



# **AGENDA**

## **Regulatory Hearings Panel meeting Thursday, 11 November 2021**

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

**Date: Thursday, 11 November 2021**

**Time: 9.30am**

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

**Marty Grenfell  
Chief Executive**

# Terms of reference – Regulatory Hearings Panel

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## Membership

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

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## 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

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**1 OPENING KARAKIA**

**2 APOLOGIES**

**3 DECLARATION OF CONFLICTS OF INTEREST**

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## **4      CONFIRMATION OF MINUTES**

### **4.1      Minutes of the Regulatory Hearings Panel meeting held on 5 August 2021**

**File Number:**            **A13030829**

**Author:**                **Robyn Garrett, Team Leader: Committee Support**

**Authoriser:**           **Robyn Garrett, Team Leader: Committee Support**

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### **RECOMMENDATIONS**

That the Minutes of the Regulatory Hearings Panel meeting held on 5 August 2021 be confirmed as a true and correct record.

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### **ATTACHMENTS**

- 1.      Minutes of the Regulatory Hearings Panel meeting held on 5 August 2021**





# **MINUTES**

## **Regulatory Hearings Panel meeting Thursday, 5 August 2021**

**Order of Business**

<b>1</b>	<b>Opening Karakia .....</b>	<b>3</b>
<b>2</b>	<b>Apologies .....</b>	<b>3</b>
<b>3</b>	<b>Declaration of conflicts of interest .....</b>	<b>3</b>
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4.1	Adoption of Hearings Procedures.....	3
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<b>5</b>	<b>Discussion of late items .....</b>	<b>7</b>

**MINUTES OF TAURANGA CITY COUNCIL  
REGULATORY HEARINGS PANEL MEETING  
HELD AT THE TAURANGA CITY COUNCIL, TE AWANUI HARBOUR ROOM, 91 WILLOW  
STREET, TAURANGA  
ON THURSDAY, 5 AUGUST 2021 AT 9.30AM**

**PRESENT:** Mrs Mary Dillon, Mr Terry Molloy, Mr Alan Tate

**IN ATTENDANCE:** Brent Lincoln (Team Leader: Animal Services), Coral Hair (Manager: Democracy Services), Nigel McGlone (Manager: Environmental Regulation), Robyn Garrett (Team Leader: Committee Support).

## **1 OPENING KARAKIA**

Chairperson Mary Dillon opened the hearing with a karakia.

The Panel acknowledged the passing of Tauranga kaumatua Dr Kihi Ngatai and noted his significant contribution to the community.

## **2 APOLOGIES**

### **APOLOGY**

#### **COMMITTEE RESOLUTION RHP1/21/1**

Moved: Mr Alan Tate

Seconded: Mr Terry Molloy

That the apology for absence received from Puhirake Ihaka be accepted.

**CARRIED**

## **3 DECLARATION OF CONFLICTS OF INTEREST**

Nil

## **4 BUSINESS**

### **4.1 Adoption of Hearings Procedures**

**Staff** Coral Hair, Manager: Democracy Services

#### **Key Points**

- Noted the addition of a quorum requirement of two into the Terms of Reference.

**COMMITTEE RESOLUTION RHP1/21/2**

Moved: Mr Terry Molloy

Seconded: Mr Alan Tate

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.

**CARRIED**

**4.2 Objection to Menacing Dog Classification - Griffin and Whitaker**

**Staff** Brent Lincoln, Team Leader: Animal Services

**Key Points**

- The Dog Control Act 1996 (DCA) required all reasonable steps to be taken by dog owners to avoid their dogs causing injury or distress to people or animals.
- The incident could have been avoided by the dogs being on leashes.
- Explained the process and options available under the DCA. Considered the most appropriate action in this case was to classify the dogs as menacing; they had met the threshold as had attacked another dog.
- Classifying the dogs was about managing future risk as it would require the dogs to be muzzled in public. A muzzled dog was a safe dog; wearing a muzzle does not impact on the wellbeing of the dog.
- Council's Dog Management Bylaw 2018 requires a dog to be kept under effective control so it cannot cause nuisance or danger to any person or other animal or enter private property.
- Outlined the offences and penalties under the law and the bylaw.
- Considered that dogs would default to embedded behaviour of their breed; a strong loyal protective dog can be aggressive. Despite the best training, a dog may default to natural tendencies; this breed was a dominant breed and can be aggressive to other dogs.

**In response to questions**

- The breed characteristics were of bull breeds, the dogs were initially bred to control aggressive bulls by attacking/grabbing various body parts. This evolved over time into a blood sport and dog fighting, particularly in the United States. The American Pitbull Terrier and American Staffordshire Terriers are similar in appearance; however, the American Staffordshire was generally less aggressive than the American Pitbull. Confirmed that these dogs were both registered as American Staffordshires.
- The breed of dog was generally about knee height.

**Objector** Bev Edwards, Solicitor  
Chloe Griffin and Campbell Whitaker, dog owners

### **Key Points**

#### **Ms Edwards**

- Clarified and outlined the various documents available to the Panel.
- Noted the range of offences and the range of options available to council as penalties.
- Disputed the classification as menacing. This incident was a first and only offence; one dog was over three years old and had not been involved in any issues previously.
- The objectors would accept a fine of \$300 for dogs not being under control.
- Disputed the veracity of the statement of the complainant and did not agree that the dogs posed a threat or attacked the other dog. These dogs were also bitten, but no action had been taken against the complainant and his dog.
- The owners were concerned about having to neuter the currently unneutered dog, in terms of the timing of the procedure on the health of the dog. Also concerned that a muzzled dog in public made that dog defenceless and a target for attack by other dogs.
- Noted reservations around breed-specific legislation; various breeds had been targeted through the years e.g. rottweilers previously, now pit bulls.
- Emphasised that these dogs were registered American Staffordshire terriers with known breeding.
- Submitted that the Panel should take account of the dogs' before and after behaviour and the range of options available, rather focusing solely on this incident.

#### **Ms Griffin**

- Ms Griffin was an experienced pitbull and staffordshire owner.
- Ms Griffin recounted her version of the incident. Explained the location of the event; she had not seen any dog or person before exiting the vehicle and only saw the complainant at the last minute as the complainant was hidden by the shipping container. Considered her dog Nellie (off lead) was acting in a friendly manner and that the complainant's dog (on lead) snapped at Nellie through the bars of the structure which Nellie had entered. The complainant's dog snapped and bit Nellie, dog Tynie arrived at this stage, was bitten and bit back. Both dogs were then returned to the owners' van and secured.
- The complainant was angry and insisted that Ms Griffin must have seen him and his dog; Ms Griffin provided her name and number.
- The dogs were subsequently sent for retraining; the owners provided references from dog trainers documenting the dogs' good behaviour, general demeanour and absence of signs of aggression.
- Did not consider that muzzling and being on leash was required for the dogs.

