

22. 7. 98

**SUPPLEMENTARY REPORT BY THE
CHAIRMAN OF THE ENVIRONMENTAL COMMITTEE
FRIDAY 17 JULY 1998 AT 12.30 PM**

10. DANGEROUS DOG BREEDS

The Dangerous Dogs Working Party had before it a second legal opinion on the power of the Council to make bylaws prohibiting particular types or breeds of dogs known to be dangerous. The breeds contemplated are the Brazilian Fila, the Japanese Tosa and the Argentina Dogo. In addition a prohibition was also sought on the keeping of American Pit Bull Terrier dogs.

The opinion stated that the Council does not have the power to utilise either the Local Government Act 1974 or the Health Act 1956 to make a bylaw prohibiting within the city certain types and breeds of dogs known to be dangerous, as such bylaws would be inconsistent with the necessarily narrower breadth of policy allowed by section 10 of the Dog Control Act 1996. The making of such bylaws is prohibited by section 10(7) of the Dog Control Act 1996 the conclusion reached was the same as the Council's solicitor, but for different reasons (refer to attachment).

Councillor O'Rourke questioned why a bylaw prohibiting types or breeds of dogs within the city could not be made pursuant to the bylaw making power contained in section 29(1)(1) of the Dog Control Act. That section contains a general power authorising the Council to make bylaws it considers necessary for the control of dogs. Advice was given by David Rolls, the Council's Solicitor, who provided the first legal opinion, that this issue had been covered in that opinion. In essence the power to "control" does not include the power to "prohibit". Also the scheme of the Dog Control Act is such that the power to prohibit types or breeds of dog in the district of a local authority was vested in the government which was empowered to do that by way of regulation.

In view of the legal opinion received, the working party discussed means by which the keeping of dangerous breeds or types of dogs could be made more restrictive than it currently is, in order to provide greater protection to the public.

It was commented that there is a real fear amongst members of the public, as to coming in contact with such dogs.

The question of what would be held to be "reasonable" and what might be seen as a "device" to get around the provisions of the Act was discussed.

It was recognised that:

- Certain dogs have a propensity to attack.
- Other dogs are able to inflict terrible injuries given their size and jaw strength.

- Some dogs are seemingly easy to be able to be controlled while others are beyond their owner's or handler's ability to control.
- Every person's rights are subject to the rights of others.

It was pointed out that it would be better to reach some form of agreement on a code with the likes of the Kennel Club, rather than trying to eliminate or phase out a particular breed of dog.

In conclusion it was considered that public safety was paramount and that there was a need that the Council impose more effective restrictions on the keeping of such dogs within the city.

- Recommendation:**
1. That the Council seek a declaratory judgment from the High Court in order to determine whether or not it has the power to prohibit by way of bylaw, the keeping or possession of dogs of any specified type or breed or cross-breed within its district.
 2. That the Council amend its Dog Control Policy to provide:
 - It is recognised that certain breeds or types of dogs or dogs with certain characteristics are capable of causing or inflicting severe injury to people.
 - In order to ensure that such dogs do not cause a nuisance to any person, nor injure, endanger, or cause distress to any person the following strategies be implemented:
 - A. If the High Court determines that the Council has the power to impose such prohibitions:
 - (i) The banning of specified types and breeds of dogs known to be dangerous by the year 2010.
 - (ii) Appropriate publicity.
 - (iii) Not allowing the introduction of any more of such types or breeds of dogs into the City of Christchurch.
 - (iv) Requiring the neutering/spaying of all existing types and breeds of dogs so determined.

22. 7. 98

- 3 -

- (v) Requiring the muzzling of all types and breeds of dogs so determined, in any public place.
 - (vi) Requiring the dog owner to provide signage, both written and visual, on their private property warning of the presence of such type or breeds of dogs.
- B. If the High Court determines that the Council does not have power to impose such prohibitions:
- (i) Appropriate publicity.
 - (ii) Requiring the neutering/spaying of all existing types and breeds of dogs so determined.
 - (iii) Requiring the muzzling of all types and breeds of dogs so determined, in any public place.
 - (iv) Requiring the dog owner to provide signage, both written and visual, on their private property warning of the presence of such type or breeds of dogs.

(Note: Councillor Manning recorded his vote against the recommendation.)

The meeting concluded at 1.40 pm

CONSIDERED THIS 22ND DAY OF JULY 1998

MAYOR