

"A"
(38 pages)

IN THE DISTRICT COURT
AT MANUKAU

This is a true copy of the exhibit marked "A" referred to in the affidavit
of KEVIN PLOWRIGHT sworn / affirmed at Auckland
the 21 day of August 2018
before me [Signature]
A Solicitor of the High Court of New Zealand
L. Gilmour
Deputy Registrar
South Auckland
CIV-2018-092-000596
[2018] NZDC 13878

BETWEEN

THE ROYAL SOCIETY FOR THE
PREVENTION OF CRUELTY TO
ANIMALS AUCKLAND (SPCA
AUCKLAND)
Applicant

AND

JANINE ANN WALLACE
BARBARA GLOVER
Dog Breeders of 1478 Miranda Road,
Pokeno
Respondents

Hearing: 12 June 2018

Appearances: NE Walker for the Applicant
B Meyer for the Respondents

Judgment: 12 July 2018

JUDGMENT OF JUDGE J H LOVELL-SMITH

The Application

[1] This is an application by Kevin Richard Plowright, an inspector duly appointed under the provisions of the Animal Welfare Act 1999, on behalf of the Society for the Prevention of Cruelty to Animals, Auckland ("SPCA"), seeking orders pursuant to s 136A of the Animal Welfare Act 1999 ("the Act"). The application is made in respect of 28 dogs, 15 of which were seized under s 127(5) of the Act on 13 October 2017 and the remainder are the surviving puppies that have been born since the seized dogs have been in SPCA custody. The respondents oppose the application denying that the applicant had the right to seize the dogs, nor do they have the right not to return the dogs to the respondents who are the rightful owners of the dogs.

[2] Section 136A of the Act provides:

136A Disposal of animals seized or taken into custody prior to commencement or determination of proceedings

(1) This section applies if—

(a) 1 or more animals are seized by a constable or an inspector, under the authority of a search warrant issued under section 131 . . .; and

(b) Either—

(i) proceedings for an offence involving . . . those animals—

(A) have been commenced but not yet determined; or

(B) have not yet been commenced but are intended to be commenced within a reasonable period; . . .

(2) If this section applies, the District Court . . . on an application by . . . an inspector, may make an order authorising—

(a) the sale of the animal or animals; or

(b) the placement of the animal or animals with another person; or

(c) the destruction or other disposal of the animal or animals; or

(d) the dehorning or performance of other surgical procedures on the animal or animals.

(3) The District Court—

(a) must, before making an order under subs (2), give the owner of the animal or animals, if known and able to be contacted, an opportunity to be heard; and

(b) may make an order under subs (2) if it is satisfied that there are good reasons for making that order; and

(c) may, when making the order, impose conditions (. . .)

(4) In determining whether to make any order referred to in subs (2), the court must have regard to the following matters:

(a) whether the owner of the animal or animals has been identified.

(b) the number of animals involved.

- (c) whether the animal or animals are being kept for economic purposes or for companionship.
- (d) the cost of continuing to hold the animal or animals.
- (e) the physical state of the animal or animals.
- (f) whether it is reasonable or practicable for the animal or animals to be placed elsewhere.
- (g) whether it is reasonable or practicable for the Ministry or an approved organisation to retain possession of and care for the animal or animals until the determination of the proceedings relating to the animal or animals:
- (h) whether any person will suffer material or other loss, and the extent of that loss, if the animal or animals are sold:
- (i) any other matters the court considers relevant.

The Course of the Proceeding

[3] After hearing from the parties, it was agreed that I should consider the matters on the papers. I have considered the affidavit of Kevin Plowright dated 15 January 2018 together with the bundle of photographs taken during Mr Plowright's inspections of the respondents' property, his supplementary affidavit dated 12 June 2018, the affidavit of Gregory John Reid dated 11 June 2018 in support of application for disposal orders pursuant to the Act and memorandum of counsel for the applicant.

[4] I have also considered the affidavit of Janine Ann Wallace dated 6 June 2018 in support of her notice of opposition to the application for disposal orders filed by the applicant and memorandum of counsel for the respondents.

Applicant's Evidence

[5] In the three months prior to the visit by Mr Plowright on 13 October 2017, during which the dogs were seized, the applicant had visited 1478 Miranda Road known as the Volkerson Kennels (the property) for the purposes of inspecting the welfare of a large number of German Shepherd dogs on four occasions.

[6] The first visit was on 28 July 2017 at about 12:14 pm on the basis of information received from a member of the public. Mr Plowright was accompanied

by another SPCA inspector, Lori Davis. Mr Plowright and Inspector Davis were wearing their SPCA vests which had their warrants of appointment displayed.

[7] On arrival, Mr Plowright recorded that it was immediately obvious that the property was home to a large number of German Shepherd dogs. As they went up the driveway they saw two dog pens containing young German Shepherd pups. When they reached the main house, there were dogs barking from all directions. Several German Shepherd dogs and pups were tethered by short one metre leashes to a white picket fence surrounding the house.

[8] As Mr Plowright and Inspector Davis approached the house they introduced themselves to an adult woman explaining the reasons for their inspection. Inspector Davis showed the woman her warrant of appointment. The woman introduced herself as "Ann" stating that she was the daughter of Barbara Glover. Ann said her sister Janine Wallace was not at the property as she had taken her mother to the doctor. Ann called Ms Glover to advise her of the SPCA inspection and then told the two inspectors that her mother was on her way home. Ann was advised of the inspectors' body worn camera.

[9] Inspector Davis and Mr Plowright began their inspection beginning with the dog pens they had seen as they came up the driveway which were made of fencing wire and wooden posts. The ground in the pens was very muddy. One pen was empty but the other contained five 8-10 week old pups and all were muddy.

[10] Ann told them she was not sure which dogs at the property would bite and which would not bite. A decision was then made to leave the property and return in a short time afterwards when Ms Glover and Ms Wallace would have returned home.

[11] Inspector Davis and Mr Plowright resumed their inspection at 1:15 pm. They were met by Ms Glover and Ms Wallace at the entrance to their front yard. Both inspectors displayed their warrant of appointment, introduced themselves and explained the reason for their inspection and informed Ms Glover and Ms Wallace that they had body worn cameras. They asked Ms Glover and Ms Wallace to show them all the dogs on the property.

[12] Mr Plowright recorded his observations of the dogs identified on the property on 18 July 2017 as follows:

- (a) An adult female dog running free on the property and there were three caged dogs inside a station wagon with the windows down;
- (b) Around the front yard of the main house was a white picket fence, to which three young pups tethered by short one metre leads and choke chains. We were told that these dogs had been put there that morning but they normally stayed inside the house.
- (c) Two adult dogs were in a double dog cage. The floor of this was covered in faecal matter with the strong offensive odour of urine and faeces. The large quantity of faecal matter in the cage suggested that the dogs spent a large amount of time confined in that way and had not been given an opportunity to defecate outside.
- (d) An adult dog was tethered to a tree on the corner of the yard. This dog did not have shelter and there was dirt only with no grass around the chain area, suggesting to me that the dog had been kept there for a considerable amount of time.
- (e) Three 6 week old pups were confined in a small portable pen. There was no water available to these pups as their bowls had been knocked over.
- (f) An adult female dog was tethered to a tree with a wheelie bin lying on its side nearby (possibly to provide shelter). The area within the range of the chain was only dirt and no grass and there were many holes indicating the dog had been digging. These factors suggested to me this dog was tethered there on a long-term basis.
- (g) An adult male dog was housed in a single dog cage. The cage and kennel was thick with faecal matter which I estimated had built up over many weeks. There was a strong odour of urine and faecal matter.
- (h) A large male dog was tethered to the front deck by short one metre leash. This leash was attached to a choke chain around the dog's neck.
- (i) Ten young pups were contained in a small wooden shed. The floor was covered with filthy newspaper and faecal matter trampled into the floor. The air was pungent with high ammonia levels from urine-soaked newspaper. A window, which would have been the only source of ventilation, was shut. Ms Wallace told us this shed was cleaned twice daily but it had certainly not been cleaned that day. There was no water available for pups.
- (j) An adult male dog was tethered to a large utility shed. The leash was a short one metre leash with a choke chain. Again there was no water available to this dog.
- (k) An adult dog was loose in the utility shed. The floor was littered with faecal matter.

