

HUTT CITY COUNCILOBJECTION TO MENACING DOG CLASSIFICATION
HEARINGS SUBCOMMITTEE

Minutes of a Meeting held in the Council Chambers, 2nd Floor, 30 Laings Road,
Lower Hutt on
Thursday 3 September 2020 commencing at 2.000pm

PRESENT: Cr S Edwards (Chair) Cr B Dyer
Cr A Mitchell

APOLOGIES: Crs Hislop and Brown

IN ATTENDANCE: Mr B Cato, Chief Legal Officer
Mr G Stuart, Head of Regulatory Services and Emergency
Management (part meeting)
Mr K Te Kawa, Senior Animal Control Officer (part meeting)
Mr M Devine, Animal Control Officer (part meeting)
Ms H Clegg, Minute Taker

Mr C Packer, Dog Owner
Mr D Packer, Dog Carer

PUBLIC BUSINESSAPPOINTMENT OF CHAIR

The Chief Legal Officer called for nominations for Chair.

Cr Edwards was nominated by Cr Dyer and seconded by Cr Mitchell.

RESOLVED: (Cr Dyer/Cr Mitchell)

Minute No. HSC 20501

"That Cr Edwards chairs the Objection to a Menacing Dog Classification Hearings Subcommittee meeting on 3 September 2020."

1. APOLOGIES

RESOLVED: (Cr Edwards/Cr Mitchell)

Minute No. HSC 20502

"That the apologies from Crs Hislop and Brown be accepted and leave of absence be granted."

2. CONFLICT OF INTEREST DECLARATIONS

There were no conflict of interest declarations.

3. HEARING FOR OBJECTION TO MENACING DOG CLASSIFICATION (20/974)

Report No. HSC2020/5/186 by the Senior Animal Control Officer

Objection

The objection was received from Mr C Packer, dog owner, to the classification of his dog "Dusty" as a menacing dog under section 33A of the Dog Control Act 1996 ("the Act").

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. It 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. 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. 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.

Evidence on behalf of Council's Animal Services

The Senior Animal Control Officer elaborated on the report. He explained that to classify a dog as menacing required an officer's report and investigations detailing the menacing act a dog had performed. He added that as a result of investigations by the reporting Animal Control Officer, the decision had been made that the dog (Dusty) had performed a menacing act by running some distance, crossing a creek, rushing up a bank at a person with a dog on lead and injuring that dog.

The Senior Animal Control Officer advised a menacing dog classification required that whenever such a dog was in public, it must be muzzled. He directed the members attention to the sworn affidavits attached to the officer's report. He said that the address Dusty resided at was the home of a responsible dog owner, and that Dusty was microchipped and registered. He acknowledged that the carer of Dusty, Mr D Packer, had paid the vet bill of the dog who was injured.

The Animal Control Officer advised that Dusty's behaviour could have resulted in an infringement notice being issued. He did not believe punitive justice was appropriate. He advised that in order to ensure such behaviour from Dusty did not occur again, the menacing dog classification was imposed.

In response to a question from a member, the Animal Control Officer referred to sections 57 and 57A of the Dog Control Act. The sections detailed actions an Animal Control Officer could take to seize a dog if an attack occurred or if a dog rushed at a person or other animal.

In response to questions from a member, the Animal Control Officer advised he regarded the incident to be worthy of a menacing classification. He stated that Dusty was not on a lead, was not under control, had rushed some distance, crossed a creek and run up a bank to confront the other dog and its owner and had injured that dog. He reported that the owner of the dog was shaken and did not know if Dusty was going to attack her or her dog. He acknowledged dogs play fight but he maintained Dusty had attacked the other dog. He clarified that he believed Dusty was a potential threat when in a public place if not muzzled.

In response to a question from a member, the Senior Animal Control Officer advised there were many reported incidences involving dogs dealt with each year, and that a high number might result in a menacing classification being imposed. He explained there were many factors which were taken into account for each complaint received. He considered the circumstances of the particular incident did warrant a menacing dog classification being imposed.

