

## STAFF REPORT

**TO:** Environment & Planning Subcommittee - Delegated Committee

**FROM:** Philip Bergman, Animal Control Officer / Animal Welfare Inspector, Control Services (Nelson) Ltd

**REFERENCE:** D406

**SUBJECT:** **T FOTHERGILL - REPORT EP09/03/05** Report prepared for hearing of 26 March 2009

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### 1. ATTACK ON DOG

There have been several incidents involving a dog named "Sarge" a male Bull Terrier dog that lives at 33 Pah Street Motueka and owned by Mr William Fothergill and his wife Tracey. The latest incident on 18 February 2009 was in relation to Sarge wandering, but the more serious incident occurred on 26 January 2009 and involved an attack on another dog by Sarge resulting in both dogs being injured and our recommendation to classify the dog as dangerous. Sarge is a large, aggressive dog very protective of its property and his owners.

It is my opinion and one shared by other Dog Control Officers that if ever the dog has the opportunity to leave its property when other dogs are present there is no doubt that he would attack, especially true if the other dog is a full male.

There have been two previous occasions noted on Council's records of an aggressive nature where Sarge has rushed up to other dogs or people. Records also show a number of wandering complaints, a welfare complaint and one where he mated another dog on Poole Street.

Control Services Animal Control Staff have previously given consideration to classifying the dog as menacing or dangerous but have elected to give the benefit of the doubt to the owners, visited, discussed, advised and trusted that no further wandering or attacking would result.

Unfortunately that has not been the case and a further aggressive incident has occurred, this time causing injury to both dogs. On this occasion a person was walking her dog on a harness past 33 Pah Street when Sarge, obviously unrestrained, rushed from his property and up to and attacked the other dog. This was a very frightening experience for the other owner and painful one for the dogs.

I subsequently visited the Fothergill's and discussed the incident with Tracey, who was unhappy with my assessment of her dog. I suggested to her that the options were to either classify the dog as Dangerous, issue an Infringement Notice or take prosecution action against her through the District Court. I made her aware that issuing an infringement notice was a severe financial penalty but would not necessarily ensure the dog is kept properly restrained.

I also reminded her that a likely result of successful prosecution would mean her dog would be destroyed, unless extraordinary circumstances were present, which in my opinion did not exist.

The other likely action was to classify the dog as dangerous and for her to pay any necessary veterinary fees that may have resulted from the other dog's injuries. However, the other dog recovered quickly without any need for veterinary intervention.

I left the property with an open mind regarding Council's next step. However once I checked Council's records and discussed with other staff our concerns, we agreed that for the best interests of the community that we classify the dog as dangerous and ensure the obligations of this classification are met. This was completed on 28 January 2009 and the owner duly notified.

Since then, Sarge has wandered from his property again and was retrieved by the owner's friend. Had this classification not been appealed and therefore operative, I would have considered issuing an instant fine for failing to comply with the Dangerous Dog Classification, (\$300.00). For your information the Dangerous Dog Classification conditions are attached. It is my belief that if the above requirements are imposed and carried out, the dog will be unlikely to re-offend, which is the desired outcome.

On 29 January 2009 Council received an objection in writing from Tracey Fothergill, and hence the reason for this hearing.

## **2. SUMMARY**

Possible options available to the Committee:

1. Uphold the Dangerous Dog Classification and deny the objection.
2. Rescind the Dangerous Dog Classification and uphold the objection.
3. Recommend to staff that legal proceedings be initiated to prosecute the owner pursuant to Section 57 of the Dog Control Act 1996, (attack on domestic pet.)
4. Issue an Infringement Notice for Failure to Control a Dog (\$200.00)

My recommendation is for Option 1, the above decision to classify the dog as dangerous be upheld, and the objection be denied.

The reasons that Option 2 is not appropriate is that I believe this dog is a danger to the general public due to his aggressive nature toward animals and therefore Council has a duty to protect the community (including animals) and the Classification as Dangerous is the most humane and effective means available to ensure no further harm. He has shown over time that he will rush owners with dogs and therefore risks serious harm. This is the purpose of the Dangerous Dog Classification under the Dog Control Act 1996.

The reasons that Option 3 is not recommended is that the attack was not serious enough to warrant a possible \$3,000.00 fine and destruction of the dog, plus costs associated with Court action.

The reason that Option 4 is not recommended is that a financial penalty of \$200.00 may be punitive but will not result in the desired outcome of ensuring the dog is controlled and not allowed to re-offend in future.

I feel that after reconsidering all the facts including the past and recent history of the dog's behaviour, the decision to classify "Sarge" as dangerous was appropriate.



Philip Bergman  
**Animal Control Officer / Animal Welfare Inspector**  
**Control Services (Nelson) Ltd**

## **EFFECT OF CLASSIFICATION AS A DANGEROUS DOG**

### Section 32, Dog Control Act

You are required:-

- a) within one month after receipt of this notice, to ensure that the dog is kept within a securely fenced portion of your property which it is not necessary to enter to obtain access to at least one door of any dwelling on the property; and
- b) not to allow the dog to be at large or in any public place or in any private way (other than when confined completely within a vehicle or cage) without –
  - (i) the dog being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction; and
  - (ii) the dog being controlled on a leash (except in a designated dog exercise area); and
- c) to produce to the Tasman District Council, within one month after receipt of this notice, a certificate issued by a registered veterinary surgeon and certifying;
  - (i) that the dog is or has been neutered; or
  - (ii) that for reasons that are specified in the certificate, the dog will not be in a fit condition to be neutered before a date specified in the certificate; and
- d) Where a certificate under paragraph (c) (ii) is produced to the Tasman District Council, to produce to the Tasman District Council, within one month after the date specified in that certificate, a further certificate under paragraph (c)(i); and
- e) in respect of every registration year commencing after receipt of this notice, to pay dog control fees for that dog at 150% of the level that would apply if the dog were not classified as a dangerous dog; and
- f) not to dispose of the dog to any other person, without the written consent of the territorial authority in whose district the dog is to be kept.

You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with any of the matters in paragraphs (a) to (f) above. In addition, the Court must order the destruction of the dog unless satisfied that the circumstances of the offence were exceptional and do not justify the destruction of the dog.

A dog control officer or dog ranger may seize and remove the dog from you if you fail to comply with all of the matters in paragraphs (a) to (f) above. The ranger or officer may keep the dog until you demonstrate that you are willing to comply with paragraphs (a) to (f).

You will also commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you sell or otherwise transfer the dog, or offer to do so, to any other person without disclosing that the dog is classified as a dangerous dog.

As from 1 July 2006, you are also required, for the purpose of providing permanent identification of the dog, to arrange within 2 months after classification for the dog to be implanted with a functioning microchip transponder. This must be confirmed by the Tasman District Council. You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with this requirement.

Full details of the effect of classification as a dangerous dog are provided in the Dog Control Act.

## **RIGHT OF OBJECTION TO CLASSIFICATION**

### Section 31 (3), Dog Control Act

If the dog is classified as a dangerous dog because it is believed to constitute a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife, you may object to the classification by lodging with the Tasman District Council a written objection within 14 days of receipt of this notice setting out the grounds on which you object. You are entitled to be heard in support of your objection and will be notified of the time and place when your objection will be heard.