

Dog Control Act Hearing Panel
DETERMINATIONS

Date: Friday 29 March 2019
Time: 3pm
Venue: Boardroom, Beckenham Service Centre,
66 Colombo Street, Beckenham, Christchurch

Present

Chairperson	Councillor Glenn Livingstone
Members	Community Board Member Tim Lindley Community Board Member Jed O'Donoghue

23 April 2019

Hearings Advisor

Mark Saunders
941 6436
Mark.Saunders@ccc.govt.nz
www.ccc.govt.nz

The objection was dealt with in the following order.

Election of a Chair

It was resolved on the motion of Community Member Jed O'Donoghue, seconded by Community Board Member Tim Lindley that Councillor Glenn Livingstone be appointed Chairperson of the Hearings Panel for the hearing scheduled for this date.

Hearing - 3pm

Hearing of an objection to the classifications pursuant to section 33A(1)(b)(i) of the Dog Control Act 1996 of the following dogs as 'menacing':

- Six-year-old, male, white-and-tan-coloured, Border Collie / Labrador Retriever cross breed dog named "Arlo Chino"
- Five-year-old, male, white-and-black-coloured, Staffordshire Bull Terrier cross breed dog named "Jedidiah"
- Four-year-old, female, white-and-black-coloured, Border Collie dog named "Willa"

Hearing closed and decision reserved at 3:55pm.

Refer page 3 below for determination.

BEFORE THE HEARINGS PANEL
OF THE CHRISTCHURCH CITY COUNCIL

19/448259

IN THE MATTER of the Dog Control Act 1996

A N D

IN THE MATTER of an objection of MELISSA MILES and MARK PRAIN of Lyttelton to the classification by the Christchurch City Council Animal Management Team under Section 33A(1)(b)(i) of their six-year-old, male, white-and-tan-coloured, Border Collie / Labrador Retriever cross breed dog named 'Arlo Chino' as a menacing dog

A N D

IN THE MATTER of an objection of MELISSA MILES and MARK PRAIN of Lyttelton to the classification by the Christchurch City Council Animal Management Team under Section 33A(1)(b)(i) of their five-year-old, male, white-and-black-coloured, Staffordshire Bull Terrier cross breed dog named 'Jedidiah' as a menacing dog

A N D

IN THE MATTER of an objection of MELISSA MILES and MARK PRAIN of Lyttelton to the classification by the Christchurch City Council Animal Management Team under Section 33A(1)(b)(i) of their four-year-old, female, white-and-black-coloured, Border Collie dog named 'Willa' as a menacing dog

Hearing: Boardroom, Beckenham Service Centre
66 Colombo Street, Beckenham, Christchurch
29 March 2019 at 3pm

Panel: Councillor Glenn Livingstone (Chairperson)
Community Board Member Tim Lindley
Community Board Member Jed O'Donoghue

Appearances
for the Objectors: Melissa Miles (Objector)
Mark Prain (Objector)
for the Animal Management Team: (Complainant)
Bill Kohi (Senior Animal Management Officer)

Determination: 23 April 2019

Hearings Advisor: Mark Saunders

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

The classification of Arlo Chino as menacing is upheld

The classification of Jedidiah as menacing is upheld

The classification of Willa as menacing is rescinded

REASONS OF THE HEARINGS PANEL

INTRODUCTION

[1] The hearing was held to consider an objection received from dog owners, Melissa Miles and Mark Prain ('the Objectors'), to the classifications by the Christchurch City Council Animal Management Team under Section 33A(1)(b)(i) of the Dog Control Act 1996 ('the Act') of their:

- a. six-year-old, male, white-and-tan-coloured, Border Collie / Labrador Retriever cross breed dog named 'Arlo Chino';
- b. five-year-old, male, white-and-black-coloured, Staffordshire Bull Terrier cross breed dog named 'Jedidiah'; and
- c. four-year-old, female, white-and-black-coloured, Border Collie dog named 'Willa';

as 'menacing' dogs – 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 Arlo Chino, Jedidiah and Willa were 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 Arlo Chino, Jedidiah and Willa had, on 6 January 2019, attacked another dog, the Senior Animal Management Officer under his delegated authority did so classify Arlo Chino, Jedidiah and Willa as 'menacing' dogs by causing to be given to the Objector, Ms Miles (as the registered owner of Arlo Chino, Jedidiah and Willa), notice of the classifications and other prescribed matters, including her right to object to the classifications under section 33B of the Act.

[3] The Objectors exercised their right to object to the classifications of Arlo Chino, Jedidiah and Willa as 'menacing' and in accordance with their right to be heard in support of their objection they were 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 29 March 2019 heard the Objectors' evidence and submissions, and also heard from the Animal Management Team, having previously received a

report from Bill Kohi, Senior Animal Management Officer, together with the evidence collected by Animal Management Officers, Jo Ward and Gail O'Keefe, relating to the incident and classifications.