In response to a question from a member regarding the responsible dog owner (RDO) classification, the Senior Animal Control Officer confirmed the classification related to the property. He said the RDO classification had been removed from the property. He added the dog owner could reapply for a RDO classification after one year.

Mr D Packer confirmed he now had to pay full dog registration fees for both dogs living

at the property.

In response to a question from a member regarding the outcomes if members were to rescind the menacing classification, the Senior Animal Control Officer confirmed that the responsible dog ownership classification would be immediately reinstated. He clarified that a menacing dog classification could be imposed by deed or breed.

Evidence of the Complainant

The complainant's written affidavit and written statement of the original phone call reporting the incident were read by all members.

Evidence on behalf of the Dog Owner

The dog carer, Mr D Packer, explained Dusty was a family pet who had been living in his household for the past six years. He added Dusty had been brought up with children and had never attacked any person or animal before. He advised he was responsible for walking Dusty and that they frequented the reserve behind his property. He stated the reserve was usually empty of other people but that over the Covid-19 lockdown period, when the incident occurred, it had been frequented more by dog walkers. He added that he allowed Dusty off lead in the reserve, a permitted activity as the reserve was a dog exercise area, and that whenever he spotted another person or dog Dusty was put back on her lead. He clarified Dusty was quite boisterous often approaching, barking and running in circles around other dogs.

Mr D Packer outlined the circumstances of the incident. He explained he usually tried to take Dusty for a walk when there were no other dogs or people around. He stated on the day they were approximately 50m north of his property gate and he let Dusty off her lead as there were no people around. Approximately 60m from his property gate he saw the complainant with a dog on a lead, coming towards them. He called Dusty, but the dog did not respond and continued to run across the creek and up to the complainant and her dog. He acknowledged this should not have occurred, and that once the dogs had finished barking and racing around each other, he called Dusty again and the dog responded. He then put Dusty back on her lead. He noted the complainant was shaken, he called to her across the creek to apologise and to ask if she could check her dog. He checked Dusty. He advised they both stated there were no apparent injuries.

Mr D Packer reported being surprised that there was a report of an injury. He questioned the inconsistencies of the complainant only finding blood on her dog a couple of days later after it rolled in the grass. He had read in the documentation that the complainant stated she found blood on her dog after the incident and assumed it must have been from Dusty. He recalled she had not mentioned that at the time. He questioned how it could be proven the blood two days later came from the altercation with Dusty and not from some other event.

In response to questions from a member, Mr D Packer acknowledged that Dusty should not have been off lead and was not under control. He maintained the noise the dogs were making made it difficult for Dusty to hear him, and that once the barking stopped, Dusty returned to him. He confirmed the dogs pranced around each other and he did not witness Dusty flying into the side of the other dog. He referred members to the tabled vet report, attached as pages 8-9 to the minutes, which indicated a 5mm laceration to the front left shoulder of the other dog and damage to the surrounding muscle.

In response to a question from a member, Mr D Packer advised he now checked the

reserve was empty before taking Dusty for her walk. He tabled photographs of the reserve and the dog Dusty attached as pages 10-12 to the minutes. He added they undertake recall training every day, and attached the muzzle to Dusty whenever she left the property.

Mr C Packer, dog owner of Dusty, advised it was very difficult to watch Dusty attempt to play with a muzzle on, and that she responded positively to commands.

In response to a question from a member, Mr D Packer advised he had not crossed the creek and that the incident had occurred when he was approximately 100m away.

Mr C Packer confirmed the responsible dog ownership classification had been attached to his parents address where Dusty lived and was registered to.

Response on behalf of Council's Animal Services

In response to questions from a member, the Senior Animal Control Officer referred members to the complainant's written statement and confirmed that even if there had been no injury, the actions of Dusty warranted a menacing dog classification. This was based on her rushing at the complainant and her dog in an uncontrolled manner in a public place. The Senior Animal Control officer conceded that without an injury, there remained a possibility a menacing classification might not have been issued for this incident. He added the classification would prevent a bite attack occurring in the future.

