
Agenda for a hearing by Commissioners of the Regulatory Subcommittee for Waikato District Council to be held in Committee Rooms 1 and 2, 15 Galileo Street, Ngaruawahia on **FRIDAY, 21 APRIL 2023**, commencing at **11.30am**.

Information and recommendations are included in the reports to assist the Subcommittee in the decision-making process and may not constitute Council's decision or policy until considered by the Subcommittee.

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GJ Ion
CHIEF EXECUTIVE

To	Policy and Regulatory Subcommittee
Report title	Objection to Disqualification from Dog Ownership – Marcus Shepherd
Date:	21 April 2023
Report Author:	Tracey Oakes, Animal Control Team Leader
Authorised by:	Sue O’Gorman, General Manager Customer Support

1. Purpose of the report

Te Take moo te puurongo

To provide information to the Policy and Regulatory Subcommittee to enable that committee to hear the objection to a disqualification from dog ownership by Marcus Shepherd, and to make a decision on the objection.

2. Executive summary

Whakaraapopototanga matua

Section 25 (1)(b) of the Dog Control Act 1996 (**the Act**) states that the Territorial Authority must disqualify a person from being an owner of a dog if the person is convicted of an offence (not being an infringement offence) against the Act.

In accordance with Section 25 (1A) of the Act the requirement in Section 25(1)(b) of the Act to disqualify a person from being an owner of a dog where they have been convicted of an offence, does not apply if the Territorial Authority is satisfied that the circumstances of the offences are such that disqualification is not warranted, or a probationary owner status should be applied instead.

Section 25(3) of the Act provides that a disqualification under section 25(1) continues in force for a period specified by the territorial authority not exceeding 5 years.

On 21 September 2021 Mr Marcus Shepherd (Mr Shepherd) was convicted of an offence under section 57 of the Act, relating to an incident where his dog attacked a person causing injury requiring the victim of the attack to be hospitalised. This section of the “Act” is not an infringement offence.

The Animal Control Team Leader subsequently exercised their delegation and disqualified Mr Shepherd from being a dog owner as required by the Act and served written notice on Mr Shepherd. In exercising their discretion, the Animal Control Team Leader considered

Section 25(1A) and did not consider that the circumstance of the offence determined that disqualification was not warranted, nor that probationary status should be substituted for disqualification. Section 25 annexed as Appendix 1.

On 4 October 2022 Mr Shepherd objected in writing to the disqualification in accordance with Section 26 of the Act. Section 26 annexed as Appendix 2.

3. Staff recommendations Tuutohu-aa-kaimahi

- a. **THAT the Regulatory Sub-committee receives the report of the General Manager Customer Support - (Objection to Disqualification from Dog Ownership - Marcus Shepherd).**
- b. **THAT the Regulatory Sub-committee upholds the Disqualification from Dog Ownership of Marcus Shepherd under section 25 (1)(b) of the Dog Control Act 1996 for the full term of 5 years.**

4. Background Koorero whaimaarama

On 11 January 2021 Council received a complaint from Mr Terry Williams (Mr Williams). Mr Williams had been attacked by a dog on his own property on 31 December 2020. Terry had subsequently spent 3 days in hospital. Service Request annexed as Appendix 3.

Officer Amanda Davis (Officer Davis) was allocated the service request and investigated the complaint. Officers Statement annexed as Appendix 4.

The dog involved is a Tan and White large American Bulldog desexed male, owned by Marcus Shepherd. NDD record annexed as Appendix 5.

Officer Davis spoke with Mr Shepherd on several occasions to discuss making Buddy available for seizure. Mr Shepherd refused to do this on each occasion.

On 19 February 2021 Mr Shepherd was infringed under Section 18 of the Act - Wilful Obstruction of a Dog Control Officer. Infringement annexed as Appendix 6.

As Mr Shepherd lives in the Waipa District, Officer Davis requested Waipa District Council's assistance to seize Buddy on our behalf. Waipa were unable to locate Buddy at Mr Shepherd's property in Kihikihi.

On 15 February 2021, the victim Mr Williams advised Officer Davis that Buddy was in Thames with Mr Shepherd's sister. Officer Davis called Thames Coromandel District Council and spoke with Officer Ward. Officer Ward advised that Buddy had been involved in an attack on a Police Officer in Thames and had been seized and subsequently released Classified Dangerous. No objection to the Dangerous Classification was received. Officer Ward advised that Buddy was back at Mr Shepherd's property in Kihikihi.

On 26 February 2021 Waipa District Council seized Buddy from Mr Shepherd's address in Kihikihi and was subsequently held in the Ngaruawahia Dog Pound facility.

Council lodged charging documents with the Morrinsville Court relating to the attack on Mr Williams. Admission by Agreement annexed as Appendix 7.

During the investigation of this matter, the victim died from an unrelated chronic illness so was unable to give evidence during the hearing. His witness statement given to Council Animal Control Officers was admitted to evidence. Mr Williams' statement recorded that he moved the dog along with his foot when it leaned against the house and the wet paint.

Also admitted to evidence at the District Court hearing was a written document from Mr Shepherd's brother (who was also unable to attend the hearing) that alleged Mr Williams kicked Buddy. Annexed as Appendix 13.

On 21 September 2021 the District Court in Morrinsville heard the matter in a Judge alone trial. Mr Shepherd was found guilty under section 57 of the Act.

On 28 September 2022 a discussion was held between Officer Davis and Animal Control Team Leader Tracey Oakes (Ms Oakes) to consider the matter of disqualification. The Animal Control Team Leader holds the delegation to disqualify an owner in accordance with Section 25 of the Act. The Animal Control Team Leader exercised their discretion to disqualify Mr Shepherd for the maximum period of 5 years considering the following factors;

1. the dog attacking people (Mr Williams and then the police officer);
2. the dog being classified as dangerous;
3. the seriousness of the injuries suffered by Mr Williams requiring hospitalisation; and
4. the complete absence of responsibility or remorse from Mr Shepherd – including;
 - a. moving the dog to evade and obstruct Officers carrying out duties under the Act; and
 - b. blaming the (now deceased) victim Mr Williams for the attack (based on allegations that the dog was kicked, which was unable to be proven in Court),

Ms Oakes signed the Notice of Disqualification which was served to Mr Shepherd by email and registered post. Notice of Disqualification annexed as Appendix 8.

On 4 October 2022, Council received a written objection from Mr Shepherd to the disqualification by email. Objection annexed as Appendix 9.

5. Discussion and analysis

Taataritanga me ngaa tohutohu

Section 28 of the Act (annexed as appendix 10) details the effect of the disqualification. A disqualified dog owner cannot be in possession of a dog at any time, except for:

- Preventing a dog from causing injury, damage, or distress
- Returning, within 72 hours, a lost dog to the territorial authority for the purpose of restoring the dog to its owner

In effect a disqualified person is not allowed to own a dog, or have a dog under their control.

Section 26 of the Act [Appendix 2] provides that in determining this objection the Committee 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.

As a result of this analysis, the Committee will have the following options:

- A. uphold the disqualification for the prescribed period, or
- B. uphold the disqualification but bring the termination date forward, or
- C. terminate the disqualification immediately.

The Committee must give written notice of its decision, the reasons for it, and the right of appeal under Section 27 of the Act to the objector. Section 27 annexed as Appendix 11.

The right of appeal is to the District Court and must be made within 14 days of the date on which the notice of the decision is given.

The option preferred by staff is option A (that the disqualification be upheld for the 5 year period), and the reasons for this recommendation are discussed below.

5.1 Options

Ngaa koowhiringa

Staff recommend option A because:

- The Act states that the territorial authority must disqualify a person from being an owner of a dog if the person is convicted of an offence (not being an infringement offence) against the Act (unless the exceptions in Section 25(1A) apply). Parliament clearly intended that owners of dogs that have been convicted of offences should, as a starting point, be temporarily prevented from owning dogs.
 - Mr Shepherd was convicted of an offence under the Act, namely being the owner of a dog that attacked a person. Mr Shepherd did not witness the attack, admitting that at the time Buddy bit Mr Williams he was at another area of the property. He also admitted that his dog bit Mr Williams, and that Mr Williams required hospital admission and medical treatment as a result of the bite.
 - Mr Shepherd continues to maintain that Mr Williams kicked Buddy and that was the reason Buddy bit Mr Williams. Mr Shepherd's claim was not found to be proven by the Court at the hearing.
 - The Court, in considering whether it should order destruction of the dog following its finding that Mr Shepherd was guilty of the section 57 charge, considered that it could not determine whether the alleged kick took place or not, and on that basis assessed that exceptional circumstances existed that meant the Court would not order destruction of the dog.
 - The Court's analysis in relation to the alleged kick was in relation to the destruction of the dog issue, and consideration of whether in terms of Section 57
-

of the Act the circumstances of the offence were exceptional and did not warrant destruction of the dog.

- It is not correct to assert that the Court found that Mr Williams kicked the dog. Council staff maintain that Mr Shepherd's position, effectively that it was Mr Williams' fault that he was bitten and significantly injured, is indicative of Mr Shepherd's failure to show remorse or take responsibility for the actions of a dog he owns, that elevates the risk to the public if he were to continue to be eligible for dog ownership.
- Staff consider the disqualification as issued is warranted, and the exceptions under section 25(1A) of the Act do not apply, because:
 - The attack that Buddy was involved with was of a serious nature and Mr Shepherd has continued to deny responsibility and to minimise the impact it had on the victim's life;
 - Mr Shepherd hid Buddy when Council made contact with him to discuss the attack and seize the dog for the attack;
 - While hidden Buddy subsequently attacked a Police Officer and was classified Dangerous by the Thames Coromandel District Council;
 - Mr Shepherd continued to refuse to work with Council in regard to the attack. Buddy was subsequently sighted at Mr Shepherd's property by Waipa District Council and seized on Councils behalf;
 - Mr Shepherd has continued to state that it was the victim's fault (alleging Mr Williams kicked the dog) and because it was Buddy's first offence he should just get a warning, despite causing substantial damage to the victim requiring hospital treatment

The Animal Control Team Leader considered the option of imposing probationary owner status on Mr Shepherd, however concluded that the imposition of probationary owner on Mr Shepherd would not adequately mitigate the risk of Mr Shepherd continuing to own dogs against the background of the factors set out above. The use of the probationary classification is often used by Council for dog owners that have committed three infringement offences of a lesser nature. This allows the dog owner to keep the dogs they have, however they cannot get any further dogs while classified probationary. Given the circumstances of this case, classifying Mr Shepherd probationary was not consistent with previous decisions or appropriate in this situation. Section 21 to Section 24 of the Act annexed as appendix 12.

