

Hearings Committee (Dog Hearing)

OPEN AGENDA

Meeting Date: **Thursday 24 August 2017**
Time: **2.00pm**
Venue: **Boardroom
Napier Conference Centre
Marine Parade
Napier**

Council Members Councillor Jeffery (In the Chair), Councillors Brosnan and Wright
Officer Responsible Director City Strategy
Administrator Governance Team

**Next Hearings Committee (Dog Hearing) Meeting
to be confirmed**

ORDER OF BUSINESS

APOLOGIES

Nil

CONFLICTS OF INTEREST

PUBLIC FORUM

Nil

ANNOUNCEMENTS BY THE CHAIRPERSON

ANNOUNCEMENTS BY THE MANAGEMENT

AGENDA ITEMS

1 Objection to classification of dog under Section 33A of the Dog Control Act 1996..... 3

PUBLIC EXCLUDED

Hearing deliberations will take place in committee.

AGENDA ITEMS

1. OBJECTION TO CLASSIFICATION OF DOG UNDER SECTION 33A OF THE DOG CONTROL ACT 1996

Type of Report:	<i>Legal</i>
Legal Reference:	<i>Dog Control Act 1996</i>
Document ID:	<i>381697</i>
Reporting Officer/s & Unit:	<i>Richard Munneke, Director City Strategy</i>

1.1 Purpose of Report

The Hearings Committee has been delegated, by Council, the power to hear, consider and decide objections made under section 33B of the Dog Control Act 1996 ('the Act'). An objection has been made in response to a an animal being classified as a Menacing Dog, therefore a hearing is required.

Status of Animal ID 172331

The dog is a neutered female, named 'Paige', aged 7 years, 5 months; it is white and tan in colour. Paige's breed is recorded as Jack Russell Terrier.

Paige was registered and microchipped in Napier on 16 March 2012, transferring from Tararua District Council.

Paige was impounded and returned on the 18 May 2016, Attachment A.

Matters leading to Classification

The dog was involved on an attack on Poultry on the 16 May 2017.

Pursuant to section 33A(1)(b) of the Act, the Council may classify a dog as menacing if they consider the dog may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of (i) any observed behaviour of the dog.

Pursuant to section 33A(1)(b) of the Act, the Council issued a Notice of Classification of Dog as a Menacing Dog to Ms Sturm on 24 June 2017. Attachment B is a copy of the Notice.

The Objection

Ms Sturms written objection was received by Council on 31 May 2017; accordingly the objection was received within the statutory 14 day objection period. Attachment C is a copy of Ms Sturm's objection.

The objections lists 4 reasons;

1. The roaming will not recur
2. Organising for aversion therapy regards chickens
3. Never menaced any human or other dog
4. When exercising dog is on lead and under full control

Hearings Committee jurisdiction

The Committee in considering an objection under section 33B of the Act may uphold or rescind the classification and in making its determination must have regard to:

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

Officer's Recommendation

That the matter be heard.

1.2 Attachments

- A Impound Service Request 163292 [↓](#)
- B Notice of Classification of dog as a Menancing Dog [↓](#)
- C Marion Sturm written objection [↓](#)
- D Section 33A of Dog Control Act 1996 [↓](#)
- E Section 33B of Dog Control Act 1996 [↓](#)
- F Section 33E of Dog Control Act 1996 [↓](#)
- G Section EC of Dog Control Act 1996 [↓](#)



NAPIER CITY COUNCIL

Hastings Street, Napier
Private Bag 6010, Napier
Telephone (06) 835 7579 - Facsimile (06) 835 7574
Web www.napier.govt.nz

Request: 163292
To: Dog Control
Attn: Alex Pollock

Received by: Holley Merry
Date & time received: 18/05/16 - 16.55
How received: Phone
Action required: Collect Animal

Closed: 18/05/16 - 18.00

Caller Information

Name Richard
Address 22 Churchill Drive
Phone (Hm) 06 844 4686
Email

Request

Type DG Barking
Details Found Foxy 22 Churchill Drive please collect - green collar no tags

Contract details

Maintenance Info Email

Actions

Status Collect Animal - Alex Pollock - Arrived: 18/05/16 - 17.25 - Completed: 18/05/16 - 18.00
Details Dog to be picked up no tags... Dog returned to owner Margaret Sturm

Owner No: 325857

24 May 2017



Marion Sturm
36 Churchill Drive
Taradale
Napier 4112

Item 1 Attachment B

Dear Mrs Sturm

NOTICE OF CLASSIFICATION OF A DOG AS A MENACING DOG

Section 33A, Dog Control Act 1996
Dog: Paige, Terrier, Jack Russell,

This is to notify you* that this dog has been classified as a menacing dog under Section 33A of the Dog Control Act 1996. This is because Council considers it may pose a threat to any person, stock, poultry, domestic animal or protected wildlife because of:

- 1. (b) (i) any observed or reported behaviour of the dog, Council may, for the purpose of Section 33E (1) (a), classify a dog to which this section applies as a menacing dog.

