

PALMERSTON NORTH CITY COUNCIL

Minutes of the District Licensing Committee Meeting

EXTRAORDINARY HEARINGS COMMITTEE MEETING HELD IN THE COUNCIL CHAMBER, CIVIC ADMINISTRATION BUILDING, PALMERSTON NORTH ON WEDNESDAY, 13 MARCH 2019 COMMENCING AT 1.00PM

Members Present: Deputy Mayor Tangi Utikere (in the Chair), and Councillors Susan Baty and Lorna Johnson.

**1-19 Hearing of Objection Pursuant to Section 33B
Classification of Dog as Menacing under the Dog Control Act 1996**

Consideration was given to:

- (i) Objection from Mr Terry Rickard dated 1 December 2018.
- (ii) Report, dated 20 February 2019 by the Animal Control Officer, Mr Aaron Thornton.
- (iii) Statement by Mr Terry Rickard – tabled.
- (iv) Statement by Mr Keith Malcolm – tabled.
- (v) PNCC Animal Control Pamphlet “What does classified as menacing mean to you?”

The following persons appeared before the Committee:

Mr Terry Rickard read his written statement and made the following additional comments:

- It was understood that an attack did not need to be considered aggressive in nature for a menacing status to apply.
- It was confirmed that the dog Karma had left the property.
- Karma’s background was unknown but there had never been any troubles with her and other animals around the neighbourhood.
- Karma had escaped the property previously through a gap in the property’s gate and this had since been rectified.

Mr Don Brown, support person for the Objector made no additional comments.

Mr Aaron Thornton, Animal Control Officer for Palmerston North City Council spoke to his evidence and made the following additional comments:

- Under the Dog Control Act rabbits were identified as a domestic pet not a prey animal.
- Tabled photographs showed no injuries to the rabbit but there was visible saliva around the neck and shoulders.
- Movement or noise could trigger the instinctual prey drive in dogs.
- There were no issues with Karma's behaviour at the pound.

The meeting adjourned at 1.41pm

The meeting resumed at 1.56pm

Reply by the Objector

In his reply Mr Rickard made the following comment:

- Nobody saw the dog kill the rabbit, therefore there was a possibility the rabbit could have died from other causes.

The Committee reserved its decision and,

2-19 Exclusion of Public

The COMMITTEE RESOLVED 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.

The meeting adjourned at 2.04pm

The meeting resumed at 2.10pm

3-19 Consideration of Objection Pursuant to Section 33B Classification of Dog as Menacing under the Dog Control Act 1996

Further consideration was given to the evidence and submissions given by the Objector and the Council's Animal Control Officer.

RESOLVED:

- 3.1 That the objection to the classification be dismissed and that the classification by the Council, of Karma as a menacing dog, be upheld as outlined in the attached decision.
- 3.2 That copies of the decision be served on all parties and be available for public inspection.

The meeting finished at 2.22pm.

CONSIDERED THIS 20TH DAY OF MARCH 2019

CHAIRPERSON

**BEFORE THE HEARINGS COMMITTEE
OF THE PALMERSTON NORTH CITY COUNCIL
UNDER THE DOG CONTROL ACT 1996**

IN THE MATTER of a Classification Objection

BETWEEN **TERRY RICKARD**
 Objector

AND **PALMERSTON NORTH CITY
COUNCIL (PNCC)**
 Local Territorial Authority

Hearings Committee: Deputy Mayor Tangi Utikere (Chairperson)
 Cr Susan Baty (Deputy Chairperson)
 Cr Lorna Johnson (Member)

Appearances: Mr T Rickard (As the Objector)
 Mr D Brown (Support for the Objector)
 Mr A Thornton (Animal Control Officer Palmerston North City Council)
 Mr G Gillespie (Palmerston North City Council)

Venue: Palmerston North City Council Chamber

Date of Hearing: 13 March 2019

DECISION OF HEARINGS COMMITTEE DATED 20 MARCH 2019

FACTS

- [1] On 27 November 2018, the dog known as KARMA, an eight year old white female English Pointer Cross was classified as menacing under the provision of section 33A(2) of the Dog Control Act 1996 ("the Act").
- [2] Section 33A in its entirety states:

"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."*

- [3] Mr Terry Rickard is the registered owner of the dog subject to the classification and has lodged an objection to the classification via letter dated 1 December 2018.
- [4] The provision for lodging an objection is contained within section 33B of the Act. Mr Rickard has complied with the statutory timeframe in lodging his objection and has been heard in support of the objection at a hearing on 13 March 2019.

