

These minutes are subject to confirmation at the next Policy and Regulatory Committee meeting to be held on Monday 2nd May 2016

HUTT CITY COUNCIL

POLICY AND REGULATORY SUBCOMMITTEE

Report of a meeting held in the James Coe 1, Dowse Art Museum,
45 Laings Road, Lower Hutt on
Wednesday 24 February 2016 commencing at 1.10pm

PRESENT: Cr M Cousins (Chair) Cr L Bridson
Cr M Willard Cr A Finlayson
Cr T Lewis

APOLOGIES: There were no apologies.

IN ATTENDANCE: Mr G Stuart, Inspections and Enforcement Manager
Mr K Te Kawa, Animal Control Officer
Mr P Davidson, Dog Owner, and Objector to Classification
Mr J Davidson, Supporter for Dog Owner
Mr and Mrs Barlow, Complainants
Mrs H Clegg, Minute Taker

PUBLIC BUSINESS

1. APOLOGIES

There were no apologies.

2. CONFLICT OF INTEREST DECLARATIONS

There were no conflict of interest declarations.

3. HEARING FOR OBJECTION TO MENACING DOG CLASSIFICATION (16/169)

Report No. PRSub2016/1/29 by the Animal Control Officer

Objection

The objection was received from **Mr Paul Davidson** (Dog Owner) to the classification of the dog "Pancake" as a menacing dog under section 33A of the Dog Control Act 1996 (the Act). Notice of classification of "Pancake" as a menacing dog under section 33A of the Act was initially served on the dog owner on 30 October 2015. Upon being advised this notice contained the incorrect date of the day of the offence occurring, a second notice was served on 5 November 2015. Written notice of objection to the classification was received by Council on 4 November 2015. The Animal Control Officer ruled that the objection was received within the timeframe specified under the Act. Accordingly the matter was set down for a hearing.

Statutory considerations

In terms of the Dog Control Act 1996, section 33A of the Act provides that a territorial authority may classify a dog as a menacing dog if –

(1) *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.

(2) *A territorial authority may, for the purposes of [section 33E\(1\)\(a\)](#), classify a dog to which this section applies as a menacing dog.*

(3) *If a dog is classified as a menacing dog under subsection (2), the territorial authority must immediately give written notice in the prescribed form to the owner of –*

(a) the classification; and

(b) the provisions of [section 33E](#) (which relates to the effect of classification as a menacing dog); and

(c) the right to object to the classification under [section 33B](#); and

(d) if the territorial authority's policy is not to require the neutering of menacing dogs (or would not require the neutering of the dog concerned), the effect of [sections](#)

[33EA](#) and [33EB](#) if the owner does not object to the classification and the dog is moved to the district of another territorial authority.

Section 33B provides dog owners with an opportunity to object to the classification and requires the territorial authority, in considering any objection, to have regard to the evidence which formed the basis for the original classification, any steps taken by the owner to prevent any threat to the safety of persons and animals, the matters advanced in support of the objection and any other relevant matters.

Section 33E specifies the restrictions which apply to a dog classified as menacing and section 33EA confirms that a menacing classification for a dog is enforceable across the whole of New Zealand. Section 33EB provides for a Council to require neutering of dogs classified as menacing and section 33EC lists the offences and consequences should a dog owner not comply with the classification requirements.

The Hutt City Council's Dog Control Policy 2015 in section 3.5, specifies that all dogs who have been classified as menacing, must be neutered or spayed:

"3.5 MENACING DOGS – REQUIREMENT TO BE NEUTERED

3.5.3 It is Council policy in all cases where dogs are classified as menacing because of their breed (ie because they are one of the breeds of dogs specified in the 4th Schedule to the Act) or behaviour to require evidence that the dog has been neutered or is unfit to be neutered by the specified date."

The territorial authority may uphold or rescind the classification, and is required by section 33B(3) of the Act to give notice of its decision and the reasons for its decision to the owner as soon as practicable.

The Hearing

Evidence on behalf of Hutt City Council's Animal Control

The Animal Control Officer elaborated on the report. He explained the basis for the classification was the Complainant's statement. He added that **Mr John Davidson** (owner of Bomber and carer of Pancake at the time of the incident) was very co-operative, paid the veterinarian bill for the injured cat, and met all his obligations under the Act. The Animal Control Officer further explained there were no other penalties or infringements imposed. He added that both dogs were released after the vet and impounding fees were paid.

In response to questions from members, the Animal Control Officer explained the two sets of circumstances whereby a classification of a menacing dog can be made: by breed or by deed. In this case, it was enforced as a result of the deed of the dog – due to the witness statement, the Animal Control Officer was satisfied the dog may cause a threat to a domestic animal.

The Animal Control Officer further explained that the veterinarian report referred to in his evidence was held on file, and that its contents did not add any new information to the classification. He clarified the veterinarian confirmed the witness statement that the cat suffered a back leg injury and that the witness statement included evidence that a dog's mouth had come into contact with the cat. He agreed an animal could be injured internally in an attack but show no external signs.

The Animal Control Officer informed members that it took several hours to find the dogs and secure them at the Council Pound. He said as several calls were received by the Council Pound concerning two wandering dogs in the area, officers were dispatched but did not sight the dogs. The Animal Control Officer conveyed none of the calls reported the dogs were menacing. He further informed members that the officer who secured both dogs had no issues when dealing with the them.

