

Dog Control Act Hearing Panel DETERMINATIONS

Date: Wednesday 16 May 2018
Time: 3pm
Venue: Committee Room 1, Level 2, Civic Offices,
53 Hereford Street, Christchurch

Present

Chairperson	Community Board Member Aaron Campbell
Members	Councillor Anne Galloway
	Community Board Member Melanie Coker

16 May 2018

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Election of a Chair

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

The objections were dealt with in the following order.

1. First Hearing

Hearing of an objection to the classification pursuant to section 33A(1)(b)(i) of the Dog Control Act 1996 of five-year-old, male, red coloured, Dogue de Bordeaux dog named "Justice", and three-year-old, female, tan coloured, Dogue de Bordeaux dog named "Maci", as menacing dogs

Postponed to 21 June 2018 at 1pm. Refer to determinations issued against that date.

2. Second Hearing

Hearing of an objection to the classification pursuant to section 33A(1)(b)(i) of the Dog Control Act 1996 of two-year-old, male, tan and white coloured, English Bull Terrier dog named "Lead" as a menacing dog

Refer page 3 below for determination.

Hearing closed and decision reserved at 3:35pm.

BEFORE THE HEARINGS PANEL
OF THE CHRISTCHURCH CITY COUNCIL

18/559878

IN THE MATTER

of the Dog Control Act 1996

A N D

IN THE MATTER

of an objection of GINA LORRAINE POOLE of Christchurch to the classification by the Christchurch City Council Animal Management Team under Section 33A(1)(b)(i) of her two-year-old, male, tan and white coloured, English Bull Terrier dog named 'Lead' as a menacing dog

Hearing: Committee Room 1, Level 2, Civic Offices
53 Hereford Street, Christchurch
16 May 2018 at 3:15pm

Panel: Community Board Member Aaron Campbell (Chairperson)
Councillor Anne Galloway
Community Board Member Melanie Coker

Appearances

for the Objector: Gina Poole (Objector)
(Objector's husband)
for the Animal Management Team: (Complainant)
(Complainant's husband)
Bill Kohi (Senior Animal Management Officer)
Brent Shatford (Investigating Animal Management Officer)

Determination: 5 June 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, Gina Poole ('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 her two-year-old, male, tan and white coloured, English Bull Terrier dog named 'Lead' (also known as 'Ed') 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 Lead 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 Lead had, on 15 February 2018, escaped its property and killed the Complainant's two Rainbow Lorikeet birds after breaking open their cage, the Senior Animal Management Officer under his delegated authority did so classify Lead as a 'menacing' dog by causing to be given to the Objector notice of the classification and other prescribed matters, including her right to object to the classification under section 33B of the Act.

[3] The Objector exercised her right to object to the classification of Lead as 'menacing' and in accordance with her right to be heard in support of her 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. The Hearings Panel on 16 May 2018 heard Mrs Poole'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, Brent Shatford, relating to the incident and classification.

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

BACKGROUND

[5] On 15 February 2018 at approximately 8:15pm, the Council received a complaint from the Complainant alleging that at approximately 8:10pm that day, the Objector's English Bull Terrier dog had come onto her property, broken open her bird cage and attacked and killed her two Rainbow Lorikeet birds.

[6] The Council's Animal Management Team investigated the complaint and on the evidence it gathered determined that the alleged dog attack on the Complainant's birds did occur. The Officer further determined that the Objector's two-year-old, male, tan and white coloured, English Bull Terrier dog named 'Lead' was the dog that attack and killed the birds, that the birds were kept as domestic pets by the Complainant, and that Lead broke open the birds' cage in which they were secured on the Complainant's property to get at the birds.

[7] The Council's Senior Animal Management Officer, considered the evidence collated by the Investigating Animal Management Officer, and considered that he had sufficient evidence to prove that the dog has not been under effective control and has attacked and killed two domestic animals and so with delegated authority, classified the Objector's dog, Lead, as 'menacing' in accordance with section

33A(1)(b)(i) of the Dog Control 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).

[8] The Council received from the Objector a formal objection to the classification of her dog, Lead, 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.

[9] 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

[10] 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)

[11] 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 statements provided by the Victim and the Objector and to the photographs provided of the dead birds, the bird cage, and the dog with one of the birds in his mouth.

