

Exemptions and Objections Sub Committee Agenda

Date: Tuesday, 6 April, 2021

Time: 9:00 am

Location: Council Chamber
Forum North, Rust Avenue
Whangarei

Elected Members: Cr Shelley Deeming (Chairperson)
Her Worship the Mayor Sheryl Mai
Ken Couper
Cr Greg Innes

For any queries regarding this meeting please contact
the Whangarei District Council on (09) 430-4200.

1. Declarations of Interest

2. Apologies

3. Confirmation of Minutes of Previous Exemptions and Objections Committee Meeting

- | | |
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| 3.1. Minutes Exemptions and Objections Sub Committee 4 November 2020 | 1 |
|--|---|

4. Decision Reports

- | | |
|---|----|
| 4.1. Object to Disqualification from Dog Ownership | 5 |
| 4.2. Objection to Menacing Dog Classification - Horse - Report-back on fulfilment of conditions | 39 |

5. Closure of Meeting

Recommendations contained in the agenda are not the decisions of the meeting.

Please refer to minutes for resolutions.

Item 3.1

Exemptions and Objections Sub-committee Meeting Minutes

Date:	Wednesday, 4 November, 2020
Time:	9:30 a.m.
Location:	Council Chamber Forum North, Rust Avenue Whangarei
In Attendance	Cr Shelley Deeming (Chairperson) Her Worship the Mayor Sheryl Mai Cr Ken Couper Cr Greg Innes
Also present	Carla and Craig Butler (Objectors) Reiner Mussle (Manager Health and Bylaws) Nina Darling (Bylaws Enforcement Co- ordinator) Sean Holland (Animal Management Officer Armourguard Peter Banks (Animal Management Executive Officer Armourguard)
Scribe	C Brindle (Senior Democracy Adviser)

1. **Declarations of Interest**

Declaration of Interest:

Cr Ken Couper declared an interest due to parties involved being personally known to him.

2. **Apologies**

There were no apologies.

3. **Confirmation of Minutes of Previous Exemptions and Objections Committee Meeting**

There were no minutes for confirmation.

4. **Decision Reports**

4.1 **Objection to Menacing Dog Classification**

Tabled – letter from Barbara and Colin Griffin advising they no longer wish to pursue the objection to the menacing dog classification for their dog Minka.

Moved By Cr Shelley Deeming

Seconded By Cr Greg Innes

That the Committee:

1. Note the letter received from the objectors Barbara and Colin Griffin, owners of the dog Minka, advising they no longer wish to pursue the objection to the menacing classification.
2. Request staff advise the objectors, Barbara and Colin Griffin, that the menacing classification on the dog Minka remains in force.

Carried

4.2 Objection to Menacing Dog Classification

Moved By Cr Shelley Deeming

Seconded By Cr Greg Innes

That the Committee hear the objection to the menacing classification against the dog 'Horse' owned by Carla Butler.

Carried

The Committee heard the objection. The Committee then closed the hearing and reserved its decision.

Moved By Her Worship the Mayor

Seconded By Cr Shelley Deeming

That the Committee's decision on the menacing dog classification be reserved until such time as the Committee has considered the evidence and all relevant matters and the Committee's decision be issued in due course.

Carried

Following deliberations the Committee resolved:

Moved By Cr Shelley Deeming

Seconded By Cr Greg Innes

The Committee having considered the information presented in writing and in person at the hearing determines that the Menacing Dog Classification imposed on the dog 'Horse' owned by Carla Butler, on the 20 March 2020 under the Dog Control Act 1996, be **rescinded**, subject to the owner complying with the following conditions:

- a) That the dog 'Horse' is kept under control at all times, as required under the Dog Control Act 1996, and

- b) is kept under control at all times, when traversing the public place (the track splitting the Butler's land effectively in two parts), and
- c) can be contained within a suitably fenced portion of the immediate property surrounding the dwelling house, when not under supervision. The fencing provided to be inspected by, and to the satisfaction, of the Animal Control Officer.

