



PAPAIOEA
PALMERSTON
NORTH
CITY

PALMERSTON NORTH CITY COUNCIL

AGENDA

HEARING BY HEARING PANEL UNDER THE DOG CONTROL ACT 1996

9.30AM FRIDAY 2 JUNE 2023

COUNCIL CHAMBER, FIRST FLOOR
CIVIC ADMINISTRATION BUILDING
32 THE SQUARE, PALMERSTON NORTH

MEMBERS

Councillor Patrick Handcock (ONZM)
Councillor Lorna Johnson

AGENDA ITEMS, IF NOT ATTACHED, CAN BE VIEWED AT

pncc.govt.nz | Civic Administration Building, 32 The Square
City Library | Ashhurst Community Library | Linton Library

Waid Crockett

Chief Executive | PALMERSTON NORTH CITY COUNCIL

Te Marae o Hine | 32 The Square
Private Bag 11034 | Palmerston North 4442 | New Zealand
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PALMERSTON NORTH CITY COUNCIL HEARING BY HEARING PANEL

Friday 2 June 2023, 9.30am

ORDER OF BUSINESS

1. Hearing of Objection Pursuant to Section 33B Classification of Dog as Menacing under the Dog Control Act 1996

Hearing Procedure Sheet Page [4]

To consider the following:

(i) Objector – Tracy Haddon

Objection to the menacing classification of the dog Toby, lodged by Tracy Haddon (Annex J to the Council Officer's Report) Page [37]

(ii) Palmerston North City Council

Officer's Report by Aaron Thornton, Team Leader Animal Management and Education (Acting) Page [6]

(iv) Right of Reply of Objector

2. Exclusion of Public

The Hearing Panel will reserve the right to make the decision with the public excluded.



INFORMATION CONCERNING PROCEDURE FOR HEARING OF OBJECTIONS RECEIVED PURSUANT TO THE DOG CONTROL ACT 1996

This information is for the assistance of persons participating in the hearing of objections received pursuant to the Dog Control Act 1996.

1. **Panel of Elected Members conducting the Hearing**

Objections received pursuant to the Dog Control Act 1996 are considered by a Hearings Panel composed of Elected Members, who have Council's delegated authority to hear and determine the objection.

2. **Statutory Provision**

Relevant statutory provisions are contained in the Dog Control Act 1996.

3. **Engagement of Counsel**

You may present your case in person or may be represented by legal counsel or any other person. You could also bring a support person with you.

4. **Public Hearing**

The hearing is a public meeting and the media and members of the public are entitled to be present. This also means that any evidence provided during the process will be included in an Agenda publicly published prior to the hearing. The Decision of the Hearings Panel will be published on the Council website and remain publicly available.

The minutes of the hearing will not be published on the Council website but could be provided to members of the public on request.

Despite the above, the Hearings Panel has the power to make an order to protect sensitive information.

5. **Venue**

The hearing will be held in the Missoula Room which is situated on the first floor in the Civic Administration Building, Te Marae o Hine, 32 The Square, Palmerston North. Access is via the doors on the Square side of the roadway. Disability access is via the Customer Service Centre then via the lifts to the first floor.

If a change of venue is required, you will be informed in advance.

6. **Agenda**

An agenda for the hearing will be sent to you at least three days before the hearing. The agenda will also include any pre-circulated evidence. (See paragraph 7 below).

7. **Evidence**

Any evidence given and submissions made may be oral or in writing. Photographs and similar evidence may also be produced. Please provide six copies of any documents to be tabled at the hearing. If you would like to have your evidence pre-circulated, you will need to provide this to the Hearing Administrator by 3pm on Friday 26 May 2023.



8. Cross-Examination

There is no right of cross-examination. This means that the parties do not have the right to address questions to other parties. The Hearings Panel may, however, question any party concerning their submission or evidence.

