

4.4 OBJECTION TO DISQUALIFICATION FROM BEING A DOG OWNER - BRIAN HAUMAHA

Author: Scott Devonport, Consents & Regulatory Manager

Authorised by: Alan Menhennet, Group Manager: Finance and Strategy

PURPOSE

The purpose of this report is to allow the committee to hear an objection to a dog owner disqualification.

EXECUTIVE SUMMARY

Brian Haumaha, the owner of a Mastiff/Neapolitan called Portia has been classified as a disqualified dog owner due to receiving five infringements within a continuous 24 month period.

A dog owner can become disqualified if they commit three or more infringements within a continuous period of 24 months in accordance with section 25 of the Dog Control Act 1996 (The Act).

The infringements were for not registering Portia in 2015 and 2016 and three incidents that the dog was found to be roaming the streets and acting aggressively towards the public in 2016.

Mr Haumaha as a disqualified owner can object to the classification under section 26 of the Act.

Do not delete this line

RECOMMENDATION(S)

That the Fences, Roading, Reserves & Dogs Committee resolves to uphold the disqualified dog owner classification for Mr Brian Haumaha for a period of 24 months.

Do not delete this line

BACKGROUND

The proposal has not been presented previously.

On the 26 October 2016, Brian Haumaha owner of a Mastiff/Neapolitan called Portia was classified as a disqualified dog owner. Portia is also a menacing dog by action due to several incidents of aggression towards the public.

A dog owner can become disqualified if they commit three or more infringements within a continuous period of 24 months in accordance with section 25 of the Dog Control Act 1996 (The Act).

Mr Haumaha, the owner of Portia has received five infringements since 21 August 2015. Three infringements were issued for failing to keep the dog under proper control (roaming) and two for failing to register Portia.

The dog Portia was impounded on the 14 December 2016 and subsequently returned to the owner pending the outcome of this objection.

DISCUSSION

The purpose of the Dog Control Act 1996 is to ensure the care and control of dogs while imposing strong responsibilities on dog owners to protect the public and animals from harm. The key obligations on a dog owner are to register and microchip their dog, keep the dog safely contained and ensure that the public or animals are not harmed by dogs.

Mr Haumaha is the owner of a large Mastiff/Neapolitan called Portia that has received the following infringements:

1. 21/08/15 Failure to register dog
2. 12/03/16 Failure to keep a dog controlled/confined
3. 5/04/16 Failure to keep a dog controlled/confined
4. 7/04/16 Failure to keep a dog controlled/confined
5. 12/08/16 Failure to register a dog

Section 25 of The Act states, that a dog owner that commits more infringements within a continuous 24 month period must be disqualified, unless the Territorial Authority considers disqualification is not warranted.

In this case disqualification was not originally sought for the three infringements for not keeping a dog under proper control as the owner was taking positive action to prevent this from occurring as can be seen from

April 2016 no further offences occurred. But the lack of registration until 9 November 2016, after multiple reminders, as well as the previous history has determined that disqualification is now appropriate.

Disqualification as a dog owner means that you must rehome all dogs from the property within 14 days and cannot own another dog for up to 5 years. Officers normally recommend a period of 24 months as being more suitable for this type of disqualification.

Mr Haumaha has objected to the disqualification in accordance with Section 26 of The Act.

The key points raised in the objection are:

- Portia did escape on numerous occasions but Mr Haumaha was taking positive action to prevent further escape, including building a large enclosure using deer fencing.
- Dog registration occurred while Mrs Haumaha was pregnant and was a time of severe pregnancy complications and Mr Haumaha was away working.
- Portia is a well loved member of the family having being raised from 3 weeks due to the mother having health issues and the family would be devastated to lose her.

While Mr Haumaha is correct that the work undertaken to contain Portia appears to have been effective since April 2016, it is the multiple infringements that need to be considered including the overdue registration in both 2015 and 2016. This shows a trend of not complying with the legal requirements of the Act which directs disqualification as the outcome.

The fact that Mr Haumaha was away working and Mrs Haumaha was pregnant does not provide a strong case given the registration was due 1 July 2016 but not paid until 9 November 2016, over five months late and over six months late in 2015.

While dogs form a strong connection with families and are considered part of the family, the Act makes it clear that owning a dog comes with clear obligations to keep the public and animals safe and ensure dogs are registered. In this case a dog owner that cares for their dog should ensure that is not a safety risk and they are kept up to date with registration. Registration funds up to 50% of dog control operations and is an important role in keeping the public safe.

