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## **Minutes of a meeting of the Hearings Panel - Other**

**Held in the Council Chamber, Civic House, 110 Trafalgar Street, Nelson**

**On Tuesday 6 March 2018, commencing at 9.30am**

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Present: Councillor B McGurk (Chairperson) and Councillor S Walker

In Attendance: Team Leader Governance (R Byrne) and Governance Support (K McLean)

Apologies : Nil

### **1. Apologies**

There were no apologies.

### **2. Confirmation of Order of Business**

Items 10 and 11 relating to the Dog Control Act would be taken first, followed by item 9 - Application for naming of a Private Right of Way - 253, 255 and 255A Nayland Road. Items 5 – 8 to follow.

### **3. Interests**

There were no updates to the Interests Register, and no interests with items on the agenda were declared.

### **4. Public Forum**

There was no public forum.

### **5. Objection to Bark Notice - Yuri Schokking and Leita McKellar - Dog named "Kobe"**

Document number R8834, agenda pages 34 - 59 refer.

Acting Manager Environmental Inspections Limited Stephen Lawrence presented the report. Animal Control Officer Sandy Vale explained the process of how sound checks were taken.

Mr Darryl Ware, main complainant, spoke to the matter and confirmed that he had identified that the barking he had recorded in the bark

register had come from the property at 82 Bisley Ave. He noted that there had been no issue in recent months.

Yuri Schokking and Leita McKellar, objectors, spoke to the matter and tabled the following documents in support of their objection:

1. Bark recording collar summary
2. Letter of support from neighbour
3. Response from LGOIMA request to provide all information on the Bark Notice
4. Training Plan/Report from Vicky Pickering, trainer
5. Temperament/Behavioural Dog assessment form from Bark Busters

The Chair advised that there was a lot of material to consider and that he and Councillor Walker would deliberate and advise in due course.

#### Attachments

- 1 Attachments: A1925771 Objection to Bark Notice

#### **6. Objection to Classification of a Dog as Dangerous - Mr Robertus Schiefer and Ms Silvia Randma - Dog named "Ebba"**

Document number R8833, agenda pages 60 - 89 refer.

Acting Manager Environmental Inspections Limited Stephen Lawrence presented the report.

Mr Robertus Schiefer and Ms Silvia Randma attended and were represented by their solicitor Mr Brett Daniel-Smith. Mr Lawson Davey, Fish & Game Officer also accompanied them. Mr Daniel-Smith tabled the following documents in support of the objection:

1. Map of the property and surrounds
2. Email from the objectors
3. Email from Mr Daniel-Smith
4. Letter from Mr Davey, Fish & Game NZ
5. Photographs of fencing at the objectors property
6. Information on German Wirehaired Pointers
7. Photo of Ebba

Ms Andrea Taylor, cat owner, was also present with her partner who spoke to the effects that the attack and subsequent loss of her cat Tilly had on her and her family.

Fish & Game Officer Lawson Davey spoke in support of the objectors and noted the personality type of wirehaired pointers.

The Chair advised that there was a lot of material to consider and that he and Councillor Walker would deliberate and advise in due course.

The meeting adjourned at 11.20am and reconvened at 11.27am

**Attachments**

- 1 Attachment: A1925838 Objection to Dangerous Dog

**7. Application for naming of a Private Right of Way - 253, 255 and 255A Nayland Road**

Document number R8966, agenda pages 29 - 33 refer.

Consents Administration Coordinator Kathy Mardon presented the report and tabled photos taken by herself and the applicant.

The applicant, Stewart Flowerday spoke to the application and noted that while there might be no easement to cover the two driveways on a legal basis, he felt that the use of the driveways should prevail and therefore naming the private right of way was appropriate.

Councillor McGurk noted that he and Councillor Walker would deliberate the matter at the end of the meeting.

**Attachments**

- 1 Attachment: A1926005 Naming Rose Way

**8. Temporary Road Closures - Police Station Open Day and Tug of Peace**

Document number R8886, agenda pages 7 - 12 refer.

