

# **ATTACHMENTS**

## **Fences, Roothing, Reserves & Dogs Committee Meeting**

**31 January 2017**

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Extract from the minutes of the Fences, Roading, Reserves & Dogs Committee meeting held on 22 September 2015

#### 4 OBJECTION TO DOG BEING CLASSIFIED AS MENACING

The following documents had been circulated with the agenda:

- (i) Report from the Consents & Regulatory Manager [A1530413].
- (ii) Report from the Compliance Officer [A1530417].
- (iii) Notice of Classification of Dog as a Menacing Dog, dated 12 August 2015.
- (iv) Objection from Ms Barnes.
- (v) 10 statements in support of the Objection from Ms Barnes.
- (vi) Statement from Ms Siobhan Hannan, dated 19 August 2015.
- (vii) Statements from Ms Sue Rauch and Mrs Heather Williams.
- (viii) Photograph of injury to Kilele.

In addition, members had before them the following documents which were circulated after the agenda had been printed but before the meeting:

- (ix) Statement of Lyn Leyland, dated 11 September 2015.
- (x) Statement from Lisa Hudson, Taupō SPCA Centre Manager, dated 15 September 2015.
- (xi) Further supporting information from Ms Barnes, dated 20 September 2015 along with attachments including a statement from Patricia Foden-Frazer dated 18 September 2015; a written observation by Dr Paul Morris; a letter from E. Mayhill; emails from Council staff; and a "tracked change" copy of the two staff reports.

The Chairman invited the Corporate Solicitor to address the Committee in order to provide procedural advice. The following points were noted:

- Section 33A of the Dog Control Act 1996 ("the Act") enables the Council to classify a dog as menacing if it considers the dog "may pose a threat to any person, stock, poultry, domestic animal or protected wildlife because of (i) any observed or reported behaviour of the dog ...".
- The Committee was required to have regard to (a) the evidence which formed the basis for the classification; and (b) any steps taken by the owner to prevent any threat to the safety of persons or animals; and (c) the matters relied on in support of the objection; and (d) any other relevant matters.
- The behaviour of people was irrelevant; this was about how the dog behaved.
- The only effect of classification in this case was that the dog would have to wear a muzzle in public.
- The Committee should take into account eyewitness evidence. Opinion evidence should only be received from independent experts qualified in a discipline relevant to the question here, i.e. canine behaviour.

With the leave of the Chairman, the following people addressed the Committee:

##### **Ms Siobhan Hannan**

- The dog Kilele still has puncture wounds on his neck.
- It was true that Ms Hannan had prised Ms Barnes' dog Tilly Matilda's jaws open. Ms Barnes did not help to separate the dogs.
- Dogs can attack for many reasons; sometimes the reason is unknown.
- The offer from Ms Barnes to pay any vet bills arising from the attack was news to Ms Hannan. This was an admission of guilt. A vet could not do anything about the puncture wounds.
- Kilele did not growl at Tilly Matilda.
- Ms Hannan had edited her original statement given to the Compliance Officer to make it clearer.

In answer to questions Ms Hannan advised that:

- Ms Barnes did originally tell Ms Hannan not to approach. She probably extended Tilly Matilda's lead because she thought it was safe to do so – both dogs were small and Tilly Matilda was not showing aggression initially.
- Ms Hannan did not own Kilele but rather looked after him for a friend.

Extract from the minutes of the Fences, Roading, Reserves & Dogs Committee meeting held on 22 September 2015

- Ms Hannan had visited the market a few times before 8 August 2015. She had never noticed Tilly Matilda before.

