

Decision Ref:

AHC J HICKS

**IN THE MATTER OF**

An objection by Jocelyn HICKS  
under section 33B of the Dog  
Control Act 1996 – Objection to  
classification of dog under section  
33A

BEFORE THE KĀPITI COAST DISTRICT COUNCIL APPEALS HEARING COMMITTEE

Deputy Chair: Cr Jocelyn Prvanov  
Members: Cr Janet Holborow  
Cr James Cootes

HEARING at PARAPARAUMU on 23 June 2022

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**DECISION OF THE COMMITTEE**

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**Result: The classification of Jocelyn HICKS’ dog, “Jonty”, is upheld**

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APPEARANCES

Jocelyn Hicks – Objector

Jacque Muir – Environmental Standards Manager

Tim Sharpe - Team Leader Public Spaces and Animal Management

Emma Jones – Witness

Roslyn Dykes - Witness

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**Reasons**

**Background**

- [1] Under the Dog Control Act 1996, a territorial authority may classify a dog as menacing, should it consider the dog to pose “a threat to any



[11] The Committee members noted the evidence presented on both sides of the objection.

[12] Committee members expressed concern over the events that had occurred.

[13] Deliberations concluded at 11.42am.

### **Decision**

[14] Following the Deliberations, the Committee reconvened and passed the following motion:

*“That the Appeals Hearing Committee:*

- 1. Receive the information.*
- 2. Note:*
  - a. The evidence which formed the basis for the classification*
  - b. Any steps taken by the owner to prevent any threat to the safety of persons or animals*
  - c. The matters relied on in support of the objection*
  - d. Any other relevant matters*
- 3. Agree to uphold the classification as a menacing dog.*
- 4. Delegate to the chairperson of Appeals Hearing Committee, the authority to issue a written decision, which will be sent to all parties and attached to the minutes of this meeting.”*

[15] Accordingly, the classification of the dog, “Jonty”, owned by Jocelyn Hicks as menacing, is upheld.

[16] The owner:<sup>2</sup>

- 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

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<sup>2</sup> Dog Control Act 1996, s 33E(1).

- 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).

[17] The menacing classification is in force anywhere in New Zealand.

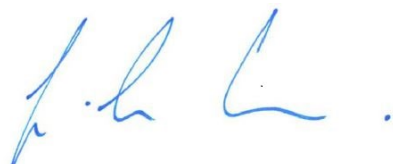
[18] A failure to comply with the above conditions commits an offence under the Dog Control Act 1996 and the person is liable on conviction to a fine not exceeding \$3,000.

[19] Additionally, if the above conditions are not complied with,

“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.”<sup>3</sup>

**Dated at Parapararumu this day Friday 7 October 2022**



**Councillor Jocelyn Prvanov**

**Deputy Chair of the Appeals Hearing Committee**

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<sup>3</sup> Dog Control Act 1996, s 33EC(2).

# MINUTES - HEARING

## KĀPITI COAST DISTRICT COUNCIL APPEALS HEARING COMMITTEE

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23 June 2022 – 9.30am

Council Offices, Rimu Road, Paraparaumu

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An objection by Jocelyn HICKS under section 33B of the Dog Control Act 1996 – Objection to classification of dog under section 33A.

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### **In attendance**

#### **Committee members:**

Chairperson Cr Jocelyn Prvanov (JP)  
Committee member Cr Janet Holborow (JH)  
Committee member Cr James Cootes (JC)

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#### **Committee Advisors:**

Tanicka Mason  
Steffi Haefeli

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#### **Objector:**

Jocelyn Hicks (JoH) – objector

#### **Animal Control:**

Jacquie Muir (JM) – Environmental Standards Manager  
Tim Sharpe (TS) – Animal Control Team Leader

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#### **Witnesses**

Emma Jones (EJ)  
Roslyn Dykes (RD)

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The meeting started at 9.30am.

Tanicka Mason Committee Advisor, swore all parties in.

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Cr Jocelyn Prvanov as chairperson welcomed everyone to the hearing and introduced committee members.

Councillor Holborow offered karakia.

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### **Opening Submissions:**

JM: I'm the Environmental Standards Manager for the Kāpiti Coast District Council, I am responsible for the management of the Animal Management team here at Council. I have prepared a document for the ease of the process. I would like to read through the report for the committee.

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55 Ms Muir read from her evidence (see pages 7 & 8 of the evidence pack) and referred to document 6 (photographs of Trusham Court) and document 10 the Kāpiti Coast District Council Dog Control Bylaw 2019.

Ms Muir went on to call her first witness, cat owner, Emma Jones.

60 Cr Prvanov advised Ms Muir that witness statements will be heard later in the meeting.

Committee members were asked if they had any questions at this stage. There were none.

Opening submissions were heard from Ms Hicks.

65

JoH: I am Jocelyn Hicks, I am the victim of this court hearing. I deny that my dog attacked this cat, and that is basically what I am saying here.

70 It's amazing to me how people can actually see what they want to see. Nobody saw what happened initially. I am adamant and I swear before God what I say is the truth without any fantasies or make up any stories that this is what happened.

JP: Thank you Ms Hicks. Now we will move onto the Animal Control Team evidence in chief.

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#### **Animal Control Evidence in chief**

JM: Thank you, I would like to call Emma Sophie Jones (EJ) please.

80 EJ: Kia ora everyone, my name is Emma, and I am just going to read my statement that I provided the Kāpiti Coast District Council team with.

