

Dog Control Act Hearing Panel DETERMINATIONS

Date: Monday 24 February 2020
Time: 3:30pm
Venue: Committee Room 2, Level 2, Civic Offices,
53 Hereford Street, Christchurch

Present

Chairperson	Councillor Anne Galloway
Members	Councillor James Daniels
	Community Board Member Alexandra Davids

13 April 2020

Hearings Advisor

Mark Saunders
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The objections were dealt with in the following order.

Election of a Chair

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

1. 3:30pm - Hearing of objection of Shane Van Der Veen

Hearing of an objection to disqualification pursuant to section 25(1)(a) of the Dog Control Act 1996 from being an owner of a dog for a period specified.

Decision reserved at 4:06pm.

Refer page 3 below for determination.

2. 4:30pm - Hearing of objection of Cheyenne Wellington and Kama MacDonald

Hearing of an objection to the classification pursuant to section 31(1)(b) of the Dog Control Act 1996 of three-year-old, female, white-coloured, Staffordshire Bull Terrier cross breed dog named "Poppy" as a dangerous dog.

Decision reserved at 5:24pm.

Refer page 19 below for determination.

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

20/273650

IN THE MATTER of the Dog Control Act 1996

A N D

IN THE MATTER of an objection of SHANE TONY VAN DER VEEN of Christchurch to his disqualification by the Christchurch City Council Animal Management Team Leader under section 25(1)(a) from being an owner of a dog for a period of three years

Hearing: Committee Room 2, Level 2, Civic Offices
53 Hereford Street, Christchurch
24 February 2020 at 3:30pm

Panel: Councillor Anne Galloway (Chairperson)
Councillor James Daniels
Community Board Member Alexandra Davids

Appearances
for the Objector: Shane Tony Van Der Veen (Objector)
for the Animal Management Team: Mark Vincent (Team Leader Animal Management)

Determination: 12 March 2020

Hearings Advisor: Mark Saunders

**DETERMINATION OF THE HEARINGS PANEL
OF THE CHRISTCHURCH CITY COUNCIL**
(Dog Control Act 1996, section 26)

The disqualification of the Objector from being an owner of a dog for three years to expire on 15 October 2021 is upheld

REASONS OF THE HEARINGS PANEL

INTRODUCTION

[1] The hearing was held to consider an objection received from Mr Shane Tony Van Der Veen ('the Objector') to his disqualification by the Christchurch City Council Animal Management Team Leader, Mark Vincent, from being an owner of a dog for three years under section 25(1)(a) of the Dog Control Act 1996 ('the Act'). The disqualification has effects described within section 28 of the Act and is in force throughout New Zealand further to section 29 of the Act.

[2] Section 25(1)(a) of the Act, under which the Objector was disqualified, relates to a person who commits three or more infringement offences (not relating to a single incident or occasion) within a continuous period of 24 months. Under section 25 of the Act a territorial authority must disqualify such a person from being an owner of a dog unless the territorial authority is satisfied that the circumstances of the offences are such that: (a) disqualification is not warranted; or (b) the territorial authority will instead classify the person as a probationary owner under section 21 of the Act.

[3] Upon discovering that the Objector had been issued with three or more infringement notices within a 24 month period (encompassing 6 November 2016 and 15 October 2018) the Team Leader Animal Management under his delegated authority did so disqualify the Objector from owning a dog (not being satisfied that such was not warranted or to instead classify the Objector as a probationary owner) by causing to be given to him on 25 November 2019 notice of disqualification (for a period of three years from 15 October 2018) and other prescribed matters, including his right to object to the disqualification under section 26 of the Act.

[4] The Objector exercised his right to object to the disqualification and in accordance with his right to be heard in support of his objection he was referred to the Hearings Panel of the Christchurch City Council as the body with the delegated authority to hear and determine the objection. The Hearings Panel on 24 February 2020 heard the Objector's evidence and submissions, and also heard from the Team Leader Animal Management, having received a report from the latter relating to the infringement offences, the Team Leader's decision to disqualify the Objector from being an owner of a dog for three years from the date of the last offence within the 24 month period, and the Objector's objection to that decision.

[5] This determination of the Hearings Panel that the disqualification of the Objector from being an owner of a dog for a period of three years is **upheld** sets out the reasons for the Hearings Panel's decision in accordance with section 26(4) of the Act. The Objector has a right to appeal this decision under section 27 of the Act, which states that:

(1) Any person who has lodged an objection under section 26 and is dissatisfied with the decision of the territorial authority may, within 14 days of the date on which notice of that decision is, under section 26(4), given to that person, appeal to the District Court against that decision.

(2) The District Court, in hearing the appeal, shall consider the matters specified in section 26(3) and any submission by the territorial authority in support of its decision, and may uphold the determination, bring forward the date of termination, or immediately terminate the disqualification.

LEGAL CONTEXT

[6] The Hearings Panel has the delegated authority to hear and determine the Objector's objection to his disqualification and, further to section 26(4) of the Act, may uphold, bring forward the date of termination, or immediately terminate the disqualification, after having regard, pursuant to section 26(3) of the Act, to:

- (a) the circumstances and nature of the offence or offences in respect of which the person was disqualified; and
- (b) the competency of the person objecting in terms of responsible dog ownership; and
- (c) any steps taken by the owner to prevent further offences; and
- (d) the matters advanced in support of the objection; and
- (e) any other relevant matters.

The Hearings Panel had regard to these matters in reaching its determination to uphold the disqualification for a period of three years. Under section 25(3) of the Act, disqualification continues in force for a period specified by the territorial authority not exceeding five years from the date of the third infringement offence or offences (as the case may be) in respect of which the person is disqualified.

[7] The Team Leader Animal Management disqualified the Objector for a period of three years from the date of the last offence in the 24 month period encompassing more than three infringement offences on dates ranging 6 November 2016 to 15 October 2018. The Hearings Panel accepted this interpretation noting that section 25(1)(a) of the Act under which the Objector was disqualified contemplates that there may be more than three infringement offences before a person is actually disqualified and taking the view that the provision that disqualification may start from the date of the offences in the plural (rather than third offence) implies in the case of more than three offences the date of the last offence in the 24 month period.¹

¹ Furthermore, the Form for the 'Notice of disqualification from dog ownership' (Form 3) in the Schedule to the Dog Control (Prescribed Forms) Regulations 1996 includes the provision that "The disqualification will apply from [date of third or more infringement offence, or date of offence] until [date under section 25(4)]" as to imply that the drafters believed that the disqualification starts from the date of the last offence. Also, chapter 5.31.3.1 of *Wells on Animal Law* (the commentary available on Westlaw) notes that "A disqualification is for any period specified by the territorial authority, but not exceeding five years from the date of the offence or the last infringement offence".

In any event, the core requirement is that the disqualification period specified not exceed five years, and disqualification to 15 October 2021 does not exceed five years from even the beginning of the 24 month period that Animal Management have isolated. It does raise the question as to why disqualification was not triggered earlier, but the fact is that it was not and the Animal Management Team Leader expressly disqualified the Objector for the more than three infringement offences committed in the 24 month period encompassing offences from 6 November 2016 to 15 October 2018.

Given the redeeming remarks made regarding the Objector in this determination, and that the delay in disqualification appears an oversight, the Panel supported that the Animal Management Team Leader made no suggestion of the delay affecting the termination date, and equally the Panel purposely holds the termination date at 15 October 2021 in full understanding of the effect section 28(3) of the Act may have had. The approach is that three years disqualification is warranted and it is not factored into this determined period that the Act effectively requires backdating the start date and a further stay on the effect of it in some events of objection being made. This approach appears consistent with that of Judge Neave in *Pattullo v Christchurch City Council* (DC CHCH CIV-2009-009-003806 31 May 2010) at para [36].

[8] This interpretation was considered most consistent with the object to the Act to impose on owners of dogs obligations designed to ensure that dogs do not injure, endanger, or cause distress to any person, stock, poultry, domestic animal, or protected wildlife. A territorial authority may be satisfied that disqualification is not warranted at the time of the third infringement offence; to abridge disqualification arising from a subsequent offence to start from the date of an earlier offence would undermine the object of the Act in not giving effect to the warranted period of disqualification when it became warranted. The delay in the decision to disqualify the Objector, though not deliberate, has undermined the object to a degree, but the Act requires the disqualification to start from the date of the offences in the plural, which for the reasons outlined is accepted as the date of the last offence in the relevant 24 month period, i.e. 15 October 2018.