[12] Mr Kohi summarised the facts of the central incident of 15 February 2018 as follows:

The Christchurch City Council received a complaint from [the Complainant] at approximately 2015 hrs on Thursday 15th February 2018.

Officer Gail O'Keefe was the first call office for after-hours call and responded to the initial call. Officer O'Keefe arrived and seized the dog that had been contained on the complainant's property.

Officer O'Keefe immediately recognised the dog and realised that she had an interest in the dog so called her colleague animal management officer Brent Shatford and briefed him on the situation and asked him to take over the investigation of this case.

Officer O'Keefe returned the dog to the owner which is standard procedure when the officer is satisfied the dog will be securely contained and no longer pose an immediate threat.

Officer Shatford has obtained a statement from the complainant the following day. [The Complainant] has stated the following:

At approximately 2010 on Thursday 15th February 2017 my husband...was about to walk out the front door of our house when he called to me to come and look at something in our driveway.

I looked out the window and saw a tan and white English Bull Terrier dog standing in our driveway with one of our Rainbow Lorikeets in its mouth. Our second Lorikeet was lying lifeless in the driveway.

[My husband] went to the garage to get a chain to secure the dog. I took some photos of the dog on my phone.

I phoned the police and animal control while [my husband] secured the dog.

While I waited for animal control to arrive a women and her son turned up stating that they dog was theirs. The son asked for the dog back but I refused to release the dog and advised them that animal control were on their way.

Animal management officer Gail arrived about twenty minutes later and secured the dog in her vehicle. She took photographs of the scene.

[The Complainant] has stated that the breeding pair of Rainbow Lorikeets are valued at \$1000 each and the damaged cage was valued at \$990.

Officer Shatford also took a statement from the owner of the English Bull Terrier called Lead, Ms Gina Lorraine Poole, who states the following:

At approximately 2000 hrs on Thursday 15th February 2018 I called out for my dog, Lead, and realised that he wasn't on my property.

I had just had earthquake repairs done which required the temporary fencing to be removed.

Lead was inside the house but due to the warm evening some doors had been left open.

I went out into the street calling for Lead. When I couldn't find him I called the Christchurch City Council and reported my dog as missing.

The Council called me back and advised me that my dog had been involved in an incident at [the Complainant's address].

My son and I went to the address but the people at the address wouldn't give Lead to us because they were waiting for animal control to arrive.

Gail from animal control arrived and gave our dog back to us.

The new driveway gate has been installed and our property is secure

Ms Poole suggests that the reason her dog has gone to [the Complainant's address] is because a month earlier the female dog from this address had been in her property, inside their house and urinated everywhere.

[13] At the hearing, Mr Kohi read the above summary of the incident and his conclusion in his report to the Hearings Panel that:

The investigating officer has completed a report which in my opinion supports the decision that the 2 year old, neutered male, Tan and White, English Bull Terrier Dog called "Lead" be classified as menacing in accordance with section 33A(1)(b)(i) of the Act.

There is no doubt that the dog has been at large and while on private property it has forced its way into a secure bird cage and killed the two Rainbow Lorikeets that were kept as domestic pets.

Accordingly, with the delegated authority given to me by the Christchurch City Council, the dog referred to above has been classified as menacing in accordance with section 33A(1)(b)(i) of the Dog Control Act 1996.

...

On the 27th March 2018, in accordance with section 33B(1)(a) of the Dog Control Act 1996 an objection to the classification was received by the Christchurch City Council Animal Management Unit from Ms Gina Lorraine Poole. Ms Poole has included several photographs, references and confirmation from her builder that the replacement gate had been ordered prior to the reported incident, in support of her objection.

[14] 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.

Evidence of the Complainant

[15] Prior to the hearing, the Complainant had provided a written statements dated 16 February 2018 relating to the incident of 15 February 2018, which had assisted the Animal Management Team in their investigation and in summarising the facts as above, and which the Panel had opportunity to consider.

[16] At the hearing, the Complainant gave evidence that she did not witness Lead killing her birds, but she did witness Lead running around with one of her bird in his mouth.

[17] The Complainant stated that the bird cage that her birds were kept in immediately prior to the incident had been moved a metre or so from its location when she came upon the scene and had its roof ripped off. She further described that when she came to the scene of the incident she observed her other bird already dead on the ground in a state indicating it had been killed by an attack on it.

