

Dog Control Act Hearing Panel DETERMINATIONS

Date: Wednesday 7 March 2018
Time: 1pm
Venue: Committee Room 1, Level 2, Civic Offices,
53 Hereford Street, Christchurch

Present

Chairperson	Community Board Member Aaron Campbell
Members	Councillor Glenn Livingstone
	Community Board Member Sally Buck

26 March 2018

Hearings Advisor

Mark Saunders
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Election of a Chair

It was resolved on the motion of Community Board Member Buck, seconded by Councillor Livingstone that Community Board Member Campbell be appointed Chairperson of the Hearings Panel for the hearing scheduled for this date.

The objections were dealt with in the following order.

1. 1pm - Hearing of objection of Sammuel Kent

Hearing of the objection of Sammuel Kent of Christchurch to the classification under section 33A(1)(b)(i) of the Dog control Act 1996 of his four-and-a-half-year-old, white and tan, male French Bull Dog named 'Pickles' as a 'menacing' dog.

Correction: The Objector noted that 'Pickles' is four-and-a-half years old, rather than two-and-a-half years old as noted in the Hearing Schedule.

Refer page 3 below for determination.

Hearing concluded at 2:28pm.

BEFORE THE HEARINGS PANEL
OF THE CHRISTCHURCH CITY COUNCIL

18/307601

IN THE MATTER

of the Dog Control Act 1996

A N D

IN THE MATTER

of an objection of SAMMUEL KENT of Christchurch to the classification by the Christchurch City Council Animal Management Team under Section 33A(1)(b)(i) of his four-and-a-half year old, male, white and tan coloured, French Bull Dog named 'Pickles' as a 'menacing' dog

Hearing: Committee Room 1, Level 2, Civic Offices
53 Hereford Street, Christchurch
7 March 2018 at 1pm

Panel: Community Board Member Aaron Campbell (Chairperson)
Councillor Glenn Livingstone
Community Board Member Sally Buck

Appearances
for the Objector: Sammuel Kent (Objector)
Ray (Person in charge of Pickles)
(Character Referee)
for the Animal Management Team: (Victim)
(Witness)
Bill Kohi (Senior Animal Management Officer)
Jo Ward (Investigating Animal Management Officer)

Determination: 26 March 2018

Hearings Advisor: Mark Saunders

**DETERMINATION OF THE HEARINGS PANEL
OF THE CHRISTCHURCH CITY COUNCIL**
(Dog Control Act 1996, section 33B)

The classification is upheld

REASONS OF THE HEARINGS PANEL

INTRODUCTION

[1] The hearing was held to consider an objection received from dog owner, Sammuel Kent ('the Objector'), to the classification by the Christchurch City Council Animal Management Team under Section 33A(1)(b)(i) of the Dog Control Act 1996 ('the Act') of his four-and-a-half year old, male, white and tan coloured, French Bull Dog named 'Pickles' (also known as 'Sergeant Pickles') as a 'menacing' dog – which classification creates special obligations imposed on the dog owner by, and described within, Sections 33E-33F of the Act.

[2] Section 33A(1)(b)(i) of the Act, under which Pickles was classified, relates to a dog that a territorial authority considers may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of an observed or reported behaviour of the dog. Under section 33A(2) of the Act a territorial authority may classify such a dog as 'menacing', and following a report that Pickles had, on 20 November 2017, bitten a person ('the Victim'), the Senior Animal Management Officer under his delegated authority did so classify Pickles as a 'menacing' dog by causing to be given to Mr Kent notice of the classification and other prescribed matters, including his right to object to the classification under section 33B of the Act.

[3] Mr Kent exercised his right to object to the classification of Pickles as 'menacing' and in accordance with his right to be heard in support of his objection it was referred to the Hearings Panel of the Christchurch City Council as the body with the delegated authority to hear and determine the objection.

[4] The Hearings Panel on 7 March 2018 heard Mr Kent's evidence and submissions, and also heard from other witnesses to the reported attack and from the Animal Management Team, having previously received a report from Bill Kohi, Senior Animal Management Officer, together with the evidence collected by the Investigating Animal Management Officer, Jo Ward, relating to the incident and classification.

[5] This report notifies the determination of the Hearings Panel that the classification of the Objector's dog, Pickles, as 'menacing' is **upheld**, and the reasons for its determination in accordance with section 33B(3) of the Act.

