



AGENDA

Regulatory Hearings Panel meeting Thursday, 13 July 2023

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

Date: Thursday, 13 July 2023

Time: 9am

Location: Bay of Plenty Regional Council Chambers
Regional House
1 Elizabeth Street
Tauranga

Please note that this meeting will be livestreamed and the recording will be publicly available on Tauranga City Council's website: www.tauranga.govt.nz.

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.

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

4 BUSINESS

4.1 Objection to Retention of Impounded Dog - Vance Skudder

File Number: A14837265

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

Authoriser: Sarah Omundsen, **General Manager:** Regulatory and Compliance

PURPOSE OF THE REPORT

1. To hear an objection from Vance Skudder opposing the retention of his dog in the pound.

RECOMMENDATIONS

That the Regulatory Hearings Panel:

- (a) Receives the report "Objection to Retention of Impounded Dog - Vance Skudder".
- (b) It is recommended that the panel uphold the decision to hold the dog Charlie pending the outcome of Court proceedings, however the panel may either:
 - (i) Return the dog to the owner if they are satisfied the release of the dog will not threaten the safety of any person, stock or domestic animal; or
 - (ii) Retain the dog pending the outcome of the prosecution.

EXECUTIVE SUMMARY

2. Vance Skudder resides in Gate Pa. In April and May 2023, he was the owner of two dogs Sadie and Charlie both were currently registered with the Western Bay of Plenty District Council.
3. Sadie is a female Labrador Retriever Cross coloured Black and White, and Charlie is a male Staffordshire Bull Terrier coloured Brindle and White.
4. Between 19 April 2023 and 4 May 2023, 5 cats were killed by two dogs roaming between Faulkner Street and Twelfth Avenue. The distance from Mr Skudder's home to the furthest attack in Twelfth Avenue is approximately 2.2kilometres.
5. Of the 5 cats attacked, 3 were killed on the 4 May 2023, all around Twelfth and Thirteenth Avenue between 5:30am and 6:30am. (*Attachment 1 – Map of 4 May Incidents*)
6. At 04:30am on the 4th of May, Council CCTV shows two dogs crossing Cameron Road at the intersection with Thirteenth Avenue. The identity of these dogs is confirmed as Charlie and Sadie. (*Attachment 2 – Photo of Dogs at Intersection*)
7. At approximately 6:30am Charlie was found roaming at the intersection of Cameron Road and Fifteenth Avenue and was taken to a vet as he had fresh blood around his mouth. The vet confirmed, the blood did not come from Charlie, and he had no injuries.
8. Charlie was impounded, and Sadie was seen running along Cameron Road and turning in toward the hospital.
9. Staff subsequently executed a search warrant on 29 May 2023 in an attempt to seize Sadie. Mr Skudder said Sadie was no longer at his property and she was safe. He declined to advise staff where Sadie was being kept and declined to be interviewed in relation to the allegations that his dogs had attacked cats.

10. A review of the circumstances of the attack led Council to recommend a prosecution and as such decided to retain Charlie in the pound pending the outcome. Mr Skudder was informed of this decision by way of a Section 71 notice dated 18 May 2023 which was delivered to his property. (*Attachment 3 – Section 71 Notice*)
11. As a result of that notice Mr Skudder has exercised his right to object, his notice of objection was received on 23 May 2023 by email. (*Attachment 4 – Objection to Retention of Charlie*)