[9] The following 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 Leader

[10] Mark Vincent, Team Leader Animal Management, 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)
- Territorial authority must disqualify a person from being the owner of a dog (Section 25)
- Objection to disqualification under section 25(1) (Section 26)
- Effects of disqualification (Section 28)

[11] Mr Vincent summarised for the Hearings Panel the circumstances on which his decision to disqualify the Objector from being an owner of a dog for a period of three years from 15 October 2018 was based by presenting his report and referring to the evidence attached thereto. Mr Vincent's report in the following extracts accordingly presents Animal Management's summary of the facts and disqualification decision:

Dog owner's details²

Shane Tony Van der Veen is the registered owner of a 5 year old, spayed female, white and grey coloured, German shepherd / Siberian Husky cross breed dog called "Kyra". Mr Van der Veen lives at [Objector's address]. The dog was registered with the Christchurch City Council [...] for the 2018/19 period.

Dog history

This dog first came to the attention of Animal management in October 2014, a summary list of investigations, enforcement action relating to this dog is [below].

² Addresses and complainant identifiers are replaced by square brackets throughout extracts from Officers, the Objector and complainants, and some spelling and typographical errors have simply been corrected.

OFFENCE INDEX

Section 32A - Breach of dangerous dog classification

Section 33EC (1) - Breach of menacing dog classification

Section 52A Failing to keep dog confined or under control

Section 57 - dog attacks person, stock, poultry, domestic animal or protected wildlife

Section 62(4) - Allowing dog known to be dangerous to be at large unmuzzled.

Date	Complaint #	Investigation	Section	Enforcement action	Date issued	Notice number
29.8.2015	[A]	Failed to contain dog	52A	Dog not under effective control	2.9.2015	Warning ...
29.8.2015	[B]	Dog escaped and rushed at dog on the road being jogged by its owner	52A	Dog not under effective control	12.10.2015	Infringed ...
21.12.2015	[C]	Dog escaped, attacked and killed neighbours geese	52A	Dog not under effective control	21.12.2015	Infringed ...
6.1.2016				Dog classified menacing based on job [C]		
13.1.2016	[D]	Dog escaped from the property and attacked a jogger	52A	Dog not under effective control	9.1.2016	Infringed ...
6.11.2016	[E]	Dog was at large - unmuzzled	33EC(1)	Failed to comply with effects of menacing dog classification	6.11.2016	Infringed ...
6.11.2016	[E]	Dog was not under effective control and attacked another dog	52A	Dog not under effective control	6.11.2016	Infringed ...
6.11.2016	[E]	Dog was not under effective control and attacked another dog	57	Warning	17.11.2016	Written warning ...
27.2.2017		Dog was at large - unmuzzled	33EC(1)	Failed to comply with effects of menacing dog classification	27.2.2017	Infringed ...
27.2.2017		Dog at large not under control	52A	Dog not under effective control	27.2.2017	Infringed ...
14.3.2017				Dog classified dangerous based on job [E]		
3.4.2017	[F]	Dog was at large - unmuzzled	32(2)	Failed to comply with effects of dangerous dog classification	2.4.2017	Infringed ...
2.4.2017	[F]	Dog at large not under control	52(2)	Failed to comply with effects of dangerous dog classification	2.4.2017	Infringed ...

20.4.2017		Dog was at large - unmuzzled	32(2)	Failed to comply with effects of dangerous dog classification	20.4.2017	Infringed ...
1.10.2017		Dog was at large - unmuzzled	32(2)	Failed to comply with effects of dangerous dog classification	1.10.2017	Infringed ...
1.10.2017		Dog at large not under control	52A	Dog not under effective control	1.10.2017	Infringed ...
14.10.2018		Dog was at large - unmuzzled	62(4)	Failed to comply with muzzling of a dog, known to be dangerous	14.10.2018	Infringed ...
15.10.2018		Dog not contained into fenced area	32(2)	Failed to comply with effects of dangerous dog classification	15.10.2018	Infringed ...

Decision to disqualify owner

- *On a review of Council's record's it was discovered Mr Van der Veen had been issued with 3 or more infringement notices within a 24 month period (between 6 November 2016 and 15 October 2018).*
- *Disqualification under section 25 of the Dog Control Act 1996, is mandatory and Mr Van der Veen should have been disqualified from owning any dog from the date of the last infringement notice in 15 October 2018.*
- *When the information regarding the infringement notices came to light, Council was obliged to disqualify Mr Van Der Veen.*

As the Team Leader Animal management, I considered section 25(1A) of the act. I was not satisfied that the exceptions to s25 (1A) would apply in this case – that disqualification would be unwarranted or Council should classify Mr Van der Veen as a probationary owner under section 21 of the act.

- *Under Council's Delegation Register, the Team Leader Animal Management is authorised to disqualify dog owners in accordance with Section 25 of the Dog Control Act 1996. I gave this authorisation and Council issued documentation to Mr Van der Veen disqualifying him from owning any dog for a period of 3 years, from the 15 October 2018 to 15 October 2021.*

Determining the period for disqualification

The maximum period of disqualification for a person is 5 years.

When calculating the period of disqualification, I used the following formula:

1. *Infringement notices relating to minor offences, against section 42 of the Dog Control Act 1996 (e.g. - non-compliance of dog registration)*
 - *Consideration and weight is given to section 25 (1A) as the most appropriate application of the legislation, which states subsection (1) does not apply if the territorial authority is satisfied that the circumstances of the offence or offences are such that*
 - *disqualification is not warranted, or*

- *the territorial authority will instead classify the person as a probationary owner under section 21 of the act.*

After consideration of the evidence, I apply section 21 of the act and to classifying the person as a probationary owner, bypassing the requirement to disqualify the person from owning any dog up to 5 years. The probationary classification has a mandatory period of 24 months. ...

2. *Infringement notices relating to more serious offences against section 31, 33, 52 or 57 of the Dog Control Act, (e.g. - non-compliance of “menacing/ dangerous dog requirements”, or “failing to control a dog”, or “a dog attack” or failing to meet other compliance requirements)*

After consideration of the evidence, I apply section 25 and disqualify the person from owning any dog, for a period greater than 24 months (2 years) and up to 4 years.

3. *Section 25 (1) of the Dog Control Act 1996 - A territorial authority must disqualify a person from being an owner of a dog if—*

(b) Where a dog owner was convicted of an offence against this the person is convicted of an offence (not being an infringement offence) against this Act; or

(c) the person is convicted of an offence against Part 1 or Part 2 of the Animal Welfare Act 1999, section 26ZZP of the Conservation Act 1987, or section 56I of the National Parks Act 1980.

After consideration of the evidence (upon conviction), the only appropriate application of this legislation is to disqualify the person from owning any dog, for a period greater than 4 years and up to 5 years.

Decision outcome

After consideration of the evidence in this case, I determined the range of offending was within the 2-4 years disqualification period. I accordingly disqualified the person from owning any dog for a period of 3 years from the date of the last infringement notice being 15 October 2018 to 15 October 2021.

Objection to the disqualification as an owner

In accordance with Section 26 of the Dog Control act 1996, any person who has been disqualified under section 25 of the Dog Control Act 1996, is entitled to object to the disqualification. On the 10th of December 2019, the Christchurch City Council received via email an objection from Mr Van der Veen.

The attachments to Mr Vincent’s report included copies of notes, notices and correspondence relating to infringement offences summarised in the Offence Index; these had been pre-circulated to the Objector and Panel along with Mr Vincent’s report and were taken as read. Mr Vincent coloured green in the Offence Index the offences at either end of the 24 month period he disqualified the Objector in respect of. By way capturing something of the broad nature and circumstances of some of the offences in this period, the Panel notes the below sample of complainant correspondence. The first complainant in that period had written in that:

On Sunday the 6th of November at approximately 8.40-9.00am, I was walking my dog with my cousin down [the road the Objector lives on] off [an adjacent road]. We passed [the Objector's address] when their two dogs began to bark and try to break through the fence. We continued walking hoping that they would not be able to get through. However as we reached the steel gate to their property the fluffier one, cream with a tanned-greyish patch on its back managed to get through the gate and the post and attack my dog. The dog that attacked managed to bite my dog on his front leg/shoulder before I pulled him away. The resident of the property, a woman, came out and called the dog off. She asked if my dog was OK and we went our separate ways. My dog was limping for the 500-600 meter walk back to our property. He now seems fine however just a bit sore.