BACKGROUND

[6] On 27 November 2017 at approximately 3:32pm, the Council received a complaint from the Victim alleging that at approximately 1:30pm on Monday, 20 November 2017, the Objector's French Bull Dog had jumped up on him in an attempt to get his Chihuahua dog and in doing so the Objector's dog had come to inflict bite wounds to his (the Victim's) arm, abdomen and thumb.

[7] The Council's Animal Management Team investigated the Victim's complaint and on the evidence it gathered determined that the alleged dog attack did occur. They further determined that the dog that attacked the Victim was the white and tan coloured, French Bull Dog named 'Pickles' owned by the Objector, Mr Kent (though another person, Ray, was in charge of Pickles at the time of the attack), and, in accordance with section 33A(1)(b)(i) of the Act, the Animal Management Team classified this dog as 'menacing'.

[8] Photographs on file depict the injuries to the Victim as a result of the dog attack.

[9] The Council's Senior Animal Management Officer considered the evidence collated by the Investigating Animal Management Officer and concluded that he had reason to classify Pickles as 'menacing' in accordance with section 33A(1)(b)(i) of the Dog Control Act, and so, with delegated authority, he did so classify the Objector's dog, Pickles, as 'menacing' in accordance with that section of the Act (which relates to a dog that a territorial authority considers may pose a threat because of an observed or reported behaviour of the dog).

[10] On 9 January 2018, the Council received from the Objector, Mr Kent, a formal objection to the classification of his dog, Pickles, as 'menacing'. The objection triggered the appointment of a Hearings Panel to hear the objection with delegated authority to uphold or rescind the classification after having regard, pursuant to Section 33B(2) of the Act, to: (a) the evidence which formed the basis for the classification; (b) the steps taken by the owner to prevent any threat to the safety of persons or animals; (c) the matters relied on in support of the objection; and (d) any other relevant matters. The Hearings Panel had regard to these matters in reaching its determination as summarised in this report.

[11] The following report and assessment summarises a considerable volume of oral and written evidence and submissions presented to the Hearings Panel. It is not intended to be exhaustive in its scope, but rather to identify what were considered to be the salient comments.

THE HEARING

Submissions of the Animal Management Team

[12] Bill Kohi, Senior Animal Management Officer, referred to his written report circulated prior to the hearing. In the report relevant extracts from the Dog Control Act 1996 were provided for the Hearings Panel's information and consideration.

- Objects of the Act (Section 4)
- Obligations of Dog Owners (Section 5)
- Functions, duties and powers of territorial authorities (Section 6)
- Territorial authority may classify dog as menacing (Section 33A)
- Objection to classification of dog under section 33A (Section 33B)
- Effect of classification as menacing dog (Section 33E)
- Offence to fail to comply with section 33E(1) or Section 33EB (Section 33EC)

[13] Mr Kohi summarised for the Hearings Panel the facts on which the decision to classify the Objector's dog as 'menacing' were based referring to his report and the attachments thereto. Mr Kohi referred to the formal statement provided by the Victim and the photograph he provided of his injuries.

[14] Mr Kohi summarised the facts of the central incident of 20 November 2017 as follows:

The reported incident occurred at the Rawhiti dog park, 136 Shaw Avenue, New Brighton, Christchurch at 13:30 on Monday the 20th November 2017.

A formal statement was provided by [the Victim], he also provided the officer with a copy of his hospital discharge documents. A photograph of his thumb was taken after treatment but there were no photographs taken of the injury at the time of the incident.

[The Victim] has stated that he was standing talking with a group of people within the confines of the dog park. He was holding his Chihuahua dog in his arms.

The person who was in charge of the French Bull Dog, Pickles, is known to the complainant as Ray. Ray was also in the group of people.

[The Victim] has felt something hit him in the abdomen. He realised it was 'Pickles' jumping up on him. He has turned away from the dog but the dog has jumped again biting him on his left forearm. Ray has tried to unsuccessfully contain Pickles. Pickles has jumped for a third time biting [the Victim] on the thumb. At this point Pickles has held on to his thumb and refused to release his hold.

Eventually Pickles has release [the Victim]'s thumb and Ray has managed to contain the dog.

Ray has taken Pickles out of the dog park. He returned with Pickles on a leash and assisted [the Victim] providing medical supplies to dress his wounds.

[The Victim] had to seek medical attention for his injuries and required hospitalisation and surgery to repair the injuries caused by the dog attack.

