
MINUTES
of the
ANIMAL CONTROL SUBCOMMITTEE MEETING
held
12.30pm, Tuesday, 3 March 2020
at
Heaphy Room, 189 Queen Street, Richmond

Present: Councillors S G Bryant, C Mackenzie

In Attendance: Principal Planner – Resource Consents (A Jewell), Regulatory Support Officer (Ross Connochie), Executive Support Officer (L Atkins)

Part Attendance: Executive Assistant (Julie Jar)

1 OPENING, WELCOME

The Chair opened the meeting at 12.30 pm and welcomed everyone in attendance and introduced the Committee and staff to Mr and Mrs Buyck.

The Chair invited Mr Buyck to speak to the subcommittee.

Mr Buyck explained he is the father of Ms Sandra Buyck, the owner of the dog Meisha. He disputed the facts in the Tasman District Council report, describing them as the opinion of Tasman District Council staff based on the views of the complainant. He referred to a letter dated 10 October 2018 which did not have the notice of classification of a menacing dog attached to it. Mr Buyck tabled copies of his additional report with **comments on the report by Council staff** in the hearing agenda and read from it, noting that the complainant's statement is unreliable as the injury was a scratch, not a bite and the reason for the attack was the traffic violation of the supposed victim. He noted the boy should have gone slowly when he saw the dog and the owner of the dog had taken steps to prevent future incidents.

Mr Buyck referred to Point 2.2 in his report, that the footpath was crowded at the time of this incident as his wife Mrs Tineke Buyck was walking with their grandchildren. He provided photos of the footpath for the Subcommittee, to illustrate the conditions and amount of space available. These photos are from Google Street View and show there is no space for a scooter on the footpath and he described the investigation as flawed as this fact was not identified. He said the complaint was just a reason to claim ACC for medical services for the boy. He noted there are only two ACC codes that relate to such injuries (dog bites or cat scratches), so medical staff can

only use this code to describe this incident, which he stated is not based on evidence. He noted Mrs Buyck had been bitten by a dog once and had treatment.

Mr Buyck read from section four of his report and described the alleged dog attack as not a fact but a report by the complainant. The dog lunging at the boy and biting him is an allegation and Mrs Buyck strongly objects to this, as there was no room for the boy to pass. He noted the boy moved into the dog Meisha's path and it was alleged the dog lunged at him. This is not accurate in his view.

Mr Buyck referred to section six of his report which notes that there have been no incidents with dog control before or after this incident with Meisha and that the problem is the boy. The dog lay down while the boy's mother demanded an apology for the incident from Mrs Buyck at the time, but Mrs Buyck had not seen the dog bite the boy. There were students around Mrs Buyck on the footpath, so there was not enough room to walk in a single row. He noted the dog was only 14 months old at this time, but she had been trained at dog classes. Mr Buyck stated the contact did not happen and disputed the incident, as Mrs Buyck did not see the boy on the scooter or the incident, as it took a fraction of a second for him to scoot past her. She looked over her shoulder to check on her grandchildren who were with her. Mr Buyck referred to the incident as a traffic accident due to the number of tall people on the footpath, the collision was unavoidable as there was not enough space, so the dog could not escape, as it was on the leash. He stated the boy's mother saw the dog jump up and interpreted this as a lunge. Section 6.6 notes bias against the dog walker as does 6.7, as Mrs Buyck was surprised by the mother's complaint at the time and she is not a flippant person as noted in the Council report. The complainant has noted the apology was not sincere enough. Mr Buyck feels the violation was a traffic violation on the boy's part and not one by the dog walker and that the manner in which Mrs Buyck was treated at the hearing was enough reason for a complaint to the Ombudsman.

In summary Mr Buyck noted the behaviour of the boy on the scooter is the issue.

2 REPORTS

The Regulatory Support Officer, Mr Connochie spoke to his report, which was taken as read. He referred to the Dog Control Act 1996 which is the legislation used. He referred to a letter of 4 September 2018 which explained the incident where the dog lunged at the boy and inflicted a minor injury to his upper thigh. This incident is called an attack as contact was made and legally contact in any form is an attack and the injury required medical attention. The doctor described this injury as a dog bite on the back of the upper leg and the ACC classification only has two codes (dog bite or other injury by an animal). He clarified that the incident did occur and the boy was injured by a dog bite, not a scratch.

Mr Connochie noted it is the Council's obligation to ensure dogs do not endanger or attack the public and there is a low threshold for this. The Council can impose restrictions and he noted the menacing dog classification is the lowest form of action. The dog was under an element of control and the boy scooted past her at speed so Meisha lunged at him, hence the menacing classification. The wording may create the perception that the dog is aggressive, but he noted it just needs to wear a muzzle in public. He said there was no negligence by Mrs Buyck, so there was no fine for failing to control a dog. The lowest level action was taken, but if an incident happens again, the Council would be criticised for not taking action at the first incident. The Council has no proof regarding the boy's mother's comment that this dog had attacked someone before, but it has to mention this as it was given under questioning, but no action was taken in relation to the comment.

