

**I give notice that  
an Ordinary Meeting of District Dog Control Committee will be held on:**

<b>Date:</b>	<b>Monday, 13 June 2022</b>
<b>Time:</b>	<b>10.00am</b>
<b>Location:</b>	<b>Council Chamber 107 Heuheu Street Taupō</b>

# **AGENDA**

## **MEMBERSHIP**

**Chairperson** Cr Kevin Taylor

**Deputy Chairperson**

**Members** Cr John Boddy  
Cr Kylie Leonard  
Mayor David Trewavas

**Quorum** 2

**Gareth Green**  
**Chief Executive Officer**

## Order Of Business

- 1 **Apologies**
- 2 **Conflicts of Interest**
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- 4 **Policy and Decision Making**
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- 5 **Confidential Business**

Nil

**3.1 ORDINARY DISTRICT DOG CONTROL COMMITTEE MEETING - 16 DECEMBER 2021**

**Author: Shainey James, Governance Quality Manager**

**Authorised by: Nigel McAdie, Legal, Risk and Governance Manager**

**RECOMMENDATION(S)**

1. That the minutes of the District Dog Control Committee meeting held on Thursday 16 December 2021 be confirmed as a true and correct record.

**ATTACHMENTS**

1. District Dog Control Committee Meeting Minutes - 16 December 2021

**4.1 OBJECTION TO MENACING CLASSIFICATION - PEPSI 210142**

**Author:** Ross McDonald, Compliance & Regulatory Manager

**Authorised by:** Jessica Sparks, Environmental Services Manager

**PURPOSE**

This item is being presented to the Committee for it to consider upholding or rescinding a menacing dog classification that has been objected to by the dog owner 08537 – Mrs Janice Christa Black (Mrs Black).

**EXECUTIVE SUMMARY**

Section 33A of the Dog Control Act 1996 (“the Act”) (Attachment 1) allows Taupō District Council to classify a dog as menacing if the dog is considered to pose a threat to a person or other animal due to observed or reported behaviour.

Pepsi a Retriever, Labrador/Cross Black, Male, Tag Number: 210142 (Pepsi) was classified as menacing on 09/03/2022 (Attachment 2) after a complaint (Attachment 3) made by a member of the public was investigated by Council Compliance Officers. After the completion of the investigation (Attachment 4 - 15) Mrs Black was issued an infringement, cancellation of her responsible dog owner status, cancellation of her multiple dog permit (under review), a direction to fence/secure the property so that the dog cannot escape and an Incident Warning Letter (Attachment 16 - 20) .

In accordance with section 33B of the Act, Mrs Black has objected to the classification (Attachment 21) and the Committee is required to consider the objection to the menacing classification.

Mrs Black states in her objection “I have always understood that Pepsi, a rescue dog that I have fostered and subsequently owned since he was a puppy, would have a number of behavioural challenges to manage and I have always taken the utmost care in ensuring he is not put in situations that may unsettle him or situations that may cause disturbance to others. He is still a teenager and as such does not always make the best decisions. However, I do not believe that he poses any more of a threat to any person, stock, poultry, domestic animal or protected wild life than the average dog”.

Mrs Black understands the seriousness of the situation and had taken steps to ensure that her dogs cannot enter either her own paddock or the neighbours and unfortunately on this occasion, that has proven insufficient.

At the date of preparing this agenda item Mrs Black appears to be complying with the requirements of the classification and there have been no further incidents reported.

**RECOMMENDATION(S)**

That the District Dog Control Committee upholds the menacing dog classification for Pepsi.

**BACKGROUND**

The proposal has not been presented previously.

A report was made to Council’s Compliance Team that Pepsi had been worrying stock on a neighbouring property at approximately 2015 hours on the 26 February 2022, leaving one sheep bleeding from its mouth.

The complainant advised that they had sighted the dog owner and son running past in one of their paddocks so went to investigate what was occurring. By the time they had got to the scene the offending dog (identified as Pepsi) had been put over the other side of the fence (on Mrs Black’s property) and the son was restraining Pepsi to stop the dog re-engaging.

The complainant advised that they have had previous negative interactions from dogs located at Mrs Black’s property and the dogs are very aggressive when/if they approach the boundary fence.

Mrs Black states that she has owned Pepsi for about 3 years old and that he can be very timid. Pepsi also shows aggression when cornered.

Mrs Black objects to the menacing classification.

## **DISCUSSION**

### **Statutory Framework – Section 33A and 33B of the Dog Control Act 1996**

The objects of the Act are to make better provision for the care and control of dogs. The Act also imposes obligations on dog owners designed to ensure that dogs do not cause a nuisance to any person and do not injure, endanger, or cause distress to any person.

