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Chairperson and Committee Members
APPEAL HEARINGS COMMITTEE

23 OCTOBER 2014

Meeting Status: **Public**

Purpose of Report: For Decision

STEPHEN SCOTT: OBJECTION TO MENACING DOG CLASSIFICATION

PURPOSE OF REPORT

- 1 This report provides the Committee with additional information that was requested at the adjourned meeting of the Appeals Hearing Committee held on 16 September 2014. With this further information the Committee is asked to consider and decide on the objection lodged by Stephen Scott against the Classification of his dog, Molly, as a Menacing Dog under Section 33A of the Dog Control Act 1996 (the "Act").

SIGNIFICANCE OF DECISION

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

BACKGROUND

The following paragraphs (3 -14) were provided in Report CS-14-1295 which was presented to the Committee at the 16 September meeting.

- 3 Stephen Scott is the registered owner of Molly, a female spayed, white, English Bull Terrier.
- 4 On Friday 20 June 2014 Council received a call from Kerry O'Brien lodging a complaint that her Labrador, Brody, was attacked by an English Bull Terrier at the Wesley Knight Dog Park in Paraparaumu.
- 5 On Thursday 19 June 2014, Kerry arrived at Wesley Knight Dog Park through the entrance off Ocean Road. Ms O'Brien let Brody off his leash and he wandered from the entrance up to the water fountain for a drink. Brody realised before Kerry that there was someone else at the park.
- 6 Stephen Scott was also at the Wesley Knight Dog Park on 19 June 2014. Mr Scott was sitting on one of the seats at the park with his dog Molly. Molly was on leash.
- 7 Brody wandered from the water fountain to where Mr Scott was sitting with Molly, who was still on leash. (Refer appendix one, aerial picture of park indication seat and water fountain)
- 8 Brody was 1-2 metres away from Molly when she lunged at him and latched onto his face. Brody was yelping as Molly remained latched to his face and was trying to shake him - this went on for about one minute. Mr Scott was trying to break the grip Molly's had on Brody's face.

- 9 Once the dogs were separated Ms O'Brien checked over Brody and Ms O'Brien stated he 'didn't seem too bad'.
- 10 Mr Scott followed Ms O'Brien to her vehicle, asked if Brody was ok and gave Ms O'Brien his name and address.
- 11 Brody was taken to the vet the following day and sedated to clean up the puncture wound to his cheek. Brody has since made a full recovery.
- 12 Mr Scott was new to the district, previously residing in Wellington, Wellington City Council was contacted by staff from Kapiti Coast District Council. It was discovered Molly has a history of behaviour similar to the incident that occurred at Wesley Knight Park on 19 June 2014. (Refer Appendix 2 – Note that Wellington Animal Control function is managed by Hutt City).
- 13 On completion of our investigation, Kapiti Coast District Council classified Molly as "Menacing" as a matter of public safety. The investigation was completed on 30 June 2014 and included the information provided by Wellington City Council Animal Control. Mr Scott was not issued with an infringement as he had Molly on leash at the time of this incident.
- 14 On 01 September 2014 written notice was received from Mr Scott that he wished to exercise his right to object to the menacing classification (refer Appendix 3).

CONSIDERATIONS

Issues

- 15 Section 33B of the Act states that, when considering an objection, the territorial authority 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 matters*

The following paragraphs provide information relevant to Section 33B of the Act for the Committees consideration

- a. *The evidence which formed the basis for the classification*

Mr Scott's dog, Molly, was classified as Menacing as a result of an incident in an off leash dog park. A Labrador wandered close to Molly, who was leashed, and was attacked by her. Molly latched onto the Labrador's cheek and tried to shake it.

- b. *Any steps by the owner to prevent any threat to the safety of persons and animals;*

The dog was on its lead at the time of the incident.

Mr Scott has since offered to take Molly to a dog behaviourist.

c. *The matters relied on in support of the objection; and*

Submission made by Stephen Scott, (Appendix 3 refers)

d. *Any other relevant matters.*

Molly's history with Wellington City Council demonstrates similar behaviour; it is for this reason that she was classified as Menacing. The incident of 19 June 2014 in the Wesley Knight Dog Park appears not to have been a one off incident.

- 16 At the appeals hearing held on 16 September 2014, during public speaking time, Mr Scott noted that in relation to the dog issues that he was involved with in Wellington, that he was never charged and had received an apology from the Police. He was concerned that the comments in Report CS-14-1295 potentially created an impression that may impact the outcome of the hearing. He stated that he could show that the incident should not necessarily have a bearing on the final decision.
- 17 Mr Scott did not have the information to hand to support this - the Committee asked Mr Scott if he could obtain the information and if staff could assist as required.
- 18 Mr Scott agreed to the request from the Committee and also agreed to bring to the reconvened meeting proof from a Dog Behaviourist that he had begun training with Molly.
- 19 The Committee sought clarification from staff around the Service Request sheet from the Local Authority (SR 25591) and incidents in the Western Bay Of Plenty from the Tauranga Police - these are provided as Appendices 4 and 5 respectively. Also attached for the information of the Committee is a record of the actions taken by staff since the meeting was adjourned (Appendix 6) and a copy of the letter to Mr Scott dated 22 September 2014 (Appendix 7 refers).
- 20 It is understood that Mr Scott will speak to these documents at the hearing on 23 October 2014.

Financial Considerations

- 21 There are no financial considerations as this matter has not been brought before the courts.

Legal Considerations

- 22 Section 33A 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 the dog; or
 - (ii) Any characteristics typically associated with the dogs breed or type

Delegation

- 23 The Committee may make a decision on this matter under Section B6 of the Governance Structure 2013-2016 as approved by Council on 4 September 2014. Section B6; 7.1.4 which states: that:

This Committee “ has the authority to hear and adjudicate objections from dog owners to classifications of dog owners and/or dogs under the Dog Control Act 1996, within the following prescribed terms of reference: Section 33B of the Dog Control Act 1996 – Objection to Classification of Menacing Dog (by nature).

Consultation

- 24 There are no consultation requirements.

Policy Implications

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

Tāngata Whenua Considerations

- 26 There are no tangata whenua considerations

Publicity Considerations

- 27 Public interest in this matter is likely. A media release will be prepared on the Committees decision.

RECOMMENDATIONS

- 28 That the Committee upholds the Menacing classification of Mr Scott’s dog Molly.

Report prepared by:

Approved for submission by:

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Sharon Foss

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ATTACHMENTS:

1. Aerial picture of Wesley Knight dog park
2. History on Mr Stephen Scott and Molly from Wellington City Council
3. Submission made by Mr Stephen Scott
4. Service request Sheet
5. Police information/history via email
6. Record of actions taken by staff since 16 September meeting
7. Post hearing letter to Mr Scott