

Appendix A: Officer's Report to Regulatory Processes Committee

Risk, Consents & Licensing

Report to Regulatory Processes Committee

Notice of classification of dog as a menacing dog pursuant to s33 Dog Control Act 1996

Objector: Matthew McClelland

Address: 55 Cecil Road, Wadestown, Wellington

Dog: 'Boris' (a Grey, Desexed Male, Schnauzer dog)

Schedule of attachments

Attachment	Description
A	Complaint and Statement received from Ngaire Bennie
B	Serious incident initial report
C	E-mail from Matthew McClelland dated 30 January 2009 requesting return of Boris
D	Release letter for 'Boris'
E	Serious incident final report
F	Notice of menacing classification
G	Letter outlining menacing classification
H	Statement from the animal control officer 35 Peter Hrstich
I	Letter to Matthew McClelland from Animal Control Manager dated 20 May 2008 regarding incident of 11 May 2008
J	Infringement notice 1280 - failure to keep dog under control
K	Letter from Matthew McClelland objecting to classification decision and requesting a Hearing

Background

- 1 On Tuesday 27 January 2009, at approximately 4.30 pm, DSS Animal Management (the animal management contractor to Wellington City Council) received a complaint from Ngaire Bennie regarding a dog attack on her chickens which took place that afternoon on her property of 44 Cecil Road Wadestown, Wellington. A copy of the complaint is attached and marked 'A'.
- 2 DSS Animal Management investigated the complaint as follows:
 - 2.1 The complainant, Ngaire Bennie, provided her contact details and details of the incident. On 27 January the animal control officer contacted Ngaire Bennie and Ngaire Bennie identified the dog that attacked her chickens as 'Boris'. The animal control officer visited 55 Cecil Road and seized Boris. On 28 January 2009 Ngaire Bennie provided a statement of the incident, a copy of which is attached and marked 'A'. The dog owner, Matthew McClelland, was not the person in charge of the dog at the time of the incident. The person in charge of the dog at the time of the incident was the family's nanny. The dog at 55 Cecil Road had been seized on Tuesday afternoon of 27 January 2009. Authority for the seizure is provided for under sections 57 and 71 of the Dog Control Act 1996 (**the Act**).
 - 2.2 The dog that was seized from 55 Cecil Road Wadestown was a Grey, Desexed Male, Schnauzer named Boris. The dog was seized pursuant to section 57 of the Act.
 - 2.3 Boris was impounded at the Moa Point Animal Shelter, pending an investigation. DSS Animal Management wrote a 'serious incident initial report' outlining the events which led to the impounding of Boris, a copy of which is attached and marked 'B'.
 - 2.4 On 30 January 2009, Matthew McClelland made a request to DSS Animal Management seeking the return of Boris. This request was referred to Wellington City Council (**the Council**). A copy of that e-mail is attached and marked 'C'. The Council subsequently released Boris that same day, a copy of the release letter is attached and marked 'D'.
 - 2.5 On 30 January 2009 a serious incident final report was written, a copy of which is attached and marked 'E'.
 - 2.6 On 4 February 2009, on the basis of the recommendation of DSS Animal Management, the Council classified Boris as menacing, a copy of the menacing classification is attached and marked 'F'. A letter outlining the Council's decision to classify Boris as menacing was sent to the dog owner, a copy is attached and marked 'G'.

Evidence

- 3 The statement from Ngaire Bennie states that:
 - 3.1 On 27 January 2009, at 44 Cecil Road, a 'grey' schnauzer dog was leaping through the air towards her chickens.

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- 3.2 Ngaire identified the dog as Boris from 55 Cecil Road as she has seen the dog before.
 - 3.3 She yelled at Boris and the dog looked sideways and dropped to the ground.
 - 3.4 Boris took off and ran around the side of the house. Ngaire followed Boris up the street.
 - 3.5 Boris ran past 55 Cecil Road, where the gate was wide open, and the dog stood in the middle of the road.
 - 3.6 Ngaire approached Boris and Boris ran off up Wade Street and into the property backing on to 55 Cecil Road.
 - 3.7 Ngaire went to 55 Cecil Road, through the open gate and to the front door. The door was opened by the dog owner's son.
 - 3.8 Ngaire spoke with the family's nanny and asked the nanny if Boris was on the property. While the nanny was checking for Boris, Ngaire went and closed the front gate. The nanny advised Ngaire that Boris was not there.
 - 3.9 Ngaire and the nanny walked to the front gate and opened the gate to see Boris just outside the gate on the footpath / steps.
 - 3.10 Boris came back onto the property through the gate and Ngaire returned home.
 - 3.11 Ngaire arrived home and immediately contacted DSS Animal Management.

4 The Council has a statement from the animal control officer 35 who initially seized Boris, a copy of which is attached and marked 'H'. The statement provides that:

- 4.1 Officer 35 was contacted by Ngaire Bennie on 27 January 2009 where she identified Boris as the dog that attacked her chickens.
- 4.2 The Officer was satisfied on reasonable grounds that Boris was a threat to poultry.
- 4.3 Boris was seized and impounded on 27 January 2009.
- 4.4 Section 57 and 71 notices under the Dog Control Act 1996 were left at the property of 55 Cecil Road.
- 4.5 The dog was impounded at the Moa Point Animal Shelter.

