

Chairperson and Committee Members
APPEAL HEARINGS COMMITTEE

18 JULY 2013

Meeting Status: **Public**

Purpose of Report: For Decision

OBJECTION TO MENACING DOG CLASSIFICATION

PURPOSE OF REPORT

- 1 This report seeks the Committee's consideration and decision on the objection lodged by Jane Stevenson against the classification of her and her husband, Ariu Semo's two dogs, Jara and Axel, as Menacing dogs under Section 33a of the Dog Control Act 1996.

SIGNIFICANCE OF DECISION

- 2 This report does not trigger the Council's Significance Policy.

BACKGROUND

- 3 Jane Maree Stevenson and Ariu Semo are the registered owners of two dogs. Those dogs being: Jara, a tan, Rhodesian Ridgeback cross; and, Axel, a black, Labrador Retriever cross.
- 4 On Friday 1 March 2013 at approximately 7.35am Ms Stevenson was on Waikanae Beach. She had her two dogs, Jara and Axel with her. Both dogs were running off leash. The section of Waikanae Beach they were on is designated as an off leash area under the Kapiti Coast District Council bylaws. This leash free area is between the Waikanae Boating Club and the Waikanae river mouth.
- 5 Philip Dyer was also at Waikanae Beach at this time. He had walked down to the water's edge, turned around and started to walk back towards the Oratia Street accessway.
- 6 Ms Stevenson had been walking along the base of the sand dunes with both of her dogs beside her sniffing washed up logs. Mr Dyer states that the he saw the dogs were walking 'some distance' behind Ms Stevenson. 'Out of the corner' of Ms Stevenson's eye she saw Jara and Axel 'break into a run into the dunes and head up them towards the top'. Mr Dyer states he heard a 'commotion' up in the sand dunes. (Refer to appendices to explain location.)
- 7 Both Mr Dyer and Ms Stevenson ran to where the dogs were in the dunes. Ms Stevenson was trying to call the dogs to come back to her. Mr Dyer witnessed the two dogs, Jara and Axel, catch and maul a cat. Mr Dyer attempted to intervene and states the "episode was over in 10-20 seconds". Mr Dyer then recognised the cat as being his family pet, Murphy. The cat had been had been disembowelled and died just after Mr Dyer intervened. By this stage the dogs were 'stood down' and behind Ms Stevenson.
- 8 Ms Stevenson and Mr Dyer exchanged details, Ms Stevenson immediately took full responsibility for the attack.

- 9 Ms Stevenson phoned the Council's Animal Control staff later that morning to report and discuss what had happened that morning on Waikanae Beach. Ms Stevenson and Mr Semo visited the Dyer residence on Saturday 2 March 2013 with the offer of a gift in recognition of their remorse.
- 10 Ms Stevenson had initially considered having Jara euthanized. At the time of the incident she had seen Jara 'with something in his mouth'. Ms Stevenson states 'he was shaking something in a sideways motion. I then saw it was a cat'. It appears that Ms Stevenson saw Jara as more of a threat/ instigator leading Axel on to chase and fatally attack the cat. Ms Stevenson later chose not to euthanize her dog, instead opting to be more careful in future with control of Jara in particular.
- 11 After reviewing the officer's report of the incident, on 30 April 2013 Animal Control Officers classified both Jara and Axel as Menacing under section 33A of the Act and issued infringement notices for failure to keep a dog under control.
- 12 Section 33A(1)(b) of the Act states a Territorial Authority 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.
- 13 The effect of a menacing classification is that a dog owner must ensure their dog is muzzled when in a public place. A menacing dog must also be microchipped and desexed.
- 14 On 14 May 2013 the Council received a formal written objection from Jane Stevenson on behalf of herself and Ariu Semo. Ms Stevenson is objecting to the Menacing Classification of both Jara and Axel. The objection letter is attached as Appendix One.
- 15 A letter from Gault Mitchell Law, acting for Bridget Ryley and Philip Dyer, owners of the cat, is attached at Appendix 2.

CONSIDERATIONS

Considering the Objection

- 16 Section 33b of the Act states that, when considering the objection the committee 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 and animals; and*
 - (c) *the matters relied on in support of the objection; and*
 - (d) *any other matters.*
- 17 The following paragraphs provide information relevant to Section 33b of the Act for the Committee's consideration:
 - (a) *the evidence which formed the basis for the classification*

Jane Stevenson and Ariu Semo's dogs, namely Jara and Axel were classified Menacing due to an incident where the two dogs attacked and killed a domestic cat in a public place.

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

Ms Stevenson and Mr Semo have altered the morning exercise routine for Jara and Axel. 'Both dogs are now on lead both on the street part of the walk and on the beach walk either north or south, and are only off lead at the far end of the beach between the river and the sea, away from any sand dunes and always in full sight'. They have also 'purchased a muzzle for Jara to use in any circumstances where he may consider himself in a hunting mode'.

c) the matters relied on in support of the objection;

A summary of Ms Stevenson's and Mr Semo's record of dog ownership in the Kāpiti Coast district follows:

- 2008 Transferred from Hutt City to Kapiti
- 2009 January: two threatening complaints one week apart
- 2010 Dog lost report
 - File notes in relation to deceased dog and newly adopted dog
 - Wandering complaint
 - Threatening complaint
- 2013 March: dog attack complaint (the incident described in this report)
 - Notes with regard to classifications and infringements imposed as a consequence.
 - May: threatening complaint lodged with regard to both dogs and inadequate fencing of the home address.

18 On the basis of the facts of the incident and the information presented in this report, it is recommended the menacing classification be upheld for both dogs.

Financial Considerations

19 There are no financial considerations.

Legal Considerations

20 Section 33 of the Act states that:

33a Territorial Authority may classify a 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 that dog; or*
 - (ii) any characteristics typically associated with the dogs breed or type*

- 21 The menacing classification was imposed under section 33a (1) b) (i) because Ms Stevenson and Mr Semo's dogs, Jara and Axel, were not under control and attacked and killed a domestic cat in a public place.

Delegation

- 22 The Committee may make a decision on this matter under Section B5 of the Governance Structure 2012-2013

7.1 Authority to hear and adjudicate objections from dog owners to classifications of dog owners and/or dogs under the Dog Control Act 1996, within following prescribed terms of reference:

...

7.1.4 Section 33B of the Dog Control Act 1996 - Objection to Classification of Menacing Dog (by nature).

Consultation

- 23 There are no consultation requirements.

Policy Implications

- 24 There are no policy implications. The recommendation is consistent with previous action in similar circumstances.

Tāngata Whenua Considerations

- 25 There are no tāngata whenua considerations.

Publicity Considerations

- 26 Public interest in this matter is possible. A media release will be prepared on the Committee's decision.

RECOMMENDATIONS

- 27 That the Committee upholds the classification of the dogs Jara and Axel belonging to Ariu Semo and Jane Stevenson as menacing under section 33a (1) b) (i) of the Dog Control Act 1996.

Report prepared by:

Approved for submission by:

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ATTACHMENTS

- Appendix 1 Letter from Jane Stevenson objecting to menacing classification
Appendix 2 Statement from cat owner
Appendix 3 Photographs of the location of attack