



AGENDA

Regulatory Hearings Panel meeting Thursday, 5 August 2021

I hereby give notice that a Regulatory Hearings Panel Meeting will be held on:

Date: Thursday, 5 August 2021

Time: 9.30am

**Location: Tauranga City Council
Te Awanui Harbour Meeting Room
91 Willow Street
Tauranga**

**Marty Grenfell
Chief Executive**

Terms of reference – Regulatory Hearings Panel

Membership

Chairperson	Mary Dillon
Members	Puhirake Ihaka Terry Molloy Alan Tate
Quorum	At least two members
Meeting frequency	As required

Role

- To conduct hearings and make decisions of a quasi-judicial nature on regulatory matters through specific hearings and decision making.

Scope

Regulatory matters

- To conduct hearings and make decisions of a quasi-judicial nature on behalf of the Council on any regulatory matter that the Council is legally:
 - empowered or obligated to hear and determine;
 - permitted to delegate to a subordinate decision-making body of Council under the Local Government Act 2002, or any other Act.
- To exercise this function in accordance with:
 - the applicable legislation;
 - the Council's corporate strategies, policies, plans and bylaws; and
 - the principles of administrative law and natural justice.
- Regulatory matters include (but are not limited to):
 - dog control matters;
 - matters arising from the exercise of Council's enforcement functions; and
 - regulatory matters that require a hearing under Council's policies (including, without limitation, Council's Gambling Venues Policy) and bylaws.

Matters excluded from scope

- The following are excluded from the scope of the Regulatory Hearings Panel:
 - matters relating to the sale and supply of alcohol;
 - matters under the Resource Management Act 1991; and
 - matters the Council is precluded from delegating to a subordinate decision-making body by the Local Government Act 2002, or any other Act.

Power to Act

Regulatory matters

- All powers, duties and discretions necessary to conduct hearings and make decisions of a quasi-judicial nature on behalf of the Council on any regulatory matter that the Council is legally empowered or obligated to hear and determine, including (but not limited to):
 - All powers, duties and discretions necessary to hear and make decisions on behalf of the Council in respect of any matter that the Council is empowered or obligated to hear and determine under the Dog Control Act 1996, the Local Government Act 2002, the Local Government Act 1974 and any regulatory matters that require a hearing under Council's policies and bylaws.
- For the avoidance of doubt, the above delegation includes authority to hear and make decisions on appeals under Council's Gambling Venues Policy, including to decline an application to appeal.
- The power to establish and amend hearings protocols relating to the general conduct of hearings and hearings related matters in accordance with the applicable legislation and the principles of administrative law and natural justice.
- The power to co-opt expert advice on an as required basis.

Matters excluded from power to act

- For the avoidance of doubt, the Regulatory Hearings Panel does not have the power to hear:
 - matters relating to the sale and supply of alcohol;
 - matters under the Resource Management Act 1991; or
 - matters that the Council is precluded from delegating to a subordinate decision-making body by the Local Government Act 2002, or any other Act.

Power to Recommend

- The Regulatory Hearings Panel is unlikely to need to make recommendations to the Council as it has the power to conduct hearings and make decisions of a quasi-judicial nature on behalf of Council as per its powers to act. However, the Panel may make recommendations to the Council if, in the circumstances of a matter, it considers it appropriate to do so.

Note: The Regulatory Hearings Panel is established as a subordinate decision-making body of Council and delegated the powers specified in its Terms of Reference under clauses 30 and 32 of Schedule 7 Local Government Act 2002 respectively. It is not a committee or subcommittee of Council.

Regulatory Hearings Panel

Summary of hearings procedure



Who is involved in a hearing?

- Regulatory Hearings Panel – these are independent persons who make the decision
- Tauranga City Council staff – staff who write the report and attend the hearing
- Applicant/objector or their representative – those who will present their evidence
- Witnesses/experts – called by staff or applicant/objector



What happens before the hearing?

- The applicant/objector will be given at least seven days' notice of the date, time and place of the hearing.
- An agenda with the staff report and any documents will be sent to the panel members and the applicant/objector before the hearing.
- The applicant/objector can organise evidence and call witnesses in support of their application/objection.
- If the applicant/objector can't be present at the hearing they can organise a representative to attend on their behalf.

What happens at the hearing?

- The hearings will be conducted without a lot of formality and will make sure that all parties and witnesses receive a fair hearing.
- Staff will present Council's case (including evidence and any witnesses) in support of its decision that is the subject of the application/objection.
- The applicant/objector presents their case (including any evidence and any witnesses).
- Council staff have a right of reply but can't submit any new evidence or call any further witnesses.
- The chairperson and panel members may ask questions from any party or witness.
- Other persons may ask the chairperson to put a question to any party or witness on their behalf but that is at the discretion of the chairperson as to whether the question is put.

- No cross examination is permitted.
- The chairperson's rulings on any matter is final.
- The hearing is generally open to the public unless there is good reason to have the hearing with the public excluded.

What happens after the hearing?

- The panel will usually deliberate in private immediately after the hearing and make their decision.
- The panel may, but is not required to, deliver its decision in the open section of a meeting. A notice of decision will be given (or sent) in writing to the applicant/objector as soon as practicable after the panel has made its decision.
- The chairperson will then close the hearing.
- If the chairperson has allowed further information to be provided before the hearing is closed, then the hearing will be adjourned, and the panel will reserve its decision until it has considered the further information.
- Where the applicant/objector has a right to appeal the panel's decision, that will be advised in writing.
- No discussions or communication of any kind will happen outside of the hearing between the panel, the parties or witnesses until a decision is issued, including during any site visits, adjournment or break.
- Minutes of the meeting will be kept as evidence of the hearing.

Order of Business

1	Opening Karakia	7
2	Apologies	7
3	Declaration of conflicts of interest	7
4	Business.....	8
	4.1 Adoption of Hearings Procedures.....	8
	4.2 Objection to Menacing Dog Classification - Griffin and Whitaker	23
5	Closing Karakia.....	43

- 1 OPENING KARAKIA**
- 2 APOLOGIES**
- 3 DECLARATION OF CONFLICTS OF INTEREST**

4 BUSINESS

4.1 Adoption of Hearings Procedures

File Number: A12705913

Author: Cindy Gillman-Bate, Corporate Solicitor
Coral Hair, Manager: Democracy Services

Authoriser: Barbara Dempsey, General Manager: Regulatory & Compliance

PURPOSE OF THE REPORT

1. To recommend the draft Hearings Procedures for adoption by the Regulatory Hearings Panel (the Panel).

RECOMMENDATIONS

That the Regulatory Hearings Panel:

- (a) Amends its meeting procedures for all quasi-judicial proceedings of the Panel (in accordance with Standing Order 3.6 and the Panel's Terms of Reference) by adopting:
 - (i) the *Dog Control Hearings Procedure* in Attachment 1 for all hearings under the Dog Control Act 1996; and
 - (ii) the *Hearings Procedure (for Panel hearings other than those under the Dog Control Act 1996)* in Attachment 2 for all other hearings.
- (b) Approves that the *Regulatory Hearings Panel – Summary of hearings procedure* document in Attachment 3 be included in the agenda for all Panel hearings.

EXECUTIVE SUMMARY

2. Tauranga City Council's [Standing Orders](#) apply to the Panel because it is a subordinate-decision making body of Council.
3. Standing Order 3.6 and the Panel's Terms of Reference permit the Panel to amend its meeting procedures for quasi-judicial proceedings.
4. Two hearings procedures are recommended for adoption by the Panel. One for dog hearings that meets the requirements of the Dog Control Act 1996 (Attachment 1), and another for all other regulatory hearings the Panel has delegated authority to hear (Attachment 2).
5. The summary document (Attachment 3) reflects and is consistent with the two draft hearings procedures. Its purpose is to make it easier for objectors/applicants and witnesses to understand the procedure that will be followed by the Panel at hearings. It is recommended that this document, rather than the full hearings procedures, be attached to the agenda for hearings.

BACKGROUND

6. The draft hearings procedures and summary document attached to this report are the same as those that were provided to and discussed with the Panel at the induction session held on 14 July 2021.

STRATEGIC / STATUTORY CONTEXT

7. Although the Panel is not a committee or subcommittee, it is a subordinate-decision making body of Council. As such, Council's Standing Orders apply to the Panel which means it will, in practical effect, operate as if it were a committee/subcommittee of Council.

