



**SOUTH WAIRARAPA
DISTRICT COUNCIL**

Kia Reretahi Tātau

South Wairarapa District Council

HEARINGS COMMITTEE

Order paper for a meeting to be held in the Supper Room, Waihinga
Centre, Texas Street, Martinborough on

Wednesday 10 July, 2019 9:30am

Dog Control Act 1996 Hearing

MEMBERSHIP OF THE COMMITTEE

Her Worship Viv Napier (Chairperson)

Cr B Jephson

Cr C Olds

RECOMMENDATIONS IN REPORTS ARE NOT TO BE CONSTRUED
AS COUNCIL DECISIONS UNTIL ADOPTED

AGENDA

APPLICATION UNDER SECTION 33B OF THE DOG CONTROL ACT 1996

1. Welcome

- Apologies
- Hearing procedure Page 1
(Note: This hearing is a reconvening of the hearing adjourned on the 17 April 2019)
- Confirmation of Hearing Committee Minutes 17 April 2019 Pages 2-3
Proposed Resolution: *That the Hearing Committee Minutes from the 17 April 2019 are a true and correct record*
- Council/applicant introductions

2. Case for Menacing Classification

- Legal submissions
- Council Officer's report Pages 4-44
'Objection to Dog Being Classified as Menacing, Shane Sykes, Environmental Services Manager
- Appearance in support of applicant
- Opportunity for Committee to ask questions

3. Objectors to Classification

- Appearances in support
- Opportunity for Committee to ask questions

4. Rights of Reply

- South Wairarapa District Council
- Objector to classification

5. Public Excluded

- Deliberation of a hearing conducted under the Animal Control Act

PROPOSED RESOLUTION: That the public be excluded from the following part of the meeting.

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) and section 48(2) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

Report/General Subject Matter	Reason for passing this resolution in relation to the matter	Ground(s) under Section 48(1) for the passing of this Resolution
Deliberation of a hearing conducted under the Animal Control Act	Good reason to withhold exists under section 1(d) and section 2(a)(i)(ii)	Section 48(1)

This resolution is made in reliance on Section 48(1)(d) and Section 48 2(a)(ii)(iii) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the hearing in public are as follows:

Reason for passing this resolution in relation to the matter	Ground(s) under Section 48(1) for the passing of this Resolution
d) that the exclusion of the public from the whole or the relevant part of the proceedings of the meeting is necessary to enable the local authority to deliberate in private on its decision or recommendation in any proceedings to which this paragraph applies.	Section 48 1(d)
a) any proceedings before a local authority where: i) a right of appeal lies to any court or tribunal against the final decision of the local authority in those proceedings or ii) the local authority is required, by any enactment, to make a recommendation in respect of the matter that is the subject of those proceedings.	Section 48 2(a)(i)(ii)

HEARINGS PROCEDURE

- (1) The Hearings Committee has full delegated authority to hear the objection to the dangerous dog classification and make a decision.
- (2) It is the intention that the hearings will be held without unnecessary formality, but not such as will impede progress.
- (3) At the commencement of the hearing those participating in the hearing will be asked to identify themselves and anyone who is giving evidence for them.
- (4) Chairperson shall have the right with or without concurrence of the other members, to terminate a submission in progress.
- (5) No person other than the chairperson or other member of the hearing body may question any party or witness.
- (6) No cross examination is allowed.
- (7) At the conclusion of the submissions the Chairperson will announce that the Committee will reserve its decision and retire to deliberate in accordance with Section 48(1)(d) of the Local Government Official Information and Meetings Act 1987.
- (8) Decisions will be released in written form as soon as practicable.

NOTE:

- (a) The Committee may wish to visit the site at a time arranged to suit all parties.
- (b) Councillors are reminded there should be no discussion with anyone outside of the hearings committee in regard to the submissions until the decisions are made.



SOUTH WAIRARAPA DISTRICT COUNCIL HEARINGS COMMITTEE MINUTES

17 April 2019

Minutes of a Hearings Committee meeting held on Wednesday 17 April 2019, commencing at 12:30pm in the Supper Room, Waihinga Centre, Texas Street, Martinborough. The meeting was conducted in public between 12:30pm and 12:35pm except where expressly noted.

Committee: Mayor Vivien Napier (Chair)
Cr Colin Olds
Cr Brian Jephson

In Attendance: Andrew McEwan (Bylaws Officer)
Lynne Drake (Bylaws Officer)
Shane Sykes (Environmental Services Manager)
Russell O'Leary (Planning and Environment GM)
Suzanne Clark (Committee Advisor)

Michal Navratil (Objector)
Yvonne Ellison (Objector support person)

HEARING OPENING

The Chairperson welcomed attendees to the hearing of an objection lodged by Ms Yvonne Teuwissen against the issuing of a menacing dog classification relating to the dog known as "Romeo" pursuant to the provisions of Section 33C(1) of the Dog Control Act 1996. Romeo is now owned by Michal Navratil, and as the current owner, wishes to be heard.

Dr Sykes, Environmental Services Manager, had forwarded a request from Mr Navratil to have the hearing deferred as the hearing agenda and associated report had been received too late to prepare for the hearing. Officers supported the request for the reasons stated.

THE HEARINGS COMMITTEE RESOLVED (HC2019/09) to adjourn the hearing and reconvene at a later date that allowed sufficient time for the objector to make preparations.

Moved (Cr Brian Jephson/Cr Colin Olds)

Carried

The Chair declared the hearing adjourned at 12:35pm.

Confirmed as a true and correct record

..... (Chair)

..... (Date)

SOUTH WAIRARAPA DISTRICT COUNCIL

HEARINGS COMMITTEE

10 JULY 2019

OBJECTION TO DOG BEING CLASSIFIED AS MENACING

Purpose of Report

To provide advice to the Hearings Committee to enable them to consider an objection to a menacing classification under the Dog Control Act 1996.

Recommendations

Officers recommend that the Hearings Committee:

1. *Receive the Objection to Dog Being Classified as Menancing Report.*
2. *Confirm the classification of "Romeo" as a menacing dog pursuant to section 33B of the Dog Control Act 1996.*

1. Executive Summary

On the 31st October 2018, Mr Tom Alison attended the property located at 298 State Highway 53, Featherston to perform pre-arranged electrical work.

On arriving at the location, Mr Alison parked his vehicle on the driveway and proceeded through a pedestrian gateway leading to the porch door.

Before reaching the doorway Mr Alison was confronted by Romeo a Maremma Sheepdog who came from inside the residence. Romeo immediately rushed at Mr Alison and made physical contact with Mr Alison's left thigh via a bite. Mr Alison was treated the same day at Featherston Medical Centre for a dog bite.

Mr Alison physically kicked Romeo to cease the attack and made an attempt to reach the porch door to isolate himself from the dog. Mr Alison was able to reach the doorway but was subsequently attacked a second time resulting in Romeo attaching to the back of Mr Alison's shirt. Romeo attempted to pull Mr Alison backwards away from the doorway.

The incident ceased once the dog owner appeared at the porch doorway from inside the residence and instructed Romeo to cease.

At the time of the incident, Romeo was owned by Ms Yvonne Teuwissen who subsequently raised an objection to the resultant menacing classification

assigned to Romeo. After raising the objection, Ms Yvonne Teuwissen's personal circumstances have changed and ownership of Romeo has been transferred to Mr Michal Navratil. Mr Navratil has a right to be heard, as he is the current owner of Romeo.

Officers consider that this incident demonstrates that Romeo may pose a threat to other domestic animals and/or people.

In such cases, Officers on behalf of Council can prosecute, issue infringements, seize a dog, or classifying the dog as dangerous or menacing.

In determining the most appropriate action Officers consider:

- a) Public safety, that is, the actual or potential harm to society as a whole and to individuals.
- b) Behaviour of the individual or party responsible including history, any rectification of the issue and steps taken to avoid future incidents.
- c) Attitude of the person towards compliance which includes denial/acceptance, willingness/reluctance to accept evidential facts.
- d) Public interest matters including the seriousness of the offence, likelihood of future offences being committed and the prevalence of the offence in the community.

