Waikato

DISTRICT COUNCIL
Te Kaunihera aa Takiwaa o Waikato

IN THE MATTER	of the Dog Control Act 1996
AND	
IN THE MATTER	of an objection against the classification of sixteen dogs as menacing pursuant to section 33C of the Dog Control Act 1996.
BETWEEN	**Mark Dias**
	Objector
AND	**Waikato District Council**
	Respondent

BEFORE THE WAIKATO DISTRICT COUNCIL HEARINGS COMMITTEE

Chairperson   Noel Smith
Member   Carolyn Eyre

HEARING at Ngaruawahia on 28 November 2019

APPEARANCES:

Mr M Dias, Objector (dog owner)
Ms A Rose, spokesperson for Mr Dias
Ms J Tanner, support person for Mr Dias
Ms A Davis, Animal Control Officer
Ms J Newell, Animal Control Officer
Mr B Watene, Animal Control Team Leader, Waikato District Council, in support
Mr P Crocker, Animal Control Team Leader, Hamilton City Council - witness
Ms K Ridling, Senior Solicitor, Waikato District Council, to assist the Committee

DECISION

> **The Committee upholds the classification of all 16 dogs as menacing pursuant to Section 33C of the Dog Control Act 1996 and dismisses the objection.**

Introduction:

[1]   On 5 June 2019, staff from the Waikato District Council Animal Control team, accompanied by Police, executed a search warrant on premises owned by the objector, Mr Dias, at Rotowaro Road, RD 1, Huntly. Following the execution of the search warrant 35 dogs were seized from Mr

Dias and relocated to the Huntly and Tuakau dog pounds operated by Waikato District Council (the 'Council').

[2]   All dogs were inspected by a vet and subsequently 14 were euthanised. Between the 7th and 12th of June all dogs were returned to Mr Dias. Prior to the dogs being released they were photographed, microchipped, identified in terms of breed and registered.

[3]   On 20 June 2019, the dogs were assessed, using the Council's classification checklist (the 'Classification Checklist'), to determine if any were 'American Pit Bull Terrier' type in accordance with the Dog Control Act 1996 (the 'Act'). The assessments were undertaken by Animal Control Officers ('ACO') Davis and Newell, both officers having been present during the execution of the search warrant as well as interacting on a number of occasions with the dogs while they were in the custody of the Council until they were released to Mr Dias.

[4]   Sixteen (16) of the seized dogs were classified as American Pit Bull Terrier type dogs, under schedule 4 of the Act. As a result, and as required by the Act, Mr Brett Watene, Team Leader Animal Control, issued a 'Notice of classification of dog as menacing' (the 'Notice') to Mr Dias for each of the dogs.

[5]   Within the prescribed timeframes, Mr Dias objected to the classification of his dogs as menacing and a hearing was set down to hear the objection.

HEARING:

Ms Angharad Rose, spokesperson and witness for objector

[6]   Ms Rose opened the 'objection' for Mr Dias. Ms Rose qualified herself as an expert in the American Pit Bull Terrier breed of dogs, explaining that she was a judge of the breed and commented that Mr Dias is not currently or previously associated with the Auckland Pit Bull Terrier Club. She had offered to assist Mr Dias due to the manner in which councils have historically wrongly classified dogs as American Pit Bull Terrier type dogs.

[7]   Ms Rose challenged Mr Crocker's evidence and status as an expert witness. She challenged his statement that the American Pit Bull Terrier was not a breed of dog. Ms Rose went on to state that she had used the photos provided by the Council and only three of the dogs, in her opinion, met the standard to classify them as American Pit Bull Terrier type dogs. In her opinion the remaining 13 dogs did not meet the physical requirements of an American Pit Bull Terrier type of dog.

[8]   Ms Rose then turned to the quality of the photos and the compliance with the Classification Checklist. She noted that many of the dogs were not photographed in accordance with the requirements of the Classification Checklist. The photos were dark and some features which had been assessed were not able to be scored as they were not clearly visible in the photos. She referred specifically to photos of the dogs known as Pic Axe and Blaze. At this point of the hearing the Council Animal Control Team made the Committee aware that there were additional photos of the dog named Kevin which had been omitted when the agenda was produced. Those photos were then produced. Ms Rose then challenged specific photos with regard to the quality and thus the ability to score fairly and accurately when undertaking the classification checklist. Those photos were on the following pages of the hearing agenda: 57, 58, 81, 82, 89, 107, 146 and 147. In

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particular, the photos on pg.89 showed photos over the top of a dog with none from the rear. The photos on pg. 107 were of a dog in a dark cage and unable to be scored.