Ms Jones read her statement which is found on pages 12 & 13 of the evidence pack.

85 Ms Jones referred members to the pictures of the damage caused to Kobe, which have been included in the evidence pack.

90 EJ: I have since contacted Jocelyn Hicks about recovering the costs. We went to the small claims court, and I was awarded that Jocelyn had to pay full costs. They stated that she did not have the dog on the leash and the vet costs were reasonable.

Ms Jones continued to read from her statement.

#### **Committee asked questions of the witness:**

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JC: Mōrena Emma and thank you for appearing today. I apologise if this is a question that needs to be directed to staff. In terms of awarding costs, was it only costs for the injuries and medical expenses? Obviously, you incurred other costs in terms of having to cancel your holiday. I'm interested in whether that was discussed or not able to be considered.

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EJ: Yes, so that's correct. It was just for the vet costs, nothing to do with the holiday. I don't think I was able to claim on that plus, I didn't want to claim on that either. That part is just life. I had a letter from the Council that Jocelyn Hicks was required to compensate me for any vet costs so that's what I went to the small claims tribunal for.

105

JC: Thank you.

JP: Any further questions?

110 JP: Thank you Emma for coming along today. So, just to clarify has the money for the vet bills been paid?

EJ: No, so the latest was that a couple of weeks ago the entire amount was meant to be paid. I missed a call from Jocelyn that said she was going to arrange a \$20 fortnightly payment which is fine, obviously its going to take 11 years to pay the total amount off so I have gone through the correct processes of contacting the court and have put in a claim for Jocelyn to do the fortnightly payments, but through the proper processes.

120 JP: Thank you very much. Are there any further questions? So, thank you very much Emma.

JM: I would like to call Ms Roslyn Dykes (RD) as a witness in this matter.

RD: Hi, I'm Roslyn Kathleen Dykes known as Rosie. I'll just read my statement please.

125 Ms Dykes read her statement found on pages 16 & 17 of the evidence pack, and added the following:

RD: And the reason the cat couldn't get back up was because there was something really wrong with its leg. From that distance I couldn't tell you what it was, it looked like it was broken. It was trying to get up. That's it.

135 JP: Thank you very much Rosie. So, I have a question, from your memory of the day do you agree that Ms Hicks who is in the room today, was the person who was present with the dog who attacked the cat?

RD: Yes.

JP: Are there any further questions from the panel?

140 JC: Mōrena Rosie and thank you for making yourself available today. Having read all the evidence that was provided in Ms Hicks' statement she described the cat as the aggressor in terms of attacking Jonty and in your statement it appears from what you said that you witnessed the dog as the aggressor. Could you just confirm for the benefit of doubt what you saw, out of the two animals which one appeared to be the aggressor of the two.

145 RD: When I got to the fence the dog was in the middle of the walkway and had the cat with its legs hanging down in its mouth and just shaking it backwards and forwards. The very very beginning of course, I wouldn't have seen but the cat is not aggressive to dogs because she lives with a dog and she's quite friendly with dogs. All I saw was I got there and the cat's in the dogs' mouth and its' legs are hanging down and the dog is shaking the hell out of it.

JC: Thank you. My second question, and I appreciate if you may not have been able to have seen in terms of distance or time. Did you see any injuries to the dog at the time?

155 RD: No, the dog looked as good as gold.

JC: Thank you very much.

JP: Any further questions from the panel?

160 JH: Thank you. So, in Ms Hicks' statements she disputes that the cat was picked up more than once.

RD: The cat was picked up more than once.

165

JH: The cat was picked up more than once by the dog? Can you confirm that the dog dropped the cat and was definitely picked up a second time in your recollection?

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RD: Yes, I went to the fence, and I screamed, and the dog dropped the cat and then nothing happened, Ms Hicks didn't do anything, so the dog picked the cat up again and started shaking it again and then I screamed again and that's when we (Ms Hicks and Ms Dykes) got into a bit of a screaming match. And then the dog dropped the cat and by then it was able to get itself away, so it did it three times.

175

JH: Yes, I'm just trying to get clarification of what is the recollection of the current witness that's all Ms Hicks. This is obviously something that is in dispute today.

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RD: This is quite traumatic, it's amazing. For me I love cats and I love dogs but to me that was horrific.

JP: So, thank you Rosie, I have a further question. You are saying that Jonty either picked the cat up twice or three times?

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RD: What I saw was three times. I didn't see whatever happened right at the beginning because I heard the cat. I raced out thinking, that scream was horrific, and something needed to be helped. I raced out to the fence line and that's when I saw. What I saw was three times he picked the cat up and shook it.

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JP: So, when the dog released the cat was that through you screaming at the dog?

195

RD: I yelled out no and the dog instantly dropped the cat, but the cat was so injured (outburst by Ms Hicks) that she just stayed there like she was in shock and then he picked it up again so I yelled no again and then he dropped it and then the third time she yelled at me and I yelled at her and the dog dropped the cat and took notice of his owner and because he had turned his head around and was looking at her because she was screaming at me and then I screamed at her "get the dog away" the cat was able to drag itself away. The dog went to have another go but she did go and grab the dog then.

200

JP: Thank you. So, until the last instance when Ms Hicks went to retrieve the dog off the cat (incomplete sentence).

205

RD: She didn't do anything she just stood there and watched him (outburst by Ms Hicks) that's what got me.

JP: And so, the last time that the dog released the cat, she then walked away. Was the dog on or off a lead?

