



**NAPIER**  
CITY COUNCIL  
*Te Kaunihera o Ahuriri*

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# HEARINGS COMMITTEE

## (DOG HEARING)

### Open Agenda

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Meeting Date:	Thursday 9 November 2017
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Time:	1.00pm
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Venue:	Breakout Room 2 Napier Conference Centre Marine Parade Napier
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Council Members	Councillor Jeffery (In the Chair) Councillors White and Wise
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Officer Responsible	Director City Strategy
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Administrator	Governance Team
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**Next Hearings Committee (Dog Hearing) Meeting to be confirmed**

# ORDER OF BUSINESS

## Apologies

Nil

## Conflicts of interest

## Public forum

Nil

## Announcements by the Chairperson

## Announcements by management

## Agenda items

- 1 Objection to Disqualification from Dog Ownership under s26 of the Dog Control Act 1966....3

## Public Excluded

Nil

# AGENDA ITEMS

## 1. OBJECTION TO DISQUALIFICATION FROM DOG OWNERSHIP UNDER S26 OF THE DOG CONTROL ACT 1996

Type of Report:	Legal
Legal Reference:	Dog Control Act 1996
Document ID:	401535
Reporting Officer/s & Unit:	Richard Munneke, Director City Strategy

### 1.1 Purpose of Report

The Hearings Committee has been delegated, by Council, the power to hear, consider and decide objections made under section 33B of the Dog Control Act 1996 ('the Act').

An objection has been made in response to disqualification from dog ownership under s26 of the Act, by Isabell Povey and Jamie Kenward, thus requiring a hearing.

### 1.2 Background Summary

Ms Povey and Mr Kenward were notified that they were disqualified from dog ownership on the 2 August 2017, following on from the conviction in the Napier District Court for an offence under section 57(2) of owning a dog that attacked a person.

The conviction related to an incident involving Ms Povey and Mr Kenwards' dogs "Roman" and "Zeus" who attacked an Animal Control Officer. The disqualification period imposed was a period of 4 years, which was effective from the date of the offence, being 17 January 2017.

The disqualification from ownership was imposed under section 25 of the Act, which states:

#### **Section 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; or*

*(b) 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.*

*(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.*

*(2) For the purposes of subsection (1)(a), a person must be treated as having committed an infringement offence if—*

*(a) that person has been ordered to pay a fine and costs under section 375 of the Criminal Procedure Act 2011, or is deemed to have been so ordered under section 21(5) of the Summary Proceedings Act 1957; or*

*(b) the infringement fee specified on the infringement notice in respect of the offence issued to the person under section 66 has been paid.*

*(3) A disqualification under subsection (1) continues in force for a period specified by the territorial authority not exceeding 5 years from the date of the third infringement offence or offences (as the case may be) in respect of which the person is disqualified.*

*(4) If a person is disqualified under subsection (1), the territorial authority must, as soon as practicable, give written notice in the prescribed form to the person of that decision.*

### **1.3 The Objection**

Ms Povey and Mr Kenward have objected to the disqualification pursuant to section 26 of the Act.

Ms Povey and Mr Kenwards objection was received by Council on the 14 August 2017.

The objection details the following reasons;

1. Mr Fisher and Ms Povey are competent dog owners
2. They have taken all steps to remedy any issues
3. The offence was not serious

### **1.4 Hearings Committee jurisdiction**

In considering the objection, the Committee must have regard to the matters set out in section 26(3) of the Act. Section 26 states as follows;

#### **26. Objection to disqualification**

*(1) Every person disqualified under section 25 of this Act –*

*(a) may object to the disqualification by lodging with the territorial authority a written objection to the disqualification; and*

*(b) shall be entitled to be heard in support of the objection.*

*(2) An objection under this section may be lodged at any time but no objection shall be lodged within 12 months of the hearing of any previous objection to the disqualification.*

*(3) In considering any objection under this section, the territorial authority shall have regard 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.*

*(4) In determining any objection, the territorial authority may uphold, bring forward the date of termination, or immediately terminate the disqualification of any person and shall give written notice of its decision, the reasons for it, and the right of appeal under section 27 to the objector.*

## **1.5 Attachments**

- A Notice of Disqualification from Dog Ownership [↓](#)
- B Objection to s25 Disqualification [↓](#)



2 August 2017

Owner No: 331439

Isabell Povey  
Jamie Kenward  
17 Hornsey Road  
Bluff Hill  
**Napier 4110**

Dear Isabell and Jamie

**NAPIER CITY COUNCIL NOTICE OF DISQUALIFICATION FROM DOG OWNERSHIP**

Section 25, Dog Control Act 1996

This is to notify you that you have been disqualified under [section 25](#) of the Dog Control Act 1996 from owning any dog.