**Ms Shirley Fraser and Ms Denise Barnes**

Ms Barnes addressed the Committee with reference to her statement:

- Ms Barnes had been walking her dogs in Taupō for the past 11 years. Over this time, she had walked 25,000km – 8,000km of these with Tilly Matilda. She had received no complaints about her dogs.
- Ms Barnes always kept her dogs on leads in the correct places. Both have been rushed/attacked by other dogs. Bertie came close to being killed by another dog. Tilly was luckier because although she had been attacked, the attacker was hauled off quickly.
- Tilly is however troubled by dogs rushing. Ms Barnes manages this by moving her out of the way of trouble and she copes well.
- Tilly is fine with normal, well-behaved dogs.
- Muzzling Tilly was unnecessary and would be cruel as she is a black dog and walks with her mouth wide open in hot weather.
- Ms Barnes had spent over 650 hours fundraising for Taupō SPCA over the past 7.5 years. With her dogs she had collected \$39,297 for SPCA.
- The incident on 8 August 2015 was unfortunate and would not have happened, had Ms Hannan moved on. Ms Barnes felt constrained and did not want to appear rude by ignoring Ms Hannan.
- Ms Barnes would never collect for Taupō SPCA again.
- Ms Barnes was asking Council to: (1) cancel the menacing classification. This was serious – a life sentence. Council needs to make sure a dog is menacing before classifying – Ms Barnes had an expert opinion that Tilly Matilda is not menacing and Council's dog control staff have not seen her.
- (2) revoke the warning because the claims are untrue.
- (3) restore Ms Barnes' Special Owner Policy status.
- The menacing classification was causing Ms Barnes stress. Her integrity and reputation have been damaged. She had owned Tilly Matilda from 11 weeks of age and the "menacing" classification was a terrible reflection on her.

**Patricia Foden-Frazer**

Ms Foden-Frazer summarised her recollection of the incident at the Riverside Market on 8 August 2015 and identified the location of Ms Barnes and Tilly Matilda [the cross on the top photograph on page 2 of photographs provided]. She advised that she did not know the two parties involved and did not hear any conversations between the two before the incident.

*Councillor M Stewart entered the meeting at this point [11.05am]*

**Ms Shirley Fraser and Ms Denise Barnes [continued]**

Ms Fraser addressed the Committee:

- The fact the incident occurred was not disputed.
- What is in dispute is the severity of reaction to a tussle between two little dogs. Why was Tilly Matilda classified as menacing for inflicting an insignificant puncture wound from a small nip?
- There was no proof that the carer of the other dog was bitten. This was a 'dog on dog' incident and both owners were at fault. The incident was not even worthy of a verbal warning.

In answer to questions Ms Barnes advised that:

- It was her usual approach to keep Tilly on a tight lead beside her. This had been suggested to her and she agreed it was a good idea, and Tilly was happy to stand by her side. Ms Barnes watched other dogs and aimed to keep Tilly out of their way.
- Just before the incident, Ms Barnes had noticed a springer spaniel 'dancing' around and going towards a little child. Tilly was ignoring this, but in the process of moving away, Ms

Extract from the minutes of the Fences, Roading, Reserves & Dogs Committee meeting held on 22 September 2015

Barnes may have gone too close to the dog in Ms Hannan's care, or that dog came too close.

- It was not true that Tilly was uncomfortable with other dogs.
- Ms Barnes would not take Tilly to the market again – it was not safe for her to collect for the SPCA in future. Tilly used to stand at her side for over three hours and in this time she was always calm with children.
- Ms Barnes would still walk with Tilly.
- When the Riverside Market was rearranged, Ms Barnes was asked to stand back. She thought this was a good idea and would not have been there if there had been any concerns.

**Ms Lauri Dunn**

- Ms Dunn was the past Chair of the Taupō SPCA but had no speaking rights on behalf of that organisation – she was here to support Ms Barnes.
- The effect on Ms Barnes of her dog having to wear a muzzle would be huge.
- Ms Barnes has been treated badly by the system. Common sense should prevail, otherwise Ms Barnes' whole family would be affected, not just Tilly Matilda.

The Council's Consents & Regulatory Manager then addressed the Committee. The following points were noted:

- Ms Barnes was aware of Tilly Matilda's behaviour and sought out expert advice.
- Sue Rauch, the previous owner of the Riverside Market had received complaints about Tilly Matilda and took steps to address these [i.e. asked Ms Barnes to stand off the path with Tilly].
- It was good that Ms Barnes had undertaken not to go to the market or collect for SPCA, but if the dog was not classified, Council could not ensure the public was protected from Tilly Matilda.
- There are different muzzles available, so it should be possible to keep Tilly Matilda comfortable while walking on hot days.