- [4] This report notifies the determination of the Hearings Panel that:
- a. the classification of the Objectors' dog, Arlo Chino, as 'menacing' is **upheld**;
 - b. the classification of the Objectors' dog, Jedidiah, as 'menacing' is **upheld**;
 - c. the classification of the Objectors' dog, Willa, as 'menacing' is **rescinded**;
- and the reasons for its determination in accordance with section 33B(3) of the Act.

BACKGROUND

[5] On 6 January 2019, the Council received a complaint from the Complainant alleging that that day his dog had been attacked by three other dogs. The Objector, Ms Miles, has also contacted the Council that day to self-report that her dogs had attacked another dog. The following day Ms Miles gave a statement to an Animal Management Officer relating to the incident.

[6] Animal Management Officers investigated the complaint and on the evidence gathered determined that the alleged dog attack on the Complainant's dog did occur. The Officers further determined that the Objectors' three dogs, Arlo Chino, Jedidiah and Willa, attacked the Complainant's dog, causing it bite injuries as indicated by photographs and veterinary records provided. The Investigating Officer in this connection considered that because of the reported attack that Arlo Chino, Jedidiah and Willa may pose a threat to one or other of the types of sentient being the Act has designs to ensure are not injured, endangered or caused distress, i.e. a person, stock, poultry, domestic animal, or protected wildlife.

[7] The Council's Senior Animal Management Officer considered the evidence collated by the Investigating Animal Management Officer, and was satisfied that he had sufficient evidence that Arlo Chino, Jedidiah and Willa have attacked and injured the Complainant's dog and considered because of this reported attack that Arlo Chino, Jedidiah and Willa may pose a threat to a person, stock, poultry, domestic animal, or protected wildlife, and so with delegated authority, classified the Objectors' dogs, Arlo Chino, Jedidiah and Willa, 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 Objectors a formal objection to the classifications of their dogs, Arlo Chino, Jedidiah and Willa, 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 or to present a transcript, but rather to summarise and identify what were considered to be the salient points.

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 Objectors' dogs as 'menacing' was based referring to his report and the attachments thereto. Mr Kohi referred to the statements provided by the Complainant and the Objector, the photographs and veterinary records relating to the injuries to the Complainant's dog, and the marked-up aerial photograph of Linwood Cemetery indicating the scene of the incident.

[12] Mr Kohi summarised the facts of the central incident of 6 January 2019 as follows:

The Christchurch City Council received a complaint from [the Complainant] at 19:35 on Sunday 6th January 2019.¹ He has reported that while walking his dog through the Linwood cemetery three dogs have attacked his dog. [The Complainant] could not provide the dog owner details but he did have a car registration of a car he believed belonged to the owner of the attacking dogs.

On Sunday the 6th January 2019 the Christchurch City Council received a call from the owner of the three dog who were involved in the incident at the Linwood cemetery. Ms Melissa Miles of...Lyttelton called to advise the council of the incident, she felt terrible and wanted the council to know that she feels responsible and it was her fault because she was distracted and had a lapse in concentration.

The dog owner was visited by Officer Jo Ward on Monday the 7th January 2019. Ms Miles gave a formal statement to the officer at this time.

Ms Miles has stated that she drove to the Linwood cemetery, entering the grounds through the Butterflied Avenue entrance.

She has parked and exited her car with the three dog leads in her hand. She has let her dogs out of the car. Her dog Willa was the first out followed by the other two dogs.

Willa has "pooped" on a grave nearby. Ms Miles has retrieved her plastic "poop" bags.

¹ Dates corrected from original summation which had mistakenly referenced February where January was intended.

When she has finished collecting the “poop” she has noticed a brown dog being walked on a leash in the distance. She has estimated that the dog being walked by a man was about 50-100 metres away.

She has noticed her two male dogs “Arlo” and “Jed” running at the man and dog. She has started to walk over towards the dogs when she has heard a “scuffle/kerfuffle”. At this point the man was yelling out for her to control her dogs.

Ms Miles has dropped everything and run towards her dogs yelling. She has pulled their tails in an attempt to stop the attack.

She has stated that she has seen her dog “Jed” latched onto the other dogs’ cheek but she has not seen anything else because she was trying to stop the attack by pulling on the dogs’ tails and collars.

Ms Miles has said that the incident was over quickly, she has retrieved her leads and has secured her dogs. She called out to the man offering to give him hers contact details. The man has declined and continued to walk away.

Ms Miles went home and called the council.

[The Complainant] has also given a formal statement to Officer Gail O’Keefe on the 7th January 2019.

He has confirmed that he was walking his dog through the Linwood cemetery, on leash, he had been in the area for about 15 – 20 minutes.

At about 19:30 he has walked around a corner and noticed a dog about 30 metres away running towards him. He heard a women calling and at this point another two dogs have started to run towards him also.