- (l) There was a deer shed with two stables. Ms Wallace opened the top of the first stable doors and there was immediately a strong and offensive odour of faecal matter and urine such that I found it difficult to breath (because of the high ammonia levels). The stable contained three 8-week old pups. It had clearly not been cleaned for many days. The only window available from ventilation was shut. The pups were without any water or a clean area to sleep.
- (m) The second stable also contained three pups and possessed a strong and pungent odour of faecal matter and high levels of ammonia from urine. These pups were a little older than the three in the other stable. Again the floor was covered with faecal matter. There were some beef bones on the floor, for the dogs to shew, but these had been amongst the faecal matter and were clearly contaminated by it. There was a window on the stable which was slightly open but in my estimation not sufficiently for a meaningful quantity of fresh air to circulate. Ms Wallace told us the stables had not been cleaned for two or three days but in my view it had obviously been longer than this.
- (n) Ms Wallace then took us to a wool shed, where a number of dogs were penned in sheep pens. Most of these dogs were without water and there was a faecal matter covering the floor, which was made of wooden slats so some of the faeces was fallen between the gaps. There were five adult female dogs and one male dog. One dog was tethered in the end pen by a short one metre lead. There were signs of dogs chewing the wooden rails likely as a result of boredom. Underneath the wool shed there were deep piles of dog faeces. The paddocks around the wool shed showed no sign of faeces or trampled grass, which in my view meant it was unlikely the dogs were spending much, if any, time out of the wool shed.
- (o) Ms Wallace then took us to an area where there were more German Shepherd pups tethered and cattle yards on short leads and choke chains. The yards had a carport type of roof with a concrete base. The pups were without bedding and some of the dogs were without water. The area was filthy, with a covering of dirt faecal matter and urine.

[13] Mr Plowright and Inspector Davis then discussed with Ms Wallace and Ms Glover the living conditions in which their dogs were being kept which were well below the Code of Welfare for Dogs 2010. In particular, they were concerned that Ms Glover and Ms Wallace had too many dogs in their care to be able to look after them adequately and they did not have sufficient housing facilities for the 63 dogs that Mr Plowright and Inspector Davis had identified. Ms Glover and Ms Wallace did not express any disagreement with their findings at that time.

[14] Inspector Davis and Mr Plowright then issued a formal Notice namely a AWS130 Instruction to Prevent or Mitigate Suffering to Ms Glover and Ms Wallace.

This Notice required the respondents to remedy the problems that had been identified by Mr Plowright and Inspector Davis, namely:

- (a) Cleaning all enclosures daily and making sure enclosures will properly ventilated;
- (b) Providing adequate shelter for all dogs;
- (c) Providing the dogs with an opportunity to display normal patterns of behaviour, immediately;
- (d) Upgrading the dog enclosures within five months;
- (e) Improving the puppy pen enclosures to require the flooring on to be dry and without mind, within seven days.

[15] The Notice was discussed with Ms Glover and Ms Wallace who said they would be building a new large kennel complex within five months. The two inspectors discussed the importance of daily cleaning and exercise and behavioural enrichment for the dogs, making it clear that these steps needed to be taken immediately. They also talked about the urgent intervention required to mitigate the suffering of the dogs and their care.

[16] Mr Plowright said that he made it clear to both Ms Glover and Ms Wallace that the SPCA's goal was to direct them towards successful care and management of their dogs as failure to comply with the instructions issued could result in the removal of the dogs and that there would be further inspections to check compliance with the Notice.

Inspection on 4 August 2017

[17] On 4 August 2017 at about 10:17 am Mr Plowright and Inspector Davis returned to the property for a follow up inspection and were again met by Ms Glover. Later they met with Ms Wallace who had finished showing a potential buyer one of the pups. Both inspectors were wearing SPCA vests with their warrants of

appointment displayed. They had pointed out and explained the body worn cameras both were wearing to the respondents.

[18] Mr Plowright said they could hear dogs barking from inside the garage. They had not been shown any dogs inside the garage on 28 July 2017 although they had asked to be shown all dogs residing on the property at the time.

[19] Ms Glover first took them to the pups in the wooden shed which she said had been cleaned out that morning. However, on inspection Mr Plowright found that the ammonia levels were overwhelming, the wooden floor was extremely smelly with stale urine and the pups water was dirty. There was no behavioural enrichment for the dogs nor any clean bedding for them. The large utility shed had been cleaned and was housing one adult loose dog. Four dogs were tethered under the covered cattle shed on short one metre leads. The surrounding area was dirty and all four dogs were without water.

[20] Ms Wallace told them that they had homes for five of their pups and one adult dog. Mr Plowright and Inspector Davis spoke to Ms Wallace about their concern for the pups in the small shed which they explained was not suitable for raising pups, as pups needed to be raised on a washable sealed surface, not a porous surface such as wood which absorbs urine.

[21] Ms Wallace then took Mr Plowright and Inspector Davis to the stables at the end of the deer shed. There was a person there that they understood was a British backpacker, who was cleaning up the urine and faeces soaked newspaper. As at the last visit, beef bones lay on the floor amongst the filth. There were four pups in the first stable, three pups in the second stable. The second stable had been cleaned by scraping the faeces and urine soaked newspaper with a shovel and fresh paper laid over the top but this token effort had made no discernible improvement. The pups sleeping area were still without bedding and were smeared with faeces.

[22] Ms Wallace then took Mr Plowright and Inspector Davis to the wool shed. Some of the dogs there were without water and the faeces had not been cleaned up. After inspecting the dogs in the wool shed they walked past dogs tethered under the

roofed cattle yards. These were in dirty conditions and on short leashes without any form of bedding.

[23] Mr Plowright and Inspector Davis then inspected six adult dogs in the old enclosures. They were in filthy condition and smelt strongly of urine and faeces. These dogs were walking in their own faeces and urine and spreading it everywhere. There was no clean bedding for the dogs.

[24] The old kennel block was within an area fenced off from the farm allowing a secure exercise area for the dogs to run in. However, there was very little sign of this area being used for dogs to exercise.

[25] Inside the fenced area were some trees with a dog chain attached to two of the trees. The area around the trees had no grass, suggesting that have been worn down to dirt. There were signs of dogs having been digging. There was a female German Shepherd loose inside the fenced area. She had very poor movement in her hind legs and was obviously underweight.

[26] Mr Plowright heard dogs barking in the garage and told Ms Wallace that he would like to view them too. Ms Wallace seemed reluctant but he drew her attention to the fact that he asked to see all dogs in the previous inspection and they had not been shown these dogs.

[27] On the way to the garage Mr Plowright and Inspector Davis observed other dogs tethered to the picket fence by short one metre leads and choke chains. These dogs had no form of shelter.