Contracts Supervisor Roding Troy Chapman and Roding Network Coordinator Melissa Ramsay presented the report.

Resolved HEA/2018/001

***That the Hearings Panel - Other:***

**Receives the report *Temporary Road Closures - Police Station Open Day and Tug of Peace (R8833) and its attachments (A1903172, A1903442); and***

**Approves the application for the temporary road closures for the Police Station Open Day and the Tug of Peace.**

Walker/McGurk

Carried

**9. Street Naming Application - Principle Developments Ltd (Farleigh Street)**

Document number R8890, agenda pages 13 - 18 refer.

Consents Administration Coordinator Kathy Mardon presented the report.

Resolved HEA/2018/002

***That the Hearings Panel:***

**Receives the report *Street Naming Application - Principle Developments Ltd (Farleigh Street) (R8890) and its attachments (A1899695 and A1899696); and***

**Approves the name of "Koura Road" for the roads to vest in Council shown as Roads 1 and 2 on the Scheme Plan for RMSH165005, in Attachment 1 (A1899695) to this report R8890; and**

**Notes the name of "Komako Way" for the private Right of Way shown as ROW 3 on the Scheme Plan for RMSH165005, in Attachment 1 (A1899695) to this report R8890.**

Walker/McGurk

Carried

**10. Street Naming Application - Inhaus Developments Ltd - 10 Daelyn Drive**

Document number R8893, agenda pages 19 - 23 refer.

Consents Administration Coordinator Kathy Mardon presented the report.

Resolved HEA/2018/003

***That the Hearings Panel:***

**Receives the report *Street Naming Application - Inhaus Developments Ltd - 10 Daelyn Drive***

***(R8074) and its attachments (A1899796 and A1899794); and***

***Approves the name of "Kakano Lane" for the road to vest in Council shown as Lot 15 on the Scheme Plan for RM175200, in Attachment 1 (A1899796) to this report, R8893.***

Walker/McGurk

Carried

## **11. Street naming application - Brooklands Road subdivision**

Document number R8943, agenda pages 24 - 28 refer.

Consents Administration Coordinator Kathy Mardon presented the report.

Resolved HEA/2018/004

***That the Hearings Panel:***

***Receives the report Street naming application - Brooklands Road subdivision and its attachments (A1899877 and A1899879); and***

***Notes the name of "Chamerion Way" for the Private Right of Way servicing Lots 1 to 9 on the Scheme Plan for RM165329, in Attachment 1 (A1899877) to this report, R8943.***

McGurk/Walker

Carried

The meeting adjourned at 12.05pm and reconvened at 1.00pm.

## **12. Objection to Bark Notice - Yuri Schokking and Leita McKellar - Dog named "Kobe" (continued)**

Document number R8834, agenda pages 34 - 59 refer.

### **Deliberation**

#### **Consideration of Facts**

The Chair noted that the application by Yuri Shokking and Leita McKellar objected to a barking dog notice in relation to their dog Kobe.

The Dog Control Act Section 55 provided that an objector may object and the Hearings Panel could consider the objection and may confirm, modify or cancel the notice.

The Panel heard evidence from EIL officers that they had two complaints in early 2017 about a dog barking in the vicinity of 82 Bisley Ave. On 9 January 2017 EIL sent an information letter to neighbours. Officers received a subsequent complaint in 18 January 2017. On 31 July 2017 officers received a further complaint and on 9 August 2017 completed a letterbox drop to adjacent properties in order to gauge the extent of the nuisance. The Panel heard from Animal Control Officer Sandy Vale that she had carried out sound checks on four separate occasions on 2,9,23 and 24 August 2017. She reported she heard no barking from that address even though she was on site for 90 minutes in total duration.

On 25 August 2017 a further complaint was received from another complainant in response to the letterbox drop over two weeks previously. This complaint advised that barking had been going on for the previous year to eighteen months.