The facts of the case are presented following this section as well as how Officers on behalf of Council have considered these matters when deciding the most appropriate course of action to take in this case.

2. Summary of Facts

2.1 Complaints history

There are no previous records of complaints relating to either Ms Yvonne Teuwissen, Michal Navratil or the Maremma sheepdog Romeo.

2.2 Events of 31st October 2018

On the morning of 31st October 2018, Mr Alison was scheduled to undertake pre-arranged electrical work at the property of 298 State Highway 53, Featherston. Telephone contact with the property manager was attempted at 9.37 am but the phone call was not answered.

At 9.38 am the tenant, Ms Yvonne Teuwissen was contacted to advise that Mr Alison was running late and he would not make the scheduled time.

A second phone call to Ms Teuwissen occurred at 10.30 am to inform the tenant that Mr Alison would be arriving shortly. There was no discussion about whether the dogs should be locked away. Ms Teuwissen had two Maremma Sheepdogs registered to her at the property (Figure 1).

Figure 2 shows an aerial image of the property at which the dog attack on Mr Alison occurred. Figure 3 shows a higher magnification picture of the property showing the driveway on which Mr Alison parked his vehicle and the gateway he

passed through on his way to the porch door. The gateway is located immediately above the red marker parallel with the clear roofing section shown at the rear of the building.

After leaving his vehicle and entering the property via a small gateway to gain access to the porch doorway, Mr Alison was confronted and bitten by Romeo, a Maremma Sheepdog. Mr Alison had his injuries from the bite assessed later the same day at Featherston Medical Centre (Figure 4). Photos of Mr Alison's injuries are shown in Figure 5 after having the wounds attended to at Featherston Medical Centre.

Mr Alison was forced to kick out at the dog in order to have his thigh released from the physical hold of Romeo. Mr Alison attempted to gain access inside the porch to isolate himself from the attacking dog. Mr Alison was attacked a second time by Romeo. Romeo attached to the back of Mr Alison's shirt and physically tried to pull Mr Alison backwards, away from the doorway. This second attack ceased when Ms Teuwissen appeared at the porch doorway and commanded Romeo to cease. Statements from Mr Alison and Ms Teuwissen are attached as Figures 6 and 7 respectively.

2.3 Council's actions

It is standard practice when Council Officers investigate complaints that the involved parties are informed as to what the possible outcomes are.

In this case an infringement notice was issued for failing to keep a dog under control as per section 53 of the Act. This infringement was contested as the owner wished to raise matters relating to the alleged offence for the Council to consider. This matter was reviewed by the Group Manager Planning and Environment and the infringement was upheld. The infringement was later filed with the District Court as an unpaid infringement. However, this infringement notice (along with several others) had an administrative error occur and was incorrectly filed with the Court. As such, the infringement had to be cancelled.

In addition, a menacing classification was issued for Romeo on 5 December 2018. Ms Teuwissen provided initial documentation to suggest that she wanted to appeal the menacing classification as early as 18 December 2018. The nature of the information provided lead officers to question whether Ms Teuwissen was aware of the process she needed to follow for objecting to the classification.

In order to be assistive further verbal information was provided to Ms Teuwissen early in January 2019 in an attempt to better explain the objection process for both the infringement notice and menacing classification. It was explained that Council required separate documentation for each issue (i.e. the infringement and menacing classification) as the processes for contesting these were different.

Ms Teuwissen subsequently provided additional information on 10 January 2019. A further meeting was held on 18 January 2019 to further explain the process to Ms Teuwissen. This was to make it quite clear that the processes for appealing the decisions of officers are different. Additional paperwork was provided at this meeting to assist in this. It was discussed that additional time would be provided

to Ms Teuwissen to determine her actions for both the infringement and menacing classification.

A new notification for classification was issued to Ms Teuwissen on 22 January 2019 outlining the new date by which she would need to lodge an objection for the menacing classification (4 February 2019).

Council subsequently received on 1 February 2019 the new form provided to Ms Teuwissen at the meeting on 18 January 2019 that clearly outline the circumstances under which Ms Teuwissen wished to object to the menacing classification (Figure 8).

2.4 Situational circumstances

There has been a comment by both Mr Alison and Ms Teuwissen in regards to whether the dogs residing at the property **should** have been locked away prior to the arrival of the tradesperson.

Officers' notes show that contact with the property manager (Greer Sinton) and the electrical company (Gordon Mouldey) both resulted in each party believing they had no responsibility in relation to the health and safety of Mr Alison in relation to the dogs on the property (Figure 9). For the benefit of the Hearings Committee, this is legally incorrect as evidenced by freely accessible information on the WorkSafe NZ website (Figure 10).

Officers' comment in relation to this matter is that this was not a legal requirement of Ms Teuwissen.

However, the question arises as to what would have been reasonable in the circumstances.

Ms Teuwissen has stated that she has not had previous issues with Romeo in relation to interactions with other people or animals, nor has Council had previous reports of issues. This does not equate to a factual finding that incidents didn't occur but rather that we have no evidence to state that they did.

Officers have accepted material submitted to Council on 10 January 2019 as forming part of the clarified objection to the menacing classification officially received on 1 February 2019 (Figure 11). Paragraph "4" of this documentation states:

"...Typically Romeo will go to the entrance, bark, expect the intruder to stop, and then wait until I have given clearance."

It is possible that previous visitors to the site have followed this practice and therefore the circumstances giving rise to the attack have not occurred. This is quite pertinent given that at the time of Mr Alison's arrival, Ms Teuwissen has stated she was in the bathroom. That is, Ms Teuwissen was not able to follow the "normal" practice.

If it is taken as true that Romeo has shown no previous signs of acting in the way that he did during Mr Alison's visit, it could be argued that there was no reason to think that the dogs would be required to be locked away.

It appears as though Ms Teuwissen may have subsequently put in place a practice for how she asks guests to arrive at her site (Figure 12). However, the system appears that it would only be effective when prior contact has been made and not for visitors with no prior knowledge of the property.

Another aspect that needs to be considered in this case is that Mr Alison was attending the site to complete pre-arranged electrical work. As such, this is a workplace health and safety matter.

It is reasonable to expect (and a legal requirement) that a business that conducts door-to-door services would have policies and protocols relating to how their staff are to enter properties in order to maintain their health and safety. That is, the business could have a policy requirement that any dogs on a property are contained prior to work being done. This could be formulated into a contractual agreement at the time of booking the service.

2.5 Ownership change

In early March, Council was notified of an ownership change for both Romeo and Ms Teuwissen's other Maremma Sheepdog.

The new owner is Mr Michal Navratil who resides at the same address as Ms Teuwissen. However, officers have been provided anecdotal oral evidence from Mr Navratil that Ms Teuwissen is no longer in New Zealand and therefore not currently residing at the premises.

Officers sought a legal opinion as to how the objection to the menacing classification should proceed in regards to the ownership change. Figure 13 shows a legal opinion on the matter with two paragraphs that have been redacted on the grounds of legal professional privilege.

Officers consider that Mr Navratil is the new owner and has a right to be heard in relation to the objection. In addition, officers have contacted Ms Teuwissen via email (since we have reason to believe she is no longer in New Zealand), to request whether she has any additional information she would like to supply in support of her objection. No information was received as a result of this communication.

3. Legal considerations

3.1 Menacing classification

The Act sets out the requirements for classifying menacing dogs under s 33A:

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.*

The owner of a dog classified as menacing may object to the classification as set out by s 33B of the Act:

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.*

The effect of a dog being classified as menacing is outlined by s 33E of the Act.

33E Effect of classification as menacing dog

- (1) *If a dog is classified as a menacing dog under section 33A or section 33C, the owner of the dog—*
- (a) *must not allow the dog to be at large or in any public place or in any private way, except when confined completely within a vehicle or cage, without being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction; and*
 - (b) *must, if required by the territorial authority, within 1 month after receipt of notice of the classification, produce to the territorial authority a certificate issued by a veterinarian certifying—*
 - (i) *that the dog is or has been neutered; or*
 - (ii) *that for reasons that are specified in the certificate, the dog will not be in a fit condition to be neutered before a date specified in the certificate; and*
 - (c) *must, if a certificate under paragraph (b)(ii) is produced to the territorial authority, produce to the territorial authority, within 1 month after the date specified in that certificate, a further certificate under paragraph (b)(i).*

- (2) *[Repealed]*

(3) [Repealed]

(4) [Repealed]

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

3.2 Ownership change

As noted in section 2.5 above, the ownership change during the objection process has added additional matters for consideration.