[28] Ms Wallace opened the garage for Mr Plowright and Inspector Davis. Inside the garage there was a strong pungent odour of urine and faecal matter. Inspector Davis had to go straight out again as the odour was overwhelming. Inside the garage there was a young dog in a small collapsible cage that had very little room to move. This dog had neither water nor bedding.

[29] Another dog was confined in air cargo crate. This dog was showing signs of aggression. There were also some empty crates with soiled newspaper indicating dogs had been in there for long periods without cleaning.

[30] Mr Plowright explained to Ms Wallace that the filthy conditions and poor air quality in the garage was not suitable for housing dogs.

[31] Around the house there were pups tethered to the fence with faecal matter within the range of their tethers. Ms Wallace had said the pups had been tethered there about an hour ago which Mr Plowright did not consider plausible.

[32] There was an adult female dog tethered in the garden without shelter or water. There was a male dog contained in a single kennel run at the back of the house which was living and sleeping on what Mr Plowright assessed to be months of accumulated faeces. Mr Plowright describes the build-up of dog faeces inside the sleeping area to be inches thick and this dog was also without access to water.

[33] Mr Plowright said when he told Ms Wallace about his concerns she did not accept there was anything wrong. He pointed out the depth of the faeces and invited her to look for herself which he said she did reluctantly. They continued around the backyard and Mr Plowright could hear barking from inside the house. He asked Ms Wallace if she would give her consent to allow an inspection inside the house but she declined.

[34] However, Ms Wallace did say she would bring the dogs out to them. She brought out a long haired pup and said the other dog still in the house was a bitch in season. Mr Plowright told her that she did not need to bring out the other dog as he did not want to get the male dogs wound up. He said he asked Ms Glover and Ms Wallace again if they had actually shown them all the dogs on their property. They said there were no other dogs that they had not seen.

[35] Inspector Davis and Mr Plowright then summarised their findings to Ms Wallace and Ms Glover and told them that they still had serious concerns for the welfare of the dogs on their property. In particular, Mr Plowright said they highlighted

the lack of water and shelter, the tethering on short leads, the filth and the high ammonia levels. In their view, the Notice issued on 28 July 2017 had not been complied with. It was suggested to Ms Wallace that they were running a commercial breeding operation and selling the pups at \$5,000 each without putting proper resources into the raising of these pups and that this was not acceptable.

[36] Mr Plowright advised Ms Wallace that they intended to seize the dogs in their care, but before doing so he gave Ms Wallace and Ms Glover an opportunity to surrender ownership of the dogs to start reducing the numbers to help them provide a better level of care. The surrendering of five dogs at that time and another five dogs the following week were discussed. Ms Wallace and Ms Glover surrendered ownership of five adult dogs as follows:

- (a) Regina, a two year old adult female;
- (b) Dazzel, an eight month old female;
- (c) Furbo, a four year old male;
- (d) Fina, a four year old female;
- (e) Gemma, a three year old female.

[37] Mr Plowright and Inspector Davis then issued Ms Glover and Ms Wallace with a second Notice AWS130, Instruction to Prevent or Mitigate Suffering. Mr Plowright said they reiterated to both women that all dog living areas had to be fully cleaned, disinfected immediately and then cleaned on a regular basis.

[38] The five dogs seized were transported back to the SPCA for veterinary examination and treatment. All the dogs were dirty with matted coats, they all smelt of urine and faeces and some were underweight.

Inspection on 11 August 2017

[39] Mr Plowright and Inspector Davis returned to the property one week later on 11 August 2017 at about 10:48 am, accompanied this time by another SPCA employee, Charlotte Clark. As was done on the previous inspections, the same introductions and explanations for their visit were made.

[40] As a result of carrying out this further inspection, Mr Plowright found that very little had been done to remedy the problems identified and there were still many dogs living in completely unacceptable conditions. They discussed their findings with Ms Wallace. One issue was ascertaining the actual number of dogs on the property as Mr Plowright was not confident that Ms Wallace had been “up front” with them. On this visit, there appeared to be 61 dogs. At the first inspection on 28 July 2017 there had been 63 dogs from which five had been surrendered. Ms Wallace had also said some dogs had been sold in the interim. The numbers did not add up in the opinion of Mr Plowright. Ms Wallace had suggested at their first visit that some dogs had been out at training or at dog shows. Mr Plowright formed the view that Ms Wallace had not been truthful and not all the dogs at the property had been shown to them.

[41] Mr Plowright and Inspector Davis then discussed with Ms Glover and Ms Wallace the options of rehoming more dogs and the option of surrendering ownership of more dogs to the SPCA in order to make caring for the other dogs less onerous. Ms Glover and Ms Wallace declined this offer.

[42] A further Notice AWS 130 Instruction to Prevent or Mitigate Suffering was issued. Despite some areas being marginally cleaner, Mr Plowright remained concerned about dogs being tethered for long periods on short leads, some having no water, areas of unacceptable hygiene and no ability to display normal behaviour or have access to behavioural enrichment.

Inspection of 12 October 2017.

[43] Mr Plowright and Inspector Davis returned to the property for a further inspection on 12 October 2017 at 11:28 am.

[44] Ms Glover and Ms Wallace showed them a new kennel block which was under construction and was to be about 20 metres long and 6 metres wide. It was at the stage of boxing and concrete reinforcing. They discussed the importance of sealing the concrete to ensure the surface was washable. Ms Glover and Ms Wallace said they were planning on having 17 enclosures with two dogs intended to be housed in each.

[45] However, early on in this inspection on 12 October 2017 it was clear that the SPCA concerns had not been remedied as there were still dogs confined in small areas and in filthy conditions.

[46] Again, Mr Plowright asked Ms Wallace how many dogs did they currently own and how many were being rehomed. Ms Wallace said that she knew every single dog on the property and there were 24 adults and that was not counting one old dog. In Mr Plowright's opinion this estimate was plainly wrong.

[47] When they inspected the dogs in the old enclosures they could smell urine and faeces well before they could even see the enclosures. There was a young male dog tethered without shelter or water and the ground around him had been worn down to dirt indicating he had been in this position for a long time.

[48] There were three adult dogs without water in the old enclosures. The floor in the enclosure had significant filthy faecal mess such that the dogs were finding it difficult to walk around without skidding around in their own faeces and urine. Two of the dogs' coats were matted and smelt strongly of faecal matter. There was no clean area for them to sit or lie down.

[49] In the covered cattle area there was an adult dog tethered on a short one metre leash without any water and surrounded by faeces. Three other dogs were in similar situations. None of them had any bedding.

[50] In the stable at the end of the deer shed there were a total of four pups. The smell in this area was not as pungent as on previous visit but was still not good. The pups on both stables were without water.

[51] In the deer shed, the ammonia levels were still very high. There was one adult female dog tethered on a short chain. Faeces were all over the floor around the dog and urine was present on the bare concrete. There were three other dogs shut separately in three small cubicles. None of these dogs had any bedding or clean area to sleep in. None of them had any form of behavioural enrichment. There were no windows and, as with the previous visit, the only natural light came from a couple of lengths of clear frosted light panels on the roof. Ms Wallace explained that the dog in the deer shed had been chained up to prevent her fighting with the other dogs under the doors of the cubicles.

[52] In the wool shed there were five 7 month old pups in pens without water. The wool shed smelt badly of faeces and urine and it was difficult to walk without stepping in faeces. Mr Plowright was of the view that dogs had been chewing on the wooden rails due to boredom as there was no form of behavioural enrichment. Some of the dogs were without water as their water vessels had been knocked over. Bones lay amongst the faeces.

