

Decision Ref:

AHC S ROSS

IN THE MATTER OF

An objection by Stephen
ROSS under section 33B
of the Dog Control Act
1996 – Objection to
classification of dog
under section 33A

BEFORE THE KAPITI COAST DISTRICT COUNCIL APPEALS COMMITTEE

Chair: Mayor Janet Holborow
Members: Cr Sophie Handford
Cr Glen Cooper

HEARING at PARAPARAUMU on 27 August 2024

HEARINGS COMMITTEE

The Hearings Committee has been established under the Kapiti Coast District Council Dog Control Bylaw 2019 (the Dog Control Bylaw) to hear, amongst other matters, objections to any dog classified as dangerous or menacing.

This decision is made under the delegations of this committee and in accordance with the Dog Control Bylaw and the Act.

APPEARANCES

Animal Management Team: Mr Michael Norden, Mr Dylan Perrett

Objector: Mr Stephen Ross, Ms Samantha Wood (Legal Counsel).

Animal Management Team's Witnesses: Mr Christopher Hargreaves, Ms Rebecca Wakelin, Ms Natalya Warren, Mr Darren Gray, Mr Michael Norden

Other Council Staff Present: Mr Richard Hopkins, Mr James Jefferson

Governance Officers: Ms Kate Coutts, Ms Anna Smith, Ms Maria Cameron, Ms Jessica Mackman

RESERVED DECISION OF THE COMMITTEE

Having considered the information presented in writing, and in person at the hearing, the committee rescinds the Menacing dog Classification imposed under the Dog Control Act 1996.

The consequence of the decision is that the Notice of Classification of the dog Indy as a Menacing dog will be rescinded effective from receipt of this decision.

INTRODUCTION

1. This decision relates to an appeal by Stephen Ross for the removal of a classification of “menacing” which was imposed on his dog Indy by the Kapiti Coast District Council Animal Management Team.
2. Indy is a 4-year-old desexed German Shepherd female dog, registered to Mr Stephen Ross (owner) of [REDACTED], and kept at that property.
3. The classification followed an incident on 1 April 2024 on Raumati Beach, whereby Indy, owned by Stephen Ross, allegedly attacked Bailey, a Cavoodle owned by Christopher Hargreaves and Rebecca Wakelin.
4. At the time, Indy was in the care of Stephen Ross’ daughter McKenzie.
5. Following the incident, on 2 April, the Animal Management Team received a Service Request advising of the incident, which was assigned to Michael Norden, warranted officer in the role of Investigations, Monitoring and Compliance with the Animal Management Team.
6. Following the incident the Kapiti Coast District Council Animal Management Team completed an investigation, which resulted in the Animal Management Team classifying Stephen Ross’ dog (Indy) as menacing under section 33A of the Dog Control Act 1996, including the following:
7. On 3 April, Mr Norden visited the complainants at their property and spoke to the complainants.
8. Following this, Mr Norden contacted witness Natalya Warren and obtained a written statement.
9. On 5 April, an email was received from what appeared to be the dog owner, outlining information regarding the incident.
10. Following a phone call with Mr Ross, Mr Norden visited the property, accompanied by Senior PSAMO Darren Gray.

11. Mr Norden and Mr Gray found McKenzie at home, and she signed a statement based on the email which had been received.
12. On Wednesday 24 April Stephen Ross was advised over the phone at his request that Indy would be classified as Menacing under Section 33A of the Dog Control Act. Mr Ross advised he would be appealing the decision.
13. Mr Ross was given notice of this classification via a letter dated 24 April.
14. In accordance with section 33B of the Act Mr Ross has objected to the classification based on the following grounds:
 - a) That the decision of the Animal Management Team classifying Indy as a menacing dog under the Dog Control Act 1996 was incorrect.
 - b) That the decision of the Animal Management team was flawed due to a breach of natural justice
 - c) Even if the finding is that the original decision was not flawed or incorrect, the classification should be rescinded based on subsequent events.