On 4 April 2019, officers wrote to Mr Navratil to inform him of contact Council had with a third-party claiming to be acting in support of Mr Navratil and asking details about the case (Figure 14). Officers requested that Mr Navratil to formally notify Council of any third-party persons he wished to operate as a support person and the limit of access he wished to set for any persons. The letter from officers included additional information on the limits of a support person during the hearing. It was also mentioned that if Mr Navratil required language assistance that this could be provided by Council.

On 9th April 2019 Council received formal notification from Mr Navratil that he requests for Ms Yvonne Ellison to be a support person for him during the hearing and that he also grants her full access to any information regarding Romeo (Figure 15). It should be noted that this access will only relate to information about Romeo since being owned by Mr Navratil and all relevant information that will be needed for the hearing.

Mr Navratil states in his letter that Ms Ellison has been involved in the case from the beginning as a support person for Yvonne Teuwissen. Officers can confirm that Ms Ellison attended the 18 January 2019 meeting in support of Ms Teuwissen.

Ms Ellison has personal involvement in this case as she has submitted on Ms Teuwissen's behalf that she does not consider Romeo to be a danger to other people or animals (see Figure 11).

This is of particular interest to officers as both Mr Navratil and Ms Ellison need to be aware that Ms Ellison will need to be a silent partner at the hearing.

The exception is if Ms Ellison is called as a witness by Mr Navratil. In this instance, the Hearings Committee will need to weigh any evidence provided by Ms Ellison as they see appropriate.

4. Officers' Comments

4.1 Cause of attack

Officers noted in section 2.4 the situational circumstances leading up to the attack.

Officers believe this attack may have been prevented by either of the parties involved having acted differently.

That is, the electrical company should have processes in place for how staff enter properties to ensure that their health and safety is not compromised. This

would obviously need to cover the potential risk of un-restrained dogs on the property.

Likewise it would be reasonable for any dog owner to confine their dog to a part of their property when they know that visitors will be attending. This does not necessarily need to be for fear of a potential attack but rather to ensure that the dog does not impede visitors.

4.2 Risk presented by Romeo

Romeo is a Maremma Sheepdog, a breed that is well known for exhibiting very strong guarding behaviour (watch dog) as well as protecting behaviour (deter/defend). The New Zealand Kennel Club recognises the Maremma Sheepdog and acknowledges these attributes (Figure 16).

The breed is accepted as being ancient in origin where it has been used to protect sheep flocks from predators. It is recognised that the Maremma Sheepdog will also protect its "flock" from humans who are perceived as a threat.

Romeo is an adult male that has not been neutered. Officers are willing to offer for free neutering of Romeo if the menacing classification is upheld by the Hearings Committee. Officers have available funding from the Department of Internal Affairs specifically for desexing dogs classified as menacing or dangerous.

4.3 Owner's behaviour

Prior to the incident of 31 October 2018 the owner had a dog warning sign displayed at the porch door along with a bell adjacent to it (Figure 17).

Since officers have investigated the dog attack on 31 October 2018, Ms Teuwissen has moved the warning signage to the driveway gate, added additional signage and installed a second bell (Figure 18).

Officers have also noted that Mr Navratil handles Romeo in a different manner to Ms Teuwissen. Mr Navratil will direct Romeo (and the other Maremma Sheepdog he now owns) to cease barking when Mr Navratil is present. This is not behaviour that officers witnessed when Ms Teuwissen owned Romeo or was present with him.

4.4 Owner's attitude

Throughout the investigation Ms Teuwissen has repeatedly ignored the physical bite Mr Alison received from Romeo.

The only time Ms Teuwissen acknowledged the bite occurred was in her statement as shown in Figure 7.

Documentation provided to Council from Ms Teuwissen after this date does not acknowledge the bite (Figure 11). Instead, the documentation focusses on the attack that resulted in Romeo attempting to pull Mr Alison back from the porch door.

In this documentation, Ms Teuwissen also refers to the tradesperson as an "intruder" (paragraph 4). As acknowledged earlier, Ms Teuwissen has a typical scenario to describe Romeo's behaviour. In this scenario she states that Romeo would expect the "intruder" to stop. This choice of language from Ms Teuwissen helps give insight into her viewpoint. It appears as though any person entering Ms Teuwissen's property is deemed by her to be an "intruder". She has even extended this to a tradesperson who was organised to come to the property to carry out work. Officers suggest that the average, reasonable person would not hold the same view.

Potentially due to the misunderstanding that Romeo "only" held the tradesperson's shirt, Ms Teuwissen seemed to be of the opinion that the incident was fairly minor. In her documentation of 10 January 2019 she attempts to paint the picture that Romeo acted reasonably by applying minimum force and a restriction to the damage he may have imposed.

Officers do not accept this type of anthropomorphism (attributing human characteristics to an animal) of a dog's actions. The actions of Romeo must be considered on the facts of what occurred and not viewed through a biased lens. These are outlined below:

- 1) A person enters the property and Romeo rushes the person.
- 2) Romeo barks and growls at the person.
- 3) Romeo bites the person and only ceases due to physical intervention.
- 4) Romeo attacks from behind and latches onto the person's clothing.
- 5) Romeo applies physical force to the clothing to stop forward momentum of the person.

The factors described above are considered extremely important when assessing this case from the human perspective. Officers are of the opinion that the actions of Mr Alison during the attack were reasonable and reflective of what the average person might have done given the circumstances. Furthermore, there is nothing unusual about a stranger having a pre-booked visiting at a property to carry out work.

At this junction, a person might argue that Romeo saw Mr Alison as a threat to his "flock" and that Romeo intervened to prevent this. However, officers do not take that approach as this would also be anthropomorphising the actions of Romeo.

Due to this, officers have looked at the 5 steps above and considered that we can't in all good conscience conclude that Romeo is not a threat to other people or animals. This is compounded by the fact that Romeo is not able to understand the interactions between humans that are considered normal. This further suggests that Romeo may pose a threat to any person, stock, poultry, domestic animal or protected wildlife due to this observed behaviour and compounded by the fact that he cannot understand normal human to human interactions.

4.5 Public interest

There are two matters of this case that have a significant level of public interest associated with them in the opinion of officers.

Firstly, Ms Teuwissen and those people who have signed the letter as shown in Figure 11 all appear to have an opinion that it is acceptable for a dog to attack a human, if the dog is of the opinion that their owner is threatened.

Officers would like to make it very clear that this is not the case. There are no circumstances where it is acceptable for a dog to attack a human. This relies on the dog understanding enough about human interactions to be able to establish friend from foe. This is simply another example of anthropomorphising the behaviour of the dog.

It should be noted that it is acceptable to have a dog that barks and alerts the owner to a presence on the property but this should never escalate to aggressive behaviour.

The second public interest matter with this case is that Council has had previous involvement with an attack from a Maremma Sheepdog (crossed with a Border Collie). In that case, a child was attacked and received a bite wound to the face. That owner was prosecuted and the dog now has a dangerous classification. In addition, that owner now breeds Maremma Sheepdogs.

This is of importance to officers due to the nature of the breed. The breed is known for having very high guarding and protective instincts. If owners are of the opinion as that outlined above, then the potential risk of the dog is escalated.

Given the predominately rural nature of the South Wairarapa district, it is of public importance that the community understand the type of training and processes that should be in place to mitigate the risk of Maremma Sheepdogs.

4.6 Ownership

The ownership of Romeo has changed during the process of the objection to the menacing classification. Officers have been provided anecdotal evidence that Ms Teuwissen is currently overseas dealing with personal matters.