The person in charge of Pickles, [Ray], also provided the investigation officer with a statement. [Ray] gave his statement on Tuesday 28th November 2018.

He has stated that he was at the Rawhiti dog park with [the Objector's] two dogs, one of which was Pickles. Both dogs were off leash.

The man who was injured by Pickles had entered the Park with his dog in his arms.

There were a group of five people standing in a group, talking. Pickles was being patted by members of the group.

[Ray] has noticed that Pickles was looking at the dog in the man's arms and before he could get a leash on Pickles he had jumped up at the dog but missed it and bit the man instead.

He eventually managed to get hold on Pickles and place a leash on him. Pickles was handed to a women to hold onto while [Ray] gathered some medical supplies and assisted the injured man.

[Ray] attended the medical centre where the victim had been taken and paid for appointment. [Ray] was advised that the man needed to go to hospital for treatment.

A third statement was also provided by a witness to the attack. [The Witness] provided a statement to the investigating officer on Tuesday 30th January 2018.

[The Witness] confirms that the French Bull Dog known as Pickles was standing beside [Ray] who had joined the group standing in the dog park.

She has seen Pickles lunge at [the Victim], biting him on the thumb.

[The Witness] has held onto [the Victim's] dog while he went to the water tap to clean his wound. Ray has gone to assist him after collecting some items from his car.

[The Witness] has taken [the Victim] to seek medical attention. She confirmed that [Ray] arrived at the Medical centre and paid the doctors bill....

This is the second reported incident involving the French Bull Dog, Pickles while under the charge of [Ray]. The previous complaint alleged that Pickles attacked another dog at the Rawhiti dog park, the owner of this dog received a wound to her fore arm while trying to retrieve her dog

An official warning notice was issue to [Ray] in accordance with Section 57 of the Dog Control Act 1996.

[15] At the hearing, Mr Kohi indicated that in his assessment Pickles continues to pose a potential threat, even if only to other dogs, or to persons coming between him and other dogs, though that being sufficient for the menacing classification, and the Council uses the classifications available to it through the Dog Control Act 1996 to prevent attacks reoccurring. Mr Kohi indicated that it was not inappropriate in itself that Pickles was off leash at the time of the attack, but Pickles needed to be under effective control.

[16] The Hearings Panel undertook to be open-minded and to form its own view of whether the menacing dog classification was and is still appropriate having regard to the matters set out in Section 33B(2) of the Act as described further below.

The Complainant

Evidence of the Victim

[17] On 28 November 2017, the Victim provided a statement to the Investigating Animal Management Officer outlining the details of the attack, noted to have occurred on 20 November 2017 at approximately 1:30pm at Rawhiti dog park, as follows:

I was in a group of people at the dog park. We were talking and I was holding my small dog, Dobby. Ray, the person in charge of the dog Pickles, was also talking amongst the group. The dog Pickles was off lead milling around. Suddenly I felt a bite or bump on my abdomen. I realised it was Pickles. I turned to get away but Pickles jumped again biting onto my left forearm. Ray was trying to grab Pickles but Pickles jumped again and latched onto my left thumb. He wouldn't let go and finally Pickles released the bite.

Ray took Pickles to the car outside the dog park to collect medical supplies. He returned with Pickles into the dog park on a lead.

I passed my dog to another park user and went to the water supply to clean my wounds.

Ray put bandages on me and a park user, [the Witness] took me to the doctor after taking my dog home. I was advised to go to the hospital for treatment. I stayed one night in hospital and had surgery for my thumb and lacerated forearm. My abdomen wound was more a graze.

Ray paid the initial medial bill from the medical centre.

[18] The Victim provided a photograph of his injured and dressed thumb. The CDHB Discharge Summary of 21 November 2017 provided in respect of the Victim's injuries records:

Presenting Complaint

Attacked by random dog at dog park

OE findings in theatre

Right adbo superficial abrasion, already cleaned and dressed

Left forearm jagged laceration onto fat, excised as an ellipse and closed with...

Left thumb – Penetrating bites with entry point through nail bed which has degloved part of the nail bed and penetrating wound

Over IPJ into joint with a small fracture off the RCL

Evidence of the Witness

[19] A Witness to the incident also on 30 January 2018 provided a statement to the Investigating Animal Management Officer as follows:

I was in Rawhiti dog park with my dog and about 6 other people. I was sitting on a bench and chatting to the Victim and others. Ray, the person with Pickles, was with two French Bulldogs and he moved closer than usual to the group. Ray started telling the group a story. Pickles was standing by Ray. Pickles lunged forward. I saw Pickles latched onto [the Victim's] thumb. I did not see any other injuries occur. [The Victim] said "he won't let go of my finger".

