



HEARINGS COMMITTEE (DOG HEARING)

Open Agenda

Meeting Date: Thursday 26 May 2022

Time: 9.30am (Dog Classification Hearing)

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

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

Officer Responsible Director City Strategy (Richard Munneke)

Administration Governance Team

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 Mitai3

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 & 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) [⇒](#)

Owner No: 336331

1 March 2022



Wikitoria Maureen Mitai



Dear Wikitoria

DANGEROUS DOG: NOTICE OF CLASSIFICATION

Section 31, Dog Control Act 1996

This is to notify you* that this dog known as Oma, Female Entire Brindle Terrier, American Staffordshire/Cross, has been classified as a dangerous dog under Section 31 (1) (b) the Dog Control Act 1996 because the Napier City Council has, on the basis of sworn evidence attesting to aggressive behaviour by the dog on one or more occasions, reasonable grounds to believe your dog constitutes a threat to the safety of any person, stock, poultry, domestic animals or protected wildlife. A summary of the effect of the classification and your right to object is provided overleaf.

Yours faithfully

David Whyte
Team Leader Animal Control

*For the purposes of the Dog Control Act 1996, you are the owner of a dog if:

- You own the dog; or
- You have the dog in your possession (otherwise than for a period not exceeding 72 hours for the purpose of preventing the dog causing injury, or damage, or distress, or for the sole purpose of restoring a lost dog to its owner); or
- You are the parent or guardian of the person under 16 years of age who is in possession of the dog and who is a member of your household living with and dependent on you



Effect of Classification as a Dangerous Dog

Sections 32 and 36A, Dog Control Act 1996

1. You are required:
 - a. within one month after the receipt of this notice, to ensure that the dog is kept within a securely fenced portion of your property that is not necessary to enter to obtain access to at least one door of any dwelling on the property; and
 - b. not allow the dog to be at large in any public place or private way (other than when confined completely within a vehicle or cage) without:
 - i. the dog being muzzled in such a manner as to prevent the dog from biting but allow it to breathe and drink without obstruction; and
 - ii. the dog being controlled on a leash (except in a designated dog exercise area); and
 - c. to produce to Napier City Council within one month after the receipt of notice, a certificate issued by a registered veterinary surgeon certifying:
 - i. that the dog 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. where a certificate under paragraph (c) (ii) is produced to the Napier City Council, to produce to the Napier City Council, within one month after the date specified in that certificate, a further certificate under paragraph (c); and
 - e. in respect of every registration year commencing after receipt of this notice, to pay dog control fees for that dog at 150% at the level that would apply if the dog were not classified as a dangerous dog; and
 - f. not to dispose of the dog to any other person without the written consent of the territorial authority in whose district the dog is to be kept.

You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with all of the matters in paragraphs (a) to (f) above. In addition, on conviction the court must order the destruction of the dog unless satisfied that the circumstances of the offence were exceptional and do not justify the destruction of the dog.

A dog control officer or dog ranger may seize and remove the dog from you if you fail to comply with all of the matters in paragraphs (a) to (f) above. The ranger or officer may keep the dog until you demonstrate that you are willing to comply with paragraphs (a) to (f).

You will also commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you sell or otherwise transfer the dog, or offer to do so, to any other person without disclosing that the dog is classified as a dangerous dog.

You are required, for the purpose of providing permanent identification, to arrange for the dog to be implanted with a functioning microchip transponder.

You are required to make the dog available, within 2 months from the date of this letter, at the Dog Control Shelter, Depot Place, Napier between the hours of 8.30am to 9.30am and 3.30pm to 4:30pm on any working day Monday to Friday or 9.00am to 10.00pm Saturday and Sunday for verification that the dog has been micro-chipped.

You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with this requirement.

If the dog is in the possession of another person for a period not exceeding 72 hours, you must advise that person of the requirement to not allow the dog to be at large or in any public place or in any private way (other than when confined completely within a vehicle or cage) without the dog being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction. You will commit an offence and be liable on conviction to a fine not exceeding \$500 if you fail to comply with this requirement.

Full details of the effect of classification as a dangerous dog are provided in the Dog Control Act 1996.

**Right of Objection to Classification**

Section 31(3), Dog Control Act 1996

You may object to the classification by lodging with the Napier City Council a written objection within 14 days of receipt of this notice setting out the grounds on which you object. You are entitled to be heard in support of the objection and will be notified of the time and place at which your objection will be heard.

Please Note: In the event of a Council Hearing the Council report and minutes of the hearing will be posted on Council's website. Other documentation and correspondence may also be made available to the public upon request and after considering any legal obligations.



NAPIER
CITY COUNCIL
Te Kaunihera o Ahuriri

Dangerous Dog Classification Notice of Receipt

I, Wiktoria Mitai [redacted] have today _____
been issued with a notice classifying my dog/s namely "OMA", female, brindle,
American Staff, cross as a dangerous dog/s.

The details of the notice have been explained to me and I fully understand the requirements of the Classification. I also understand that I will be liable for prosecution and there will be an order for the dogs' destruction, should I fail to comply with any of the requirements.

It has been explained to me that I **must**:

- **Fence** the dog into a portion of the property, which it is not necessary to enter to obtain access to a door of any dwelling on the property, within one month
- Provide the dog with adequate exercise however not exercise the dog in a public place without a **muzzle** being worn
- Ensure that the dog is **leashed** when in a leash control area
- Cause the dog to be **neutered** by a registered Veterinarian and provide to Council a certificate certifying that the dog has been neutered, within one month
- If the dog has already been neutered a **certificate** is still required
- Apply to Council for **written consent** to dispose of the dog to anyone else. Note; the dangerous dog classification must be explained to the new owner and the dangerous dog classification requirements remain with the dog
- Where this dog is in the temporary possession of any other person, **advise** that person of the requirement to muzzle and leash the dog
- Cause the dog to be implanted with a functioning **microchip transponder** within two months after 1 July 2006.

Muzzle provided Yes / No

Owners Signature: Wiktoria Mitai

Officers Signature: Yane

Date: 2/3/22