



**NAPIER**  
CITY COUNCIL  
*Te Kaunihera o Ahuriri*

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# HEARINGS COMMITTEE

## (DOG HEARING)

### Open Agenda

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Meeting Date: Tuesday 11 May 2021

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Time: 1.00pm

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Venue: Ikatere Room  
Level 2, Capeview Building  
265 Marine Parade  
Napier

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Committee Members Deputy Mayor Brosnan (In the Chair) Councillors Browne, Simpson, Tapine, and Taylor  
Māori Committee Representative (Vacant)

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Officer Responsible Director City Strategy (Richard Munneke)

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Administration Governance Team

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

# ORDER OF BUSINESS

Karakia

Apologies

Mayor Wise

Conflicts of interest

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# AGENDA ITEMS

## 1. HEARING REPORT ON MENACING DOG CLASSIFICATION

Type of Report:	Legal
Legal Reference:	Dog Control Act 1996
Document ID:	1308031
Reporting Officer/s & Unit:	Rachael Horton, Manager Regulatory Solutions

### 1.1 Purpose of Report

The purpose of this report is to provide information on the menacing dog classification under **s33A(1)(b) of the Dog Control Act 1996 (the Act)**.

#### Officer's Recommendation

The Hearings Committee (Dog Hearing):

- a. Based on the evidence provided in this report, the menacing dog classification for Pippi owned by Stephanie Sewell is upheld.

### 1.2 Background Summary

A Territorial authority may classify dog as menacing. This section applies to a dog that — a territorial authority considers may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of any observed or reported behaviour of the dog; or any characteristics typically associated with the dog's breed or type.

**Owner:** Stephanie Lisa Sewell. Owner number 327144

**Dog:** Pippi, female German Shepherd aged 5 years ID 158780

**Classification:** Classified as menacing under S33A(1)(b)(i) of the Act.

### 1.3 Legal framework

S33B (2) provides the legal framework for considering the objection. This report will cover each aspect.

#### **33B Objection to classification of dog under section 33A**

...

*(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.*

**(a) Evidence forming the basis for the classification**

The circumstances leading to the classification of Pippi as Menacing under s33A(1)(b) of the Dog Control Act are as follows:

On 8 December 2020 at approximately 5:30pm, the complainant was taking her dog for a walk at the Napier Boys' High School fields bordering on Te Awa Avenue. While walking her dog a large German Shepherd came out of bushes that are along the boundary of the school and attacked her dog (**Attachment A: Service Request and Attachment B: ACO Report**).

The owner of the German Shepherd, Stephanie Sewell, lives at the property where the dog came from and acknowledges that her dog Pippi had left the property briefly at the time of the attack after the wind had blown a gate open (**Attachment C: Statement S Sewell**). Ms Sewell was present immediately after the attack when she retrieved her dog Pippi, and while she did not see the attack, she alleges that the injuries are a result of the two dogs colliding rather than an attack (**Attachment D: Statement K Feaver and Attachment C: S Sewell**).

The complainant's dog Rita received a broken back leg (complete fracture of the distal tibia and fibula) and puncture wounds to its inner thigh and was taken to the vet immediately for treatment. (**Attachment E: Email from Carlyle Vet**). The complainant has incurred \$2,433.30 of costs at the vet for immediate treatment and surgery on the 8<sup>th</sup> and 9<sup>th</sup> of December 2020, and Rita has required three orthopaedic surgeries (**Attachment F: Statement M Ross and Attachment G: Discharge Instructions**).

Council received a report of the attack from the complainant on 9 December 2020, advising that a German Shepherd had come out of the bushes at Napier Boys' High School and attacked her dog. She had described the German Shepherd as a bigger bushier dog, and that the owner said the gate must have blown over (**Service Request**).

Animal Control Officer Raymond Feierabend completed a report on the attack (**ACO Report**) and an Attack Rating Evaluation (**Attachment H: Attack Rating Evaluation**), resulting in a score of 30. The attack rating evaluation is a SOLGM best practice dog attack evaluation, and is completed at the conclusion of the investigation to consider the options. The SOLGM dog attack evaluation provides a matrix framework to evaluate and identify the best course of action. For the range of 28-34, the SOLGM dog attack evaluation guidance on potential action is menacing classification or dangerous dog classification and/or infringement.

A recommendation to classify Pippi as menacing was made to the Manager, Regulatory Solutions based on the outcome of the attack rating matrix and the information gathered during the investigation. This recommendation was approved by the Manager, Regulatory Solutions.