EVIDENCE

- [5] To provide some context to the alleged incident which led to the classification being made, it is important to canvas the various evidence that has been placed before the Hearings Committee.

The Objector

- [6] Mr Rickard helpfully provided the Committee with a written statement covering the various points that he wished to make.

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- [7] In the Statement he noted that he had obtained KARMA as a rescue dog from the City pound in December 2013. With reference to the incident that was alleged to have occurred between his dog and a neighbouring rabbit on 19 November 2018, he also stated that the rabbit in question would often roam to neighbouring properties, having observed it in his own front yard on at least four occasions. While Mr Rickard's property was fenced, on the day of the alleged attack, he was gardening in the backyard and he became aware that KARMA was no longer contained within his property.
- [8] A short time later a neighbour approached him in his driveway and advised him that his dog had killed his rabbit. After what could be described as an unpleasant interaction with the neighbour, Mr Rickard checked his dog over; finding no evidence of any blood to indicate she had attacked the rabbit. The neighbour then returned to Mr Rickard having the deceased rabbit in his hands. The objector explained that he would have expected that the rabbit would have significant injuries if it had been attacked by a dog.
- [9] Mr Rickard also took issue with the *Assessment Matrix*¹ completed by the Animal Control Officer, suggesting that the scores indicated should have been downgraded due to the lack of substantial proof of his dog's actions. He also believed that it was unfair to classify the dog as menacing in the absence of any eyewitness account or solid proof that KARMA actually attacked and killed the rabbit.
- [10] At the time, he had accepted that his dog was responsible based on the information he had been given by the rabbit owner; which he now felt was inadequate. The objector also advised that he did not fully appreciate what the implications of the menacing dog classification would mean for his dog.
- [11] In response to questions from the Committee, he confirmed that KARMA was away from his property at the time of the alleged offence, albeit for only a few minutes. He also described KARMA as being a pet that had possibly been abused prior to him becoming the owner; but that she had not caused any trouble, or shown any aggression in the past. He also indicated that the fencing issue that allowed her to escape on the day had been rectified.

The Council

- [12] Animal Control Officer Aaron Thornton confirmed the contents of his tabled Report². He identified that Council received a complaint from a local veterinary surgeon following an alleged attack on a rabbit in Wincanton Place on 19 November 2018. He travelled to the vet practice in Pitama Road and took photos of the deceased rabbit *in situ*. He also confirmed that he arrived approximately 30 minutes after the incident and that the rabbit was still reasonably warm. The photographs that he had taken at the time were tabled at the hearing.
- [13] Mr Thornton confirmed that there had been no previous history of non-compliance for KARMA and that he observed no issues with her behaviour when she was in his custody following the alleged incident.
- [14] In response to the suggestion raised by Mr Rickard that "Rabbits are prey animals and if you want to keep one as a pet then you are responsible for keeping it from known risks",³ Mr Thornton confirmed that rabbits were identified as a domestic pet, not a prey animal, under existing Dog Control legislation.

¹ ANNEX – C, pp14-18 Hearings Committee Order Paper, dated 13 March 2019.

² pp6-10, Hearings Committee Order Paper for 13 March 2019 Meeting.

³ Objector's Written Submission to the Hearing, dated 13 March 2019.