[18] The Complainant indicated they took care where they located their birds, but in terms of being up their driveway, she noted that they were secure in a heavy cage under a tree. The Complainant clarified that she did not hear the bird cage being tipped over by Lead, and that her husband only happened to

come across the scene when he decided to go out for some groceries. However, the Complainant indicated that the bird cage was a big powerful cage to keep their breeding pair of birds together.

[19] The Complainant indicated that she has two dogs and two cats herself and acknowledged that one of her dogs did get out of her property in the recent past and go to the neighbours (the Objector and her husband) who contacted her and she went and collected her dog.

[20] The Complainant also indicated that Lead had escaped the Objector's property on a previous occasion, maybe a week before the incident, and that he was out on the road and indicating an intention to follow the Complainant's vehicle up her driveway, so the Complainant delayed driving up her driveway and in that time other neighbouring children collected Lead and took him back to the Objector's property.

[21] The Complainant's husband in respect of the point that they didn't hear their bird cage being tipped over at the time of the incident, explained that they live up the other end of their house, so wouldn't expect to hear noises on the driveway where the bird cage was located at the time.

The Objector

Evidence and Submissions of Gina Poole

[22] In initially raising her objection in writing, the Objector had submitted that:

I feel that this is an extremely harsh penalty for this offence, and wish to outline the circumstances that lead to these events, and why and how he (ED) came to being at large on the 15th February 2018. This was the first and only time he has ever been out and not under effective control and the things that we have put in place and were in the process of putting in place prior to this unfortunate event. Ed was entrusted to us from our friend...soon after our return to New Zealand from the UK. ED is a pedigree NZKC registered show dog known as 'Bramble out with a Bang at Brixton (AI) 02290-2016'.

As ED has what is called 'a mouth fault', in dog show terms, his Breeder...and the Co-owner...wanted to find a home where he could still be shown at Bull Terrier speciality shows but first and foremost, be a family pet. [Ed's Co-owner] was confident when giving Ed to us, that he we were going to experienced and responsible dog owners, and Ed would be a much loved family member.

[Ed's Co-owner] and I met through our mutual love of Boxers. When our family emigrated here in 2007 we brought with us our 9 year old Boxer, 'Balfour', at considerable financial cost (\$10,000). As a much loved member of our family it was unthinkable that we would leave him behind. Sadly, Balfour died not long after we arrived. Fortunately we had met [Ed's Co-owner], and we were able to have a Boxer puppy from her, a breeder we were confident in. We also met other Boxer breeders, and had an older Boxer bitch from another breeder.... We attended dog shows around Canterbury with our dogs on a regular basis. We initially lived at [the current address], but had then moved to [another address] and leased [the current address] out as a rental home.

Unfortunately, my husband...lost his job due to the earthquakes and we had our family home in Burwood, red zoned after months and months of indecision by EQC. We were not New Zealand citizens; hence...was unable to get unemployment benefit. After 3 months of him looking for work without success and trying to survive on one wage, we had to make the extremely hard decision to go

back to the UK. This meant having to give up our much loved dogs as we were unable to afford to take them back with us, as we had only just enough money to get us back to the UK

My eldest son was living in the North Island serving in the NZ army at this time and he and his partner took our young male boxer to go live with them and [the breeder] kindly took the older boxer bitch (Phoebe) back.

When we were settled back in the UK and after some months, I rescued an American Bull Dog called BRIDGE. Being that I did not know his full history, and being the he was a large and powerful dog, I muzzled him whenever I had him out off of my property, as I wanted to be responsible and with not knowing what he could possibly be like with other dogs, people children etc to me this was the most sensible thing that I could do. BRIDGE showed himself to be nonaggressive dog after a few months of being out of kennels from which he was rescued. BRIDGE now lives with my mother who is in her 80's, back in the UK, and enjoys a gentle stroll off a leash without the need of a muzzle.

So after 6 Years back in the UK getting ourselves back on our feet, and eventually getting paid out for the home that was red zoned, we were able to move back to NZ.

We moved back to [the current address]. Upon us moving back to NZ and into this home, we met back up with [Ed's Co-owner], and after a few months we had, ED living with us and bringing us the joy of having a dog again.