THE HEARING

1. A Hearing was convened on 27 August 2024 to hear Mr Ross' objection. The meeting minutes are available [here](#) on the Council's website.
2. The Committee heard from the following:
3. Animal Management Team: Mr Michael Norden, Mr Dylan Perrett
4. Objector: Mr Stephen Ross, Ms Samantha Wood (Legal Counsel)
5. Animal Management Team's Witnesses: Mr Christopher Hargreaves, Ms Rebecca Wakelin, Ms Natalya Warren, Mr Darren Gray, Mr Michael Norden
6. Extensive written and visual evidence was pre-circulated to the committee including the following:
 - a) A statement lodged by Rebecca Wakelin on April 2024, a statement by Hargreaves on 11 April 2024, and a further statement from Natalya Warren, a witness to the attack, on 16 April.
 - b) Written evidence was provided by the Animal Management Team, including all correspondence.
 - c) Summary evidence was provided by Dylan Perrett, Team Leader Public Spaces Animal Management.
 - d) A decision Matrix was supplied to the committee.
 - e) Evidence and photographs of the victim dog after the attack were provided.
 - f) Invoices for the veterinary treatment were included in the evidence.

- g) Written evidence was provided by the Objector, represented by Solicitor Samantha Wood.
7. The Chair, Mayor Holborow, opened the Hearing, stating that any decision made by the committee would be based on all written and oral evidence provided to it.
 8. All parties and their witnesses were sworn in.
 9. The committee heard opening submissions.
 10. Dylan Perrett Team Leader Public Spaces gave the opening submission for the Animal Management Team.
 11. He outlined the incident, whereby Indy attacked Bailey and subsequent investigation, and included reference to the legislation.
 12. The decision to classify as Menacing was based on the reported behaviour and analysis that Indy poses a threat to persons or animals.
 13. In response to questions from the Committee asked Mr Perrett clarified:
 - a) The decision-making matrix as a “guiding tool” and the severity of the attack led to the analysis that Indy poses a threat
 - b) The fact that the attack occurred was evidence that McKenzie had failed to control Indy.
 - c) Indy’s breed was not relevant to the classification.
 - d) The attack might not have occurred if the dog was in the control of someone more experienced.
 - e) The alleged second incident which occurred on the beach had carried no weight.
 14. Ms Samantha Wood, Legal Counsel for Mr Stephen Ross, then gave the preliminary submission for the Objector.
 15. Ms Wood outlined the event from the Objector’s perspective, and confirmed that the attack had occurred.
 16. She referred the Committee to the written submissions, and outlined three grounds of objection to the Classification:
 - a) That original decision is inconsistent with the matrix and previous decisions.
 - b) That decision breaches natural justice.
 - c) That the further evidence and subsequent events justify rescinding the decision.

17. Ms Wood said that the statistics provided by Council show that an injury alone is not enough to lead to a classification.
18. She put forward the view that the actions of Bailey's owners in picking up Bailey may have exacerbated the injury.
19. She questioned the likelihood of recurrence given there was no reported previous history of aggression.
20. Ms Wood commented on the Council Officers' analysis of the attitude of the owner in the Matrix, noting that in her opinion he had demonstrated a compliant and co-operative attitude and behaviour, and had offered to pay veterinary bills.
21. There was a delay paying the veterinary bills while Mr Ross clarified whether dental cleaning should be included. She said it appeared that delay may have contributed unfairly to the view taken by Council Officers.
22. Ms Wood talked about the impact on the family of the consequences of a warning letter they received after the classification, which was retracted after the dog was found not to be Indy.
23. Ms Wood pointed to the measures the family have already put in place – ordered a muzzle, kept Indy on a short lead, and started behavioural training.
24. Ms Wood pointed to a breach of Natural Justice with the second attack on the beach being taken into consideration with no right of reply.
25. Ms Wood also said that the home visit to McKenzie had put pressure on her.
26. Ms Wood said that the gathering and treatment of evidence was inadequate, pointing to a lack of investigation of further actions to be taken by the family.
27. Ms Wood questioned the treatment of Information requests.
28. Ms Wood then summarised the main points as follows:
 - a) The decision process fell short – the Ross family didn't know the full extent of allegations, McKenzie felt under pressure, no chance to fully engage.
 - b) Steps the Ross family have taken to mitigate further incidents.
 - c) Payment of veterinary invoices
 - d) Severity of injury worsened by actions of owners of Bailey
 - e) Evidence was incomplete and wasn't considered fairly.
29. Ms Wood stated that Indy isn't going to be a threat, and that the statistics show that first time offences don't necessarily result in classification.
30. In answer to questions asked by the committee Ms Wood further stated:

