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## **NOTICE OF MEETING**

**Notice is hereby given that a Meeting  
of the Hearings Panel  
will be held in the Council Chambers  
First Floor, Civic Administration Building,  
101 Esk Street, Invercargill  
On Wednesday 11 September 2019 at 9.00 am**

Cr D J Ludlow (Chairman)  
Cr R R Amundsen  
Cr T M Biddle

CLARE HADLEY  
CHIEF EXECUTIVE

## **Council's Values:**

- Responsibility      Take ownership of decisions and outcomes, both collectively and individually.
- We willingly share our knowledge.
  - We acknowledge our mistakes, work to resolve them and learn from them.
  - We give and receive feedback in a constructive manner to resolve issues.
  - We do our job with total commitment.
- Respect              Everyone is important, as are their views.
- We support and care for each other.
  - We stop to listen, learn and understand.
  - We communicate in an honest, up-front and considerate manner.
  - We maintain confidences and avoid hurtful gossip.
- Positivity           Always look on the bright side of life.
- We are approachable, interested and friendly.
  - We are open and receptive to change.
  - We acknowledge and praise the efforts of others.
  - We work together as a team to get the job done.
- Above and Beyond   Take opportunities to go the extra mile.
- We take the initiative to improve our work practices to get the best results.
  - We challenge ourselves and each other to make it better.
  - We take pride in providing the best possible outcomes.
  - We are ambassadors for our Council at all times.

## **Council's Vision for the City:**

Enhance our City and preserve its character, while embracing innovation and change.

## **Council's Vision:**

We are an energised, fun and innovative team that makes it better for each other and our community.

## **Council's Mission:**

Making it better by making it happen.

# AGENDA

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**BEFORE THE HEARINGS COMMITTEE**

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

**BETWEEN** Mary Barnes  
Appellant

**AND** **INVERCARGILL CITY COUNCIL**  
Respondent

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**IN RESPECT OF AN OBJECTION TO A DOG BEING  
CLASSIFIED AS MENACING**

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Held in the Council Chambers, Civic Administration Building  
11 September 2019

<b>APPELLANT</b>	Mary Barnes, the owner of <i>Albie</i>
<b>NAME OF DOG</b>	<i>Albie</i>
<b>SITE OF INCIDENT</b>	The area proximate to 46 Purdue Street. <i>Appendix 1</i> is an aerial photograph of the site where the incident occurred.
<b>COMPLAINANT</b>	
<b>DATE OF INCIDENT</b>	27 May 2019
<b>RESPONSIBLE OFFICER</b>	Daniel de Ruyter, Animal Control Officer is a warranted officer pursuant to Section 11 of the Dog Control Act 1996.(Warrant No. 2018/08).
<b>REPORTING OFFICER</b>	Elle Dickson, Team Leader – Compliance is a warranted officer pursuant to Section 11 of the Dog Control Act 1996 (Warrant No. 2019/02).
<b>PROCESS</b>	<p>The incident occurred on 27 May 2019 and the dog <i>Albie</i> was seized on the same day.</p> <p>The Animal Control Officer interviewed and received a statement from the appellant's husband, Lance Barnes on 28 May 2019.</p> <p>The Animal Control Officer interviewed and received a statement from the complainant, on 29 May 2019.</p> <p>On 12 July 2019 the Director of Environmental and Planning Services, acting under authority delegated by the Council, decided that the following actions were to be undertaken:</p> <ul style="list-style-type: none"><li>• Issue an infringement for failure to confine under Section 52A of the Dog Control Act 1996</li><li>• Classify the dog as menacing under Section 33A of the Dog Control Act 1996</li><li>• Inform the complainant of the outcome.</li></ul> <p>On 16 July 2019 the Menacing Dog classification was served on Mary Barnes.</p> <p>On 23 July 2019 the appellant requested a Hearing to consider the Director of Environmental and Planning Services' decision to classify <i>Albie</i> as menacing.</p>

## 1. THE INCIDENT

On Monday 27 May 2019 the complainant, \_\_\_\_\_ was walking home after work when *Albie*, a three legged bichon cross from 46 Purdue Street, left its property due to a gate being left open by the owner, Lance Barnes. *Albie* made contact with \_\_\_\_\_ in the form of a bite to the back of his left leg (no marks were left).