8. Although some Standing Orders will be applicable to hearings (such as agendas, minutes, hearings to be in public unless a good reason to exclude the public applies etc), many of them are either not applicable, not appropriate or too formal for a hearing.
9. Standing Order 3.6 and the Panel's Terms of Reference enable the Panel to amend its meeting procedures for all hearings of the Panel by adopting a default set of hearings procedures.
10. If the recommended hearings procedures are adopted, Standing Orders will continue to apply but with any necessary modifications as a result of the procedure and with particular regard to the fact that hearings should be undertaken in a manner that avoids unnecessary formality. In the event there is any inconsistency between the procedure and Standing Orders, the procedure will take precedence. The Chairperson has authority to determine how any procedural matter will be dealt with, and any refusal of a person to obey an order or ruling of the Chairperson will constitute contempt.

OPTIONS ANALYSIS

11. The Panel may choose to:
 - (a) adopt the draft hearings procedures in the form attached to this report (**recommended**);
 - (b) adopt them subject to amendments;
 - (c) not adopt them and refer them to staff to make further changes with amended versions to be reported back to the Panel at its next meeting;
 - (d) not adopt any hearings procedures and instead follow Standing Orders.

FINANCIAL CONSIDERATIONS

12. None.

LEGAL IMPLICATIONS / RISKS

13. Standing Order 3.6 states:

"3.6 Quasi-judicial proceedings

For quasi-judicial proceedings the local authority may amend meeting procedures. For example, committees hearing applications under the RMA 1991 have additional powers under the Commissions of Inquiry Act 1908."

14. Council has delegated the following Power to Act to the Panel in its Terms of Reference:

"The power to establish and amend hearings protocols relating to the general conduct of hearings and hearings related matters in accordance with the applicable legislation and the principles of administrative law and natural justice."
15. The recommended hearings procedures attached to this report have been legally reviewed to ensure they meet the applicable legislative requirements and principles of administrative law and natural justice.

CONSULTATION / ENGAGEMENT

16. No public consultation/engagement has been undertaken as this was not necessary.

SIGNIFICANCE

17. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals and decisions in this report against Council's Significance and Engagement Policy. Council acknowledges that in some instances a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.

18. In making this assessment, consideration has been given to the likely impact, and likely consequences for:
 - (a) the current and future social, economic, environmental, or cultural well-being of the district or region
 - (b) any persons who are likely to be particularly affected by, or interested in, the matter
 - (c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.
19. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the matter is of low significance.

ENGAGEMENT

20. Taking into consideration the above assessment, that the matter is of low significance, officers are of the opinion that no further engagement is required prior to the Panel adopting the hearings procedures.

Click here to view the [TCC Significance and Engagement Policy](#)

NEXT STEPS

21. If approved, the *Regulatory Hearings Panel – Summary of hearings procedure* will be included in agendas of the Panel. It will also be posted on Council's website, along with a copy of the hearings procedures.

ATTACHMENTS

1. **Attachment 1 - Draft Dog Control Hearings Procedure - A12706254** [↓](#)
2. **Attachment 2 - Draft Hearings Procedure (for Panel hearings other than those under the Dog Control Act 1996) - A12706271** [↓](#)
3. **Attachment 3 - Regulatory Hearings Panel - Summary of hearings procedure - A12692212** [↓](#)

DOG CONTROL HEARINGS PROCEDURE

1. DEFINITIONS

“Council”	means the Tauranga City Council
“DCA”	means the Dog Control Act 1996
“Panel”	means the Regulatory Hearings Panel
“Standing Orders”	means the current Standing Orders adopted by the Council in accordance with clause 27 of Schedule 7 of the Local Government Act 2002 (including any subsequent amendments to those Standing Orders)

2. GENERAL PROCEDURAL MATTERS

2.1 Application of Standing Orders

- 2.1.1 Standing Orders apply to the Panel as it is a subordinate decision-making body of Council. The Standing Orders relating to meeting procedures may be amended for Panel hearings because they are quasi-judicial proceedings.

This Procedure applies to Panel hearings for all matters under the DCA. The meeting procedures of Standing Orders will also apply but with any necessary modifications as a result of this Procedure and with particular regard to clause 2.3.

In the event of an inconsistency between this Procedure and Standing Orders, this Procedure will take precedence and clause 3.7.1 applies.

2.2 Quorum

- 2.2.1 A hearing of the Panel is duly constituted if a quorum is present. No business may be conducted while waiting for the quorum to be reached.
- 2.2.2 The quorum for a hearing of the Panel is as specified in the Panel's Terms of Reference.
- 2.2.3 If a quorum is not present within 30 minutes of the advertised start of a hearing, the Chairperson must vacate the chair and the hearing shall be deemed to be deferred until such date as is fixed for the hearing. Where members are known to be travelling to the meeting, but are delayed due to extraordinary circumstance, the Chairperson has discretion to wait for a longer period.
- 2.2.4 If the quorum is lost during a hearing and is not present within 15 minutes, the Chairperson must vacate the chair and the hearing shall be deemed to be adjourned until such date as is fixed for the continuation of the hearing. Clause 4.1.3 and 4.1.4 shall apply to such an adjournment.
- 2.2.5 If a member of the Panel leaves the hearing while the business of the hearing is still being conducted (and a quorum still remains), then in the interests of natural justice, that member shall not be entitled to participate in the Panel's deliberations or the decision.

2.3 Degree of Formality

- 2.3.1 All hearings under the DCA shall be undertaken in a manner which avoids unnecessary formality, and which ensures that all parties and witnesses receive a fair hearing.
- 2.3.2 This Procedure shall be followed unless, having regard to the applicable legislation, in the opinion of the Chairperson an alternative procedure would be fairer or more appropriate in the circumstances.

2.4 Council Report

- 2.4.1 The Agenda for the hearing shall include a report written by an Animal Services Officer, the Team Leader: Animal Services or other relevant Council officer.
- 2.4.2 The report shall include the background information to the objection/application to be heard and will attach the relevant documentation. The documentation attached to the report shall include a copy of the notice that is the subject of the objection/application, any relevant correspondence, and any evidence in support of the decision to issue the notice involved.
- 2.4.3 The objector/applicant will be sent a copy of the Agenda for the hearing (including the report and all of the attachments) at the same time as it is distributed to Panel members.

2.5 Notice of hearing

- 2.5.1 The hearing must not proceed unless the objector/applicant has been given at least 7 days' notice of the date, time and place of the hearing.

3. HEARING PROCEDURES**3.1 Who is Entitled to be Heard**

- 3.1.1 The objector/applicant is entitled to attend and be heard in support of their objection/application.
- 3.1.2 The objector/applicant may submit evidence and call witnesses in support of their objection/application.
- 3.1.3 If the objector/applicant is represented and will not be present at the hearing in person, the representative must have sufficient authority to bind the objector/applicant.
- 3.1.4 The Council may be represented by one of its officers, employees, contractors or external advisors and may call witnesses in support of its decision to issue the notice that is the subject of the objection/application.

3.2 Order of Proceedings

- 3.2.1 The order of proceedings at the hearing shall be as follows:
 - (a) The Council's representative presents their opening address and presents the Council's case (including evidence and any witnesses).
 - (b) The objector/applicant presents the objector/applicant's case (including any evidence and any witnesses).
 - (c) The Council is given a right of reply, but is not permitted to submit any new evidence or call any further witnesses.

3.3 Time limits and Further Information

- 3.3.1 The Chairperson may direct the Council and/or the objector/applicant to present its case within a specified time limit.
- 3.3.2 The Chairperson may request any person attending the hearing to provide further information to the Panel within a specified time.

3.4 Adjournments

- 3.4.1 The Chairperson may adjourn the hearing if they consider that an adjournment is necessary or desirable to ensure fairness, including for the purposes of enabling an objector/applicant to consider and respond to any evidence presented during the hearing which was not included in the Council Report under clause 2.4.1. Clause 4.1.3 and 4.1.4 shall apply to such an adjournment.

3.5 Questions

- 3.5.1 No person other than the Chairperson or other member of the Panel shall be permitted to directly question any party or witness.
- 3.5.2 Other persons may request that the Chairperson put a question or questions to any party or witness. It is at the Chairperson's sole discretion whether the question is put.
- 3.5.3 No cross examination shall be permitted.

3.6 Language

- 3.6.1 Presentations or evidence written or spoken may be made in English or Te Reo Māori. A person may also present or give evidence at a hearing in New Zealand Sign Language.
- 3.6.2 If any person intends to present or give evidence in Te Reo Māori or New Zealand Sign Language at the hearing, that person must give reasonable notice (at least 2 working days) of that intention to allow sufficient time for translation services to be arranged.
- 3.6.3 If at least 2 working days' notice is provided, the Chairperson will ensure that a competent interpreter is available at the hearing, and may require that any speech or document presented be translated and/or printed in English.

