, pages 149-153, especially at 150.

<sup>34</sup> Ibid, pages 163-164, at page 164.

<sup>35</sup> Ibid, at page 163.

<sup>36</sup> Statement of Kevin Thomas, sworn 21 November 2014, [41].

adequate (noting that internal fences prevented Bruce from accessing either the front yard or the side entrance to the property). However, Mr Thomas acknowledges that the officer said he was going to double-check.<sup>37</sup> Then Mr Thomas says, a further two weeks later, the Council representative visited again, and on this occasion Mr Thomas received confirmation that Council considered the arrangement compliant.<sup>38</sup> The Council produced no notes about these subsequent inspections.

- [28] However, in September 2013, a compliance notice, and then an amended compliance notice was issued, requiring placement of signs near each entrance to the enclosure; that Bruce wear an identifying tag; and have a suitable enclosure as prescribed. There was no material before the Tribunal recording any follow up to that notice.<sup>39</sup> Mr Thomas says that by then, the signage issue, which related only to the smaller enclosure area in which Bruce was placed when no-one was at home (and which had not been raised on any earlier occasion), had been attended to.<sup>40</sup> Also, he says there were many other signs on the fences around the property. This is confirmed by the photographs taken by the Council representative on 8 July 2013.<sup>41</sup> Also, Mr Thomas says that by the time the compliance notice was received, Bruce's name tag had been replaced and a lock on the smaller enclosure fixed.<sup>42</sup>
- [29] The internal review decision for the destruction order states that compliance with the amended notice was achieved by Ms Thomas effectively convincing an authorised officer that the enclosed area, used for outdoor storage, was Bruce's enclosure. Thereby, Council acknowledged discussions between the Thomas' and Council representative/s about the compliance of the arrangements with requirements (albeit that at the time the internal review decision, it suggests a different understanding of the outcome of the discussions), notwithstanding the absence of any notes from Council officers about it.
- [30] If the Council accepted, as Mr Thomas says, that the Thomas' arrangements were compliant and the other matters referred to in the notices had been rectified before that notice was sent, then the notice was not properly evidence of a 'history of non-compliance,' which the learned Member relied upon in deciding to confirm the destruction order.
- [31] Further, if accepted that the Council told the Thomas' that the arrangements were compliant, even if they were not, it may have led to a consideration of whether there was reasonable excuse for Bruce not being in the (smaller) enclosure at the relevant time.

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<sup>37</sup> Ibid, [34]-[44].

<sup>38</sup> Ibid, [46].

<sup>39</sup> *Thomas v BCC* [2014] QCAT 681, at [9].

<sup>40</sup> Statement of Kevin Thomas, sworn 21 November 2014

<sup>41</sup> Affidavit of Kylie Jane Goodwin, pages 155-161, at [50].

<sup>42</sup> Statement of Kevin Thomas, sworn 21 November 2014, at [47-48].

- [32] The subsequent events lend support to Mr Thomas' version of events. If the Council did not accept that Bruce was being enclosed in accordance with requirements, it seems more likely than not (given Mr Thomas' evidence of three visits in quick succession) that further Council follow up would have occurred. This would have been necessary to ensure that proper arrangements had been implemented, or otherwise, as the notices themselves warned, to take action to issue infringements notices (imposing fines) or seizing Bruce.<sup>43</sup> As discussed, there is no evidence that there was any further follow-up.
- [33] In any event, Mr Thomas' evidence is undisputed. There is no evidence from the Council about the follow up which occurred for the July 2013 to August 2013 period. As discussed earlier, the comments in the internal review decision (although referring only to acceptance of the arrangements relating to the smaller enclosure) confirm that there were discussions between the Thomas' and Council representatives, which apparently were not documented by Council. Mr Thomas had been found by the Tribunal on compelling grounds to be a witness of credit on other issues as against a Council employee.<sup>44</sup> There is no apparent basis to conclude, and the Tribunal did not, that Mr Thomas was not truthful in relation to the discussions about whether the arrangements were compliant.
- [34] Although he acknowledged the arrangement the Thomas' said was in place,<sup>45</sup> as the Thomas' submit, the learned member did not make a finding about whether the Council had approved it. The Tribunal's finding about their lack of vigilance is related in the sense that he concluded that the Thomas' failed to place Bruce in the smaller enclosure when they were not at home.<sup>46</sup> Consideration of lack of vigilance should properly be understood having regard to the arrangements alleged.
- [35] Therefore, we accept that the events and the compliance notices must be considered in context, in making findings about any lack of vigilance and non-compliance. It is relevant whether the Council had advised the Thomas that the arrangements were compliant in assessing whether it was reasonable for the dog to not be in the smaller enclosure. If not for his findings about the Thomas' history of non-compliance and lack of vigilance, a different decision about whether to confirm the destruction order may have been reached by the learned Member.
- [36] We are satisfied that leave to appeal should be granted for the reasons set out in the previous paragraphs.
- [37] Ms Thomas raises other issues and other grounds of appeal. However, in view of our conclusions above, we do not need to consider these issues.
- [38] We grant leave to appeal and rehear the review application.

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<sup>43</sup> Affidavit of Kylie Jane Goodwin, pages 166-170.

<sup>44</sup> *Thomas v BCC* [2014] QCAT 681 at [16]-[20].

<sup>45</sup> *Ibid*, at [25].