Should a dog, by action or observed behaviour, be considered to pose a threat, then section 33A of the Act allows the territorial authority to classify a dog as menacing, and section 33B allows the owner to object to the classification and to be heard in support of the objection.

### **Evidence which formed the basis for the Classification – Section 31**

- On 28/02/2022, Council received a complaint that Pepsi had been worrying stock on a neighbouring property.
- The complainant was able to positively identify that Pepsi was the offending dog (this is not disputed by the dog objector).
- Pepsi was able to freely leave his property as the fencing was not adequate to prevent this.
- Pepsi was roaming and not under the control of a person.
- Mrs Black admits the incident occurred
- During a telephone conversation Mrs Black stated several points of interest regarding Pepsi's behaviour:
  - "If it's moving, he chases it"
  - "Pepsi has a high prey drive"
  - "(Pepsi is) A high energy dog"

After completing the investigation, a classification matrix was completed. This is based on the information gained from witness interviews, previous history, and evidence found during the investigation. The matrix forms part of the decision to classify a dog as menacing. In this case the classification matrix did not reflect a menacing classification. However, with the admission in regards to Pepsi' behaviour made by the owner and the dogs history, Pepsi was classified as menacing.

### **Steps taken by the Owner to Prevent any Threat to the Safety of Persons or Animals – Section 33B(2)(b)**

Since the reported incident, there have been no further reports to Council in relation to Pepsi. Mrs Black has been co-operative with ensuring that the effects of the classification have been adhered to. Mrs black has also made improvements to her property to prevent the dog escaping and Pepsi has attended stock aversion training (Attachments 22 - 24).

### **Matters Relied Upon in Support of the Objection – Section 33B(2)(c)**

Mrs Black has objected to the Menacing classification. Mrs Black has made the following comments in support of her objection:

I do not believe that he (Pepsi) poses any more of a threat to any person, stock, poultry, domestic animal or protected wildlife than the average dog".

I have taken steps to ensure that my dogs cannot enter either my paddock or the neighbours. This has been achieved by making improvements to the fencing on her property.

Mrs Black has taken Pepsi to attend some stock aversion training (however there is no evidence to support what this included or its results).

Mrs Black has provided references from other parties in support of her objection (Attachments 25 - 27).

### **Other Relevant Matters – Section 33B(2)(d)**

Given the subjective nature of dog attacks and the process of classifying a dog, each incident although seemingly similar will vary as will the enforcement action/options. The outcome is based on evidence that has been presented, the likelihood of reoccurrence, history of the dog, negligence on the part of the person in control of the dog at the time and ensuring the safety of our community from further harm.

In this case the classification matrix used by Council scored below the menacing range, however after reviewing the file and in accordance with the Dog Control Act 1996 Section 33A which states a Territorial authority may classify dog as menacing if it considers that dog may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of any observed or reported behaviour of the dog it was decided that a classification was warranted and appropriate.

In this case the factors that reinforced the Compliance Teams decision to classify were:

Mrs Black admits Pepsi's behaviour/judgement cannot be relied upon alone.

Pepsi was able to roam from the property where he is kept and has done on more than one occasion.

Pepsi was not under the control of a person at the time of the incident.

The dog was required to be restrained to prevent Pepsi re-engaging with the stock.

Based on this information it is considered that there are two options:

1. Rescind the menacing classification; or
2. Uphold the menacing classification.

**OPTIONS**

Analysis of Options

Option 1: Rescind the menacing classification

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• Council is seen to have a fair and robust process when considering an objection.</li> <li>• Consideration is given to the ongoing compliance by the owner since the incident to prevent any future concerns.</li> </ul>	<ul style="list-style-type: none"> <li>• Should there be another incident, Council maybe criticised for not taking all actions available to prevent harm by upholding the menacing classification to ensure the dog is not a threat to the public and or other animals.</li> </ul>

Option 2: Uphold the menacing classification

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• Council is seen to take any incident seriously when it comes to uncontrolled dogs or owners not taking their obligations under the Act.</li> <li>• Upholding the classification ensures that the current owner (who may be required by Council to rehome Pepsi) must make any future owners aware of Pepsi' history and by doing so mitigate the chance of further harm or injury.</li> </ul>	<ul style="list-style-type: none"> <li>• Council's response might be seen as excessive in relation to a dog that shows what may be considered normal characteristics.</li> </ul>

Analysis Conclusion:

The menacing classification is upheld by the Committee.

## CONSIDERATIONS

### Alignment with Council's Vision

Council's vision is 'to be the most prosperous and liveable district in the North Island by 2022'. This is accompanied by a core set of values to underpin decision-making, the following of which are relevant to this particular proposal: Resilient.

### Financial Considerations

There are no financial considerations.

### Legal Considerations

#### Local Government Act 2002

The matter comes within scope of the Council's lawful powers, including satisfying the purpose statement of [Section 10](#) of the Local Government Act 2002. That section of the Act states that the purpose of local government is (a) to enable democratic local decision-making and action by, and on behalf of, communities; and (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future. It is considered that social is of relevance to this particular matter.

The proposal has been evaluated with regards to a range of legislation. The key legislation applicable to the proposal is the Dog Control Act 1996, in particular section 33 - Objection to classification of dog under section 33b(1):

(3) Where any dog is classified as a menacing dog under section 33A, the owner may, within 14 days of the receipt of notice of that classification under section 33B, object to the classification in writing to the territorial authority and shall be entitled to be heard in support of his or her objection.

(4) In considering any objection under this section, the territorial authority shall have regard to—

- (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—

and may uphold or rescind the classification.

### Policy Implications

There are no known policy implications.

### Māori Engagement

Council is bound by various Acts to consult and/or engage with Māori, including a duty to act reasonably and in good faith as a Te Tiriti o Waitangi partner. Equally, Council has a responsibility to develop and proactively foster positive relationships with Māori as key stakeholders in our district, and to give effect to the principles of Te Tiriti o Waitangi including (but not limited to) the protection of Māori rights and their rangatiratanga over tāonga. While we recognise Māori in general, we also need to work side by side with the three ahi kaa / resident iwi of our district.

Although good faith does not necessarily require consultation, it is a mechanism for Council to demonstrate its existence and commitment to working together as district partners. Appropriately, the report author acknowledges that they have considered the above obligations including the need to seek advice, guidance, feedback and/or involvement of Māori on the proposed recommendation/s, objective/s, project/s or service/s outlined within this report.

### Risks

If the classification is rescinded, there is a risk to Council if Pepsi was to be involved in another incident of similar nature. The risk is a reputational one i.e. that Council did not use all of its tools to prevent future harm.

## 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**

Direct communication has been/will be carried out with affected parties/key stakeholders but no wider communication is considered necessary.

## **CONCLUSION**

It is the owner's responsibility to ensure a dog is controlled effectively and in accordance with the Act. Dog owners must understand their obligations, in particular to protect the community from their dog causing nuisance and/or injury through aggressive behaviour.

This incident is a direct result of Pepsi not being controlled or confined in a manner that would have prevented the incident.

The position of the Compliance Team on behalf of the Council is that the evidence substantiates the classification of Pepsi as a menacing dog in accordance with the Act which states: a Territorial authority may classify a dog as menacing if there is observed or reported behaviour of the dog posing a threat to any person, stock, poultry, domestic animal, or protected wildlife.

If Mrs Black continues to comply with the classification requirements and ensure Pepsi is secured on her property, there is a reduced risk of future harm from Pepsi and the objective of the Act has been achieved. Should Mrs Black not comply, then the ability to impose financial penalties (through infringements) and further classification remains available to Council.

## **ATTACHMENTS**

1. Attachment 1 Dog Control Act 1996 Section 33B
2. Attachment 2 Notice of Menacing Classification - Pepsi - SR 2204261
3. Attachment 3 Service Request 2204261
4. Attachment 4 Dog Owner File
5. Attachment 5 Dog Incident Checksheet Complainant
6. Attachment 6 Dog Incident Checksheet Witness A
7. Attachment 7 Dog Incident Checksheet Offending Dog Owner
8. Attachment 8 Photo of PEPSI 1
9. Attachment 9 Photo of PEPSI 2.pdf
10. Attachment 10 Scene Diagram
11. Attachment 11 Information and Photo Showing Alleged Egress from Property (Pepsi)
12. Attachment 12 Paddock Boundary Fence
13. Attachment 13 Photo of Land Boundary (between Complainant and Offending Dog Owner)
14. Attachment 14 Photo Showing Location Attachment 14 Complainant Sighted Stock and Offending Dog Owner
15. Attachment 15 TDC Dog Classification Evaluation Matrix SR2204261 CO44
16. Attachment 16 Infringement 804156 Pepsi.pdf
17. Attachment 17 Responsible Dog Owner Permit Cancellation - 08537



18. Attachment 18 Multiple Dog Permit Cancelled - Instruction to Reduce Dog Numbers
19. Attachment 19 Direction to Improve Fencing - SR2204261
20. Attachment 20 Warning Incident Notice - Pepsi - SR 2204261
21. Attachment 21 Objection to Classification Pepsi Dog Owner 08537
22. Attachment 22 Email from Dog Owner - Fwd Ref 08537 & Infringement 804156
23. Attachment 23 Email from Dog Owner Re Pepsi Ref 08537 Stock Aversion Training
24. Attachment 24 Photo from Dog Owner Fencing Improvements
25. Attachment 25 Letter of Support - A
26. Attachment 26 Letter of Support - B
27. Attachment 27 Letter of Support - C