



# HEARINGS COMMITTEE (DOG HEARING)

## Open Agenda

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Meeting Date: Thursday 26 May 2022

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Time: 9.30am (Dog Classification Hearing)

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Venue: Ikatere Room  
Level 2, Capeview Building  
265 Marine Parade  
Napier

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Committee Members Deputy Mayor Brosnan (In the Chair) Councillors Browne, Simpson, Tapine, Taylor and Mayor Wise  
Māori Committee Representative (Vacant)

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Officer Responsible Director City Strategy (Richard Munneke)

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Administration Governance Team

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**Next Hearings Committee (Dog Hearing) Meeting to be confirmed**

# ORDER OF BUSINESS

## Karakia

## Apologies

Nil

## Conflicts of interest

## Agenda items

- 1 Objection to Dangerous Classification - Wikitoria Mitai .....3

# AGENDA ITEMS

## 1. OBJECTION TO DANGEROUS CLASSIFICATION - WIKITORIA MITAI

<i>Type of Report:</i>	Legal
<i>Legal Reference:</i>	Dog Control Act 1996
<i>Document ID:</i>	1459972
<i>Reporting Officer/s &amp; Unit:</i>	Rachael Bailey, Manager Regulatory Solutions

### 1.1 Purpose of Report

The purpose of this report is to provide information on the dangerous dog classification under **s31(1)(b) of the Dog Control Act 1996 (the Act)**.

#### Officer's Recommendation

The Hearings Committee (Dog Hearing):

- a. Resolve to uphold the dangerous dog classification for Oma owned by Wikitoria Mitai on the basis of the evidence provided in this report.

### 1.2 Background Summary

**Owner:** Wikitoria Maureen Mitai, owner number 336331

**Dog:** Oma, female American Staffordshire/Cross aged 5 years, ID 207305

**Classification:** Classified as dangerous under s31(1)(b) of the Act

Section 31 of the Dog Control Act 1996 provides that a territorial authority must classify a dog as a dangerous dog if the territorial authority has, on the basis of sworn evidence attesting to aggressive behaviour by the dog on 1 or more occasions, reasonable grounds to believe that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal or protected wildlife.

Council has sworn evidence that Oma attacked an Animal Control Officer (ACO) in the driveway of Ms Mitai's property. The ACO was attending Ms Mitai's property following a report of a dog attack on a runner outside the property by a dog matching Oma's description.

Ms Mitai was prosecuted by the Council for the attack on the runner, however, while the judge was "highly suspicious", he was not satisfied beyond reasonable doubt. The threshold for classifying a dog as dangerous is set out below, and is "reasonable grounds to believe that the dog constitutes a threat to the safety of any person ... domestic animal ...". The threshold for classification is much different, and lower, to that required for a prosecution.

### 1.3 Legal framework

Section 31 of the Act sets out the basis for classifying a dog as dangerous.

#### **31 Territorial authority to classify dangerous dogs**

*(1) A territorial authority must classify a dog as a dangerous dog if—*

*(a) the owner of the dog has been convicted of an offence in relation to the dog under section 57A(2); or*

*(b) the territorial authority has, on the basis of sworn evidence attesting to aggressive behaviour by the dog on 1 or more occasions, reasonable grounds to believe that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife; or*

*(c) the owner of the dog admits in writing that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife.]*

*(2) Where any dog is classified as a dangerous dog under subsection (1) of this section, the territorial authority shall immediately give notice in the prescribed form of that classification to the owner.*

*(3) Where any dog is classified as a dangerous dog under subsection (1)(b) of this section, the owner may, within 14 days of the receipt of notice of that classification under subsection (2) of this section, object to the classification in writing to the territorial authority, and shall be entitled to be heard in support of his or her objection.*

*(4) In considering any objection under this section, the territorial authority shall have 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—*

*and may uphold or rescind the classification.*

*(5) The territorial authority shall give notice of its decision on any objection, and the reasons for its decision, to the owner as soon as practicable.*

Following a dangerous dog classification, the effects of the classification are set out in s32 of the Act.