[53] Ms Wallace asked Mr Plowright and Inspector Davis if they were happy with their inspection. Their response was that they were pleased a new enclosure was being built but they did not discuss their findings. They left the property at 12:38 pm.

[54] Mr Plowright and Inspector Davis then discussed the inspection. Overall they were very concerned with what they had seen and disappointed in that there had not been meaningful improvement.

Seizure of dogs – 13 October 2017

[55] Seizing dogs is not a task that the SPCA undertakes lightly as it is expensive and has substantial ongoing costs relating to veterinary care and boarding of the dogs. They considered, however, that the welfare of the animals was so compromised they were left with no lesser option.

[56] A decision was made not to seize the dogs that day, but to go back the following day with an SPCA veterinarian, Jess Beer, and a Community Constable. On 13 October 2017 at 11:30 am Mr Plowright accompanied by Inspector Davis,

veterinarian Jess Beer, a Community Constable Todd and Waikato Animal Control Officer Rhys Heatley, together with a number of SPCA staff to assist with the transportation of the dogs went to the property.

[57] When they arrived, Ms Glover came out of the house. Mr Plowright advised her as to why they were at the property and of her rights in terms of the Bill of Rights Act. Mr Plowright told her that he would not be asking any questions today but anything that she may say could be used as evidence in Court. Ms Glover asked him to wait until Ms Wallace was home as she was only 15 minutes away.

[58] Mr Plowright said they then proceeded to inspect the property and identify the dogs to be seized.

[59] As a result, the following dogs were seized:

(a) MONTY

Young male pup tethered on a short leash to a picket fence. He did not have water.

(b) ASTRO

Adult male dog in the old enclosure. He was identified by the veterinarian as being underweight, with a matted coat and an ear infection that required treatment.

(c) DOLLY

Adult female dog seized from the same enclosure as Astro. The veterinarian identified similar problems with her as with Astro.

(d) MAFIA

Adult male dog seized from the same old enclosure as Astro and Dolly and also exhibiting the same problems.

(e) CASPER

Young male pup tethered on a short leash without any water and an inadequate shelter, around the cattle yards.

(f) ZETA

Adult female dog tethered in the cattle yard and identified by the veterinarian has been underweight and a matted coat.

(g) DEBBIE

Adult female dog found in a locked shed. She had faeces matted in her coat and had an obvious ear infection causing her to shake her head with discomfort.

Since being seized, Debbie gave birth to ten puppies on 29 November 2017. One of the puppies died but the other nine are progressing well in SPCA care.

(h) PARIS

Female pup found in a small cubicle in the deer shed. She was identified as being underweight and having a matted coat. Like all the dogs the deer shed they were without any bedding or behavioural enhancement.

(i) DESNEY

An adult female dog housed in the wood shed. She had skin problems and an ear infection that required veterinary treatment.

Since being seized, Desney gave birth to seven puppies on 10 December 2017. They are progressing well in SPCA care.

(j) ELITE

5 month old male dog, housed in the wool shed in unsanitary conditions.

(k) PUPPY

5 month old male dog, housed in the wool shed in unsanitary conditions.

(l) EMMA

5 month old female dog, housed in the wool shed in unsanitary conditions.

(m) DANI

Adult male dog tethered next to the hay barn (where Ms Wallace had told us there were no dogs). This dog was shaking her head with discomfort from an obvious ear infection that required treatment.

(n) PARELLE

Adult male dog housed in the hay barn on a short tether with no access to water. This dog was identified as being underweight.

(o) RITZA

This dog caused us the greatest concern. Ritza was an adult female dog enclosed within the barn. Her lead was twisted up tightly around the hock joint on her right hind leg. This had forced the dog's leg upwards next to its head in what was an unnatural and obviously extremely uncomfortable position. The dog had been tangled up like this and unable to move for considerable time. The dog's limb had become very swollen likely due to lack of blood supply to the leg. We untangled the leash from the dog's leg and she was unable to bear any weight on the leg, which was significantly enlarged. This dog was in obvious pain and distress. She had not had access to water and there was faecal build up in the area around her. She required immediate veterinary attention.

[60] With regard to the dog Ritza, when Ms Wallace asked what was wrong with her, Mr Plowright said she was told that Ritza was found without water and tangled up in her lead unable to walk. Ms Wallace claimed that Ritza had been given water the night before.

[61] Mr Plowright advised Ms Wallace that the SPCA were seizing these 15 dogs pursuant to s 127(5) of the Animal Welfare Act and a list of the 15 dogs was given to Ms Wallace.

[62] A further Instruction to Prevent or Mitigate Suffering Notice was then issued to the respondents. All 15 dogs were transported to the SPCA for veterinary examination and treatment.

Euthanasia of Ritza

[63] Subsequently, Ritza had further complications due to her leg having been without blood flow for a prolonged period of time. As a result, an area of skin and tendon and other tissue of her hock was dying and the infection had become gangrenous. Amputation of the leg was an option that was considered, but due to Ritza being a large dog breed this was not practical. The SPCA veterinarian Jess Beer recommended euthanasia.

[64] Pursuant to s 138 of the Animal Welfare Act, Mr Plowright invited Ms Wallace and Ms Glover to have the opportunity of seeking a second veterinary opinion. They accepted this and Ritza was inspected by their own veterinarian who recommended euthanasia or amputation. Ms Wallace and Ms Glover agreed to Ritza being euthanised which was carried out on Friday, 27 October 2017.

Mr Plowright's Overall Findings

[65] The difficulties of carrying out inspections of Volkerson kennels were such that the SPCA could not even establish a complete idea of the number of dogs on the property. Ms Wallace and Ms Glover were not forthcoming with information in this regard.

[66] The property does not have suitable facilities to house the number of dogs in their care. Many of the dogs were tethered without shelter or water and remained so despite the multiple notices that had been issued by the SPCA.

[67] Many of the dogs were tethered by a short one metre dog leads attached to a choke chain around the dogs neck. Not only is this not satisfactory but it is also contrary to the Code of Welfare for Dogs 2010 which details that dogs should not be unattended or tethered with choke chains or devices that tighten around the neck.

[68] The kennel block currently under construction will only be able to house about half the number of dogs currently in the care of Ms Glover and Ms Wallace and in Mr Plowright's opinion, Volkerson kennels is disorganised and poorly maintained and set up where dogs are not being cared for adequately.

[69] Ms Wallace and Ms Glover had been unwilling or unable to comply with the instructions issued. The decision to seize the 15 dogs was a decision they did not take lightly and they only arrived at that point after multiple inspections and repeated failures to comply with the notices.

[70] The ongoing housing of these dogs and providing veterinary care for them is an expensive and labour-intensive operation for a charitable organisation such as the SPCA.

[71] It is not appropriate for the dogs to be returned to either Ms Glover or Ms Wallace as they do not have the ability or the inclination to care for them properly in the opinion of Mr Plowright.

[72] [I have considered the bundle of photographs taken during the inspections prepared by Mr Plowright which in my view all cases confirm his evidence.]

Affidavit of Gregory John Reid

[73] The affidavit of Gregory John Reid, Animal Welfare Inspector employed by SPCA Auckland for approximately five years and warranted under the provisions of the Animal Welfare Act 1999 set out the costs to SPCA Auckland in relation to caring for the dogs since they had been seized.

