



AGENDA

Ordinary meeting of the

Hearings Panel - Other

Wednesday 27 February 2019

Commencing at 9.00a.m.

Council Chamber

Civic House

110 Trafalgar Street, Nelson

**Pat Dougherty
Chief Executive**

Membership: Councillors Brian McGurk (Chairperson), Matt Lawrey and Stuart Walker

Nelson City Council Disclaimer

Please note that the contents of these Council and Committee Agendas have yet to be considered by Council and officer recommendations may be altered or changed by the Council in the process of making the formal Council decision.

Guidelines for councillors attending the meeting, who are not members of the Committee, as set out in Standing Order 12.1:

- All councillors, whether or not they are members of the Committee, may attend Committee meetings
- At the discretion of the Chair, councillors who are not Committee members may speak, or ask questions about a matter.
- Only Committee members may vote on any matter before the Committee

It is good practice for both Committee members and non-Committee members to declare any interests in items on the agenda. They should withdraw from the room for discussion and voting on any of these items.

1. Apologies

Nil

2. Confirmation of Order of Business**3. Interests**

3.1 Updates to the Interests Register

3.2 Identify any conflicts of interest in the agenda

4. Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and Road Safety Stopping Demonstration**5 - 18**

Document number R9911

Recommendation

That the Hearings Panel - Other

Receives the report Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and Road Safety Stopping Demonstration (R9911) and its attachments (A2111145, A2119950 and A2119004); and

Approves the temporary road closures for Sanitarium Weet-Bix Kids TRYathlon on 3 March 2019, and Road Safety Stopping Demonstrations on 25 March until 29 March 2019.

5. Objection to classification of dog as menacing - Charles Riley - dog name: MAX**19 - 40**

Document number R9901

Recommendation

That the Hearings Panel:

Receives the report Objection to classification of dog as menacing - Charles Riley - dog name: MAX (R9901) and its attachments (A2134555, A2134654, A2134661, A2134673, A2134675 , A2136844 and A2136855); and

Dismisses the objection of Charles Riley; and

Upholds the classification of Max as menacing.

**6. Objection to classification of dog as menacing -
Pirikotahi Phelan - dog name: ROSA**

41 - 55

Document number R9902

Recommendation

That the Hearings Panel - Other

Receives the report Objection to classification of dog as menacing - Pirikotahi Phelan - dog name: ROSA (R9902) and its attachments (A2134555, A2134558, A2134560 and A2134593); and

Dismisses the appeal of Pirikotahi Phelan; and

Upholds the classification of Rosa as menacing.

Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and Road Safety Stopping Demonstration

1. Purpose of Report

- 1.1 To approve the temporary road closure application for the Sanitarium Weet-Bix Kids TRYathlon on 3 March 2019.
- 1.2 To approve the temporary road closure application for Road Safety Stopping Demonstrations on 25 March until 29 March 2019.

2. Recommendation

That the Hearings Panel - Other

Receives the report Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and Road Safety Stopping Demonstration (R9911) and its attachments (A2111145, A2119950 and A2119004); and

Approves the temporary road closures for Sanitarium Weet-Bix Kids TRYathlon on 3 March 2019, and Road Safety Stopping Demonstrations on 25 March until 29 March 2019.

3. Background

- 3.1 It is a requirement that temporary road closures made under Schedule 10 Clause 11(e) of the Local Government Act 1974 come to the Hearings Panel - Other for approval.

4. Discussion

Sanitarium Weet-Bix Kids TRYathlon

- 4.1 Council officers received an application from SMC Events on 9 January 2019 to close the roads listed below on Sunday 3 March 2019 between the hours of 6am and 1pm (as shown in Attachment 1). This closure is to

Item 4: Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and Road Safety Stopping Demonstration

enable the annual Sanitarium Weet-Bix Kids TRYathlon to take place at Tahunanui Recreation ground.

4.1.1 Beach Road from approximately no. 21 Beach Road to Golf Road

4.1.2 Golf Road from Beach Road to Parkers Road

4.1.3 Hounsell Circle.

- 4.2 As per point 11 of Schedule 10 of the Local Government Act 1974, consultation with Police has been undertaken and they have given approval for this event. Consultation with NZTA has not been undertaken for this event due to this having no impact on the state highway.
- 4.3 As per 11(e) of Schedule 10 of the Local Government Act 1974, this proposed road closure will not exceed the aggregate of 31 days for any year.
- 4.4 As per point 11A of Schedule 10 of the Local Government Act 1974, Council placed a notification in Our Nelson on 18 December 2018 to notify of its intention to close these roads and inviting feedback until Friday 18 January 2019. The advertisement was also posted on the Council's website. No feedback was received. Event organisers will be distributing a letter as per Attachment 2 to directly affected residents approximately two weeks before the event.
- 4.5 This event does not require a resource consent for noise and evidence of public liability insurance has been provided. The event organisers and Council officers are working with Safe Traffic NZ Ltd regarding traffic management. Resident access will be managed by onsite traffic management staff when safe to do so.
- 4.6 Council officers are satisfied that the road closure will not unreasonably impede traffic because alternate routes are available, the extent and duration is limited and there have been no issues raised in the past years this event has been run. Council officers recommend that this application be approved.

Road Safety Stopping Demonstrations

- 4.7 Council officers have initiated the process to implement the closure of the roads listed below as shown in Attachment 3. These closures are to enable road safety stopping demonstrations to take place.
- 4.7.1 Tipahi Street from Motueka Street to Tukuka Street on Monday 25 March 2019 at 8.30am until 11am
- 4.7.2 Totara Street on Monday 25 March 2019 at 11.30am until 3.30pm
- 4.7.3 Norwich Street on Tuesday 26 March 2019 at 9.00am until 3.00pm
- 4.7.4 Rui Street on Wednesday 27 March 2019 at 8.30am until 11.30am
- 4.7.5 Ranui Road from Titoki Street to Willow Avenue on Wednesday 27 March 2019 at midday until 3pm

Item 4: Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and Road Safety Stopping Demonstration

4.7.6 Nile Street from Tasman Street to Domett Street on Thursday 28 March 2019 at 8.30am until 3pm.

- 4.8 Road safety stopping distance demonstrations will be held at six different locations and presented to school students. Demonstrations will involve a car travelling along the road at different speeds and braking at the same point each time, demonstrating how long it takes a car to stop when travelling at those speeds. Costs incurred are met by existing road safety education budgets.
- 4.9 As per point 11 of Schedule 10 of the Local Government Act 1974, consultation with Police has been undertaken and they have given their approval. Consultation with NZTA has been undertaken for Rui Street, due to this location having impact on the state highway and they have approved this, provided all Traffic Management requirements are met.
- 4.10 As per 11(e) of Schedule 10 of the Local Government Act 1974, this proposed road closure will not exceed the aggregate of 31 days for any year.
- 4.11 As per point 11A of Schedule 10 of the Local Government Act 1974, Council placed a notification in Our Nelson on 11 December 2018 to notify of its intention to close these roads and invited feedback until Friday 18 January 2019. The advertisement was also posted on the Council's website. No feedback was received.
- 4.12 This event does not require a resource consent for noise and the event will be covered by Council's public liability insurance. Council officers will engage a traffic management company to assist with this event. Resident access will be managed by onsite traffic management staff when safe to do so.
- 4.13 Council officers are satisfied that the road closure will not unreasonably impede traffic because alternate routes are available and the extent and duration is limited. There have been no issues raised in the past years this event has been run. Council officers recommend that this application be approved.

5. Options

- 5.1 The Hearings Panel - Other has two options, either to approve or decline the temporary road closure applications. Officers recommend approving the temporary road closures.