Carried

The full Decision of the Committee and the reasons for it's determination has been issued separately.

5. Closure of Meeting

The meeting concluded at 11am.

Confirmed this 6th day of April 2021

Councillor Shelley Deeming (Chairperson)

4.1 Objection to Disqualification from Dog Ownership

Meeting	Exemptions and Objections Committee
Date of meeting	6 April 2021
Reporting Officers	Reiner Mussle – Manager Health and Bylaws Peter Banks - Animal Management Executive Officer, Armourguard

Time	Hearing	Name
9am	Objection to Disqualification from Dog Ownership (Section 25 of the Dog Control Act 1996)	Byron Haika

Hearing Procedure

Objection under the Dog Control Act 1996

- 1 The Chairperson opens the proceedings by introducing the committee and asks parties to introduce themselves and their witnesses.
- 2 Staff will briefly outline the objection.
- 3 The Council Officer's/contractor's report, which has been circulated prior to the hearing, is taken as read.
- 4 The objector presents his/her case including any supporting evidence from witnesses.
- 5 Council officers/contractors will speak on his/her report and is available to answer questions.
- 6 Only the objector is given the opportunity to have a right to reply. This gives him/her the chance to clarify matters raised in the Council officer's/contractor's report but not to present new evidence.
- 7 Final questions of clarification.
- 8 The Chairperson adjourns the hearing to deliberate on its decision based on the evidence submitted, following which the objector will be notified in writing of the decision.

A written decision will be issued as soon as practicable.

Report to Exemptions and Objections Committee

1. Introduction

The purpose of this hearing is to hear and determine the objection of Mr Byron Haika to disqualification from dog ownership.

2. Background

Council first advised Mr Haika that it intended to disqualify him from dog ownership on 19 October 2020.

This was due to Mr Haika having received three or more infringements not related to a single incident within a twenty four month period (Legislation– Appendix A), (Infringements – Appendix B).

Mr Haika had the right to object to that disqualification and an objection was received and accepted by Council dated 30 October 2020 (Correspondence – Appendix C).

Infringements must be issued within 6 months of the infringement offence, but they must also be issued sufficiently early enough within that six months to ensure that the person infringed has 28 days plus, a further 28 days (total of 56 days) minimum to pay or dispute the infringement.

It was discovered that D507218 issued to Mr Haika for failing to keep a dog controlled or confined (and also D507219) were issued too late in the six month period to provide Mr Haika with his entitlement of 56 days. As such, those infringements were written off (Infringements - Appendix B).

The disqualification which had been based on the inclusion of one of those infringements (D507218) therefore lapsed.

Unfortunately there was a further infringement dated 10 January 2021 (D507280) issued to Mr Haika for a failure to keep a dog confined or controlled. There had also been a failure by Mr Haika to keep his dogs 'Mister' and 'Midnight' registered, and microchipped ('Midnight') dated 16 December (D506719, D507312 and D507310). (Infringements – Appendix B)

A dog owner must keep their dog(s) registered and microchipped at all times, irrespective of any other processes that may be occurring under the Dog Control Act.

On 24 February 2021 Council drafted a letter to Mr Haika advising that although the initial disqualification had been rescinded, a new disqualification had been imposed. This was because with the December 2020 and January 2021 infringements he had reached the statutory threshold for disqualification a second time. The disqualification expires on 16 December 2023. The letter was forwarded to Armourguard as Council's animal management enforcement contractor for issue.

Unfortunately, in the interim, on 27 February 2021, Mr Haika's dog 'Mister' wandered yet again, and the dog was impounded. All dogs must be kept registered and Council must not release a dog that is not registered (Legislation – Appendix A). On 2 March 2021 Mr Haika paid the registration fee for the dog 'Mister'. The dog was released to him and Armourguard served him with the new disqualification notice.

Infringements associated with the 27 February 2021 wandering incident were posted out to Mr Haika by a staff member, however, both Armourguard and Council took the view that

there was nothing further to be gained by issuing even more infringements, and these were cancelled and Mr Haika informed.