3.7 Maintenance of Order

- 3.7.1 Where these Procedures or the applicable Standing Orders make no provision or insufficient provision for a procedural matter, the Chairperson shall determine how it is dealt with, and a refusal by any person to obey any order or ruling of the Chairperson shall constitute contempt.
- 3.7.2 The Chairperson may require any member of the public to leave the hearing if it is believed on reasonable grounds that the behaviour of that member of the public is likely to prejudice the orderly conduct of the hearing if that person is permitted to remain.
- 3.7.3 If any member of the public who is required, in accordance with clause 3.7.2, to leave a hearing, refuses or fails to leave the hearing or, having left the hearing, attempts to re-enter the hearing without the permission of the Chairperson, any police officer or authorised security personnel may, at the request of the Chairperson, remove or exclude that member of the public from the hearing.

3.8 Minutes of Proceedings

- 3.8.1 The Panel must keep minutes of the hearing.
- 3.8.2 Minutes of the hearing duly entered and authenticated as prescribed by Council are prima facie evidence of the proceedings.
- 3.8.3 Standing Orders 29.3 and 29.4 apply in respect of the inspection of those minutes.

3.9 Qualified Privilege

- 3.9.1 Where a hearing is open to the public, and a member of the public is supplied with a copy of the agenda for the hearing or any part of the minutes of the hearing are provided, the publication of any defamatory matter included in the agenda or in the minutes is privileged unless the publication is proved to have been made with ill will or taking improper advantage of the publication.
- 3.9.2 Any oral statement made at a hearing in accordance with the requirements of these Procedures, is privileged, unless the statement is proved to have been made with ill will or taking improper advantage of the publication.
- 3.9.3 The privilege conferred by this clause is in addition to, and not in substitution for, or derogation of any other privilege, whether absolute or qualified, that applies, by virtue of any other enactment or rule of law, to the proceedings of any local authority.

4. MAKING THE DECISION**4.1 Deliberations, Adjournments and Reserving the Decision**

- 4.1.1 The Panel may deliberate in private pursuant to section 48(1)(d) of the Local Government Official Information and Meetings Act 1987.
- 4.1.2 Once the hearing is concluded the Panel must either close the hearing (if hearing is complete) or adjourn the hearing (if the Chairperson has allowed further information to be provided before the hearing is concluded) and reserve its decision. The Panel may, but is not required to, deliver its decision in the open section of a meeting. Alternatively, a notice of decision will be issued in accordance with clause 5.
- 4.1.3 A quorum of the same members who attended the hearing must be present for deliberations and to make the decision. If a member left the hearing while the business of the hearing was still being conducted, or was unable to attend a subsequent hearing date if the hearing was adjourned, then in the interests of natural justice, that member shall not be entitled to participate in the Panel's deliberations or the decision.
- 4.1.4 No discussions shall be entered into between the Panel (including the Chairperson) and parties or witnesses outside of the hearing and up until a decision is issued, including during any site visit, adjournment or break.

4.2 Relevant Considerations

- 4.2.1 In considering the objection/application, the Panel must have regard to the relevant considerations listed in the relevant provision of the DCA under which the objection/application is being heard, namely:
 - Section 22(3) – objection to classification as probationary owner
 - Section 26(3) – objection to disqualification
 - Section 31(4) – objection to classification as dangerous dog

- Section 33B(2) – objection to classification as menacing dog (due to behaviour or characteristics of breed)
- Section 33D(3) – objection to classification as menacing dog (due to breed of dog)
- Section 70(3) – application for return of dog removed pursuant to Section 56 for causing distress by loud and persistent barking or removed pursuant to Section 32(6) for failing to comply with effect of classifying dog as dangerous.
- Section 71(5) – application for release of dog held pending outcome of prosecution
- Note: no relevant considerations are listed in section 55 – objection to barking dog notice. The Panel will need to consider whether a nuisance is in fact being created by the persistent and loud barking or howling of the dog or dogs involved.

4.3 Decisions available under the DCA

4.3.1 The type of determination that the Panel is permitted to make is specified in the relevant provision of the DCA under which the objection/application is being heard, namely:

- Section 22(4) – objection to classification as probationary owner – may uphold or terminate the classification
- Section 26(4) – objection to disqualification – may uphold, bring forward the date of termination or immediately terminate the disqualification
- Section 31(4) – objection to classification as dangerous dog – may uphold or rescind the classification
- Section 33B(2) – objection to classification as menacing dog (due to behaviour or characteristics of breed) – may uphold or rescind the classification
- Section 33D(3) – objection to classification as menacing dog (due to breed of dog) – may uphold or rescind the classification
- Section 55(3) – objection to barking dog notice– may confirm, modify or cancel the notice.
- Section 70(2) – application for return of barking dog or classified dangerous dog– shall return dog if satisfied the return will not result in the resumption of the barking nuisance or will comply with the requirements of keeping a classified dangerous dog.
- Section 71(4) – application for release of dog held pending outcome of prosecution – shall return dog if satisfied release will not threaten the safety of any person, stock, poultry domestic pet or protected wildlife.

4.4 Decision

- 4.4.1 The Panel will make its decision by vote in accordance with Standing Order 19 and clause 24 of Schedule 7 of the Local Government Act 2002.
- 4.4.2 The Panel's decision shall be made in the form of a formal resolution of the Panel. The resolution must specify the reasons for the Panel's decision.
- 4.4.3 If the effect of the Panel's decision on an objection made under section 55 DCA (objection to a barking dog notice or barking dog removal notice) is to modify the requirements specified in the original notice, the resolution making the decision must also state the requirements as so modified.
- 4.4.4 If the decision relates to an objection made under section 26 DCA (objection to disqualification), the resolution making the decision should also state that the objector has a right of appeal under section 27 DCA.
- 4.4.5 If the decision relates to an application made under section 70(2) DCA (application to release barking dog or classified dangerous dog), the resolution making the decision should

also state that the applicant has a right of appeal to the District Court under section 70(4) DCA.

- 4.4.6 If the decision relates to an application made under section 71(4) DCA (application to release dog pending prosecution), the resolution making the decision should also state that the applicant has a right of appeal to the District Court under section 71(6) DCA.

5. NOTIFICATION OF THE DECISION

- 5.1 As soon as practicable, a written record of the Panel's resolution (recording the decision and giving the reasons for it) must be given (or sent) to the objector/applicant.
- 5.2 Notification of the Panel's decision on an objection made under section 26 DCA (objection to disqualification), section 70(2) DCA (application to release barking dog or classified dangerous dog) or section 71(4) DCA (application to release dog pending prosecution) must also state that the objector/applicant has a right of appeal to the District Court under section 27 DCA, section 70(4) DCA or section 71(6) DCA (whichever section is applicable) (whether or not the Panel's resolution specifies this).

HEARINGS PROCEDURE **(for Panel hearings other than those under the Dog Control Act 1996)**

1. DEFINITIONS

- “Council”** means the Tauranga City Council
- “Panel”** means the Regulatory Hearings Panel
- “Standing Orders”** means the current Standing Orders adopted by the Council in accordance with clause 27 of Schedule 7 of the Local Government Act 2002 (including any subsequent amendments to those Standing Orders)

2. GENERAL PROCEDURAL MATTERS

2.1 Application of Standing Orders

- 2.1.1 Standing Orders apply to the Panel as it is a subordinate decision-making body of Council. The Standing Orders relating to meeting procedures may be amended for Panel hearings because they are quasi-judicial proceedings.

This Procedure applies to Panel hearings for all matters except those under the Dog Control Act 1996. The meeting procedures of Standing Orders will also apply but with any necessary modifications as a result of this Procedure and with particular regard to clause 2.3.

In the event of an inconsistency between this Procedure and Standing Orders, this Procedure will take precedence and clause 3.7.1 applies.

2.2 Quorum

- 2.2.1 A hearing of the Panel is duly constituted if a quorum is present. No business may be conducted while waiting for the quorum to be reached.
- 2.2.2 The quorum for a hearing of the Panel is as specified in the Panel's Terms of Reference.
- 2.2.3 If a quorum is not present within 30 minutes of the advertised start of a hearing, the Chairperson must vacate the chair and the hearing shall be deemed to be deferred until such date as is fixed for the hearing. Where members are known to be travelling to the meeting, but are delayed due to extraordinary circumstance, the Chairperson has discretion to wait for a longer period.
- 2.2.4 If the quorum is lost during a hearing and is not present within 15 minutes, the Chairperson must vacate the chair and the hearing shall be deemed to be adjourned until such date as is fixed for the continuation of the hearing. Clause 4.1.3 and 4.1.4 shall apply to such an adjournment.

