

Dog Control Act Hearings Panel
DETERMINATIONS

Date: Thursday 31 August 2023
Time: 1:09pm
Venue: Committee Room 2, Level 2, Civic Offices,
53 Hereford Street, Christchurch

Present

Chairperson	Community Board Member Emma Norrish
Members	Councillor Mark Peters Community Board Member Jason Middlemiss

Luke Smeele
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Election of a Chair Te Whakatū Poumua

It was resolved on the motion of Councillor Mark Peters, seconded by Community Board Member Jason Middlemiss, that Community Board Member Emma Norrish be appointed Chairperson of the Hearings Panel for the hearings scheduled for this date.

The Christchurch City Council Hearings Panel convened on 31 August 2023 to hear objections as follows under the Dog Control Act 1996, which were dealt with in this order:

1. Hearing at 1pm - regarding dog named 'Hine'

Hearing of an objection by **GEORGE ALLAN PHILLIP BARNEY** of Christchurch, pursuant to s 33B of the Act, to classifications of his dog, 'Hine', as menacing under s 33A(1)(b)(i) of the Act by Christchurch City Council Animal Management.

The Hearings Panel heard on this date the evidence and submissions (summarised in its decision) of the Objector, Animal Management Team, and the Complainant in regard the incident leading to the classifications objected to, and at 1:28pm adjourned the hearing to deliberate its decision in this matter, which is attached hereto and was confirmed as noted at its base.

**BEFORE THE HEARINGS PANEL
OF THE CHRISTCHURCH CITY COUNCIL**

IN THE MATTER of the Dog Control Act 1996

AND

IN THE MATTER of an objection of **GEORGE ALLAN PHILLIP BARNEY** of Christchurch to the classification by the Christchurch City Council Animal Management Team under Section 33A(1)(b)(i) of his seven-year-old, female, tan coloured, Bull Mastiff dog named '**Hine**' as a menacing dog

Hearing: Committee Room 2, level 2, Civic Offices 53 Hereford Street, Christchurch 31 August 2023 at 1pm

Panel: Community Board Member Emma Norrish (Chairperson)
Community Board Member Jason Middlemiss
Councillor Mark Peters

Appearances
for the Objector: George Allan Phillip Barney (Objector)

for the Animal Management Team: Lionel Bridger (Manager Animal Services)
(Complainant/Victim)

Determination: 12 September 2023

Hearings Advisors: Luke Smeele

**DETERMINATION OF THE HEARINGS PANEL
OF THE CHRISTCHURCH CITY COUNCIL**
(Dog Control Act 1996, section 33B)

The classification of Hine as menacing is upheld

REASONS OF THE HEARINGS PANEL

INTRODUCTION

[1] The hearing was held to consider an objection received from dog owner, George Phillip Allan Barney ('the Objector'), to the classification by the Christchurch City Council Animal Management Team ('Animal Management') under section 33A(1)(b)(i) of the Dog Control Act 1996 ('the Act') of his:

- Seven-year-old, female, tan, Bull Mastiff dog named Hine;

as a 'menacing' dog – which classification creates special obligations imposed on the dog owner by, and described within, sections 33E-33F of the Act.

[2] Section 33A(1)(b)(i) of the Act, under which Hine was classified, relates to a dog that a territorial authority considers may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of an observed or reported behaviour of the dog.

[3] Under section 33A(2) of the Act a territorial authority may classify such a dog as 'menacing', and following a report that Hine had, on 10 May 2023, attacked a person, the Manager of Animal Management under his delegated authority from the territorial authority in which the Objector and his dog reside did so classify Hine as a 'menacing' dog by causing to be given to the Objector notice of the classifications and other prescribed matters, including his right to object to the classifications under section 33B of the Act.

[4] The Objector exercised his right to object to the classifications of Hine as 'menacing' and in accordance with his right to be heard in support of his objection they were referred to the Hearings Panel of the Christchurch City Council as the body with the delegated authority to hear and determine the objection.

[5] The Hearings Panel on 31 August 2023 heard the Objector's evidence, and also heard from Animal Management and the Complainant and her partner in relation to the incident leading to the classification of Hine, having previously received a report from Lionel Bridger, Manager Animal Services, together with the evidence collected by the Investigating Animal Management Officer relating to the incident and classifications.