*Councillor R Harvey entered the meeting at this point [11.28am]*

Members then deliberated on whether or not to uphold the staff decision to classify Tilly Matilda as a menacing dog. The Chairman emphasised the importance of the Committee's consideration of its duty of care to the wider community. The following points were noted:

- Ms Barnes' dedication to raising funds for the SPCA was acknowledged.
- The Corporate Solicitor's advice had to be taken into account.
- Members had a responsibility to ensure the whole community is safe in public places.
- Council's dog control officers were praised for the difficult work they do.

Members decided to uphold the staff decision to classify Tilly Matilda as a menacing dog. They were satisfied that Tilly Matilda had attacked another dog at the Riverside Market, Taupō on 8 August 2015. It was agreed that Tilly Matilda *may* still pose a threat in terms of section 33A of the Dog Control Act 1996; and no evidence had been presented to convince them otherwise.

**FRD201509/04 RESOLVED to uphold the decision to classify Tilly Matilda [registration number 151202] as a menacing dog.**

**Cozens/Boddy**

Note: Councillor J Williamson requested his dissent to resolution FRD201509/04 above be recorded.

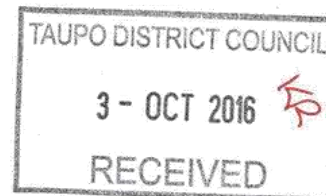
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30 September 2016

The CEO  
Taupo District Court  
Private Bag 2005  
**TAUPO**



Dear Sir

DENISE BARNES APPEARANCE BEFORE THE FRReD COMMITTEE ON 22.9.15

I act for Denise Barnes of Taupo who is an elderly long term resident of the town.

I write to raise on behalf of my client a matter involving the Council in which she feels she was treated unfairly and has been left with a strong sense of injustice and seeks rectification by the Council.

The matter at issue occurred on 12 August 2015 when my client's dog, Tilly Matilda (Reg No 151202) was classified as a menacing dog pursuant to S. 33A of the Dog Control Act 1996. This classification was subsequently upheld by the FRReD Committee.

My client now seeks to have this classification reviewed and rescinded on the basis that the finding was factually flawed and a fair process was not followed.

Of most concern is that the Council process at the FRReD Committee failed to pay heed to the rules of natural justice as set out as follows.

1. The complaint against her dog was accepted without question or adequate investigation. For instance the complaint was made by telephone and the dog was not seen by Council officials until 9 days after the incident.
2. Mrs Barnes was not given an opportunity to provide an explanation for her dog's behaviour at the hearing.
3. An independent eye witness to the incident, Ms Foden - Frazer a Police Officer at the time was not permitted to fully give her version of the

evidence which was quite different to that of the complainant. Indeed it paints quite a different picture of the incident compared.

4. Mrs Barnes expert in dog behaviour, Shirley Fraser was not given an opportunity to comment on the incident. This is important because it would appear that Tilly was in effect defending herself from the intrusion of the complainants dog which it can be argued was not adequately under control.
5. The committee referred to other complaints by members of the public about Tilly but such information was never disclosed to Mrs Barnes.
6. On the other hand numerous unsolicited letters from members of the public were produced in support of Tilly but appear to have been given no weight whatsoever.
7. There appears to have been numerous assumptions made by the committee about Tilly's alleged aggressive behaviour and that she had been at large which are wrong and are without supporting evidence.
8. The Committee has also relied on incorrect evidence such as a claim that the SPCA did not support Tilly when no such statement was ever made and in fact was refuted by the SPCA officer.
9. That the meeting was stacked with an intimidating amount of staff people and councillors which for a woman in her 70s she found somewhat overwhelming.
10. Finally the manner of the chairman, Mr Hickling indicated a degree of bias and pre-judgment of the case against my client. In particular he did not permit my client to fairly present her case by improperly limiting time and not permitting my client to fairly and fully present her defence.