Evidence on behalf of the Complainant

Mrs Barlow (the Complainant's wife) read the veterinarian's report, detailing the injuries their cat ("Millie") suffered. The report also detailed the medical diagnosis and anticipated treatment. **Mr Barlow** (the Complainant) then elaborated on his original written statement. He clarified he saw Millie flying through the air, and then lying on the ground with the two dogs menacing it. He chased the dogs off with his broom, noting that the older dog ran away immediately, but the younger one (subsequently

identified as Pancake, after the Animal Control Officer confirmed the birth dates of both dogs, as contained on the National Register and the Hutt City Council register) continued to menace, before running off after being hit with the broom. He added it was one hour later when the Barlows located their cat up a tree on their property.

In response to a question from a member, the Barlows confirmed Millie was 16yrs old and that she suffered ligament and tendon injuries in the attack.

Evidence on behalf of the Dog Owner

Mr John Davidson, owner of Bomber (the older dog) gave verbal evidence to the Hearing. He stated his family accepted the trauma of the Complainants, and were remorseful. He fully accepted Mr Barlow's version of events.

Mr Davidson stated in his 50yrs of owning dogs, he had never experienced a situation like this, and proceeded to explain how he believed the dogs left his secure, well fenced section due to a family member suffering from Alzheimers leaving the gate open. Mr Davidson advised that he was in Auckland on business. Mr Davidson informed the Subcommittee this had never happened before and they had now installed more secure locks on all external doors and the gate to the property. When Mr Davidson was informed that the dogs were not on the property, he immediately organised for family members and several friends to look for the dogs. By late afternoon when the dogs had not been found, he rang the Animal Control section of the Council to report the lost dogs. He received a call from Animal Control the next day to say the dogs were secure at the Council Pound, and he asked that they be kept there until he returned to Wellington at the end of the week.

When Mr Davidson returned to Wellington he went to pick the dogs up and immediately paid the veterinarian bill for Millie, and the Council Pound fees. The dogs were released into his care. Mr Davidson further explained that Pancake was in his care, due to his son and daughter-in-law being committed elsewhere. He stated Pancake would sometimes come to stay at his property.

Mr Davidson believed his dog (Bomber) was the instigator in the incident, and that his son's dog (Pancake) was a follower, and therefore had been unfairly classified as menacing. He added the dogs would have been acting in a 'pack' situation and animal instinct would have 'kicked-in' as the dogs got excited and caught up in the heat of the moment.

Mr Paul Davidson gave a brief verbal addition to his father's evidence. He explained his own property was fully secure. He regretted the situation and was saddened to hear Millie was put down. He further agreed with his father that Pancake was following Bomber in her actions. He added that when at home, Pancake was a low energy dog who laid around the house and had never demonstrated menacing behaviour before.

In response to questions from the members, both the Davidsons agreed they understood the term "menacing" did not mean "biting", and that Pancake was the dog who remained on the scene the longest. Mr John Davidson explained he was intending to place an objection on Bomber's classification also, but that time got away on him. He reiterated Bomber was the instigator and that both dogs were very approachable and not vicious as evidenced by the fact the person who eventually secured both dogs had no trouble obtaining the dog tag to report it to Council's Animal Control division. He also added

they had regular meter readers onto their property with no incidents from Bomber.

Response on behalf of the Animal Control Section

The Animal Control Officer reiterated the process undertaken, stressing that the classification was as a result of the incident as conveyed in the complainant's witness statement, and that he was legally bound to apply the requirements of the Act once an incident occurred. He accepted the good nature of the dogs (having been in contact with them during their stay at the Pound), but that the dogs were off their property and uncontrolled during the incident. He could not rule out the possibility that they may pose a threat to domestic animals in the future.

Deliberations

In considering this matter the members had regard to the statement of evidence which formed the basis of the classification; steps taken by the dog owner (Mr Paul Davidson) and sometimes dog carer (Mr John Davidson) to prevent any threat to the safety of persons and animals; the matters submitted in support of the objection; and all the other relevant information provided.

Members agreed that the classification of menacing dog was carried out according to the law concerning the date of the incident and that the objection was received within due time.

There was general discussion concerning the likelihood of the dog "Pancake" being involved in further incidents, including the statement from Mr John Davidson that the dogs were acting in a 'pack' situation and that Bomber was the instigator, while Pancake was the follower. The members further noted that Pancake was the dog who stayed after the incident, once Bomber ran away, and had to be forcibly deterred before running into the neighbourhood. They reiterated the requirement of the Dog Control Act that all dogs must be under control at all times, and that Pancake was not, and that there was no guarantee that should Pancake escape again, a similar incident would not occur.

In the circumstances, the members were not prepared to accept the action already carried out by the dog owner and dog carer (securing the properties the dog resides and visits) as a basis to rescind the classification. These undertakings did not go far enough to reassure members that they had reasonable grounds to believe that the dog did not constitute a threat to the safety of any domestic animal.

RESOLVED:

Minute No. PRSub 16101

"That the Subcommittee:

- (i) notes the provisions of the Dog Control Act 1996 which apply to classification of a dog as a menacing dog; and*
- (ii) upholds the classification of the dog "Pancake" as a menacing dog."*

There being no further business the Chair declared the meeting closed at 1.50 pm.

Cr MJ Cousins
CHAIR

CONFIRMED as a true and correct record
Dated this 2nd day of May 2016