BACKGROUND

12. When a dog is impounded and the owner pays any outstanding impound fees, Council must either release the dog or they may retain the dog under the provisions of Section 71 of the Dog Control Act 1996.
13. To retain the dog Council must be initiating a prosecution in relation to the dog and believe that if the dog is released, the dog is likely to threaten the safety of any person, stock, poultry, domestic pet or wildlife.
14. On this occasion, Council is concerned that the dog Charlie is likely to pose a threat to other domestic animals, namely cats. Staff have no concerns that Charlie will pose a threat to people.
15. The Section 71 notice was issued because:
 - a) On 19 April 2023 at 06:55am a witness who resides in Twenty First Avenue saw her cat Zippy being attacked by two dogs at the back of her property. She saw the dogs attacking her cat which suffered puncture wounds to the right side of its spine and rear. She identified the dog Sadie as one of the attacking dogs and noted the second dog was similar to Charlie.
 - b) On 22 April 2023 a witness who lives in Faulkner Street saw two dogs attacking and killing her cat. She identified the dog Sadie as one of the attacking dogs and noted the second dog was similar to Charlie. The attack happened at 2:00am.
 - c) On 28 April 2023 staff visited the residence of Vance Skudder and spoke to his wife who said they have two dogs Sadie and Charlie, both registered in WBOPDC. She said it couldn't possibly be their dogs.
 - d) On 4th May 2023 at 04:30am Council CCTV shows two dogs crossing Cameron Road at the intersection with Thirteenth Avenue. The identity of these dogs is confirmed as Charlie and Sadie.
 - e) On 4th May 2023 at 05:00am two witnesses who live in Twelfth Avenue heard dogs barking and found their cat dead. CCTV shows two dogs which are similar to Charlie and Sadie.
 - f) On 4th May 2023 around 05:00am a witness who also lives in Twelfth Avenue heard a noise and saw a dog with her cat in its mouth. The cat suffered puncture wounds to its neck and suffered nerve damage around its eye and paws. CCTV shows two dogs which matched the description of Charlie and Sadie.
 - g) On 4th May 2023 at approximately 05:30am a witness from Thirteenth Avenue noticed her cat missing. The cat was found dead at the corner of Thirteenth and Edgecumbe. The cat had suffered head and neck injuries which appeared to be the result of a dog attack.
 - h) Another witness saw two dogs outside his property, one of the dogs had a cat in its mouth, he later identified this dog as Charlie. This is the cat missing from Thirteenth Avenue.
 - i) On the 4th of May 2023 at 06:30am Charlie was found roaming at the intersection of Cameron Road and Fifteenth Avenue and was taken to a vet as he had fresh blood around his mouth. The vet confirmed, the blood did not come from Charlie, and he had no injuries. Charlie was impounded and has been held there pending a prosecution.
 - j) On 4th May 2023 at approximately 06:30am a dog matching the description of Sadie was seen running along Cameron Road and turning in toward the hospital.
16. There have been no further cats reported attacked or killed in this area since Charlie was impounded.

17. When hearing this matter, the panel may agree to retain the dog in the pound pending the outcome of any prosecution or may agree to release the dog if they believe the dog does not pose a threat to the safety of any person, stock, poultry, domestic pet or wildlife.
18. If Mr Skudder is not satisfied with the decision of the panel, he may appeal the matter to the District Court.
19. It is recommended that Charlie is retained in the pound pending the outcome of the prosecution because:
 - (a) If released there is potential for the dogs to attack again; and
 - (b) Upon conclusion of the court proceedings, it is unlikely Charlie will be made available to staff.





SIGNIFICANCE

20. 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.
21. 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 .
 - (c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.
22. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the issue is of low significance.