\_\_\_\_\_ stated that Mr Barnes did not apologise regarding the incident and that this was the second time that *Albie* had bitten him. Mr Barnes stated that he had apologized to \_\_\_\_\_

## 2. BREACHES OF THE DOG CONTROL ACT 2014

It is my conclusion that the following offences have occurred:

- *Albie* was not confined or under control, as required by S52A of the Act
- *Albie* attacked \_\_\_\_\_ which is a breach of S57 of the Act.
- *Albie* is known to have attacked a person, but remains unmuzzled, which is in breach of S62 of the Act

## 3. THE INVESTIGATION

### 3.1 Evidence

#### 3.1.1 \_\_\_\_\_ statement (Appendix 2)

\_\_\_\_\_ states: *On Monday 27 May 2019 at roughly 16.45 I was walking home. As I passed 46 Purdue Street a three legged bichon cross came running out of the property and bit me on the back of my left leg. I was wearing jeans which prevented any marks on my leg but I still felt the bite. The owner came out and tried to call the dog back but failed. He then picked the dog up and I said "This is the second time your fucking dog has bitten me". Owner proceeded to say "You're not meant to be out" to the dog. No apologies were exchanged. This dog has bitten me before. Neighbour has said it has bitten her before too.*

#### 3.1.2 Lance Barnes statement (Appendix 3)

Lance Barnes, the husband of the owner of *Albie* states: *I had been out to the shop to get milk, I had arrived home. I normally shut the gate when I get home, but it was around 4.50pm and my wife finishes work at 5.00 pm so I left it open. I went inside and put the milk away. I then went to get the washing. Our other dog came with me. *Albie* was sitting on the couch when I went to get the washing. I shut the door to the house when I went outside. I was getting the washing off the line when I heard barking at the front of our house. I left the other dog at the back of the property and went out the front. A man was out the front facing *Albie* with about two metres between them. He didn't look scared at the time, *Albie* was barking at him. I picked him up. I said "Sorry" to the man and he walked away.*

*He stopped and turned around and said "That's the second time it's happened" and then he left. I took Albie inside and about an hour later the contractor arrived. When I went out to get the washing Albie must of got out the door. Two weeks ago he was at the vets and had eight teeth removed."*

#### 4. THE OBJECTION

- 4.1 On 24 July 2019 the Council received correspondence from Mary Barnes (*Appendix 4*) requesting a Hearing to be convened to consider overturning the decision by the Director of Environmental and Planning Services.

#### 5. HISTORY OF THE OFFENDING DOG AND OWNER

##### 5.1 Registration details

Dog Name	Ref No	Breed	Colour	Sex	Address	Owner	Reg Class
<i>Albie</i>	26456	Bichon Frise cross	White	Male	46 Purdue St Invercargill	Mary Ann Barnes	Menacing Desexed

##### 5.2 Assessment of the dog's behaviour

Amy Brunt, the Council's Animal Care Facility Assistant, has commented that from her memory *Albie's* behaviour was fine while at the Animal Care Facility. He would come to the front of the kennel when the Animal Control Officers were there. He was a little standoffish at the start and would retreat back when Officers entered the kennel to pick him up, but would allow them to handle him. Amy does not recall having any issues with *Albie*, and remembers that he carried himself well even though he had only three legs

##### 5.3 Previous offences

There are multiple complaints recorded against *Albie* with regard to attacking and acting menacingly towards members of the public. The last such complaint was 28 April 2017. The Request for Service (RFS) notes are attached as *Appendix 5*.

##### 5.4 Dog owner's history

Mary Barnes has previously owned two dogs. *Tuppence* was recorded as a responsible pet and was registered with us from 2006 through to 2008, and there is no other history for this dog. The other dog, *Bonnie*, was registered in 2003 with no other history for this dog.

A second dog, *Rayson*, is owned by Lance Barnes and resides at 46 Purdue Street. *Rayson* has been registered with the Invercargill City Council since 2008 through to 2019 as a responsible pet. *Rayson* has had three barking complaints since 2016.

## 6. CONSIDERATION OF THE DOG CONTROL ACT 1996

Relevant sections of the Dog Control Act 1996 are appended as *Appendix 6*.