[74] Mr Reid deposed that each dog seized and dogs born to those seized dogs at the SPCA all have individual records which holds each dog's details and have been

kept up to date including vet checks, diagnostic results, temperament and behaviour. These records are known as "PetNet Records" each animal being assigned a "Village Number". There has been a total of 35 animals (including deceased animals), separated into three groups for costings:

- (a) Adults: 15 animals (six + months of age);
- (b) Litter 1: 11 animals (Debbie's litter);
- (c) Litter 2: 9 animals (Desney's litter);

[75] The total costings which include board, food costs, vet costs, Superlac (cost of supplement milk powder for puppies as both litter of puppies born at SPCA received supplementary feeding due to the dam's inability to independently feed) amounted to \$161,398.71.

Evidence for the Respondent

Affidavit of Ms Wallace

[76] In support of the notice of opposition, Ms Wallace filed an affidavit dated 6 June 2018. Ms Wallace is Barbara Glover's daughter.

[77] Ms Wallace stated at paragraph 3:

At the outset I must make it clear that I am extremely concerned over the actions taken by the SPCA during the course of this whole experience; their actions have created an incredible amount of stress for me and my family. We are all experienced, conscientious and respected dog breeders; to have been treated with such discourtesy and disrespect by the SPCA and its employees has been deeply upsetting and distressing. These court proceedings have heightened our feelings of being persecuted without regard for our actions and integrity. We hope that the Court will put an end to these actions by the SPCA so we can all move on happily with our lives.

[78] In responding to Mr Plowright's affidavit of 15 January 2018, Ms Wallace said that they operated as a private kennel, not open to the public with no open times for public viewings. She acknowledged they bred and sold some of their dogs but she said this was not a profitable operation. Her mother had bred and sold German

Shepherds for a number of years as a pastime. All the dogs were registered with the New Zealand Dog Kennel Association. There were 50 German Shepherd dogs registered to her mother Barbara Glover including the pups and dogs which were surrendered to the SPCA. She said there were currently ten dogs in their care on their property.

[79] Ms Wallace lives on the property together with her sister and her mother Mrs Glover together with "woofers", travellers who work in exchange for board and meals regularly staying at the property to assist with the care of the dogs, which including cleaning out the dogs living quarters, feeding, exercise, train and play with the dogs with no time restraints.

[80] At no time does Ms Wallace believed that the dogs were kept in conditions that were in breach of the minimum standards set by the Animal Welfare (Dogs) Code of Welfare Act 2010, irrespective of the fact that in July 2017 they made significant improvements regarding the dogs living quarters and the care that they received.

[81] In relation to the inspection carried out on 28 July 2017, Ms Wallace said the winter of 2017 was an incredibly wet one with the highest number of dogs held on the property. The weather caused the ground to be saturated which turned to mud after the puppies had run around. The puppies are fed prior to being placed in the day run where they are provided with beef bones for them to chew, carry around and play with. She referred to the photographs which "depict" the puppies fur as "matted". She rejected that assertion stating that puppies' coats were not long enough to matt and their adult coats are also starting to come through. Further, dogs are often tethered together in close proximity to one another to help them socialise and when they are cleaning their living quarters.

[82] In July 2017, Ms Wallace, her mother and sister were all very anxious and on high alert as they understood a man who had severely beaten her mother and sister during a home invasion in 2009 had escaped from Springhill Prison. As a result, during the day they had more than the normal number of dogs stationed on tethers around the house to alert them if anyone approached.

[83] Ms Wallace said none of the dogs spend the nights outside on tethers. They are fed twice a day and the diet of each dog varies dependant on its requirements. Many of them receive supplements and fresh meat in their diet. As a result, there are some dogs that defecate up to five times a day. The adult dogs are exercised on the farm. All living areas for the dogs are cleaned regularly. There are many holes around the property due to the dogs digging to bury their bones and some due to rabbits.

[84] Ms Wallace said that while not all dogs had access to water all day, they do have frequent access to water. She contends that the dogs often tip their water bowls over and consequently they are periodically checked throughout the day. If a dog were to be tethered in a spot for a short while, a water bowl would not be necessary. No dog on their property is tethered on a long term basis. The area under the tree had not grown due to the tree's size, not because a dog had been tethered there as claimed by Mr Plowright.

[85] The puppies referred to by Mr Plowright were fed prior to being placed in the portable pen to allow them to exercise and play, but brought inside every night. These puppies were all healthy, happy and had been checked by a vet when they had their vaccinations.

[86] The dog in the single cage was not living in faecal matter built up over weeks. It was "simply remanence of the coat/hair from the meat beef bones in the cage". In all areas where the dogs are kept, are cleaned regularly. However, on the day of this inspection the water blaster had broken earlier in the day. They were not home when Mr Plowright and Inspector Davis arrived because they had been in town trying to get a part to fix the water blaster and the cleaning on this day was behind schedule because of it.

[87] The deer shed was constructed in 2013 with each stable measuring 2.5m wide x 3m deep x 4m high. The shed has a concrete floor, wooden walls and two double house windows on each side. The windows and high ceiling allows natural light and air circulation throughout the shed. The shed is designed to allow ventilation for a large animal, therefore there is plenty of ventilation for the puppies. As the weather was so wet, the dogs were often coming in from their exercise wet and they had taken

to put down newspaper to soak up this water. The newspaper was removed and replaced regularly. The five containers shown in front of the deer shed are full of used newspapers which had been removed from inside the shed.

[88] The shed was built approximately two years ago out of Canadian Cedar wood measuring 2m x 2m x 2m with one window and one door. Ms Wallace said the wooden shed had been cleaned earlier that day. While there was likely a lingering smell of ammonia, it was not pungent and certainly not to a point that would have affected the health or welfare of the puppies. The window is slightly open and set from the inside to prevent anyone from entering the shed. The cedar shingles allow ample air to ventilate the shed. She said the photograph also shows the amount of rain that they had experienced that week.

[89] Ms Wallace maintained that there are special enzymes that dissolve those crystals left by normal cleaning methods that lead to a lingering smell of ammonia. They have begun using these enzymes and noticed the faint lingering smell has disappeared.

[90] With regard to the wool shed with dimensions of 7m x 9m x 5m, she said this was built by the Land Corporation in the 1930s. She said it was used to house dogs as a temporary measure due to the terrible weather. The faecal build up under the shed is from decades of animals and was not a risk to the dogs' health or welfare because of the distance between them and the naturally composting matter. She said the gnawing on the wooden boards is unlikely to have been done by dogs and is much more likely to have been from the calves and goats that have used the shed.

[91] Ms Wallace said the puppies had been placed into wooden shed on clean and dry newspaper after having been fed and allowed to run and play on the wet grass earlier while her mother was at a doctor's appointment. The puppies house is cleaned twice daily as ten puppies will defecate and make a lot of mess.

[92] Ms Wallace said that all their puppies were born inside their house and from about four to six weeks onwards they are moved outside to the puppy house. The window and door are closed at night and opened during the day, weather permitting,

to allow fresh air in. The puppies stay in there overnight and are fed in there before being put out into their outdoor pen. The puppies play outside as much as possible because it helps them to develop an understanding of the world. She said their dogs are known for their loving character which would not be possible if they were not treated well, particularly during their first few months.

[93] Ms Wallace said they had a male dog in the utility shed because they had a number of break-ins. She said that the faeces contained beef bones and normal food, as the bones are chewed and the fat from the meat are digested, the colouring changes which she says is just the result of a healthy natural diet. She said the dog was kept in a large area and did not mind defecating in the shed because he had the space to remove himself from the faecal matter and the shed was cleaned regularly. The female dog had been tethered outside the utility shed to allow cleaning inside the shed.

