



PALMERSTON NORTH CITY COUNCIL

AGENDA

HEARINGS COMMITTEE

10AM, TUESDAY 19 MARCH 2019

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



MEMBERSHIP

Tangi Utikere (Chairperson)
Brent Barrett
Leonie Hapeta

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

Heather Shotter
Chief Executive, Palmerston North City Council

Palmerston North City Council

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PALMERSTON NORTH CITY COUNCIL

HEARINGS COMMITTEE

EXTRAORDINARY MEETING

19 March 2019

MEETING NOTICE

Pursuant to Clause 22 of Schedule 7 of the Local Government Act 2002, I hereby requisition an extraordinary meeting of the Hearings Committee to be held at **10.00am on Tuesday 19 March 2019 in the Council Chamber, first floor, Civic Administration Building, The Square, Palmerston North** to consider the business stated below.



CHAIRPERSON

ORDER OF BUSINESS

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

Parties:

Applicant:

Letter, dated 19 January 2019, from Mr Bret Martin and Ms Sommai Lightbourne. (Attached)

(Pages 5-7)

Palmerston North City Council:

Report, dated 20 February 2019, by the Animal Control Officer, Mr Ross McDermott. (Attached)

(Pages 8-12)

Right of Reply of Applicant

2. Exclusion of Public

That the public be excluded from the following parts of the proceedings of this meeting, namely agenda item 1.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

	General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
1.	Hearing of Objection Pursuant to Section 33B Classification of Dog as Menacing under the Dog Control Act 1996	personal privacy	(a)(i)

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public are as follows:

1. Hearing of Objection Pursuant to Section 33B Classification of Dog as Menacing under the Dog Control Act 1996 – LGOIMA 7(2)(a) – personal privacy.

* Also that Committee Administrators (Rachel Corser, Courtney Kibby and Penny Odell) be permitted to remain after the public has been excluded because of their knowledge and ability to provide the meeting with procedural advice and record the proceedings of the meeting.

* * * *

19th January 2019

Palmerston North City Council
Dog Control
Menacing Dog Classifications

To whom it may concern,

Recently our dog "Kado" was classified as a menacing dog.

At the time of the classification we were away on holiday and the caregiver was given specific instructions to prevent any such potential altercations. As we were not directly responsible for the incident in question, we are not happy with this classification for several reasons stated below and would like this classification to be reconsidered and removed from our dog.

- 1) We live in an area that has a large amount of dogs which are frequently walked past our property some controlled on leads and some walked off leads.
We have been having issues with several owners who continuously attempt to socialise their dogs with ours through the gates of our property. This has happened several times while I have been working in the garden. I have requested the menacing owners to refrain from this behaviour as they don't have my permission and definitely don't know how my dogs behave towards other dogs that may show aggression and bolshiness towards them.
My older dog NgaNgu (14 years) is now deaf and has bad arthritis and she is easily upset by strange dogs and Kado is rather protective of her.
- 2) Due to this potential situation if we are not present or observing the dogs in the front yard, we ensure our dogs are kept in the secure lock up compound that has been established at the back of our property.
- 3) Due to the reoccurrences of owners attempting to socialise their dogs with ours we had decided to invest in custom designed infill panels to be fitted to our gates to prevent unwanted dog access into and out of our property. These have been designed and were to be manufactured and fitted next month. ***Please see attached pictures in appendix 1***
- 4) While we were away on holiday, Keren Martin (Bret's Mother) was caring for our property and the two dogs. We had given her very strict instructions on handling the dogs and ensuring they were controlled appropriately to eliminate the current risks that were present with our inadequate gating arrangement and the menacing dog owners in the neighbourhood who we were currently having issues with.
- 5) Keren had faltered (human error) to follow our instructions for ensuring the dogs were locked at the back of the property. Kado jumped through the corner gate and was aggressive to another dog.

None of us know exactly what the circumstances were that encouraged him to jump through the gate and exhibit this behaviour. But it happened and we are very disappointed and concerned that this has occurred.

- 6) Keren took responsibility, apologised profusely for her neglecting instructions and our dog's unexpected bad behaviour. She locked the dogs up and explained the situation to the dog control officer when he arrived and reviewed our dog kennelling arrangements.
- 7) Keren also enquired about the victim's dog's wounds, its potential recovery and paid the vet bill in good faith.
- 8) Bret Martin has owned several dogs over the years that he has lived in Palmerston North although he has never considered applying for preferred owner status, he has never had any complaints, or dogs impounded for roaming or bad behaviours. In 20 years this would be the first notifiable offence.

Due to the above stated circumstances and the fact that we have preventative infill panels currently being designed and manufactured for our gates to prevent unwanted and uncontrolled interactions between dogs walking past our property.

We would also be prepared to take Kado to dog training and socialising to curb the behaviour he has exhibited.

We would like PNCC Dog Control to consider removing the menacing dog classification in good faith that this behaviour from Kado will not be repeated and if it does we would be more than happy to fulfil the Menacing Dog classification requirements.

We look forward to your consideration and response.
Regards,

Bret Martin

Somma Lightbourne

Appendix 1

Our current gate layouts allow interaction of dogs through gate uprights.
The RED silhouette details the height of approximately 1200mm the intended perforated infill panels for the gates.