Mr Shepherd in his objection notes that he will ensure that Buddy is fenced in his own section of yard with his own kennel, be muzzled when in public and kept on lead if walked during busy times at the park. Buddy is subject to a dangerous classification, and those actions are required as a consequence of the classification irrespective of who owns Buddy.

Mr Shepherd also noted in his objection that he would take Buddy to 'dog education training classes' to help him reintegrate into life outside the pound. Council has no evidence that Mr Shepherd has taken Buddy to training once released from the pound.

Mr Shepherd seeks in his objection that either the Committee terminate the disqualification or substitute probationary owner status in the place of disqualification. The Committee is bound by the provisions of the Act, that only provides for upholding the

disqualification, changing the period of disqualification, or terminating the disqualification. Accordingly the Committee is unable to substitute probationary owner status.

5.2 Financial considerations

Whaiwhakaaro puutea

There are no material financial considerations associated with the recommendations of this report.

5.3 Legal considerations

Whaiwhakaaro-aa-ture

Staff confirm that the staff recommendation complies with the Council's legal and policy requirements. Legal Counsel will be available to assist the Committee with the matters of law as required.

5.4 Strategy and policy considerations

Whaiwhakaaro whakamaaherehere kaupapa here

The report and recommendations are consistent with the Council's policies, plans and prior decisions.

5.5 Maaori and cultural considerations

Whaiwhakaaro Maaori me oona tikanga

There are no wider Maaori or cultural considerations involved in the exercise of Council's legislative responsibilities under the Act, where an individual dog owner has a conviction.

5.6 Climate response and resilience considerations

Whaiwhakaaro-aa-taiao

The matters in this report have no known impact on climate change or resilience for the Council.

5.7 Risks

Tuuraru

Should the Committee uphold the disqualification and proceed with the staff recommendation, the Objector is entitled to appeal the decision to the District Court.

Should the Committee uphold but shorten the length of time of the disqualification, the Objector is still entitled to appeal the decision to the District Court, and will be able to own and be responsible for dogs in public and private spaces after the disqualification period ends.

Should the Committee terminate the disqualification, the Objector will be free to own (and therefore be responsible for) dogs after having committed an offence under the Act, and despite failing to take responsibility for prior attacks, increasing the risk of further serious safety incidents.

6. Significance and engagement assessment Aromatawai paahekoheko

6.1 Significance Te Hiranga

The decisions and matters of this report are assessed as of low significance, in accordance with the Council's [Significance and Engagement Policy](#).

6.2 Engagement Te Whakatuutakitaki

This is a regulatory/operational matter concerning an individual and we do not propose to inform more broadly than necessary to give effect to the disqualification, if upheld.

7. Next steps Ahu whakamua

Should the disqualification be upheld, it will apply at a national level.

Council's role will be to update the relevant records and inform the Waipa District Council of the outcome as the disqualification will need to be enforced.

There is a right of appeal of the Committee's decision to the District Court.

8. Confirmation of statutory compliance Te Whakatuuturutanga aa-ture

As required by the Local Government Act 2002, staff confirm the following:

The report fits with Council's role and Committee's Terms of Reference and Delegations.	Confirmed
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The report contains sufficient information about all reasonably practicable options identified and assessed in terms of their advantages and disadvantages (<i>Section 5.1</i>).	Confirmed
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Staff assessment of the level of significance of the issues in the report after consideration of the Council's Significance and Engagement Policy (<i>Section 6.1</i>).	Low
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The report contains adequate consideration of the views and preferences of affected and interested persons taking account of any proposed or previous community engagement and assessed level of significance (<i>Section 6.2</i>).	Confirmed
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The report considers impact on Maaori (<i>Section 5.5</i>)	Not applicable
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The report and recommendations are consistent with Council's plans and policies (<i>Section 5.4</i>).	Confirmed
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The report and recommendations comply with Council's legal duties and responsibilities (<i>Section 5.3</i>).	Confirmed
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9. Attachments

Ngaa taapirihanga

Attachment 1 – Section 27 of the Act

Attachment 2 – Section 26 of the Act

Attachment 3 – Service Request

Attachment 4 – Officer Statement

Attachment 5 - NDD Record

Attachment 6 - Infringement

Attachment 7 - Admission by agreement

Attachment 8 - Notice of Disqualification

Attachment 9 - Objection

Attachment 10 - Section 28 of the Act

Attachment 11- Section 27 of the Act

Attachment 12- Section 21 to Section 24 of the Act



New Zealand Legislation

Dog Control Act 1996

If you need more information about this Act, please contact the administering agency: **Department of Internal Affairs**

Disqualification of owners

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 561](#) 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.

Section 25: substituted, on 1 December 2003, by [section 14](#) of the Dog Control Amendment Act 2003 (2003 No 119).

Section 25(1): amended, on 7 July 2004, by [section 7\(1\)](#) of the Dog Control Amendment Act 2004 (2004 No 61).

Section 25(1A): inserted, on 7 July 2004, by [section 7\(2\)](#) of the Dog Control Amendment Act 2004 (2004 No 61).

Section 25(2)(a): replaced, on 1 July 2013, by [section 413](#) of the Criminal Procedure Act 2011 (2011 No 81).



New Zealand Legislation

Dog Control Act 1996

If you need more information about this Act, please contact the administering agency: **Department of Internal Affairs**

26 Objection to disqualification

- (1) Every person disqualified under [section 25](#)—
 - (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.

Request Number: DOGS1907/21
 Date Received: 11/01/2021
 Source: Phone
 Status: P
 Group: DOGSCRM
 Category: DogAggHist
 Process Counter: 510894

Priority: Medium
 Completed On: 24/03/2021
 Resp Workgroup: Dogs
 Raised By: DHERE001
 Resp User: AFORB001
 Call Back?: Yes

Related Property & Customer

Property Address: Seifert Road

Home
 Telephone:

Mobile Telephone: 027-4518458

Work
 Telephone:

Caller Name: Terry Dean Williams

Caller Address: 517 Seifert Road~RD 5~Morrinsville 3375

Caller Email: terrydw@outlook.co.nz

Request Details

Description: Dog attacked Terry at this property on 31/12/2020. Dog belonged to the painter who was working on the house at the time. Big dog, over 50kgs. Put Terry in hospital for 3 days. Brown and white dog. Some sort of mastiff/bull dog but not entirely sure.

Terry was not comfortable speaking with me about the attack and would prefer to speak with the animal control officer. Please call at your soonest convenience to discuss in further detail - 027-4518458

Resolution Description: Completed

Resolution Details: prosecution pending

Memo Details

There are no memos for this request

Event Details

Event Ctr	Related Table	Table No	Sequence	Event Code	Description	Date Commenced	Date Finalised	Status
7227824	ramAP	510894	100	CRMCreate	CRM Created	11/01/2021	11/01/2021	P
7227825	ramAP	510894	200	DogSeized	Dog Seized?	11/01/2021	24/03/2021	P
7227826	ramAP	510894	300	DogClass	Current Dog Classification?	24/03/2021		C
7227827	ramAP	510894	2000	CRMComplet	CRM Completed	24/03/2021	24/03/2021	P

**IN THE DISTRICT COURT
MORRINSVILLE REGISTRY**

CRN No: 21039500035

BETWEEN

WAIKATO DISTRICT COUNCIL

Prosecutor

AND

MARCUS WAYNE SHEPHERD

Defendant

WITNESS STATEMENT OF AMANDA DAVIS

DATED THE

DAY OF MAY 2022

**BROOKFIELDS
LAWYERS**

S J Corlett

Telephone No. 09 379 9350

Fax No. 09 379 3224

P O Box 240

DX CP24134

AUCKLAND

1. My full name is Amanda Davis. I have been an Animal Control Officer for the Waikato District Council ("Council") for over 9 years. I am warranted by Council to monitor compliance with the requirements of the Dog Control Act 1996 ("Act"). My warrant for appointment under the Act covers the Waikato District.
2. On 11 January 2021, a service request (request number DOGS1907/21) was logged with Council's Call Centre. The caller was Terry Dean Williams, who advised that he had been attacked by a dog that belonged to a painter working at his property and wanted to speak with an Animal Control Officer ("ACO"). The request was assigned to me as ACO number 7. **[EXHIBIT]**.
3. On 12 January 2021 at approximately 11.00am, I called Mr Williams, introduced myself and advised that I was an Animal Control Officer investigating his dog attack complaint.
4. During our phone call, Mr Williams told me that he had been attacked by a dog belonging to a person that had been doing painting work at his property at 517 Seifert Road, Tauhei, and the attack had occurred on 30 December 2020 at around 1.00pm-1.30pm at the same property. He also said that as a result of his injuries he had been transferred from A&E to the Plastics Team at Waikato Hospital and he had been in Hospital from 30 December until he was released on 1 January. He also said the dog that attacked him was named "Buddy" and that it belonged to Marcus Shepherd who lived at 10 Sheehan Street, Kihikihi. Mr Williams also advised that Buddy was meant to be muzzled but was not at the time of the attack.
5. On 13 January 2021 at approximately 12.10pm, I visited Mr Williams at 517 Seifert Road and took a written witness statement from him. Prior to taking Mr Williams' statement, I specifically cautioned him regarding the importance of giving an accurate and truthful written statement and also told him that his statement could be used in Court action. Mr Williams acknowledged this by nodding and saying yes, indicating to me he fully understood matters.