9. Conduct of the Hearing

At the start of the hearing, the Hearings Panel will briefly outline the hearing procedure. The following order of appearance will usually apply:

- (a) The objector presents their case in support of their objection.
- (b) The representative of the Council and any other person reporting on behalf of the Council present their case.
- (c) The objector has a right of reply.

Notwithstanding this general order, the Hearings Panel may elect to regulate the hearing procedure as they see fit.

10. Tikanga Maori

You may speak to your objection in Te Reo Māori if you wish. If you intend to do so, please contact the Hearing Administrator **within three days** of the date you receive the letter notifying you of the hearing. This is to enable arrangements to be made for a certified interpreter to attend the meeting.

11. Visual and Digital Aids

If you wish to use any visual or digital aids, please contact the Hearing Administrator no later than two days before the meeting so that arrangements can be made.

12. Adjournment

The Hearings Panel has the authority to adjourn the hearing. If at the time of adjournment no date or time is set for a resumed hearing then you will be given at least seven working days' notice of the date and time of the resumed hearing.

13. Decision

After the Hearings Panel has heard the evidence, it will usually declare the hearing closed and will leave the room to consider its decision. All parties will be advised in writing of the decision as soon as possible and the reasons for it.

If you are dissatisfied with the decision, we recommend you seek legal advice.

14. Variation of Procedure

The Hearings Panel may, in its sole discretion, vary the procedure set out above if the circumstances indicate that some other procedure would be more appropriate.

REPORT

TO: Hearings Panel

HEARING DATE: 2 June 2023

TITLE: Objection to Menacing Classification of Dog - Dog Control Act 1996

PRESENTED BY: Ross McDermott, Team Leader - Animal Management & Education

RECOMMENDATION TO HEARINGS PANEL

- A. That the Hearings Panel upholds the Menacing Classification of Tracy Haddon's dog, Toby.**
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1 PURPOSE OF REPORT

This report seeks the Hearings Panel's consideration and decision on the objection lodged by Tracy Haddon against the classification of her dog, Toby, as a menacing dog under section 33A of the Dog Control Act 1996 (the Act).

2 SIGNIFICANCE OF DECISION

The Council's Significance and Engagement Policy is not triggered by this report.

3 CONTRIBUTION TO THE COUNCIL VISION AND GOALS

This matter relates to the Goals which underpin Council's Vision, specifically Goal 3 – a connected and safe community.

4 BACKGROUND

Legislation

- 4.1 Section 33A(1) of the Act provides that Council may classify a dog as menacing that has not been classified as a dangerous dog under section 31; but Council considers may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of any observed or reported behaviour of the dog.
- 4.2 In relation to section 33A (and 33B) of the Act, Council has the discretion to classify a dog as menacing, but the discretion needs to be considered in the context that a dog '...may pose a threat to any person...'. 'May' is a very low threshold and a decision considers the likelihood of the dog behaving similarly in the future.