The first dog described as the biggest of the three dogs, a Staffy type dog, white has grabbed his dog by the neck and has started to shake his dog. The second dog, described as the fattest, also white has also grabbed his dog by the throat.² The third dog has also grabbed the dog by the neck.

The women has arrived to the incident about 90 seconds after it started. She tried to pull her dogs away. [The Complainant] believes the attacked lasted for about 5 minutes.

He has tried to drag is dog away from the other dogs, but each time he managed to drag the dog away the other dogs would attack again.

[The Complainant] has managed to get away from the attack, he has noticed that the women was struggling to control her dogs so he wanted to get away as quickly as he could.

² The Panel noted that the Complainant’s statement actually says “2nd dog was the fatter of the 3 dogs also white this dog grabbed my dog on his side”.

He has called the council from his mobile phone and provided the car registration in an attempt to identify the dog owner.

[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 includes a copy of the Hybris job notes, photographs and vet's account both provided by [the Complainant], a map of the Linwood Cemetery area (highlighting the general area where the incident has occurred).

I have considered all the evidence, accordingly, with delegated authority, I classified the dogs known as "Arlo-Chino", "Jedidiah" and "Willa" as menacing in accordance with section 33A (1) (b) of the Dog Control Act 1996.

[14] The Panel queried Mr Kohi on common reasons dogs may run at others in this sort of context, and Mr Kohi indicated that dogs are territorial, but it will not always be clear why their response becomes aggressive. It is common for dogs to approach others to investigate them, and if they become aggressive an instinct to act as a pack can emerge.

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

Evidence of the Complainant

[16] The Complainant gave a statement to Officer O'Keefe on the day following the incident as noted and summarised by Mr Kohi (copied above). At the hearing, the Complainant again described the incident, noting that the biggest of the Objectors' three dogs had bolted toward him and his dog and ripped into the neck of his dog with the other dogs following. The Complainant indicated that the attack went on for a while and the smallest of the Objectors' dogs came back in around continuing the attack.

[17] The Complainant expressed that Ms Miles had no control of her dogs though she was yelling at them and had failed to put her on dogs on a leash. The Complainant described the attack as unprovoked, occurring when his dog was on his lead, and as a 'ripping apart' of his dog. The Complainant noted that it was 'not on' for his dog to be attacked by three dogs in this manner, describing his dog as a 'poor old fellow' and clarifying that the attack was not to his dog's cheek, but rather all the damage was to his neck indicating that the Objectors' dogs were 'out to kill'.

[18] The Panel asked the Complainant if he regarded all three of the Objectors' dogs as equally culpable, and the Complainant responded that the biggest one started the attack, the smallest one started the attack again, and so the biggest one and smallest one are the main culprits. The Complainant indicated that the Objectors' dogs attacked as a pack and he did not know if the middle sized one would have attacked otherwise. He also expressed that if the dogs were on a leash the incident would not have occurred and there was a sign at the start of the cemetery stating that dogs should be on a leash.

[19] The Complainant mentioned blood pouring out of his dog at the vet. The veterinary notes supplied included the following comments:

HISTORY: pt attacked by three dogs this evening. Wounds appear confined to neck area.

PHYSICAL EXAM:

Temperature (39.8)

Heart Rate (140)

Resp Rate (pant)

MM/CRT (pk < 2 sec)

Several linear excoriations of ventral neck and one large puncture wound ventral neck slightly to the left

DIAGNOSIS: dog attack with moderate soft tissue trauma of neck

TREATMENT:...

surgical exploration - widened puncture wound to allow visualization of underlying tissues. Jugular readily observable bu intact. Wound doesn't extend to trachea. Mostly trauma to SQ layer and a small amount of muscle ventrally. pocket extends dorsally half way up the left side of neck but trauma there is minimal. place penrose drain from dorsal most aspect of wound to most dependant aspect of wound and anchored dorsally and ventrally with single suture per site...

The Objector

Evidence and Submissions of the Objector

[20] In initially raising their objection in writing, the Objectors had written that:

We hereby give notice of our strong objection to the classification of our three dogs as 'menacing', as per receipt of Council's formal letters delivered to us by you on 7th February.

The bases of our objection are as follows:

We have been rescuing animals large and small (horses to pigs to dogs and cats) in Christchurch for 30years, with no major incidents in that time and certainly not classification of any of our animals as 'menacing'— ie we are not naïve – we are very experienced trainers and Melissa in particular devotes her work-life to the care of animals. The three dogs sited here have been with us for 4-6years without incident.