- 2.2.5 If a member of the Panel leaves the hearing while the business of the hearing is still being conducted (and a quorum still remains), then in the interests of natural justice, that member shall not be entitled to participate in the Panel's deliberations or the decision.

2.3 Degree of Formality

- 2.3.1 All hearings shall be undertaken in a manner which avoids unnecessary formality, and which ensures that all parties and witnesses receive a fair hearing.
- 2.3.2 This Procedure shall be followed unless, having regard to the applicable legislation, in the opinion of the Chairperson an alternative procedure would be fairer or more appropriate in the circumstances.

2.4 Council Report

- 2.4.1 The Agenda for the hearing shall include a report written by a relevant Council officer.
- 2.4.2 The report shall include the background information to the objection/application to be heard and will attach the relevant documentation. The documentation attached to the report shall include a copy of the notice/decision that is the subject of the objection/application, any relevant correspondence, and any evidence in support of the decision that is the subject of the objection/application.
- 2.4.3 The objector/applicant will be sent a copy of the Agenda for the hearing (including the report and all of the attachments) at the same time as it is distributed to Panel members.

2.5 Notice of hearing

- 2.5.1 The hearing must not proceed unless the objector/applicant has been given at least 7 days' notice of the date, time and place of the hearing.

3. HEARING PROCEDURES

3.1 Who is Entitled to be Heard

- 3.1.1 The objector/applicant is entitled to attend and be heard in support of their objection/application.
- 3.1.2 The objector/applicant may submit evidence and call witnesses in support of their objection/application.
- 3.1.3 If the objector/applicant is represented and will not be present at the hearing in person, the representative must have sufficient authority to bind the objector/applicant.
- 3.1.4 The Council may be represented by one of its officers, employees, contractors or external advisors and may call witnesses in support of its decision that is the subject of the objection/application.

3.2 Order of Proceedings

- 3.2.1 The order of proceedings at the hearing shall be as follows:
- (a) The Council's representative presents their opening address and presents the Council's case (including evidence and any witnesses).

- (b) The objector/applicant presents the objector/applicant's case (including any evidence and any witnesses).
- (c) The Council is given a right of reply, but is not permitted to submit any new evidence or call any further witnesses.

3.3 Time limits and Further Information

- 3.3.1 The Chairperson may direct the Council and/or the objector/applicant to present its case within a specified time limit.
- 3.3.2 The Chairperson may request any person attending the hearing to provide further information to the Panel within a specified time.

3.4 Adjournments

- 3.4.1 The Chairperson may adjourn the hearing if they consider that an adjournment is necessary or desirable to ensure fairness, including for the purposes of enabling an objector/applicant to consider and respond to any evidence presented during the hearing which was not included in the Council Report under clause 2.4.1. Clause 4.1.3 and 4.1.4 shall apply to such an adjournment.

3.5 Questions

- 3.5.1 No person other than the Chairperson or other member of the Panel shall be permitted to directly question any party or witness.
- 3.5.2 Other persons may request that the Chairperson put a question or questions to any party or witness. It is at the Chairperson's sole discretion whether the question is put.
- 3.5.3 No cross examination shall be permitted.

3.6 Language

- 3.6.1 Presentations or evidence written or spoken may be made in English or Te Reo Māori. A person may also present or give evidence at a hearing in New Zealand Sign Language.
- 3.6.2 If any person intends to present or give evidence in Te Reo Māori or New Zealand Sign Language at the hearing, that person must give reasonable notice (at least 2 working days) of that intention to allow sufficient time for translation services to be arranged.
- 3.6.3 If at least 2 working days' notice is provided, the Chairperson will ensure that a competent interpreter is available at the hearing, and may require that any speech or document presented be translated and/or printed in English.

3.7 Maintenance of Order

- 3.7.1 Where these Procedures or the applicable Standing Orders make no provision or insufficient provision for a procedural matter, the Chairperson shall determine how it is dealt with, and a refusal by any person to obey any order or ruling of the Chairperson shall constitute contempt.
- 3.7.2 The Chairperson may require any member of the public to leave the hearing if it is believed on reasonable grounds that the behaviour of that member of the public is likely to prejudice the orderly conduct of the hearing if that person is permitted to remain.

- 3.7.3 If any member of the public who is required, in accordance with clause 3.7.2, to leave a hearing, refuses or fails to leave the hearing or, having left the hearing, attempts to re-enter the hearing without the permission of the Chairperson, any police officer or authorised security personnel may, at the request of the Chairperson, remove or exclude that member of the public from the hearing.

3.8 Minutes of Proceedings

- 3.8.1 The Panel must keep minutes of the hearing.
- 3.8.2 Minutes of the hearing duly entered and authenticated as prescribed by Council are prima facie evidence of the proceedings.
- 3.8.3 Standing Orders 29.3 and 29.4 apply in respect of the inspection of those minutes.

3.9 Qualified Privilege

- 3.9.1 Where a hearing is open to the public, and a member of the public is supplied with a copy of the agenda for the hearing or any part of the minutes of the hearing are provided, the publication of any defamatory matter included in the agenda or in the minutes is privileged unless the publication is proved to have been made with ill will or taking improper advantage of the publication.
- 3.9.2 Any oral statement made at a hearing in accordance with the requirements of these Procedures, is privileged, unless the statement is proved to have been made with ill will or taking improper advantage of the publication.
- 3.9.3 The privilege conferred by this clause is in addition to, and not in substitution for, or derogation of any other privilege, whether absolute or qualified, that applies, by virtue of any other enactment or rule of law, to the proceedings of any local authority.

4. MAKING THE DECISION

4.1 Deliberations, Adjournments and Reserving the Decision

- 4.1.1 The Panel may deliberate in private pursuant to section 48(1)(d) of the Local Government Official Information and Meetings Act 1987.
- 4.1.2 Once the hearing is concluded the Panel must either close the hearing (if hearing is complete) or adjourn the hearing (if the Chairperson has allowed further information to be provided before the hearing is concluded) and reserve its decision. The Panel may, but is not required to, deliver its decision in the open section of a meeting. Alternatively, a notice of decision will be issued in accordance with clause 5.
- 4.1.3 A quorum of the same members who attended the hearing must be present for deliberations and to make the decision. If a member left the hearing while the business of the hearing was still being conducted, or was unable to attend a subsequent hearing date if the hearing was adjourned, then in the interests of natural justice, that member shall not be entitled to participate in the Panel's deliberations or the decision.
- 4.1.4 No discussions shall be entered into between the Panel (including the Chairperson) and parties or witnesses outside of the hearing and up until a decision is issued, including during any site visit, adjournment or break.

4.2 Relevant Considerations

- 4.2.1 In considering the objection/application, the Panel must have regard to the relevant considerations specified in the applicable legislation, policy or bylaw under which the objection/application is being heard.

4.3 Decision

- 4.3.1 The Panel will make its decision by vote in accordance with Standing Order 19 and clause 24 of Schedule 7 of the Local Government Act 2002.
- 4.3.2 The Panel's decision shall be made in the form of a formal resolution of the Panel. The resolution must specify the reasons for the Panel's decision.

5. NOTIFICATION OF THE DECISION

- 5.1 As soon as practicable, a written record of the Panel's resolution (recording the decision and giving the reasons for it) must be given (or sent) to the objector/applicant.

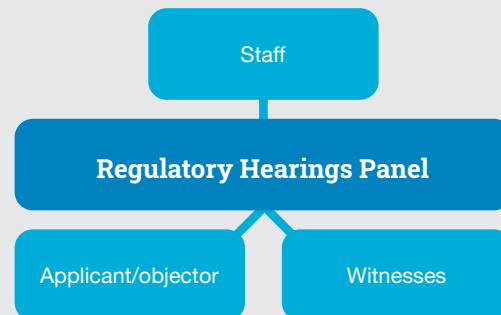
Regulatory Hearings Panel

Summary of hearings procedure



Who is involved in a hearing?

- Regulatory Hearings Panel – these are independent persons who make the decision
- Tauranga City Council staff – staff who write the report and attend the hearing
- Applicant/objector or their representative – those who will present their evidence
- Witnesses/experts – called by staff or applicant/objector



What happens before the hearing?

- The applicant/objector will be given at least seven days' notice of the date, time and place of the hearing.
- An agenda with the staff report and any documents will be sent to the panel members and the applicant/objector before the hearing.
- The applicant/objector can organise evidence and call witnesses in support of their application/objection.
- If the applicant/objector can't be present at the hearing they can organise a representative to attend on their behalf.

What happens at the hearing?

