

4 OBJECTION TO DOG BEING CLASSIFIED AS MENACING

The following documents had been circulated with the agenda:

- (i) Report from the Consents & Regulatory Manager [A1530413].
- (ii) Report from the Compliance Officer [A1530417].
- (iii) Notice of Classification of Dog as a Menacing Dog, dated 12 August 2015.
- (iv) Objection from Ms Barnes.
- (v) 10 statements in support of the Objection from Ms Barnes.
- (vi) Statement from Ms Siobhan Hannan, dated 19 August 2015.
- (vii) Statements from Ms Sue Rauch and Mrs Heather Williams.
- (viii) Photograph of injury to Kilele.

In addition, members had before them the following documents which were circulated after the agenda had been printed but before the meeting:

- (ix) Statement of Lyn Leyland, dated 11 September 2015.
- (x) Statement from Lisa Hudson, Taupō SPCA Centre Manager, dated 15 September 2015.
- (xi) Further supporting information from Ms Barnes, dated 20 September 2015 along with attachments including a statement from Patricia Foden-Frazer dated 18 September 2015; a written observation by Dr Paul Morris; a letter from E. Mayhill; emails from Council staff; and a “tracked change” copy of the two staff reports.

The Chairman invited the Corporate Solicitor to address the Committee in order to provide procedural advice. The following points were noted:

- Section 33A of the Dog Control Act 1996 (“the Act”) enables the Council to classify a dog as menacing if it considers the dog “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 ...”.
- The Committee was required to 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.
- The behaviour of people was irrelevant; this was about how the dog behaved.
- The only effect of classification in this case was that the dog would have to wear a muzzle in public.
- The Committee should take into account eyewitness evidence. Opinion evidence should only be received from independent experts qualified in a discipline relevant to the question here, i.e. canine behaviour.

With the leave of the Chairman, the following people addressed the Committee:

Ms Siobhan Hannan

- The dog Kilele still has puncture wounds on his neck.
- It was true that Ms Hannan had prised Ms Barnes’ dog Tilly Matilda’s jaws open. Ms Barnes did not help to separate the dogs.
- Dogs can attack for many reasons; sometimes the reason is unknown.
- The offer from Ms Barnes to pay any vet bills arising from the attack was news to Ms Hannan. This was an admission of guilt. A vet could not do anything about the puncture wounds.
- Kilele did not growl at Tilly Matilda.
- Ms Hannan had edited her original statement given to the Compliance Officer to make it clearer.

In answer to questions Ms Hannan advised that:

- Ms Barnes did originally tell Ms Hannan not to approach. She probably extended Tilly Matilda’s lead because she thought it was safe to do so – both dogs were small and Tilly Matilda was not showing aggression initially.
- Ms Hannan did not own Kilele but rather looked after him for a friend.

- Ms Hannan had visited the market a few times before 8 August 2015. She had never noticed Tilly Matilda before.

Ms Shirley Fraser and Ms Denise Barnes

Ms Barnes addressed the Committee with reference to her statement:

- Ms Barnes had been walking her dogs in Taupō for the past 11 years. Over this time, she had walked 25,000km – 8,000km of these with Tilly Matilda. She had received no complaints about her dogs.
- Ms Barnes always kept her dogs on leads in the correct places. Both have been rushed/attacked by other dogs. Bertie came close to being killed by another dog. Tilly was luckier because although she had been attacked, the attacker was hauled off quickly.
- Tilly is however troubled by dogs rushing. Ms Barnes manages this by moving her out of the way of trouble and she copes well.
- Tilly is fine with normal, well-behaved dogs.
- Muzzling Tilly was unnecessary and would be cruel as she is a black dog and walks with her mouth wide open in hot weather.
- Ms Barnes had spent over 650 hours fundraising for Taupō SPCA over the past 7.5 years. With her dogs she had collected \$39,297 for SPCA.
- The incident on 8 August 2015 was unfortunate and would not have happened, had Ms Hannan moved on. Ms Barnes felt constrained and did not want to appear rude by ignoring Ms Hannan.
- Ms Barnes would never collect for Taupō SPCA again.
- Ms Barnes was asking Council to: (1) cancel the menacing classification. This was serious – a life sentence. Council needs to make sure a dog is menacing before classifying – Ms Barnes had an expert opinion that Tilly Matilda is not menacing and Council's dog control staff have not seen her.
- (2) revoke the warning because the claims are untrue.
- (3) restore Ms Barnes' Special Owner Policy status.
- The menacing classification was causing Ms Barnes stress. Her integrity and reputation have been damaged. She had owned Tilly Matilda from 11 weeks of age and the "menacing" classification was a terrible reflection on her.