As such, it is possible that Ms Teuwissen will return to New Zealand and seek ownership of Romeo. The Hearings Committee is advised that officers consider Romeo a risk irrespective of his ownership.

5. Summary

Romeo is a Maremma Sheepdog, a breed recognised for its high propensity for displaying guarding and protecting behaviour. Furthermore, Romeo and canines in general, are not able to understand the complexities of human interactions. With Romeo, this is coupled with a propensity to physically attack a person that he perceives as a threat.

Officers recommend that the Hearings Committee uphold the menacing classification as Romeo has proven that he may pose a threat to the public. This threat exists independently of who owns Romeo.

6. Appendices

- Figure 1: Dog ownership record
- Figure 2: Aerial photograph of attack location
- Figure 3: High magnification aerial photograph of attack location
- Figure 4: Mr Alison medical record
- Figure 5: Photographs of Mr Alison's bite injury
- Figure 6: Statement of Mr Alison
- Figure 7: Statement of Ms Teuwissen
- Figure 8: Objection to menacing classification
- Figure 9: South Wairarapa District Council service request
- Figure 10: WorkSafe FAQ for property management
- Figure 11: Supporting documentation provided by Ms Teuwissen
- Figure 12: Supporting email documentation provided by Ms Teuwissen
- Figure 13: Partially redacted legal advice
- Figure 14: Letter sent to Mr Navratil
- Figure 15: Request for documentation from Mr Navratil
- Figure 16: Maremma Sheepdog breed information
- Figure 17: Photo of signage at attack location immediately after dog attack
- Figure 18: Photo of improved signage at attack location subsequent to attack

Contact Officer: Dr Shane Sykes, Environmental Services Manager

Reviewed By: Russell O'Leary, Group Manager Planning and Environment

APPENDICES

Owner: 11472

Yvonne Tewissen

Owner

Name Yvonne Tewissen
 Date of Birth 6/11/1959
 Mobile
 Address 298 State Highway 53, RD 1, Featherston 5771
 Location 298 State Highway 53, Featherston (Rural)
 Valuation No 1825008300 (1.2621 hectares)
 Area Featherston
 Balance 0.00
 Group Preferred Owner
 Registration Notice 27/06/18

Dogs: 2

ID	Regn ID	Name	Breed	Colour	Sex	Neutered	Age	Class	Transfer Out	New Owner	Decease
33006	180337	ROMEO*	Sheepdog, Maremma	White	Male	No	9 Years	Rural T		N	D
33007	180338	GUILLIATLA*	Sheepdog, Maremma	White	Female	Yes	7 Years	Rural T		N	D

History (sorted chronologically)

Sort History by Type

* No history records located *

Documents Saved

By Unique Owner Number 0033005

None found

Notes

Date Last Changed By

No notes found

Documents

Date File Name Description Comments

No documents found

Owner Unique ID

33005

Last NDD Change: 9/08/17 12.35

Update Timestamp

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Figure 2

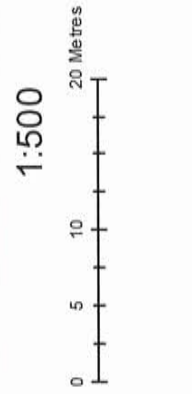
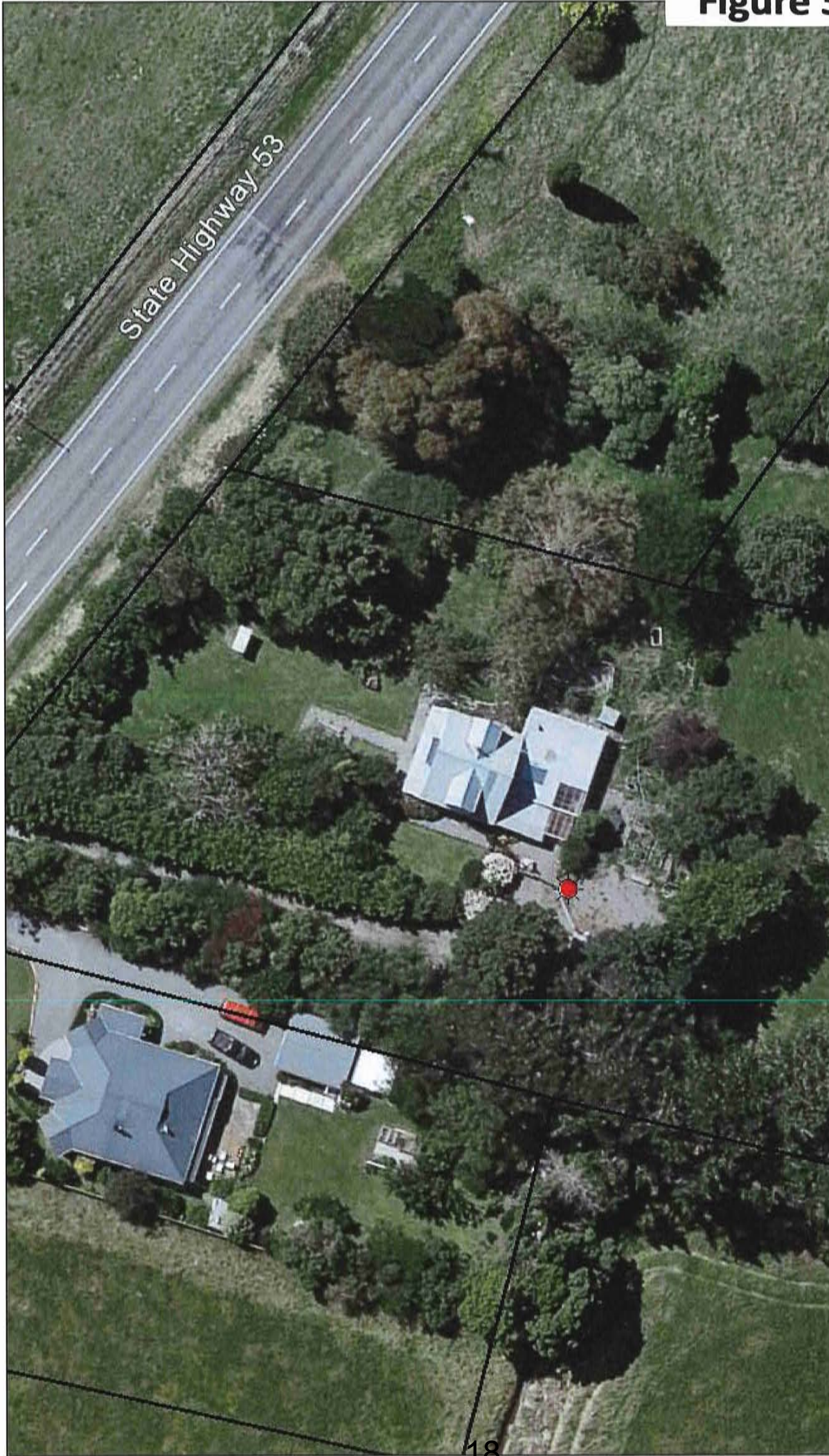


DISCLAIMER
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April 9, 2019

- Masterton Property
- Carterton Property
- South Wairarapa Property

Figure 3



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April 12, 2019

- Masterton Property
- Carterton Property
- South Wairarapa Property

Figure 4

WORK & REFERRAL

ACC45 No.

YY03555

PERSONAL DETAILS

MR ALISON
THOMAS



PROVIDER DETAILS

Debbie Banks

Featherston Medical Limited
3 Clifford Square
Featherston, South Wairarapa

ACC # PAH112 NZMC: 064838

INJURY, DIAGNOSIS AND ASSISTANCE

Date of accident: 31/10/2018

Time of accident: 10:40 AM

Attending a property and got bitten on left thigh by dog.

TE60 (Dog bite)

Left

(TE60.00) Confirmed

WORK CAPACITY

This Patient is able to continue their normal hours of work

Treatment Provider Signature: *Debbie Banks*

Date: 31/10/2018

This form is NOT a complete ACC45 and is not suitable for sending to ACC.
It is intended for referral Health Providers and Employers.

