

Hearings Committee (Dog Hearing)

OPEN MINUTES

Meeting Date: **Thursday 24 August 2017**
Time: **2.00pm – 3.10pm**
Venue: **The Boardroom
Napier Conference Centre
Marine Parade
Napier**

Present: Councillor Jeffery (In the Chair) Councillors Brosnan and Taylor
Mrs Marion Sturm – Appellant
Mrs Joan Baker – support person to Appellant
Mr Mark Scott – Witness
Mrs Gill Mockford – Witness

In Attendance: Ms Hayleigh Brereton – Council Advocate
Mr Lance Titter – Director City Services
Ms Fiona Fraser – Manager Communications and Marketing
Mr David White – Team Leader Animal Control
Mr Stuart Hylton – External Advisor to Panel

Administration: Governance Team

APOLOGIES

Nil

CONFLICTS OF INTEREST

Nil

PUBLIC FORUM

Nil

ANNOUNCEMENTS BY THE CHAIRPERSON

Nil

ANNOUNCEMENTS BY THE MANAGEMENT

Nil

AGENDA ITEMS

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

<i>Type of Report:</i>	<i>Legal</i>
<i>Legal Reference:</i>	<i>Dog Control Act 1996</i>
<i>Document ID:</i>	<i>381697</i>
<i>Reporting Officer/s & Unit:</i>	<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 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.

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 Mrs Sturm on 24 June 2017. Attachment B is a copy of the Notice.

The Objection

Mrs Sturms written objection was received by Council on 31 May 2017; accordingly the objection was received within the statutory 14 day objection period.

The objections lists 4 reasons:

1. The roaming will not recur
2. Mrs Sturm is organising for aversion therapy regards chickens
3. The dog has never menaced any human or other dog
4. When exercising, the 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.

At the Meeting

The Chair introduced the parties to the Hearing, witnesses and Mr Stuart Hylton, external advisor to the Panel. The Chair then explained the process of the Hearing, and that it was a quasi-judicial proceeding with no cross-examination of witnesses.

Council Advocate – Ms Hayleigh Brereton

Ms Brereton spoke to the Council submission, noting that the dog Paige had been classified as menacing under section 33a(1)(b) of the Dog Control Act ('the Act'). Mrs Sturm had lodged an objection to this classification, which is now considered by the Committee under section 33b of the Act.

Ms Brereton reviewed the attack and events that led to the classification, including a dog attack evaluation undertaken by Warranted Animal Control Officer Vanessa Gray, in accordance with SOLGM best practice guidelines. The evaluation matrix produced a score of 31, for which the recommended actions include "menacing or dangerous dog classification and or infringement". Accordingly the classification notice was issued and an infringement levied for failure to control the dog.

Under the terms of the classification as defined in the Act, the owner must not allow the dog to be at large unless confined or muzzled.

Since the classification in May 2017, there have been 3 further complaints regarding the dog Paige including that the dog had been unmuzzled in public on at least two occasions in July 2017 and that the dog had menaced another dog in August 2017.

Council Officers had recommended that the dog undertake chicken aversion therapy but is unaware that this step has been undertaken by the Appellant to date.

The first Witness was called to speak.

Witness – Mr Mark Scott

Mr Scott spoke to his submission, highlighting the following points:

- The dog Paige was seized by Animal Control following an attack on a number of chickens on 16 May 2017.
- There had been a previous attack on their chickens in April 2017 but no dog was apprehended at that point. Mr Scott stated his belief that the same dog was responsible for the earlier attack also.
- Mr Scott and a neighbor in the area had seen a Jack Russell terrier roaming the area on one occasion each since the May incident. They are concerned that this was the dog Paige who remains inadequately secured despite the classification.
- Mr Scott advised that he was aware of occasions where the dog had been in public unmuzzled and that he was deeply unhappy that the owner was not respecting the requirements of the dog classification.
- The events had been very distressing for his family and a neighbouring family who had also owned some of the chickens attacked by the dog. Several of the chickens had been children's pets.
- Mr Scott stated his strong preference that the menacing dog classification be upheld by the Committee, or that more stringent measures be taken in the form of destruction of the dog.

The second Witness was called to speak.

Witness – Mrs Gill Mockford

Mrs Mockford spoke to her submission and that of her daughter, highlighting the following points:

- The attack on the chickens had been extremely distressing for her family. Several of the chickens had been her daughter's pets and her daughter was extremely distraught at what had occurred.
- Mrs Mockford had seen no evidence to support the claim that the dog was no longer menacing. In the last four weeks Mrs Sturm had been seen in public twice with the dog unmuzzled. In one instance Mrs Sturm had been unable to control the dog and it attacked another dog that was on its own property.
- A lack of respect for the rules had already been demonstrated by Mrs Sturm, and Mrs Mockford was concerned that even if the Classification was upheld that the rules would continue to be ignored. She asked what would happen if this did occur.
- Mrs Mockford asked the Committee to remove and destroy the dog, based on the lack of demonstrated compliance by the owner.

Questions of the Committee to Council Advocate and Witnesses

In response to questions from the Committee, it was clarified that:

- The penalty for having an unmuzzled dog that has been classified as menacing is a fine. To date no fine has been levied as Officers have been waiting for the decision of this Hearing before proceeding to address the further complaints received since May 2017.
- Mr Scott had chased a Jack Russell terrier from his property once since May 2017

and another neighbour had chased a Jack Russell terrier from the same area since May. Neither had been able to positively identify the dog as Paige but both believed it was most likely.

