

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE DIVISION
REVIEW & REGULATION LIST**

VCAT REFERENCE: G484/2012


CATCHWORDS

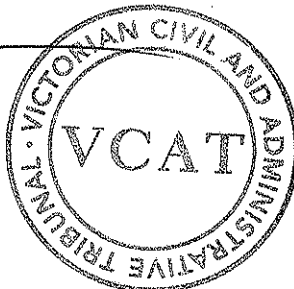
Review and Regulation List; *Domestic Animals Act* 1994; application to review determination of municipal council that subject dog is a member of a restricted breed; matter considered on remitter from Supreme Court of Victoria; *Victorian Civil and Administrative Tribunal Act* 1998; *Domestic Animals Act* 1994, Sections 3(3) and (4), 98A, 98 (2AA).

APPLICANT: Daniel Scott
RESPONDENT: Moonee Valley City Council
WHERE HELD Melbourne
BEFORE: Senior Member I. Proctor
HEARING TYPE: Hearing
DATES OF HEARING: 21 May and 6 June 2013
DATE OF ORDER 2 July 2013
DATE OF REASONS 2 July 2013
CITATION

ORDER

The Respondent's declaration is set aside.


Ian Proctor
Senior Member



APPEARANCES

For Applicant Mr R. Kendall QC with Mr A. Felkel of counsel
For Respondent Mr A Halse of counsel

REASONS

Introduction

1. On 24 April 2012, Mr Blyth Moir of Moonee Valley City Council (the Council) declared an unregistered male dog, known as “Doug”, Microchip No. 95600000146890 to be a restricted breed dog under section 98A of the *Domestic Animals Act* 1994 (the DA Act). The declaration states as part of the required text that the declaration is made after comparing the dog’s appearance to the criteria set out in the “Standard for Restricted Breed Dogs in Victoria” (the Standard). Council served copy of the declaration on Mr Scott¹, the applicant in this proceeding.
2. On 4 June 2012, VCAT received an application from Mr Scott, under section 98(2AA) of the DA Act, applying for review of Council’s decision, under section 98A of that Act. On 24 July 2012, VCAT affirmed Council’s decision.
3. Mr Scott appealed that decision to the Supreme Court of Victoria. On 4 April 2013, the Court (with consent of the parties) allowed the appeal without deciding the merits and remitted the matter to VCAT for rehearing. That consent apparently related to the Supreme Court’s decision in *Dudas v Monash City Council* and *Tarawa-Shearer v Darebin City Council* [2012] VSC 578 where VCAT’s determinations were set aside and remitted for re-hearing.
4. VCAT must decide afresh whether Doug is a restricted breed dog, as defined under the Act and so whether Council’s declaration should be affirmed or set aside.

The VCAT hearing

5. Over 21 May and 6 June 2013, I heard the application. On 4 June 2013, I conducted an unaccompanied inspection of Doug at an animal shelter where he is held, pending the outcome of these proceedings.
6. Mr Scott called a very experienced veterinarian Dr John Ayerbe and Dr David Lowe, a very experienced dog judge and breeder as expert witnesses. Dr Lowe’s recently gained doctorate is in a field not relevant to this proceeding. Council called Mr Blyth Moir and Ms Megan da Silva, both local laws and animal control officers. Mr Moir has years of experience as a local laws officer dealing with dogs and is a Council employee. Ms da Silva is a former employee. She has some experience, in relative terms being early in her career. I found each of the witnesses to be reliable.
7. I heard submissions and reserved my decision.

¹ As required under section 98B(1) of the Act.

Legislative background

8. The Act's purposes are set out in section 3. It relevantly says,
- The purpose of this Act is to promote animal welfare, the responsible ownership of dogs and cats and the protection of the environment by providing for—
- (a) a scheme to protect the community and the environment from feral and nuisance dogs and cats; and ...
 - (c) the identification and control of dangerous dogs, menacing dogs and restricted breed dogs; and ...
9. In 2011, section 98A was inserted into the Act to provide for an *authorised officer* to declare a dog as a restricted breed dog². An *authorised officer* was and is an *authorised officer* appointed under section 72 of the Act.
10. The Act was further amended to repeal the panel process previously available to review restricted breed declarations and provide instead for review by VCAT. It also amended the prohibition on keeping a restricted breed dog at section 41EA of the Act, allowing for a two-year amnesty period within which to register restricted breed dogs. Concerning VCAT, the Act says,
- 98 Review of decisions by Victorian Civil and Administrative Tribunal**
- (2AA) The owner of a dog may apply to the Victorian Civil and Administrative Tribunal for review of a decision by an authorised officer under section 98A to declare the dog a restricted breed dog.
- (2A) An application for review under subsection (1), (2) or (2AA) must be made within 28 days after the later of—
- (a) the day on which the decision is made;
- (2B) For the purposes of subsection (2A), a decision referred to in subsection (2AA) is taken to be made when the notice of the declaration is served on the owner of the dog.
11. A restricted breed dog is now defined in section 3(1) of the Act as:
- Restricted breed dog means a dog that is any one of the following breeds—
- Japanese Tosa;
 - Fila Brasileiro;
 - Dogo Argentino;
 - Perro de Presa Canario (or Presa Canario);
 - American Pit Bull Terrier (or Pit Bull Terrier).
12. Sections 3(3) and 3(4) of the Act provide for a Gazettal of an approved Standard describing a restricted breed dog:

² By *Animals Legislation (Responsible Ownership) Act 2001*

- (3) a dog that falls within an approved Standard for a breed of dog specified in a paragraph of the definition of restricted breed dog is taken to be a dog of that breed.
- (4) for the purposes of subsection (3) an approved Standard is a Standard that has been approved by the Minister and published in the Government Gazette.

13. Part 1 of the Standard relevantly provides:

- 1. A dog that meets the description of a dog in this Part is an American Pit Bull Terrier; except a dog in respect of which the owner has one of the following certificates stating that the dog is an American Staffordshire Terrier-
 - (a) a pedigree certificate from the Australian National Kennel Council
 - (b) a pedigree certificate from a member body of the Australian National Kennel Council
 - (c) a pedigree certificate from a national breed council registered with the Australian National Kennel Council
 - (d) a certificate signed by veterinary practitioner
- 14. Under section 51(2) of the *Victorian Civil and Administrative Tribunal Act* 1998, in determining this application for review, VCAT may affirm or vary the decision under review, make another decision in substitution for it or set aside the decision under review and remit the matter for re-consideration by the decision-maker.
- 15. VCAT must determine whether the decision under review was the correct one by making an independent assessment and an independent determination of the question (*Bausch v Transport Accident Commission* 11 VAR 117 at 137). The Act and the Standard should be interpreted in accord with Parliament's intention.

1st Supreme Court of Victoria decision about the Standard

- 16. In *Dudas*, Kaye J. formulated the test which VCAT must follow. It was submitted to him there were two "pathways" to conclude a dog is restricted breed dog. The 'first pathway' was submitted to be by concluding on the basis of expert evidence alone that a dog is an American Pit Bull terrier. The second was submitted to be by concluding the dog falls within the Standard (see para 50). Kaye J. observed, from the VCAT transcript, that the VCAT hearing proceeded solely on the basis of the 'second pathway' (para 51). His Honour did not again address the 'first pathway' issue.
- 17. Kaye J expressed his view of the correct test from paragraph 99

... the requirement that a dog "meet the description" of the American Pit Bull Terrier must contemplate, in my view, *a substantial, or high, level of correspondence between the characteristics of the particular dog in question, and the description of those characteristics in the Standard.* ... When pressed, counsel for both defendants accepted that, in order that a particular dog meet the description contained in the Standard, there must be substantial

correspondence between the characteristics of the dog and the criteria contained in the Standard. That concession is clearly correct.

Obviously, in an individual case, the question whether there is the requisite high or substantial level of correspondence between the dog, and the Standard, will ultimately be one of appropriate judgment in the particular case. That judgment may depend on the expert opinion (if any) available to the authorised officer or, on review, to the Tribunal, as to whether any particular characteristics or criteria, specified in the Standard, are of particular importance in determining whether there is a *high or substantial level* of correspondence between the characteristics in the Standard and the particular dog in question, so that it can be properly concluded that the dog “meets the description” of the dog in the Standard. However, in the end, as a matter of proper construction, the relevant characteristics of the dog in question must be assessed, in quantitative and qualitative terms, to have a *substantial or high level of correspondence with the criteria* specified in the Standard, in order that it “meet the description” of a dog in that part of the Standard. (My emphasis)

18. I understand his honour to be using the words “high” and “substantial” as synonyms (words with the same meaning). To do otherwise, would produce absurd results. As a test, there can only be one level of compliance. If “substantial” was taken to require a lower level of compliance than “high” then his honour need have only employed the word “substantial”.
19. In *Linehan v Hume CC* (General) [2012] VCAT 1975, I observed while describing the question as “moot” in the matters before him, Kaye J seemed to agree that the “*Briginshaw*” approach is the applicable standard of proof which should be adopted by the VCAT (para 42). I said that in doing so, the “*Briginshaw*” approach³ should be used.
20. I note that in the recently decided *Kalamaras v Cardinia SC* (General) [2013] VCAT 1017, Macnamara J sitting as a VCAT Vice president said that given that this proceeding includes no allegation of criminal conduct, it is not immediately evident why the *Briginshaw* standard of proof should be engaged. He assumed that the rationale for its application is that the animals, the subject of this proceeding, are liable to destruction depending on the outcome. Macnamara J regarded the issue as moot because the findings he made could be reached applying either the simple balance of probabilities test, the usual test for civil proceedings or the *Briginshaw* standard.
21. In the same fashion, the issue is moot in this proceeding.