Figure 5





Statement from Tom Alison

Name: Tom Alison

Date: 31-10-2018

Address:

Time: 1.00 pm

Town: Featherston

Tom advised he does not have to say anything or give a statement and he has the right to seek legal advice but anything he did say may be used as evidence in court.

The sequence of events was:

At exactly 9.37am I rang the property manager (Greer Sinton -) who looks after the property at 298 SHWY 53 to make sure the dog owner knew the dogs on the property were going to be locked up as I was going to be there soon to do a job.

I didn't get an answer from the property manager so I left her a message then rang the tenant ^{on,} ~~at~~ approximately 9.38am to say I was going to be late, at 10.30am I rang the tenant again to confirm the address and let her know I was only five minutes away, I didn't mention the dogs as I assumed she would have them locked away knowing I would be arriving soon and that would be confirmed as that was the agreement.

At 10.31am I arrived at the house, parked my van on the drive, got out and opened a small gate that led to a porch door, there was no dog signage on the gate. As I approached the porch door a large white dog sort of like a Samoyed came running out of the porch door and came straight at me, the dog latched onto my left thigh so I back kicked the dog and it let go of me and made for the porch door, the dog was determined to bite me again as I made for the door and as I got through the door and into the porch the dog grabbed the back of my shirt and began trying to pull me back outside.

By this stage the owner of the dog was there and was yelling "Romeo let go, stop, Romeo let go, stop" the dog let go of my shirt and I closed the door on the dog to get it away from me, I don't think the owner saw the initial attack on me, that's when I noticed there was a second dog similar looking to the dog that attacked me inside the house, it did not get involved in the attack.

The owner left the porch area leaving me alone in the porch then came back and said she had ~~locked~~ ^{put away} both dogs, she said I could get on with the job I had come for, the owner was unapologetic and ~~didn't even ask how I was.~~ ^{didn't appear to be interested in when I showed} Her the dog bite. ^{There was no offer of assistance or any apology} ^{came. shame by Her.} The dog owner seemed shocked when I told her I would not be doing the job because I had been bitten by her dog and then I left the property and rang my employer at 10.37am to explain what had happened.

I went straight to the FSTN medical centre and had my wound treated and dressed.

My Company, GVE Electrical & Pumping Ltd, intends to contact the property manager and owner of the house to report the attack, I have already reported the attack to Council.

P.T.O

Signed 

Date 22/11/18

Signed  (Bylaws Officer)

Date 22-11-18

I

Statement from Yvonne Teuwissen

Name: Yvonne Teuwissen

Date: 31-10-2018

Address: 298 SHWY 53

Time: 2.30 pm

Town: Featherston

Yvonne advised she does not have to say anything or give a statement and she has the right to seek legal advice but anything she did say may be used as evidence in court.

The Sequence of events was:

On the 31-10-2018 at around 9.30am the tradesman rang to say he would be late, he did not mention my dogs at all, then about 10.10am he rang again to confirm the address, he said he was having trouble finding my place but I knew he would be arriving soon, he did not ask if the dogs were locked up and I did not know he was under the impression the dogs were going to be lock up.

About five minutes later I was in the living room of my house with my dogs, the front porch door to my house was open and all of a sudden one of my dogs ROMEO rushed out through the porch door and began barking. I hadn't heard the tradesman vehicle arrive and wondered what ROMEO was barking at.

I went to investigate the barking and saw the tradesman in my porch with ROMEO holding onto the back of his shirt trying to pull him out of the porch area, I yelled at ROMEO to let go and he did allowing the tradesman to close the door of the porch.

I saw the wound on the tradesman's leg and I asked the tradesman if he was OK but he didn't answer me, he said he was leaving so I held my dogs so he could leave, I said I was sorry about what had happened.

ROMEO was barking at the tradesman as he left in his van as a warning sign.

I had no idea my dogs were supposed to be locked away before the tradesman arrived, I had not been advised this had to happen by anyone.

This has never happened before in the 10 years I have owned Romeo.

Signed 

Date 19-11-2018

Signed 

(Bylaws Officer)

Date 26-11-18

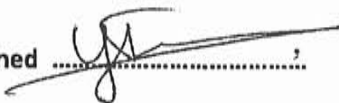
Figure 8

OBJECTION TO MENACING CLASSIFICATION

You may object to the Classification of your dog as Menacing by asking in writing for a hearing to be held at the South Wairarapa District Council and the grounds on which you object to your dog **Romeo** being Classified as Menacing under section 33A(1)(b)(i) D.C.A 1996)

Once we have received this you will be notified of the place and time the hearing will be heard.

Would you like a hearing to object to the Menacing Classification - YES NO

Signed 

Date1-2-2019.....

Signed(Bylaws Officer)

Date

Figure 9



South Wairarapa District Council

19 Kitchener Street, Martinborough
PO Box 6, Martinborough
Telephone (06) 306 9611 - Facsimile (06) 306 9373
Web www.swdc.govt.nz

Request: 182205
To: Dog Control
Attn: Andrew McEwan
Priority: 6:1 Month
Deadline: 23/04/19

District: Featherston
Received by: Andrew McEwan
Date & time received: 31/10/18 - 12.00
How received: Telephone
Date & time of incident: 31/10/18 - 11.00
Action required: Under Action

Caller Information

Name Tom Alison
Address
Phone
Email

Request

Type Dog - Attacking Human
Details Bitten by dog.

Location

Details 298 SHWY 53.

Dog Details

Owner 11472 : Yvonne Tewissen : 298 State Highway 53, RD 1, Featherston
Safety Risk: No
Safety-Note:
Dogs 180337 : ROMEO : Sheepdog, Maremma : White
Dangerous Dog: No
180338 : GUILLIATLA : Sheepdog, Maremma : White
Dangerous Dog: No

Hazards

Employees on site
Identify Hazards
Action for Hazards
Comments

Actions

Status Under Action - Andrew McEwan - Completed: 31/10/18 - 13.00
Details Met with Tom Alison - Took Statement/Photos
Met with Yvonne Tewissen - Took Statement/Photos

Status Under Action - Andrew McEwan - Completed: 01/11/18 - 13.10
Details Rang Greer Sinton (Property Manager) she advised there was no process in place where tradesman was to ring her so she could let dog owner know trades man was coming and dogs needed to be locked up.

Actions cont..

Status Under Action - Andrew McEwan - Completed: 02/11/18 - 08.55

Details Gordon Mouldey rang Council and advised he had not been on the property since about a year ago when he first looked at the job. Gordon had not spoken to the property manager about her obligation to inform the dog owner (Tenant) tradesman would be coming onto the property at a certain time and dogs needed to be locked up, Gordon assumed it was part of her job managing the property.

Status Under Action - Andrew McEwan - Completed: 18/01/19 - 13.00

Details Yvonne Tewissen and her friend Yvonne came into Council for a meeting about what her options were in regard to objecting to the Infringement and the Menacing Classification.

Status Under Action - Andrew McEwan - Completed: 22/01/19 - 13.30

Details Hand posted to 298 SHWY 53 a revised Menacing Classification Notice.

This Action

Arrived

Completed

Further action required?

Officer

Complainant advised?



Managing health and safety

Property management FAQs

Answers to questions about the responsibilities of property managers and owners, and body corporates under the Health and Safety at Work Act, the Gas (Safety & Measurement) Regulations and Electricity (Safety) Regulations.

As a commercial property owner/landlord what's my duty under HSWA?

Under HSWA, a commercial property owner/landlord is a Person Conducting a Business or Undertaking (PCBU). This means you have a duty of care, so far as is reasonably practicable, to ensure the health and safety of everyone involved with or affected by work on or at your property. This includes work that you organise or are responsible for.

Those that could be affected include tenants, contractors engaged by you, or members of the public visiting your property.

I'm a property manager. Do I have a duty?

Under HSWA, a property manager is also a PCBU and will also have a duty of care, so far as is reasonably practicable, to ensure the health and safety of everybody involved with or affected by work on the property that you are responsible for.

As the property manager you will also have responsibility for the management and control of the property with the duty to ensure the property (if it's a workplace) is without risks to health and safety.

I'm a commercial tenant – what's my duty?