The Animal Control Officer confirmed the complainant was still distressed two days after the incident when he spoke with her. She advised she would not walk in the reserve again. He pointed out that injuries could still occur from an attack from a muzzled dog, notably from claws.

Mr C Packer questioned which dog "snapped" first, and that the other dog might also have been responsible for the incident. He asked why his dog was being punished, and whether all dogs who run at people should be required to be muzzled.

The Chair thanked all parties for their attendance and submissions. He advised a decision would be released within 15 working days.

The meeting adjourned at 2.49pm. The dog owner/carer, the Head of Regulatory Services and Emergency Management, the Senior Animal Control Officer and Animal Control Officer left the meeting.

Deliberations

In considering the matter, members had regard to the following:

- the statement of evidence which formed the basis of the classification;
- steps taken by Dusty's owner, Mr C Packer, and carer, Mr D Packer, to prevent any threat to the safety of persons and animals;
- the matters submitted in support of the objection;
- the matters raised by the complainant; and
- all the other relevant information provided.

Members agreed that the classification of menacing dog was carried out according to the

law.

Members expressed disappointment that the complainant was not present to provide her account of the incident. Members noted the following:

- that Dusty was not under control at the time of the incident and Mr D Packer acknowledged this was an error of his judgement;
- that dogs often run at each other;
- the issue of who the aggressor was, either Dusty rushing at the complainant and her dog or the other dog snapping, was not clarified;
- the existence of blood or otherwise at the time of incident could not be clarified;
- that Dusty and her carer treated the reserve as an extension of their property and that it was usually empty;
- inconsistencies in the accounts of the incident, the delay between the incident and it being reported and the complainant taking her dog to a vet;
- that dog owners and their controlled animals should feel safe wherever they walked; and
- that it could not be guaranteed that Dusty would not act in a menacing way in the future.

Members were advised that the purpose of a menacing dog classification was to protect people and other animals.

Members noted that Dusty's carers could reapply for the responsible dog ownership classification after one year and that Dusty would remain muzzled for the rest of her life when in a public place.

Members noted the actions carried out by Dusty's owner and carer by checking the reserve was clear before entering and undertaking regular recall training. Members did not consider these actions went far enough to reassure them that Dusty was not a threat to the safety of any person or animal.

Members requested officers inform all dog owners about what "a dog being under control" actually meant, and the clear consequences of what the outcome was of not having a dog under control, namely a menacing dog classification and compulsory muzzling.

RESOLVED: (Cr Edwards/Cr Dyer)

Minute No. HSC 20503

"That the Subcommittee:

- (i) *notes the provisions of the Dog Control Act 1996 which apply to classification of a dog as a menacing dog;*
- (ii) *notes the evidence of the Animal Control Officer which led to the classification being imposed;*
- (iii) *notes the verbal and written objection by the owner of the dog;*
- (iv) *notes the written evidence of the complainant;*

- (v) *notes any other matters relevant under Section 33B of the Act; and*
- (vi) *pursuant to section 33B(2) of the Dog Control Act 1996 upholds the menacing classification of the dog Dusty."*

Reasons

- It is acknowledged that the dog owner/carer has taken some steps to minimise the likelihood of a further incident, however, they are not considered sufficient to ensure that Dusty is not a threat to the safety of the public or other animals;
- The decision is made for the safety of the public and other animals; and
- Council needs to uphold the law.

There being no further business the Chair declared the meeting closed at 3.23 pm.

Cr Edwards
CHAIR

CONFIRMED as a true and correct record
Dated this 23rd day of November 2020

Colour
 Microchip
 Breed
 DOB
 Optimal Weight 0.00 Phone

Clinical Notes:

Date: 9 MAY 20 11:25

Vet: AWK

Weight: 36,00 Temperature 39.4 Scores: Body 5 Dental -1

Desc: Reason: D - abcess?

