Confidential Item

CAMPBELLTOWN CITY COUNCIL

Confidential Item

For Council meeting to be held on

Tuesday 1 August 2023 at 7.00 pm

Refer Item 11.8

Confidential Item

11.8 [redacted] and [redacted] – Dog Matters

Chief Executive Officer, Paul Di Iulio's Report

Purpose of Report

This report seeks a resolution of the Council concerning various aspects of a matter that has occurred subsequent to a decision of the South Australian Civil and Administrative Tribunal.

Strategic Plan Link

Focus Area 1.4.4 Promote community safety and respond to concerns

Focus Area 5.1.2 Support Elected Members and Committee Members to undertake their legislative functions

Previous Council/Committee Resolution

Nil.

Background

Local Councils administer and enforce the *Dog and Cat Management Act 1995* (**Act**) in their area. The objects of the Act include encouraging responsible dog and cat ownership, and reducing the public and environmental nuisance caused by dogs and cats. There is an inherent and important community safety aspect in these objectives.

[redacted] and [redacted] are the owners and persons responsible for the control of two dogs, known as 'Charlie' and 'Dakota' (**the Dogs**). Following a series of dog attacks within the Council's area in May 2022, on 1 June 2022 authorised persons of the Council seized the Dogs pursuant to the Act. On 7 July 2022, the Council issued destruction orders in respect of each of the Dogs, in accordance with Section 51(a) of the Act.

Since 1 June 2022, the dogs have been and continue to be detained by the Council pursuant to the destruction orders.

A detailed summary of the events leading up to the issue of the destruction orders by the Council can be found in the decision of the South Australian Civil and Administrative Tribunal (**Tribunal**) attached.

This report seeks a resolution of the Council concerning various aspects of this matter that have occurred subsequent to the above decision of the Tribunal.

Discussion

Review and Court Proceedings

The following provides detail of the various review and court proceedings that have been commenced by [redacted] and [redacted] following the issue of the destruction orders in respect of the Dogs.

SACAT Proceedings

In July 2022, [redacted] and [redacted] commenced proceedings in the Tribunal seeking a review of the Council's decision to issue the destruction orders. Those proceedings commenced with conciliation conferences and proceeded to a hearing in November 2022. Ultimately, having considered the evidence, the Tribunal upheld the Council's decision to issue the destruction orders.

The *South Australian Civil and Administrative Tribunal Act 2013* provides for an appeal from a decision of the Tribunal to be made to the Supreme Court of South Australia within 30 days of that decision. The Tribunal's decision was made on 7 March 2023 and stayed for 30 days to allow for an appeal to be lodged. To date, no appeal has been lodged and any such appeal is now out of time.

Magistrates Court (Civil) Proceedings

In December 2022, [redacted] and [redacted] commenced proceedings against the Council in the Adelaide Magistrates Court (Civil) seeking various orders, including an interlocutory application for an order restraining the Council from destroying the dogs, a claim in detinue and an application for an order that [redacted] be allowed to visit the Dogs.

An interim order restraining the Council from destroying the Dogs was made by the Court on 22 December 2022. The subsequent application for an order that [redacted] be allowed to visit the Dogs was dismissed by the Court. Thereafter, the interim restraining order was revoked. In accordance with the *Magistrates Court Act 1991*, the order of the Court revoking the restraining order was stayed for 21 days to allow for an appeal to be lodged. To date, no appeal has been lodged and any such appeal is now out of time.

On 17 July 2023, [redacted] and [redacted] filed a notice of discontinuance of the remainder of these proceedings, in relation to their claim in detinue. They were unsuccessful in each of their applications in this matter.

Supreme Court Proceedings

In June 2023, prior to the expiration of the appeal period from the Magistrates Court decision, [redacted] filed an interlocutory application in the Supreme Court of South Australia seeking an injunction preventing the Council from destroying the Dogs. This application was premised on [redacted]' submissions to the Court that she intended to file an application for Judicial Review of the Council's decision to make the destruction orders in respect of the Dogs.

This matter came before the Court on four occasions over the course of approximately one month. No application for judicial review (or any other application) was ever filed by [redacted]. On 14 July 2023 these proceedings were struck out by the Court. [redacted] intimated to the Court she intended to appeal this decision and on that basis the Court stayed its order striking out her application for a period of 21 days to allow for an appeal to be lodged.

The Court has awarded the Council costs in the fixed amount of $2,500 in relation to its costs of responding to this proceeding. The legal costs incurred by Council through these proceedings was approximately $10,200.

Magistrates Court costs

To date, the Council has expended approximately $26,800 in legal fees responding to the Magistrates Court proceedings.

In accordance with the rules of the Court, [redacted] and [redacted] are liable to pay the Council's costs on a standard basis, for costs incurred up until the notice of discontinuance was filed.

On a standard costs basis, the Council would be entitled to claim 60% of its costs in this matter. The usual course in seeking a claim of costs is for the party seeking its costs to offer to settle the claim for a fixed amount less than its 60% entitlement. Adopting this approach would protect the Council in the event its claim for costs proceeded to taxation.

Any offer to settle or final entitlement claimed by the Council will be dependent on the assessment and analysis by Council's legal advisors of costs incurred against the relevant Magistrates Court scale of costs.

There is no limitation of time applicable to any application by the Council to seek its costs in this matter.

Supreme Court proceeding

The stay of the order of the Supreme Court striking out [redacted]' application is set to expire on Friday 4 August 2023. From that date, there will be no restraint upon the Council from carrying out the destruction orders lawfully issued in relation to the Dogs.

Communications with [redacted] and [redacted]

Throughout the course of the above proceedings, both [redacted] and [redacted] have continually communicated with various Staff and Elected Members of the Council in relation to these matters. It is the opinion of Council's legal advisors that all communications with [redacted] and [redacted] be made through a single point of contact only, being [redacted] of Norman Waterhouse Lawyers. This is to ensure a consistent approach to dealing with these matters which is procedurally fair, that does not put any future legal steps or proceedings at risk.

Visitation of the Dogs

There have been a number of requests made by [redacted] and [redacted] to visit their dogs. This has been permitted by Staff on two previous occasions. Advice from Council's legal advisors is that visitations are not appropriate because they may adversely affect the wellbeing of both the Dogs and their owners.

Recovery of the Council's costs of detention of the Dogs

The Council paid the AWL approximately $27,300 to detain the dogs up to 1 January 2023, an approximate amount has been quoted to Council by AWL for cost incurred from 1 January 2023 up to 4 August 2023 to be approximately $26,200. Council Staff have received legal advice indicating that it may be possible to recover at least some of those costs from [redacted] and/or [redacted] in accordance with the Act. Given the significant costs associated with the detention of the Dogs which to an extent is due to the subsequent proceedings brought by [redacted] and [redacted] in which they have been unsuccessful, it is considered appropriate to seek to recover costs associated with the detention of the Dogs from [redacted] and/or [redacted].

Destruction of the Dogs

On and from 4 August 2023, following the expiry of the stay of the order of the Supreme Court striking out [redacted]' application, the Council will be lawfully able to carry out the destruction orders in relation to the Dogs.

Council's administration has received a behaviouralist report in relation to the Dogs, (attached).

All appeal timeframes in respect of the various Tribunal and Court proceedings either have expired or will expire on 4 August 2023. Thereafter, there is no inhibition in the carrying out of the terms of the destruction orders.

Intervention Order/s

In accordance with the *Intervention Orders (Prevention of Abuse) Act 2009* any person may apply to the Magistrates Court of South Australia seeking an intervention order against a person or persons for their protection and/or the protection of others. Such an application must be commenced by way of affidavit made by a natural person, in support of the application. In appropriate circumstances, proposed protected persons can include a class or group of persons, for example 'the staff and elected members of the City of Campbelltown'.

It may become necessary for the Chief Executive Officer to make application to the Magistrates Court of South Australia pursuant to *the Intervention Orders (Prevention of Abuse) Act 2009*, seeking intervention orders against one or both of [redacted] and/or [redacted] for the protection of Council employees, contractors and/or Elected Members.

Social Implications

Council should be sensitive to all stakeholders involved when discussing this matter.

Environmental / Climate Change Implications

There are no environmental / climate change implications in relation to this report.

Asset Management Implications

There are no asset management implications in relation to this report.

Governance / Risk Management

In accordance with Section 6(3) of the Local Government Act 1999, Council has responsibility to 'exercise, perform and discharge the powers, functions and duties of local government under this and other Acts in relation to the area for which it is constituted'.

Community Engagement

There are no Community engagement implications in relation to this report.

Regional Implications

There are no regional implications in relation to this report.

Economic Development Implications

There are no economic development implications in relation to this report.

Financial Implications

Council has incurred significant costs associated with this matter. To date the expense Council has incurred, including general legal matters, the Magistrate Court and Supreme Court Proceedings, the intervention order for a witness and the costs associated with housing the dogs at the AWL, is in the order of $192,000.

Recommendation

That the report be received and that:

1. **all correspondence received from [redacted] and/or [redacted] is to be directed to [redacted] of Norman Waterhouse, who will respond on the Council's behalf as appropriate**

2. **the Council instructs Norman Waterhouse Lawyers to commence proceedings to recover its costs of responding to the Magistrates Court (Civil) application filed by [redacted] and [redacted], court file number [redacted]**

3. **the Council instructs Norman Waterhouse Lawyers to provide further advice with a view to commencing proceedings to recover as much of its costs of detention of the dog 'Charlie' and 'Dakota' as it is lawfully entitled to**

4. no further visitation of the dogs 'Charlie' and 'Dakota' be allowed by any person

5. on or shortly after 4 August 2023, the terms of the destruction orders issued in relation to the dogs 'Charlie' and 'Dakota' be given effect

6. the Council requests the Chief Executive Officer give consideration at the appropriate time, to making application to the Magistrates Court of South Australia for intervention orders against either or both of [redacted] and [redacted] for the protection of Council Staff, contractors and/or Elected Members

7. the Chief Executive Officer is authorised to notify [redacted] and [redacted] of the Council decision set out in paragraphs 1, 2, 5 and 6 of this resolution.

Matter number [redacted]

[redacted]

Respondent

Campbelltown City Council

Regarding

Application to review a destruction order made by a council

Hearing held on: **Various Dates**
Before Senior Member: [redacted]
In attendance: [redacted] and [redacted], in person
[redacted] for Campbelltown City Council, in person
Decision made on the papers

Affirm decisions – Statement of Reasons

Consideration by the Tribunal

1. This is the determination of two applications made to the Tribunal by [redacted] and [redacted], concerning dog destruction orders made in relation to two dogs registered to [redacted], by the Campbelltown City Council (the Council)
2. The decisions were made on 7 July 2022 in relation to [redacted]' two dogs, Dakota and Charlie, pursuant to section 51(a) of the *Dog and Cat Management Act 1995* (the Act).
3. These proceedings have been before the Tribunal for a significant period of time, and have entailed numerous hearings. I will set out the history and general background of these proceedings below as this identifies some of the issues which have arisen in these proceedings.

Background

4. The initial applications made by the applicants [redacted] and [redacted] and considered by the Tribunal along with the present matters (matters 2022/SA002040 and 2022/SA002021) related to the seizure of [redacted]' dogs by the respondent Council on 1 June 2022, following alleged incidents on 22 May 2022. Those initial applications were for a review of the Council's decisions to seize the dogs and its consequent refusal to release the dogs to [redacted].
5. [redacted] maintained these applications, although they were effectively overtaken by subsequent events, until they made an application to withdraw those applications on 13 December 2022. Leave was granted to them for the withdrawal of those applications on

20 December 2022, pursuant to section 47(3) of the *South Australian Civil and Administrative Tribunal Act 2013* (the SACAT Act).

6. The remaining applications, made later, are presently before the Tribunal for determination. They are applications for the review of decisions by the Council for the destruction of the two dogs. The decisions were made on 7 July 2022. The dogs were at that time in the custody of the Council, having been seized by the Council on 1 June 2022, and they remain in the Council's custody.

7. When these proceedings commenced the applicants were legally represented, and their solicitor [redacted] appeared on their behalf at directions hearings conducted on 21 July 2022 and 5 August 2022.

8. Orders were made on 21 July 2022 for a stay of the destruction orders in relation to the dogs pending the determination of these proceedings, and those orders remain in place. However the Tribunal considered it was not appropriate to make any orders for the conditional release of the dogs at that time. This application had been opposed by the respondent. [redacted], the solicitor for the Council, indicated the Council was willing to negotiate a suitable outcome for the applicants to address their concerns.

9. The respondent filed the section 35 documents, including a full statement of reasons for the decisions dated 27 July 2022, on 29 July 2022.

10. At a further directions hearing on 5 August 2022, the Tribunal made directions, to which the Council consented, for reports to be made and provided to the Tribunal and the applicants in relation to an animal welfare check and an animal behaviourist report in respect of the dogs. The parties agreed the matter was ready for a full hearing, and [redacted] told the Tribunal the applicants would be giving evidence themselves at the hearing, as well as three other witnesses, and that the applicants' case was that their dogs had not been involved in the incidents alleged by the respondent, and that there would be "alibi" evidence that the dogs were elsewhere at the relevant time.

11. A further directions hearing was conducted on 20 September 2022. The applicants were no longer represented by [redacted]. Various directions were made for the conduct of the proceedings, and the applications were set down for a full hearing on 28 and 29 September 2022, and witnesses were agreed. [redacted] indicted she and [redacted] would be giving evidence, and [redacted] provided witness statements for 4 witnesses, and [redacted] indicated she wished to cross examine each of these witnesses so arrangements were made for them to attend the hearing and a schedule for the two day hearing was agreed.

12. On 28 September 2022 [redacted] and [redacted] outlined their case and called one witness, [redacted], who gave evidence by telephone. At that hearing however it became apparent that the full hearing could not proceed as arrangements had to be made in relation to further evidence which was only adduced at that hearing.

13. In response to an aspect of the respondent's case that the dogs had been involved in another incident on 27 July 2021, the applicants outlined "alibi" evidence, asserting that the dogs were "with the RSPCA for Emergency Boarding from 27/07/2021 to 31/07/2021". [redacted] for the respondent then sought a witness summons to be issued for the RSPCA to produce documents clarifying the details of the emergency boarding, in particular the time at which the dogs entered the care and custody of the RSPCA. I directed that this summons be issued.