³ *Briginshaw v Briginshaw* (1938) 60 CLR 336

The Standard and the evidence

22. In *Kalamaras*, Macnamara J noted some of the difficulties of the Standard in terms of its drafting. Once again those difficulties posed challenges. The mismatches between the text and the photographs and drawing meant to illustrate that text drew comment. What is becoming the classic example is that with respect to the head, the Standard says, "Viewed from above, the general shape of the head is that of a blunt wedge, large and broad." The accompanying photograph and drawing show the head viewed from the front. With respect to several terms used in the Standard, Dr Ayerbe, a veterinarian with decades of experience, said he did not know what they meant. Perhaps this is because, as Dr Lowe understands, the Standard was drafted with reference to a dog judging standard. Perhaps terms not familiar to veterinarians are used. If that is so, it seems to raise difficulties for others who are not dog judges, including Council authorised officers and VCAT members.
23. Such difficulties seem to have caused the witnesses to take different approaches. Ms da Silva decides a dog complies with a particular criterion if she assesses full or substantial compliance. Dr Ayerbe looks for close to full compliance. Dr Lowe's written report was very detailed, breaking down criteria in the Standard into sub-criteria. At times it was difficult to understand his final conclusion on particular criteria. I did not agree with a submission that he attempted to confuse the issue via overly detailed analysis.

Decision

24. I have set aside the declaration that the dog known as Doug is a dog of a restricted breed under the Act.
25. At the Appendix to these reasons, I summarise each witness's evidence and my finding concerning each of the criterion in the Standard. Once I decided each of the individual criteria, I stepped back and formed an overall view.

Item from Standard	Finding
Slightly longer in length than height	Does not comply
Head	Does not comply
Lips	Complies
Teeth	Complies
Nose	Complies
Eyes	Does not comply
Ears	Complies
Neck	Does not comply
Forequarters	Does not comply
Body	Complies

Forechest	Complies
Back	Complies
Loin	Does not comply
Hindquarters	Does not comply
Feet	Does not comply
Tail	Unable to conclude
Coat	Does not comply
Colours	Complies
Height at withers	Does not comply
Weight: 14 kgs – 36 kgs	Complies

26. Given that analysis, in my view there is not a substantial or high level of correspondence between the characteristics of Doug and the description of those characteristics in the Standard.
27. While the witnesses' views and my conclusions are largely set out in the Appendix, some issues are worthy of comment here.

Maturity

28. There is evidence before VCAT about Doug's appearance before the first VCAT hearing in 2012 and evidence as to his current appearance. While there are differing opinions between the witnesses as to whether Doug is now fully mature, Doug was an immature dog at the time of the first inspection.
29. Here, I focus on Doug's current appearance, and consider whether his appearance would be different if he had not been held in an animal shelter for the last year while VCAT and Supreme Court proceedings unfolded. As Macnamara J said in *Kalamaras* (at para 24), VCAT should exclude short-term variations and concentrate on long-term characteristics.
30. On the maturity issue, Dr Lowe says Doug is mature, being the equivalent of a 22 year old human. That said, he may add or lose muscle as he matures further. Dr Ayerbe also regarded Doug as mature. He regards the dog as fit and healthy, apparently being exercised while at the animal shelter. Ms da Silva does not regard the dog as mature, saying he will continue to muscle up.
31. In the normal course, where there is dispute in opinion between an experienced veterinarian and an authorised officer of the Council, VCAT is likely to give greater weight to the veterinarian's evidence. The same has tended to apply to experienced dog judges. The fact that a veterinarian or judge does not agree with the policy underlying the Standard may or may not cause VCAT to reject the person's evidence. The will depend on whether that belief appears to undermine the person's impartiality in forming his or her opinion.

32. Here, I accept the opinions of Dr Ayerbe and Dr Lowe that Doug is substantially mature.

Delay in detailed inspection

33. Unusually in cases of this type, while Mr Moir was the authorised officer who declared Doug to be a restricted breed dog, it was Ms da Silva who some five weeks later conducted a detailed inspection which resulted in her first detailed report. Mr Moir agreed that in hindsight this was not best practice. Not surprisingly, it was put to Mr Moir and Ms da Silva that this placed Ms da Silva under pressure to agree with her superior Mr Moir and to also conclude that Doug was a restricted breed dog. I was satisfied with her evidence that she formed an independent judgement and Mr Moir's comment that if she had disagreed, steps would have been taken to reverse the declaration.
34. Ms da Silva was the council's principal witness, providing the only detailed written reports. Mr Moir had provided a short written commentary on some aspects of Doug appearance and gave more fulsome evidence during cross examination.