Our son and daughter-in-law with their 2 children aged 2 and 3 years, soon moved down from the North Island to live with us. ED has been to most wonderful dog with our grandchildren. He is so gentle, and he is our grandson's best mate. They will curl up on the couch and cuddle for hours. He sleeps with both the grandchildren and they also feed him and enjoy taking him for his walks. So as you do with 4 adults, 2 young children and 1 dog, you make life work.

We are currently having earthquake repairs done to the outside of our property, including a new concrete patio in the garden and the driveway replaced. These have been ongoing since 24th November 2017, when the gates to our property were removed to allow for the access of a large digger. As soon as we were able, the temporary gates were installed. This was on the 16th December 2017. ED was kept under close supervision and did not leave the property during the time when our property was not gated and secure.

In December 2017 a new gate was ordered for installation on completion of the driveway. The temporary gates were removed on 15th January 201 when the work recommenced to replace the driveway. This job has not been completed due to circumstances beyond our control. The driveway was prepared, but the concrete not poured because of very hot weather, and the contractor was concerned that the concrete could crack. On his advice we waited until 4th February 2018 for our concrete to be poured. Our property had to remain without a gate during this time. ED was once again kept under close supervision and did not leave our property unsupervised.

It was during this time (1st February 2018), that a dog (Flo) came onto our property and entered our home. Ed was not aggressive towards the dog, he just stayed in his open cage as requested and did not get involved with Flo. The dog ran around our house, urinated on our lounge carpet and due to

its skittish behaviour scared my grandchildren. Our concern was for the dog to be reunited with its owner as soon as possible knowing they would be very concerned for its safety. We conducted some house to house enquiries with our neighbours helping but did not manage to find the owners of the dog. We then rang the telephone number on its collar tag and we found out that the residents of [Complainant's address] were the dog owners, and the dog was returned to them without any complaints. We believe ED may have gone on to the driveway of [Complainant's address] to look for and play with their dog after meeting it on our property; or have gone up it thinking it may be our driveway.

The gates to our property were due to be installed after the concrete had been poured, but a delay in the delivery of the wheels for the gates meant that the installation could not go ahead until 16th February 2018 (please review letter from [company installing gat]). Our driveway is still not complete, due to a car driving dangerously and crashing into our fences. However we have gated our property as soon as it was possible for us to do so (please review photographs attached).

I have also included character references for ED from our nearest neighbours, whom have never had an issue with him.

In regard, to what happened on the 15th February, we are extremely sorry to the owners (Family) of the birds and I have tried on two occasions to make contact with them. We apologised in writing to them and want to provide reasonable reparation for their loss. We know that money cannot account for the tragic loss of their birds but we hope it will go some way in helping with their loss.

On the night of 15th February 2018, I may not have come across to the occupiers of [Complainant's address] (the bird owners) as apologetic and a remorseful as I possibly should have and I regret this, but at the time I was firstly in absolute panic that my dog was missing and I had contacted the Council immediately to report this as I thought that ED had been stolen It NEVER crossed my mind that anything like this would happen, it just isn't in his nature. He is a well socialized dog and has been since 3 months old, fabulous with people and other dog's.

When my son and I found where ED was, it was shock to firstly find our dog chained up and held on to by the gentleman at the property and then of course to see what had happened. I became upset when the man would not let us have our dog. I removed myself from the property. I do understand now, in hindsight, thinking about it from their side, but at the time we were all emotional. The gentleman had threatened our dog's life, and between the gentleman and myself calling dog control I found out that he would not let us have Ed back and that dog control would have to come and get him and speak with the gentleman at [Complainant's address], to get more information. As previously mentioned, it was relief at first after calling and searching property to property, to find Ed, but then to see what had happened was disbelief, and everyone's emotions were high. Both of the residents made threats against Ed's life, and I was concerned for his safety. Ed was distressed, being forcefully held against his will. I felt it would be sensible to remove myself from the situation not to provoke further hostility, especially as the residents had been both aggressive and abusive towards my son who had stayed with Ed to ensure his safety. I sent our apologies in a letter and placed it in their mail box the next day. When we did not receive any reply as to how we could make amends for this unfortunate incident I wrote another letter offering our apologies again, and asking for them to negotiate a reasonable sum for the replacement of the birds. To this date we have had no reply.