Incident

- 4.3 Tracy Haddon is the registered owner of Toby, a male, black, mix breed Chihuahua.
- 4.4 On 1 February 2023 at 1416, Council received a telephone complaint to our customer contact centre about two wandering dogs. The complainant described the two dogs as a mixed breed, black and white dog and a small, black, Chihuahua mix who are kept at [REDACTED] Street, Palmerston North. The dogs were described as roaming around the corners of Hillcrest Drive and Acacia Street, constantly running across the road and almost being hit by cars. The complainant said they were not comfortable approaching the dog as the dogs were barking at everyone. A copy of the Animal Control Complaint Report No: 61853 is attached as **Annex A**.
- 4.5 At approximately 1430, Animal Control Officer Bernie Compton arrived at Acacia Street. He observed two dogs roaming on the street and took photographs of the dogs. A copy of the photographs taken by Officer Compton are attached as **Annex B**.
- 4.6 When Officer Compton exited his vehicle and took the photographs, the black dog was exhibiting extremely aggressive behaviour, the dog was standing in a dominant stance with its tail erect and high pitched barking and attempted to advance on him whenever he turned away slightly from the dog. Had he turned his back on the dog he was certain he would have been bitten, however no physical contact was made due to Officer Compton being aware of the physical behaviour being displayed by the dog and not putting himself in a position that the dog could bite him.
- 4.7 A young girl then came out of [REDACTED] Street and approached the officer and dogs. She picked up both dogs and took them back to [REDACTED] Street, securing them in the dwelling. The incident was witnessed by a member of the public. A copy of the Job Sheet for complaint number 61853 is attached as **Annex C** and a statement provided by the witness to Council is attached as **Annex D**.
- 4.8 Officer Compton ascertained that no adults were present at [REDACTED] Street at the time and left the scene after leaving a note at the property. He made a telephone call to the registered dog owner at [REDACTED] Street, Ms Haddon. He did speak with Ms Haddon but she was unable to speak at the time and said she would call him back.
- 4.9 On 8 February 2023 Ms Haddon telephoned Officer Compton. He said that he had been following up on the incident involving her dogs on 1 February 2023. He advised her that Toby had been roaming and had become aggressive towards him when approached. Tracy stated to Officer Compton that Toby had probably started being aggressive in the last few months. She advised that they had reached out to Paul Hutton (a dog behaviourist based in Manawatū). She went on to say that they have noticed that it is mainly males that Toby reacts to.

Officer Compton advised Ms Haddon that Toby would be classified as menacing due to his observations of Toby's behaviour on 1 February.

- 4.10 On 9 February 2023 two further complaints were reported to Council. The first complaint, received at 1522, reported that a dog had attacked the complainant. [REDACTED] said [REDACTED] had been nipped on the back of the ankle by a black Chihuahua, [REDACTED] did not receive injuries as [REDACTED] was wearing gumboots. The complainant mentioned that there was another dog roaming with the Chihuahua which the caller described as looking like a poodle and black and white in colour. [REDACTED] also stated that while on the phone [REDACTED] could see the two dogs roaming to other properties and trying to "fight" with other dogs. A copy of the Animal Control Complaint Report 61919 is attached as **Annex E**.
- 4.11 The second complaint was received at 1549. The complainant reported that at about 1520 [REDACTED] was walking home from school along Acacia Street and there was a small black dog roaming with a medium size, black and white coloured dog. The small black dog charged towards [REDACTED] barking aggressively. The caller went on to say that [REDACTED] had seen the dogs out roaming several times a day and that the small black dog is constantly aggressive towards people. [REDACTED] said the dogs were from [REDACTED] Street. A copy of the Animal Control Complaint Report 61920 is attached as **Annex F**.
- 4.12 As part of preparing for this hearing, the Acting Team Leader Animal Management reviewed the houses next to [REDACTED] Street on GoogleMaps. A copy of the image obtained that matches the description from the second complainant is attached as **Annex G**. The property in the image is [REDACTED] Street, where Ms Haddon resides.
- 4.13 As a result of the two complaints, Animal Control Officer Charles Kereama-Graham attended [REDACTED] Street at approximately 1600 that same day. He observed two dogs within the property. The officer spoke to Ms Haddon and advised her of the two complaints reported to Council. Tracy's husband arrived home at this time and stated that he had no problem with putting the dog down if it had bitten someone. The officer advised them that an infringement would be issued for the incident. A copy of the Infringement Notice issued is attached as **Annex H**.
- 4.14 A Notice of Classification of Dog as Menacing Dog for Toby was issued to Ms Haddon on 10 February 2023. A copy of the Notice is attached as **Annex I**.
- 4.15 On 24 February 2023 Ms Haddon telephone Council and stated her objection to the classification of Toby. A copy of the message is attached as **Annex J**.

5 CONSIDERATIONS

- 5.1 Section 33B of the Act states that, when considering an objection, the territorial authority 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 matters.

5.2 The following paragraphs set out the information relevant to the section 33B considerations:

The evidence which formed the basis for the classification

5.2.1 Tracey Haddon's dog, Toby, was classified as menacing due the incident on 1 February 2023 where Toby was found wandering off the owner's property without her control and responded aggressively to the attending Animal Control Officer.