Opinion evidence

35. I have not accepted a submission that VCAT should not consider the opinions of authorised officers. This is in the context that while VCAT may inform itself in any way it sees fit and is not bound by the laws of evidence, generally opinion evidence is only accepted from people regarded as experts in a field of knowledge. It was submitted authorised officers, while having experience and training of varying degrees, are not experts when it comes to the Standard and dogs.
36. In this type of case, authorised officers, not the relevant Council, are the decision makers. Their declarations are based on their opinions. Therefore, as in all such cases at VCAT to date, I considered their opinions.
37. In most instances where Dr Ayerbe and Dr Lowe disagree with Ms da Silva and Mr Moir, I have preferred their views (noting Dr Ayerbe and Dr Lowe do not always agree on specific points) assisted by the photographs available to me⁴. In doing so, I do not criticise Ms da Silva nor Mr Moir. Ms da Silva is a relatively inexperienced authorised officer who put her opinions based on the best observations she could make in the context of her training and experience. In cross-examination when contrary views of Dr Ayerbe and Dr Lowe were put to her, she very often disagreed, often referring to photographs. At one point she observed the judgements are subjective.

⁴ In the context of the detailed evidence before me, my general observations of Doug when I visited the animal shelter, have not assisted.

Height

38. Concerning Doug's height (withers to ground), Ms da Silva measured it at 59 cm, Dr Ayerbe at 60 cm (with a steel measure) and Dr Lowe at 63 cm. Dr Lowe was the only person who used a measuring frame, a simple measuring device which assists in accurate measuring. He gave evidence that to make an accurate measurement is necessary to feel the dog to find the high point of the dog shoulder blades. While I accept each witness did his or her best to measure Doug (the main difficulty being Doug's playfulness), I prefer Dr Lowe's measurement as an experienced dog judge with appropriate equipment.
39. Given the Standard indicates a maximum height of 53cm, at 63 cm, Doug is 19% higher than the maximum height. In my view, while a note to the Standard says the disparity between height and weight is considerable and importance should be placed on the overall consideration of the assessment of the dog rather than adhering absolutely to the guidelines on height, a 19% variation seems beyond the tolerance for variation.

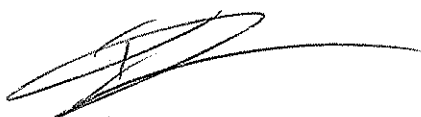
Height v length

40. While Mr Moir and Ms da Silva gave evidence that Doug is approximately 70 cm long, in cross-examination Ms da Silva agreed that measurement is approximate. Once again I prefer Dr Lowe's measurements. On the issue of height v length Dr Lowe's evidence is that Doug is 63 cm high and 64 cm long. In his view this 2% difference does not meet the criteria that a dog be, "slightly longer than high". He regarded Doug as being square in this sense of appearance. He described the difference as "negligible". He said in 'dog terminology' a 5% to 10% variance is "slight". A contrary view put to me was that even accepting Dr Lowe's measurements, Doug being 1 cm longer than high makes him slightly longer than tall.
41. In my view, accepting Doug is 63 cm high and 64 cm long, he cannot be described as slightly longer than high, except in the mathematical sense he is a cm longer. In practical terms he is equal in height and length. I note the introductory side view diagram in the Standard under the heading "General Appearance and Characteristics", shows a dog to the eye notably longer than high.
42. It is convenient to note here that Dr Lowe presented evidence as to Doug's body mass index (BMI), as the Standard does not address that issue, I do not regard BMI as relevant.

Restricted breed with reference to expert evidence alone?

43. As I discussed in *Linehan v Hume CC* (General) [2012] VCAT 1975 in my view in *Dudas Kaye J* did not reject the possibility of using the 'first pathway' where expert evidence supported that conclusion. It appears that, having noted the submission concerning this, he then noted VCAT had not considered it. Therefore, his honour did not consider it an issue before him and did not decide it.

44. Here, expert evidence does not support a finding that Doug is a restricted breed dog, without reference to the Standard. While Ms da Silva and Mr Moir regard him as an American Pit Bull type dog, they are not experts as to dog breeds. In Dr Ayerbe's opinion, the dog is possibly a cross breed, part Great Dane, part something else. He says it does not resemble a Pit Bull Terrier or and American Pit Bull Terrier. The dog is too tall and it does not have the correct head type. In Dr Lowe's opinion Doug is a cross breed, appearing to have the body of a Great Dane with a Pit Bull Terrier head. He says Doug is not close to the appearance of a Pit Bull Terrier. I accept their evidence.
45. Given my view of the evidence, it is not necessary to consider applying the 'first pathway' test.