In light of the above matters my client has strong grounds for asserting that she has not been treated fairly in her defence of the classification of her dog as menacing. It would appear that the Committee was somewhat cavalier in conducting its hearing process which is unfortunate given my client's age and unblemished record. Accordingly my client seeks to have the classification of her dog as menacing rescinded or at least a rehearing of the matter be permitted.

I look forward to hearing from you at your earliest convenience.

IAN FARQUHAR



**I D FARQUHAR**

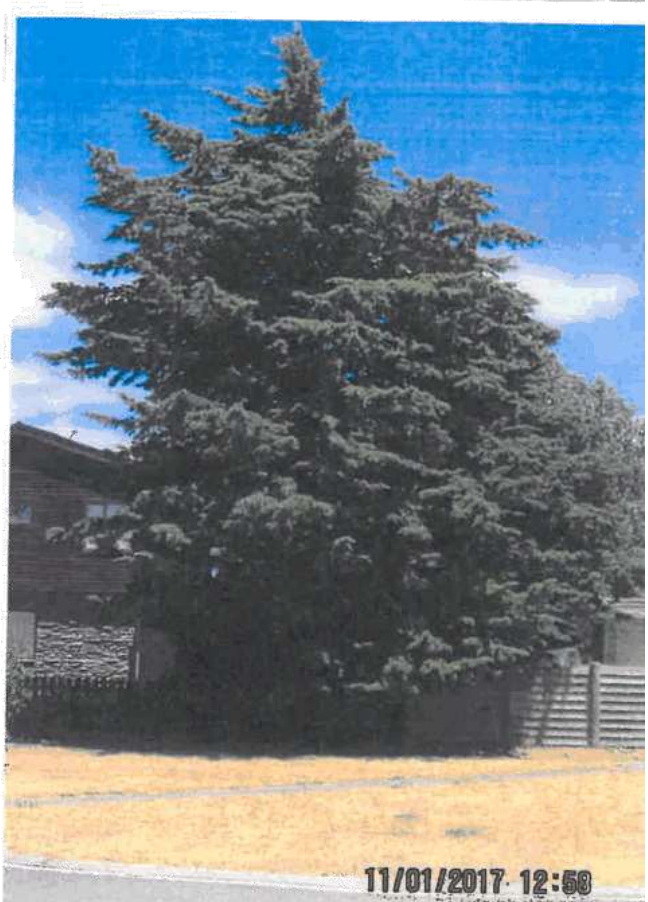
Email - [i.farquhar@farquharlaw.co.nz](mailto:i.farquhar@farquharlaw.co.nz)