- The hearings will be conducted without a lot of formality and will make sure that all parties and witnesses receive a fair hearing.
- Staff will present Council's case (including evidence and any witnesses) in support of its decision that is the subject of the application/objection.
- The applicant/objector presents their case (including any evidence and any witnesses).
- Council staff have a right of reply but can't submit any new evidence or call any further witnesses.
- The chairperson and panel members may ask questions from any party or witness.
- Other persons may ask the chairperson to put a question to any party or witness on their behalf but that is at the discretion of the chairperson as to whether the question is put.

- No cross examination is permitted.
- The chairperson's rulings on any matter is final.
- The hearing is generally open to the public unless there is good reason to have the hearing with the public excluded.

What happens after the hearing?

- The panel will usually deliberate in private immediately after the hearing and make their decision.
- The panel may, but is not required to, deliver its decision in the open section of a meeting. A notice of decision will be given (or sent) in writing to the applicant/objector as soon as practicable after the panel has made its decision.
- The chairperson will then close the hearing.
- If the chairperson has allowed further information to be provided before the hearing is closed, then the hearing will be adjourned, and the panel will reserve its decision until it has considered the further information.
- Where the applicant/objector has a right to appeal the panel's decision, that will be advised in writing.
- No discussions or communication of any kind will happen outside of the hearing between the panel, the parties or witnesses until a decision is issued, including during any site visits, adjournment or break.
- Minutes of the meeting will be kept as evidence of the hearing.

4.2 Objection to Menacing Dog Classification - Griffin and Whitaker

File Number: A12053569

Author: Brent Lincoln, Team Leader: Animal Services

Authoriser: Barbara Dempsey, General Manager: Regulatory & Compliance

PURPOSE OF THE REPORT

1. To provide information for a hearing for objections lodged against the classification of dogs Nellie and Tynie as classified menacing dogs.

RECOMMENDATIONS

That the Regulatory Hearings Panel:

- (a) Receives the report; and either:
 - (i) Upholds the classification of the dog Nellie as a menacing dog; or
 - (ii) Rescinds the classification of the dog Nellie as menacing dog
 - (iii) Upholds the classification of the dog Tynie as a menacing dog; or
 - (iv) Rescinds the classification of the dog Tynie as menacing dog.

EXECUTIVE SUMMARY

2. On 26 October 2020 a dog owner reported that his dog, which was being exercised on a lead, had been attacked by two other dogs which were off lead. The attacking dogs charged at the victim dog, with one dog biting its ear and the other biting its shoulder. The injuries were treated by a veterinarian whose report indicated bites to the victim dog's ear and shoulder. As a result of the attack, Animal Services classified both attacking dogs as Menacing which requires the owners to muzzle the dogs when at large or in a public place or private way.
3. The owners have a right of objection, which they have exercised, this panel must make a determination to either uphold or rescind the classification for each dog having regard to:
 - (a) The evidence which formed the initial classification; and
 - (b) The steps taken by the owner to prevent any future threat; and
 - (c) Any matters relied on in support of the objection; and
 - (d) Any other relevant matter.

BACKGROUND

4. On Monday 26 October 2020 at approximately 4:00pm the complainant, his wife and daughter were at a public reserve off Taurikura Drive, exercising their 7-year-old Rhodesian Ridgeback, Staffordshire Terrier Cross dog on a leash.
5. At the time they were behind the boat club building and not visible to anyone arriving in the car park area. *Attachment 1 – Aerial photograph, Attachment 2 – Photo boat club building.*
6. A van pulled up and a woman, later identified as Chloe Griffin got out of the vehicle and walked a short distance from it. A male, later identified as Campbell Whitaker, also got out and let two dogs out of the vehicle.

7. One dog was a male and the other female, they were medium to heavy build, short coat and brindle in colour wearing wide studded collars.
8. Council records show the female dog, Nellie, is owned by Chloe GRIFFIN and registered as an American Staffordshire Terrier aged three years. Neither the owner nor the dog had any negative history with Council prior to this incident.
9. Council records show the male dog, Tynie, is owned by Campbell WHITAKER and registered as an American Staffordshire Terrier aged one year. Neither the owner nor the dog had any negative history with Council prior to this incident.
10. Both dogs are registered to the same Gate Pa address.
11. The complainant stated, the two dogs charged at their dog, with one biting their dog's left ear and the other, their dog's right shoulder. After the attack the complainant said he held one dog (Nellie) by the collar until Griffin arrived while Tynie stood back until secured by Whitaker. *Attachment 3 – Complainant statement.*
12. Immediately prior to the dogs attacking, the complainant heard Griffin say, "oh no, there's another dog here".
13. The victim dog had a bleeding ear and was later taken to a veterinarian who reported "dog bite to LHS ear, getting swollen and infected, is a little sore. Small bite area on RF shoulder. Injuries cleaned and treated. *Attachment 4 – Veterinary report*
14. Both owners were very apologetic and offered to pay for any veterinary fees and provided their contact details.
15. The complainant stated the dogs were not person aggressive, however he was concerned about the way the dogs immediately, directly and aggressively charged his dog. He also expressed concern that if his dog had been a smaller dog, or a child had incidentally been involved then the outcome could have been a lot more serious.
16. Chloe Griffin was interviewed by staff and stated:
 - (a) They drove around looking for a place where there were no dogs.
 - (b) The complainant was about 20 metres away. She partly saw the incident; I've seen them at the last minute. My dog ran halfway to me before picking up on dog scent. Nellie ran to the bottom of the concrete wall, wagging its tail, smiling. The other dog snaps through bars. Nellie was in hello mode.
 - (c) She didn't think the dogs acted dangerously because they have never shown aggression.
 - (d) Both dogs are going to a dog trainer.
17. At the completion of interviews, Animal Services staff completed an attack rating report for each dog. This is used as a guide to indicate the most appropriate outcomes. The rating for both dogs was 24, this placed it in the range of 09 to 29 where a low score would indicate a written warning and a higher score would indicate classifying the dog as menacing and could include an infringement for failing to control the dog. *Attachment 5 – Attack rating reports*
18. As a result, both dogs were classified as menacing, this was because:
 - (a) The dogs were immediately aggressive without provocation.
 - (b) Both dogs attacked the victim dog.
 - (c) Comments made by the dog owner indicated they were aware the dogs showed dog aggression.
 - (d) Staff considered that these dogs would pose a threat to other dogs if they were exercised without muzzles.
 - (e) Having the dog muzzled reduces the risk to other animals significantly while allowing the dog to be exercised safely.

LEGAL IMPLICATIONS / RISKS

19. Council may classify a dog as menacing where it is considered the 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. (Section 33A (1) of the Dog Control Act 1996).
20. Upon classification, Council must serve a notice on the owner and they may object to the notice within 14 days. The classification notice was posted to the dog owners on the 2 November 2020 and emailed to their lawyer on 5 November 2020. *Attachment 6 – Menacing Classification dog Tynie and Attachment 7 – Menacing Classification dog Nellie.*
21. Council received an objection to the classification on 13 November 2020. *Attachment 8 – Notice of objection*
22. The objectors have raised three points of objection and dispute:
 - (a) That the dogs (Nellie and Tynie) attacked the complainant's dog while it was on a lead.
 - (b) That the dogs (Nellie and Tynie) may pose a threat to any person, stock, poultry, domestic animal or protected wildlife.
 - (c) That the dogs (Nellie and Tynie) have any characteristics typically associated with the dogs' breed or type.
23. Staff responded to the initial objection on 17 November 2020 and supplied the objector with a copy of the file. At this time the objector was asked whether, once they had perused the file, if they could confirm whether they wished to continue with the objection. On 23 November 2020 Council was advised that the objection should proceed. *Attachment 9 – Correspondence Regarding Objection*
24. The objection must be heard by the panel, and, in deciding whether to uphold or rescind the notice must document their reasoning for their decision.
25. When considering the objection, the panel may either uphold or rescind the classification and must have regard to:
 - (a) The evidence which formed the classification; and
 - (b) The steps taken by the owner to prevent any threat to the safety of persons or animals; and
 - (c) The matters relied on by the objection; and
 - (d) Any other relevant matters.

SIGNIFICANCE

26. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals and decisions in this report against Council's Significance and Engagement Policy. Council acknowledges that in some instances a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.
27. In making this assessment, consideration has been given to the likely impact, and likely consequences for:
 - (a) the current and future social, economic, environmental, or cultural well-being of the district or region
 - (b) any persons who are likely to be particularly affected by decision, or interested in, the issue, proposal, decision, or matter
 - (c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.
28. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the decision is of low significance.

ENGAGEMENT

29. Taking into consideration the above assessment, that the decision is of low significance, officers are of the opinion that the following engagement is required under the Dog Control Act 1996.
30. The objector may be heard in support of any objection made by them.