This incident was not seen by Melissa who due to a recent operation on her foot, was not as mobile as she usually is and by the time she reached the scene and immediately pulled two of our dogs away, the complainant was already on the phone to animal management siting an attack by 'three bullies'. As per council records none of our dogs are Bull Terriers and the third, Willa, a Collie cross, was not involved at all in the alleged attack – she was behind Melissa throughout. Arlo is a Labrador cross and Jed a Staffy-Collie cross, both rescue dogs from council's Bromley facility

Melissa was distracted as she left the truck by attempting to pick up a poo bag for Willa and given her foot operation, was not quick enough to put the dogs on their leashes when Arlo and Jed ran off to engage the complainant's dog. This was a very unusual error on her part, which she admits. Upon arriving at the scene, she immediately apologized and offered the complainant the services of our Vet at our cost for whatever injury his dog had incurred – none was at the time visible to her. This offer was refused outright and his attitude was hostile. While perhaps understandable, this didn't help an accurate assessment or resolution of the matter at the time – Melissa felt bullied and withdrew from the scene at his insistence.

While we are not (yet) in possession of the full file on this matter, the basic elements have been relayed to us by council officers and we will of course review the evidence carefully, before being heard. In that vein, it is essential I am available to that hearing as co-owner of these animals – Melissa, deeply upset, has carried it thus far in my absence. In the hope we can resolve this matter quickly I have time flexibility in the last two weeks of Feb and the first week in March. Beyond that my international work could well see me again out of NZ for substantive periods of time and given what's happened to date, I do not think it fair nor appropriate that she confront a hearing panel with the complainant present, alone.

Finally as experienced animal owners we do understand that unpredictable behaviors can occur for a variety of reasons, no matter how benign the animal's history. Once the facts in this matter are fully established and if Arlo and Jed (again Willa was not there) are found wanting, we will work with the complainant to reimburse his costs and we will unequivocally apologise. We would hope however that on balance the panel will appreciate this is not a cut and dried situation and to assign 'menacing' status to any of our dogs (never mind our dysplasia-bound sheep dog Willa) is wholly inappropriate.

Kind Regards,
Mark Prain and Melissa Miles

[21] At the hearing the Objectors read the following statement:

Thank you for the opportunity of this hearing before you today. My name is Mark Prain. I am the Founding Director of the Hillary Institute of International Leadership launched by Sir Ed and our patron Helen Clark in 2007. My work regularly takes me out of New Zealand. My partner Melissa Miles, here with me, is a writer and animal rescuer, often '*holding the family fort*' when I'm away. Multiple character references can be provided for both of us if required. We are formally appealing the classification of our beloved three dogs as '*menacing*', as per Council's formal letters delivered to us by Bill Kohi on 7th February. The bases of our objection are as follows:

We have been rescuing animals large and small (horses to pigs to dogs, cats and chooks) in Christchurch for 30years, with no major incidents and no classification of any of our animals as '*menacing*'. We are not naïve. We are very experienced animal carers and Melissa in particular devotes much of her work-life to the well-being of animals, and this unprecedented situation has hit her hard. We are strong supporters of the Dog Act and never miss an opportunity to campaign to ensure un-registered or un-neutered dog owners are called out. All our rescued animals, large and small, are compliant at point of adoption – as were our three dogs sited here today.

Arlo, Jed and Willa have been with us for 4-6 years respectively. Two of them, Arlo and Jed, came from the CCC Pound – which as a matter of policy as you know, does not provide Pit-Bulls for adoption. This complaint before you today, deliberately and we believe, prejudicially, infers all three as '*vicious*' Bull Terriers. None of them are. As per Council's records Jed is a Staffy-cross, Arlo is a Labrador-Collie cross and the third, Willa, is a Collie, crossed with a Huntaway sheep-dog.

The instigation of this incident was heard but not seen by Melissa who due to a recent operation on her foot, was not fully mobile and by the time she reached the scene, pulled Arlo and Jed away and leashed them, the complainant was already on the phone to animal management siting an attack by '*three bullies*' – which as stated, they are not and Willa, our Collie with weak hips, was behind Melissa and played no part in the alleged attack beyond barking.

Why this happened is not in dispute. Melissa was distracted as she left the truck by grabbing a poo bag and given her foot, was not quick enough to apply the dogs leashes when Arlo and Jed jumped out. This was a very unusual error on her part, which she admits and we unreservedly apologise to the complainant on that basis. Upon arriving at the scene, she immediately apologized and offered the complainant the services of our Vet at our cost for whatever injury his fine, big dog had incurred – none was at the time visible to her. This offer was refused outright and the complainant's attitude was hostile. While perhaps understandable, this didn't help an accurate assessment or resolution of the matter at the time – Melissa felt bullied and withdrew at his insistence.

To our dogs. Arlo like many Labs, is fixated on fetching balls and water – anyone of any age who throws a ball for him is his friend – and he loves swimming. Jed is a burrower – particularly when it comes to rabbit holes – but he's never caught one in his life. They both love to play and had the complainant simply let his dog off-leash when they approached, this we're confident, would have been the only outcome – play. I don't want to be unduly critical, but in the interests of accuracy we all need to acknowledge the complainant and his dog were also part of whatever actually happened here. Something triggered an aggressive exchange – and we don't accept as unbiased, the complainant's dramatic narrative of over five minutes of repeated attacks, which is disputed by Melissa. Our long experience of '*fight or flight*' suggests unless our dogs were put in a defensive position they would not have been aggressive at all. They are both well-socialised, happy animals as many close to us would attest including the pet-store who fitted their recent muzzles.