Let me know if I missed any details. Sorry I could not give a better description of the dog that managed to escape.

That incident occurred when there was a 'menacing' dog classification in place, and after a further 'dangerous' dog classification had been put in place, the attachments to Mr Vincent's report show correspondence from another complainant related to an incident in April 2017; that complainant wrote that:

I was walking my 10mth old Puppy "Molly" around 1900 last night on [the road the Objector lives on]. I was walking north on the east side of [that road], walking from [Complainant's address] towards [an intersecting road].

As I got near the first of the two houses (the closest house to where I'm living) on the property of [the Objector's address], I was directly outside when I heard the 2 dogs at this address barking aggressively as they always do. This is when the tan and white dog of the two dogs just jumped the fence, I hadn't expected that as I thought that the dogs was quite old, the dogs always act quite menacing when you walk past.

Once the tan and white dog was on the street side of the fence it came around behind me trying to attack my puppy Molly. I was trying to protect her from the attacking dog. The dog was snapping its jaws at my dog, Molly was so frightened and was trying to get away from the dog. She slipped out of her collar and was starting to run towards home in fright.

A man from the house where the dogs live had come out the door of the house when the tan and white dog had just jumped the fence, he must have heard the noise of the dogs barking. The man grabbed the dog and got in back into his property, by this time I had been able to catch and try to calm Molly, all he said to me was why was I walking at that time of night, I shouldn't be and his dog was only protecting his property, I said that I wasn't on your property. There was a young girl at the house as well she seemed to be recording what was going on, on her phone.

I have previously owned Pit Bulls, and I would describe this dogs as menacing more than menacing its aggressive it's always really aggressive.

(AMO) (GO) then showed me a file on her cell phone with many different dogs on it. I have attached the photo of the dog that I have identified as the dog from [the Objector's address] the dog that jumped the fence a tried to attack my dog.

(AMO) (GO) asked the question do I know what a muzzle looks like, my answer was yes I do, AMO Officer Gail then asked was either of the dogs at this address wearing a muzzle at the time, my answer was No.

I would be prepared to give evidence in court if it was necessary.

And the Offence Index shows further incidents after this one occurring with copies of the resulting infringement notices issued attached to Mr Vincent's report to evidence that (more than) three infringement offences were committed in the relevant 24 month period.

[12] The Hearings Panel, having received the report of the Team Leader Animal Management and noted his decision to disqualify the Objector from being an owner of a dog for three years, kept an open-mind in proceeding to hear the Objector's objection to Mr Vincent's disqualification decision. The Panel forms its own view, after hearing from an objector, of whether ongoing disqualification is warranted, and whether it is warranted for the period imposed by Animal Management or a shorter period, having regard to the matters set out in section 26(3) of the Act.

The Objector

Evidence and Submissions of the Objector

[13] In initially raising his objection in writing, the Objector had written that:

I Shane Fisher-Van Der Veen am writing this letter in hope of having the notice I've been served for dog disqualification for 3 years revoked.

I am fully aware and take full responsibility of the issues my dog has caused over past couple of years. The main problem has been inadequate fencing on my large boundary which I should have taken care of many years ago, I did have a contractor out but unfortunately he didn't do a very good job. I am fully prepared to get a fencing contractor out and build a suitable 6 foot fence across my boundary so my dog won't be able to see other dogs walking past and won't be able to get out so further attacks won't happen.

I'm sure you are aware my poor family member has been in the pound since the 16/9/2019 (almost 3 months) waiting for the Christchurch City Councils legal team to even decide if prosecution is going ahead or not. The stress and anxiety this has caused on me and my family is unbearable, we just want our family member back home. I have owned dogs for at least 20yrs and I am a very responsible dog owner, unfortunately due to financial struggles and health issues (heart attack) I just couldn't afford to build a suitable fence across my large section to contain my dog. My financial situation is now much better so please please please waive this disqualification notice, let me build a suitable boundary containment and everything going well with the legal team I can bring our loved family member back home where she belongs.

[14] At the hearing the Objector indicated the vast majority of his issues with dog control had related to inadequate fencing on his large property. The Objector showed the Panel a photograph of his property and the wire fence his contractor had installed inadequately to fulfil the purpose of containing his dog and preventing incidents of his dog getting at by-passers.

[15] The Objector indicated that in 2014 he had had a heart attack, which had also caused him financial struggle, and so his ability to securely fence in his dog was limited at that time. Subsequently improvement of his fencing was further frustrated by the contractor he engaged to improve it doing a

poor job and leaving him 'ripped off'. The Objector also indicated that the death of the mother of his dog had been a factor in the inclination of his dog to harass by-passers.

[16] The Objector indicated that he is working from home now and he had had some help with constructing a confined enclosure for his dog, though his main case for objecting to disqualification from being a dog owner, was his commitment to next build a six foot containment fence across his property. The Objector suggested that this was all he could do, though he was confident it would securely contain his dog.

[17] The Objector indicated that he is a responsible dog owner and if he gets another chance he will do things differently, noting that in hindsight he should have done them differently, and it would have been preferable to have invested in better fencing than to have incurred the fines he has. The Objector also reported that he had tried muzzling Kyra, though she hated it and it failed, and his plan was to thoroughly contain her.

[18] The Objector indicated disagreement with any allegation of Kyra having attacked a person, and indicated that there was a complete lack of the sort of evidence that would have been expected if Kyra had attacked his neighbour's geese as had been alleged in one incident. The Objector accepted that Kyra is territorial and there were legitimate incidents, though only ever near his property, being territorial in nature. The Objector, however, referred to there being several children living at this property and regular visitors, with Kyra posing no threat to them.

[19] The Objector admitted to having failed Kyra in failing to contain her with the result that incidents of her endangering other domestic animals had occurred with consequences that could be negative for Kyra. Though the Objector indicated that he can be with Kyra the vast majority of the time now, and that he is now financially able to put a six foot fence right across his property, which is his preferred solution to give Kyra freedom of movement. The Objector assured that he could have the fence built immediately, though was not presently certain of what the cost would be.

Reply from the Animal Management Team Leader

[20] The Team Leader Animal Management, Mr Vincent, noted in reply that as of the present moment Kyra had been impounded with Animal Management for a considerable time and been well cared for. Mr Vincent believed that the Objector was understanding the gravity of the situation now and taking responsibility, though the provisions of the Act had compelled him to disqualify the Objector from owning a dog for a period not exceeding five years, and after considering the possible exemptions and his routine approach to deciding on the period of disqualification, Mr Vincent had not seen grounds for exemption, and had seen fit to decide upon a three year disqualification period.

[21] Mr Vincent further clarified the effect of Kyra's classification as 'dangerous' that the owner must:

- ensure that the dog is kept within a securely fenced portion of the owner's property that it is not necessary to enter to obtain access to at least one door of any dwelling on the property; and
- 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; and
- controlled on a leash (except when in a dog exercise area specified in a certain bylaw).

The Panel noted for the Objector that these are the requirements for a 'dangerous' dog, and it was unclear that the Objector's intent was sufficient.

Reply from the Objector

[22] In answer to questioning from the Panel, the Objector noted that Kyra had been impounded by Animal Management for the last five months and he was committed to building a fence on his property and his conception of what he could do to try persuade for Kyra to come back to him. The Objector noted that he had had dogs for the protection they provide on his large property in barking at night if anyone comes onto the property, and he assured that they would not bite anyone.

[23] The Objector confirmed that he had paid all fines arising from the infringement offences leading to his disqualification, though indicated that he is unsure what the fate of Kyra will be since in another matter Animal Management had taken a prosecution that could result in her destruction.

[24] The Objector further confirmed that he is not farming on his property, and the issue with Kyra is simply with by-passers, as she goes straight to the fence if anyone comes past. The Objector repeated that the alleged incident with the neighbour's geese that caused Kyra to be classified 'menacing' may or may not have happened, though accepted that incidents involving by-passing dogs had been his fault. The Objector clarifying the location and nature of the enclosure he had for Kyra, which is suitable as a confinement, though he also planned that she could run around with a fence built.