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RD: No, no lead, I didn't see a lead, I don't know what was in her pockets. She grabbed it by the collar and dragged it away.

JP: And then as you said in your submission, she grabbed it by the collar and after 10 meters she then (incomplete sentence).

215

RD: Released it and walked off.

JP: Ok thank you very much. Any further questions from members of the panel? Thank you very much for your evidence today, is there any further evidence from the Animal Control team?



220 JM: Yes, we have one further witness to call.  
Can I just let the Appeals Hearing Committee know that Ms Hicks has just called my witness  
a bitch, just for your information.

225 I now have a witness to call who is Timothy Spencer Sharpe the Animal Management Team  
Leader.

230 JP: Thank you. Before we go on further, this is a formal court and when we have someone  
speaking we'd like that person to be able to speak and be uninterrupted and to not be  
intimidated please. Thank you.

235 TS: Thank you Chair and Councillors. Mr Sharpe proceeded to read his written statement  
which can be found pages 21-23 of the evidence pack.  
Mr Sharpe referred to Ms Hicks' statement which can be found on pages 24- 27 of the  
evidence pack.

235 Mr Sharpe also referred to documentary evidence four and five of the evidence pack.

JP: Thank you, do we have any questions from the panel? Cr Cootes.

240 JC: Thank you Tim for appearing today to give evidence. In reading the information pack that  
has been provided to us, there are some conflicting statements obviously between the two  
sides. In Ms Hicks' view the cat was the aggressor and in your statement on page 23 it  
states there that she, being Ms Hicks maintained that her dog Jonty was within its rights to  
245 attack the cat. Could you just clarify for the benefit of doubt that the statement was a  
statement that you heard from Ms Hicks.

250 TS: Yes. The implication with reference to that is that the cat had initiated matters, the cat  
had squared up to Jonty in the first instance and the cat was the aggressor. That was my  
understanding of the comment that she made when I was at her property which again is at  
odds with information contained within her statement, in that the cat has made an  
255 unsuccessful attempt to escape. Again, in my view there is no alternative for the cat in those  
circumstances if its route of escape is no longer available. Yes, I was not content that the cat  
initiated this attack. It was a consequence of the cat being unable to extricate itself from a life  
or death situation.

260 JC: Thank you. The next one is around the injuries to the cat and although we have the  
pictures which are very clear that there were injuries to the cat and a number of invoices  
showing the work from the vets in terms of the surgery and so forth. Was there any  
assessment summary from the vet in terms of, we received the cat on XY day and observed  
(incomplete sentence).

265 TS: In terms of a report like that we generally don't get anything like that from a vet which is  
why we obtain photographs. Photographs as they say, say a thousand words and we  
obviously get an itemised receipt from the vet indicating the treatment that had been  
delivered, the medication that has been issued and so based on that and all the attendant  
circumstances, witness statements I'm happy to conclude that those injuries were sustained  
as a result of the attack on Kobe by Jonty.

270 JC: Thank you Tim and my last question is on the other side of the discussion which is  
around Jonty. The information states that staff seized the dog on day five or six from  
memory, were there any injuries evident to Jonty based on the claims from Ms Hicks that he  
was, I think in her words that the cat was latched on to his (incomplete sentence).

275 TS: Jonty was uninjured, there were no visible injuries on Jonty.

JC: Ok, thank you Tim.

JP: Any further questions?

280 JH: That actually clarifies some of the questions that I had as well. Um, I'm just wondering whether the two statements are completely at odds. Looking at the statement on page 26 the fact that the cat tried to escape isn't in dispute. "The cat tried to escape then came down, then squared up with Jonty". Would you have any comment on that?

285 TS: Bear with me councillor.

JH: Are they at odds because the reason that the cat did that was because its escape route was unavailable?

290 TS: My assessment is that the cat has tried to escape as a result of being confronted by the dog, and it has been unsuccessful in doing so and then faced with an impossible situation that it cannot extricate itself from, it may have attempted to defend itself.

JH: The other question is, the statement about the degree of intransigence. Does that  
295 impact on the action that's taken by the dog control team in terms of the decisions that are made?

Could you just clarify that for me please?

300 TS: Certainly, so the immediate concern for me in these circumstances is we have an incident that has I believe, unfolded on a Sunday 2<sup>nd</sup> January, initial enquiries have been completed, and I think it was brought to our attention on the fifth of January. From our point of view the matter is very much in its infancy, my concern at that point in time is that we have a dog that has caused significant injuries to a cat. We have a dog that is not classified, and  
305 we have a potential threat to the safety of other animals, potentially other people, that needs to be addressed. So, on those grounds alone I'm satisfied I got sufficient to seize the animal in order to progress our enquiries. When the animal is identified we can obviously check the owners' history and we can examine if they have come to our attention previously. Certainly not wanting to transgress, there is a propensity for Ms Hicks to walk her animals off leash in  
310 designated on leash areas. She has come to our attention previously in respect of that and she has been dealt with for those matters. So, my comments there relate to the fact that we have an individual who is aware of the rules, is continuing to disregard them and for that very reason her animal, off leash, continues to present a risk to other animals and worst-case scenario, other people.

315 JH: Thank you.

JP: Sorry a further question from Cr Cootes.

320 JC: Apologies for not asking this earlier, was there any explanation given by Ms Hicks as to why Jonty was off leash?