Figure 1: Current Driveway Gate.



Figure 2: Current Front Gate

**BEFORE THE HEARINGS COMMITTEE – PALMERSTON NORTH CITY
COUNCIL (PNCC)**

IN THE MATTER Of a notice of objection under section 33B of the Dog
Control Act 1996 (DCA)

AND

IN THE MATTER Objection to the classification of a dog as menacing under
section 33A of the DCA.

BY Bret Martin

**STATEMENT OF EVIDENCE OF
ROSS McDERMOTT (ANIMAL CONTROL OFFICER), PNCC**

Menacing Dog Objection Hearing:
Bret Martin
Oasis 12471258

20 February 2019

1. INTRODUCTION

- 1.1 My name is Ross McDermott and I am an Animal Control Officer with the Palmerston North City Council. I have been responsible for classifying a dog owned by Bret Martin as menacing under section 33A of the DCA.
- 1.2 Bret Martin owns a grey and white male Staffordshire Bull Terrier named Kado.
- 1.3 At 2.02 pm on 4 January 2019 PNCC received a complaint of a dog attack on a dog. This happened on the footpath, Palmerston North.
- 1.4 The investigation identified the dog was attacked and injured by Bret Martin's dog, Kado.
- 1.5 Kado was classified as menacing under section 33A of the DCA. Bret was advised of the classification on 8 January 2019.
- 1.6 Bret objected to the classification on 19 January 2019.

2 DESCRIPTION OF THE ATTACK

- 2.1 At 2:02pm on 4th of January 2019 a complaint (number 49740) was received. This reported that a dog jumped onto her dog and the dog has bitten her dogs front right leg. It was going for her dog's legs and neck as well and she couldn't get the dog off for a minute until a passer by stopped and helped her separate the dogs. The offending dog is a Staffy type dog and it jumped over the fence.
This happened just after midday today and the caller has advised that a lady who lives at the property has come out and taken the dog and says it belongs to her son.
- 2.2 I called the complainant and asked that they provide me with an informal statement of what happen and any photos they had taken, as part of the investigation process.
- 2.3 I attended the property belonging to Bret, where I spoke to Bret's mother who had been tasked to care for the dog, I was shown where the dog normally lives and the provisions that were in place for keeping the dog contained, Bret's mother has told me that she was instructed to keep the dog out of the front yard, and this all happened because she chose to put the dog in the front yard and then left the dog unattended.
- 2.4 I decided that the dog could stay at the property as Bret was to return first thing in the morning and, instructed Bret's mother to keep the dog locked out the back, should I hear differently I will be back to impound the dog.

- 2.5 On the 7th of January 2019 I received the victims informal statement and 2 photos of her dog. In the email conversation that followed; I obtained more information about the victim dog and a brief vet report. It was also confirmed that Bret's mother reimbursed the victim \$143.50 for the vet bill.
- 2.6 The attack occurred at approximately midday on Friday 4 January 2019, on the footpath directly outside the offender's house,
- 2.7 The offending dog was observed by the complainant attacking her dog, while she attempted to walk past the property on her normal route.
- 2.8 The victim dog was taken to a vet clinic to be assessed.

3 EVIDENCE

- 3.1 The evidence considered in the issuing of the menacing classification was:
- a. Statement from the victim dog owner:
 - i. The dog jumped the front fence
 - ii. The dogs jaw locked on my dogs' leg and I could not get him off
 - iii. In the process of separating the dogs, the attacking dog went for my dogs' jaw and neck.
 - b. An assessment matrix that is used throughout New Zealand by numerous Territorial Authorities' Animal Control / Animal Management services to give an indication of what action should be taken in dog attacks. Palmerston North City Council also uses this tool to give an indication of appropriate actions. In this case the score was assessed as 36, which is at the low end of the moderate score range, this indicates an option of Classification as Menacing under Section 33A of the DCA 1996.
 - c. DCA case law routinely referred to during dog attack prosecutions and other dog bite attack incidents is Halliday vs New Plymouth District Council, that "past behaviour is the best predictor of future behaviour".

4 DOG CONTROL ACT 1996 – SECTION 33A AND 33B

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.

5 OBJECTIVES AND POLICIES

- 5.1 Section 4 of the Dog Control Act 1996 identifies the objects of the Act to include making better provisions for the care and control of dogs by making special provision in relation to menacing dogs and impose on owners of dogs obligations to ensure that dogs do not injure, endanger or cause distress to any domestic animal.
- 5.2 Clause 10 of the PNCC Dog Control Policy 2018 requires dogs classified by Palmerston North City Council as menacing under sections 33A or 33C of the Dog Control Act 1996, or any dog classified as menacing which is transferring to Palmerston North City Council to be neutered.
- 5.3 PNCC Goal 3: A connected and safe community includes the safe communities activity of providing regulatory services that contribute to health and safety in respect to stray and aggressive dogs.

6 CONCLUSION

- 6.1 Palmerston North City Council Animal Control staff have a duty to enforce the provisions of the Dog Control Act 1996.
- 6.2 Pursuant to the provisions of Section 33A of the Dog Control Act 1996, Palmerston North City Council classified the dog known as “Kado” because of the observed and reported behaviour whilst off his owner’s property.

Ross McDermott
Animal Control Officer
Palmerston North City Council