6. I then asked Mr Williams to tell me his full recollection of what occurred in his own words. He proceeded to detail his version of events and I wrote down everything he said.
7. Once I had drafted his written statement, I read the full statement back to Mr Williams. This included the acknowledgement at the end of the statement which confirmed the truth and accuracy of the statement, that such may be used in court proceedings, and that he is aware that it is an offence to make a statement that is known to be false. After doing so, Mr Williams told me that he was happy with the statement and that he understood the requirements of the Acknowledgment. **[EXHIBIT]**.
8. During my visit with Mr Williams that day, I noticed that his injured foot was heavily bandaged. Later that day Mr Williams sent me photos via text message of his injuries which I understand were taken by him in Hospital straight after the attack. **[EXHIBITS]**
9. At the time of my visit with Mr Williams, I also photographed him on site at the Seifert Road property to get an understanding where he was situated at the time leading up to the attack and where he was when attacked. **[EXHIBITS]**
10. On 14 January 2021 at about 11.30am, I received a call from Mr Shepherd enquiring about what was going to happen. I advised him of Council's process and of our intention to prosecute given the circumstances. I asked him to surrender the dog and he refused. I said that we would seize the dog and he stated several times he would move the dog to prevent this happening. I advised Mr Shepherd several times how serious the attack was and that our main concern was public safety. I explained the process of holding the dog in Council's pound once seized, pending prosecution and the outcome of that. He was told that only a Judge could order destruction of the dog. I asked Mr Shepherd several more times to surrender the dog and make it available for seizure.

11. During our conversation, Mr Shepherd stated that Mr Williams had kicked his dog, so he deserved the bite. He also said that it was the dog's first offence so why would we prosecute him. I explained to him that at the time of the attack Mr Williams was not interacting with the dog at all. I explained to Mr Shepherd several times that dogs are not allowed to bite people. I told him that once we put our file together, he would be advised of court dates, but it was recommended that he get a lawyer.
12. Mr Shepherd told me he had imported the dog from Australia, that it was his dog, he was named "Buddy" and that he was a desexed American Bull Dog. Mr Shepherd said that he had brought a muzzle for the dog. I asked him why and Mr Shepherd said it was because of other dogs. I asked him if that was enforced by a Council, and he said no it was of his own accord. Mr Shepherd was advised again to let Council seize the dog, he again refused and stated he does not want the dog put down. I explained again that once the dog was seized it would be held pending the outcome of the prosecution. He did not want to do that and stated he would give the dog to someone else. He refused to tell me who. I then ended the conversation and advised Mr Shepherd to be in touch if he had any more questions.
13. Subsequently, and after some difficulty in trying to locate Buddy, I collected him from Waipa Animal Control in Cambridge on 1 March 2021. The dog was photographed in the kennel there and poled from his kennel into a Council Animal Control vehicle. **[EXHIBIT]**
14. On Monday, 1 March 2021, I sent Mr Shepherd a Council Seizure Notice. The dog remains at Council's pound pending the outcome of the current prosecution. **[EXHIBIT]**.
15. On 23 March 2021, I was advised that Mr Williams had unfortunately passed away the previous day (22 March 2021). I gave my condolences.

DATED this day of May 2022

A Davis

View Dog Details

Name:	TA Dog Id:	Born:	Kept at address:
<input type="text" value="BUDDY"/>	<input type="text" value="57022"/>	<input type="text" value="5/2019"/> (MM/YYYY)	<input type="text" value="10 SHEEHAN STREET KIHIKIHI"/>
Predominant breed:	Predominant colour:	Gender:	De-sexed:
<input type="text" value="Bulldog, American"/>	<input type="text" value="Tan"/>	<input type="text" value="Male"/>	<input type="text" value="No"/>
Secondary breed:	Secondary colour:	Classification:	Classification Section:
<input type="text"/>	<input type="text" value="Brindle"/>	<input type="text" value="Dangerous"/>	<input type="text" value="31(1)(c)"/>
Distinguishing marks:	Standard microchip #:	Status:	Dog alert:
<input type="text"/>	<input type="text" value="991001001956294"/>	<input type="text" value="Currently In District"/>	<input type="text" value="No"/>
Permanent identifier:	Other microchip #:	Deactivated reason:	Destruction Order Date:
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/> (DD/MM/YYYY)
TA:	Registration #:	Year of Registration:	
<input type="text" value="Waipa District"/>	<input type="text" value="4563"/>	<input type="text" value="2022/2023"/>	



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[Current Owners](#) [Previous Registrations](#) [Duplicate Dogs in other TAs](#)

Current Owners
[TA Owner Id=177775](#) : [Owner=SHEPHERD MARCUS](#) : [D.O.B=23/11/1983](#) : [Address=10 SHEEHAN STREET KIHIKIHI](#) : [Created=29/06/2021](#)

Previous Registrations
No previous registrations.

Duplicate Dogs in other TAs	Status	Compare
 TA=Thames-Coromandel District : TA Dog Id=218902 : Reg=2020/2021-3898 : Dangerous : Breed=Bulldog : Colour=Brown/White : Name=BUDDY : Male : Born=2018 : Created=22/02/2021 : Owner Id=647100 : Name=Shepherd Marcus Wayne	Confirmed Same	<input type="button" value="Compare"/>
 TA=Waikato District : TA Dog Id=154428 : Reg=2022/2023-1776 : Dangerous : Breed=Bulldog, American : Colour=Tan/Brindle : Name=BUDDY : Male : Born=2019 : Created=22/02/2021 : Owner Id=181031 : Name=SHEPHERD MARCUS	Confirmed Same	<input type="button" value="Compare"/>

INFRINGEMENT NOTICE

(ISSUED UNDER AUTHORITY OF SECTION 66 OF THE DOG CONTROL ACT 1996)



NUMBER: D25427
SR No. : DOGS1907/21

Territorial Authority
Waikato District Council
15 Galileo Street, Ngaruawahia
Ph: (07) 824 8633
Fax: (07) 824 8091

Marcus Wayne Shepherd
10 Sheehan Street
Kihikihi 3800

	Forenames	Surname		
Name of Owner:	Marcus Wayne Shepherd		Person ID:	181031
Date of Birth:	23/11/1983		Animal ID:	154428

ALLEGED INFRINGEMENT OFFENCE DETAILS

Date:	14/01/2021	Time:	11:30:00 AM	Day of Week:	Thursday
Road/Street:	Seifert Road	Locality:	WHITIKAHU		

OFFENCE COMMITTED

	Infringement Fee (\$)	Offence Code
Wilful Obstruction of Dog Control Officer/Dog Ranger	\$750.00	S18

Additional Details of Offence (if any):	Infringement Fee payable
	\$750.00
Reg No or Description of Dog:	
Licence:	Breed: Bulldog American
Sex: Male	Primary Colour: Tan

PAYMENT OF INFRINGEMENT FEE

The infringement fee is payable within 28 days after:	19/02/2021	ACO:
(earliest date notice delivered personally or posted)		07

Please note that if you have been served with this Infringement Notice for failing to register a dog, payment of the infringement does not include the dog registration fee. You will still need to register your dog without delay and failing to do so may result in the issue of further infringement notices.

Infringement fee may be paid to:

WAIKATO DISTRICT COUNCIL
15 Galileo Street, Private Bag 544, Ngaruawahia
Or to the any of the following Waikato District Council Area Offices
Huntly 154 Main Street
Tuakau 2 Dominion Road
Raglan 7 Bow Street
Cheques or money orders should be "NOT TRANSFERRABLE".

IMPORTANT: PLEASE READ THE SUMMARY OF RIGHTS PRINTED OVERLEAF

SUMMARY OF RIGHTS

1. This notice sets out an alleged infringement offence. In terms of section 2 of the Dog Control Act 1996, you are liable as 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 a person under 16 who is the owner of the dog and who is a member of your household living with and dependent on you.

Payments

2. If you pay the infringement fee within 28 days of the issue of this notice, no further action will be taken. Payment may be made at places indicated on the front of this notice.

Defences

3. You have a complete defence against proceedings if the infringement fee was paid to Waikato District Council at any of the places for payment shown on the front page of this notice before or within 28 days after you were served with a reminder notice. Note that late payment or payment at any other place will not be a defence.

Further action

4. If you wish to—
- (a) raise any matter relating to the alleged offence for consideration by the Waikato District Council; or
 - (b) deny liability for the offence and request a court hearing (refer to paragraphs 5 and 9 below); or
 - (c) admit liability for the offence, but wish to have a court consider written submissions as to penalty or otherwise (refer to paragraphs 6 and 9 below),—
- you should write to Waikato District Council at the address shown on the front page of this notice. Any such letter should be personally signed.
5. You have a right to a court hearing. If you deny liability for the offence and request a hearing, Waikato District Council will serve you with a notice of hearing setting out the place and time at which the matter will be heard by the court (unless it decides not to start court proceedings). Note that if the court finds you guilty of the offence, costs will be imposed in addition to any penalty.
6. If you admit the offence but want the court to consider your submissions as to penalty or otherwise, you should in your letter—
- (a) ask for a hearing; and
 - (b) admit the offence; and
 - (c) set out the written submissions you wish to be considered by the court.

Waikato District Council will then file your letter with the court (unless it decides not to commence court proceedings). There is no provision for an oral hearing before the court if you follow this course of action.

Note that costs will be imposed in addition to any penalty.

Non-payment of fee

7. If you do not pay the infringement fee and do not request a hearing within 28 days after the issue of this notice, you will be served with a reminder notice (unless Waikato District Council decides otherwise).
8. If you do not pay the infringement fee and do not request a hearing within 28 days after being served with the reminder notice, Waikato District Council may file the reminder notice, or provide particulars

of the reminder notice for filing, in the court and you will become liable to pay **costs in addition to the infringement fee**, under section 21(5) of the Summary Proceedings Act 1957.

Queries/correspondence

9. When writing or making payment please include—
- (a) the date of the infringement; and
 - (b) the infringement notice number; and
 - (c) the identifying number of the alleged offence and the course of action you are taking in respect of it; and
 - (d) your address for replies.

Notice of liability for classification as a probationary owner or a disqualified owner

If you commit 3 or more infringement offences (not relating to a single incident or occasion) over a period of 24 months, Waikato District Council may classify you as—

- a probationary owner; or
- a disqualified owner.