TS: I can't recollect specifically whether there was any comment in relation to that. I don't think it's a matter that is at issue at the moment, in relation to an infringement being issued  
325 for failing to control and that has been paid by Ms Hicks ergo she accepts responsibility for not having her dog on leash under control.

JP: Thank you Cr Cootes. Thank you, Tim.

330 I have some further questions. Some of them have already been answered. Ms Hicks is admitting that her dog attacked the cat. Three days later you went to her house, I'm really interested to know how you identified that Jonty was the dog that attacked the cat. How did you find him?

335 TS: Okay, so again this comes down to our previous knowledge and previous dealings with Ms Hicks. We have photographic evidence of her walking her dogs off leash in designated on leash areas, so I guess due to that foundation of intelligence (if I can call it that) we can then obviously identify an owner. It's a salient point, at the time Ms Hicks had two German Shepherds which I guess when I was first reviewing the matter could have been problematic  
340 in terms of how do we establish which animal is responsible for the attack, so we planned accordingly for that, but the face to face conversation I had with her on the 5<sup>th</sup> of January, Ms Hicks to her credit volunteered that Jonty was responsible and that she was aware of the incident. Based on the strength of that admission, if I can call it that, then that is sufficient in our view to identify and take appropriate action in respect of the dog owner and their animal.

345 JP: Thank you. I suppose, in terms of the legislation the potential actions of the dog. In this situation you have two parts. One, the action of the dog/the mindset of the dog and, two, the owner who is in control of the dog. I'd like, if you are able to make some comment around how those two interact in this situation please. Could you make comment around  
350 (incomplete sentence)

TS: We are dealing with a dog ultimately, that dog is owned by an individual who has obligations and responsibilities under the Dog Control Act. What we have in this particular situation is a dog that is not under appropriate control and has attacked another animal, so  
355 we have taken action in respect of that dog. Obviously, mens rea element isn't applicable, we are dealing with cold hard facts, an attack has happened, and a dog is responsible. For those reasons and for the concerns I expressed earlier, that fact that there is an animal that potentially poses a risk to the community we are empowered to seize that animal as part of our ongoing investigation, which was done. Obviously, at the conclusion of any investigation  
360 in respect of an animal's behaviour it is the registered owner or the person in charge or control of that animal who is penalised/infringed/receives a menacing classification as in this case. What has happened in this particular case is, for the concerns we had concerning Ms Hicks' propensity to walk the dog off leash, the fact that it had been involved in a serious attack causing significant injury and the fact that we couldn't satisfy ourselves that Ms Hicks' conduct in respect of the dog, how she managed it would be moderated or modified a  
365 decision was made to seize the animal to remove that threat from our streets. Quite early on, and as our investigation evolved a decision was made to release the dog to Ms Hicks with some conditions which basically mimic what the menacing classification requires in that this animal is being released to you, the investigation is ongoing, you are required to keep your  
370 animal leashed in public and muzzled. Those were the conditions stipulated, obviously if there were any issues following that early release, we reserve the right to cease the animal again and retain it until we can be satisfied that the owner is complying with any obligations which are imposed and there is no risk to members of the community or their animals.

375 JP: Thank you very much, I have a further question which you have pre-empted and that was, the dog has been released and classified as a menacing dog, which means it needs to wear a muzzle. Are you aware, do you know anything yes or no if a muzzle has been put on the dog when it goes out in public?

380 TS: No, we don't have the ability to monitor that, it may be something that comes to our attention through a witness who is aware of any classification that is imposed, it might be a situation that we encounter as part of our routine patrols. We like to think that we can trust responsible dog owners and if they are the recipient of a menacing classification, if it is not

385 contested or if the classification is upheld, they will follow the criteria that is set out under that classification. We don't have the ability to actively monitor that.

JP: Thank you very much. Do we have any further questions from members of the panel? Thank you very much for your evidence today. Jacquie do you have any further evidence that you would like to bring to this court?

390 JM: We would just like to sum up and bring to your attention once again section 33A of the Dog Control Act. Based on the evidence that we gathered and witness statements that we obtained and also based on the statement obtained from Ms Hicks on the 5<sup>th</sup> of January, there was no identification issues around the fact that dog Jonty was involved in that attack, 395 that wasn't under dispute. The territorial authority, we determined that dog may pose a risk and if you refer to section 33A it does state that "may pose a threat to any person or stock, poultry, domestic animal or protective wildlife because of any observed or reported behaviour". Based on that reported and observed behaviour we believe that this dog may pose a threat to people or other domestic animals that is why we have classified the dog as 400 menacing under the Dog Control Act. That concludes our evidence.

### **Ms HICKS' evidence**

405 JP: Now we will move on to Ms Hicks to give her evidence. Thank you, Ms Hicks. This is your opportunity to explain exactly what happened, this is about your evidence not necessarily what you are agreeing with or refuting what other people have provided today please.

410 JoH: I can refer to page 102 which is my statement of facts. There is no fantasy or lies. In my history I have been competing at obedience championships and ribbon trials for over 20 years. I still do training of domestic dogs. This is a German Shepherd dog, this is why they are used as Police dogs because they are extremely alert, extremely obedient, easier to train.

415 I had Jonty under control. I always do. I will say, this incident occurred on public land. Everybody who leaves their property, anybody, people, dogs, whatever, cats, once you're off your property you are at risk of anything. The latest thing with these ramraids into buildings, people shooting left, right and centre, accidents on the road, people getting killed. You are always at risk.

