



# MINUTES

## Waimate District Council Appeal Panel Committee Meeting

5 April 2019

**MINUTES OF WAIMATE DISTRICT COUNCIL  
WAIMATE DISTRICT COUNCIL APPEAL PANEL COMMITTEE MEETING  
HELD AT THE COUNCIL CHAMBER, WAIMATE DISTRICT COUNCIL, 125 QUEEN STREET,  
WAIMATE ON FRIDAY 5 APRIL 2019, COMMENCING AT 2.02 pm**

**PRESENT:** Chair Craig Rowley, Cr Sharyn Cain, Cr Sheila Paul

**APOLOGIES:** Nil

**IN ATTENDANCE:** Paul Cooper (Regulatory and Compliance Group Manager), Helen Strachan  
(Committee Secretary)

**OPENING**

**1 APOLOGIES**

Nil

**2 VISITORS**

Nil

**3 CONFLICTS OF INTEREST**

Nil

**4 IDENTIFICATION OF MAJOR (URGENT) OR MINOR ITEMS NOT ON THE AGENDA**

**MINUTES**

**5 CONFIRMATION OF MINUTES**

**5.1 MINUTES OF THE WAIMATE DISTRICT COUNCIL APPEAL PANEL COMMITTEE  
MEETING HELD ON 2 APRIL 2019**

**COMMITTEE RESOLUTION 2019/1**

Moved: Cr Sheila Paul

Seconded: Chair Craig Rowley

That the Minutes of the Waimate District Council Appeal Panel Committee Meeting held on 2 April 2019 with minor formatting amendments, be confirmed as a true and correct record.

**CARRIED**

## REPORTS

### 6 GENERAL REPORTS

#### 6.1 MENACING DOG CLASSIFICATION OBJECTION - MAREE AND PAUL WHITING

The Waimate District Council Appeal Panel met on Tuesday 2 April 2019 at 3.30pm to decide on an objection by a dog owner against the decision of the Council Animal Control Officer to classify their dog as menacing pursuant to Section 33A(2) of the Dog Control Act 1996. At that meeting they reserved their decision, pending a review of all information, to hold a further meeting later in the week.

Accordingly, the Waimate District Council Appeal Panel met on Friday 5 April 2019 at 2.00pm to make their decision.

#### COMMITTEE RESOLUTION 2019/2

Moved: Cr Sharyn Cain

Seconded: Cr Sheila Paul

1. That the Menacing Dog Classification Objection - Maree and Paul Whiting report is accepted; and
2. That the Waimate District Council Appeal Panel upholds the Menacing Dog Classification, decision below:

**IN THE MATTER** of the Dog Control Act 1996

**AND**

**IN THE MATTER** of an application by Mrs Maree Whiting and Mr Paul Whiting to appeal a menacing dog classification, pursuant to Section 33A (2) of the Dog Control Act 1996, by the Waimate District Council Animal Control Officer.

#### **BEFORE THE WAIMATE DISTRICT COUNCIL APPEAL PANEL**

Chair – Mayor Craig Rowley

Member – Cr Sharyn Cain

Member – Cr Sheila Paul

#### **BY WAY OF PUBLIC HEARING**

Waimate District Council Appeal Panel Hearing was held in the Council Chamber, Waimate District Council, 125 Queen Street, Waimate on Tuesday 2 April 2019 at 3.30pm

#### **APPEARANCES**

Mrs Anne Weeks – Complainant

Mr Bradley Haines – Witness

Mr Lawrence Pritchard – Witness

Mr John Fattorini – Witness

Mrs Maree & Mr Paul Whiting – Applicant

Mrs Linda Shefford – Senior Animal Control Officer

Mr Robin Cadogan – Animal Control Officer

**ALSO PRESENT**

Mr Paul Cooper – Regulatory and Compliance Group Manager  
Mrs Helen Strachan – Committee Secretary

**RESERVED DECISION OF THE WAIMATE DISTRICT COUNCIL APPEAL PANEL COMMITTEE  
REGARDING APPEAL AGAINST MENACING DOG CLASSIFICATION**

