

I hereby give notice that an ordinary meeting of the Regulatory and Community Safety Committee will be held on:

**Date:** Tuesday, 13 February 2024  
**Time:** 10.00am  
**Meeting Room:** Room 1, Level 26  
**Venue:** 135 Albert Street  
Auckland

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## **Komiti mō te Waeture me te Haumarū ā-Hapori / Regulatory and Community Safety Committee**

### **OPEN AGENDA**

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#### **MEMBERSHIP**

<b>Chairperson</b>	Cr Josephine Bartley
<b>Deputy Chairperson</b>	Cr Ken Turner
<b>Members</b>	IMSB Member Edward Ashby Cr Julie Fairey Cr Alf Filipaina, MNZM IMSB Member Tony Kake, MNZM Cr Mike Lee Cr Kerrin Leoni Cr Sharon Stewart, QSM
<b>Ex-officio</b>	Mayor Wayne Brown Deputy Mayor Desley Simpson, JP

(Quorum 5 members)

**Phoebe Chiquet-Kaan**  
**Governance Advisor**

**5 February 2024**

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1 **Ngā Tamōtanga | Apologies**

2 **Te Whakapuaki i te Whai Pānga | Declaration of Interest**

3 **Te Whakaū i ngā Āmiki | Confirmation of Minutes**

Click the meeting date below to access the minutes.

That the Regulatory and Community Safety Committee:

- a) whakaū / confirm the ordinary minutes of its meeting, held on [Tuesday, 5 December 2023](#), including the confidential section, as a true and correct record.

4 **Ngā Petihana | Petitions**

5 **Ngā Kōrero a te Marea | Public Input**

5.1 **Public Input: Amanda Easterbrook - challenges of dog ownership / management within the Auckland region.**

**Te take mō te pūrongo**  
**Purpose of the report**

1. Amanda Easterbrook will address the Regulatory and Community Safety Committee on the challenges of dog ownership / management within the Auckland region.

**Whakarāpopototanga matua**  
**Executive summary**

2. This committee is responsible for regulatory hearings (required by relevant legislation), regulatory policy and bylaws and is responsible for overseeing improvement of the Council's regulatory functions and making certain regulatory decisions that are appropriate to be made by elected members.

**Ngā tūtohunga**  
**Recommendation/s**

That the Regulatory and Community Safety Committee:

- a) whiwhi / receive the public input from Amanda Easterbrook regarding the challenges of dog ownership / management within the Auckland region and whakamihī / thank Amanda Easterbrook for attending the meeting.

## 5.2 Public Input: Kate Donaldson - Wrights Spur Commercial Activity

### Te take mō te pūrongo Purpose of the report

1. Kate Donaldson will address the Regulatory and Community Safety Committee on issues arising from a commercial property located at 10 Haultain St that is impacting the residents on Wrights Spur.

### Whakarāpopototanga matua Executive summary

2. This committee is responsible for regulatory hearings (required by relevant legislation), regulatory policy and bylaws and is responsible for overseeing improvement of the Council's regulatory functions and making certain regulatory decisions that are appropriate to be made by elected members.

### Ngā tūtohunga Recommendation/s

That the Regulatory and Community Safety Committee:

- a) whiwhi / receive the public input from Kate Donaldson and whakamihi / thank Kate Donaldson for attending the meeting.

## 6 Ngā Kōrero a te Poari ā-Rohe Pātata | Local Board Input

## 7 Ngā Pakihi Autaia | Extraordinary Business

## 8 Ngā Pānui mō ngā Mōtini | Notices of Motion

Under Standing Order 2.5.1 a Notice of Motion has been received from Councillor Josephine Bartley for consideration under Item 9.

## Notice of Motion - Councillor J Bartley - Introduce a bylaw restricting the visibility of vape products in specialist vape retailers from external view

File No.: CP2024/00440

Item 9

### Whakarāpopototanga matua Executive summary

1. Councillor Josephine Bartley has given notice of a motion that she wishes to propose.
2. The notice, signed by Councillor J Bartley and Councillor A Filipaina as seconder.  
The notice is appended as Attachment A and the main supporting document as Attachment B (page 6 refers to the remaining attachments).

### Motion

That the Regulatory and Community Safety Committee:

- a) tono / request staff to investigate and draft a bylaw or amend an appropriate bylaw to restrict from external view any R18 vape product in a specialist vape retailer
- b) tono / request information on the number and location of vape stores/specialist vape retailers that hold lease and/or tenancy agreements with Council or any of the Council Controlled organisations
- c) tautapa / delegate to the Chair of the Regulatory and Community Safety Committee or their nominee to advocate to central government for greater restrictions on vaping and more interventions for youth vaping.

### Ngā tāpirihanga Attachments

No.	Title	Page
<a href="#">A⇒</a>	Notice of Motion 2 February 2024	
<a href="#">B⇒</a>	Notice of Motion Main Supporting Document	
<a href="#">C⇒</a>	Memo - Youth Advisory Panel Feedback	
<a href="#">D⇒</a>	Youth Vaping PowerPoint Presentation	
<a href="#">E⇒</a>	Ministry of Education Vaping in Schools OIA response	
<a href="#">F⇒</a>	ARFNZ Letter to Auckland City Council 9-11-2023	
<a href="#">G⇒</a>	ARFNZ-Vaping-survey-2021-factsheet	
<a href="#">H⇒</a>	ASH Year 10 Snapshot Survey 2023	
<a href="#">I⇒</a>	ASH position statement - Vaping and young people	
<a href="#">J⇒</a>	Briefing to the Incoming Government - Youth vaping addiction	
<a href="#">K⇒</a>	CAYAD Statement on reducing the harms of youth vaping in Tāmaki Makaurau	

## Ngā kaihaina Signatories

Item 9

Author	Phoebe Chiquet-Kaan - Governance Advisor
Authorisers	Sarndra O'Toole - Kaiarataki Kapa Tohutohu Mana Whakahaere / Team Leader Governance Advisors Craig Hobbs - Director Regulatory Services



## Resource Consents Appeals: Status Report 13 February 2024

File No.: CP2024/00257

Item 10

### Te take mō te pūrongo

#### Purpose of the report

1. To provide an update of all current resource consent appeals lodged with the Environment Court.

### Whakarāpopototanga matua

#### Executive summary

2. This report provides a summary of current resource consent appeals to which the Auckland Council is a party. It updates the report to the Regulatory and Community Safety Committee on 7 November 2023.
3. If committee members have detailed questions concerning specific appeals, it would be helpful if they could raise them prior to the meeting with Robert Andrews (phone: 09 353-9254) or email: robert.andrews@aucklandcouncil.govt.nz) in the first instance.

### Ngā tūtohunga

#### Recommendation/s

That the Regulatory and Community Safety Committee:

- a) whiwhi / receive the Resource Consents Appeals: Status Report 13 February 2024

### Horopaki

#### Context

4. As of 25 January 2024, there are 38 resource consent appeals to which Auckland Council is a party. These are grouped by Local Board Area geographically from north to south, as set out in **Attachment A**. Changes since the last report and new appeals received are shown in bold italic text.
5. The principal specialist planners - resource consents, continue to resolve these appeals expeditiously. In the period since preparing the previous status report on 24 October 2023, there have been four new appeals lodged and none withdrawn or resolved.
6. The Learning Houses Limited appeal is to the decision to refuse their resource consent application for a childcare centre accommodating 120 children and 24 staff at 75 Pomona Road, Kumeu. The application site is in the Countryside Living Zone and proposes the construction of a new building, earthworks, and discharge of wastewater. The commissioners were not satisfied that the scale of the activity would maintain and enhance the rural character and amenity of the zone.
7. The new appeal from Digital Advertising Limited is to the decline of consent for the installation of two wall-mounted digital billboards at 8 Pitt Street, Auckland Central. The hearing commissioners found that the billboards (3.2m wide by 6m height) would significantly detract from the appearance of the building and the heritage values of the adjacent chapel, adversely affect the visual amenity of the streetscape and be inconsistent with the relevant Auckland Unitary Plan objectives and policies.

8. The appeal from Ngāti Pāoa Trust Board opposes council's grant of a restricted discretionary consent to a dwelling and two visitor accommodation units and associated wastewater, access, earthworks and landscaping. The site within the Rural 2 western landscapes land unit, is located at 81 Margaret Reeve Lane, Waiheke Island. The appeal raises matters of concern over potential impacts to the Okaka Pā site, listed by Heritage New Zealand Pouhere Taonga but not scheduled within the Auckland Unitary Plan. The appeal seeks that the application is declined.
9. Rosemarke Investments Limited appeals under section 358 of the RMA against part of a decision relating to additional processing charges. These relate to their resource consent applications for an 11 dwelling development and 11 lot subdivision at 75 Vincent Street Howick. The hearing commissioner's decision reduced the overall fees from that invoiced by council while the appeal seek further relief.

## **Tātaritanga me ngā tohutohu**

### **Analysis and advice**

10. To receive the report as provided.

## **Tauākī whakaaweawe āhuarangi**

### **Climate impact statement**

11. The report provides an update of consent appeals and seeks no resolution or consideration of the merits associated with them.

## **Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera**

### **Council group impacts and views**

12. Not applicable.

## **Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe**

### **Local impacts and local board views**

13. Not applicable.

## **Tauākī whakaaweawe Māori**

### **Māori impact statement**

14. The decision requested of the Regulatory and Community Safety Committee is to receive this progress report rather than to consider the relevance to Māori associated with each of the appeals at this time.
15. The Resource Management Act 1991 includes a number of matters under Part 2, which relate to the relationship of Tangata Whenua to the management of air, land and water resources. Maori values associated with the land, air and freshwater bodies of the Auckland Region are based on whakapapa and stem from the long social, economic and cultural associations and experiences with such taonga. These matters where relevant are considered with the resolution of the resource consent appeals.

## **Ngā ritenga ā-pūtea**

### **Financial implications**

16. Environment Court appeal hearings can generate significant costs in terms of commissioning legal counsel and expert witnesses. Informal mediation and negotiation processes seek to limit these costs. Although it can have budget implications, it is important that Auckland Council, when necessary, ensure that resource consents maintain appropriate environmental outcomes and remain consistent with the statutory plan policy framework through the appeal process.

## Ngā raru tūpono me ngā whakamaurutanga Risks and mitigations

17. Not applicable.

## Ngā koringa ā-muri Next steps

18. Not applicable.

## Ngā tāpirihanga Attachments

No.	Title	Page
<a href="#">A⇒</a>	Current Resource Consent Appeals as 25 January 2024	

## Ngā kaihaina Signatories

Author	Robert Andrews - Principal Specialist Planning
Authoriser	Craig Hobbs - Director Regulatory Services



## Review of the Forward Work Programme - Regulatory and Community Safety Committee

File No.: CP2024/00381

Item 11

### Te take mō te pūrongo

#### Purpose of the report

1. To arotake / review and tuhi / note progress on the 2024 Regulatory and Community Safety Committee forward work programme appended as Attachment A of the agenda report.

### Whakarāpopototanga matua

#### Executive summary

2. The forward work programme for the Regulatory and Community Safety Committee was adopted by the committee at its meeting held on 7 March 2023 (Resolution number [RSCCC/2023/3](#)). It was agreed that the forward work programme would be reported for information and reviewed on a six-monthly basis.
3. All committees have been requested to review their forward work programme, by the end of March 2024.
4. Following approval, all committee forward work programmes will be reported to the Governing Body in April and October each year, for oversight as per the Terms of Reference.
5. The current forward work programme for the Regulatory and Community Safety Committee is appended as Attachment A.
6. The Forward Work Programme has been circulated in the monthly summary of information reports in previous agendas for the committee's information.
7. Following the approval of the forward work programme, it will be reported to the Governing Body, for oversight as per the Terms of Reference.

### Ngā tūtohunga

#### Recommendation/s

That the Regulatory and Community Safety Committee:

- a) riro / receive and arotake / review the progress on the 2024 forward work programme as appended in Attachment A of the agenda report.
- b) whakaae / approve the updated forward work programme.

### Ngā tāpirihanga

#### Attachments

No.	Title	Page
A⇒	Forward Work Programme - Updated February 2024	

### Ngā kaihaina

#### Signatories

Author	Phoebe Chiquet-Kaan - Governance Advisor
Authoriser	Craig Hobbs - Director Regulatory Services



## Summary of Regulatory and Community Safety Committee information memoranda, workshops, and briefings - 13 February 2024

File No.: CP2024/00102

Item 12

### Te take mō te pūrongo Purpose of the report

1. To receive a summary and provide a public record of memoranda or briefing papers that have been distributed to the Regulatory and Community Safety Committee.

### Whakarāpopototanga matua Executive summary

2. This is a regular information-only report which aims to provide greater visibility of information circulated to Regulatory and Community Safety Committee members via memoranda/briefings, where no decisions are required.
3. The following information items have been distributed:

Date	Subject
11/12/2023	Regulatory response levels to freedom camping and animal management compliance over holiday break
16/01/2024	Hearings held, hearing panels and hearing outcomes January 2023 – December 2023

4. Note that, unlike an agenda report, **staff will not be present to answer questions about the items referred to in this summary.** Committee members should direct any questions to the relevant staff.

### Ngā tūtohunga Recommendation/s

That the Regulatory and Community Safety Committee:

- a) whiwhi / receive the Summary of Regulatory and Community Safety Committee information memoranda and briefings – 13 February 2024

### Ngā tāpirihanga Attachments

No.	Title	Page
A⇒	Regulatory response levels to freedom camping and animal management over the holiday break	
B⇒	Hearings held, hearing panels and hearing outcomes January 2023 - December 2023	

### Ngā kaihaina Signatories

Author	Phoebe Chiquet-Kaan - Governance Advisor
Authoriser	Craig Hobbs - Director Regulatory Services

**Item 12**



## Determination of Objection against Disqualification of Dog Owner - Pasiono Fataiki Paea Vehikite

File No.: CP2024/00225

Item 13

### Te take mō te pūrongo

#### Purpose of the report

1. To hear and determine the objection by Mr Pasiono Fataiki Paea Vehikite against his disqualification to own dogs pursuant to Section 25 of the Dog Control Act 1996 (DCA).

### Whakarāpopototanga matua

#### Executive summary

2. Mr Vehikite was the owner of three dogs:
  - Rocky, a male American Pit Bull terrier,
  - Ice, a female Staffordshire Bull Terrier cross, and
  - SiSi, a female Staffordshire Bull Terrier cross.
3. Between the period 13 November 2022 to 15 July 2023, Mr Vehikite was issued with 10 infringement notices for offending against the DCA. Some of the offences for which he was issued with infringement notices (INF), related to a single incident or occasion.
4. Section 25(1)(a) and 25(3) of the DCA provide that a territorial authority **must** disqualify a person from being an owner of a dog for a period not exceeding 5 years if that person commits 3 or more infringement offences (not relating to a single incident or occasion) against the DCA within a continuous period of 24 months.
5. Consequently, on 15 August 2023 Animal Management decided to disqualify him from owning dogs for a period of two years, commencing on 19 April 2023 and ending on 19 April 2025 (refer Attachment A).
6. The effect of the disqualification is that Mr Vehikite:
  - a) May not own or be in possession of a dog at any time during the period of disqualification.
  - b) Must dispose of any dog owned by him.
  - c) May not dispose his dog to a person who resides at the same address as him.
7. At the time of the disqualification, he owned only one dog, a 6-month-old unregistered dog. His other three dogs had by then been euthanized because of his failure to claim them after they had been impounded for offending under the DCA.
8. Mr Vehikite objects to his disqualification on the following grounds (refer Attachment B):
  - a) He has made sure that the gate is high enough to prevent this dog from escaping from his property.
  - b) He will make sure that the gate is always shut and secured.
  - c) He and his family are busy training this dog.
9. The purpose of disqualifying a person from owning dogs is to:
  - a) Prevent re-offending that may cause a nuisance or harm to persons or animals by prohibiting the person from owning dogs,
  - b) Serve as a general deterrence to other dog owners, and

- c) Bring home to a dog owner the consequences of their failure to comply with their obligations and responsibilities under the DCA which may cause a nuisance or harm to persons or animals.
10. Section 26 of the DCA provides the right to a disqualified person to be heard in support of their objection to the disqualification. The Regulatory and Community Safety Committee (the Committee) must hear the objection and decide whether to:
  - a) Uphold,
  - b) Bring forward the date of termination, or
  - c) Immediately terminate the disqualification.
11. Mr Vehikite has the right of appeal to the District Court if he is dissatisfied with the decision of the Committee.

## Ngā tūtohunga Recommendation/s

That the Regulatory and Community Safety Committee:

- a) hear and determine the objection, and
- b) uphold the disqualification of Mr Pasione Fataiki Paea Vehikite for the period of 2 years from 19 April 2023 to 19 April 2025.

## Horopaki Context

12. The Governing Body of the Auckland Council has delegated to the Committee the responsibility for regulatory hearings in Resolution No. GB/2019/109 which was adopted on 12 November 2019. The regulatory hearings which the Committee is responsible include, amongst others, decisions under the DCA in relation to the consideration of objections under the DCA.
13. Section 26(3) of the DCA determines that in considering an objection to the disqualification of a person, the Committee should have regard to the following:
  - a) The circumstances and nature of the offences in respect of which the objector was disqualified,
  - b) The competency of the objector in terms of responsible dog ownership,
  - c) Any steps taken by the objector to prevent further offences,
  - d) The matters advanced in support of the objection, and
  - e) Any other relevant matters.

### **The circumstances and nature of the offences in respect of which Mr Vehikite was disqualified**

14. Between the period 15 September 2022 to 20 July 2023 Animal Management received 12 complaints about Mr Vehikite's dogs. During this time Animal Management also inspected his property with the SPCA.

15. The jobs are summarized in the table below.

No.	Date	RFS	Circumstances of offence	Outcome
1.	15/9/2022	8101118438	Rocky, Ice and SiSi roaming on road and neighbouring property	Refer 8101122803
2.	22/9/2022	8101122803	Rocky, Ice and Sisi roaming on public road.  All three dogs still puppies, but over 3 months of age and not registered.	Dogs impounded.  Rocky registered and classified as menacing by breed (s 33C DCA)  Formal warning issued under s 42 DCA for failing to register Ice and SiSi.  Vehikite informed to apply for a multi-dog licence.
3.	13/11/2022	8101156584	Rocky, Ice and SiSi roaming on road and neighbouring property.	Dogs found on roof of Vehikite's dwelling.  Family educated about danger of dogs being on roof.  <b>INF 61000415552, 6100041522 and 61000415560</b> issued under s 20(5) DCA for failing to control dogs on leash in public place.
4.	25/11/2022	8101164205	Rocky, Ice and SiSi roaming on public road.  Photo supplied by complainant.	Vehikite said that he was on his way home to secure dogs.  Complainant failed to supply written statement.  No enforcement action taken.
5.	6/3/2023	8101228769	Rocky, Ice and SiSi roaming on public road.  Photo supplied by complainant.	SiSi pregnant. Vehikite given SPCA contact number for assistance to de-sex dogs.  Complainant failed to supply written statement.  No enforcement action taken.

Item 13

No.	Date	RFS	Circumstances of offence	Outcome
6.	9/3/2023	8101231195	Rocky, Ice and SiSi roaming on neighbouring property.	Follow up with SPCA for assistance to de-sex dogs. No written statement by complainant. <b>INF 61000436789</b> issued under s 33EC for failing to comply with Rocky's menacing classification notice.
7.	29/3/2023	8101244026	Two of Vehikite's dogs roaming the previous day.	Complainant declined to provide written statement. Requested that Vehikite be educated on confining dogs on his property. No enforcement action.
8.	11/4/2023	8101252472	Rocky, Ice and SiSi roaming on public road.	Complainant declined to provide written statement. Vehikite undertook to heighten fence.
9.	13/4/2023	8101253909	Rocky, Ice and SiSi roaming on public road on 19/3/2023	Photos of dogs provided. Complainant wishes to remain anonymous. 27/4/2023 Notice to Vehikite under cl 14 AM Bylaw to neuter SiSi by 28/5/2023. No enforcement action.
10.	18/4/2023	8101257101	Rocky and Ice at large in Urlich Park. Rocky seen attacking a Muscovy duck. 4 ducks found dead. On 19/4/2023 AMO observed Ice and Rocky at large. Jumped over fence to get back into property.	Rocky and Ice impounded. Rocky not yet neutered. Dogs unclaimed and euthanized. <b>INF 61000448078 and 61000448086</b> issued under s 53 DCA for Rocky and Ice being uncontrolled on 18/4/2023. <b>INF 61099450498 and 61000450485</b> issued under s 20(5) DCA for Rocky and Ice for being unleashed in public place on 19/4/2023.

No.	Date	RFS	Circumstances of offence	Outcome
11.	28/4/2023	8101263340	Property inspection with SPCA to check on Sisi and her puppies	Gap in gate through which puppies could leave property freely.  Vehikite declined SPCA assistance for dog food and desexing SiSi and her puppies.
12.	15/7/2023	8101314029	SiSi and another dog roaming on public road.  AMO observed SiSi at large on public road.  Gate to Vehikite's property standing open.	SiSi not desexed.  <b>INF 61000473269</b> under s 20(5) DCA for failing to provide certificate that Sisi has been desexed.  <b>INF 61000473250</b> under s 20(5) for SiSi being unleashed in public place.
13.	20/7/2023	8101317412	SiSi and another dog roaming on public road.  AMO observed SiSi and another dog at large.	SiSi unregistered.  SiSi impounded, not claimed and euthanized.  No enforcement action.

#### Mr Vehikite's competency in terms of responsible dog ownership

16. He was aware that his dogs were escaping from his property but seemingly did not take any steps to prevent that from happening.
17. His persistent failure to confine his dogs on his property is causing a nuisance to the community and may pose a risk to the safety of road users.
18. He regularly failed to comply with his obligations under the DCA.

#### Steps taken by Mr Vehikite to prevent further offences

19. During April 2023 Mr Vehikite undertook to heighten the fencing to prevent the dogs from leaving. The gate to the property was however frequently left open with the result that the dogs remained free to leave his property.
20. In his objection to the disqualification, Mr Vehikite again undertakes to ensure that his dogs would not leave his property. Given the indifference he has shown in the past about his obligations, his future willingness to comply is questionable.

#### Matters advanced by Mr Vehikite in support of his objection

21. Mr Vehikite undertook to ensure that his dogs are confined within his property.
22. He admitted that he owns another dog and that it is unregistered because of a lack of funds to pay the fee.
23. This dog, a male American Pit Bull Terrier crossbreed, was impounded on 10 October 2023 because it was unregistered. The dog was subsequently registered to another person and released to him.

## Tātaritanga me ngā tohutohu Analysis and advice

24. Public safety is at the heart of the DCA. For this reason, the purpose of disqualifying a person from owning a dog or placing a dog owner on probation is to protect public safety by reducing the likelihood of re-offending that may cause a nuisance or harm to persons or animals.
25. In the case of a probationary owner, the likelihood of re-offending is reduced by educating the dog owner in their obligations under the DCA and by limiting the number of dogs that they may own; and requiring the owner to undertake a dog owner education programme and/or a dog obedience course.
26. In the case of a disqualified owner, the purpose is to prevent re-offending by prohibiting the person from owning dogs; to bring home to a dog owner the consequences to their failure to comply with their obligations; and to act as a general deterrent to other dog owners who are lacking responsibility to comply with their obligations.
27. Section 25 of the DCA determines that the Council **must** disqualify a repeat offender from owning a dog unless it is satisfied that the circumstances of the offences are such that:
  - a) Disqualification is not warranted, or
  - b) The person should rather be classified as a probationary owner under section 21 of the DCA.
28. The effect of section 25 of the DCA is that the classification as a probationary owner can only occur if the territorial authority is first satisfied that a disqualification is not warranted because of the circumstances of the offences and the offender.
29. It was decided to disqualify Mr Vehikite for the following reasons:
  - a) Mr Vehikite's failure to control and confine his dogs has continued despite being issued with infringement notices.
  - b) He was educated on his obligations to keep his dogs confined.
  - c) He failed to have Rocky and SiSi de-sexed despite having been notified of that requirement.
  - d) His repeat offending shows a disregard of his obligations under the DCA.

## Tauākī whakaaweawe āhuarangi Climate impact statement

30. This is a report about dog ownership which has no climate impact.

## Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera Council group impacts and views

31. This is a report about dog ownership which does not require council group views.

## Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe Local impacts and local board views

32. This is a report about dog ownership which has no local impact. Local Board views have not been sought.

## Tauākī whakaaweawe Māori Māori impact statement

33. This is a report about dog ownership which has no impact on Māori.

## Ngā ritenga ā-pūtea Financial implications

34. The decision by the Committee on the disqualification of a dog owner has no financial implications.

## Ngā raru tūpono me ngā whakamaurutanga Risks and mitigations

35. Mr Vehikite has the right of appeal to the District Court if he is dissatisfied with the decision of the Committee. The risk of the Committee's determination being overturned on appeal is low.

## Ngā koringa ā-muri Next steps

36. The Committee must give Mr Vehikite written notice of its decision and the reasons for it as soon as practical.

## Ngā tāpirihanga Attachments

No.	Title	Page
A⇒	Notice of disqualification	
B⇒	Objection to disqualification of dog owner	

## Ngā kaihaina Signatories

Author	Chrisna Nortje, Principal Specialist, Animal Management
Authorisers	Shaun Murray, Acting Manager Animal Management James Hassall - General Manager, Licensing and Regulatory Compliance Craig Hobbs - Director Regulatory Services





# Determination of Objection against Disqualification of Dog Owner - Catherine Jean White

File No.: CP2024/00224

Item 14

## Te take mō te pūrongo

### Purpose of the report

1. To hear and determine the objection by Ms Catherine Jean White against her disqualification to own dogs pursuant to Section 25 of the Dog Control Act 1996 (DCA).

## Whakarāpopototanga matua

### Executive summary

2. Ms White was the owner of a white and brindled male American Bulldog named Monty, and in possession of two large unregistered American Bulldog type dogs. Under section 2 of the DCA she was deemed to be their owner.
3. On 29 September 2023 Ms White was convicted of eight offences under the DCA. Summaries of the offences are as follows:
  - a) Monty was classified as menacing by deed under section 33A of the DCA. On 30 May 2021 Ms White left Monty in the care of her cousin. In contravention of section 33F(2) she failed to inform her cousin that Monty needed to be leashed and muzzled when in public.

Monty attacked a dog when the cousin took Monty for a walk. This is an offence under section 57(2) of the DCA.
  - b) Monty was impounded for this attack but released on the condition that Monty must remain confined within Ms White's property.

On 3 June 2021 Ms White allowed Monty to be at large and unmuzzled in a public place contrary to her obligations set out in the menacing classification notice. This is an offence under section 33EC(1) of the DCA.

While at large, Monty attacked a dog that was being walked on a lead. This is an offence under section 57(2) of the DCA.
  - c) Animal Management was unable to impound Monty after the second attack. On 22 July 2021 a search warrant was executed at Ms White's property to seize and impound Monty. Ms White wilfully obstructed the animal management officer in the exercise of their duty to impound Monty and refused to bring Monty out from her house. This is an offence under section 18 of the DCA.

Monty was eventually seized and impounded with the assistance of an occupier of Ms White's property.
  - d) On 12 July 2022 the two unnamed dogs were at large outside Ms White's property. They ran across the road and attacked a neighbour's dog. The neighbour tried to intervene and was bitten by one or both of Ms White's dogs. This incident forms the basis of three offences under section 57(2) of the DCA. Ms White drove off with the two dogs. Their whereabouts are unknown.
4. In sentencing Ms White, the court considered her limited financial means and the compounding effect a serious offence against her had on her physical and emotional health. The court ordered the destruction of Monty and reparation to be paid to the two victims.
5. Section 25(1)(c) of the DCA provides that a territorial authority **must** disqualify a person from being an owner of a dog if that person is convicted of an offence (not being an infringement offence) against the DCA.

6. On 4 October 2023 Animal Management decided to disqualify Ms White from owning dogs. The period of disqualification is for 4 years commencing on 12 July 2022 (being the date of the last offence) and ending on 12 July 2026 (refer Attachment A).
7. The effect of the disqualification is that Ms White may not own or be in possession of a dog at any time during the period of disqualification.
8. Ms White objects to her disqualification on the ground that her current dog, Rua, supports her emotionally and acts as a guard dog (refer Attachment B):
9. The purpose of disqualifying a person from owning dogs is to:
  - Prevent re-offending that may cause a nuisance or harm to persons or animals by prohibiting the person from owning dogs,
  - Serve as a general deterrence to other dog owners, and
  - Bring home to a dog owner the consequences of their failure to comply with their obligations and responsibilities under the DCA which may cause a nuisance or harm to persons or animals.
10. Section 26 of the DCA provides the right to a disqualified person to be heard in support of their objection to the disqualification. The Regulatory and Community Safety Committee (the Committee) must hear the objection and decide whether to:
  - a) Uphold,
  - b) Bring forward the date of termination, or
  - c) Immediately terminate the disqualification.
11. Ms White has the right of appeal to the District Court if she is dissatisfied with the decision of the Committee.

## Ngā tūtohunga Recommendation/s

That the Regulatory and Community Safety Committee:

- a) whakaae / agree to hear and determine the objection.
- b) whakaae / agree to uphold the disqualification of Catherine Jean White for the period of 4 years from 12 July 2022 to 12 July 2026.

### Restatement

- c) whakaae / agree that the matter remain confidential until the conclusion of the hearing and then be restated in the open minutes.

## Horopaki Context

12. The Governing Body of the Auckland Council has delegated to the Committee the responsibility for regulatory hearings in Resolution No. GB/2019/109 which was adopted on 12 November 2019. The regulatory hearings which the Committee is responsible include, amongst others, decisions under the DCA in relation to the consideration of objections under the DCA.
13. Section 26(3) of the DCA determines that in considering an objection to the disqualification of a person, the Committee should have regard to the following:
  - a) The circumstances and nature of the offences in respect of which the objector was disqualified,
  - b) The competency of the objector in terms of responsible dog ownership,

- c) Any steps taken by the objector to prevent further offences,
- d) The matters advanced in support of the objection, and
- e) Any other relevant matters.

### **The circumstances and nature of the offence in respect of which Ms White was disqualified**

14. Ms White was convicted of eight offences under the DCA committed over a period of 14 months. These offences involve five unprovoked attacks, two failures to comply with her obligations stipulated in Monty's menacing classification notice, and one offence for obstructing or hindering an animal management officer from lawfully seizing and impounding Monty.
15. The victims in the attacks did not sustain serious injuries, but the events were distressing.
  - a) The first attack of 30 May 2021 resulted in the attacked dog sustaining puncture wounds to its head and eye which required surgery to clean and stitch the wounds.
  - b) The injuries sustained in the second attack of 3 June 2021 were relatively minor despite Monty having dragged the dog by its neck for about 4 to 5 metres. It required the combined effort of two persons to pull Monty off that dog.
  - c) The attack on 12 July 2022 by the two unnamed dogs resulted in several puncture wounds to the dog's groin which required veterinary intervention. That dog's owner sustained bite wounds to her right leg and scrapes and cuts to her right foot.
16. Prior to these offences, Ms White was issued with two infringement notices for failing to control Monty:
  - a) On 16 October 2020 Monty attacked a dog that was being walked past Ms White's property. The dog sustained a minor injury to its eye and its owner a cut to her finger. Ms White was issued with an infringement notice under section 53 of the DCA and Monty was classified as menacing by deed under section 33A of the DCA.
  - b) On 13 December 2020 Monty was at large and rushed aggressively at a person and their dog. Ms White was issued with an infringement notice under section 20(5) of the DCA for failing to control Monty on a leash in a public place.

### **Ms White's competency in terms of responsible dog ownership**

17. Ms White has persistently disregarded her obligations under the DCA.
18. Her dog Rua is three years old. It is not and has never been registered.

### **Steps taken by Ms White to prevent further offences**

19. Ms White now owns another dog, Rua. She has submitted photos of the fencing of her property to show that Rua can be confined within her property. It is doubtful that the fencing at the rear is adequate to confine a dog.

### **Matters advanced by Ms White in support of her objection**

20. Animal Management acknowledges the emotional support and sense of security that a dog may give its owner.

## Tātaritanga me ngā tohutohu Analysis and advice

21. Public safety is at the heart of the DCA. For this reason, the purpose of disqualifying a person from owning a dog or placing a dog owner on probation is to protect public safety by reducing the likelihood of re-offending that may cause a nuisance or harm to persons or animals.
22. In the case of a probationary owner, the likelihood of re-offending is reduced by educating the dog owner in their obligations under the DCA and by limiting the number of dogs that they may own; and requiring the owner to undertake a dog owner education programme and/or a dog obedience course.
23. In the case of a disqualified owner, the purpose is to prevent re-offending by prohibiting the person from owning dogs, and to bring home to a dog owner the consequences to their failure to comply with their obligations.
24. Section 25 of the DCA determines that the Council **must** disqualify a repeat offender from owning a dog unless it is satisfied that the circumstances of the offences are such that –
  - a) Disqualification is not warranted, or
  - b) The person should rather be classified as a probationary owner under section 21 of the DCA.
25. The effect of section 25 of the DCA is that the classification as a probationary owner can only occur if the territorial authority is first satisfied that a disqualification is not warranted because of the circumstances of the offences and the offender.
26. It was decided to disqualify Ms White and not place her on probation for the following reasons:
  - a) The importance of general deterrence.
  - b) Ms White's repeated inability or unwillingness to comply with her obligations under the DCA.
  - c) Her obstructive and uncooperative behaviour towards animal management officers.
  - d) It is unlikely that Ms White will, or can financially, comply with conditions relating to dog owner education and dog obedience courses if she is placed on probation.
  - e) A probationary classification would result in Ms White having to dispose of Rua because the dog is unregistered. She would then in any event forfeit the emotional support the dog gives her.

## Tauākī whakaaweawe āhuarangi Climate impact statement

27. This is a report about dog ownership which has no climate impact.

## Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera Council group impacts and views

28. This is a report about dog ownership which does not require council group views.

## Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe Local impacts and local board views

29. This is a report about dog ownership which has no local impact. Local Board views have not been sought.

## Tauākī whakaaweawe Māori Māori impact statement

30. This is a report about dog ownership which has no impact on Māori.

## Ngā ritenga ā-pūtea Financial implications

31. The decision by the Committee on the disqualification of a dog owner has no financial implications.

## Ngā raru tūpono me ngā whakamaurutanga Risks and mitigations

32. Ms White has the right of appeal to the District Court if she is dissatisfied with the decision of the Committee. The risk of the Committee's determination being overturned on appeal is low.

## Ngā koringa ā-muri Next steps

33. The Committee must give Ms White written notice of its decision and the reasons for it as soon as practical.

## Ngā tāpirihanga Attachments

No.	Title	Page
A⇒	Disqualification notice	
B⇒	Objection to disqualification of dog owner	

## Ngā kaihaina Signatories

Author	Chrisna Nortje, Principal Specialist Animal Management
Authorisers	Eleanor Waitoa, Manager Animal Management James Hassall - General Manager, Licensing and Regulatory Compliance Craig Hobbs - Director Regulatory Services



## Determination of an objection to a nuisance abatement notice - Peter Steiner

File No.: CP2024/00231

Item 15

### Te take mō te pūrongo

#### Purpose of the report

1. To hear and determine the objection by Peter Steiner against a Nuisance Abatement Notice (NAN) issued on 28 July 2023 pursuant to section 55(1)(b) of the Dog Control Act 1996 (DCA).

### Whakarāpopototanga matua

#### Executive summary

2. Mr Steiner is the primary owner of a 5-year-old female, black and tan, Doberman dog called Gypsy and a 6-year-old male, black and tan, Doberman dog called Mista. He resides with the dogs in a Residential – Mixed Housing Urban Zone in Māngere Bridge.
3. Since January 2018, Animal Management has received 35 complaints about Gypsy and Mista barking loudly and persistently.
4. Section 55 of the DCA provides that upon receipt of a complaint about a dog barking or howling, a dog control officer may issue a nuisance abatement notice to the owner of the dog if the officer is satisfied on reasonable grounds that a nuisance is being created by the loud and persistent barking or howling of that dog.
5. A NAN was issued on 28 July 2023 due to the loud and persistent barking reported in the most recent complaint RFS 8101309787 dated 8 July 2023, refer Attachment A.
6. On 8 August 2023 Mr Steiner objected to the NAN, refer Attachment B. The grounds of his objection are that:
  - a) his dogs rarely bark during 6-7 am when he gets up and goes to work,
  - b) he was home on the morning of the complaint and his dogs were not barking, and
  - c) the barking of the dogs recorded by the complainant was not aggressive but was of the dogs whining as if they were being tempted by biscuits.
7. The probabilities in this case support the conclusion that Gypsy and Mista are barking loudly and persistently which is causing a nuisance to the complainant.

### Ngā tūtohunga

#### Recommendation/s

That the Regulatory and Community Safety Committee:

- a) whakaae / agree to hear and determine the objection.
- b) whakaae / agree to uphold the Nuisance Abatement Notice issued on 28 July 2023 to Peter Steiner.

### Horopaki

#### Context

8. The Governing Body of Auckland Council has delegated to the Regulatory Committee, now known as the Regulatory and Community Safety Committee, the responsibility for regulatory hearings in Resolution No. GB/2019/109 which was adopted on 12 November 2019. The regulatory hearings which the Committee is responsible for include, amongst others, decisions under the DCA in relation to the consideration of objections under the DCA.

9. A NAN is issued under section 55(1) of the DCA if the Auckland Council receives a complaint about barking dogs and upon investigation a dog control officer has reasonable grounds for believing that a nuisance is being created by the persistent and loud barking or howling.
10. The DCA does not define 'persistent' or 'loud'. Officers are guided by their general meaning and usage to determine whether barking is persistent and loud. According to the third edition of the *Shorter Oxford English Dictionary*:
  - a) 'Persistent' means: 'Of an action or condition: Continuous, constantly repeated'. 'Constantly' in turns means 'continually recurring'. It follows that continuous barking over a prolonged period, or periodical but consistent barking is regarded as persistent, and that intermittent or occasional barking is not persistent.
  - b) 'Loud' means: 'Of sounds or voices: Strongly audible, striking forcibly on the sense of hearing'.
11. The DCA also does not define when the loud and persistent barking of a dog becomes a nuisance. It is however akin to a tort of private nuisance which is the unlawful interference with a specific person's use or enjoyment of the property they are occupying.

For the purposes of the DCA the nuisance caused by a barking or howling dog must be more than irritation or annoyance. It must be such that it unreasonably or unjustifiably interferes, disrupts, or inhibits the activities ordinarily carried out by an occupant of residential property.

There is no exact rule of formula for a dog control officer to determine when the barking or howling is unreasonable but, as with a tort, the objective standard of a reasonable person is applied. This means that a nuisance under section 55 of the DCA is created if an officer is satisfied on the established facts that the loud and persistent barking or howling would probably interfere with the average person's activities on their property.
12. A NAN requires the owner of the dogs causing a nuisance to make reasonable provisions on their property to abate that nuisance. These provisions are stipulated in the NAN. The owner is given a seven-day grace period to either comply with or object to the notice.
13. It is an offence under section 55(7) of the DCA if an owner who did not object to the notice, fails to comply with the provisions in the NAN any time after the seven-day grace period.
14. An objection suspends the operation and enforcement of the NAN. The objection may be directed at the reasonableness of the provisions prescribed in the NAN, or it may question the grounds for issuing the NAN.
15. In considering the objection to a NAN, the Committee must have regard to:
  - a) the evidence which led to the issuing of the notice,
  - b) any evidence that that the objector and their witnesses may present during the hearing, and
  - c) any other relevant matters.
16. Section 55(3) of the DCA determines that the Committee may:
  - a) confirm the NAN,
  - b) modify the requirements stipulated in the NAN, or
  - c) cancel the NAN.

## Background

### Earlier complaints

17. During the period 2018 to 2022 the Auckland Council received 34 complaints about the nuisance that the dogs' barking was creating.
18. Mr Steiner was supplied with educational material on the possible reasons for the dogs' barking, and information and advice on the abatement of the barking.



19. He was issued with two warning notices about the dogs' barking and six NANs.
20. The provisions relating to noise abatement notices in the DCA have been subject to different interpretations. Following receipt of further legal analysis, the period for which they remain in force was changed from seven days to six months. This change was implemented in June 2023.

### Complaint resulting in NAN (this NAN is active for six months)

21. On 8 July 2023 Auckland Council received a complaint about the barking of the two dogs. On 12 July 2023 a Barking Advisor interviewed the complainant and confirmed the barking was loud and persistent. On the same day, the officer informed Mr Steiner of the complaint. He said that he had been going through a stressful time and undertook to put the bark collars back on the dogs.
22. On 20 July 2023 the advisor called the complainant who identified that the barking was still ongoing. The advisor then called Mr Steiner who claimed he was home and that the dogs were not barking. He states that the complaints were lies and exaggerated. He stated that he did not put the bark collars on the dogs because they were not barking. He was requested to again put the bark collars on Gypsy and Mista. A bark survey form was posted to the occupants of 19 properties in the vicinity of Mr Steiner's home.
23. On 24 July 2023 the same complainant lodged another barking complaint. The complainant advised they had recordings of the barking. On 25 July 2023, 13 recordings were emailed to the bark adviser. On the same day, Mr Steiner was called and two of the recordings were played to him. He claimed the batteries might have been put in the bark collars the wrong way. He was informed a NAN would be issued.
24. On 26 July 2023 the complainant's statement was recorded in writing. On 28 July 2023, one NAN was issued for both dogs and emailed to Mr Steiner.
25. Over the following days, three responses were received to the survey confirming the barking nuisance caused by the dogs.
26. On 8 August 2023 Mr Steiner objected to the NAN on the basis that
  - a) his dogs rarely bark during 6-7 am when he gets up and goes to work,
  - b) he was home on the morning of the complaint and his dogs were not barking, and
  - c) the barking of the dogs recorded by the complainant was not aggressive but was of the dogs whining as if they were being tempted by biscuits.

## Tātaritanga me ngā tohutohu Analysis and advice

27. Dobermans are highly protective in nature and will seek to alert their household of any suspicious or unusual activity. They may also bark a lot if they are trying to communicate something to their owners, like boredom or needing some exercise. Boredom is one of the causes that was identified by the Bark Advisor.
28. Mr Steiner generally claims that his dogs do not bark or that they are provoked. The ongoing nature of these complaints, the fact it has been different complainants, and that there were multiple responses to the bark survey leads to believe these two dogs are barking loudly and persistently, constituting a nuisance. In such instances a responsible dog owner would take steps to minimise any audio or visual stimulation that could lead to excessive barking and would continue to utilise the bark collars and ensure they are in good working order.
29. The complainant stated that the barking had become overwhelming. They had to leave their house one day to get away from the ongoing barking. The barking came to a point they had to wear noise cancelling headphones just to watch TV and movies. This deprived them of the full use and enjoyment of their property and was affecting their mental health.

30. The audio recordings provided by the complainant are typical of Gypsy and Mista's barking. Two of these recordings were played to Mr Steiner who claimed the batteries in the collar might have been in the wrong way.
31. The probabilities are that Gypsy and Mista are barking loudly and persistently which causes a nuisance to others.
32. The Bark Investigator has assessed that the use of a noise and vibration anti-bark collar and bark box would best abate the nuisance. This was recommended to Mr Steiner on 7 June 2023, refer Attachment C.
33. Attachment D is the bark advisor's statement about the investigation of the complaint and the grounds for issuing the NANs.

### **Tauākī whakaaweawe āhuarangi** **Climate impact statement**

34. This is a report about a nuisance caused by the loud and persistent barking of a dog. It has no climate impact.

### **Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera** **Council group impacts and views**

35. This is a report about a nuisance caused by the loud and persistent barking of a dog. It does not require council group views.

### **Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe** **Local impacts and local board views**

36. This report has no local impact. Local Board views have not been sought.

### **Tauākī whakaaweawe Māori** **Māori impact statement**

37. This report has no impact on Māori.

### **Ngā ritenga ā-pūtea** **Financial implications**

38. The decision by the Committee on the nuisance abatement notice has no financial implications.

### **Ngā raru tūpono me ngā whakamaurutanga** **Risks and mitigations**

39. There are no risks in upholding the Nuisance Abatement Notice.

### **Ngā koringa ā-muri** **Next steps**

40. The Committee must give Mr Steiner written notice of its decision as soon as practical.

## Ngā tāpirihanga Attachments

No.	Title	Page
<a href="#">A⇒</a>	Nuisance Abatement Notice	
<a href="#">B⇒</a>	Objection to Nuisance Abatement Notice	
<a href="#">C⇒</a>	Bark Investigator recommendations	
<a href="#">D⇒</a>	Barking Advisor statement	

## Ngā kaihaina Signatories

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Authorisers	Eleanor Waitoa, Manager Animal Management James Hassall - General Manager, Licensing and Regulatory Compliance Craig Hobbs - Director Regulatory Services