Author: Melissa Ramsay, Roading Network Coordinator

Item 4: Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and
Road Safety Stopping Demonstration

Attachments

Attachment 1: A2111145 - Weet-Bix TRYathlon Map [↓](#)

Attachment 2: A2119950 - Weet-Bix TRYathlon resident letter [↓](#)

Attachment 3: A2119004 - Road Stopping Maps [↓](#)

Item 4: Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and Road Safety Stopping Demonstration

Important considerations for decision making
<p>1. Fit with Purpose of Local Government</p> <p>The following are applicable:</p> <ul style="list-style-type: none">• The Local Government Act 1974, Schedule 10, Temporary Prohibition of Traffic;• The Local Government Act 2002, Clause 78, Community Views in Relation to Decisions. <p>The temporary road closures fit with the purpose of local government.</p>
<p>2. Consistency with Community Outcomes and Council Policy</p> <p>These events contribute to our community outcomes by assisting our community to celebrate their identity and community.</p>
<p>3. Risk</p> <p>If the temporary road closures are not approved, these community events are at risk of not going ahead.</p>
<p>4. Financial impact</p> <p>There is no financial impact to Council for these road closures.</p>
<p>5. Degree of significance and level of engagement</p> <p>This matter is of medium significance because of the number of people affected and the short duration of the events. A request for feedback was advertised in Our Nelson and on the Council's website.</p>
<p>6. Inclusion of Māori in the decision making process</p> <p>No engagement with Māori has been undertaken in preparing this report.</p>
<p>7. Delegations</p> <p>The Hearings Panel - Other has the following delegations to consider temporary road closures:</p> <p><i>Functions:</i></p> <ul style="list-style-type: none">• <i>To conduct hearings and/or determine under delegated authority applications relating to the Dog Control Act 1996, all matters relating to Temporary Road Closures pursuant to Schedule 10 clause 11(e) of the Local Government Act 1974, matters relating to naming features within the city, and any other matters required for determination by Council under legislation as determined by Council.</i>

Item 4: Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and Road Safety Stopping Demonstration: Attachment 1



The map is an approximate representation only and must not be used to determine the location or size of items shown, or to identify legal boundaries. To the extent permitted by law, the Nelson City Council, their employees, agents and contractors will not be liable for any costs, damages or loss suffered as a result of the data or plan, and no warranty of any kind is given as to the accuracy or completeness of the information represented. Nelson City Council information is licensed under a Creative Commons Attribution 4.0 International License, and the use of any data or plan or any information downloaded must be in accordance with the terms of that licence. For more information please contact us. Cadastral information derived from Land Information New Zealand. CROWN COPYRIGHT RESERVED.

Proposed Road Closure

2019 Weet-Bix TRYathlon



Legend

Proposed Road Closure:
Sunday 3 March 6am-1pm

0 100 200 300 m



File Ref: A2111145
MO. Original map size A4.

PO Box 645 Nelson 7040 New Zealand PH 03 5460200 nelson.govt.nz

Item 4: Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and Road Safety Stopping Demonstration: Attachment 2



Sanitarium Weet-Bix Kids TRYathlon – Nelson Tahunanui Beach - Sunday March 3 2019

Dear Resident,

The Weet-Bix Kids TRYathlon will be held at Tahunanui Reserve on Sunday March 3, with an estimated 1,850 children participating.

A course map is on the reverse side of this letter for your reference.

To ensure this event is safe for all participants, supporters and residents, we are proposing the following road restrictions in the area on **Sunday March 3 between 7.00am - 1.00pm**.

- Full road closure of **Beach Rd** (from Waikare St to Golf Rd)
- Full road closure of **Golf Rd** (from Beach Rd to Parkers Rd)
- Full road closure of **Hounsell Circle**
 - From **7.00am – 8.45am**, during the set-up period for the cycle course of the TRYathlon, there is resident access only. Please follow the reduced speed limits and any instructions provided by Traffic Controllers
 - From **8.45am – 1.00pm**, the TRYathlon is on with participants cycling in both directions (see the map on reverse side of this letter). Where possible, we request no resident vehicle movements during this time.
 - *If residents require urgent access in / out of their properties during this time, please chat to one of the event team (in high-vis vests) before moving your vehicle. They will provide access when it is safe to do so.*

We appreciate that an event of this scale can create some inconvenience to residents. However, in our effort to make this event as safe as possible for participants, supporters and road users we need to implement these measures. We will continue to take every opportunity to keep disruptions to a minimum.

If you have any queries, please contact Kelsey Ryan – Course Manager, at kelsey@smcevents.co.nz or 027 397 4809

Kind regards,
Sanitarium Weet-Bix Kids TRYathlon Team

A2119950

Item 4: Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and Road Safety Stopping Demonstration: Attachment 2



A2119950

Item 4: Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and Road Safety Stopping Demonstration: Attachment 3



The map is an approximate representation only and must not be used to determine the location or size of items shown, or to identify legal boundaries. To the extent permitted by law, the Nelson City Council, their employees, agents and contractors will not be liable for any costs, damages or loss suffered as a result of the data or items shown, and no warranty of any kind is given as to the accuracy or completeness of the information represented. Nelson City Council information is licensed under a Creative Commons Attribution 4.0 International License, and the use of any data or plan or any information downloaded must be in accordance with the terms of that licence. For more information please contact us. Cadastral information derived from Land Information New Zealand. CROWN COPYRIGHT RESERVED.

Proposed Road Closure for Stopping Demonstration Tipahi Street

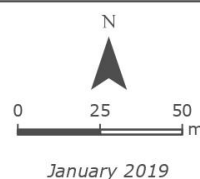


A2119004

Legend



Monday 25 March 2019
8.30am until 11am



PO Box 645 Nelson 7040 New Zealand PH 03 5460200 nelson.govt.nz

File Ref: A2119004
MO. Original map size A4.

Item 4: Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and Road Safety Stopping Demonstration: Attachment 3



The map is an approximate representation only and must not be used to determine the location or size of items shown, or to identify legal boundaries. To the extent permitted by law, the Nelson City Council, their employees, agents and contractors will not be liable for any costs, damages or loss suffered as a result of the data or plan, and no warranty of any kind is given as to the accuracy or completeness of the information represented. Nelson City Council information is licensed under a Creative Commons Attribution 4.0 International License, and the use of any data or plan or any information downloaded must be in accordance with the terms of that licence. For more information please contact us. Cadastral information derived from Land Information New Zealand. CROWN COPYRIGHT RESERVED.

Proposed Road Closure for Stopping Demonstration Totara Street

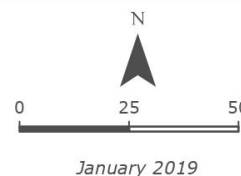


A2119004

Legend



Monday 25 March 2019
11.30am until 3.30pm



File Ref: A2119004
MO. Original map size A4.

PO Box 645 Nelson 7040 New Zealand PH 03 5460200 nelson.govt.nz

Item 4: Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and Road Safety Stopping Demonstration: Attachment 3



The map is an approximate representation only and must not be used to determine the location or size of items shown, or to identify legal boundaries. To the extent permitted by law, the Nelson City Council, their employees, agents and contractors will not be liable for any costs, damages or loss suffered as a result of the data or plan, and no warranty of any kind is given as to the accuracy or completeness of the information represented. Nelson City Council information is licensed under a Creative Commons Attribution 4.0 International License, and the use of any data or plan or any information downloaded must be in accordance with the terms of that licence. For more information please contact us. Cadastral information derived from Land Information New Zealand. CROWN COPYRIGHT RESERVED.

Proposed Road Closure for Stopping Demonstration Norwich Street

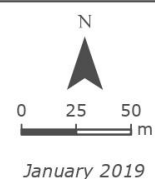


A2119004

Legend



Tuesday 26 March 2019
9am until 3pm



File Ref: A2119004
MO. Original map size A4.

PO Box 645 Nelson 7040 New Zealand PH 03 5460200 nelson.govt.nz

Item 4: Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and Road Safety Stopping Demonstration: Attachment 3



The map is an approximate representation only and must not be used to determine the location or size of items shown, or to identify legal boundaries. To the extent permitted by law, the Nelson City Council, their employees, agents and contractors will not be liable for any costs, damages or loss suffered as a result of the data or plan, and no warranty of any kind is given as to the accuracy or completeness of the information represented. Nelson City Council information is licensed under a Creative Commons Attribution 4.0 International License, and the use of any data or plan or any information downloaded must be in accordance with the terms of that licence. For more information please contact us. Cadastral information derived from Land Information New Zealand. CROWN COPYRIGHT RESERVED.

