

# *Hastings District Council*

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## OPEN A G E N D A

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### HEARINGS COMMITTEE MEETING

**(REQUEST FOR THE RELEASE OF A DOG HELD IN  
RETENTION PENDING PROSECUTION (SMOKEY))**

Meeting Date: **Thursday, 9 May 2019**

Time: **10.00am**

Venue: **Council Chamber  
Ground Floor  
Civic Administration Building  
Lyndon Road East  
Hastings**

<b>Committee Members</b>	<b>Panel Members Rostered on for this hearing:</b> Chair: Councillor Lyons Councillors Schollum and Barber  <b>Other Hearings Committee Members (not rostered on for this hearing):</b> Councillors Heaps, Kerr (Deputy Chair) and Redstone and Mr P Kay
<b>Officer Responsible</b>	Regulatory Solutions Manager – John Payne
<b>Committee Secretary</b>	Christine Hilton (Ext 5633)

## Hearings Committee – Terms of Reference

### Fields of Activity

The Hearings Committee is established to assist the Council by hearing and determining matters where a formal hearing is required under the provisions of the:

- Resource Management Act 1991
- Building Act 2004
- Health Act 1956
- Dog Control Act 1996
- Litter Act 1979
- Hastings District Council Bylaws
- Local Government Act 1974
- Local Government Act 2002
- Gambling Act 2003

### Membership (7 including 6 Councillors)

Chairman appointed by the Council from the membership of 6 Councillors

Deputy Chairman appointed by the Council from the membership of 6 Councillors

4 other Councillors

1 externally appointed member with relevant qualifications and experience

### Quorum\* –

- a) All members including the Chair (or Deputy Chair, in the Chair's absence) sitting on a hearing must be accredited (as of 12 September 2014).
- b) A maximum of three members including the Chairperson (or Deputy Chair, in the Chair's absence) to meet for any one hearing, except for Council Initiated Plan Change hearings where all members may attend and take part in the decision making process.
- c) For Hearings other than Council Initiated Plan Change hearings the quorum shall be two members.
- d) For Council Initiated Plan Change Hearings the quorum shall be three members.
- e) Members to sit on any hearing other than a Council Initiated Plan Change Hearing shall be selected by agreement between the Chair (or Deputy Chair, in the Chair's absence) and the Group Manager: Planning and Regulatory Services.
- f) For the purpose of hearing any objection in respect of the matters detailed under the Dog Control Act 1996 the Hearings Committee will consist of any three members selected by the Chair.

\*In the case of hearings under the provisions of the Resource Management Act 1991 the quorum is to meet the obligations contained in section 39B of the Act.

### Delegated Powers

#### HEARINGS COMMITTEE

##### 1. RESOURCE MANAGEMENT ACT 1991

Pursuant to Section 34(1) of the Resource Management Act 1991 the Hearings Committee of Council is delegated power to:

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| 1) Hear, consider and decide upon any Resource Consent application or any other application made to Council under the Act (including private plan change requests). For the avoidance of doubt, this includes the use or exercise of any powers vested in the Council under the Act to process, hear and decide upon any such application. | Decide on Applications and Private Plan Change requests. |
| 2) Hear, consider and recommend to the Strategy, Planning and Partnerships Committee or Council as it considers appropriate, on submissions made on any proposed plan or any Council initiated change to the District Plan or variations to the Proposed Plan.   | Submission on Council Plan Changes.                      |
| 3) Appoint a Commissioner or Commissioners to hear, consider and decide on any Resource Consent application or any other application made to Council under the Act. This   | Appoint Commissioner for Resource Consents.              |

