
REPORT 1
(1215/53/IM)

DOG CONTROL ACT 1996 – OBJECTION TO OFFICER’S MENACING CLASSIFICATION DECISION

1. Purpose of Report

To obtain Committee agreement that the Menacing Dog Classification imposed by Council officers should remain in place for ‘Boris’, a grey, desexed male, Schnauzer dog.

2. Recommendations

Officers recommend that the Committee:

1. *Receive the information*
2. *Agree to uphold the menacing dog classification that was imposed under section 33A(1)(b)(i) of the Dog Control Act 1996.*

3. Basis for Menacing Dog Classification

The Dog Control Act 1996 (DCA) provides that the Council may classify a dog as menacing if the dog falls within the specifications prescribed in section 33A(1).

The proven elements required in order to classify a dog as menacing as prescribed by section 33A(1) of the DCA are as follows:

The territorial authority may classify as a menacing dog any 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 dog's breed or type.

Acting under delegated authority, Council officers based their decision to impose a menacing dog classification under section 33A(1)(b)(i) of the DCA above.

When deciding whether to uphold or rescind the decision to impose a menacing dog classification, section 33B DCA provides that the Committee **must** have regard to the following:

- (a) The evidence which formed the basis for the original classification; and
- (b) Any steps taken by the owner to prevent any threat to the safety of persons and animals; and
- (c) The matters advanced in support of the objection; and
- (d) Any other relevant matters.

4. Background

Policy

In September 2004, the Council adopted the Dog Control Policy and Animal Bylaw that came into effect on 1 October 2004.

Part 4.1.1 of the Dog Control Policy (the Policy) classifies all public places as controlled public places where dogs are allowed controlled on a leash, except for public places classified as prohibited or as dog exercise areas. In a dog exercise area the dog can be off leash but the owner must still maintain control of the dog at all times.

Part 4.4.6 of the Policy specifies when an individual dog is classified as menacing by officers under the DCA. Classifying dogs as menacing is an effective method of controlling individual dogs that have demonstrated aggressive or menacing behaviour.

Incident

Council officers investigated a public complaint regarding an unprovoked attack by 'Boris' upon a neighbour's chickens at 44 Cecil Road.

On 27 January 2009 'Boris' had escaped his property of 55 Cecil Road and attacked the complainant's chickens at her property of 44 Cecil Road. The complainant interrupted the attack and no chickens were injured or killed during the attack.

The dog is now classified menacing under section 33A(1)(b)(i) of the DCA.

Council officers classified 'Boris' as a menacing dog based on evidence which shows that:

- The attack was unprovoked.
- Boris only stopped leaping at the chickens when yelled at by the chicken owner.
- Boris had been involved in a similar incident on 11 May 2008 involving the injury of 2 chickens at 44 Cecil Road (for which Boris was seized, impounded and an infringement notice issued).
- 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.
- 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.
- 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.

Accordingly, Council officers formed the view that it had reasonable grounds upon which to believe that the dog involved in the attack on the chickens posed a threat to the chickens. As a result of this belief, Council classified the dog as menacing, under section 33A(1)(b)(i) of the Act.

Once classified as menacing, section 33E of the DCA prescribes a mandatory requirement that the owner of 'Boris' must comply with: The owner must:

- ensure the dog is muzzled in any public place.

5. Discussion

The dog 'Boris' is owned by Matthew McClelland who has objected to the menacing classification and in accordance with section 33B of the DCA is entitled to a hearing and a copy of the evidence report.

The evidence report, attached as appendix 1, contains all relevant information regarding the decision to classify 'Boris' as a menacing dog.

6. Conclusion

The evidence report:

- substantiates a dog attack incident occurring on 27 January 2009 involving 'Boris', and,
- provides grounds for officers making a menacing dog classification decision under section 33A(1)(b)(i) of the DCA.

It is recommended that the Committee upholds the officers' menacing dog classification decision under section 33B of the DCA.

Contact Officer: Richard Natusch, Animal Control Team Leader

Supporting Information

1) Strategic Fit / Strategic Outcome

*Community Health & Safety 2.8 Public Health
Public Health efforts promote the health and wellbeing of the population.*

2) LTCCP/Annual Plan reference and long term financial impact

N/A

3) Treaty of Waitangi considerations

N/A

4) Decision-Making

The report sets out a number of options and reflects the views and preferences of those with an interest in this matter who have been consulted with.

5) Consultation

a) General Consultation

All affected parties have been identified. Council is required under legislation to hear this matter.

b) Consultation with Maori

N/A

6) Legal Implications

Council's lawyers have been consulted during the development of this report.

7) Consistency with existing policy

This recommendation is consistent with the Wellington City Council Dog Control Policy 2004.

Appendix A: Officer's Report to Regulatory Processes Committee