ATTACHMENTS

1. Attachment 1 Map of area - Griffith and Whitaker - A12082322 [↓](#)
2. Attachment 2 - Photo of Boat Club Building - A12165515 [↓](#)
3. Attachment 3 - Complainant Statement - A12165508 [↓](#)
4. Attachment 4 - Vet invoice - "Finn" - A11936395 [↓](#)
5. Attachment 5 - Attack Rating - Campbell Whitaker and Chloe Griffin - A12165332 [↓](#)
6. Attachment 6 - Menacing Classification Tynie - Campbell Whitaker - A12176829 [↓](#)
7. Attachment 7 - Menacing Classification Nellie - Chloe Griffith - A12165632 [↓](#)
8. Attachment 8 - Notice of Objection to Menacing - Griffith and Whitaker - A12047253 [↓](#)
9. Attachment 9 - Correspondence relating to objection - Griffin and Whitaker - A12165632 [↓](#)

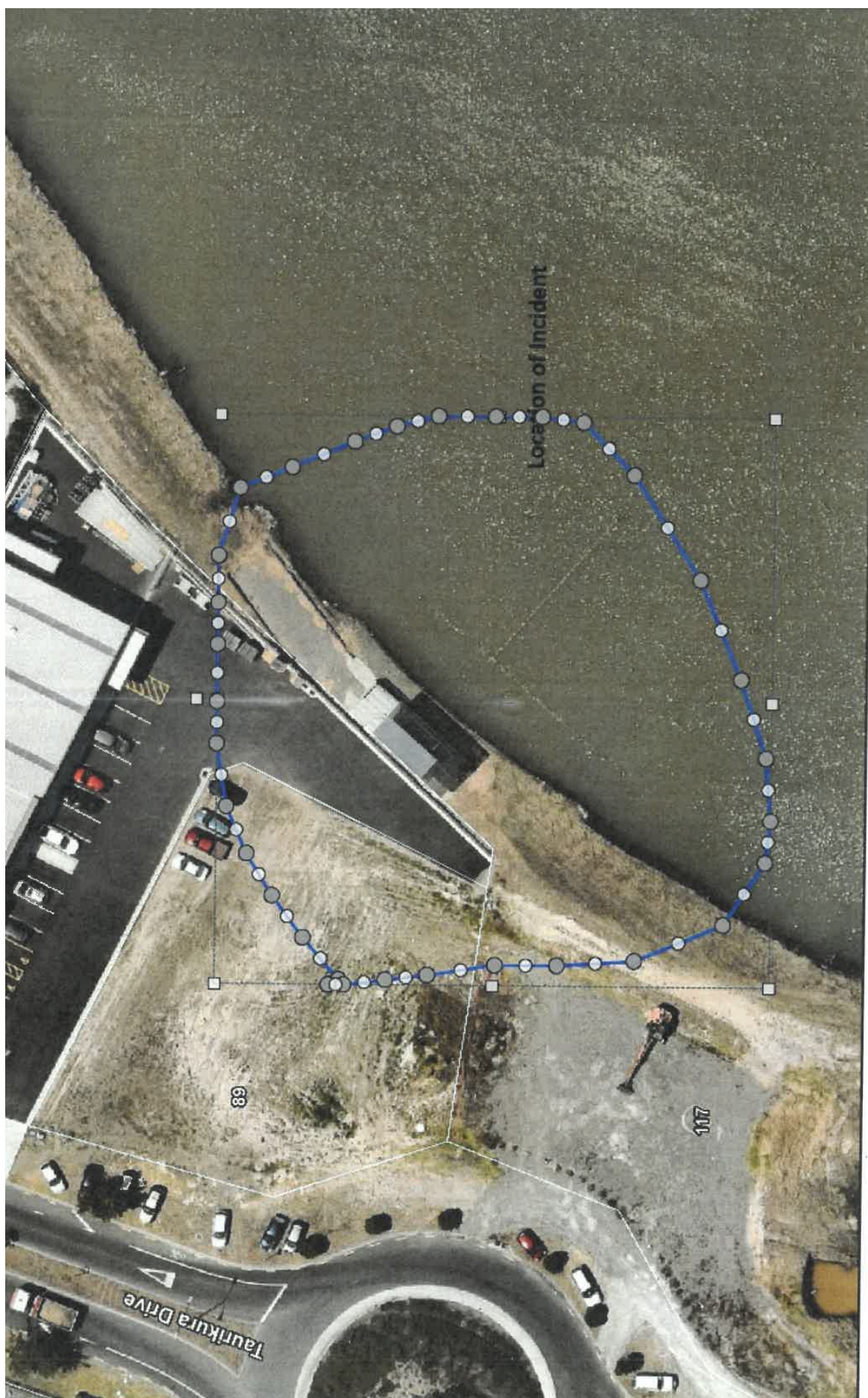


Information shown on this plan is indicative only. The Council accepts no liability for its accuracy and it is your responsibility to ensure that the data obtained from this plan is appropriate and applicable to the end use.



1:2228 @A4
72.41
144.81 Meters

TAURANGA CITY COUNCIL



TAURANGA CITY COUNCIL

1:557 @A4
18.10

36.20 Meters



Information shown on this map is indicative only. The Council accepts no liability for its accuracy and it is your responsibility to ensure that the data contained herein is appropriate and applicable to the end use intended.



Photos of power boat club



STATEMENT

I state that my full name is Ian Richard McKenzie

This statement is true and made with the knowledge that it may be used in court proceedings.


1. On Monday the 26th day of October at approximately 4:00pm, I was with my wife and daughter walking the family dog "Finn", a male Rhodesian Ridgeback / Staffordshire Terrier cross aged approximately 7 years old at an area by the Taurikura Drive pond. "Finn" was on a lead.
2. People pulled up in a van sign written with "Specialised Refinishers" registration number MAC98.
3. A woman got out and walked off, while a male companion let two dogs out of the van.
4. One dog was male, the other female. Both dogs the woman later described as American Staffordshire Terrier cross types, both Brindle or brown, of medium to heavy build, short coat and had wide studded collars.
5. The woman turned and saw me with my dog and yelled out "Oh no, there's another dog here".
6. The two dogs from the van charged at "Finn". From this point on the owners had no control over the actions of their dogs or the outcome of the engagement.
7. The two dogs latched onto "Finn", one biting the left ear and the other dog on the right shoulder area.
8. I managed to grab a hold of one of the attacking dogs by the collar and held it until the lady arrived.
9. "Finn" stood his ground which kept the other attacking dog back until the other owner could pull it away.
10. "Finn" had a bleeding ear.



11. The offending dog owners were extremely apologetic and struggled to get the dogs back in the van.
12. The woman gave me her contact details as Chloe 021 2481863 and offered to pay any expenses.
13. Chloe also stated that the dogs go to Behavioural Trainer. Both dogs were in very good condition and I believe well looked after by their owners.
14. On Tuesday 27th October, "Finn" was Taken to Barkes Corner Vet for treatment to the ear, totalling \$136.50.
15. I was and remain concerned that these dogs immediately, directly and aggressively charged Finn. That if I was not with my wife and daughter, or Finn had slipped his lead, or we were in a more open situation where the dogs angles of attacked weren't as restricted, or the attacked dog was not as robust as Finn or a child was incidentally involved; if any of these conditions existed the outcome could have been very serious.
16. I would particularly add that the dogs were not in any way human aggressive even when I held one by the collar.

Sign.

Date


30/10/2020

Box 3012
Tauranga, Tauranga 3112
: 07 543 0026

GST No: 121-814-617
Client Code: MCKEN83
Client: Mrs McKenzie

Date	Inv No.	Vet	Description	Qty	Net	GST	Total
10 OCT 20	758436	SR	Finn				
			Clavulox 500mg Tablets	10	37.48	5.62	43.10
			Consultation - Small Animal	1	57.39	8.61	66.00
			Rimadyl 75mg Chewable Tablets	3	23.83	3.57	27.40
				Invoice Totals:	118.70	17.80	136.50
Total number of invoices: 1				Invoice Totals:	118.70	17.80	136.50

ATTACK RATING REPORT			
CCM No	880563		
NAME:	Chloe Griffin and Campbell Whitaker		
McGrath	5 to 35	8	
<i>(This section relates to the physical seriousness of the attack).</i>			
Level 5	Rushing person.		
Level 7	Attack person - no visible injury.		
Level 8	Animal injured		
Level 10	Stock Worried		
Level 12	Animal killed - Non Dog		
Level 13	Attack person Causing Injury		
Level 17	Dog Killed		
Level 21	Serious but not hospitalised		
Level 22+	Admitted to Hospital and/or suffers long term effects		
Level 35	Death of a person.		
PUBLIC INTEREST	0 to 3	2	
<i>Public expectation of how the incident should be managed based on seriousness of incident</i>			
LEGISLATIVE INTENT		2	
<i>(Legislative intent has been factored into the report and remains constant @ 2 points).</i>			
CLASSIFIED (unleashed or unmuzzled)	0 or 3	0	
Classified menacing by Breed (Classifications by deed are captured by other aspects of the assessment.)			
VICTIM IMPACT	0 to 5	2	
<i>(This section does not relate to the level of retaliation sought by the victim, rather the effects on the victim as a result of the attack.</i>			
Level 0	The victim is not concerned about the outcome.		
Level 5	The victim is likely to continuously suffer as a result of the attack		
DOG SURRENDERED/DESTROYED	0 to 1	1	
<i>The fact the dog has been surrendered for destruction has some influence on decision however would be inevitable outcome if prosecution pursued.</i>			
Level 0	The dog has been surrendered for destruction or destroyed.		
Level 1	The dog has not been surrendered for destruction.		
OBSERVED AGGRESSION	0 to 2	0	
<i>(Based on the Officers observation only. It should be noted that a dog may act aggressively under certain stimuli and show absolutely no signs of aggression in the absence of that stimuli).</i>			
Level 0	No signs of aggression		
Level 2	Very aggressive		
NEGLIGENCE	0 to 6	4	
<i>(Evaluate the degree of negligence).</i>			
Level 0	Not the result of negligence of the owner.		
Level 2	A lack of understanding of the true nature of dogs		
Level 4	The incident is the direct result of carelessness.		
Level 6	The incident is a result of connivance		
CO-OPERATION	0 to 2	0	
Level 0	Co-operative and forthcoming with information		
Level 2	Unco-operative to the point that Police assistance was required		

PREVIOUS HISTORY		0 to 5	0
Level 0	No history		
Level 1	History without aggression		
Level 3	History with aggression (Over one year old)		
Level 4	History with aggression (under one year old)		
Level 5	Classified as dangerous.		
DOG REGISTERED AT THE TIME OF THE INCIDENT		0 to 2	0
Level 0	The dog is currently registered		
Level 2	The dog is not currently registered		
RESTRAINT		0 to 4	1
Level 0	The dog was under adequate restraint ie caged or fenced in.		
Level 1	The dog was under inadequate restraint ie could have been accidentally approached or could have easily escaped		
Level 2	The dog was at large (unknown).		
Level 4	The dog was at large (known).		
KNOWN BY OWNER TO BE DANGEROUS		0 to 4	0
Level 0	Not known by the owner to have shown previous aggression.		
Level 4	Known by the owner to have previously attacked.		
RECURRENCE LIKELIHOOD		0 to 3	2
Level 0	The circumstances relating to this incident are such that a reoccurrence is highly unlikely		
Level 3	The circumstances relating to this incident are such that a reoccurrence is highly likely		
TRAINED TO BE AGGRESSIVE		0 to 2	0
Level 0	Not trained at all to be aggressive.		
Level 1	Encouraged to be a guard dog.		
Level 2	Professionally trained guard dog.		
DAMAGES		0 to 1	0
Level 0	No damages or damages paid voluntarily.		
Level 1	Did not voluntarily offer to pay/Damages unpaid.		
BREED CHARACTERISTICS		0 to 4	2
<i>This section is evaluated mainly based on our experience. In the case of a mixed breed, evaluate the most predominant identified breed. Example – Pit Bull type dogs are renowned for their propensity to attack.</i>			
Level 0	Not known for its aggression.		
Level 1	Known as a guard dog breed.		
Level 4	Notorious for attacking.		
TOTAL			24
09 – 29 = WARNING NOTICE, MENACING CLASS & OR INFRINGEMENT			
30 – 36 = DANGEROUS DOG CLASSIFICATION & OR INFRINGEMENT			
Over 37 = PROSECUTION			
General Comments and Recommendation:			
Discussed with BL - Menacing classification both dogs			

2 November 2020

CAMPBELL WHITAKER

TAURANGA 3112

Dear Campbell

**Notice of classification of dog as menacing dog by deed
Section 33A, Dog Control Act 1996**

Dog: 48471

Reference: Tynie

Complaint number: 880563

At 4:00pm on Monday 26 October 2020 your dog along with a second dog attacked a dog which was on a lead with the owner in Taurikura Drive.

This letter is to inform you that this dog has been classified as a menacing dog under section 33A (2) of the Dog Control Act 1996.

This is because we believe your dog may pose a threat to any person, stock, poultry, domestic animals or protected wildlife because of the observed/reported behaviour of the dog.

A summary of the effect of the classification and your right to object is provided below.

Yours sincerely



Brent Lincoln
Animal Services Team Leader:
Tauranga City Council
07 577 7000
info@tauranga.govt.nz

Effect of classification as menacing dog

Sections 33E, 33F and 36A, Dog Control Act 1996

You—

- a) must not allow the dog to be at large or in any public place or in any private way (other than when confined completely within a vehicle or cage) without the dog 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 produce to the Tauranga City Council, within 1 month after receipt of this notice, 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) where a certificate under paragraph (b)(ii) is produced to the Tauranga City Council, produce to the Tauranga City Council, within 1 month after the date specified in that certificate, a further certificate under paragraph (b)(i).

You will commit an offence and be liable on conviction to a fine not exceeding \$3000 if you fail to comply with paragraph (a) above.

A dog control officer or dog ranger may seize and remove the dog from you if you fail to comply with all of the matters in paragraph (a) above. The officer or ranger may keep the dog until you demonstrate that you are willing to comply with paragraphs (a).

As from 1 July 2006, you are also required, for the purpose of providing permanent identification of the dog, to arrange for the dog to be implanted with a functioning microchip transponder. This must be confirmed by making the dog available to the Tauranga City Council in accordance with the reasonable instructions of the Tauranga City Council for verification that the dog has been implanted with a functioning microchip transponder of the prescribed type and in the prescribed location.

You will commit an offence and be liable on conviction to a fine not exceeding \$3000 if you fail to comply with this requirement within two months after the dog is classified as menacing.

If the dog is in the possession of another person for a period not exceeding 72 hours, you must advise that person of the requirement to not allow the dog to be at large or in any public place or in any private way (other than when confined completely within a vehicle or cage) without the dog being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction. You will commit an offence and be liable on conviction to a fine not exceeding \$500 if you fail to comply with this requirement.

Full details of the effect of the classification of a dog as menacing are provided in the Dog Control Act 1996.

Right of objection to classification under section 33A

Section 33B, Dog Control Act 1996

You may object to the classification of your dog as menacing by lodging with the Tauranga City Council a written objection within 14 days of receipt of this notice setting out the grounds on which you object.

You have the right to be heard in support of your objection and will be notified of the time and place at which your objection will be heard.

RE: RE Menacing Classification Chloe Griffin and Campbell Whitaker

23 November 2020

Dear Bev

Thank you for your response I will commence the process to have the matter heard by the Council Hearing Panel.

The Hearing Panel is unaware of any of the facts at this point and therefore can have no bias toward your client.

My comments in relation to s62 of the Act referred primarily to s62(1) (b) where property includes the victim dog.

Kind Regards

Brent Lincoln | Team Leader: Animal Services

Tauranga City Council | 07 577 7049 | 0212439849 brent.lincoln@tauranga.govt.nz | www.tauranga.govt.nz

From: Bev Edwards <bev@straighttalk.nz>

Sent: Sunday, 22 November 2020 6:44 PM

To: Brent Lincoln <Brent.Lincoln@tauranga.govt.nz>

Subject: Re: RE Menacing Classification Chloe Griffin and Campbell Whitaker

CAUTION: External Email.

Dear Brent

My clients instruct that they wish to dispute the allegations of fact made by the 'complainant'. It is my instructions that the statement given by said complainant is misleading and deceptive; and he is put to the proof of his statement.

Kindly proceed with the application to table the objection to the menacing classifications with the Council Hearing Committee.

Finally, it is my opinion that s62 Dog Control Act 1996 is in abeyance, pending the finalisation of this matter. The fact or otherwise of my clients dogs to be '*known to be dangerous*' assumes that the Council has predetermined the matter and that my clients will not receive a fair & unbiased Council Hearing. Kindly confirm that this is not the situation.

regards

Bev Edwards

On 17 November 2020 at 09:16 Brent Lincoln <Brent.Lincoln@tauranga.govt.nz> wrote:

Dear Bev

In response to your letter of 13 November 2020, please find attached copies of all documentation held by Council in relation to the menacing classification of the dogs Nellie and Tynie owned by Chloe Griffith and Campbell Whitaker.