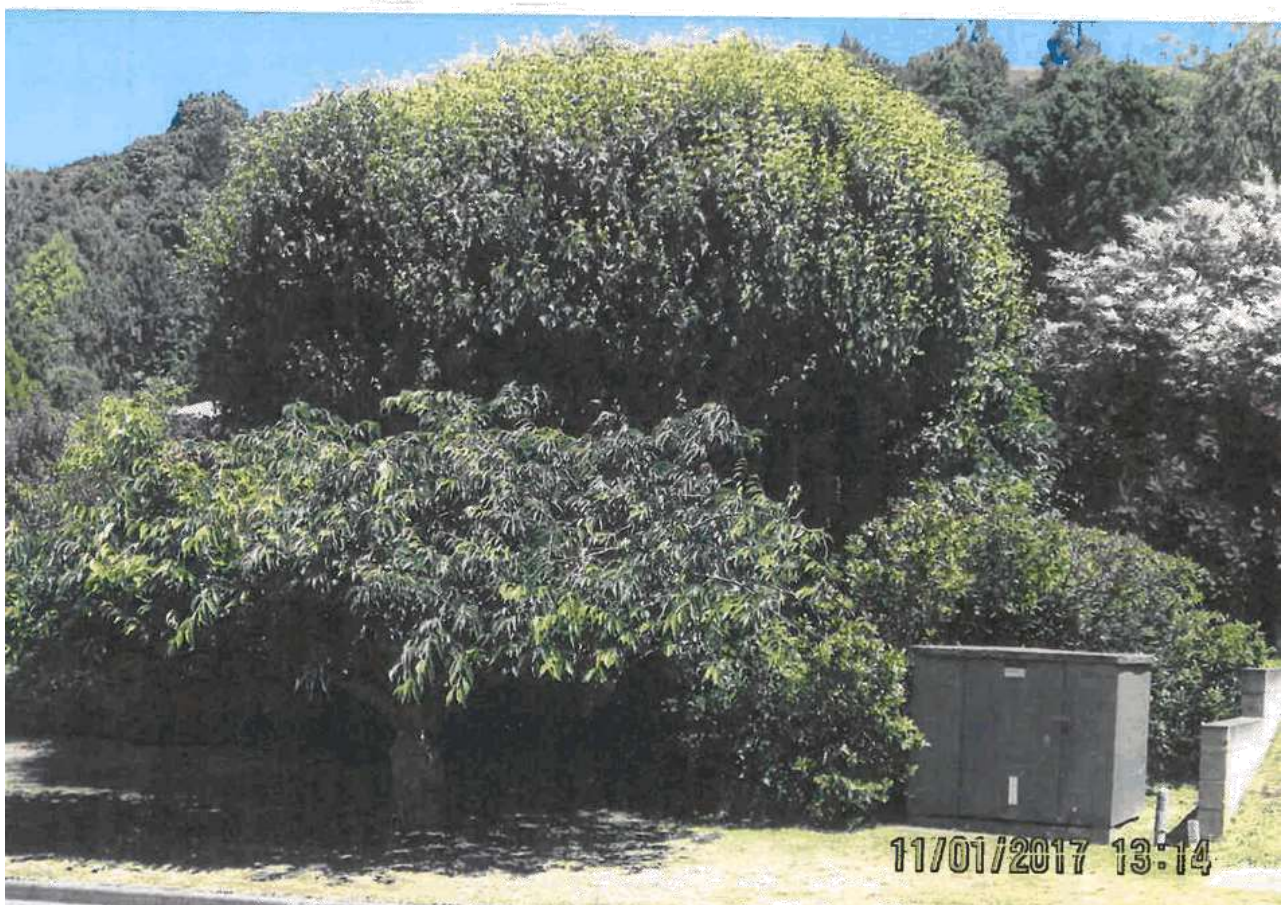
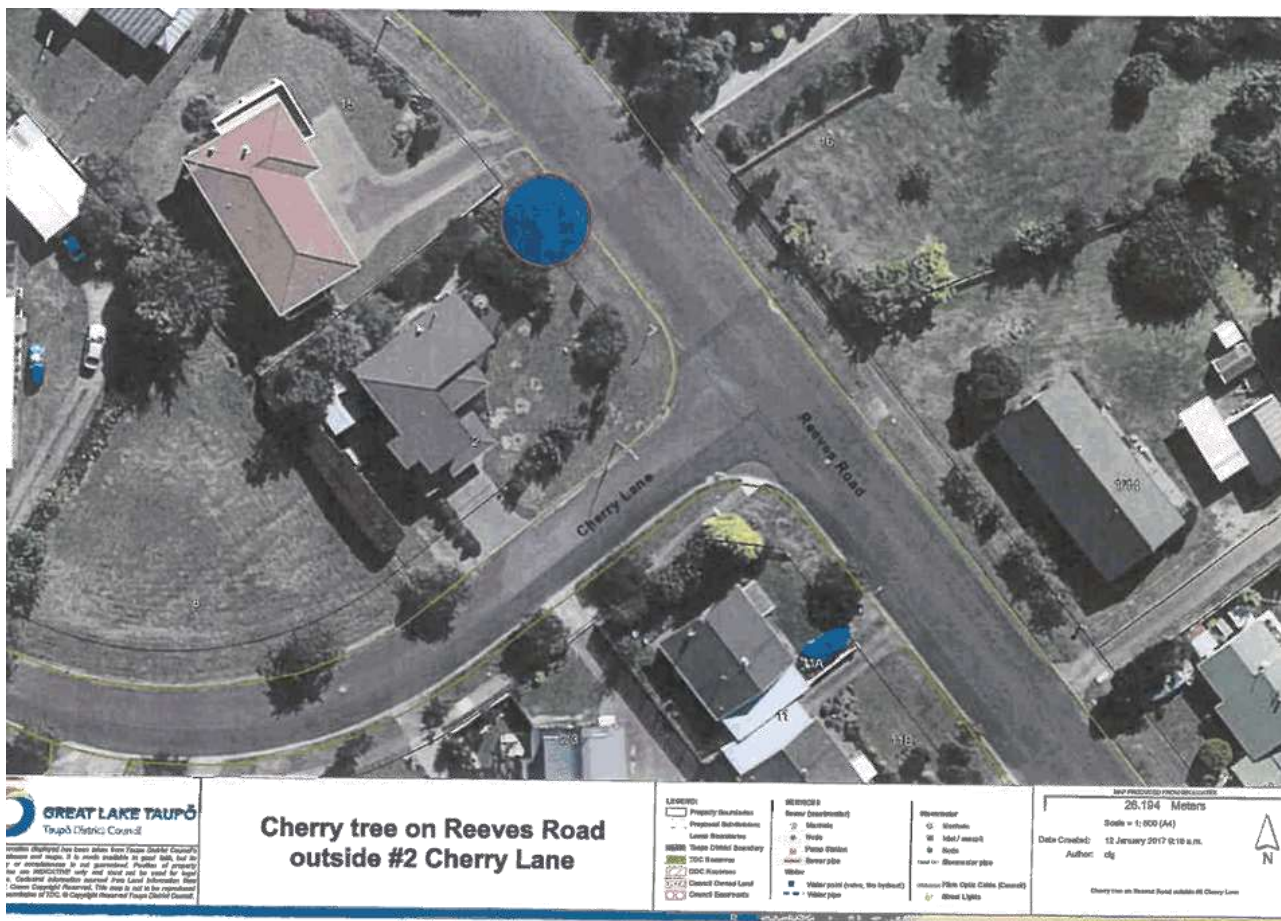