Ian Proctor
Senior Member

Appendix – Comparison of evidence about Doug and the Standard

Item from Standard	Dr Ayerbe	Ms Da Silva	Dr Lowe	Mr Moir,	VCAT Finding
General Appearance and Characteristics: The overall outline of the breed indicates it to be slightly longer in length (point of shoulder to buttocks) than height (withers to ground). Bitches may be slightly longer than males.	Complies, slightly longer than tall (said in cross-examination)	Complies. Approximately 70cm in length Withers to elbow - Unable to measure, too excitable. By her measurements the dog is longer in length than height by approx. 11cm Elbow to ground - Unable to measure, too excitable.	Length (shoulder to buttocks) - 64cm. Measured point of shoulder blade to rear of pelvis with tape measure. Does not comply - Only marginally longer (64 cm) than high (63 cm), essentially a square dog	Height-v-Length: DOUG is in compliance with this criteria given his length is now 70 cm as compared to its height of 59 cm. About the size of a reasonably sized Labrador.	Does not comply, see body of decision.
A distance from withers to the elbow and the elbow to the ground is generally equal.	Approximately equal (said in cross-examination)	Was unable to measure as dog was too excitable. It was difficult to get dog to stay still.	Complies. Withers to elbow - 32cm Elbow to ground - 31cm		Complies.
Head					Overall, does not comply
The head is proportionate to the dog. Viewed from above, the general shape of the head is that of a blunt wedge, large and broad.	Does not comply. The head is “oversize” rather than proportionate to the dog. The general shape is more “triangular” than wedge shaped.	Complies. Head is blunt wedge shape. Head is broad with tapering towards the stop. Head is proportionate to the dog’s body.	Complies. In cross examination, I understood him as saying the head, in this respect, complies.		Complies. With the standard offering little guidance, which gives rise to subjective judgement, rely on weight of evidence that there is compliance.

Appendix – Comparison of evidence about Doug and the Standard

Item from Standard	Dr Ayerbe	Ms Da Silva	Dr Lowe	Mr Moir,	VCAT Finding
Viewed from the side, the skull and muzzle are on parallel planes separated by a moderately deep stop. Arches over the eyes are well defined but not pronounced (refer figure 3).	Does not comply. Viewed from the side the skull and the muzzle are not on parallel planes. The stop is long and marginally elevated.	Complies. Dog has parallel head planes with deep, defined stop. Has arches over eyes that are well defined	Does not comply. Not parallel planes. Must physically examine to find flat top of skull. No discernable arches over eyes, so whilst they are not pronounced, they are also not well defined. There is a moderate stop so complies re this.		Does not comply. Accept evidence to this effect, reinforced in that photographs do not show parallel planes, comparing Figure 3 and photographs 4 in Ms da Silva's report and at page 11 in Dr Lowe's report.
Muzzle: Slightly shorter in length to the skull (i.e. 2:3 ratio for muzzle:skull). It is broad, deep and powerful with a slight taper to the nose and falls away slightly under the eyes.	Does not comply. The muzzle is marginally shorter than the skull but not a 2:3 ratio and rises rather than falls away. It is more pointed than broad and deep.	Complies. Muzzle is shorter in length to the skull and tapers to the nose and falls away slightly under eyes. However, could not measure skull. If Dr Lowe has measured, she could not disagree (from cross-examination).	Does not comply. Muzzle 8-9cm, Skull 17cm. 1:2 ratio approx. Difficult to measure but managed it. Complies re breadth, tapers and fall away. However, physical examination reveals muzzle does not have depth. The jaw is not all that powerful. He	Complies. Could not measure. Notes small mathematical difference between a 1:2 ratio and a 2:3 ratio. Has a powerful mouth. Fact dog will co-operate in opening it not relevant.	Does not comply. Accept Dr Lowe's measurements. A 1:2 ratio is significantly different to a 2:3 ratio.