[25] The Objector indicated that he had been consistently keeping Kyra confined to her enclosure, but incident had arisen when she was let out to toilet and unfortunately by-passers had come by on such occasion leading to incident of their companion animal being endangered.

[26] The Objector indicated that he had tried or considered different styles of muzzle for Kyra, noting issues with these, and Mr Vincent confirmed that not all styles are appropriate for the present purpose, but provided an update that in Animal Management's care Kyra did not have an issue with a basket muzzle.

RESERVED DECISION

[27] The Hearings Panel considered that it had all the information it needed to have regard to under section 26(3) of the Act after considering the evidence, information and submissions available to it.

[28] The Hearings Panel reserved its decision, which it now conveys as the decision to uphold the disqualification for three years 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 set out above which the Panel had due regard to.

The circumstances and nature of the offence or offences in respect of which the person was disqualified

[29] The report of the Team Leader Animal Management indicates that the Objector was disqualified in respect of the infringement offences committed between 6 November 2016 and 15 October 2018, which his Offence Index shows to be:

- November 2016 – Failed to comply with effects of menacing dog classification; and dog not under effective control
- February 2017 – Failed to comply with effects of menacing dog classification; and dog not under effective control
- April 2017 – Failed to comply with effects of dangerous dog classification; and dog not under effective control
- April 2017 – Failed to comply with effects of dangerous dog classification
- October 2017 – Failed to comply with effects of dangerous dog classification; and dog not under effective control
- October 2018 – Failed to comply with muzzling of a dog known to be dangerous
- October 2018 – Failed to comply with effects of dangerous dog classification

[30] The nature of these offences speaks to a repeated failure within a 24 month period to comply with the effects of dog classification, and a failure of the Objector to keep his dog under effective control. It may fall under the heading of ‘any other relevant matters’ that the Offence Index also indicates earlier offences, though the Panel considered that the Objector expressed reasonable doubt about the circumstances of the incident that led to the menacing classification.

[31] The terms of section 25(1)(a) of the Act indicate that the trigger for disqualification under that subsection is three or more infringement offences within a 24 month period; this speaks to an intent that historic offences are not a primary consideration for disqualification from owning a dog. Repeated infringement offences within a short period are the target of the subsection. The Panel is directed by the Act to have regard to the circumstances and nature of the offences in respect of which the person was disqualified; those offences in this case were those committed between 6 November 2016 and 15 October 2018.

[32] Since the circumstances and nature of offences outside this period are not to be specifically regarded they should not be given significant or undue weight. Given the circumstances and doubts the Objector described around the earliest offences, the Panel were persuaded to give no weight to offences committed before 6 November 2016. However, those committed between 6 November 2016 and 15 October 2018 are more numerous than the three necessary and demonstrate a recidivism in respect of

the same types of lack of compliance and ineffective control of a dog. Such recidivism is precisely what disqualification is intended to address.

[33] Discounting offences committed prior to 6 November 2016 from the consideration of the disqualification is warranted, but the circumstances and nature of the offences committed in the 24 months following that date do not warrant bringing forward the termination of the disqualification. The Objector had some relevant hardship early on in respect of his health and fencing contractor, but it was apparent to the Panel that the Objector put later circumstances down to bad luck, when actually compliance with classifications and maintaining effective control of his dog would have prevented incident.

[34] The Objector gave voice to appropriate responsibility for relevant incidents, which was considered as a possible reason for bringing forward the termination of the disqualification. However, the repeated offences spoke to too slow an uptake of responsibility to proactively comply and exercise effective dog control, so the Panel considered that the three years' disqualification was proportional to this, almost swayed as it was to see the Objector's remorse for the situation that had developed, his dedication to Kyra, and his sincerity to do better and differently in the future.

The competency of the person objecting in terms of responsible dog ownership

[35] The Panel were impressed with the Objector's presentation at the hearing, and were persuaded that he was developing the competence and dedication to be a more responsible dog owner in the future. The Objector was recognising, and apparently willing to take, actions relevant to more responsible dog ownership, though he also considered that bad luck had been an element in incidents, when the reality is that a responsible dog owner would have better addressed the risk Kyra was known to present.

[36] The Panel considered that the Objector is still developing in his competence in terms of responsible dog ownership such that not less than three years of being disqualified from owning a dog is warranted, even though the Objector did present to the hearing as a sincere and caring dog owner prepared to start acting as a responsible dog owner. The Objector appeared to be ready and competent to take steps to address the issue with Kyra, though had not yet demonstrated taking serious steps, and it had been apparent that the Objector has not historically prioritised compliance with classification he may not agree with the effects of. The Panel was not persuaded that there would necessarily be a significant shift in the Objector's historic disregard for compliance unless the disqualification for the three years was upheld.

Any steps taken by the owner to prevent further offences

[37] The Objector implied that he had attempted to contain Kyra by engaging a fencing contractor, though the contractor did a poor job, leaving him feeling 'ripped off'. Some time has passed since that event, and though the Objector indicated that he is now adequately resourced to build a six foot fence across his property and has committed to doing that, at least if Kyra is returned to him, the Objector has not actually taken the step of building the fence.

[38] It is not clear that the six foot fence the Objector offers to build will necessarily fully comply with the requirements for owning a 'dangerous' dog if, as it seems, the Objector is likely to allow Kyra to run freely and unmuzzled behind the fence, which may simply run across the property. The Objector came across to the Panel as a good and caring dog owner, and his caring nature may have motivated his non-compliance with the effects of dog classification in the past, since it is not uncommon for a caring dog owner to conceive that the effects are restrictive or dislikeable to their dog.

[39] However, the effects of dog classification in non-exceptional circumstances are practical and consistent with animal welfare. The Act contemplates that dogs must be appropriately controlled. The Panel accepted indication from the Animal Management Team Leader that Kyra could wear an appropriate muzzle, and considered that the Objector did not make appropriate efforts to properly introduce Kyra to a muzzle in a manner indicating sincere commitment to compliance with the 'menacing', then 'dangerous', dog classifications.

[40] The Panel considered favourably the Objector's efforts in regard to creating an enclosure for Kyra, though it was apparent that his steps in letting her out to toilet in a manner that lost control of her indicated negligence when the risk should have been apparent enough. The Panel considered that the Objector had historically been too slow and reluctant to take proper steps to prevent further offences, and he had not been serious enough in his steps for owning a dog such as Kyra, so it was warranted that it be upheld that he be disqualified from owning a dog for three years, and not for a lesser period.

[41] It is a most serious matter to own a dog one knows to pose a threat to other domestic animals and not to take the serious steps that would reasonably be taken to eliminate the threat. Such a dog owner is fully culpable when their dog then endangers another. In the absence of demonstration of serious steps having been taken that would have been more effective, a distrust must be harboured for any such dog owner that does not care enough for the welfare of other dogs and their owners to properly protect them from endangerment. The physical and emotional damage dog attacks cause must be centre of mind, and some disqualification of a repeat offender is an appropriate bridge to restoring trust in a dog owner and an appropriate break in ownership to allow them to reflect on whether they are actually prepared for the obligations of dog ownership.

The matters advanced in support of the objection

[42] The matters advanced in support of the objection have been largely already considered above. The Objector expressed disagreement that Kyra was a danger to persons, however, disqualification pertains to the Objector as a dog owner more generally; it does not pertain to Kyra. The Act does not just protect persons from endangerment by dogs; it also protects stock, poultry, domestic animals and protected wildlife, and it is evident that the Objector owns a dog that has endangered such, and he has failed to prevent committing more than three infringement offences in a 24 month period.

[43] Indeed the Objector has failed in his obligation in relation to his dog as set out in section 5(1)(g) of the Act to: "take all reasonable steps to ensure that the dog does not injure, endanger, or cause distress to any stock, poultry, domestic animal, or protected wildlife", and in section 5(1)(i) to "to comply with the requirements of [the] Act and of all regulations and bylaws made under [the] Act".

[44] The Panel gave serious consideration to shortening the disqualification period in light of the Objector's constructive, helpful approach to the hearing, demonstrating a good, caring dog owner with a sincere desire to be responsible, and who had suffered hardship that had contributed early on to some incidents involved Kyra. The Panel thus had real regard to the matters advanced in support of the objection, being almost persuaded to shorten the disqualification.