**BACKGROUND**

1. At about 4:30pm on Thursday 3 January 2019, the Waimate District Council received a complaint from Mrs Ann Weeks in relation to a dog attack. The complaint was subsequently attended by an Animal Control Officer and those involved spoken to. All parties were co-operative and helpful in establishing what had occurred.
2. Mrs Weeks was on her mobility scooter walking her small Maltese dog known as Gemma on a lead in Victoria Park together with other people. The dog owned by Mrs Whiting and known as Bently is a male Golden Retriever. It escaped her control and rushed toward Mrs Weeks and Gemma. Bently picked up Gemma by the neck and shook her vigorously.
3. Bently was subsequently forced to release Mrs Weeks' dog by the witness Mr Lawrence Pritchard.
4. Both Mrs Weeks and Gemma were distressed by the attack, and Gemma was taken to the vet for an examination. The examination showed that there were no apparent physical injuries to Gemma but there was evidence of dried saliva in two areas on her fur.
5. The investigating Animal Control Officer handed over the matter to the Waimate District Council senior Animal Control Officer for further follow-up. After further enquiries, discussion and then evaluation of the case with senior management, Bently was classified as a menacing dog pursuant to section 33A (2) of the Dog Control Act 1996.
6. Mrs Maree Whiting and Mr Paul Whiting, within the 14 day prescribed period under the provisions of section 33B of the Dog Control Act 1996, objected in writing to the menacing dog classification.

**SUMMARY OF EVIDENCE AT HEARING**

**Mrs Ann Weeks (written statement taken as read)**

7. During questions of clarification, Mrs Weeks stated that she was distressed by the attack and was pleased that people were close by to assist, otherwise she feared that her dog would have been killed. She further stated that both she and Gemma were "in shock" following the attack, and said it took two days for the owner of the attacking dog to apologise.

**Mr Bradley Haines (written statement taken as read)**

8. During questions of clarification, Mr Haines stated that he saw both Golden Retrievers off the lead but only one of them attacked the smaller dog. He did not observe any aggression from the Golden Retrievers toward people during the incident.

**Mr Lawrence Pritchard (written statement taken as read)**

9. During questions of clarification, Mr Pritchard stated that he didn't know where the two dogs (off lead) came from and that when the attack was happening he punched the attacking dog in the head in order to make it let the little dog go, which it did. He did not see any aggression from the larger dogs toward people.

**Mr John Fattorini (written statement taken as read)**

10. During questions of clarification, Mr Fattorini stated that before the attack the two larger dogs were standing on the concrete under the veranda of the cabin with no supervision from their owners.

**Mrs Leanne McLeod (written statement taken as read but no questions of clarification were possible due to non-attendance of the witness)**

11. Mrs and Mrs Whiting made it known that they wished to dispute portions of Mrs McLeod's statement as being untrue, particularly as it related to an allegation of one of their dogs biting a child at the camp and that she didn't speak to them at any time as she had alleged in her statement. The Chairman invited Mrs Whiting to give her evidence.

**Mrs Maree Whiting (written statement and letter of objection taken as read)**

12. During questions of clarification, Mrs Whiting stated that the family travelled down from Christchurch and unpacked. Whilst they were unpacking the dogs were put on a temporary longline they had erected for the dogs between the vehicle and the cabin. After a short period, the two dogs became tangled on the longline. Mrs Whiting stated that she momentarily unclipped the dogs from the longline to untangle them, at which time they bolted and ran off toward Mrs Weeks and her dog who were some distance behind her. Bently then attacked the little dog. Mrs Whiting further stated that she apologised to Mrs Weeks straight away after the incident, and again at Mrs Weeks' house the day after, when they also offered to cover the cost of any vet bills. In mitigation she stated that this incident was not in Bently's nature, he had never exhibited this kind of behaviour toward smaller dogs in the past and that Bently (and the other Golden Retriever) are used to running free on a lifestyle block and have chased wild rabbits, but leave chickens and other animals alone.

