



Minutes of a meeting of the Hearings Panel - Other

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

On Wednesday 27 February 2019, commencing at 9.01a.m.

Present: Councillor B McGurk (Chairperson), Councillors I Barker and M Lawrey

In Attendance: Manager Environmental Inspections Limited (B Edwards) and Governance Adviser (E Stephenson)

Apology: Apologies : Nil

1. Apologies

There were no apologies.

2. Confirmation of Order of Business

There was no change to the order of items.

3. Interests

Councillor Matt Lawrey advised that although his children would be taking part in the TRYathlon, he did not consider that this was a conflict in regard to making a decision on Item 4 - Temporary Road Closures - Sanitarium Weet-Bix Kids TRYathlon and Road Safety Stopping Demonstration.

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

Document number R9911, agenda pages 5 - 18 refer.

Roading Network Coordinator, Melissa Ramsay, spoke to the report, noting that Council had now engaged a traffic management company, Safe Traffic NZ, for the road stopping demonstrations.

In response to questions, Ms Ramsay said that there was nothing different in this application from previous years. She explained that two

school demonstrations would be taking place in Norwich and Nile Streets and that alternative routes were available, with adequate signage. She said that residents had received a letter drop and if the proposal was approved, would get another letter drop a week before the event.

Resolved HEA/2019/001

That the Hearings Panel - Other

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

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

Barker/Lawrey

Carried

5. Objection to Classification of dog as Menacing - Charles Riley - Dog name: MAX

Document number R9901, agenda pages 19 - 40 refer.

Objector Dr Charles Riley, accompanied by Mrs Leigh Riley, and complainant Yasmin Barrington were present for this item. The Chairperson checked that there were no objections to the Panel membership.

Manager Environmental Inspections Limited, Brent Edwards, introduced Officer in Charge, Bill Gaze, and Animal Controller Jeff Welch, who were available to answer questions. Mr Edwards summarised the matter and said that, as a result, pursuant to section 33A of the Dog Control Act 1996, Max had been classified as an menacing dog, hence the objection being heard today.

Complainant Yasmin Barrington recounted her recollection of the event and her concerns, detailed in Agenda Attachment 2, and answered questions regarding the incident and previous behaviour. She confirmed that her preference would be to have Max muzzled.

Objector Dr Riley summarised his objection, including his recollection of the incident and Max's background, detailed in Agenda Attachment 7, and answered questions regarding control over Max when off-leash, past history, any confrontations with other dogs, further training and dog psychology. In response to questions, he accepted that Max was the aggressor in that situation, but noted that there had been no conflict with other dogs.

Mr Edwards clarified that under the section 33A of the Dog Control Act 1996, that 'menacing' was the lowest classification available, with no ability for Council to enforce a requirement of on-lead only, it was a menacing classification or nothing. He reiterated that officers recommend that Max be muzzled in a public place and noted that officers had no concerns about Max's behaviour amongst people.

The matter was left to lie pending deliberations.

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

Document number R9902, agenda pages 41 - 55 refer.

Complainant, Adrienne Fraser, and the Maltese cross dog's (victim's) owner, Raewyn Shand, were present for this item. Rosa's owner was not present.

The Chairperson checked that there were no objections to the Panel membership.

Manager Environmental Inspections Limited, Brent Edwards, summarised the incident, noting that the Animal Control Officer had written to Rosa's owner asking for an explanation, but that no reply had been received. The only letter received was the formal objection to the classification of Rosa as a menacing dog, pursuant to section 33A of the Dog Control Act 1996.

Complainant Adrienne Fraser recounted her recollection of the event, detailed in Attachment 2 to the agenda report, and answered questions. Ms Fraser said that she had felt threatened when the incident took place. Animal Control Officer, Jeff Welch, summarised events prior to the attack and said that the owner was also under instruction under section 11 of the Dog Bylaw, requiring construction of fencing to contain dogs to the rear of properties. He noted that a menacing classification did not mean an automatic requirement to contain a dog and that assistance had been offered, but there had been no change to date. He confirmed that he had felt threatened by the dog's behaviour on a previous visit to the property.