Council's options

5 Based on the evidence, the Council officers had the following options (A-D):

A To prosecute Matthew McClelland (as the owner of the dog), pursuant to section 57 of the Act. Section 57 provides that:

- (1) A person may, for the purpose of stopping an attack, seize or destroy a dog if—

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- (a) the person is attacked by the dog; or
 - (b) the person witnesses the dog attacking any other person, or any stock, poultry, domestic animal, or protected wildlife.
- (2) The owner of a dog that makes an attack described in subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$3,000 in addition to any liability that he or she may incur for any damage caused by the attack.
- (3) If, in any proceedings under subsection (2), the Court is satisfied that the dog has committed an attack described in subsection (1) and that the dog has not been destroyed, the Court must make an order for the destruction of the dog unless it is satisfied that the circumstances of the offence were exceptional and do not warrant destruction of the dog.

A successful prosecution under this section will result in a Court order for the destruction of the dog, unless exceptional circumstances exist. In this instance, Council has discretion whether to prosecute. Officers with the delegated authority must take into account a range of factors, including consistency, previous offending and other enforcement options available. In this case, officers have chosen not to prosecute the dog owner.

- B To classify Boris as a dangerous dog pursuant to section 31 of the Act. Section 31 provides that:

The territorial authority shall classify as a dangerous dog—

- (i) Any dog in respect of which the owner has been convicted of an offence under [section 57A(2)]; and
- (ii) Any dog which the territorial authority has, on the basis of sworn evidence attesting to aggressive behaviour by the dog on one or more occasions, reasonable grounds to believe constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife; and
- (iii) Any dog that the owner admits in writing constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife.

- C To classify Boris as a menacing dog pursuant to section 33A of the Act. That section provides that the Council may classify as menacing any dog which has not been classified as dangerous, but which:

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.

- D To issue an infringement notice to Matthew McClelland pursuant to section 53(1) of the Act for failure to keep Boris under control.

Council's decision to classify Boris as menacing

6. Council officers chose to classify Boris as a menacing dog. This decision was based on evidence which shows that:

- 6.1. The attack was unprovoked

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- 6.2. Boris only stopped leaping at the chickens when yelled at by the chicken owner
- 6.3. Boris had been involved in a similar incident on 11 May 2008 involving the chickens at 44 Cecil Road (for which Boris was seized, impounded and an infringement notice issued). The release letter for Boris outlining the mitigation measures put in place at that time is attached and marked 'I'
- 6.4. The mitigation measures accepted by the Council in response to the incident of 11 May 2008, have not been effective, as the incident of 27 January 2009 provides
- 6.5. The fitting of the self closing mechanism to the front gate of 55 Cecil Road does not guarantee that 'Boris' is always contained within the property
- 6.6. The classification ensures that in future Boris must always be muzzled in a public place. Boris must also remain muzzled when he is in a dog exercise area.
- 7 Accordingly, Council officers formed the view that it had reasonable grounds upon which to believe that the dog involved was Boris, and that Boris posed a threat to the safety of the poultry. As a result of this belief, Council classified Boris as menacing, under section 33A(1)(b)(i) of the Act.
- 8 Council also chose to issue an infringement notice for failure to keep Boris under control or confined, pursuant to section 53(1) of the Act, a copy of which is attached and marked 'J'
- 9 Accordingly, on 4 February 2009, Council prepared for Matthew McClelland, Boris' owner, a written notice of classification of Boris as a 'menacing' dog, a copy is attached and marked 'F'. A letter was sent to Matthew McClelland advising the classification decision, a copy is attached and marked 'G'. The letter and notice were posted to the owner, Matthew McClelland on 4 February 2009.
- 10 By facsimile dated 18 February 2009, Matthew McClelland wrote to the Council, objecting to the menacing classification. A copy of the facsimile is attached and marked 'K'.

Effect of menacing classification

- 11 Section 33E of the Act outlines the effect of a menacing classification. It states that the dog owner must:
- 11.1 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
- 11.2 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:
- 11.2.1 that the dog is or has been neutered; or

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- 11.2.2 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
- 11.3 if a certificate under paragraph 11.2.2 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 11.2.1.
- 11.4 Paragraph 11.1 does not apply in respect of any dog or class of dog that the territorial authority considers need not be muzzled ... in any specified circumstances (for example, at a dog show).
- 12 Boris had been de-sexed prior to the incident of 27 January 2009 occurring and the subsequent menacing classification being imposed. Since the classification, Matthew McClelland has fitted a self closing mechanism to the front gate of 55 Cecil Road. Mr McClelland has made assurances that the fencing at the property is of an adequate standard to contain Boris.
- 13 As a consequence of Mr McClelland's objection, Council has arranged a hearing in accordance with section 33B of the Act. On 29 April 2009, Mr McClelland was provided with full disclosure of all the relevant documents on the Council file. On that same day of 29 April 2009, Mr McClelland was provided with notice of the date and place of the hearing, and a copy of this report.

Recommendation

- 14 It is recommended that the Regulatory Hearing Committee endorse the requirements of the notice of classification dated 4 February 2009, namely that Matthew McClelland's dog named Boris, a grey desexed male Schnauzer, be classified as menacing pursuant to section 33A(1)(b)(i) of the Act.

Richard Natusch
Animal Control Team Leader