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

There is also a payment of \$66.00 compensation to be paid to the owner of the poultry killed or euthanized as a result of your dog's actions which as agreed will be paid via Animal Control to the persons owning the livestock. This letter will act as a receipt for payment received from you to be forwarded by myself.

Amount received \$66.00 signed: _____ Date received: _____

Payment received of \$66.00 Name _____ Signature: _____ Date: _____

Yours faithfully

Vanessa Gray
Animal Control Officer

*For the purposes of the Dog Control Act 1996, you are the owner of a dog if:

- You own the dog; or
- You have the dog in your possession (otherwise than for a period not exceeding 72 hours for the purpose of preventing the dog causing injury, or damage, or distress, or for the sole purpose of restoring a lost dog to its owner); or

Hearings Committee (Dog Hearing) – 24 August 2017 – Open Agenda

- You are the parent or guardian of the person under 16 years of age who is in possession of the dog and who is a member of your household living with and dependent on you.

Effect of Classification as Menacing Dog
Sections 33E, 33F and 36A, Dog Control Act 1996

You:

- a. Must not allow the dog to be at large or in any public place or in any private way (other than when confined completely within a vehicle or cage) without the dog being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction; and
- b. Must produce to Council, within one month after receipt of this notice, a certificate issued by a registered veterinary surgeon certifying:
 - i. That the dog is or has been neutered; or
 - ii. That for reasons that are specified in the certificate, the dog will not be in a fit condition to be neutered before a date specified in the certificate; and
- c. Where a certificate under paragraph (b) (ii) is produced to Council, produce to Council, within one month after the date specific in that certificate, a further certificate under paragraph (b) (i).

You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with all of the matters in paragraphs (a) to (c) above. A dog control officer or dog ranger may seize and remove the dog from you if you fail to comply with all of the matters in paragraphs (a) to (c) above. The officer or ranger may keep the dog until you demonstrate that you are willing to comply with paragraphs (a) to (c).

You are also required, for the purpose of providing permanent identification of the dog, to arrange for the dog to be implanted with a functioning microchip transponder. This must be confirmed by making the dog available to Council in accordance with the reasonable instructions of Council for verification that the dog has been implanted with a functioning microchip transponder of the prescribed type and in the prescribed location.

You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with this requirement within 2 months after the dog is classified as menacing.

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

Full details of the effect of the classification of a dog as menacing are provided in the Dog Control Act 1996.

Right of Objection to Classification under Section 33C
Sections 33B, Dog Control Act 1996

You may object to the classification of your dog as menacing by lodging with Council a written objection addressed to the Team Leader, Animal Control, within 14 days of receipt of this notice setting out the grounds on which you object.

You have the right to be heard in support of your objection and will be notified of the time and place at which your objection will be heard.

From: Marion Sturm <marion.s@clear.net.nz>
Sent: Saturday, 1 July 2017 14:12
To: Lance Titter
Subject: muzzling of Paige 167245

Follow Up Flag: Follow up
Flag Status: Completed

Paige is a Jack Russel who hunts rats, mice, rabbits and cockroaches and unfortunately after 6 years of living on the property managed to find and kill a chicken and injure 2 others who were not properly contained as per the city bylaws. I accept full responsibility that she was roaming and it will not recur. I am also organising for paige to have aversion therapy as regards chickens.

She regularly visits the aged at Atawhai residential care, has never menaced any human or other dog and is very social. WHEN exercising her she is now always on a lead where I have full control and she is unable to chase anything let alone chickens. Her favourite exercise is retrieving sticks in the river which is impossible when she is muzzled.

I really would like you to rescind the muzzle wearing condition.

Sincerely

Marion Sturm

Other related info ...

Speyed 24/ 8/2012 at Carlyle Vet Clinic

Chipped 16/3/2012 SPCA Napier 941000013467778



New Zealand Legislation
Dog Control Act 1996

Menacing dogs

Heading: inserted, on 1 December 2003, by [section 21](#) of the Dog Control Amendment Act 2003 (2003 No 119).