[45] However, in its final assessment of all relevant matters, the Panel having heard the Objector's objection determined that the intent of the disqualification provision in the Act and the object of the Act were appropriately served, and the Objector justly treated, by upholding a three year disqualification period. The Panel considered three years fair to public safety and necessary to impose the proper gravity of this matter, and the importance of the legal obligations of dog owners, on the Objector. It would also seem to allow appropriate time for the Objector to prepare and embrace his responsibilities should he choose to own a dog again as soon as he can.

Any other relevant matters

[46] It has been discussed above that offences committed outside the relevant 24 month period might be considered 'other relevant matters' if not given significant or undue weight in light of the lack of specific direction to have regard to the circumstances and nature of such other offences. As discussed, in this case, the Panel gave no weight for the reasons discussed above to offences committed before the 24 month period. It became apparent in the hearing that an alleged incident had also occurred after the 24 month period resulting in Kyra being impounded with a possibility that destruction could be ordered by the District Court. However, the Animal Management Team Leader did not present the circumstances of the cause of this more recent development, so no weight could be given it, and it was furthermore apparent that the matter had not yet traversed through the appropriate forum, being the District Court.

[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 26(3) of the Act. The Hearings Panel noted that every objection to a disqualification 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 bringing forward the termination of, the disqualification is justified in this case by the evidence and submissions and aligns with the objects of the Act.

RESULT

[48] Having considered the objection of the Objector to his disqualification from being the owner of a dog for a period of three years, together with the evidence and submissions collated by the Animal Management Team Leader, and having regard to the matters contained within the Dog Control Act 1996 and referred to in section 26(3) of the Act, it is determined that:

The disqualification of the Objector from being the owner of a dog for a period of three years to expire on 15 October 2021 is **upheld** for the reasons indicated herein and for the reason that the Hearings Panel consider that the number and frequency of infringement offences the Objector committed warranted his disqualification for three years in light of the object of the Act to ensure persons and other relevant

animals are not injured, endangered or caused distress, and the obligation of the Objector as dog owner to take all reasonable steps to ensure this.

[49] The Hearings Panel considered bringing forward the date of termination, or immediately terminating the disqualification, but decided against these options, determining that three years' disqualification from 15 October 2018 to 15 October 2021 is warranted for the reasons outlined. The Objector has a right of appeal to the District Court under section 27 of the Act.

[50] Additionally, section 26(2) of the Act implies that the Objector may object to their disqualification again to the Hearings Panel under section 26 provided that no such objection shall be lodged within 12 months of the hearing of any previous objection to the disqualification such as this is.

CONFIRMED THIS 12TH DAY OF MARCH 2020



COUNCILLOR ANNE GALLOWAY
CHAIRPERSON

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

20/278838

IN THE MATTER of the Dog Control Act 1996

A N D

IN THE MATTER of an objection of CHEYENNE SANDIE WELLINGTON and KAMA MACDONALD of Christchurch to the classification by the Christchurch City Council Senior Animal Management Officer under Section 31(1)(b) of their three-year-old, female, white-coloured, Staffordshire Bull Terrier cross breed dog named 'Poppy' as a dangerous dog

Hearing: Committee Room 2, Level 2, Civic Offices
53 Hereford Street, Christchurch
24 February 2020 at 4:30pm

Panel: Councillor Anne Galloway (Chairperson)
Councillor James Daniels
Community Board Member Alexandra Davids

Appearances
for the Objector: Kama MacDonald (Objector)
for the Animal Management Team: Bill Kohi (Senior Animal Management Officer)
Nina McDrury (Animal Management Officer)
Chris Todd (Animal Management Officer)
Third Complainant's Husband (Witness)

Determination: 13 March 2020

Hearings Advisor: Mark Saunders

**DETERMINATION OF THE HEARINGS PANEL
OF THE CHRISTCHURCH CITY COUNCIL**
(Dog Control Act 1996, section 31)

The classification of Poppy as a 'dangerous' dog is upheld

REASONS OF THE HEARINGS PANEL

INTRODUCTION

[1] The hearing was held to consider an objection received from dog owners, Cheyenne Wellington and Kama MacDonald ('the Objectors'), to the classification by the Christchurch City Council Senior Animal Management Officer under Section 31(1)(b) of the Dog Control Act 1996 ('the Act') of their three-year-old, female, white-coloured, Staffordshire Bull Terrier cross breed dog named 'Poppy' as a dangerous dog – which classification creates special obligations imposed on the dog owner by, and described within, section 32 of the Act.

[2] Section 31(1)(b) of the Act, under which Poppy was classified, relates to a dog that a territorial authority has, on the basis of sworn evidence attesting to aggressive behaviour by the dog on one or more occasions, reasonable grounds to believe constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife.

[3] Under section 31(1) of the Act a territorial authority must classify such a dog as 'dangerous', and following the collection of affidavits from three separate complainants dated 13, 14 and 21 January 2020 respectively attesting that a dog held out to be Poppy had, on 9 and 16 November and 2 December 2019 respectively, attacked their dogs, on which basis the Senior Animal Management Officer judged Poppy a threat, he did so classify Poppy as a 'dangerous' dog. This being performed under his delegated authority to do so by causing to be given to the Objector, Ms Wellington (as the registered owner of Poppy), notice of the classification and other prescribed matters, including her right to object to the classification under section 31(3) of the Act.

[4] The Objectors exercised their right to object to the classification of Poppy as 'dangerous' 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.

[5] The Hearings Panel on 24 February 2020 heard the Objectors' evidence and submissions, and also heard from the Animal Management Team, having previously received a report from Senior Animal Management Officer Bill Kohi, together with the evidence collected by Animal Management Officers, Nina McDrury, Chris Todd and Paul Martin, relating to the incidents and classification.

[6] This report notifies the determination of the Hearings Panel that the classification of the Objectors' dog, Poppy, as 'dangerous' is **upheld** and the reasons for its determination in accordance with section 31(5) of the Act.

LEGAL CONTEXT

[7] The Hearings Panel has the delegated authority to hear and determine the Objectors' objection to the classification of Poppy as 'dangerous' and, further to section 31(4) of the Act, may uphold or rescind the classification having regard to:

- (a) the evidence which formed the basis for the original classification; and
- (b) any steps taken by the owner to prevent any threat to the safety of persons and animals; and

- (c) the matters advanced in support of the objection; and
- (d) any other relevant matters.

The Hearings Panel had regard to these matters in reaching its determination to uphold the classification of Poppy as 'dangerous', and further to section 31(5) of the Act gives this notice of that decision in regard to the Objectors' objection, and gives the reasons for its decision further below following a summation of the hearing of the matter that was undertaken prior to the decision being reached.

THE HEARING

[8] The following 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. By agreement, Ms Kama MacDonald alone of the Objectors attended the hearing to present their evidence and submissions.

Submissions of the Animal Management Team

[9] 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 to classify dangerous dog (Section 31)
- Effects of classification as dangerous dog (Section 32)

[10] Mr Kohi summarised for the Hearings Panel the grounds on which his decision to classify the Objectors' dog, Poppy, as 'dangerous' was based referring to his report and the evidence attached thereto. Mr Kohi referred to the affidavits provided by the complainants attesting to aggressive behaviour by a dog he accepted to be Poppy, and to the further evidence attached to his report in the form of notes, photographs and veterinary records relating to the incidents in which the complainants' dogs were attacked.

[11] Mr Kohi's report in the following extracts that he substantially read at the hearing presents Animal Management's summary of the facts they accepted as relevant to the classification decision:

Dog owner's details

Ms Cheyenne Sandie Wellington of [her address] is the registered owner of a 3 year old, White Staffordshire Bull Terrier Cross Breed, entire female called Poppy. Poppy is registered for the current year...

For the purpose of clarity for the hearing panel: Kama Louise MacDonald of [same address] is known to be a person also responsible for the dog known as "Poppy".

