

JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

ACT : STRATA TITLES ACT 1985 (WA)

CITATION : THE OWNERS OF BROOKSIDE VILLAS STRATA
PLAN 17324 and GEHRING [2018] WASAT 122

MEMBER : MS H LESLIE (MEMBER)

HEARD : 27 SEPTEMBER 2018

DELIVERED : 8 NOVEMBER 2018

FILE NO/S : CC 1268 of 2018

BETWEEN : THE OWNERS OF BROOKSIDE VILLAS STRATA
PLAN 17324
First Applicant

DOROTHY HARRISON
Second Applicant

AND

LEONIE GEHRING
Respondent

Catchwords:

Removal of dog from strata - Breach of by-laws - Exercise of discretion by Tribunal - Assistance dog - Balance of interests of occupiers

Legislation:

Disability Discrimination Act 1992 (Cth), s 9(C)
Strata Titles Act 1985 (WA), s 91

Result:

Application successful

Category: B

Representation:

Counsel:

First Applicant : In Person
Second Applicant : In Person
Respondent : In Person

Solicitors:

First Applicant : N/A
Second Applicant : N/A
Respondent : N/A

Case(s) referred to in decision(s):

Nil

REASONS FOR DECISION OF THE TRIBUNAL:

Background

1 The application before the Tribunal is an application under s 91 of the *Strata Titles Act 1985* (WA) (the Act). That section provides, under the heading 'Order relating to animal kept contrary to by-laws' the following:

Where, pursuant to an application by a strata company, a proprietor, an administrator, a person having an estate or interest in a lot or an occupier or other resident of a lot for an order under this section, the State Administrative Tribunal considers that a person is keeping an animal on a lot or common property in contravention of the by-laws, the State Administrative Tribunal **may** order that person to cause the animal to be removed from the parcel within a specified time and thereafter to be kept away from the parcel unless the keeping of the animal on the lot or common property, as the case may be, is subsequently authorised by the by-laws. (Tribunal emphasis)

2 The first applicant is The Owners of Brookside Villas Strata Plan 17324 (the Strata Company) set up by virtue of the relevant strata plan which creates a strata complex (the complex) of 21 single storey units built around a triangular common area in Kelmscott, Western Australia. The three sides of the triangular complex contain respectively six, six and nine units. There are four pairs of units which share a party wall. The rest are freestanding. All have front and rear garden areas. The strata plan was registered in 1989. All but six units are owner occupied. The other six are tenanted, three by relatives of the proprietors and three in 'arms length' tenancies.

3 The respondent is the owner of Unit 14 in the complex, having purchased her unit in 2013. It is a freestanding unit. It is situated second from the end of the 'long side' of the triangular complex, close to an inner 'corner' of the triangle.

4 In this instance, the applicants have requested that the Tribunal make an order to have the respondent remove a dog living in her unit in breach of the by-laws.

5 The grounds set out in the application for the making of the order are as follows:

The dog more often than not every weekday is left alone locked up within the unit itself

The dog gets distressed and barks incessantly disturbing the peace and enjoyment of other owners and tenants

Units not appropriate for a dog is no yard space

Dog has defecated on the common areas

Not restrained on a lead when out

Not restrained in owners vehicle when driving through complex

Owner shown disrespect to neighbours by flaunting the dog

Undue stress caused at the AGM by owners angry that the dog was on the premises

- 6 The respondent's position is that she seeks to have the Tribunal exercise its discretion in her favour and not make an order for removal. She seeks to make a case that the dog is an 'assistance dog' for her partner, and that an exception to the prohibition of the dog should be made in this case.

Relevant history

- 7 There is no dispute that a dog is living at the respondent's unit and has been since January 2018 when the dog was purchased and brought home by the respondent's partner Mr James Oddy. It is not suggested that the respondent knew of this acquisition in advance.