#### **Mr Whitaker**

- Dog Tynie was not initially involved but reacted to seeing dog Nellie in distress, and exchanged barks and bites with the complainant's dog.
- Considered that the complainant should have made himself known and visible as soon as he saw Ms Griffin and Nellie.
- Deliberately chose areas to exercise the dogs that did not have other dogs around, had thought the area was clear.

#### **In response to questions**

- Noted that the owners had worked with various dog trainers; one before the incident and several since the incident; and were continuing to work with one trainer.
- People were intimidated by the breed of the dogs and could be unpleasant (Ms Griffin had experienced verbal abuse; dog Nellie had been kicked) and so tended to avoid areas with other people/dogs. The dogs had no previous record with Council.

- There was no plan to breed the dogs; would be neutered at about 2.5 years old when fully matured.
- Disputed that both dogs were attacking the complainant's dog at the same time.
- The owners had not taken the dogs to the vet as they were competent to provide their own first aid/wound treatment. The offer to pay the complainant's vet costs was to try and calm the situation.
- Clarification was provided around the location and position of dogs around the structure in terms of access to bite.
- The owners' van could have been visible to the complainant.

## Right of Reply

**Staff** Brent Lincoln, Team Leader: Animal Services

- It was an owner's choice about the appropriate age to neuter a dog; vets would generally be comfortable to neuter a nearly two-year old dog.
- There had not been many cases reported to Council of muzzled dogs being attacked, could only think of one instance.
- Considered that a person with a dog on a lead was acting responsibly to do what was required. The overall principle of the DCA was that an owner must make all reasonable efforts to control a dog; dogs off lead could approach a dog on lead.
- Advised that the courts had held that where two dogs off lead interact, then no blame could be attributed to either dog; a different scenario when one dog was on lead.

The Panel adjourned at 10.30am for deliberations.

The Panel reconvened 11.19am.

## Decision

The Panel decided to rescind the classification of both dogs as menacing.

Factors taken into consideration in reaching the decision included:

- s33B(2) of the Dog Control Act – the Panel considered the further evidence and information provided in the hearing and noted the disputed views of the incident between the complainant and the objectors. The Panel also noted the further steps taken by the owners to ensure the dogs' behaviour had improved, with subsequent training and behaviour management undertaken.
- The Panel considered the threat the dogs might pose to people or animals, and concluded there was minimal risk of the dogs reoffending – there was no history of offending or any other reported incidents and the owners had demonstrated responsibility and awareness, and taken steps to address the safety concerns.

The Panel noted the overall obligations imposed on dog owners by s5 of the Dog Control Act and reminded the owners that they had primary responsibility to ensure that the dogs posed no further threat, and that they took all reasonable steps to ensure the dogs did not injure or cause distress to people or other animals. It was suggested that the owners had muzzles available to use, kept the dogs on lead when practicable and neutered the dog when appropriate.

The Chairperson concluded that this had been a difficult decision to make and it was up to the owners to ensure there was no repeat of the incident.

### **COMMITTEE RESOLUTION RHP1/21/3**

Moved: Mr Alan Tate

Seconded: Mr Terry Molloy

That the Regulatory Hearings Panel:

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

**CARRIED**

## **5 DISCUSSION OF LATE ITEMS**

Nil.

**The meeting closed at 11.22am**

**The minutes of this meeting were confirmed as a true and correct record at the Regulatory Hearings Panel meeting held on 11 November 2021.**

.....  
**CHAIRPERSON**

## 5 BUSINESS

### 5.1 Objection to Dangerous Dog Classification - Stacey Tawa

**File Number:** A12955260

**Author:** Brent Lincoln, Team Leader: Animal Services

**Authoriser:** Barbara Dempsey, General Manager: Regulatory & Compliance

Please note that this report contains confidential attachments.

Public Excluded Attachment	Reason why Public Excluded
Item 5.1 - Objection to Dangerous Dog Classification - Stacey Tawa - Attachment 2 - Photographs of victim's injuries	s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons.

### PURPOSE OF THE REPORT

1. To hear an objection against the classification of the dog Gucci as a dangerous dog.

### RECOMMENDATIONS

That the Regulatory Hearings Panel:

- (a) Accept the notice of objection and either:
  - (i) Upholds the classification; or
  - (ii) Rescinds the classification.

### EXECUTIVE SUMMARY

2. The objector is the owner of a German Short Haired Pointer Labrador Retriever Cross dog called Gucci.
3. On 21 January 2021 the owner was in a campervan which was parked on the front lawn of the property where the owner was living, Gucci was asleep in the campervan. (*attachment 1 – Aerial photograph*)
4. The victim approached the front gate of the property, Gucci ran from the camper, barking and growling aggressively. He stopped at the front gate with his paws on top of the 1.2-metre-high gate.
5. The owner came out of the camper and in a panicked voice told the victim to move back from the gate. She was also yelling at the dog.
6. The victim moved back from the gate and was on the curb by the road when the dog jumped the gate and attacked twice.
7. The victim was wearing leather working gloves at the time, but the dog caused punctures to both hands as he defended himself and required a hospital visit and received stitches. (*attachment 2 – Photographs of injuries*)
8. Council proceeded with a prosecution during which the owner entered a guilty plea, the Court then took the personal circumstances into account and discharged her without conviction and declined to make a destruction order.
9. The owner was required to make payment of \$500 to the victim and \$500 to Council.



