

**BEFORE THE HEARINGS COMMITTEE
OF THE PALMERSTON NORTH CITY COUNCIL
UNDER THE DOG CONTROL ACT 1996**

IN THE MATTER of an Objection to

Classification under Dog Control Act 1996

BETWEEN JING YANG
Objector

**AND PALMERSTON NORTH CITY
COUNCIL (PNCC)**
Local Territorial Authority

Hearings Committee: Deputy Mayor Aleisha Rutherford (Chairperson)
Councillor Rachel Bowen (Member)
Councillor Zulfiqar Butt (Member)

Appearances: Ms J Yang (As the Objector)
Mr P Drummond (Legal Counsel for the Objector)
Mr A Thornton (Animal Control Officer Palmerston North City Council)
Mr R McDermott (Team Leader – Animal Management & Education)
Palmerston North City Council)
Mr E Maassen (Legal Counsel for Palmerston North City Council)

Venue: Palmerston North City Council Chamber

Date of Hearing: 3 June 2021

DECISION OF HEARINGS COMMITTEE DATED 23 JUNE 2021

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FACTS

- [1] On 15 February 2021, the dog known as BECKY, a one year old black and tan female German Shepherd was classified as menacing under the provision of section 33A of the Dog Control Act 1996 ("the Act").
- [2] Section 33A in its entirety states:

"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; or*
 - (ii) any characteristics typically associated with the dog's breed or type.*

(2) A territorial authority may, for the purposes of section 33E(1)(a), classify a dog to which this section applies as a menacing dog.

(3) If a dog is classified as a menacing dog under subsection (2), the territorial authority must immediately give written notice in the prescribed form to the owner of—

- (a) the classification; and*
- (b) the provisions of section 33E (which relates to the effect of classification as a menacing dog); and*
- (c) the right to object to the classification under section 33B; and*
- (d) if the territorial authority's policy is not to require the neutering of menacing dogs (or would not require the neutering of the dog concerned), the effect of sections 33EA and 33EB if the owner does not object to the classification and the dog is moved to the district of another territorial authority."*

- [3] Ms Jing Yang is the registered owner of the dog subject to the classification and has lodged an objection to the classification via a letter received 26 February 2021.
- [4] The provision for lodging an objection is contained within section 33B of the Act. Ms Yang has complied with the statutory timeframe in lodging her objection and has been heard in support of the objection at a hearing on 3 June 2021.

EVIDENCE

- [5] To provide some context to the alleged incident which led to the classification being made, it is important to canvas the various evidence that has been placed before the Hearings Committee.

The Objector

- [6] In her objection letter Ms Yang provided a written statement covering the various grounds she was objecting on.

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- [7] In the Statement she noted that Becky has been well taken care of, socialised and attended professional puppy school. Becky has not had conflicts with other dogs in the past and has not had an incident like this happen before.
- [8] During the hearing Mr Drummond spoke for Ms Yang though she did provide answers to some questions.
- [9] With reference to the dog attack that was alleged to have occurred on 9 February 2021, Mr Drummond stated there was no dispute over the facts or whether the council had identified the correct dog. He explained Ms Yang accepted the detail of what occurred and agreed that the scoring [assessment matrix] looked like a fair assessment of matters.
- [10] Mr Drummond stated that the circumstances of the case were unfortunate and unusual since Ms Yang did not know that the persons would take her dogs for a walk, and the persons who walked Becky used the wrong collar and did not have Becky under control. He explained Ms Yang normally used a choke chain when walking Becky to keep her under control. He stated the situation was highly unlikely to reoccur.
- [11] Mr Drummond explained Ms Yang was a responsible person and very apologetic in terms of what had taken place. She advised that she has paid the victims vet's bill and was open to having further training for Becky.
- [12] In response to questions from the panel Ms Yang clarified that the friends who walked Becky did not have permission to do so and that Ms Yang did not know they were going to take Becky for a walk. Ms Yang had left Becky in the care of a different friend while she was out of town, who subsequently allowed the persons involved in the incident to walk Becky.
- [13] Ms Yang confirmed she had no objection to neutering Becky, as a requirement of the menacing dog classification. However, it was noted Becky was currently pregnant.