- a) This was a first-time event, with other factors contributing and conflicting evidence. If severity of injury was a deciding factor, picking up Bailey may have made the injuries worse.
 - b) The high tide and lack of space had contributed to the incident.
31. The Animal Management Team called forward Christopher Hargreaves, the owner of Bailey.
32. Mr Hargreaves described the incident on 1 April, saying it was unprovoked and had a significant impact on them.
33. Mr Hargreaves said that McKenzie was struggling to maintain control, and Indy came away attacking Bailey at his feet. Mr Hargreaves lifted Bailey up and there was noticeable bleeding. He asked McKenzie for details, and she said she was just the dog walker and not the owner, and didn't give details. He described the veterinary treatment that was needed, and that he would like to be reimbursed.
34. In answer to questions by the Committee Mr Hargreaves further stated:
 - a) Bailey was sitting between his feet when the incident occurred and he felt picking him up was his only choice, and that Indy "came up" with Bailey. He described Indy as "intent" and that she jumped up at Bailey as he lifted him up above his head.
 - b) Indy was not under control, and that the attack was severe.
35. Rebecca Wakelin, co-owner of Bailey, gave a statement affirming Mr Hargreaves version of events.
36. Natalya Warren provided evidence as a witness, concurring with the previous two versions of events.
37. In addition, she referred to a second incident on 1 April after the first attack, when Indy lunged at another dog. She also stated that she saw blood on McKenzie's hands.
38. Darren Gray, Senior Public Spaces Animal Management Officer, read a statement outlining his actions as Public Spaces and Animal Management Officer, including identifying the dog and progressing the investigation
39. In answer to questions raised by the committee Mr Gray further stated:
 - a) When he visited the Ross' property, Indy was secured at the property
 - b) Initial interactions with Mr Ross were co-operative.
 - c) McKenzie seemed comfortable to them when they went the property to obtain a signed statement.

40. Mike Norden, Animal Management Team, then spoke as a witness and read a statement, outlining his role in the classification decision.

41. In answer to questions by the committee Mr Norden further stated:

- a) The Matrix is a tool as part of the bigger part of the investigation. Other factors, such as the history of the dog and dog owner, and the seriousness of the event are the main considerations.
- b) When asked about what had led to the analysis of the owner's attitude, Mr Norden outlined the importance of taking all accounts into consideration.
- c) Mr Norden said he wanted to meet with McKenzie and Mr Ross together, but he didn't have the opportunity to do that.
- d) Mr Norden said he needed to meet McKenzie as the email he received outlining McKenzie's version of events wasn't in a standard format, so needed to be formatted as a formal statement.
- e) When asked about the likelihood of recurrence, Mr Norden said that he had two complainants and a witness whose statement supported the complainants. He said he put a lot of weight on Natalya Warren's evidence as an objective observer.
- f) When asked if any questions had been asked about further actions to be taken by the family, and he answered that an investigator shouldn't try to predict the future, but take into account the facts and evidence available at the time to determine the classification. He said that his view was that it most likely could happen in the future, particularly if McKenzie was in charge of the dog.
- g) Mr Norden said he hadn't had the chance to find out about what actions Indy's owner planned to take in response to the classification, as he didn't have the opportunity to sit down with him and talk about the findings.
- h) Mr Norden confirmed that after some initial confusion had been resolved a reduced amount had been paid against the Veterinary invoices.
- i) McKenzie's behaviour had been taken into account as well as the dog owner's when assessing the dog owner's attitude.
- j) Weight is placed on evidence gathered rather than the Matrix itself and this had been hindered by the lack of opportunity to meet with Mr Ross and McKenzie.
- k) Mr Norden clarified some of the evidence supplied by the Objector around previous classifications of other dogs.
- l) The wishes of the complainant and a range of other factors can lead to a warning rather than a classification.
- m) When asked about likelihood of recurrence, and the likelihood of a dog that's attacked once attacking again if a dog has otherwise a perfect record, Mr Norden said that his experience had showed him that dogs that had attacked previously might attack the same dog again and noted a concern around the close proximity between the residences of the parties.

