

Menacing Dog Classification Objection - Neera Giri

TO	Judicial Committee
FROM	Marion Smith - Community Environment Group Manager
DATE	24 July 2015
SUBJECT	Menacing Dog Classification Objection - Neera Giri

1 Purpose of Report

An objection has been received from Neera Giri, the registered owner of a Staffordshire Terrier dog named Buddy who was classified as menacing under section 33a of the Dog Control Act 1996 after an incident involving a dog attack with another dog.

2 Background

At approximately 5:15pm on 8 May 2015, Buddy the Staffordshire Terrier left its property at 60 Moewai Park Road, Whitianga and went to the gate of another property, where it attacked a dog behind a steel gate with low mesh. Its muzzle protruded through the steel bars and bit the dog on its nose & mouth.

Incident Report dated 8 May 2015 is attached as Reference A.

The daughter of the complainant heard dogs barking and witnessed Buddy bite and hold the other dog by its nose. She alerted the complainant to the attack on her family dog.

Neera Giri was witnessed by the complainant to go to the gate, remove her dog away from the gate and take it home. As a result of the attack the complainant's dog sustained a minor wound to his nose & lip. Attached within Reference C.

During investigation of the incident, Compliance Officer Victor Mclean went to 60 Moewai Park Road, Whitianga to speak to Neera Giri. She was not home at the time and Buddy was in the house. The officer reported that the dog was acting aggressively, barking and growling at the officer. It only settled down as the officer retreated to his truck. Attached as Reference F.

The complainant's husband who is the registered owner of the dog attacked, has previously witnessed the dog Buddy run to the gate of his property and act aggressively towards his dog. Attached within Reference C.

A neighbour has provided Council with a signed statement that he has witnessed, Buddy trying to attack the complainants dog on "several occasions" through the gate. Attached within Reference C.

The complainant has also stated that she has witnessed the Staffordshire Terrier dog Blue (and other dogs) fighting in Moewai Park Road, about 200 metres from its home.

As a result of a complaint received by Council regarding Buddy roaming in Moewai Park Road in November 2014, the Compliance Team Leader Steve Hart went to Moewai Park Road the following day at 0600 hrs - the approximate time when the alleged dog is usually roaming. At 0605 hrs the dog was observed running along Moewai Park Road unaccompanied by its owner towards its property. It ran past the officer, into the property and into the dwelling.

The officer phoned the owner (who was away overseas at the time) and left her a message on her phone. A warning letter was issued to Neera Giri requesting that she control her dog Buddy.

The complainant has stated to Council that the failure of Neera Giri to control her dog has impacted on her lifestyle and she feels unsafe taking her dog for walks. The complainant and her family no longer walk their dog past Neera Giri's home and instead drive the dog to another location to walk it.

There was an earlier incident in 2015 when the complainant's dog and Neera Giri's dog Buddy had in altercation in Moewai Park Road. Neither dog was being controlled and the complainant was issued with a written caution in regard to her dog being uncontrolled. There have been no further incidents of the complainants dog being uncontrolled since that incident.

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:

- At no time has Neera Giri accepted responsibility for her dog attacking the complainant's dog which was on the owner's property at the time it was attacked.
- Since her dog was classified as menacing, Neera Giri has refused to muzzle her dog in a public place and as recent as 23 July 2015 she was observed by two compliance officers with her dog on Brophies Beach reserve off lead and with no muzzle. The dog was running in front of the vehicle she was driving along the reserve. Neera has been observed by Compliance Officer Victor McLean, exercising her dog in this manner on previous occasions. Neera Giri was posted a warning notice on 28 July 2015 for not having her dog on a lead or having her dog unmuzzled in a public place.
- Council has received 13 letters from friends and family of Neera Giri supporting her objection to the dog being classified. Attached as Reference D
- The dog Buddy owned by Neera Giri is registered as a "Staffie" type dog breed. This infers the dog is a Staffordshire Terrier dog and its build typifies as an American Staffordshire Terrier rather than the smaller version of an English Staffordshire Terrier. The American Staffordshire Terrier breed when predominant in any dog is also known as a Pit Bull Terrier type dog. Some Councils automatically classify American Staffordshire Terriers as menacing by breed due to the Pit Bull Terrier link. Reference E (as described in the Mini Atlas of Dog Breeds by Andrew DePrisco)
- As the dog Buddy is a breed closely aligned to the Pit Bull Terrier type dog it must be assumed that a greater care of responsibility is required by the owner.

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 attack on the dog was not 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 lessor of the two classifications would also protect the public and other animals from further risk.

In addition to the Menacing Dog Classification, an infringement was also issued to Neera Giri on 10 March 2015 under section 53(1) Failure to keep a dog under control. The infringement remains unpaid.

53 Offence of failing to keep dog under control

(1) Any person who commits an offence 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 from Neera Giri dated 13 July 2015, gives no indication that the owner accepts responsibility for what has occurred and evidence suggests that she is not behaving as a responsible owner of a Staffordshire Terrier dog. There has been no apology to the complainant. Attached reference B.

While the submission from Neera Giri is supported by 13 letters from friends and family, these supporting letters needs to be weighed against additional statements including one from Victor McLean, an experienced Compliance Officer who has witnessed firsthand the aggressive behaviour of the dog and the lack of control of the dog by its owner. A neighbour has also stated that he has witnessed Buddy attempting to attack the complainant's dog through a closed gate on more than one occasion.

It was on the basis of the attack that occurred on 8 May 2015, a Compliance Officers observations and statements received, that a menacing dog Classification was considered appropriate given the circumstances.

Statements and photos attached as Reference C were received by Council as supporting documents to the classification being upheld.

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.

¹ Dog Control Act 1996 Section 33A

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 is 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.
- (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 Menacing Dog Classification Objection - Neera Giri report dated 24 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 - Buddy - Neera Giri

Attachment A

Attachment A - Supporting Documents Menacing Dog Objection - Buddy - N...