Commercial tenants are also PCBUs and you have the same duty of care as other PCBUs, so far as is reasonably practicable, to ensure the health and safety of your own workers and others.

If you are a residential tenant, you only have a responsibility under the Act when work is carried out on the property. You have to take reasonable care for your own and others' health and safety, and follow any reasonable instructions given by the PCBU doing the work (for example, a plumber or electrician).

What happens when there is more than one business involved?

When there is more than one business involved, you all must work together, so far as is reasonably practicable, by consulting, cooperating, and coordinating your activities in relation to workplace health and safety.

More than one business can have a duty in relation to the same matter. This is called [overlapping duties](#) [[/managing-health-and-safety/getting-started/understanding-the-law/overlapping-duties/](#)].

See [Working with other businesses](#) [[/managing-health-and-safety/businesses/working-with-other-businesses/](#)] for more information.

What about Bodies Corporate – do they have a duty?

Yes. Under HSWA, a Body Corporate is considered to be a PCBU. As a result, a Body Corporate has a duty to ensure, so far as is reasonably practicable, the health and safety of workers, and that the health and safety of other persons is not put at risk from its work. These duties apply to matters over which the Body Corporate has influence and control.

Who is an officer and what's their role?

An officer is someone who holds a senior leadership position and has the ability to significantly influence the management of a PCBU, for example, directors, trustees, board members. Officers have a duty because they make policy and investment decisions that can affect workplace health and safety. Every officer has a duty – it is not a joint duty.

For example, members of the Management Committee of a Body Corporate are officers and have a duty of due diligence under HSWA. While the Body Corporate is the PCBU and has the primary duty of care to ensure workplace health and safety, the committee members have a duty to make sure the Body Corporate is doing what it needs to do to ensure the health and safety of workers and others when work is being carried out on the common areas of the property.

Officers themselves don't have the duty to keep people safe – that is the duty of the PCBU (the Body Corporate), but as leaders of the organisation they should make sure the organisation is doing the right things to manage risks (so far as is reasonably practicable).

See the [Officer FAQs](#) [[/managing-health-and-safety/getting-started/mythbusting-and-faqs/officer-faqs/](#)] for more information.

I'm a rental property owner, what are my duties under the new law?

If you are a residential landlord, you are a PCBU under the law. The steps that you can take to meet your legal duties are straightforward.

Engage competent contractors to do any work on the property

We don't expect a landlord to be an expert in the trade that is required to complete work. Once a tradesperson or appropriate skilled contractor has been engaged, that contractor then has the

responsibility to ensure that the work they do does not put the health and safety of others (including tenants) at risk.

Ensure any serious injury or illness arising from work is notified

Contractors should [notify us if any serious injury or illness occurs while work is being undertaken](#) [/notify-worksafe/](#). Landlords should check this has been done (where they become aware of such incidents).

None of this requires extensive manuals or paper-based systems, although property management companies or landlords with numerous properties may choose to use documented systems to keep on top of requirements and make it easier to track the progress of work activities.

Any matter concerning accommodation standards and conditions for residential tenancies is covered by tenancy law, so we will not become involved.

I'm temporarily renting out my family home (or part of my home) what are my duties under the new law?

Where someone is temporarily renting out a family home or a part of a home (eg Air BnB), we have no particular interest in such premises.

As a matter of common sense and in the interests of ensuring safety however, it is sensible for Air BnB operators (or others) to avoid having any significant work carried out on/in the home while it is fully or partially rented out.

Do I have any other health and safety responsibilities?

The [Gas \(Safety & Measurement\) Regulations 2010\(external link\)](#) [/http://www.legislation.govt.nz/regulation/public/2010/0076/latest/DLM2359501.html](http://www.legislation.govt.nz/regulation/public/2010/0076/latest/DLM2359501.html) have specific provisions for landlords. These apply to the landlords of residential premises and include an agent of a landlord. A landlord must ensure any gas appliance or installation used in connection with a rental premises is safe and must not allow any person to use an unsafe gas appliance or installation.

A gas installation is deemed safe for the purposes of the residential tenancy if at the commencement of the tenancy if it is assessed as being not unsafe under a safety verification check NZ Safety Standard NZS 5255.

The landlord must ensure that the occupier of any rental premises is provided with adequate instructions for the safe use of any gas appliances or installation.

The [Electricity \(Safety\) Regulations 2010\(external link\)](#) [/http://www.legislation.govt.nz/regulation/public/2010/0036/latest/DLM2763501.html](http://www.legislation.govt.nz/regulation/public/2010/0036/latest/DLM2763501.html) also have similar provisions that place a duty on landlords to ensure the electrical installation is safe.

Last updated 17 April 2018

WORKSAFE

Mahi Haumaru Aotearoa

Figure 11

To: Andrew McEwan

I have received your Notice of Classification of my dog Romeo as a Menacing Dog. As stated I am replying to the said incident.

1. The tradesman had a pre arranged meeting with me but he was over 90 minutes late and if I had locked my dog up at the time he was supposed to arrive he would have been locked up over 90 minutes which I would class as cruelty to the dog.
2. The tradesman ASSUMED that the Property Manager would have contacted the owner of the dogs (myself), why assume and secondly, the tradesmans Supervisor had visited the property prior to do the estimate for work to be done and had behaved appropriately knowing dogs were on the property. He waited until I had introduced the dogs to him and there were NO incidents at all.
3. Is there an Act or Law that I am unaware of stating that every property that has a dog must have a Signage at the Gates? I have Signage on my door which is approximately 1.5 meters from the entrance gate.
4. When Romeo grabbed hold of the tradesman's shirt and tried to pull him from the porch entrance he was using minimum force to get the intruder to exit the property to protect his owner, myself. Typically Romeo will go to the entrance, bark, expect the intruder to stop, and then wait until I have given clearance.

Romeo could have done a lot of damage to the tradesman but he did not, he just tried to exit him off the porch entrance, this shows a dog who is not dangerous, and very controlled.

The tradesman said he was 5 minutes away but his timekeeping was not what you would call exact. The fact that he entered my home without texting or calling out at the gate and waiting for me as he knowing there were two dogs on the property, and, as I was in the bathroom.

As your letter stated as soon as I called Romeo off the tradesman he showed ability to obey direction and released him.

Romeo is 10 years old, hundreds of people have visited my home, children, tradesman, defensive people, and friends and no body has ever been attacked. I have enclosed a letter from persons who know my dogs and interact with them on a frequent level in the public domain, lakes, rivers, and trails.

Under Section 14.1 of the Dog Act every precaution must be taken to prevent dogs, a dog being a nuisance or injuries to health, well I believe I did notify the tradesman about my dogs, his manager had visited and he felt no need to warn his tradesman that the dogs were dangerous.

Romeo saw a complete stranger enter his family home and his only instincts was to get them away as this is the only way he knew.

SOUTH WAIRARAPA DISTRICT COUNCIL



The tradesman seems to have completely ignored all advice from that he received and deliberately entered the property more than likely in a rush and fed up as he had trouble finding the property and was already very late.

A Maremma sheepdog is not classified as a dangerous dog and not typically hostile with their dogs breed type.

Section 6.6 4 (1) Dog Control Act 1996 33B (1) (6)

The infringement Notice must have a statement as to the right of the person served with the notice to request a hearing. Person has a right to be heard in support of the objection. I wish to request a hearing to discuss all of the charges laid against myself and my dog with my support person.

Regards

Yvonne Teuwissen .

A handwritten signature in blue ink, appearing to be 'Yvonne Teuwissen', with a long horizontal stroke extending to the right.

SOUTH WAIRARAPA DISTRICT COUNCIL



17 December 2018

Dear Mr McEwan,

We are writing this letter in support of Yvonne Teuwissen and her dog Romeo.

We have interacted with Romeo for a period of time in the public environment and at Yvonne's property in Featherston. Romeo has never displayed any signs of aggression or threat to any of us under any circumstances.

We have dogs as well and use our common sense when dealing with them. We would not just walk into Yvonne's house but would call from the gate and wait for her to give her dogs the okay for us to enter.

