

**Dog Control Act Hearings Panel**  
**DETERMINATIONS**

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**Date:** Wednesday 9 March 2022  
**Time:** 1.30pm  
**Venue:** Via Audio-Visual Link

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**Present**

Chairperson	Community Board Member Alexandra Davids
Members	Community Board Member Tim Lindley Councillor Anne Galloway

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## **Election of a Chair**

It was resolved on the motion of Councillor Anne Galloway, seconded by Community Board Member Tim Lindley, that Community Board Member Alexandra Davids be appointed Chairperson of the Hearings Panel for the hearings scheduled for this date.

The Christchurch City Council Hearings Panel convened on 9 March 2022 to hear objections as follows under the Dog Control Act 1996, which were dealt with in this order:

### **1. First Hearing at 1.30pm - regarding dogs named 'Charlie' and 'Eve'**

Hearing of an objection by **JOSEPH SIMON WYNN** of Christchurch, pursuant to s 33B of the Act, to classifications of his dogs, 'Charlie' and 'Eve', as menacing under s 33A(1)(b)(i) of the Act by Christchurch City Council Animal Management.

The Hearings Panel heard on this date the evidence and submissions (summarised in its decision) of the Objector, Animal Management Team, and the Complainant in regard the incident leading to the classifications objected to, and at 2.23pm reserved its decision in this matter, which is attached hereto and was confirmed as noted at its base.

Refer page 3 below for the determination relating to Charlie and Eve.

### **2. Second Hearing at 2.30pm - regarding dog named 'Tyson'**

Hearing of an objection by **ELIZMA SUE GREEN** of Christchurch, pursuant to s 33B of the Act, to classification of her dog, 'Tyson', as menacing under s 33A(1)(b)(i) of the Act by Christchurch City Council Animal Management.

The Hearings Panel heard on this date the evidence and submissions (summarised in its decision) of the Objector, Animal Management Team, and the Complainant in regard the incident leading to the classification objected to, and at 3.15pm reserved its decision in this matter, which is attached hereto and was confirmed as noted at its base.

Refer page 22 below for the determination relating to Tyson.

**BEFORE THE HEARINGS PANEL  
OF THE CHRISTCHURCH CITY COUNCIL**

**IN THE MATTER** of the Dog Control Act 1996

**A N D**

**IN THE MATTER** of an objection of **JOSEPH SIMON WYNN** of Christchurch to the classification by the Christchurch City Council Animal Management Team under Section 33A(1)(b)(i) of his two-year-old, male, white coloured, Swiss Shepherd dog named '**Charlie**' as a menacing dog

**A N D**

**IN THE MATTER** of an objection of **JOSEPH SIMON WYNN** of Christchurch to the classification by the Christchurch City Council Animal Management Team under Section 33A(1)(b)(i) of his four-year-old, female, black coloured, German Shepherd dog named '**Eve**' as a menacing dog

Hearing: Via Audio-Visual Link  
9 March 2022 at 1.30pm

Panel: Community Board Member Alexandra Davids (Chairperson)  
Community Board Member Tim Lindley  
Councillor Anne Galloway

Appearances  
for the Objector: Joseph Wynn (Objector)  
Objector's partner  
Objector's witness  
for the Animal Management Team: Lionel Bridger (Manager Animal Services)  
Sean Quinn (Animal Management Officer)

Determination: 7 April 2022

Hearings Advisors: Liz Ryley and Mark Saunders

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

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**The classification of Charlie as menacing is upheld**  
**The classification of Eve as menacing is upheld**

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**REASONS OF THE HEARINGS PANEL**

**INTRODUCTION**

[1] The hearing was held to consider an objection received from dog owner, Joseph Simon Wynn ('the Objector'), to the classification by the Christchurch City Council Animal Management Team ('Animal Management') under section 33A(1)(b)(i) of the Dog Control Act 1996 ('the Act') of his:

- two-year-old, male, white coloured, Swiss Shepherd dog named 'Charlie'; and
- four-year-old, female, black coloured, German Shepherd dog named 'Eve';

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 Charlie and Eve 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.

[3] Under section 33A(2) of the Act a territorial authority may classify such a dog as 'menacing', and following a report that Charlie and Eve had, on 29 October 2021, attacked stock, the Manager of Animal Management under his delegated authority from the territorial authority in which the Objector and his dogs reside did so classify Charlie and Eve as 'menacing' dogs by causing to be given to the Objector notice of the classifications and other prescribed matters, including his right to object to the classifications under section 33B of the Act.

[4] The Objector exercised his right to object to the classifications of Charlie and Eve as 'menacing' and in accordance with his right to be heard in support of his 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.

[5] The Hearings Panel on 9 March 2022 heard the Objector's evidence and submissions, and also heard from Animal Management in relation to the incident leading to the classification of Charlie and Eve, having previously received a report from Lionel Bridger, Manager Animal Services, together with the evidence collected by the Investigating Animal Management Officer relating to the incident and classifications.

[6] This report notifies the determination of the Hearings Panel that:

- the classification of the Objector's dog, Charlie, as 'menacing' is **upheld**;
- the classification of the Objector's dog, Eve, as 'menacing' is **upheld**;

and the reasons for its determination in accordance with section 33B(3) of the Act. The determination that the classification of both Charlie and Eve is 'upheld' signifies that they both remain and will continue to be classified 'menacing' and the relevant special obligations thus imposed by the Act in relation to 'menacing' dogs must be adhered to or the consequences for non-adherence set out in s 33EC of the Act will apply.

**BACKGROUND**

[7] On 29 October 2021 the Council received a complaint from the Complainant alleging that that day he observed a black German Shepherd chasing an alpaca in a paddock at 201 Bridle Path Road, and in a

neighbouring paddock, five sheep lying down on their backs. He observed a white German Shepherd attacking another sheep, and sheep jumping fences, with some caught in the fences trying to escape. Also one sheep visibly bleeding with lacerations around the neck and face.

[8] The Complainant was approached by the dog owner looking for his white dog. The dog owner organised a vet to attend to the injured sheep and advised he would cover all vet fees.

[9] When the Investigating Officer's statements and evidence collected were assessed by the Manager with the delegated authority to make the decision, Animal Management determined that both Charlie and Eve may pose a threat and would both be classified 'menacing' under section 33A(1)(b)(i) of the Dog Control Act (which 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 (i) any observed or reported behaviour of the dog).

[10] The Council subsequently received from the Objector a formal objection to the classification of his dogs, Charlie and Eve, 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 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**

[12] The Manager Animal Services appeared at the hearing to speak to his decision to classify Charlie and Eve as menacing, which was subject to the objection to be determined by the Hearings Panel. In his report he outlined the circumstances leading to the dog attack and the relevant section of the Dog Control Act, i.e. section 33 that stipulates a territorial authority may classify a dog as menacing.

[13] Mr Bridger summarised for the Hearings Panel the facts on which the decision to classify the Objector's dogs as 'menacing' was based referring to his report. Animal Management escalated the compliance, i.e. a warning was not appropriate in this instance as often the dogs are not identified. He noted the dog owner had covered all the vet bills. Classifying the dogs as menacing was the most appropriate action Mr Bridger submitted. He listed considerations for this as: (a) both dogs left the

property; and (b) the dogs entered another property and chased and harassed livestock of another property owner.

[14] Mr Bridger responded to questions of clarification from the Hearings Panel. He clarified that the starting point of consideration was whether a warning was appropriate in the circumstances. Then the injuries are looked at. In other situations of a similar nature when there were no injuries and hardly any contact a warning would be considered. If the dogs were to be placed in a similar situation in future, did escape and access other property where animals were kept, Mr Bridger opined that when the dogs were together they demonstrated a high level of prey drive, and he felt they would do so again. They are not bad dogs, but in different circumstances may offend again.