Mr Haika has lodged an objection dated 9 March 2021 to the new disqualification for this committee to hear and consider.

3. Discussion

The Dog Control Act 1996 sets out that:

“26 Objection to disqualification

(3) In considering any objection under this section, the territorial authority shall have regard to—

- (a) the circumstances and nature of the offence or offences in respect of which the person was disqualified; and
- (b) the competency of the person objecting in terms of responsible dog ownership; and
- (c) any steps taken by the owner to prevent further offences; and
- (d) the matters advanced in support of the objection; and
- (e) any other relevant matters.”

4.1 The circumstances and nature of the offence or offences in respect of which the person was disqualified

Date	Infringement Number	Description
10 January 2021	D507280	<p><i>Failure to keep dog controlled or confined</i></p> <p>On or about the 10th of June 2020 the residents at a Russell Road property experienced an attack on their sheep. At the time Armourguard’s Animal Management team suspected Byron Haika’s dog ‘Mister’ who was seen wandering in the immediate vicinity around the same time.</p> <p>On the 15th of January 2021 ‘Mister’ was again witnessed by the residents of the same Russell Road property wandering on their property. He was photographed and reported to Animal Management.</p>
16 December 2020	D506719, D507312, D507310,	<p><i>Failure to register and microchip dogs:</i></p> <p>On the 16th of December 2020 Animal Management visited Byron Haika’s address to carry out a property check regarding his two dogs. Both dogs ‘Mister’ and ‘Midnight’ were present at the address. When Byron was asked if the dogs were compliant it was found that both ‘Mister’ and ‘Midnight’ were both unregistered and ‘Midnight’ was not microchipped.</p>

22 April 2020	D505398	<i>Failure to keep dog controlled or confined</i> On the 22 nd of April 2020 Animal Management uplifted and impounded 'Mister' who was found wandering unaccompanied.
29 April 2020	D503424	<i>Failure to keep dog controlled or confined</i> On the 29 th of April 2020 Animal Management uplifted and impounded 'Mister' who was found wandering unaccompanied.

4.2 The competency of the person objecting in terms of responsible dog ownership

Unfortunately, Mr Haika has shown an ongoing inability to keep his dogs under control as demonstrated by the above history.

4.3 Any steps taken by the owner to prevent further offences

Given the ongoing wandering recurrences it is difficult to point to any effective steps that have been taken.

4.4 The matters advanced in support of the objection

The committee must hear and consider Mr Haika's objection.

4.5 Any other relevant matters

Other Incidents

The infringement fees associated with D507218 issued to Mr Haika for failing to keep a dog controlled or confined (and also D507219 for willfully obstructing a dog control officer) were written off. This incident, however, involved an attack on sheep at the Russell Road property on or about the 10th of June 2020. Mr Haika's dog 'Mister' had been witnessed and recognized on the property around the time of the attack. During the course of the subsequent investigation by Animal Management there was initially sufficient evidence to reasonably believe that 'Mister' was involved in the attack and required impounding. Mr Haika obstructed the Animal Management Officer by refusing to produce or release 'Mister' to the Officer. Verbal abuse followed from Mr Haika to the point where it was necessary to request Police attendance at the address.

While the infringement fees associated with D507407 (Failure to register a dog) and D507408 (Failing to keep dog controlled or confined) in relation to the most recent incident on 27th February 2021 were withdrawn, this incident involved Mr Haika's unregistered dog 'Mister' being discovered off its property and wandering on a neighbouring address on the 27th of February 2021. Mr Haika's home address was unoccupied at the time as discovered by Animal Control.