Classification

The Dog Control Act 1996 provides the territorial authority with the ability to classify a dog as menacing under the following criteria:

**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.*

Following a menacing dog classification, the effects of the classification are:

**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).*

Ms Sewell was served with a Notice of Classification of a Dog as Menacing on or about 27 January 2021 (**Attachment I: Notice of Classification as Menacing**).

On 1 March 2021 a letter was sent to Ms Sewell advising her of the outcome of Council's investigation (**Attachment J: Council investigation letter**).

***(b) Any steps taken by the owner to prevent any threat to the safety of persons or animals***

Ms Sewell denies that Pippi bit the complainant's dog, she alleges that a collision caused the injuries (**Statement S Sewell**).

Ms Sewell has not advised Council of any steps to prevent any further threat to the safety of persons or animals (**Statement S Sewell, Attachment K: emails from S Sewell 28 January 2021, 5 February 2021 and 16 March 2021**).

***(c) Matters relied on in support of the objection***

Ms Sewell has provided a lengthy statement disputing various matters (**Statement S Sewell**), and has provided several emails to Council (**emails from S Sewell 28 January 2021, 5 February 2021 and 16 March 2021**).

Essentially Ms Sewell acknowledges that Pippi was present at the time of the attack, but believes that any injuries were caused by a collision between the dogs rather than a bite.

***(d) Any other relevant matters***

Council has subsequently obtained statements from the following people:

- (i) **Attachment L: Statement 1**;
- (ii) **Attachment M: Statement 2**;
- (iii) Kristin Feaver (Statement – K Feaver);
- (iv) Mark Ross (Statement – M Ross); and
- (v) Steven Devereaux (**Attachment N: Statement – S Devereaux**).

Ms Feaver is the complainant, her statement supplements her service request and the ACO report, and provides an update on the impact that the attack has had on her and her dog Rita.

Mr Devereaux is the partner of Ms Feaver, and his statement provides information regarding the evening of the attack, and his interaction with Ms Sewell.

Mr Ross is a vet that treated Rita following the attack. His statement explains the injuries that Rita suffered and the procedures that she has subsequently had to treat her broken leg.

Statement 2, walks her dog at Napier Boys' High School and her statement describes an interaction that she had with Ms Sewell and her two dogs (Pippa and another German Shepherd), and her recollection of an occasion when Ms Sewell's dogs were aggressively barking at her dog and Ms Sewell needed to grab her dog as it "started for" her dog. Statement 2 describes Ms Sewell berating her for approaching her dogs from an angle that Ms Sewell couldn't see.

Statement 1 also exercises her dog at Napier Boys' High School and her statement describes several interactions with Ms Sewell and her dogs. Statement 1 describes an occasion when Ms Sewell's dogs were barking, growling and snarling at her, with Ms Sewell struggling to keep them under control.

*Please note that some information has been redacted under section 7(2)(a) of the Local Government Official Information and Meetings Act 1987 – that the privacy of natural persons should be protected.*

#### 1.4 Attachments

- A Service request re attack 9 December 2020 (*Under Separate Cover*) ➡
- B ACO report 8 January 20-21\_Redacted (*Under Separate Cover*) ➡
- C Statement - S Sewell (*Under Separate Cover*) ➡
- D Statement - K Feaver\_Redacted (*Under Separate Cover*) ➡
- E Email from Carlyle Vet regarding injuries to Rita 15 December 2020 (*Under Separate Cover*) ➡
- F Statement - M Ross (vet)\_Redacted (*Under Separate Cover*) ➡
- G Discharge instructions - 9 December 2020\_Redacted (*Under Separate Cover*) ➡
- H Attack rating evaluation (*Under Separate Cover*) ➡
- I Notice of classification as menacing 27 January 2021 ⬇
- J Council investigation letter 1 March 2021 (*Under Separate Cover*) ➡
- K Emails from S Sewell (*Under Separate Cover*) ➡
- L Statement 1\_Redacted (*Under Separate Cover*) ➡
- M Statement 2\_Redacted (*Under Separate Cover*) ➡
- N Statement - S Deveraux\_Redacted (*Under Separate Cover*) ➡
- O Dog owner enquiry - S Sewell (*Under Separate Cover*) ➡
- P S Sewell Hearing Statement (*Under Separate Cover*) ➡
- Q S Sewell - Picture of Gate Lock (*Under Separate Cover*)



Owner No: 327144

27 January 2021

Stephanie Lisa Sewell  
23 Te Awa Avenue  
Te Awa  
Napier 4110

Dear Stephanie

**NOTICE OF CLASSIFICATION OF A DOG AS A MENACING DOG**

Section 33A, Dog Control Act 1996

Dog: Pippi, Shepherd, German,

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.

Yours faithfully

Raymond Feierabend  
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
- 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.