You will be treated as having committed an infringement offence if you—

- have been ordered to pay a fine and costs under section 375 (1)(b) of the Criminal Procedure Act 2011, or are treated as having so been ordered under section 25(5) of the Summary Proceedings Act 1957; or
- pay the infringement fee specified in the infringement notice. Probationary ownership starts from the date of the third infringement offence in the 24 month period. Unless terminated earlier by Waikato District Council, probationary ownership runs for a period of 24 months. Disqualification as a dog owner starts from the date of the third infringement offence in the 24 month period. The length of disqualification is determined by Waikato District Council but may be no longer than 5 years.

Consequences of classification as a probationary owner or disqualified owner

During the period a dog owner is classified as a probationary owner, the person—

- must not be or become the registered owner of any dog except a dog that the person was the registered owner of at the time of the third infringement offence; and
- must dispose of every unregistered dog the person owns.

During the period that a person is classified as a disqualified owner, the person—

- must not own or become the owner of any dog; and
- must dispose of all dogs the person owns; and
- may have possession of a dog only for certain purposes (eg, returning a lost dog to the territorial authority).

A person may object to being classified as a probationary or disqualified owner by lodging a written objection with Waikato District Council. There is a further right of appeal to a District Court, if a disqualified person is dissatisfied with the decision of Waikato District Council.

Full details of classification as a probationary owner or a disqualified owner, and the effects of those classifications, are provided in the Dog Control Act 1996.

Note:

Full details of your rights and obligations are in section 66 of the Dog Control Act 1996 and section 21(10) of the Summary Proceedings Act 1957.

All queries and all correspondence regarding this infringement notice must be directed to Waikato District Council at the address shown.

**IN THE DISTRICT COURT
MORRINSVILLE REGISTRY**

CRN No: 21039500035

BETWEEN

WAIKATO DISTRICT COUNCIL

Prosecutor

AND

MARCUS WAYNE SHEPHERD

Defendant

**ADMISSION BY AGREEMENT UNDER SECTION 9 OF THE EVIDENCE
ACT 2006**

DATED: 22 MAY 2022

NEXT EVENT: JAT 23 May 2022 at 10am
JUDICIAL OFFICER: TBA
CASE OFFICER: Avrill Coombe

**BROOKFIELDS
LAWYERS
S J Corlett
Telephone No. 09 379 9350
Fax No. 09 379 3224
P O Box 240
DX CP24134
AUCKLAND**

**ADMISSION BY AGREEMENT UNDER SECTION 9 OF THE EVIDENCE ACT
2006**

Pursuant to section 9 of the Evidence Act 2006, the parties admit the following facts so as to dispense with proof thereof:

- (1) At all material times (including on 30 December 2020), the Defendant, Marcus Wayne Shepherd ("Mr Shepherd"), was the owner of a brown and white male American Bulldog type dog called "Buddy" ("Buddy");
- (2) The complainant and deceased Terry Dean Williams ("Mr Williams") had a property at 517 Seifert Road, Tauhei ("Property");
- (3) On 30 December 2020, Mr Shepherd and his brother (Aaron) had been undertaking painting work for Mr Williams on the house at the Property;
- (4) At this same time (30 December 2020), and whilst painting work was being done by Mr Shepherd, his brother (Aaron) and Mr Williams, Buddy was at the Property roaming free and unleashed with Mr Williams' knowledge.
- (5) On 30 December 2020 between 1 pm and 1.30 pm it is accepted that during the course of the day an interaction took place between the dog, Buddy, and Mr Williams, which resulted in the dog biting Mr Williams to the foot.
- (6) At the time Mr Williams was bitten by Buddy, Mr Shepherd was at another area of the property.
- (7) As a result of his injuries, Mr Williams drove himself to Anglesea Clinic and later transferred to Waikato Hospital for further treatment.

DATE 22 May 2022



S J Corlett
Counsel for the Prosecutor

DATE 22 May 2022

A handwritten signature in black ink, appearing to read "James Carter", with a horizontal line extending through the middle of the signature.

J Carter
Counsel for the Defendant

Notice of Disqualification from Dog Ownership

Section 25, Dog Control Act 1996

To: Marcus Shepherd
Address: 10 Sheehan Street
KIHIKIHI

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;



You have been convicted of an offence (not being an infringement offence) against the Dog Control Act 1996;

This disqualification will apply from the 21st of September 2022 and will run for a period of Five years.

A summary of the effect of the disqualification and your right to objection is provided overleaf.

28 Sept 2022


Tracey Oakes
Animal Control Team Leader

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

- you own the dog
- 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 a person under 16 who is the owner of the dog and who is a member of your household living with and dependant on you

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 with the Waikato District Council a written objection 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 Waikato District 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 Waikato District Council on your objection.

From: "Tracey Oakes" <Tracey.Oakes@waidc.govt.nz>
Sent: Tue, 4 Oct 2022 10:44:23 +1300
To: "t1connect prod" <t1connect.prod@waidc.govt.nz>
Subject: FW: Buddy

#ECMALL
 #SILENT

From: Tracey Oakes
Sent: Tuesday, 4 October 2022 10:30 am
To: Democracy <Democracy@waidc.govt.nz>
Cc: Gaylene Kanawa <Gaylene.Kanawa@waidc.govt.nz>
Subject: FW: Buddy

Good morning Gaylene and Team,

Please see below a written objection to a Disqualification as a dog owner by Marcus Shepherd. This will need to be heard by the new Regulatory subcommittee. See also below the acknowledgement of receipt. Can Mr Shepherd please be contacted with an approximate date and the hearings explanation document for the objector.

Please let me know as soon as possible the dates to ensure I meet out deadlines.

Cheers,

Tracey

From: Sarah Bourke <Sarah.Bourke@waidc.govt.nz>
Sent: Tuesday, 4 October 2022 10:19 am
To: mar_k_843@hotmail.com
Cc: Tracey Oakes <Tracey.Oakes@waidc.govt.nz>; Amanda Davis <amanda.davis@waidc.govt.nz>
Subject: Buddy

Good Morning Marcus

Thank you for your written notice of objection to the disqualification letter. I acknowledge receipt.

The process from here is that a hearing will be arranged for you to discuss your position with the Committee. Council staff are not the decision makers in relation to this objection, but your reasons below will be provided to the Committee. Because the Local Body Elections are currently taking place, the make up of that committee is currently unknown, but once arranged a hearing date will be set and our Democracy Team will be in touch with you regarding dates and times for that hearing.

In the meantime, you are welcome to collect Buddy.

In order to do so, you must attend at Council offices and pay the outstanding fees. The discounted and final fees are as previously explained:

1. Impound fee \$80;
2. Seizure fee \$70;
3. Dangerous dog registration \$193.50; and
4. Sustenance Fees of \$10,868 for 494 days (a reduction of 78 days).

I also remind you that the deadline to collect Buddy is **4pm on October 5th 2022**, otherwise the Council may dispose of the dog in the manner authorised by section 69(3) of the Dog Control Act 1996.

For further information and to arrange collection please contact our Animal Control Team via 0800 492 452.

Regards,
Sarah

Sarah Bourke

Community Safety Manager

Waikato District Council

Te Kaunihera aa Takiwaa o Waikato

■ P 07 824 8633 ■ F 07 824 8091 ■ Call Free 0800 492 452

Private Bag 544, Ngaaruawaahia 3742

15 Galileo Street, Ngaaruawaahia



From: marcus shepherd <mar_k_843@hotmail.com>

Sent: Tuesday, 4 October 2022 12:20 am

To: Sarah Bourke <Sarah.Bourke@waidc.govt.nz>

Subject: Buddy

My Name is Marcus Wayne Shepherd 23/11/1983 of 10 Sheehan street Kihikihi, Te Awamutu. I am formally objecting to disqualification notice underer section 25 of the dog control act you have sent me. I would like to elaborate wit the following reasons. I would like to quote from section 26 objection to disqualification. Sub section 3 (a) The circumstances and nature of the offences in respect of which the person was disqualified. Terry kicked Buddy that is the reason

buddy bit him . Thats the reason he was ordered not to be destroyed. Myself as an owner has never trained him to be aggressive or encouraged any such behaviour. Sub section (b)The competency in terms of responsible dog ownership. I own my own home which is fully fenced to a very high standard. My dog is always fed and walked daily . She is kept in extremely good health and sleeps next to my bed at night. I would be absolutely devastated to have to give her up she is like my daughter and is treated as such. Sub section (c) steps I would take to prevent further offence. Buddy would be fenced off in his own section of the yard with his own kennel . Be muzzled and kept on a lead if walked at times when there are not many people at the park . Be taking to dog training education classes to help reintegrate him to life outside the pound. 26 sub section (4) In determining any objection the territorial authority may uphold, bring forward the date of termination or immediately terminate the disqualification. Which I feel is the right course of action in these circumstances. The act also says that I did not have to be disqualified in the first place . Which is where you got I was given false information. It is not law you have to disqualify section 25 1A sub section 1 does not apply if the territorial authority is satisfied that the circumstances of the offence are such that _ this is the sub section that then states council does not have to follow sub section 1. that states the council must '

a) disqualification is not warranted or

b) The territory will classify the person as a probationary owner under section 21. I really think with the case I have put forward that either a or b is a fair option in this situation. Could you please find some gratitude in your hearts for me and buddy now please . I think buddy and I have been through enough. The emotional drain knowing he is locked up in there with no human contact eats away at me daily. This has gone on for long enough and I really feel keeping it out of court again is better for all involved . I am a good person and a very good dog owner . I am trusting now that the right decision will be made . Thank you for reading this and I look forward to acknowledgment of it being received . Regards Marcus Shepherd

28 Effect of disqualification

(1) Subject to this section, if a person is disqualified from owning a dog under [section 25](#) the person must,—

- (a) within 14 days of the date on which notice of the decision is given to the person, dispose of every dog owned by the person; and
- (b) not subsequently be in possession of a dog at any time, except for the purpose of—
 - (i) preventing a dog from causing injury, damage, or distress; or
 - (ii) returning, within 72 hours, a lost dog to the territorial authority for the purpose of restoring the dog to its owner.

(2) Every dog disposed of under subsection (1)(a)—

- (a) shall be disposed of in a manner that does not constitute an offence against this or any other Act; and
- (b) shall not be disposed of to any person who resides at the same address as the person disqualified.