10. Council then classified the dog as a dangerous dog. (*attachment 3 – Dangerous dog classification*)

## BACKGROUND

11. On the morning of the attack, the victim who owns the neighbouring property, had engaged a contractor to trim trees along the fence line between the two properties. They started around 08:30 / 09:00am and finished around 12:00pm.
12. Unbeknown to the victim, the dog Gucci had been tied up near the fence line for the majority of this time.
13. At approximately 12:30 pm the victim approached the front gate of the property where the dog was kept. His intent was to ask permission to recover 2 or 3 branches which had fallen over the fence.
14. Before he could do anything, the dog Gucci attacked. He remained on the footpath where he was attacked twice by the dog. After the initial attack, the dog again rushed at him biting his hands.
15. The attack was unprovoked and left lasting injuries for the victim, both physically and psychologically.
16. The victim gave evidence that he was wearing leather gloves at the time and these probably saved him suffering worse injury. Blood was visible on the inside of the gloves. (*attachment 4 – Victims statement*).
17. The dog owner was interviewed and admitted her dog jumped the gate and attacked the victim. (*attachment 5 – Dog Owner Interview*)
18. Staff then completed an attack rating form; this is used to give guidance on what is likely to be the most appropriate action to take in relation to the attack. (*attachment 6 – Attack rating form*).
19. During the trial a Council staff member who was a Dog Control Officer at the time of the attack gave evidence, which was accepted by the defence, as to the high level of aggression shown by the dog. (*attachment 7 – Brief of evidence Brent Foster*)
20. At the conclusion of the court case I discussed with the dog owner that we would classify the dog as a dangerous dog, this was verbally accepted by the dog owner.
21. Section 31(1)(b) of the Dog Control Act 1996 states a Territorial Authority must classify a dog as dangerous if the authority has, on the basis of sworn evidence attesting to the aggressive behaviour by the dog reasonable grounds to believe that the dog constitutes a threat to the safety of any person.
22. The victim gave sworn evidence in Court as to the unprovoked aggressive nature of the dog when it attacked him.
23. On 13 September 2021 the dog Gucci was classified as a dangerous dog.
24. On 19 September 2021 Council received a notice of objection to the classification. (*attachment 8 – Notice of Objection*)
25. Where any dog is classified as a dangerous dog under subsection (1)(b), the owner may, within 14 days of the receipt of notice of that classification, object to the classification in writing to the territorial authority, and shall be entitled to be heard in support of his or her objection.
26. 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.
27. The owner of a dog classified as dangerous must:
    - (a) Ensure the dog is kept in secure fenced portion of the property that is not necessary to enter to obtain access to at least one door of any dwelling.
    - (b) Ensure the dog is muzzled and controlled by a lead when at large or in a public place.
    - (c) Neuter the dog.
  28. During the court hearing the defence produced photographs of a caged area on the property which they had prior to the attack. This caged area would be suitable to meet the obligations of point 25(a) above. (*attachment 9 – Cage photograph*)
  29. Any owner who knows their dog has attacked a person should, for the safety of the public, ensure their dog is muzzled and controlled by a lead in public.
  30. The dog Gucci is already neutered.
  31. This dog is very territorial and has high potential to attack again if not securely contained on the property. Additionally, unless the dog is securely contained while on the property, any person entering the property lawfully would be at high risk of being attacked.

### LEGAL IMPLICATIONS / RISKS

32. While not legally liable, if the classification is revoked and the dog does attack again then there could be considerable negative media response.

### ATTACHMENTS

1. Aerial photo of property - A12957319 [↓](#)
2. Photographs of victim's injuries - A12955180 - Public Excluded
3. Dangerous Dog Classification - A12898503 [↓](#)
4. Victim's statement - A12169908 [↓](#)
5. Interview of dog owner - A12189979 [↓](#)
6. Attack Rating - A12177178 [↓](#)
7. Brief of Evidence - Brent Foster - A12957339 [↓](#)
8. Notice of objection to dangerous dog classification - Stacey Tawa - A12957702 [↓](#)
9. Photograph of caged area for Gucci - A12957315 [↓](#)





## Notice of classification of dog as a dangerous dog

### Section 31, Dog Control Act 1996

To: Stacey Tawa

Address: 93 Bethlehem Road  
Tauranga 3110

Dog: Gucci a German Short Haired Pointer Labrador Retriever Cross

This notice is to notify you that this dog has been classified as a dangerous dog.

This is because under section 31(1)(b)

Tauranga City Council has, on the basis of sworn evidence attesting to aggressive behaviour by the dog on one or more occasions, reasonable grounds to believe your dog constitutes a threat to the safety of any person, stock, poultry, domestic animals or protected wildlife.

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

  
Signed

13 September 2021  
Date



For the purposes of the Dog Control Act 1996, you are the owner of a dog if:

- you own the dog
- you have the dog in your possession (otherwise than for a period not exceeding 72 hours for the purpose of preventing the dog causing injury, or damage, or distress, or for the sole purpose of restoring a lost dog to its owner)
- you are the parent or guardian of a person under 16 who is the owner of the dog and who is a member of your household living with and dependent on you.

**Effect of classification as dangerous dog**

Sections 32 and 36A, Dog Control Act 1996

You are required:

- a) within one month after receipt of this notice, to ensure that the dog is kept within a securely fenced portion of your property that it is not necessary to enter to obtain access to at least one door of any dwelling on the property.

**Note:** keeping a classified dangerous dog in the house or at large on your property does not comply with paragraph (a) above. If your dog is in your house or at large on your property it must be muzzled and controlled by a lead.

- b) not to 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:
  - i) 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
  - ii) the dog being controlled on a leash (except in a designated dog exercise area); and
- c) to produce to Tauranga City Council, within one 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
- d) where a certificate under paragraph (c)(ii) is produced to Tauranga City Council, produce to Tauranga City Council within one month after the date specified in that certificate a further certificate under paragraph (c)(i); and
- e) in respect of every registration year commencing after receipt of this notice, to pay dog control fees for that dog at 150% of the level that would apply if the dog were not classified as a dangerous dog; and
- f) not to dispose of the dog to any other person without the written consent of the territorial authority in whose district the dog is to be kept.

You will commit an offence and be liable on conviction to a fine not exceeding \$3000 if you fail to comply with all of the matters in paragraphs (a) to (f) above. In addition, on conviction the court must order the destruction of the dog unless satisfied that the circumstances of the offence were exceptional and do not justify the destruction of the dog.



An Animal Services officer may seize and remove the dog from you if you fail to comply with all of the matters in paragraphs (a) to (f) above. The officer may keep the dog until you demonstrate that you are willing to comply with paragraphs (a) to (f).

You will also commit an offence and be liable on conviction to a fine not exceeding \$3000 if you sell or otherwise transfer the dog, or offer to do so, to any other person without disclosing that the dog is classified as a dangerous dog.

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 classification as a dangerous dog are provided in the Dog Control Act 1996.