- n) Mr Norden also mentioned that the independent witness had given evidence that there had been a second attack, and said that in his opinion if Indy was on the beach without a muzzle, she could attack again.
- o) When asked how much weight was given to the second attack, when there is only one account and there isn't much information about it, Mr Norden said he put little weight on unsupported evidence.

42. Mr Norden concluded by saying that he stands by the menacing classification.

43. Samantha Wood read the witness statement of the appellant's daughter McKenzie Ross. The statement outlined the following:

44. McKenzie was walking along the beach, the tide was high, and there wasn't a lot of room. Mr Hargreaves was walking slowly she tried to control Indy and tried to let them pass. She said the two dogs barked at each other, and described Bailey's bark as "high pitched". The dogs clashed together and she couldn't pull Indy back, and Mr Hargreaves picked Bailey up which separated them. The incident happened quickly and she didn't see Indy bite Bailey. She said that there was a tense exchange after the incident, so she left the scene as they "weren't getting anywhere".

45. McKenzie refuted that there was blood on her hands as alleged by Natalya Warren, and said that Indy did not lunge at another dog, and that they didn't pass any other people or dogs, pointing to the photo evidence which didn't show any other people or dogs. She outlined the interactions with the Animal Management Team, saying that during the first visit, an email was requested, which was later provided. She described the visit by Mr Norden and Mr Gray, and said they had asked her to sign a statement, and that the visit had made her uncomfortable.

46. Stephen Ross, the dog owner read a statement summarised below:

47. Mr Ross apologised for the incident, and expressed regret that Bailey was injured, and said he is willing to pay any outstanding vet bills. He pointed to Indy's "unblemished" previous record. He said that during the first interview he had apologised and offered to pay vet bills, and that Mr Gray had said not to worry, that "dogs will be dogs" and that such events weren't uncommon.

48. Mr Ross said that Mr Gray had asked for an email outlining their version of events, which he had provided. He said he had called to confirm that the email had been received, and at that time they requested a signed statement. He said there was no more communication with him until Mr Norden's phone call to explain that he had taken over the investigation and would like a signed statement. Mr Ross didn't think that was necessary, as the email had come from their account. He said he had arrived home on the Thursday and learnt that Mr Gray and Mr Norden had visited the property and spoken to McKenzie alone. Mr Ross said the visit had upset her, and that made him angry.

49. Mr Ross said that McKenzie had never had such an interaction before, and that the documents had said that McKenzie was “immature” and that should have been taken into consideration. He described the phone call whereby he had been informed that Indy had been classified as a menacing dog, which “shocked” him as it was such a change from previous communication.
50. Mr Norden said to him that a witness had come forward and described a second attack. Mr Ross said he was frustrated he hadn’t had a chance to reply to the other evidence. He said he became angry at the way they’d been treated and what it meant for Indy, and said there was a lack of detail in the communication around the classification.
51. Mr Ross questioned details of the evidence around the attack, saying that McKenzie had offered her phone number.
52. Mr Ross questioned the finding that Indy was “very likely” to attack again highlighting her unblemished record.
53. Mr Ross questioned the finding that he, the owner, had been obstructive, saying he had been compliant including initiating and agreeing to meeting with the council, he offered to pay the vet bills, he returned missed phone calls.
54. Mr Ross outlined steps the family had taken after the incident to reduce the chance of recurrence, including committing to the following actions:
 - a) Indy must only be walked on a fixed short lead
 - b) Indy must not be walked in public place during busy daylight hours
 - c) Indy must wear a muzzle when walked in a public place
55. He said all of these measures have been put in place, and they have also begun animal training with Indy.
56. Mr Ross outlined an incident whereby the family received a warning after a false accusation that Indy had been walked without a muzzle, and said that had been stressful for the family.
57. In response to questions, Mr Ross further stated:
 - a) When asked if Indy behave this way to other small dogs, and he answered that she stops and barks, and said there was only one incident with another small dog when she was a very small puppy.
 - b) Mr Ross gave an update on training, and said Indy and the family had their first training session, to teach Indy to heel, and they’ve shared information about the incident with the trainer. They’re aiming that Indy becomes less