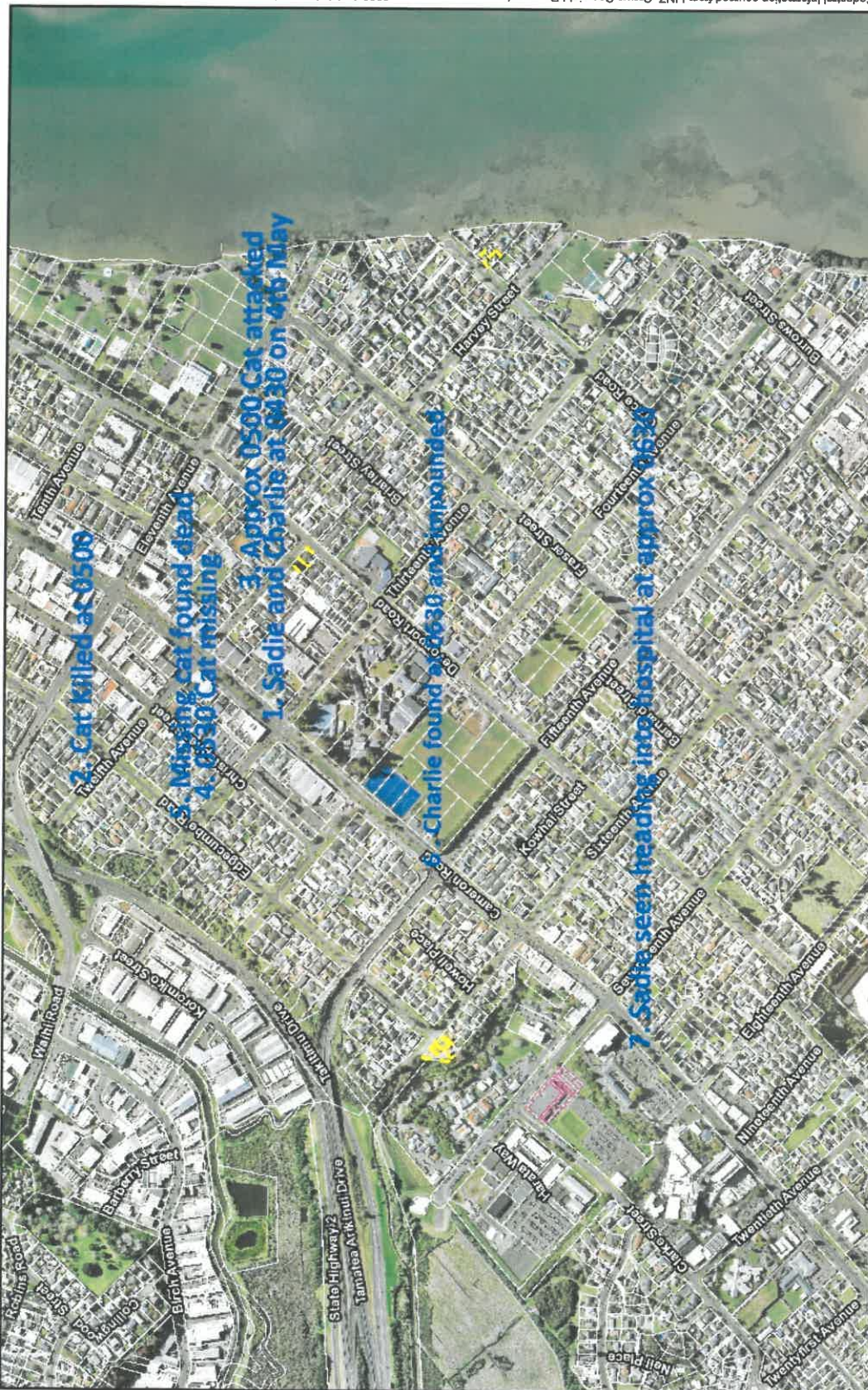
ENGAGEMENT

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

ATTACHMENTS

1. **Attachment 1 - Map of 4 May Incidents - A14842629** [↓](#) 
2. **Attachment 2 - Photo of Dogs at Intersection - A14842627** [↓](#) 
3. **Attachment 3 - Section 71 Notice - A14842628** [↓](#) 
4. **Attachment 4 - Objection to Retention of Charlie - A14842630** [↓](#) 

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TAURANGA CITY COUNCIL

4.2 Objection from Katherine Batten Opposing the Menacing Classification for her dog Patrick

File Number: A14842933

Author: Brent Lincoln, Team Leader: Animal Services

Authoriser: Sarah Omundsen, General Manager: Regulatory and Compliance

PURPOSE OF THE REPORT

1. To hear an Objection from Katherine Batten Opposing the Menacing Classification for her dog Patrick.

RECOMMENDATIONS

That the Regulatory Hearings Panel:

- (a) Receives the report "Objection from Katherine Batten Opposing the Menacing Classification for her dog Patrick".
- (b) It is recommended that the panel uphold the menacing classification, however the panel may either:
 - (i) Uphold the classification; or
 - (ii) Rescind the classification.