(3) Where any person has, within 14 days after the date on which the notice of disqualification under [section 25\(4\)](#) is given to that person, lodged an objection under [section 26](#), subsection (1) of this section shall apply in relation to that person as if the reference in that subsection to [section 25\(4\)](#) were a reference to [section 26\(4\)](#).

(4) Where any person has, within 14 days after the date on which the notice under [section 26\(4\)](#) is given to that person in respect of an objection to which subsection (3) of this section refers, lodged an appeal under [section 27](#), subsection (1) of this section shall apply in relation to that person as if the reference in that subsection to the date on which the notice under [section 25\(4\)](#) was given to that person were a reference to the date of the decision of the District Court on that appeal.

(5) Every person commits an offence and is liable on conviction to a fine not exceeding \$3,000 who—

- (a) fails to comply with subsection (1); or
- (b) fails, in disposing of a dog under subsection (1), to comply with subsection (2); or
- (c) at any time while disqualified under [section 25](#), becomes the owner of any dog in terms of this Act; or
- (d) disposes or gives custody or possession of any dog to any person, knowing that person to be disqualified under [section 25](#).

(6) Where any person is convicted of an offence against paragraph (a) or paragraph (c) of subsection (5), the territorial authority may extend the period of disqualification of that person until a date not later than 5 years after the date on which the offence occurred.

(7) Where any person fails to comply with subsection (1), any dog control officer may seize any dog owned by that person and, for that purpose, may, at any reasonable time, with all

persons he or she calls to his or her assistance, enter onto the land or premises, including any dwellinghouse, of the owner of the dog.

Section 28(1): substituted, on 1 December 2003, by [section 15\(1\)](#) of the Dog Control Amendment Act 2003 (2003 No 119).

Section 28(2): amended, on 1 December 2003, by [section 15\(2\)](#) of the Dog Control Amendment Act 2003 (2003 No 119).

Section 28(3): amended, on 1 December 2003, by [section 15\(3\)](#) of the Dog Control Amendment Act 2003 (2003 No 119).

Section 28(4): amended, on 1 March 2017, by [section 261](#) of the District Court Act 2016 (2016 No 49).

Section 28(4): amended, on 1 December 2003, by [section 15\(4\)](#) of the Dog Control Amendment Act 2003 (2003 No 119).

Section 28(5): amended, on 1 July 2013, by [section 413](#) of the Criminal Procedure Act 2011 (2011 No 81).

Section 28(5): amended, on 1 December 2003, by [section 15\(5\)](#) of the Dog Control Amendment Act 2003 (2003 No 119).



New Zealand Legislation

Dog Control Act 1996

If you need more information about this Act, please contact the administering agency: **Department of Internal Affairs**

27 Appeal to District Court

- (1) Any person who has lodged an objection under [section 26](#) and is dissatisfied with the decision of the territorial authority may, within 14 days of the date on which notice of that decision is, under [section 26\(4\)](#), given to that person, appeal to the District Court against that decision.
- (2) The District Court, in hearing the appeal, shall consider the matters specified in [section 26\(3\)](#) and any submission by the territorial authority in support of its decision, and may uphold the determination, bring forward the date of termination, or immediately terminate the disqualification.

Section 27(1): amended, on 1 March 2017, by [section 261](#) of the District Court Act 2016 (2016 No 49).

*Probationary owners***21 Classification of probationary owners**

(1) Where any person is convicted of any offence (not being an infringement offence) against this Act or any offence against [Part 1](#) or [Part 2](#) of the Animal Welfare Act 1999 in respect of a dog or any offence against [section 26ZZP](#) of the Conservation Act 1987 or [section 56I](#) of the National Parks Act 1980 or [section 85](#) of the Te Urewera Act 2014, the territorial authority may classify that person as a probationary owner.

(2) Where any person commits 3 or more infringement offences (not relating to a single incident or occasion) within a continuous period of 24 months, the territorial authority may classify that person as a probationary owner.

(3) For the purposes of subsection (2), a person shall be deemed to have 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 an infringement notice in respect of that offence and issued to that person under [section 66](#) has been paid.

(4) Where any person is classified as a probationary owner under subsection (1), the territorial authority shall as soon as practicable give written notice in the prescribed form to that person of that decision.

(5) This section applies only if [section 25\(1A\)](#) applies.

Section 21(1): amended, on 28 July 2014, by [section 138](#) of the Te Urewera Act 2014 (2014 No 51).

Section 21(1): amended, on 1 January 2000, by [section 194](#) of the Animal Welfare Act 1999 (1999 No 142).

Section 21(2): amended, on 1 December 2003, by [section 11](#) of the Dog Control Amendment Act 2003 (2003 No 119).

Section 21(3)(a): replaced, on 1 July 2013, by [section 413](#) of the Criminal Procedure Act 2011 (2011 No 81).

Section 21(5): added, on 7 July 2004, by [section 4](#) of the Dog Control Amendment Act 2004 (2004 No 61).

22 Objection to classification as probationary owner

(1) Every person classified as a probationary owner under [section 21](#)—

(a) may object to the classification by lodging, with the territorial authority, a written objection to the classification; 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 during the period of the classification, but no objection shall be lodged within 12 months of the hearing of any previous objection to the classification.

(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 classification was made; 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 including, but not limited to, the disposal of any dog or dogs or the fencing of the property on which the dog is kept; 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 or terminate the classification of any person as a probationary owner, and shall give written notice of its decision and the reasons for it to the objector.

Dog Control Act 1996 (as at 30 November 2022)

23 Probationary owners

(1) Classification as a probationary owner shall, unless earlier terminated by the territorial authority, continue until 24 months after the date of the offence or, as the case may be, the date of the third infringement offence, in respect of which the classification was made.

(2) No person who is for the time being classified as a probationary owner shall be capable of being the registered owner of any dog unless that person was the registered owner of that dog on the date of the offence or, as the case may be, the date of the third infringement offence, in respect of which the classification was made.

(3) [Repealed]

(4) [Repealed]

(5) [Repealed]

(6) [Repealed]

(7) [Repealed]

Section 23(3): repealed, on 1 December 2003, by [section 12](#) of the Dog Control Amendment Act 2003 (2003 No 119).

Section 23(4): repealed, on 1 December 2003, by [section 12](#) of the Dog Control Amendment Act 2003 (2003 No 119).

Section 23(5): repealed, on 1 December 2003, by [section 12](#) of the Dog Control Amendment Act 2003 (2003 No 119).

Section 23(6): repealed, on 1 December 2003, by [section 12](#) of the Dog Control Amendment Act 2003 (2003 No 119).

Section 23(7): repealed, on 1 December 2003, by [section 12](#) of the Dog Control Amendment Act 2003 (2003 No 119).

Dog Control Act 1996 (as at 30 November 2022)

23A Territorial authority may require probationary owner to undertake training

(1) If a person is classified as a probationary owner under [section 21](#), the territorial authority may require the person to undertake, at his or her own expense, a dog owner education programme or a dog obedience course (or both) approved by the territorial authority.

(2) Every person commits an offence and is liable on conviction to a fine not exceeding \$3,000 who, without reasonable excuse, fails to comply with a requirement under subsection (1).

Section 23A: inserted, on 1 December 2003, by [section 13](#) of the Dog Control Amendment Act 2003 (2003 No 119).

Section 23A(1): amended, on 7 July 2004, by [section 5\(1\)](#) of the Dog Control Amendment Act 2004 (2004 No 61).

Section 23A(2): added, on 7 July 2004, by [section 5\(2\)](#) of the Dog Control Amendment Act 2004 (2004 No 61).

Section 23A(2): amended, on 1 July 2013, by [section 413](#) of the Criminal Procedure Act 2011 (2011 No 81).

Dog Control Act 1996 (as at 30 November 2022)

24 Obligation of probationary owners to dispose of unregistered dogs

(1) Where any person is classified as a probationary owner, that person shall, within 14 days after the date on which the notice of classification is, under [section 21\(4\)](#), given to that person, dispose of every unregistered dog owned by that person.

(2) Every dog disposed of under this Act shall be disposed of in a manner that does not constitute an offence against this or any other Act.

(3) Where any person lodges, within 14 days after the date on which the notice under [section 21\(4\)](#) is given to that person, an objection under [section 22](#), subsection (1) applies in relation to that person as if the period within which that person is required by that subsection to dispose of every unregistered dog owned by that person ends on the 14th day after the date on which the notice under [section 22\(4\)](#) is given to that person.

(4) Where any person is given a notice under [section 21\(4\)](#) at a time at which that person is keeping an unregistered dog in contravention of [section 42\(1\)](#),—

- (a) it shall not be an offence against [section 42\(1\)](#) for that person to keep that unregistered dog until the expiration of any period allowed by this section for the disposal by that person of that unregistered dog; and

(b) nothing in [section 42\(2\)](#) authorises the seizure and impounding of that unregistered dog at any time while that dog is still being kept by that person and any period allowed by this section for the disposal by that person of that unregistered dog has not expired.

(5) Every person commits an offence and is liable on conviction to a fine not exceeding \$3,000 who—

(a) fails to comply with subsection (1); or

(b) fails, in disposing of a dog under subsection (1), to comply with subsection (2); or

(c) at any time while classified as a probationary owner becomes the registered owner of a dog (unless the person was the registered owner of the dog on the date of the offence or the date of the third infringement offence in respect of which the classification was made under [section 21](#)); or

(d) disposes or gives custody or possession of any dog to any person, knowing that the person is disqualified under [section 25](#).

Section 24(5): added, on 7 July 2004, by [section 6](#) of the Dog Control Amendment Act 2004 (2004 No 61).

Section 24(5): amended, on 1 July 2013, by [section 413](#) of the Criminal Procedure Act 2011 (2011 No 81).

Att. "A"

11/3/21

My name is Aaron Shepherd:
 I am Marcus Shephard's
 brother. On the 30th december
 2020 I was helping my
 brother paint Terry's house.
 Terry and I were painting the
 base of the house. Buddy
 was sitting up against the wall
 where Terry was trying to paint
 he pushed him with his foot
 off the wall from the area
 where he was trying to paint.
 Buddy walked away then
 returned to the wall.

