

**AGENDA FOR A MEETING OF THE HEARINGS COMMITTEE TO BE HELD AT
WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON,
WAITAKERE, ON THURSDAY, 27 SEPTEMBER 2007 COMMENCING AT 9.30 AM**

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1 APOLOGIES



2 URGENT BUSINESS

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 provides that where an item of business is not on the agenda, it may only be dealt with at the meeting if:

- (i) the Committee by resolution so decides; and
- (ii) the Chairman has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion and decision, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting.

The Committee may make a decision on a matter determined to be urgent.

NOTE: Urgent Business need not be dealt with now and may be delayed until later in the meeting.



3 CONFLICTS OF INTEREST

The Council has acknowledged in its Code of Conduct that Elected Members need to be vigilant to stand aside from decision making when a conflict arises between their role as a member of the Council and any private or other external interest they might have. This note is provided as a reminder to members to check that no such conflicts arise in relation to any items on this agenda.



4 CONFIRMATION OF MINUTES

Meeting Minutes – Monday, 3 September 2007
Friday, 14 September 2007

RECOMMENDATION

That the minutes of the Meeting of the Hearings Committee held on Monday, 3 September 2007 and Friday, 14 September 2007 as circulated, be taken as read and now be confirmed.



5 **DOG CONTROL ACT 1996 SECTION 33B - OBJECTION TO CLASSIFICATION AS
"MENACING DOG"**

PURPOSE OF THE REPORT

This report sets out the advice of Council officers to the Hearings Committee on the issues raised by the objection to classification as "menacing dog" by Nicole Helen Spurle. It is *not* the decision of the Committee. The decision will be made after the Committee has considered the objection, the submissions, and any evidence provided at the Hearing.

The purpose of this report is to determine an objection by Nicole Helen Spurle to the classification of her dog "Levi" as a menacing dog under section 33B of the Dog Control Act 1996.

BACKGROUND

The Dog Control Act 1996 section 33A empowers a territorial authority to classify any dog that the territorial authority considers may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of any observed or reported behaviour of the dog. Classifications are made by the Manager: Animal Welfare, by delegated authority.

At about 8.00 pm on 26 January 2007 the complainants were walking their pup in South Kensington Way when a dog left its property at 52 South Kensington Way, Henderson, rushed at the complainants and bit the male complainant on the hand, the right leg and on his calf. The dog then attacked their pup. Builders close by assisted in pulling the dog off the complainants and the pup. The Police were called who referred it to Animal Welfare: Waitakere. An animal welfare officer attended and identified the dog as a boxer and it was by then contained inside the house at 52 Kensington Way, Henderson. While the officer was there the dog's owner arrived home with an older male. She is the applicant in this hearing, Nicole Helen Spurle. Ms Spurle said that she had been out for the evening and the dog had been left outside behind the fence. Ms Spurle was advised by the Animal Welfare Officer of the likely consequences of her dog being classified as menacing. Ms Spurle's male companion became agitated and alleged that it was not their dog that was responsible for the attack.

The dog is a neutered male boxer, red and white, named Levi and is currently registered. The male complainant was treated for multiple small lacerations and scratches to the left hand, scratches to both legs and a single scratch on the forearm at Westcare White Cross. Medical expenses of \$100 have been reimbursed by Ms Spurle.

The complainants subsequently made a written statement and the statements were made available to Ms Spurle under the Local Government Official Information and Meetings Act. References to the complainants' names and address were deleted.

On 25 May 2007 two Animal Welfare Officers met the complainants in South Kensington Way and asked them to confirm the address of the offending dog as being number 52 which they did. When they walked their pup past the address the pup became distressed and attempted to drag the owner backwards. It then lay down and refused to walk past that address. The young dog has needed intensive behavioural training as a result of the trauma suffered.

The dog Levi, owned by Ms Spurle, was classified as a menacing dog on Tuesday, 13 March 2007 but that notice was withdrawn due to an irregularity and a new notice of classification was issued on Monday, 23 April 2007. Ms Spurle has made a formal objection against that classification.

ISSUES

Hearing the objection is a statutory function under the Dog Control Act 1996. Section 33B provides:

[33B. Objection to classification of dog under section 33A—

1. If a dog is classified under section 33A as a menacing dog, the owner—
 - a. may, within 14 days of receiving notice of the classification, object in writing to the territorial authority in regard to the classification; and
 - b. has the right to be heard in support of the objection.
2. The territorial authority considering an objection under subsection (1) 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 relevant matters.
3. The territorial authority must, as soon as practicable, give written notice to the owner of—
 - a. its determination of the objection; and
 - b. the reasons for its determination.]

A1 The consequences of a menacing dog classification are set out in the Appendix attached at page A1.

Ms Spurle objects to the classification on the following grounds:

- “1 That the original classification was flawed in that Mr Wells said that there was no classification in place when we spoke to him after the original notice date and that Mr Wells went back on his word about the classification. It is our contention that this action is only being done after a complaint was lodged against him and the handling on this matter.
- 2 That we have several independent witnesses who will give evidence of dealings with our dog that are contrary to the facts outlined in the notice. Several contractors working on our house recently that have never met our dog entered our property and worked on the house without fear of the dog. They will all attest to the fact.
- 3 That no actual evidence has been given that the dog concerned is our dog. The complainants stated in their statements that the dog came from No. 54 South Kensington Way. Both complainants who live on the street and can easily verify our address gave No. 54 as the dogs domicile. One even changed his mind from 52 to 54.”

In answer to the three points of objection:

1. That allegation is refuted. The classification was made on the basis of the investigation.
2. No such written evidence has been submitted. However, it is not uncommon for a dog that is socialised to people to still be aggressive to other animals. In this incident one of the complainants was injured because Ms Spurle's dog was attacking their dog.

3. The street number of the property that Ms Spurle's dog came out of has since been clarified with the complainants and they have confirmed that the dog came out of 52 South Kensington Way, Ms Spurle's property. Since the incident Ms Spurle has raised the height of the gate to her property.

CONCLUSION

Dog attacks persistently receive high profile media attention. This was an attack that resulted in injuries to persons, albeit minor, and a young dog has been traumatised. Ms Spurle has shown no remorse for the attack.

The classification as a menacing dog is justified as the dog may continue to pose a threat to domestic animals, namely other dogs.

RECOMMENDATIONS

- 1 That the Dog Control Act 1996 Section 33B - Objection to Classification as "Menacing Dog" report be received.
- 2 That the objection to the classification of "Levi" as a menacing dog be declined and the classification of "Levi" as a menacing dog be upheld in accordance with section 33B(2) of the Dog Control Act 1996.

Report prepared by: Neil Wells, Manager: Animal Welfare



APPENDIX A

33E. Effect of classification as menacing dog—

(1) If a dog is classified as a menacing dog under section 33A or section 33C, the owner of the dog—

(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
(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 registered veterinary surgeon 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).

(2) A person who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$3,000.

(3) If a person fails to comply with subsection (1), a dog control officer or dog ranger may—(a) seize and remove the dog from the person's possession; and

(b) retain custody of the dog until the territorial authority has reasonable grounds to believe that the person has demonstrated a willingness to comply with subsection (1).

(4) Section 70 applies to a dog removed under subsection (3) as if it were removed under section 56; and accordingly section 70 applies with all necessary modifications.(5) Subsection (1)(a) 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).]