[15] The Investigating Officer had initially provided the following case summary of the incident leading to the classification:

*On Friday 29th October 2021 at approximately 11.45, the complainant and his co worker were in the office...when he saw what he described as a black German Shepherd chasing one of their alpacas. They immediately went outside to scare the dog away. The complainant chased the dog which ran back to one of their adjacent paddocks that was out of view of the office and around 100m away.*

*As he reached this paddock he could see 5 sheep lying on their backs up against fences and not appearing to move. He then spotted another dog, a white German Shepherd with a pink harness chasing and attacking another sheep.*

*The complainant described the white dog as the more aggressive of the two and was not easily deterred from chasing and attacking the sheep. Sheep were jumping fences and some were caught in fences trying to escape. The complainant saw the white dog snapping at the sheep while the black dog he only saw chasing them. Eventually the dogs jumped their rear two fences out onto the Ferrymead Park to the west and ran away.*

*Whilst the complainant's colleague contacted Animal Management the complainant went to look for the dogs in Ferrymead Park.*

*Around 12pm the complainant was approached by a Suzuki jimny car with the black German Shepherd in the back. The dog owner was asking people if they had seen his white dog. The complainant advised the owner the dogs had just mauled and chased his sheep.*

*The dog owner eventually followed the complainant over to his paddock and passed on his phone number but then disappeared to ask someone else about the dog.*

*The complainant then went back to check on his stock. He found all of the sheep and alpacas were very scared and half were cowered in the corner of an open woodshed. One young sheep was visibly bleeding with lacerations around neck and face. He eventually managed to herd the sheep to their yards back near the house.*

*The dog owner had rung and offered to organise a vet to come out and attend to the injured sheep. The sheep were noticeably shocked and still panting heavily several hours later.*

*The dog owner did make repeated contact and update the complainant on the situation with the vet and to apologise. Around 2.30pm a vet arrived, the dog owner also attended and was apologetic and said he would cover all vet fees.*

*The vet assessed the most injured sheep with the others appearing ok. Stitches were required to a large bite mark to the throat which appeared to just miss the oesophagus. Further bites to the ear, neck and face were cleaned and an antibiotic injection given. Neck bite has just missed carotid artery. Face had deep puncture wound from dogs teeth. An antibiotic injection was left for the complainant to administer on Sunday 31st October 2021.*

*The complainant had to call the vet out again on Monday 1st November 2021 as they found another sheep with a badly swollen eye which was suspected to be as a result of being chased into a fence.*

***Mitigating Circumstances:***

*Both dogs Eve and Charlie are currently registered, microchipped and neutered.*

*No previous history linked to dog called Charlie.*

*Dog owner has been co-operative, taken responsibility and provided a statement. He had been out searching for the dogs once he realised they were missing.*

*Dog owner arranged for a vet to attend to the sheep injuries and will cover all costs for that treatment.*

*Complainant was able to scare off the dogs which is highly likely to have minimised damage caused by dogs.*

***Aggravating Circumstances:***

*One previous impound ticket...for Eve in March 2019 - dog was being collected by the owner as I arrived. His front sliding door had been left open and dog escaped property as there are no boundary fences.*

*There is still no fencing at the dog property ...*

*Moderate injuries to single black sheep; is expected to make a full recovery. One other sheep injured suspected to be caused by being chased into a fence by these dogs. It is considered likely to lose its eye.*

**Officer Recommendation:**

*The dog owner is liable for damages related to this attack and should continue to pay all costs in full.*

*The dog called Charlie, a 2 year old, male, white Swiss Shepherd be classified menacing dog.*

*The dog called Eve, a 4 year old, female, black German Shepherd be classified menacing dog.*

**Evidence of the Owner of the Stock that were Attacked ('the Complainant')**

[16] The complainant had provided the following statement to the Investigating Officer:

*On 29/10/2021 my co-worker and I were in the office...when I saw a black German Shepherd dog chasing one of our alpacas in the paddock.*

*We immediately went outside to scare the dog away. I chased the dog which ran back to one of our adjacent paddocks that was out of view of the office and around 100m away.*

*As I reached this paddock I could see 5 sheep lying on their backs up against fences and not appearing to move. I then spotted another dog, a white German Shepherd with a pink harness chasing and attacking another sheep. The white dog appeared to be the more aggressive of the two and was not easily deterred from chasing and attacking the sheep.*

*Sheep were jumping fences and some were caught in fences trying to escape. Eventually the white dog jumped the rear two fences out onto the Ferrymead Park to the west and ran away. The black dog wasn't as confident and took a while to jump the fences. We assume this is most likely where they came from as well. We saw the white dog snapping at sheep while the black dog we only saw chasing them.*

*While this was occurring my colleague was ringing animal control. I then went to look for the dogs and owner in Ferrymead Park.*

*Around 12pm I was approached by a Suzuki jimny car with the black dog in the back. The owner was asking people if they had seen the white dog. I told him I had and I was also looking for it as it had just mauled and chased my sheep. Initially the owner just seemed worried about finding his dog and didn't show much worry for the damage done. He proceeded to follow me over to the paddock and gave me his phone number but then disappeared to ask someone else about the dog.*

*I then went back to check on the stock. All of the sheep and alpacas were very scared and half were cowered in the corner of an open woodshed. One young sheep was visibly bleeding with lacerations around neck and face. I eventually managed to herd the sheep to our yards back near the house. Sean from Animal control arrived and took some notes.*

*The dog owner had rung and offered to organise a vet to come out and attend to the injured sheep. The sheep were noticeable shocked and still panting heavily several hours later.*

*The dog owner did make repeated contact and update me on the situation with the vet and to apologise. Around 2.30pm a Vet arrived, the dog owner also attended and was apologetic and said he would cover all vet fees etc. The vet assessed the most injured sheep with the others appearing ok.*

*Stitches were required to a large bite mark to the throat which appeared to just miss the oesophagus. Further bites to the ear, neck and face were cleaned and an antibiotic injection given. Neck bite has just missed carotid artery. Face had deep puncture wound from dogs teeth. Antibiotic injection left for us to administer on Sunday.*

*I have also been made aware by another local Heathcote resident that dogs of the same description were attacking sheep in the farmers paddock further up [the] Road 10 days ago....I am also aware of another report on the local...facebook page on Oct 4th "two dogs running around paddocks by ...Path, are they with someone or lost. They look like they are wearing harnesses."*

*It is concerning if this has happened before recently, as the Vet said, the dogs will have the taste of blood now and likely to happen again if opportunity presents. We also have young children often in the paddocks that would be easy targets if caught up in an event like this. Luckily we are not lambing this year as we typically would have 20-30 3-5 week old lambs also in the paddock at this time of year.*

*We had to get the vet out again on Monday 1st November 2021 as we found another sheep with an eye injury which he said was most likely caused by the sheep running into a fence. The vet prescribed cream but there is a good chance the sheep may lose it eye. I have emailed Animal Management Officer Sean Quinn a photograph of this sheep's injury.*

## **The Objector**

### **Evidence and Submissions of the Objector**

[17] Subsequent to raising his objection in writing, the Objector had provided the following written submissions:

#### **Introduction**

*I want to start by making clear the deep sense of remorse that I feel about what happened on Friday the 29th of October. My actions led to two animals being physically harmed and several others suffering severe distress. I understand that [the complainant] and his family had to invest significant time and energy into the recovery of their animals. On top of that, they must also feel like their privacy and security was violated; that they can't feel safe in their own home.*

*Having suffered the loss of my own livestock from a dog attack just a few years ago, I empathise strongly with [the complainant] and his family. I know that it feels scary, it feels unfair, and it feels like an unspoken bond of trust has been broken within the community.*

*I accept full responsibility for the distress that was caused to [the complainant], his family, and his livestock. In this document I aim to explain the exceptional circumstances that enabled my dogs to escape, how the dogs do not pose a risk to the safety of any person or animal, and how I plan to ensure this incident can never be repeated.*

#### **Grounds for objection**

*I strongly believe that neither of my dogs are menacing. I am therefore objecting to the menacing dog classification for both Eve and Charlie on several grounds:*

- *AMO Sean Quinn mentioned on two separate occasions that he does not believe that Eve or Charlie are menacing, and that he only recommended a section 33A because he wanted to give*

*us the chance to appeal the classification. He expressed concern that if he had recommended no classification, the dogs would be classified in a way that could not be appealed.*

- *After speaking with the vet and reviewing the case files, I believe that neither Eve nor Charlie made contact with any animals. I believe that the injuries sustained by the sheep were a result of the sheep running into fencing or other sharp objects.*
- *Neither dogs have a history of being aggressive towards or harming any person, stock, poultry, domestic animal, or wildlife. On the contrary-*
- *Both dogs have cohabited with chickens and cats for most of their lives; they spend significant time around other dogs of all breeds and temperament; they regularly interact with children, infants, and other animals; and they have received extensive impulse control training.*
- *Exceptional circumstances resulted in the dogs receiving minimal exercise and attention for many days leading up to their escape. This is not normal for them, and I believe this to be the sole motivation for them to escape and seek out entertainment in the form of chasing livestock.*