208 Westbrook Ave, Takapuna, Auckland
 Free Calling: 0800 848 747 | www.belairmtai.co.nz
 Email: sarts@belairmtai.co.nz | Facebook: www.facebook.com/belairmtai

Page 1 of 3

just up from where he
 was previously sitting.
 Terry pushed him off the
 wall with his foot again.
 This happened three or four
 times. Buddy kept coming
 back to sit on the wall.
 Terry seemed to become
 frustrated with buddy and
 then kicked him hard. This
 is when buddy reacted and
 bit his foot. Terry seemed
 to fall over as he was
 off balance and not expecting
 that to happen. I believe
 buddy only acted aggressive

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because he was kicked.
It was like a warning bite.
he let go after a couple of
seconds then Terry got up
then walked to his car.

Buddy has never bitten me
and I've never seen him be
aggressive.

Aaron Shepherd.
02109096178

A.K. Shepherd.

208 Westbrook Ave, Takapuna, Auckland
Free Calling: 0800 648 747 | www.balmoral.co.nz
Email: pet@balmoral.co.nz | Facebook: www.facebook.com/Balmoral



copy

24-Feb-2021

Marcus Wayne Shepherd
10 Sheehan Street
Kihikihi
Te Awamutu 3800

Dear Sir/Madam

Notice of Classification of Dog "Classified as "Dangerous"

Please find attached a notice advising that your dog BUDDY has been classified as dangerous under the Dog Control Act 1996.

The reasons for your dog being declared as dangerous are included in the notice.

Should you have any queries in regard to the notice please call Thames-Coromandel District Council 07 868 0200.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Alice Crowther".

Alice Crowther
Licensing and Compliance Manager
Thames-Coromandel District Council



Form 4
Notice of classification of dog as dangerous dog
Section 31, Dog Control Act 1996

To: Marcus Wayne Shepherd

Address: 10 Sheehan Street
Kihikihi
Te Awamutu 3800

Dog: ID218902 - BROWN & WHT MD BULL DOG Named
BUDDY aged 2 years

This is to notify you that this dog has been classified as a dangerous dog under section 31(1) of the Dog Control Act 1996.

This is because:

1. The Owner of the dog has admitted in writing that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or any protected wildlife.

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



Alice Crowther
Licensing and Compliance Manager
Thames-Coromandel District Council
Date: 24-Feb-2021



*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 a person under 16 who is the owner of the dog and who is a member of your household living with and dependent on you.

***Effect of classification as dangerous dog
Sections 32 and 36A, Dog Control Act 1996***

You are required,—

- (a) within 1 month after receipt of this notice, to ensure that the dog is kept within a securely fenced portion of your property that it is not necessary to enter to obtain access to at least 1 door of any dwelling on the property; and
- (b) not to 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—
 - (i) 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; and
 - (ii) the dog being controlled on a leash (except in a designated dog exercise area); and
- (c) to produce to the Thames-Coromandel District Council, within 1 month after receipt of this notice, a certificate issued by a registered veterinary surgeon 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) where a certificate under paragraph (c)(ii) is produced to the Thames-Coromandel District Council, to produce to them, within 1 month after the date specified in that certificate, a further certificate under paragraph (c)(i); and
- (e) in respect of every registration year commencing after receipt of this notice, to pay 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) 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 also required, for the purpose of providing permanent identification of the dog, to arrange for the dog to be implanted with a functioning microchip transponder. This must be confirmed by making the dog available to the Thames-Coromandel District Council in accordance with their reasonable instructions for verification that the dog has been implanted with a functioning microchip transponder of the prescribed type and in the prescribed location.

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 within 1 month after the dog is classified as dangerous.

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 Thames-Coromandel District 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.



LIST OF VETERINARY CLINICS PROVIDING MICROCHIPPING

<u>Name of Clinic</u>	<u>Address</u>	<u>Phone Number</u>
Anexa FVC Animal Health Centre	105 Kapanga Road, Coromandel	(07) 866 8556
Anexa FVC Thames	621 Pollen Street, Thames	(07) 868 7005
Tiger Clinic	506 Queen Street, Thames	(027) 496 9888
Hauraki Vets Thames	309A Pollen Street, Thames	(07) 868 3013
Coro Vets (Tairua)	32 Main Road, Tairua	(07) 865 8109
Coro Vets (Whangamata)	215 Aickin Road, Whangamata	(07) 865 8109
Whitianga Vets	23 Albert Street, Whitianga	(07) 866 5314

I am the owner of an American Bull Dog cross named BUDDY, dog registration (To Be Advised).

I acknowledge that on the 22nd of January 2021 at 1400hrs my dog bit Police Officer at 113 Abingdon Place, Thames.

I understand that upon investigation the recommended outcome is that BUDDY be classified as a dangerous dog. I understand the implications of that classification, notably that -

Within one month of getting the notice of classification, my dog must be:

- Kept in a fenced area of my property. This should be separate and fenced from the entry into my property
- Either neutered or certified unfit to be neutered before the date specified
- Muzzled in public except when in a vehicle or cage
- On a leash at all times in public, except when in a dog exercise area.


I agree to the recommendation that my dog be classified as dangerous and will comply with the requirements that follow from that classification.

Signed



Dated



 REPORT	TO	Ken WARD, Team Leader	<input type="checkbox"/>	<i>For Information</i>
	FROM	John HILL, Senior Compliance Officer.	<input type="checkbox"/>	<i>For Approval</i>
	GROUP	By Laws and Compliance	<input type="checkbox"/>	<i>For Action</i>
	DATE	19th of February 2021.	<input checked="" type="checkbox"/>	<i>For Recommendation</i>
	SUBJECT	Dog Attack / Bite Person. Recommendation for Infringement Action and reclassification.		

Introduction.

1. The attached file relates to a dog attack / bite against a Police Officer acting in the execution of his duties that occurred at the address of
2. My recommendation is that the matter be proceeded with by way of Infringement (Uncontrolled Dog) and also the reclassification of the dog to that of Dangerous.

Sequence of events (from statements obtained from the complainant and verbal comments from the owner's sister who was in control of the Dog at the time.

Complainant.

3. On the 22nd of January 2021 at 1400rs police were attending a job at in Thames.
4. They saw a female, who was being chased off her neighbour's property.
5. She was heavily intoxicated at the time.
6. is the occupier of and was looking after her Dog.
7. This Dog is a large American Bull Dog called "Buddy".
8. Constable made enquiries at the address of as there was a vehicle half parked in her driveway and on the road.
9. When questioned about the vehicle was unable to talk as she was heavily intoxicated.
10. To locate the driver of the vehicle Constable entered property and knocked on the front door.
11. Shortly after police knocked, a large dog came to the front door and appeared to be calm and was not aggressive.
12. As re-entered the property, the Dog began to growl.
13. As began to walk up the stairs the dog bit onto Constable right knee and would not release the bite.
14. Constable was able to shake the dog off his knee to which it then latched onto his boot.
15. The dog was sprayed with OC spray which had an immediate effect.
16. Constable then left the property and later reported the incident to his Supervisor.
17. When asked who owned the dog advised that the dog belonged to her

18. Of note is that Police have no interest in taking the matter any further at this time and this was reported for our recording purpose.

Witness / Owner.

19. The dog, "Buddy" was under the control of the witness, [redacted] and has been at the address of [redacted] for several weeks.
20. It is owned by the witness's brother, Marcus SHEPHERD who resides at a Hamilton Address of 10 Sheehan Street, Kihikihi.
21. Upon attendance, the circumstances of the complaint were discussed with [redacted] and she was cooperative in handing the Dog to the local compliance team whilst they conducted this enquiry.
22. Due to her level of intoxication at the time of the incident, [redacted] could only acknowledge that an incident took place whereby her Dog, Buddy did bite an attending Police Officer.
23. The owner, Marcus was contacted and was also briefed on the allegation of this incident. He was also cooperative and understood that his Dog had been retained by the Council whilst an investigation was undertaken. He was keen to work closely with the council in relation to ensure the Dog was re-registered and classified as a Dangerous Dog.
24. Both [redacted] accept that this incident could have been avoided with more direct supervision of the dog but also mentioned that the attending Police Officer entered their property without warning, so they were unable to contain it in time.
25. Both [redacted] and Marcus SHEPHERD state that this is the first incident involving the dog and maintain that nothing like this has ever happened before.
26. Marcus SHEPHERD has attended at the Thames Coromandel Council Office and has re-registered the Dog, as this registration had lapsed. It is also Micro chipped (Number 991001001956294)
27. Return of the dog has been discussed with the family and they fully understand that if Thames Coromandel District Council exercise this option, the dog, "Danger" would be classified as Dangerous and would be subject to the rules and regulations that this categorization brings.

Victim.

28. The victim in this instance is a local Police Officer, [redacted]
29. He entered the property of [redacted] whilst in the execution of his duty.
30. The Dog was initially fine and not threatening. Upon the arrival, of [redacted] the Dog became aggressive and bit Constable [redacted] on the knee and foot before being sprayed with Pepper Spray.
31. As a result of this bite, Constable [redacted] did not receive any medical treatment.
32. I have discussed the matter with Constable [redacted] and his Supervisor, [redacted]. They do not support any Prosecution Action.
33. They do not support the Destruction of the dog.
34. I have discussed at length the possible resolution from the Thames Coromandel District Council and Police are supportive of classifying the dog appropriately to prevent any further incident.

Prosecution guidelines

Test for Prosecution:

7. The Solicitor-General's Prosecution Guidelines¹ states the Test for Prosecution must be satisfied if:
 - a. The evidence which can be adduced in Court is sufficient to provide a reasonable prospect of conviction – the Evidential Test; and
 - b. Prosecution is required in the public interest – the Public Interest Test.²

Test 1: The Evidential Test:

8. The Evidential Test is where:

A reasonable prospect of conviction exists if, in relation to an identifiable person (whether natural or legal), there is credible evidence which the prosecution can adduce before a court and upon which evidence an impartial jury (or judge), properly directed in accordance with the law, could reasonably be expected to be satisfied beyond reasonable doubt that the individual who is prosecuted has committed a criminal offence.³
9. The guidelines state that the elements of this test are:
 - a. Identifiable individual
 - b. Credible evidence
 - c. Evidence which the prosecution can adduce
 - d. Could reasonably be expected to be satisfied
 - e. Beyond reasonable doubt
 - f. Commission of a criminal offence

Possible offences.