- 8 There is no dispute that the Strata scheme originally adopted the standard by-laws provided under the Act, including, relevantly, By-law 12(c) which prevents the keeping of any animal on a lot, after notice for removal has been given by the Strata Council to an occupant. Since March 2013 and currently, the by-laws have relevantly provided in By-law 24 as follows:

A proprietor, occupier or other resident shall not -

Keep any cat or dog on the lot that he/she owns, occupies in or on the common property; or keep any other pets on the lot that he/she owns, occupies or resides in or the common property without prior written consent from the Strata Council. (*sic*)

The dog at unit 19 can remain until it is deceased. No replacement dog is approved.

- 9 There is no dispute that the respondent is and at all times was aware of the content of the by-laws. She was a Strata Council member

up until March/April this year. She ceased that role because of the current issues.

10 There is no dispute that the respondent did not at the time of the arrival of the dog have and does not now have the written consent of the Strata Council to have a dog.

11 There is no dispute that the respondent has previously been involved in the work of the Strata Council and has supported the enforcement of the pet by-law in other cases.

Issues

12 The issues for the Tribunal appear to be as follows:

- 1) What has been the applicants approach to the enforcement of the relevant by-law historically;
- 2) Is the dog 'an assistance dog' or similar;
- 3) Should the Tribunal exercise its discretion in the respondent's favour if the answer to that question is 'yes'; and
- 4) If the answer to that question is no, is there any other reason why the Tribunal should exercise its discretion in the respondent's favour?

Consultation

13 The initial notification requiring the removal of the dog was sent by letter dated 4 April 2018 from the first applicant Strata Manager. The dog remained. The respondent wrote to the Strata Council by letter dated 12 April 2018 requesting permission to keep the dog permanently on compassionate grounds, claiming that the dog was 'bought as an emotional support dog for my partner who suffers from mental health issues and myself who has a lot of stress from my dad's medical condition over the last three months'. The respondent acknowledged that permission was not sought prior to the acquisition of the dog and again sought permission claiming that the dog had 'become part of our family and well-being of my partner since January 2018'. In her letter, the respondent stated that 'there will be no neighbourhood disturbances from' the dog; that 'my daughter is home most days and will ensure the dog will make minimal noise' and that he 'will attend training in May for socialisation skills to make sure he doesn't bark and cause any

nuisance to any residents during the day' and further 'it is hoped that no nuisance noise will be made'.

14 The Strata Council refused consent for the dog and notice was given by letter from the Strata Manager dated 17 April 2018. The respondent then wrote again seeking a review of that decision and referring to the dog as a 'mental health assistance dog'. She referred to specific training proposed to be sought for the dog and made reference to s 9(C) of the *Disability Discrimination Act 1992* (Cth) and to the definition of an assistance animal being a dog or other animal that 'is trained to assist a person with a disability to alleviate the effect of the disability and meets the standards of hygiene and behaviour that are appropriate for an animal in a public place'. She again stated 'there will be limited noise disturbances from him' and referred to the fact that 'we are working through products and training so he doesn't bark and cause any nuisance to any residents during the day'. The matter was placed on the agenda for the Annual General Meeting (AGM) of the Strata Company.

15 The application to the Tribunal was made by the Strata Council at the direction of the Strata Company which resolved at the AGM on 29 May 2018 to the effect that the respondent be given a further 14 days to remove the dog and that the Strata Company take the matter to the Tribunal if the respondent failed to comply with the further request. The relevant notice reflecting that resolution was issued on behalf of the Strata Company by letter sent by the Strata Manager dated 1 June 2018.

16 Following the hearing of the matter, the Tribunal reserved its decision on the basis that a decision would not be delivered until the applicants have had a further opportunity to explain fully the respondent's position, including the supporting psychological evidence which had not previously been seen by the Strata Council or discussed with the members of the Strata Company, to an extraordinary general meeting of owners. The respondent gave undertakings concerning the control of the dog in the interim.

