

# Exemptions and Objections Subcommittee

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## **Notice of Meeting**

A meeting of the Exemptions and Objections Committee will be held in the Council Chamber, Forum North, Whangarei on:

**Wednesday  
29 April 2015  
9.00am**

**Subcommittee of:**  
Planning Committee

**Committee**  
Cr G C Innes (Chairperson)  
Cr J D T Williamson (Deputy Chairperson)  
Her Worship the Mayor  
Cr S M Glen  
Cr S J Deeming

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**OPEN MEETING**

**APOLOGIES**

**CONFLICTS OF INTEREST**

Members are reminded to indicate any items in which they might have a conflict of interest.

**INDEX**

<b>Item No</b>		<b>Page No</b>
1.	Minutes of the Meeting of the Exemptions and Objections Committee held 10 February 2015.....	1
2.	Objection to Disqualified Dog Owner Classification - Logan .....	3

**Recommendations contained in this agenda may not be the final decisions.  
Please refer to the minutes for resolutions.**

# 1. Minutes: Exemptions and Objections Committee

## Tuesday 10 February 2015

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*Minutes of a meeting of the Exemptions and Objections Committee held in the Council Chamber, Forum North, on Tuesday 10 February 2015 at 9.00am*

**Present:**

Cr G C Innes (Chairperson)

Crs S J Deeming, S M Glen and J D T Williamson

**Apology:**

Her Worship the Mayor S L Mai

**Moved: Cr Innes**

**Seconded: Cr Deeming**

“That the apology be sustained.”

**CARRIED**

**Also present:**

R J Donald (Applicant) and C Donald (Accountant)

T Davies-Colley (Applicant – Pipiwai Investments Ltd)

**In attendance:**

Principle Planner (P Lees) and Senior Meeting Co-ordinator (C Brindle)

*Item 3 was taken prior to Item 1.*

**1. Objection to Costs under Section 357B of the Resource Management Act 1991 - R J and J A Donald**

The Committee heard the Objection to Costs.

**Moved Cr Innes**

**Seconded Cr Glen**

“That following the hearing of the matters before the committee, the public be excluded from the meeting pursuant to Section 48 (1) (d) of the Local Government Official Information and Meetings Act to enable the committee to deliberate in private on the decisions made.”

**CARRIED**

*The meeting adjourned at 9.53am and reconvened at 10.15am.*

**2. Objection to Costs under section 357B of the Resource Management Act 1991 - Pipiwai Investments Limited (SD1000085)**

The Committee heard the Objection to Costs.

**Moved Cr Innes**

**Seconded Cr Deeming**

That following the hearing of the matters before the Committee, the public be excluded from the meeting pursuant to Section 48(1)(d) of the Local Government Official Information and Meetings Act to enable the Committee to deliberate in private on the decisions made.”

**CARRIED**

**2. Confirmation of Minutes of a Meeting of the Exemptions and Objections Committee held on 3 December 2014**

**Moved: Cr Deeming**

**Seconded: Cr Morgan**

“That the minutes of the meeting of the Exemptions and Objections Committee, having been circulated, be taken as read and now confirmed and adopted as a true and correct record of proceedings of that meeting.”

**CARRIED**

**The meeting closed at 11.08am**

Confirmed this 29<sup>th</sup> day of April 2015

G C Innes (Chairperson)

## 2. Objection to Disqualified Dog Owner Classification - Logan

**Reporting officer** M R Henehan (Bylaw Co-ordinator)

**Date of meeting** 29 April 2015

Time	Hearing	Name
9:00	Objection to Disqualified Dog Owner Classification	Logan

### Hearing Procedure

The Committee can set its own procedure for the hearing of objections, but the following is a general description of the procedure that will be followed. Hearings will be conducted in a manner which provides for fair and impartial justice for all parties. If any party intends to have any witnesses and/or legal counsel appear they must, at least 10 days prior to the hearing, provide to Council the names of those witnesses and/or legal counsel and a written copy of any witness statements.

- 1 The Chairperson opens the proceedings by introducing the committee and asking those present to introduce themselves and their witnesses (if any).
- 2 Staff will briefly outline the objection. Council's officers/contractor's report, which has been circulated prior to the hearing, is taken as read.
- 3 If the complainant is present he/she may address the Committee and provide supporting evidence from witnesses.
- 4 The objector presents his/her case including any supporting evidence from witnesses.
- 5 The Council's officers/contractors will speak on his/her report and is available to answer questions.
- 6 The objector only is given the opportunity to have a right to reply. This gives him/her the chance to clarify matters raised in the Council's officers/contractors report but not to present new evidence.
- 7 The Chairperson adjourns the hearing to deliberate on its decision based on the information submitted, following which the objector will be notified in writing of the decision.

It is recommended that the following resolution be passed to exclude the public from the meeting during discussion:

"That following the hearing of the matters before the committee, the public be excluded from the meeting pursuant to Section 48 (1) (d) of the Local Government Official Information and Meetings Act to enable the committee to deliberate in private on the decisions made."

# Objection to Disqualified Dog Owner Classification - Logan

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**Reporting officer** M R Henehan (Bylaw Co-ordinator )

**Date of meeting** 29 April 2015

## Significance and Engagement

Having considered the Significance and Engagement Policy this matter is not considered significant and the public will be informed via agenda publication on the website.

## Introduction

Acting on delegated authority of Council, the Regulatory Services Manager, Grant Couchman, has under Section 25 of the Dog Control Act 1996 (The Act), disqualified Paul Logan from owning a dog for a period of five years. This action was taken after Mr Logan was convicted of offences under the Act following a serious dog attack at 91 Hatea Drive on 16 July 2013. Mr Logan has objection to this decision and Council must now hear this objection.

## The circumstances

On 16 July 2013, the victim in this matter, who is a mental health worker, went to the address of Paul Logan at 91 Hatea Drive, Whangarei on a pre-arranged visit to a tenant. Mr Logan's dogs "Misty" and "Luna" were at this address which was not fully fenced. Both dogs were unrestrained and Mr Logan was aware of the victim's arrangements to visit this address.

On entering the property, Luna jumped up from the porch and ran towards then past the victim and attacked her from behind, knocking her to the ground. Misty joined the attack and the victim described both dogs biting her at the same time, tugging at her and pulling at her with their teeth.

The victim was subjected to a prolonged attack and received severe injuries to her head, arms, legs and back. Her injuries might have been more severe however Mr Logan placed himself on top of her to protect her from the dogs. This action stopped the attack sufficiently so that he and a neighbour could restrain both dogs. Attached are photographs showing the severe injuries inflicted during this attack, which the District Court Judge described as "horrific".

On investigation, Mr Logan handed Luna over to dog control officers and authorised his immediate destruction. When interviewed he denied that Misty had bitten the victim.

Council charged Mr Logan with two offences against section 57 of the Act (Dog attacks person) and one further charge against section 58 (Dog causes serious injury). The penalty for the former offence is a \$3,000 fine and for the later offence a three year term of imprisonment and/or a \$20,000 fine.

## The District Court Judgement

On 25 November 2013 Mr Logan appeared at Court and pleaded guilty to all charges and on 24 January 2014 he was sentenced in the Whangarei District Court to four months home detention and \$500 reparation to be paid to the victim. An order was also made for Misty's destruction. The judge considered aggravating factors were that Mr Logan knew the victim would be visiting and that serious injuries were inflicted. Attached notes of Judge G Davis on Mr Logan's sentencing give more details of these circumstances.

Mr Logan appealed against the order for the destruction of Misty and at the High Court on 10 March 2014 it was decided that the appeal would not be allowed. It was only during discussions at court on this date that it was clarified that the appeal related only to the destruction order.

## The Dog Control Act

The Regulatory Services Manager has delegated authority to disqualify a person from owning a dog. In deciding whether to disqualify a person and the appropriate period of disqualification, the RSM is guided by section 25 of the Act. This section states a 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 this Act.

However this 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.

The sentencing judge considered aggravating factors were that Mr Logan knew the victim would be visiting and that serious injuries were inflicted. Additionally, two dogs were involved in the attack. Clearly in this case a period of disqualification is warranted.

Staff have canvassed other territorial authorities in respect to what is the common practice regarding determining the appropriate term of disqualification. Feedback received indicates that where the attack is serious or severe, the owner is disqualified for the maximum five years.

Whangarei District Council has disqualified one owner previously. In this case, in 1999 Donald Mitchell Hedges was disqualified for five years after his three dogs attacked a child who was delivering pamphlets, causing injuries to the victim's leg.

The Regulatory Services Manager, in considering the above factors, determined that Mr Logan should be disqualified from owning a dog for a period of five years. Accordingly a notice to this effect was served on Mr Logan on 15 October 2014.

## **The objection**

Section 26(3) of the Act provides that any person disqualified as a dog owner may object to the disqualification by lodging a written objection to Council and shall be entitled to be heard in support of the objection. 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.

Section 26(4) states that, 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.

The circumstances and the nature of the offences are dealt with elsewhere in this document and in the attachments. Additionally the committee may wish to decide on Mr Logan's competency in terms of responsible dog ownership on the basis of the information provided.

Mr Logan may adduce evidence of any steps taken to prevent further offences or other matters in support of the objection at the hearing.

## **Summary**

Mr Paul Logan has objected to Council disqualifying him as a dog owner for five years in accordance with section 25 of the Act as a result of his two dogs attacking and causing serious injuries to a mental health worker who was visiting his home on 16 July 2013.

Council charged Mr Logan with two offences against section 57 (Dog attacks person) and one further charge against section 58 (Dog causes serious injury). The penalty for the former offence is a \$3,000 fine and for the later offence a three year term of imprisonment and/or a \$20,000 fine.

On 25 November 2013 Mr Logan pleaded guilty to all charges and on 24 January 2014 he was sentenced in the Whangarei District Court to four months home detention and \$500 reparation to be paid to the victim. The two dogs involved have been destroyed. The judge considered aggravating factors were that Mr Logan knew the victim would be visiting and that serious injuries were inflicted.

It is recommended the decision of the Regulatory Services Manager to disqualify Mr Logan from owning dogs for five years, which is the maximum specified, be upheld.

## Recommendation

That the disqualification of Paul Logan as a dog owner for a period of five years in accordance with section 25 of the Dog Control Act 1996, be upheld.

### Attachments:

1. [Photographs](#)
2. [Notes of Judge G Davis on sentencing \(Whangarei District Court\) 15/32450](#)
3. [Judgement of Andrews J \(Appeal at the Whangarei High Court\) 15/32449](#)



# Northland Police

Images taken by staff of the  
Northland Police.

## Objection to Disqualification Dog Owner Classification Paul LOGAN

Photography Reference  
Number: CB 14 463  
Source: 13/0619  
13/0640

*This book is the property of the New Zealand Police and must be returned to the Police at the end of the hearing.  
The booklet is not for general publication outside these court proceedings.*

Images taken on:

19th July 2013

by

Senior Constable HEFFEY



01



02



Images taken on:

26th July 2013

by

Senior Constable HEFFEY



04



05



06



07



08



09



10



11





IN THE DISTRICT COURT  
AT WHANGAREI

CRI-2013-088-002659

WHANGAREI DISTRICT COUNCIL  
Informant

v

PAUL LOGAN  
Defendant

Hearing: 24 January 2014

Appearances: R Hart for the Informant  
W Puriri for the Defendant

*{emailed Council + HD*

Judgment: 24 January 2014

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NOTES OF JUDGE G DAVIS ON SENTENCING

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[1] I have before me Paul Logan. Mr Logan has been charged with and has pled guilty to two offences against s 57 Dog Control Act 1996 and one pursuant to s 58 Dog Control Act 1996. They are effectively charges under s 57 that Mr Logan was the owner of two dogs, one named Misty and one named Luna, that each attacked a health worker that was visiting the property or attacked Mr Logan himself. The charge under s 58 Dog Control Act is that he was the owner of Luna which attacked the health worker visiting the property and caused serious injury to that health worker.

[2] The facts that give rise to the offending require some narration. Mr Logan has two dogs. They are described as being likely Smithfield-mastiff crosses, one known as Misty and the other known as Luna. Mr Logan had the two dogs at his address in Whangarei.

[3] The victim of the offending was a mental health worker who had made arrangements to attend the home at about 10.20 am to visit a tenant there. The summary of facts to which Mr Logan has pled guilty indicates that he was aware of the visit taking place having been present when the arrangements were made a week or so earlier and having been in telephone contact with the victim twice in the previous seven days about the tenant.

[4] The victim entered the property through the gate and after looking for the dogs and seeing there were none walked towards the front door. As she approached the front door the dog Luna jumped from the porch and ran towards her. It attacked her from behind. Luna knocked the victim to the ground and bit at her neck and head area immediately. The summary of facts describes the victim as feeling the dog's teeth grinding her skull and pulling the skin away. The second dog Misty joined the attack and the victim could feel both dogs biting at her at the same time, tugging and pulling her with their teeth. At times they were at opposite ends of her body.

[5] The attack was prolonged. She received severe injuries to her head, her arms, her legs and her back. Her head was badly lacerated. Mr Logan tried to stop the attack and could not. In response to that he placed himself on top of the victim to put himself between her and the dogs. He too was bitten and that gives rise to one of the charges. But, significantly, the summary of facts records that stopped the attack sufficiently that Mr Logan and a neighbour were able to restrain and remove the dogs. The defendant's actions is described in the summary of facts as probably saving her life. An ambulance was called and she spent about four and a half days in hospital.

[6] The summary of facts significantly goes on to record that Mr Logan told the dog control officers at the time that Misty had not bitten the victim at all. He immediately handed Luna over and authorised her destruction which occurred on the same day. The victim was able to give a full statement which recorded that both dogs had attacked her. Mr Logan was bitten on the hand also.

[7] I have made reference to the fact that Mr Logan has said that Misty did not attack the victim because on one analysis that may be seen as being a fact that is not one that assists Mr Logan at all but I am not prepared to draw that inference. It may well have been in the mêlée that Misty may well have been involved in the attack and that was simply not seen by Mr Logan. So for the purposes of this sentencing exercise I am not in a position to count that as an aggravating feature for Mr Logan.

[8] Mr Logan initially pled not guilty to this matter and elected trial by jury. It was sent for a case review hearing as is the practise. At that case review hearing Mr Logan was given a sentence indication, an electronically monitored sentence would be imposed, his not guilty plea was vacated and a guilty plea was entered. A pre-sentence report was called for.

[9] For reasons that I will explain shortly I am not persuaded that there is any reason to depart from the electronically monitored sentence that was offered by one of my brother Judges.

[10] Mr Logan has a significant criminal history but this is the first instance that he has come before the Courts for this type of offending. The aggravating features of this offending, in my view, can be summarised as follows: firstly, the arrival of the victim was known to Mr Logan; secondly, there were severe injuries sustained in the attack. I have seen the photo booklets that have been prepared by the informant and the injuries looked to my untrained eye I have to say to have been horrific. There is a significant wound to the right side of the victim's head. It has required a number of stitches. In addition to that there are multiple puncture wounds including to the victim's ear, a further significant wound to a second part of her head as well as other puncture wounds to the neck area, the thigh area, the wrist and hand area as well as the back area. I suspect that the attack was prolonged, it was sustained and for the victim it must indeed have been terrifying. One can only speculate as to the thoughts that would have been going through her head including the likelihood of death resulting.

[11] While that is the aggravating features of the attack itself, a significant mitigating feature of the attack is Mr Logan's own actions which appear to have put

his own life at peril. If my views as to the nature of the attack are correct, it was a selfless act on his part designed, in my view, to bring the attack to an end and posed significant risk of harm to him. That, in my view, must be taken into account in arriving at any sentence.

[12] The principles and purposes set out in a sentencing exercise such as this have been described in a combination of the Sentencing Act 2002 and a number of cases that have come before the Court. In particular the principles and purposes set out in the Sentencing Act including holding you accountable for what you have done, denouncing and deterring this sort of behaviour and protecting the public are, in my view, some of the relevant principles. I also note an offer to make reparation has been forthcoming and that will be included as part of the sentencing exercise.

[13] The general scheme behind the Act, however, was described by His Honour Gendell J in a case *Campbell v Police* HC Wanganui CRI-2008-483-13, 9 June 2008 where His Honour at paragraph 23 said:

Deterrence, both of the offender, but more in particular of others who may choose to keep breeds of dogs which are dangerous to the public, and which they know are dangerous, is crucial if the public are to be protected. If people want to own and keep this sort of animal, whether classified as dangerous or not, and whether as a status symbol or a statement or a badge, then they are entitled to do so. But the law places upon them a very high obligation, and those who possess dangerous dogs must know that if they escape from secure custody so as to cause serious injury in terms of s 58, then imprisonment may well follow.

[14] That particular passage has been cited with approval in a number of other cases that have come before the Courts.

[15] It is quite clear that the starting point is one of imprisonment. This is also a strict liability offence, Mr Logan, which means whether you intended the attacks to occur or not is irrelevant. The onus falls on you and indeed falls on any dog owner to ensure that all reasonable steps are taken to make sure that the dogs are secure. His Honour Baragwanath J said it in the following way in a case *Hamilton City Council v Fairweather* [2002] NZAR 477 (HC):

...an owner is automatically liable for a dog attack if the dog is not under control. But if the dog attacks while it is under control, no offence is committed.

[16] That is why, as I say, this is a strict liability offence.

[17] When one looks at the offending I passed comment that in 2003 the penalties for dog attacks went up. There was a case which you may have become familiar with *Owen v Police* HC Auckland A44/02, 13 June 2003 which involved a horrific attack on a young girl by a dog in a public park. It resulted in significant injuries, I understand some of which were permanent to this young girl and at that time the maximum penalty was three months' imprisonment and a fine. No doubt as a response to public criticism of the penalties that were available at the time Parliament chose to uplift the penalties to a term of imprisonment of three years. In my view, that is consistent with the view that a starting point of imprisonment is the only option here.

[18] When one looks at the offence itself, the aggravating features of the offence, namely as I have touched on the fact that the victim was known to you, the dogs were not secure, there were serious injuries, there were attacks to the head and there was hospitalisation a starting point of 12 months in prison would be the appropriate starting point here. However, you are entitled to reductions in that significant respect, namely your acts that brought that attack to a halt and which can only be described as likely saving the woman's life. I would deduct from that a term of two months from the starting point. You have also pled guilty, not at the earliest possible opportunity but at a sentence indication. I would give you some credit for that by reducing the sentence by a further two months which would leave an end sentence of eight months in prison.

[19] That would commute or convert to a term of four months' home detention which when one steps back and looks at the offending, in my view that is the appropriate sentencing response today, Mr Logan.

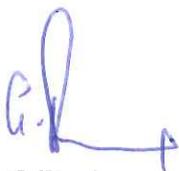
[20] Accordingly, in respect of each matter you will be convicted and sentenced to a term of home detention of four months. They are all to be served concurrently; in

other words, all at the same time. There is an address that is technically feasible for an electronic sentence to be imposed namely at 91 Hatea Drive in Whangarei. You will be subject to a number of special conditions attaching to the sentence of home detention and they are as follows. There will be the standard conditions of home detention but an additional condition that you are not to have Maria Ngatai also known as Maria Crapp residing at the home detention address. That is because there are concerns about your relationship with her. I am told that she is not residing at the address so the imposition of that condition should not, in my view, pose any significant impediment to the care of your young daughter.

[21] Lastly, I am directing that all fines that you have which I am told is somewhere in the order of \$5102 is to be remitted. I am told you are paying those fines off at a rate of \$35 per week. I propose that the \$35 a week that you are paying towards the reduction of those fines will now be applied towards a reparation sum of \$500 which is to be paid to the victim of the offending. That, as I say, is to be paid at a rate of \$35 per week.

[22] There is also an order that the dog Misty is to be destroyed. I am told by your counsel that you do not consent to that order being made nor for that matter do you necessarily oppose it but I have heard nothing in the way of special circumstances that would mean that I ought not to make the order for destruction of Misty. Further to that I am told you are likely to appeal my decision so given that indication that order is not to mature for a further seven days. In the event an appeal is not filed it is to be finalised in seven days. In the event an appeal is filed then I would be prepared if the request was made for that order to remain in place pending further order of the Court.

[23] I am also going to direct that the summary of facts be released to the media should they require a full copy of the summary of facts.



G Davis  
District Court Judge

**IN THE HIGH COURT OF NEW ZEALAND  
WHANGAREI REGISTRY**

**CRI 2014-488-000001  
[2014] NZHC 424**

BETWEEN PAUL LOGAN  
Appellant

AND WHANGAREI DISTRICT COUNCIL  
Respondent

Hearing: 10 March 2014

Appearances: P Logan Appellant in person  
R Harte for Respondent

Judgment: 11 March 2014

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**JUDGMENT OF ANDREWS J  
[Reasons for oral judgment of Andrews J]**

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*This judgment is delivered by me on 11 March 2015 at 11:30am  
pursuant to r 11.5 of the High Court Rules.*

.....  
*Registrar / Deputy Registrar*

Solicitor:  
Rob Harte Lawyer, Whangarei

## **Introduction**

[1] On 25 November 2013 the appellant pleaded guilty to two charges of being the owner of a dog that attacked a person, and one charge of being the owner of a dog that attacked a person and caused serious injury. On 24 January 2014, the appellant was sentenced by Judge G Davis in the District Court at Whangarei.<sup>1</sup> The appellant was sentenced to home detention for four months and ordered to pay reparation of \$500 to the victim of the offending. The Judge also made an order for the destruction of one of the dogs, “Misty”.

[2] The appellant has appealed against the order for the destruction of Misty. At the conclusion of the appeal hearing I advised the appellant that the appeal was dismissed. I now set out my reasons for that decision.

## **Background**

[3] On 16 July 2013, Misty and another dog “Luna” were at the appellant’s property. The dogs were not restrained in any way, and the property was not completely fenced. At about 10.20 am the victim, a mental health worker, came to the property by arrangement to visit a tenant. The arrangement had been made some seven days earlier, in the appellant’s presence, and the victim had telephoned the appellant during the week about the visit.

[4] The victim entered the property. As she came up the driveway towards the house, Luna jumped up from the porch, ran towards and then past the victim, and attacked the victim from behind, knocking her to the ground. Misty joined the attack, and the victim described both dogs biting her at the same time, tugging and pulling at her with their teeth. The victim was subjected to a prolonged attack, and received severe injuries to her head, arms, legs, and back. Her injuries might have been even more severe, but the appellant placed himself on top of her, to protect her from the dogs. He was also bitten. The appellant’s actions stopped the attack sufficiently, so that he and a neighbour could restrain both dogs.

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<sup>1</sup> *Whangarei District Council v Logan* District Court Whangarei CRI-2013-088-2659, 24 January 2014.

[5] When dog control officers arrived, the appellant handed Luna over, and authorised his immediate destruction. The appellant said that Misty had not bitten the victim.

### **District Court judgment**

[6] The Judge considered that it was an aggravating factor of the offending that the appellant had known the victim would be visiting, and that the victim suffered serious injuries. The Judge was not prepared to draw any adverse inference from the appellant's statement that Misty had not attacked the victim. He observed that in the mêlée, the appellant may simply not have seen Misty.

[7] The Judge considered that the appellant's actions, which had brought the attack to an end and had put his own life in peril, were a significant mitigating factor.

[8] Pursuant to s 57(3) of the Dog Control Act 1996, the Judge was required to make an order for Misty's destruction (as being a dog that had attacked a person) unless he was satisfied that the circumstances of the offence were exceptional, and that destruction was not warranted.

[9] In considering this issue the Judge recorded that he had heard nothing in the way of special circumstances that would mean that he ought not to order destruction. The Judge made an order for destruction but at the same time effectively stayed the order pending this appeal.

### **Relevant law**

[10] Pursuant to s 250 of the Criminal Procedure Act 2011, an appeal against sentence must be allowed if the appellate Court is satisfied that:

- (a) For any reason, there is an error in the sentence imposed upon conviction; and
- (b) a different sentence should be imposed.

In any other case, the Court must dismiss the appeal.

[11] In *Anand v Auckland Council*, Katz J summarised the relevant case law under s 57(3), as follows:<sup>2</sup>

[12] It is now commonly accepted that the decision in [*Halliday v New Plymouth District Council*]<sup>3</sup> is the leading authority on the interpretation of the destruction rest under s 57(3). That case clearly set out that there is a two stage test to determine that destruction should not be ordered:

- (a) The appellant must establish that the circumstances of the offence were exceptional; and
- (b) The appellant must establish that the circumstances do not warrant destruction of the dog.

[13] At [48] of *Halliday*, Heath J suggested a list of non-exhaustive factors that might be relevant to determining whether the circumstances are exceptional:

- (a) The nature of the attack (including the fact that injury resulted);
- (b) The appellant's history as an owner of the dog;
- (c) Whether the dog had behaved in this way in the past;
- (d) The steps taken by the owner to prevent such an attack occurring; and
- (e) The reasons why the steps taken did not prevent such an attack occurring on the occasion in question.

[14] A further important principle from *Halliday* is that events which post-date the offence ought not to be taken into account in the first stage. That is because the circumstances of the offence cannot include any circumstance that has not yet occurred.

[15] ... Further, in *Jorion v Kapiti Coast District Council*, Dobson J stated:

[the dog's] apparently benign nature, her role as a family pet and confirmation of her friendly interaction with children cannot count for a lot. ... Nor is the absence of any history of attacks by the dog likely to constitute an exceptional circumstance. The Act does not contemplate dogs being given a second chance.

[12] I note that in *Orr-Walker v Auckland Council*, Heath J repeated and affirmed the approach he had taken in *Halliday*.<sup>4</sup> In *Allen v Manukau City Council*, Allan J

<sup>2</sup> *Anand v Auckland Council* [2013] NZHC 445, [2013] NZAR 285 at [12]–[15].

<sup>3</sup> *Halliday v New Plymouth District Council* HC New Plymouth CRI-2005-443-011, 14 July 2005.

<sup>4</sup> *Orr-Walker v Auckland Council* [2013] NZHC 784.

observed that the cases in which the Court declines to make a destruction order despite conviction under s 57 will be rare.<sup>5</sup>

[13] As noted above, if the first stage of the test is satisfied (that is, if it is established that there are exceptional circumstances), the Court must then go on to consider the second stage (whether destruction of the dog is warranted). Even if there are exceptional circumstances, if there is a chance that the dog may attack again, destruction will be warranted.

### **Appeal submissions**

[14] As noted by the Judge in the District Court, no submissions were made in the District Court as to the circumstances of the offences being exceptional. In this Court, Mr Logan submitted that Misty had not in fact attacked the victim. He said that the victim had not said that she saw Misty attack her. He said that when he arrived on the scene (which he said as seconds after the attack began), he did not see Misty attacking the victim and he said that a neighbour, who had also arrived very quickly, had said that Misty was “in the background”.

[15] Mr Logan next noted that the victim had been to the property before, and had had no problem with Misty. He further said that the victim had walked into the driveway, then turned so as to approach the porch area (which is not the front door of the house). He said that if she had gone directly up the drive to the front door, the attack would never have happened.

[16] Mr Logan also presented a bundle of documents which included a letter dated 5 September 2013, headed “Application to have dog returned”. This makes comments about Misty’s participation in the attack, and steps Mr Logan has taken since the attack occurred.

[17] Finally, Mr Logan presented two photographs of the property. The first is taken from the street, and shows a wooden fence surrounding the property, but also

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<sup>5</sup> *Allen v Manukau City Council* HC Auckland CRI-2009-404-330, 15 December 2009.

shows that a portion of the fence is absent. The second photograph shows the area where the attack occurred.

[18] For the respondent, Mr Harte submitted that there was nothing exceptional about the present offences, other than the means used by the appellant to end the attack. He submitted that the circumstances were that the visit was arranged, the dog that initiated the attack (Luna) was uncontrolled, and unaccompanied, and had attacked the victim as she approached the house. Misty, also uncontrolled and unaccompanied, had then joined in the attack. Mr Harte submitted that it is not an exceptional circumstance that one dog was more aggressive in the attack than the other. Mr Harte further submitted that the appellant's lack of control over the dogs was indicated by the fact that he could not exert control and stop the attack other than by placing his body over the victim's body.

[19] As to the second stage of the inquiry, Mr Harte submitted that even if there were exceptional circumstances to the offences that would not lead to a conclusion that destruction should not be ordered. In particular, he submitted that the fact that the appellant had had to take extreme measures in order to exert control over the dogs indicated that he would not be able to exert control over the dog in the future.

### **Discussion**

[20] As to the first stage of the inquiry, the difficulty with Mr Logan's submissions is that he pleaded guilty to the offences, on the summary of facts that was presented in the District Court. I accept Mr Harte's submission that there was nothing exceptional in the circumstances. Indeed, as he submitted, this was a most "unexceptional" event, in that the victim came to the house on an arranged visit, and was simply approaching the house when the attack occurred. There was no suggestion that the victim had provoked the attack, or indeed of any other matter that might be considered "exceptional".

[21] In the circumstances, as the first stage of the inquiry had not been satisfied, the Judge could not go on to consider whether destruction was warranted. While Mr Harte acknowledged that the matters set out by the appellant in his letter to the Council were matters that could well be taken into account in considering whether

destruction should be warranted, the District Court Judge simply could not get to the stage of considering them.

[22] This Court is in the same position. The Judge was right to conclude that there were no exceptional circumstances, so there is no room for any inquiry as to whether destruction was warranted.

[23] In the circumstances, as the appellant was advised, the appeal cannot be allowed. The appeal is dismissed.

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Andrews J

## RESOLUTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following parts of proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

1.	The making available of information would be likely to unreasonably prejudice the commercial position of persons who are the subject of the information. {Section 7(2)(c)}
2.	To enable the council (the committee) to carry on without prejudice or disadvantage commercial negotiations. {(Section 7(2)(i)}.
3.	To protect the privacy of natural persons. {Section 7(2)(a)}.
4.	Publicity prior to successful prosecution of the individuals named would be contrary to the laws of natural justice and may constitute contempt of court. {Section 48(1)(b)}.
5.	To protect information which is the subject to an obligation of confidence, the publication of such information would be likely to prejudice the supply of information from the same source and it is in the public interest that such information should continue to be supplied. {Section7(2)(c)(i)}.
6.	In order to maintain legal professional privilege. {Section 2(g)}.
7.	To enable the council to carry on without prejudice or disadvantage, negotiations {Section 7(2)(i)}.

### Resolution to allow members of the public to remain

If the council/committee wishes members of the public to remain during discussion of confidential items the following additional recommendation will need to be passed:

#### Move/Second

“That \_\_\_\_\_ be permitted to remain at this meeting, after the public has been excluded, because of his/her/their knowledge of Item \_\_\_\_\_.

This knowledge, which will be of assistance in relation to the matter to be discussed, is relevant to that matter because \_\_\_\_\_.

*Note:*

*Every resolution to exclude the public shall be put at a time when the meeting is open to the public.*