

Menacing Dog Classification Objection - Sally Tennent Brown

TO	Judicial Committee
FROM	Marion Smith - Community Environment Group Manager
DATE	27 July 2015
SUBJECT	Menacing Dog Classification Objection - Sally Tennent Brown

1 Purpose of Report

An objection has been received from Sally Tennent - Brown the registered owner of a Blue Merle Dog which was classified as menacing under section 33a of the Dog Control Act 1996 after an incident involving a dog attack a person.

2 Background

On 17th March 2015 at approximately 9:45am Sally Tennent - Brown was walking along Rings Road Coromandel her with a Blue Merle dog named Chloe. The dog was not on a lead but was walking alongside its owner. A female walker approached from the opposing direction and walked past Sally Tennent - Brown and her dog. As they passed each other the dog Chloe bit the female walker on the right leg above the ankle.

Sally Tennent - Brown apologised and immediately put the dog on a lead. She then offered the victim a ride to the doctor as she lived close by. The offer of the ride was rejected by the victim as the dog owner inferred that the dog would also travel in the car to the doctor.

The victim was soon after transported to the doctor by a friend. The medical expenses were paid for by the dog owner.

Animal Control Officers attended the incident at 11:15am on 17th March 2015 and seized the dog involved in the incident under section 57 of the Dog Control Act 1996. The dog was released back to the owner on 24th March 2015 after all fees were paid. (The Incident File is attached as Reference A)

An infringement for failing to control the dog under section 53(1) of the Animal Control Act 1996 for failure to keep a dog under control was issued.

3 Issue

There are several issues that need to be considered in relation to this matter and the reasons the dog was classified as menacing under section 33A of the Dog Control Act 1996.

- Sally Tennent - Brown had only owned the dog for 5 weeks when the incident occurred. The dog was previously owned by a farmer who no longer had a use for the dog.
- The dog had no behaviour history with the current or previous owner.

- The Blue Merle breed is closely aligned to the Australian Blue Heeler. This dog is renowned for nipping on the heel of stock to turn them.
- The Blue Merle is an extremely intelligent dog and responds well to behavioural training.
- At the time of the attack the owner immediately apologised to the victim and offered to provide transport to the doctor. She paid the medical costs.
- The incident may not have occurred if the dog was controlled on a lead.
- The victim, her husband Peter Sutton and another witness have contacted Council with concerns that the dog has not been muzzled in a public place since the dog was classified and has been seen "off lead" while being exercised by its owner on a shared driveway near a kindergarten.
- The dog owner has suggested that the dog undertake training for its behaviour and has booked onto a dog obedience course.

The act states **33A Territorial authority may classify dog as menacing**

- (1) This section applies to a dog that—
- (a) has not been classified as a dangerous dog under section 31; but
 - (b) a territorial authority considers may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of—
 - (i) any observed or reported behaviour of the dog;

Compliance officers chose to recommend the classification as menacing under section 33A rather than Dangerous under section 31 of the Dog Control Act 1996 as the incident involving the single bite was not considered a serious attack that would support a dangerous dog classification.

Section 31 of the Dog Control Act 1996 states:

31 Territorial authority to classify dangerous dogs

- (1) A territorial authority must classify a dog as a dangerous dog if—
- a. the owner of the dog has been convicted of an offence in relation to the dog under section 57A(2); or
 - b. the territorial authority has, on the basis of sworn evidence attesting to aggressive behaviour by the dog on 1 or more occasions, reasonable grounds to believe that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife; or
 - c. the owner of the dog admits in writing that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife

In this regard:

- The owner has not been convicted of an offence under section 57A(2) of the Dog Control Act 1996, at the time of classifying the dog.

- The owner had not admitted in writing that the dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife.

It was therefore considered appropriate in this regard that a menacing dog classification would be sufficient as the lesser of the two classifications would also protect the public from further risk.

An infringement for failing to control the dog under section 53(1) of the Animal Control Act 1996 for failure to keep a dog under control was issued on 27th July 2015.

53 Offence of failing to keep dog under control

- (1) Every person commits an offence and is liable on conviction to a fine not exceeding \$3,000 who, being the owner of a dog, fails to keep that dog under control.
- (2) Notwithstanding section 52(2)(b), an owner of a dog does not commit an offence against subsection (1) by reason only of the dog being found at large in a public place in contravention of any regulation or bylaw.