[9] Ms Rose raised a number of discrepancies in relation to the procedure of the registration and classification of the dogs, including:

(a) Many of the registration documents had not been signed by Mr Dias and therefore the registrations could be invalid and their legality could be questioned.

(b) The date of the classification, being 20 June 2019, was between 8 to 13 days after the dogs were released to Mr Dias.

(c) The validity of the classifications as they had not been done in accordance with the Classification Checklist (for example, the photos and classification were required to be undertaken on the same date).

[10] Ms Rose noted that all 16 dogs which had been classified as menacing had not had their mouths checked but had all been scored one (1) for teeth using the Classification Checklist. She argued that the score should have been zero (0). She went on to note that several of the scores noted on the Classification Checklist for the dogs, Blaze, Madonna, Brosa and Moon Unit 2 had been added incorrectly. She asked had the additional photos of 'Kevin' been viewed by Mr Crocker when he undertook his independent assessment.

[11] In summing up, Ms Rose stated that, in her opinion, there were only three dogs which met the threshold of American Pit Bull Terrier type dogs and therefore could be classified as menacing in accordance with the Act. She challenged the classification of all of the dogs owing to Council staff not following Council's own procedures and the Classification Checklist not being reliable enough to be used to classify dogs as American Pit Bull Terrier types.

[12] In answer to clarifying questions, Ms Rose noted the following:

(a) The Auckland American Pit Bull Terrier Dog Club ('APBTDC') is an umbrella national organisation for the American Pit Bull Terrier. She confirmed that the APBTDC requires all dogs intended to be registered with the club to be presented in person for classification due to the need to assess temperament. Ms Rose confirmed that there are no DNA markers for American Pit Bull Terriers.

(b) The Classification Checklist was flawed, for example staff scoring the mouth when the mouth wasn't examined.

(c) Comments had been made on the Classification Checklist for most of the dogs that they had neither an under or overbite but, in the case of the dogs known as Spidey and Sarah, both have an under bite. She did not believe the Classification Checklist was subjective.

(d) Ms Rose confirmed she had not seen any of the 16 dogs other than 2 that were unloaded from a Council vehicle but that was neither close up or for an extended period.

Mr Mark Dias, Objector

[13] Mr Dias confirmed that all 16 dogs, the subject of these proceedings, were at his home on 20 June 2019 (that being the date when the assessment of the dogs took place). Mr Dias then asked the Committee to focus on page 95 of the Council agenda of the proceedings (the 'Agenda'). He turned to note 1 on page 95 and confirmed the photos taken of his dogs could not

have been taken at the time of assessment as the dogs were at his home. He noted that on page 94 the dog Kevin had been given a score of one (1) for his teeth when in fact the assessing officer had not viewed the teeth according to the comments on page 95. He stated that assessment was unfair. He challenged how the assessor could state that the dog had no under or over bite when the assessor had not viewed the teeth. Mr Dias challenged the assessor's statement as being completely untrue.

[14] Mr Dias then stated that the assessment on pg. 42 stating that the dog Pic Axe had a deep chest was wrong. He claimed the dog had a shallow chest. He claimed the photos showed Pic Axe in a non-aggressive state.

[15] Mr Dias noted that on page 64 of the Agenda, the dog Sarah had been scored as a 3 for tail when the tail could not actually be seen in the photo. He also challenged the comment that Sarah was displaying high levels of aggression. He claimed the photos showed that statement to be wrong.

[16] Mr Dias noted on page 72 (Blaze) that the assessment was not signed or dated. He pointed out the photos on page 73 showed the dogs tail as being high. He also noted the dog was on a lead and in a passive state. On page 89 he noted Madonna's tail could not be seen as well as the fact she was home on the date of the assessment.