Section 4 of the Act states that the objects of the Act include -

- iii Making special proviso in relation to dangerous dogs and menacing dogs; and*
- iii by imposing on the owner of dogs, obligations designed to ensure that dogs do not cause a nuisance to any person and do not injure, endanger, or cause distress to any persons.*

**Comment:** The owner of *Albie* has an obligation under the Act to control their dog and to ensure that it does not cause a nuisance to other people. The incident of 27 May 2019 and the history of this dog would indicate that *Albie* has menacing behaviours as defined in Section 33A of the Dog Control Act 1996.

Section 5 of the Act sets out the obligations of dog owners, and requires them:

- 1b to ensure that the dog is kept under control at all times*
- 1e. to take all reasonable steps to ensure that the dog does not cause a nuisance to any other person, whether by persistent and loud barking or howling or by any other means*
- 1f to take all reasonable steps to ensure that the dog does not injure, endanger, intimidate, or otherwise cause distress to any person*
- 1h to take all reasonable steps to ensure that the dog does not damage or endanger any property belonging to any other person.*

**Comment:** *Albie's* owner is therefore responsible for ensuring that *Albie* is controlled and restrained in a way that does not cause distress or injury to other people or animals. *Albie's* history of behavior and the incident of 27 May 2019 indicates that his owners have not ensured that he is being kept under control.

Section 33A of the Act states that a Council may classify a dog as menacing based on any observed or reported behavior of the dog.

**Comment:** On 27 May 2019 *Albie* exhibited behavior that was menacing in nature. The complainant has stated that this is the second incident when *Albie* has bitten him. The history with respect to *Albie* indicates that he has exhibited menacing behaviour on more than one occasion. It is therefore appropriate for the Council to assess whether there is sufficient evidence to classify him as menacing. The Director formed the view in July 2019 that, based on observed and reported behaviour of *Albie*, the test for a deciding that a dog is menacing had been met.

Section 33B of the Act allows for a dog owner to object to a menacing classification. In making its assessment on the objection, the Council must have regard to:

- (a) The evidence which formed the basis for the classification*



**Comment:** The complainant has sworn a statement that *Albie* rushed at him and bit him on the back of his leg. The dog owner has indicated that *Albie* had recently had eight teeth removed.

(b) *Any steps taken by the owner to prevent any threat to the safety of persons or animals*

**Comment:** *Albie's* owner has not indicated what steps they have taken to prevent another incident.

(c) *The matters relied on in support of the objection*

**Comment:** The statement by \_\_\_\_\_ was relied on as evidence that an attack had indeed happened.

(d) *Any other relevant matters.*

**Comment:** *Albie* has a history of poor behaviour. His owner has stated that *Albie* was able to leave the property, which contravenes the Dog Control Act 1996. While he has had a number of teeth removed, members of the public are unaware of this. When *Albie* rushes at someone and 'bites' them, it is an attack. If *Albie* had a full set of teeth, bite marks are likely to be evident.

Section 62 of the Act states that if a dog is known to be dangerous or has attacked any person, the owner must not allow the dog to be at large or in any public place or private way, except when confined completely within a vehicle or cage, without being muzzled or controlled on a leash.

**Comment:** *Albie* is known to have bitten a person in the past and therefore is known to be dangerous.

## 7. RECOMMENDATION

It is my recommendation that the menacing classification imposed on *Albie* by the Director of Environmental and Planning Services be upheld. The reasons for my recommendation are:

1. *Albie* has a history of wandering. *Albie's* owner has not addressed this issue over the previous years when other incidents were reported.
2. *Albie* was not under control in public as required by Section 5 of the Act
3. Retaining the classification of menacing requires *Albie's* owners to undertake certain actions within their own property, as well as when *Albie* is in a public place or at large.
4. Whilst *Albie* has had teeth removed, he continues to demonstrate poor behavior by attacking passers by.