14. At that hearing [redacted] then provided documentation concerning SAPOL attendance at [redacted] and [redacted]' property on 27 July 2021. This document indicated police had attended at the premises on the morning of that day at about 10.00 am, and that the dogs were then present at the premises. [redacted] sought a summons to be issued to SAPOL in relation to this and any other documentation related to the SAPOL attendance on 27 July 2021. This was opposed by the applicants but I directed the summons to be issued as the identification of the time of the dogs' presence at the premises was a central issue and [redacted] had already produced the document at the hearing, and put it in the public domain, although he did not tender it in evidence.

15. A further directions hearing was convened at the request of the parties on 7 October 2022. The applicants sought a summons in relation to documentation held by the Animal Welfare League (where the dogs are presently boarded) in relation to the dogs. This summons was issued by the Tribunal. The applicants also sought witness summons to be issued in relation to all the witnesses to incidents alleged to have occurred on 15 January 2021, 27 July 2021 and 22 May 2022: statements had been provided by these witnesses and the applicants indicated they wished to cross examine them. In addition the applicants indicated they wished to cross examine the Council decision maker, [redacted]. Witness summonses were issued with respect to all these witnesses (other than the Council delegate decision-maker who the respondent agreed would attend the hearing). At that hearing a total of 14 witnesses to appear at the full hearing of the matter was identified. It was agreed a further 4 days would be required for the full hearing.

16. When the hearing resumed on 15 November 2022, the first day of the four day scheduled hearing, the applicants represented themselves, and the Council was represented by [redacted] of counsel, with [redacted].

17. On the first day of the scheduled hearing the applicants commenced by addressing some evidence they had filed with the Tribunal on 14 November 2022 (the previous day). This evidence comprised an audio recording of a directions hearing conducted by the Tribunal in another, unrelated matter, in which the same parties (applicants and respondent) are engaged (2022/SA002084); some photographs and a video posted on FaceBook; and a submission that the applications in the present proceedings before the Tribunal be dismissed.

18. The applicants submitted that the audio recording of the other Tribunal proceedings (before a different Tribunal Member) showed that in these present proceedings the respondent was using the Tribunal for an improper purpose, namely to obtain material from SAPOL which it had been unable to obtain through an application in the other proceedings. The applicants applied to have these present proceedings dismissed pursuant to section 48(1)(b) of the SACAT Act.

19. I did not grant this application, and at the time I explained to the applicants that it appeared they had misunderstood the effect of dismissal of the proceedings pursuant to section 48(1)(b) of the SACAT Act. The application before the Tribunal is [redacted] and [redacted] application, not the Council's, and to dismiss it pursuant to section 48(1)(b) (should there be grounds, which I was not satisfied existed), would ensure the destruction orders sought to be reviewed would not be reviewed and would remain in place, and the applicants would not be easily able to seek further review. I told the applicants I understood this was not their intention and would not serve their purposes in having the Destruction Orders reviewed.

20. The audio recording of the other Tribunal proceedings was not received in to evidence.

21. Following this discussion at the hearing [redacted] and [redacted] told the Tribunal they no longer intended to give evidence themselves and would not be calling any evidence, and that they wanted the matter to be determined on the papers without any further hearing. After an adjournment and some discussion the respondent agreed to this course of action and a timetable was set for the provision of a joint book of evidence would be provided by the parties, as well as the provision and exchange of written submissions, to be followed by a determination on the basis of that and the material earlier filed with the Tribunal in these proceedings.

22. Since those directions were made there have been further directions hearings at the request of the applicants, dates for the filing of submissions have been extended, and the applicants have made two applications that I recuse myself from determining this matter. I declined the applications that I recuse myself, and I will address this matter later in these reasons.

23. The parties provided a joint book of documents representing the evidence presented in this matter, as agreed (this was not intended as a book of agreed evidence); and both parties provided written submissions. The applicants sought an extension of time within which to file their response and this was granted to 21 December 2022. I note the applicants filed a response on 29 December 2022, acknowledging it had not been filed by the required date.

The decisions under review

24. The decisions now subject to review by the Tribunal are those made by the respondent Council on 7 July 2022. The decisions were made pursuant to section 51(a) of the Act, and relate to both [redacted]' dogs, Charlie and Dakota (the Dogs). The orders included the direction that the dogs be destroyed by 8 August 2022, but this aspect of the order has been stayed pending the outcome of these proceedings and that stay order in respect of both decisions remains in place.

25. The Council's Destruction Order states that the Council is satisfied that each of the Dogs "is unduly dangerous and has attacked, harassed or chased" a person, or an animal owned by a person. In the documents preceding the Destruction Order, the Notice of Intention to Make an Order, the Council referred to each of the Dogs wandering at large on 22 May 2022 and being involved in two separate attacks on two dogs being walked by their owners in a public place. The Notice of Intention, in the case of each of the Dogs, asserts that the attacks resulted in fatal injuries to the first victim dog, injuries requiring veterinary treatment to the second victim dog, and injuries requiring medical treatment to the victim person.

26. The order in relation to each of the Dogs stated that both Dogs had, on 22 May 2022

    - *attacked a Maltese type dog owned by a person causing injuries that resulted in death;*
    - *attacked and/or harassed a Border Collie type dog owned by a person causing injury that required veterinary treatment; and*
    - *attacked a female person causing puncture wound injuries requiring medical treatment.*

27. A detailed statement of reasons for these decisions dated 27 July 2022 was provided by the respondent with the section 35 documents filed on 29 July 2022.

28. The statement of reasons indicates the decision was made by [redacted], the Acting General Manager Urban Planning and Leisure Services of the Council. [redacted] states he held the appropriate delegations to make the decisions and consequent orders.

29. The reasons indicate that the Destruction Orders were made following two incidents involving the Dogs resulting in attacks on both persons and owned dogs, on 22 May 2022.

30. The first attack was asserted to have occurred at about 10.00am in [redacted] Tranmere. The Dogs were wandering at large and attacked a 9 year old Border Collie and a woman. The dog required immediate veterinary treatment and overnight admission for observation, and the woman required treatment by a medical practitioner for injuries to her left forearm, both knees, left upper thigh and right lower leg. Witnesses to the attack reported seeing two dogs, one, with blood in its mouth, attempting to bite the victim dog, and the other nearby. Photographs of the injuries to the dog and the woman, three statements and two statutory declarations were provided to the Council and attached to the Statement of Reasons.

31. The second attack was asserted to have occurred shortly after, on the same day, at about 10.05 am, on the corner of [redacted] and [redacted] Magill, when the Dogs attacked a Maltese terrier being walked by its owners. The Maltese terrier was badly injured and had to be euthanised as a result of the attack. Two statements and a statutory declaration were received setting out accounts of this attack, and were provided with the Statement of Reasons. These witness statements describe the Dogs as large and aggressive, and describe the attack.

32. The Statement of Reasons also refers to an earlier attack on a separate date.

33. It was asserted that on 27 July 2021 about 9.20 am the Dogs attacked an owner walking her Tibetan Spaniel type dog along [redacted] Avenue Tranmere near the intersection with [redacted] Avenue. The owner stated that she saw the Dogs in the street chasing a cat, which ran up a tree nearby to where the owner was with her dog. The Dogs then attacked the Tibetan Spaniel dog causing injury. The owner was also injured by the Dogs. The Tibetan Spaniel had to be euthanised as a result of the injuries resulting from the attack by the Dogs.

34. The Statement of Reasons provided by the Council states that taking into account the severity of the injuries sustained by the victims of the attacks it was concluded that the attacks should be categorised as Level 5 attacks, for which the appropriate remedy is a Destruction Order.

35. It was concluded that the Dogs were unduly dangerous, and on 22 May 2022 had attacked harassed or chased persons and animals in circumstances constituting an offence against the Act. It was considered the Dogs exposed the public to an appreciable risk of harm, having escaped the premises at which they were kept and committed two attacks on both persons and owned animals, each of which were acting in a way in which it may be reasonably expected they would act in circumstances which may reasonably be expected to occur.

The Applicants' evidence and submissions

36. Neither [redacted] nor [redacted] gave any evidence in this matter. Up to the hearing on 15 November 2022 they had indicated they would be giving evidence but at that hearing said they no longer intended to do so. They had also told the Tribunal they would be calling other witnesses in support of their case but the only witness who gave evidence in this matter was [redacted], [redacted]' mother, who gave evidence by telephone on 28 September 2022.

37. [redacted] and [redacted] did provide a number of witness statements, other documents and numerous submissions in relation to this matter, and I take all these materials into account, including their final submission received by the Tribunal on 29 December 2022, despite it being received significantly later than the date set by the Tribunal.

38. At the hearing on 28 September 2022 [redacted] and [redacted] set out the principal points of their case. They were as follows:

    - The Council in issuing the orders relied on events that did not occur.
    - Their dogs are good and well behaved dogs which live with [redacted] and family members.
    - There are inconsistencies in the various witness statements provided by the respondent which cast doubts on their truth or accuracy and means they should not be relied on.
    - The identification of the Dogs is in issue: the witnesses were shown only photographs of the Dogs, not presented with a line up of dogs, and in any event the Dogs do not match the descriptions by the witnesses of the dogs involved in the attacks.
    - The Dogs are not unduly dangerous within the meaning of section 51 of the Act.

39. The applicants also raised other matters in the course of their oral and later written submissions. I will set out the various grounds raised by the applicants and the submissions and evidence they provided to the Tribunal under the general headings below.

The Dogs were seized unlawfully

40. The applicants asserted that the Dogs had been unlawfully seized by the Council. She said the Council did not act in accordance with the Act in that there were no proper grounds under the Act to seize the dogs when this occurred on 1 June 2022, and when the Council officers attended with the police to assist, they did not have a warrant to enter the premises. [redacted] made applications to the Tribunal for the release of the Dogs in reliance on these matters, but withdrew those applications later in these proceedings.

The Dogs are not dangerous

41. The Applicants told the Tribunal that the Dogs are well behaved, registered and microchipped, and are trained. They referred the Tribunal to the various references concerning the Dogs which they had provided.

42. They told the Tribunal the nature of the Dogs was also supported by the reports from the Animal Welfare League, which is presently housing the Dogs: the reports are positive and indicated the Dogs were friendly. A report from [redacted], a veterinary surgeon who had treated the dogs, also supported this general view. [redacted] provided a written report and it had been expected he would be giving evidence at the hearing.

43. The applicants also provided other "references" in relation to the dogs: these were from [redacted], a Dog Trainer, who states that Dakota was "social" with other dogs and cats, children and other people, with no concerning behaviour; [redacted], experienced in animal rescue, who had initially cared for Charlie, who she described as a "friendly delightful dog"; and [redacted], from Scruffer Lovers Dog Rescue, stating that [redacted] cares well for her dogs.

44. The applicants also provided the Tribunal with photographs of the dogs with other adults, with other animals and with children, to demonstrate their friendly, well trained and calm natures. She told the Tribunal dogs are "family", well trained, well looked after, and "innocent", not aggressive.

There is no evidence the Dogs involved in the incidents on 22 May 2022 were their dogs

45. The applicants' original submission in support of these applications was that it was not established that the Dogs involved in the incidents on 22 May 2022 were their dogs. They told the Tribunal that their dogs were elsewhere at the time of the incidents on 22 May 2022 and under their control, and they would present "alibi" evidence.

46. The applicants argued, in the first place, that the identification of the Dogs involved in the 22 May 2022 incidents was compromised. They said that the various witnesses to the incidents had only been shown photographs of their dogs, not a "line up" of dogs, from which to identify the dogs involved in the incidents. They submitted that being shown only a photograph of their dogs influenced the witnesses to identify that their dogs, in the photo, were the Dogs involved in the incidents.

47. In addition, they argued that there were other dogs known to be "at large" in the area at the time of the incidents, one large black dog and one large brown dog, and the involvement of those dogs was not investigated by the Council. These dogs were pictured on a website, "Lost dogs of Adelaide". They suggested it may have been these dogs that engaged in the attacks.

48. They also submitted that the descriptions of the dogs involved were various and inconsistent in the witness statements. They submitted that the descriptions were also not very precise or detailed, and did not necessarily match their dogs' descriptions.

49. The applicants conceded in their written submissions that a motor vehicle photographed immediately following the 1st incident on 22 May 2022 was [redacted]' car and registered in her name, but not that [redacted] was driving the car, or that he indicated he was looking for their dogs. They submitted there was no photograph of the woman said to be near the car, or of the woman in the car, and no description of the woman, and nothing to establish that the woman said to be calling for the dogs was [redacted]. They submitted there was no clear proof of when the photograph of the car was taken, and the photo of vehicle was not witnessed or properly identified in the documents provided by the respondent.

50. [redacted]' mother, [redacted], gave evidence by telephone at the hearing on 28 September 2022.

51. [redacted] told the Tribunal that sometime in the morning of 22 May 2022 she had seen [redacted] at [redacted] with the Dogs. She could not remember the time she saw the dogs or when she was at that address. She said she had also seen the Dogs with [redacted] at [redacted] Tranmere sometime that day. [redacted] [redacted] told the Tribunal she could not believe the dogs could behave as alleged, and they were always kept behind locked gates, or were with her daughter. She told the Tribunal they were the "most loving" dogs and were never aggressive, and she believed this matter was "all part of a vendetta".

52. [redacted] and [redacted] submitted to the Tribunal that it was clear there was no compelling evidence to establish that the Dogs were their dogs.

The incidents of 22 May 2022 were fabricated

53. [redacted] and [redacted] submitted to the Tribunal that the incidents of 22 May 2022 did not happen at all, but had been fabricated by the Council in order to obtain material from or concerning them, to be used for "another purpose". This submission became the primary submission of the applicants.

54. They did not identify what this "other purpose" was, but asserted that the Tribunal was aware of what the "other purpose" was.

55. The applicants asserted that the alleged events of 22 May 2022 were "orchestrated and fabricated" by the Council for improper purposes.