As specified in the classification notices previously provided to you, both dogs have been classified menacing in accordance with Section 33A(2) of the Dog Control Act 1996 for an attack and therefore Council has made no assessment of the dogs in relation to your request pursuant to s33A (1)(b)(ii) and therefore I have not provided information with regard to the breed or type of dog in relation to the classification per se. In saying that, the last section of the attack rating report does refer to "breed characteristics" and this has been rated at 2 out of 4 as these are a dominate breed dog that can have a propensity to display aggression to other dogs in particular. The attack rating form is a guide only to give an indicative seriousness of the event.

For the purpose of this disclosure we have included:

1. The original complaint ref 879295 dated 27 Oct 2020 for Chloe Griffith.
2. A copy of this complaint modified for the second dog owner ref 880563 dated 27 Oct 2020 for Campbell Whitaker.
3. The complainant's statement.
4. A map showing the location of the attack.
5. The vet invoice.
6. Email from vet, including photo and clinical record.
7. Investigation sheet – statement by Chloe Griffin.
8. Attack Rating Report – Chloe Griffin
9. Attack Rating Report Campbell Whitaker.
10. Classification Notice Campbell Whitaker.
11. Classification notice Chloe Griffin.
12. Separate photo of injury to ear.

I have noted and accept that the requirement to neuter the dog Tynie has been suspended until the objection to the classification has been withdrawn or resolved.

I note it is disputed that the attack took place, as can be seen from the information provided to you, the owner of the dog has witnessed the attack, the victim dog has sustained injuries and there is a report from a veterinarian supporting this. Once you have had an opportunity to peruse the attached documents, can you please confirm that you wish to proceed with the objection to the menacing classifications and at that time I will lodge an application with Council Hearing Committee.

Please note that it is my opinion, unless persuaded otherwise, that the requirement of s33E(1)(a) still applies until such time that the Hearing Committee makes a determination on this objection, should you wish to proceed.

I would also like to bring your attention to s62 of the Dog Control Act 1996, which Council says applies whether or not the dog is classified as a menacing dog.

I have, at this stage redacted the name and personal details of the dog owner, complainant and their dog.

Kind Regards

Brent Lincoln | Team Leader: Animal Services

Tauranga City Council | 07 577 7049 | 0212439849 brent.lincoln@tauranga.govt.nz | www.tauranga.govt.nz

Straighttalk Law



**Beverley Edwards - BA LL.B
Barrister and Solicitor**

1ST floor SMART BUSINESS CENTRE
65 Chapel street
Tauranga

m. 0211229880
bev@straighttalk.nz

Straight forward legal solutions

13 November 2020

To Tauranga City Council

Brent Lincoln
Animal Services Team Leader:
Tauranga City Council
07 577 7000
info@tauranga.govt.nz

NOTIFICATION of Objection to classification under section 33A

Section 33B, Dog Control Act 1996

NOTIFICATION of Objection to effect of s33E (1)(b)(i)

Kindly be advised that ito s33B and 33E of the Dog Control Act 1996, I represent the following owners who have been issued with a Menacing Dog Deed:

1. Chloe Griffin
Dog: 44194
Complaint: 879295
2. Campbell Whitaker
Dog: 48471
Complaint: 880563

You are formally requested to provide all evidence that the Council relies on ito s33A (1)(b) (i) of 'any observed or reported behaviour of the dog'; this is to include any

documentation/statements/reports that relate to these Complaints. Failure to do so will be a breach of natural justice.

You are further requested to provide any evidence that the Council relies on its s33A (1)(b) (ii) of *'any characteristics typically associated with the dog's breed or type.'*

Objection to s33A classification

It is disputed that the two dogs attacked a dog which was on a lead with the owner in Taurikura Drive.

It is disputed that either dog 'may pose a threat to any person, stock, poultry, domestic animals or protected wildlife because of the observed/reported behaviour of the dog.'

It is disputed that either dog has *'any characteristics typically associated with the dog's breed or type.'* You are requested to specify exactly what breed or type you allege either dog is.

Evidence of the dogs' age/history/training will be lead at the hearing. An expert witness may be called in their case.

Objection to effect of s33E (1)(b)(i)

The owner of dog 48471 will object to the territorial authority notice to neuter said dog, until the classification objection has been finalised.

As my clients have the right to be heard in support of their objection, kindly notify myself of the time and place at which their objection will be heard.

Kindly confirm receipt of this letter by return email.

Yours sincerely



Beverley Edwards

Barrister & Solicitor

RE: RE Menacing Classification Chloe Griffin and Campbell Whitaker

23 November 2020

Dear Bev

Thank you for your response I will commence the process to have the matter heard by the Council Hearing Panel.

The Hearing Panel is unaware of any of the facts at this point and therefore can have no bias toward your client.

My comments in relation to s62 of the Act referred primarily to s62(1) (b) where property includes the victim dog.

Kind Regards

Brent Lincoln | Team Leader: Animal Services

Tauranga City Council | 07 577 7049 | 0212439849 brent.lincoln@tauranga.govt.nz | www.tauranga.govt.nz

From: Bev Edwards <bev@straighttalk.nz>

Sent: Sunday, 22 November 2020 6:44 PM

To: Brent Lincoln <Brent.Lincoln@tauranga.govt.nz>

Subject: Re: RE Menacing Classification Chloe Griffin and Campbell Whitaker

CAUTION: External Email.

Dear Brent

My clients instruct that they wish to dispute the allegations of fact made by the 'complainant'. It is my instructions that the statement given by said complainant is misleading and deceptive; and he is put to the proof of his statement.

Kindly proceed with the application to table the objection to the menacing classifications with the Council Hearing Committee.

Finally, it is my opinion that s62 Dog Control Act 1996 is in abeyance, pending the finalisation of this matter. The fact or otherwise of my clients dogs to be '*known to be dangerous*' assumes that the Council has predetermined the matter and that my clients will not receive a fair & unbiased Council Hearing. Kindly confirm that this is not the situation.

regards

Bev Edwards

On 17 November 2020 at 09:16 Brent Lincoln <Brent.Lincoln@tauranga.govt.nz> wrote:

Dear Bev

In response to your letter of 13 November 2020, please find attached copies of all documentation held by Council in relation to the menacing classification of the dogs Nellie and Tynie owned by Chloe Griffith and Campbell Whitaker.

As specified in the classification notices previously provided to you, both dogs have been classified menacing in accordance with Section 33A(2) of the Dog Control Act 1996 for an attack and therefore Council has made no assessment of the dogs in relation to your request pursuant to s33A (1)(b)(ii) and therefore I have not provided information with regard to the breed or type of dog in relation to the classification per se. In saying that, the last section of the attack rating report does refer to "breed characteristics" and this has been rated at 2 out of 4 as these are a dominate breed dog that can have a propensity to display aggression to other dogs in particular. The attack rating form is a guide only to give an indicative seriousness of the event.

For the purpose of this disclosure we have included:

1. The original complaint ref 879295 dated 27 Oct 2020 for Chloe Griffith.
2. A copy of this complaint modified for the second dog owner ref 880563 dated 27 Oct 2020 for Campbell Whitaker.
3. The complainant's statement.
4. A map showing the location of the attack.
5. The vet invoice.
6. Email from vet, including photo and clinical record.
7. Investigation sheet – statement by Chloe Griffin.
8. Attack Rating Report – Chloe Griffin
9. Attack Rating Report Campbell Whitaker.
10. Classification Notice Campbell Whitaker.
11. Classification notice Chloe Griffin.
12. Separate photo of injury to ear.

I have noted and accept that the requirement to neuter the dog Tynie has been suspended until the objection to the classification has been withdrawn or resolved.

I note it is disputed that the attack took place, as can be seen from the information provided to you, the owner of the dog has witnessed the attack, the victim dog has sustained injuries and there is a report from a veterinarian supporting this. Once you have had an opportunity to peruse the attached documents, can you please confirm that you wish to proceed with the objection to the menacing classifications and at that time I will lodge an application with Council Hearing Committee.

Please note that it is my opinion, unless persuaded otherwise, that the requirement of s33E(1)(a) still applies until such time that the Hearing Committee makes a determination on this objection, should you wish to proceed.

I would also like to bring your attention to s62 of the Dog Control Act 1996, which Council says applies whether or not the dog is classified as a menacing dog.

I have, at this stage redacted the name and personal details of the dog owner, complainant and their dog.

Kind Regards

Brent Lincoln | Team Leader: Animal Services

Tauranga City Council | 07 577 7049 | 0212439849 brent.lincoln@tauranga.govt.nz | www.tauranga.govt.nz