Complaint Details

1. *The Christchurch City Council has received three complaints regarding the dog known as “Poppy” from [Objectors’ address]. Dates of each complaint are:*
 - (a) *...09/11/2019 Dog attack another dog (Officer Todd).*
 - (b) *...16/11/2019 Dog attack another dog (Officer Martin).*
 - (c) *...02/12/2019 Dog attack another dog (Officer McDrury).*
2. **The first complaint...***was received by the Christchurch City Council on Sunday 10th November 2019. This complaint was received on behalf of the complainant by NZ Relay Deaf Call.*
3. *The complainant/victim...has advised that he was attacked by a dog at about 11:00pm, 9th November 2019.*
4. *[The first complainant], assisted by...the NZ Sign Language Services, gave a formal statement to Officer McDrury at 5:45pm on Wednesday 13th November 2019.*
5. *He has stated that he was walking his dog with his brother in law. They had walked to [a] lane [adjoining the Objectors’ street]. Walking back to his address they have walked past [the Objectors’ address]. About half way between [the Objectors’ address] and his home on the corner of [the Objectors’ street] and [the street it exists onto] a dog has charged at them and attacked [the first complainant]’s dog.*
6. *[The first complainant] has described the attacking dog as being a medium sized dog, cream colour with a black patch between its shoulders and maybe white on its chest.*
7. *[The first complainant] also confirmed that the photo shown to her by Officer McDrury was the same dog that attacked his dog. (Officer McDrury showed [the first complainant] a photograph of Poppy from [the Objectors’ address]).*
8. *He states that two people (a male and female) came out of [the Objectors’ address] and retrieved the attacking dog, taking it back into [the Objectors’ address].*
9. *[The first complainant] has picked his dog up and continued home. He suffered superficial wounds to his nose and forehead during the fracas. His dog also sustained puncture wounds to his chest and legs.*
10. *[The first complainant] took his dog to the vet on the 10th November 2019.*
11. **The second complaint...***was received by the Christchurch City Council on Saturday 16th November 2019).*
12. *The complainant/victim [Daughter] on behalf of her mother...has advised that the dog has entered her mother’s property and attacked her dog.*
13. *[The mother] has given a formal statement to Officer Martin on Wednesday 20th November 2019.*
14. *She has stated that her dog was in her secure yard. She has heard a dog “yelp” and then her dog, “Lucky” has come running inside, bleeding from her stomach, leaving a trail of blood through her house.*
15. *[The mother] has secured her dog in her bathroom and went outside to ascertain what has happened. She has found what she describes as a muscular white dog standing in her yard.*
16. *A lady has come from the front of her property and secured the dog. She has yelled at some kids to “grab the dog’s collar!”*
17. *The children have quickly appeared with a collar and lead which the lady has put onto the dog and the children have taken the dog away.*
18. *The lady has then entered [the mother’s] home and said that she didn’t have money. [The mother] suggested that she may need to “put the dog down”. The lady has left.*
19. *[The mother] has called her daughter...to come and help. [The daughter] was able to get the ladies name from the children staying next door.... Her name was Kama and her contact phone number is*

20. *Officer Martin has visited [next door address] on the 16th November 2019. He has spoken to a Mr [third party]. Mr [third party] has confirmed that he's looking after a dog for his ex-partner and that the same dog did enter his neighbour's property after it was released from a vehicle by his kids before their mother could secure with a leash and collar.*
21. *The Officer has identified the dog owner and proceeded to phone her on the number the council has on record. Ms Cheyenne Wellington is the registered owner but when the Officer phoned Cheyenne the phone was answered by a female called Kama.*
22. *Kama has admitted over the phone to Officer Martin that she was in charge of the dog called Poppy on the day of the reported incident.*
23. *She, however was not prepared to give her personal details (Date of birth, full name, address and occupation) and was warned that it is a breach of the Dog Control Act not to provide this information when requested by a Dog Control Officer.*
24. *Kama returned a call to the officer and provide all the necessary information.*
25. **The third complaint...***was received by the Christchurch City Council on Monday 2nd December 2019.*
26. *The [third] complainant/victim...has complained that on the evening of Monday the 2nd December 2019 while walking her dog down [the street the Objectors' street exits onto] her dog was attacked by another dog.*
27. *[The third complainant] has provide a formal statement to Officer McDrury on Tuesday 3rd December 2019.*
28. *She has stated that she was walking her dog, on lead, along [last-mentioned street] towards [the Objectors' street] when she has noticed another dog standing next to her. She has described the dog as being a light cream colour with a white stripe running down the front of its face.*
29. *This dog has walked up to the side of [the third complainant's] dog and attacked it biting her face and ear. Her dog has then fallen over and the attacking dog has proceeded to bite her leg.*
30. *[The third complainant] has kicked the attacking dog forcing it to let go. The dog stood its ground until [the third complainant] yelled, telling it to go away.*
31. *A blue car has pulled up and a thin Caucasian male jumped out of the passenger side of the car and chased the dog down the road.*
32. *A man came out of a red brick house and told [the third complainant] that that dog needs to be "Shot!"*
33. *Another man from this house gave [the third complainant] a ride home.*
34. *[The third complainant's husband...has returned to speak to the man from the red brick house.*
35. *[The witness] confirmed that he saw the incident involving [the third complainant]. He told [her husband] that he wasn't sure of the exact address of the dog owner but that it was at the end of the cul-de-sac [the Objectors' street].*
36. *[The husband] has gone to [the Objectors' street] and found two dogs in the window at [the Objectors' address], he has taken some photographs. He has also provide a statement to the Officer confirming why he went to this address and that he took the photographs of the dogs inside the house.*
37. *[The third complainant] has been shown these pictures by Officer McDrury and confirmed that the dog on the left of the photographs was the dog that attacked her dog.*
38. *Officer McDrury has confirmed that the dog is Poppy from [the Objectors' address].*

[12] Mr Kohi then read a summation his decision to classify Poppy as a 'dangerous' dog as set out in his report as follows along with his acknowledgement of duly receiving the Objectors' objection to the classification, which entitled the Objectors' to be heard at the hearing.

Decision to classify the dog as dangerous

- *The investigating officers have completed an investigation file which include copies of the three Hybris ticket notes, photographs, veterinarian accounts, infringement notice, Section 63 letter and job notes taken during the investigation.*
- *I have considered the facts surrounding all three complaints received by the Christchurch City Council between the 9th of November and the 2nd of December 2019. The fact that this dog has not been kept under proper control, contained or confined so that it cannot wander and as a result has attacked and injured three dogs on three separate occasions.*
- *All three complainants/victims have provide sworn evidence attesting to the aggressive behaviour of the dog known as "Poppy" from [the Objectors' address].*
- *The owner of Poppy Ms Cheyenne Wallace has received infringement and /or Warning Notices for breaches of the Dog Control Act 1996 on the following dates:-*
 1. *16/04/18 Section 42, failure to register.*
 2. *21/05/18 Section 52 warning notice, allowing dog to roam.*
 3. *26/06/18 Section 52, failure to keep dog controlled or confined.*
 4. *12/07/18 Section 52, failure to keep dog controlled or confined.*
 5. *26/11/18 Section 52, failure to keep dog controlled or confined.*
 6. *07/01/19 Section 52, failure to keep dog controlled or confined.*
 7. *15/07/19 Section 52, failure to keep dog controlled or confined.*
 8. *09/11/19 Section 52, failure to keep dog controlled or confined.*
 9. *11/01/20 Section 52, failure to keep dog controlled or confined.*
 10. *01/02/20 Section 32, Breach of Dangerous Dog Classification*
- *Ms Wellington was also classified as a probationary owner on the 2nd November 2019 in accordance with Section 21 of the Dog Control Act 1996.*
- *I have considered all the evidence, accordingly, with delegated authority, I classified the dogs known as "Poppy" as dangerous in accordance with section 31(1)(b) of the Dog Control Act 1996.*

Section 31(3) Objection to dog being classified as dangerous

On the 9th February 2019, in accordance with section 31(3) of the Dog Control Act 1996 an email appealing the dangerous classification was lodged on behalf of the dog owner, Ms Cheyenne Wellington by Ms Kama MacDonald objecting to the notice classifying her dog as dangerous. Ms Wellington has confirmed by email that she, as the dog owner, wants to object to the dangerous classification.

[13] The Hearings Panel having received Mr Kohi's report kept an open-mind in proceeding to hear the Objectors' objection to Mr Kohi's classification decision. The Panel forms its own view, after hearing from

an objector, whether a 'dangerous' dog classification was, and is still, reasonable having regard to the matters set out in Section 31(4) of the Act as described further below.

Evidence of the Complainants

[14] Mr Kohi had summarised the evidence of the complainants in submitting his report as set out above. Attached to his report were affidavits from the three complainants along with notes, statements and other evidence collated by the Animal Management Team, which had informed Mr Kohi's report.