*Under section 33(a)(1)(b) of the Dog Control Act 1996 “a territorial authority considers **may pose** a threat to any person, stock, poultry, domestic animal, or protected wildlife because of – (i) any observed or reported behaviour of the dog; or (ii) any characteristics typically associated with the dog’s breed or type”. In regards to my objection to the menacing dog classification, the circumstances in which my dog came to be at large have been rectified immediately, (please review photographs attached). Our property is now secure and the measures we have taken have been of significant cost (\$1600). ED will never be off our property again unless under full and effective control. This in my view revokes the ‘may pose a threat’ under this section of the Act. I would like to further add that Ed being an English Bull Terrier is not one of the breeds mentioned in 11.4.2 of the Christchurch City Council Dog Control Policy 2016, that are listed as menacing, as aforementioned in this letter and the character references for Ed provided show that he has a gentle nature towards humans and other animals. This can be highlighted by the fact that this is Ed’s first incident; he has not been reported or observed previously for any untoward or menacing behaviour by a member of the public.*

I find that conditions of the classification are extreme, as I have always been classified as a responsible dog owner for all my previous dogs registered with Christchurch City Council. I have been informed that our dog would have to be muzzled at all times except when in a cage or a car. I think that this would be cruel and completely unnecessary due to the provisions we now have in place. I accept responsibility as an owner it being my fault for not having my property secured at this period, but as aforementioned, circumstances beyond my control meant that this could not be rectified quickly.

I see under section (4) (c) of the Animal Welfare Act 1999 which is Definition of Physical, health, and behavioural needs, it states, (opportunity to display normal patterns of behaviour). I have to question, how can a dog display normal behaviour, if muzzled at all times while in its home or yard, being unable to groom itself, or play with a ball or stick and has to chew a bone or be fed inside a cage or a car?

Under the Animal Welfare (DOGS) code of Welfare 2010 (MAF Biosecurity) Section 8.1.3 MUZZLES best practice Recommendations (a) There should be a period of preconditioning with supervision by the handler as dogs may initially find the muzzle frightening or distressing. So how long is allowed for preconditioning that is fair and reasonable?

Also under the Animal Welfare (DOGS) code of Welfare 2010 Minimum Standard number 19 Aids for behavioural Modification (c) Muzzles must fit comfortably without chafing the skin or impeding breathing and must allow the dog to open its mouth sufficiently to enable panting or drinking. I can see with most breeds of dogs that muzzles bought in a shop fit these requirements but these requirements cannot be achieved with a Bull Terrier as the standard muzzles don’t allow this and I feel that having our dog muzzled at all time except for when in a cage or car he would not be able to pant and regulate his body temperature. I am looking into having a custom made muzzle to ensure that I don’t put my dog at an enforced by (section 33(e) menacing dog classification of the dog control act 1996) welfare risk.

I am very sorry for what has happened and I don't dispute that my dog was not under effective control or contain on my property, I have ensured that I have immediately put things in place to keep my dog on my property at all time in future.

This is a first offence, he has never had any dealings with any council ever before, he is not a dog that has been out wandering on numerous occasions, it was a unfortunate incident, where I was in my bedroom and had closed the sliding door which has access from my room to the back yard of our property, and my daughter-in-law was out the back hanging out washing, we both thought that ED was inside the house, he must have gone looking for us, and wandered down the drive way. The property at [Complainant's address], is also a back section, possibly he had thought that that was home and he has gone up there drive and come across the bird cage which was in a private driveway but still a public access area. I don't know what has happened from then onwards as I haven't seen the statement from the complainant.

I also don't understand after talking with another friend whom is also an Animal management officer in an adjoining district that has said that they would not look at a classification for the same offence in their district. Why is it different form one council to another?

I do understand that you are trying to prevent this happening again in the future, but I have put measure in place to ensure that my property is secure and safe to keep my dog contained.

I ask you to please consider my application to have this objection upheld and to not sentence my dog to a life behind a caged muzzle and classified as a menacing dog.

[23] At the hearing the Objector gave evidence that Lead got off their property and they feel responsible for that, they are responsible dog owners, and they weren't aware Lead had got out previously (as indicated in the Complainant's evidence) – surmising that the neighbouring children that apparently returned Lead on that occasion must have put him back in the garden.

[24] The Objector pointed to the circumstances beyond their control around the situation with their gate, which situation went on longer than planned. The Objector further noted that Lead has not shown any aggression or menacing behaviour other than this incident.