*I will go into further detail about each of these points below.*

#### **AMO Sean Quinn's recommendation**

*Over the course of the initial incident and the classification process, Sean spent over an hour with both Eve and Charlie. In his report, he stated that "Eve and Charlie have never displayed any aggressive behaviour towards me and the dog owner has always shown good verbal control over the dogs".*

*During a phone call on 8 November, Sean expressed his belief that neither of the dogs were menacing and explained that his recommendation of a section 33A classification was to ensure that we had a chance to appeal the classification. Sean reiterated this again while he was helping to fit the muzzles.*

*I found this to be one of the most puzzling parts of the classification. While I wanted this document to be purely objective, this next part is entirely speculative: I got the impression Sean knew that whoever makes the decisions would only accept a recommendation to classify the dogs as menacing, and that any other recommendation would not be taken seriously. I was always genuine, honest, and respectful to Sean. I can only assume he was the same to me in return, and that his assessment of the dogs not being menacing was genuine.*

#### **Sheep injuries**

*Despite [the complainant] referring to the injuries as "bite marks" and "wound[s] from dogs teeth", when I spoke to the vet on the 9th of November he was not able to conclusively say whether the wounds were from a bite. The vet even speculated that the wounds could have been caused by the sheep running into sharp objects such as a fence, hedge, or branch.*

*Given that neither dog has ever attempted to bite a person or animal, and the fact that the dogs were only seen to be chasing the animals, I do not believe that the sheep's injuries were directly caused by the dogs. That the dogs chased the sheep at all is entirely unacceptable, however this is something that cannot be remediated by a menacing dog classification; it can only be remediated through better dog control and stricter dog training.*

#### **Dog history and training**

*Both Eve and Charlie live with 3 cats, and have previously lived with chickens. The dogs are gentle with all of the other animals, and the cats will often cuddle up to the dogs. This living arrangement has made it easy for us to train the dogs to be gentle with other animals.*

*Both dogs have regular contact with children, infants, and other animals - both in our home and in public spaces. We are conscious that our dogs are big, and that many people associate them with attack or guard dogs. Because of this, we have invested an enormous amount of time and effort into training them to be calm and obedient.*

*Types of training we have focused on include “default settle” (calmly lying down even when there are exciting things happening), impulse control (waiting for explicit permission before eating, playing, leaving the house, etc), and being gentle with their mouths. This training has enabled us to take the dogs into all sorts of situations including crowded markets, childrens’ birthday parties, and walks in areas containing livestock.*

*We pride ourselves on how often people compliment Eve and Charlie on their obedience and behaviour around children and animals. We are confident that despite the recent incident, the dogs are still trustworthy and able to behave appropriately in any situation.*

**Exceptional circumstances**

*[The personal exceptional circumstances of the Objector and his partner] at the beginning of October [described by the Objector were read and considered by the Panel and treated as private].*

*The behaviour exhibited by the dogs on the 29th of October was completely out of character, and entirely unprecedented. Under normal circumstances, I would not allow myself to be distracted while the dogs are not contained. Under normal circumstances I would have shut the dogs inside before beginning a conversation with my neighbour. It was a lapse in my judgement and attention that enabled them to escape, and ultimately caused the dogs to ignore their training and attempt to round up Ben’s sheep.*

**Remedial steps**

*Since the incident on the 29th of October, we have been working hard to make changes that will prevent this from happening again.*

**Improvements to our property**

*We have begun to install temporary fencing around certain parts of our property. Unfortunately rocky ground and uneven sloping has made this particularly challenging, and we don’t believe that it will be possible to create a completely dog-proof fence right now. We are, however, very close to finalising the designs for a house extension. This will include major earthworks that will allow us to have a fully-fenced garden.*

**Changes to how we keep the dogs at home**

*We have implemented some “house rules” around how the dogs are kept. This includes only allowing one dog outside at a time, or having them on leashes if they are outside at the same time. This makes it much easier for us to keep the dogs in a smaller area of our property so that they become uninterested in the areas that lead off our property.*

**Dog exercise and training**

*We have made significant changes to our day-to-day schedules to ensure there is always sufficient time to exercise the dogs. Even if we are not able to leave our home, we have rearranged our living space in a way that gives the dogs ample room to play.*

*Despite preferring positive reinforcement to train the dogs, we have recently purchased shock collars. We are using these to discourage the dogs from leaving our property, and to reinforce their training in high-distraction environments.*

*Dog training has always been an ongoing endeavour for us, and we will continue to dedicate time to maintaining the good temperament and obedience of Eve and Charlie.*

**Recommendations**

*I genuinely believe that Eve and Charlie do not pose a threat to any person or animal, and that this incident arose from exceptional circumstances that we can ensure are never repeated. Our dogs have interacted with countless people in Christchurch and around New Zealand who would testify to not only themselves feeling safe around the dogs, but also to feeling that their children and pets are safe around them.*

*From a perspective of wanting to reduce or prevent harm, I believe the menacing dog classification is ineffective and provides a false sense of security because a muzzled dog can still chase sheep. I also have some serious concerns about the dogs' ability to pant and drink while wearing muzzles.*

*I have already outlined some of the remedial steps that I believe are more effective for reducing or preventing harm, but I would also like to propose one more:*

*[The complainant]'s property backs onto a sports field that is a common place for locals to exercise their dogs.*

*Despite the requirement for dogs to be leashed being signposted in multiple places, I know that most people allow their dogs to run free in these fields. I believe that the fencing around [the complainant]'s property is not adequate to keep dogs out - it is low enough that large dogs can jump over it, and has gaps large enough that smaller dogs can jump through it.*

*I would be willing to work with [the complainant] to review his fencing and would also contribute financially to improving it.*

**Addendum: Timeline of events**

*Over the course of the incident itself and the weeks following, I made an effort to accurately record any events or interactions that I deemed relevant. They are listed below in chronological order. Note that I have used "quotation marks" to indicate when I am directly quoting a conversation or text message.*

**Friday 29 October**

**11:35?**

*I was sweeping my driveway while the dogs played on the lawn. One of my neighbours, John, saw me and we started a conversation. During the conversation both Eve and Charlie approached John to sniff him. He said hello to both of them. At some point both of the dogs wandered into another neighbour's garden. This particular garden is on a steep slope that goes all the way from my street to the bottom of the hill. The dogs sometimes sniff around the top of this garden but on this day they ventured further. When I lost sight of them, I told John that I should go and fetch the dogs. We ended the conversation and I began walking down the garden, calling the dogs. I got to the bottom of the garden and didn't see any sign of them, so I walked back up the garden, taking my time to call them and check behind bushes.*

**11:42**

*I looked down into Heathcote from the top of the garden and I could see Charlie in the football fields at the bottom of the hill. I immediately ran to the house to get my car keys.*

**11:43**

*I called my friend Patricia...and asked for her help to find the dogs. She agreed to meet me at Ferrymead Park.*

**11:50?**

*Patricia found Eve in Ferrymead Park, near the toilet block. I ran to meet her and put Eve in my car.*

**11:55**

*I drove towards Ferrymead Park to look for Charlie. At the entrance I saw a man who turned out to be [the complainant], the stock owner. He was holding a long rope and was acting very agitated. I asked if he had seen a white dog. He used harsh language to tell me that the white dog had attacked his sheep, and said "if I had a gun I would have shot the f\*\*\*ing thing". I parked my vehicle nearby and walked over to talk to him. I asked him if his sheep were okay. He said one was bleeding badly. I told him that I would find the white dog and gave him my number in case he needed anything. He seemed to calm down towards the end of the conversation. I walked away to ask the groundskeeper (who was mowing the fields) if he had seen any dogs. He had not.*

**12:01**

*[The complainant] sent me a picture of a brown and black sheep with blood around its neck. I replied immediately with a message that said "If you've got a vet you can call, do you wanna bring them out ASAP and get them looked at? I'll cover costs". I also sent another message that said "No blood on the black dog, will keep looking for white dog. Totally unacceptable from me and them, I'm so sorry. Will help make up for it however I can".*

**12:42**

*My neighbour sent me a message saying that Charlie was on the road behind my house. I called her and asked if she could grab him. She said that she couldn't grab him because he kept running away from her. She agreed to keep him in sight while I drove home.*

**12:45**

*I called Sean and told him that I had found Charlie. We agreed to meet at my house.*

**12:50**

*I arrived at the lane behind my house. Charlie looked frightened and was initially reluctant to come to me. I took a video of him to show that he didn't have any blood on him. Eventually I coaxed him into the car and drove home.*