56. They asserted that Incident 1 did not occur at all. To support this assertion they referred to the veterinary bill and report issued in respect of the treatment of the allegedly injured dog, Indie, on 22 May 2022. They stated that other publically available records show that Indie was 11 years old, but is recorded on the veterinary surgeon's account of the treatment as 9 years of age. The applicants asserted that the veterinary surgeon's medical records and bill provided to the Tribunal in the section 35 documents were in fact two years old and had been edited to appear as though they related to events occurring on 22 May 2022: that is, that they were forged documents.

57. They also referred to inconsistency in the various accounts (from the Victim and from two witnesses) concerning incident 1, including whether the Victim was attacked by one or both dogs, and which arm the Victim was bitten on.

58. The applicants submitted to the Tribunal that neither the Victim nor the victim dog Indie were attacked or bitten at all. They provided a video and photographs from a FaceBook post made on 22 May 2022 which they state shows the Victim and the victim dog at a family event for a child member of the Victim's family held on that afternoon. They state that the video and photographs (not apparently from the Victim's FaceBook page) do not show any injuries to either the Victim or the victim dog, as both appear in good health and behaving in a manner not consistent with the incident alleged to have occurred earlier that morning.

59. The applicants state they do not accept the photographs of the Victim's injury are genuine, and that there is no evidence of when the photographs were taken, and the photographs have not been "properly proved" or contained in a sworn statement.

60. The applicants also reject the statements provided by two witnesses to Incident 1, submitting that these statements should not be accepted by the Tribunal as they were not properly sworn statements as they were not in "the proper form": they stated the statements provided by the Council have the names, signatures and addresses of the witnesses redacted, and in any event represent false evidence as the applicants assert the events which the witnesses purport to have witnessed did not occur at all.

61. The applicants also assert that Incident 2 did not occur.

62. The applicants state that Incident 1 is said to have occurred at 10.00 am, and Incident 2 at about 10.05 am. The place of Incident 2 is about 1 kilometre away from where Incident 1 is said to have occurred. They submitted to the Tribunal that the dogs could not have run this distance in five minutes.

63. Further, they submitted that the accounts provided by the witnesses to the Incidents were inconsistent, and presented an unfeasible situation. The allegation was that Dakota had picked

South Australian
Civil and Administrative Tribunal
GPO Box 2361 Adelaide SA 5001 T 1800 723 767 DX 167 E sacat@sacat.sa.gov.au
sacat.sa.gov.au

up the victim dog in its mouth: they assert that Dakota was too small to have been able to do this. Nor did the witnesses clearly identify or describe the dogs.

64. The applicants asserted as their central argument in their written submissions that the events of 22 May 2022 alleged by the Council did not occur, and had been entirely fabricated by the Council in order to obtain material under sub poena to use for another purpose.

Incident 3, 27 July 2021

65. The applicants submitted that this incident did not occur at all, or, if it did, did not involve their dogs.

66. The applicants submit they have never been contacted concerning this incident by the Council, and the first they were aware of it was in the reference to it in the Statement of Reasons provided by the Council in the section 35 documents.

67. They also stated they had made two freedom of information applications for information concerning this incident, and had obtained no information showing it had occurred.

68. They also assert that the dog alleged to be the dog victim, Peachy, did not exist: they assert that an independent website identifying all registered and microchipped dogs in South Australia has no record of the dog.

69. The applicants assert that the account of the event, set out in the witness statement of the Victim (the alleged owner of the dog) could not have occurred. The Victim states she was walking with her mother, with her child in a pusher and walking her dog Peachy, when they were attacked by two Dogs. The Victim states that she was injured by the Dogs, as was her dog, and the dog had to be euthanised. The applicants assert this could not have occurred, as South Australia was in a COVID-19 lock down period on 27 July 2021, and so the Victim could not have been out walking with her mother, and could not have been observed by an independent witness.

70. The applicants also assert the accounts of the Dogs' behaviour is inconsistent, and in addition, they assert that the veterinary report is "suspicious". They state that the witness statements suggest that the incident occurred about 9.20 am, but the veterinary report states that the dog was admitted for treatment at 9.00am, and on that basis the dog would have been dead before the alleged incident occurred.

Incident 4, 15 January 2021

71. The applicants agreed this event had occurred, although they disagreed with the account provided by the Council

72. The applicants told the Tribunal the Witness to the event had exaggerated, and that although they had paid an expiation notice in relation to the incident to the Council, the issue of an expiation notice and no other Order showed that the Council regarded the matter as a minor matter only, not establishing that the dogs were dangerous. They said that the dogs barked at each other, and ran toward each other, followed by a "scuffle", not "an attack".

The form of the evidence presented by the respondent

73. The applicants submitted that none of the witness statements provided by the respondent in respect of any of the incidents concerning the Dogs should be accepted by the Tribunal, or at least should be accorded no or little weight.

74. Their essential submission in respect of this issue was that none of the statutory declarations or witness statements were in the form of sworn evidence or in an appropriate from to be acceptable to any South Australian court or tribunal.

75. In particular they submitted that the statements and associated documents were not sworn; had the names and addresses of the deponents redacted; some attached documents were not initialled or dated; or were not signed or witnessed on each page. They submitted that the photographs provided (for example, of the motor vehicle, and the injuries to the Victim and the dog in Incident 1) were not properly dated, identified and witnessed.

76. They submitted that the affidavit of [redacted] (the decision maker) was not sworn or witnessed on every page; the statements by [redacted] and [redacted] (Incident 1) and by [redacted] (Incident 2) were not signed or dated; and the attachments (photographs) to their documents are not signed. They submitted, in any event that this evidence should not be accepted as it was all false, as the events did not occur.

Other submissions

77. [redacted] and [redacted] also made a number of other submissions.

78. They told the Tribunal they had been disadvantaged in pursuing their applications because they did not have legal representation.

79. In their written submissions they state they would not have opted to have these applications decided on the papers if they had understood that this meant they would not be able to cross examine the witnesses or make assertions contradicting their evidence, and they should have been advised of this.

80. They submitted that no statement of reasons had been provided by the respondent, or that the statement provided was insufficient. In support of this submission they referred to the issues they had raised concerning the form of the witness statements provided by the respondent, submitting that as these statements should not be accepted by the Tribunal there was no evidence to support the respondent's decision.

81. They also submitted that there was no onus of proof on them to establish that the decision under review was not correct or preferable or to establish any facts. They submitted that it was however for the respondent to establish the truth of what it asserted, namely that their dogs were unduly dangerous within the meaning of the Act, and that the respondent had to prove on the balance of probabilities that the events occurred, and the applicants' dogs were responsible for those events.

82. The applicants conclude in their submission on this point that "if these attacks did occur, the respondent would most likely be correct" in the assertion that the attacks would constitute an offence pursuant to section 44(2) of the Act.

83. The applicants' central submission was that the events of 22 May 2022 did not occur, but that the account of the alleged incidents and the evidence presented to the Tribunal to support that account were fabricated by the respondent Council in order to obtain certain information concerning the applicants which was not otherwise available to the Council. The applicants asserted that the Council wanted to obtain this information "for an improper purpose", and that the Tribunal knew what that improper purpose was.

South Australian
Civil and Administrative Tribunal
GPO Box 2361 Adelaide SA 5001 T 1800 723 767 DX 167 E sacat@sacat.sa.gov.au
sacat.sa.gov.au

84. I understand that the material which [redacted] and [redacted] asserted was sought by the Council, and for which the events of 22 May 2022 and the "evidence" concerning those events were fabricated, was the material ordered to be produced to the Tribunal pursuant to a witness summons issued by the Tribunal on 28 September 2022.

85. This witness summons arose from discussion at the hearing on that date. [redacted] asserted their dogs could not have been involved in Incident 3, which is alleged to have occurred at about 9.00 am on 27 July 2021. He told the Tribunal the dogs were boarding with the RSPCA on that date. Subsequently in the hearing he produced the first page of a police affidavit which indicated the police had attended at his premises on 27 July 2021 at 10.00 am and dogs were visibly present at the premises behind a fence. [redacted] showed this document to [redacted] for the Council, and to the Tribunal, but he did not tender it. [redacted] sought a witness summons for the return of all police documentation concerning the police attendance at the premises on that day. [redacted] and [redacted] opposed this application, but I granted the application, on the ground that the issue of the location of the dogs, and the time, was material to the matter before the Tribunal.

86. SAPOL provided the material summonsed, but in a heavily redacted form. It is understood it was this material which [redacted] and [redacted] assert was the material for which the Council had fabricated the Destruction Orders and the events and evidence relating to them.

87. [redacted] subsequently made an application for the dismissal of these applications before the Tribunal pursuant to section 48(1)(b) of the SACAT Act, on the ground that the proceedings were being used for an improper process, being that the respondent was using the proceedings for the purpose of obtaining the information returned by SAPOL in response to the witness summons issued by the Tribunal on 28 September 20;22.

88. I rejected this application at the time it was made: these are proceedings initiated by [redacted] and [redacted], for the purpose of review of the Council's Destruction Orders. There is nothing before me to suggest they are using these proceedings for purposes other than obtaining the removal of the Destruction Orders in relation to their dogs. If I made the order sought by [redacted] this would effectively affirm the Destruction Orders, which could then be acted upon by the respondent, and [redacted] and [redacted] would not easily be able to seek a further review of these orders. I suggested to [redacted] at the time that he had perhaps misunderstood the terms of section 48(1)(b) of the SACAT Act.

The Respondent's submissions and evidence

89. The respondent's submissions were provided to the Tribunal by [redacted] both in oral submissions at the various hearings of these matters, and in a lengthy written submission. The respondent also provided a substantial section 35 Book of Documents and a supplementary Book of Documents, including supporting documentation by way of statutory declarations and statements by victims and witnesses to the Incidents; veterinary invoices and medical records; and photographs including of the injuries to the Victims and the dog victims.

90. The respondent submits that the Destruction Orders were made following two attacks by the Dogs on members of the public and dogs owned by the victim on 22 May 2022.

91. Mr [redacted] made submissions concerning each of the incidents, also referring the Tribunal to the evidence supporting the submissions.

92. He submitted that Incident 1 occurred at about 10.00am Sunday 22 May 2022. The Dogs were wandering at large. A woman was walking her border collie of about 9 years of age and the Dogs attacked her and her dog. A witness heard the woman screaming for help and upon attending found the woman lying on the footpath holding the collar of one of the Dogs which had blood in its mouth and was attempting to bite the woman's dog. The victim dog required veterinary treatment and the woman had treatment from a general practitioner for injuries to the underside of her right forearm, both knees, left upper thigh and right lower leg. Another witness was also present.

93. Incident 2 occurred at about 10.05 on the same day on the corner of [redacted] Street and [redacted] Magill. The Dogs were wandering at large, and a Maltese type dog was being walked by its owner. The Maltese dog was attacked by the two Dogs which both picked up the Maltese dog in their mouths and shook it and then dropped it. The Dogs then ran away. The Maltese dog was taken to a veterinary surgeon and was subsequently euthanised as a result of the injuries sustained in the attack by the Dogs.

94. [redacted] states that the Dogs were seized on 1 June 2022 and remain in the custody of the respondent. The Destruction Orders were made as a result of the two incidents on 22 May 2022.

95. The respondent submits there are also two earlier incidents involving the Dogs.

96. Incident 3 occurred at about 9.20 am on 27 July 2021 near the intersection of [redacted] and [redacted] Tranmere. The Dogs were wandering at large and attacked a Tibetan Spaniel dog that was being walked by its owner, who was walking with her mother and her child who was in a pram. The owner, her mother and a separate passerby tried to stop the attack, but the dog was bitten in the neck by the large black dog, and in the stomach by the smaller brown dog. The owner was bitten on the finger. The Tibetan Spaniel dog was subsequently euthanised as a result of the injuries suffered in the attack.

97. Incident 4 occurred at about 4.00pm on 15 January 2021 outside 4 [redacted] Tranmere. A dog was being walked by its owner along the footpath but went out onto the road to go around a car parked across a driveway. A large black dog ran out of the premises at [redacted] and attacked the dog being walked by its owner. The owners came out of the premises and restrained the black dog. The respondent submits that the owners who came out of the premises and restrained the dog were the applicants in these proceedings. The victim dog required veterinary treatment for its injuries sustained in the attack.

98. The respondent submitted that the single issue before the Tribunal is whether the Destruction Orders should be affirmed as correct and preferable, or set aside.

99. [redacted] referred the Tribunal to what he described as "a comprehensive set of witness statements" in relation to each of these incidents. He states these were all taken contemporaneously or very close to the time of the incidents. He states that the evidence identifies the Dogs as involved in the incidents (other than Incident 4, which only concerned one of the Dogs). He states that the applicants elected not to test any of this evidence by cross examination, and so the evidence is uncontradicted and should be accepted by the Tribunal.

100. [redacted] submits that each witness testimony is inherently reasonable, probable and conclusive of the issues they address, and as the applicants chose not to cross examine any

of the witnesses it was not open to the applicants to submit that the witness testimony should not be relied upon.

101. [redacted] made submissions on the evidence before the Tribunal concerning each of the Incidents.

(a) Incident 1

The victim of this incident, [redacted], provided a statement and affidavit describing the incident, including a description of the Dogs that attacked her, and a statutory declaration attesting that the Dogs in the attached photographs (of the Dogs) were those dogs.

A witness, [redacted], also provided a statement of what he witnessed of the attack, also including a description of the Dogs. [redacted] also provides a statutory declaration that the Dogs in the attached photographs (of the Dogs) were the Dogs involved in the attack.

Another witness, [redacted], also provided a statement describing the attack which he witnessed, and describing the Dogs, which he also identified in the photographs.

[redacted] and [redacted] also state that shortly after the attack they saw a male person driving a vehicle. [redacted] says he spoke to this person and told him his dogs had attacked another dog. [redacted] took a photograph of this person and the motor vehicle at 10.09 am on 22 May 2022. The registration number of the vehicle is shown in the photograph. [redacted] states that a woman was also present and calling what he heard as “Koda”, which [redacted] submits is close to the name of one of the Dogs, “Dakota”. [redacted] spoke to the woman and she told him she was looking for her dogs, and she described them. [redacted] states that the description matched the Dogs which he had seen attacking [redacted] and her dog.

