

Chairperson and Committee Members
APPEAL HEARINGS COMMITTEE

26 SEPTEMBER 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 Mr Sinbad Timoteo.

SIGNIFICANCE OF DECISION

- 2 This report does not trigger the Councils Significance Policy.

BACKGROUND

- 3 Sinbad Timoteo is the registered owner of Koda, an entire male, brindle and white, American Bulldog aged 5 years. Mr Timoteo has lodged an objection against the classification of his dog, Koda, as Menacing under Section 33A of the Dog Control Act 1996. (Appendix One refers.)
- 4 On Tuesday 18 June 2013 at approximately 7.30 in the evening Mr Patrick van Son and his partner were returning home from their evening walk with their Rottweiler named Chopper. As they neared their property in Titoki Road, Raumati, Mr van Son's partner 'spotted' Koda running at 'full speed' towards them. Mr Timoteo was not within sight.
- 5 Within seconds and without warning or hesitation, Koda attacked Chopper, latching onto Chopper's neck. As Mr Timoteo was not present Mr van Son was left with no option other than to repeatedly kick Koda to try and get him to let go of Chopper. Chopper was still leashed while being attacked. Mr van Son states that as the attack neared the 2-3 minute mark and Koda was still not letting go of Chopper's neck, he saw Mr Timoteo walking from his property 100 metres away and toward them. Refer Appendix Two for map of locality and Appendix Three for a copy of the statements from each party.
- 6 Mr Timoteo had been walking Koda on his lead, but as he neared his home, on Anaru Street, he took Koda off the lead. (A copy of the Infringement Notice issued to Mr Sinbad Timoteo is attached as Appendix Four.) Mr Timoteo did not see Mr van Son and his partner walking Chopper due to the distance between the parties.
- 7 Mr Timoteo also had to kick Koda with force and pull his tail to try and get Koda to release Chopper from his grip. Approximately 1-2 minutes later Koda released his grip long enough that Mr van Son was able to get Chopper away from Koda and into his property.
- 8 Mr Timoteo took Koda back to his property on Anaru Street.

- 9 Mr van Son did not take Chopper to the vet as he had some anti bacterial cream from a previous injury and used that. The wounds to Chopper were not photographed at that time, as they were mainly scrapes and not easily apparent.
- 10 Mr van Son would like to see Koda muzzled when in public and kept confined to his property in the future. He was subsequently classified as menacing. Council did not release Koda until a kennel and run was built for Koda to be housed in.
- 11 It is understood, as the result of a service request lodged on 8 July 2013, Mr van Son found Koda wandering along Alexander Road and returned him to Mr Timoteo's property. An Animal Control Officer spoke with Mr van Son to confirm this incident.

CONSIDERATIONS

Considering the Objection

- 12 Section 33B(2) 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 relevant matters.*

- 13 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*

Sinbad Timoteo's dog, Koda, was classified as menacing due to an incident where Koda was off leash in a public place (infringement issued 18 June 2013) ran 100 metres and attacked another dog being walked on leash.

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

As a condition of release from impounding, the dog owner was required to build a kennel and run to ensure Koda remained confined to his property. Koda has a history of wandering from his property.

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

A summary of Mr Timoteo's record of dog ownership in the Kapiti Coast District follows:

- | | |
|------|---|
| 2008 | 'Dog found' call logged, dog subsequently impounded. |
| 2009 | 'Dog impounded' complaint lodged with impounding record. |
| 2010 | Two 'dog wandering' complaints and one warning notice issued. |

2011 Three lost dog complaints, two dog wandering complaints and three impoundings.

2012 One dog attack complaint (rushing-no injury), subsequently an infringement was issued.

File note: change of ownership form completed as Mr Timoteo's wife wishes to be taken off our records as Koda's owner.

2013 One wandering dog complaint, one lost dog complaint, one threatening dog complaint, two impoundings and the attack relating to this report.

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

Financial Considerations

15 There are no financial considerations.

Legal Considerations

16 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.

17 The menacing classification was imposed under section 33a (1)(b)(i) of the Act because Mr Timoteo's dog, Koda, was not under control and attacked another dog.

18 The Act allows for the territorial authority's Appeals Hearing Committee to consider objections of this nature. The District Court does not oversee objections of this nature.

Delegation

19 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)

Policy Implications

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

Publicity Considerations

- 21 Given recent coverage of menacing dog issues in this District there is likely to be media interest in the decision of this meeting.

RECOMMENDATIONS

- 22 That the Appeals Hearing Committee upholds the classification of the dog Koda belonging to Sinbad Timoteo 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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APPENDICES:

1. Letter from Mr Timoteo objecting to the classification of his dog, Koda as Menacing under Section 33a of the Dog Control Act 1996.
2. Map of locality of dog attack.
3. Statements from each party.
4. Copy of Infringement Notice issued to Mr Timoteo.