Romeo is 10 years old, extremely well behaved, and because of his breed very relaxed and casual. He knows who his owner is and in the public environment is not a threat at any level. We often meet new dogs and owners on our walks and there have been no problems at any time.

We do not believe that Romeo is a dangerous dog and that he does not need to be muzzled outside his home. His actions were those of a dog and any of our dogs in insuring that their master (us) are not threatened and are safe.

All of the dogs including Romeo have attended a 4 – 5 week dog training school and passed testing at all levels.

We ask for your consideration in this situation which seems to be a one of.

Regards

yvonne Ellison
Chris Sullivan

Yvonne Ellison
Chris Sullivan

Chris Sullivan

Orathni Eastley

SOUTH WAIRARAPA DISTRICT COUNCIL



ELLISON, Yvonne (RIMUPP)

From: Yvonne Teuwissen <yvonneteuwissen@gmail.com>
Sent: 21 January 2019 11:52 a.m.
To: ELLISON, Yvonne (RIMUPP)
Subject: Fwd: Property access

Hi Yvonne,
Attached the email of the lady that brought a parcel and came in to the inner gate.
I think it is useful

Cheers
Yvonne

----- Forwarded message -----

From: Yvonne Teuwissen <yvonneteuwissen@gmail.com>
Date: Mon, 21 Jan 2019 11:47
Subject: Re: Property access
To:

Hello Katy,

Thank you for that.
It is very important to the dogs and to me.

Regards
Yvonne Teuwissen

On Sat, 19 Jan 2019 10:44 wrote:
Hi Yvonne,

Apologies for the delay in sending this message, I've been away on holiday.

I wanted to lend some support as I understand your dog and a tradesperson have had an unsavoury interaction.

When I had to deliver a parcel to your home, I found access to the property simple and straightforward. The yard was fenced and your dogs were contained within the property and inside your house, albeit with the back door open. You explained to me that the process was to ring a bell to alert you to my arrival and wait for you to come out. The dogs were alerted to my arrival, and while barking, came out of the house. You came out momentarily after them (You would have come out first upon hearing my car arrive but the rain was pelting down and muffled the cars sound) and reassured the dogs that I was here to see you and it was ok. . This seemed like an entirely acceptable process for the dog, myself and you.

Kind regards
Katy

Sent from my iPhone

Shane Sykes - Environmental Services Manager

From: Jacob Burton <jacob.burton@hazelton.co.nz>
Sent: Thursday, 14 March 2019 10:30 a.m.
To: Shane Sykes - Environmental Services Manager
Cc: Rachel Conner
Subject: RE: Dog Control Act: Menacing classification objection and change of ownership

Hi Shane,

We have reviewed the provisions on the Dog Control Act looked for relevant case law on this particular issue. The Act provides very little guidance on this particular situation and we were unable to find any case law on this issue.

As you have correctly pointed out, the classification of a dog as menacing under section 33A *applies to a dog*. This means that even if the owner of the dog changes, the dog remains classified as menacing.

What you have described is unusual – the Act does not contemplate a situation where an owner objects to a classification of a dog, but ceases to be the owner of the dog before the objection has been heard by the Council.

Section 2 of the Act defines an “owner” as:

- owner, in relation to any dog, means every person who –*
- (a) owns the dog; or*
 - (b) has the dog in his or her possession, whether the dog is at large or in confinement, otherwise than for a period not exceeding 72 hours for the purpose of preventing the dog causing injury, damage, or distress, or for the sole purpose of restoring a lost dog to its owner; or*
 - (c) the parent or guardian of a person under the age of 16 years who –*
 - (i) is the owner of the dog pursuant to paragraph (a) or paragraph (b); and*
 - (ii) is a member of the parent or guardian’s household living with and dependent on the parent or guardian...*

Case law suggests that more than one person can be considered the “owner” of the dog at the same time, but it is clear from this definition that the previous owner of the dog is not an “owner” for the purposes of the Dog Control Act, providing they no longer have the dog in their possession. This is particularly so if ownership has formally been transferred to the new person by an update to the Council’s records.

In this case we understand that an objection has already been lodged by the previous owner of the dog. That person was the “owner” for purposes of the Act at the time that the objection was lodged, but not anymore. The question is then whether the change in status of this person has any bearing on the objection before the Council. We consider that it does.

Section 33B(1) of the Act says:

- 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.*

The owner is the person who has the right to be heard in support of the objection. It does not say the “the person objecting” has the right to be heard in support of the objection. We consider that this means that the new owner takes on the right of the previous owner under this section to be heard in support of the application. The objection process does not end because the dog changed hands once an objection had already been made, but the new owner can choose whether they want to be heard or not.

The problem with this is that the new owner may not know anything about the situation giving rise to the classification of the dog as menacing by the Council, and may not have anything to add in support of the objection. However, there is nothing to prevent the new owner from relying on evidence provided by the previous owner in support of the objection (which could include calling the previous owner as a witness).

If the new owner decides not to proceed with the objection, the previous owner could be left without any way to proceed with the objection, as they no longer have a right to be heard themselves.

Section 33B(2) of the Act says:

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.*

Once an objection has been made, and the owner has been heard (if they wish to be heard), the Council simply forms a decision in consideration of the factors from (a) to (d). The Council here has the power to take into account a broad range of factors under this section. They are not optional, the Council *must* have regard to them.

We can envisage the following situation arising: A dog changes owners after an objection as to its classification is made, but before the previous owner has been heard in support of the application. The previous owner is denied the right to be heard in support of an objection they originally made, but the new owner decides not to be heard in support of the application. The Council therefore proceeds with considering the objection under section 33B(2), aware that the objection was made by the previous owner, but that no person is being heard in support of the objection.

We consider that the Council would be required to ask the previous owner for any evidence or information that supports the objection, as in most cases this would be relevant under factors (b) to (d) that the Council must have regard to. This does not necessarily need to involve the previous owner “being heard” in support of the application – the Council could ask the previous owner to provide a written statement in support, for example.

If the Council denies the previous owner from having any input into the objection process on the basis that it no longer has the right to be heard under section 33B(1), and then subsequently fails to take into account any evidence that the previous owner may have in support of the objection that would fall under factors (b) to (d) that it is required to have regard to, then there is a risk that the decision to classify the dog as menacing may be judicially reviewed on the basis that the Council failed to take into account relevant information in making its decision.

Let me know if you have any further questions.

Regards,
Jacob Burton
Solicitor
(04) 472 7574

This e-mail is confidential and may be legally privileged. If you are not the addressee any use, disclosure, forwarding or printing of this document is prohibited. If you are not the addressee please notify us and then delete this document. Thank you.

From: Shane Sykes - Environmental Services Manager <shane.sykes@swdc.govt.nz>
Sent: Wednesday, March 13, 2019 10:37 AM
To: Rachel Conner <rachel.conner@hazelton.co.nz>
Subject: Dog Control Act: Menacing classification objection and change of ownership

Hi Rachel,

I have a somewhat strange situation and just thought I would get your input on the best approach from a legal perspective.

We have had a dog attack in our district in late last year and we have decided to issue an infringement notice and a menacing classification.

The owner has requested:

- 1) For the infringement that the TA considers matters relating to the alleged offence
- 2) For the menacing classification that they have an objection and this is to be heard by the Hearings Committee.

We have subsequently received a notification for a change of ownership for two dogs (one of which was involved in the above matters).

My understanding is that the ownership change does not have any bearing on the infringement as it is issued to the dog owner at the time of the incident.

However, I am not sure how the ownership change might affect the menacing classification.

Section 33B of the Act describes that the owner of the dog may object to the classification. But what happens if the ownership changes mid-objection?

- Does the new owner now deal with it?
- Does it stay with the old owner?
- Or does it nullify the classification altogether?

I would imagine that it can't nullify the classification as the **dog** has been classified. I would imagine that it may be a case for the new owner to determine whether they wish to continue with an objection? If so, does the Council then have to give the new owner a new notice of menacing classification and they then have 14 days to object?

If that is the case, how would a hearing proceed with the new owner? Would we be able to call the original owner (at the time of the attack) as a witness?