Officers responded to questions regarding wandering and aggression, and the effect of a menacing classification on future decision-making regarding wandering.

The matter was left to lie pending deliberations.

Exclusion of the Public

Resolved HEA/2019/002

That the Hearings Panel - Other

Excludes the public from the following parts of the proceedings of this 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) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

McGurk/Lawrey

Carried

7	Objection to Classification of dog as Menacing - Charles Riley - Dog name: MAX	<p>Section 48(1)(d)</p> <p>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.</p>	<p>Section 48(2)</p> <p>Paragraph (d) of subsection (1) applies to</p> <p>(a) Any proceedings before a local authority where -</p> <p>(i) A right of appeal lies to any Court or tribunal against the final decision of the local authority in those proceedings</p>
8	Objection to classification of dog as menacing - Pirikotahi Phelan - Dog name: ROSA	<p>Section 48(1)(d)</p> <p>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.</p>	<p>Section 48(2)</p> <p>Paragraph (d) of subsection (1) applies to</p> <p>(a) Any proceedings before a local authority where</p> <p>(i) A right of appeal lies to any Court or tribunal against the final decision of the local authority in those proceedings</p>

The public was excluded at 10.08a.m. and readmitted at 10.35a.m.

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

Document number R9901, agenda pages 19 - 40 refer.

Following deliberations, this item was revisited.

Dr Charles Riley (known as Rob) had formally objected to the classification of his male Retriever/Labrador cross named Max as menacing dog. A hearing panel comprising of three elected members of the Council was convened to hear the objection. The Panel noted that it had considered fully the information in the agenda report and attachments, heard evidence from the officers, the complainant and Max's owners.

Section 33B of the Dog Control Act 1996 provides that this hearing panel convened for the purpose of considering the objection by Dr Riley may uphold or rescind the classification and, in making its determination, it must have regard to the evidence which formed the basis of the classification, any steps taken by Dr Riley to prevent a threat to the matters relied in support of the objection and any other relevant matters.

The panel heard from Manager Environmental Inspections Limited, Brent Edwards, who presented his report. The facts relating to the incident on 24 October 2018 were not in dispute.

The panel then heard from Yasmin Barrington, the complainant in the matter, giving rise to the complaint to the Council's dog control officers about Max attacking her dog named Mango. Mrs Barrington said she has had problems with Max previously and she felt threatened by Max. She felt that Dr Riley stood by and was ineffective in dealing with Max when the two dogs had their encounter in the early morning of 24 October 2018. Mrs Barrington acknowledged that Dr Riley paid for the resulting vet bills and sent her a card apologising for the incident.

The panel also heard from Dr Riley and his wife Leigh Riley. Dr Riley said that they had owned five dogs over the years. Max was a rescue dog from Ngahere on the West Coast and they got him when he was about 18 months old. They had owned Max for about three years. They were experienced compliant dog owners and expressed a great deal of affection for Max. Both Rob and Leigh Riley were quite comfortable with Max being part of the family and interacting with their grandchildren. Rob and Leigh Riley had engaged the services of Sue Walsh, a dog psychologist who took a long history and had helped them with techniques to manage Max. Max had been neutered and micro chipped.

Dr Riley said he was able to take Max to the Back Beach without any issues and when he walked Max on public walkways and pathways he would have him on a lead. Dr Riley was of the view that he thought muzzling Max when in public places was unreasonable and it would be

sad if he was muzzled while on the Back Beach. He felt that Max only seemed to have a problem with Mango. He acknowledged that Max was aggressive with Mango. He described it as a doggy v doggy confrontation and something that sometimes happened. The panel was of the view that Dr Riley was understating the situation between Max and Mango.