[94] With regard to Mr Plowright's statement that there was a build-up and food within faeces with a high smell of ammonia. She said that the puppies were fed outside of the shed and some food including beef bones were placed in a stainless steel dish as shown to the left of the photograph. She said that their vet record showed that the puppies were healthy and if there had been high levels of ammonia, the puppies would be ill.

[95] Ms Wallace contended that the four notices received from the SPCA between 27 July 2017 and 12 October 2017 made no mention of the wooden slate flooring within the wool shed not being suitable for dogs. The other half of the floor of the shed is solid wood.

[96] She said that the working cattle yards are built to protect against westerly winds which are common in their area, the building is secure and stable, not the carport type. Angus bulls weighing over a tonne are run through these yards and it is sufficient to contain them. The dogs that were in the yard did not have bedding as they were only there temporarily for a few hours.

[97] Ms Wallace contended that as shown on the concrete flooring, cattle had been kept in the yard a few days before. The dogs were kept temporarily on show leads

with slip chains. Bore water which she described as natural water with no chemical added and no giardia or bacteria, originates from a 120m deep farm bore was available to the dogs.

[98] The dog depicted in the photograph, Regina, can be seen to have been tethered to the other side of the fence with water available, but she had moved to the other side where the SPCA were standing. This showed Regina from a different angle where it is clear that she is on a two-metre light German Shepherd slip chain. Regina was surrendered to the SPCA on 4 August 2017 and was kept in correct condition and coat presentation. The puppy had temporarily been placed on a show lead having been fed. There were no faeces on the ground, rather that the mud and hay had been churned up due to the yard having working cattle through there the day before.

[99] Contrary to Mr Plowright's statement, Ms Wallace said that the photographs show the puppy Elite on a normal show length lead while the kennels were being cleaned. She said that these leads are used to train the puppies how to act while on a lead. Elite also has access to his water bowl containing natural bore water which he can be seen playing with.

[100] Ms Wallace contended that the kennel where Paris was kept was in excellent condition. The water in the stainless steel bucket was full of fresh bore water. She said the enclosure including the wooden pallet had an iron roof and house awning. While the kennel is old, the wire and the enclosure are kept clean, the kennel had been hosed out with fresh bore water and the floor was wet because the water blaster was not functioning on 28 July 2017.

[101] She referred to photograph #135654 and said that the kennel which is approximately 30 years old had just been water blasted. Each dog had a wooden house of 2m x 125m at the end of their 2.5m run. The kennels consisted of solid wooden plywood on each side and had a plastic awning over the wire netting of the roof providing shelter from all weathers.

[102] "Ann" can be seen cleaning the kennels; the faeces were picked up and the concrete had been hosed down. There was a sump hold which had been covered by

wooden pallets due to a contractor having run over and breaking the concrete. The water blaster was not working and the missing part had been shown to Mr Plowright and Inspector Davis. The kennels can be shown to have wooden kennels at the end for the dogs to retreat back into.

[103] Ms Wallace said there was a discussion with Mr Plowright and Inspector Davis and with Barbara Glover that the existing kennels were not up to scratch. She and her mother had agreed they would improve them, wanting to give their dogs top notch facilities and the existing kennels were old. A time frame of five months was discussed. They received Notice of Instruction to Prevent or Mitigate Suffering.

[104] Ms Wallace said at the time of the inspection they were quite shocked, upset and did not feel comfortable discussing details too much with Mr Plowright and Inspector Davis. Although they wished to cooperate, she did not believe that any of the dogs' health or welfare was at risk in any way. She was completely open to making improvements to make things as nice as possible for the dogs.

[105] Following on from the inspection, Ms Glover and Ms Wallace immediately organised for new kennels to be built and also took steps to comply with the other points mentioned. The wet weather and the earthworks required on the site hindered the new kennels being constructed. However, the works were completed ahead of schedule and in early November they invited the SPCA inspectors out to the property to view the new sheds. They made a number of recommendations which they implemented immediately.

Inspection on 4 August 2017

[106] On 28 July 2017 Ms Wallace said that Mr Plowright and Inspector Davis were not shown any dogs in the garage as there were no dogs in the garage at that time.

[107] The wooden puppy shed had been cleaned out that morning, the puppies had been fed and taken outside to play before being put back inside. As playful and boisterous young puppies, they make a mess very quickly, they also go toilet quite frequently.

[108] The stables in the deer shed were in the process of being cleaned by a British woofer staying with Ms Wallace at the time when Mr Plowright arrived. The stable had been cleaned by removing the toileting matter of the puppies and replacing the used newspaper with fresh clean newspaper providing the dogs with a clean environment. Ms Wallace said she was unsure why Mr Plowright said the removing of faeces and urine would make no discernible improvement and that the area was still smeared with faeces after acknowledging that newspaper had been removed.

[109] At the time Mr Plowright inspected the wool shed, it had not yet been cleaned that day, it was still mid-morning.

[110] The old kennel complex each had a wooden house with a 2m long run, these kennels had not yet been cleaned that day. The dogs were let out to exercise in secure exercise area every day. The female in the fenced area was Dazzle. She had been poisoned, had received veterinary care and was recovering.

[111] Ms Wallace said that at each inspection they showed the SPCA inspectors all the dogs on the property. On their first visit they allowed them to scan the microchip of each dog, however, they did not want to. Inside the garage there was one puppy that was in a large collapsible crate after having spent the night there. The other dog in the garage in the IATA large dog crate was not showing signs of aggression, he was simply barking because there was a stranger in his house.

[112] The pups tethered around the house had been put there approximately one hour before. Mr Plowright does not say why he does not consider this to be plausible. If it is because there was faecal matter within the range of the tethers, an hour is long enough for a dog to go to the toilet. The adult female in the garden had just been put outside. She sleeps inside the house.

[113] With regard to the adult dog in the single kennel which had what Mr Plowright said was the depth of months of faecal matter build up, Ms Wallace took issue with that and did not agree it was months of build-up. She assessed it would have taken a few days for that mess to appear and it was cleaned out immediately. Despite the fact

she refused to give consent to allow an inspection inside the house, she said Mr Plowright stood up and peered through the windows taking photographs.

[114] Ms Wallace said that they wished to continue to work with the SPCA and the number of dogs they had at that time was more than they ever had previously. Whilst they agreed to surrender five dogs at that time, they did not discuss surrendering another five dogs the following week. She said the photograph of Dazzle is incorrect and it is the dog called Fina in Mr Plowright's photograph booklet. Regina, one of the dogs surrendered captioned as being underweight was shown at the Kumeu show on 9 July 2017 some weeks earlier and had won best of breed, best bitch and a challenge certificate.

[115] Ms Wallace maintained that the level of matting in the dogs coats shown on the photographs would have occurred within a week. Monty had a very long coat and was therefore very prone to matting. He would have clumps in his coat within hours of grooming. The coats shown in those photographs would not have caused the dogs any suffering or distress and they did not have any parasites living in their coats. She said the records of the veterinary examination and treatment of the weight of the five dogs surrendered have never been provided.

[116] Ms Wallace said they had cleaned everywhere prior to the inspection on 11 August 2017 and made as many improvements as they could in that time. She did not believe that any of the dogs were living in completely unacceptable conditions at that time. As they had done on previous visits by the SPCA, they showed all the dogs on the property.