**12:55**

*Sean arrived at my house. My friend Patricia arrived at the same time. My partner...had arrived a few minutes earlier. Patricia agreed she was not needed and left. I took Charlie inside and gave my statement to Sean. During this time [my partner] was calling vets to arrange treatment for the sheep. Also during this time Sean mentioned that he had inspected the sheep and it appeared to have a deep puncture wound. Neither [my partner] nor myself believed that either of the dogs could have done this and asked Sean whether the wound could have been caused by the sheep running into an object. Sean wasn't able to confirm how the wound was caused. Sean said multiple times that he didn't think our dogs were dangerous. Neither of the dogs were restrained while Sean was in the house.*

**13:57**

*I messaged [the complainant] and said “We’ve booked with two mobiles vets (Rangiora and Lincoln) in case one is free sooner. Both have estimated between 3.30-4.00pm arrival. None of the local vets have wanted to get involved. Can you confirm you’re 201 bridle path? Please give me a call if there’s anything else in the meantime.”*

**14:03**

*I messaged [the complainant] and said “Rangiora vet is en route now. ETA 40 minutes”.*

**14:31**

*I arrived at [the complainant]’s house so that I could meet the vet when they arrived.*

**14:40?**

*The vet arrived. I explained that I was the dog owner and made sure all costs would be passed on to me. We went to find [the complainant], who was on the phone in a sleepout-type building. [The complainant] took us to see the sheep, which had been put in a small pen behind a building. [The complainant] & I watched the vet assess the sheep. Ben seemed relatively calm by this point and seemed to accept my apologies. I told both [the complainant] and the vet to call me if they needed anything, and went home.*

**20:51**

*I emailed Sit Happens, the puppy school that Eve & Charlie attended, to ask about private training and “walk & train” sessions.*

**Monday 1 November**

**16:32**

*The vet emailed [my partner] an invoice. This included a follow-up visit over the weekend for a ewe that had a swollen eyelid. I paid the invoice immediately.*

**Monday 8 November**

**16:38**

*Sean called to tell me that they have decided to classify both Eve and Charlie as menacing. He said nothing will happen yet, and that he would deliver the paperwork when it’s ready. He didn’t explain what the menacing classification is or what it entails.*

**Tuesday 9 November**

**14:12**

*I made contact with the vet and asked him to confirm if the wounds he attended were caused by a dog bite. He described how clipping back the sheep’s fleece revealed several puncture wounds, some that required stitches, and that “given the recent occurrence of sheep being chased, it is highly likely this may have been caused by running into fences or sharp objects such as a hedge or branch”.*

**Saturday 13 November**

**09:44**

*I placed an order with Aetertek New Zealand for 2x dog training collars. I intended to use these collars to train the dogs to stay within my property, since there is no fencing.*

**Tuesday 16 November**

**11:43**

*Sean called to schedule a time to deliver the paperwork. We agreed tomorrow morning at*

10.30am.

**Wednesday 17 November**

**08:36**

*Sean asked to reschedule the meeting for 1.30pm.*

**13:30**

*Sean arrived [our address] and went over the paperwork. He told me that he doesn't think the dogs are menacing, but he recommended this classification over a section 33A classification so that I had the chance to appeal the decision. He explained that if he had recommended the dogs not to be classified as menacing, there was a chance that a different classification would be used that did not allow the decision to be appealed.*

**13:59**

*After he left, Sean called to ask if I wanted free muzzles for the dogs. I said yes. He said he only had one of each size in his car, so we agreed to meet at the shelter later in the afternoon where I would bring Eve & Charlie to be sized for muzzles.*

**14:32**

*I submitted a LGOIMA request via the "Request LGOIMA information" form located at <https://ccc.govt.nz/the-council/request-information/request-official-information-through-lgoima/>.*

**16:04**

*Sean sent me an email with the subject "Requesting information". He outlined the process for requesting access to the investigation file.*

**16:55**

*I arrived at the shelter but was told that Sean had already left and they didn't have any muzzles there. I spoke to Sean on the phone and we agreed I would text him my availability so we could meet and fit some muzzles.*

**20:42**

*I sent an email to [animalmanagement@ccc.govt.nz](mailto:animalmanagement@ccc.govt.nz) with the subject "Request for information". In this email I requested access to the investigation file in the way that Sean advised in his earlier email.*

**20:50**

*I sent a text message to Sean Quinn to let him know that I would be free all day tomorrow. He replied and said he would call me around 10:45 tomorrow morning.*

**Thursday 18 November**

**10:45**

*Sean arrived with muzzles for Eve and Charlie. He spent some time helping me fit them. Neither of the dogs liked having the muzzles on, but Sean suggested putting peanut butter inside the muzzles which helped a little. I expressed my concern that they would not be able to drink with the muzzles on.*

**11:45**

*I received an email from the council with the subject "Re: [ Ticket: 497043 ] LGOIMA acknowledgement: Menacing dog classification - file". It says "We are handling your request under the Local Government Official Information and Meetings Act 1987 (LGOIMA). We have*

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*forwarded it to the appropriate Christchurch City Council staff, and we will provide a response or update within 20 working days of the date we received your request”.*

**Wednesday 1 December**

**09:32**

*I sent a follow up email to animalmanagement@ccc.govt.nz regarding my email on 17 November, asking for an update on the LGOIMA request.*

**Wednesday 8 December**

**14:50**

*Lionel Bridgers called to ask if I am continuing with my objection. I said yes but I am waiting for the files from the LGOIMA request to come back. He seems surprised that they haven't and says he will chase them about it tomorrow (Thursday 9 December). I told him that I had already planned to call him on Friday 10 December if I hadn't heard anything by then, because the 20 days is nearly up.*

**Monday 13 December**

**13:12**

*I called Lionel Bridgers but he didn't answer.*

**13:49**

*I called Lionel Bridgers again and this time left a message asking for an update on the LGOIMA request. I left him my phone number and asked him to call me back.*

**Wednesday 15 December**

**11:43**

*I received an email from OfficialInformation@my.ccc.govt.nz with an attached file named “LGOIMA Valley View file COMBINED.pdf” containing some of the information that I requested.*

[18] The Objector also provided a number of statements before the hearing from persons with knowledge of Charlie and Eve indicating their experiences of the dogs' good nature, which the Panel gave what weight to they could, recognising that it is not unusual for dogs that do warrant classification to have such validations that they appear entirely safe in familiar contexts. It is thus known to the Panel that removing dogs to different contexts can manifest the threat innate to them, and it should be discouraged for dog owners to become too complacent with their dogs in contexts where children are present, and all dogs always retain an underlying level of unpredictability.

[19] At the hearing, the Objector stated he took full responsibility for events, and hated the thought that he had allowed another family to experience the stress, and for other animals to be hurt. He had reiterated to the complainant how sorry he was about this incident understanding all the emotion and stress it caused.

[20] The Objector objected to the classification that Eve and Charlie pose great risk to animals and stock. He hoped he could demonstrate how well loved and trusted these dogs were with other pets. The dogs had not demonstrated prey drive with other animals or sheep. He and his partner are the best possible owners to make sure a similar incident never happens again.

[21] The Objector reiterated that events were the result of truly exceptional circumstances, that would never be repeated because of what they had learned, and the remedial steps taken. Eve and Charlie are not menacing, they are well trained and obedient. If an over-excited dog is unsupervised it would probably act in a similar way, but they are not bad dogs and what happened was on him and his lack of supervision.

[22] The Objector explained how the incident happened. In the weeks leading up to it he indicated he and his partner were sleep deprived, and not eating well; they had not exercised the dogs much so the dogs had pent up energy. Due to sleep deprivation, he said he watched them walk down the neighbour's garden without thinking what would happen. He emphasised how exceptional it was that the dogs went down 200 metres of steep terrain, through the neighbouring property, down the drive, across the busy road and through Ferrymead Park. He noted this has never happened before and will not again with the changes they have made.

[23] The Objector advised the changes they have made to prevent recurrence have been: improving the fencing somewhat, though it has not possible to fully fence the property so they have implemented relevant house rules, i.e. the dogs are not outside together unless fully leashed, and the one out is supervised. He advised that the dogs separately are fine and obedient, together they play and cause more trouble.

[24] The Objector advised that training is always ongoing and they will continue investing in it. He indicated they have incorporated that training into all aspects of their lives, and they purchased shock collars due to what happened for negative reinforcement. He noted they use them sparingly to enforce the visible boundary, so the dogs cannot leave the property.