Proposed Road Closure for Stopping Demonstration Rui Street

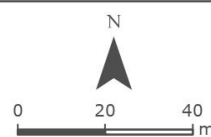


A2119004

Legend



Wednesday 27 March 2019
8.30am until 11.30am

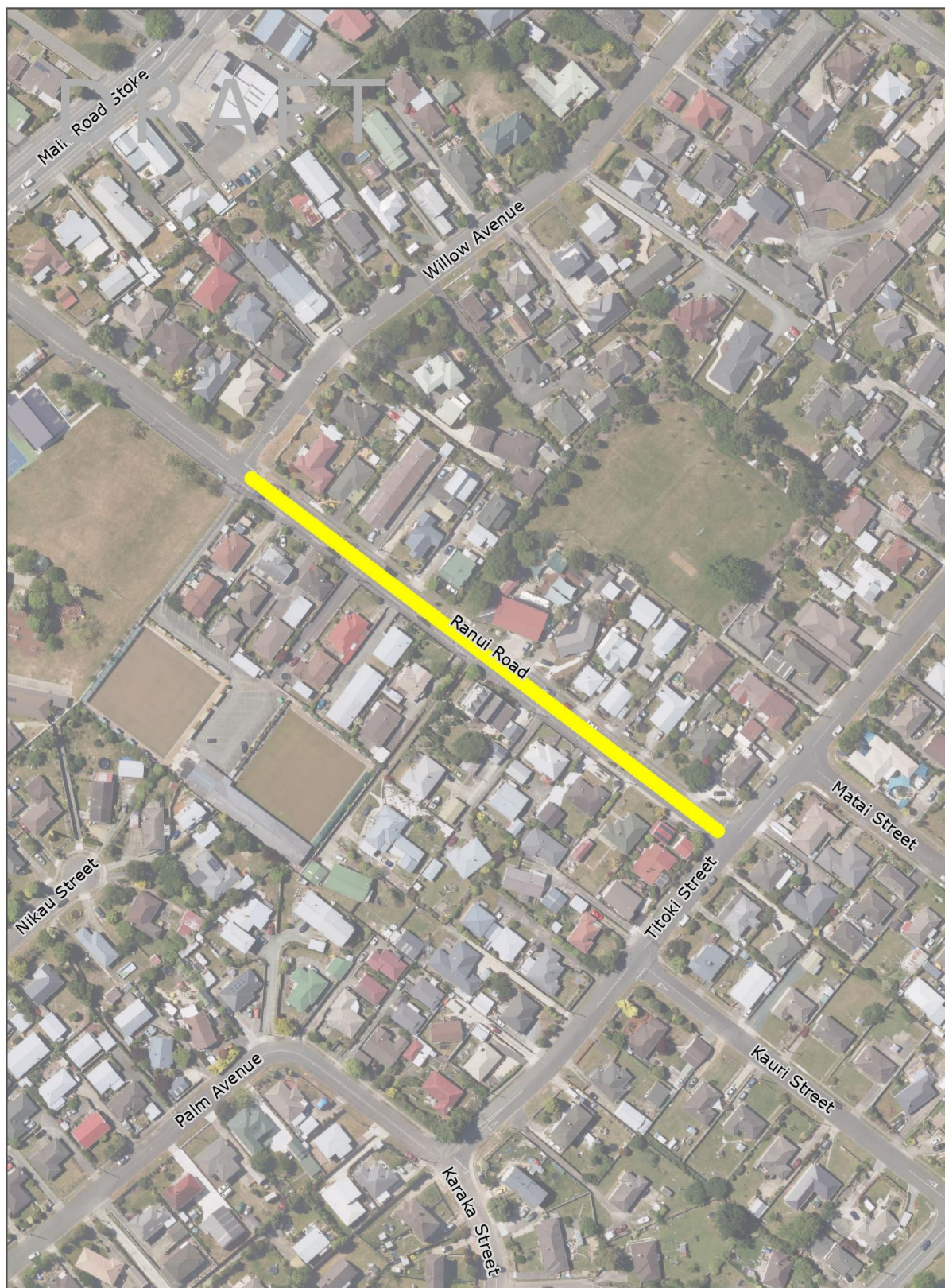


January 2019

File Ref: A2119004
MO. Original map size A4.

PO Box 645 Nelson 7040 New Zealand PH 03 5460200 nelson.govt.nz

Item 4: Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and Road Safety Stopping Demonstration: Attachment 3



The map is an approximate representation only and must not be used to determine the location or size of items shown, or to identify legal boundaries. To the extent permitted by law, the Nelson City Council, their employees, agents and contractors will not be liable for any costs, damages or loss suffered as a result of the data or plan, and no warranty of any kind is given as to the accuracy or completeness of the information represented. Nelson City Council information is licensed under a Creative Commons Attribution 4.0 International License, and the use of any data or plan or any information downloaded must be in accordance with the terms of that licence. For more information please contact us. Cadastral information derived from Land Information New Zealand. CROWN COPYRIGHT RESERVED.

Proposed Road Closure for Stopping Demonstration Ranui Road

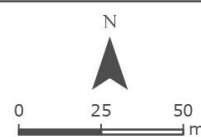


A2119004

Legend



Wednesday 27 March 2019
8.30am until 11.30am



January 2019

PO Box 645 Nelson 7040 New Zealand PH 03 5460200 nelson.govt.nz

File Ref: A2119004
MO. Original map size A4.

Item 4: Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and Road Safety Stopping Demonstration: Attachment 3



The map is an approximate representation only and must not be used to determine the location or size of items shown, or to identify legal boundaries. To the extent permitted by law, the Nelson City Council, their employees, agents and contractors will not be liable for any costs, damages or loss suffered as a result of the data or plan, and no warranty of any kind is given as to the accuracy or completeness of the information represented. Nelson City Council information is licensed under a Creative Commons Attribution 4.0 International License, and the use of any data or plan or any information downloaded must be in accordance with the terms of that licence. For more information please contact us. Cadastral information derived from Land Information New Zealand. CROWN COPYRIGHT RESERVED.

Proposed Road Closure for Stopping Demonstration Nile Street

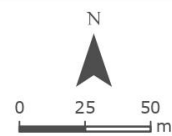


A2119004

Legend



Thursday 28 March 2019
8.30am until 3pm



January 2019

File Ref: A2119004
MO. Original map size A4.

PO Box 645 Nelson 7040 New Zealand PH 03 5460200 nelson.govt.nz

REPORT R9901

Objection to classification of dog as menacing - Charles Riley - dog name: MAX

1. Purpose of Report

- 1.1 To decide on an objection to the classification of a dog as menacing pursuant to section 33A of the Dog Control Act 1996.

2. Summary

- 2.1 Section 33A of the Dog Control Act 1996 provides for a dog to be classified as menacing if the territorial authority considers that the dog may pose a threat to any person because of observed or reported behaviour of the dog. (Attachment 1)
- 2.2 Section 33B of the Dog Control Act 1996 provides a right to the owner of a dog classified as menacing to object to the classification and be heard in support of the objection. (Attachment 1)
- 2.3 Charles Robert Riley owns a five year old male black Retriever/Labrador named Max. On 24 October 2018, at about 07.00am, Max was with his owner, Dr Charles Riley (known as Rob) on the Grampian Track. Another dog owner was walking her dog, a female Terrier/Retriever/Labrador cross named Mango near the top of the hill above Collingwood St. She saw Dr. Riley talking with a group of people and Max was with him but not on a lead. (Attachment 2)
- 2.4 Having experienced problems with the dog Max before, the owner of Mango held her dog's collar and tried to keep the gate between her and Max closed. Max saw Mango and managed to get through the gate and attacked Mango.
- 2.5 Using her walking pole, Mango's owner attempted to separate Max from her dog. Dr. Riley took no physical action to get Max off Mango and simply called to Max with little effect. Max was finally removed from Mango but soon got free again and resumed his attack on Mango.
- 2.6 As a result Mango sustained a wound on the left hind leg which required veterinary treatment which included 3 staples to close the wound. (Attachment 3)
- 2.7 In explanation, Dr. Riley said there had been a "*sudden skirmish with an outburst of growling and barking that had lasted less than a minute.*"

Item 5: Objection to classification of dog as menacing - Charles Riley - dog name: MAX

(Attachment 4) In explanation, Dr. Riley said this was not the first time the 2 dogs had “*snarled at each other*” and he had tried to avoid contact between the two. He said he had owned Max for 3 years and suspected he had been “damaged” by the previous owner and as a result had not been good with other dogs but had made progress and was now able to be taken to Tahunanui Back Beach and the Grampians track where he meets with other dogs, remaining calm and not reacting aggressively. (Attachment 4)

- 2.8 After consideration of all the facts, on 29 October 2018, Charles Riley was advised via formal Notice of Classification that his dog Max had been classified as menacing. (Attachment 5)
- 2.9 On 15 November 2018, Council received a letter via e-mail from Charles Riley appealing the menacing classification. (Attachment 6)

3. Recommendation

That the Hearings Panel:

Receives the report Objection to classification of dog as menacing - Charles Riley - dog name: MAX (R9901) and its attachments (A2134555, A2134654, A2134661, A2134673, A2134675 , A2136844 and A2136855); and

Dismisses the objection of Charles Riley; and

Upholds the classification of Max as menacing.

4. Background

- 4.1 Nelson City Council is not aware of any previous Dog Control history of aggression involving Max.

5. Discussion

- 5.1 Section 33E of the Dog Control Act requires that if a dog is classified as menacing, the following must be complied with:

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

(b) If required by the territorial authority the dog must be neutered.

Note the Nelson City Council Dog Control Policy requires that all dogs classified as menacing are neutered. Max has already been neutered.