33A Territorial authority may classify dog as menacing

- (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 33A: inserted, on 1 December 2003, by [section 21](#) of the Dog Control Amendment Act 2003 (2003 No 119).

Section 33A(3): amended, on 1 November 2004, by [section 10](#) of the Dog Control Amendment Act 2004 (2004 No 61).

Section 33A(3)(c): amended, on 28 June 2006, by [section 13](#) of the Dog Control Amendment Act 2006 (2006 No 23).

Section 33A(3)(d): added, on 28 June 2006, by [section 13](#) of the Dog Control Amendment Act 2006 (2006 No 23).



New Zealand Legislation
Dog Control Act 1996

33B Objection to classification of dog under section 33A

- (1) If a dog is classified under [section 33A](#) as a menacing dog, the owner—
 - (a) may, within 14 days of receiving notice of the classification, object in writing to the territorial authority in regard to the classification; and
 - (b) has the right to be heard in support of the objection.
- (2) The territorial authority considering an objection under subsection (1) may uphold or rescind the classification, and in making its determination must have regard to—
 - (a) the evidence which formed the basis for the classification; and
 - (b) any steps taken by the owner to prevent any threat to the safety of persons or animals; and
 - (c) the matters relied on in support of the objection; and
 - (d) any other relevant matters.
- (3) The territorial authority must, as soon as practicable, give written notice to the owner of—
 - (a) its determination of the objection; and
 - (b) the reasons for its determination.

Section 33B: inserted, on 1 December 2003, by [section 21](#) of the Dog Control Amendment Act 2003 (2003 No 119).



New Zealand Legislation
Dog Control Act 1996

33E Effect of classification as menacing dog

- (1) If a dog is classified as a menacing dog under [section 33A](#) or [section 33C](#), the owner of the dog—
 - (a) must not allow the dog to be at large or in any public place or in any private way, except when confined completely within a vehicle or cage, without being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction; and
 - (b) must, if required by the territorial authority, within 1 month after receipt of notice of the classification, produce to the territorial authority a certificate issued by a veterinarian certifying—
 - (i) that the dog is or has been neutered; or
 - (ii) that for reasons that are specified in the certificate, the dog will not be in a fit condition to be neutered before a date specified in the certificate; and
 - (c) must, if a certificate under paragraph (b)(ii) is produced to the territorial authority, produce to the territorial authority, within 1 month after the date specified in that certificate, a further certificate under paragraph (b)(i).
- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) Subsection (1)(a) does not apply in respect of any dog or class of dog that the territorial authority considers need not be muzzled in any specified circumstances (for example, at a dog show).

Section 33E: inserted, on 1 December 2003, by [section 21](#) of the Dog Control Amendment Act 2003 (2003 No 119).

Section 33E(1)(b): amended, on 28 June 2006, by [section 29\(4\)](#) of the Dog Control Amendment Act 2006 (2006 No 23).

Section 33E(2): repealed, on 28 June 2006, by [section 29\(5\)](#) of the Dog Control Amendment Act 2006 (2006 No 23).

Section 33E(3): repealed, on 28 June 2006, by [section 29\(5\)](#) of the Dog Control Amendment Act 2006 (2006 No 23).

Section 33E(4): repealed, on 28 June 2006, by [section 29\(5\)](#) of the Dog Control Amendment Act 2006 (2006 No 23).

Section 33E(5): amended, on 7 July 2004, by [section 12](#) of the Dog Control Amendment Act 2004 (2004 No 61).



New Zealand Legislation
Dog Control Act 1996

33EC Offence to fail to comply with section 33E(1) or 33EB

- (1) Every person who fails to comply with [section 33E\(1\)](#) or [33EB](#) commits an offence and is liable on conviction to a fine not exceeding \$3,000.
- (2) If a person fails to comply with [section 33E\(1\)](#) or [33EB](#), a dog control officer or dog ranger may—
 - (a) seize and remove the dog concerned from the person's possession; and
 - (b) retain custody of the dog until—
 - (i) the dog control officer or dog ranger is satisfied that the person has demonstrated a willingness to comply with [section 33E\(1\)](#) or [33EB](#) (as the case may be); or
 - (ii) the dog is disposed of under [section 71A](#).

Section 33EC: inserted, on 28 June 2006, by [section 14](#) of the Dog Control Amendment Act 2006 (2006 No 23).

Section 33EC(1): amended, on 1 July 2013, by [section 413](#) of the Criminal Procedure Act 2011 (2011 No 81).