#### **32 Effect of classification as dangerous dog**

*(1) If a dog is classified as a dangerous dog under section 31, the owner of the dog—*

- (a) must ensure that, from a date not later than 1 month after the receipt of notice of classification, 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 1 door of any dwelling on the property; and
- (b) 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—
- (i) muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction; and
- (ii) controlled on a leash (except when in a dog exercise area specified in a bylaw made under section 20(1)(d)); and
- (c) must produce to the territorial authority, within 1 month after the receipt of notice of classification, a certificate issued by a **[[veterinarian]]** and certifying—
- (i) that the dog is or has been neutered; or
- (ii) that for reasons that are specified in the certificate, the dog will not be in a fit condition to be neutered before a date specified in the certificate; and
- (d) must, if a certificate under paragraph (c)(ii) is produced to the territorial authority, produce to the territorial authority, within 1 month after the date specified in that certificate, a further certificate under **[[paragraph (c)(i); and]]**
- (e) must, in respect of every registration year commencing after the date of receipt of the notice of classification, be liable for dog control fees for that dog at 150% of the level that would apply if the dog were not classified as a **[[dangerous dog; and]]**
- (f) must not, without the written consent of the territorial authority in whose district the dog is to be kept, dispose of the dog to any other person.
- (2) Every person who fails to comply with subsection (1) commits an offence and is liable on ... conviction to a fine not exceeding \$3,000.
- (3) If a court convicts a person of an offence against subsection (2), the court must also make an order for the destruction of the dog unless satisfied that the circumstances of the offence were exceptional and do not warrant destruction of the dog.
- (4) Every person who sells or otherwise transfers, or offers to sell or transfer, to any other person any dog known by that person to be classified as a dangerous dog without disclosing the fact of that classification to that other person commits an offence and is liable on ... conviction to a fine not exceeding \$3,000.

*(5) If a person fails to comply with subsection (1), a dog control officer or dog ranger may—*

- (a) seize and remove the dog from the person's possession; and*
- (b) retain custody of the dog until the territorial authority has reasonable grounds to believe that the person has demonstrated a willingness to comply with subsection (1).*

*(6) Section 70 applies to a dog removed under subsection (5) as if it were removed under section 56; and accordingly section 70 applies with all necessary modifications.*

Ms Mitai was served with a dangerous dog notice of classification on or about 2 March 2022. **(Attachments 1 and 2: Dangerous classification and Notice of Receipt.)**

In accordance with s 31(3) of the Dog Control Act 1996, Ms Mitai objected to the classification of Oma in writing. Accordingly, Ms Mitai is entitled to be heard in support of her objection.

S31(4) provides the legal framework for considering the objection. This report will cover each aspect.

### ***31 Territorial authority to classify dangerous dogs***

...

*(4) In considering any objection under this section, the territorial authority shall have 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—  
and may uphold or rescind the classification.*

#### ***(a) Evidence forming the basis for the classification***

Kerry Reid, ACO has sworn an affidavit setting out an attack on him by Oma that occurred on 5 February 2021 at approximately 6:15pm at 32 Williams Street. The ACO fended off Oma and was able to get back to his vehicle uninjured.

**(Attachment 3: Affidavit of Kerry Reid).**

Mr Reid's affidavit refers to an attack on another dog by Oma on 4 June 2021 when Oma was impounded. Mr Newton, the dog owner's partner, was walking with Oma in the pound when she attacked another dog causing injury to herself and the other dog. There is video evidence of the attack that has been provided to Ms Mitai and will be available in advance of the hearing.

Mr Reid's affidavit refers to other occasions when Oma has shown aggression to other ACOs and vets, and gives the opinion that Oma is a dangerous dog that poses a risk to members of the public and other dogs.

In addition to the affidavit of the Mr Reid, there is sworn evidence from a hearing relating to an earlier attack on 5 February 2021. While Ms Mitai was found not guilty as the judge was not satisfied beyond reasonable doubt, there was sworn evidence that a dog matching Oma's description attacked a passing runner outside 32 Williams Street.

**(Attachment 4: Judgment, Attachment 5: Ruling).**

Mr Reid also provided sworn evidence at the hearing for the attack on the runner. Mr Reid described Oma's behaviour as one of the most aggressive he had seen in his five and a half years as an ACO.

The Judge concluded that while he was not satisfied beyond reasonable doubt that Oma attacked the victim, he was "highly suspicious".