This sequence of events in terms of *what actually happened* however, puts us in a '*he said, she said*' situation. This was compounded by two different dog control officers interviewing the complainant and then Melissa – Gail O'Keefe and Jo Ward on 7th January (not February as per Council's summary statement). Deeply concerned, Melissa voluntarily rang the

Council on reaching home to enquire after the complainant dog's welfare. She was next day interviewed by Jo Ward and was fully co-operative. She was not however properly advised of her rights and the possible implications of that interview which she consequently signed upon the officer's request without time to pause and reflect as to its accuracy. Ms Ward did indicate a warning was the likely outcome and it is unfortunate she isn't with us today to speak to that opinion. Not understanding consequently the seriousness of the situation Melissa did not contact me which had she been properly informed, she would certainly have done.

Some weeks passed and we were then notified Council had assigned '*menacing*' status to all three dogs. Clearly the time-lapse between the interviews and the judgement throws significant doubt on just how menacing Animal Management thought our dogs actually were, or surely they would have notified us immediately post interview. Genuinely astonished at the heavy-handedness of Council's judgment, we immediately contacted Animal Management and indicated firstly we would appeal, and secondly an informal discussion was in order in terms of due process. A meeting followed with Senior Animal Management Officer Bill Kohi (here today) which was informative and productive and we thanked Bill for that – however the horse had proverbially bolted – a 'judgement', deeply and prejudicially flawed in our view, had already been made. Not having seen the complainant's statement, our astonishment deepened when we finally received the full evidential file a further 11 days later on February 18th.

In summary, as long experienced animal owners we do understand that unpredictable behaviors can occur for a variety of reasons, no matter how benign an animal's history and we're not appealing this directive out of naïve sentiment. We do however remind the panel there is no behavioral history re our dogs to support the complainant's exaggerated narrative. Moreover despite the facts in this matter in our view being far from proven, we nonetheless once again, offer to fully reimburse his \$789.70, overnight surgery costs (having viewed the vet's comprehensive treatment report), and we unequivocally apologise. This is not however an admission of liability regarding intentional behavior by Arlo and Jed – and certainly *not* Willa, a fluffy, patting favourite at Melissa's Mum's rest-home, who we reiterate was not involved and should be set aside. Most importantly, we are delighted the complainant's dog recovered quickly, removing his own wound plugs within days of the event.

In terms of 33B (2b) of the Act relating to remediation steps, Arlo and Jed were (and Council records confirm), micro-chipped as pups at point of adoption and neutered via the Straven Rd vet courtesy of CCC. Willa was micro-chipped shortly after adoption and once old enough, spayed at our cost. Muzzles are being utilized in public places and as a matter of course we no longer take all three out in public at the same time, thereby further mitigating potential risk. On balance however we hope the panel will appreciate this incident, while undeniably unfortunate, was not a cut and dried situation. Assigning '*menacing*' status to any of our dogs, is a considerable over-reach which will hang over them (and us), hereon. Nothing in our view is achieved by assigning menacing status, other than consigning them to considerable, unnecessary constriction and limiting their normal life of regular, healthy social interaction with people and other animals – in our case, of all sizes.

In closing, in our view sufficient, non-biased evidence of the events has **not** been clearly established to support the current judgement. It being upheld would not therefore best serve the objects of the Dog Control Act or anyone involved. We contend the application of menacing status is without due merit and we are confident and give every possible assurance this kind of incident will **not** happen again. At a time when as we gather here today, our community is further acknowledging deep acute trauma, frankly we need to support those whose daily practice is about kindness and common sense rather than retribution. We accordingly strongly appeal to you to reconsider this decision. Thank you all for your time here today.

Kind Regards,
Mark Prain and Melissa Miles

[22] The Panel sought further clarification on which aspects of the Complainant's account were being challenged, and it was indicated that Willa's involvement was being challenged, along with the suggestion of there being repeated attacks over five minutes, i.e. the length of the attack was challenged. There was also indication of that the nature of the description of the incident was not fully accepted and the Objectors were still mystified about why the incident happened, it being unclear what had initiated it.

[23] The Objectors further clarified that Ms Miles arrived to the scene of the incident to control her dogs as quickly as she could, and it was her mistake to not have her dogs on a leash, but they normally would

be on a leash. The Objectors noted again that the operation on Ms Miles's foot and her resulting temporary limitation was a factor contributing to the incident.

Reply from the Animal Management Team and the Complainant

[24] The Senior Animal Management Officer, Mr Kohi, noted in reply that having two different officers interviewing the Complainant and Ms Miles was not an issue, as officers do not influence statements, but just take them down. Mr Kohi noted that he did not rely unfairly on the Complainant's description of the incident, understanding that it would naturally be coloured by the distressing circumstances of his dog being injured.