17 The Tribunal has been notified that that further general meeting occurred and the material was considered. A further motion was passed, with one abstention but otherwise unanimously, supporting the ongoing action before the Tribunal requesting an order for the removal of the dog. The Tribunal therefore delivers its decision.

Issue 1

18 The uncontested evidence appears to be that, to this point, the only pets with which the Strata Council has taken issue have been cats and dogs. There has been no issue with other known pets such as guinea pigs, rabbits, fish and birds.

19 In relation to cats, it appears that enforcement has been varied in the past. It is noted that the letter to the respondent dated 17 April 2018 approves the retention by her of her cat on certain conditions. The letter specifically refers to approvals granted for cats in Unit 4 and Unit 17 on similar bases. It seems all three cats were authorised by the Strata Council at a point subsequent to their arrival in their respective units. It appears that in relation to the cat at Unit 4 in 2017, because of the behaviour of the cat, action in the Tribunal was contemplated. The respondent was on the Strata Council at the time and supported enforcement. The action was ultimately not proceeded with because of fear amongst Strata Council members of repercussions from the occupants with whom there had been confrontations and much unpleasantness.

20 It appears from the uncontested evidence from witnesses for the applicants that, originally, the complex did not have a by-law prohibiting pets. It seems that there was a sign at the front of the complex stating that pets were not allowed but that no by-law had been passed to that effect; rather, the standard Schedule 2 By-law was in place. In 2007, the unit holder in Unit 19 who was an elderly lady whose husband had died acquired a dog. It seems there was some opposition to this but, since there was no by-law preventing the having of a dog within a lot and given the communications between the occupant and the then Strata Manager which appear to have authorised the dog, no action was taken for the dog's removal at the time. None was taken thereafter as the dog was well behaved and did not create a nuisance of any sort. That dog has since died.

21 In 2013, the current by-law was implemented. This was done because an elderly lady had been injured by a dog that had been acquired by the Unit 4 resident. That dog was removed as was a dog acquired by the occupiers of Unit 16 it seems, at the request of the Strata Council. It appears that proceedings in the Tribunal were contemplated in relation to the Unit 16 dog. The applicants say that the respondent was supportive of that action. The respondent disputes that she had any input into the decisions about other dogs.

Issue 2

22 It is uncontested that the respondent and Mr Oddy have been in a relationship since May 2016 and have lived together since February 2017 in her unit.

23 Mr Oddy gave evidence that he saw the dog (which is a Chihuahua x Boston Terrier puppy), then a pup, online in January 2018 and made a decision to purchase it which he did two days later; he said that he was not specifically looking for a dog but, rather, was simply online, he thinks on Facebook, when the dog's availability came up. Mr Oddy gave evidence that he suffers from depression for which he receives treatment; that he was struggling in late 2017 and quit his job and was having difficulties managing both issues. He acknowledged issues also with anger management for which he is receiving treatment.

24 He concedes that he did not discuss the acquisition of the dog with the respondent. He concedes that the acquisition of the dog was not something that had been recommended to him by his doctor or his psychologist. He talked about having had dogs in the past and how he felt that they had assisted him with his then mental health difficulties. He conceded that he had not had a dog for about two years since the end of his last relationship.

25 He gave evidence that he chose the dog essentially on how he looked, not by reference to specific breed or other suitability criteria. He concedes that he knew that dogs were not allowed in the complex but that he ignored this, in his words, 'I just thought, stuff it!'

26 He has been receiving treatment from Dr Bill Douglas, a clinical psychologist. Mr Oddy gave evidence that he told Dr Douglas about the acquisition of the dog and how he feels it helps him with his mood. Dr Douglas provided a letter in support of the respondent's position. The letter is dated 28 May 2018 and reads as follows:

To whom it may concern

Re: Mr James Oddy

...

This letter is to confirm that Mr Oddy has been referred to me by his GP for treatment in connection with depression. Medical records show that Mr Oddy has suffered from depression since early 2015.