[117] The Notice of Instruction to Prevent or Mitigate Suffering dated 11 August 2017 was provided to her. The first note on that instruction is that any tethered dog was to have a minimum of a two metre tether and access to adequate shelter. She said that the requirement for a two metre tether is not the minimum standard or even recommended best practice under the Code and appeared to be an arbitrary instruction from the SPCA.

[118] She also said that the instruction stated that two adult dogs were confined inside the deer shed with no natural light. She said the deer shed has three panels of laser light roofing panels installed in the roof to allow natural light in addition to the glass window and door. She referred to the photographs in their addendum booklet which she said showed this to be the case.

Inspection on 12 October 2017

[119] Ms Wallace maintained that on inspection twenty-four adult dogs were on the property on that date. She considers an adult dog being anything one year and older which means that the dogs on the property were puppies not adults. She cannot understand why Mr Plowright claims this estimate was plainly wrong. Further, it was not accurate to say that the dogs in the old kennel enclosures had significant faecal mess or that they were finding it difficult to walk without skidding in their own faeces or urine with no clean area to sit or lie down in. She said this is not backed up in any way by the photographs taken by Mr Plowright.

Seizure of Dogs on 13 October 2017

[120] Ms Wallace is adamant that the dogs seized on that date did not need to be removed from their care as they were not being wilfully mistreated nor did their physical health or behavioural needs make it necessary for them to be removed.

[121] She claimed that Monty was "a gorgeous healthy young pup". He had been shown on 2 October 2017 winning Reserve Best of Breed, Best Dog, Best Puppy and a Challenge Certificate to become a champion in the German Shepherd dog long coat category. Monty had been tied to the fence after being groomed in preparation for the show the next morning, he would have been tethered there for approximately 15 minutes while she drove to the vets about 10 minutes away.

[122] Ms Wallace denies that Astro, Dolly and Mafia who lived in the old kennel complex were underweight with matted coats or had ear infections. Mafia had seen the vet on 24 September 2017. Kasper did not live in the cattle yards. He was there temporarily and did not require water for the short time he was to be tethered there.

See photograph #120038. Debbie's coat was not matted with faeces although she accepted she had a mild ear infection which was being treated.

[123] Ms Wallace contended that the litter of puppies did not receive proper care while with the SPCA. One pup was euthanised on 9 January 2018, six days prior to Mr Plowright swearing that the pups were progressing well. The clinic notes show that in the weeks since its birth, the pup who was euthanised had slow weight gain, had suffered an umbilical infection, had issues with its eye being closed from mucus and was lethargic, dehydrated and vomiting, that the entire litter had been off the food. This puppy's symptoms and euthanasia resulted from confirmed "coccidian disease" due to unhygienic conditions at the SPCA. A six week old German Shepherd puppy should weigh between 3-3.5 kg. This puppy had an excellent birth weight of 500g and died at six weeks only 840g – the weight of a new born puppy.

[124] Ms Wallace said Desni was receiving treatment for an ear infection and she had ongoing issues with her skin. Elite, Puppy and Emma were the pups in the wool shed. Dani was not tethered. He was in his run next to the hay barn. Dani had been to the vet on 22 August 2017 with ear mites and was treated with Advocate.

[125] Ms Wallace believes that Ritza wrapped her lead around her leg during the inspection by the SPCA because they arrived in seven vehicles, banged on the door of the barn with a crow bar and a sledgehammer which caused her stress and aggravation. They then attempted to open the door with a crow bar rather than simply opening the latch and sliding the door. She believed that Ritza would have been distressed and anxious as a result of that noise. She was a three year old female dog. Ms Wallace viewed her hind leg once when she was in the vehicle as did her friend Paula who was on the property that day and could not see any broken skin or bruising and no swelling of her hind leg at the time. Ms Wallace said she could not see any swelling or broken skin in the photographs in Annexure A.

[126] Ms Wallace contends that while Ritza was at the SPCA she developed an infection and she and her mother felt pressured to make a quick decision when a second veterinarian opinion was obtained. Mark Clinning from Veterinary Associates

never inspected Retza nor was he provided photos or clinical records and they had to make the very upsetting decision to have her put to sleep.

[127] Ms Wallace contended that despite repeated requests clinical records for Ritza during her time in SPCA's care have never been provided and no photographs of the dogs nor the records of any weight of the dogs seized, despite the SPCA raising the weight of the dogs as a concern.

[128] At the end of this inspection and seizure, Ms Glover and Ms Wallace received a Notice of Instruction to Prevent or Mitigate Suffering. This instruction states that any crated dog must not be crated for more than one hour. In their view, this is a completely arbitrary instruction from the SPCA that does not have any reasonable basis. The instruction also states that the wool shed flooring was not suitable for housing dogs due to risk of injury. She did not consider this to be correct as an adult German Shepherd's paw is much bigger than a sheep's trotter and the slating was designed for sheep to walk on. Further, the issue of the dogs' paws being hurt on the slating had not been raised at any earlier point. Ms Wallace said that it felt as though it did not matter what they did, the SPCA would just find new things they were unhappy about.

[129] Ms Wallace acknowledged at the time of the first inspections they were tethering dogs by slip chains or other devices which tightened around their necks. They have stopped using these devices. She said the recommended best practice under the Code is that dogs are not left unattended or routinely tethered by choke chains or other devices which tighten around the neck. She did not accept the failure to comply with that recommended best practice should allow the SPCA to seize and destroy their dogs.

Puppies

[130] Desni and Debi, two of the bitches seized by the SPCA on 13 October 2017 were pregnant. Ms Wallace said that they understood from the SPCA that on 29 November 2017 Debi gave birth to a litter of ten live pups and one still born via caesarean operation and she was de-sexed at the same time. They were advised by the SPCA that one of those pups later died and was eaten by its mother. She claimed that

despite requesting the birth weight of these pups, this information was not supplied. She said they now understood that Debi did not start producing milk and was not feeding her pups at first. Ms Wallace stated that the days after birth are a crucial time for pups to be fed by their mother as the mother's milk in these early stages contains antibodies that build the pups' immune system. She said she understood from their vet that there are ways to treat a dog that has not commenced lactating and that it appears that those steps were never taken by the SPCA and that the pups suffered as a result.

[131] Ms Wallace also said they understood from the SPCA that on 10 December 2017, Desni gave birth to seven puppies. On 9 January 2018, Ms Wallace said she was contacted by the SPCA and advised they were considering euthanising one of Debi's pups. She said that she wanted a second opinion and instructed Dr Eckhard Stahlmann to provide the second opinion. She understood that Dr Stahlmann spoke with the SPCA vet after she has spoken with him and it was agreed that the pup would be euthanised.

[132] Dr Stahlmann received the clinic notes for that pup two weeks after it was euthanised and the notes made distressing reading. It is Ms Wallace's belief that the SPCA did not adequately care for these pups and that the inadequate care is directly responsible for the slow and likely painful death of this puppy.

[133] Ms Wallace also referred to the subsequent SPCA visits to their property on 22 November 2017 and 18 May 2018. The visit on 22 November 2017 was in response to their invitation to the SPCA to come and inspect the progress of the kennels. She contended that Greg Reid stated at this time "it was a 120% improvement" which she says is in complete contradiction to his comments on 1 May 2018 which were broadcast on the TV show "7-Sharp". She referred to a message from the producer of 7 Sharp outlining that the SPCA did not believe any improvements had occurred.

[134] The SPCA visited the property on Thursday, 8 February 2018 for half an hour and no instruction to Prevent or Mitigate Suffering was provided.