[6] This report notifies the determination of the Hearings Panel that:

- the classification of the Objector's dog, Hine, as 'menacing' is **upheld**;

and the reasons for its determination in accordance with section 33B(3) of the Act. The determination that the classification of Hine is 'upheld' signifies that she remain and will continue to be classified 'menacing' and the relevant special obligations thus imposed by the Act in relation to 'menacing' dogs must be adhered to or the consequences for non-adherence set out in the Act will apply.

BACKGROUND

[7] On 10 May 2023 the Council received a complaint from the Complainant alleging that she had been walking home from work and without warning, provocation or bark the dog bit and latched onto her leg. The dog after biting the complainant did not let go and the Complainant had to shake and pry the dog from her leg.

[8] Animal Management Officers investigated the complaint and, on the evidence, gathered determined that the alleged dog attack on the Complainant did occur. When the Investigating Officer's statements and evidence collected were assessed by the Manager with the delegated authority to make the decision, Animal Management determined that Hine may pose a threat and would be classified 'menacing' under section 33A(1)(b)(i) of the Dog Control Act (which relates to a dog that 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).

[9] The Council subsequently received from the Objector a formal objection to the classification of his dog, Hine, as 'menacing'. The objection triggered the appointment of a Hearings Panel to hear the objection with delegated authority to uphold or rescind the classification after having regard, pursuant to Section 33B(2) of the Act, to:

- (a) the evidence which formed the basis for the classification;
- (b) the steps taken by the owner to prevent any threat to the safety of persons or animals;
- (c) the matters relied on in support of the objection; and
- (d) any other relevant matters.

The Hearings Panel had regard to these matters in reaching its determination as summarised in this report.

[10] The following report and assessment summarises a considerable volume of oral and written evidence and submissions presented to the Hearings Panel. It is not intended to be exhaustive in its scope or to present a transcript, but rather to summarise and identify what were considered to be the salient points.

THE HEARING

Submissions of the Animal Management Team

[11] Lionel Bridger, Manager Animal Services, referred to his written report circulated prior to the hearing. In the report relevant extracts from the Dog Control Act 1996 were provided for the Hearings Panel's information and consideration:

- Objects of the Act (Section 4)
- Obligations of Dog Owners (Section 5)
- Territorial authority may classify dog as menacing (Section 33A)
- Objection to classification of dog under section 33A (Section 33B)
- Effect of classification as menacing dog (Section 33E)

[12] Mr Bridger summarised for the Hearings Panel the facts on which the decision to classify the Objector's dog as 'menacing' was based referring to the report. Animal Management escalated the compliance, i.e. a warning was not appropriate in this instance. He noted that the dog had been involved in two other incidents, one involving a warning for being unsupervised in a public place and another for an attack on a dog. Classifying the dog as menacing was the most appropriate action Mr Bridger submitted. He listed considerations for this as: (a) the dog escaped the owners house and was in a public area; and (b) the dog attacked a person and latched onto their leg and did not let go.

[13] The Panel sought clarification from Animal Management regarding whether a dangerous classification had been considered. Animal Management clarified that a dangerous classification is a more serious classification and the evidential requirements for a dangerous classification had not been met in this case. Though the complainants' injuries were significant she was not taken to the hospital for treatment.

[14] The investigating Officer had initially provided the following case summary of the incident leading to the classification:

On Wednesday 10 May 2023 at approximately 2.20pm the Complainant was walking home from work. The Complainant walked from Wainoni road into Portsmouth street and then in Basingstoke street. She sighted two dogs further up Basingstoke Street. The Complainant was on the left-hand side of the street. 42 Basingstoke is on the right-hand side of the street.

Lynda was home at 45 Basingstoke Street; her husband asked her to come out and look at the lawn edges he had trimmed. Lynda sighted the two dogs from 42 Basingstoke Street come out of Bournemouth crescent.

The dogs were going back and forth from one side of the street to the other. As the Complainant walked past both dogs came round behind her and Hine, the tan dog bit her on her lower left leg.