I understand that Mr Oddy acquired a pet dog earlier this year which has had a significantly positive effect on the management of his mood and mental state generally and that, in my opinion, this dog constitutes a significant aid to maintaining his mental wellbeing. In my opinion this dog constitutes an 'assistance animal' and if it was removed **would have** an adverse effect on his mental health.

I also understand that there has been some pressure applied for him to remove the dog from his place of abode, and, in my opinion, this would constitute **at least some** risk to the deterioration in his mental health. (Tribunal emphasis)

Yours Sincerely

Dr Bill Douglas

27 The respondent did not call Dr Douglas and he therefore could not be questioned on his letter. His absence affects the weight that the Tribunal can place on the letter particularly as to the potential effect of the removal of the dog. It is accepted that the conclusions expressed in the report are opinions genuinely held. It is accepted also that those conclusions are dependent upon the information provided to him by Mr Oddy and possibly the respondent.

28 Mr Oddy gave emotional evidence about his connection with the dog, stating that he thinks about the dog all the time and how knowing the dog will be there when he gets home helps him. The respondent also gave evidence about Mr Oddy's depression and how much better he is since having the dog; how much his mood and overall well-being has changed. The respondent stated that, in her view, the benefit to Mr Oddy of having the dog was such that, if the ultimate decision was that the dog could not remain at the unit, that she would sell her unit and that they would move and live elsewhere rather than require him to rehome the dog. There was no challenge to Mr Oddy's diagnosis or to the significance of his mood symptoms. There was indeed no challenge to the potential beneficial effect that a puppy in a household will have on someone in Mr Oddy's situation.

29 The applicants, however, do challenge the identification of the dog as 'assistance dog' and claimed that he is merely a family pet albeit a much loved one.

Issues 3 and 4

30 The applicants, through Ms Dorothy Harrison, expressed sympathy for Mr Oddy's situation but also sought to identify the

negative effects of the dog's presence on other unit occupants as a counter to the argument that the Tribunal should exercise its discretion in favour of the respondent.

31 The principal issue is the dog barking during the day when there is nobody at home, that is, the first three grounds listed in the application. It is common ground that the respondent and Mr Oddy and the respondent's 19-year-old daughter Taylah reside in the unit. It is also common ground that Mr Oddy and the respondent have full-time day jobs 8 am to 4/5 pm. Taylah has part-time work, usually three to four days a week. Her hours and shifts vary. Her day shifts average three to four hour shifts. Sometimes she works nightshifts. The respondent's case is that Taylah is home most days when not at work. This was disputed by the applicants whose witnesses say the dog is often alone for much of the day.

32 The respondent and Mr Oddy both conceded that the dog probably does bark at times; indeed Mr Oddy said he would not be surprised if the dog barked a lot. However both disputed that he barks as much as is alleged by the applicants and the applicants' witnesses.

33 The applicants produced written statements from eight witnesses on this issue and called five of them to speak to their statements and answer questions. All eight witnesses live in units within the half of the complex in which the respondent's unit is situated and which are the eight closest units to the respondent's unit. The applicants sought to rely on written statements from three of the eight witnesses who could not attend the hearing - Mr Geoffrey Dudman and Mr Martin Cogar who are in Units 13 and 15 which are the units on either side of the respondent, and Ms Emily Marchesi who is in Unit 10, the unit between Ms Harrison and Ms Jenny Wardlaw. Those three were not called and therefore could not be questioned on their statements. The Tribunal accepts the evidence, however, their absence affects the weight that the Tribunal can place on those statements. Mr Dudman had a medical appointment and could not attend the hearing. It is noted that Ms Marchesi and Mr Cogar both provided statutory declarations. Ms Marchesi is 91 and housebound. Mr Cogar is a truck driver.