420 The area between Mazengarb Road, where I was right up to Guildford Drive, in the Long-term Plan has been designated a few years ago as a dog friendly area because it is on that side of the stream where there is no way that a dog can do anything.

425 However, that hasn't happened unfortunately.

The cat was on public land, dog walking area. What was it doing? Hunting. Cats always hunting. The cat was aware that we were approaching but waited until we were approximately three metres before it then leaped up in defence.

430 Ms Hicks continued to read from her statement.

There is no way I let Jonty pick up the cat again. The difference in the size of the two animals, had he attacked that cat, he would have killed it. It is as pure and simple as that.

435 He is not a menacing dog.

440 That is exactly what happened. However, further, once that had happened, I waited, the cat was lying on the ground. I waited and I could see the neighbour had left her fence and obviously she was coming round to see what had happened to the cat. She came around with another lady and so I thought, its ok they will pick up the cat.

445 The cat was panting, exhausted. I walked away and I waited. While I was walking away, there was an elderly lady on the other side of the stream, and I would emphasise that this stream was at least a metre deep. The elderly lady walked along on the other side and went and sat on a seat which has been provided for old people to sit and have a rest and that's exactly what she did.  
While I was walking away, she was sitting on the seat.

450 I walked away and that was it, because the cat was obviously being looked after by the neighbour and her neighbour or whoever it was.

And that's it. That's what happened.

455 JP: Thank you very much Ms Hicks, do any members of the panel have any questions for Ms Hicks?

460 JC: Thank you Ms Hicks, I have a few questions. Just reading from your statement here you had said that after the cat came flying down it wrapped its front legs and claws around your dog's face. In your verbal testimony you have said that the dog had the cat, latched around his face and was going round and round in circles trying to shake the cat off. Were there any injuries evident on Jonty after the incident?

465 JoH: No. A German Shepard's coat is extremely dense, very thick. They originated from mountains in Switzerland.

JC: So just to clarify, we're talking about the face of the dog. There were no injuries to the face of the dog?

470 JoH: Not in the eyes, no.

JC: Did you observe any physical injuries to Kobe the cat?

475 JoH: No, I didn't, no.

JC: Just noting that you, in your statement you said that there was a puncture wound, were you just quoting the evidence from the witness? You didn't see any puncture wounds?

480 JoH: No, I didn't actually see any bleeding or anything like that, because the cat just flopped down. Could I just emphasise a point there, the cat was holding on to his head, its' body was swinging and that's why he managed to get hold of the hind leg as he was shaking his head, trying to get the cat off. The body swung and he managed to get hold of the hind leg. And that's how the leg was damaged.

485 JC: I have just two further questions. You heard me ask earlier the Animal Management team, Tim, who's in the room today, that in the statement, you had acknowledged that Jonty had attacked Kobe the cat.

490 JoH: No.

JC: When he visited you at your house, are you stating that, that isn't the case? Do you not accept that Jonty (Cr Prvanov was cut off).

495 JoH: No, He didn't attack the cat, but I accepted that, that was what they had come for was this issue with this episode.

JC: Lastly, given the injuries that have occurred to Kobe and the recommendation to have Jonty muzzled, why do you believe that he doesn't pose a risk and shouldn't be muzzled? What's your, I guess your rationale around him not needing to be muzzled in a public space?

500 JoH: Because I emphasise, he is completely under my control because I am a dog trainer. There are two statements right at the very back of the evidence pack from my neighbours on both sides. One has cats and has given a statement and my neighbour also has a cat. He's fascinated, naturally but he doesn't try and chase them. He's just a big sook basically.

505 JC: Thank you, I don't have any further questions.

JH: Thank you very much, I know this isn't easy for you today. We're just all here to find out what has happened. I'm just going to try and get through some questions so I get things clear in my mind of what happened that day.

510 I'm just going to go towards the end of the first page, when you say that Jonty tossed his head from side to side and in doing so, he managed to get hold of the leg and the cat still managed to hold on.

515 So are you saying that Jonty had the leg in his mouth and the cat was still holding onto his head, but then you said, the cat's body swung.

520 I'm trying to work out how its possible for the dog to be holding the leg, the cat to be hanging on and hanging on, but the body still to be swinging. I'm trying to get that picture into my mind, I can't quite.

JoH: That's not how really, where did I say that?

525 JH: So, its towards the end of the first page of your statement. Cr Holborow proceeded to read from page 102 starting at "What was my dog supposed to do"

JoH: Yes

530 JH: So, the body is swinging, that cat's hanging on and the dog has the hind leg.

JoH: As he was going round, Jonty was tossing his head. He was frantically trying to get this cat off his face.

535 JH: I can see how it might have been hard to see what the situation was.

JoH: So, I was trying to get hold of his collar, which was very difficult because he was going round and round. The cat was all 'arrggghh' and I didn't want to get my hand in there either.

540 JH: So, are you maintaining that Jonty was incapable of dropping the cat?

Did you say, drop or give or leave?

JoH: I said drop it.

545 JH: Ok, but you think that Jonty wanted to drop the cat but he couldn't.

JoH: No, that's right, he couldn't because the cat was still hanging onto his face.

550 JH: Okay, thanks for that.

So, you say in your statement "Jonty had got hold of a hind leg" and you saw that, and yet you walked away because you thought that the cat was just tired.

555 Did you think that Jonty had grabbed the hind leg but not injured it?

JoH: Yes

560 JH: Later on in the statement there is some argument about whether you had a leash or not, and you're quite clear that you had a backpack with a leash and poo bags and all those things that you should have when you're walking.

