

Chairperson and Committee Members
APPEAL HEARINGS COMMITTEE

23 AUGUST 2012

Meeting Status: **Public**

Purpose of Report: For Decision

DOG OWNER'S OBJECTION TO DISQUALIFICATION

PURPOSE OF REPORT

- 1 This report seeks the Committee's consideration and decision on the objection lodged by Mr Phillip Just against his Classification as a Disqualified Dog Owner under Section 25 of the Dog Control Act 1996 (the "Act")

SIGNIFICANCE OF DECISION

- 2 This report does not trigger the Council's Significance Policy.

BACKGROUND

- 3 Mr Phillip Just was the registered dog owner of two German shepherds named Diesel and Conner. Mr Phillip and Mrs Karen Just reside at 64 Leinster Avenue, Raumati.
- 4 On Thursday 27 October 2011 at approximately 09.30am the Just's elderly neighbour was walking down her driveway to collect the morning newspaper where she sighted two German shepherd dogs loose on the street, the street being Leinster Avenue. The neighbour collected her newspaper and whilst retreating up her driveway was knocked down and attacked by the Just's dog Conner. Appendix One shows a map of the properties, including the driveway.
- 5 The victim (neighbour) was subsequently taken to Hutt Hospital for surgery to her left forearm, where she required a skin graft to close the wound on her arm. Appendix Two is a photograph of the injury. The picture was taken at the doctor's surgery prior to the victim being taken to hospital.
- 6 Although Conner was euthanized by the Justs three days after the attack, due to the serious injury caused by the dog, the Kapiti Coast District Council sought to prosecute Phillip and Karen Just. Both were charged with failure to control a dog under Section 52a of the Act and being the owner of a dog that had attacked and caused serious injury under Section 58 of the Act.
- 7 Following discussions with the defendants' lawyer, a plea arrangement was reached in this matter which saw Mr Just plead guilty to each charge and the charges withdrawn against Mrs Just. On 12 June 2012 Mr Phillip Just was convicted on each charge. The court ordered the defendant to pay the victim \$1000 in reparation. Appendix Three is the court report.
- 8 Under Section 25 of the Act a territorial authority must disqualify a person from being the owner of a dog if they have been convicted of an offence under the Act.

On 16 July 2012, after the Council received the court report, Animal Control staff acting under delegated authority sent a notice to Mr Phillip Just advising him he was disqualified from owning a dog for a period of five years from the date of the attack (27 October 2011- 27 October 2016). A dog owner has 14 days to object in writing to this classification. Appendix Four is a copy of the disqualification notice sent to Mr Just.

- 9 The five year period of disqualification is the maximum permissible under the Act. In the past three years the Council has disqualified seven people from dog ownership. Offences committed under the Act range from attacks on people, wilful obstruction of an animal control officer to attacks on domestic animals and poultry. At the time of writing this report the Council has successfully prosecuted two further dog owners; each for a dog attack on a person. Upon receiving written confirmation from our lawyers each of these owners will also be disqualified. There is a further prosecution pending for a dog attack on a person. If prosecution is successful this dog owner will also be disqualified from dog ownership for a period of five years.
- 10 On 25 July 2012 the Council received written notification from Mr Phillip Just requesting a hearing to object to his disqualification as a dog owner. A copy of the request is at Appendix Five. This meeting of the Appeals Hearings Committee has been convened to hear that objection.

CONSIDERATIONS

Considering the Objection

- 11 Section 26 of the Act states that, when considering an objection to disqualification, a 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.*
- 12 The following paragraphs provide information relevant to section 26 of the Act for the Committee's consideration.

(a) *the circumstances and nature of the offence for which the person was disqualified*

Mr Phillip Just was disqualified from dog ownership for a maximum of five years as a result of a serious and unprovoked attack by one of his dogs on a neighbour. The details are set out in the Background section (paragraphs 3-9) of this report.

(b) *the competency of the person objecting in terms of responsible dog ownership*

Prior to the date of the attack (27 October 2011) Mr Just's dog file read as follows:

February 2009 - A Special Owner Policy application form was received. Confirmation was received from the National Dog Database that Conner was previously registered by Porirua City Council. A property inspection was completed and the Special Owner Policy application was approved.

September 2009 - Warning notice; two German shepherds (at that time) being walked off leash and ran "in a threatening manner to a resident" walking his dog on a leash in that same area.

March 2010 - A micro-chipping reminder letter was sent. A transfer of ownership form was posted to Mr Just as "Ash" was being sent out of the district.

June 2011 - Tags were issued and would be paid for the following week, as credit card facilities were not available to them.

After the attack, the following complaint was recorded. On 15 April 2012 the Council received a "dog threatening" complaint from another neighbour, about a German shepherd acting in an aggressive manner towards their children who were playing in their backyard. That German shepherd was identified by the complainant and an Animal Control Officer as Phillip Just's dog Diesel.

On 15 April 2012, while investigating the above mentioned 'dog threatening' complaint, an Animal Control Officer sighted the husband of the victim (of the attack on 27 October 2011) closing his gates. While speaking with him, he stated that he had just shooed Diesel from his property. The victim and her husband now have a dog repellent device which emits a high frequency that repels dogs. He used this device and was able to get Diesel off his property and close his gates.

(c) any steps taken by the owner to prevent further offence

The dog that attacked the neighbour was euthanized by the Justs three days after the attack.

(d) the matters advanced in support of the objection

No details of matters to support the objection have been received by the Council. Mr Just or his representative will present his objection to his disqualification at the Committee's meeting.

(e) any other matters

The victim and her husband still reside at their property on Leinster Avenue, Raumati.

Next steps

- 13 After considering the matters in this report and those presented at the hearing, the Committee may either: uphold the disqualification, bring forward the date of termination, or immediately terminate the disqualification. Written notice of the

Committee's decision, the reasons for it, and the right of appeal under section 27 must be provided to the objector.

- 14 If dissatisfied with the decision, the objector may, under section 27 of the Act, appeal to the District Court. The appeal must be lodged within 14 days of the notice of decision. The Court would make its considerations against the same matters as the territorial authority and has the same options as the territorial authority, ie uphold the disqualification, bring forward the date of termination, or terminate the disqualification.

Financial Considerations

- 15 The Council's legal cost in this matter stands at \$12,110.73 as at the end of July 2012. An appeal to the District Court in this matter would see the Council in a position to seek costs from Mr Just. However, these are likely to be minimal and at the Judge's discretion.

Legal Considerations

- 16 Mr Just pleaded guilty to and was convicted of failure to control his dog, under Section 52a of the Act.
- 17 Mr Just pleaded guilty to and was convicted of being the owner of a dog that attacked causing serious injury, under Section 58 of the Act.
- 18 Under Section 25 of the Act a territorial authority must disqualify a person from being an owner of a dog if the person is convicted of an offence against the Act. The period of disqualification may be up to five years from the date of the offence.

Delegation

- 19 The committee may make a decision on this matter under Section B5 of the Governance Structure 2010-2013.

7.1 Authority to hear and adjudicate objections from dog owners to classifications of dog owners and/or dogs under the Dog Control Act 1996, within the following prescribed terms of reference:

Section 7.1.2 Section 26 of the Dog Control Act 1996- Objection to disqualification.

Consultation

- 20 There are no consultation requirements.

Policy Implications

- 21 There are no policy implications. The recommendation is consistent with previous action in similar circumstances.

Tāngata Whenua Considerations

- 22 There are no tāngata whenua considerations.

Publicity Considerations

- 23 Public interest in this matter is likely. A media release will be prepared on the Committee's decision.

RECOMMENDATIONS

- 24 That the Committee upholds the disqualification of Mr Phillip Just as a dog owner.

Report prepared by:

Approved for submission by:

Julie Toseland

Tamsin Evans

Acting Senior Animal Control Officer

Group Manager – Community Services

ATTACHMENTS:

Appendix One	Map of properties
Appendix Two	Photograph of injury
Appendix Three	Court report
Appendix Four	Disqualification notice
Appendix Five	Objection letter from Mr Just
Appendix Six	Extracts from the Dog control Act 1996

Appendix Six: Extracts from the Dog Control Act 1996: sections 25, 26, 27, 52a, 58

25 Disqualification of owners

- (1) A territorial authority must disqualify a person from being an owner of a dog if –
 - (a) the person commits 3 or more infringement offences (not relating to a single incident or occasion) within a continuous period of 24 months; or
 - (b) the person is convicted of an offence (not being an infringement offence) against this Act; or
 - (c) the person is convicted of an offence against [Part 1](#) or [Part 2](#) of the Animal Welfare Act 1999, [section 26ZZP](#) of the Conservation Act 1987, or [section 56I](#) of the National Parks Act 1980.
- (1A) Subsection (1) does not apply if the territorial authority is satisfied that the circumstances of the offence or offences are such that—
 - (a) disqualification is not warranted; or
 - (b) the territorial authority will instead classify the person as a probationary owner under [section 21](#).
- (2) For the purposes of subsection (1)(a), a person must be treated as having committed an infringement offence if—
 - (a) the person has been ordered to pay a fine and costs under [section 78A\(1\)](#) of the Summary Proceedings Act 1957, or is deemed to have been ordered to do so under [section 21\(5\)](#) of that Act, in respect of the offence; 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.

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.

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 a 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.

52a Control of dog on owner's property

- (1) This section applies when a dog is on land or premises occupied by its owner.
- (2) The owner of a dog must, at all times, ensure that either -
 - (a) the dog is under the direct control of a person; or
 - (b) the dog is confined within the land or premises in such a manner that it cannot freely leave the land or premises.
- (3) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$3,000 who fails to comply with subsection (2).
- (4) If a person fails to comply with subsection (2), a dog control officer or dog ranger may -
 - (a) seize and impound the dog; and

- (b) for the purposes of paragraph (a), enter, at any reasonable time, the land or premises (except a dwellinghouse) owned or occupied by the owner of the dog.

58 Dogs causing serious injury

The owner of any dog that attacks any person or any protected wildlife and causes -

- (a) serious injury to any person; or
- (b) the death of any protected wildlife; or
- (c) such injury to any protected wildlife that it becomes necessary to destroy the animal to terminate its suffering,- commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 years or a fine not exceeding \$20,000, or both, and the court shall, on convicting the owner, make an order for the destruction of the dog unless satisfied that the circumstances of the attack were exceptional and do not justify destruction.