[17] Mr Dias then referred to the additional photos produced at the beginning of the hearing and purporting to be additional photos of the dog known as Kevin. He compared the photos to the photos of Kevin in the Agenda and commented that the photos could be of another dog.

[18] Mr Dias then challenged the assessment of each dog as the assessments were not carried out with a live dog in front of the officer and in all cases done several days after the dogs had been released to his custody. He then focused on a number of dogs and pointed out the discrepancies between the assessment of the ACO's and his own opinion:

- **Moon Unit 1** (pages 105-107)
    - Does not have a deep chest
    - Eyes not able to be seen
    - Splayed feet
- **Tommy** (pages 114/115)
    - No sign of aggression in photos
    - Dog has oval eyes
    - The head is not a brick shape
    - Chest is not as described
    - Inaccurate assessment
- **Bolt**
    - Dog was stolen from Mr Dias's vehicle and other items stolen while recently shopping.
- **Spidey** (pages 56/57)
    - Dog had had an injury 2 weeks prior and while in custody a tooth came loose – unfairly scored.
    - Chest not deep
    - Head not brick shaped
    - Ears – mid range on head.

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[19] Mr Dias was concerned that all the knowledge held by the Animal Control Team, regarding classifying a dog as menacing, had come from Mr Crocker as he did not believe Mr Crocker was qualified to assess a dog as American Pit Bull Terrier or teach others how to do the same. He claimed no one is qualified as there is no official standard to classify a dog as an American Pit Bull Terrier.

[20] Mr Dias challenged the classification of his dogs as menacing as the Animal Control Team had not followed their own procedures. He claimed that using live specimens is the best method to assess dogs for classification and that the use of photos days after his dogs had been returned to him was unfair and wrong. He went on to comment that he believed the Animal Control Team had used guess work and that staff had made false statements to classify his dogs. He claimed the assessments were lies and a misrepresentation that was compounded when they were signed off by Mr Watene.

[21] Mr Dias then stated that one of his dogs which was returned was not classified as an American Pit Bull Terrier type. He found it hard to understand as 2 litter mates had been assessed as American Pit Bull Terrier type dogs and classified as menacing.

[22] In response to questions from the Committee, Mr Dias agreed that it was his signature on the application to register dogs on page 19 of the Agenda. Mr Dias clarified that the form on pages 17-19 of the Agenda was written by Amanda Davis, ACO. He claimed he was told to sign the document or he wouldn't get his dogs back. Mr Dias claimed that the registration on page 27 was altered after he signed it as he maintained the dog was not a Pit Bull. When asked whether he accepted the classification of three of his dogs, by his expert, as belonging to the American Pit Bull Terrier type he responded that he did not. When asked the difference between the American Pit Bull Breed and an American Pit Bull Terrier type dog Mr Dias commented that they were one in the same.

[23] Mr Dias confirmed the handwriting on page 24 was his but commented that the dog's correct name is Borsa, not Brosa.

Amanda Davis - Animal Control Officer

[24] Ms Davis confirmed her brief of evidence and spoke to the objection. She confirmed that it was her handwriting on page 26 of the Agenda and that she only changed the breed of the dog Tommy after discussion with Mr Dias.

[25] Ms Davis confirmed that all the photos were taken by mobile phone digital cameras and that they were taken at different times. She confirmed that Mr Dias had not been given a set of the digital photos for each dog. She went on to state that it was common practice not to take the photos and do the classification assessment on the same day.

[26] Ms Davis confirmed that there was only one set of photos. However the set used by herself and Ms Newell to classify the dogs was much lighter than the photos provided to the Committee and Mr Dias in the Agenda. It was determined the photocopying of the photos had produced a much darker set. Ms Davis was directed to produce the set of photos that she and Ms Newell had used in their assessment of the 16 dogs.

Joanne Newell – Animal Control Officer

[27] Ms Newell read her brief of evidence and in response to the Committee stated it was reasonable to score the teeth as a (1) even though she had not closely inspected them. She stated that over a period of time she had seen the jaws open and had seen the teeth and felt she was able to fairly score each dog. In respect of assessing the muzzle of each dog she stated that she had been within 2m of each dog and that the photos assisted her in recalling each dog she classified.