34 The five called were Ms Anne Towson who lives in Unit 16, two doors from the respondent down the long side of the triangular complex, Ms Emmely Bridge who lives in Unit 12, two doors down on the other side of the respondent in the first unit on the adjacent short side of the triangular complex, Ms Harrison who lives in Unit 11 next

to Ms Bridge and directly across the corner from the respondent, Ms Nola Ezzi who lives in Unit 9, two doors along from Ms Bridge and Ms Wardlow who lives in Unit 9, directly opposite the respondent on the other short side of the triangular complex.

35 Ms Towson is a retired person who is at home most of the day as are Ms Bridge and Ms Harrison. Ms Ezzi is retired. She looks after her grandson one day a week but is otherwise mostly home. Ms Wardlow works 9 am till 4 pm three days a week but is otherwise largely at home.

36 The consistent evidence of all of these people is that the dog barks regularly when there is no one at home at Unit 14. Its barking has been described as high-pitched yapping which annoys and disturbs the nearby residents. It may go on for one to two hours at a time. The evidence is that the dog is distressed when the Unit 14 occupants leave and barks, and that it is disturbed by and barks at ordinary day-to-day noises such as whistling kettles in the adjacent units, the normal noises caused by nearby neighbours going into or out of their front or rear gardens, residents using or talking at a normal volume in the common picnic area in the internal grounds of the triangular complex, or going to the letterbox or taking out the bin.

37 Evidence was given that the barking impacts on the lifestyle of the residents and on the ordinary use by residents of the complex and of their lots; that they cannot freely use their gardens and the common areas and must 'tip toe' around so as to not disturb the dog. Evidence was given by at least one resident that she is driven to go out at times to get away from the noise, and another that she feels she needs to keep her doors shut and music on to diminish the noise of the barking.

38 Evidence was given as to a number of altercations and arguments that have occurred between residents and the respondent and Mr Oddy by reason of the noise made by the dog. Relationships between the parties have been affected. Sadly, the previous valued relationship between Ms Harrison and the respondent and her daughter has broken down.

39 Evidence was given that any training being undergone by the dog does not appear to be impacting on its barking behaviour and that a blind installed in the front window of Unit 14 has not assisted in diminishing the barking.

40 Evidence was given as to the distressing and stressful effect on the residents who have to listen to the constant barking and of the potential health impacts such as stress levels and blood pressure concerns. Concern was expressed in the evidence about the apparent distress of the dog on being left, and on it being unfair on the dog to be locked inside a unit, sometimes for a whole day.

41 The respondent in her evidence disputed that the dog barked as much as was complained about by witnesses for the applicants. She claimed to have set up a system of cameras in her unit to record the dog's behaviour. No footage was provided for the consideration of the Tribunal. She further claimed to have an electronic mechanism connecting the cameras to her phone so that she received some form of alert on her phone when the dog was barking. She, however, presented no log of the barking behaviours so as to demonstrate her point, nor any electronic record or other evidence supporting the existence or reliability of the mechanism to which she referred.

42 It appears to be common ground that the training that the dog is currently receiving is not specific assistance training but is what might be regarded as ordinary obedience training. The respondent is the one who takes the dog to his obedience classes. Mr Oddy gave evidence that this is because his mental health issues make it difficult for him to interact with people and he feels uncomfortable in the class environment. He agreed he works full-time as a storeman/tool technician. He insisted that the dog was his dog, not a 'family dog'. He said that he and the respondent walk the dog and that Taylah sometimes takes the dog with her.

43 Mr Oddy conceded that the dog has to be at least 12 months old before an application can even be made for it to attend specific 'assistance dog' training. It was conceded that the research and documentation presented by the respondent all related to future 'assistance dog training' that the respondent and Mr Oddy hoped to have the dog go through.