[25] The Complainant in reply noted that the reason he immediately rang the Council at the scene of the incident was to see if there was a dog control officer to come to the scene to 'clear things up'.

[26] The Complainant noted that you do not let your dog off leash to play with another dog running at it. He also noted that the third dog was also involved in the incident and grabbed his dog around the ribs. The Panel allowed the Objectors to respond to this and they repeated their position that this 'third dog' i.e. Willa, was behind Ms Miles the whole time.

[27] The Complainant described the attack as 'full on', noting that Ms Miles was not there (i.e. not immediately present to the start of it); the Objectors' instigating dog came 'straight in a straight line' at his dog.

[28] The Complainant raised that his vet bill had not been paid by the Objectors, and the Objectors responded that there was an immediate offer by Ms Miles to pay this and a repetition of the offer, and they had also come to the hearing with their cheque book. Mr Kohi clarified that disputes over such costs are matters for the Disputes Tribunal. There appearing no true dispute over costs settlement appeared to be facilitated at the close of the hearing as a side matter undirected by the Panel.

[29] Mr Kohi clarified for the Panel that he believes all three of the Objectors' dogs were involved in the incident and noted that if the dogs escaped control such incident could happen again. Mr Kohi confirmed though that there had not been prior incident with these dogs, and that the Objectors presented as responsible. Mr Kohi also noted, however, that the incident meets the threshold for classification of the dogs as menacing, and classification of the dogs as such was the appropriate and proportionate tool available to him in respect of his responsibility to ensure the safety of other domestic animals.

[30] The Panel queried Mr Kohi on the suggestion that Ms Miles had not been properly advised of her rights when being interviewed. Mr Kohi indicated that only the Officer could speak to what the advice was, though this is not a matter that has progressed to prosecution, and it was to the credit of Ms Miles that she was proactive, voluntarily helping, cooperating and taking responsibility.

Close of Hearing

[31] 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.

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

PANEL DELIBERATIONS

The evidence which formed the basis for the classification

[33] The evidence which formed the basis for the classifications was not in the Panel's view in any doubt with regard to it supporting the assessment that Arlo Chino and Jedidiah attacked the Complainant's dog. The Objectors' and Complainant's evidence disagreed as to whether Willa was involved in the attack however; the Complainant gave evidence that she was, and Ms Miles gave evidence that she was not. This created some doubt with regard to whether Willa participated in the attack.

[34] The Complainant indicated that the Objectors' three dogs all attacked his dog. It was indicated for Ms Miles at the hearing on the other hand that she perceived Willa as behind her during the attack and not involved in it at all, though Willa was apparently barking during it. To the Panel's thinking it was possible Ms Miles may have lost sight of Willa's involvement for a time, or that, on the other hand, the Complainant may have mistaken the dogs or a merely glancing involvement by Willa in the chaotic and distressing scene for something more threatening than it might have been. With two or three dogs attacking his dog, it is understandable that there is some imprecision between the Complainant's statement and his account at the hearing.

[35] The Panel saw no issue with the credibility of either side, but did see understandable issues with the precision of the evidence and started with the clearer and more precise facts. The clear and overwhelming fact was the terrible and totally unacceptable injuries one or more of the Objectors' dogs had caused the Complainant's dog. Classification does not hinge on casually connecting an attacking dog to an injury, and is a broader evaluation of threat, but it is a virtual certainty that Arlo Chino caused injury. It is not decisive that it is less clear whether Jedidiah contributed to puncturing or ripping the skin/tissue of the Complainant's dog; the Panel were in no real doubt reflecting on their overall assessment of the evidence that Jedidiah participated in the attack in a threatening and distressing manner.

[36] There was no clear evidence that Willa injured the Complainant's dog, which as noted may not necessarily be a vital ingredient. Though in a broader sense the Panel conceived that it is not crucial to determine if Willa was even involved in the attack, since the Panel's evaluation of the evidence is that regardless of whether she was involved in the attack, the impression is that Willa will not pose a threat to other domestic animals with Arlo Chino and Jedidiah classified, as it was apparent any involvement by Willa was likely glancing and provoked and initiated by Arlo Chino and Jedidiah.

[37] Altogether the Panel were not satisfied the evidence indicated that Willa may pose a threat in circumstances in which Arlo Chino and Jedidiah are classified. At a minimum, the difference between

Jedidiah and Willa is that the Panel evaluated that Jedidiah was an active and threatening participant in the attack and likely caused injury, whereas the impression was that Willa at most was drawn in by pack behaviour, if at all.

[38] The Panel overall were satisfied that the evidence suggested that Arlo Chino and Jedidiah may pose a threat to other domestic animals. The injuries to the Complainant's dog easily justified classification and the Panel considered that Arlo Chino at least inflicted them, and even if only Arlo Chino inflicted them, the active participation and persistence of Jedidiah was still sufficiently threatening to justify classification. Jedidiah was clearly threatening and the impression is that he was difficult to control and ready to endanger and continue and compound the attack.