It should be noted that disqualification affects the dog owner and not the dog. The dog can either be surrendered to Council to be dealt with appropriately, or can be rehomed to somewhere appropriate to manage a large dog and ensure it is properly contained. At the end of the disqualification period the owners have the option of the dog being returned.

Based on this information it is considered that there are three options: uphold the disqualification, rescind the disqualification but make the owner probationary or rescind the disqualification in full.

OPTIONS

Analysis of Options

Option 1. Uphold the disqualification

Advantages	Disadvantages
<ul style="list-style-type: none"> • Sends a clear message that Council upholds its responsibilities under the Act to ensure the public is kept safe from dog owners that do not meet the obligations of the Act. 	<ul style="list-style-type: none"> • The dog must either be surrendered to Council or rehomed and it may be that the dog, being a large aggressive dog is not suitable for rehoming and has to be euthanized.

Option 2. Rescind the disqualification classification but make the owner probationary

Advantages	Disadvantages
<ul style="list-style-type: none"> • Ensures that Mr Haumaha can have no other dogs other than Portia under his ownership and will ensure that any future offences will still result in a disqualification. 	<ul style="list-style-type: none"> • The dog does not need to be surrendered and Mr Haumaha realizes that he cannot afford any further offences. But the dog may still present a risk to the public.

Option 3. Rescind the disqualification in full

Advantages	Disadvantages
<ul style="list-style-type: none"> Mr Hauhama has worked hard to keep the dog contained since April 2016 and should the objection be accepted understands that any future offences will result in disqualification. 	<ul style="list-style-type: none"> Should a member of the public be hurt by Portia, Council may be considered to have not meet its obligations under the Act to disqualify owners that commit multiple offences. Would be inconsistent with other disqualifications decisions that have been objected. Allows Mr Haumaha to own other dogs.

Analysis Conclusion:

The preferred option is option 1.

CONSIDERATIONS**Financial Considerations**

There are no financial implications.

Legal ConsiderationsLocal Government Act 2002

The key consideration is the Dog Control Act 1996 Section 25:

25 Disqualification of owners

(1) A territorial authority **must** disqualify a person from being an owner of a dog if—

(a) the person commits 3 or more infringement offences (not relating to a single incident or occasion) within a continuous period of 24 months

(1A) Subsection (1) does not apply if the territorial authority is satisfied that the circumstances of the offence or 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.

Therefore the legislation sets a high bar in that a territorial authority must disqualify a person unless it is not warranted or the owner is classified as probationary instead.

Policy Implications

There are no known policy implications.

Risks

There may be a risk that if Mr Haumaha continues to maintain ownership of Portia or other dogs that there is a risk to the public given his lack of compliance with the Act. If Council choses to not seek disqualification and Portia harms a member of the public, Council's reputation could be harmed.

SIGNIFICANCE OF THE DECISION OR PROPOSAL

Council's Significance and Engagement policy identifies the following matters that are to be taken into account when assessing the degree of significance of proposals and decisions:

- The level of financial consequences of the proposal or decision;
- Whether the proposal or decision will affect a large portion of the community or community of interest;
- The likely impact on present and future interests of the community, recognising Maori cultural values and their relationship to land and water;
- Whether the proposal affects the level of service of an activity identified in the Long Term Plan;

- e. Whether community interest is high; and
- f. The capacity of Council to perform its role and the financial and other costs of doing so.

Officers have undertaken a rounded assessment of the matters in clause 11 of the Significance and Engagement Policy (2016), and are of the opinion that the proposal under consideration is of low importance.

ENGAGEMENT

Taking into consideration the above assessment, that the decision is of a low degree of significance, officers are of the opinion that no further engagement is required prior to Council making a decision.

COMMUNICATION/MEDIA

No communication/media is required.

CONCLUSION

The Dog Control Act 1996 is clear in its objective to keep the public and animals safe from harm of dogs and ensure that owners take their obligations seriously.

Given that Mr Haumaha has a record of five infringements within a continuous 24 month period the Act directs Council to disqualify him as a dog owner for up to five years. This would require Portia to be rehomed within 14 days of this decision or surrendered to Council.

While there are some concerns over Portia's aggressive nature, as a menacing dog, this decision should be based on Mr Haumaha as a dog owner and not the dog.

The decision to uphold the disqualification classification sends a clear message that Council takes its obligations under the Act seriously and expects dog owners to maintain a high standard of legal compliance with the Act, while keeping the public safe from harm.

Do not delete this line

ATTACHMENTS

Nil