

## 4.1 JAN SMEATON - OBJECTION TO MENACING CLASSIFICATION OF DOG 'SAHARA'

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### EXECUTIVE SUMMARY

The dog owned by Mrs Jan Smeaton, owner no. 08105 of 37 Whakamoenga Point, Acacia Bay, Taupō, being an Australian Cattle cross named SAHARA, registration no. 172560, has been classified as a menacing dog in accordance with the Dog Control Act 1996 (the Act) Section 33A(1)(b).

The menacing classification was due to SAHARA attacking another dog at 5 Mile Bay on 5 June 2017.

Mrs Smeaton has objected to the classification under section 33B (1) of the Act.

Mrs Smeaton has stated in her objection of the classification of SAHARA that it is unduly harsh; provides no opportunity or incentive for rehabilitation and training; and that it removes the ongoing enjoyment of the dog to herself and family. Mrs Smeaton further states that after adopting SAHARA from the SPCA, she became aware of some anxious attachment tendencies particularly around other dogs. As a result, Mrs Smeaton and SAHARA attended dog obedience sessions at the Taupō Dog Club. Mrs Smeaton also engaged the services of MaryAnne Joyce from Paws in Hand to assist with training and socialisation.

### BACKGROUND

This proposal has not been presented previously.

A complaint was made on 5 June 2017 to the Taupō District Council from Mrs Clare Webber alleging that on that day, the dog SAHARA belonging to Mrs Jan Smeaton attacked Mrs Webber's dog LENI.

Mrs Webber stated that whilst walking with her dog LENI at 5 Mile Bay Taupō, there was a group of other dogs walking with their owners. The dogs in the two groups met and were playing when the offending dog SAHARA ran up to LENI and bit her on the side of the body leaving a 10cm gash.

Both LENI and SAHARA were off leash at this time.

As a result of the investigation of this complaint, SAHARA has been classified as menacing by deed in accordance with the Act.

### DISCUSSION

The purpose of the Act is to ensure better care and control of dogs by making special provisions in relation to dangerous dogs and imposing obligations designed to ensure that dogs do not injure, endanger, or cause distress to any stock, poultry, domestic animal, or protected wildlife.

The key points recorded by Compliance Officer Marty Devonport during the investigation of the complaint as recorded in service request no. 1708302 are as follows:

- Mrs Webber identified the dog that attacked LENI as being SAHARA
- Mrs Jan Smeaton as owner admitted that her dog SAHARA had attacked the other dog
- Photos were taken of Mrs Webber's dog LENI, showing the injuries sustained
- Mrs Smeaton stated that SAHARA has shown anxious attachment tendencies and has at times growled at other dogs. Mrs Smeaton had purchased a muzzle for SAHARA because of these issues however, SAHARA was not wearing a muzzle on the day of the alleged incident

## OPTIONS

### Analysis of Options

#### Option 1.

Uphold the classification.

Advantages	Disadvantages
<ul style="list-style-type: none"><li>Upholding the classification to ensure the dog wears a muzzle to mitigate the risk to the general public</li></ul>	<ul style="list-style-type: none"><li>None to Council</li></ul>

#### Option 2.

Rescind the Classification

Advantages	Disadvantages
<ul style="list-style-type: none"><li>None to Council</li></ul>	<ul style="list-style-type: none"><li>Safety risk to the public remains</li></ul>

### Analysis Conclusion:

The preferred option is Option 1.

## CONSIDERATIONS

### **Financial Considerations.**

There are no financial considerations.

### **Legal Considerations**

#### Dog Control Act 1996

The objects of the Act are—

(a) to make better provision for the care and control of dogs—

(i) by requiring the registration of dogs; and

(ii) by making special provision in relation to dangerous dogs and menacing dogs; and

(iii) by imposing on the owners of dogs, obligations designed to ensure that dogs do not cause a nuisance to any person and do not injure, endanger, or cause distress to any person; and

(iv) by imposing on owners of dogs obligations designed to ensure that dogs do not injure, endanger, or cause distress to any stock, poultry, domestic animal, or protected wildlife; and

(b) to make provision in relation to damage caused by dogs.

#### Dog Control Act 1996 Section 33A(1)(b)

Territorial authority may classify dog as menacing

(1)(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.

#### Dog Control Act 1996 Section 33E(1)(b)

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—

(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 veterinarian certifying—

## **Policy Implications**

There are no known policy implications.

## **Risks**

By rescinding the Menacing Classification Council will not have taken all measures available to reduce the risk of any possible continued aggressive behaviour.

Being muzzled in such a way as to prevent the dog from biting, but allow it to breathe and drink without obstruction will mitigate the risk to the wider public without undue hardship to the dog.

## **SIGNIFICANCE OF THE DECISION OR PROPOSAL**

Council's Significance and Engagement policy identifies the following matters that are to be taken into account when assessing the degree of significance of proposals and decisions:

- a. The level of financial consequences of the proposal or decision;
- b. Whether the proposal or decision will affect a large portion of the community or community of interest;
- c. The likely impact on present and future interests of the community, recognising Maori cultural values and their relationship to land and water;
- d. Whether the proposal affects the level of service of an activity identified in the Long Term Plan;
- e. Whether community interest is high; and
- f. The capacity of Council to perform its role and the financial and other costs of doing so.

Officers have undertaken a rounded assessment of the matters in clause 11 of the Significance and Engagement Policy (2016), and are of the opinion that the proposal under consideration is of low importance.

## **ENGAGEMENT**

Taking into consideration the above assessment, that the decision is of a low degree of significance, officers are of the opinion that no further engagement is required prior to Council making a decision.

## **COMMUNICATION/MEDIA**

No communication/media is required.

## **CONCLUSION**

The compliance team believes that the classification was and remains appropriate.

The objective in this situation is to put in place measures in accordance with the Act to prevent this type of incident occurring again. Council also has a duty of care to the public to take all reasonable steps to ensure the safety of its community.

It is established through admission by both the owner of SAHARA and, the signed statement from the owner of LENI, that the dog SAHARA was able to attack LENI and was not kept under proper control in a public place.

The classification of menacing is not onerous on either the dog or the owner and should be seen as protecting the wider public and conversely, also protecting the dog from the public in that the dog will be unable to be aggravated by external circumstances and expose Mrs Smeaton to further enforcement action from the territorial authority.

When at the owner's home the muzzle is not required to be worn.

## **ATTACHMENTS**