Appendix – Comparison of evidence about Doug and the Standard

Item from Standard	Dr Ayerbe	Ms Da Silva	Dr Lowe	Mr Moir,	VCAT Finding
Head profile: see diagrams in the Standard		Complies. Male head style shape. Shorter muzzle than top skull. Broad, strong head shape. Well muscled cheeks, with tight lips. Well defined stop, furrow reducing in depth towards occiput.	easily opened the mouth. Does not comply. Head profile does not match Standard. The principal reasons for this are that his head to muzzle proportions are 1:2 and not 2:3 as called for by the standard and also due to his strongly upward sloping forehead as compared to the flatter skull required in the standard.	Complies.	Does not comply. Examination of various photographs shows Doug's head profile to be very different to the profile photograph at Figures 3 and the diagram at Figure 6 of the standard.
Skull: Large, fairly flat, broad and deep, slightly tapering towards the stop. There is a deep median furrow reducing in depth from stop to occiput. Cheek muscles are prominent but free of wrinkles. When the dog is alerted wrinkles will form on the forehead.	Does not comply. Skull is not flat. It is wide with a taper towards the stop. The cheek muscles are visible but does have wrinkles where the back of the mouth meets the cheek muscles.	Complies. Cheeks well muscled. Wrinkles present when dog is alert. Head is broad with tapering towards stop. Well defined stop, furrow reducing in depth towards occiput.	Areas of compliance: Doug's skull is large, moderately broad, deep and slightly tapers towards the stop. The cheeks comply as do wrinkles over his skull. Areas of non compliance:		Does not Comply. Doug has a domed skull as shown in photograph 4 in Ms da Silva's report. Agree cheeks are free of wrinkles, as shown in various photographs where dog's mouth is closed.

Appendix – Comparison of evidence about Doug and the Standard

Item from Standard	Dr Ayerbe	Ms Da Silva	Dr Lowe	Mr Moir,	VCAT Finding
			Doug's skull is most definitely not flat but domed. The furrow does not extend to the occiput, it stops midway through the skull.		
Lips: Clean and tight	"I am unsure as to what this definition means and am unable to make an assessment for this characteristic."	Complies. Clean tight lips.	Does not comply. Doug is loose lipped showing no inclination as to cleanness as can be seen photograph at page 14 of his report.	Complies in the context that all dogs have slightly loose lips.	Complies. While Dr Lowe's photograph raises questions, in it Doug is looking to the side. Photographs such as 6 & 7 of Ms da Silva's report closely resemble Figure 7 of the Standard (diagram and photograph).
Teeth: Large and a complete scissor bite i.e. upper teeth closely overlapping the lower teeth and set square to the jaws.	Complies.	Dog has scissor bite. Difficult to view teeth, could not photograph.	Partial compliance — whilst Doug has a complete scissor bite, the teeth are quite small for the size of head and dog and therefore could not be described as large.	Complies.	Complies. Rely on weight of evidence. Photographs not helpful.

Appendix – Comparison of evidence about Doug and the Standard

Item from Standard	Dr Ayerbe	Ms Da Silva	Dr Lowe	Mr Moir,	VCAT Finding
Nose: Large with wide open nostrils and may be of any colour.	Complies.	Complies. Nose is large with wide open nostrils.	Partial compliance. Whilst Doug satisfies the standard with regard to nose colour and size, his nostrils are not what is known in the dog world as being open, in fact they are inclined to be very slightly on the closed scale of nostrils.		Complies. Accept weight of evidence of Dr Ayerbe and Ms da Silva v Dr Lowe.
Eyes: Medium in size, round in shape and set low in the head – not prominent. Eyes can be all colours except blue. The eye rims are the same colour as the skin colour.	Does not comply. The eyes are more “almond” shaped than round. The rims (eye lids) are pink and not the same colour as the skin. Shape of eye is a significant issue for veterinarians because almond shaped eyes can be more prone to infection in some situations. Agrees	Complies: Dog has round, light brown coloured eyes with skin pigment matching nose pigment, being liver in colour.	Does not comply (although Dr Lowe uses the term “Partial compliance.”) Complies re size, prominence, eye colour, rims v skin colour. Areas of non-compliance: Clearly almond shaped, as will be the case in other dogs of similar skull structure		Does not comply. Accept evidence of Drs Ayerbe and Lowe.

Appendix – Comparison of evidence about Doug and the Standard

Item from Standard	Dr Ayerbe	Ms Da Silva	Dr Lowe	Mr Moir,	VCAT Finding
	Doug's eyes are rounder than the eyes shown in Figure 9 of the standard.		with a sharply rising forehead. Not set low in the head being set midway to high in the head.		
Ears: The shape and carriage of the ears will vary from dog to dog. Generally they are set fairly high on the skull, not large and may be half pricked or rose shaped (i.e. folding backwards and exposing the inner burr of the ear).	Complies.	Complies. Dog has one rose and one forward placed (half pricked) ear. Ears are not large and set high on head	Complies (although Dr Lowe uses the term "Partial compliance."). While noting both ears, and the left one in particular often take the full drop position which breaches the standard he says they comply.	Complies.	
Neck: Moderate length and with great strength, tapering from the head into the shoulders. A slight arch over the crest. The neck must be free from loose skin or dewlap (loose, pendulous skin under the throat).	Does not comply. The neck is long and has no taper. Average muscling. There was some loose skin under the throat.	Complies: Strong neck, tapering from head to shoulders, with a slight crest of neck. Neck is moderate in length and is free from loose skin.	Partial albeit quite low compliance. Areas of compliance: Doug's neck is quite strong and is free of dewlap or loose skin. Strength complies. Areas of non-compliance: In canine terms, Doug's neck is quite long and cannot be	Complies re medium length.	Does not comply. No taper or arch. See photograph 22 of Ms da Silva's report and page 16 of Dr Lowes report. Accept evidence that neck is long. Jawline is above backline.