Item 5: Objection to classification of dog as menacing - Charles Riley - dog name: MAX

- 5.2 Under Section 33B(1) of the Dog Control Act 1996, if a dog is classified as menacing the owner has 14 days in which to object to the classification and has the right to be heard in support of the objection. (Attachment 1)
- 5.3 Section 33B(2) outlines that the territorial authority considering an objection 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 (Attachment 1)
- 5.4 Section 33B(3) outlines that 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. (Attachment 1)

Criteria for consideration

- 5.5 The evidence which formed the basis for the classification
- 5.5.1 In the morning of 24 October 2018, Nelson City Council received a complaint from a dog owner who had been walking her dog Mango on the Grampian's Track earlier that morning. Her dog had been attacked and bitten by another dog (Max) on the track. Max had initially been stopped from attacking Mango but during a second attack had taken a piece of flesh out of Mango which required a Veterinary Surgeon to insert 3 staples to close the wound. (Attachment 2)
- 5.5.2 A Veterinary report on the wound caused to Mango stated:
"Single laceration, 2cm in length – angled. Underlying tissue mildly disrupted but clean. 3 staples to close wound."
(Attachment 3)
- 5.5.3 In a statement, the owner of Mango said when she had been walking her dog on the Grampian's Track she had seen Dr Riley with Max ahead of her. Max was off-lead and Dr Riley was talking to other people. She said she had experienced issues with Max on previous occasions, whether he is on-lead or not.
- 5.5.4 On seeing Max she had grabbed her dog's collar and tried to keep the gate on the track shut. She said Max had managed to get through the gate and attacked her dog, Mango. Using her walking

Item 5: Objection to classification of dog as menacing - Charles Riley - dog name: MAX

pole, she managed to stop Max attacking Mango. She said Dr. Riley had taken little action to control Max apart from standing to one side, calling Max by name, taking no physical actions. She had called for Dr. Riley to grab his dog's collar, but he had not done so.

- 5.5.5 After managing to remove Max from Mango, he soon got free and attacked Mango again. Mango tried to run away from Max but was caught and attacked again. During the second attack Max has bitten Mango and taken a piece of flesh out of her left thigh. (Attachment 2)
 - 5.5.6 The injury to Mango was viewed and photographs of the injury were taken by a Nelson City Council Animal Management Officer. (Attachment 3)
 - 5.5.7 Dr. Riley, owner of Max was contacted and advised the attack had been reported to Nelson City Council. He said that he apologised to the owner of Mango for what had happened. He viewed the incident differently, saying there had been a "sudden skirmish with an outburst of growling and barking, which lasted less than 1 minute and was witnessed by another group of walkers." (Attachment 4)
 - 5.5.8 He said that when the dogs were separated they calmed and he had apologised and patted Mango, checking that there was no broken skin or wounds. He said it was not the first time the 2 dogs had snarled at each other and he had tried to avoid contact between the two. (Attachment 4)
 - 5.5.9 In explanation for his dog's behaviour, Dr Riley said he had owned Max for 3 years and suspected he had been "damaged" by his previous owners in his first 18 months of life. He said when he got Max he had been hyperactive and not good with other dogs but had made enormous progress over the last 2 years. Max is often taken to the Tahunanui Back Beach dog exercise area and the Grampian's Track where he meets with other dogs and remains calm.
 - 5.5.10 Dr. Riley said he was extremely upset over the incident and planned to seek further professional training and intended to keep Max on a lead and muzzle him if Council felt that to be necessary. (Attachment 4)
- 5.6 Steps taken by the owner to prevent any threat to the safety of persons or animals
- 5.6.1 Dr Riley has said he will-
 - (a) Ensure Max is kept on a lead.
 - (b) Seek professional training for Max.

Item 5: Objection to classification of dog as menacing - Charles Riley - dog name: MAX

(c) Will muzzle Max if Council deem this to be necessary.

5.7 Matters relied upon in support of the objection

5.7.1 Dr Riley has stated his dog Max was damaged by his first owners and as a result was hyperactive and not good with other dogs. (Attachment 4)

5.7.2 Dr Riley states Max has made enormous progress over the last 2 years and in visits to Tahunanui Back Beach has never been involved in fights or issues with other dogs or experienced issues with other dogs when walking on the Grampian's tracks. (Attachment 4)

5.7.3 Dr Riley is planning to seek further professional training for Max and to keep him on a lead and muzzled if Council deem this to be necessary. (Attachment 4)

5.7.4 Dr Riley has written a submission regarding the classification. (Attachment 7) His submission is:

5.7.4.1 INCIDENT

- On my daily walk up the Grampians with our Labrador, Max (off lead) on 24/10/18, I stopped at the top Ronaki gate to talk to some friends. Yasmin suddenly appeared with her dog Mango. There was immediate growling and a skirmish lasting about 10 seconds. We parted the dogs and I put Max on the lead. I patted and inspected Mango and could see no lacerations and no blood. No lacerations on Max.
- I subsequently received a Vet Bill from Yasmin for \$87 (Consult \$50 with Skin Clips). I paid this and apologised to her with a card.
- I received an Infringement notice from the Nelson City Council for "Failure to keep dog under control" with fine of \$200. This I paid. I also received notice that Max be classified as a "Menacing Dog" under section 33A (2) of the Dog Control Act 1996.
- We are now at a Review Hearing to appeal the classification that Max be defined as "menacing" with the implication that he would need to be muzzled in public places for the rest of his life.

5.7.4.2 BACKGROUND

- We have owned Max for 3 years. He is registered, neutered and has a microchip. He has walked the Grampians most mornings over these years. He has never had a fight with or bitten another dog. He has had numerous visits to the back beach with constant sniffing and contact with other dogs. He has never been in a "dog battle". He mingles with children aged 2 and 3 months. He is never aggressive despite their pulling or poking him. He loves to retrieve, drop the object, then retrieve again. He sits on command and empties his bladder on command. Over

Item 5: Objection to classification of dog as menacing - Charles Riley - dog name: MAX

the last year, I had taken him off the lead on the Grampians as I was satisfied that he would not run off, not attack other dogs and come when called.

- We have engaged Sue Walsh, "behaviour expert for Dog Almighty" to assess and provide training for dog v dog meetings.

5.7.4.3 PAST HISTORY

- We have owned 4 other dogs over 40 years. Our last 3 have walked the Grampians almost daily. All 3 dogs have had occasional skirmishes with other dogs on the track. One never knows what starts it and which dog is the aggressor. The owners always say "not mine". The barking and growling is over in seconds and we walk on. The dogs are happy.

5.7.4.4 MAX and MANGO

- Max had met Mango on 2 previous occasions, both times resulting in aggressive barking. Mango's owner Yasmin yelled at me to, "get my dog muzzled". Mango is obviously greying and ageing. Older dogs often want to protect their territory: I have seen it with my previous animals. Obviously, the above incident would have been shortened and controlled if Max had been on a lead.

5.7.4.5 SUMMARY

- I am an experienced dog owner of 40 years.
- Our Max is not an aggressive, dangerous dog. He is friendly and always seeks to please.
- Doggie v doggie confrontations are common. It is often hard to see the trigger.
- I have apologised to Yasmin and paid her Vet bill as well as the \$200 infringement.
- The skirmish would have been shortened and managed if Max had been on a lead.
- We have engaged a Canine Behaviour Expert to work with Max.

5.7.4.6 CONCLUSION

- We are unhappy that this incident took place.
- "Muzzling for life" is unnecessary and extreme.
- We could accept that Max be always on a lead on public paths and walkways.

Item 5: Objection to classification of dog as menacing - Charles Riley - dog name: MAX

5.8 Matters relied upon in support of the Classification

5.8.1 There are no other relevant matters.

6 Options

Option 1: The objection be dismissed (recommended option)	
Advantages	<ul style="list-style-type: none">• This will result in Max being legally required to wear a muzzle whenever out in public. This will reduce the risk of people, other dogs and animals being attacked and injured should another aggression incident occur.
Risks and Disadvantages	<ul style="list-style-type: none">• This may have a negative impact on life activities Max and his owner enjoy.
Option 2: The objection be upheld	
Advantages	<ul style="list-style-type: none">• Max will not legally be required to wear a muzzle in public.
Risks and Disadvantages	<ul style="list-style-type: none">• This will increase the risk of other dogs being attacked and injured if Max was to again become aggressive.

7 Conclusion

- 7.1 The behaviour of Max on 24 October 2018 shows that he can behave in an aggressive manner and is a real risk to other dogs and the public.
- 7.2 It is considered that in order to reduce the risk of an attack on other dogs or a member of the public that Max should be muzzled whenever in a public place.
- 7.3 A menacing classification is the lowest level of classification that requires the use of a muzzle when in public.
- 7.4 It is recommended that the objection be dismissed and the classification of Max as a menacing dog be upheld.