Cr Mackenzie asked Mr and Mrs Buyck if the dog had been involved in any incidents before this and they replied no.

Mr Connochie noted the investigator John Griffith's report used the word "flippant" to describe Mrs Buyck's attitude towards this case. He noted she does not understand the seriousness of the situation and is blaming the boy for the attack. He recommended the menacing dog classification be upheld.

Cr Mackenzie asked about the dog's daily exercise regime, as it would need a lot of exercise, being a young Border Collie. Mrs Buyck replied that it runs around the garden and noted Border Collies do not bite.

The Chair gave Mr Buyck the Right of Reply.

Mr Buyck said the wording of the complaint noted the dog had lunged at the boy and bitten him, however he argued that the boy had moved towards the dog when there was no room for the boy, who had not complied with the traffic rules. He noted wheeled recreational devices are supposed to give way to pedestrians and there was no room to pass, so the wording should be that the boy attacked the dog. He also noted the medical statement was what the mother of the child has said and it was not signed by a doctor but a nurse, after the doctor saw the boy. He also objected to his wife being described as flippant as she is never flippant.

He also stated that any dog can bite and the bylaw notes that it is an offence to cause a dog to become restless or unmanageable, so the boy is liable for up to a \$3,000 summary conviction and Tasman District Council should change the bylaw to include summary conviction.

Mr Buyck also noted the Dog Control Act regards some dog breeds as menacing and there is stigma attached to wearing a muzzle, which he refuses to use on Meisha. He described the muzzle as a life sentence for the dog which cannot be rescinded, unless it is changed at a hearing.

He noted the injury was a scratch from a paw, not a dog bite wound. There was no bleeding or teeth marks and he felt the injury could have been caused by another incident, not the dog. It was the Dog control Officer's first day on the job and he had not seen the dog. Mr Buyck believes the injury looked like a scratch, therefore the Council's conclusion is not correct.

The Chair asked Mr Buyck if they still have the dog and if there have been any other incidents and he responded that they do and there have been no incidents. The dog is now two and a half years old. He does not want his wife to walk the dog with it wearing a muzzle.

The Chair thanked Mr and Mrs Buyck for attending the hearing.

Mr Buyck said this was an unfortunate incident for the boy and the dog, nobody had stopped at the time of the incident. Mrs Buyck described it as abusive to say she is minimising this incident and Mr Buyck also commented that at the last hearing some items were not read or heard and his wife was very upset about this.

The Chair thanked Mr and Mrs Buyck for their attendance and informed them that they would be advised of the outcome of this hearing in writing and apologised that this did not occur at the previous hearing. He noted the Regulatory Services Manager will notify them in writing and he will ensure the process is followed in a timely manner. There is a two week timeline and confidential reasons will be provided to the Buycks.

The meeting closed at 1.25 pm and Mr and Mrs Buyck left the room with the Regulatory Support Officer.

3 CONFIDENTIAL SESSION

3.1 Procedural motion to exclude the public

Moved Cr Bryant/Cr Mackenzie

ACS20-03-1

THAT the public be excluded from the following part(s) 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 follows.

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by section 6 or section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, as follows:

3.2 Deliberations of Panel for Animal Control Subcommittee Hearing

Reason for passing this resolution in relation to each matter	Particular interest(s) protected (where applicable)	Ground(s) under section 48(1) for the passing of this resolution
The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.	48(i)(d) - To deliberate in private in a procedure where a right of appeal lies to a Court against the final decision.	s48(1)(a) The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.

CARRIED

The meeting moved into Confidential session at 1.27 pm and resumed in Open at 1.40pm

Menacing Dog Classification of MEISHA dog owned by Ms Sandra Buyck

Moved: Cr Bryant/Cr Mackenzie

ACS20-03-2

That the Animal Control Subcommittee:

1. Receives the Menacing Dog Classification Hearing report RACS20-03-1; and
2. Upholds the menacing classification under section 33A of the Dog Control Act 1996 for the dog Meisha owned by Ms Sandra Buyck for the following reasons:
 - a. We have had regard to all matters under section 33B(2) in reaching our determination on the objection against the original menacing dog classification under s33A whereby a territorial authority may classify a

dog as menacing if it “considers it 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”.