The Complainant screamed, Lynda said, started to run so she yelled out don't run and she stopped. Both dogs ran back into 42 Basingstoke Street, through the open front gate. The Complainant had blood dropping down her leg and there was blood on the footpath. The Complainant walked home and called the police who called an ambulance.

Lynda said the dogs continued to wander in and out of the property until a friend of the dog owner came by and put the dogs back in and shut the gate. She can't remember if they were male or female. The police arrived after.

The paramedics treated the Complainant at home.

The dog owner is currently having cancer treatment and is staying at Ranui house. His friend Alfie is staying with the dogs. The dogs dug a hole under the fence and got into the front yard and out through the open gate.

Mitigating Circumstances:

Dog owner is currently getting medical treatment and his friend Alfie is living with the dogs. He told Alfie not to let the dogs out in the back yard together loose as they are naughty together and will dig out. Alfie let the dogs out in the yard together and they dug a hole under the fence and escaped.

Aggravating Circumstances:

Bite required medical treatment and resulted in the Complainant having two days off work.

Hine and Tai received a warning section 57 in 2017.

History of wandering. Last job was in July 2022. Witness said she hasn't seen the dogs out wandering for about a year.

Officer Recommendation:

Tai didn't attack therefore I recommend a warning section 52A for wandering.

Hine attacked therefore I recommend she be classified MED and a warning section 52A for wandering.

Both dogs are currently registered and microchipped. Both dogs aren't desexed.

Evidence of the Complainant that was Attacked ('the Complainant')

[15] The Complainant had provided the following statement to the Investigating Officer:

I was walking from work. I came from Wainoni Road and turned into Portsmouth Street and then into my street. I was about a quarter of the way up my street when I sighted the two dogs. The dogs were about another quarter of the way further up the street. I was on the left-hand side of the street, and they were on the right-hand side.

They both crossed over to my side of the footpath. As I got closer, they both crossed back to the other side. They then crossed back to the same side street as me I was on the phone to my partner at the time. I got off the phone to him.

The dogs then flanked behind me. The tan one came in behind me and bit my left leg. The second dog was behind me as well, but it hung back and didn't come up to me. I screamed at it. I turned towards the dog. Both dogs then went back into the property. The address they went back into was 42 Basingstoke Street.

The front fence at the property is low. I didn't see a little gate by the front fence. They both went back and sat down in the driveway. In front of the deer gate. I stopped and looked down and there was blood down my leg and on the ground.

There was a lady a few houses that sighted the attack. She came down and asked if I was alright. She said the dogs are often out, but she has never seen them bite anyone. There was a car pulled over with two guys who offered a ride, but I told them that I could walk home. I walked home.

I called my partner and then I called the police, and they organised the ambulance. Paramedic treated me on my front doorstep. They cleaned the wound and gave me antibiotics and pain relief. I had two days off work. The dogs showed no aggression. Which to me is scarier as there was no warning. The dog went straight around behind me and latched onto me.

[16] At the Hearing the Complainant stated that she could not walk properly for months after the attack and had to take time off work and incurred expenses for the treatment of the injury to her leg. The Complainant also expressed the negative impact the attack had on her feeling of safety and security in the neighbourhood. Additionally, the Complainant stated her concern for wider community as there are many elderly residents and kids who walk in the neighbourhood and if a less physically capable person was attacked the injury could be significantly more serious.

[17] The Panel thanked the Complainant for their appearances at the hearing.

The Objector

Evidence and Submissions of the Objector

[18] The Objector provided the following statement in objection to the classification:

I am writing this letter to object to the classification of my dog as a Menacing Dog on the grounds that she (Hine) was under the care of my friend while I was staying at Ranui House on Cambridge Terrace Christchurch, undergoing medical treatment and that instructions for the care of the dogs were not followed by my friend.

[19] The Objector did not appear before the Panel.

Close of Hearing

[20] The Hearings Panel considered that it had all the information it needed to have regard to under section 33B(2) of the Act after considering the evidence, information and submissions available to it.

[21] The Hearings Panel adjourned the hearing and deliberated its decision.

PANEL DELIBERATIONS

The evidence which formed the basis for the classification

[22] The evidence which formed the basis for the classification was in the Panel's view not in any doubt with regard to it supporting the assessment that Hine had attacked and injured the Complainant.