Item 5: Objection to classification of dog as menacing - Charles Riley - dog name: MAX

Author: Mandy Bishop, Manager Consents and Compliance

Attachments

- Attachment 1: A2134555 Dog Control Act 1996 Sections 33A & 33B [↓](#)
- Attachment 2: A2134654 Complaint of Yasmin Barrington [↓](#)
- Attachment 3: A2134661 Vet Report and Photos of injured dog Mango [↓](#)
- Attachment 4: A2134673 Response from Rob Riley [↓](#)
- Attachment 5: A2134675 Notice of Classification of Dog as Menacing Charles Robert Riley [↓](#)
- Attachment 6: A2136844 Rob Riley Letter of Appeal against Menacing Classification [↓](#)
- Attachment 7: A2136855 Submissions of Rob Riley against Classification of dog Max as menacing [↓](#)

Important considerations for decision making	
1. Fit with Purpose of Local Government	The regulatory functions are to be performed in a manner that is most cost effective for households and businesses. The Dog Control Act 1996 provisions are being applied appropriately to minimise the public risk.
2. Consistency with Community Outcomes and Council Policy	The recommendation aligns with the Council's Dog Control Policy by having regard to the need to minimise the danger, distress and nuisance to the community caused by dogs and/or by non-compliant owners.
3. Risk	<p>Council has obligations under the Dog Control Act 1996 to follow the correct legal process.</p> <p>There is also a risk to the community from future incidents.</p>
4. Financial impact	There is no Financial impact for Council.
5. Degree of significance and level of engagement	The recommendations outlined in this report are not considered significant in terms of Council's Significance and Engagement Policy.
6. Inclusion of Māori in the decision making process	No engagement with Māori has been undertaken in preparing this report.
7. Delegations	<ul style="list-style-type: none">The Hearings Panel – Other, has the power to <i>hear and determine objections to the classifications of dogs and all other procedural matters for which a right of objection and hearing is provided for</i> under the Dog Control Act 1996; and to recommend changes to the Council's Dog Control Policy and the Dog Control Bylaw.

Item 5: Objection to Classification of dog as Menacing - Charles Riley - Dog name: MAX: Attachment 1

2/7/2019

Dog Control Act 1996 No 13 (as at 01 March 2017), Public Act 33A Territorial authority may classify dog as menacing – New Zealand ...



New Zealand Legislation Dog Control Act 1996

Menacing dogs

Heading: inserted, on 1 December 2003, by section 21 of the Dog Control Amendment Act 2003 (2003 No 119).

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.

Section 33A: inserted, on 1 December 2003, by section 21 of the Dog Control Amendment Act 2003 (2003 No 119).

Section 33A(3): amended, on 1 November 2004, by section 10 of the Dog Control Amendment Act 2004 (2004 No 61).

Section 33A(3)(c): amended, on 28 June 2006, by section 13 of the Dog Control Amendment Act 2006 (2006 No 23).

Section 33A(3)(d): added, on 28 June 2006, by section 13 of the Dog Control Amendment Act 2006 (2006 No 23).

Item 5: Objection to Classification of dog as Menacing - Charles Riley - Dog name: MAX:
Attachment 1

2/7/2019

Dog Control Act 1996 No 13 (as at 01 March 2017), Public Act 33B Objection to classification of dog under section 33A — New Zealan...



New Zealand Legislation
Dog Control Act 1996

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.

Section 33B: inserted, on 1 December 2003, by section 21 of the Dog Control Amendment Act 2003 (2003 No 119).

Item 5: Objection to classification of dog as menacing - Charles Riley - dog name: MAX:
Attachment 2

Bill Gaze

From: Yasmin Barrington <yasmin.barrington@pittandmoore.co.nz>
Sent: Wednesday, 24 October 2018 14:08
To: Bill Gaze
Subject: Menacing dog complaint

Importance: High

Hi Bill

Further to our telephone conversation, following is an outline of the incident at The Grampians walkway this morning.

Menancing dog: Max (black Labrador)
Owner: Dr Rob Riley, lives in Ngatitama Street; or C/- Rata Medical Clinic, Collingwood Street

This morning at about 7am I was walking my 11 year old Catahoula dog, Mango on The Grampians walkways. When we reached the clearing at the top of the hill (Collingwood Street/Tawa track from Ronaki Street side), I saw Dr Riley and his dog Max talking to some people at the clearing. Max was unleashed.

As I have had issues with Max attacking my dog before (regardless of whether he is leashed or not), I grabbed Mango's collar and tried to keep the gate shut. Max saw Mango and managed to get through the gate where he started attacking her. I was hitting out at Max with a walking pole and trying to separate the dogs. Dr Riley has absolutely no control over his dog whatsoever and was rather ineffectually standing to the side calling Max and not intervening very much at all. I was screaming at him to grab his dog's collar – which he did not or could not.

We managed to get Max off Mango for a few seconds, but Max then became free again and once again went for Mango when she was trying to run away from him. During this second attack he has bitten a chunk out of her left thigh. My husband took Mango to the Halifax Vet Clinic where she was given antibiotics and has had three staples put into her thigh.

I walk Mango on The Grampians every morning. I am finding these walks becoming frequently unpleasant and not relaxing as I have no idea where or when we will run into Dr Riley and Max. Max is an exceptionally aggressive dog and I have spoken to other people on the track who tell me that he tries to attack their dogs as well. I would also be concerned as to how he would react around a small child.

Regards

Yasmin Barrington | Personal Assistant

PITT&MOORE | LAWYERS & NOTARIES PUBLIC
T. 03 548 8349 | F. 03 546 6761 | A. 78 Selwyn Place, Nelson 7010, P O Box 42, Nelson 7040
E. <mailto:yasmin.barrington@pittandmoore.co.nz> | W. www.pittandmoore.co.nz

CAUTION: This communication is confidential and subject to legal privilege. If you are not the intended recipient you must not peruse, use, disseminate, distribute or copy this communication. Please call Pitt & Moore, Solicitors, Nelson, New Zealand on +64 3 548 8349 (collect) and erase all copies of this message and its attachments. Please note that Pitt & Moore retains all copyright for this communication. You may not copy, amend, use or disclose any part of this communication, unless authorised by Pitt & Moore.

Item 5: Objection to classification of dog as menacing - Charles Riley - dog name: MAX:
Attachment 3

Medical Note



Patient: Mango Client: Ms Yasmin Barrington Date: Oct 24, 2018

Reason for visit:

Dog Attack
bitten by another dog this morning
- left lateral thigh wound
- cleaned with sterile saline



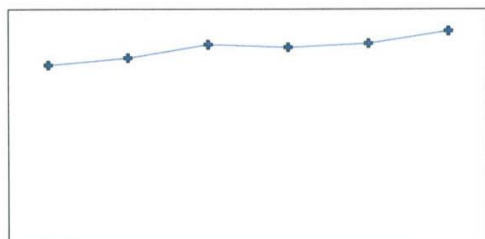
What did we find?

Skin/Coat

>>> Single laceration 2cm length - angled. Underlying tissue mildly disrupted but clean.

WEIGHT HISTORY

Oct 24, 2018	25.45 kg
Apr 07, 2018	24.00 kg
Jan 28, 2017	23.55 kg
Apr 09, 2016	23.85 kg
Mar 21, 2015	22.30 kg
Mar 01, 2014	21.45 kg



Assessment:

1) Single laceration

Plan:

Clipped and cleaned
Flushed wound with sterile saline
3 staples to close wound

Single betamox injection

Has head collar at home
Will call if any swelling after 48hr for antibiotic script

Staple removal in 10-14 days

Plan Items:

Plan Items:	Qty	
Consultation	1	Invoiced
Skin Staples	3	Invoiced
Betamox LA Injectable 100ml	3 ml	Invoiced

Item 5: Objection to classification of dog as menacing - Charles Riley - dog name: MAX:
Attachment 3

Patient: Mango

Client: Ms Yasmin Barrington

Date: Oct 24, 2018



BEST PRACTICE
New Zealand Veterinary Association
ACCREDITED HOSPITAL

If you have any questions or concerns, please notify our staff so that we may assist you in any way that we can. *Thank you for allowing us to serve you.*

Todd Field

[www. HalifaxVet.co.nz](http://www.HalifaxVet.co.nz)

Halifax Veterinary Centre • 205 Bridge St • PO Box 351 • Nelson
Phone 03 54VETS1 (03 548 3871) • Fax 03 548 1712 • Email info@halifaxvet.co.nz



Item 5: Objection to classification of dog as menacing - Charles Riley - dog name: MAX:
Attachment 4

Bill Gaze

From: Leigh and Rob Riley <gus16@xtra.co.nz>
Sent: Wednesday, 24 October 2018 19:55
To: Bill Gaze
Subject: re MAX Labrador

Dear Bill,

I received your notification of a complaint regarding my dog Max.
Firstly, I apologise to the owner of the golden Lab ? called Mango.

At 7 am this morning, we met at the gate at the top of the Ronaki track.
There was a sudden skirmish with an outburst of growling and barking.
This lasted less than a minute and was witnessed by another group of walkers.
When separated, the dogs calmed and I apologised, patted Mango, and checked that there were no broken skin wounds.

This is not the first time that these 2 dogs have snarled at each other. I have tried to avoid contact.

We have had Max for 3 years. We suspect he was damaged by his first owners in his first 18 months. When we got him he was hyperactive and not good with other dogs. He has made enormous progress over the last 2 years. He has never got into fights on the back beach and regularly meets other dogs on the Grampians tracks : he remains calm and does not react.