53 Offence of failing to keep dog under control

(1)

Every person commits an offence and is liable on conviction to a fine not exceeding \$3,000 who, being the owner of a dog, fails to keep that dog under control.

(2)

Notwithstanding [section 52\(2\)\(b\)](#), an owner of a dog does not commit an offence against subsection (1) by reason only of the dog being found at large in a public place in contravention of any regulation or bylaw.

Section 53(1): amended, on 1 July 2013, by [section 413](#) of the Criminal Procedure Act 2011 (2011 No 81).

Section 53(1): amended, on 1 December 2003, by [section 33](#) of the Dog Control Amendment Act 2003 (2003 No 119).

57 Dogs attacking persons or animals

(1)

A person may, for the purpose of stopping an attack, seize or destroy a dog if—

(a)

the person is attacked by the dog; or

(b)

the person witnesses the dog attacking any other person, or any stock, poultry, domestic animal, or protected wildlife.

(2)

The owner of a dog that makes an attack described in subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$3,000 in addition to any liability that he or she may incur for any damage caused by the attack.

(3)

If, in any proceedings under subsection (2), the court is satisfied that the dog has committed an attack described in subsection (1) and that the dog has not been destroyed, the court must make an order for the destruction of the dog unless it is satisfied that the circumstances of the offence were exceptional and do not warrant destruction of the dog.

Notes re evidential test.

- a. Identification – Identification is not an issue and all parties accept that “Buddy” was the dog responsible for this incident. It was the only dog present.
- b. Credible evidence – Having reviewed the evidence available, there would be sufficient to proceed with a Prosecution if desired. A statement from the victim, Constable _____ is available if required. Of note is that Prosecution is not supported by Police at this time and infringement action and reclassification is preferred. Although there is no witness statement from _____ she accepts that an incident did take place. She was heavily intoxicated at the time and her memory reflects this.
- c. Evidence which the prosecution can adduce: As above, although there is no witness statement, we can say that an incident did take place and “Buddy” was the dog responsible. Police do not support a Prosecution but accepts that Infringement action and suitable classification of the dogs would also provide a suitable outcome. This is their desired course of action.
- d. Could reasonably be expected to be satisfied. Constable _____ is a credible witness who was victim of the attack. His colleague was also present and would also be able to clarify the version of events. He has not been approached for a witness statement but will be if deemed necessary. It is also evident that all parties accept that an incident took place. As stated, both _____ and Marcus accept that “Buddy” was responsible for the incident.
- e. Beyond reasonable doubt. This will be satisfied.
- f. Commission of a criminal offence: Having reviewed the circumstances available at this time, Section 53 of the Animal Control Act applies in that the dog, “Buddy” was not under control at the time of this incident. To address this this incident, it is recommended that an infringement be issued.

Notes re public interest test.

A Police Officer acting in the execution of his duties was bitten on the knee and foot. Public Officials should be able to enter a property without fear of attack.
Without doubt, it is within the public interest to pursue this matter.

The views of the attending Police Constable and his Supervisor have been taken into account and they do not wish to pursue the matter through the Courts but support Infringement action and the reclassification of the Dog as Dangerous.

Having reviewed the circumstances available, the dog was not under control at this time.

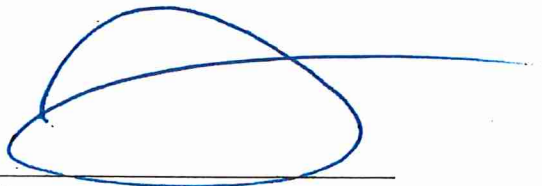
This is the first offence in relation to the dog, "Buddy" when considering the Dog Control Act.

The owner of the dog has been cooperative and has agreed to the classification of the dog as dangerous. As a classified dangerous dog, he understands the new controls that go with this classification and has agreed to take his Dog back to the Hamilton Area.

The Police Constable and his Supervisor have been spoken to at length and are satisfied that the reclassification of the dog as dangerous, in addition to the Infringement action, is a reasonable course of action in the circumstances.

Recommendation.

I recommend that this incident be dealt with by way of infringement notice and is classified as Dangerous which will provide the extra controls required to keep the public and livestock safe. I recommend that when this infringement is issued and the dog classified, this matter be filed as complete.



John HILL
Senior Compliance Officer.
19.02.2021

Investigations Dog File

RFS

978984


Complainant

Dog attack Animal

Dog Owner

Officer:

SCO 37 JOHN HILL

 REPORT	TO	Administration Officer	<input type="checkbox"/>	<i>For Information</i>
	FROM	Ken Ward	<input checked="" type="checkbox"/>	<i>For Approval</i>
	GROUP	By Laws and Compliance	<input type="checkbox"/>	<i>For Action</i>
	DATE	24/2/21	<input type="checkbox"/>	<i>For Recommendation</i>
	SUBJECT	File for ECM RFS 978984		

Hi Olivia

Dog classified and shown in pathway – infringement posted

Please file in ECM



Ken Ward
Team Leader
Bylaws and Compliance

DOG AGGRESSION INVESTIGATION CHECKSHEET

Date started 15-2-21

RFS No: 978984

- RFS Compliance Report _____
- Job Sheet _____
- Incident Statement - victim *- on per email - Statement not provided*
- Incident Statement - witnesses _____
- Offending Dog owner / Person In Charge Statement _____
- Note book entry copy's _____
- Bite Level Score _____
- Veterinary / Doctor Report costs copy _____
- Seizure Notice _____
- Search Notice (under Search & Surveillance Act 2012) _____
- Impound Form _____
- Surrender Notice _____
- Section 71 letter _____
- Copy of Authority to enter dwelling _____
- Intramaps snapshot _____
- Photographs Victim / Injuries / Scene / Offending Dog - with
declaration _____ No of photos taken: _____ attached: _____
- Copy dog registration form / NDD Printout if out of district _____
- Complete dog history / record _____
- Police Report _____
- Classification Request _____

- Aggressive Dog / Owner Score Matrix: _____
- Confirm any other officers who assisted: _____
- Confirm all officers have provided copies of emails, notes, photos, statements or any information that relates to this investigation. _____

Leading Compliance Officer

Name: _____ Signed: _____ Date: _____

Senior Compliance Officer Approved

- More Information Required: _____

- Approved:(sign) _____ SCO _____ Date: _____

Team Leader

- More Information Required: _____

- Approved(Sign) _____ TL _____ Date: _____

Next Action:

- Dog Seizure / Section 71
- Warning
- Infringement
- Prosecution Recommendation
- Classification - Menacing / Dangerous (attach request)
- Enter notes into Pathways with No Further Action
- Other: _____

DOG – HUMAN BITE LEVELS:

- LEVEL 1 (human) Rushing, Growls, shows teeth, barks, stares, snaps, no contact equivalent: argument or warning
-
- LEVEL 2 Single bite, saliva, no puncture (human equivalent: push/shove)
- LEVEL 3 (Human) Single bite. 1 to 4 punctures, ½ as deep or less as dogs canine equivalent: assault, punch)
- LEVEL 4 shakes. Single bite. 1 to 4 punctures, greater than ½ deep as canines or There will be bruising evident within 2 days for very hard bites (Human equivalent: assault with bodily harm)
- LEVEL 5 mauling Multiple bites, greater than ½ deep as dogs canine or shakes, (Human equivalent: same)
- LEVEL 6 Fatality (Human equivalent: same)

DOG – DOG BITE LEVELS:

- LEVEL 1 warning) Growls or snaps, no contact (Human equivalent: argument or warning)
- LEVEL 2 Single bite, bruise/scrape (Human equivalent: push/shove)
- LEVEL 3 deep or Single bite, bite to back, head or neck, 1 to 4 punctures ½ as less as dogs canine (Human equivalent; assault, punch)
- LEVEL 4 tooth or bodily Multiple bites or single bite but more than ½ deep as canine bites feet, legs or abdomen (Human equivalent assault with harm)
- LEVEL 5 Multiple bites, maims/mutilates (Human equivalent: same)
- LEVEL 6 Fatality (Human equivalent: same)

DOG CONTROL IMPOUNDING RECORD

IMPOUNDING DETAILS			Service Request Number:		978991.		
Impounded: (Date/Time)		16-02-21 / 1135 hrs		Impounded By:		C037 John Hill	
Impounding Address/ Location:				Impounding Reason:		Section 42(2)(a) Section 57(5)(a)	
Taken to Pound: (Location, Date/Time)		Thames.		Moved to Alternative: (Location, Date/Time)			
DOG DETAILS							
Sex	Colour	Breed		Age	Name		Reg #
M	Tan+White	American Bulldog		M	"Buddy"		
Impounding History: (Tick as Appropriate)		1 st Imp:		2 nd Imp:		3 rd Imp:	4th+:
Owner Advised of (Date/Time)		16-02-2021. 1135 hrs.		Advised by: (Ranger/Method)		C037 - By phone.	
Microchip Scan Date/Time				Microchip Rescan Date/Time (before disposal)			
Microchip # Not scanned due to risk							
Comments Appears friendly but did bite a local police officer approx 2 weeks ago. MENACING BY BREED. * WAS GROWING * AS SCARED. USE CAUTION.							
OK for Adoption (Yes/No):		Yes.		Recommended Owner Type:		Experienced.	
DOG RELEASED TO (Specify if Owner, Owner's Agent or New Owner)							
Name:				Phone No (Hm):			
Local Address:				Phone No (Wk):			
Out of Area Address:				Mobile Phone:			
				Other Contact (Specify)			
				Date Of Birth:			
IMPOUNDING OUTCOMES				FEES PAID			
Total Days in Pound:		2		Registration:		\$ Pro Rates	
Date Claimed:		18-02-2021		Impounding:		\$ 90	
Date Adopted:				Sustenance:		\$ 20	
Date to SPCA/Other Agency				Microchip			
Date Sold or to Pet Shop				Total Paid:		\$	
Date Destroyed				Infringement No:			
Date Other Outcome				Specify Other Outcome:		Infringement to follow	