[15] The husband of the third complainant attended the hearing and spoke of his wife's distress at the attack on their dog, Bella, and the degree of bleeding it had caused. He did not witness the incident, but relayed his wife's account of the incident and how the attacking dog had 'munted' Bella and tried to take out the side of her eye. He relayed that Bella is an older dog and there was not much his wife could do as the attacking dog got on top of Bella.

[16] The husband spoke of receiving report from a third party at the scene of the incident when he arrived that the attacking dog is often seen wandering and took that person's description of the property at which the dog resides, noting a tree out front, no fence and longish grass. He indicated easily finding the property based on the description and proceeding to the Objectors' address; he knocked on the door of the Objectors' house and found no one home, but two dogs within were barking at him and he observed the Objectors' dogs through the window in the Objectors' house with blood on the side of face of one. He noted that he took a photograph then left to assist with taking Bella to the vet.

[17] The husband also spoke to the effect of the attack on Bella and his wife, who is devastated, noting that his grandchild normally walks Bella – he was glad they were not on this occasion. He also noted the cost of the vet bill and how Bella cannot go for walks now as it is not long before she starts limping as her front leg seems 'stuffed' from where she was attacked.

The Objectors

Evidence and Submissions of the Objectors

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

I on behalf of Cheyenne Wellington wish to dispute the classification of an aggressive dog against our pet named Poppy, a staffordshire cross, tanned colour. I am within the 14 day timeframe period on which to make my dispute.

I wish to see the factual evidence on which the council has based its decision and ask that this be my official notice for disputing the said classification.

My grounds are based on the fact that on several numerous occasions, this past year alone there has been 3 or more times that Poppy has been either let out without our consent or from people visiting our property and not closing the gate. There has been Zero incidents of her attacking or being aggressive to any other animal.

Whilst she has had these opportunitys on occasion to freely roam our community and subsequently been impounded, there has been no such incidents of aggression towards any person, dog, cat or animal and this is my basis that she is NOT and aggressive dog.

There have been on 1 occassion where another dog has tried to invade her space and if this is the time in question I wish to see your sworn evidence provided.

Please note we have also gone out of pocket to provide Poppy with the most expensive muzzle, harness and choker chain, to alleviate any risks, if any, to the community.

I make this application with authority from Cheyenne Wellington and also as her full time carer.

*I look forward to your reply and am available via cellphone ... or in person at [Objectors' address].
Your sincerley,*

Kama MacDonald

[19] At the hearing Ms MacDonald denied that Poppy was the attacking dog from the third complaint, indicating that the description of the person who collected that dog did not fit any person at her property, and the person who directed (through description) the husband of the third complainant to her property was the first complainant and unreliable. She suggested that the attacking dog could not have been Poppy when Poppy was by the account of the husband of the third complainant found by him to be inside her house; neither she nor her partner had collected Poppy – she had not escaped – and as acknowledged neither she nor her partner were at home to answer the door when he knocked.

[20] Ms MacDonald submitted that Poppy is not vicious but has a friendly nature. She indicated that Poppy is often with children and friendly with them.

[21] Ms MacDonald accepted Poppy had escaped her property on a number of occasions, but argued that she had at times been escaped for a number of hours without complaint of her committing any attack in such time – she expressed that Poppy is a roamer, not a fighter, and had never attacked another animal while roaming. She submitted that the attacking dog in the third compliant must have been another dog, indicating that there is a similar dog residing at another property nearby on another street across the road that looks just like Poppy, and on occasion of that dog escaping it had been thought to be Poppy.

[22] Ms MacDonald denied the honesty of the first complainant, suggesting inconsistencies in his changing account, and suggested he was intoxicated and had a financial motive for the complaint in asking the Council to pay his vet bill. She submitted that the first complainant's account of the incident is not what happened, and there was no injury to his face.

[23] Ms MacDonald suggested that Poppy was at her gate and snuck through and the first complainant's dog was on her grass and the first complainant was at the end of her driveway intoxicated and winding up the dogs. The dogs were barking at each other, and they both attacked each other in her account, and in the course of separating them the first complainant had his hand bitten by one or other of the dogs and she offered assistance, but his face was not bitten, and he said he was fine. Poppy

sustained a bleeding ear, but the incident was superficial and she thought nothing of it and was not asked for her account at the time.

[24] Ms MacDonald, however, accepted the account of the second complaint as what happened. She noted that Poppy is curious of rabbits and was trying to get at those when Poppy came upon the other dog who started barking, they fought and the other dog got hurt. She recounted grabbing and restraining Poppy as fast as she could, supplying the second complainant her contact details, and indicating she was sorry she did not have any money. She noted the circumstances that Poppy had been at the neighbouring property while she attended a funeral.

[25] Ms MacDonald indicated that she is a responsible dog owner and ensured Poppy had her shots and was micro-chipped. She was connected to a network of people in Facebook who looked out for each other's dogs and assisted with locating Poppy when she did escape. She indicated that she had invested in security cameras and a muzzle; the cameras because she was not sure how Poppy was getting out of the property, and had found through the cameras that she was getting over the fence (other than some of instances of visitors leaving the gate open) and discerned fencing improvements to make.

[26] Ms MacDonald noted that Poppy has not attacked a person while she has been roaming, and that Poppy had frequently interacted with her neighbours' dogs without incident, noting that on occasion she had let her immediate neighbour's dogs share her yard with Poppy. Ms MacDonald indicated that Poppy socialises well with other dogs and asserted that she is not a dangerous dog.

[27] Ms MacDonald described the benefit Poppy's companionship had for her health, describing her dogs as therapy dogs, and noting how everybody loves them, and Poppy is good with kids. She also noted that the incident subject of the second complaint was out of character for Poppy, and that was the only occasion of such incident. She repeated the incident subject of the third complaint did not involve Poppy, and suggested that the first complainant had framed the incident as Poppy attacking his dog as a ploy to get money for his vet costs.

[28] Ms MacDonald noted her significant expense she had dedicated to the issue in investing in security cameras, a muzzle, etc., and though she acknowledges that Poppy is a roamer, she is trying to address that, and asserted that Poppy is not aggressive, but is a therapy dog. She also repeated the point that a similar dog resides nearby that is liable to get confused for Poppy.

[29] The Panel sought some clarifications and heard from Ms MacDonald that Poppy has been escaping her property by either jumping their six foot fence or through visitors not closing their gate properly. Ms MacDonald noted that they had learned to not place rugs on the fence, which had apparently contributed to Poppy escaping, and had learned other improvements they could make to prevent escape over the fence.

[30] Ms MacDonald conveyed concern that the classification of Poppy as 'dangerous' causes her worry that if Poppy gets out she could then be subjected to destruction by the authorities.

Reply from the Animal Management Team and the Complainant

[31] The Senior Animal Management Officer, Mr Kohi, clarified in his reply that it was not suggested that the first complainant himself was attacked by Poppy; the evidence accepted was simply that he suffered wounds to his nose and forehead during the fracas – not uncommonly sustained as incidental to trying to separate dogs. He clarified that there was no indication that the first complainant had asked the Council to assist with his vet costs, though confusion as to this point could pertain to the SPCA sometimes helping in this respect.

[32] Mr Kohi also clarified in respect of Ms MacDonald's worry about Poppy being destroyed that the Council itself would not do that in any circumstance other than the limited one of it being necessary during an attack. The District Court does have related powers and in the event of further incident warranting it, a prosecution could be taken to the Court, but that would be a judgment for the particular circumstances of the incident. Mr Kohi clarified the actual effects of classification of a dog as 'dangerous' as set out in section 32 of the Act, and explained the approach Animal Management takes of trying to work with dog owners and not be too heavy handed, though referred to the number of infringement notices in this case as set out in his report.

[33] Mr Kohi responded in respect of Ms MacDonald's indication that the first complainant had directed the husband of the third complainant to the Objector's property by noting that the address of the person who offered the description that directed the husband of the third complainant was not noted as being at the address on record for the first complainant.