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- [15] He also confirmed that classification did not have to be applied as a result of “the observed and reported aggressive behaviour”⁴, but that ‘reported’ behaviour was sufficient for the purposes of the Act.
- [16] With reference to the *Assessment Matrix*, he identified the distinction between a grade 9 as highlighting prey drive, whereas grade 8 related to an assumed level of aggression; in light of this he confirmed that the assessment was made within days of the alleged incident and that he stood by his original assessment made at the time.
- [17] Mr Thornton confirmed that no post-mortem had been undertaken on the rabbit, but his observations were that whilst no blood was present, there was saliva at the front of the shoulder and on the neck of the rabbit.
- [18] His conversation with the attending vet who examined the rabbit, indicated that there were no definitive reasons for the death of the rabbit provided, and that the vet was largely relying upon what the rabbit owner had said.
- [19] When asked to describe what triggered a dog to attack, Mr Thornton identified that the prey drive was triggered by any type of fast movement or high pitch noises.
- [20] He also confirmed that there was no external sign of injury caused by a dog, although there were wet patches on the rabbit. He said there could have been internal injuries but these were not documented as no post-mortem took place. When asked if the rabbit could have been killed by another animal he said it was a possibility.

Right of Reply

- [21] In exercising a brief Right of Reply, Mr Rickard submitted that there was confirmation that the rabbit could have died from some other causes as there was no proof that his dog had killed the rabbit.

REASONS FOR DETERMINATION

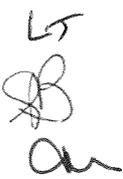
- [22] The relevant statutory provision for the Committee to discharge its obligations is contained within s 33B(2) which states:

“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.”

- [23] The Committee has considered all of the evidence placed before it in arriving at a determination on this matter.

⁴ At para 6.2 of the Animal Control Officer’s Report, dated 20 February 2019.



- [24] The basis of Mr Rickard's objection is that there is no evidence to prove that his dog was responsible for the death of the rabbit; also citing that there was no eyewitness account of how the rabbit specifically died. It is important for us to indicate that while an eyewitness account would give some weight to a particular submission, such a lack thereof, does not automatically lead to the upholding of the objection.
- [25] Instead, the Committee must consider the evidence in its entirety, determining what is credible and what is not, and the relevant weight that it applies to each. In this circumstance, we have had specific regard to the factors identified in s 33B(2)(a) and (c).
- [26] There is, however, some evidence that is not in dispute. Firstly, that on the day of the alleged incident, KARMA had escaped from its property in Wincanton Place, Palmerston North. At the same time, a rabbit at a neighbouring property had been found deceased. The rabbit was subsequently taken to a veterinary surgeon, and the observations presented to the hearing by the objector and the Animal Control Officer lead us to infer that the death of the rabbit coincides with the time that KARMA roamed free from her property.
- [27] The rabbit was also observed by its owner to be in the mouth of KARMA; a connection made by the owner having previously observed the English Pointer Cross in the neighbourhood. This is consistent with the presence of saliva on the rabbit that had been observed by the vet and the Animal Control Officer, and is confirmed by the photographs tabled at the hearing.
- [28] There is no evidence to support the suggestion that there was another dog in the area at the time, and on the basis of what has been presented, it seems very unlikely that the rabbit was killed by another dog within one to two hours of KARMA escaping from her property.
- [29] On the basis of the predatory aggression factors identified by Mr Thornton, we reject the suggestion that KARMA may have picked up the rabbit once it had already been deceased. This is largely based on the fact that a deceased rabbit would not make any noise, nor would it run; two key elements in aggressive drive considerations.
- [30] In this circumstance we believe the Council Officer has done everything correctly and that the degree of aggression used in killing a rabbit warrants a Grade 8; and as such we have determined that the *Matrix Assessment* seems fair in these circumstances.
- [31] We have reached the conclusion that the circumstances as outlined, and the evidence presented, leads us to the view that KARMA was responsible for the death of the rabbit. As such, we consider it appropriate in this circumstance for the Animal Control Officer to have classified the dog as menacing.

DETERMINATION

- [32] For the reasons outlined above, the objection is dismissed. The menacing dog classification applied to the eight year old English Pointer Cross known as KARMA under s 33A(2) of the Dog Control Act 1996 is confirmed.

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Dated this 20th day of March 2019



**Deputy Mayor Tangi Utikere
Chairperson**



**Cr Susan Baty
Deputy Chairperson**



**Cr Lorna Johnson
Member**