delegation is subject to the requirement that any Hearings Commissioner(s) appointed shall hold a valid certificate of accreditation under section 39A of the Act.	
4) Appoint a Commissioner or Commissioners to hear, consider and recommend to the Strategy, Planning and Partnerships Committee or Council as it considers appropriate, on any submissions made on any proposed plan or any Council or privately initiated change to the District Plan. This delegation is subject to the requirement that any Hearings Commissioner(s) appointed shall hold a valid certificate of accreditation under section 39A of the Act.	Appoint Commissioner for Proposed District Plan and Council or Private Plan Changes.
5) Extend any time limits or waive compliance with any requirement specified in the Act or Regulations in respect of any matter before it under the Act and pursuant to the above delegations pursuant to Section 37 of the Act.	Extend Time Limits and Waive Compliance.
6) Hear and determine any objection made pursuant to Section 357, 357A, 357B, 357C and 357D of the Act	Review of Decisions made under Delegation.
7) Make an order, pursuant to Section 42 of the Act, relating to the protection of sensitive information in respect of any matter before it.	Protection of Sensitive Information.
8) Waive, pursuant to Section 42A(4) of the Act, compliance with Section 42A(3) of the Act relating to the receiving of officers' reports in respect of any matter before it.	Waive Time for Receipt of Officers' Reports.
9) Determine, pursuant to Section 91 of the Act, not to proceed with a hearing of an application for Resource Consent where it considers additional consents under the Act are required in respect of any application before it.	Defer Application Where Other Consents Required.
10) Require, pursuant to Section 92 of the Act, further information relating to any application before it and postpone notification, hearing or determination of the application.	Require Further Information.
11) The above delegations shall apply with all necessary modifications to:	
i) Any notice of review of Consent conditions issued by Council pursuant to Section 128 of the Act or by any committee or officer or the Council having delegated authority to do so.	Review of Consent Conditions.
ii) Any submissions on any requirement for a designation or alteration to a designation made pursuant to Sections 168, 168A or 181 of the Act.	Hear Submissions on Designations.
iii) Any submissions on any requirement for a Heritage Order made pursuant to Section 189 and 189A of the Act.	Hear Submissions on Heritage Orders.
12) Consider and make recommendations on any requirement for a designation or alteration to a designation pursuant to Section 171 of the Act.	Recommendations and Designations.
13) Consider and decide on any amendments to Council's District Plan to alter any information, where such an alteration is of minor effect, or may correct any minor errors pursuant to Clause 16(2) or 20A of Part 1 of the First Schedule to the Act.	Amend District Plan.

## 2. HEALTH ACT 1956

Pursuant to Clause 32 of Part 1 of the Seventh Schedule to the Local Government Act 2002 and Section 23 of the Health Act 1956 the Hearings Committee is delegated authority to:

i) Hear explanations against a notice to revoke registration issued pursuant to Clause 9 of the Health (Registration of Premises) Regulations 1966.	Explanations Why Registration Should Not be Revoked.
ii) Hear and determine any appeal against a direction or decision of any officer acting under delegated authority and any application or objection made pursuant to Clause 22 of the Housing Improvement Regulations 1974.	Determine Appeals, Applications or Objections to Requirements Under Housing Improvement Regulations.

### 3. DOG CONTROL ACT 1996

Pursuant to Clause 32 of Part 1 of the Seventh Schedule to the Local Government Act 2002, the Hearings Committee is delegated authority to hear and determine any objections lodged against any decision of an officer acting under delegated authority or any notice issued by a Dog Control Officer pursuant to the following Sections.

Decide on objections under the Dog Control Act 1996

Section 22	Objection to the classification as a probationary owner.
Section 26	Objection to disqualification from being an owner of a dog
Section 31	Objection to the classification of a dog as a dangerous dog
Section 33B	Objection to the classification of a dog as a menacing dog under section 33A.
Section 33D	Objection to the classification of a dog as a menacing dog under section 33C as it is believed to belong to 1 or more classified breeds.
Section 55	Objection to the issue of an abatement notice for a barking dog.
Section 70	An application for the return of a barking dog seized under section 56 for causing distress.
Section 71	An application for the release of a dog that is being held in custody under section 71(1) and (2) for threatening public safety.
Section 71(1)(a)	To be satisfied that a dog seized under section 15(1)(c) because the dog was without access to proper and sufficient food, water or shelter, will be given access to proper and sufficient food, water, or shelter if returned to the land or premises from which it was removed.
Section 71A(2)(a)(i)	To be satisfied that the owner of a dog seized under section 33EC (because the owner failed to comply with his obligations in respect of a dog classified as menacing), or of a dog classified as a menacing dog seized under section 33EB (because the owner failed to have the dog neutered), has demonstrated a willingness to comply with the relevant requirements".