**Right of objection to classification**

Section 31(3), Dog Control Act 1996

You may object to the classification by lodging with Tauranga City Council a written objection within 14 days of receipt of this notice setting out the grounds on which you object. You are entitled to be heard in support of the objection and will be notified of the time and place at which your objection will be heard.

**Note:** in the event of a Council hearing the council report and minutes of the hearing will be posted on the council's website. Other documentation and correspondence may also be made available to the public upon request and after considering any legal obligations.

LB 2021

## STATEMENT

I state that my full name is Theodore EBBING

I reside at , Mount Maunganui

My phone number is

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

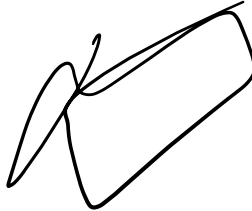
1. On Thursday 21 January 2021 at approximately 12:30pm. I was working on my rental property 91 Bethlehem Road.
2. I was cutting trees along the boundary of 91 and 93 Bethlehem Road. We started this work at approximately 8:30am – 9am. Some of the cut branches had fallen onto the neighbour's property at 93 Bethlehem Road.
3. I walked to the front gate of 93 Bethlehem Road. The gate was closed.
4. I intended to get the branches that had fallen onto the neighbour's property.
5. There was a white campervan park on the left front lawn near the boundary fence between the two properties.
6. A Pitbull type dog ran out of the campervan. This dog was coloured white and gold of medium size. It came to the front gate and put both paws on top of the gate. The dog was barking and growling aggressively.
7. A woman also came out from the campervan and in panicked voice was telling me to move back and was also yelling at her dog.
8. I moved back from the gate and was nearly standing on the road.
9. I was wearing leather gloves.
10. The dog jumped the gate and bit both my hands as I was trying to defend myself.
11. The dog attacked twice.
12. The bite piecing the leather gloves and causing a 1 cm cut that required stiches (probably 6 -7) and 4 puncture wounds.



13. The woman came through the gate and physically got the dog under control and took the dog back into the campervan and shut the door returning with a towel and was very apologetic.

Signed

Date 22/1/2021

A handwritten signature in black ink, consisting of a stylized, cursive 'K' or similar character, followed by a rectangular box that appears to be a placeholder for a stamp or a redacted area.

CM 895621

# DOG CONTROL INVESTIGATION SHEET

## Details Of Complaint (Office Use Only)

On: 21 / 1 / 21 received a complaint from Theodore Ebbing  
 alleging that on Thurs day, the 21st day of January 2021, a dog (description) Pitbull breed  
type, White & gold from (address) 93 Bethlehem Rd did bite the  
complainant on the hand.

Date Complaint Investigated        /        /       

## Alleged Offender's Details (Office Use Only)

1) The Dog Register or 2) Investigations Revealed  
 Given Name Stacy Surname Tawa D.O.B.        M ☒ F ☐  
 Address 93 Bethlehem Rd Phone (Hm)         
 As being the owner / carer of a Colour White, tan patches Breed GSP / Labrador  
 Sex: M ☒ F ☐ Age 2Y3M Desexed ☐ Yes ☒ No Name Gucci Registration No. 2021 / 12695  
 Microchip No. 934 0000 9021 8257  
 Name of registered owner (if different):       

## Investigation Results

I visited (Name) Stacy Tawa at (Address) 93 Bethlehem Rd on 21 / 1 / 21.  
 Are you the owner or were you caring for the dog at the time of the incident? Yes  
 How long have you owned / cared for the dog? approx 2 years  
 Who would have been responsible for the dog at the time of the incident? Me.  
 Where were you when the alleged incident happened? In the motorhome with him on the property.  
 Did you see the incident? (If yes, what happened?) Yes. Gucci was asleep on the front seats.  
Gucci jumped and barked out. I saw Gucci with his front paws  
on the gate which was shut. The complainant tapping gloves on top of  
gate & then his hand. Gucci then jumped the gate & bit him on  
the hand. I went out the gate & verbally got Gucci back in  
the motorhome & shut door to enable me to help the victim.  
I saw blood on victims hand & gave him a towel.  
 Has the dog ever bitten, attacked or rushed at any person or other animal / vehicle? (If yes, describe) No.  
 Did you see the victim's injury? ☐ N/A (If yes, describe) yes, I think right hand - blood  
 Did you speak with the victim? ☐ N/A (If yes, what was said?) I apologised to the victim  
and said it's probably because of the chainings.  
 What do you think caused the dog to act this way? Because of chainings - being used  
from around 8am.

What is the purpose of your dog? (guard, companion, hunting etc.) Pet (family)  
 Dogs classified menacing ☒ N/A  
 If this dog is classified, why wasn't the dog wearing a muzzle? N/A.

Why wasn't the dog restrained? ☐ N/A He was on his property - with a gate closed.

Why wasn't the dog restrained when I arrived at your address on / / ? ☒ N/A

Were you aware that the dog was leaving the property? ☒ N/A

Have you received previous letters regarding this dog? (If yes, what were the letters for?) No.

Copy of letters shown and read ☐ Yes ☐ No ☒ N/A

Are you aware of any other dogs in the immediate neighbourhood that could have been mistaken for your dog? (If yes, where?)  
No.

Would you like me to take a photograph of your dog and show it to the complainant so that we can be sure they have the right dog?  
No.

Do you think your dog acted dangerously? No.  
 (if no) Why not? He was contained on the property

Do you think your dog has the potential to bite or cause injury to someone?

How could you have prevented this? Keep him tied up.

What will you do to prevent this from happening again? Keep him tied up when we are not with him.

When will this action be taken? Straight away.

### Dog Owner's Statement

**N.B:** Where any owner admits in writing that their dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife, Council is required to classify that dog as dangerous pursuant to section 31 (1) (c) of the Dog Control Act 1996.

I declare to the best of my knowledge that this is a true and correct record. I have read and understand the above.

Dog Owner's Signature [Signature] Date 21 / 1 / 21 1420hrs

### OFFICE USE ONLY

Was the dog restrained or under direct control when you arrived at the property? ☒ Yes ☐ No  
 Was the dog free and at liberty to leave the property? ☐ Yes ☒ No ☐ N/A  
 Could the dog have prevented clear access to a door of any dwelling on the property? ☐ Yes ☒ No

☐ Photograph of dog taken? ☐ Yes ☒ No  
☒ Date Photograph identified by complainant/witness? ☐ N/A / /  
☒ Aerial photograph marked and initialled by complainant?  
☒ Statements signed by complainant, witnesses and alleged offender?  
☒ Veterinary/Medical report attached?  
☐ Dog's reaction during investigation (describe) Tied to a tree.