[25] The Panel sought further clarification of the Objector about an incident on the local Facebook page about two shepherds crossing Bridle Path Road, and whether that was the same or another incident. The Objector explained that was an occasion in 2020 when the female dog was at a neighbour's house and they had collected her from there, and Animal Management had been called.

[26] The Objector's partner confirmed she was not at the property on the day of the incident and was at work.

[27] In answer to further questioning from the Panel, the Objector noted a comment by Animal Management that dogs who attack sheep are rarely identified. The Objector advised they had wanted to do the right thing from day one, despite the complainant's aggressiveness and his wanting to harm the dogs. He advised their house extension is complete so it is not possible for the dogs to escape again.

[28] The Panel noted its appreciation of the work the Objector has done and their willingness to speak with the sheep owner and take responsibility. In relation to the impact on them and the dogs, the Objector advised the dogs do not like muzzles and do not know how to drink with the muzzles on, it creates difficulty for the dogs. He was also concerned kennels will not want take dogs with a classification and that perception is stressful.

### **Reply by Animal Management**

[29] In response to a Panel query about the effectiveness of the two technologies advanced to solving the containment of the dogs to the property, Mr Bridger noted that notification was received after the dogs had wandered some distance, and while he did not know the area well, he was concerned that dogs can

go a long distance in a short period of time. He noted that the shock collars are manually operated; the risk is if one is not watching the dogs they can wander off. It is dependent on someone actively monitoring and using the technology. The distance of the Objector's house to the sheep paddock was noted to be substantial and the dogs seemed quite purposely to be going in that direction up to the paddock, rather than just wandering.

[30] Mr Bridger advised he was unable to comment on the ability for the dogs to drink with a muzzle. He noted that there is a provision in the Dog Control Act where a classified dog in public requires a muzzle, but when at the kennel, does not have to be muzzled.<sup>1</sup>

### **Final Remarks of Objector**

[31] The Chair allows the Objector some final remarks. He suggested the muzzle would not have prevented the sheep being chased into fences.

[32] In clarification of the injuries and what the vet had felt happened, the Objector advised he had a brief conversation with the vet, and asked if the vet could be 100 per cent certain the wounds were from dog bites. He reported that the vet said that wounds like that were consistent with dog bites but conceded the wounds could be from something else. Regardless what injury was sustained, he advised that neither dogs had any sign of blood on them.

[33] The Panel thanked the Objector and his partner for their appearances at the hearing.

### **Close of Hearing**

[34] 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.

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

### **PANEL DELIBERATIONS**

#### **The evidence which formed the basis for the classification**

[36] The evidence which formed the basis for the classifications was not in the Panel's view in any real doubt with regard to it supporting the assessment that Charlie and Eve injured the Complainant's stock. The Panel considered that for the purposes of determining the objection to the classification of Charlie and Eve as menacing it was not strictly necessary for the injuries to have resulted from bites.

[37] Classification as menacing is not intended to be punitive, and the statutory requirement for it is not high; only that it is assessed that the dogs may pose a threat, based on observed or reported behaviour – not specifically that a bite had occurred. The muzzling requirement arising from classification may suggest

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<sup>1</sup> The Panel notes section 33E of the Dog Control Act sets out the relevant provisions in their exact form that the owner of a classified dog "must not allow the dog to be at large or in any public place or in any private way, except when confined completely within a vehicle or cage, without being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction". Thus the muzzle must be such as to allow the dog to drink, or else logically the dog should not where it must be muzzled.

that the threat should be from biting, but the Panel having carefully looked at the evidence did consider it more likely than not that Charlie and Eve do pose some risk of biting based on the evidence around the reported behaviour.

[38] In fairness, the Panel notes that any dog that can bite does pose some risk of biting, so classification is not intended to stigmatize or pass moral judgement on Charlie and Eve. Rather there is an issue with society wrongly stigmatizing a dog wearing a muzzle, and the Dog Control Act unhelpfully employing the label ‘menacing’ to cover the plethora of often accidental incidents that lead territorial authorities to impose the muzzling requirement, when the reality is that muzzling should be a more widespread voluntary device to manage the common and innate risk of dog bites.

[39] The Panel considered that the incident resulted from a lapse on the Objector’s part in regard to containing Charlie and Eve, which may be accepted as a mistake, not to be punished, but neither allowing the Panel to neglect the object of the Dog Control Act and obligation to consider the wider community. The Panel can only look at the preventative tool of classification the Act puts in front of it, imperfect as it may be, and ineffective as it may have been in these circumstances of Charlie and Eve escaping into public.

[40] The legal test is not that the muzzling requirement would have prevented the incident; the Panel principally takes a forward-looking approach of judging whether the evidence supports upholding classification to advance the objects of the Act and prevent risk. The Panel may be substantially reassured that the Objector is a responsible dog owner, who lapsed, but admirably did his best to make this right and positively engage in the process, so does not mean to doubt the Objector, but only to recognise that dogs are unpredictable and risk will not reasonably be eliminated in this case. So classification requiring muzzling in the circumstances the Act prescribes, should remain in place in light of the evidence of the incident.

[41] Thus the Hearings Panel, having regard to the evidence which formed the basis for the classification of Charlie and Eve as ‘menacing’, considered that it was sufficient to form the basis for the Animal Management Team’s classification of both dogs, recognising that it would proceed to consider the Objector’s evidence and his submissions in support of his objection to the classifications.

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

[42] The Panel were encouraged that the Objector is taking serious steps to prevent another incident. However, the Panel harboured some doubt the steps would always, without fail, contain Charlie and Eve in an appropriate way; in regard to the indicated use of shock collars, the Panel expresses caution, referring the Objector to the relevant minimum standards and recommended best practice for electronic devices set out on page 33-34 of the Code of Welfare for Dogs: <https://www.mpi.govt.nz/dmsdocument/46030-Code-of-Welfare-Dog>.

[43] The Hearings Panel thus considered the Objector’s evidence and submissions in regard to the steps he had taken to prevent any further threat. However, the Panel considered that the attack demonstrated that the Objector did not have his 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.

[44] It is a substantial concern the Charlie and Eve wandered so far and have an apparent inclination to harass, and potentially to attack, stock. The muzzling requirement imposed by classification may not be an ideal fit to the problem, that the discretion the law allows the Panel is to uphold or rescind classification, having regard to the matters as here set out, considering whether Charlie and Eve may pose a threat based on the reported behaviour.

[45] Having considered the steps taken by the Objector, the Panel still felt Charlie and Eve may pose a threat; it is not necessary that classification would have prevented this incident where the dogs escaped into public, but it would confirm a breach should it happen again where muzzles are not in place. The point that muzzles would not prevent harassment of stock may be correct, but they would assist and that the Objector is responsible enough to perceive this issue is to his credit that he would be able to become complacent under the classification.

[46] A more severe classification of the dogs as dangerous may have better confined Charlie and Eve, but the Panel was impressed by the Objector's capacity for taking responsibility, and supports the level at which Animal Management set classification, seeing that the Objector could be expected to take containment steps voluntarily, and the Panel's discretion is anyway limited to upholding or rescinding the menacing classification.

[47] The Hearings Panel ultimately did not feel the high level of confidence it would want to in respect of the steps taken that could justify de-classifying Charlie or Eve as dogs that are potentially a capable and inclined threat to stock.

[48] 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 stock, and the need to address the threat. It recognised the difficulty in constantly controlling Charlie and Eve as dogs that could so quickly escape a distance and harass and injure stock, and the threat they present when unmuzzled.

[49] In light of these various considerations speaking to the fact that Charlie and Eve are a potential threat, the Hearings Panel considered that the steps taken by the Objector, though responsible, were not sufficient in all the circumstances of this case to persuade it to rescind the classifications of Charlie and Eve.

### **Matters relied on in support of the objection**

[50] The Panel were also encouraged by the Objector being apologetic, and highly encouraged by the Objector's positive proactivity in making matters right and engaging in the process.

[51] Classifications are not intended to remedy or punish, but are to prevent risk. The Panel still perceiving some risk in this case, which classification may not perfectly address. It is unfortunate to add a label of 'menacing' where Charlie and Eve were engaging in somewhat natural behaviour, that could potentially be corrected with training if exposure to stock was necessary, but the intent is not to stigmatize,

and it is simply the arbitrary manner of reference the Act adopted to signal the employment of the preventative tool that is classification.