[39] The evidence suggested to the Hearings Panel that the incident resulted from the Objectors' dogs not being kept under control and that Arlo Chino and Jedidiah could endanger another domestic animal again if again not kept under control. It was to the credit of the Objector though that she accepted responsibility for the incident.

[40] The Panel noted the Objectors' remark that Ms Miles in giving her initial statement was not advised that she could take legal advice or fully advised in respect of the possible implications, or given time to reflect on the accuracy of her statement. The Panel, however, cautiously focused on the subsequent statements that Mr Prain assisted Ms Miles with rather than Ms Miles' initial statement to accommodate the Objectors' concern in this respect. Though classification is not punitive, but rather a preventative tool, and it does not incriminate.

[41] The Panel could accept the incident arose from a simple mistake by Ms Miles and would not intend classification to punish her or her dogs for what cannot be changed. The Panel's inquiry is broader than the accounts of the incident; it focuses on whether the Objectors' dogs may pose a threat going forward that classification serves to prevent recurrence of.

[42] The Hearings Panel, having regard to the evidence which formed the basis for the classification of Arlo Chino, Jedidiah and Willa as 'menacing', considered that it was sufficient to form the basis for the Animal Management Team's classifications of Arlo Chino and Jedidiah, recognising that it would proceed to consider the Objectors' evidence and their submissions in support of their objection to the classifications.

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

[43] It was not doubted that the Objectors were sincere that they would from now on control Arlo Chino, Jedidiah and Willa. The Hearings Panel recognised that the Objectors were generally responsible dog owners who had learnt the danger of not controlling their dogs, and were persons capable and inclined to heed that lesson, admiring their dedication to rescuing animals, and noting their good backgrounds and lack of prior incident.

[44] The Hearings Panel accordingly considered the Objectors' evidence and submissions in regard to the steps they had taken to prevent any further threat. However, the Panel considered that the attack demonstrated that Ms Miles did not have her dogs 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; the Panel perceived a continuing risk that the steps suggested could not entirely eliminate given that accidents or lapses may happen and it is unfair that potential victims of such bear that risk.

[45] The Panel had particular concern about Arlo Chino and Jedidiah as dogs inclined to initiate and continue such an attack on another dog so quickly and unexpectedly, and not inclined to immediately desist upon command apparently.

[46] The Panel were encouraged that the Objectors were refraining from walking their dogs together recognising the potential difficulty of handling the three dogs together in various situations that may arise on walks. It might be easy for the Objectors to return to believing that Arlo Chino and Jedidiah would not be a threat to other animals, but they are clearly unpredictable and potentially endangering and such trust could be misplaced, such that upholding the classifications would be justifiable to prevent complacency.

[47] 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 Arlo Chino and Jedidiah as dogs that are potentially a capable and inclined threat to other dogs. On the other hand, the Panel were satisfied that Willa could justifiably be de-classified while Arlo Chino and Jedidiah remained classified, perceiving the Objectors' steps to prevent any further threat as more clearly sufficient to address the more modest possible risk attached to Willa.

[48] The risk attached to Willa is apparently one more in the nature of a possible propensity to join an attack as part of pack behaviour, rather than any tendency to initiate an attack. Again the Panel perceived the declassification of Willa as appropriate against the lack of certainty around whether Willa actually joined the attack on this occasion with this reasoning that even if she did upholding the classification of Arlo Chino and Jedidiah would appear sufficiently likely to undermine any threat Willa presents.

[49] The Panel had regard to the objects and provisions of the Act, the nature of the attack and the resulting injury to the Complainant's dog, and the need to address the threat. It recognised the difficulty in constantly controlling Arlo Chino and Jedidiah as dogs that could so quickly initiate and escalate an attack on another dog, and the threat they present when unmuzzled.

[50] In light of these various considerations speaking to the fact that Arlo Chino and Jedidiah are a potential threat, the Hearings Panel considered that the steps taken by the Objectors, though responsible, were not sufficient in all the circumstances of this case to persuade it to rescind the classifications of Arlo Chino and Jedidiah, but did give it some reassurance in rescinding the classification of Willa suggesting that the Objectors continue to be vigilant and cautious of the influence of Arlo Chino and Jedidiah on Willa around other dogs.

Matters relied on in support of the objection

[51] It was very much to the credit of the Objectors that they were proactive in contacting the Animal Management Team and cooperating. The Panel were also encouraged by the Objectors being apologetic and were satisfied with their approach to compensation, understanding the naturally aggrieved position of the Complainant, as clearly the situation is never going to be fair to him, having suffered distress that is not remedied and his dog suffering pain and distress that is neither remedied. As unintended as the pain and distress caused often is in these instances, once it has occurred it is irreversibly traumatic, but lapses happen so as much credit as the Objectors may be due for their response, the Panel considered the threat more broadly to include the potential for recurrence the Objectors will not intend.