[redacted] submitted that a registration check revealed the motor vehicle was registered in [redacted]’ name, with the same address as that at which the Dogs were registered. While conceding that there was no photograph or description of the woman present at the time, [redacted] submitted that it was open to the Tribunal to find that the discussions described by [redacted] occurred (as it is not contradicted by the applicants), and that [redacted] (who can be seen in the photograph) was driving [redacted]’ car, and the woman looking for her dogs was [redacted].

(b) Incident 2

[redacted] told the Tribunal two statements and two statutory declarations were provided in relation to this incident.

[redacted] states he was walking his Maltese terrier which was attacked by the Dogs, which he described. The attack was witnessed by [redacted] who describes the attack and the Dogs. They both attest that the Dogs in the photographs are the Dogs involved in the incident.

(c) Incident 3

Two statements were provided in relation to this incident.

[redacted] was walking her dog on a lead when it was attacked by the Dogs, who she describes. The attack was witnessed by [redacted] who describes the attack and the Dogs.

(d) Incident 4

The respondent provided a statement from [redacted] in relation to this incident. [redacted] describes the incident and provides a description of the Dog (a large black dog).

The respondent states that as a result of this incident the Council issued two expiation notices to [redacted], for the offences of wandering at large, and dog attack, and they were paid by [redacted].

102. [redacted] submitted that the victims and witnesses to Incidents 1 and 2 clearly and specifically identified the Dogs as the Dogs involved in the incidents. Each of the incidents was witnessed by more than one person, and in each case by independent witnesses. The attacks were in daylight. [redacted] submitted there is no evidence before the Tribunal to suggest the evidence has been provided or influenced in any improper way, and they should be accepted by the Tribunal.

103. [redacted] denied that Incident 1 was fabricated as asserted by the applicants. In particular he referred to the video and FaceBook page still photos provided by the applicants. In relation to the still photographs, [redacted] states there is no evidence these were images taken on 22 May 2022, although they may have been posted on that day. He concedes that the video was filmed on 22 May 2022 and shows [redacted], but submits her arm injury is not visible in the film. He referred the Tribunal to the photographs of the injuries [redacted] suffered in the attack which were provided by her and included in the Book of Documents and the joint bundle of documents provided by the parties.

104. In relation to Incident 3, the applicants initially told the Tribunal that the Dogs were with the RSPCA at the time of the attack. However, [redacted] submitted that the evidence of [redacted] and [redacted] was that the attack occurred at about 9.15 – 9.20 am, about 500 metres from the applicants' residence where the Dogs were living on the relevant date. The RSPCA records indicate the Dogs were boarded with it after 1.53 that afternoon, and the material provided by SAPOL stated that two dogs (not described) were present at the applicants' address at 10.00 am that day. [redacted] submitted that there was no evidence as to the Dogs' whereabouts at the time of Incident 3.

105. [redacted] submitted that the failure of [redacted] and [redacted] to give evidence at the hearing was fatal to their case. He submitted that as they had provided no evidence concerning the location of the Dogs at the times of Incidents 1, 2 or 3 (other than [redacted]), or called any other witnesses to contradict the evidence provided by the respondent, their case depends on the acceptance of unsubstantiated claims.

106. [redacted] submitted that the applicants, in applying to have this matter determined on the papers, had forgone the opportunity to cross examine any of the witnesses and thereby test the respondent's case.

107. [redacted] also made submissions concerning the application of the Act.

South Australian
Civil and Administrative Tribunal
GPO Box 2361 Adelaide SA 5001 T 1800 723 767 DX 167 E sacat@sacat.sa.gov.au
sacat.sa.gov.au

108. He submitted that the purpose of the Act, as set out in the Act, is to encourage responsible dog ownership, reduce public and environmental nuisance caused by dogs, and promote effective management of dogs, and that these objects should be taken into account in determining whether the decisions under reviewed should be affirmed.

109. [redacted] submitted that the Destruction Orders had been made pursuant to section 51(a) of the Act, which required consideration of whether the Dogs had harassed, attacked or chased a person in circumstances which would constitute an offence against the Act; whether the Dogs were "unduly dangerous"; and whether the making of the Destruction Orders was the correct of preferable decision.

110. [redacted] submitted that the evidence clearly supported the inference that the Dogs had been involved in the attacks on 22 July 2022, and in the earlier incidents. He submitted that each of the witnesses to Incidents 1, 2 and 3 described the two Dogs acting in concert; in each case each witness described a large black or grey dog along with a smaller brown or tan coloured dog; each attack occurred in the vicinity of the applicants' premises at times when the whereabouts of the Dogs was not otherwise established; [redacted]' motor vehicle, apparently driven by [redacted], was seen by two witnesses in the vicinity of Incident 1 shortly after it occurred; a woman was heard calling "Koda" at this time in the vicinity; and the applicants have conceded Charlie's involvement in Incident 4.

111. [redacted] submitted that the evidence was that the Dogs acted in concert in the first three incidents, and it was not therefore necessary to establish which dog caused particular injuries.

112. He submitted that it was highly unlikely that at the same time the applicants were searching for their dogs, two other dogs of the same description were wandering at large and engaged in attacks together in the same area.

113. He submitted that section 44(2) of the Act makes it an offence for a person who is responsible for the control of a dog if the dog attacks, harasses, or chases or otherwise endangers the health of a person or animal owned by another person. He submitted the circumstances of each of the incidents, as a matter of fact, would establish an offence under section 44(2) of the Act, and therefore section 51(a)(ii) of the Act is satisfied.

114. [redacted] submitted that the applicants had presented nothing to the Tribunal suggesting they would be willing and able to comply with any order other than a Destruction Order.

115. He concluded with the submission that it was clear the Dogs were unduly dangerous within the meaning of the Act, taking into account the degrees and nature of injuries sustained by both the human and animal victims of the attacks, and the unprovoked nature of the attacks.

116. [redacted] rejected the applicants' submission that the Dogs were well trained and good natured and friendly. He referred to the statement of the veterinary surgeon, [redacted], who completed a behavioural assessment of the Dogs on 21 September 2022. Although [redacted] assessment was positive, he concedes that it was "a snapshot in time", so his assessment could not be regarded as contradicting the account of the Dogs' behaviour as observed by other witnesses other occasions.

117. The respondent's final submission was that the decisions should be affirmed as both correct and preferable. It was submitted that the evidence supported the conclusion both that the Dogs were those involved in the Incidents, and that their conduct showed they were unduly dangerous. [redacted] submitted there was no preferable alternative decision that could be made: the Dogs were not suitable for re-homing due to the viciousness and seriousness of the attacks, and the applicants' conduct had demonstrated that any alternative order, such that the Dogs were returned to the applicants, would not address the concerns of the Act.

The Legislation

118. Section 50(1) of the Act empowers the Council to issue a Destruction Order in relation to a specified dog.

119. Section 51 of the Act provides as follows:

A council ... may make an order in relation to a dog under this Division if satisfied that –

(a) In the case of a Destruction Order –

(i) the dog is unduly dangerous; and

(ii) the dog has attacked, harassed or chased a person or an animal or bird owned by or in the charge of a person in circumstances that would constitute an offence against this Act

120. Section 44(2) of the Act provides as follows:

(2) A person who owns or is responsible for the control of a dog is guilty of an offence if the dog attacks, harasses, or chases or otherwise endangers the health of a person or an animal owned by a person or an animal or bird owned by or in control of another person (whether or not actual injury is caused)

Consideration by the Tribunal

121. Section 34 of the SACAT Act provides that the Tribunal has jurisdiction to deal with *a matter that … involves a review of a decision.* An application to review a decision comes within the Tribunal's review jurisdiction, and the Tribunal is required to examine the decision under review by way of a re-hearing (see section 34(3) of the SACAT Act), and must reach the correct or preferable decision, having regard to and giving appropriate weight to the decision of the original decision-maker (see section 34(4) of the SACAT Act). The Tribunal in conducting a review of a decision and exercising those powers is taken to be standing in the shoes of the original decision-maker, but may also have reference to additional relevant evidence, as the review is by way of a rehearing. The Tribunal "may make any order the Tribunal considers appropriate" (see section 37(1) of the SACAT Act), and the Tribunal's decision on review is to be regarded as and given effect as a decision of the original decision-maker (see section 37(3) of the SACAT Act)

The evidence

122. In considering these applications, there is a large amount of material before me, provided over a relatively lengthy period of time. This includes the material contained in the section 35 Book of Documents and a Supplementary Book of Documents; a joint (rather than agreed) Book of Evidence provided by the parties; material from witness summonses issued to RSPCA and SAPOL on 28 September 2022, and from the Animal Welfare League in response to a witness

summons issued on 7 October 2022; witness statements from all witnesses for the respondent in relation to the 4 incidents; and a witness statement from the Council decision maker. The parties also provided detailed written submissions, and I take all this material into account.

123. I note some of this material represents additional evidence not before the decision maker at the time the decisions were made. I am satisfied it is appropriate to take it into account and I am able to do so pursuant to section 34(5)(b) of the SACAT Act.

124. The applicants objected to me taking into account the material contained in the witness statements filed by the respondent. This material essentially contains most of the evidence supporting the decisions the subject of this review. The applicants' argument for excluding, or giving minimal weight to this material, was that the statements "did not amount to sworn evidence", or was not in a proper form to be accepted as evidence.

125. I do not accept these submissions, nor, indeed, these characterisations.

126. In the first place, the Tribunal is not bound by the rules of evidence, and may inform itself as it thinks fit (see section 39(1)(b) of the SACAT Act); and in addition (section 39(1)(c) of the SACAT Act), *must act according to equity, good conscience and the substantial merits of the case, and without regard to legal technicalities and forms*.

127. Accordingly, that witness statements or affidavits are not exactly in accordance with prescribed forms required by legislation or legal principles or practice will not itself provide a sufficient basis for rejecting the content of those statements. The source, form and presentation of a witness statement or other material before the Tribunal may impact on the weight or probative value to be placed on it, but it will not necessarily mean it will not be taken into account, and under the SACAT Act I am able to do so.

128. In addition however, I am not persuaded by the applicants' submissions that the form of all these materials is deficient. The applicants assert for example, that the statutory declarations of [redacted] and [redacted] (concerning Incident 1) are not sworn evidence: however, they appear to me to be statutory declarations, appropriately affirmed, witnessed, dated and signed. I note the attachments to those documents are not separately initialled. Similarly, [redacted] statement (concerning Incident 2) appears to be correctly witnessed, signed and dated. It is unclear to me the precise objections of the applicants in relation to these matters. They similarly object to the Tribunal accepting the witness statements of [redacted], [redacted] and [redacted], with respect to Incidents 2 and 3, but again there is nothing in the form of these statements which appear to raise problems in themselves.

129. The other issue that arises in relation to these witness statements is that the content of those statements has not been tested by the applicants because of their decision to have this matter dealt with on the papers, rather than proceed with the full hearing of the matter which had been scheduled. The witnesses were all available to give their evidence directly to the Tribunal and to be cross examined at that hearing. Summonses were issued for their attendance and a schedule of witnesses was prepared. An interpreter was arranged by the Tribunal in relation to one witness to facilitate his evidence.

130. The applicants raised their issues concerning the form of the witness statements at the first day of the scheduled hearing on 15 November 2022. I told them then that any deficiencies in the written form of the evidence (or indeed in its content) would be able to be addressed by both the witnesses and the applicants when they gave their direct evidence before the Tribunal as

arranged. The applicants would be able to cross examine the witnesses concerning the circumstances of them providing the witness statements (if this was relevant), the provenance of the photographic evidence; and any other matters they wanted to test, including, of course, the substance of their evidence. I expressed the view then that the direct oral provision of sworn or affirmed evidence to the Tribunal, subject to cross examination, would cure any defect in the form of the written material already filed with the Tribunal.

131. At the hearing on 15 November 2022 the applicants told the Tribunal they no longer intended to give evidence themselves, or to call any witnesses, and they wanted the matter determined on the papers.

132. When the applicants applied on 15 November 2022 to have this matter determined on the papers and without further hearing, they forwent the opportunity to test the evidence of the respondent's witnesses. I suggested to the applicants at that time it might be more appropriate to deal with this matter by way of a hearing rather than on the papers, but after further consideration they indicated this is how they wanted to proceed, and the respondent accepted this approach.

133. I am conscious that the applicants have not been legally represented throughout most of these proceedings. They were represented at the early stages of the proceedings but then dispensed with their legal representative. They indicated at the hearing on 28 September 2022 they might again seek legal representation but this did not proceed before the Tribunal. The applicants made their election to have this matter determined without a further hearing for their own reasons, despite suggestions from the Tribunal that this might not be the most appropriate course of action. As part of their submission to the Tribunal they complained that they were disadvantaged because they were not legally represented, and that if they had understood they could not contradict the evidence of witnesses if the matter proceeded on the papers they would not have taken that approach. However, these are consequences that follow from the specific approaches they have taken in the course of these proceedings, which appear to have been carefully considered and were insisted upon by the applicants at the 15 November 2022 hearing.

134. In my view the Tribunal assisted the applicants as far as was possible in the context of a contested hearing: all adjournments and extensions of time within which to file documents sought were granted, taking into consideration that the applicants were unrepresented; directions hearings were called at the applicants' request to address particular concerns; and despite the failure to provide witness statements and an outline of submissions prior to the scheduled full hearings in this matter, witness summonses were granted and all witnesses arranged to be available for cross examination by the applicants. The Tribunal cannot provide parties with legal advice or advice on how to conduct their case.

135. The respondent submitted in its written submissions that the failure of the applicants to either present their own evidence, in person or by affidavit, or call any other evidence to contradict the respondent's case, and to cross examine the respondent's witnesses, meant that their case depended on unsubstantiated claims, with nothing to contradict the evidence presented by the respondent.

136. The respondent submitted that in these circumstances, where the essential elements of its case have not been tested by the applicants, the Tribunal should accept the evidence of the Respondent as determinative of the issues.