[52] The Hearings Panel had regard to all the matters relied on in support of the objection. The Panel appreciated the Objector's level of commitment to his dogs, and his constructive approach to the hearing process. The Panel could detect that Charlie and Eve are loved and generally gentle and friendly dogs.

[53] However, the Hearings Panel was mindful of the potential relevance of these determinations to the safety of the wider public, and was not persuaded Charlie and Eve no longer had the propensity to at least harass other stock in similar contexts. The Hearings Panel regarded that the nature and result of the attack justified upholding the 'menacing' classifications of both Charlie and Eve so as to require muzzling as a preventative measure.

### **Other relevant matters**

[54] 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 Charlie and Eve would be justified by the evidence and submissions and would align with the objects of the Act.

### **RESULT**

[55] Having considered the objection of the Objector to the classifications of his dogs, Charlie and Eve, 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:

- the classification of the Objector's his two-year-old, male, white coloured, Swiss Shepherd dog named '**Charlie**' 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 Charlie 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; and
- the classification of the Objector's four-year-old, female, black coloured, German Shepherd dog named '**Eve**' 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 Eve 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.

**CONFIRMED THIS 11<sup>TH</sup> DAY OF APRIL 2022**



**COMMUNITY BOARD MEMBER ALEXANDRA DAVIDS**  
**CHAIRPERSON**

**BEFORE THE HEARINGS PANEL  
OF THE CHRISTCHURCH CITY COUNCIL**

**IN THE MATTER** of the Dog Control Act 1996

**A N D**

**IN THE MATTER** of an objection of **ELIZMA SUE GREEN** of Christchurch to the classification by the Christchurch City Council Animal Management Team under Section 33A(1)(b)(i) of her three-year-old, male, brindle and white-coloured, Miniature Bull Terrier, named '**Tyson**' as a menacing dog

Hearing: Via Audio-Visual Link  
9 March 2022 at 2.30pm

Panel: Community Board Member Alexandra Davids (Chairperson)  
Community Board Member Tim Lindley  
Councillor Anne Galloway

Appearances  
for the Objectors: Elizma Sue Green (Objector)  
(Objector's partner)  
for the  
Animal Management Team:  
Lionel Bridger (Manager Animal Services)  
Chris Todd (Investigating Animal Management Officer)

Determination: 7 April 2022

Hearings Advisors: Liz Ryley and Mark Saunders

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

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**The classification of Tyson as menacing is upheld**

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**REASONS OF THE HEARINGS PANEL**

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## **INTRODUCTION**

[1] The hearing was held to consider an objection received from dog owner, Elizma Sue Green and her partner ('the Objectors'), 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 their three-year-old, male, brindle and white-coloured, Miniature Bull Terrier dog, named 'Tyson' as 'menacing' – 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 Tyson 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.

[3] Under section 33A(2) of the Act a territorial authority may classify such a dog as 'menacing', and following a report that Tyson had, on 9 December 2021, attacked a dog, the Manager Animal Services under his delegated authority did so classify Tyson as a 'menacing' dog by causing to be given to the Objector, Elizma Sue Green (as the registered owner of Tyson), notice of the classification and other prescribed matters, including her right to object to the classification under section 33B of the Act.

[4] The Objector exercised her right to object to the classification of Tyson as 'menacing' and in accordance with her right to be heard in support of her objection she was referred to the Hearings Panel of the Christchurch City Council as the body with the delegated authority to hear and determine the objection.

[5] The Hearings Panel on 9 March 2022 heard the Objectors' evidence and submissions, and also heard from the Animal Management Team, having previously received a report from Lionel Bridger, the Manager Animal Services, together with the evidence collected by Animal Management Officer, Chris Todd, relating to the incident and classification.

[6] This report notifies the determination of the Hearings Panel that the classification of the Objectors' dog, Tyson, as 'menacing' is **upheld** and the reasons for its determination in accordance with section 33B(3) of the Act. The determination that the classification is 'upheld' signifies that Tyson remains and will continue to be classified 'menacing' and the relevant special obligations thus imposed by the Act in relation to 'menacing' dogs must be adhered to or the consequences for non-adherence set out in the Act will apply.

## **BACKGROUND**

[7] On 9 December 2021, the Council received a complaint from the owner of attacked dogs, the Complainant, alleging that that day her Chihuahua dogs had been attacked and bitten by the Objectors' dog.

[8] Animal Management Officer, Chris Todd, investigated the complaint and on the evidence and admissions gathered determined that the alleged dog attack on the Complainant's dogs did occur, causing bite injuries as indicated by the photographs and other evidence provided.

[9] The Council's Manager Animal Services considered the evidence collated by the Investigating Animal Management Officer, and was satisfied that he had sufficient evidence that Tyson bit the Complainant's dogs. He considered because of this reported attack that Tyson may pose a threat, and so with delegated authority, classified the Objectors' dog, Tyson, 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).

[10] The Council received from the Objectors a formal objection to the classification of their dog, Tyson, 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 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**

[12] The Manager Animal Services appeared at the hearing to speak to his decision, which was subject to the objection to be determined by the Hearings Panel.

[13] The Investigating Officer had initially provided the following case summary of the incident leading to the classification:

*Last Thursday, whilst moving furniture through the front door at 21 Shearer Avenue, a family member has inadvertently left the door open, whilst at the same time a 'child-proof' gate (kiddy-gate) was also left open. The family's English Bull Terrier (TYSON) has exited the house through these open accessways.*

*TYSON has crossed Shearer Avenue to Shearer Park, where the complainant and her child were on the playground, whilst her husband was playing with their three Chihuahua dogs in the greenspace adjacent.*

*Initially TYSON has bitten TOYA (Chihuahua) but following intervention by [the complainant], TOYA was able to escape.*

*TYSON then turned his attention to TORY (Chihuahua), chasing him down and attacking him. Again [the complainant], assisted by a neighbour managed to pin TYSON down while [the complainant's] husband removed TORY from TYSON's grip.*

*Around this time [the Objector and her husband] and parents arrived, secured TYSON then returned a short time later in an attempt to discover what had taken place.*

*Vet treatment was sought for both TOYA and TORY. TORY required surgery to repair the damage to her abdomen.*

*TORY recently returned home and is expected to make a full recovery.*

**Mitigating Circumstances:**

*Lines of Communication were established early between all involved parties (texts on job), and updates / apologies forthcoming.*

*TYSON lives in a fully secure yard with (currently) three 'dog proof' boundaries established, and as a result of this incident one more will be set up with a 'kiddy-gate' going in at the front door.*

*Dogs normally reside in a large, fully fence and gated, concreted dog compound. There is a kiddy gate across the backdoor ranchslider. Another kiddy-gate separates the dining area from the kitchen / passage, whilst the new gate will go at the front door. The main driveway gate is automated and they have processes in place to reduce the risk of one party opening the gate whilst the dogs are running within the yard.*

*All vet bills to this point have been paid in full by the offending dog owner (as at 15/12/21).*

*TYSON is already desexed and microchipped and they already muzzle him when walking as it affords them more control.*

*Although not directly caused by them, the owner takes responsibility for the actions of his family member in leaving the door open. The vet at Avonhead Vet advised [the Investigating Officer] that the offending dog 'wasn't very good' else it would have killed the dogs...*

**Aggravating Circumstances:**

*It was a slightly 'care-free' attitude of a family member in leaving the gate open that lead to the incident, which requires addressing.*

*The injuries were significant (although expected when a dog of this size grabs one of the victims size).*

**Officer Recommendation:**

*As the offending dog is already registered, microchipped, and de-sexed while the owner understands his obligations in knowing that his dog has attacked that it must now be muzzled in public, therefore classifying Menacing would be a moot point, as such would be Dangerous as the conditions of providing an area for it to live (compound) have been fulfilled also.*

*The offending owner has been compliant the entire way through and paid the account at the first opportunity.*

*Regardless of what the initial complainant states who did not see it, this is the First Offence by this dog.*

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*Recommend not Classifying but noting on file that owner is aware of s.62 obligations, following a WN for Section 57, and if necessary to infringe for Section 52A.*

[14] Animal Management's decision whether to classify a dog rests with the Manager, Lionel Bridger, however, and not with the Investigating Officer. Mr Bridger considered the officer recommendation, but decided that Tyson would be classified as 'menacing'.