Elle Dickson  
TEAM LEADER – COMPLIANCE

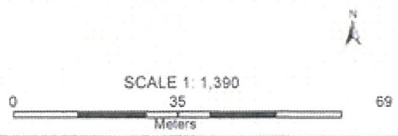
## APPENDICES

- Appendix 1 Aerial photograph of site where incident occurred
- Appendix 2 Statement
- Appendix 3 Lance Barnes Statement
- Appendix 4 Mary Barnes Letter requesting a Hearing to be convened to
- Appendix 5 Request for Service Notes
- Appendix 6 Relevant sections of Dog Control Act 1996

**APPENDIX 1**



Date Printed: 20 August 2019



Information shown is the currently assumed knowledge as at date printed. If the information is vital, confirm with the Authoritative Owner. E & E O  
 Aerial Images Copyright Invercargill City Council.  
 Cadstral information is derived from Land Information New Zealand.  
 CROWN COPYRIGHT RESERVED

RFS number: <u>29837</u>
Complainant's address: _____
Offender's address (if known): <u>46 Purdue Street</u>

COMPLAINANT STATEMENT TEMPLATE

Issue being dealt with: Dog attack on person

Start time and location of complainant's statement:

\_\_\_\_\_

Statement

\_\_\_\_\_ states:

That is my full name. I live at \_\_\_\_\_

My home phone is \_\_\_\_\_ my email is \_\_\_\_\_

I am currently employed at \_\_\_\_\_

My date of birth is \_\_\_\_\_

I am being spoken to by Daniel de Rycker from the Invercargill City Council about an incident on the 27/5/19

(Statement below is written as if the complainant is talking in the first person)

PROBLEM SUMMARISED

On Monday 27<sup>th</sup> of May 2019 at  
Roughly 16.45 I was walking home  
as I passed 46 Purdue Street  
a 3 legged bitch x came running  
out of the property and bit me

on the back of my left leg  
I was wearing jeans which prevented  
any marks on my leg but I still  
felt the bite.

The owner came out and tried  
to call the dog back but failed  
he then picked the dog up and  
I said "this is the second time  
your fucking dog has bitten me" owner

proceeded to say "your not meant  
to be out" to the dog. no apologies  
were exchanged.

this dog has bitten me before.

~~and~~ <sup>my</sup> neighbour has said it has  
bitten her before also.

[Redacted content]

Handwritten notes on lined paper, consisting of three distinct paragraphs of text.

The first paragraph is located in the upper right section of the page, starting on the second line from the top and ending on the fifth line. It contains approximately 15 lines of text.

The second paragraph is located in the middle section of the page, starting on the sixth line and ending on the eleventh line. It contains approximately 15 lines of text.

The third paragraph is located in the lower section of the page, starting on the twelfth line and ending on the eighteenth line. It contains approximately 15 lines of text.

A series of horizontal lines for writing, with three faint, curved lines drawn across the page, possibly representing a signature or a watermark.





Organisation: Invercargill City Council

Warrant Number: 2018/00

Finish Time: 17:19

RFS number: 298237  
 Offender's address: 46 Purdue Street

OFFENDER STATEMENT TEMPLATE

Location of statement: 101 Esk Street

Date statement taken: 28, 5, 19 Time statement taken: 3.13pm

Statement

Lance Barnes states:  
 That is my full name. I live at 46 Pradge Street Invercargill  
 I am currently employed as a retired  
 at \_\_\_\_\_  
 My home phone is 2172476, my email is LanceBarnes1954@gmail.co  
 My date of birth is 09/10/1954

I am speaking with Elle Dickson, a Warranted Officer from the  
 Invercargill City Council (Council Unit Animal Services) about a  
dog attack incident

I have been shown his/her Warrant of Appointment (Warrant number 2019/02)  
 under the outlined Act Dog Control Act 1996

OUTLINING RIGHTS UNDER NEW ZEALAND BILL OF RIGHTS ACT 1990

- a) I have been told that I do not have to say anything and anything I do say may be given in evidence.
- b) I have been told I am free to leave the interview at any time.
- c) I have been told that I can talk with a lawyer before the interview continued.
- d) I have been asked if I am willing to proceed with the interview.
- e) I do not wish to talk to a lawyer.

(Statement below is written in a question/answer format.  
IS = I said, HS/SS = He said/She said)

I had been out to the shop to get milk, I had arrived home I normally shut the gate when I get home, but it was around 4.50pm and my wife finishes work at 5pm so I left it open.