<sup>46</sup> *Ibid*, at [25].

### What is the correct and preferable decision?

- [39] We agree with (and adopt) the reasoning and findings set out in the learned Member's reasons except as set out in the following paragraphs.
- [40] We accept Mr Thomas evidence about the Council's approval of the arrangements for Bruce. On the balance of probabilities, we find that a Council representative did advise Mr Thomas sometime in July or August 2013 that the arrangements for Bruce were compliant and that Bruce was only required to be placed in the (smaller) enclosure if no-one was at home.<sup>47</sup> In making this finding, we do not find that the arrangement was actually compliant. We are satisfied only that the Thomas' were advised by a Council representative that they were compliant, and that they relied upon such advice.
- [41] Although Mr and Mr Thomas were not home when the incident occurred, their son was home, albeit he was asleep. We have accepted that the arrangement approved by Council only required Bruce to be in the smaller enclosure if no-one was at home. It is reasonable to infer that this meant if there was no adult Member of the Thomas family at home. We find that the Thomas' did not breach their understanding of the arrangement as they understood it. We conclude that they had reasonable excuse for Bruce not being in the smaller enclosure only when no adult member of the family was at home. Their son was a responsible adult member of the Thomas family. He was at home.
- [42] Based on our earlier analysis, we find that when the compliance notice issued in September 2013, any aspects of non-compliance relating to replacing of Bruce's tag and signage on the smaller enclosure had been attended to. Accordingly, it is not evidence of non-compliance.
- [43] The only other compliance notice is dated May 2011. It related to de-sexing and an identification device over three years before the incident in August 2014 (and which, it is uncontroversial, had been complied with). The Council submits that there was other evidence supporting a finding of a history of non-compliance including the declaration of Bruce as a dangerous dog in 2010 advising of the conditions;<sup>48</sup> records of inspections done in May and June 2010 noting that de-sexing and chipping were yet to be done;<sup>49</sup> and that the Thomas considered de-sexing and micro-chipping cruel. We do not consider that they take the matter further as they essentially relate to the matters arising or raised in the 31 May 2011 non-compliance notice.
- [44] On 21 August 2014, an electricity meter reader (whom the Tribunal found, and we find, Mr Thomas had previously told not to enter the backyard or 'Bruce would have him') who had only previously entered the yard with Mr Thomas), ignored the many warning signs about the presence of a

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<sup>47</sup> In respect of who was required to be at home, Transcript I-15, line 26-27.

<sup>48</sup> These were set out by the Tribunal at *Thomas v BCC* [2014] QCAT 681, at [3].

<sup>49</sup> *Ibid*, at [5].

dangerous dog. He entered the Thomas' back yard alone. He was bitten by Bruce. The destruction order was made by Council.

- [45] Mr Johnson ignored the many warning signs about the presence of the dangerous dog (of which he had prior knowledge), as well as, Mr Thomas' prior explicit verbal warning to him not to enter the backyard or Bruce would 'have him.' He entered the area in which Bruce was kept. In any situation when a dangerous dog is enclosed in an area, if a person enters it, they are at risk of injury. Without diminishing the significance of Mr Johnson's very unfortunate experience, this is what happened here.
- [46] It is not a situation where the Thomas' failed to keep Bruce enclosed. He did not leave his enclosure and attack a person in the street. Bruce bit a person who entered the area in which he was enclosed, in disregard of extensive signage, prior warning, and internally fenced areas. Indeed, there is no suggestion since the dangerous dog declaration that Bruce has at any time escaped the area in which he has been enclosed, thereby posing a risk to community health and safety. If Mr Johnson had not entered, the attack would not have occurred. Although not strictly compliant, the arrangements in place for Bruce had ensured protection of the community from damage or injury or the risk of it, and had resulted in Bruce being controlled and not a risk to community health or safety.
- [47] The circumstances must be looked at in context – the dog was effectively isolated from any person other than the family members, (other than a painter who was on the premises with permission). The dog was confined within the property, and unable to access any person coming in the front gate and walking along the entry path to the front door.
- [48] There had been some lack of compliance by the Thomas as demonstrated by the compliance notice in May 2011, and matters identified and attended to by them in July and August 2013. Although this is not insignificant, it had not resulted in compromise of community safety. Further, we are not satisfied that the Thomas failed to comply with the Council approved arrangement on the day of Mr Johnson's attack. It follows that we are not satisfied that it was a lack of vigilance on the Thomas' part which led to the attack on Mr Johnson.
- [49] We find that the arrangements in place for Bruce had at all times following the making of the dangerous dog declaration (until Mr Johnson in disregard of the signage, previous warnings, and entered the internally gated area in which Bruce was kept) protected the community from damage and injury or risk of it from Bruce. Accordingly, Bruce had been managed in a way consistent with community expectations for keeping dangerous dogs in the AM Act.
- [50] That said, the Thomas' have now built a new enclosure for permanent housing of Bruce.
- [51] In the rather unusual circumstances of this matter, we are not satisfied that a destruction order is the correct and preferable decision to achieve the

aims of the legislative scheme, and find that a destruction order should not be made.

[52] We make orders accordingly.

### **Observations**

[53] We wish to make it clear that this decision does not condone enclosure arrangements for regulated dogs which are not compliant with the AM Act. The outcome of this matter turns solely on its unusual facts.