[28] *At this point in the proceedings the original set of photos were presented to the Committee. The Chairperson directed that Ms Rose take the opportunity to review the photos. After a reasonable time to view the photos the Chairperson asked Ms Rose if her own classification would now change having seen the original photos. Ms Rose said it would not as although the photos were lighter in many cases, she did not differ from her original assessment.*

[29] Ms Newell stated that although some dogs were only in the pound for two days and others longer she was able to recall each dog's characteristics and was aided with the photos when she undertook the assessment of each dog.

Peter Crocker, Team Leader, Animal Control, Hamilton City Council

[30] Mr Crocker spoke to his initial report contained in the Agenda as well as his brief of evidence. He outlined his extensive experience in relation to dogs and his experience in classifying American Pit Bull Terrier type dogs. Mr Crocker confirmed that Ms Davis had asked him to peer review the assessment and classification of the 16 dogs.

[31] Mr Crocker confirmed that, although it was best practice to classify dogs when they were present and not days later from photos, it was common to assess dogs against a checklist using only photos. Mr Crocker confirmed that in his assessment, he had used the original set of photos and that they were the same ones used by the ACO's.

[32] Mr Crocker, responding to a question from Ms Rose (via the Chairperson) regarding his ability to classify a particular dog, stated that he was able to view the dog from the front and thus assess the dog. Mr Crocker confirmed that the three photos of 'Madonna' on page 89 were enough to assess and classify the dog.

[33] Mr Crocker then gave the Committee the total scores he had calculated during his assessment of the sixteen dogs (each scoring out of 66). Mr Crocker used the Hamilton City Council ('HCC') checklist which is similar to that used by the Council. He noted that HCC had recently adjusted the threshold of a dog being considered an American Pit Bull Terrier type to requiring a score of 49/66. Mr Crocker's scores are listed below along with the Council scores for comparison. It is noted Mr Crocker was unaware of Council's scores for each dog until after he had assessed them.

	Crocker	Waikato DC
Woppy	60	60
Pic Axe	56	56
IDK	59	59
Spidey	54	56
Sarah	62	63
Blaze	52	58
Yahtzee	56	58

Madonna	51	60
Kevin	57	59
Moon Unit 1	56	60
Tommy	54	59
Brosa	58	62
Tilly	56	60
Moon Unit 2	60	62
Bolt	59	58
Shady	59	60

[34] Mr Crocker confirmed that he had also scored the teeth as (1) for all 16 dogs and that the result of his assessment of all 16 dogs was that the all were predominantly American Pit Bull Terrier type dogs. He stated that he believed the original checklist had been implemented by Australian authorities and it was then brought to New Zealand and used by many councils. Mr Crocker believed the checklist had been in existence in New Zealand for over 15 years in some form or another.

Right of Reply:

[35] Ms Rose stated that the whole process of classifying the dogs was full of discrepancies against the requirements of the Classification Checklist and, in particular, the fact that the dogs were not classified the same day as the photos were taken. She highlighted the scoring of the teeth in all dogs as (1) as significant, especially as none of the dogs had their mouths opened for inspection to check their teeth. She noted that in many photos there was no evidence of a tail yet the dogs had been scored. Likewise in many photos, the images were too dark to see the eyes yet the dog concerned was scored. Ms Rose asked how, when an item was missing could it be classified.

[36] Ms Rose claimed that the photos of the dog Pic Axe showed that the dog had no muscling yet it had been scored as though it had. She claimed the Classification Checklist was subjective where it should not be. She stated that both ACO's and the 'Expert' varied in their scoring. She claimed the Classification Checklist was too broad, not stuck to by individuals and each individual assessor put their own "spin" on each assessment.

[37] In closing Ms Rose reiterated that in her opinion only 3 of the 16 dogs, Woppy, Sarah and Brosa, met the criteria to be able to be classified as an American Pit Bull Terrier type. She believed that the process of assessing the dogs had not been fair. Forms had been filled in by Mr Dias and changed by members of the Animal Control Team. She claimed the Animal Control Team had not adhered to the Council's own rules. She asked, "What's the point of having rules if they (staff) don't adhere to them?

Legislation – Dog Control Act 1996

[38]   **33C Dogs belonging to breed or type listed in Schedule 4 to be classified as menacing**

(1) A territorial authority must, for the purposes of section 33E(1)(a), classify as menacing any dog that the territorial authority has reasonable grounds to believe belongs wholly or predominantly to 1 or more breeds or types listed in Schedule 4.