This follows—

- your conviction for being the owner of a dog that attacked a person under S57(2) of the Act

The disqualification will apply from 13 January 2017 until 13 January 2021.

A summary of the effect of the disqualification and your right to object is provided below.

Yours sincerely

Hayleigh Brereton  
**Manager Regulatory Solutions**

**Effect of disqualification**

[Section 28](#), Dog Control Act 1996

You are required to dispose of every dog owned by you within 14 days of the date of this notice.

However, you may not dispose of a dog—

- to a person who resides at the same address as you; or
- in a way that constitutes an offence against the [Dog Control Act 1996](#) or any other Act.

You must not become the owner, even on a temporary basis, of any dog while you are disqualified. You may have possession of a dog only for the purpose of—

- preventing it from causing injury, damage, or distress; or
- returning, within 72 hours, a lost dog to a territorial authority for the purpose of restoring the dog to its owner.

You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you—

- fail to dispose of every dog owned by you within 14 days of this notice; or
- at any time while disqualified, become the owner of any dog; or
- dispose of a dog owned by you—
  - to a person who resides at the same address as you; or
  - in a manner that constitutes an offence against the [Dog Control Act 1996](#) or any other Act.

If you are convicted of the first or second of these offences, your period of disqualification may be further extended.

You will also commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you dispose or give custody or possession of a dog to a person knowing that person to be disqualified from ownership under [section 25](#) of the Dog Control Act 1996.

Full details of the effect of disqualification are provided in the [Dog Control Act 1996](#).

**Right of objection to disqualification**

[Section 26](#), Dog Control Act 1996

You may object to the disqualification by lodging a written objection with the Napier City Council setting out the grounds on which you object. You are entitled to be heard in support of your objection and will be notified of the time and place when your objection will be heard.

No objection can be lodged within 12 months of the hearing of any previous objection to the disqualification. If an objection is lodged within 14 days after the date of this notice, the requirement to dispose of every dog owned by you will be suspended until the Napier City Council has determined the objection.

There is a further right of appeal to a District Court if you are dissatisfied with the decision of the Napier City Council on your objection.

**Hayleigh Brereton**

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**From:** Baden Meyer <baden@highstreetlaw.co.nz>  
**Sent:** Monday, 14 August 2017 15:50  
**To:** Hayleigh Brereton  
**Cc:** Jamie Fisher  
**Subject:** Fisher(Kenward) - Povey - Objection to s25 Disqualification  
  
**Importance:** High

Hayleigh,

This email is to confirm Mr Fisher and Ms Povey object to the disqualification from ownership under s25 of the Dog Control Act 1996.

Full grounds for objecting to the disqualification shall be provided in due course but in the interim I can confirm that the grounds for objecting to the classification are pursuant to s26 (a) through (c) of the Dog Control Act namely:

- (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.

Put plainly Mr Fisher and Ms Povey are competent dog owners, they have taken all possible steps to remedy any issues and the offence which qualifies as giving rise to the Notice to Disqualify was not serious. In all the circumstances the Notice to Disqualify is not warranted nor consistent with the principles underpinning the section and the Act as a whole.

Kind regards,

**Baden Meyer**

Barrister

021 2888560



Level 5, 43 High Street PO Box 184, Shortland Street Auckland City 1140 *Principal: Baden Meyer Barrister – Trading as High Street Law CAUTION: This email message and any attachments contain information that is CONFIDENTIAL and may be LEGALLY PRIVILEGED. If you are not the intended recipient any use, disclosure or copying of this message or attachments is strictly prohibited. If you have received this email message in error, please notify the writer immediately and destroy all copies of the message and attachments. You must scan this email and attached files for viruses. Baden Meyer Barrister does not represent or warrant that the files attached to this email are free from computer viruses or other defects. Any attached files are provided, and may be used, on the basis that the user assumes responsibility for any loss, damage or consequence resulting directly nor indirectly from the use of the attached files.*