Ray started telling people that Pickles had done this three times. I saw [the Victim] going towards the water tap and buckets. I was holding [the Victim's] dog at this time. Ray went to the car with the dogs and then returned with them.

I then took [the Victim] home to drop the dog off. I then took [the Victim] to the doctor. Ray turned up with the dogs at the doctors to pay the bill. The doctor asked me to take [the Victim] to hospital, so I did.

[20] At the hearing, the Victim recounted that he was in a group talking at the time of the incident and observed Pickles eyeing up his dog for attack, and Pickles leaped up first biting at his stomach, then getting his arm, and on the third attack getting his thumb, which we wouldn't let go off causing injury resulted in a 75 percent loss of movement in his thumb. He noted that plastic surgery was needed for his thumb as well as physiotherapy.

[21] The Victim noted that his dog he was holding at the time was his seven-year-old Chihuahua, which he takes to the dog park most days, and he had seen Pickles attempt to perpetrate a similar incident about a month before though the dog in that case had been picked up quickly enough that there was no injury.

[22] The Witness attended the hearing and confirmed that everything had been covered between the summary of the Senior Animal Management Officer and the account of the Victim.

[23] The Victim indicated that Pickles is paired with another dog called 'Mo', which the Victim described as a beautiful dog, and noted that Pickles is protective of Mo, and noted that Pickles move little except he

keeps an eye on what is going on and has issues with other male dogs when Mo is around, and he had seen Pickles attack another dog before, and the owner of that dog subsequently cease to come to the dog park.

The Objector

Evidence and Submissions of Sammuel Kent

[24] The Objector's initial written objection to the classification of Pickles as a 'menacing' dog had advised that:

I am seeking a review of your decision viz:- Classifying Sargent Pickles as a Menacing Dog..

*Firstly, the person in charge of Sargent Pickles on the occasion of both incidents was [Ray]..
The person in charge is the one responsible -not the dog.*

Secondly, I have read the relevant sections of the Dog Control Act.

I appeal to you to review the circumstances of the incidents:-

(a) I accept that two people suffered injury -bite or claw as a result of defensive action taken when Sargent Pickles jumped up at small dogs being held in the arms of their owners in the dog park.

I want it made clear that Sargent Pickles has never attacked a person.

(b) [Ray] has lived with and walked Sargent Pickles; indeed they have visited the dog park 2/3 times a day, every day for the past 30 months: 99.9999% of the time hundreds of people and their dogs have enjoyed their company.

(c)I WE have been aware for the past 12 months that Sargent Pickles has a tendency to jump at any small dogs HELD IN THE ARMS OF THEIR OWNER IN THE PARK and we have always made them aware of this and taken action viz: placing Sargent Pickles on his lead and moving away, and on many occasions -left the park.

Both owners, in these two incidents, were aware and I believe that they would agree that I /we had a PLAN OF ACTION viz: to put Sargent Pickles on his lead - a responsible behaviour/action.

Incident 1. Owner gave [Ray] no time to put Sargent Pickles on a lead despite numerous requests from him for them to remain outside park until he had taken action with Sergeant Pickles: PEOPLE TO BLAME NOT THE DOG.

Incident 2. [Ray] was talking to a group of regulars and did not realise that the person (injured) had entered the park and joined the group; a momentary lack of attention: PEOPLE TO BLAME NOT THE DOG.

I am not making light of the incidents, however, on these two occasions it was a LACK OF PEOPLE ACTION that resulted in the incident taking place.

Addressing Section 33E. 11,4,2

1(a) Made enquires of Vets and French Bulldogs owners and breeders as to a suitable muzzle - I HAVE PURCHASED A MUZZLE AND WILL TRAIN ITS USAGE ON SARGENT PICKLES. taking Veterinary advice.

1(b) Sargent Pickles has never "injured stock, poultry, domestic animals or protected wild life" - he

has NEVER attacked people -either in the park or when walking in public places.

French Bulldogs are not listed as a Menacing Dog Section 33A of the Dog Control Act.

