

Considering Applications to Keep Excess Dogs – Section 26 of the Dog Act 1976

By Tim Beckett

Introduction

Local governments are frequently required to consider applications to keep more than the prescribed number of permitted dogs at a residential premises, which necessarily requires a balancing act between the potential benefit to the applicant and the potential adverse effects on neighbours. In the recent decision of **Whitehead and City of Swan** [2019] WASAT 124, the State Administrative Tribunal (**Tribunal**) affirmed a decision by the City of Swan to refuse an application to keep more than the prescribed number of dogs under the *Dog Act 1976* (**Act**). In doing so, the Tribunal reflected on the matters relevant to that assessment process.

General principles

Section 26(1) of the Act provides that a local government may, by a local law, limit the number of dogs that have reached three months of age that can be kept at a premises. Section 26(3) of the Act further provides that a person may apply to keep more than the prescribed number of dogs and a local government may grant that application if it is satisfied that it is appropriate to do so and subject to any appropriate conditions that may be imposed. Furthermore, a local government cannot authorise the keeping of more than 6 dogs that are 3 months or older unless the relevant property is an approved kennel establishment.

Typically, a local government will, by an appropriate law, prescribe that up to 2 dogs may be kept at a premises without an exemption having been granted under section 26(3) of the Act. In some cases, local governments allow a greater number of dogs to be kept on land which is appropriately zoned and of a suitable size.

The Tribunal has previously stated that there is no automatic right to keep additional dogs at a property. In **Corrigin and Shire of Northam** [2009] WASAT 140, the Tribunal stated:

'A local government, considering an application for an exemption from a local law limiting the number of dogs which may be kept on a property within its jurisdiction, must deal with the application in a practical way. It cannot be expected that the local government will carry out a protracted enquiry or hearing in order to determine applications of this nature. It is appropriate to act on submissions from neighbours, as was done in this matter. Where there are a number of objectors, and the grounds of objections are consistent and will constitute valid grounds if accepted, and are apparently well-founded, that should be a sufficient basis upon which the local

government might refuse the application.'

Whitehead decision

In the *Whitehead* case, the Tribunal considered an application to keep 6 dogs on a property which was zoned residential under the relevant planning scheme and comprised an area of approximately 2000m². The City of Swan had refused an application to keep 6 dogs at that property on the basis that it had received 5 separate objections from neighbours in response to the application, with particular emphasis on alleged barking nuisances arising from the keeping of the dogs at the property.

Furthermore, the City had regard to the fact that a recent inspection had found 18 dogs, including 9 pups, at the property and the City was aware that dog breeding and dog grooming activities had also occurred from the property. Furthermore, only 2 of the subjects dogs were being kept inside the applicant's house and the remaining dogs were kept in concrete enclosures. While the applicant never conceded that she was operating a commercial kennel, it was clear from the City's inspections that the dogs were not being kept solely as ordinary pets.

After a hearing, the Tribunal confirmed the City's decision to refuse the application to keep more than 2 dogs at the property. In doing so, the Tribunal made the following findings:

- While the application was not a town planning matter, it was relevant that the property was zoned residential and that an 'animal establishment' was a prohibited land use in that zone.
- Having regard to the manner in which the dogs were kept at the property, the Tribunal considered that the 'true nature and character of the use' of the property was as a dog kennel.
- The Tribunal further referred to the breeding and keeping of pups at the property, stating '*while pups less than 12 weeks old are not relevant in terms of the application of the Local Law, given the frequency of dog litters, the almost constant presence of pups is relevant in terms of evaluating the overall impact the Property is causing on adjoining neighbours*'.

Ultimately, the Tribunal's decision referred to and reinforced the general principles previously established by the Tribunal in relation to these applications, stating:

'I am also mindful that there is no right to keep more 2 dogs at the Property... In considering whether to grant an exemption the City (and now the Tribunal) must be satisfied that satisfactory arrangements are in place to ensure that there will be no unreasonable impacts on adjoining properties. In this instance, I am far from satisfied. The applicants hobby of keeping, exhibiting and breeding dogs is causing undue impacts on surrounding properties and, it appears, this has been the case for sometime... As stated, the Property may not strictly be a kennel, but the reality is, it operates as one. The dogs on the property are not kept as pets per se but are kept as part of the Applicant's dog exhibiting/breeding hobby...

The impacts that [the applicant's] dogs are causing on neighbours is not reasonable, nor justified, in what is a residential area.'

As a result of the Tribunal's findings, the applicant was not permitted to keep more than 2 dogs at the property and was therefore required to make arrangements for excess dogs to be re-homed.

Conclusions

Ultimately, each application under section 26(3) of the Act must be determined according to its merits and any criteria that may apply to such an application by virtue of an individual local government's local laws.

In making that decision, a local government must balance the competing interests of an applicant being allowed to keep additional dogs with the potential impacts those dogs may have on surrounding properties. Where there are complaints or objections from those surrounding properties, it is a matter for a local government to objectively assess any objections to determine whether the application should be granted and, if so, the conditions that ought to be imposed to mitigate any potential adverse effects arising from those dogs.

There are numerous decisions by the Tribunal addressing a range of circumstances and reasons for refusal of applications. It is a matter for the local government to assess whether, as in the *Whitehead* case, there will be satisfactory arrangements in place to ensure that there will be no unreasonable impacts on adjoining properties.

Where a local government intends to refuse an application, it may be incumbent on that local government to provide evidence in support of its reasons for making that decision. In *Whitehead*, the City of Swan carried out a detailed and thorough assessment of the application, including multiple property inspections and clear communication with the applicant and her neighbours. That process ensured that there was sufficient evidence to support a refusal of the application.

Accordingly, in considering an application, local governments must objectively assess the competing interests of the applicant and any adjoining residents and must thoroughly investigate any complaints to ensure that any decision is transparent and well informed.

The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case. If you would like any further advice in relation to any issues addressed by this article, please contact Tim Beckett by email to tbeckett@mcleods.com.au or any other member of the McLeods enforcement team.