reactive. She has been wearing a muzzle and will continue to do so until they finish the dog training.

- c) Mr Ross said they hoped one day to get to the point where they can let Indy chase sticks again.
- d) Mayor Holborow asked what the danger was of something like this happening during the duration of Indy's life – is it in her nature? Mr Ross replied that it isn't in her nature, and that they can take steps, but it would depend what a future event would look like.
- e) Mr Ross said that Indy had attended doggy day-care in the past with no problems, including for extended periods with other dogs.

58. Ms Wood passed around an additional piece of evidence which was an email saying, "Attached is also the Risk Matrix we use to decide what line of outcome we are looking to take alongside the Menacing classification papers served to the dog owner."
59. She said that the email showed the Matrix did form quite a large part of the inquiry and how persuasive it was and questioned whether it was just a guideline or whether it was used to decide.
60. Dylan Perrett provided evidence in reply on behalf of the Animal Management Team, reiterating the main points raised during the evidence in chief.
61. Mr Perrett outlined the consequences of the classification, and that it was about public safety, ensuring that it doesn't happen again.
62. Mr Perrett said that the findings in the Matrix focussed on the person in charge of the dog at the time of the incident, rather than Mr Ross, and that the reluctance of McKenzie to supply details was a contributing factor, though there were other sides to that story.
63. Mr Perrett stated that it was a serious unprovoked dog attack incident by a large dog on a much smaller dog causing serious injury to the other dog. The attack was fully investigated using the standard processes and with evidence by the two witnesses and as a serious first incident of this kind. He said that a menacing classification sets conditions where the owner can continue to enjoy their family pet with additional controls to avoid any recurrence.
64. Mr Perrett affirmed that Animal Management Team believe this an appropriate response based on all the information and should be upheld.
65. Mr Perrett confirmed that the Animal Management Team received an Official Information Request which showed that there were 13 first time dog on dog attacks between April 23-March 24. This showed there were 4 menacing, 5 euthanised (the owner's decision).

66. The Matrix is a guideline to assist with the investigation and is not by itself the only tool to determine the enforcement action. It is not disputed by the owners that the dog carried out the attack, which is one reason that a Menacing classification is not applied in some cases. The actions required by the classification are exactly what the owners are intending to do, but the actions are formalised.
67. Samantha Wood provided evidence in reply on behalf of the Objector, reiterating the points raised during the evidence in chief.
68. Ms Wood asked if the severity of the injury is the only consideration, how is it that any dogs are excused from a classification. She outlined concerns around the clarity of the process, pointing to the findings on the Matrix which had two decisions which didn't seem to reflect the evidence the Animal Management team had in front of it.
69. Ms Wood re-iterated that in their view the actions of Bailey's owners had exacerbated the injury, and said the Animal Management Team needed to consider more carefully what had caused the severity of the injury if it was the "main thrust".
70. Ms Wood highlighted conflicting reasoning and frameworks between the phone calls, the information requests, and the information given at the hearing, and said the Objector didn't get a chance to explain the actions they'd taken or what they planned to do.
71. Ms Wood identified severity of injury, likelihood of recurrence, attitude of dog owner, the vet invoices issue, and any further criteria as main considerations under legislation.
72. Ms Wood re-iterated that this was first time offending and that significant voluntary measures are in place
73. Ms Wood said that the procedure didn't allow for McKenzie to provide a fuller statement.
74. Ms Wood concluded by saying that the situation is terrible, but there is a reason there is discretion and a Matrix - because there needs to be a wider breadth.
75. The committee adjourned for deliberations.