Consideration

44 It is clear that despite the relevant standard by-law a decision was taken by the Strata Company from the very earliest days of the complex that pets not be allowed. The Tribunal accepts that, originally, there was a notice at the front of the complex visible to all who might be intending to purchase or rent in the complex that this was the position. Subsequently, by-laws were specifically amended to support that

approach and to ban pets but allowing the Strata Council a discretion to authorise pets in specific circumstances. The Strata Company appears to have been tolerant of pets that do not create a noise, and cats to a limited extent. It is noted that the Strata Company has made a decision not to allow any further cats. It appears on the few occasions previously when dogs have been allowed, that it has created an issue. It appears that on two occasions those dogs were removed without the need for formal proceedings. On another other occasion, the presence of a dog was somewhat reluctantly tolerated but only because of the particular circumstances. It seems a form of authorisation was given by a staff member of the then Strata Manager at a time when there was no prohibitive by-law. No action was taken because the dog did not create a nuisance. The circumstances of that owner also related to mood and emotional issues following a bereavement, however, a different approach to the current approach was taken ultimately by the Strata Company, in the view of the Tribunal quite reasonably, because of the good behaviour of the dog.

45 The Tribunal accepts the evidence from the applicants' witnesses regarding the previous approach taken regarding pets. To that extent, the Tribunal is not satisfied that there is anything about the behaviour of the Strata Company in the approach that it has taken in this instance that represents an inconsistency or otherwise that affects the exercise of the discretion by the Tribunal. That disposes of Issue 1.

46 It is accepted by the Tribunal that the training information materials lodged appear to contemplate depression as a condition for which a specific 'assistance dog' might be of use. It is unclear and there was no evidence as to what precisely it is that such training would achieve that would be of benefit to Mr Oddy, in the amelioration of his mood symptoms over and above the engagement and companionship that would be available to him from an affectionate pet dog that is not a trained assistance dog. His evidence adverted to these qualities as the benefits to him. There was no reference to any other aspect of the specific training that would benefit someone with his condition. Clearly in relation to persons with physical disabilities or conditions such as epilepsy, specific training is provided to teach the dog to assist the person with practical matters or to provide warning or alerts as to impending risks.

47 In relation to Issue 2, the Tribunal finds that this dog is clearly not yet an assistance dog for Mr Oddy in the formal sense that those words might be understood in a disability sense. It is not yet clear that

the dog would be accepted for training in the program to which the respondent has referred. Issue 3 therefore falls away. The Tribunal also notes that, at least initially in her correspondence with the Strata Council, the respondent claimed that the dog was providing a benefit to her given the stressors in her life.

48 As to Issue 4, in the Tribunal's view, the training issue is something of a red herring. The Tribunal accepts Mr Oddy's evidence that the presence of the dog in his life outside of his work hours is of positive benefit to his mood. There could be no doubting the genuineness of his feelings from the way in which he gave his evidence. His therapist's written evidence corroborates that evidence. There is no evidence that the benefits and level of 'assistance' that the dog provides to Mr Oddy would be any greater than at present even if it were to undergo specific assistance training. It seems to the Tribunal that it is the presence and affection of the dog and the emotional connection that Mr Oddy has within it that is the critical benefit rather than any form of active assistance. The Tribunal accepts that the dog does not create a problem when there is someone at home at Unit 14. However, the Tribunal accepts the evidence lead by the applicants that, for much of the time when the respondent, Mr Oddy and Taylah are away from the unit, the dog barks, and that the extent, pitch, frequency and manner of its barking is upsetting and disturbing to the unit holders in the vicinity.

49 The Tribunal considers that all of the occupants who gave evidence for the applicants were credible and believable and are persons who, the Tribunal accepts, are able to give evidence as to what occurs and how things are at their end of the complex during the daytime. Their evidence was consistent and they represent a reasonable sample of the occupants of that end of the complex. The Tribunal notes that statements that are corroborative of the witness testimony came from almost all of the other unit holders that live in that half of the complex. Albeit that less weight attaches to the content of the statements of those who did not attend to be questioned, the Tribunal is prepared to take notice of the consistency of the evidence.