(2) If a dog is classified as menacing under subsection (1), 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 33D.

[39] **Schedule 4, Part 2 - Type of Dog**

American Pit Bull Terrier

[40] **33D Objection to classification of dog under section 33C**

(1) If a dog is classified as a menacing dog under section 33C, the owner—

(a) may, within 14 days of receiving notice of the classification, object in writing to the territorial authority in regard to the classification; and

(b) has the right to be heard in support of the objection.

(2) If an owner objects to the classification, he or she must provide evidence that the dog is not of a breed or type listed in Schedule 4.

(3) 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) the matters relied on in support of the objection; and

(c) any other relevant matters.

(4) The territorial authority must, as soon as practicable, give written notice to the owner of—

(a) its determination of the objection; and

(b) the reasons for its determination.

[41] On 20 June 2019, two Council ACO's, Ms Davis and Ms Newell, assessed 16 dogs against the Classification Checklist. As a result of that assessment, all 16 dogs were assessed as being predominantly American Pit Bull Terrier type dogs. Using the same Classification Checklist, five other dogs were assessed as not being American Pit Bull Terrier type.

[42] Due to the determination that the dogs were predominantly of American Pit Bull Terrier type, all 16 dogs were classified as menacing pursuant to section 33C of the Act. The owner of the dogs, Mr Dias, was notified, in writing, of each classification.

[43] Under section 33D of the Act the owner, having objected to the menacing classification for each dog, must provide evidence that the dog/s is/are not of a breed or type listed in Schedule 4 of the Act.

[44] In accordance with the Act, the Committee must have regard to the evidence which formed the basis for the classification, as provided by the ACO's as well as the evidence provided by Mr Dias in support of his objection.

The Evidence supporting Classification:

[45] Section 33C of the Act requires a Territorial Authority, that is to say a council, to classify a dog as a menacing dog if that council believes that dog is wholly or predominantly of a breed or type listed in Schedule 4 of the Act. Schedule 4, Part 2, lists the American Pit Bull Terrier type of dog that falls under section 33C.

[46] On 20 June 2019, sixteen dogs belonging to Mr Dias were assessed and classified by Council ACO's using the Council Classification Checklist which provides a scoring system rating the physical characteristics of a dog in order to determine whether the dog could be classified as American Pit Bull Terrier type. All 16 dogs scored 34 or more on a scale of 0 – 66 and, as such, were determined to be American Pit Bull Terrier type dogs.

[47] During the hearing, evidence was presented by the Council that the dogs were released to Mr Dias as and when he was able to find sufficient money to make payment of outstanding pound fees and registration costs. As such, the dogs remained at the pound for between 2 and 7 days. At the time of release, each dog was processed which included the taking of photographs. Those photographs were used by ACO's to assist in the assessment of each dog when the Classification Checklist was completed for each dog on 20 June 2019. Evidence was also presented that the time spent observing and interacting with the dogs while they were held at the pound was also recalled and used as part of the assessment.

[48] The photos used by the ACO's were later hand delivered to Mr Crocker to independently assess each dog to determine whether any dog was an American Pit Bull terrier type dog. Mr Crocker assessed each dog and determined that each dog had the physical characteristics that made each one an American Pit Bull Terrier type dog.

[49] Having undertaken an assessment using the Classification Checklist, the ACO's, prima facie, had reasonable grounds to believe that all 16 dogs were predominantly of the American Pit Bull Terrier type and, as such, was required to classify each dog as menacing.

Evidence Challenging the Classification

[50] As outlined in s33D of the Act the objector must provide evidence that the dog (dogs) is not of a breed or type listed in Schedule 4. Ms Rose gave evidence of being a judge of the American Pit Bull Terrier breed. It was noted that the NZ Kennel Club does not recognise the breed. Ms Rose outlined that she had scored all 16 dogs against the Classification Checklist and provided an analysis for each dog. Those scores compiled by Ms Rose are listed below. We have also listed the Council and Mr Crocker's assessments for comparison.