To Taupo district dog Control.

I Brian Haumaha of  
Dop "Portia" Impounded <sup>object to having my</sup> and consequently  
being euthanised.

Beginning of the year 2016 we had a few issues surrounding her enclosure and she was escaping whilst myself and my wife weren't home. We would try our best to house her properly however she still remained outside our property at times! We fixed these issues with Ray Dunbar and he was happy with the new enclosure with Deer fencing to keep her housed at all times. Prior to this she went onto other peoples properties which resulted in three infringements we were told that nothing else would happen if we made sure "Portia" was muzzled in public (which she is at all times) we had one especially made for her and she didn't get out again (which she hasn't). Registrations for this year rolled around and wife was pregnant with our 5th child during this time she had severe pregnancy complications whilst I was away working and the dog registration was the last thing on our mind during this period!

We received a letter advising of "possible disqualification" if "Portia" wasn't registered the very next day we went down and peg her. However she was already booked to be impounded and we were not aware of this until the dog control officer turned up on our doorstep. We have tried very hard to make sure "Portia" is well walked, and she is a part of our family having raised her from a 3 week old puppy due to the mother having health issues.

Please reconsider this order we would be  
Absolutely heartbroken to give her up!

We are more than happy to pay "2017"  
year of registration upfront now to make  
sure this doesn't happen next year.

I can guarantee 100% that there will be NO  
more issues surrounding "Portia" and we ask  
that our owner disqualification be lifted so  
we can continue to keep her.

Thank you for your time in this matter

Brian Haumsha



**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.

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**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.**

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**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"> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>

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

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>



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## Option 3. Rescind the disqualification in full

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>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.</li> </ul>	<ul style="list-style-type: none"> <li>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.</li> </ul>

Analysis Conclusion:

The preferred option is option 1.

**CONSIDERATIONS****Financial Considerations**

There are no financial implications.

**Legal Considerations**Local 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;

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- 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.

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**ATTACHMENTS**

Nil