[23] Classification as menacing is not intended to be punitive, and the statutory requirement for it is not high; only that it is assessed that the dog may pose a threat, based on observed or reported behaviour. The muzzling requirement arising from classification may suggest that the threat should be from biting, but the Panel having carefully looked at the evidence, did consider it more likely than not that Hine does pose a risk of biting based on the evidence around the reported behaviour.

[23] In fairness, the Panel notes that any dog that can bite does pose some risk of biting, so classification is not intended to stigmatize or pass moral judgement on Hine. Rather there is an issue with society wrongly stigmatizing a dog wearing a muzzle, and the Dog Control Act unhelpfully employing the label 'menacing' to cover the plethora of often accidental incidents that lead territorial authorities to impose the muzzling requirement, when the reality is that muzzling should be a more widespread voluntary device to manage the common and innate risk of dog bites.

[24] The Panel considered that the incident resulted from the failure of the Objector's friend to adequately follow the instructions for the care of the dog given to them by the Objector, which may be accepted as a mistake, not to be punished, but neither allowing the Panel to neglect the object of the Dog Control Act and obligation to consider the wider community. The Panel can only look at the preventative tool of classification the Act puts in front of it, imperfect as it may be.

[25] The Panel principally takes a forward-looking approach of judging whether the evidence supports upholding classification to advance the objects of the Act and prevent risk. The Panel was not substantially reassured that the Objector is a responsible dog owner and was unsatisfied with the dog owners lack of engagement in the process and failure to attend the hearing. The Panel recognised that the risk will not reasonably be eliminated in this case. So, classification requiring muzzling in the circumstances the Act prescribes, should remain in place in light of the evidence of the incident.

Matters relied on in support of the objection

[26] The Panel were also discouraged by the Objector's lack of participation in making matters right and engagement in the process.

[27] Classifications are not intended to remedy or punish but are to prevent risk. The Panel still perceiving some risk in this case, which classification may not perfectly address. The intent in adding a label of 'menacing' to Hine is not to stigmatize, and it is simply the arbitrary manner of reference the Act adopted to signal the employment of the preventative tool that is classification.

[28] The Hearings Panel had regard to all the matters relied on in support of the objection. The Panel appreciated that the Objector was not in charge of looking after the dog at the time of the incident and had left the dog in charge of his friend who failed to follow the instructions for the care of the dog.

[29] The Hearings Panel was mindful of the potential relevance of these determinations to the safety of the wider public and was not persuaded Hine no longer had the propensity to attack in unpredictable circumstances. The Hearings Panel regarded that the nature and result of the attack justified upholding the 'menacing' classifications of Hine so as to require muzzling as a preventative measure.

Other relevant matters

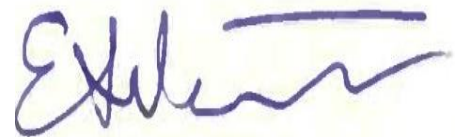
[30] The Hearings Panel had regard to the evidence as a whole and considered that it had all the information it needed to have regard to under section 33B(2) of the Act. The Hearings Panel noted that every objection to a menacing dog classification is considered on its own merits and having regard to the circumstances particular to the case. The Hearings Panel, having regard to all relevant matters, considered that upholding, and not rescinding would be justified by the evidence and submissions and would align with the objects of the Act.

RESULT

[31] Having considered the objection of the Objector to the classifications of his dog Hine, as a ‘menacing’ dog, together with the evidence and submissions collated by the Animal Management Team and from those who appeared before the Hearings Panel, and having regard to the matters contained within the Dog Control Act 1996 and referred to in section 33B(2) of the Act, it is determined that the classification of the Objector’s seven-year-old, female, tan coloured, Bull Mastiff dog named ‘Hine’ as a menacing dog is **upheld** for the reasons indicated herein and for the reason that the Hearings Panel considers because of the reported incident that Hine may pose a threat to one or other of the types of sentient being the Act has designs to ensure are not injured, endangered or caused distress.

Meeting concluded at 1:35pm.

CONFIRMED THIS 12th DAY OF SEPTEMBER 2023



COMMUNITY BOARD MEMBER EMMA NORRISH
CHAIRPERSON