When you walked away with the dog, did you then put the leash on the dog?

565 JoH: No.

JH: Why didn't you put the leash on the dog as you walked away?

JoH: Because he was also very traumatised by this.

570

JH: And you thought it would further traumatise him by putting a lead on him?

JoH: Well it wasn't necessary. He was walking beside me. He was under my control.

575 JH: I think that's all the questions I have. Thank you.

JP: Thank you Ms Hicks, I have some questions myself. Just following on from Cr Holborow, you are saying that the cat basically latched on to Jonty's face and his eyes or just his face?

580 JoH: Just his face. Once the cat had a grip on his face he started to run round and round which made the cat swing and he got hold of his leg.

JP: Okay, just his face. When he did that Jonty was able to hold on to the cat's leg but the cat was still swinging. Could you clarify please?

585

JoH: Once the cat had got a grip on his face he started to swing. He was tossing his head and as he did that he was going round and round, which made the cats' body swing and that's how he managed to catch the hind leg.

590 JP: Okay, thank you. So, when Jonty grabbed hold of the cat's hind leg, did the cat still maintain its grip on his face?

JoH: Yes

595 JP: So, it wasn't hanging by the leg with its head lower than the leg.

JoH: No.

600 JP: You made the comment that you always have Jonty under control, how in this instance did Jonty manage to injure the cat? I think everybody is agreeing that Jonty injured the cat, so how could Jonty injure the cat if he was under your control?

JoH: Because the cat was around his face, and he was trying to get the cat off him. What would you do if you had something wrapped around your face?

605

JP: The question is though, I'll rephrase. We've heard other's evidence suggesting that Jonty dropped the cat at least once, twice. So, if the dog was under your control, why was he then able to pick it up multiple times?

610 JoH: He didn't! And that is the point, he did not! That is downright lies. He did not. I got him to drop the cat, we moved back away from the cat. He did not pick it up at all. The cat latched onto him and he shook it which made him go round and round and eventually I got hold of his collar and told him to drop it and that was it. He dropped it.

615 There is no way that I would allow that to happen, and this is what is so annoying to me, that people tell lies. He did not pick the cat up! Two, three times, he did not do that and I would not have allowed him to do that!

JP: How long in your estimation was Jonty holding the cat in his jaws?

620

JoH: It wasn't long, these things, after the event seem to go on and on but it wasn't very long. Five minutes? I don't know. It wasn't long, really.

JP: We've read your statement and thank you for providing it. I'm interested to know what your view of cats is please?

625

630 JoH: Aahhhh, thank you, it seems to be implied by Animal Control and everyone else that I'm anti cats, I am not. I love cats, I like cats very much. But I feel that people should be responsible for their cats just the same as dogs and this is actually going to happen. The SPCA are now starting a legislation as they have in Australia for people who own cats to keep cats on their property. And if you want a cat, you build a cato because cats are predators. They can do as they like, they don't have to be registered, microchipped, and people just let them wonder about at will. You are not allowed to do that with dogs and that's my only argument. I have nothing against cats. Our next-door neighbour has a wonderful cat and they like me.

635

JP: Jonty has been classified as a menacing dog and that requires him to wear a muzzle when he goes for walks. I'm just asking the question; does he now wear a muzzle when he is on a walk and is he on a lead?

640

JoH: Yes

JP: That's good to hear.

645 JoH: He is always on a lead apart from those particular areas.

JP: But that is an area that requires you to have a lead and by all accounts this is not the first time that you have been walking Jonty and maybe your other dog in a lead area when you haven't had a lead on, so can you explain your rationale around that please?

650

JoH: Apart from the fact that they are under my control completely, there are not very many places on the Kāpiti Coast where you can actually walk a dog freely. Ocean Road, the place off Gray's Road, a small part of the beach and that's it. Oh, and the Waikanae River and that's it.

655

JP: I hear what you are saying but what you're saying to us is that although the rules state your dog needs to be on a lead you are actually flouting the bylaw.



660 JoH: The only place really is where I was on Guildford Drive now that still hasn't been classified as a dog free area but it's in the Long-term Plan apparently.

JP: Thank you for your evidence. Do you have anybody else to speak on your behalf?

665 JoH: No

JP: We've been going for an hour and 20 minutes, it would be nice if we could have a 10 min break. We will now resume at 11 o'clock.

670 The meeting adjourned at 10.51am and resumed at 11.03am

JP: Thank you, now we are up to both parties having the opportunity to respond to the evidence that has been provided today as well as what is in our information packs. We will hear first from the Animal Control team, do you want to take up the opportunity to respond to any evidence that's been provided today?

675

### **Animal Control Evidence in reply**

JP: Can I just say that this should be directed at the hearing panel.

680 JM: I would just like to draw your attention again to the sections of the Dog Control Act which is provided for you under documentary evidence 9.

JP: Could you please provide a page number as it makes it a lot easier.

685 JM: I think it starts on page 61.

JP: Thank you.

690 JM: In order for the committee to uphold or rescind the classification we need to consider the evidence which forms the basis of the classification. So just once again, the dog was off lead and arguably not under control as per Ms Hicks' statement and has picked up a cat and shook it in its' mouth, as per Ms Hicks' statement. She also alleges that she is walking her dog on a lead but as per the menacing classification that she has been issued she also needs to have it muzzled currently and our team leader Tim Sharpe has observed her  
695 walking her dog on lead but without a muzzle, so we don't believe that she has taken the steps to prevent threats to the safety of other animals. That is all we really have to comment on the evidence that she has provided the committee today.