[34] The Chair allowed some final clarifying exchange through the Chair in relation to the description of the man who collected the attacking dog following the incident subject of the third complaint, allowing the husband of the third complainant his reply. Given questions from one of the investigating officers taken through the Chair, Ms MacDonald was allowed reply indicating the description did not fit the description of those persons living with her and looking after Poppy. Ms MacDonald further responded to the officer's question of her account of the first complainant, indicated that they are known to each other, relaying his manner of speaking in spite of related disability and indicating he is regularly intoxicated.

RESERVED DECISION

[35] The Hearings Panel considered that it had all the information it needed to have regard to under section 31 of the Act after considering the evidence, information and submissions available to it.

[36] The Hearings Panel reserved its decision, which it now conveys as the decision to uphold the classification of Poppy as 'dangerous' 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, heard from the Objector and others at the hearing, and attached to the Senior Animal Management Officer's report which the Panel had due regard to.

The evidence which formed the basis for the classification

[37] Ms MacDonald denies that Poppy was involved in the third complaint and the description of the person that collected the attacking dog following that incident is not accepted to fit a person residing at the Objectors' address. However, the third complainant has given affidavit evidence that the dog on the left in the photographs taken by her husband at the Objectors' address is the dog that attacked her dog. It would have been preferable though for the photographs to be formally exhibited to the affidavit with more conclusive identification evidence.

[38] Identification evidence is important and it is unnecessary for a 'dangerous' dog classification that there be sworn evidence attesting to aggressive behaviour by the dog on three occasions; section 31(1)(b) indicates that even one occasion is sufficient if it is the basis for having reasonable grounds to believe the dog constitutes a threat.

[39] Ms MacDonald accepted that Poppy was involved in the second complaint, and even in the first complaint, though taking issue with the first complainant's account of that incident. Recognising the importance of good, thorough identification to fairly treating a dog and their owner facing the prospective requirements and impositions of classification, it would be better to take an approach of looking to the first and second complaints as to whether they alone were not enough for considering the objection, rather than prematurely adding the evidence of the third complaint to the consideration.

[40] The first complaint can similarly fall in behind consideration in the first instance of the accepted second complaint rather than prematurely adding in more evidence than might be necessary for there to be reasonable grounds for believing that Poppy constitutes a threat. Deliberations need not be unduly complicated by the contentions of excess occasions when the Act implies that a territorial authority must classify a dog 'dangerous' when it has, on the basis of sworn evidence attesting to aggressive behaviour, reasonable grounds for believing that the dog constitutes a threat. Classification is a preventative measure, not a punitive one; if even only the safest evidence reasonably indicates a threat, the objects of the Act imply that the threat should be prevented and thus classification should follow.

[41] The evidence in relation to the second complaint was in the Panel's view in proper form, attested to aggressive behaviour from Poppy, and gives rise to reasonable grounds for believing that Poppy constitutes a threat to other dogs. The injury Poppy caused to the other dog in the second complaint was graphic in the bleeding caused and would have obviously been distressing to the dog and owner; the incident clearly speaks to Poppy constituting a threat to other dogs in the circumstances of the attack occurring in the other dog's yard and causing an obvious wound to the dog's stomach leaving a trail of blood.

[42] Having regard to the evidence related to the second complaint, the Panel were clear that this at least supported upholding the classification as showing Poppy to constitute a threat to other dogs that should be prevented through classification, but the Panel reserved its determination before having regard to the further matters next discussed.

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

[43] The Panel considered the steps taken by the Objectors, particularly that the Objectors had installed cameras to find out how Poppy was escaping their property and discern fencing improvements to make, but the Panel frankly had no confidence in the Objectors preventing the threat that Poppy constitutes to other dogs. Poppy obviously had inclination to escape, had done so on a number of occasions, and was evidently capable and inclined to attack other dogs while at large, even only considering the second complaint.

[44] The Panel could accept Ms MacDonald's account that Poppy often and typically had friendly interactions with other dogs, but a dog that can suddenly, even if very occasionally, have an aggressive threatening interaction with another dog such as the second complaint is still reasonably classified as dangerous in the circumstances of this case. Even occasional incident of attack is unacceptable, particularly in the context of a dog that has escaped on so many occasions. The Objectors' are responsible when Poppy is interested to escape and visitors are able to leave their gate open and accidentally let Poppy escape. The Panel felt that the Objectors needed a more urgent and pressing sense of their responsibility around this issue and the threat Poppy presents. To diminish it as not her usual character was naïve and irresponsible. The Panel strongly believed that the classification of Poppy as 'dangerous' should be upheld having heard from Ms MacDonald in this regard, but again reserved its determination before having regard to the remaining matters next discussed.

Matters relied on in support of the objection

[45] The Panel had regard to Ms MacDonald's submission that the incident giving rise to the second complaint was out of character for Poppy, but even if that is true is and the other complaints are set aside, the Panel still felt very clearly that the nature and circumstances of the attack that Poppy committed upon Lucky (the victim dog in the second complaint) spoke to Poppy constituting a threat to other dogs, especially with the Objectors' having failed to prevent Poppy escaping their property on so many occasions, suggesting that classification is clearly a necessary step to prevent the threat Poppy poses and have the Objectors understand the seriousness of their obligations.

[46] Ms MacDonald though accepting the incident giving rise to the second complaint had framed the attack of Poppy on Lucky as a fight. The Panel were concerned that the Objectors' did not seem to properly appreciate the threat that Poppy constitutes, the need to take serious preventative steps in that regard, and the distressing results to other dogs and owners that are risked by their insufficient attitude to the point that Poppy had escaped on a number of occasions and been at large for considerable time.

[47] The Panel appreciated and approved that Poppy's companionship had health benefits for the Objectors; the Panel would like to see those continue, but fundamental to this is that the Objectors act with the greatest seriousness, commitment and urgency to securely contain Poppy and prevent the threat she constitutes, which inclined the Panel to uphold the classification of Poppy as 'dangerous', having had regard to the matters relied on in support of the objection, though reserved its determination before having regard to any other relevant matters.

Other relevant matters

[48] Ms MacDonald had made representation to the second complainant that she did not have the financial means to take responsibility for the damage done by Poppy. While the Panel does not adjudicate compensation, such a point of responsibility is relevant to whether a classification might be upheld or rescinded, and only strengthens the Panel's conclusion that it is imperative that Poppy is prevented from constituting a threat to other dogs through her classification as 'dangerous' being upheld. The Objectors' were entitled to object to the classification but their submissions in support of their objection were not at all persuasive in respect of convincing that they would prevent the threat Poppy poses independent of classification being imposed.

[49] It is an object of the Act to "make better provision for the care and control of dogs...by imposing on owners of dogs obligations designed to ensure that dogs do not injure, endanger, or cause distress to any stock, poultry, domestic animal, or protected wildlife", and it is an obligation imposed on dog owners by the Act to "take all reasonable steps to ensure that the dog does not injure, endanger, or cause distress to any stock, poultry, domestic animal, or protected wildlife".

[50] Even without getting to the first and third complaints, it is clear from the incident giving rise to the second complaint that the Objectors' have failed in their legal obligation, failed to convince they would fulfil it without the classification being upheld, and altogether it is clear to the Panel that upholding the classification is most consistent with the object of the Act and is entirely fair, reasonable and justified. The Objectors have been too slow to appreciate the importance of keeping Poppy under effective control at all times; the second complaint arose from a failure to keep Poppy under effective control and it was clear from the circumstances that Poppy needs to be muzzled and leashed when at large and securely contained on her property, and this needs to be formalised through classification.

[51] The 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 31(4) of the Act. The Panel noted that every objection to a dangerous dog classification is considered on its own merits and having regard to the circumstances particular to the case. The Panel, having regard to all relevant matters, considered that upholding, and not rescinding, the classification of Poppy was reasonable for the reasons given above.

RESULT

[52] Having considered the objection of the Objectors to the classifications of their dog, Poppy, as a 'dangerous' dog, 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 31(4) of the Act, it is determined that:

The classification of the Objectors' three-year-old, female, white-coloured, Staffordshire Bull Terrier cross breed dog named 'Poppy' as a 'dangerous' dog is **upheld** for the reasons indicated herein and for the reason that the Hearings Panel considers that there are reasonable grounds, properly attested to, to

believe that Poppy constitutes a threat to the safety of other dogs particularly as among the animals the Act has designs to ensure are not injured, endangered or caused distress.

CONFIRMED THIS 13TH DAY OF MARCH 2020



COUNCILLOR ANNE GALLOWAY
CHAIRPERSON