I went inside and put the milk away I then went to get the washing our other dog came with me. Albie was sitting on the couch when I went to get the washing. I shut the door to the house when I went

outside. I was getting the washing off the line when I heard barking at the front of our house. ~~I put~~  
<sup>ED</sup>  
<sup>L.B</sup> ~~our foxgy away it~~  
I left the other dog at the back of the property and went out the

front. A man was ~~at~~ the front facing Albie with about 2 metres between them. He didn't look scared at the time, Albie was barking at him. I picked him up. I said Sorry to the man

and he walked away. He stopped and turned around and said that's the second time it's happened and then he left.

I took Albie inside and about an hour later the contractor arrived.

When I went out to get the washing Albie must of got out the door. Two weeks ago he was at the vets and had eight teeth removed

*[The following section contains multiple horizontal lines, all of which are crossed out with a diagonal line, indicating that the content has been redacted or is otherwise void.]*

Statement by offender to confirm all that is written is true and correct:

Statement: I have had this statement read to me it is true and correct.

Signed: *[Handwritten Signature]*

Dated: 28.5.2019

Statement taken and signature witnessed by:

Name: Elle Dickson

Job Title: Team leader

Organisation: Invercargill City Council

Warrant Number: 2019/2

Finish Time: 3.36pm

23 July 2019  
Mary Barnes  
46 Purdue Street  
Invercargill

SCANNED  
24 JUL 2019

Invercargill City Council  
Request no.29827  
Dog Ref no.26456  
Document Ref no.0246914

Regarding investigation outcome, dog attack on person, 46 Purdue Street, Invercargill.

I had to wait six anxious weeks for a decision to be made regarding my dog Albie's fate. I am very dissatisfied with the eventual outcome.

I wish to object to this outcome and would like a copy of all statements and evidence presented in this case as I am going to ask for a hearing into this decision.

Yours sincerely

Mary Barnes



## **RFS 170268 – Dog Attacking People**

**18 July 2014 1.47 pm**

Responsible Officer: Diane Lowther

“Small white 3 legged dog from 46 Purdue St rushed out onto the footpath and nipped a delivery person on the ankle then latching onto her pants not letting go. Delivery person said she reported it to her supervisor but heard nothing back that's why she waited since Tuesday when the incident happened to report to us when I asked her about it.”

**18 July 2014 3.07 pm**

Responsible Officer: Janice Paisley

“ACO53 to visit dog owner.”

**24 September 2014**

Responsible Officer: Peter Jones

“24/09/14 @ 11:39 Spoke to dog's owner, cautioned him about allowing the dog to be out rushing at people. Any further complaints of this nature will result in a menacing classification. Owner very apologetic and vows to be more vigilant.”



## **RFS 180115 – Wandering/ Fouling Complaint**

**1 December 2014 12.13 pm**

Responsible Officer: Colleen McStay

“Bichon F three legs comes from 46 Purdue St. Postie called.”

**1 December 2014 1.04 pm**

Responsible Officer: Janice Paisley

“ACO55/53 attending to this.”

**1 December 2014 3.02 pm**

Responsible Officer: Elle Dickson

“ACO53/55 visited, put dog behind gate at rear of property. Left card to owner to contact office.”

**1 December 2014 3.35 pm**

Responsible Officer: Elle Dickson

“ACO53/55 visited. The dogs were in the back yard but are able to escape. Put both dogs into a room at end of garage. Spoke to co.”

**1 December 2014 4.26 pm**

Responsible Officer: Elle Dickson

“1/12/14 @ 16.20 Spoke to owner regarding her dogs being out and the Bichon Frise rushing out at people. Advised her that he may be classed as a menacing pet because of this and what becomes involved when this happens.

Told her I would get back to her within the next couple days with what will happen after I speak to the complainant.

Also refer to RFS 180152 180115.”

**4 December 2014 4.52 pm**

Responsible Officer: Elle Dickson

"ACO 55 16.52 4/12/14 she wanted to know what is happening. She has already spoken to the complainant and apologised for the accident. I told her that I will get back to her Monday. In the meantime I need to get hold of complainant."

**4 December 2014 4.52 pm**

Responsible Officer: Elle Dickson

"ACO 55/53 Visited 5/12/14 Complainant's address to gather a statement no one home, also visited neighbour's property and no one home."