South Australian
Civil and Administrative Tribunal
GPO Box 2361 Adelaide SA 5001 T 1800 723 767 DX 167 E sacat@sacat.sa.gov.au
sacat.sa.gov.au

137. The respondent submitted that the each witness testimony filed by the respondent was inherently reasonable, probable and conclusive of the relevant issues, and under those circumstances the Tribunal was bound to accept the evidence. [redacted] submitted there was no reason why this evidence should be regarded as so incredible and so unreasonable that no reasonable person should accept it.

138. In addition, he submitted that no *Browne v Dunn* line of questioning had arisen in this case, as the applicants had not put their assertions concerning the witnesses' evidence to them, and this precluded the applicants from any submission that the respondent's evidence should not be relied upon.

139. I am satisfied all the material before me can be taken into account in the determination of this matter, and I do so. I am satisfied that any deficiencies in the form of the witness statements filed by the respondent is not of any significance in terms of accepting them as relevant evidence, even if there are any such deficiencies. I am also satisfied that the fact that the applicants chose not to present any evidence of their own contradictions of the respondent's evidence, and further, chose not to test any of the evidence presented by the respondent through cross examination, does not mean the respondent's evidence is weakened or can be disregarded.

Findings of fact

140. The principal findings of fact in this matter, bearing in mind the requirements of the Act, relate to the following matters:

- the events which comprised the four incidents asserted by the respondent;
- whether the applicants' dogs are the Dogs involved in any or all of those incidents;
- if the Dogs involved in those incidents should be characterised as "unduly dangerous";
- if the conduct of the Dogs would constitute an offence under the Act

141. The applicants asserted that Incidents 1 and 2 (22 May 2022) did not occur at all, and that all evidence concerning these incidents was fabricated. They also asserted that if these incidents had occurred, their dogs had not been involved, and were not at large at the time. They also asserted that Incident 3 had not occurred at all and the evidence concerning it had been fabricated, but that if it did, it had not involved their dogs, which were not at large at the relevant time. They agreed that Incident 4 had occurred, and involved one of their dogs, but that it had been a minor incident and had been treated as such by the Council at the time.

142. The respondent provided witness statements prepared near the time of each of the alleged incidents, from both the victims of the alleged incidents and from independent witnesses to each incident. The respondent also provided other supporting evidence in relation to each incident. The respondent submitted that in relation to each incident the Council's evidence was effectively unchallenged.

143. *Incident 1 – 10.00am 22 May 2022*

- The respondent provided statements, statutory declarations and affidavits from the witnesses it asserted were involved in this incident, and those three witnesses ([redacted], [redacted] and [redacted]) were available to give evidence at the hearing.

- The evidence of [redacted] is that she was walking her dog when she and her dog were attacked by two dogs she later identified as the applicants' Dogs. She was injured on her left forearm, both knees, left upper thigh and right lower leg, and the dog was also injured. She required treatment from a doctor and the dog required immediate veterinary treatment. [redacted] affidavit is accompanied by an account and medical records from the veterinary service which treated her dog on 22 May 2022, and photographs of her injuries (to her arm, her knees, and her legs), and photographs of the dog's injuries and treatment.
- The evidence of [redacted] and [redacted] is of witnessing the attack by both the Dogs. [redacted] and [redacted] are (separate) neighbours, who heard the attacks from their homes and came to assist. Both identify the Dogs involved in the attack as the applicants' dogs. Both describe the attacks in a broad manner consistent with [redacted] account.
- [redacted] states that he heard a woman nearby calling out something like "Koda" and he spoke to the woman who said she was looking for her dogs, who she described. Mr [redacted] states the description matched the dogs he had seen involved in the attack. At about the same time a car was driven by a male person slowly down the road where the attack occurred. [redacted] states that he spoke to the male driver and said his dog had attacked another dog. [redacted] states that he took a photograph of the car with its registration number, and the woman got into the car and it drove off.
- It is conceded by the applicants that the car involved was the motor vehicle registered to [redacted].
- [redacted]' mother, [redacted], gave evidence that she had seen [redacted] with the dogs both at a friend's house and at [redacted]' home on the morning of 22 May 2022. However she could not remember the times when she had seen the dogs with [redacted].
- The applicants asserted this incident did not occur at all, and that the accounts by the witnesses are fabricated. They state that [redacted] attended or presented a birthday party for her stepdaughter later that afternoon, and that in a video and photographs taken from a FaceBook posting, no evidence of any injury to [redacted], or to the dog, is apparent.
- The respondents did not deny the video showed [redacted] and was taken on 22 May 2022.
- The applicants also state that the veterinary account and medical records relating to the attack are either forgeries or fabrications from an earlier event at least two years ago.
- However I note that none of the applicants' assertions that the events of 22 May 2022 were fabricated have been put to any of the witnesses, and there has been no cross examination of [redacted] concerning the video provided by the applicants. I note in that video [redacted] is wearing clothing with elbow length sleeves which do not show the underside of her arms where the injury is said (and pictured) to have occurred. The photographs show a dog curled up on a sofa looking subdued, and a child patting the dog, looking concerned. However none of these circumstances is explained and there is no identification of the dog.

144. *Incident 2 – 10.05 am 22 May 2022*

- The respondent provided two statements and two statutory declarations concerning this incident.
- The first was from [redacted], who states he and his son were with their Maltese dog on a leash near or in their front yard and the Maltese was aggressively attacked by two dogs which each picked up his dog by the neck and shook it and then ran away. [redacted] described the Dogs, and identified them as the applicants' dogs. His dog had to be euthanised as a result of the injuries resulting from the attack. [redacted] had some scratches from the incident, and was concerned the dogs might also attack his son.
- A witness, [redacted], heard the attack from her house and came to assist. She described the attack consistently with [redacted] description, and also described the dogs. She identified the Dogs as the applicants' dogs.
- The applicants assert this attack did not occur. They submitted the dogs could not have reached the location of Incident 2 from the location of incident 1 in the 5 minutes it was alleged to have taken, and if their dogs had run so far so quickly they would not have been able to conduct the attack described.

145. *Incident 3 – 9.15 am 27 July 2021*

- The respondent provided two statements concerning this incident.
- [redacted] states that she was walking her child in a pram with her dog and accompanied by her mother at about 9.15 in the morning. She states the Dogs were at large and running in the street, and attacked her dog. She describes the Dogs. Her dog had to be euthanised as a result of the injuries caused in the attack. She states that her mother was bitten on the finger and required antibiotics and a tetanus injection, and the dog required emergency veterinary attention and the decision was made to euthanise the dog as a consequence of its injuries. Medical and veterinary notes and reports were provided.
- [redacted] lived nearby and heard the attack and came to assist. She described the attack consistently with [redacted] account, and described the dogs. She also provided some photographs, including of blood on the pavement where the attack occurred. They both identified the Dogs involved in the attack as the applicants' Dogs.
- The applicants state that this event was fabricated and did not occur. They state there is no record of [redacted] dog existing at all, as there is no record of its registration or being microchipped. They state the event could not have occurred as described because 27 July 2021 was during a COVID-19 lockdown period so [redacted] could not have been out walking with her child, mother and dog, and nor could [redacted] have been in the vicinity.
- In addition the applicants state that if this incident occurred it could not have involved their dogs.
- Initially they told the Tribunal their dogs had been boarding with the RSPCA on 27 July 2021. RSPCA records establish that the dogs came into the RSPCA's custody only from shortly before 2.00pm that afternoon.
- The applicants then provided an affidavit from SAPOL in relation to an attendance at their premises that morning. The SAPOL affidavit indicates that police officers attended the

applicants' premises that morning at 10.00am, and [redacted] was present. They observed two dogs at the premises, unrestrained, but behind a secured gate.

146. *Incident 4 – 15 January 2021*

- [redacted] made a statement on 16 January 2021 concerning an attack on her dog as she was walking the dog on a lead in the street. She states that a large black dog ran out of a property (identified as the applicants' premises). The attack caused multiple puncture wounds to [redacted] dog. The dog required surgery and antibiotics as a result of the injuries from the attack.
- The applicants do not deny this incident, although they they disagreed with some aspects of [redacted] account. They state that the event was only a "scuffle" between the two dogs, and was only ever regarded as a minor event by the respondent Council, which issued expiation notices only in respect of the incident, and the applicants paid these.

147. The applicants also tendered evidence concerning the disposition of their dogs. They provided a number of statements indicating that the dogs were well trained, well cared for and friendly dogs, and also photographs showing the dogs with other animals and with children, and in ordinary domestic circumstances,. They submitted these all demonstrated and supported the view that the dogs were not dangerous in any respect, and well socialised and lived as part of a family environment, and were used to being safely with other people and animals.

148. I have very carefully considered this extensive evidence. I cannot disregard that the applicants, despite their assertions that the events upon which the respondent relies for the basis of the orders under review before the Tribunal were completely fabricated, nevertheless forwent by their own application the opportunity to present evidence demonstrating this, or to put these assertions to the witnesses, or challenge the evidence of the respondent's witnesses. The applicants objected to the written form of the witness evidence, but forwent the opportunity to challenge that evidence: all the witnesses were available and scheduled to attend the Tribunal hearing and the applicants could have cross examined them. They decided not to do so.

149. They also chose not to provide their own sworn evidence. This could have addressed the whereabouts of the Dogs at the time of each of the incidents (in particular Incidents 1 and 2); their account of the events involving their car at the location of Incident 1; the events of the morning of 27 July 2021; and the motivation and the purpose of the significant frauds by numerous people they allege, in respect of Incidents 1, 2 and 3; as well as give their own account of the events of Incident 4; and numerous other aspects of the Incidents. No evidence addressing these matters is before the Tribunal, and the Tribunal cannot make a decision based on unsubstantiated assertions, or make assumptions as proposed by the applicants.

150. The consequence of this lack of evidence from the applicants, coupled with their decision not to challenge the evidence presented by the respondent, means that in making findings of fact I am largely confined to the assessment of the credibility of the material provided by the respondent. Although the applicants have denied some of this evidence, and asserted it is not true, they have not tested it at all. While it is difficult to prove a negative, that is to prove something did not happen, they have chosen not to test the accounts given of the events.

151. They also face difficulties in that, having asserted that the incidents on 22 May 2022 and 27 July 2021 did not occur at all, they also want to assert that those incidents occurred differently.

Incidents 1 and 2

152. In relation to Incidents 1 and 2, I do not accept the applicants' assertions that the incidents did not occur and that the evidence presented as supporting them was fabricated.

153. I am satisfied that at about 10.00 am that morning, [redacted] and her dog were attacked unprovoked by two Dogs roaming at large, and [redacted] and her dog were injured, and both required medical treatment.

154. I accept [redacted] account of the incident as inherently believable and reasonable, and it is a clear account of a traumatic event. Her account is supported by separate statements of two independent witnesses who lived nearby, heard the commotion of the attack, and came to investigate and assist. The three accounts are consistent, bearing in mind this was clearly a frightening, traumatic and disturbing event which happened fairly quickly. There is absolutely no evidence at all before me to suggest the events have been fabricated or exaggerated.

155. I do not accept that the material posted on FaceBook on 22 May 2022, apparently showing [redacted] and family members in a domestic situation, is inconsistent with my finding that [redacted] and her dog were attacked in the morning of 22 May 2022. There is no explanation for how this material was obtained, or its genuineness. The information in this material has not been put to [redacted] for her explanation. The material does not show injuries to the woman or the dog in the photographs, but nor does it show lack of injury.

156. In the absence of any evidence from the applicants concerning this material, and of any opportunity for [redacted] to address this material, I am not prepared to accord any weight to it at all.

157. Nor is there any evidence or significant submissions concerning the veracity of the veterinary surgeon account and medical notes concerning the treatment of [redacted] dog on 22 May 2022. The applicants asserted these documents were either forged or falsified, on the basis of an assertion that [redacted] dog was 11 years of age, but the medical notes indicate the dog was 9 years of age. There may be various possible explanations for this discrepancy, and none of them has been put to the veterinary practice, [redacted] or the Council. There is no evidence as to who carried out this forgery or falsification, or why this would have occurred.

158. The applicants state that the photographs of [redacted] injuries and that of the dog are not dated and properly identified. I accept this, but this is a matter that could have been addressed or clarified in cross examination, which did not occur. There is nothing before me to suggest these photographs are not photographs of the injuries a result of the attack by the Dogs, and I accept that they are such photographs. They illustrate injuries quite consistent with the descriptions in the accounts by [redacted] and the other witnesses, and with treatment to the dog consistent with the account of the dog's injuries and the veterinary records and account.

159. I am also satisfied that the second incident occurred as described by the respondent. The statements of [redacted] and [redacted] are independent and consistent. They are inherently reasonable and believable. While the applicants cast some doubt on the timing of the second attack, there are various possibilities as to whether the times of each of the Incident 1 and

Incident 2 attacks are precise or accurate, but none of these have been put to those involved in the attacks.

160. The applicants gave a generalised explanation of why, in their view, Incidents 1 and 2 were "fabricated": namely, to give the Council an opportunity to obtain evidence against the applicants to use for another purpose. Their explanation is not, in my view, a credible explanation. In addition, the applicants gave no explanation as to how or why so many people – the victims, independent witnesses, medical practitioners and veterinary practices – would or could have participated in such a significant fraudulent activity, and I note again that all those who gave written statements concerning these incidents were available to appear before the Tribunal and be cross examined by the applicants, but ultimately did not do so because the applicants chose not to proceed with the hearing.

161. In relation to both of Incidents 1 and 2, each of the victims and the independent witnesses described the Dogs involved in the attacks. While not precise descriptions, they are broadly consistent and accurate. Each of the victims and witnesses have provided statements that the Dogs involved in the attacks are the Dogs in the photographs shown to them, identified as the applicants' dogs.

162. In relation to Incident 1, the identification of the Dogs as belonging to the applicants is also supported by the evidence of the car appearing shortly after the attack, and the woman looking for her dogs, matching the description of the Dogs involved in the attack. I am satisfied the man driving the car, who is clearly visible in the photograph taken by [redacted] on 22 May 2022, is [redacted]. It is not denied that the car the man is driving is registered to [redacted] and is her car.