Other Complaints

Finally, in addition, to the above incidents Mr Haika has also received verbal or written warnings for three other incidents in the last twenty four months as follows (CRM Printouts – Appendix D):

Date	CRM Number	Description
21 May 2019	AC073876	2x Mr Haika's dogs sighted out wandering by a member of the public Dogs unregistered
17 February 2020	AC077875	Mister impounded for wandering in an area where a sheep had been mauled. The sheep attack was not witnessed and so the dog responsible was not known. Written wandering notice issued for 'Mister' WAN8346
8 May 2020	AC078904	'Mister' impounded for wandering released with warning

Other Matters

If the disqualification is upheld by this Committee, Mr Haika would have fourteen days after that decision to rehome his dogs. It would mean that his dogs will not be able to reside with him (based on the current expiry date) before 16 December 2023, and he will not be able to take on any other dogs before 16 December 2023 either.

Recommendations

That the Committee:

- a. Hear the objection to the objection to disqualification as a dog owner.

Following deliberations:

That the Committee:

- a. Determine whether the disqualification is **either** upheld or not upheld.

5 Attachments

Appendix A – Relevant Legislation – Dog Control Act 1996
Appendix B - Records of Infringements
Appendix C – Correspondence
Appendix D – CRM Printouts

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By sections

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 Contents

Previous section

Next section



Tag section

Remove



Previous hit

Next hit

*Disqualification of owners***25 Disqualification of owners**

- (1) A territorial authority must disqualify a person from being an owner of a dog if—
- (a) the person commits 3 or more infringement offences (not relating to a single incident or occasion) within a continuous period of 24 months; or
 - (b) the person is convicted of an offence (not being an infringement offence) against this Act; or
 - (c) the person is convicted of an offence against Part 1 or Part 2 of the Animal Welfare Act 1999, section 26ZZP of the Conservation Act 1987, or section 56I of the National Parks Act 1980.
- (1A) Subsection (1) does not apply if the territorial authority is satisfied that the circumstances of the offence or offences are such that—
- (a) disqualification is not warranted; or
 - (b) the territorial authority will instead classify the person as a probationary owner under section 21.
- (2) For the purposes of subsection (1)(a), a person must be treated as having committed an infringement offence if—
- (a) that person has been ordered to pay a fine and costs under section 375 of the Criminal Procedure Act 2011, or is deemed to have been so ordered under section 21(5) of the Summary Proceedings Act 1957; or
 - (b) the infringement fee specified on the infringement notice in respect of the offence issued to the person under section 66 has been paid.
- (3) A disqualification under subsection (1) continues in force for a period specified by the territorial authority not exceeding 5 years from the date of the third infringement offence or offences (as the case may be) in respect of which the person is disqualified.
- (4) If a person is disqualified under subsection (1), the territorial authority must, as soon as practicable, give written notice in the prescribed form to the person of that decision.

Section 25: substituted, on 1 December 2003, by section 14 of the Dog Control Amendment Act 2003 (2003 No 119).

Section 25(1): amended, on 7 July 2004, by section 7(1) of the Dog Control Amendment Act 2004 (2004 No 61).

Section 25(1A): inserted, on 7 July 2004, by section 7(2) of the Dog Control Amendment Act 2004 (2004 No 61).

Section 25(2)(a): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).



26 Objection to disqualification

- (1) Every person disqualified under section 25—
 - (a) may object to the disqualification by lodging with the territorial authority a written objection to the disqualification; and
 - (b) shall be entitled to be heard in support of the objection.
- (2) An objection under this section may be lodged at any time but no objection shall be lodged within 12 months of the hearing of any previous objection to the disqualification.
- (3) In considering any objection under this section, the territorial authority shall have regard to—
 - (a) the circumstances and nature of the offence or offences in respect of which the person was disqualified; and
 - (b) the competency of the person objecting in terms of responsible dog ownership; and
 - (c) any steps taken by the owner to prevent further offences; and
 - (d) the matters advanced in support of the objection; and
 - (e) any other relevant matters.
- (4) In determining any objection, the territorial authority may uphold, bring forward the date of termination, or immediately terminate the disqualification of any person and shall give written notice of its decision, the reasons for it, and the right of appeal under section 27 to the objector.