RECOMMENDATION Prosecution.

Officer B Foster Date 4 / 2 / 2021

Marathon 41365

ATTACK RATING REPORT			
CCM No	895621		
NAME:	Stacey TAWA		
McGrath	5 to 35	18	
<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	3	
<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	3	
<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	2	
<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	3	
<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		

<b>PREVIOUS HISTORY</b>		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.		
<b>DOG REGISTERED AT THE TIME OF THE INCIDENT</b>		0 to 2	0
Level 0	The dog is currently registered		
Level 2	The dog is not currently registered		
<b>RESTRAINT</b>		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).		
<b>KNOWN BY OWNER TO BE DANGEROUS</b>		0 to 4	2
Level 0	Not known by the owner to have shown previous aggression.		
Level 4	Known by the owner to have previously attacked.		
<b>RECURRENCE LIKELIHOOD</b>		0 to 3	1
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		
<b>TRAINED TO BE AGGRESSIVE</b>		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.		
<b>DAMAGES</b>		0 to 1	1
Level 0	No damages or damages paid voluntarily.		
Level 1	Did not voluntarily offer to pay/Damages unpaid.		
<b>BREED CHARACTERISTICS</b>		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.		
<b>TOTAL</b>			<b>39</b>
<b>09 – 29 = WARNING NOTICE, MENACING CLASS &amp; OR INFRINGEMENT</b>			
<b>30 – 36 = DANGEROUS DOG CLASSIFICATION &amp; OR INFRINGEMENT</b>			
<b>Over 37 = PROSECUTION</b>			
<b>General Comments and Recommendation:</b>			
Offender commented that she walks dog with a muzzle.			

**Brief of Evidence****Tauranga City Council v Stacey Tawa****Brent Foster to prove:**

My full name is Brent George Foster

1. I am currently employed by Tauranga City Council as a Technical Support Officer for Animal Services, I have held this position for 3 Months, prior to that, I was a Dog Control Officer for approximately 2 years.
2. I have inspected the Council records in relation to the impounded dog Gucci.
3. Gucci is registered dog which is currently 2 years and 8 months old and is a male German Short Pointer Labrador Retriever Cross.
4. The registered owner of the dog is Stacey Tawa, the defendant of 93 Bethlehem Road, Tauranga.
5. On 21 January 2021 Council received a complaint that the dog Gucci had attacked a person by jumping the fence at its home at 93 Bethlehem Road, as a result I contacted the dog owner and interviewed her on 21 January 2021.

*Exhibit 2 - Interview Stacey Tawa*

6. On 4 February 2021 I visited the property and seized the dog for the attack as Council intended to prosecute, I issued the owner with a seizure notice. The dog is in the pound and remains there.

*Exhibit 3 – Seizure notice*

7. On 9 February 2021 Council agreed to hold dog until 18 February so the dog owner could seek legal advice.
8. On 25 February the owner paid impound fees \$55, sustenance fees for 6 days \$54 and a seizure fee of \$100 and was served with a notice pursuant to Section 71 of the Dog Control Act advising the dog would be held in the pound pending the conclusion of the prosecution.

*Exhibit 4 – Section 71 Notice*

9. As a Dog Control Officer, I have dealt with many dogs in the pound, although, not the most aggressive dog I have encountered, Gucci is certainly one of the more aggressive dogs we have held.

10. The dog shows a high level of territorial aggression and is aggressive toward anyone approaching its cage, this hasn't changed from the day it was impounded. That aggression does not appear to have abated, or in fact got worse.
11. Gucci sits at the back of his cage and lunges aggressively at anyone passing his pen, growling and baring its teeth, often pushing right up to the bars of the pen.
12. Because of the level of aggression shown by this dog, staff will not move the dog unless there are at least two officers present and only when using a dog pole each.
13. The majority of impounded dogs show no aggression or very little aggression when their cage is approached or even entered and can be moved with a simple lead.
14. There are over 14700 dogs on the Tauranga City Council dog register, in the last three years we have received an average of 56 reports of people being attacked each year. Of these only 2 or 3 are deemed serious enough to impound the dog pending prosecution.

## **Straighttalk Law**



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

1<sup>ST</sup> floor SMART BUSINESS CENTRE  
65 Chapel street  
Tauranga

m. 0211229880  
bev@straighttalk.nz

Straight forward legal solutions

20 September 2021

**To Tauranga City Council**

**Brent Lincoln**  
**Animal Services Team Leader:**  
Tauranga City Council  
07 577 7000  
[info@tauranga.govt.nz](mailto:info@tauranga.govt.nz)

**NOTIFICATION of Objection to classification under section 31**

**Notice number A5219857**

Kindly be advised that I represent the following owner who has been issued with a  
Dangerous Dog Deed:

Stacy Tawa  
93 Bethlehem Road  
Tauranga

**Objection to classification**

1. My client instructs that on the 15 September 2021, she was coerced and forced to sign documentation, without being advised of her right to seek legal advice.



2. My client hereby advises that she challenges this classification. This matter has been through the District Court, and the Council is not going to use a 'back door' to attempt to enforce its authority.
3. As my client has the right to be heard in support of her objection, kindly notify myself of the time and place at which her objection will be heard.

***Kindly confirm receipt of this letter by return email.***

Yours sincerely



Beverley Edwards

Barrister & Solicitor

*Annexure "A"*



## 5.2 Objection to Classification of Menacing Dog - Carl Cosford

**File Number:** A12517649

**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 an objection lodged by Carl Cosford against the classification of his dog Maximus as a classified menacing dog.

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### RECOMMENDATIONS

That the Regulatory Hearings Panel:

- (a) Either:
  - (i) Upholds the classification; or
  - (ii) Rescinds the classification.

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### EXECUTIVE SUMMARY

2. On 16 March 2021 the resident of 73 Resolution Road, Welcome Bay went outside and found his neighbour's dog in his guinea pig cage.
3. Upon inspection, his two guinea pigs were dead. There were no other dogs in the vicinity.
4. As a result of the attack Council classified the dog, Maximus, as a menacing dog pursuant to Section 33A(1)(b)(i) of the dog Control Act 1996 as we consider the dog poses a threat to domestic animals. (*Attachment 1 – Classification notice*).
5. A classified menacing dog is required to be neutered and wear a muzzle when in public, Maximus was already neutered at the time of the attack.
6. An owner may object to the classification and any such objection must be heard by this committee which may either uphold or rescind the classification.