**15 December 2014 12.46 pm**

Responsible Officer: Elle Dickson

"Spoke to complainant she is going to put a statement through then we can proceed with menacing classification"

**12 January 2015 5.56 pm**

Responsible Officer: Elle Dickson

"Complainant still hasn't put anything in writing about the attack so we can't proceed with the menacing classification. Rang Mary, the dog owner, and told her what was happening."

**RFS 180182 – Wandering/ Fouling Complaint**

**1 December 2014 3.07 pm**

Responsible Officer: Colleen McStay

“Wandering dog Bichon F white 3 legs Purdue St”

**1 December 2014 3.13 pm**

Responsible Officer: Janice Paisley

“ACO53/55 attending to this. Also refer to 180115 previous complaint.”

## **RFS 220267 – Wandering/ Fouling Complaint**

**29 June 2016 1.39 pm**

Responsible Officer: Michelle Thwaites

"Complaint about a 3 legged Bichon Frise from 46 Purdue Street. Running out across the road and barking and scaring a lady that was walking past. She said the same thing happened a year ago and that if the dog could, it would probably try and bite someone. The owner called the dog back and apologised but she was really shaken and hurled some abuse at him and his 3 legged dog (possibly wearing a bandana, the dog that is) and told him to keep his dog under control."

**29 June 2016 2.25 pm**

Responsible Officer: Janice Paisley

"ACO54 contacted regarding this complaint."

**30 June 2016 8.11 am**

Responsible Officer: Michelle Thwaites

"Message left on answer phone last night for Peter from Mrs Barnes. They are both working today so you will have to try and call them on Friday."

**30 June 2016 10.33 am**

Responsible Officer: Peter Jones

"29/6/16 @ 14.30 dog was in the property, well down in the back section behind a gate. There was a car in the drive way, unsure if anyone was actually home, no one answered the door. Card left. Both dogs on the property were barking like crazy at something behind the back fence, maybe another dog."

**15 July 2016 10.58 am**

Responsible Officer: Nicole Todd

"Spoke to dog owner, Lance. He said that he was home doing the gardening in the front yard when Little Bear got out. Lance said he turned his back for a minute and he was off down the road. Back yard looked pretty secure so I don't think they would have gotten out of there.

Warned him about watching his dogs if he ever takes them out the front as it is not secure.."

## **RFS 220267 – Dog Attack/ Menacing**

**28 April 2017 11.54 am**

Responsible Officer: Leeanne van Malland

of rang to advise he was walking to work this morning. As he was going passed 46 Purdue Street, a white Maltese or Bichon type dog came running out of the drive and tried biting at Les's leg, but didn't puncture his leg only got his jeans. The owner said sorry and gave him a look of disgust."

**28 April 2017 12.03 pm**

Responsible Officer: Nicole Todd

"Will visit dog owner and discuss. Bear has chased and grabbed on to a postie in the past but no harm was done then either.

I will most likely revoke responsible status from the dog owner and possibly issue an infringement. A menacing classification is probably a bit extreme for a three legged bichon...."

**29 April 2017 11.29 am**

Responsible Officer: Nicole Todd

"28/04/17 @ 16:32

ACO55/56 Spoke to dog owner regarding Bear getting out.

She understood that they would lose their responsible status. She thinks that Bear may have been abused before they got him and that is most likely how he lost his leg as he is very weary of strangers.

Mary said they might look at putting a second gate over the driveway to prevent this from happening again."

## RFS 298237 – Dog Attack/ Menacing

**27 May 2019 5.29 pm**

Responsible Officer: Marc Pemberton

"Has just been bitten by a dog from 46 Purdue. The bite went through the jeans but not through the skin. He was walking along the footpath when the dog rushed out and repeatedly rushed him. It appeared to be a small dog with three legs.

**28 May 2019 9.08 am**

Responsible Officer: Amy Brunt

"AHC Notes :

27-05-2019 @ 17.26

*Little Bear*, Male, Bichon, white Age 6,

Owner Mary Banes @ 46 Purdue Street.

Called to \_\_\_\_\_ : Small white dog from 46 Purdue Street has bitten person at \_\_\_\_\_ on the leg.