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By sections

View whole (537KB)

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 Contents

Previous section

Next section



Tag section

Remove



Previous hit | Next

28 Effect of disqualification

- (1) Subject to this section, if a person is disqualified from owning a dog under section 25 the person must,—
 - (a) within 14 days of the date on which notice of the decision is given to the person, dispose of every dog owned by the person; and
 - (b) not subsequently be in possession of a dog at any time, except for the purpose of—
 - (i) preventing a dog from causing injury, damage, or distress; or
 - (ii) returning, within 72 hours, a lost dog to the territorial authority for the purpose of restoring the dog to its owner.
- (2) Every dog disposed of under subsection (1)(a)—
 - (a) shall be disposed of in a manner that does not constitute an offence against this or any other Act; and
 - (b) shall not be disposed of to any person who resides at the same address as the person disqualified.
- (3) Where any person has, within 14 days after the date on which the notice of disqualification under section 25(4) is given to that person, lodged an objection under section 26, subsection (1) of this section shall apply in relation to that person as if the reference in that subsection to section 25(4) were a reference to section 26(4).
- (4) Where any person has, within 14 days after the date on which the notice under section 26(4) is given to that person in respect of an objection to which subsection (3) of this section refers, lodged an appeal under section 27, subsection (1) of this section shall apply in relation to that person as if the reference in that subsection to the date on which the notice under section 25(4) was given to that person were a reference to the date of the decision of the District Court on that appeal.
- (5) Every person commits an offence and is liable on conviction to a fine not exceeding \$3,000 who—
 - (a) fails to comply with subsection (1); or
 - (b) fails, in disposing of a dog under subsection (1), to comply with subsection (2); or
 - (c) at any time while disqualified under section 25, becomes the owner of any dog in terms of this Act; or
 - (d) disposes or gives custody or possession of any dog to any person, knowing that person to be disqualified under section 25.
- (6) Where any person is convicted of an offence against paragraph (a) or paragraph (c) of subsection (5), the territorial authority may extend the period of disqualification of that person until a date not later than 5 years after the date on which the offence occurred.
- (7) Where any person fails to comply with subsection (1), any dog control officer may seize any dog owned by that person and, for that purpose, may, at any reasonable time, with all persons he or she calls to his or her assistance, enter onto the land or premises, including any dwellinghouse, of the owner of the dog.

Section 28(1): substituted, on 1 December 2003, by section 15(1) of the Dog Control Amendment Act 2003 (2003 No 119).

Section 28(2): amended, on 1 December 2003, by section 15(2) of the Dog Control Amendment Act 2003 (2003 No 119).

Section 28(3): amended, on 1 December 2003, by section 15(3) of the Dog Control Amendment Act 2003 (2003 No 119).

Section 28(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 28(4): amended, on 1 December 2003, by section 15(4) of the Dog Control Amendment Act 2003 (2003 No 119).

Section 28(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 28(5): amended, on 1 December 2003, by section 15(5) of the Dog Control Amendment Act 2003 (2003 No 119).

**69A Impounded dog must be microchipped and registered before release**

- (1) A registered dog that has been impounded by a territorial authority under this Act may not be released to any person (other than for the purposes of destroying it) without first being implanted with a functioning microchip transponder of the prescribed type and in the prescribed manner.
- (2) Subsection (1) does not apply to a registered dog that has been impounded by the territorial authority for the first time.
- (3) An unregistered dog that has been impounded by a territorial authority under this Act may not be released to any person (other than for the purposes of destroying it) without first being registered under this Act.
- (4) An unregistered dog that has been impounded by a territorial authority under this Act may not be released to any person (other than for the purposes of destroying it) without first being implanted with a functioning microchip transponder of the prescribed type and in the prescribed manner.
- (5) Subsections (1) and (4) do not apply if,—
 - (a) as a requirement of this Act, the dog has been previously implanted with a functioning microchip transponder of the prescribed type and in the prescribed location; or
 - (b) in any other case, the territorial authority has verified that the dog has been implanted with a functioning microchip transponder of the prescribed type and in the prescribed location.
- (6) A territorial authority that implants in a dog, or causes a dog to be implanted with, a microchip transponder under this section may recover all the costs in relation to the procedure from—
 - (a) the owner of the dog; or
 - (b) the person taking possession of the dog.