[15] At the hearing, Mr Bridger described the incident complained of for the Panel and noted his summary of it as leading to his classification of Tyson as menacing as stated in his report:

*The family of the offending dog were busy moving furniture into the house at [their address] when a door was left open allowing Tyson to leave the property and proceed to [the] Park in the vicinity of the play ground equipment which is located approximately 70m from the offending dogs property. The complainant in the matter was in the park with her Child and husband they had there 3 Chihuahua dogs with them. Tyson approached one of the dogs (Toya) and bit him. The complainant intervened allowing Toya to avoid a further attack. Tyson then chased Tory and attacked him, the complainant and her husband intervened and managed to remove the dog from Tyson's jaws. Tory sustained serious injuries that required surgery to her abdomen. At the time of the attack Tyson was unsupervised in the park.*

[16] The Animal Management team responded to a question of clarification from the Hearings Panel, noting that the dog would only wear a muzzle in public, but would not be required to be muzzled in its backyard, so with the same circumstances, the situation could occur again.

[17] The Hearings Panel undertook to be open-minded in hearing the objection 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 Owners of the Dogs that were Attacked ('the Victims')**

[18] The first victim (wife) had provided the following statement to the Investigating Officer:

*I was playing with my daughter on the merry go round, when I heard my husband...screaming and turned to see a dog chasing TOYA initially and grabbed her before I managed to secure the other dog.*

*There was no barking or growling from the other dog, it was so unexpected that it attacked, it may have just been coming to play initially, but no, straight attack. It was dark, blackish in colour, I believe an English Bull Terrier, muscly, not wearing collar for me to grab.*

*After that TOYA managed to run off away, eventually finding her at home. Unfortunately the other dog broke away from my hold as there wasn't really anything to grasp and that was when it attacked TORY.*

*I jumped on them both as it was holding TORY in its mouth. I held the dog down by grabbing its ear, pinning my knee on its neck to restrain him while [my husband] ran over and pulled TORY from its grip. He held TORY in his arms, and I still had the dog under my body weight until another man arrived, apparently another neighbour took over from me.*

*At that stage I went to comfort my daughter who was crying and screaming also. Another neighbour...had come to help too and when the man who was restraining the dog couldn't hold him, we ran to her place to be safe.*

*I couldn't look at TORY as she was bleeding so much, and really quiet. We rushed TORY through to the Afterhours Vets, and he underwent surgery immediately. She was transferred through to Avonhead Vets this morning and will remain there to see how he goes.*

*I've received the Clinical Records from the vets, and have provided them to Council, along with the bill. We paid the Afterhours \$1616.80, plus we will have further bills from our vet and possibly even more from Afterhours if TORY returns there overnight for monitoring.*

*We had a phone call from a man whilst at the vets last night who we believed was the dog owner. He spoke with [my husband].*

[19] The second victim (husband) had given the following statement to the Investigating Officer:

*I was at the park with my wife..., our daughter and our three Chihuahua's.*

*I was a few metres from the playground itself on a park bench. I was patting our older dog SANTE and I saw the Bull Terrier dog running at us. I tried to block him with my leg, TOYA ran but the dog grabbed TOYA. We were yelling and screaming and even tried kicking the dog.*

*[My wife] grabbed the dog and TOYA managed to run away, last seen leaving the park. It got chaotic around there at that stage. The dog escaped [my wife] and attacked TORY our other young male dog.*

*I was holding my daughter up at this stage but the Bull Terrier then chased down TORY grabbing him in its mouth. [My wife] jumped on the bull terrier by its head and neck so I helped and held down too. I then grabbed TORY from the dogs grasp, as another man arrived to help out.*

*I saw an open wound and flesh in his side, he was agitated and tried to bite me as obviously in pain. There was a lot of blood, and I have managed to capture a couple of photos of each dogs injuries and I will email those to Chris [the Investigating Officer] also.*

*We managed to get home and rush the dogs through to the afterhours vets, but prior to us leaving the owners had come out looking for their Bull Terrier, thinking it was their dog that got attacked.*

*This morning while [my wife] was at the vets I got a phone call from a man who said he was the owner, and we have agreed to meet at 5pm as he only finishes work at 4:30pm. ...I will contact Chris after this meeting and let him know how it went as I am aware Council will want to interview him later.*

*At this stage I have nothing further to add as am sure [my wife] has covered off all the costs and vets details already.*

[20] The Victims and Complainant did not appear at the hearing, though the victims' evidence of the incident was essentially not challenged, so the Panel relied on the statements taken from them by the Investigating Officer.

## **The Objectors**

### **Evidence and Submissions of the Objectors**

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

*We would like to appeal TYSON 'S status classified to be Menacing.*

*After the incident of TYSON and the 3rd party we had constant communication between us and the other dog owners [the complainants].*

*We've paid all the vet bills given to us by [the complainants] in full.*

*Tyson is de-sexed by West Melton Vet Clinic and Micro Chipped.*

*This is the first ever incident with TYSON, people in our neighborhood never knew we had him.*

*We've also put a lot in place to ensure that this does not happen again:*

- 1. Kiddie gate in between the kitchen leading to the front door*
- 2. They are fenced off during the day in a gated section that's locked, when we are not home*
- 3. We do not take TYSON for walks (we never take him out of our yard)*
- 4. We've spoken to our family members about the seriousness of keeping doors and gates shut*
- 5. We have good communication between the two of us when we come and go driving through the main gate*

*TYSON is an English bull terrier - Not classified in Schedule 4*

*We've read and understand Schedule 4, Section 33E, 57,63 of the Dog Control Act.*

[22] The Objector's husband had provided a statement around the time of the incident stating:

*On 9.12.21 at 19.45 at home...when we realised that TYSON was not here. In the lead up to that, my parents...had been visiting. Whilst here, we had been loading a bed from the front of the house onto a trailer which was parked in the driveway.*

*Generally between the back yard where the dogs are, there is a ranchslider, then a kiddie gate within the kitchen, then a front door to contain the dogs.*

*When we are away from home the dogs are secure in the dog run, or play den in the back corner of the property.*

*On Thursday night, we had finished moving and were all having a coffee in the kitchen. Unfortunately I think my Dad was the last one into the house through the front door, and when I realised that only LEIA was here with us I also saw the 'kiddie gate' was open.*

*I immediately went out through the open front door, while my wife was calling for TYSON.*

*Next door...I found a neighbour from further down the road and he told me there's 'a lot going on and he thought the dog lived next door but I told...that it was actually my dog TYSON, who I then bought home, through the front door and secured him in behind the kiddie gate with LEIA.*

*I then back outside and spoke with [my neighbour] again who told me that my dog bit two dogs in the park, and that the people mentioned lived in [...]. He explained what had occurred, and said that one had run away, I offered to go and search, but instead went over the park. I introduced myself to [the victim, husband], the owner of the other dogs, and saw one of his dogs was lying there pretty injured.*

*There was bit of a commotion as emotions were quite High. I remained quiet and took it all in, and in the meantime [the victim, wife] had gone home to get there vehicle. The lady from down the road...bought over a small cage. The injured dog was put in the cage and I said it needed to go to the vets. [The victim, husband] voiced his concerns to me as to what happened. They left with injured dog.*

*That same night I got [the victim, husband's] number off [a neighbour] and I called him the following morning. He wanted to meet that evening after 5 which I agreed to.*

*Both [victims] came to see [my wife] and I on Friday evening. We apologised to them for what had happened and asked that they keep us updated and send us the bill as we are happy to fully pay that back. We ensured we will keep in touch.*

*At this stage we've heard nothing from him so intend to make contact with them ourselves. Chris [Investigating Officer] has informed us the bill is over \$1600, although had said it was \$1100 on Friday.*

*To prevent this occurring again we are considering installing a kiddie gate at the front door. We also have automated gates at home and the First person inside them then secures the dogs in the house pending the other person coming in and closing the gates, without the chance of escape.*

*My parents feel very bad for what has happened and I'm sure they have learnt a valuable lesson also and now understand why we have these measures in place. They are very well aware of the consequences of the actions as they met us on the street in the aftermath of the incident. Both mum and Dad went across the road with me, and stayed until the dogs were taken off to the vets.*

[23] At the Hearing the Objector's husband reiterated his feeling of remorse for what had occurred, adding that steps had been put in place to prevent this occurring again. Unfortunately it was human error and they would fight for their dog he described as lovely and playful, and not a menacing dog.

[24] In response to the Panel's enquiries, the Objector's husband confirmed they kept in communication with the other party to ensure their dogs were alright. They play with their own dog in the yard and he is not taken out of the yard. They have another dog that Tyson is protective of and stated that was why Tyson does not get along with other dogs.