700 JP: Thank you any questions from the panel? Cr Cootes.

JC: You would have heard me asking questions about any injuries to the dog. I asked both Tim and Ms Hicks. In your experience in Animal Management when cats are involved in altercations with dogs is there usually, and I'm assuming you've come across numerous examples over the years, that dogs do not receive any injuries. Given the explanation today  
705 around the cat being latched on to its face and repeatedly moving round and round in circles trying to toss it off.

JM: We would have expected to have seen some scratching to its face based on the evidence that Ms Hicks has given today, "latched on while the dog shook the cat", for the cat to release we would absolutely would have expected to see some scratch injuries across the  
710 snout of the dog's nose.

715 JP: Any further questions? Thank you, so I have a question, just to clarify 100 percent, what you have said is that even though Jonty has been classified as a menacing dog he has been observed out in public without a muzzle on.

720 TS: Yes, I have seen Ms Hicks with Jonty in public, walking the dog on leash but unmuzzled. I passed in a private vehicle, I don't believe I was on duty at the time, when I saw her in the vicinity of, I believe it was Kena Kena school, off the top of my head.

JP: Thank you. So, does that end your evidence in reply? Or do you have a further question?

725 JH: Just thinking about muzzles, how uncomfortable/unpleasant/traumatising are muzzles for dogs? We're here today to dispute the use of a muzzle. Is it likely Jonty would get used to the muzzle? Is it going to cause him suffering?

730 TS: It probably varies from dog to dog. Some dogs acclimatise quite well, very easily with no issues. Other dogs, it may take a period of time for them to acclimatise. In my experience all dogs do eventually acclimatise and they are able to wear a muzzle comfortably for the duration they're in a public place.

JH: Do we provide support to owners to go through that process?

735 TS: No, we don't. We impose the classification and then it's the responsibility of the dog owner to make sure that they comply with the conditions that are imposed.

JH: Thank you.

740 JP: Thank you, a further question from Cr Cootes.

745 JC: Sorry, just a follow-up from the question from Cr Holborow. Given the comments today around Alsatians being used as police dogs are you aware whether the dog teams are muzzled prior to release to track offenders.

JM: You're talking about the police dog team?

JC: Correct.

750 JM: They are usually under control, on lead and not muzzled or don't have to be muzzled when they are out with their handlers.

JC: Alright, thank you.

755 JP: Thank you, so that does conclude your evidence in reply?

JM: Yes, thank you.

760 JP: Thank you. So now Ms Hicks its your opportunity to provide evidence in reply and if you could direct your submission to the panel, please.

You have the opportunity now to respond to any evidence that you've heard today or what is in the information pack.

765

## Jocelyn Hicks Evidence in reply

770 JoH: Right, well first off, there is so much of Mr Sharpe's evidence and Ms Dykes evidence that is just hearsay. I didn't and haven't said these things.  
If I can start off with Animal Control. Mr Sharpe says that I said that Jonty was within his rights to attack the cat as the cat had initiated matters. That is just not true. I did not say that. I do not believe that he had the right. Any dog has not the right to attack the cat. That's his  
775 opinion. He also said I am passionately anti-cat, which is not true. I like cats very much. In his evidence when they arrived around to uplift Jonty, did he show any menacing behaviour towards you and Mr Panster?

JP: Excuse me, could you please direct your comments to the panel.  
780

JoH: Right, sorry. When they both arrived at my place to find out whether it was me who was involved in this attack. There were two of them, they just walked in my gate. Did Jonty show any aggression on menacing behaviour towards them? No.

785 When they took him away for the night and impounded him, did he show any menacing behaviour? He went mildly as he is. That's what he's like. The other thing which I am really angry about is with regard to the bird that I mentioned and showed them both. Jonty showed me where this Kingfisher, little baby, couldn't fly and was vulnerable to cat attack.

790 I did not say, where he says in evidence here, that I said that the bird had been attacked by a cat. I didn't say that because it wasn't true. I said I picked up the bird and brought it home to stop it being injured or killed by a cat. And I emphasise that Jonty found the bird. A little baby bird that couldn't fly and he showed me where it was.

795 He could have killed it, but he didn't do that because he wouldn't. People keep on interpreting, what I'm thinking and what Jonty's behaviour was. It's hearsay. He has no interest in birds. So that's that Animal Control. So, do I go onto the next, Ms Dykes evidence?

800 Ms Jones is not here now.

JP: So, if I can make a comment, even if Ms Jones is still not online you are able to make comment on her evidence

805 JoH: Right, well, all her evidence was hearsay because she wasn't there and she's parroted fashion from Mrs Dykes.

810 On page 16 of Mrs Dykes' evidence, she said "the owner was quite close and wasn't doing or saying anything to intervene". The owner describes me. Then she says, "I yelled out no and the dog dropped the cat". Well, she just said that before, which is an absolute lie, is he going to take any notice of what she is saying? She did not, she called out over the fence, "Get away, get away" and that's when I said to her "I am trying to get away", and that's when I said about cats on public land and how they have no right to be there. I was angry.

815 And then she says this is what I did. Then I walked up to the dog and touched it near its head and walked a couple of paces away. Then the dog picked up the cat again, which was still where it had been dropped. Then she goes, she yells "no, get the dog away from the cat". The owner grabbed the dog by its collar but then it broke free. It went back to the cat who had moved about a couple of feet away. It went and grabbed the cat again.