163. I accept the evidence of [redacted] that the woman present at the time was calling something like "Koda", and told [redacted] she was looking for her dogs and described dogs similar to those observed by [redacted] in the attack on [redacted] and her dog. The woman got into the car with [redacted] and they drove off together. While this woman is not described, I am satisfied the woman was [redacted], and she was calling her dog "Dakota" (or some diminutive of that name). Neither [redacted] nor [redacted] provided any explanation for the presence of [redacted]' car or the events described by [redacted], which are also supported by [redacted]' evidence and photograph.

164. I am quite satisfied the Dogs involved in the attacks in Incident 1 and Incident 2 are the applicants' dogs Charlie and Dakota, in relation to whom the Destruction Orders have been made. I am conscious that this is an identification of significant seriousness, given the possible consequences of this identification, but in considering the essentially uncontradicted evidence before me I am comfortably satisfied the identification is correct.

165. I note the witnesses who identified the Dogs were not shown a "line up" of dogs (by way of photographs) when asked to identify the Dogs involved in the attacks. They were only shown a photograph of the applicants' dogs. However, I note that the descriptions given by the witnesses are broadly consistent, and all the witnesses are confident in their statements that the photographs are of the Dogs involved in the attacks. The attacks occurred in daylight and over a period of time, and all the witnesses had a good opportunity to see the Dogs. The confidence of their identification has not been tested by the applicants, other than by their assertions. In the circumstances I am satisfied this was an adequate means of establishing the identification of the Dogs. I note the applicants raised the possibility that there were other dogs roaming at large in

the vicinity, but they did not present any clear evidence of this other than raising this as a possibility.

166. The applicants asserted from the outset of these proceedings that they would provide "alibi evidence" in respect of the Dogs, saying their dogs were elsewhere at the time of the alleged attacks. They did not provide any such evidence, other than through the very vague evidence of [redacted], who said she had seen the dogs in the company of [redacted] in the course of the day on 22 May 2022, including in the morning, but she was unable to be precise in terms of time. This evidence did not take the matter any further in relation to this issue. The applicants presented no evidence as to the location of the Dogs at the times of the attacks.

167. I am satisfied it was the applicants' Dogs which were involved in Incident 1 and Incident 2, and perpetrated the attacks on the person and dog victims in those attacks.

Incident 3

168. In relation to Incident 3, I do not accept the applicants' assertions that the incident did not occur and that the evidence presented as supporting it was fabricated.

169. I am satisfied that at about 9.15 am that morning, [redacted] was walking with her child in a pram, her dog on a lead, and her mother, and her dog was attacked by two dogs which were at large. [redacted] mother suffered some injuries and required medical treatment, and [redacted] dog was injured and as a result of its injuries had to be euthanised.

170. I accept [redacted] account of the incident as inherently believable and reasonable, and it is a clear account of a traumatic event. She has provided the veterinary notes concerning the treatment for the dog on the same date as the attack. Her account is supported by a separate statements by an independent witness, [redacted], who lived nearby, heard the commotion of the attack, and came to investigate and assist. The two accounts are consistent, bearing in mind this was clearly a frightening, traumatic and disturbing event which happened very quickly. Both accounts include consistent descriptions of the dogs involved in the attack, and both identified the applicants' dogs as the Dogs involved in the attack. There is absolutely no evidence at all to suggest the events have been fabricated or exaggerated.

171. The applicants asserted this attack did not occur and that the dog attacked and subsequently euthanised did not exist at all. They submit that the veterinary notes are forgeries. I regard these assertions, which are unsupported, as completely preposterous. The applicants provided no supporting evidence and chose not to cross examine the witnesses to this incident, who were both available to give evidence at the hearing.

172. The applicants also submitted that this event could not have occurred because it was in a COVID-19 lockdown period. While I accept this was the case, my understanding of the lock down requirements is that they did not prevent people coming out of their homes to the street (which was [redacted] case), or of taking exercise within a prescribed area of their homes, with other members of their household. Even if it were the case that [redacted] and her family members were in breach of the requirements (which I am not suggesting was the case), this would hardly mean that the attack did not occur.

173. The applicants also submitted that if the attack did occur, it could not have involved their dogs. In the first place they told the Tribunal their dogs were boarding with the RSPCA on the date of the attack, and provided an email indicating this was the case. However, after further

evidence was obtained from the RSPCA establishing that the dogs were only with the RSPCA after about 2.00pm that day, [redacted] produced a police statement indicating that the police had attended the applicants' premises that morning at 10.00 am and saw two dogs at the premises, unrestrained but behind a locked gate. [redacted] was also at the premises.

174. I do not accept this material demonstrates that the Dogs involved in the attack on 27 July 2021 could not have been the applicants' dogs. I accept the applicants' dogs were secured at their premises from 10.00am that morning. There is no evidence as to where the dogs were prior to 10.00am. The applicants gave no evidence to disprove or even cast doubt on the evidence of the witnesses to the attack.

175. While the applicants do not have to disprove the facts as alleged by the respondent in support of its decisions, there needs to be some credible submission before the Tribunal to suggest that the decision based on the facts as the respondent asserts them is not correct or preferable. There may be no onus on the applicant in a matter of administrative review, but if the decision the subject of the review is based on a determination of facts by the decision maker, and those facts appear based on credible, believable and uncontested evidence, the grounds for setting aside the relevant decision is limited. The applicants in these circumstances need to cast doubt on the evidence the respondent has relied on by testing the evidence, or demonstrating it is wrong, or cannot be correct. The applicants have not done so in relation to Incident 3.

176. The respondent submits the location of Incident 3 is about 500 meters of the applicants' premises where the dogs were residing that day. There is no evidence as to where the dogs were prior to 10.00am that day. The witnesses both gave consistent descriptions of the dogs involved in the attack, consistent both with each other, and with the general descriptions of the applicants' dogs. The witnesses both stated that the Dogs in the photographs were the dogs that attacked them. These were the applicants' dogs.

177. The applicants denied they were aware of the attack on 27 July 2021, and indeed, they denied it occurred. I am satisfied it did occur, and it follows from that conclusion that the applicants must have known the Dogs had escaped, as when the police arrived at 10.00am the Dogs were back at the premises, secure behind a locked gate. They might have come back to the premises themselves, but one or other of the applicants must have secured the locked gate. I am satisfied the applicants were aware the Dogs had escaped from the premises on the morning of 27 July 2021, but I do not make any finding as to whether they were aware of the attack.

178. I am satisfied that Incident 3 occurred as alleged by the respondent, and that the Dogs involved in that attack were the applicants' dogs.

Incident 4

179. The applicants accepted that Incident 4 occurred, although they disagreed with the account given by the victim and owner of the dog attacked, [redacted]. The applicants described the "attack" as a "scuffle", and said it had clearly been regarded as a minor incident by the Council, as it was addressed by two expiation notices, and no order made against the Dogs. I note that only one of the Dogs was involved in this incident.

180. It is my view I do not need to make any further findings regarding Incident 4.

Are the Dogs unduly dangerous?

181. Having determined that the four incidents alleged by the respondent occurred in the matter asserted, and that the Dogs involved in those incidents were the applicants' Dogs, in determining of the Destruction Orders made in relation to the Dogs are correct or preferable decisions, I must consider if the Dogs can be characterised as "unduly dangerous" within the meaning of section 51 of the Act. It is only in relation to dogs that are unduly dangerous that the Council can exercise its power under section 50(1) of the Act to issue a Destruction Order.

182. In considering what amounts to an "unduly dangerous" dog, I note the applicants submitted their dogs were not dangerous at all, but were well trained, well looked after, well socialised, and friendly and good natured. They provided reference statements in support of these submissions, and photographs of the dogs with other people and animals. [redacted] gave evidence of the Dogs' good natures and their centrality in [redacted]' family. The applicant [redacted] spoke several times to the Tribunal of her care and concern for the Dogs and their importance to her.

183. I accept all this. It was quite clear [redacted] regarded the dogs as loved and cared for pets, and that they have been trained and are well socialised in their home environment, and when in her care and control.

184. However, I have also made findings that on at least three occasions, Incidents 1, 2 and 3, the Dogs when at large, not in the care and control of [redacted] or [redacted], have behaved aggressively, viciously and very frighteningly, and have caused the deaths of two dogs, significant injury to another, and injuries to the owners of the dogs they attacked. I note that in two of those attacks (Incident 2 and Incident 3) there were small children present who could easily have been the victim of the attacks.

185. What amounts to a dog being characterised as "unduly dangerous" within the meaning of the Act has been considered in other cases.

186. In *Clare and Gilbert Valleys Council v Crawford* ([2005] SADC 135), Judge Milsteed concluded that an "unduly dangerous" dog was one that presented a greater danger to people or animals than one that is only "dangerous", as the Act drew a distinction between them to the extent that "unduly dangerous" dogs ought to be destroyed. He suggested (at [74-77]) that

> *In order to pose a greater danger than a dangerous dog, to an extent warranting destruction, the dog must, at least, expose the public or other animals, to an appreciable risk of serious harm. In the case of people,* ***there must be an appreciable risk of serious harm to any person acting in a way in which a person may reasonably be expected to act in circumstances which may reasonably be expected to occur****.*

187. In *Hastwell v The City of Holdfast Bay* [2014] SADC 132 Judge Slattery also considered the meaning of "unduly dangerous". He considered that this matter "must be assessed in the whole of the background circumstances of the case under consideration", and concluded:

> *... it is the objective assessment of the disposition of the dog that is the key to the operation of the Act. That assessment must be made in the whole circumstances of the case and the background of the dog as it is known and the assessment of the dog on the day. This will include the assistance from any expert evidence.*

188. In this matter there was no expert assessment presented by either the applicants or the respondent. The applicants initially told the Tribunal they would present expert evidence on this matter from the veterinary surgeon, [redacted], who provided a brief report, and from an animal

behaviourist, but apart from [redacted] report, did not do so. The "references" provided for the dogs are limited in their application and do not amount to expert evidence. I have indicated that I accept this evidence concerning the general nature of the dogs when they are with their owners and family. There is however clear evidence, which I have also accepted, of the behaviour of the dogs when they are at large and unsupervised, and this demonstrates aggressive and vicious conduct causing serious harm.

189. In my view this evidence establishes that the dogs have displayed undue aggression and could and have caused injury through inflicting bite wounds and causing serious harm other animals or people.

190. Judge Milsteed in *Crawford* noted further that

> *Obviously, the legislature intended the words unduly dangerous to embrace dogs that presented a greater danger to people or animals than dangerous dogs and to the extent that they ought to be destroyed. But what is the test for determining whether a dog falls into that category?*

191. The conclusion, in both *Crawford* and in the later consideration by Judge Slattery in *Hastwell*, was that all of the circumstances and background of the dog must be taken into account, and that there must be *an appreciable risk of serious harm to any person acting in a way in which a person may reasonably be expected to act in circumstances which may reasonably be expected to occur.*

192. There are two aspects of the circumstances and background of these Dogs which in my view should be taken in to account in determining if they are to be regarded as unduly dangerous dogs.

193. The first is their domestic circumstances. I have already indicated that I accept that the dogs are loved, well cared for and trained, and well socialised and friendly with other dogs and people. However I can only be confident this is the case in the context of the dogs being in the care and control of the applicants. It appears the dogs are generally in the control of the applicants, and I note that very shortly after the Incidents of 22 May 2022 the applicants were out looking for the Dogs, suggesting they were keen and anxious to return them to their care and control.

194. The second however is the nature of the attacks which occurred in the first three incidents. Two dogs died as a result of these attacks; three people were injured; the attacks were completely unprovoked, in the open and in broad daylight where owners were walking their dogs; and in two of the incidents small children were at significant risk. The attacks were unprovoked. The attacks could not be described as anything other than vicious, traumatising and frightening.

195. I am of the view the attacks by the Dogs presented *an appreciable risk of serious harm to any person acting in a way in which a person may reasonably be expected to act in circumstances which may reasonably be expected to occur* – that is, walking a domestic dog during the day on a suburban street. That the Dogs when they are with the applicants do not present this appreciable risk of serious harm does not minimise the real risk of serious harm they present, and have caused, if they are at large.

196. For these reasons I am quite satisfied that the Dogs should be characterised as unduly dangerous.

197. The second limb of section 51 of the Act requires that the "unduly dangerous" dog must have *attacked, harassed or chased a person or an animal or bird owned by or in the charge of a person in circumstances that would constitute an offence against this Act.*

198. It is clear the Dogs have "attacked, chased or harassed" both people ([redacted], [redacted], and [redacted]), and animals owned by or in the charge of a person (their dogs). That was the feature of each of Incidents 1, 2 and 3, and it also occurred in relation to the conduct of one of the Dogs in Incident 4.

199. Did this behaviour by the Dogs occur in circumstances that would constitute an offence against this Act?

200. The respondents submitted the events of Incidents 1 and 2 (as the Incidents on which the Destruction Orders were based) would constitute an offence against section 44(2) of the Act, which makes it an offence for a person who owns or is responsible for the control of a dog, if the dog attacks, harasses or chases or otherwise endangers the health of a person or an animal owned by a person, whether or not actual injury is caused. The applicants in their final submissions concede that *If it was the case that these attacks did occur, the respondents would most likely be correct* in the conclusion that there was an offence under section 44(2) of the Act.

201. On the basis of the findings of fact I have made above, I am satisfied that the incidents do establish circumstances which would constitute an offence under section 44(2) of the Act, and I note that the applicants concede that, if the incidents did occur, that is likely to be the case.

202. Under these circumstances I am satisfied that the decisions under review, namely the Destruction Orders made on 7 July 2022, are correct decisions. The Dogs are unduly dangerous, and the conduct of the Dogs in Incidents 1 and 2 occurred in circumstances which I am satisfied would constitute an offence against the Act.

203. In reaching this conclusion and making my findings of fact above, I am conscious of the need to be satisfied on the balance of probabilities, and in considering the evidence bear in mind the principles set out in *Briginshaw v Briginshaw(*(1938) 60 CLR 336). These findings have very serious consequences, but I am satisfied the evidence is strong and clear, and overwhelmingly supportive of these findings of fact.

204. The remaining issue is whether the decision is a preferable decision.

205. Whether a correct decision is preferable arises where the decision maker has a choice in determining the decision which can apply in the circumstances. In considering if a decision is preferable the Tribunal must take into account all the circumstances of the matter, as well as the purpose and legislative scheme of the Act. In addition, the Tribunal must consider the circumstances as they are at the time the Tribunal is making the decision, not necessarily the circumstances at the time the decision under review was made.