I am extremely upset that this happened today.
I am planning to seek further professional training, keep Max on the lead, and muzzle him if you feel that is necessary.

Yours sincerely,
Rob Riley

Item 5: Objection to classification of dog as menacing - Charles Riley - dog name: MAX:
Attachment 5

Notice of classification of dog as menacing dog

Section 33A, Dog Control Act 1996

To: Charles Robert Riley

DOB: 20th October 1949

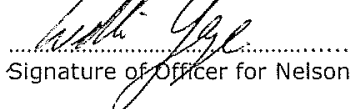
Address: 16 Ngatitama Street Nelson South Nelson 7010

Dog: Max183557 129919

This is to notify you *that this dog has been classified as a menacing dog under section 33A(2) of the Dog Control Act 1996.

This is because [under section 33A(1)(b) On the 24th October 2018 at approximately 0700hrs on the Grampian TrackMax did attack another dog named Mango causing an injury that needed veterinary treatment

A summary of the effect of the classification and your right to object is provided below.



Signature of Officer for Nelson City Council

William Gaze

Date 29th October 2018

*For the purposes of the Dog Control Act 1996, you are the owner of a dog if –

- you own the dog; or
- you have the dog in your possession (otherwise than for a period not exceeding 72 hours for the purpose of preventing the dog causing injury, or damage, or distress, or for the sole purpose of restoring a lost dog to its owner); or
- you are the parent or guardian of a person under 16 who is the owner of the dog and who is a member of your household living with and dependent on you.

Effect of classification as menacing dog

Sections 33E, 33F, and 36A, Dog Control Act 1996

You –

- (a) must not allow the dog to be at large or in any public place or in any private way (other than when confined completely within a vehicle or cage) without the dog 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, as required by the Nelson City Council, produce to the Nelson City Council within one month after receipt of this notice, a certificate issued by a registered veterinary surgeon certifying that-
 - (i) the dog is, or has been, neutered; or

RAD425333

Item 5: Objection to classification of dog as menacing - Charles Riley - dog name: MAX:
Attachment 5

- (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) where a certificate under paragraph (b)(ii) is produced to the Nelson City Council, produce to the Nelson City Council within 1 month after the date specified in that certificate, a further certificate under paragraph (b)(i).

You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with all of the matters in paragraphs (a) to (c) above.

A dog control officer or dog ranger may seize and remove the dog from you if you fail to comply with all of the matters in paragraphs (a) to (c) above. The officer or ranger may keep the dog until you demonstrate that you are willing to comply with paragraphs (a) to (c) above.

As from 1 July 2006, **you are also required**, for the purpose of providing permanent identification of the dog, **to arrange for the dog to be implanted with a functioning microchip** transponder. This must be confirmed by making the dog available to the Nelson City Council in accordance with the reasonable instructions of the Nelson City Council for verification that the dog has been implanted with a functioning microchip transponder of the prescribed type and in the prescribed location.

You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with this requirement –

- within 2 months from 1 July 2006 if your dog is classified as menacing on or after 1 December 2003 but before 1 July 2006; or
- within 2 months after the dog is classified as menacing if your dog is classified as menacing after 1 July 2006.

If the dog is in the possession of another person for a period not exceeding 72 hours, you must advise that person of the requirement to not allow the dog to be at large or in any public place or in any private way (other than when confined completely within a vehicle or cage) without the dog being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction. You will commit an offence and be liable on conviction to a fine not exceeding \$500 if you fail to comply with this requirement.

Full details of the effect of the classification of a dog as menacing are provided in the Dog Control Act 1996.

Right of objection to classification under section 33A

Section 33B, Dog Control act 1996

You may object to the classification of your dog as menacing by lodging with the Nelson City Council a written objection within 14 days of receipt of this notice setting out the grounds on which you object.

You have the right to be heard in support of your objection and will be notified of the time and place at which your objection will be heard.

RAD425333

Item 5: Objection to classification of dog as menacing - Charles Riley - dog name: MAX:
Attachment 6

Bill Gaze

Dog Control Officer

Nelson City Council

15/11/18

Dear Bill,

re our Labrador MAX

Apologies for my not understanding the process of appeal.

I accept the infringement that Max was not under control, on a lead. We will go ahead and post payment for the fine.

We wish to appeal the "classification" that Max is a "menacing dog".

Yours sincerely,

Rob and Leigh Riley

APPEAL AGAINST CLASSIFICATION of DOG "MAX" as "Menacing

INCIDENT

On my daily walk up the Grampians with our Labrador, Max (off lead) on 24/10/18, I stopped at the top Ronaki gate to talk to some friends. Yasmin suddenly appeared with her dog Mango. There was immediate growling and a skirmish lasting about 10 seconds. We parted the dogs and I put Max on the lead. I patted and inspected Mango and could see no lacerations and no blood. No lacerations on Max.

I subsequently received a Vet Bill from Yasmin for \$87 (Consult \$50 with Skin Clips). I paid this and apologised to her with a card.

I received an Infringement notice from the Nelson City Council for "Failure to keep dog under control" with fine of \$200. This I paid. I also received notice that Max be classified as a "Menacing Dog" under section 33A (2) of the Dog Control Act 1996.

We are now at a Review Hearing to appeal the classification that Max be defined as "menacing" with the implication that he would need to be muzzled in public places for the rest of his life.

BACK GROUND

We have owned Max for 3 years. He is registered, neutered and has a micro chip. He has walked the Grampians most mornings over these years. He has never had a fight with or bitten another dog. He has had numerous visits to the back beach with constant sniffing and contact with other dogs. He has never been in a "dog battle". He mingles with children aged 2 and 3 mths. He is never aggressive despite their pulling or poking him. He loves to retrieve, drop the object, then retrieve again. He sits on command and

empties his bladder on command. Over the last year, I had taken him off the lead on the Grampians as I was satisfied that he would not run off, not attack other dogs and come when called.

We have engaged Sue Walsh, "behaviour expert for Dog Almighty" to assess and provide training for dog v dog meetings.

PAST HISTORY

We have owned 4 other dogs over 40 years. Our last 3 have walked the Grampians almost daily. All 3 dogs have had occasional skirmishes with other dogs on the track. One never knows what starts it and which dog is the aggressor. The owners always say "not mine". The barking and growling is over in seconds and we walk on. The dogs are happy.

MAX and MANGO

Max had met Mango on 2 previous occasions, both times resulting in aggressive barking. Mango's owner Yasmin yelled at me to "get my dog muzzled". Mango is obviously greying and ageing. Older dogs often want to protect their territory : I have seen it with my previous animals. Obviously, the above incident would have been shortened and controlled if Max had been on a lead.

SUMMARY

I am an experienced dog owner of 40 years.

Our Max is not an aggressive, dangerous dog. He is friendly and always seeks to please.

Doggie v doggie confrontations are common. It is often hard to see the trigger.

I have apologised to Yasmin and paid her Vet bill as well as the \$200 infringement.

The skirmish would have been shortened and managed if Max had been on a lead.

We have engaged a Canine Behaviour Expert to work with Max.

CONCLUSION

We are unhappy that this incident took place.

"Muzzling for life" is unnecessary and extreme.

We could accept that Max be always on a lead on public paths and walkways.

LEIGH and ROB RILEY

16 Ngatitama St

Nelson. 546 6023

**Objection to classification of dog as menacing -
Pirikotahi Phelan - Dog name: ROSA**

1. Purpose of Report

- 1.1 To decide on an objection to the classification of a dog as menacing pursuant to section 33A of the Dog Control Act 1996.

2. Summary

- 2.1 Section 33A of the Dog Control Act 1996 provides for a dog to be classified as menacing if the territorial authority considers that the dog may pose a threat to any person because of observed or reported behaviour of the dog. (Attachment 1)
- 2.2 Section 33B of the Dog Control Act 1996 provides a right to the owner of a dog classified as menacing to object to the classification and be heard in support of the objection. (Attachment 1)
- 2.3 Pirikotahi Phelan (known as Piri) owns a three year old female Labrador/Pit Bull cross named Rosa.
- 2.4 In the afternoon of 20 September 2018, a woman was walking a friend's Maltese dog past Phelan's address at 32 Weka Street, Nelson. As they neared the property she saw two dogs on the property, one being a young dog and the other a "Pit Bull type" adult dog. Both dogs ran at the front fence and reacted aggressively in response to her and the dog she was walking. The adult dog (Rosa) jumped over the fence and attacked the Maltese dog being walked past the address, biting it around the neck. (Attachment 2)
- 2.5 A woman leaving the address called Rosa and the dog released the smaller dog, returning to the property. The Maltese dog was not injured, but it is believed this was only due to the woman leaving the address calling Rosa off. (Attachment 2)
- 2.6 Visits by Animal Management Officers to Piri Phelan's address at 32 Weka Street on 24 and 25 September 2018 found no one at the address. On 26 September 2018, Piri Phelan, the owner of Rosa was written to by a Nelson City Council Animal Management Officer and advised of the complaint regarding the attack. He was asked to comment but did not reply to the letter. (Attachment 3)

Item 6: Objection to classification of dog as menacing - Pirikotahi Phelan - dog name: ROSA

- 2.7 After careful consideration, Piri Phelan was advised on 16 October 2018 via formal Notice of Classification that his dog Rosa had been classified as menacing. (Attachment 3)
- 2.8 On 6 November 2018, Council received an undated a letter from Piri Phelan appealing the menacing classification. (Attachment 4)

3. Recommendation

That the Hearings Panel - Other

Receives the report Objection to classification of dog as menacing - Pirikotahi Phelan - dog name: ROSA (R9902) and its attachments (A2134555, A2134558, A2134560 and A2134593); and

Dismisses the appeal of Pirikotahi Phelan; and

Upholds the classification of Rosa as menacing.