Dr Riley agreed there had been at least two previous incidents in addition to this occasion, giving rise to the complaint that resulted in Max being classified as menacing. When questioned, Dr Riley conceded that Max was a large strong dog and was able to get through the gate. Max was off-lead at the time and had ignored his verbal commands. Dr Riley said he got to Max as soon as he could and acknowledged that getting between the two dogs fighting could result in injury to any person that got between them to break it up.

The panel noted that it had fully considered the relevant matters.

The panel was of the view that Max posed a threat to a person and domestic animal because of the observed and reported behaviour and that the menacing classification was justified.

The panel agreed to uphold the classification and dismiss the objection.

Resolved HEA/2019/003

That the Hearings Panel - Other

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

Dismisses the objection of Charles Riley; and

Upholds the classification of Max as menacing.

Lawrey/McGurk

Carried

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

Document number R9902, agenda pages 41 - 55 refer.

Following deliberations, this item was revisited.

Pirikotahi (Piri) Phelan had formally objected to the classification of his three year old female Labrador/Pit Bull cross named Rosa as a menacing

dog. This panel, comprising of three elected members of the Council, had been convened to hear the objection.

Section 33B of the Dog Control Act 1996 provides that this hearings panel, convened for the purpose of considering the objection by Mr Phelan may uphold or rescind the classification, and in making its determination, must have regard to the evidence which formed the basis of the classification, any steps taken by Mr Phelan to prevent any threat to the safety of persons or animals, matters relied in support of the objection and any other relevant matters.

The panel heard from Manager Environmental Inspections Limited, Brent Edwards, who presented his report. The investigating dog control officer, Mr Jeff Welch, and Mr Bill Gaze, another dog control officer, who provided a verbal report on his dealings with the occupants of the address at 32 Weka Street in Nelson and dealing with wandering dogs in the area.

Mr Phelan did not appear at the hearing and no-one appeared on his behalf. There was no other correspondence from Mr Phelan and so the panel could only rely upon the written notice of the objection.

The panel also heard from Ms Adrienne Fraser, a friend of the owner of Casper, the Maltese dog that was attacked by Rosa. She recounted the incident when Rosa ran up to and jumped over the fence and latched onto the back of Casper's neck for a few seconds. A woman at 32 Weka Street called Rosa off, mumbled sorry and left the property.

Mr Phelan's objection against the classification claimed that this was a one-off incident and Rosa would have considered the dog passing the front of his property when his mother was leaving the property as a threat and therefore jumped the fence.

Mr Welch proved two photographs of the front of property at 32 Weka Street to assist the panel. The fence at the front of the property was a low wire mesh fence measuring about 700mm high and could be easily cleared by a dog. Mr Welch reported that on 5 September 2018, he visited the address about a dog registration matter. He had in his possession a District Court warrant to remove the dogs. At that time Rosa appeared and was clearly unhappy and jumped the fence. Mr Welch advised that Mr Phelan was able to register the dogs at that time.

Mr Welch explained to Mr Phelan about the need to take active steps to contain the dogs on the property. He reported that his attempts to engage with Mr Phelan about adequate fencing had not been successful.

Mr Gaze reported that he had been dealing with reports of wandering dogs in the area and two of those wandering dogs had been identified as coming from 32 Weka Street. He visited the address and found the dogs, including Rosa, to be aggressive towards him.

The panel noted it had fully considered the relevant matters.

The panel was of the view that Rosa posed a threat to a person and domestic animal because of the observed and reported behaviour and that the menacing classification was justified.

The panel agreed to uphold the classification and dismiss the objection.

Resolved HEA/2019/004

That the Hearings Panel - Other

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

Dismisses the appeal of Pirikotahi Phelan; and

Upholds the classification of Rosa as menacing.

Barker/Lawrey

Carried

There being no further business the meeting ended at 10.43a.m.

Confirmed as a correct record of proceedings:

_____ Chairperson _____ Date