LEGISLATION

76. When making its determination on this objection, the Committee must have regard to section 33B (2) of the Dog Control Act 1996 which provides:

77. (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.*
- b) Any 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.*

78. The original Classification of Indy as Menacing was imposed under Section 33A of the Dog Control Act 1996 which defines a menacing dog:

A menacing dog is one that may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of

- a) Any observed or reported behaviour of the dog; or*
- b) Any characteristics typically associated with the dog's breed or type.*

Menacing Dog classifications are imposed under the Kapiti Coast District Council Dog Control Bylaw 2019, which references the Dog Control Act 1996.

79. The committee took into consideration the relevant legislation as outlined above when coming to this decision.

REASONS FOR DECISION

80. Based on the written and oral evidence provided by the objector and the Council's Animal Control Team, the Committee is not persuaded that Indy poses a threat to any person, stock poultry, domestic animal, or protected wildlife, and therefore rescinds the Menacing classification for the following reasons:

81. It was clear that McKenzie was struggling to control Indy in difficult circumstances, with limited room on the beach, and a lead which was unsatisfactory.

82. There is no dispute that an attack occurred and led to serious injury to Bailey, however some of the details surrounding the attack are unclear, and some of the evidence was contradictory.

83. The allegation of the second attack as outlined in Natalya Warren's evidence is unconfirmed, so Committee finds it should not be taken into account. In some places in the evidence, the Animal Control Team identified this second incident as a consideration when deciding on the likelihood of recurrence, and at other times the Animal Control Team said it had no bearing.

84. The committee notes that this is the first reported behaviour of this kind by Indy.

85. Indy's owner has taken actions to address the safety concerns, committing to Indy wearing a muzzle and commencing behavioural training. The committee notes that the family has taken the event seriously and has taken steps to address the risk of recurrence.
86. The veterinary bill has been largely settled, and Mr Ross has agreed to pay any outstanding amounts.
87. There were other concerns raised by the Objector, but the committee has only assessed the concerns which are relevant to the legislation when making this decision. Other grounds for objection have not been upheld.
88. While the decision-making Matrix is not legislatively binding, it is a tool used by the Animal Management team in coming to a decision about the classification. The committee had some reservations around some of the findings in the decision-making matrix, particularly around the attitude of the dog owner and the finding that the likelihood of recurrence was very likely.
89. In terms of the attitude of the dog owner, the assessment was applied McKenzie, who is not the dog owner. There were also differing accounts of McKenzie's response at the time of the attack.
90. The evidence presented to support the assessment that there is a high likelihood of recurrence, thus posing a threat, was not compelling, when this was Indy's first reported attack and the committee did not hear convincing evidence supporting this assessment.
91. The likelihood of a further attack is mitigated with the measures the Ross family has put in place. The Animal Management Team were not aware of those measures when imposing the classification, as they had not had a chance to have a conversation with Mr Ross.
92. The committee heard that the family has already agreed that a muzzle will be used on Indy, and that they have already commenced one-on-one dog training, which they say is going well. The committee finds that the owners have taken significant steps to mitigate the threat of recurrence. Primarily for this reason, and for the other reasons outlined above, the Committee has made the decision to rescind the Menacing Dog Classification.

DECISION OF THE SUBCOMMITTEE

The Kapiti Coast District Council Appeals Committee, having heard the evidence and statements at its meeting on 27 August, has made the decision to rescind the Menacing Dog Classification of Stephen Ross' dog Indy.

Result: The classification of Stephen ROSS’ dog, “Indy”, is rescinded

Dated at Paraparaumu this day Friday 4 October 2024



Mayor Janet Holborow

Chair of the Appeals Hearing Committee