206. The Tribunal is also required to give appropriate weight to the decision of the original decision maker (see section 34(4) of the SACAT Act).

207. Clearly there was a range of possibilities open to the original decision maker in this matter. The decision maker could have selected a lesser Order than a Destruction Order. The issue here is whether this would have achieved the purpose of the Act in the circumstances of this matter.

208. The purpose of the Act is to encourage responsible dog and cat ownership; reduce public and environmental damage caused by dogs and cats; and to promote the effective management of dogs and cats (see section 3 of the Act). In this context the preferable decision must address these objects, supporting responsible dog ownership and effective management of dogs.

209. [redacted] submitted that taking into account the unprovoked nature of the incidents and the viciousness and seriousness of the attacks, the Destruction Orders constituted the preferable decisions in this matter.

210. I am satisfied that the Destruction Orders do represent the preferable decision in this matter. It is indeed a very serious matter to make a Destruction Order, but in circumstances where the Dogs have escaped from the control of their owners, and engaged in unprovoked attacks on members of the public causing injury and death to other dogs, and injury to persons with those dogs, to achieve the purposes of the Act and to ensure public safety it is necessary to put in place orders that will address the risk to the public and other animals. While there are other less draconian orders available to the Council, the decision maker must consider how effective such a lesser order might be in achieving the same end.

211. [redacted] submitted the applicants had not demonstrated good faith in pursuing the conduct of the review of these orders. In particular, he submitted that the applicants had shown no concern or remorse concerning the effects of the Dogs' attacks, or to take any responsibility for the Dogs' conduct and its impact. He submitted there was nothing in the applicants' submissions to or conduct before the Tribunal that could give the Tribunal confidence they would or could comply with a lesser order than a Destruction Order. He submitted further that nor were the Dogs suitable for rehoming due to the viciousness and seriousness of the attacks.

212. I am satisfied that the Destruction Orders are the preferable orders in this matter. I accept [redacted] submission that the applicants have given no indication in their submissions to the Tribunal that they take any responsibility for the Dogs' conduct or its consequences. Their case was essentially constituted by assertions, unsupported by any evidence, of a giant conspiracy involving at least 8 members of the public (the victims and witnesses), the Council and some of its employees, the Council's solicitor, and the medical and veterinary services which provided treatment and care to the human and animal victims of these attacks. Having made the assertions of conspiracy and fraud, the applicants did not either provide evidence in support of their allegations, any clear motivation for the alleged conspiracy, or put the assertions to any of the witnesses.

213. In my view the assertions of conspiracy and fraud are outrageous and preposterous, and this conclusion does influence my view concerning the applicants' possible willingness or capacity to comply with a lesser Order than a Destruction Order. This leads me to the conclusion that in Order other than a Destruction Order would be ineffective in reducing the danger posed to the public by these unduly dangerous dogs.

214. While accepting that the Dogs are a loved part of [redacted]' household, I note that neither she nor [redacted] expressed any regret or concern, or showed any empathy, for [redacted] or [redacted], whose dogs had to be euthanised following the shocking and violent attacks on them by the Dogs, or [redacted], whose dog was injured and required urgent veterinary treatment.

215. Accordingly, I consider that the decision made by the Council on 7 July 2022 is both the correct and preferable decision, and should be affirmed. The Council should not however proceed to have the dogs destroyed until after the expiry of the period during which [redacted] and [redacted] can seek to appeal in relation to this decision under section 71 of the SACAT Act, and I shall stay the execution of this order until the expiration of the period within which an appeal to the Supreme Court may be made.

The Applicants' request for my recusal

216. After the hearings in this matter were completed, and the parties were filing and exchanging submissions and other material as agreed after the decision was made by the parties to have this matter determined on the papers, the applicants made two requests that I recuse myself.

217. The first request I refused, not having been provided with any reasons why the request had been made. In my view I had no actual or perceived conflict of interest and was unaware of any other basis for the request.

218. Subsequently I was advised by the Tribunal Registrar that a further request had been made that I recuse myself from the determination of these applications. The request was not made directly to me but directed to the Tribunal. The Registrar provided me with a summary of the applicants' reasons for their request. I again refused the request, providing the Registrar with my reasons.

219. Most of the matters raised by the applicants have been addressed above in this statement of reasons, but I will also address them here in this specific context. The reasons the applicants sought my recusal appeared to me to relate principally to matters relating to the admission of evidence, and the broad conduct of the hearing.

220. There were no allegations of lack of independence or conflict of interest on my part, or of bias or apprehended bias. Rather, the reasons raised by the applicants appeared to indicate they disagreed with my application of legal or procedural principles. I shall briefly address these matters for the sake of completeness.

221. The applicants raised the following matters:

- *Failure to grant extensions of time where sought by the applicants*. All extensions of time for the lodgement of materials sought by the applicants were granted by me, being aware the applicants were not legally represented. The only extension of time not granted was for an indefinite extension of time within which to file their final response submission, until a new Tribunal member was assigned to determined the matter. A brief extension of time was granted, with which the applicants did not comply, but in any event the material filed (a week after the extended date) has been taken into account in this determination.
- *I expressed views concerning the evidence the applicants sought to provide the Tribunal*. The applicants asserted in various oral and written submissions that the Respondent has not provided any reasons for its decision or provided any evidence. I told the applicants this was not the case. The Respondent provided a statement of reasons for the decision under review, as well as the section 35 documents, numerous and extensive witness statements and other evidence. The applicants' view was that this material was inadequate to support the respondent's case and accordingly amounted to no evidence or

reasons at all. That the applicants did not consider these reasons adequate to support the decisions is a matter for the applicants to address in their submissions.

- The applicants state *I wrongly expressed the view that the applicants are required to establish the proof of facts they assert*. The applicants submitted that in matters of administrative review there is no onus of proof, and I accept this is the case in a general sense. The role of the Tribunal is to make the correct or preferable decision. However, where a party asserts the truth of a fact or matter, there is an onus on that party to establish that, on the balance of probabilities. The Tribunal in making an assessment of the evidence will consider the principles expressed in *Briginshaw v Briginshaw (*(1938) 60 CLR 336), so the more serious the allegation or consequences, the more compelling the evidence should be to satisfy the balance of probabilities. I drew this requirement to the attention of the applicants on a number of occasions, and the applicants disagreed with my view that they should present evidence and submissions in support of their assertions concerning the facts as they alleged.
- *I permitted unsworn affidavits to be accepted as evidence in the hearing of this matter, and that I had allowed into evidence from the respondent "that would not be admissible in any Court or Tribunal in Australia".* I have addressed this matter above in the consideration of the evidence before me. In my view the applicants misunderstood the nature of the evidence the Tribunal can take into account, and did not appreciate the assessment of material on the basis of its weight and probative value.
- *I rejected as relevant "100% undoubtable video evidence that the events with at least one incident did not occur".* I understand this to be a reference to the material extracted from a FaceBook posting, which the applicants asserted was relevant to Incident 1. At the hearing on 15 November 2022 I indicated to the applicants they should provide evidence and make submissions supporting the identification and explanation of the events in the material, and the weight to be accorded to this evidence would depend on those matters, and that the material in itself was of little value without that context. At that stage of the hearing it was expected that the applicants would be giving evidence and cross examining the witnesses.
- *I allowed the respondent "to abuse the Tribunals [sic] power for an improper purpose. Just to access documentation held by SAPOL".* I understood this complaint to refer to the issue of a witness summons to SAPOL for production of material relating to SAPOL attendance at the applicants' premises on 27 July 2021. This is addressed above. I considered the purpose of the summons, to determine if there was evidence concerning the location of the Dogs, and the time the Dogs were present at the applicants' premises, was a proper purpose for the issue of the summons, and I dismissed the applicants' objections on this ground and that they had put the material before the Tribunal and the respondent in the course of the hearing. I am unaware, despite the applicants' assertions, of any other purpose for which the information was sought in the summons, and the applicants have, despite their assertions, never articulated this.

222. I carefully considered all these issues raised in the summary of the material from the applicants which was provided to me, and concluded that none formed a basis for my recusal. I concluded the matters raised by the applicants did not demonstrate any issues of lack of independence or bias, actual or apprehended, but rather disclosed a misunderstanding of the

nature of the proceedings and of the assessment of evidence necessary in the context of administrative review.

Orders of the Tribunal

1. The decisions are affirmed.

2. The operation of the decisions is stayed until the expiration of the period within which an appeal to the Supreme Court may be made.



COUNCIL ASSESSMENT:

Date: 24th May 2023

Overview:

Assessment Credentials: conducted by [redacted] *(Cert IV Companion Animal Training & approved DCMB Trainer & Assessor)*.

Assessment Request: received from [redacted], Team Leader Administration & Regulation located at the Campbelltown City Council.

Assessment purpose: Comprehensive behaviour assessment in response to active Council Destruction order.

- Incident(s) date and time:
  - 22nd of May 2022 – *known as 'attack one'*
  - 22nd of May 2022 – *known as 'attack two'*
  - 27th of July 2021
- Dog(s) being assessed: (2)
  - Dog 1: Name Dakota
  - Dog 2: Name: Charlie
- Supporting Information regarding ownership and current circumstances
- Known address of dogs:
  - Not disclosed
- Current circumstances of the dogs:
  - Currently Held: Animal Welfare League – Charlie at Wingfield, the other dog, Dakota is at Edinburgh North
  - Current owner: [redacted]
  - At the time of assessment, Dakota and Charlie are being held at the above under a Destruction order.
- Description of the Incident which resulted in the Destruction order of the dogs:
  - Damage Caused: 3 separate attacks
  - Actions of the Council: Requirement to conduct external assessment of both Dakota and Charlie
  - Orders placed: Destruction Order on both dogs Dakota and Charlie

SECTION 1: DETAILS OF THE SUBJECT

Dog (1):

- NAME: Dakota
- BREED: Rhodesian Ridgeback x
- DOB/ AGE: 1/3/2015
- SEX: Female Desexed
- COLOUR: Tan with Black muzzle
- MICROCHIP NUMBER: 9530 1000 0297 517

Dog (2):

- NAME: Charlie
- BREED: Labrador Retriever x
- DOB/ AGE: 7/3/2017
- SEX: Male Desexed
- COLOUR: Black with a small white fleck on chest
- MICROCHIP NUMBER: 9001 6400 1554 218

Documentation Provided:

- The following documents were provided:
- SACAT Book of Documents – 98 various documentations
- SACAT Order - Hearing held on various dates re [redacted] and [redacted]

Brief history provided:

- Injuries inflicted from incident sustained by Dakota and Charlie
  - Attack (1) perpetrated on an unfamiliar dog resulting in significant injuries. Treatment requiring in emergency veterinary attention and care
  - Attack (2) perpetrated on an unfamiliar person causing multiple injuries (cuts and lacerations) requiring medical treatment.
  - Attack (2) perpetrated on an unfamiliar dog resulting in severe internal and external injuries resulting in humane euthanasia under veterinary guidance and recommendation
  - Attack (3) perpetrated on an unfamiliar dog resulting in severe internal and external injuries. Response required a humane euthanasia under veterinary guidance.
  - Attack (3) perpetrated on an unfamiliar person, resulting in puncture wound on the person's finger requiring medical treatment
  - Inter-dog aggression between Dakota and Charlie at AWL
    - Injuries sustained to all involved
    - Details provided below

Statements provided:

1. [redacted]
2. [redacted]
3. [redacted]
4. [redacted]
5. [redacted]
6. [redacted] CEO (current), Animal Welfare League

- At the time of the incident the details of Charlie and Dakota were as follows:
  - Owner's Name: [redacted]
  - Address: N/A
  - Length of Possession: Dakota and Charlie; were both 'adopted' in
  - Obtained From: Shelter – one dog was bought from rescue organisation 'Scruffer Lovers'
  - Previous training conducted:
  - Charlie:
    - Private training with 'Sit, Drop, Stay'
    - West Torrens Obedience Level 3
    - Para Districts Dog training
    - 'Polite Pooch' Adelaide Behavioural Training
    - Dakota:
      - Completed bronze level obedience training 2017
      - Para Districts Level 3 Dog training
      - Agility training

- *Information given to [redacted] about Charlie and Dakota since being housed at AWL, provided via kennel record-keeping by AWL staff:*

Observations by AWL signed by [redacted], CEO (previous) of Animal Welfare League:

- Charlie has been noted to have a 'prey drive'
  - Fixated on a rabbit that was in an adjacent cage in the vet's room
  - A dead possum had been found in Charlie's pen in the morning, the possum had died from the injuries caused by Charlie
  - The possum had been completely decimated and severed
  - Charlie appeared to be resource guarding the possum's carcass
  - Kennel check prior to the incident, there were no possums present in Charlie's kennel
- Both dogs' behaviour was noted as being 'friendly' at the AWL – it appeared that the staff were able to have a positive interaction with both dogs, without the presence of stimuli that causes both dogs to react.
- On the 12th of May 2023 an incident between Dakota and Charlie occurred, this was explained in a report written by [redacted], CEO Animal Welfare League.