History: A few days ago while walking near canal was attacked by another dog. No obvious wounds, haemorrhage at the time. Today when rolling in dirt noticed bleeding from L elbow. No significant lameness observed.

Been well otherwise no significant change in DUDE, demeanour.

Physical Exam:

Muzzled for wound care and PE as reactive to palpation.

Eyes - Corneas clear, no discharge, no conjunctivitis or blepharospasm noted.
 Pupils symmetrical Ears - No ceruminous debris obvious externally, no odour, no erythema noted

Nose - No discharge noted

Oral - Mucous membranes pink, moist, CRT <2 sec. Thorough oral exam not performed as muzzled. Teeth - Muzzled for exam - dental exam not performed.

Lymph nodes - No pain, asymmetry or lymphadenopathy noted of the submandibular, prescapular or popliteal

lymph nodes

Cardiovascular - Normal heart rate and rhythm, no pulse deficits, no murmur identified Respiratory - No abnormalities noted in rate, effort or on auscultation

Abdomen - No abnormal masses or foci of pain identified on abdominal palpation Musculoskeletal - Ambulating well on all four limbs, a full orthopaedic exam was not performed Genitourinary - No discharge or abnormalities noted

Integument - ~5mm dermal laceration caudal LF just proximal to olecranon. Surrounding musculature (distal triceps) firm mass-effect. No other wounds palpable/visualised.

Neuro - Mentation normal. A full Neuro exam was not performed

Assessment/Problem list:

Puncture wound +/- (secondary abscessation and rupture). Soft tissue trauma and haemorrhage.

Plan:

Clipped surrounding fur, cleaned w/ chlorhexidine solution. Flushed underneath tissue w/ 50ml sterile Hartmann's solution. Debrided wound margins.

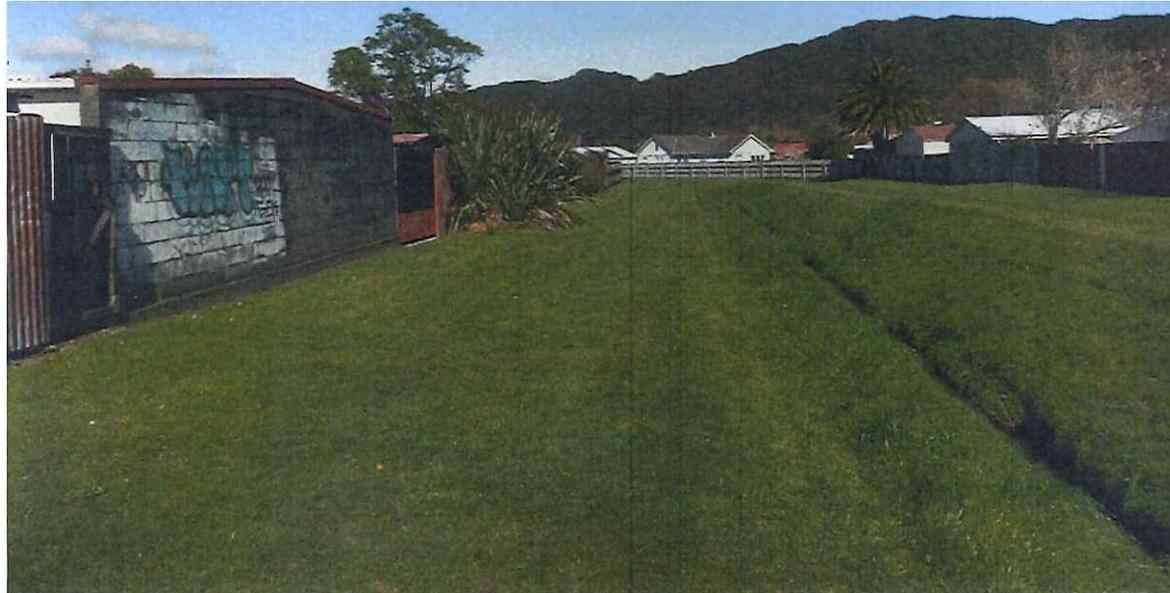
Rx: carprofen sid x 7 days. Clavulox bid x 7 days.