Officer: CO97

GUIDELINE - AGGRESSIVE DOG INCIDENT SCORING

RFS NO: 978984

Owner / Dog Actions	Score Levels	Comment	Score	Date
Level of aggressive behaviour - as per levels sheet	Add 5 per level = (minimum) 5 - 30 (maximum)	Level 2	10	19-02-21
Previous History of Known Aggressive Behaviour	Add 3 to Total known incidents	Nil known	0	"
Owner Immediate Action Minimising Risk	Level of Satisfaction (excellent) 1-10 (unsatisfactory)	Cooperative	1	"
Owner Taking Responsibility For Dogs Actions	Level of Satisfaction (excellent) 1-10 (unsatisfactory)	Cooperative	1	"
Owner Actions to Change Dogs Behaviour	Level of Satisfaction (excellent) 1-10 (unsatisfactory)	Re classified	2	"
Owner Willingness to Work With Council	Level of Satisfaction (excellent) 1-5 (unsatisfactory)	Cooperative	1	"
Owner Apology / Offer Reparation to Victim	Level of Satisfaction (excellent) 1-10 (unsatisfactory)	Not willing	10	"
TOTAL SCORE			25	

Owner: Marcus SHEPHERD Dog Name: Buddy

Scoring for Recommended Enforcement Action

- 12 - 15 = formal written warning
- 15- 20 = Formal written warning and Infringement
- 20 - 25 = Infringement & classify menacing or dangerous (level 2 plus bite)
- 25 - 30 = Seizure, S71, Infringement, classify dangerous & possible prosecution
- 30 - 61 = Seizure, S71 & recommended prosecution

COMMENT ON INCIDENT
Police are not in favour of Prosecution - As per report

ACTION RECOMMENDED and REASONS

As per attached report.

**ANIMAL CONTROL OFFICER
JOB SHEET**

Complaint Number: 978984		Officer: SCO 37
DOG OWNER DETAILS		
Name: Marcus SHEPHERD.		Phone: 0273637956.
Address: 10 SHEEHAN ST. Kihikihii		
COMPLAINANT DETAILS		
Name:		Phone:
Address: C/O THAMES Police Station - 404 Queen St. Thames		
Date:	Time:	Notes:
16-02-21	1135	Attended at _____ Spoke to _____ and _____ who accept and incident took place whereby a Police Officer was bitten on the knee. They were cooperative. No statement obtained as she did not consent and information suggests she was extremely intoxicated at the time. Dog was uplifted as not registered and also needed due to investigation.
18-02-21	1230	Dog returned to Marcus SHEPHERD who accepts an incident took place and signs declaration that the Dog is Dangerous.
19-02-21		Report prepared.

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIROA**

**CRI-2021-039-000347
[2022] NZDC 18592**

WAIKATO DISTRICT COUNCIL
Prosecutor

v

MARCUS WAYNE SHEPHERD
Defendant

Hearing: 21 September 2022
Appearances: W Corlett for the Prosecutor
J Carter for the Defendant
Judgment: 21 September 2022

NOTES OF JUDGE S R CLARK ON SENTENCING

[1] Earlier today I found that the charge against Mr Marcus Shepherd laid pursuant to s 57(2) of the Dog Control Act 1996 was proved. I formally enter a conviction now in relation to that charge.

[2] I now turn to the question of penalty. Section 57(2) provides that on conviction the owner of a dog can be fined a sum not exceeding \$3,000, in addition to any liability that they may incur for damage. I have heard submissions in relation to an appropriate level of fine from both defence counsel and the prosecution, and there is a consensus that a fine of \$1,000 would be appropriate in the circumstances of this case.

[3] I fine you the sum of \$1,000, Mr Shepherd, in relation to this matter and also order that 50 per cent of that fine is paid to the Waikato District Council pursuant to s 77 of the Act. In addition to that I also award costs in the sum of \$678 to the prosecution.

[4] I now turn to the question of destruction pursuant. Section 57(3) of the Act reads:

If, in any proceedings under subsection (2), the court is satisfied that the dog has committed an attack described in subsection (1) and that the dog has not been destroyed, the court must make an order for the destruction of the dog unless it is satisfied that the circumstances of the offence were exceptional and do not warrant destruction of the dog.

[5] The leading authority is a Court of Appeal case of *Auckland Council v Hill*.¹ That case provides that when considering an order for destruction the Court follows a two-step approach. The first step is to identify the relevant circumstances of the offence, that is what happened, and that the inquiry should be on the immediate focus of the attack itself. In paragraph 5 of that decision the Court indicated that a dog's history and events that occurred after the offence is complete are not circumstances of the offence.

[6] The second step is for the Court to ask whether the circumstances of the offence were exceptional, and do not warrant destruction of the dog, see paragraph 6 of that decision.

[7] Section 57(3) precedes on the basis that the attack in and of itself establishes that there is a risk of the dog attacking again in similar circumstances. So, the focus will be on whether the circumstances are sufficiently exceptional that the risk is remote and does not justify destruction of the dog in the interests of public safety.

[8] It is trite to say but I will repeat that on a conviction of this nature, being a strict liability offence, an order for destruction will normally follow.

¹ *Auckland Council v Hill* [2020] NZCA 52.

[9] I turn now to consider the circumstances. The defendant, Mr Marcus Shepherd, was contracted to carry out painting at the victim's address, the victim being Mr Terry Williams, the property in question being 7 Sifford Road, Whitikahu. Mr Shepherd owns a white male American Bulldog called Buddy and he and his dog were at the address on 30 December 2020, and indeed as I understand it also there on the preceding two days. On the day in question, that is 30 December 2020, it is common ground that Buddy was not tied up or leashed in any way, nor was it muzzled.

[10] This case is complicated by the fact that the victim, Mr Terry Williams, has provided a statement to the prosecution. He is now deceased and was not available to give evidence-in-chief or be cross-examined. Sentencing is further complicated by the fact that Mr Aaron Shepherd, who was present at the address on the day and an eyewitness to what happened, is not available. He is currently an inpatient at the Henry Rongomau Bennett Centre.

[11] Nevertheless, on the victim's evidence itself he says that on the day in question he was painting the house and he had to move the dog at least twice using his foot to move the dog. I think it probably pays for me to set out the relevant part of his evidence in full. I am quoting from his statement which is dated 13 January 2021. It is at tab B of the common bundle of documents. I start at page 2 about a third of the way from the bottom:

I had to move the dog away from the house. I moved it and it was fine. I carried on painting and then had to move the dog again. The dog got up and moved. It made no noise. I had placed my foot under it and lifted it to move on. It had no issue with this and happily moved each time. I was calm and just told it to move as I used my foot gently under the gap between the house and lawn. Aaron was there with me the whole time asking me to look at his work.

I was just standing by the house talking to Aaron. The dog at this stage was out of my sight. The next thing I know the dog had latched on and grabbed my right foot. It pulled me out to the side, and I collapsed on to the ground. The dog had clamped on to my sandal and foot.

[12] As far as I can make out from Mr Williams' statement he says he moved the dog using his foot at least twice, and using his foot to lift the dog.

[13] Mr Aaron Shepherd provided a handwritten statement dated 11 March. In many respects it is similar to that of Mr Williams. Again, I am just going to set out the relevant part. It can be found as attachment A to the defence application to admit hearsay statement. Starting on the first page about half-way down:

Buddy was sitting up against the wall where Terry was trying to paint. He pushed him with his foot off the wall from the area where he was trying to paint. Buddy walked away, then returned to the wall just up from where he was previously sitting. Terry pushed him off the wall with his foot again. This happened three or four times. Buddy kept coming back to sit on the wall.

[14] I am going to ignore the next part which talks about Terry becoming frustrated and move to the sentence which then reads:

Then he kicked him hard. This is when Buddy reacted and bit his foot.

[15] As I said in many respects it is similar to that of Mr Williams' statement. Mr Aaron Shepherd says that Mr Williams moved the dog three or four times. Mr Williams talks about at least twice. The major difference, of course, is Aaron Shepherd says that Mr Terry Williams kicked Buddy.

[16] As a result of Buddy biting Mr Williams, he needed to seek medical treatment and was hospitalised for three days. Whilst it is correct to say there is no medical evidence before the Court there certainly is a photograph. It is in the prosecution bundle of materials at tab C, which shows a reasonably serious gash to what I understand is the right foot of Mr Williams.

[17] The question here is whether the circumstances are exceptional, and such that they do not warrant destruction of Buddy. Those requirements are of course cumulative and linked, and this requires a focus by the Court on the circumstances of the offence and the risk as to whether or not it will occur again in the future. The focus must be on whether the circumstances are sufficiently exceptional that the risk is remote, and does not justify destruction of the dog in the interests of public safety.

[18] As I said earlier this is a difficult exercise in the sense that with the unavailability of Mr Williams and Mr Aaron Shepherd definitive findings of fact on the question of kicking cannot be made. I suppose in addition to that nor can definitive

findings of fact be made as to the force with which Mr Williams moved Buddy on, and there is no doubt that he did. He has said so himself. Thus, I have to proceed with what I have got.

[19] This is a case in which it is correct that Buddy was not leashed or muzzled, but nor had there been an objection by Mr Williams on the day or in the preceding two days. This is a case in which Mr Williams on at least two, possibly three or four occasions decided to move the dog on using his foot in order to move it or encourage it to move. I also cannot rule out the possibility that Buddy was kicked or moved with force.

[20] I have to ask myself in those circumstances when Buddy was being moved by the leg of someone else, perhaps with force, we do not know, perhaps kicked, was it provoked, was that an exceptional circumstance?

[21] As I have said this is a difficult case in which absolute definitive findings are very difficult, in fact cannot be made, because as I have said this is a situation in which I have evidence before me that the dog was moved, it was by the use of a foot by Mr Williams on at least two occasions, and possibly kicked.

[22] In those circumstances by a very thin margin, I find that exceptional circumstances exist, and I am not going to order destruction of the dog.

Judge SR Clark

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

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