Arrived at 46 Purdue Street, small white Bichon inside with owners. Male came to the door and said that he was aware what had happened.

I asked where the dog was and he invited me inside. His wife was inside with the dogs. He explained that he had left the gate open as his wife wasn't far away from coming home from work, he went out the back to get the washing off the line and thought he had shut the front door.

The white Bichon has run out the gate, and started barking at

\_\_\_\_\_ said that the dog is out often and this is the second time it has bitten him. Les said that he lifted his leg and sort of kicked towards the dog to get it away. He kept walking and the dog kept coming towards him. He turned face on with the dog. He said the owner heard what was happening and come out and picked the dog up, said "Sorry" and took it inside.

Complainant :

**28 May 2019 9.22 am**

Responsible Officer: Amy Brunt

"Had a call from the dog's owners. They wanted an update on what was happening with their dog? They also provided a hotline 03 217 2476.

They also said that the dog had had about 8 teeth out about two weeks ago."

**28 May 2019 1.33 pm**

Responsible Officer: Daniel De Ruyter

"Spoke to the complainant and organised a statement for 5.15 pm 29 May 2019."

**28 May 2019 1.43 pm**

Responsible Officer: Daniel De Ruyter

"Called the dog owner to let him know I would not be down today as I had already spoken to complainant and will be heading there tomorrow. He said that after hours said that it would all get sorted today. He became very argumentative regarding everything. He is going to go visit the dog in the pound now."

**30 May 2019 10.49 am**

Responsible Officer: Daniel De Ruyter

"Draft report handed to Team Leader."

**30 May 2019 4.02 pm**

Responsible Officer: Amy Brunt

"Dog released to owner for a total cost of \$130.00: \$80.00 impound fee and \$55.00 afterhours."

**16 July 2019 11.31 am**

Responsible Officer: Micheal Murdoch

"16/07/2019 Menacing notice dropped into the dog owner. I handed it to a male at the property. He said "What six weeks to get this paper work?" I told him I have had nothing to do with this attack and I know nothing about it at all. I told him he can request a hearing but we need this on paper.

16/07/2019 @ 11:32 Lance was down at the help desk wanting to talk to someone about his dog. Spoke to him. He wanted to know why his dog had to be muzzled on his property? I told him that it did not. He said "It's written right here: Private Way." I said he needs to look up what Private Way means. He said that it should be clearer. I told him there needs to be access to a door on the property and when he is exercising his dog in public the dog will have to be muzzled. He wants all the statements notes RFS from the attack. Again I told him we also need this in writing. He said will this also take six weeks? And how long would they wait for a hearing? I told him I have no idea. He asked for Elle to contact him on his home number."



## DOG CONTROL ACT 1996

The following extracts from the Dog Control Act (the Act) are relevant to this matter:

### S4 Objects

*The objects of this Act are—*

*(a) to make better provision for the care and control of dogs—*

*(i) by requiring the registration of dogs; and*

*(ii) by making special provision in relation to dangerous dogs and menacing dogs; and*

*(iii) by imposing on the owners of dogs, obligations designed to ensure that dogs do not cause a nuisance to any person and do not injure, endanger, or cause distress to any person; and*

*(iv) by imposing on owners of dogs obligations designed to ensure that dogs do not injure, endanger, or cause distress to any stock, poultry, domestic animal, or protected wildlife; and*

*(b) to make provision in relation to damage caused by dogs.*

### S5 Obligations of dog owners

*(1) The obligations imposed on dog owners by this Act require every owner of a dog—*

*(a) to ensure that the dog is registered in accordance with this Act, and that all relevant territorial authorities are promptly notified of any change of address or ownership of the dog:*

*(b) to ensure that the dog is kept under control at all times:*

*(c) to ensure that the dog receives proper care and attention and is supplied with proper and sufficient food, water and shelter:*

*(d) to ensure that the dog receives adequate exercise:*

*(e) to take all reasonable steps to ensure that the dog does not cause a nuisance to any other person, whether by persistent and loud barking or howling or by any other means:*

*(f) to take all reasonable steps to ensure that the dog does not injure, endanger, intimidate, or otherwise cause distress to any person:*