4 Discussion

The submission (Reference B) from Sally Tennent - Brown indicates that she is remorseful for what occurred, she apologised to the victim and that she is prepared to have the dog undergo behaviour correction training.

The dog owner received an infringement for Failing to Control the dog under S53 of the Dog Control Act 1996 and has stated that she will pay the infringement.

The owner has also verbally acknowledged that she was not aware that a shared drive way constituted a public place under the Dog Control Act 1996 and that she thought that the dog did not need to be muzzled under the menacing classification on her drive way.

Sally Tennent - Brown has provided three letters in support to her submission. (attached within Reference B)

The three submissions received from the victim, her husband and another witness highlight issues regarding the owner not correctly muzzling the dog in a public place.

In considering an objection to the classification of a dog as menacing Council should have regard to the following:

TCDC Dog Control Policy 2004 - Reviewed September 2009

In adopting a policy Council must have regard to:

- the need to avoid the inherent danger in allowing dogs to have uncontrolled access to public places that are frequented by children, whether or not the children are accompanied by adults; and
- the importance of enabling, to the extent that is practicable, the public (including families) to use streets and public amenities without fear of attack or intimidation by dogs;

Classification of Menacing Dogs¹

Council will classify as menacing:

- Any dog described by its owner as one of the breeds listed in Schedule 4 of the Act.
- Any dog that a dog control officer concludes is a threat to any person, stock, poultry, domestic animal or protected wildlife.
- Any dog that a dog control officer concludes belongs wholly or predominantly to 1 or more of the breeds or types listed in Schedule 4 of the Act.

TCDC Consolidated Bylaw 2004 Control of Dogs 2004 - Reviewed September 2009

1004.DUTY TO AVOID NUISANCES

1004.1

A person must not keep a dog on any land or premises if:

- (a) the dog causes a demonstrable nuisance; or
- (b) the dog exposes the health or safety of others to significant risk; or
- (c) the dog creates a reasonable apprehension in the minds of others of a threat to their health or safety. The reason must be justified by proven evidence.

1004.2

No person shall cause any dog on any land, premises or public place to become restive or unmanageable or incite any dog fight with or attack any other animal or person.

1004.3

If, in the opinion of a dog ranger or dog control officer, any dog or dogs or the keeping of any dogs on any premises has become or is likely to become a nuisance or injurious to health the dog ranger or dog control officer may by notice in writing, require the owner or occupier of the premises within a time specified in the notice to do all or any of the following:

- (a) Reduce the number of dogs kept on the premises.
- (b) Construct, alter, reconstruct or otherwise improve the kennels or other accommodation used to house or contain the dog or dogs.
- (c) Require the dog or dogs to be tied up or otherwise confined during specified periods.
- (d) Take such other reasonable action as the dog ranger or dog control officer deems necessary to minimize or remove the likelihood of nuisance or injury to health.

The underlying factors that Council are to consider when making a determination on a menacing dog classification objection are:

33B Objection to classification of dog under section 33A

- (1) If a dog is classified under section 33A as a menacing dog, the owner—
 - (a) may, within 14 days of receiving notice of the classification, object in writing to the territorial authority in regard to the classification; and
 - (b) has the right to be heard in support of the objection.

¹ Dog Control Act 1996 Section 33A

(2) The territorial authority considering an objection under subsection (1) 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.

(3) The territorial authority must, as soon as practicable, give written notice to the owner of—

- (a) its determination of the objection; and
- (b) the reasons for its determination

5 Suggested Resolution(s)

That the Judicial Committee:

1. Receives the Report Menacing Dog Classification Objection - Sally Tennent - Brown dated 27th July 2015.
2. Will after hearing the objection, determine a decision whether to confirm, modify or cancel the classification.
3. Direct staff to advise all parties of the outcome.

References-Tabled/Agenda Attachments

Attachment A Supporting Documents Menacing Dog Objection - Chloe - Sally Tennant-Brown - Redacted Version

Attachment A

[Attachment A - Supporting Documents Menacing Dog Objection - Chloe - S...](#)