The threshold for a criminal prosecution, beyond reasonable doubt, is much higher than the threshold for a dangerous classification, "*reasonable grounds to believe that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal or protected wildlife*". Although it was not provided beyond reasonable doubt that Oma was the dog responsible for the attack on the passing runner, there are reasonable grounds to believe that she was the dog responsible for the attack, and accordingly constitutes a threat to the safety of any person, domestic animal etc.

**(b) Any steps taken by the owner to prevent any threat to the safety of persons and animals;**

Ms Mitai has not advised Council of any steps taken to prevent any threat to the safety of persons or animals.

**(Attachment 6: Objection).**

**(c) The matters advanced in support of the objection;**

Ms Mitai's objection does not set out any matters in support of the objection.

**(d) Any other relevant matters—**

David Whyte, the Team Leader of the Napier City Animal Control team has provided a statement with his assessment of the threat that Oma poses. Mr Whyte's statement sets out is 19 years of experience as a Police Dog Handler, including his duties with the NZ Police Dog Section, where he was responsible for training puppies and prospective handlers. Mr Whyte received training from NZ and international experts on dog behaviour, including the types of aggression in dogs and the various drives of dogs. In that role Mr Whyte was regularly required to assess dog temperament.

As Team Leader, Mr Whyte was required to assess the risk posed by Oma to members of his team and the Napier community. Mr Whyte assessed Oma as a dangerous dog. Mr Whyte handled Oma on most of the 391 days that she was impounded, and remains of the view that she is a dangerous dog who poses a threat to the community of Napier and other animals within the community.

**(Attachment 7: Statement of David Whyte, Attachment 8: Impound Records)**

Three ACOs have provided statements regarding Oma when she was impounded, with all 3 agreeing that Oma is dangerous/poses a threat. Two experienced ACOs state that she is the most aggressive dog they have encountered.

**(Attachment 9: Statement of Kerry Reid, Attachment 10: Statement of Luke Burton, Attachment 11: Statement of Simon Kale)**

Finally there is a video of Oma attacking another dog when she was impounded. She was being walked back to her cage by Mr Newton, one of her owners who she is familiar with, when she lunged at a dog in the cage. Mr Newton was unable to stop the attack on his own and required assistance from an ACO.

*Please note that some information has been redacted under section 7(2)(a) of the Local Government Official Information and Meetings Act 1987 – that the privacy of natural persons should be protected.*

#### 1.4 Attachments

- 1 NCC - Attachment A - Dangerous Dog Classification [↓](#)
- 2 NCC - Attachment B - Notice of Receipt [↓](#)
- 3 NCC - Attachment C - Affidavit of Kerry Reid (Under separate cover 1) [⇒](#)
- 4 NCC - Attachment D - Judgement (Under separate cover 1) [⇒](#)
- 5 NCC - Attachment E - Ruling (Under separate cover 1) [⇒](#)
- 6 NCC - Attachment F - Objection (Under separate cover 1) [⇒](#)
- 7 NCC - Attachment G - Statement of David Whyte (Under separate cover 1) [⇒](#)
- 8 NCC - Attachment H - Impound Records (Under separate cover 1) [⇒](#)
- 9 NCC - Attachment I - Statement of Kerry Reid (Under separate cover 1) [⇒](#)
- 10 NCC - Attachment J - Statement of Luke Burton (Under separate cover 1) [⇒](#)
- 11 NCC - Attachment K - Statement of Simon Kale (Under separate cover 1) [⇒](#)
- 12 W Mitai - Attachment A.pdf (Under separate cover 1) [⇒](#)
- 13 W Mitai - Attachment B.pdf (Under separate cover 1) [⇒](#)
- 14 W Mitai - Attachment C.pdf (Under separate cover 1) [⇒](#)
- 15 W Mitai - Attachment D.pdf (Under separate cover 1) [⇒](#)
- 16 W Mitai - Attachment E - Dog Owner Submissions on Appeal Against Dangerous Dog Classification.pdf (Under separate cover 1) [⇒](#)
- 17 W Mitai - Attachment F - Council Dog ID Process May 2021.pdf (Under separate cover 1) [⇒](#)