	Rose	Council	Crocker
Woppy	48	60	60
Pic Axe	35	56	56

IDK	39	59	59
Spidey	34	54	56
Sarah	44	62	63
Blaze	35	52	58
Yahtzee	37	56	58
Madonna	31	51	60
Kevin	21	57	59
Moon Unit 1	32	56	60
Tommy	31	54	59
Brosa	45	58	62
Tilly	31	56	60
Moon Unit 2	39	60	62
Bolt	n/s	59	58
Shady	26	59	60

n/s = not scored

[51] Much of the evidence from Ms Rose and Mr Dias centred on matters that were somewhat subjective and a matter of opinion. However when scoring item 5 (upper teeth) on the Classification Checklist it was noted that both ACO's and Mr Crocker had scored a (1) for teeth despite similar comments stating: 'unable to look at teeth due to high aggression level in dog, jaw appeared to meet correctly' or 'did not appear to have over or under bite'. Ms Rose challenged the generic assessment and said the score for teeth should have been zero for each dog. A number of challenges were made to the scoring of the eyes, the head, the depth of the chest, the ears and tail position for particular dogs.

[52] A strong challenge was made to the process of classifying each dog. It was accepted that each dog was photographed just prior to its release. The dogs were not assessed against the Classification Checklist until 20 June 2019. In every case that meant that, contrary to the requirements of the checklist, each dog was not photographed at the time of assessment. Mr Dias challenged the procedural fairness of the classification stating that the assessment should have been done with live dogs and not photos.

[53] The quality of the photos provided to the owner was also challenged and the lack of photos for certain dogs. Likewise the photos produced as evidence were not in line with the photo positions prescribed in the Classification Checklist. Mr Dias challenged the ability of the ACO's to score his dogs fairly when the photos did not capture all of the physical characteristics required by the Classification Checklist.

[54] Mr Dias challenged the professionalism of the ACO's stating they acted unprofessionally, had used guess work in their assessment of his dogs, had made false statements in the hearing (relating to changing documents after he had signed them) and accused them of lying and misrepresentation of the facts only to be compounded by their team leader, Mr Watene when he issued the Notices.

Findings of the Committee:
[55] Council must have reasonable grounds to believe that a dog is a breed or type of dog listed in Schedule 4 of the Act before classifying it as a menacing dog under s33C of the Act. There is no process set out in legislation to assist council officers in making that classification.

[56]   Evidence was given that the Council uses a standard checklist, similar to those used by many councils in New Zealand, to assess dogs so as to determine whether they are American Pit Bull Terrier type dogs.   It is accepted that the ACO's used the Classification Checklist on 20 June 2019 and, as a result, determined 16 dogs belonging to Mr Dias were of the American Pit Bull Terrier type as listed in Schedule 4 of the Act.

[57]   Having established that the 16 dogs were of the American Pit Bull Terrier type, the Council correctly issued a menacing classification for each dog.

[58]   As owner of the 16 dogs, Mr Dias is required to provide evidence that the dogs are not of a breed or type listed in Schedule 4 of the Act. Mr Dias relied on Ms Rose to provide an assessment of each dog, based on her experience as an owner and judge of the American Pit Bull Terrier 'breed'. Ms Rose provided that assessment (see paragraph [45]). The Committee notes that, on average, each dog scored consistently lower than what both the ACO's and Mr Crocker scored.

[59]   Both Ms Rose and Mr Dias challenged the process used to assess and classify the dogs and highlighted the deviation from the requirements of the Classification Checklist on how and when the process should be undertaken. In particular, the assessment of the dogs using photos that had been taken between 8 and 13 days prior.

[60]   The Classification Checklist states, *"Photographs are to be taken at the time of assessment and are to be taken of the side, front and back with specific shots taken of any outstanding physical American Pit Bull Terrier type characteristics"*. The Committee finds that the assessments undertaken by ACO's Davis and Newell were at variance to the prescribed process.

[61]   The issue of the quality of the photos in the Agenda being different from those used by the ACO's is, in the opinion of the Committee, irrelevant. The classification process used the original set of photos at the time of assessing the dogs and thus that part of the process was not prejudicial. During the hearing Ms Rose was provided with the original set of photos and after a reasonable time to review the photos stated she would not amend her own classification score for each dog.