Any steps taken by the owner to prevent any threat to the safety of persons or animals

5.2.2 On the 8 February telephone call Ms Haddon advised that they had contacted a Manawatū based dog behaviourist. Council does not know if any sessions with the behaviourist have been completed with Toby and Ms Haddon.

The matters relied on in support of the objection

5.2.3 At the time of writing this report Council had not received any submissions from Ms Haddon to support the objection.

Any other matters

5.2.4 Complaint history: Two further incidences of Toby roaming and behaving aggressively towards members of the public were reported on 9 February 2023.

A copy of the complaint history for Toby is attached as **Annex K**. From the 27 June 2022 to 12 April 2023, there have been three (3) aggressive dog complaints and two (2) dog attacks reported to Council.

5.2.5 Assessment matrix: An assessment matrix is used throughout New Zealand by numerous territorial authorities' Animal Control / Animal Management teams to give an indication of appropriate action following a dog attack. Palmerston North City Council also uses this tool. In this case the score was assessed as 51, which is at the middle of the score range, this indicates an option of classification and Infringement issue as an officer action. A copy of the assessment matrix completed by Officer Compton is attached as **Annex L**.

5.2.6 Case law: Case law that is routinely referred to during dog attack prosecutions and is taken into consideration when investigating dog bite / attack incidents is *Halliday v New Plymouth District Council*¹. This case mentions in part, when discussing the underlying principles of section 57

¹ *Halliday v New Plymouth District Council* High Court New Plymouth CRI-2005-443011, 14 July 2005.

and 58 under the Act that in the absence of exceptional circumstances
“...past behaviour is regarded as the best predictor of future behaviour.”

5.3 Operational implications

There are no capital or operating expenditure implications or maintenance costs associated with this matter.

5.4 Financial implications

There are no financial implications associated with this matter.

5.5 Policy implications

There are no policy implications. The recommendation is consistent with previous action in similar circumstances.

5.6 Cultural considerations

There are no cultural considerations to be taken into account in this matter.

5.7 Consultation

There are no community consultation requirements.

6 OPTIONS AVAILABLE

6.1 The Panel has two options in considering the objection to the menacing classification

- Uphold the classification of the dog as menacing; or
- Rescind the decision.

7 DELEGATION

7.1 The Hearings Panel may make a decision on this matter under clause 3.4.1 of the Delegations Manual as approved by Council on 16 November 2022.

8 CONCLUSION

8.1 This menacing classification will reduce the risk posed to any member of the public and other dogs and animals by requiring Toby to be muzzled when in public.

8.2 This is the fifth reported incident that Toby has been involved in. Whilst all have been considered minor this pattern of behaviour identifies to the Animal Management Team that the dog owner has a disregard or is ignorant to her dog's behaviour. If there are no measures put in place this is likely to result in further incidents occurring.

8.3 If the Panel rescinds the classification, there is a risk that further breaches of the Act will occur, and members of the public could be further threatened or even harmed.

- 8.4 The incident relating to the menacing classification whilst it did not result in injury to the officer who attended, it clearly demonstrated unacceptable behaviour from the dog. Should the dog bite a member of the public again, Council may consider prosecuting the owner and seek destruction of the dog.
- 8.5 Based on professional experience, and consistent with the case law, *Halliday* previously cited, officers consider that if the dog owner continues to allow the dog to act in the manner that it has in the past, it will attack again.
- 8.6 The position of the Animal Management Team on behalf of the Council is that the evidence substantiates the classification of Toby as menacing under the Act and remains appropriate.

9 NEXT STEPS

- 9.1 In accordance with section 33D(4) of the Act:

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.