[135] Ms Wallace contended that they have continued to do their best to work with the SPCA. No dogs had been seized from their property since 13 October 2017 until the most "recent visit" by the SPCA on 18 May 2018 when an additional six dogs were uplifted.

[136] Ms Wallace said "it is very difficult for us not to think there is some sort of concerted and deliberate effort by the SPCA to upset and annoy us despite our best efforts to persuade and convince all involved that we have the best interest of our animals at the forefront of our every action."

[137] Ms Wallace said that the SPCA had not given any evidence of the costs of housing the dogs and puppies that they had seized. She said that they have provided evidence of their housing facilities and are happy to have ongoing monitoring by the appropriate government agency to make sure that these dogs are being kept in the manner they are happy with, photographic evidence of their facilities are provided with the addendum filed and served with her affidavit.

Conclusion

[138] I am satisfied beyond reasonable doubt that Mr Plowright's overall findings supported by the bundle of photographs and four visits to the property together with receipt of veterinary advice are not able to be challenged by the respondents. I find that the explanations provided by the respondents are implausible and unacceptable. Despite four inspections, the SPCA was unable to establish the exact number of dogs on the property and their investigation was hindered by the respondents who were not forthcoming with the information regarding the numbers of the dogs. I also accept the affidavit evidence of Inspector Reid.

[139] I am left in no doubt that the respondents' property does not have suitable facilities to house the number of dogs in their care, that many of the dogs were tethered without shelter or water remains despite the multiple notices that were issued by the SPCA. The respondents have accepted that the dogs tethered by short one metre leads attached to a choke chain around their neck was unacceptable.

[140] Clearly, Ms Wallace and Ms Glover were disorganised, lacked insight and unable to comply with the instructions issued. There is no doubt that the dogs were not being cared for adequately. Further, I am satisfied beyond reasonable doubt that neither Ms Glover nor Ms Wallace have the ability nor the inclination to care for them properly if they were returned to them.

[141] The suffering that the dog Ritza endured due to her leg having been without blood flow for a prolonged period of time resulting in an area of skin and tendon and suffering from gangrene resulted in the respondents own veterinary recommending euthanasia or amputation. There is no evidence provided of any veterinary treatment prior to this dog being seized by the applicant. The respondents agreed to her being euthanised. There is no documentary evidence or other evidence apart from Ms Wallace's affidavit from the respondents that these dogs received any form of veterinary treatment, or veterinary treatment for skin problems or ear infections, nor that they were fed nor watered properly.

[142] In determining whether to make an order pursuant to s 136A(1) of the Act, I must have regard to the matters set out in subsection (4). These are as follows:

- (a) Whether the owner of the animal or animals has been identified.

Both respondents have ownership of the animals although Barbara Glover is recorded as their registered owner with the Council and with Dogs NZ.

- (b) The number of animals involved.

A total of 28 animals are the subject of the application.

- (c) Whether the animals are being kept for economic purposes or for companionship.

The animals are for breeding and commercial purposes. Ms Wallace told Mr Plowright that they operated as a private kennel and not open to the public with no open times for public viewings. She

acknowledged that they bred and sold some of their dogs but said it was not a profitable operation. Ms Wallace as stated in her affidavit at paragraph 3 that she and her family were dog breeders.

- (d) The cost continuing to hold the animals.

Chief Inspector Greg Reid has estimated the cost as approximately \$161,398.71. The applicant is a charitable entity which I accept can ill afford to view such costs.

- (e) The physical state of the animals.

Inspector Plowright acknowledged that when seized, the physical state of the animals varied. A number were identified by the veterinary as being underweight and suffering from ear infections. One had to be euthanised. The animals were tethered on short leads and with choke chains contrary to the Animal Welfare Code. The animals were kept in unsanitary conditions which included:

- (a) No or insufficient shelter.
- (b) Living in spaces where faecal matter and urine were inadequately managed and the animals had this matted into their coats.
- (c) Without access to water.
- (d) Inappropriate facilities for animals to display normal behaviour or have access to behavioural enrichment.
- (e) Facilities with poor ventilation and flooring.

The physical state of the animals has improved significantly since they were taken into custody of the SPCA.

- (f) Whether it is reasonable or practicable for the animals to be placed elsewhere.

It is inappropriate for the animals to be returned to the respondents property. It is still assessed as a significantly high risk environment. It is, in my view, a real risk that the animals will be neglected or mistreated given the respondents' ill-treatment of these animals in their care.

The construction of the new kennel block does not deal with the issue that the property is overstocked with dogs and has inadequate number of personnel to properly provide the care provided. The applicant's intention is to sell or rehome the animals or if necessary euthanise them to enable their long term needs to be met.

- (g) Whether it is reasonable or practicable for the Ministry or an approved organisation to retain possession of and care for the animals until the determination of the proceedings relating to the animals.

It was reasonable for the SPCA to retain possession of and care for the animals until they are placed with foster families. It is not reasonable, practicable for the SPCA to continue to retain possession of and care for the animals and they seek an order permitting them to be sold, placed with another person under s 136A(2)(b) of the Act, or destroyed under s 136A(2)(c) of the Act if any of the animals cannot be sold or re-homed within a reasonable period.

Due to the costs involved and the applicant continuing to hold the animals, the animals are only in the temporary care of the SPCA. Their long term needs will be met by the animals being sold or rehomed.

- (h) Whether any person will suffer material or other loss, and the extent of that loss, if the animals are sold.

The respondents may suffer loss because they are not able to breed from the female dogs and sell. The respondents claim that they do not make any money from their breeding.

The respondents have asserted that their kennels are not a profitable business but have not provided evidence to demonstrate that the granting of the order would cause material or other loss.

[143] Taking all matters into account, I am satisfied that there are good grounds for the orders to be made. There will therefore be disposal orders under s 136A of the Animal Welfare Act 1999 authorising the animals described, namely 15 dogs seized and retained from the respondents' property and their litters of 10 and 7 puppies not all of whom have survived: one sold under s 136(2)(a) of the Act subject to the following conditions:

- (a) That the proceeds of sale must be held by the applicant after deducting any costs incurred by the applicant in caring for the animals, providing them with veterinary treatment and selling them;
- (b) To pay the balance of the proceeds of sale to the owners after the determination of the proceedings for an offence involving the animals, or:
 - (i) After a decision is taken not to commence any such proceedings; or
 - (ii) Placed with another person under s 136A(2)(b) of the Act; or
 - (iii) Destroyed under s 136A(2)(c) of the Act if any of the animals cannot be sold or rehomed within a reasonable period.

[144] I note from subsection (5) that if an animal is sold under the authority of an order under subsection 2(a) the proceeds of sale must be held, in this case, by the SPCA after deducting the cost of sale or any costs incurred by it in caring for the animals.

[146] What the sale price for the dogs might be is not known at this stage. I therefore reserve this issue for further consideration once sale costs are known and what, if any, the balance of costs of caring for the animals might be.

[147] I invite the applicant to submit a memorandum on this issue when it is in a position to do so, referring also to the authority it relies upon to recover the outstanding caring costs from the respondents.

[148] The respondents may reply to such a memorandum within 21 days of receipt.

[149] The applicant is entitled to the cost of these proceedings and I invite the applicant to submit a memorandum on this issue. The respondent may reply to such a memorandum within 21 days of receipt.

A handwritten signature in black ink, appearing to read 'J H Lovell-Smith', with a large checkmark to its left.

J H Lovell-Smith
District Court Judge