Appendix – Comparison of evidence about Doug and the Standard

Item from Standard	Dr Ayerbe	Ms Da Silva	Dr Lowe	Mr Moir,	VCAT Finding
			described as moderate in length, displays no taper at all, nor an arch across the crest.		
The jawline is to be well above the backline (see Figure 11).	An important aspect of non-compliance is the jawline is well below the backline. This is a significant indicator of strength and physical condition.	Did not consider the jawline v backline issue.	The jaw line (drawn as if the mouth was closed) in the natural standing position is below the level of the back.	Did not previously consider the jawline v backline issue but at hearing after seeing photos agreed jawline is not above the backline.	Part of neck criterion. See above.
Forequarters : Strong forelegs, well boned and muscular with elbows fitting close to the body. Viewed from the front the forelegs are set moderately well apart and in a straight line to the ground.	Does not comply. The forelegs are well formed and strong, but the elbows are not close to the body. Musculature is normal for that size of dog and consistent with the Standard.	Complies. Has strong, straight and muscular front. Does not elbow out. Has short pasterns with flexibility.	Partial compliance. Areas of compliance: The forequarters are well boned, strong and form a straight line to the ground when viewed from the front. Areas of non-compliance: Despite Doug's apparent strength his forequarters are reasonably lightly		Does not comply. Dog is not as muscular as diagram at Figure 12. See photographs 18 & 19 of Ms da Silva's report and at page 18 of Dr Lowe's report. Accept evidence that elbows are not fitting close to the body.

Appendix – Comparison of evidence about Doug and the Standard

Item from Standard	Dr Ayerbe	Ms Da Silva	Dr Lowe	Mr Moir,	VCAT Finding
The pasterns are short and fairly straight but with flexibility. Viewed from the side, the legs are straight with some flexibility in the pasterns.	Does not comply. The pasterns are long rather than short.	Complies. Has short pasterns with flexibility.	Does not comply. They are quite long and whilst straight are quite weak and laid back which detracts from flexibility.		Does not comply. Accept expert evidence that pasterns are long.
Body: Powerfully built with a deep chest of moderate width.	Complies. Photographs at page 11 of his report show the dog to be of moderate width but not powerfully built.	Complies. Doug has deep, muscular chest.	Does not comply. Quite narrow and his chest lacks depth stopping well above his point of elbow as shown above. He is also not strong in the body being quite narrow throughout and lacking musculature in the body region.	Dog has matured to be powerfully built with a deep muscular chest”	Complies. Accept weight of evidence on this issue.

Appendix – Comparison of evidence about Doug and the Standard

Item from Standard	Dr Ayerbe	Ms Da Silva	Dr Lowe	Mr Moir,	VCAT Finding
Forechest: Should not extend far beyond the point of shoulder or below the elbow. Well ribbed back with moderate tuck up (concave underline of the body curving upwards from end of the ribs to waist).	Complies.	Complies. Strong well muscled. Forechest, does not extend past shoulder, below elbow. Short lion, with slight slope to croup. Dog has good spring of rib and has, a moderate tuck up.	Partial compliance. Doug's forechest is almost non existent and therefore does not extend beyond the shoulder at all, it does not extend below the elbow stopping well above that point. He is not well ribbed back being quite long in the coupling as a result. He does demonstrate some tuck up.		Complies. Accept weight of evidence of Dr Ayerbe and Ms da Silva v Dr Lowe.
Back: Broad, strong, firm and level and with a slight incline at the withers.	Complies.	Complies. Has strong, level topline [back], with slight incline at withers.	Very low compliance. The only point of compliance being the fact that Doug has a slight incline at the withers. His back is not broad, lacks strength as previously discussed, is soft and is clearly		Complies. Accept weight of evidence of Dr Ayerbe and Ms da Silva v Dr Lowe.

Appendix – Comparison of evidence about Doug and the Standard

Item from Standard	Dr Ayerbe	Ms Da Silva	Dr Lowe	Mr Moir,	VCAT Finding
Loin: Short and deep with a slight slope to the croup.			not level having quite a rise over the loin. Does not comply. Whilst Doug has a slight slope over the croup his loin is nevertheless quite long and lacking in depth.		Does not comply.
Hindquarters: Strong and muscular hindquarters that are in balance with the forequarters. Thighs are well developed and muscular.	Does not comply. The loin is comparatively long in comparison with the body. Does not comply. Hindquarters are strong and muscular. Thighs are well developed and muscular. However, rear pasterns are elevated from the ground (long dog) compared to rest of dog) and are not parallel to each other.	Complies. Complies. Quite well muscled hind quarters, displaying strength. Well defined and muscular thighs	Partial but low compliance. Doug is somewhat lithe in the hindquarters which is somewhat consistent with the forequarters but generally is quite lightly muscled with light development of musculature compared to the requirements of the standard.	Complies. Dog is slightly slimmer than the dog photographed at Figure 17a of the Standard. Substantially slimmer than the diagram at Figure 17a.	Does not comply. Photos at page 24 of Ms da Silva's report and at page 20 of Mr Lowe's report to my eye show somewhat lithe hindquarters from the back, compared to the picture and diagram at Figure 17a.
The hock joint should be well bent and the rear pasterns close to the ground, perpendicular and parallel to each other.	Does not understand "well bent". Figure 17(b) shows a normal hock.	Complies. Short, well bent hocks, close to ground. Is slightly cow hocked, but are parallel.	Partial compliance. Doug is quite straight in the hock with quite long hocks, however they are close to perpendicular and		Complies. Photo at page 20 of Mr Lowe's report to my eye is sufficiently close to Figure 17b. . Photos in Ms da

Appendix – Comparison of evidence about Doug and the Standard

Item from Standard	Dr Ayerbe	Ms Da Silva	Dr Lowe	Mr Moir,	VCAT Finding
Feet The feet are round and in balance with the size of the dog, well arched and tight. The pads are hard and well cushioned. Nails are strong. Dewclaws may be removed.	Does not comply. The feet are more splayed than round and are small in comparison with the rest of the size of the dog. The pads are more soft than hard. Dog well exercised and hardness of pads in any case not greatly effected by amount of exercise.	Complies. Well arched toes, feet are in proportion to size of dog. Strong nails. Did not feel pads.	parallel when viewed from the rear. Essentially not compliant. Whilst Doug has strong nails and his feet are consistent with the size of the dog, they are not round, lack arching, are somewhat splayed so cannot be described as tight, and the pads are lacking in cushioning and are quite soft.	Slightly round fairly firm paws.	Silva's and Dr Ayerbe's report not very helpful. Does not comply. Various photographs show them not to be well arched and tight, consistent with expert opinion. Accept evidence that pads are soft.
Tail The tail is set in line with the back and tapers to a point. At rest the tail is carried low and when excited may be carried raised but never curled over the back. The length of the tail should reach approximately to the hock joint.	Complies.	Hard to view tail as kept wagging. Not seen at rest. Tail reaches hock joint. Slight slope of croup allows for correct tail set. Was unable to take any photos. Was correct during first inspection.	Partial compliance. Whilst Doug's tail tapers is of acceptable length and does not curl over the back, it is set on well below the line of the back and is carried in a mid height position at rest.		Unable to conclude, in context that issue will not determine the case, so not necessary to seek further evidence.

Appendix – Comparison of evidence about Doug and the Standard

Item from Standard	Dr Ayerbe	Ms Da Silva	Dr Lowe	Mr Moir,	VCAT Finding
Coat The coat is short, smooth, glossy and of a harsh texture, free of undercoat.	Does not comply. The coat is short but more of a smooth texture rather than a harsh texture.	Complies. Short, harsh coat. Not double coated. Free of undercoat. Smooth and glossy.	Partial compliance. The coat complies except that it is not harsh, being quite soft in fact and there is some evidence of undercoat around Doug's neck.		Does not comply. Accept evidence coat is not harsh.
Colours All colours and combination of colours are acceptable, with the exception of blue merle and pure white. White feet and a splash of white on the chest are not uncommon on solid coloured dogs.	Complies	Complies. Light tan in colour, light brown eyes and liver nose.	Tan, which is a rare colour in the Terrier Bull Breeds, combined with other structural aspects of the dog points to strong involvement of Great Dane in Doug's heritage.		Complies.
Height at withers: 43 cm – 53 cm	60 cm. - Does not comply.	59 cm approx. Complies, while higher than standard, within tolerances.	63 cm – does not comply 23.2% taller than the maximum height permitted	Complies, while higher than standard, within tolerances/	Does not comply. See body of decision.
Weight: 14 kg – 36 kg.	32.5 kg	32.1 kg	32.3 kg		Complies.