4. Background

- 4.1 A check of dog records for Rosa shows her owner, Piri Phelan moved to Nelson in mid-2018 from Christchurch where he had failed to register Rosa.
- 4.2 Rosa was reported as wandering in the Weka Street, Nelson area on 25 July 2018 and an unregistered dog and a 7-day notice to register was issued. Rosa was not registered as required so an Infringement Notice for Failing to Register a dog was issued on 7 August 2018 to Piri Phelan.
- 4.3 On 5 September 2018, as Rosa remained unregistered she was seized and impounded. During this seizure, Rosa jumped the fence at 32 Weka Street. Once registered and the fees were paid she was released.

5. Discussion

- 5.1 Section 33E of the Dog Control Act requires that if a dog is classified as menacing, the following must be complied with:
- 5.2 The owner must not allow the dog to be at large or in any public place or private way, without being confined completely within a vehicle or cage, or without being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction.
- 5.3 If required by the territorial authority the dog must be neutered.

Note that the Nelson City Council Dog Control Policy requires that all dogs classified as menacing are neutered. Rosa has not been neutered.

Item 6: Objection to classification of dog as menacing - Pirikotahi Phelan - dog name: ROSA

- 5.4 Under Section 33B(1) of the Dog Control Act 1996, if a dog is classified as menacing the owner has 14 days in which to object to the classification and has the right to be heard in support of the objection.
- 5.5 Section 33B(2) outlines that the territorial authority considering an objection 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 (Attachment 1)
- 5.6 Section 33B(3) outlines that 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. (Attachment 1)

Criteria for consideration

- 5.7 The evidence which formed the basis for the classification
- 5.7.1 During the afternoon of 20 September 2018, a woman was walking her friend's Maltese dog on Weka Street, Nelson. As they neared Pirikotahi Phelan's address at 32 Weka Street, his two dogs ran at the front fence reacting aggressively towards the woman and the dog she was walking. One of the dogs (Rosa) jumped over the fence and attacked the Maltese dog, biting it around the neck. (Attachment 2)
- 5.7.2 The dog which made the attack (Rosa) is a Pit Bull/Labrador cross, owned by Pirikotahi Phelan (Piri), who at the time was living at 32 Weka Street, Nelson.
- 5.7.3 Although the smaller Maltese dog was not injured in the attack it is believed this was only due to a woman leaving the address calling Rosa off.
- 5.7.4 Visits to Phelan's address at 32 Weka Street, Nelson revealed the fencing was inadequate to contain the 2 dogs housed there. On one visit the dog Rosa jumped easily over the fence when approached by Animal Management Officers.
- 5.7.5 Nelson City Council Animal Management Officer, Jeff Welch wrote to Piri Phelan on 26 September 2018 and advised of the attack by his dog Rosa. The details of the attack were outlined and he was

Item 6: Objection to classification of dog as menacing - Pirikotahi Phelan - dog name: ROSA

asked to comment, as Council were considering enforcement action in relation to the attack. Piri Phelan has not responded to that letter.

5.8 Steps taken by the owner to prevent any threat to the safety of persons or animals

- 5.8.1 Piri Phelan has not taken any steps to improve the fencing at his Weka Street address or taken any steps to prevent any threat to the safety of persons or animals.

5.9 Matters relied on in support of the objection

- 5.9.1 The undated letter from Piri Phelan, received by Council on 6 November 2018 is the only matter in support of the objection (Attachment 4)
- 5.9.2 In his letter Piri Phelan states: *"This was a one-off incident where somebody walking their past our property into an area that Rosa would consider her territory. Also, my mother who is close with Rosa was exiting the gate when the person walking their dog were approaching my mother, this is when Rosa, considering this approaching dog to be in her territory, investigated the threat, jumping the fence to do what dogs do and that is protect!"*
- 5.9.3 Piri Phelan submits that the classification of Rosa as menacing is not warranted and is "unreasonable" because it was a "one-off incident". He says Rosa is a good dog and this is shown as she stopped "investigating" and returned to her property on command.

6. **Options**

Option 1: The Objection be Dismissed (Recommended Option)	
Advantages	<ul style="list-style-type: none">• This will result in Rosa being legally required to wear a muzzle whenever out in public. This will reduce the risk of people, other dogs and animals being attacked and injured should another aggression incident occur.
Risks and Disadvantages	<ul style="list-style-type: none">• This may have a negative impact on life activities Rosa and her owner enjoy.
Option 2: The objection be upheld	
Advantages	<ul style="list-style-type: none">• Rosa will not legally be required to wear a muzzle in public.

Item 6: Objection to classification of dog as menacing - Pirikotahi Phelan - dog name: ROSA

Risks and Disadvantages	<ul style="list-style-type: none">• This will increase the risk of other dogs being attacked and injured if Rosa was to again become aggressive.
-------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------

7. Conclusion

- 7.1 The behaviour of Rosa on 20 September 2018 shows that she can behave in an aggressive manner and is a real risk to other dogs and the public.
- 7.2 It is considered that in order to reduce the risk of an attack on other dogs or a member of the public that Rosa should be muzzled whenever in a public place.
- 7.3 A menacing classification is the lowest level of classification that requires the use of a muzzle when in public.
- 7.4 It is recommended that the objection be dismissed and the classification of Rosa as a menacing dog be upheld, noting the dog will be required to be neutered.

Author: Mandy Bishop, Manager Consents and Compliance

Attachments

- Attachment 1: A2134555 Dog Control Act 1996 Sections 33A & 33B [↓](#)
- Attachment 2: A2134558 Statement of Complaint Adrienne Fraser [↓](#)
- Attachment 3: A2134560 Piri Phelan Classification Notice Menacing dog Rosa [↓](#)
- Attachment 4: A2134593 Piri Phelan Letter of Appeal against Menacing Classification of dog Rosa [↓](#)

Important considerations for decision making	
1. Fit with Purpose of Local Government	The regulatory functions are to be performed in a manner that is most cost effective for households and businesses. The Dog Control Act 1996 provisions are being applied appropriately to minimise the public risk.
2. Consistency with Community Outcomes and Council Policy	The recommendation aligns with the Council's Dog Control Policy by having regard to the need to minimise the danger, distress and nuisance to the community caused by dogs and/or by non-compliant owners.
3. Risk	<p>Council has obligations under the Dog Control Act 1996 to follow the correct legal process.</p> <p>There is also a risk to the community from future incidents.</p>
4. Financial impact	There is no Financial impact for Council.
5. Degree of significance and level of engagement	The recommendations outlined in this report are not considered significant in terms of Council's Significance and Engagement Policy.
6. Inclusion of Māori in the decision making process	No engagement with Māori has been undertaken in preparing this report.
7. Delegations	<ul style="list-style-type: none">The Hearings Panel – Other, has the power to <i>hear and determine objections to the classifications of dogs and all other procedural matters for which a right of objection and hearing is provided for</i> under the Dog Control Act 1996; and to recommend changes to the Council's Dog Control Policy and the Dog Control Bylaw.



New Zealand Legislation

Dog Control Act 1996

Menacing dogs

Heading: inserted, on 1 December 2003, by section 21 of the Dog Control Amendment Act 2003 (2003 No 119).

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.

Section 33A: inserted, on 1 December 2003, by section 21 of the Dog Control Amendment Act 2003 (2003 No 119).

Section 33A(3): amended, on 1 November 2004, by section 10 of the Dog Control Amendment Act 2004 (2004 No 61).

Section 33A(3)(c): amended, on 28 June 2006, by section 13 of the Dog Control Amendment Act 2006 (2006 No 23).

Section 33A(3)(d): added, on 28 June 2006, by section 13 of the Dog Control Amendment Act 2006 (2006 No 23).



New Zealand Legislation
Dog Control Act 1996

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.

Section 33B: inserted, on 1 December 2003, by section 21 of the Dog Control Amendment Act 2003 (2003 No 119).