On 29 March 2021, Council received a notice from Mr Cosford objecting to the classification. (*Attachment 2 – Notice of objection*)

### BACKGROUND

7. The objector lives at 69A Resolution Road and is the registered owner of a male Maltese Shih Tzu Cross dog named Maximus. Maximus was 3 years and 8 months old at the time of the attack.
8. The properties share a common boundary. (*Attachment 3 – Aerial photograph of properties*)
9. The dog is known to the complainant as it has roamed and allegedly defecated on his property a number of times however Council has not received any previous complaints about the dog.
10. The guinea pig cage is constructed of timber and wire mesh and has an open top.
11. The guinea pigs were Peruvian, as is the owner, they belonged to the complainant's daughters and he had strong emotional connection with the animals and is very upset at the loss.
12. When he saw the dog, he chased it and it ran back to 69A Resolution Road.
13. The dog owner offered him \$100 for the loss of the Guinea pigs but he declined.

14. A Dog control Officer noted that on arrival at the dog's address, Maximus barked at him and also showed aggressive tendencies.
15. The dog owner's partner was spoken to and said:
  - (a) She was home with the dog when it escaped but didn't see the attack.
  - (b) The dog had not shown any aggression previously.
  - (c) "His gate was open, and the hutch did not have a roof, so it was easy for my dog to get it".
  - (d) They have reinforced their fencing to prevent a re-occurrence.
16. The officer completed an attack rating form, which is used as a guide to achieve consistency when assessing a likely outcome for dog attacks. The rating is only a guide and all factors are taken into account when deciding the most appropriate action. (*Attachment 4 – Attack rating*)
17. The rating scored 29 which indicates the dog should be classified as menacing and could include a \$200 infringement for failure to control. Any higher rating would indicate a classification as a dangerous dog.
18. On this occasion the dog had no previous history with Council, so an infringement was not issued and the dog was classified as menacing.
19. In relation to attacks and when discussing destruction orders, the Court of Appeal has ruled that where a dog has attacked once "It is not open to the dog's owner to argue that the dog can be expected to behave differently in similar circumstances in the future". "The focus (of the Act) is on the risk that the dog poses to people and animals assuming it can be expected to behave in the same way in similar circumstances.
20. The same principle applies when classifying a dog as menacing, the requirement for the dog to be muzzled ensures that this dog will not pose a risk or threat to another animal in the future. A muzzled dog is a safe dog.
21. When Council received the objection, staff responded to Mt Cosford on 8 April 2021. (*Refer Attachment 2 – includes Council response to objection*).
22. On 13 April 2021 Mr Cosford responded to the above email and confirmed that he wished to continue with this objection. (*Refer Attachment 2 – Includes response from Mr Cosford*)
23. In summary Mr Cosford is objecting on a number of grounds, the following being the main issues raised:
  - (a) The date of the offence as shown on the classification notice has an error in that it shows the year as 2921 instead of 2021.
  - (b) Maximus did not kill the Guinea Pigs
  - (c) The complainants gate was open, and the cage offered no protection to predators.
  - (d) Maximus is a Maltese Shih Tzu Cross, a small non-dangerous breed.
  - (e) The complainant is erratic and vengeful and shouldn't be taken seriously.
  - (f) The penalty of requiring Maximus to be muzzled is excessive.
24. Animal Services acknowledges the date error on the classification and although the date doesn't invalidate the classification, will issue a new form if the panel uphold the classification.

## LEGAL IMPLICATIONS / RISKS

25. The panel is required by law to consider the objection. There is no right of appeal if the dog owner is not satisfied with the committee decision, however the decision may be subject to a judicial review. If the classification is rescinded it will increase the possibility that this dog could attack again. There is no implied legal liability on Council should this happen.

## **ATTACHMENTS**

1. **Menacing Classification - A12604038** [↓](#)
2. **Exchange of Correspondence re objection - Carl Cosford - A12604036** [↓](#)
3. **Aerial Photograph - A12578481** [↓](#)
4. **Attack Rating - A12373265** [↓](#)

24 March 2021

CARL COSFORD

WELCOME BAY  
TAURANGA 3112

Dear Carl

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

Dog: 51472  
Reference: MAXIMUS  
Complaint number: 908046

At 7.00pm, Tuesday 16 March 2021 your dog Maximus escaped from your property and proceeded to a neighbours garden and jumped into an open pen killing two guinea pigs.

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](mailto: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 Objection to Menacing Classification Maximus ref 910652**

13 April 2021

Hello Brent, thank you for your reply.

I'd like to keep it all about the Dog, but the underling motivation here from the Guinea Pig owner, is for some type of revenge. He is trying to balance this situation out by causing this classification, and simply trying to waste our and, your time.

Im a little confused as to how your department can accept any statements or such complaints from such an unstable individual.

For clarity, his behavior may have itself caused the Guinea pigs hearts to stop.

While max was present in his yard for a matter of seconds. The complainant acted very poorly. A grown man, he made the loudest noises and a huge scene. He chased our Dog with a axe (hatchet) trying to "revenge kill him." Then proceed to throw around the axe several times, was hitting the fence and the ground. Yelling, fully crazed and waving the axe around in the air. He was very vengeful and stalked our front yard over two days. He came onto our property and scared the daylights out of our children who are still worrying about "the bad man" and what might happen next. We are still very concerned for the safety of our pet.

The neighbors called the police at the time. The police report is available. They sent him home but he returned later that evening and tried to blackmail two thousand dollars from us, or have our dog killed. Treated to "go buy big dog, bring dog over to your house and get big dog to eat your dog". He also tried to find out where Tina, worked. His behavior was such that his flatmate kicked him out the next day. This aggravated the individual and the situation even more, leading to more rash behavior and his subsequent complaint after his attempts at murder and blackmail failed.

It is hard for me to believe that an individual who is so erratic and vengeful could be taken seriously at all, and the judgement past and accepted so easily by 'My Council'. The individual does not contribute to any residential city rates, but is able to now get your department working for him.

It is actually our family that has been terrorised by this situation and I am concerned about the ongoing effects of this event on my children's mental wellbeing, post traumatic stress.

It is unclear to us if the complainant even had permission from his landlord too house these types of pets at their address.

As for the objections regarding Max, plus extras:

1. The date.

The letter we received, was dated saying the event occurred in 2921. This date is far from specific and for the purpose of this classification, nullifies it.

3. Max was not the killer. The complainant told us he, "saw him coming down the driveway, I fly down the stairs and chased him away". I don't believe anyone saw any dog attacking the animals. And no evidence linking the physical killing of the animals to our dog was sighted or produced.



4. Guinea pig owners are not required to protect their properties from roaming dogs?! I find this rule unfathomable. And it need to be changed. How can you keep defenceless animals in an unlocked situation, then get stray animals put on dangerous dogs lists for simply following their noises and natural instincts?

5. The dogs breed. Agreed, that all dogs have the ability to cause nuisance. But Max's size and manner are in no way a danger to any animal, stock or human. Dogs however, have been bread for many hundreds of years to sniff out rodents (ratters).

6. The mentally unstable, vengeful state of the complainant. I don't believe you can in confidence uphold a complaint from a individual who acts this way. He attempted to kill, treathened our animal with death several times, tried to blackmail us, and has caused psychological damage and anxiety to our children.

7. This is a first offence for Max and we feel the extremity of the judgment is unjust in this situation. Muzzling our dog at all times in public is a joke and an unfair punishment for simply being an inquisitive dog in a hard to ignore situation.

8. Max did not escape on purpose to hunt these animals down. He is fully fenced at all times. He wandered out of an open door (human error on our part) and surveyed his immediate territory. He visited a property where he was familiar. Our friends once lived with their dog (and Max's friend) at this address. He followed his natural instincts, which lead him into a situation where vulnerable rodents were present (human error on the complainants part).

Animals have suffered here because of human error and oversight, not because our animal is menacing. I can not accept this judgement from you with confidence, as its bases is formed from an individual whos mental state and actions are not of sound mind.

If you are not willing to reduce this classification or chuck this case out completely, please forward my two emails, with all information i have submitted to the hearings committee.

regards

Carl and Tina

On Thu, 8 Apr 2021, 11:35 AM Brent Lincoln, <[Brent.Lincoln@tauranga.govt.nz](mailto:Brent.Lincoln@tauranga.govt.nz)> wrote:

Dear Carl

Thank you for your notice of objection to the classification of your dog Maximus as a menacing dog.

For clarity your objection is based on the following points:

1. The date and time on the classification is incorrect. – The guinea pig owner has confirmed the attack took place on the 16 March 2021 sometime around 5pm to 7pm. Although the letter specifies 7pm, that is specific enough for the purposes of the classification and does not nullify it.
2. *The complainant also stated that "he knew someone in the council, and can have your dog killed." I hope this is not the case causing an internal conflict of interest.* Decisions made by myself are only influenced by the facts of the situation and not by any external contacts of people in Council. I have no knowledge of anyone that the complainant may know in Council.
3. Max was not the dog that killed the Guinea pigs – The complainant saw Maximus on the guinea pig cage with the two dead guinea pigs. No other dog was sighted.
4. The complainant's gate was open and the cage sub-standard offering no protection to predators – There is no obligation on the guinea pig owner to secure his property from roaming dogs. There is a requirement on dog owners to ensure their dogs are contained on their own property, cannot roam and cannot cause nuisance or danger to any domestic animal.
5. Maximus is a Maltese Shih Tzu – a small non-dangerous breed. – All dogs have the ability to cause nuisance or danger and dogs will act quite differently when not under the supervision of their owner.

Can you please confirm that the above points cover your basis for the objection and that you wish me to continue to process your objection to this classification.

Once you confirm this, your objection will be filed with the Council Hearings committee for consideration. You will be advised when they are going to have the hearing so that you can present your case.

Kind Regards

**Brent Lincoln** | Team Leader: Animal Services

Tauranga City Council | 07 577 7000 | [www.tauranga.govt.nz](http://www.tauranga.govt.nz)

**From:** [info@tauranga.govt.nz](mailto:info@tauranga.govt.nz) <[info@tauranga.govt.nz](mailto:info@tauranga.govt.nz)>

**Sent:** Tuesday, 30 March 2021 8:08 AM

**To:** Brent Lincoln <[Brent.Lincoln@tauranga.govt.nz](mailto:Brent.Lincoln@tauranga.govt.nz)>  
**Subject:** Origen Contact Centre # 910652 [REFER] CONFIDENTIAL

Origen Contact Centre

Transaction: 910652 [ View Transaction >> Click here to view your CC Transaction ]  
Created: 30 Mar 2021 @ 05:15am by Lauren Haddock [ [lauren.haddock@tauranga.govt.nz](mailto:lauren.haddock@tauranga.govt.nz) ]  
Type/Subtype: Animal Services / Customer Message  
Priority: ROUTINE  
Action: REFER  
Your Position: 2AS200

Message:

You have received a new request for which you are the referral.

Notes:

Details:

Received via info queue on 29/03/2021 at 18:25  
Note: Attachment forwarded to Animal Admin

Regarding Maximus (Max).

We object to the the classification of Maximus as menacing.  
Right of objection to classification under section 33A Section 33B, Dog Control Act, 1996.  
Grounds on which we object/Facts in support of Max:

Firstly the dates provided in attached letter are incorrect. Listing the event occurred "At 7.00pm, Tuesday 16 March 2921". Making this notice null in void.  
The complainant also stated that "he knew someone in the council, and can have your dog killed." I hope this is not the case causing an internal conflict of interest.

There are a number of stray dogs that walk Resolution rd, any of which may have killed the complainants Guinea Pigs with max turning up after the fact. No evidence was provided or sighted that proved max physically killed the animals. The complainant also stated that "They died of broken hearts".

We believe that Max does not pose a treat to any person, stock, poultry, domestic animals or protected wildlife.

We have observed max since an age of three months till now. Over three years he has grown up around a cat and poultry we once owned, never treating them. He is scared to walk past cats.

Our two small children have had hands in his mouth almost every day, he has learnt control from a young age, never once nipping or attempting to nip. Max is obedient and controllable.

Max's breed is not dangerous. He is a Malteze Shih Tzu who is neutered. "A

small breed with high energy and love to play. Ther're also very gentle and love to sit on laps. Very loyal."

When we became aware that the complainant had guinea pigs on the section next door we went the extra mile to secure our fence line so max could not access. This was about 5 months ago.