Patricia Foden-Frazer

Ms Foden-Frazer summarised her recollection of the incident at the Riverside Market on 8 August 2015 and identified the location of Ms Barnes and Tilly Matilda [the cross on the top photograph on page 2 of photographs provided]. She advised that she did not know the two parties involved and did not hear any conversations between the two before the incident.

Councillor M Stewart entered the meeting at this point [11.05am]

Ms Shirley Fraser and Ms Denise Barnes [continued]

Ms Fraser addressed the Committee:

- The fact the incident occurred was not disputed.
- What is in dispute is the severity of reaction to a tussle between two little dogs. Why was Tilly Matilda classified as menacing for inflicting an insignificant puncture wound from a small nip?
- There was no proof that the carer of the other dog was bitten. This was a 'dog on dog' incident and both owners were at fault. The incident was not even worthy of a verbal warning.

In answer to questions Ms Barnes advised that:

- It was her usual approach to keep Tilly on a tight lead beside her. This had been suggested to her and she agreed it was a good idea, and Tilly was happy to stand by her side. Ms Barnes watched other dogs and aimed to keep Tilly out of their way.
- Just before the incident, Ms Barnes had noticed a springer spaniel 'dancing' around and going towards a little child. Tilly was ignoring this, but in the process of moving away, Ms

Barnes may have gone too close to the dog in Ms Hannan's care, or that dog came too close.

- It was not true that Tilly was uncomfortable with other dogs.
- Ms Barnes would not take Tilly to the market again – it was not safe for her to collect for the SPCA in future. Tilly used to stand at her side for over three hours and in this time she was always calm with children.
- Ms Barnes would still walk with Tilly.
- When the Riverside Market was rearranged, Ms Barnes was asked to stand back. She thought this was a good idea and would not have been there if there had been any concerns.

Ms Lauri Dunn

- Ms Dunn was the past Chair of the Taupō SPCA but had no speaking rights on behalf of that organisation – she was here to support Ms Barnes.
- The effect on Ms Barnes of her dog having to wear a muzzle would be huge.
- Ms Barnes has been treated badly by the system. Common sense should prevail, otherwise Ms Barnes' whole family would be affected, not just Tilly Matilda.

The Council's Consents & Regulatory Manager then addressed the Committee. The following points were noted:

- Ms Barnes was aware of Tilly Matilda's behaviour and sought out expert advice.
- Sue Rauch, the previous owner of the Riverside Market had received complaints about Tilly Matilda and took steps to address these [i.e. asked Ms Barnes to stand off the path with Tilly].
- It was good that Ms Barnes had undertaken not to go to the market or collect for SPCA, but if the dog was not classified, Council could not ensure the public was protected from Tilly Matilda.
- There are different muzzles available, so it should be possible to keep Tilly Matilda comfortable while walking on hot days.

Councillor R Harvey entered the meeting at this point [11.28am]

Members then deliberated on whether or not to uphold the staff decision to classify Tilly Matilda as a menacing dog. The Chairman emphasised the importance of the Committee's consideration of its duty of care to the wider community. The following points were noted:

- Ms Barnes' dedication to raising funds for the SPCA was acknowledged.
- The Corporate Solicitor's advice had to be taken into account.
- Members had a responsibility to ensure the whole community is safe in public places.
- Council's dog control officers were praised for the difficult work they do.

Members decided to uphold the staff decision to classify Tilly Matilda as a menacing dog. They were satisfied that Tilly Matilda had attacked another dog at the Riverside Market, Taupō on 8 August 2015. It was agreed that Tilly Matilda *may* still pose a threat in terms of section 33A of the Dog Control Act 1996; and no evidence had been presented to convince them otherwise.

FRD201509/04 RESOLVED to uphold the decision to classify Tilly Matilda [registration number 151202] as a menacing dog.

Cozens/Boddy

Note: *Councillor J Williamson requested his dissent to resolution FRD201509/04 above be recorded.*