Item 6: Objection to classification of dog as menacing - Pirikotahi Phelan - dog name:
ROSA: Attachment 2

Jeff Welch

From: Adrienne & Paul Fraser <paul.ade.fraser@gmail.com>
Sent: Thursday, 20 September 2018 10:19 PM
To: Council Enquiries (Enquiry)
Subject: Re: Dogs at 32 Weka St

Categories: Wendy Chambers

Hi

My name is Adrienne and I am presently housesitting in Milton St, looking after a Maltese cross dog.

This afternoon whilst I was out walking the dog down Weka St I went past number 32. There was a woman who was just leaving the property. There were two light coloured (possibly pitbull type) dogs that were inside the fenced property and they acted very aggressively as we approached. Then one of them actually jumped the fence(which is not overly high) and attacked my dog, got him around the neck. The woman called the dog off and quickly apologised to me. It did scare me as if she had not been there I don't know what would have happened and whether I would have been attacked.

Obviously the fence needs to be higher in this sort of situation with aggressive animals. I cannot be sure but I think that one of them didn't have a registration tag.

Just wanted to report this as I believe it could be a potentially dangerous situation.

Regards
Adrienne Fraser

Item 6: Objection to classification of dog as menacing - Pirikotahi Phelan - dog name:
ROSA: Attachment 3



26 September 2018

COPY

REF: 1859872

Civic House, 110 Trafalgar Street
PO Box 645, Nelson 7040, New Zealand

Mr P K Phelan
32 Weka Street
Nelson 7010

P 546 0243
E jeff.welch@ncc.govt.nz
nelson.govt.nz

Piri

DOG ATTACK INCIDENT 20 SEPTEMBER 2018

On Thursday 20th September 2018 Nelson City Council received a complaint regarding your dog Rosa.

The caller reports that Rosa and another younger dog rushed aggressively at your front fence as the complainant was walking a friend's dog past the property. Rosa has then jumped over the fence and attacked the smaller dog, biting it around the neck.

A woman exiting your address at the time yelled at your dog and fortunately it let go and returned to your property before any injuries were inflicted.

The issue of confinement has been brought to your attention previously, most recently when Rosa was witnessed jumping the fence as Dog Control Officers were seizing the dogs on September 5th. In addition to confinement, there is now an aggression issue.

Council is now considering taking enforcement action in respect of this latest breach of the Dog Control Act.

If you wish to comment on this matter, please email or telephone me within the next seven days.

Yours sincerely

J Welch
Animal Management Officer



15 October 2018

COPY

REF: 1859872

Civic House, 110 Trafalgar Street
PO Box 645, Nelson 7040, New Zealand

Mr P K Phelan
32 Weka Street
Nelson 7010

P 546 0243
nelson.govt.nz

Mr Phelan

**CLASSIFICATION OF DOG 'ROSA' AND FENCING ORDER FOLLOWING AGGRESSION INCIDENT
ON 20 SEPTEMBER 2018**

On Friday 21st September 2018 Nelson City Council received a complaint alleging that on Thursday 20th September 2018 your dog Rosa had jumped your front fence and attacked a small breed dog being walked past on the footpath.

The caller reports that injury to the Maltese dog was only avoided due to the prompt actions of a woman who was leaving your property and promptly managed to call your dog back to the property.

As a result of this incident, Council is now classifying Rosa as a menacing dog pursuant to section 33 of the Dog Control Act 1996. Classification papers are enclosed and I would encourage you to read these in their entirety.

In brief, the classification requirements are:

- **Effective immediately**, Rosa is to wear a muzzle at all times when in public (including in a vehicle unless fully contained and unable to put her head out of a window);
- **Within one month of receipt of this letter**, Rosa is to be desexed and Council is to be supplied with a veterinary certificate that this has occurred. *Available through SPCT @ \$25*

In addition to the classification, Council is also invoking a fencing instruction under section 11.2(b) of the Dog Bylaw. **Within one month of receipt of this letter** you are required to have created a fenced area sufficient to ensure confinement of the dogs to your property but that allows visitor access to the front door of the dwelling without coming into contact with the dog(s). This may involve construction of adequate fencing at the sides of the dwelling so as to confine the dogs to the rear of the property.

If you require assistance with fencing suggestions please feel free to contact this office.

Please note that you have a right of objection in respect of the classification and any such objection should be lodged, in writing, within 14 days of receipt of this letter.

Yours sincerely

J Welch

Animal Management Officer

A2071963.

COPY

Notice of classification of dog as menacing dog
Section 33A, Dog Control Act 1996

To: Pirikotahi Kim PHELAN

DOB: 09/11/1980


Address: 32 Weka Street, Nelson

Dog: 'Rosa' American Pitbull Terrier/Labrador cross, female, registered NCC 18/4009, microchip number 982000402503847.

This is to notify you* that this dog has been classified as a menacing dog under section 33A(2) of the Dog Control Act 1996.

This is because [under section 33A(1)(b)(i)] on Thursday the 20th of September 2018, Rosa jumped over the front fence of your property and attacked a Maltese cross dog being walked on the footpath.

A summary of the effect of the classification and your right to object is provided below.


Signature of Officer for Nelson City Council

Date 16/10/18

*For the purposes of the Dog Control Act 1996, you are the owner of a dog if –

- you own the dog; or
- you have the dog in your possession (otherwise than for a period not exceeding 72 hours for the purpose of preventing the dog causing injury, or damage, or distress, or for the sole purpose of restoring a lost dog to its owner); or
- you are the parent or guardian of a person under 16 who is the owner of the dog and who is a member of your household living with and dependent on you.

Effect of classification as menacing dog
Sections 33E, 33F, and 36A, Dog Control Act 1996

You –

- (a) must not allow the dog to be at large or in any public place or in any private way (other than when confined completely within a vehicle or cage) without the dog 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, as required by the Nelson City Council, produce to the Nelson City Council within one month after receipt of this notice, a certificate issued by a registered veterinary surgeon certifying that-
 - (i) 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) where a certificate under paragraph (b)(ii) is produced to the Nelson City Council, produce to the Nelson City Council within 1 month after the date specified in that certificate, a further certificate under paragraph (b)(i).

You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with all of the matters in paragraphs (a) to (c) above.

A2077880

A dog control officer or dog ranger may seize and remove the dog from you if you fail to comply with all of the matters in paragraphs (a) to (c) above. The officer or ranger may keep the dog until you demonstrate that you are willing to comply with paragraphs (a) to (c) above.

As from 1 July 2006, **you are also required**, for the purpose of providing permanent identification of the dog, **to arrange for the dog to be implanted with a functioning microchip** transponder. This must be confirmed by making the dog available to the Nelson City Council in accordance with the reasonable instructions of the Nelson City Council for verification that the dog has been implanted with a functioning microchip transponder of the prescribed type and in the prescribed location.

You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with this requirement –

- within 2 months from 1 July 2006 if your dog is classified as menacing on or after 1 December 2003 but before 1 July 2006; or
- within 2 months after the dog is classified as menacing if your dog is classified as menacing after 1 July 2006.

If the dog is in the possession of another person for a period not exceeding 72 hours, you must advise that person of the requirement to not allow the dog to be at large or in any public place or in any private way (other than when confined completely within a vehicle or cage) without the dog being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction. You will commit an offence and be liable on conviction to a fine not exceeding \$500 if you fail to comply with this requirement.

Full details of the effect of the classification of a dog as menacing are provided in the Dog Control Act 1996.

Right of objection to classification under section 33A

Section 33B, Dog Control act 1996

You may object to the classification of your dog as menacing by lodging with the Nelson City Council a written objection within 14 days of receipt of this notice setting out the grounds on which you object.

You have the right to be heard in support of your objection and will be notified of the time and place at which your objection will be heard.

To Whom it may concern, This letter is to object the NCC's decision to class my dog Rosa as a menacing dog because of a one off incident where somebody walking their dog past our property into an area that Rosa would consider her territory, also my mother who is close with Rosa was exiting the gate when the person walking their dog were approaching my mother this is when Rosa considering this approaching dog to be in her territory investigated the threat jumping the fence to do what dogs do and that is protect! i dont believe this one off incident should cause the NCC to take this course of action i think its unreasonable i believe this because on command Rosa stopped investigating the threat and returned to her property this makes her a good dog who responds to command, Rosa was raised with two cats and two small dog breeds from when

she could fit in the palm of your hand she is a family pet dog being raised along side two small dog breeds she has developed great speed and precise control of her movement and mouth pressure to interact with small dog breeds safely, she has never had a fight with another dog ever only barking and standing her ground, she is not a menacing dog regardless of the NCC decision she is a much loved member of our family, i understand the Maltese cross dog was unharmed but the shock of something like this happening is very real and i'm very sorry about that.

Yours,
Piri Phelan

ON: 20482



received at:
NR

06.Nov.2018 11:19
C

12402