50 The Tribunal accepts that the dog is disturbed by and is caused to bark by ordinary every day noises that occur in the vicinity of Unit 14 by reason of the other occupants going about their normal day-to-day lives. The Tribunal accepts the evidence that the obedience training that the dog has undergone to this point (which is accepted) does not appear to have had any impact on the dog's barking behaviour. There is

no suggestion that the dog is deliberately teased or otherwise stirred up by occupants of the complex. Despite the absence of expert veterinary evidence, it does seem reasonable to conclude on the basis of even a lay understanding of these matters that, as is suggested by some of the witnesses for the applicants, the barking is at least in part due to loneliness or a separation anxiety that the dog is experiencing when its humans are away from the unit. Its attention appears to be specifically drawn to the noises made by other humans.

51 The question for the Tribunal remains one of balancing the benefits of the dog to Mr Oddy against the current difficulties that it causes for the other occupants of the complex.

52 Although the Tribunal has sympathy for Mr Oddy's situation, clearly he knew that dogs were not permitted when he purchased the dog. His deliberate disregard for the rules and his attitude to the position taken by the Strata Company is regrettable. It is also regrettable that he placed the respondent in the position in which she now finds herself by reason of his actions. It is understandable that, in sympathy for his situation, it was difficult for her to insist that the dog be returned or rehomed earlier in the piece. As time has gone by and the members of the family have all become attached to the dog, she has simply been placed in an even more difficult situation.

53 It is noted that the respondent proposed a number of steps that she would take in an endeavour to satisfy the Strata Company that the dog will not create a nuisance. These included the use of the barking collar, potentially the future use of 'doggie day care', and the giving of assurances that there would always be somebody at home when the dog was there. Notwithstanding those proposals, the issues caused by the barking behaviours continued up until the time of the hearing. The respondent confirmed that she had purchased but not in fact used a barking collar. Her explanation as to why she had not done so was unsatisfactory, in the Tribunal's view, given all of the issues,

54 The Act provides for the horizontal and vertical subdivision of land usually into relatively small lots that provide for medium or high density living. Strata complexes are often small and provide an environment where people are required to be able to live in close proximity to each other. The success of such systems is predicated on the fact that rules will be put in place to manage circumstances in which the rights of the occupants come into conflict with each other and that people will extend at least a basic consideration to each other.

Such schemes would otherwise not be workable. The rules are published so that people are aware of their rights and obligations from the time their occupancy commences.

55 The view of the Tribunal, albeit with some sympathy to Mr Oddy given his personal circumstance, is that, in this instance, the right of the other occupants of the complex to reasonable quiet enjoyment of their lots and the common property in the complex takes precedence over his right to own a dog and his desire to keep it at Unit 14.

56 Were it the case that the dog was not creating a nuisance by its barking and were the question simply one as to whether or not, given Mr Oddy's personal circumstances, the dog should be allowed to remain - in other words, were it a case of enforcement of the rules for enforcement's sake, - the Tribunal's decision may well have been different. In saying that, however, the Tribunal accepts that there is a degree of sympathy, amongst at least some of the other occupants who gave evidence, for Mr Oddy's situation. Were it not for the disturbance that the dog has been causing, the Tribunal accepts that the application might not have been brought in the first place. The Tribunal makes no finding on these hypothetical matters.

Orders:

In all the circumstances the Tribunal exercises its discretion in favour of the applicants and makes the following order:

1. Pursuant to s 91 of the *Strata Titles Act 1985* (WA), the respondent is to cause the Chihuahua x Boston Terrier dog 'Drexel' to be removed from her lot being Unit 14 Brookside Ave, Kelmscott within 28 days of the date of this order and thereafter to be kept away from the lot and the common property of the complex unless the keeping of the animal on the lot is subsequently authorised by the first applicant.

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

MS H LESLIE, MEMBER

8 NOVEMBER 2018