*(g) to take all reasonable steps to ensure that the dog does not injure, endanger, or cause distress to any stock, poultry, domestic animal, or protected wildlife:*

*(h) to take all reasonable steps to ensure that the dog does not damage or endanger any property belonging to any other person:*

*(i) to comply with the requirements of this Act and of all regulations and bylaws made under this Act.*

*(2) Nothing in this Act limits the obligations of any owner of a dog to comply with the requirements of any other Act or of any regulations or bylaws regulating the control, keeping, and treatment of dogs.*

### S33a 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.

**S33B Objection to classification of dog under Section 33A**

- (1) If a dog is classified under section 33A as a menacing dog, 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) 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.
- (3) 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.

**Section 57 Dogs attacking persons or animals**

- (1) A person may, for the purpose of stopping an attack, seize or destroy a dog if—
  - (a) the person is attacked by the dog; or
  - (b) the person witnesses the dog attacking any other person, or any stock, poultry, domestic animal, or protected wildlife.
- (2) The owner of a dog that makes an attack described in subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$3,000 in addition to any liability that he or she may incur for any damage caused by the attack.
- (3) If, in any proceedings under subsection (2), the court is satisfied that the dog has committed an attack described in subsection (1) and that the dog has not been destroyed, the court must make an order for the destruction of the dog unless it is satisfied that the circumstances of the offence were exceptional and do not warrant destruction of the dog.
- (4) If a person seizes a dog under subsection (1), he or she must, as soon as practicable, deliver the dog into the custody of a dog ranger or dog control officer.
- (5) If a dog control officer or dog ranger has reasonable grounds to believe that an offence has been committed under subsection (2), he or she may—
  - (a) seize and take custody of the dog; or
  - (b) if seizure of the dog is not practicable, destroy the dog.
- (6) A dog control officer or dog ranger may enter land or premises for the purposes of subsection (5), but may enter any dwellinghouse on the land or premises only if—
  - (a) he or she is in fresh pursuit of a dog that—
    - (i) he or she has reasonable grounds to believe has committed an attack described in subsection (1); and
    - (ii) has been identified by a witness to the attack; or
    - (b) he or she is authorised to enter by a warrant issued by an issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012), made on application by the dog ranger or dog control officer in the manner provided for an application for a search warrant in subpart 3 of Part 4 of the Search and Surveillance Act 2012, who must not issue a warrant unless the issuing officer is satisfied that there are reasonable

grounds to believe that an offence has been committed under subsection (2), and, in the case of a dog control officer, he or she is accompanied by a constable.

(6A) None of the following persons may act as an issuing officer under this section:

(a) the mayor or any elected member of the local authority that employs or engages the dog ranger or dog control officer; or

(b) any employee of the local authority that employs or engages the dog ranger or dog control officer.

(6B) The provisions of subparts 1, 3, 7, 9, and 10 of Part 4 of the Search and Surveillance Act 2012 apply in respect of an authority applied for or issued under subsection (6).

(7) To avoid doubt, a constable may exercise the powers conferred on a dog control officer or dog ranger by this section.

(8) This section, section 57A, and section 58 do not apply in respect of a dog that—

(a) is kept, or is being used, or is certified for use by a specified agency; and

(b) is being used for the purpose of carrying out in a lawful manner any function, duty, or power of that agency.

## **S62 Allowing dogs known to be dangerous to be at large unmuzzled**

(1) This section applies to a dog owned by a person and known by the person to—

(a) be dangerous; or

(b) have attacked any person or any stock or poultry or property of any kind.

(2) The person must not allow the dog to be at large or in any public place or private way, except when confined completely within a vehicle or cage, without being—

(a) muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction; and

(b) controlled on a leash (except when in a dog exercise area specified in a bylaw made under section 20(1)(d)).

(3) A person whose dog is in the possession of any other person for a period of less than 72 hours must advise that person of the requirement to comply with subsection

(4) Every person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding \$3,000, and the court may, on convicting the person, make an order for the destruction of the dog.

(5) Every person who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding \$500.

(6) This section does not apply in respect of a dog that—

(a) is kept, or used, or is certified for use by a specified agency; and

(b) is being used for the purpose of carrying out in a lawful manner any function, duty, or power of that agency.