[52] Classifications are not intended to remedy or punish, but are to prevent recurrence. The Panel thus did not turn itself to the unfairness of what the Complainant and his dog have suffered, other than to consider that others may suffer such if there is a threat that is not prevented.

[53] The Panel noted the Objectors' submission that play rather than an attack would have resulted if the Complainant had let his dog off its leash when their dogs were spotted, and noted the Objectors' comment that the Complainant and his dog were also part of whatever actually happened at the start of the incident, indicating the Objectors' view that something must have triggered the aggressive exchange. The Panel could understand that the Objectors' would think these things as the owners of the dogs in question, but considered that objectively dogs clearly should be walked on lead in such areas as where the incident occurred and not let off when other dogs run forward, and it is reality that unexpected, unprovoked attacks by dogs with no history occur.

[54] It is not impossible there is some truth to the submissions, but in the Panel's evaluation the facts very clearly indicated that Arlo Chino and Jedidiah may pose an unprovoked and unexpected threat in normal reasonable circumstances, and the submissions caused the Panel concern that the Objectors' did not fully appreciate that and might become complacent. Against this background, the Panel considered that the objects of the Act were best served by upholding the classifications of Arlo Chino and Jedidiah; the Panel was reassured by the Objectors' trust in Willa, but not at all reassured by the submissions in regard to Arlo Chino and Jedidiah.

[55] The Panel had regard to Ms Miles being affected by the recent operation on her foot at the time of the incident, but were significantly concerned by her inability to immediately recall Arlo Chino and Jedidiah and immediately end the attack. The Panel were sympathetic to the dogs getting away from Ms Miles in these circumstances, but did not see it as altering their assessment that Arlo Chino and Jedidiah should remain classified as menacing.

[56] The Hearings Panel had regard to the matters relied on in support of the objection. The Panel appreciated the Objector's level of commitment to their animals, and was thankful for the Objectors' sincerity and constructive approach to the hearing process, much appreciating that the Objectors are evidently good and responsible dog owners. However, the Hearings Panel was mindful of the potential relevance of these determinations to the safety of the wider public, and was not persuaded Arlo Chino and Jedidiah no longer had the propensity to attack and injure in similar contexts. The Hearings Panel

regarded that the nature of the attack and its focus on another dog justified upholding the ‘menacing’ classifications of Arlo Chino and Jedidiah so as to require muzzling as a preventative measure.

[57] The Hearings Panel appreciated the Objectors’ submissions, but for reasons already canvassed above considered that they should not rescind the classifications of Arlo Chino and Jedidiah on the basis of those submissions all things considered. The Hearings Panel perceived that Willa on the other hand could be declassified with the classifications of Arlo Chino and Jedidiah being upheld, perceiving that the steps taken by the Objectors were proportionate to preventing Willa being a threat, though were not alone sufficiently preventative in respect of Arlo Chino and Jedidiah noting the terrible consequences of the incident as unfairly suffered by the Complainant and his dog.

[58] The Panel note again that classification is a preventative measure, and is not intended to be punitive; the Panel was encouraged by the Objectors’ responsibility, reparations and apology, but regarded that it should nonetheless uphold the classifications of Arlo Chino and Jedidiah 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

[59] 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 classifications of Arlo Chino and Jedidiah would be justified by the evidence and submissions and would align with the objects of the Act.

RESULT

[60] Having considered the objection of the Objectors to the classifications of their dogs, Arlo Chino, Jedidiah and Willa, as ‘menacing’ dogs, together with the evidence and submissions collated by the Animal Management Team and from those who 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:

- a. the classification of the Objector’s six-year-old, male, white-and-tan-coloured, Border Collie / Labrador Retriever cross breed dog named ‘Arlo Chino’ as a ‘menacing’ dog be **upheld** for the reasons indicated herein and for the reason that the Hearings Panel considers because of the reported incident that Arlo Chino may pose a threat to one or other of the types of sentient being the Act has designs to ensure are not injured, endangered or caused distress, i.e. a person, stock, poultry, domestic animal, or protected wildlife.
- b. the classification of the Objector’s five-year-old, male, white-and-black-coloured, Staffordshire Bull Terrier cross breed dog named ‘Jedidiah’ as a ‘menacing’ dog be **upheld** for the reasons indicated herein and for the reason that the Hearings Panel considers because of the reported incident that Jedidiah may pose a threat to one or other of the types of sentient being the Act has

designs to ensure are not injured, endangered or caused distress, i.e. a person, stock, poultry, domestic animal, or protected wildlife.

- c. the classification of the Objector's four-year-old, female, white-and-black-coloured, Border Collie dog named 'Willa' as a 'menacing' dog be **rescinded** for the reasons indicated herein.

CONFIRMED THIS 23RD DAY OF APRIL 2019



COUNCILLOR GLENN LIVINGSTONE
CHAIRPERSON