The Appellant was invited to speak.

Appellant – Mrs Marion Sturm

Mrs Sturm spoke to her submission, highlighting the following points:

- The dog Paige has worn the required muzzle on all but two occasions. One of those occasions she (Mrs Sturm) had been ill and left the muzzle in the car accidentally.
- On the second occasion Paige was in the back of the car on her lead while Mrs Sturm was talking to a woman in her neighbourhood, following which Paige was brought out to greet the woman's dog at the agreement of the woman. The woman happened to turn her back and the dogs had a snarling match. Mrs Sturm expressed the view that it was generally the dog whose territory it was that began such behaviour, to protect its property. It had definitely not been an attack on the other dog by Paige. When it had occurred, Mrs Sturm had picked Paige up and put her in the back of the car again. Mrs Sturm agreed that she had made a lighthearted remark at the time along the lines of chastising Paige for bad behaviour when she was trying to prove that she was a good dog. She had not expected that the incident would be reported as a dog attack by Paige.
- Mrs Paige accepted that the attack of the 16 May 2017 should not have happened and felt regret about it, but felt that the fencing of the chickens was inadequate as Paige could not jump very high.
- Following the attack in May, Mrs Sturm had created a secure area for Paige outside with two gates and a retaining wall. Paige had attempted to get out but had not been able to. Mrs Sturm referred the committee to the photographs she had provided of the area.
- The classification had meant a complete change in lifestyle for both the dog and herself; the dog was always on a lead and completely isolated at home.

Questions of the Committee

In response to questions from the Committee:

- Mr Mark Scott was requested to describe the fencing of his chicken housing. He advised that the fencing was standard rural fencing for cattle or sheep (as opposed to deer fencing) with chicken wire wrapped around the enclosure. The pipe gate was about one metre high by one metre wide and also had mesh through it. The fencing was approximately one metre high. He noted his understanding that Jack Russell terriers could jump six foot fencing.
- Mrs Sturm confirmed that Paige did enjoy hunting small prey in the empty sections next to her property but was now confined to the property.
- The two occasions where she had breached the classification requirements to muzzle the dog occurred a) because she was ill and had forgotten the muzzle, and b) when Paige was in the boot of the car on a lead and it didn't; occur to Mrs Sturm that a muzzle was required in that instance.
- Mrs Sturm had not undertaken chicken aversion therapy to date, despite the Animal Control Officer's recommendation as she did not believe it was necessary. She had paid the \$200 fine for the time Paige was roaming and Paige no longer was able to do so.
- Mrs Sturm had not attended any training courses with Paige, and believed she was a firm and responsible owner having had dogs including working dogs for 46 years.

- Paige did not jump and Mrs Sturm did not believe that she had jumped the fencing even in the case of the attack on the chickens. She reiterated her belief that the fencing must be inadequate.
- Mrs Sturm advised the secure enclosure was not in place at the time of the attack on the chickens but had been constructed since. Mrs Sturm did not believe that Paige could jump on the nearby chairs (in place so she could keep Paige company while outside) to get out of the enclosure.
- Mrs Sturm advised there were no further occasions where Paige had been unmuzzled other than the two identified by third parties that Mrs Sturm raised to the Committee.

Status of Recommendation

The Committee asked the Council Advocate whether, on the evidence produced today, there were any grounds in her view to rescind the classification.

Ms Brereton advised that there had been no evidence produced that would lead her to recommend that the Committee rescind the classification.

At the request of the Committee, the Council Advocate provided the reasoning behind this position, noting that Mrs Sturm had objected to the classification on four grounds:

1. The roaming will not recur
2. Mrs Sturm is organising for aversion therapy regards chickens
3. The dog has never menaced any human or other dog
4. When exercising, the dog is on lead and under full control

The Chair noted that the Committee had to make its decision based on the evidence that was presented and any mitigating actions that had or had not been taken by Mrs Sturm. Any possible future mitigating actions could not be included within their deliberations.

Ms Brereton noted that chicken aversion therapy had not taken place, that there was an existing complaint from the time period following the classification that Paige had menaced another dog, and that there was insufficient evidence that roaming has or will not recur and that the dog is under full control when exercising.

The Open Hearing was closed at 2.57pm.

The deliberations of the Committee were taken in committee.

Deliberations

The Committee reviewed the evidence as it had been presented at the Hearing.

It was noted that the witnesses requests to destroy the dog were out of the scope of this Hearing.

The implications of either rescinding or upholding the classification were considered by the Committee.

The decision of the Committee and supporting reasoning is outlined in the resolution of the Committee.

DECISION OF THE COMMITTEE

Councillors Taylor / Brosnan

THAT the notice of menacing dog classification be upheld, on the basis that there is

insufficient evidence to show that the dog does not pose a threat to any person, stock, poultry, domestic animal or protected wildlife.

The Committee based its decision on the following evidence from the Hearing:

- 1) There was insufficient evidence that the dog will be contained on the property at all times.**
- 2) The Committee was disappointed that the owner had not taken up the opportunity to undertake chicken aversion therapy for the dog, as recommended by Council Officers.**
- 3) The Committee was disappointed that the applicant had not adhered to the requirement to muzzle the dog at all times since the classification.**

CARRIED

THE MEETING CLOSED AT 3.10PM.

APPROVED AND ADOPTED AS A TRUE AND ACCURATE RECORD OF THE MEETING

CHAIRPERSON: _____

DATE OF APPROVAL: _____