- I also had a conversation with [redacted] and [redacted] on Wednesday 31st of May 2023 at AWL Wingfield:
    - Dakota had been transferred to the Wingfield Shelter from Edinburgh Nth facility on the day I was scheduled to visually assess Dakota and Charlie
    - The Behaviour & Rehabilitation Manager, [redacted] and Behaviour Officer, [redacted] made the decision to re-introduce Dakota and Charlie together
        - *Please note – this was not instructed or suggested by me,* [redacted]
    - As stated, there was a 'positive and friendly' interaction between Dakota and Charlie while being on lead and managed
    - It was then decided to unleash Dakota while keeping Charlie on lead
    - According to the report, Dakota then approached Charlie (on lead) and jumped up on Charlie causing the lead to become intwined between the two dogs
    - It is undetermined what exactly occurred to initiate the aggressive reaction from both dogs
    - The 'fight' was described as 'intense and strong' by [redacted] and [redacted]
    - The 'fight' was physically stopped (separating the two dogs) by [redacted], Dakota and Charlie did not choose to separate from each other, neither dog disengaged
    - Injuries were sustained by all that were present at the incident:
        - Charlie's ear was bitten – requiring veterinary treatment at AWL
        - Dakota's front leg was bitten and torn – requiring emergency treatment at SASH
            - Both dogs requiring sutures and after care
        - [redacted] – had part of her left thumb severed (unable to be reattached), requiring emergency treatment and aftercare
        - [redacted] – received treatment from GP Clinic for a reaction from blood splatter entering her eyes
            - *Both* [redacted] *and* [redacted] *have returned to work at AWL.*

SECTION 2: RELEVANT DEFINITIONS

FIDDLE SIGNS:

- These are displacement behaviours show during times of experiencing negative emotions such as conflict, tension, stress, anxiety, high arousal, confusion and frustration. These behaviours serve the purpose of self-calming, appeasement, diffusing conflict, and communicating to others that an individual does not wat to interact and are an external outlet for internal emotion.
- In dogs these most commonly include averting eyes, turning the head away, blinking, licking lips/ tongue flicking, yawning, shaking off and pretending to sniff the ground.

STRESS SIGNS:

- These are behaviours or body language exhibited (usually subconsciously) during times of experiencing stress and negative physiological arousal. These indicate the animal is experiencing highly unpleasant emotions e.g. anxiety, fear, pain, apprehension and worry and reflect that the animal is not comfortable/ not coping in its environment. These signs are associated with activation of the sympathetic nervous system.
- In dogs these signs can include: panting, cheek puffing, jaw chomping, pacing, increased motor activity, vocalisation (whining, barking, howling), muscle tension/ rigid muscles, tension and tight facial expressions, ears pulled or pinned back, wrinkling at the cornices of the mouth and brow, wide dilated pupils, stiff wagging tail or a tail tucked between the legs.

AGGRESSION:

- A threat of physical harm or actual physical harm in response to a perceived threat or contest. This is associated with unpleasant aversive emotional experience involving fear and anxiety.
- In dogs this may be characterised by any or all of the following: low growl, stiff rigid body, brief freeze, hard stare, alarm or defensive barking, lip lifting, snarling, snapping or biting.

AROUSAL:

- This refers to a certain level of physical, physiological and psychological alertness or activity.
- Low arousal levels are associated with deep relaxation, sleep or sedation.
- Moderate arousal levels are required for normal functioning and is characterised by an appropriate balance of the sympathetic and parasympathetic nervous systems.
- High arousal levels are associated with times of intense emotions such as excitement, or anxiety/ stress/ fear. It involves excessive activation of the sympathetic nervous system.

HYPER-VIGILANCE:

- This refers to a state of excessive monitoring and scanning of the environment in an attempt to gather more information on potential or imagined threats.
- In dogs, hyper vigilance is described where dogs are tensely, rapidly or manically searching, exploring and observing the environment on high alert as if waiting for or expecting something.

ANXIETY:

- This refers to a mood state whereby an individual's actions are based on the perception that there is a potential threat or impending danger. It is an inherently aversive negative emotion that involves complex interplay of neurochemicals and hormones and initiates the physiological stress response. Anxiety involves high levels of physiological arousal. It is not under conscious control in animals.
- During times of anxiety, individuals have trouble thinking and learning due to increased activity within the amygdala and locus ceoruleus of the brain and decreased response by the cerebral cortex.

SECTION 3: THE BEHAVIOURAL ASESSMENT - DESCRIPTION

The following is an explanation of the behaviour assessment that was performed.

Disclaimer: It is important to note that a behavioural assessment is a result taken from an examination performed at a particular time and in a specific environment. The assessment is the culmination of subjective and objective observations of the animal's behavioural tendencies and some of its potential behavioural outputs. The behavioural assessment does not necessarily correlate to or reflect the actual incident/s that the animal was involved in, which occurred at a different time and different environment. The outcomes of the behavioural assessment may not correlate with the future behavioural choices and patterns of the animal when placed in different contexts.

a) People present during the assessment 31st of May 2023 at 3pm, at AWL Wingfield SA:

- [redacted]
- [redacted] – General Inspector, Campbelltown City Council
- [redacted] - Behaviour & Rehabilitation Manager, AWL
- [redacted] - Behaviour officer, AWL

b) **Outline of the assessment:**
The assessment was performed by observing the behaviour of the dog in the following situations:

- From a distance while the dog was inside its kennel enclosure, and we were outside of the kennel.
- When an unfamiliar person approached the kennel door.
- When an unfamiliar person walks past and ignores the dog, followed by walking past and engaging in eye contact with the dog,
- Allowing the dog to explore the room when on a leash.

*In this case, the majority of the behavioural assessment was **unable to be performed as planned due to the incident that occurred on 12th of May**. As detailed later, 'Dakota and Charlie' showed moderate arousal and low / moderate aggressive behaviour during the course of his assessment, and therefore we could not have proceeded safely and would have jeopardised the health and welfare of both the interacting person and 'Dakota and Charlie'.*

c) **Context and setting:**

- Describe the environments involved e.g.
  i. Kennel
     - Dakota was enclosed in a large double pen at AWL – as per video
  ii. Outdoor area
     - Charlie was enclosed in the assessment room/yard, on lead managed by [redacted] – as per video

d) Video evidence:

- *In this case, the majority of the behavioural assessment was **unable to be performed as planned due to the incident that occurred on 12th of May**. As detailed later.*

SECTION 4: RESULTS OF THE BEHAVIOURAL ASSESSMENT:

ASSESSMENT FOR CHARLIE, ASSESSMENT ROOM/YARD:

a) Observation from a distance

i. Refer to video

Position	Standing on lead
Body language	When distracted, loose walking (pain, limping front left paw) When focussed on myself and [redacted] – direct hard stare, tense, mouth closed, straight out tail with fast wag, aroused – then distracted and managed by [redacted] Charlie then became focussed on myself and [redacted], barked, growled attempted to move closer towards us, would not consider to be friendly or safe at that moment. Decided to leave and to not engage any further with Charlie.
Vocalisation	Low bark, with growl,
Arousal level	Low/**Moderate**/High
Fiddle/stress signs	On lead and managed by [redacted], disengaged when offered by [redacted] – use of treats
Willingness to interact	None/**Low**/Moderate/High – did approach me, I allowed him to sniff then [redacted] redirected him back to her. I did not feel safe to pat him therefore I chose not to physically touch him.
Aggression	None/Low/**Moderate**/High
Taking treats?	Not offered/**Yes**/No

ASSESSMENT FOR DAKOTA, ASSESSMENT KENNEL:

a) Observation from a distance

ii. Refer to video

Position	[redacted] entered the kennel
Body language	Friendly and social with [redacted], appears to have a bond with familiar staff, however Dakota did fixate on myself and [redacted] which caused her to react towards us – stare, barking and growling. Dakota is also in pain due to the injuries sustained to her front right leg from Charlie on the 12th of May.
Vocalisation	Not captured on video – barking towards [redacted] and myself
Arousal level	Low/**Moderate**/High
Fiddle/stress signs	Managed by [redacted], engagement when offered by [redacted] – use of treats – Dakota did a shake off, hard to determine as she had a cone around her head.
Willingness to interact	None/**Low**/Moderate/High – towards me
Aggression	None/**Low**/Moderate/High
Taking treats?	Not offered/**Yes**/No

SECTION 5: CONCLUSIONS & RECOMMENDATIONS

CONCLUSIONS OF THE BEHAVIOURAL ASSESSMENT:

Behaviour is typically determined by a combination of genetics, learning from previous experiences and the current environment.

To evaluate any behaviour and the likelihood of recurrence, the above factors and history are important and need to be considered in the context in which the behaviour occurs.

- The factors to consider are:
  - *In order to evaluate any behaviour, and the likelihood that it will be repeated, all the above factors are important and need to be considered in the context in which the behaviour occurs. For aggression, relevant factors include age of onset of aggression, duration of aggression, frequency of aggression, intensity of aggression, response to aggression, and the context in which the aggression occurred, i.e., was there any provocation. These factors also need to be considered when deciding if the dog is dangerous. It is important to recognise that aggression is a normal behaviour of all species, and the appropriateness or social acceptance of this behaviour is context specific.*

- When referring to the above statement and comparing them to the three individual attacks caused by Charlie and Dakota:
  - ***Duration of aggression;*** the three attacks lasted until there was either no longer a perceived threat from the unfamiliar dog (victim) or the owner of the dog being attacked was able to intervene to redirect the dogs away – using force and physical separation
  - ***Response to aggression****;* as per witness statement, the dog(s) being attacked by Dakota and Charlie were on lead and were **not reacting aggressively** towards Dakota and Charlie prior to being attacked. The victim dog(s) were reacting to being attacked, therefore can increase the arousal and level of intensity of aggression being used at that moment by Dakota and Charlie.
  - **Frequency of aggression;** Charlie has previously attacked another dog there were fines issued but no report. Charlie and Dakota have been identified as being responsible for two separate attacks within approx.10mins of each other on the same day. The third attack occurring on 27th of July 2021.
  - **Intensity of aggression;** two of three dogs attacked were humanely euthanised due to the severity of the injuries inflicted by Charlie and Dakota. The third dog received emergency treatment, surgery and ongoing care due to the severity of the injuries caused by Charlie and

Dakota. The owners of the dogs being attacked also sustained injuries caused by Charlie and Dakota either by; redirected aggression or trying remove their dog away from Charlie and Dakota. *These incidents were classed as level 5 & 6 as per DCMB's Incident Severity Scale Guideline.*

- **Context in which the aggression occurred;** the three individual attacks happened in what appear to be without provocation. The three victim dogs were:
    - All on lead
    - Under effective control of their handler at the time
    - Not displaying any reactivity prior to being attacked
    - Not near the home or territory of Charlie and Dakota
    - Did not seek out Charlie and Dakota or did they have the opportunity to escape – being on lead.

- There are many different categories of aggression but broadly they can be divided into aggression in relation to protection of self and resources and predatory behaviour. Predatory behaviour is that used to catch and kill for food. It is characterised by a lack of vocalising or threat behaviour before the attack. ***If dogs have a social bond, they may both attack although*** whether this is behaviour similar to the co-ordination seen in group hunting animals such as wolves and lions is not clear.
- Understanding ***'Predatory Behaviour'*** in dogs:
    - Predatory behaviour is not emotionally motivated
    - There is a 'predatory sequence' of events leading up, these can include:
        1. *Stare*
        2. *Stalk*
        3. *Chase*
        4. *Grab*
        5. *Bite*
        6. *Kill – please note Charlie was able to fulfil this sequence of predatory behaviour (without interference) in relation to having the opportunity in killing a possum that entered his kennel.*

- In relation to the AWL staff noting that Charlie and Dakota appeared to be 'friendly, social' and engaging with the staff in a friendly manner may be due to that dogs are able to identify individual humans with whom they have contact with. They are also able to identify and react differently to sight and smell of familiar people. They also can learn to react aggressively or fearfully when encountering individuals who have frightened or hurt them or the environments where they have experienced fear, pain or other negative emotions.
- In a shelter environment such as AWL, both Charlie and Dakota have built up a bond and positive association with regular staff – *as seen in the video*. These staff members would be supplying both Charlie and Dakota with food (valuable resource), attention, warmth, comfort, shelter from the elements

and a predictable routine. Therefore, the staff would not be perceived as threat but something that brings a positive association – so, no aggressive reaction/response was required from Charlie or Dakota.

- The injuries sustained by [redacted] and [redacted] were due to trying to physically separate Dakota and Charlie during that intense moment
- The aggression and fighting were not directed at [redacted] or [redacted], they were injured due to physically intervening between two fighting dogs: Charlie and Dakota.

CONCLUSIONS DRAWN FROM THE INCIDENTS; BEHAVIOURAL ASSESSMENT & SUPPLEMENTARY INFORMATION PROVIDED:

- The incidents leading to this assessment resulted in causing the death of two dogs and severely injuring a third. Also injuring the people that were present at the time of the incidents.
- The documentation provided suggests that when Charlie and Dakota are not in a controlled and managed environment they choose to seek and fulfil their predatory behaviour.
- All incidents demonstrate that Charlie and Dakota lack any sort of impulsive control to stop at anytime when an unfamiliar dog appears to be non-threatening or fearful when in their presence.
- Charlie and Dakota have an unknown history (by [redacted]) prior to the reported incidents to the council. The information provided to [redacted], it has been a combination of council documentation and visual assessment of both dogs at AWL on 31st of May 2023.

RECOMMENDATIONS:

- In my opinion, I am in full support of the Campbelltown Council's decision to enforce the Destruction Order on both dogs named Dakota and Charlie owned by [redacted].
- There is no room for human error with Charlie and Dakota – *as clearly demonstrated on 12th of May 2023 at AWL, Wingfield SA. This incident will also determine that Charlie and Dakota may not be able to live together in the same household in the future.*
- *The only way to ensure that Charlie and Dakota are never able to cause further harm to another dog or person is for them to be humanely euthanased.*
    - Dakota and Charlie's history represents a serious threat to the community and anyone who walks a dog in a public place.
    - It should be noted that, based on the information provided by council documentation, Dakota, and Charlie's current owner:
        - Have not taken responsibility for Dakota and Charlie and the behaviours they have shown.
        - Has not appreciated the risk Charlie and Dakota poses to public safety by failing to secure them both in her property, after the first attack on 27th of July 21. I have no knowledge of her having implemented any measures to reduce their ability to escape

the property since the first attack on 27th of July 21. This would include suggestions such as locked enclosures, tethering to an anchor point or installing an extra self-locking gate by the front door.

- Again, there is no room for human error with Charlie and Dakota. Placing Charlie and Dakota in a new home:
    - This is NOT recommended. Charlie and Dakota are not suitable for rehoming.

If you have any further questions regarding the behavioural assessment, please do not hesitate to contact me.

Kind regards,

[redacted]

Certificate IV in Companion Animal Training

Approved accredited trainer by the Dog & Cat Management Board

Due to the restricted behavioural assessment procedures carried out, it is vital in this case to consider the history of the reported incidents in conjunction with the behavioural assessment.