The complainants animals where not secure or supervised correctly. The main driveway front gate was always open and the guinea pig cage was clearly sub standard, offering no protection, open to any and all predators.

We believe that if it was Max, he may have been simply trying to play with the Guinea pigs. He is far from menacing and this classification and notice are far from correct.

Parcel:

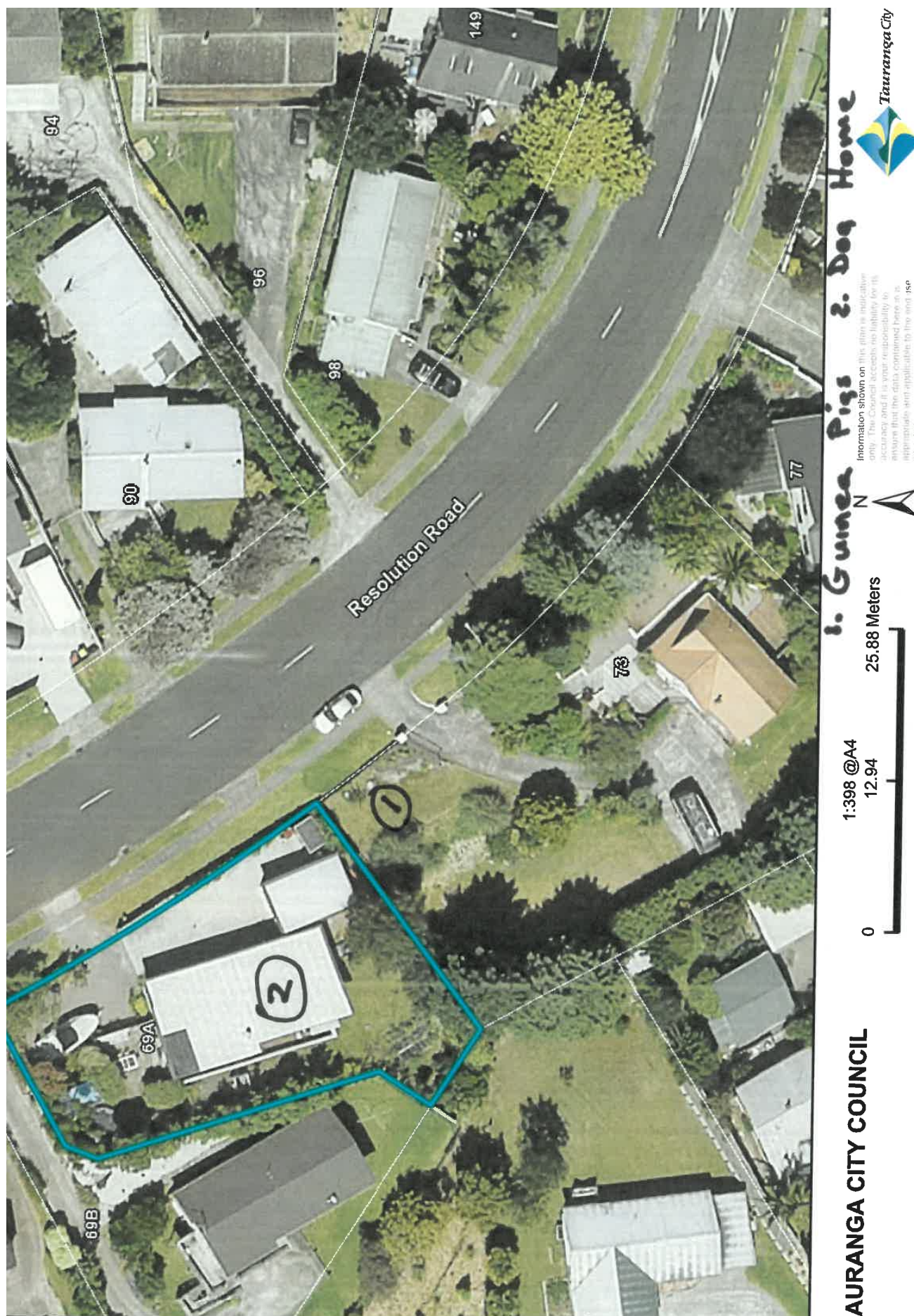
Contact: CARL COSFORD

Phone:

This message was automatically generated by the Origen Contact Centre

WF/25/0/0/0/AFTER/R/REFER/ORG/2AS200

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ATTACK RATING REPORT		
CCM No	908046	
NAME:	Carl COSFORD	
McGrath		5 to 35 12
<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 3
<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 4
<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 1
<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	

<b>PREVIOUS HISTORY</b>		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.		
<b>DOG REGISTERED AT THE TIME OF THE INCIDENT</b>		0 to 2	0
Level 0	The dog is currently registered		
Level 2	The dog is not currently registered		
<b>RESTRAINT</b>		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).		
<b>KNOWN BY OWNER TO BE DANGEROUS</b>		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.		
<b>RECURRENCE LIKELIHOOD</b>		0 to 3	1
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		
<b>TRAINED TO BE AGGRESSIVE</b>		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.		
<b>DAMAGES</b>		0 to 1	0
Level 0	No damages or damages paid voluntarily.		
Level 1	Did not voluntarily offer to pay/Damages unpaid.		
<b>BREED CHARACTERISTICS</b>		0 to 4	0
<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.		
<b>TOTAL</b>			<b>29</b>
<b>09 – 29 = WARNING NOTICE, MENACING CLASS &amp; OR INFRINGEMENT</b>			
<b>30 – 36 = DANGEROUS DOG CLASSIFICATION &amp; OR INFRINGEMENT</b>			
<b>Over 37 = PROSECUTION</b>			
<b>General Comments and Recommendation:</b>			
Dog has escaped property and killed the neighbours Guinea Pigs a total of two animals killed. No previous history for dog.			

## 6 PUBLIC EXCLUDED SESSION

### RESOLUTION TO EXCLUDE THE PUBLIC

#### RECOMMENDATIONS

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
<b>6.1 - Application to Release Impounded Dog - Ryde</b>	s6(a) - The making available of the information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial	s48(1)(a) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7
<b>6.2 - Application to Release Impounded Dog - Chopper</b>	s6(a) - The making available of the information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial	s48(1)(a) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7
<b>Confidential Attachment 2 - 5.1 - Objection to Dangerous Dog Classification - Stacey Tawa</b>	s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons	s48(1)(a) the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7

## 7 CLOSING KARAKIA