EXECUTIVE SUMMARY

2. Katherine Batten (also known as Christine) is the owner of two Standard Poodles, James and Patrick. James is nearly twelve years old, and Patrick is 2 years and 9 months old.
3. On Sunday 16 April 2023, Katherine was exercising her dogs at Carmichael Reserve. She had taken her dogs off lead after checking that no one was around. At that time a jogger appeared. Katherine said, Patrick "bounced" up to the jogger and his head bashed into the jogger's hip.
4. The jogger said she saw the dogs being let off lead as she approached Carmichael Reserve. As she ran past, the white dog (Patrick), did a loop toward her and bit her on the left thigh and then carried on running. As a result, she ended up with bruising and a puncture wound on her leg. (*Attachment 1 – Photo of Bite*)
5. Staff interviewed both parties and completed an attack rating form which we use as a guide when deciding what would be the most appropriate action for this incident. The rating totalled 27 which placed it in the sector where a menacing classification was appropriate. (*Attachment 2 – Victim Statement*) (*Attachment 3 – Statement Katherine Batten*) (*Attachment 4 – Attack Rating*)
6. On 16 June 2023 the dog was classified as menacing when the notification was delivered to Katherine. (*Attachment 5 – Notice of Menacing Classification*)
7. The owner of a dog may object to that classification within 14 days of receiving the notice. On 30 June 2023 Council received an email which contained an objection from Katherine, a formal objection to the classification from her lawyer and a number of statements in support of Katherine. (*Attachment 6 – Objection to Menacing Classification from Katherine Batten*. *Attachment 7 – Formal Objection to Classification*. *Attachment 8 – Statements of Support*).

BACKGROUND

8. When considering an objection against a menacing classification, the panel may uphold or rescind the classification, and in making its determination must have regard to:
 - (a) the evidence which formed the basis for the classification; and
 - (b) any steps taken by the owner to prevent any threat to the safety of persons or animals; and
 - (c) the matters relied on in support of the objection; and
 - (d) any other relevant matters.
9. The Objector has raised 9 points in defence of the classification, I will address each of these in turn:
 - (a) *Patrick did not attack the victim* – Patrick was not under direct control of the owner and ran up to the victim and as he ran past, bit her on the leg causing an injury which included bruising and a puncture wound. It may have been a passing bite but in effect it is an attack which has caused injury. The injury is consistent with bite rather than merely an impact.
 - (b) *There is no negligence on behalf of Patrick's owner:*
 - (i) The Act requires all dog owners to take all reasonable steps to ensure that their dog does not injure, endanger, intimidate, or otherwise cause distress to any person.
 - (ii) Offences under the Act are strict liability offences, in this case, Patrick's owner must show she took all reasonable steps to ensure her dogs could not cause injury.
 - (iii) It is clear that Patrick was not under direct control of the owner as in her own words, "Patrick "bounced" up to the jogger and his head bashed into the jogger's hip".
 - (iv) If Patrick had been kept on lead or under better control, then this attack is unlikely to have occurred.
 - (c) *Whilst off lead the dog was in a dog exercise area with the owner close to hand and under the owner's supervision.* – We don't have specified dog exercise areas however dogs are allowed to be exercised off lead in this park as long as points 9(b)(i) and (ii) above, together with Clause 6.1 of the Dog Management Bylaw 2018 are complied with. The bylaw says "where a dog is causing or likely to cause danger, distress or nuisance it must be kept on a Leash and Under Effective Control of the Owner." Effective Control is defined as "to manage, influence or determine the activities of all dogs in a person's possession, whether by voice commands, hand signals, whistles or other effective means, so that no dog can cause nuisance or danger to any person or other animal and cannot enter or interfere with private property and includes the physical ability to restrain all dogs in a person's possession"
 - (d) *There is no evidence to support any finding that the incident is likely to reoccur especially given the on-going training of Patrick.* – The Court of Appeal has made some clear rulings around attacks which are relevant when considering the circumstances of this attack.
 - (i) A one-off failure by an otherwise responsible owner to maintain effective control of a dog is not a defence.
 - (ii) The law does not require the Court to inquire into the psychology of the dog to make predictions about future behaviour. Any attack establishes that there is a risk of the dog attacking again in similar circumstances.
 - (iii) In saying that, it is acknowledged that one of the considerations that the panel must take into account are any steps taken by the owner to prevent any future