Sargent Pickles will never enter the Dog Park (a decision made by ME and passed on to [Ray])

I have contacted KURI , professional dog training service seeking their help in addressing Sargent Pickles behaviour in this particular circumstance.

Addressing Section 33E 11.4.3

Sargent Pickles has a partner-they have produced a litter. This partner was purchased as a new member of the family and for breeding purposes. De-sexing Sargent Pickles would result in a "potential financial loss to the owner "

[Ray] was in control of Sargent Pickles on both occasions and he accept full responsibility.

I have banned me from taking Sargent Pickles to the Dog Park, so as to avoid any further incidents of this type- REMOVING THE ENVIRONMENT

Addressing this particular behaviour of Sargent Pickles by seeking out and using profession services - EDUCATION for Sargent Pickles. [Ray] and myself.

[Ray] takes the matter seriously and accepts full responsibility for the actions of Sargent Pickles when in his care.

- PERSON TO BLAME not the ANIMAL

[Ray] who was Secondary School teacher for 44 years and now working with [...] understands and practises responsible and acceptable law abiding behaviour at all times.

I cannot emphasis "it " enough - Sargent Pickles is not to blame – [Ray] was in charge - he has written a letter of apology; he has paid a medical account, and he accepts responsibility.

I am PLEADING with you to remove the Menacing Dog status from Sargent Pickles.

I am addressing the problem; removed the environment (no DOG PARK); purchased the muzzle; arranged professional education for Sargent Pickles, [Ray] and myself.

Thanking you for taking the time to consider the contents of this letter of appeal.

[25] The Objector included a letter of support from a neighbour stating:

I confirm I have known [the Objector and Ray] since their arrival from Australia.

They are in my opinion both outstanding and caring neighbours, a credit to us all in the neighbourhood.

They own a small dog which they call Sgt Pickles, which I have observed on a daily basis being walked to the Rawhiti Dog Park on a lead at all times by [Ray].

[Ray] visits my home often with the dog Sgt Pickles, at no time have I ever observed any aggressive behaviour in any way.

When my four grandchildren 5-10 visit us they love the chance to...and pat Sgt Pickles.

I have observed many people in the New Brighton Shopping Mall making a fuss and patting the dog.

Evidence of Person in Charge

[26] Ray, the Person in Charge of Pickles at the time of the incident on 28 November 2017 provided a statement to the Investigating Animal Management Officer as follows:

I was in Rawhiti dog park with [the Objector's] 2 dogs. They were both off lead playing in the park. The man who was injured entered the park holding his dog. We were in a group chatting. There were 5 of us. Pickles was near us and being patted by people in the group. I saw Pickles look at the small dog in the man's arms. Before I could get a lead on Pickles, he jumped up at the dog. He missed the dog and got the man.

The man was trying to fend Pickles off. I did not notice how many times Pickles jumped up. I eventually got hold of Pickles' harness and attached his lead.

I gave Pickles to another woman and went with the man to the water trough. I went to get medical supplies and returned to help with injured man. I went to the medical centre that the injured man attended and paid his bill of \$38.

The injured man advised me he was going to hospital to be treated.

[27] At the hearing, the Objector noted his apologies to the Victim and offer to pay for him to go to treatment. The Objector up front noted his willingness to pay, noting that it is his dog and his responsibility.

[28] The Person in Charge of Pickles at the time of the incident, Ray, noted at the hearing that he would put Pickles on a lead in the dog park when other dogs were entering or exiting, but Pickles wasn't in his line of sight at the time just before the incident and when he started to see Pickles lining up the Victim's Chihuahua, he tried but couldn't react quickly enough to stop the incident. He noted that upon noticing that the Victim needed more treatment than immediately available he asked the name of the Victim's doctor and rang ahead for the Victim to let the medical centre know they were on their way.

[29] Ray also discussed the previous incident referred to by the Senior Animal Management Officer, indicating that Pickles and the relevant dog did not like each other, though Pickles had socialised very well with the owners' previous dog. Ray indicated that they were advised to not bring their dog into the dog park until Pickles was on a lead, and the suggestion was that they did not comply with such an instruction that was yelled out at them and there was a little altercation, though Ray did not realise at the time that injury had resulted having not been immediately in position since another lady had offered to go explain to the other dog owner the need to halt while Pickles was leashed.

[30] The Objector noted that he apologised to the relevant person in that previous incident, and would have paid any medical bills if he had been aware of the injury resulting.