- b. After weighing up all the evidence, we have found on balance that there was contact between the dog and the boy resulting in an injury to the boy – with the evidence supporting this finding including the statements of the complainant; the images of the injury; a copy of the ACC form acknowledging a dog injury; Mrs Buyck’s acknowledgement that she did not witness the alleged occurrence and Mr Buyck’s acknowledgment in his right of reply that there was contact, but that the resultant injury was “slight”.**
- c. While the evidence is that the footpath may have been crowded at the time and while characterised by the objector as a “vehicle accident”, or that an eight-year old had committed a “traffic violation”, we consider it reasonable that in the use of such shared public space, there may be pedestrian congestion and young children “scooting” past in similar circumstances and those in control of dogs under such circumstances are still required to ensure contact with people is avoided.**
- d. The original classification as a menacing dog imposed by the Council was proportionate to the circumstances. This is to prevent as far as possible any further incidents of this nature which would pose a threat to any person, and to prevent any further transgressions against the Dog Control Act 1996.**

CARRIED

4 OPENING, WELCOME

The Chair opened the meeting at 1.46 pm and welcomed everyone in attendance and introduced the Committee and staff to Ms Pembeci. He explained the process of the hearing to her. The Chair invited Ms Pembeci to speak to the Subcommittee.

Ms Pembeci explained that at the time of these incidents, she had just split up with her partner and had lost her house, so she was living in a van with Tyly and eight puppies. She is now living in a house with a flatmate and Tyly and has found homes for the puppies. Tyly attends parties with her and gets on well with children. She showed a video of Tyly to the Councillors on her mobile phone. She stressed Tyly is not a dangerous dog and she does not want her to wear a muzzle.

She understands the dog was not registered at the time of these incidents, but Tyly is not dangerous. Ms Pembeci provided two letters for file about her dog written by her mother and a resident of Golden Bay who knows the dog. The Councillors read both letters.

5 REPORTS

Mr Connachie spoke to his report which was taken as read. He noted Tyly was classified as menacing to protect the public under the Dog Control Act 1996, after two incidents on Rototai Beach in Golden Bay. Firstly the dog ran up and aggressively grabbed a person by the jersey and

the second time she tried to bite another person. Mr Connochie noted the classification is to protect the public as well as the owner in case this happens again, as the outcome would be more serious. He noted if the dog is involved in another incident, the Council would have to take action, for this reason he recommended that the Council upholds the menacing classification.

Ms Pembeci responded that there had been no incidents before this and Tyllly was protecting the puppies (Luna's puppies that she cared for). She behaved as if she was their mother. Ms Pembeci noted Tyllly is not fixed and lives indoors.

The Chair thanked Ms Pembeci for attending the hearing and explained the meeting would move into a confidential session, then notify her of their decision by letter (to be emailed to her).

Ms Pembeci left the meeting at 2.03 pm with the Regulatory Support Officer.

6 CONFIDENTIAL SESSION

6.1 Procedural motion to exclude the public

Moved Cr Bryant/Cr Mackenzie
ACS20-03-3

THAT the public be excluded from the following part(s) 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 follows.

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by section 6 or section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, as follows:

6.2 Deliberations of Panel for Animal Control Subcommittee Hearing

Reason for passing this resolution in relation to each matter	Particular interest(s) protected (where applicable)	Ground(s) under section 48(1) for the passing of this resolution
The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.	48(i)(d) - To deliberate in private in a procedure where a right of appeal lies to a Court against the final decision.	s48(1)(a) The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.

CARRIED

The meeting moved into Confidential session at 2.05 pm and resumed in Open at 2.10 pm

6.3 Menacing Dog Classification of TYLLY dog owned by Ms Valentina Pembeci

Moved Cr Bryant/Cr Mackenzie

ACS20-03-4

That the Animal Control Subcommittee receives the Menacing Dog Classification Hearing report RACS20-03-2 and upholds the menacing classification for the dog Tylly owned by Valentina Pembeci in order to prevent as far as possible any further incidents of this nature and any further transgressions against the Dog Control Act 1996; and lessen the chance of any further legal action by the Council towards Ms Pembeci.

CARRIED

7 OPENING

The Chair opened the meeting at 2.58 pm in the absence of Mr Toki who did not attend.

8 REPORTS

Mr Connochie spoke to his report which was taken as read. He noted Mr Toki had been staying in his van at Payne's Ford, Takaka, when the attack took place. There was no dog control at all as Luna attacked two domestic goats, as a result she was classified as menacing. He noted Mr Toki finds the muzzle cruel. As Mr Toki is of no fixed abode (he is freedom camping) and the dog is in the public all the time, the menacing classification should be upheld.

8.1 Menacing Dog Classification of LUNA dog owned by Lewis Toki

Moved Cr Bryant/Cr Mackenzie

ACS20-03-5

That the Animal Control Subcommittee receives the Menacing Dog Classification Hearing report RACS20-03-3 and upholds the menacing classification for the dog Luna owned by Lewis Toki in order to prevent as far as possible any further incidents of this nature and any further transgressions against the Dog Control Act 1996; and lessen the chance of any further legal action by the Council towards Mr Toki.

CARRIED

The meeting concluded at 3.05 pm

Date Confirmed:

Chair: