



Order Paper for a meeting of the

DOG CONTROL COMMITTEE

To hear an

**Appeal against
Dangerous Dog Classification
Pursuant to Dog Control Act 1996**

to be held on

Thursday, 24 February 2022

commencing at 9.00am

to be held in

Via Zoom

9.12 ITEMS OF BUSINESS NOT ON THE AGENDA WHICH CANNOT BE DELAYED

A meeting may deal with an item of business that is not on the agenda where the meeting resolves to deal with the item and the Chairperson provides the following information during the public part of the meeting:

- (a) the reason the item is not on the agenda; and
- (b) the reason why the discussion of the item cannot be delayed until a subsequent meeting.

s. 46A (7), LGOIMA

Items not on the agenda may be brought before the meeting through a report from either the chief executive or the Chairperson.

Please note that nothing in this standing order removes the requirement to meet the provisions of Part 6, LGA 2002 with regard to consultation and decision-making.

9.13 DISCUSSION OF MINOR MATTERS NOT ON THE AGENDA

A meeting may discuss an item that is not on the agenda only if it is a minor matter relating to the general business of the meeting and the Chairperson explains at the beginning of the public part of the meeting that the item will be discussed. However the meeting may not make a resolution, decision or recommendation about the item, except to refer it to a subsequent meeting for further discussion.

REFERENCE:

Queenstown Lakes District Council Standing Orders adopted on 12 December 2019.

Queenstown Lakes District Council

Dog Control Committee

Panel to Hear Objection to Classification of Menacing Dog

Councillor P Clark

Councillor C Ferguson

Councillor C MacLeod

Agenda for a meeting of the Dog Control Committee to be held via Zoom on Thursday 24 February 2022 commencing at 9.00am.

Item	Page	Report Title
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**Dog Control Committee
24 February 2022**

Department: Finance, Legal & Regulatory

Title | Taitara Objection to classification of Dangerous Dog

PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

The purpose of this report is to provide background information to inform the Council's decision to uphold or rescind the classification of Hank as dangerous under the Dog Control Act 1996.

RECOMMENDATION | NGĀ TŪTOHUNGA

That the Dog Control Committee:

- 1 **Note** the contents of this report; and
Either
- 2 **Uphold** the classification of Hank as dangerous dog under the Dog Control Act 1996;
Or
- 3 **Rescind** the classification of Hank as dangerous dog under the Dog Control Act 1996

Prepared by:



Carrie Edgerton
Team Leader, Regulatory Support,
Animal Control and Parking
19/01/2022

Reviewed and Authorised by:



Anthony Hall
Regulatory Manager
19/01/2022

CONTEXT | HOROPAKI

Background

- 1 On 4 March 2020 Wilbur a male registered boxer (Animal ID 59477) and Hank a male registered Chesapeake (Animal ID 55982) (**dogs**) were spotted attacking stock on a private farm owned by Mr Kane, located in Luggate-Tarras Road, Hawea Flat. Prior to being caught, the dogs killed or mortally wounded 49 adult sheep (**sheep**).
- 2 Ms Nancy Williamson, operating as Big Dogs Homestays dog kennels in Cromwell was in charge of both Wilbur and Hank at the time the **dogs** escaped and attacked the **sheep**.
- 3 While Big Dog Homestays operates in land governed by the Central Otago District Council, (**CODC**), the attack on **sheep** occurred on land governed by the Queenstown Lakes District Council (**QLDC**).
- 4 CODC infringed Ms Williamson for failing to control or confine the **dogs**. CODC was considering taking further action. QLDC did not take enforcement action following the attack on the **sheep**.

Ombudsman Recommendation

- 5 Mr Kane made a complaint to the Ombudsman against QLDC's decisions not to prosecute the owners of the Dogs, Ms Christine Prebble and Mr James Prebble (**owners**), or to classify the **dogs** as dangerous under the Dog Control Act 1996.
- 6 QLDC received a letter from the Ombudsman dated 11 May 2021 (attached as **Attachment A**) stating that the Ombudsman:
 - a. had formed the final opinion that QLDC's decision not to pursue prosecution or classify the dogs was unreasonable; and
 - b. recommended that QLDC reconsider its classification decisions under ss 31 and 33A(1) of the Dog Control Act 1996.

Reconsidered Classification Decision

- 7 QLDC sought a sworn statement from Mr Kane as to the attack on his **sheep** (attached as **Attachment B**).
- 8 Based on this sworn statement, QLDC officers acting under delegated authority reconsidered the classification decision and found that the legal test was made out to classify the **dogs** as dangerous dogs under s 31(1)(b) DCA because *"the territorial authority has, on the basis of sworn evidence attesting to aggressive behaviour by the dog on 1 or more occasions, reasonable grounds to believe that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife"*. The analysis behind this decision is attached as **Attachment C**.

- 9 QLDC notified the **owners** that the **dogs** had been classified as dangerous dogs on 16 June 2021. The letters and notices sent to the **owners** are attached at **Attachment D**, and explain the effects of the classification.

Objection to Classification

- 10 Under s 31(3) of the Dog Control Act 1996, where any dog is classified as a dangerous dog under s 31(1)(b), the owner may, within 14 days of the receipt of the notice of that classification, object to the classification in writing to the territorial authority and is entitled to be heard in support of the objection.
- 11 On 25 June 2021 QLDC received an objection from the **owners** to the dangerous classification of the **dogs**. A copy of the email correspondence objecting to the classification is attached as **Attachment E**. The **owners** asked to be heard and a hearing was set for 20 August 2021, however was postponed at Mr Prebble's request due to Covid, and has been re scheduled for 24 February 2022.
- 12 Wilbur was put to sleep by the owner in August 2021, however Mr Prebble (**owner**) requested the hearing for Hank should proceed.
- 13 Following this hearing, the Council is to decide whether to uphold or rescind the classification of Hank under s 31(4) of the Dog Control Act 1996. The considerations to have regard to when making this decision are set out below (16) and are different from the legal test that council officers considered when classifying Hank under s 31(1)(b).
- 14 The Council must consider the matters in s 31 of the Dog Control Act 1996 in respect of each objection and must make a decision in respect of the classification of Hank.

LEGAL CONSIDERATIONS AND STATUTORY RESPONSIBILITIES | KA TURE WHAIWHAKAARO, ME KĀ TAKOHAKA WAETURE

- 15 Under the Council's Delegations Register, the Councillors, of which any three may form a hearings panel, are to hear objections lodged under the Dog Control Act 1996.
- 16 Section 31(4) of the Dog Control Act 1996 provides that:

(4) In considering any objection under this section, the territorial authority shall have regard to –

- (a) the evidence which formed the basis for the original classification; and*
- (b) any steps taken by the owner to prevent any threat to the safety of persons and animals; and*
- (c) the matters advanced in support of the objection; and*
- (d) any other relevant matters –*

and may uphold or rescind the classification.

17 Accordingly, the Council must have regard to the above matters in making its decision to uphold or rescind Hanks dangerous classification.

18 Under s 31(5) of the Dog Control Act 1996, the Council shall give notice of its decision on any objection, and the reasons for its decision, to the **owner** as soon as practicable.

ATTACHMENTS | NGĀ TĀPIRIHANGA

A	Ombudsman letter to QLDC dated 11 May 2021
B	Mr Kane's Sworn Statement dated 25 May 2021
C	QLDC Alleged Dog vs Stock Attack Review Report dated 11 June 2021
D	Dangerous classification cover letter and notices dated 16 June 2021
E	Dog Owners' objection dated 25 June 2021

Our ref 525438 (Complaint ground: 525441)
Contact Tom Nelson
12 March 2021



Mr Mike Theelen
Chief Executive
Queenstown Lakes District Council
By email: ceo@qldc.govt.nz; Naell.Crosby-Roe@qldc.govt.nz

Dear Mr Theelen

Ombudsmen Act investigation Sam Kane

Thank you for your correspondence with Investigator Tom Nelson, concerning the complaint from Sam Kane about the Queenstown Lakes District Council's enforcement decisions regarding a dog attack. I am writing on behalf of Chief Ombudsman Peter Boshier.

Complaint and investigation

Please refer to Rachel Petterson's letter of 29 June 2020 for the background to this matter.

In summary, in early March 2020, 49 of Mr Kane's sheep were killed by two dogs which had escaped from a neighbouring kennel. The dogs were not in the care of their owners at the time. The dogs were on the run for several weeks, before attacking Mr Kane's sheep over a number of days. I understand that the dogs were eventually caught by their owners.

Mr Kane has complained that the Council's decisions not to prosecute the dog owners or to classify the dogs as dangerous under the Dog Control Act 1996 (DCA) were unreasonable.

This investigation concerns whether the Council's investigation and enforcement decisions concerning the two attacks were unreasonable in the circumstances.

Council Investigation and enforcement decisions

The Council has advised that:

As per the QLDC investigation process, each time an incident is reported Council officers gather statements from both parties. In this case, we were notified of the attack on 1 April 2020. Mr Kane refused to complete a written statement with our Animal Control officer on the day of the attack or during the few days afterwards. On 4 April 2020, Regulatory Services Manager Lee Webster from Central Otago District Council was visiting the farm and successfully obtained a statement on our behalf.

In terms of the Council's decision not to pursue classification of the dogs as 'dangerous' or to prosecute the owners of the dogs, the Council has supplied an explanation provided by Regulatory Manager Anthony Hall to Chief Executive Mike Theelen:

The Boarding Kennel is in the Central Otago District (outside our jurisdiction) this is where the subject dogs were kept prior to getting out. There is a history of the Kennel not containing dogs appropriately and there are reasonable grounds to believe that the subject dogs did kill sheep on QLDC land.

Given the dogs were not in the care of the owners at the time of the attack and in fact at a Boarding Facility where you would expect your dogs to be controlled and confined, we have determined that it is not appropriate to seek action against the dogs owners or classify of the dogs.

The dogs belong to two different owners and they live in two different locations, Christchurch and Queenstown. The dogs are a Boxer and Chesapeake Bay retriever (Lab). Due to the Kennel being located in CODC, means action against the Kennel is a CODC matter. So far, to date they have issued an infringement – (failure to control) it is not in our knowledge that if they are going to seek prosecution.

Prosecution, Classification and Infringements have been considered, however due to the circumstances of the offence being exceptional none of the options outlined are considered Warranted.

Decision not to classify dogs as dangerous or menacing

The Dog Control Act 1996 sets out the requirements for the classification of dogs. Section 31 of the Act states:

- (1) *A territorial authority must classify a dog as a dangerous dog if—*
 - (a) *the owner of the dog has been convicted of an offence in relation to the dog under section 57A(2); or*
 - (b) *the territorial authority has, on the basis of sworn evidence attesting to aggressive behaviour by the dog on 1 or more occasions, reasonable grounds to believe that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife; or*
 - (c) *the owner of the dog admits in writing that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife.*

Section 33A(1) of the Act sets out a council’s discretion to classify a dog as menacing. It states:

This section applies to a dog that—

- (a) *has not been classified as a dangerous dog under section 31; but*
- (b) *a territorial authority considers may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of—*
 - (i) *any observed or reported behaviour of the dog; or*
 - (ii) *any characteristics typically associated with the dog’s breed or type.*

From the information supplied by the Council, it appears the Council's view was that the two dogs were responsible for the deaths of the 49 sheep on Mr Kane's land. I note Mr Hall's comments that *'there are reasonable grounds to believe that the subject dogs did kill sheep on QLDC land.'* The Council had obtained a witness statement from Mr Kane, collected by Lee Webster of Central Otago District Council, which attested to the sightings of two dogs over dead sheep. I understand that following the sightings, the owners of the dogs came onto Mr Kane's land and captured the dogs in question. The dogs had by that time been loose on Mr Kane's property for over four weeks.

Section 31 of the Act places an obligation on a territorial authority to classify a dog as dangerous where it has reasonable grounds to believe that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife. The section mandates that the reasonable grounds must be on the basis of sworn evidence attesting to the aggressiveness of the dog.

It does not appear that the Council sought a sworn statement in this case. Nevertheless, given the evidence the Council had gathered, and its conclusion that the dogs were responsible for the attacks, the Ombudsman would generally expect a reasonable decision-maker to take the necessary steps to seek a sworn statement if it considered that dogs constituted a threat in terms of section 31 of the Act. Given what I understand to be the accepted facts, it is difficult to see how the Council could arrive at a conclusion that the dogs did not pose a threat to stock. If there were, however, any evidential obstacles to classification under section 31, a menacing classification remained available to the Council under section 33A(1) of the DCA.

The Council's position is that classification is not appropriate because the dogs were in the care of the Kennel and were not in the control of their owners. It is not clear why the Council reached this conclusion. Section 31 of the Act creates an obligation on councils to pursue classification of dogs as dangerous in situations where there is evidence giving rise to reasonable grounds to believe that the dog constitutes a threat to the safety of stock. Additionally, the focus of section 31 of the Act does not appear to be punitive. One of the objects of the Dog Control Act is to make better provision for the care and control of dogs *'by imposing on owners of dogs obligations designed to ensure that dogs do not injure, endanger, or cause distress to any stock, poultry, domestic animal, or protected wildlife'*.¹ The section provides a mechanism for enforcing additional controls on dogs that have been shown to be a threat to the community. With this in mind, it does not appear that the culpability of the dog owners is a relevant consideration in deciding whether or not a dog should be classified under section 31.

Taking into account the accepted facts, the evidence collected by the Council, and the express direction under section 31 of the Act to classify dog in certain circumstances, the Council's decision not to take steps to classify the dogs as dangerous appears to be unreasonable.

Decision not to pursue prosecution of owners

The introduction to the Council's *Enforcement Strategy and Prosecution Policy* states:

¹ Section 4 Dog Control Act 1996.

Prosecutions are a response to non-compliance which result in serious consequences for victims, witnesses and defendants. Prosecutions should be used in a deliberate and targeted manner to deter and denounce offending and hold the offender accountable for harm to the victim, environment and community caused by the offending.

Public confidence in the Council's administration of its enforcement duties relies on decisions to prosecute (or not to prosecute) being made in a transparent, consistent and fair manner.

Any prosecution undertaken by the Council or on its behalf (i.e. by the New Zealand Police) should be conducted in accordance with this prosecution policy, the Council's enforcement strategy and the Solicitor General's prosecution guidelines.

The Council's policy directs that an investigation file will be referred to either a prosecuting solicitor or the New Zealand Police. The Policy states:

Decision to prosecute

If a prosecutor considers that both the evidential test and the public interest tests are met, a decision of "recommend prosecution" is made, together with a list of the appropriate charges. This decision will be recorded in writing.

The prosecutor will refer this decision together with the investigation file to the Council officer in charge (i.e. the officer with delegated authority to file a charging document with the Court). That officer will exercise their discretion whether or not to commence a prosecution.

Decision not to prosecute

If a prosecutor determines that either the evidential test or the public interest test set out in the SGPG are not met a "no prosecution" decision will be made. This decision will be recorded in writing. Where the evidential test is met, but the public interest test is not, the prosecutor will refer the decision together with the investigation file to the Council officer in charge (i.e. the officer with delegated authority to file a charging document with the Court). The officer will exercise their discretion whether or not to initiate a prosecution.

A decision of "no prosecution" does not preclude a re-consideration of an investigation where new and/or additional information is available. Additionally, a review of the decision not to prosecute may be initiated for the purpose of re- evaluating the public interest.

If the decision is not to commence a prosecution, the reasons for that decision will be recorded in writing. The file will be closed, but the decision not to proceed with the prosecution may still be reviewed.

In this case, I understand that the relevant offence for a potential prosecution is that under section 57(2) of the DCA:

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

- (a) the person is attacked by the dog; or*
 - (b) the person witnesses the dog attacking any other person, or any stock, poultry, domestic animal, or protected wildlife.*
- (2) The owner of a dog that makes an attack described in subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$3,000 in addition to any liability that he or she may incur for any damage caused by the attack.*

The Council determined that prosecution of the dog owners was not warranted as the circumstances of the offending were exceptional. The dogs were in the care of a professional boarding kennel where it would be expected that dogs would be controlled and confined. As the dogs were not in the care of the owners at the time that the offending occurred, it would not be appropriate to pursue prosecution against the owners.

In this case, internal correspondence provided indicates that the Council considered that there was likely sufficient evidence to pursue prosecution. The Council's explanation to me appears to equate to an exercise of its discretion not to prosecute where it would not be in the public interest to pursue prosecution of the owners due to a total absence of fault on their part. I acknowledge that, given the circumstances, this approach appears to be broadly consistent with the principles of fairness and proportionality articulated in the Council's Enforcement Strategy and Prosecution Policy.

While the final discretion whether to prosecute appears to rest with the Council officer in charge, the Council's policy dictates that this decision should be made after referral to a prosecutor for their recommendation. This detail may have been omitted in the Council's report, but it does not appear that the investigation file was referred to a prosecutor before the decision was made.

I expect that in regular day-to-day operations, enforcement decisions for low-level offending will often not warrant the formal step of referral to a prosecutor for a recommendation on the question of prosecution. The circumstances of this complaint, however, involve a serious attack which resulted in considerable harm and cost to the victims. This appears to be the type of serious non-compliance which the Council's policy anticipates may warrant prosecution, and would be expected to engage the more robust decision-making process set out in the Council's policy. This involves the prosecutor conducting the two-step test for prosecution decision-making mandated in the Solicitor General's guidelines, before making their recommendation. The Council has not provided any reasons for why this step appears not to have been taken in this case.

Altogether, and subject to further comment from the Council, it appears that the Council's exercise of its discretion whether to prosecute in this case was unreasonable, in that it does not appear to have followed the decision-making process prescribed in its prosecution policy.

Possible recommendations

If the Ombudsman were to confirm this as his opinion on the matter, then he would likely recommend:

- that the Council reconsiders its decisions under sections 31 and 33A(1) of the DCA, taking into account its obligations under that Act and the comments made; and

- that the Council refers the investigation to a prosecutor for their review and recommendation, in accordance with its Enforcement Strategy and Prosecution Policy, before re-considering its decision.

Your comments

I invite you to comment before the Ombudsman forms his my final opinion on this matter. If you do wish to comment, please respond by 2 April 2021.

Please note that Ombudsmen must conduct their investigations in private,² and are required to maintain secrecy in respect of all matters that come to their knowledge. This is subject only to specific exceptions, as specified in the Ombudsmen Act.

This information is provided to you in confidence, in order to seek your comment before the Ombudsman forms an opinion on your complaint. We ask that confidentiality be maintained until the outcome of the investigation is finalised.

Yours sincerely



Magnus O'Neill
Assistant Ombudsman

² Section 18(2) Ombudsmen Act 1975. This also applies to OIA and LGOIMA investigations: see sections 29 and 28, respectively.

STATEMENT OF SAMUEL ALLAN KANE

In the matter of Section 31 of the Dog Control Act 1996.

I Samuel Allan Kane, [REDACTED], Farmer solemnly and sincerely affirm:*

1. That two dogs, the boxer dog owned by Christine Prebble and the curly coated retriever dog owned by James Prebble roamed through our farm and aggressively killed or mortally wounded 49 of our adult sheep over a period of days or weeks ending 5th March 2020 when they were caught on our farm on Luggate-Tarras Road.

2. The majority of the sheep showed signs of two dogs attacking at once, with facial wounds and wounds to under their front armpit area. The injuries to the sheep from these vicious attacks were extensive and severe. (Exhibit A – VetEnt Report for FMG Insurance).

3. These dogs were seen leaving the body of one of the dead sheep in Broad Gully Paddock by my father Allan Kane. They were caught by James Prebble on our farm in Broad Gully Block next to Broad Gully Paddock the following day, dead sheep were later found in this Broad Gully Block as well. Dead sheep were also located out the back of our farm in Back Block and they look to be the first mob of sheep attacked. (Exhibit B – CODC Dog Control Witness Interview Form).

4. The impact on our farm and family was substantial, both emotionally and financially. This impact is ongoing with every new dog that goes missing or roaming near our farm, we cannot help but worry that we will see a repeat of this tragedy. (Exhibit B – CODC Dog Control Witness Interview Form).

5. We have caught many stray dogs on our property. None of them have attacked our sheep. These dogs not only took the initiative to attack and kill sheep, but they spent days or weeks practicing and gaining skills to make the majority of the attacks lethal. We only had 3 sheep that survived being attacked, they killed or inflicted mortal injuries to 49 large adult sheep.

6. The dogs that attacked our sheep pose a major threat to livestock and need to be classified as dangerous dogs so that they are managed in a way that ensures they never get the opportunity to do this again.

Signed: *Kane*

Affirmed* at *Wanaka* this *25* day of *May* 20 *21*

Before me: *Isabell Shirley Menlove J.P.*
I. S. Menlove.

25-05-2021.

Isabell Shirley Menlove, JP
#11063
WANAKA
Justice of the Peace for New Zealand

ALLEGED DOG Vs STOCK ATTACK – REVIEW REPORT

Kane Vs C Prebble and J Prebble

Report date: 11 June 2021

Reporting officer: Carrie Edgerton - Animal Control Team Leader

EXECUTIVE SUMMARY

On the 4 March 2020 Wilbur a male registered boxer and Hank a male registered Chesapeake (**Dogs**) were spotted attacking stock (**Sheep**) on a private farm located in Luggate-Tarras road, Hawea Flat. The farm and sheep are the property of Mr Sam Kane and Ms Cynthia Robson.

Wilbur ID 59477 Owner Ms Christine Prebble of Christchurch.

Hank ID 55982 Owner Mr James Prebble of Queenstown (However this dog has not been reregistered in the Queenstown Lakes District this year and we have been unable to find him at his previous address, so we believe the dog is now out of district).

Both Dogs escaped from Big Dog Homestay Kennels owned by Nancy Williamson and were reported missing to QLDC on the 5/2/2020 by Nancy. The kennels are located in Central Otago District, not in the Queenstown Lakes District.

There have been multiple reports of lost dogs from Big Dog Homestay previously.

INVESTIGATION (Time Line of Events)

- 05/02/20 RFS AC20/0167 Two dogs reported as missing by boarding kennel owner Nancy Williamson.
- 03/03/20 Attack occurred (Not Reported)
- 04/03/20 Attack occurred (RFS AC20/0269)
- 04/03/20 K.Shiplee QLDC Animal Control officer spoke with Ms Robson over the phone regarding the attack
- 04/03/20 Mr Prebble was contacted and arrived at attack site.
- 04/03/20 K.Shiplee and Evie Reay, Animal control support officer attended location of attack
04/03/20 Pictures of victims taken
- 04/03/20 K.Shiplee spoke with dog owner James Prebble at attack location in regards to finding dogs.
- 04/03/20 Mr Prebble was left on the property to search for dogs
- 5/03/20 5AM Both dogs located and secured on the farm by Mr Prebble

SUMMARY OF INVESTIGATION

- On the 3/03/20 Mr Kane found two sheep dead on his property. Both had sustained trauma to their necks and faces. This apparent attack was not reported at the time to Animal control.
- On the 4 March 2020 Wibur and Hank were observed by Mr Kane's Farther attacking stock.
- Both dogs were known to the victim's owners due to them being advertised as lost for several weeks and previous contact from the Prebbles trying to locate their dogs.
- Two more sheep were killed during this attack, eight sheep were injured.
- Mr Kane chased both dogs away from the stock, the dogs headed back into the valley, still on Mr Kanes property.
- Ms Robson contacted the police and then QLDC, RFS AC20/0269 was lodged for stock attack.
- Four sheep were observed by K.Shipley as deceased with another eight severely injured.
- Owner Mr Kane contacted Mr Prebble to advise of the attack and request he find the dogs.
- Mr Prebble arranged for a helicopter and searched for the dogs, Mr Prebble spent the night on the land and located and secured both dogs in the early hours on the 5th March.
- Since the initial report of four dead and eight injured sheep, the estimated number of deaths has been increased to 42, eight of which were euthanized after the attack
- QLDC obtained sworn evidence from Mr Kane in light of the Ombudsman's recommendations.

OPTIONS AVAILABLE TO COUNCIL

- Issue a warning letter to Mr Prebble under s 52 of the Dog control Act 1996.
- Issue a warning letter to Ms Prebble under s 52 of the Dog control Act 1996.
- Classify Hank as a Menacing dog by Action under s 33A of the dog Control Act 1996.
- Classify Wilbur as a Menacing dog by Action under s 33A of the dog Control Act 1996.
- Classify Hank as a Dangerous dog by Action under s 31 of the dog Control Act 1996.
- Classify Wilbur as a Dangerous dog by Action under s 31 of the dog Control Act 1996.
- A combination of the above.

RECOMMENDATION:

Classify the dogs as Dangerous.

REASON FOR RECCOMENDATION

The options have been considered, taking into account that the timeframe to prosecute the dog owners has lapsed. Relevant background context to consider is:

- CODC have infringed Ms Williamson under s 52 of the Dog Control Act.
- CODC have taken steps towards a prosecution of Ms Williamson (still on-going).
- Based on the above, it is recommended Council consider classification of the Dogs.
- Section 31 of the Dog Control Act states:
 - (1) *A territorial authority must classify a dog as a dangerous dog if—*
 - (a) *the owner of the dog has been convicted of an offence in relation to the dog under section 57A(2); or*
 - (b) *the territorial authority has, on the basis of sworn evidence attesting to aggressive behaviour by the dog on 1 or more occasions, reasonable grounds to believe that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife; or*
 - (c) *the owner of the dog admits in writing that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife.*
- The owners of the Dogs have not been convicted of an offence under s 57A(2).
- The owners of the Dogs have not admitted in writing that the Dogs constitute a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife.
- QLDC has sworn evidence (attachment A) attesting to aggressive behaviour by the dogs from Mr Sam Kane dated 25 May 2021.
- Accordingly under s 31(1)(b), QLDC must classify the dogs if on the basis of this statement, QLDC has “reasonable grounds to believe that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife”
- Based on the sworn statement (Attachment A) it is evidence that:
 - The dogs were responsible for the attack and caused significant injury and death to 49 adult sheep;
 - Mr Kane is of the view that the Dogs “took initiative to attack and kill sheep” and in his view not all stray dogs on his property have attacked sheep.
 - Mr Kane is of the view that the dogs post a major threat to livestock.
- Mr Kane’s statement is considered accurate and reliable and that there are reasonable grounds that the dogs constitute a threat to the safety of stock.
- Under s 32 DCA, the effect of this classification is:
 - (1) *If a dog is classified as a dangerous dog under section 31, the owner of the dog—*
 - (a) *must ensure that, from a date not later than 1 month after the receipt of notice of classification, the dog is kept within a securely fenced portion of the owner’s property that it is not necessary to enter to obtain access to at least 1 door of any dwelling on the property; and*

(b) must not allow the dog to be at large or in any public place or in any private way, except when confined completely within a vehicle or cage, without being—
(i) muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction; and
(ii) controlled on a leash (except when in a dog exercise area specified in a bylaw made under section 20(1)(d)); and
(c) must produce to the territorial authority, within 1 month after the receipt of notice of classification, a certificate issued by a veterinarian and certifying—
(i) that the dog is or has been neutered; or
(ii) that for reasons that are specified in the certificate, the dog will not be in a fit condition to be neutered before a date specified in the certificate; and
(d) must, if a certificate under paragraph (c)(ii) is produced to the territorial authority, produce to the territorial authority, within 1 month after the date specified in that certificate, a further certificate under paragraph (c)(i); and
(e) must, in respect of every registration year commencing after the date of receipt of the notice of classification, be liable for dog control fees for that dog at 150% of the level that would apply if the dog were not classified as a dangerous dog; and
(f) must not, without the written consent of the territorial authority in whose district the dog is to be kept, dispose of the dog to any other person.

- Hank is already de sexed, Wilbur will be required to be de sexed.
- The Recommendation has been determined in consideration of QLDC Enforcement Strategy 2014.

Name: Carrie Edgerton

Role: Animal Control Team Leader

Signature:

A handwritten signature in black ink, appearing to be 'C. Edgerton', written in a cursive style.

Date 08/6/2021

Name: Anthony Hall

Title: Regulatory Manager

Signature:

A handwritten signature in blue ink, consisting of a stylized capital letter 'A' followed by a long, horizontal, wavy line that tapers to the right.

Date: 11/6/2021

In reply please quote
File Ref: AC20/0269

11 June 2021

Ms Christine Prebble
[REDACTED]
[REDACTED]
[REDACTED]

Dear Ms Prebble

DANGEROUS DOG CLASSIFICATION

As you are aware your dog Hank registration number 206437 was involved in a dog-on-stock attack on 4 March 2020 on farmland in Luggate – Tarras Road Wanaka.

This matter has been reviewed by the Ombudsman who gave recommendations to the Council on 11 May 2021.

Following these recommendations, the Council further investigated this matter and has determined that under s 31(1)(b) Dog Control Act 1996 (**DCA**), the Council has on the basis of sworn evidence, reasonable grounds to believe Hank constitutes a threat to the safety of any person, stock, poultry, domestic animal or protected wildlife.

Consequently, under s 31 DCA, Hank has been classified as a dangerous dog. Please refer to the attached Notice of Classification.

Under s 32 DCA, the ongoing effects of this Classification are that you must ensure Hank:

- **is secured in a separate fully fenced portion of the owner's property that is not necessary to enter to obtain access to at least 1 door of any dwelling on the property;**
- **is muzzled in a way that prevents the dog from biting at all times when in public places or any private way;**
- **is controlled on a leash when in public places or any private way (except in a dog exercise area specified in a bylaw); and**
- **dog control fees are at 150% of the level that would apply if the dog was not classified as a dangerous dog.**
- **is neutered within 1 month of receipt of this notice and provide Council a certificate issued by a veterinarian and certifying;**

(i) that the dog is or has been neutered; or

(ii) that for reasons that are specified in the certificate, the dog will not be in a fit condition to be neutered before a date specified in the certificate

Please ensure that you comply with the requirements of the dangerous dog classification and the DCA at all times, as failing to do so may result in further enforcement action including a fine not exceeding \$3,000 (refer s 32 DCA).

If you have any queries regarding this matter, please do not hesitate to contact Queenstown Lakes District Council on email on services@qldc.govt.nz or phone 03 443 0024.

Yours sincerely



Carrie Edgerton
ANIMAL CONTROL TEAM LEADER

In reply please quote



File Ref: AC20/0269

16 June 2021

Mr James Prebble

[Redacted address]

Dear Mr Prebble,

DANGEROUS DOG CLASSIFICATION

As you are aware your dog Hank registration number 206437 was involved in a dog-on-stock attack on 4 March 2020 on farmland in Luggate – Tarras Road Wanaka.

This matter has been reviewed by the Ombudsman who gave recommendations to the Council on 11 May 2021.

Following these recommendations, the Council further investigated this matter and has determined that under s 31(1)(b) Dog Control Act 1996 (DCA), the Council has on the basis of sworn evidence, reasonable grounds to believe Hank constitutes a threat to the safety of any person, stock, poultry, domestic animal or protected wildlife.

Consequently, under s 31 DCA, Hank has been classified as a dangerous dog. Please refer to the attached Notice of Classification.

Under s 32 DCA, the ongoing effects of this Classification are that you must ensure Hank:

- is secured in a separate fully fenced portion of the owner’s property that is not necessary to enter to obtain access to at least 1 door of any dwelling on the property;
- is muzzled in a way that prevents the dog from biting at all times when in public places or any private way;
- is controlled on a leash when in public places or any private way (except in a dog exercise area specified in a bylaw); and
- dog control fees are at 150% of the level that would apply if the dog was not classified as a dangerous dog.
- is neutered within 1 month of receipt of this notice and provide Council a certificate issued by a veterinarian and certifying;

(i) that the dog is or has been neutered; or

(ii) that for reasons that are specified in the certificate, the dog will not be in a fit condition to be neutered before a date specified in the certificate

While a dangerous dog classification requires a dog to be neutered, the Council understands that Hank has already been de-sexed, however we require a veterinary certificate to put on file for Hank to meet the obligations of the Act.

Please ensure that you comply with the requirements of the dangerous dog classification and the DCA at all times, as failing to do so may result in further enforcement action including a fine not exceeding \$3,000 (refer s 32 DCA).

If you have any queries regarding this matter, please do not hesitate to contact Queenstown Lakes District Council on email at services@qldc.govt.nz or phone 03 443 0024.

Yours sincerely

Carrie Edgerton
ANIMAL CONTROL TEAM LEADER



Queenstown Lakes District Council
NOTICE OF CLASSIFICATION OF DOG AS A DANGEROUS DOG
Section 31, Dog Control Act 1996

To Ms Christine Prebble

Address:

[Redacted address]

Dog: Wilbur 208632

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

This is because the Council has, on the basis of sworn evidence attesting to aggressive behaviour by the dog on 1 or more occasions, reasonable grounds to believe that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife (refer s 31(1)(b)."

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

Regulatory Manager

16 June 2021
Date

***For the purpose of the Dog Control Act 1996, you are the owner of a dog if –**

- * You own the dog; or
- * You have the dog in your possession (otherwise than for a period not exceeding 72 hours for the purpose of preventing the dog causing injury, or damage, or distress, or for the sole purpose of restoring a lost dog to its owner); or
- * You are the parent or guardian of a person under the age of 16 who is the owner of the dog and who is a member of your household living with you and dependent on you



**Effect of Classification as a Dangerous Dog
Section 32, Dog Control Act 1996**

You are required, -

- (a) Within one month after receipt of this notice, to ensure that the dog is kept within a securely fenced portion of your property which it is not necessary to enter to obtain access to at least one door of any dwelling on the property; and
 - (b) must not allow the dog to be at large or in any public place or in any private way, except when confined completely within a vehicle or cage, without being—
 - (i) muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction; and
 - (ii) controlled on a leash (except when in a dog exercise area specified in a bylaw made under [section 20\(1\)\(d\)](#)); and
 - (c) To produce to the Queenstown Lakes District Council, within one month after receipt of this notice, a certificate issued by a registered veterinary surgeon and certifying--
 - (i) That the dog is or has been neutered; or
 - (ii) That for reasons that are specified in the certificate, the dog will not be in a fit condition to be neutered before a date specified in the certificate; and
 - (d) Where a certificate under paragraph (c) (ii) is produced to the Queenstown Lakes District Council, to produce to the Queenstown Lakes District Council, within one month after the date specified in that certificate, a further certificate under paragraph (c); and
 - (e) In respect of every registration year commencing after receipt of this notice, to pay dog control fees for that dog at 150% of the level that would apply if the dog were not classified as a dangerous dog; and
 - (f) Not to dispose of the dog to any other person, without the written consent of the Queenstown Lakes District Council in whose district the dog is to be kept. You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with all of the matters in paragraphs (a) to (f) above. In addition, on conviction the court must order the destruction of the dog unless satisfied that the circumstances of the offence were exceptional and do not justify the destruction of the dog. A dog control officer or dog ranger may seize and remove the dog from you if you fail to comply with all of the matters in paragraphs (a) to (f) above. The ranger or officer may keep the dog until you demonstrate that you are willing to comply with paragraphs (a) to (f). You will also commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you sell or otherwise transfer the dog, or offer to do so, to any other person without disclosing that the dog is classified as a dangerous dog. As from 1 July 2006, you are also required, for the purpose of providing permanent identification of the dog, to arrange for the dog to be implanted with a functioning microchip transponder. This must be confirmed by making the dog available to the Queenstown Lakes District Council in accordance with the reasonable instructions of the Queenstown Lakes District Council for verification that the dog has been implanted with a functioning microchip transponder of the prescribed type and in the prescribed location. You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with this requirement—
- within 2 months from 1 July 2006 if your dog is classified as dangerous on or after 1 December 2003 but before 1 July 2006; or
 - Within 2 months after the dog is classified as dangerous if your dog is classified as dangerous after 1 July 2006.



If the dog is in the possession of another person for a period not exceeding 72 hours, you must advise that person of the requirement to not allow the dog to be at large or in any public place or in any private way (other than when confined completely within a vehicle or cage) without the dog being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction. You will commit an offence and be liable on conviction to a fine not exceeding \$500 if you fail to comply with this requirement.

Full details of the effect of classification as a dangerous dog are provided in the [Dog Control Act 1996](#).

Right of Objection to Classification Section 31 (3), Dog Control Act 1996

If the dog is classified as a dangerous dog because it is believed to constitute a threat to public safety, you may object to the classification by lodging with the Queenstown Lakes District Council a written notice within 14 days of receipt of this notice setting out the grounds on which you object. You are entitled to be heard in support of your objection and will be notified of the time and place when your objection will be heard.



Queenstown Lakes District Council
NOTICE OF CLASSIFICATION OF DOG AS A DANGEROUS DOG
Section 31, Dog Control Act 1996

To Mr James Prebble

Address: [REDACTED]

Dog: Hank 206437

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

This is because the Council has, on the basis of sworn evidence attesting to aggressive behaviour by the dog on 1 or more occasions, reasonable grounds to believe that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife (refer s 31(1)(b).”

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

Regulatory Manager

16 June 2021
Date

***For the purpose of the Dog Control Act 1996, you are the owner of a dog if –**

- * You own the dog; or
- * You have the dog in your possession (otherwise than for a period not exceeding 72 hours for the purpose of preventing the dog causing injury, or damage, or distress, or for the sole purpose of restoring a lost dog to its owner); or
- * You are the parent or guardian of a person under the age of 16 who is the owner of the dog and who is a member of your household living with you and dependent on you



Effect of Classification as a Dangerous Dog
Section 32, Dog Control Act 1996

You are required, -

- (g) Within one month after receipt of this notice, to ensure that the dog is kept within a securely fenced portion of your property which it is not necessary to enter to obtain access to at least one door of any dwelling on the property; and
 - (h) must not allow the dog to be at large or in any public place or in any private way, except when confined completely within a vehicle or cage, without being—
 - (i) muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction; and
 - (ii) controlled on a leash (except when in a dog exercise area specified in a bylaw made under [section 20\(1\)\(d\)](#)); and
 - (i) To produce to the Queenstown Lakes District Council, within one month after receipt of this notice, a certificate issued by a registered veterinary surgeon and certifying—
 - (iii) That the dog is or has been neutered; or
 - (iv) That for reasons that are specified in the certificate, the dog will not be in a fit condition to be neutered before a date specified in the certificate; and
 - (j) Where a certificate under paragraph (c) (ii) is produced to the Queenstown Lakes District Council, to produce to the Queenstown Lakes District Council, within one month after the date specified in that certificate, a further certificate under paragraph (c); and
 - (k) In respect of every registration year commencing after receipt of this notice, to pay dog control fees for that dog at 150% of the level that would apply if the dog were not classified as a dangerous dog; and
 - (l) Not to dispose of the dog to any other person, without the written consent of the Queenstown Lakes District Council in whose district the dog is to be kept. You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with all of the matters in paragraphs (a) to (f) above. In addition, on conviction the court must order the destruction of the dog unless satisfied that the circumstances of the offence were exceptional and do not justify the destruction of the dog. A dog control officer or dog ranger may seize and remove the dog from you if you fail to comply with all of the matters in paragraphs (a) to (f) above. The ranger or officer may keep the dog until you demonstrate that you are willing to comply with paragraphs (a) to (f). You will also commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you sell or otherwise transfer the dog, or offer to do so, to any other person without disclosing that the dog is classified as a dangerous dog. As from 1 July 2006, you are also required, for the purpose of providing permanent identification of the dog, to arrange for the dog to be implanted with a functioning microchip transponder. This must be confirmed by making the dog available to the Queenstown Lakes District Council in accordance with the reasonable instructions of the Queenstown Lakes District Council for verification that the dog has been implanted with a functioning microchip transponder of the prescribed type and in the prescribed location. You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with this requirement—
- within 2 months from 1 July 2006 if your dog is classified as dangerous on or after 1 December 2003 but before 1 July 2006; or
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If the dog is in the possession of another person for a period not exceeding 72 hours, you must advise that person of the requirement to not allow the dog to be at large or in any public place or in any private way (other than when confined completely within a vehicle or cage) without the dog being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction. You will commit an offence and be liable on conviction to a fine not exceeding \$500 if you fail to comply with this requirement.

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Carrie Edgerton

From: christine prebble [REDACTED]
Sent: Friday, June 25, 2021 11:41 AM
To: Carrie Edgerton
Cc: [REDACTED]
Subject: Fwd: Ref : AC20/0269

Objection to classification of dogs Wilbur and Hank, file reference AC20/0269:

----- Original Message -----

From: christine prebble [REDACTED]
To: Carrie Edgerton <Carrie.Edgerton@qldc.govt.nz>
Cc: [REDACTED]
Date: 25 June 2021 at 11:06
Subject: Ref : AC20/0269

To whom it may concern.

I am writing in response to the letter received concerning the classification of the two dogs, Wilbur and Hank, as dangerous dogs. I am the sole owner of Wilbur a 7 year old neutered male boxer, and solely responsible for him and James is the owner and responsible for Hank a 5 year neutered male Chesapeake Bay Retriever. The dogs were found, after escaping on February 4th 2020, from Big Dog Homestay on the Tarras Luggate Road owned by Nancy Williamson, on March 4th 2020, who failed to notify us that the dogs were not in her care, nor on her property, until we rung her on the next day to tell her we were approximately 30minutes away from picking them up. Unfortunately the circumstances which attributed to them being discovered were none less than desirable. We had searched relentlessly for the entire month and in fact taken time off work so that we could search the greater area every day, and contacted every avenue of media, and knocked on many many doors. We were notified by the police on the morning of the March 3rd that the dogs had been discovered on the sheep station belonging to Sam and Cynthia Kane by Sam's father, and that Sam Kane had given us until 6am on March 4th to remove the dogs from his property or they would be shot. We immediately brought in further help to search for them including farmers on trail bikes and a chopper. We stayed up all night and finally we were able to retrieve them when they came to us from high up in a bushy gully at 5.45am, the morning of March 4th. They were obviously alive, however physically not well, Wilbur having internal bleeding and an ulcerated gut. Both dogs have recovered and have shown no signs of aggression towards animals, stock, birds, poultry or people.

Wilbur is a friendly, well trained boxer and has always been interactive with people and other animals. He lives in an environment which is adjacent to a marshy lagoon which is the habitat of many native species, especially birds and herons, shares my property with free range chooks, and is welcoming to all who visit, be it friends, family couriers or meter readers. The greater area in which we live is a popular walking, biking, running and dog exercise area, boasting many walkways and open paddocks. At no given time has Wilbur ever shown any aggression or bad behavioral problems toward any person or animal. He is contained on my property and is taken twice daily for walks along the river, stopbank, lagoon and in the paddocks on and off the lead. For the reasons contained in this paragraph I believe that the classification is unwarranted, however I am responsible for my dog and his actions and know that the circumstances of March 2020 would not have eventuated had he been correctly cared for at the boarding kennels.

Hank, is an intelligent, social and highly trained 5 year old male neutered Chesapeake Bay retriever. Hank lives in a domestic environment, is friendly to all, animals or people/children, and has undertaken specialized training, which has enabled him to work as a ski patrol dog, meaning that he has had to share the chairlift with unfamiliar people, including children. At no time has he not interacted with anyone in an unsocial manner, nor given any cause for alarm. He is fortunate enough to live in a beautiful part of New Zealand where his walks can include many areas inhabited by our native species, keas, tuis, bellbirds etc. Being responsive to commands, and with the ability to learn quickly, Hank has at no time been a threat to any living creature.

In conclusion, we believe that the classification of our dogs as dangerous dogs is totally unnecessary. The issue of this entire circumstance is WHY and HOW do dogs constantly escape from the Bigs Dogs establishment, and why is the owner allowed to continue operating. The most recent escape being on the 10th June 2021, still to be missing on 25th June 2021, a beautiful dog Dobby, belonging to Madi O'Donnell, 0226495846. We just hope and pray that her dog is found safe and well and not involved in a scenario such as that which we found ourselves involved in.

Yours sincerely

Christine and James Prebble

On 24 June 2021 I at 13:12 Carrie Edgerton <Carrie.Edgerton@qldc.govt.nz> wrote:

Hi Christine

This is my email address if you need any further correspondence on the classification we just spoke about on the phone.

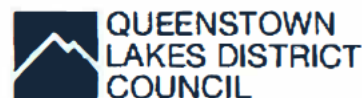
Kind Regards

Carrie Edgerton | Support, Animal Control and Parking
Team Leader | Regulatory + Finance

Queenstown Lakes District Council

DD: +64 3 450 1708 | P: +64 3 441 0499

E: carrie.edgerton@qldc.govt.nz



Carrie Edgerton

From: James Prebble [REDACTED]
Sent: Friday, June 25, 2021 6:55 PM
To: christine prebble; Carrie Edgerton
Subject: RE: Ref : AC20/0269

Hi Carrie,

I am the owner of Hank and will also be objecting to Classification of our dogs, file reference AC20/0269

Can all correspondence from the ombudsman which he has made this decision be sent through to us as soon as possible.

Kind regards,

James Prebble
[REDACTED]

From: christine prebble [REDACTED]
Sent: Friday, 25 June 2021 11:41 AM
To: Carrie Edgerton <Carrie.Edgerton@qldc.govt.nz>
Cc: James Prebble [REDACTED]
Subject: Fwd: Ref : AC20/0269

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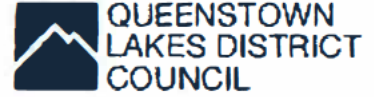
Kind Regards

Carrie Edgerton | Support, Animal Control and Parking
Team Leader | Regulatory + Finance

Queenstown Lakes District Council

DD: +64 3 450 1708 | P: +64 3 441 0499

E: carrie.edgerton@qldc.govt.nz



James Prebble

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] | [REDACTED] | [REDACTED] | [REDACTED]

[REDACTED]  [REDACTED]

[REDACTED]

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