[31] The Objector also noted that Pickles is entire, and also that he doesn't like having the muzzle on. The Objector noted the training that Pickles has been undertaking to address the problematic behaviour and how this will be ongoing. The Objector further described how Pickles and Mo are his best friends and go with him everywhere. He described his objection to the neutering requirement, and how Pickles is fine with children, even very young children; how he mostly sits snorting and farting and has never been aggressive to anyone else.

[32] The Objector confirmed there have only been the two incidents that the Senior Animal Management Officer referred to, and how he now doesn't take Pickles to the dog park, and has brought his own breed-appropriate muzzle for Pickles.

[33] Ray further added that Pickles wasn't attacking the Victim as a person, but was only going for his dog.

Evidence of Character Referee

[34] The Objector brought a character referee to the hearing who has been taking her young dog to the dog park in question for around 18 months. The Referee described how Pickles and her dog had become best mates and how Pickles enjoys a play and a game, and how Pickles and other dogs often cuddle up, and it is only little dogs that are a problem for Pickles when held by their owners. The Referee expressed issue with the lack of guidelines for users of dog parks, noting that Ray is good at reading Pickles' behaviour, but other people do not listen to his instructions and make it difficult for Ray to do the right thing at the right time. The Referee indicated that it is just this one issue Pickles has around little dogs when held by their owners.

Reply from the Animal Management Team and from the Victim

[35] Mr Kohi acknowledged the Objector's efforts in respect of training and his sincerity in endeavouring to remedy the situation and take responsibility, but still considered the 'menacing' classification an appropriate and proportionate preventative measure to remain in place. Mr Kohi noted some concern about the Objector's comment around having Pickles around babies and small children, indicating that the majority of serious dog attacks are in the home, and all dogs should be well supervised around children, or ideally separated to eliminate the risk.

[36] Having heard from the Objector, the Victim and Witness indicated they had no more to add upon being given the opportunity to reply.

Close of Hearing

[37] The Hearings Panel considered that it had all the information it needed to have regard to under section 33B(2) of the Act after considering the evidence, information and submissions available to it.

[38] The Hearings Panel closed the hearing and reserved its decision.

PANEL DELIBERATIONS

The evidence which formed the basis for the classification

[39] The evidence which formed the basis for the classification was not in the Panel's view in any doubt with regard to it supporting the assessment that Pickles bit the Victim resulting in him suffering the wounds reported. The Objector and Person in Charge of Pickles at the time furthermore (to their credit) did not deny that Pickles bit the Victim and that there was a previous similar incident in which Pickles while trying to get at another dog caused injury to a person; a warning notice having been issued in respect of the previous incident.

[40] The Panel appreciated that Pickles apparently caused the injuries to persons through trying to get at other dogs and there was no evidence that Pickles would attack persons in other circumstances. The Panel also appreciated that Pickles had not injured the other dogs. The Panel, however, considered that evidence that Pickles bit a person, whether or not as an intentional attack focused on a person (the Panel giving Pickles the benefit of the doubt that it was not intentionally focused on the Victim), through trying to get at another dog, is and was sound basis for the classification in absence of exceptional circumstances.

[41] Though the Panel saw nothing particularly exceptional about the circumstances of the incidents, and considering the extent and lasting effect of the injury the Victim suffered, the Panel conceived that the classification given was and is proportionate to a dog that is not a direct threat to persons and may only bite occasionally in the circumstances experienced; convincing evidence of a dog focusing such an attack on a person might have been dealt with more seriously, and the Panel considered that the Animal Management Team had exercised fair and insightful judgment in classifying Pickles at the level they did relying on the evidence available.

[42] The evidence suggested to the Hearings Panel that the attack resulted from Pickles not being kept under control and that Pickles could attack again if again not kept under control; indeed it appeared the incident could reoccur in some circumstances even with Pickles leashed if he was unmuzzled. The evidence suggested that Pickles had an apparent propensity to such an attack in some circumstances as demonstrated by the attack that led to the classification and by the previous attack.

[43] The Hearings Panel, having regard to the evidence which formed the basis for the classification of Pickles as 'menacing', considered that it was sufficient to form the basis for the Animal Management Team's classification, recognising that it would proceed to consider Mr Kent's evidence and his submissions in support of his objection to the classification.

Steps taken to prevent any threat to the safety of persons or animals

[44] It was not doubted that the Objector, Mr Kent, was sincere that he would from now on contain and control Pickles, and that he was committed to training Pickles. The Panel were pleased at the Objector's demonstrated dedication to, and concern for, Pickles in ordering him a breed-specific muzzle. The Hearings Panel recognised that Mr Kent had taken such steps to prevent further threat and did not doubt that Mr Kent is a caring and responsible dog owner. The Panel commend Mr Kent for taking responsibility for the incident, distancing Pickles from the situation of risk, taking the effort to source a muzzle considerate of Pickles welfare and taking proactive steps towards training, as being all actions the Panel hopes Mr Kent will continue.

[45] The Hearings Panel considered Mr Kent's and Ray's commitment to understanding and training Pickles and removing him from the situation in which the incidents to date have occurred. The Hearings Panel also considered Mr Kent's and Ray's evidence and submissions in regard to the generally harmless nature of Pickles and his lack of aggression toward people and children. Though the Panel supported the Senior Animal Management Officer's caution around interactions between dogs and children, urging the Objector to not be complacent about such interactions regardless that Pickles might be generally trustworthy when other dogs are not in the mix.

[46] The Hearings Panel considered, however, that the bite injuries the Victim suffered from Pickles tragically demonstrate that Pickles poses a threat to other dogs and to people that get between him and other dogs. Indeed, the degree of injury suffered by the Victim, the level of medical treatment required for it, and its permanence in having lasting effect on the mobility of his thumb, as points that weighed heavily on the Panel, suggest that Pickles poses a significant threat, regardless of the point that it may exist alongside a generally harmless nature. The stigmatising connotation of a menacing dog classification is sometimes unfortunate as the label is sometimes a poor fit to the classification's purpose of preventing a threat demonstrated by the reported behaviour of the dog.

[47] The Panel is not wishing in any sense to condemn Pickles or his owner, but it is unacceptable to allow the threat Pickles poses unclassified to exist; the degree of damage Pickles inflicted on the Victim is a matter of the greatest seriousness and concern to the Panel. The Panel has great sympathy for the Victim, though the Victim did not seek it, and the Panel admires the matter of fact manner in which the Victim assisted them in giving evidence. The Victim and Witness assisted with an integrity and composure the Panel respected, and though they did not dwell on the matter, the Panel easily perceives the impact of such an incident and injury on the lives of a person. The public interest in these dog attacks is sometimes quite wrongly focused on blame and fault; in this case particularly all parties were well-intended and acted with integrity such that it would be simple-minded to bring moralistic notions to the matter, but the consequence of the incident was nonetheless serious and unacceptable and justifies classification as a preventative measure.

[48] It is understandable that the Objector would object to the connotations of a menacing classification and feel unfairly condemned by the unfortunate negative side of the wider community interest, but the Panel can do little about such things other than reject such negativity seeing an Objector trying to do the right thing and a dog that is undoubtedly loveable and worthy of consideration, though clearly also a threat. And the Panel is fundamentally concerned in terms of the steps taken by the Objector with whether the threat Pickles poses has been reasonably eliminated, and though the Objector has taken the right steps, the degree of damage Pickles did reasonably warrants muzzling Pickles and further upholding the classification as a practical preventative step that the Objector can embrace knowing the Panel regards it as no more than that, and does not uphold it in order to punish, stigmatise or criticise.

[49] The Panel acknowledged that it may be that Mr Kent will from now on control Pickles, but it had to have regard to the objects and provisions of the Act, the nature of the attack and dog bite injury that the Victim suffered when innocently using the dog park, and the need to address the threat. It recognised the difficulty in constantly controlling a dog that displays such a tendency to bite in trying to get at other such dogs in such circumstances, and the threat it presents when un-muzzled.

[50] In light of these various considerations speaking to the fact that Pickles is a potential threat, the Hearings Panel considered that the steps taken by the Objector, though admirable, were not sufficient in all the circumstances of this case to persuade it to rescind the classification.

Matters relied on in support of the objection

[51] The Objector essentially accepted the Victim's account of the incident to his credit; it also being to the credit of the Objector that he apologised to the Victim for the incident and offered reimbursement for their expenses. The Hearings Panel considered the Objector's remarks in respect of the persons involved in the incidents being to blame, rather than Pickles being to blame, but considered that whether or not there could be blame (and it was perhaps unfair to place blame anywhere in this instance), and whether or not it lay with persons or Pickles, was somewhat immaterial as the classification is not intended to be punitive. Whether a potential threat arises from the nature of a dog or from the action of persons, classification of the dog can be the appropriate preventative measure as the most simple, effective and available means of controlling a threat that is unacceptable to not control; it is unfortunate that it may affect the dog most, but the effects of the classification are not intended to be discomforting, so the Panel is encouraged that the Objector clearly has a concern for Pickles to endeavour to ensure the best muzzle is used.

[52] The Hearings Panel appreciated the sincere and admirable efforts of the Objector to prevent a reoccurrence of the attacks, but the Hearings Panel was mindful of the potential relevance of these determinations to the safety of the wider public, and was not persuaded Pickles no longer had the propensity to attack and injure in similar contexts.

[53] The Hearings Panel regarded that the nature and seriousness of the attacks justified upholding the 'menacing' classification so as to require muzzling as a preventative measure. It should not necessarily be moral condemnation on a dog that its nature compels it to bite in some circumstances, but it should be normalised to take such incidents very seriously as the present case demonstrates how the consequences can escalate, so it should become normalised to immediately seek to train and muzzle a dog with a propensity to biting. A muzzle should and can be selected that does not harm a dog, and it is hoped the Objector can assist with championing and normalising muzzle use knowing the muzzle should be a sign of responsibility, not punishment or condemnation.

[54] The present case demonstrates the threat a generally good dog with a good owner can present, and the need to take care around and with all dogs; the Person in Charge of Pickles at the time did not have Pickles under effective control to prevent the attack, but the circumstances of the attack were not unusual, so the reasonable conclusion of the Panel is that classification is appropriate control to prevent any further attack. The Objector and Person in Charge had received a warning notice in respect of a previous incident, so could be regarded to have been treated with ample fairness.

[55] The Panel considered that the Objector and the Person in Charge had attempted to control the threat by asking other dog park users to allow them opportunity to control Pickles before entering the park, but saw evidence that it was an unreliable (and possibly unreasonable) step. It was unreliable possibly because of a lack of cooperation from other dog owners, but that point was considered immaterial given the appropriate freedom of movement of other users and the responsibility on dog owners to effectively control their dog and ensure they do not injure or endanger. Fundamentally a dog owner should not need to rely on other dog owners restricting their reasonable freedom of movement for any time (and shouldn't

need to yell out instructions to other owners), and the point remains that Pickles has a propensity to cause injury in the relevant circumstances and any contributing factor of other dog owners failing to halt before approach is not unusual, much less exceptional enough to be relevant.

[56] The Hearings Panel appreciated the Objector's submissions, but for reasons already canvassed above considered that they should not rescind the classification on the basis of those submissions all things considered. The Hearings Panel perceived that Pickles had demonstrated a capacity for injuring people unprovoked even if only in certain circumstances when Pickles is aiming rather for another dog.

[57] The Hearings Panel considered that in light of the injury Pickles had caused to the Victim, and the circumstances of the attack, the classification should be in place, noting that it is a preventative measure, and is not intended to be punitive, as the Hearings Panel was encouraged by the Objector's efforts, but regarded that it should nonetheless uphold the classification having regard to the object of the Act to impose on dog owners obligations designed to ensure that dogs do not injure, endanger, or cause distress to any person, stock, poultry, domestic animal or protected wildlife.

Other relevant matters

[58] The Hearings Panel had regard to the evidence as a whole and considered that it had all the information it needed to have regard to under section 33B(2) of the Act. The Hearings Panel noted that every objection to a menacing dog classification is considered on its own merits and having regard to the circumstances particular to the case. The Hearings Panel, having regard to all relevant matters, considered that upholding, and not rescinding, the classification would be justified by the evidence and submissions and would align with the objects of the Act.

RESULT

[59] Having considered the objection of Mr Kent to the classification of his dog, Pickles, as a 'menacing' dog, together with the evidence and submissions of those who have written to the Council and/or appeared before the Hearings Panel, and having regard to the matters contained within the Dog Control Act 1996 and referred to in section 33B(2) of the Act, it is determined that the classification of Mr Kent's four-and-a-half year old, male, white and tan coloured, French Bull Dog named 'Pickles' as a 'menacing' dog be **upheld** for the reasons indicated herein and for the reason that the Hearings Panel considers that the dog may pose a threat because of the reported behaviour of the dog.

CONFIRMED THIS 26TH DAY OF MARCH 2018



AARON CAMPBELL
CHAIRPERSON