The panel heard from the original complainant Mr Ware, who lives on the high side of 115 Moana Ave between 35-60 metres away. There were periods that barking went for up to an hour, others when it didn't happen. The weather was hot and he had his windows open. He spoke about previous dealings with the applicants a number of years ago and his reasons for not approaching the applicants in more recent times. Mr Ware also said he was a retired broadcaster, he knew sound direction and the types and origins of sounds. Mr Ware also provided detailed bark logs for a period of 9 Jan - 28 March and 1 August - 31 August 2017.

The Panel also heard from the applicants Yuri Shokking and Leita McKellar. Ms McKellar spoke of the incident about when the complainant arrived at their property about six years previously and described his manner as being aggressive. It appeared there had been no direct dealings since that time. She provided evidence that at least seven dogs were resident in the close neighbourhood but not registered to the street. The family have lived at the address for 16-17 years, there had been two dogs on the property for 14 years who had since died and been replaced with the dog that is subject to the complaints. The first they knew about it was when a neighbour visited to say they had had a visit from the Council to say they had a barking dog complaint. They contacted Mr Lawrence from EIL at the time. They noted that the dog doesn't sleep outside at night, sleeps in the house and is never left outside when they are not at home but is in the garage. She had since spoken to 10 different neighbours who advised no complaints and provided documentation. The family had gone to considerable lengths to have a dog behavioural assessment completed from Bark Busters in Christchurch and a local trainer, Vicky Pickering. Both concluded Kobe was a good dog with no problematic behavioural issues. Vicky Pickering provided advice about additional training and options including a bark log from a recording collar. The bark log noted one or less barks per hour for the duration of the testing period 8 - 17 December 2017.

There hadn't been a complaint in six months and Mr Ware confirmed that there had been no problems in recent times. Ms McKellar provided a copy of the Council's service request which she had received via a LGOIMA request. She claimed there was conflicting evidence when it said there were nine checks carried out. The log confirmed evidence from the Dog Control officer that she had completed the bark checks as above but had been in the area on additional occasions.

### **Reason for the Decision**

The Panel was satisfied that the applicants had implemented sufficient measures and taken all reasonable steps to ameliorate any issue. Those measures included use of a bark collar to check barking; behavioural assessment; no complaint in the last six months; the dog remaining inside the property when owners were not home and at night time. The panel was not satisfied that the barking had been unreasonable to the level indicated because the frequency of barking was not substantiated, noise issues had subsided and there was evidence of other dogs in the neighbourhood.

### **Decision**

The Objection was upheld and the bark notice was cancelled.

Resolved HEA/2018/005

#### ***That the Hearings Panel - Other***

***Receives the report Objection to Bark Notice - Yuri Schokking and Leita McKellar - Dog named "Kobe" (R8834) and its attachments (A1912555, A1850872, A1912567, A1912569, A1912581, A1912611 and A1912621); and***

***Upholds the objection of Yuri Schokking & Leita McKellar; and***

***Confirms the written notice (bark notice) served on 25 September 2017 is cancelled.***

Walker/McGurk

Carried

### **13. Objection to Classification of a Dog as Dangerous - Mr Robertus Schiefer and Ms Silvia Randma - Dog named "Ebba" (continued)**

Document number R8833, agenda pages 60 - 89 refer.

#### **Deliberation:**

#### **Consideration of Facts**

The Chair noted that the objection was to the classification of a dangerous dog known as Ebba, owned by Mr Robertus Schiefer and Ms Silvia Randma. Throughout the hearing they were represented by Mr Brett Daniel-Smith

Under section 3 of the Dog Control Act, the Panel considering any Objection needed to consider the evidence which formed the basis of the original classification of dangerous dog, recognise the steps taken by owners to prevent a threat to any persons or animal and consider matters put forward by the applicants and any relevant matters.

In November 2017 a German Wirehaired Pointer named Ebba chased and attacked a cat named Tilly at the frontage of No 8 Gipps St. The attack was seen by a fourteen year old who lived at that address and who provided a sworn statement regarding the attack.

As a result of the attack the cat was taken to a Veterinary clinic in Nelson with extensive and substantial injuries requiring five hours of surgery to the value of \$7,000; the treatment was unsuccessful and a decision was made to euthanise the cat. The facts were not in dispute.