[25] The Objector's husband added that their permanent gate is now in place and Lead won't be able to get out now, indicating that Lead had met the Complainant's dog before when it escaped to their property, and Lead hadn't been aggressive to the Complainant's dog.

[26] The Objector and her husband emphasised that they are very sorry, and they are animal lovers and are trying to make amends, but have a reasonable disagreement in respect of the value of the damage.

Reply from the Animal Management Team and from the Complainant

[27] The Senior Animal Management Officer confirmed that there is no previous history of Lead being at large or displaying aggressive behaviour, but having assessed that Lead had attacked and killed domestic animals as behaviour the Act specifically targets considered that classification of Lead as a menacing dog was the appropriate and proportionate measure to apply under the Act.

[28] Having heard from the Objector, the Complainant was offered a right of reply but indicated she had nothing further to add in reply.

Close of Hearing

[29] 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.

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

PANEL DELIBERATIONS

The evidence which formed the basis for the classification

[31] 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 Lead attacked and killed the Complainant's Rainbow Lorikeet birds after wandering uncontrolled onto the Complainant's property and breaking open the birds' cage, and thus they accepted there was evidence supporting the assessment that Lead may pose a threat to domestic animals.

[32] The evidence suggested to the Hearings Panel that the incident resulted from Lead not being kept under control and that Lead could endanger domestic animals again if again not kept under control. The evidence suggested that Lead had an apparent determination and capacity to break into areas to get at domestic animals like birds as demonstrated by the incident that led to the classification.

[33] The Hearings Panel, having regard to the evidence which formed the basis for the classification of Lead 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 the Objector's evidence and her submissions in support of her objection to the classification.

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

[34] It was not doubted that the Objector was sincere that she would from now on contain Lead. The Hearings Panel recognised that the Objector had completed steps to secure their property.

[35] The Hearings Panel considered the Objector's evidence and submissions in regard to the steps they had taken to prevent any further threat to the safety of animals. However, the Panel considered that the attack demonstrated that the Objector did not have Lead under effective control at the time of the incident to prevent the attack, and considered that reasonable steps to prevent any threat were not taken. Furthermore, the Panel had particular concern about a dog capable and determined to topple or break open a heavy bird cage with an inclination to attack and kill domestic birds. The Hearings Panel did not feel the high level of confidence it would want to in respect of the steps taken that could justify de-classifying a dog that is potentially a powerful, capable and inclined threat to other domestic animals.

[36] The Panel had regard to the objects and provisions of the Act, the nature of the attack and the resulting death of domestic animals, and the need to address the threat. It recognised the difficulty in constantly controlling a dog that displays such tendency, and the threat it presents when un-muzzled.

[37] In light of these various considerations speaking to the fact that Lead is a potential threat, the Hearing 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

[38] The Objector essentially accepted the Complainant's account of the incident to her credit; it also being to the credit of the Objector that she apologised to the Complainant for the incident and was willing to address compensation (the disagreement as to the appropriate amount of compensation not being a concern to the Panel in the circumstances as a matter for another forum).

[39] The Hearing Panel had regard to the matters relied on in support of the objection. The Panel appreciated the Objector's level of concern and commitment in respect of Lead, and was thankful for the Objector's sincerity and constructive approach to the hearing process, much appreciating that the Objector is evidently generally a very good and responsible dog owner. However, the Hearings Panel was mindful of the potential relevance of these determinations to the safety of the wider public, and was not persuaded Lead no longer had the propensity to attack and injure in similar, and potentially other, contexts. The Hearings Panel regarded that the nature and seriousness of the attack justified upholding the 'menacing' classification so as to require muzzling as a preventative measure.

[40] 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 Lead had demonstrated a capacity for attacking other domestic animals unprovoked. The Hearings Panel considered that in light of the deaths of the birds Lead had caused, and the circumstances of wandering unto the Complainant's property up their driveway and breaking open the heavy bird cage, the classification should be in place. The Panel note that classification is a preventative measure, and is not intended to be punitive; the 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

[41] 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

[42] Having considered the objection of the Objector to the classification of her dog, Lead, 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 the Objector's two-year-old, male, tan and white coloured, English Bull Terrier dog named 'Lead' 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 5TH DAY OF JUNE 2018



AARON CAMPBELL
CHAIRPERSON