Advised to keep clean and avoid wound. To monitor for pain, discharge.

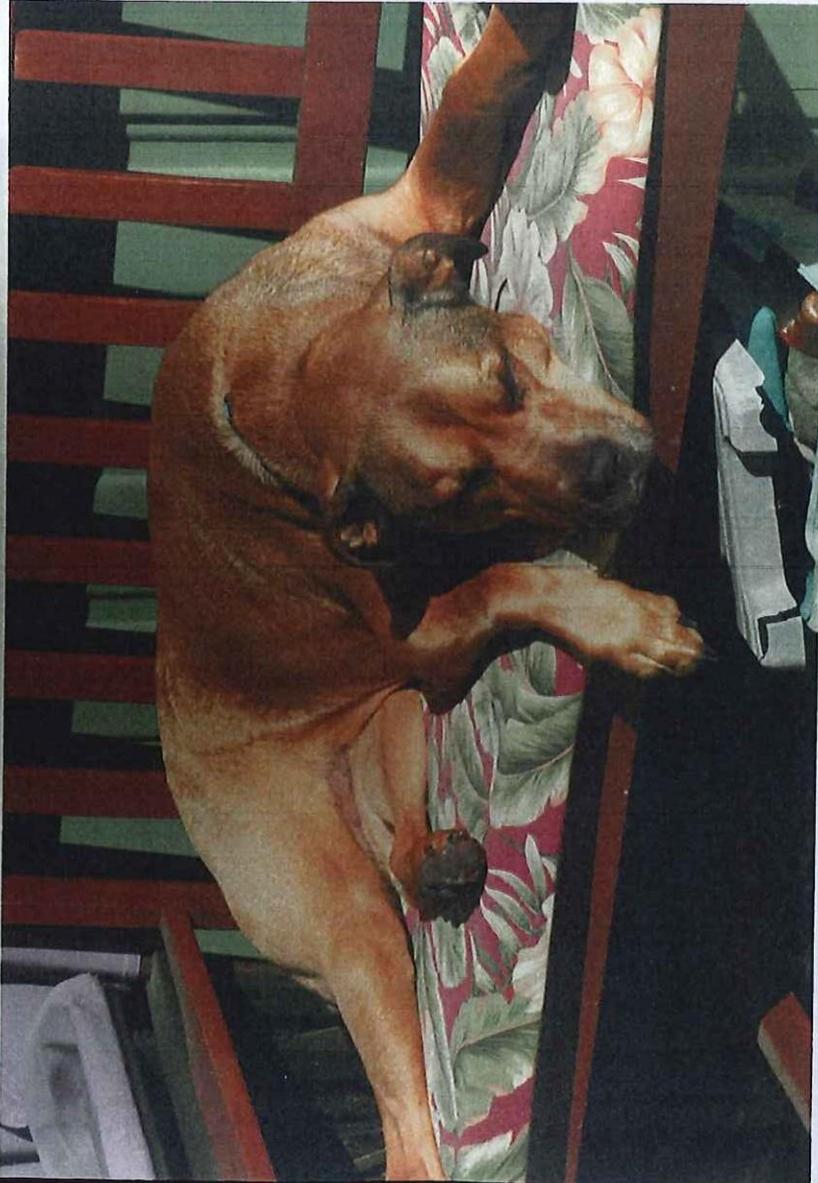
Drugs Dispensed:

Drug Quantity	Drug Name and Instructions
7	Canidryl 100mg Tabs: Give ONE (1) tablet ONCE daily. ALWAYS GIVE WITH FOOD. Contact clinic if any vomiting or diarrhoea.
14	Juroclav Tablet 500mg: Give ONE (1) tablet TWICE daily.

View south from our back gate, to corner (60-70m)



DUSTY



DUSTY & GRACE