Ebba was trained and bred as a hunting dog and had been involved in hunting feral cats. There was no dispute that Tilly was a domestic animal much loved by her owner Andrea Taylor of 23 Clovelly St. There was ample justification for the dog to be designated as dangerous.

Since the incident the owners had taken steps to completely fence their property and remove trees which were a shelter for cats; they had also retrained the dog as an indicator dog; paid the veterinary bill without equivocation and had fitted a muzzle on the dog when on a lead in public.

There was a letter of support and the Panel heard from Lawson Davey – an officer with Nelson Marlborough region of Fish and Game NZ. He talked of his experience of working with hunting dogs for more than 20 years and he had a lot of contact with both pointers and labradors. He indicated that Ebba was young dog but fully mature and that Mr Schiefer spent a considerable amount of time, money and effort to train the dog. He acknowledged that at the end of the day it is a dog and dogs tend to regard their property as territory. He noted that German Shorthaired Pointers are highly strung, the German Wirehaired Pointer is less so and the Labrador is more even tempered.

Other relevant matters for the Panel were that they were concerned to hear from Mr Schiefer that he took Ebba to work with him on his job as a builder and Ebba was used as an onsite deterrent dog to protect his tools.

### **Reason for the Decision**

The Panel considered that the dog's temperament was appropriate to guard his possessions and was a factor in the dog's response.

The Panel acknowledged Mr Schiefer and Ms Randma had gone to considerable lengths to ameliorate the situation by reimbursing the veterinary fees and enclosing the dog on their property. However the Panel believed that the dog's temperament was such that there was a risk when in public places. The dog resides in a suburban area where the risk of its natural response as a hunting dog is elevated. The controls imposed through a dangerous dog classification include muzzling and neutering and these measure will reduce the risk to an acceptable level.

### **Decision**

The Panel dismissed the objection and upheld the classification of Ebba as a dangerous dog.

Resolved HEA/2018/006

***That the Hearings Panel - Other***

***Receives the report Objection to Classification of a Dog as Dangerous - Mr Robertus Schiefer and Ms Silvia Randma - Dog named "Ebba" (R8833) and its attachments (A1913472, A1913478, A1913491, A1876343 and A1878144); and***

***Dismisses the objection of Mr Robertus Schiefer and Ms Silvia Randma; and***

***Upholds the classification of "Ebba" as dangerous.***

McGurk/Walker

Carried

### **14. Application for naming of a Private Right of Way - 253, 255 and 255A Nayland Road (Continued)**

Document number R8966, agenda pages 29 - 33 refer.

Deliberation:

The Chair noted that the applicant wanted Council to name a shared driveway between 253, 255 and 255a Nayland Road.

He noted the Resource Consent reason decision point C – the application does not propose to allow persons on the subject site to use the right of way access to the south. He noted there was no implied right for one right of way to use the other right of way. No 255 had the right to use the driveway but this was not reciprocal.

The applicant was requesting Council to overrule the legal easements to allow for current or prospective use. While there might be no easement to cover the two driveways on a legal basis, the Panel felt that the legal use of the driveways should prevail and therefore naming the private right of way was not appropriate. Given that the right of way servicing

253 Nayland Road was a separate entity from the existing right of way servicing 255 and 255a Nayland Road and there was no legal easements covering the three properties the Panel declined to note the name of Rose Way in Council records.

Resolved HEA/2018/007

***That the Hearings Panel:***

***Receives the report Application for naming of a Private Right of Way 253, 255 and 255A Nayland Road, and its attachment (A1909837); and***

***Declines to note the name of "Rose Way" for the private Right of Way servicing lots 1 and 2 DP 8019, (255 and 255A Nayland Road), and Proposed Lots 1 to 4 on the Scheme Plan for Resource Consent RM175063 (253 Nayland Road) in Attachment 1 (A1909837) to this report R8966.***

McGurk/Walker

Carried

There being no further business the meeting ended at 2.12pm.

Confirmed as a correct record of proceedings:

\_\_\_\_\_ Chairperson \_\_\_\_\_ Date