### 4. LITTER ACT 1979

Pursuant to Clause 32 of Part 1 of the Seventh Schedule to the Local Government Act 2002, the Hearings Committee is delegated authority to hear and decide on any objection lodged pursuant to Section 10 of the Litter Act 1979 against a notice issued under that section.

Decide on Objections to Notices Issued by a Litter Control Officer.

### 5. Building Act 2004

Pursuant to Section 67A of the Building Act 2004 the Hearings Committee is delegated authority to grant a waiver or modification to section 162C(1) or (2) (which requires residential pools to have means of restricting access by unsupervised children) the requirements of the Act (with or without conditions) in the case of any particular pool.

Grant Exemptions to Pool Fencing Requirements.

### 6. HASTINGS DISTRICT COUNCIL BYLAWS

Pursuant to Clause 32(1) of Part 1 of the Seventh Schedule to the Local Government Act 2002, the Hearings Committee is delegated

authority to:

- |     |  |   |
|-----|--|---|
| i)  | Hear and determine any application for a review of any decision of a duly authorised officer pursuant to any part or provision of the Hastings District Council Bylaws.                            | Review of Delegated Decisions.          |
| ii) | Consider and determine any application under Clause 1.5 of Chapter 1 of the Hastings District Council Consolidated Bylaw for a dispensation from full compliance with any provision of the Bylaws. | Dispensations from Bylaws Requirements. |

## **7. LOCAL GOVERNMENT ACT 1974**

Pursuant to Clause 32(1) of Part 1 of the Seventh Schedule to the Local Government Act 2002 the Hearings Committee is authority to hear and recommend to Council on any objections to any proposal to stop any road pursuant to Section 342 and the Tenth Schedule to the Local Government Act 1974.

Hearing Objections to Road Stopping.

## **8. GAMBLING ACT 2003**

Pursuant to Clause 32(1) of Part 1 of the Seventh Schedule to the Local Government Act 2002, the Hearings Committee is delegated authority to:

- |    |   |  |
|----|---|--|
| i) | Hear, consider and determine in accordance with section 100 of the Gambling Act 2003, applications for territorial authority consent required under section 98 of that Act, as required by the Hastings District Council Class 4 Gambling Venue Policy. | Hear and Decide on Applications for Territorial Authority Consent. |
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# HASTINGS DISTRICT COUNCIL

**A HEARINGS COMMITTEE MEETING WILL BE HELD IN THE COUNCIL  
CHAMBER, GROUND FLOOR, CIVIC ADMINISTRATION BUILDING,  
LYNDON ROAD EAST, HASTINGS ON  
THURSDAY, 9 MAY 2019 AT 10.00AM**

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**1. APOLOGIES**

At the close of the agenda no requests for leave of absence had been received.

**2. REQUEST FOR THE RELEASE OF A DOG HELD IN RETENTION  
PENDING PROSECUTION (SMOKEY)**

**DOCUMENTS CIRCULATED FOR HEARING - COMPILED AS ONE  
DOCUMENT**

<b><u>Document 1</u></b>	The covering administrative report	<b>Pg 1</b>
	<b>Attachment A</b> Subject property at 904 Bedisloe Street	<b>Pg 5</b>
	<b>Attachment B</b> Request to release dog ID 82458	<b>Pg 7</b>
	<b>Attachment C</b> Excerpt from Dog Control Act 1996 - s71	<b>Pg 9</b>
	<b>Attachment D</b> Aerial view of subject site at 904 Bledisloe Street	<b>Pg 11</b>

**The Agenda can be viewed on the Council website and a reference hardcopy is held at the Council Civic Administration Building.**