820 This is not what happened. Once he dropped the cat, I did not let him have another go, well he wasn't having a go. I did not let him attack the cat. And this is all just down right lies. I did

swear because I was so angry. That people would tell lies about what happened. That's how it happened, what I've said, he did not attack the cat.

825

JP: Thank you Ms Hicks.

JoH: I just want to mention one other thing that is relevant, sorry.

830

I will just make this comment, anyone who has been in the defence force knows that attack is the best form of defence, and this was what the cat did because it was defending itself, because it had landed (inaudible), and had he attacked that cat, if he had been chasing the cat, he would have gotten it, probably by the back of the neck and shaken it and killed it as instinct.

835

The other thing worth mentioning about any signs of injury on Jonty's face. I emphasise that he has thick fur because they come from cold climes, they've got like two coats. The cat's natural instinct is to go for the eyes, it didn't get to the eyes, so it just hung on.

JP: Thank you Ms Hicks, so this about the evidence provided by other parties.

840

JoH: Yes.

JP: So, I'm just wondering if you have any comment on the evidence being provided by other parties today or whether you are complete?

845

JoH: I've done that haven't I?

JP: So if I could ask members of the panel if they have any questions of Ms Hicks?

850

JH: Just a question about something that she just said in her statement there. Ms Hicks confirmed that she swore when she walked away. Ms Hicks, you said you were angry because people had been lying. I'm not aware that anybody had said anything by that point. Could you just clarify that?

855

JoH: I swore at the time that it happened.

JH: Yeah.

JoH: I said something like (incomplete sentence).

860

This wouldn't have happened if the cat had been kept under control like dogs and I probably put a 'bloody' in there and that's more or less what I was indicating.

JP: Cr Cootes, do you have any questions?

865

I have a question, its written in your statement and also, you've confirmed that you've said this here, that it was public land and there was no right for a cat to be there. Can you please explain your reasoning for that?

870

JoH: Because cats can do what they like. Owners for cats have no responsibility. If you've got a cat, do you know where it is right now? No, it could be anywhere. They cause accidents running across the road. Cats are all over the place.

JP: Okay, thank you. In the previous evidence in reply, we heard that although Jonty has been classified as a menacing dog, that he has been observed in public without a muzzle on. Do you agree with that statement?

875

880 JoH: Yeah, I can explain that. You will probably find it hard to believe once again because I am on the defensive, on the 2<sup>nd</sup> of March we had an encounter with a dog, Jonty and I. Very friendly, next thing this dog lunged at him, he got such a fright that he knocked me over and I broke my wrist. Here's proof, here is my wrist now, its crooked. And I had my hand in a plaster cast and then I had the cast taken off and had a fibre glass plaster on it for two months. And in that time, I had trouble getting the clip because I couldn't use my hand, getting the clip around the back of the mask, the muzzle and that's probably when he saw me. I couldn't push things together.

885 JP: I'm sorry to hear that you've injured your wrist. So, obviously you have a muzzle. What is Jonty's reaction to the muzzle?

890 JoH: He is okay with it.

JP: He's okay with it. Okay, thank you. Any further questions from the panel?

895 At this point in time, we have reached the point where we have received all the information, all the evidence from various parties, and so now it is up to this hearing committee to go into deliberations. These deliberations are to basically make the following decision:

To agree to uphold the classification as a menacing dog

900 Or

To agree to rescind the classification as a menacing dog.

That is actually the sole purpose of this hearing today.

905 At this point in time the hearing panel would like to deliberate, and we are estimating that we would like to meet back here in 15 minutes. So, at 11.40am we would like to reconvene and at that point in time we will inform you of whether we have made a decision, and if we have, what that decision will be.

910 Thank you very much everyone for providing your evidence and in the manner you have conducted yourselves.

The meeting adjourned at 11.25am

915 The meeting resumed at 11.42am

920 JP: Thank you for coming back to the end of this hearing committee. I just want to reiterate, thanking everyone for presenting their evidence over the last few months and for Council staff for putting this hearing together. Also, for all the evidence that has been presented today by all the various parties. I know that this is a very emotive topic that we are discussing today.

925 As a hearing panel, we have thoroughly considered all the evidence that has been provided to us, both in the documentation that has been provided to us in the folder, as well as the evidence that has been presented today.

Based on that, this panel agrees to uphold the classification of a menacing dog.

930 In due course we will provide the reasons for that determination in a timely manner.

Decision:

**MOVED** – Cr Holborow  
**SECONDED** – Cr Cootes

935

- A. That the Committee receive the report.
- B. That the Committee notes:
  - B1 The evidence which formed the basis for the classification
  - B2 Any steps taken by the owner to prevent any threat to the safety of persons or animals
  - B3 The matters relied on in support of the objection
  - B4 Any other relevant matters.

940

**CARRIED**

**MOVED** – Cr Prvanov  
**SECONDED** – Cr Holborow

945

- C. That the committee
  - C1 Agree to uphold the classification as a menacing dog.

**CARRIED**

**MOVED** – Cr Cootes  
**SECONDED** – Cr Holborow

950

- D. That the committee delegate to the chair of the Appeals Hearing Committee, the authority to issue a written decision in line with this resolution, which will be sent to all affected parties and attached to the minutes.

955 **CARRIED**

Meeting concluded at 11.46am

960