[25] The Objector stated that they did have a muzzle for Tyson as a puppy but they did not take him for walks so he does not know other dogs. They described the impact of the classification requiring muzzling Tyson in public, noting that while they do not take Tyson anywhere, it has a personal impact. They do not

see Tyson as menacing, stating that he is like a child for them and worth fighting for. In reply to a question from the Panel, they advised that the muzzle does still fit Tyson.

[26] The Hearings Panel thanked the Objectors for the time and work they have carried out in securing their property.

### **Reply by Animal Management**

[27] In response to clarification sought by the Hearings Panel, Mr Bridger outlined the escalated compliance model applied. Owners need to appreciate the classification, he said, and take into account the seriousness of the injuries. The legislation protects dog owners, and people need to be comfortable walking their dogs in public places. Mr Todd added that education on dog owner obligations was provided by the team, and the Objector has been provided with a copy of section 62 of the Dog Control Act. They meet every condition with the steps they have taken voluntarily, so the notification in writing is that they need to continue with this course of action.

[28] The Hearings Panel noted that the classification signals to the community that the Council does not want the situation of dog attacks to occur again and that it is not acceptable.

### **RESERVED DECISION**

[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 reserved its decision, which it now conveys as the decision to uphold the classification of Tyson as ‘menacing’ for the reasons that follow. The Panel’s reasons are grouped under headings of the matters the Panel had regard to and without seeking to repeat all the evidence and submissions pertaining to these summarised above, which the Panel had due regard to.

### **The evidence which formed the basis for the classification**

[31] The evidence which formed the basis for the classification of the Objector’s dog, Tyson, as ‘menacing’ was essentially agreed in regard to it being that Tyson attacked the complainants’ dogs, Toya and Tori, and caused them the injuries depicted in the evidence.

[32] The Panel were satisfied that the evidence of the unprovoked attack suggested that Tyson may pose a threat to other dogs he is unfamiliar with due to his lack of socialisation. The fact of the attack and resulting injuries clearly in the Panel’s view justified Animal Management imposing a preventative tool at the level of classifying Tyson as ‘menacing’ – recognising that there were some mitigating circumstances that are addressed below.

[33] This label of ‘menacing’ the Dog Control Act imposes is unfortunate and unhelpful, and the Panel’s intent is not to create through it unwarranted stigma. It is simply the simplistic means through which the Act designates that dogs so classified, because they ‘may’ pose a threat, must be muzzled in some circumstances. As noted it is unfortunate and unhelpful that the Act plays into society’s tendencies through such labels to move straight to polarities of people and dogs being either good or bad.

Nonetheless, the Panel cannot change the Act, and must work within it to focus on its purposes, particularly as they relate to this tool being what is available to prevent future risk.

[34] This tool is not a great fit to the circumstances of the incident where Tyson accidentally escaped the property, but the evidence indicates that Tyson is not socialised to interacting with unfamiliar dogs, and it would be a cautious prevention of risk to have him wear a muzzle in public. It is again unfortunate that the use of muzzles is not more common and may attract unwarranted stigma, but the powers of the Panel to encourage more enlightened societal attitudes towards dog behaviour and the use of a muzzle as a simple means of navigating the complexity of dog behaviour, is limited to what it can record in its decisions. It is unfair to expect the average dog owner to overcome socialisation or anxiety issues in their dog once they have developed; ideally dog training would be in the mix, but territorial authorities need to address incidents as they arise with what they have in their toolkit, and the Panel considered that with the limited tools available classification was warranted by the evidence which formed the basis for it.

[35] It is to the credit of the Objector though that they accepted responsibility for the incident. The Panel could accept the incident arose from a mistake, and the Objector had done all they could to make the matter right. The Panel would not intend classification to punish Tyson or the Objector for what cannot be changed, as it is instead a preventative tool. The Panel can accept that mistakes happen, but it is evident that Tyson is not socialised to unfamiliar dogs and continues to pose a risk to them, suggesting a preventative tool is warranted.

[36] Again, it is recognised that this tool is not well suited to the circumstances of the incident where Tyson came to be accidentally in public, in which event it may not be reasonably expected he would be wearing a muzzle, but even if the Panel had discretion to impose another more restrictive classification or consequence available under the Act which might address that, the Panel was impressed by the extent to which the Objector engaged in trying to make things right and preventing recurrence, as admirable and what should be encouraged in these matters, so the Panel would not support a more restrictive classification or severe consequence.

[37] The classification may not add anything in practice given the Objector already prevents any risk to other dogs by avoiding Tyson coming into contact with them, but the fact that there is need to supports that the classification should be upheld as a background requirement. Indeed, it may be considered that it may be preferable, rather than simply avoiding Tyson coming into contact with unfamiliar dogs, to attempt the hard task of addressing socialisation with professional training, and taking Tyson out of his yard wearing a muzzle, where permanent containment to his yard, extensive as that yard may be, might conceivably be too restrictive, subject to opinion of a professional trainer as might be sought.

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

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

[39] It was not doubted that the Objector was sincere that they would from now on contain Tyson. The Hearings Panel recognised that the Objector and her partner were responsible dog owners who had learnt the need for vigilance, and were persons capable and positively inclined to heed that lesson, admiring their dedication to Tyson, and noting their positive engagement with Animal Management, and attempts to make things right, as things to be recognised and encouraged as key in these matters.

[40] The Hearings Panel accordingly considered the Objector's submissions in regard to the steps they were taking to prevent any further incident. However, the Panel considered that the attack demonstrated that the Objector did not have Tyson under effective control at the time of the incident to prevent the attack, and the tool of classification under the Act should be upheld to address such special requirements being in place in respect of Tyson.

[41] The Panel regarded the Objector as credible, and having the best intentions, but given the nature of the attack, and acceptance of the issue with socialisation, the Panel would have required the highest level of convincing that the risk had been entirely eliminated to rescind a 'menacing' classification, which it had not reached. The socialisation issue would have needed to be resolved, and though the possibility of still engaging a professional trainer may not enable the Objector to re-access this process, the Panel would emphasise that the classification is not intended to impose moral judgement upon Tyson or the Objector. The Objector's good moral character in positively engaging in this process is to be encouraged, and it is understood how the socialisation issue arose, no doubt contributed to by the Covid-19 lockdown restrictions as indicated by the Objector.

[42] The Panel can only uphold or rescind the 'menacing' classification in dealing with the objection, but notes that the classification will not entirely substitute for the Objector taking other steps, and the Panel was pleased to be dealing with a responsible, honest and competent Objector who it perceived would take the other steps necessary.

[43] Though the Panel has considered the steps taken by the Objector to prevent any threat, having also considered the objects of the Dog Control Act and the seriousness of the incident, it is not persuaded to rescind the classification by the responsible steps the Objector is taking with respect to Tyson.

**Matters relied on in support of the objection**

[44] It was very much to the credit of the Objector that they were helpful and proactive in taking responsibility for the incident and resulting costs immediately. The Panel were impressed by the Objector's apologetic, honest and empathic presentation. They were equally impressed by the mature factual account from the Complainant, admiring the civility and maturity of how all involved handled what was clearly a distressing incident.

[45] The Panel in the circumstances of the incident, having considered the matters relied on in support of the objection, see fit to uphold the classification. The Panel note again that classification is a preventative measure, and is not intended to be punitive; the Panel considered the Objector's responsibility in addressing containment of Tyson, and their reparations and co-operation with Animal

Management as exemplary for how such incidents should be attempted to be made right. However, the Panel also perceives that the classification of Tyson was proportionate, including in light of, but not unduly distracted by, the Objector's proactive and positive engagement in the process. The Panel should not be distracted fundamentally from advancing the object of the Dog Control Act.

[46] The Panel thus had regard to the matters relied on in support of the objection, but considered that it should nonetheless uphold the classification of Tyson in recognition of 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**

[47] 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 of Tyson would be justified by the evidence and submissions and would align with the objects of the Act.

### **RESULT**

[48] Having considered the objection of the Objectors to the classification of their dog, Tyson, as a 'menacing' dog, together with the evidence and submissions collated by the Animal Management Team, 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 male English Bull Terrier dog named 'Tyson' as a 'menacing' dog is **upheld** for the reasons indicated herein and for the reason that the Hearings Panel considers because of the reported incident that Tyson 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.

**CONFIRMED THIS 7<sup>TH</sup> DAY OF APRIL 2022**



**COMMUNITY BOARD MEMBER ALEXANDRA DAVIDS**  
**CHAIRPERSON**