**REPORT TO:** HEARINGS COMMITTEE

**MEETING DATE:** THURSDAY 9 MAY 2019

**FROM:** REGULATORY SOLUTIONS MANAGER  
JOHN PAYNE

**SUBJECT:** REQUEST FOR THE RELEASE OF A DOG HELD IN  
RETENTION PENDING PROSECUTION (SMOKEY)

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## **1.0 SUMMARY**

- 1.1 The purpose of this report is to obtain a decision from the Committee on a request for the return of an impounded dog held in retention pending prosecution.
- 1.2 This request arises from an application by the dog owner for the return of her dog.
- 1.3 Council is required to give effect to the purpose of local government as prescribed by Section 10 of the Local Government Act 2002. That purpose is to meet the current and future needs of communities for good quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses. Good quality means infrastructure, services and performance that are efficient and effective and appropriate to present and anticipated future circumstances.
- 1.4 The objective of this decision relevant to the purpose of Local Government is compliance with regulatory obligations under the Dog Control Act 1996.
- 1.5 This report concludes by recommending the Committee evaluates the evidence to determine whether the release of the dog will threaten the safety of any person, stock, poultry, domestic pet, or protected wildlife and either upholds the decision or orders the release of the dog.

## **2.0 BACKGROUND**

- 2.1 On 24 March 2019 the victim, a District Health Nurse, was making a pre-arranged visit to a patient at 904 Bledisloe Street, Hastings when she was attacked by the resident dog.
- 2.2 There was an alert on the file – ‘dog at the address’. The victim had phoned in advance and was advised it was safe to enter through the front gate.
- 2.3 From the front gate the victim saw a dark colour dog behind a second gate. The dog was barking and growling.
- 2.4 The victim entered the first gate and walked diagonally across the lawn to towards the front door (**Attachment 1**).
- 2.5 The dog jumped the gate and attacked the victim, biting her on the foot (not a severe wound), causing her to fall to the ground.
- 2.6 The dog then bit her on the buttock.

- 2.7 The victim was screaming for help, when two woman came out from the house yelling at the dog to let go. The victim quickly got up and ran into the house.
- 2.8 As a result of the attack the victim required medical attention at the Hawke's Bay hospital. She suffered a significant puncture wound to her buttock which was so deep it required an x-ray.
- 2.9 The victim has been unable to work or drive due to her injuries and has been suffering psychological impacts including anxiety and nightmares.
- 2.10 At the time of the incident the dog was unregistered.

### **3.0 CURRENT SITUATION**

- 3.1 On 4 April 2019 Council received a written request (**Attachment 2**) from the dog owner for the release of the dog pursuant to section 71(4) of the Dog Control Act 1996 (**Attachment 3**).
- 3.2 The dog, an entire male Mastiff, Labrador Cross known as Smokey, was seized and impounded and a prosecution has been filed against the owner (the objector in this matter) with the District Court. The penalty under section 58 of the Dog Control Act 1996 is a term of imprisonment not exceeding 3 years or a fine not exceeding \$20,000.
- 3.3 Although one side of the internal property was gated, the other side was completely open. Even if the dog hadn't jumped the closed gate it could have simply run around the back of the house to the front - via the unfenced side - and attacked the victim (**Attachment 4**).

### **4.0 OPTIONS**

- 4.1 Uphold the decision of the Animal Control Officer to retain the dog pending the outcome of the prosecution.
- 4.2 Rescind the decision of the Animal Control Officer to retain the dog pending the outcome of the prosecution and allow the dog to be released.

### **5.0 SIGNIFICANCE AND ENGAGEMENT**

- 5.1 Not all attack prosecutions result in the dog being seized and held pending the outcome of a prosecution. This attack is extremely unfair on the victim who took all reasonable steps to avoid the incident. Staff are holding this dog to protect the community.
- 5.2 Any person who has sought the return of a dog under this section who is dissatisfied with the decision of Council may appeal to a District Court against that decision.

### **6.0 ASSESSMENT OF OPTIONS (INCLUDING FINANCIAL IMPLICATIONS)**

- 6.1 Before making a decision to release the dog Council must be satisfied that the release of the dog will not threaten the safety of any person, stock, poultry, domestic pet, or protected wildlife.



**7.0 PREFERRED OPTION/S AND REASONS**

- 7.1 That the Hearings Committee make a decision on the request from Pounamu Morunga-Cooper for the return of her dog (Smokey) on the basis of the evidence presented for consideration at this hearing.