Report prepared by

Report approved and submitted by

Aaron Thornton
TEAM LEADER ANIMAL MANAGEMENT
AND EDUCATION (ACTING)

Jason Rosenbrock
ENVIRONMENTAL PROTECTION SERVICES
MANAGER

ATTACHMENTS

- Sections 33A, 33B, 33D and 33E of the Dog Control Act 1996.
- Annex A: CN 61853 – Animal Control Complaint Report.
- Annex B: Photos of dogs – Taken by Officer Compton on 1 February.
- Annex C: Job Sheet – Officer Compton.
- Annex D: Written statement of 1 February 2023 incident.
- Annex E: CN 61919 – Dog Attack complaint report.
- Annex F: CN 61920 – Aggressive dog complaint report.
- Annex G: Google Maps image of property described by complainant.
- Annex H: Infringement notice – Section 52A Dog Control Act 1996.
- Annex I: Notice of Menacing Classification.
- Annex J: Copy of objection message received from Ms Haddon.
- Annex K: Complaint history.
- Annex L: Assessment Matrix.

NOTE: The attachments to this report have been withheld under the section 53(b)(i) of the Privacy Act 2020

Menacing dogs

33A 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.

33B 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.

33E Effect of classification as menacing dog

(1) If a dog is classified as a menacing dog under [section 33A](#) or [section 33C](#), the owner of the dog—

(a) must not allow the dog to be at large or in any public place or in any private way, except when confined completely within a vehicle or cage, without being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction; and

(b) must, if required by the territorial authority, within 1 month after receipt of notice of the classification, produce to the territorial authority a certificate issued by a veterinarian 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

(c) must, if a certificate under paragraph (b)(ii) is produced to the territorial authority, produce to the territorial authority, within 1 month after the date specified in that certificate, a further certificate under paragraph (b)(i).

(2) [Repealed]

(3) [Repealed]

(4) [Repealed]

(5) Subsection (1)(a) does not apply in respect of any dog or class of dog that the territorial authority considers need not be muzzled in any specified circumstances (for example, at a dog show).

ANNEX J

-----Original Message-----

From: Kbase4live <info@pncc.govt.nz>

Sent: Friday, 24 February 2023 7:07 pm

To: Lesley Butler <lesley.butler@pncc.govt.nz>; Bernie Compton <bernie.compton@pncc.govt.nz>; Charles Kereama-Graham <Charles.Kereama-Graham@pncc.govt.nz>; Wendy O'Connor <Wendy.O'Connor@pncc.govt.nz>; Aaron Thornton <aaron.thornton@pncc.govt.nz>

Subject: New WYWO RFS 926695

While You Were Out the following message was taken on your behalf.

MESSAGE FROM: Tracy Haddon

STATUS: Please contact back

DETAILS: Tracy Haddon 4:51 PM February 24, 2023

Hi we were served a menacing dog classification with the right to object.
I do not believe Toby is a menacing dog. He is not in public places unless he is on leash and he socialises well with us and with other dogs.
I would like him assessed as I do not believe he fits the classification of the notification.
Thanks
Tracy

PREFERRED CONTACT METHOD: Email

Contact Details:

Phone:

Email:

Referred By: CJ ATKINS

Please resolve this WYWO message when it has been dealt with.

<https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fkbase4live.pncc.govt.nz%2FLink.asp%3FRFS%3A926695&data=05%7C01%7Caaron.thornton%40pncc.govt.nz%7C77909964469c433f821e08db162d5589%7C4b63d63445d2495cbfdc5cb926de35ea%7C0%7C0%7C638128156224081700%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=VK0k0%2FCN8446T7u7%2FwagM85Dhpe5Z0vvG%2F2CdmCaw3A%3D&reserved=0>

Mobile Link

<https://aus01.safelinks.protection.outlook.com/?url=http%3A%2F%2Frfsmobile.pncc.govt.nz%2Freview%2F926695&data=05%7C01%7Caaron.thornton%40pncc.govt.nz%7C77909964469c433f821e08db162d5589%7C4b63d63445d2495cbfdc5cb926de35ea%7C0%7C0%7C638128156224081700%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=Bi%2BCROA%2FHwsnFntb3bd02vbXnLk1v6Q9d87GqAq%2BFmk%3D&reserved=0>

{end}