If you could go through this topic and provide some advice on how we are best to proceed I would appreciate that. I may of course have follow up questions.

Kind regards,

Shane Sykes

Michal Navratil
298 State Highway 53
RD 1
Featherston 5771



SOUTH WAIRARAPA
DISTRICT COUNCIL
Kia Reretahi Tātau

FILE COPY

4 April 2019

MENACING CLASSIFICATION: ROMEO

Dear Mr Navratil,

I wanted to inform you of several matters that relate to the upcoming hearing in relation to an objection to a menacing classification for ROMEO, a maremma dog now owned by you.

Firstly, Council has had a person communicate with Council stating that they act as a support person for you. They have stated that you would like them to be present at the hearing for the objection to the menacing classification of ROMEO.

In order for Council to communicate with another person about matters affecting you, Council will require written notification of your consent. In your written consent you are able to state the limits of access that you wish to provide to any nominated person in relation to your personal matters.

Please be aware that if you wish to bring a person along to the hearing, you will need to be clear on why that person is there. You are able to have a person present with you to provide you with personal support. However, this person will not have any right to be heard by the Hearings committee.

If you need language assistance, Council is able to provide this for you from a suitably qualified person. Alternatively, you may bring along a person to act as an interpreter for you but Council would ask to see what qualifications this person has in relation to acting as an interpreter. This is to ensure that we follow the correct legal process.

Please inform Council if this is the case along with what language you are most comfortable in communicating with an interpreter.

Finally, you are able to have a person speak at the hearing if you call them as a witness. The Hearings Committee will need to weigh the evidence presented by any witness when they make their decision.

We would encourage you to seek independent legal advice if you are unsure of any of the information that has been provided to you or for support during the process.

Sincerely,

Dr Shane Sykes
Environmental Services Manager

Figure 15

April 8, 2019

Dear Mr Sykes,

I would like to request that Yvonne Ellison be my Support Person in the dealing with the case of Romeo, my newly acquired dog. She has been involved with this case as Support Person for Yvonne Teuwissen since the beginning and knows quite a bit about the case. I would like her to have full access to any information regarding Romeo and that she is able to attend the hearing set for April 17, 2019 at 12:30PM regarding the Menacing Classification.

I am unsure if I have all of the paperwork regarding Romeo and request a copy of paperwork that has been received and dispensed to and from the person laying charges and to and from Yvonne Teuwissen.

Kind Regards,

Michal Navratil



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Breeds » MAREMMA SHEEPDOG

Maremma Sheepdog

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General Information - Maremma Sheepdog

Group:	Working
Size:	Large
Lifespan:	9-12 years
Exercise:	High
Grooming:	Medium
Trainability:	Medium
Watchdog Ability:	Very high
Protection Ability:	Very high
Area of Origin:	Italy
Date of Origin:	Ancient times
Other Names:	Maremma, Pastore, Abruzzese, Cane Da Pastore, Maremmano-Abruzzese
Original Function:	Guardian



History

The Maremma Sheepdog, also known as the Pastore Maremmano-Abruzzese, is an ancient breed from Italy, pre-dating the Romans. Originally classified as two breeds, the Mountain Dog, the Abruzzese, and the Maremmano with a somewhat shorter coat, they are now considered one breed and were officially designated as such in 1950. They belong to the same family as the Kuvasz, the Akbash, the Komondor, and the Pyrenean Mountain Dog. This wonderful sheepdog is a great defender of its flock against wolves, and is valued by shepherds. In more recent years, mostly in England, it has become a companion dog, where it will defend its family and particularly the children. There are several Maremmas in New Zealand being used to protect stock such as Alpacas, pigs, sheep, goats, chickens and donkeys (mostly from two-legged predators).

Temperament

The Maremma Sheepdog is intelligent and loyal, and enjoys its outdoor work, and thus will need space; hence not a good apartment dog! It also may be somewhat independent and so is not the easiest dog to train.

Upkeep

The Maremma Sheepdog needs daily exercise and enjoys a long walk or good run in a safe area. It especially enjoys cold weather and can live outdoors in temperate to cool climates. It does best when allowed access to both house and yard. Its coat needs brushing one or two times weekly, more often during heavy shedding periods.

NZ D

New Zealand only mag that focus specifically the well-being of dogs and canine activities

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Figure 17

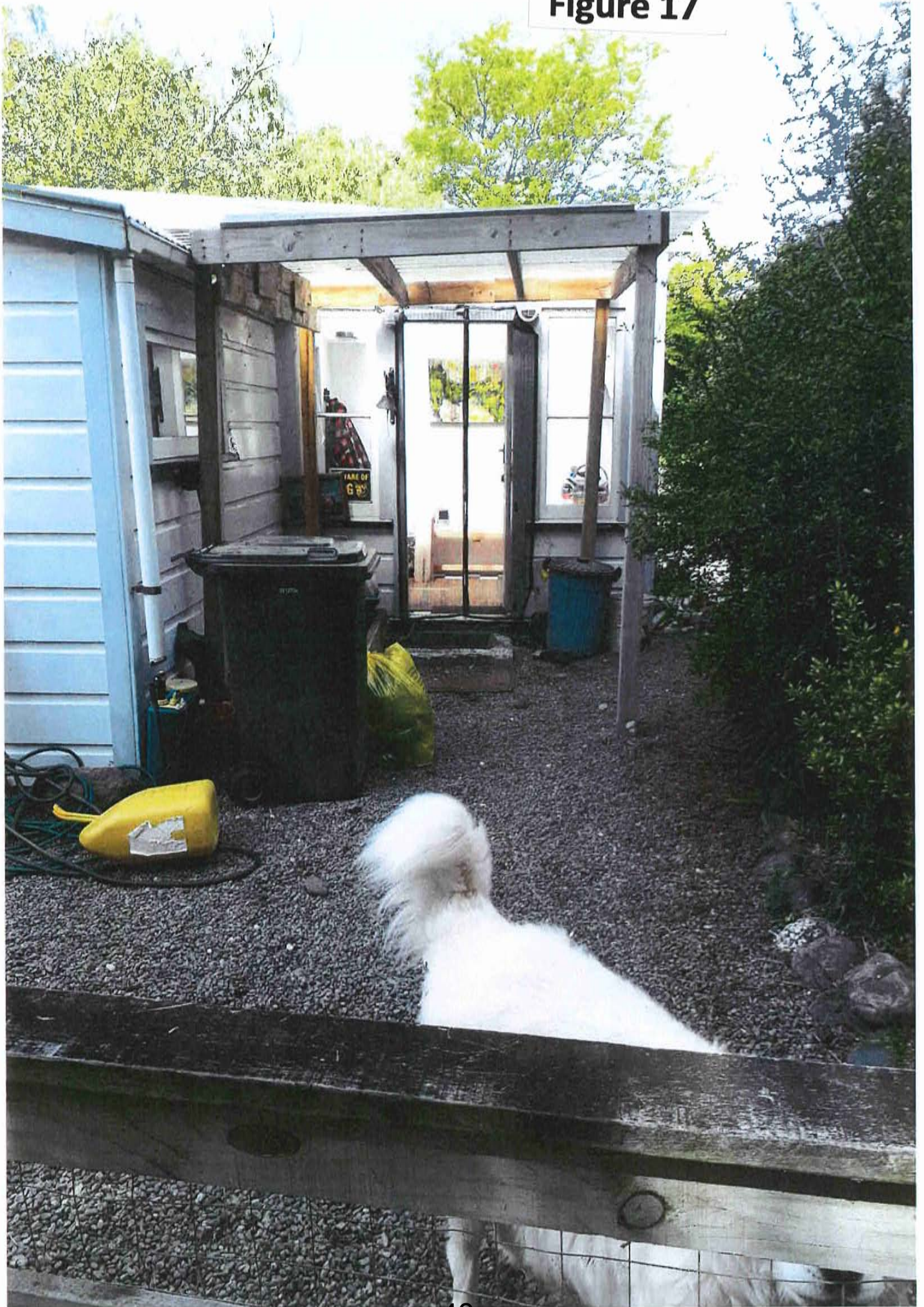


Figure 18