[62]   A number of the photos relied upon in the classification of the 16 dogs have not been taken in the prescribed manner as set out in the Classification Checklist in that many dogs did not have a complete set of side, front and back photos. It is assumed in this situation 'back' refers to the rear of the dog. It is noted that some dogs have a photo of the back but not the rear. ACO Newell stated she could recall each dog she assessed and the photos assisted her recall when scoring each characteristic. The Committee finds that the use of photos to assist recall is a common and appropriate process or aide-memoire.

[63]   Mr Dias raised the issue of some characteristics of each dog being assessed when it was not visible in a photo. He stated that the tail could not be seen in the photos on page 64 (Sarah) and page 89 (Madonna). The Committee notes a tail is not clearly visible in the Agenda at page 64 but is clearly visible in the original photos used for each assessment and produced during the hearing. A tail is visible on page 80 but as no photo has been taken from the back (rear) it is not clearly visible for assessing.

[64]   In assessing the teeth (item 5 of the Classification Checklist) each Officer scored each dog (1) and indicated for each dog that they were unable to view the teeth. Mr Crocker confirmed that HCC follows a similar approach. The Committee is of the view that if the characteristic cannot be seen then it should not be scored. In reviewing the score of each dog and reducing

them by (1), the Committee notes that the score remains such that each dog can still be classified as menacing.

[65] Mr Crocker outlined a review of the classification checklist undertaken some time previously by HCC. He noted that HCC had retained a total score of 66 but had moved the score at which dogs were classified as menacing to 49. HCC believed that that score (49) more fairly reflected the 'wholly or predominantly' required in s33C of the Act. The Committee notes that all dogs had a level of 56 or higher when originally assessed and thus the dogs were 'predominantly' of the American Pit Bull Terrier type.

Reasons and Decision:

[66] The Act, at section 33C, requires a Territorial Authority to have reasonable grounds to believe a dog belongs wholly or predominantly to one or more breeds or types listed in Schedule 4 of the Act. The Act does not prescribe a process or methodology to undertake an assessment of a dog or dogs to determine if a dog is one of the breeds or type listed in Schedule 4. Evidence was given that councils across New Zealand, including Waikato District Council, have adopted a standardised checklist in order to assess dogs. The checklist is not a prescribed form in either legislation or regulations and can only be considered as a guideline to ACOs. As a guideline it is just that, a guide, and thus strict compliance is not required although best practice would suggest that it is.

[67] Using the Classification Checklist, the photos taken during the processing, registration, microchipping and release to Mr Dias and their recollection of each dog, the two ACOs formed the view that all 16 dogs are of the American Pit Bull Terrier type as prescribed under Schedule 4 of the Act. It is the Committee's determination that the assessment using the combination of the above was reasonable and thus the Committee accepts that the two ACOs had reasonable grounds to determine that the 16 dogs are of the American Pit Bull Terrier type.

[68] Mr Dias and Ms Rose, on his behalf, referred to the variations from the Classification Checklist in assessing the dogs. As discussed above, the checklist is a guideline and is not a prescribed form. While Mr Crocker confirmed it is best practice to assess a dog while in a council's possession, the Committee is of the view that an assessment done on a day other than on the day a dog is photographed is not fatal to the classification process.

[69] While Mr Dias challenged the quality of the photos in the Agenda, an original set of photos was produced at the hearing and those photos were of better quality and clarity. It is those photos that the ACOs used to assess and classify the dogs. Mr Crocker used the same set of photos to undertake his assessment of each dog. The Committee is satisfied that the original set of photos were of such quality that a fair assessment could be and was made by the ACOs.

[70] The Committee has chosen to ignore the scoring of the upper teeth for all dogs, as noted in paragraph [57]. The generic nature and manner of assessment of the teeth is, in the view of the Committee, an unfair element in the process. Having said that, the total score of each dog is reduced by only one point and does not affect the classification of each dog.

[71] Having heard from both the objector, Mr Dias, and the Council, it is the view of the Committee that the classification of the sixteen dogs listed at page 4 of the Agenda is appropriate and fair.

[72] The Committee upholds the classification of all 16 dogs as menacing under section 33C of the Dog Control Act 1996 and dismisses the objection.

Noel Smith
Chairperson
12 December 2019