**8.0 RECOMMENDATIONS AND REASONS**

- A) That the report of the Regulatory Solutions Manager titled "Request for the release of a dog held in retention pending prosecution (Smokey)" dated 9/05/2019 be received.
- B) That the Hearings Committee make a decision regarding the request from Pounamu Morunga-Cooper for the return of her dog (Smokey) on the basis of the evidence presented at the hearing being held to consider this request.

**Attachments:**

- |   |   |                |
|---|---|----------------|
| A | Subject property at 904 Bedisloe Street             | CG-14-12-00115 |
| B | Request to release dog ID 82458                     | CG-14-12-00112 |
| C | Excerpt from Dog Control Act 1996 - s71             | CG-14-12-00113 |
| D | Aerial view of subject site at 904 Bledisloe Street | CG-14-12-00116 |



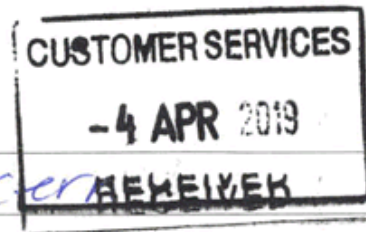
Item 2

Attachment A





Item 2



Attachment B

To whom it may concern

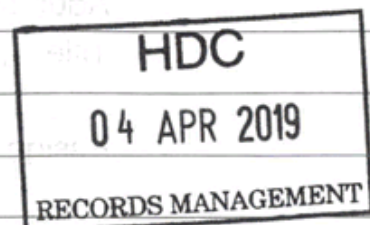
We are writting for the release of my dog Smokey who is currently at the pound, pending the outcome of your investigation into the incident that occurred on the 24-3-19.

Pennamu Morunga-Cooper  
904 Bledisloe Street  
02041423404

chip # 990 0000 0016 2561

me

4-4-19







**71 Retention of dog threatening public safety**

(1) This section shall apply where—

- (a) Any constable, dog control officer, or dog ranger has, under [section 57 or section 57A], seized any dog or been given custody of any dog or taken custody of any dog; and
- (b) The owner of the dog is to be prosecuted for an offence under section 57 [section 57A, or section 58]; and
- (c) The dog has been claimed by its owner and any fee payable under section 69(2) of this Act has been paid; and
- (d) The territorial authority is satisfied on reasonable grounds that the release of the dog would threaten the safety of any person, stock, poultry, domestic pet, or protected wildlife.

(2) Except as otherwise provided in this section, every dog to which subsection (1) of this section applies shall be kept in custody and given proper care and exercise until the prosecution referred to in subsection (1)(b) of this section is determined by the Court.

(3) In every case to which subsection (1) of this section applies, the territorial authority shall give written notice in the prescribed form to the person claiming the dog.

(4) The owner of any dog which is, for the time being, kept in custody under subsection (2) of this section may apply at any time to the territorial authority for the release of the dog.

(5) Where application is made under subsection (4) of this section and the territorial authority is satisfied that the release of the dog will not threaten the safety of any person, stock, poultry, domestic pet, or protected wildlife, the territorial authority shall, subject to subsection (7) of this section, return the dog.

(6) Any person who has sought the return of a dog under subsection (4) of this section and is dissatisfied with the decision of the territorial authority may appeal to [the District Court] against that decision, and the District Court, in hearing the appeal, shall consider the matters specified in subsection (5) of this section and any submission by the territorial authority in support of its decision and may uphold that decision or order the return of the dog.

(7) Where the territorial authority has, under section 68(1)(b) of this Act, set fees for the sustenance of impounded dogs, the territorial authority may apply those fees to the sustenance of any dog kept in custody under this section and may require the payment of those fees before any dog is returned under subsection (5) of this section or, unless the District Court orders otherwise, subsection (2) or subsection (6) of this section.

(8) In any case where the territorial authority requires fees under subsection (7) of this section to be paid before any dog is returned, and those fees have not been paid within 7 days of the receipt by the owner of written notice that the dog will be returned upon payment of those fees, the territorial authority may dispose of the dog in the manner authorised by section 69(3) of this Act, and subsections (4) to (6) of that section shall apply as if the dog had been disposed of under that section.







904 Bledisloe Street, Hastings  
Aerial View,

created by Kelly

KK0746.06