risk of the dog biting again. This has been touched on by some of the endorsements in Attachment 8.

- (e) *Minimal impact to victim with no lasting effect* – The injuries received were such that the victim continued to run home. She received a puncture mark and bruising. In her statement she has said the incident has made her “flinch more when running past dogs off lead. I would not be comfortable with all the kids that play in the park”. A dog bite can be quite confronting and can have lasting psychological impacts well after the physical have healed.
 - (f) *No evidence or basis to characterise the breed as a guard dog.* – Accepted, however this would not have made any difference to the final outcome.
 - (g) *No public interest to be served by the classification* – The public have an expectation that any bite on a person will be investigated and appropriate action taken to minimise any further risk. A muzzled dog is largely a safe dog.
 - (h) *It is not the purpose of the legislation to classify a dog where the incident arose out of a unique set of circumstances.* – There is nothing unique about an owner letting their dog off lead and that dog then attacks or intimidates a person. This is a common event, and often the basis of complaints received by Council.
10. Section 33A of the Act provides that a Council may classify a dog as menacing if they consider the dog may pose a threat to any person, stock, poultry, domestic animal or wildlife because of any observed or reported behaviour.
 11. The “purpose of the Act” states “this is to make better provision for the care and control of dogs by making special provision in relation to dangerous dogs and menacing dogs.”
 12. Section 62 of the Act also applies to this matter. Where the owner of a dog knows the dog has attacked a person, the owner must ensure the dog is muzzled and controlled by a lead in public, there is no right of objection.
 13. A number of endorsements for Patrick have been provided with the objection. These are from a range of people who have had interactions with Patrick including a veterinarian, dog trainers, pet groomers etc. They generally attest to the exuberance or boisterous nature of Patrick and his general good demeanour and the work that he has undergone to bring him to the stage he is at now. They also attest to the friendly non-aggressive nature of Patrick.
 14. Council records show Kristine has owned dogs in Tauranga since 2012 and has no other reported incidents of any kind.
 15. At two years and 9 months old, Patrick is an adult dog, because of his described nature of boisterous exuberance it cannot be ruled out that an incident similar to this will not occur in future if he is not controlled and muzzled.
 16. If the classification is upheld, Council would consider reviewing the classification in 12 months’ time if there are no further reported incidents.

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 .









(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 issue is of low significance.

ENGAGEMENT

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

ATTACHMENTS

1. **Attachment 1 - Bite Photo - A14647527** [↓](#) 
2. **Attachment 2 - Victim Statement - A14842928** [↓](#) 
3. **Attachment 3 - Statement Katherine Batten - A14842927** [↓](#) 
4. **Attachment 4 - Attack Rating - A14842930** [↓](#) 
5. **Attachment 5 - Notice of Classification - A14842931** [↓](#) 
6. **Attachment 6 - Objection to Classification Katherine Batten - A14842925** [↓](#) 
7. **Attachment 7 - Formal Objection on behalf of Katherine Batten - A14842926** [↓](#) 
8. **Attachment 8 - Statements of Support for Katherine Batten - A14842929** [↓](#) 



5 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
5.1 - Public Excluded Minutes of the Regulatory Hearings Panel meeting held on 4 May 2023	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 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

6 CLOSING KARAKIA