The Council

- [14] Mr Ross McDermott, Mr Aaron Thornton, and Mr Elliott Maassen spoke to the officer's evidence and made additional comments.
- [15] Mr Maassen stated that, in relation to section 33A and 33B of the act, the Council had the discretion to classify a dog as menacing, but that discretion needed to be considered in the context that a dog '... may pose a threat to any ... domestic animal...'.
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- [16] Mr Maassen identified 'may' was a very low threshold and the focus was on the likelihood of the dog behaving similarly in the future and endangering people or animals. Dog Control Officers had considered that it is likely that Becky would pose a threat to people or in particular to domestic animals in the future.
- [17] Mr McDermott stated that having Becky muzzled would significantly reduce the chances of an event like this one reoccurring. Officers were trying to ensure that people, other animals and Becky were safe.

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Right of Reply

- [18] In exercising a brief Right of Reply, Mr Drummond reminded the panel that section 33A (2) states 'a territorial authority may ... classify a dog to which this section applies as a menacing dog', and that the territorial authority has the discretion as well as the panel.
- [19] Mr Drummond referred to the caselaw presented within the councils written evidence stating that '... past behaviour is the best predictor of future behaviour...' could be considered in relation to the usual behaviour from the dog prior to this incident. If Becky is walked by her owner, an attack will not happen. Becky's past behaviour is fine, under control and sensible.
- [20] When questioned if Mr Drummond includes the recent dog attack resulting in the menacing dog classification in Becky's history, Mr Drummond did not answer the question specifically but reiterated under supervision of the owner and when Becky is wearing the correct choke chain, the behaviour of Becky has been absolutely fine.
- [21] Mr Drummond stated that a lesson has been learnt from what occurred. Ms Yang would avoid the situation happening again because it has been traumatic for her too.

REASONS FOR DETERMINATION

- [22] The relevant statutory provision for the Committee to discharge its obligations is contained within s 33B(2) which states:

"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."*

- [23] The Committee has considered all the evidence placed before it in arriving at a determination on this matter.
- [24] The basis of Ms Yang's objection is that the circumstances surrounding the dog attack are unusual and unlikely to occur again. Becky was wearing the wrong collar and was walked by people unfamiliar to her.
- [25] The Committee must consider the evidence in its entirety, determining what is credible and what is not, and the relevant weight that it applies to each. In this circumstance, we have had specific regard to the factors identified in s 33B(2)(a),(b)and (c).
- [26] We accept Becky has a history of good behaviour and there are extenuating circumstances that may have contributed toward this incident. In particular, that Becky was wearing the incorrect collar and that the persons walking Becky did not have permission to do so and were unfamiliar to her. We acknowledge Ms Yang accepts the detail of the reported dog attack and advises that she has paid the victims vet bill.
- [27] We also accept that despite the circumstances that may have contributed to the attack it has occurred and appears to be unprovoked. The detail in the written report outlining the lack of

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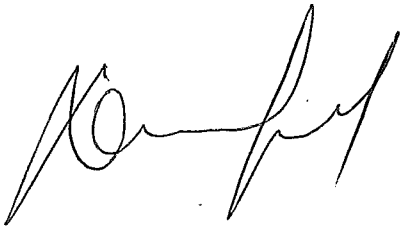
response from Becky to commands given during the attack, and the fact that Becky was not able to be controlled during the attack is of concern.

- [28] We have reached the conclusion that given the circumstances as outlined, and the evidence presented, we consider it appropriate for the Animal Control Officer to have classified Becky as 'menacing' in accordance with the Dog Control Act 1996.


DETERMINATION

- [29] For the reasons outlined above, the objection is dismissed. The menacing dog classification applied to the one year old black and tan female German Shepherd registered as dog 6291 and known as BECKY under s 33A(2) of the Dog Control Act 1996 is upheld.
- [30] The panel also note that Becky is not in a fit condition at present to be neutered and require this to occur within 4 months of her pregnancy ending, and evidence of the procedure to be provided to Palmerston North City Council within one month.

Dated this 23rd day of June 2021



Deputy Mayor Aleisha Rutherford
Chairperson



Councillor Rachel Bowen
Member



Councillor Zulfiqar Butt
Member