**Mr Paul Whiting (letter of objection taken as read)**

13. During questions of clarification, Mr Whiting stated that he was not present at the time of the incident and that he was both upset and surprised that it had happened. He stated that Bently had never attacked animals before, that they always walk him on a lead and that they have never had any issues before. Mr. Whiting further stated that when Animal Control Officer Robin Cadogan came to speak to them the following day, they were informed how they could contact Mrs Weeks. It was at this time the Whiting's went to Mrs Weeks' home, apologised and offered to pay any vet bills. He stated that six weeks after the incident Bently was found to have cancer in his leg, which was subsequently removed. Bently has never attacked another animal (or a person) in the past. Mr Whiting stated that he did not dispute the (Animal Control Officer's) report. He stated that they are happy to reimburse Mrs Weeks for the cost of the vet bill.

**Mrs Linda Shefford, Senior Animal Control Officer**

14. Mrs Shefford read her report to the hearing and then made herself available for questions of clarification. She stated that Victoria Park, other than the oval and the children's play area, was an off leash area in terms of the Dog Control Bylaw and policy. She further stated that although it was an off leash area, dogs must remain under control at all times.

**Mr Robin Cadogan, Animal Control Officer**

15. During questions of clarification, Mr Cadogan stated that on the day after the incident, he visited Mrs Weeks to obtain a statement. At that time, she was still upset and stated that Mrs Whiting had not apologised for the attack. After speaking to Mrs Weeks he spoke to the Whittings, who asked if they could apologise to Mrs Weeks, which he heard them do a short time later while at Mrs Weeks' house.

**MATTERS TO BE CONSIDERED UNDER SECTION 33B**

16. Section 33B of the Dog Control Act 1996 gives direction as to what a territorial authority must have regard to when making its determination after an objection has been received. It must have regards to the following:
- The evidence which formed the basis for the classification
  - Any steps taken by the owner to prevent any threat to the safety of persons or animals; and
  - The matters relied on in support of the objection; and
  - Any other relevant matters.
17. At the conclusion of verbal testimony, the Waimate District Council Appeal Panel (the Panel) closed the hearing to further consider the evidence and make a determination of the objection by way of a reserved decision. That decision once made to include the reasons for the determination and conveyed by written notice as soon as practicable thereafter.

**DECISION**

18. The Panel acknowledges that the incident has caused emotional distress to both dog owners and that the process of working through an investigation, the classification of a dog as menacing and a subsequent objection process can be difficult for those involved. All parties co-operated with proceedings in a genuine and courteous manner.
19. It was noted that aspects of the evidence considered at the hearing were at times conflicting, but no such conflict existed around the immediate circumstances of the attack carried out by the Whittings' dog Bently.
20. In considering all the facts, the panel has re-examined the written statements taken from the parties, any verbal testimony given at the hearing, the Animal Control staff job sheets and other documentation included in the agenda for the hearing.
21. The panel accepts that the Whittings have apologised for the attack and it is accepted that they have offered to pay for any vet costs incurred by Mrs Weeks arising from the incident. It is also noted that an infringement fine of \$200 relating to the same incident issued by the Animal Control Officer for the loss of control of Bently has been paid. The panel also notes this offence could have had far more serious consequences if it had not been for the bystanders who forcibly stopped the attack. All witnesses agree that the attack was unprovoked.

22. The panel in particular noted that the tool used by Animal Control staff to determine their recommendation as to any enforcement outcome as being useful. When the facts are considered through this tool and appropriate scores given for each section, the guidance provided ensures a consistent approach to all matters where enforcement action may become necessary. In this case, the tool gave a final score of 35, which was within a broad scoring range that allowed for the menacing dog classification to be recommended.
23. Section 33A of the Dog Control Act 1996 provides the authority for territorial authorities to classify dogs as menacing if it considers that they may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of any observed or reported behaviour of the dog.
24. The panel has determined that in this case, the observed and reported behaviour of Bently rushing toward and attacking the smaller dog Gemma owned by Mrs Weeks is cogent evidence that justifies the menacing classification. Therefore, this panel has determined to uphold the decision to classify Bently as a menacing dog.

*C Rowley*

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Mayor C Rowley  
Chairperson

**CARRIED**

## MEETING CLOSURE

There being no further business, the Chair closed the meeting at 2.27pm.

The minutes of this meeting are to be confirmed at the Environmental Services and Finance Committee Meeting scheduled on Tuesday 30 April 2019.

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**CHAIRPERSON**