Section 69A: inserted, on 1 July 2006, by section 24 of the Dog Control Amendment Act 2004 (2004 No 61).

Section 69A(3): brought into force, on 7 July 2004, by section 2(3) of the Dog Control Amendment Act 2004 (2004 No 61).

Section 69A(6): added (with effect on 1 July 2006), on 28 June 2006, by section 23 of the Dog Control Amendment Act 2006 (2006 No 23).

Infringement

Infringement No:* D507219

Primary Offender Name: Byron Haika

Status

Written Off

Primary Offender Address:

Balance:

0.00

General

Animal ID: 75742

Mister - Alaskan Malamute - Black

Date:* 10/06/2020

Infringement ID: 395824

Time:* 5:45:00 PM

Date Paid:

Officer Code: 140

Officer 140

Balance: 0.00

Book ID:

Due Date: 29/01/2021

Import ID:

Status: WriteOff

Written Off

Infringement Type: DOG

Dog Infringements

Offence Code	Description
▶ WO	Wilful obstruction of dog control officer

Infringement

Infringement No:* 

Primary Offender Name:

Primary Offender Address:

Status: **Written Off**

Balance:

General

Animal ID: Mister - Alaskan Malamute - Black

Date:*

Infringement ID:

Time:*

Date Paid:

Officer Code:

Officer 140

Balance:

Book ID:

Due Date:

Import ID:

Status:

Written Off

Infringement Type:

Dog Infringements

Offence Code	Description
▶ FCC	Failed to keep dog controlled or confined

Infringement

Infringement No.* 

Primary Offender Name: Byron Haika

Primary Offender Address:

Status

Reminder Sent

Balance:

200.00

General

Animal ID:

Mister - Alaskan Malamute - Black

Date:*

Infringement ID:

Time:*

Date Paid:

Officer Code:

Officer 140

Balance:

Book ID:

Due Date:

Import ID:

Status:

Reminder Sent

Infringement Type:

Dog Infringements

Offence Code	Description
▶ FCC	Failed to keep dog controlled or confined

Infringement

Infringement No:* 

Primary Offender Name: Byron Haika

Primary Offender Address:

Balance: 330.00

Status **Prosecuted**

General

Animal ID: Mister - Alaskan Malamute - Black

Date:*

Infringement ID:

Time:*

Date Paid:

Officer Code:

Officer 191

Balance:

Book ID:

Due Date:

Import ID:

Status:

Prosecuted

Infringement Type:

Dog Infringements

Offence Code	Description
▶ <u>UN</u>	Failure to register dog

Transactions

Infringement

Infringement No:* 

Primary Offender Name: Byron Haila

Primary Offender Address:

Status

Prosecuted

Balance:

330.00

General

Animal ID:

Midnight - Retriever Labrador - Black

Date:*

Infringement ID:

Time:*

Date Paid:

Officer Code:

Officer 191

Balance:

Book ID:

Due Date:

Import ID:

Status:

Prosecuted

Infringement Type:

Dog Infringements

Offence Code	Description
▶ IC	Failed to implant microchip in a dog

Infringement

Infringement No:*	D507312	
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Status	Prosecuted
Not Prosecuted	Prosecuted

Primary Offender Name:	Byron Hale
Primary Offender Address:	1000 S. 1st St.
Balance:	330.00

General

Animal ID: 74206

Midnight - Retriever Labrador - Black

Date: 16/12/2020

Infringement ID: 401603

Time: 3:45:00 PM

Date Paid:

Officer Code: 191

Officer 191

Balance:	330.00
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Book ID:

Due Date: 26/02/2021

Import ID:

Status:	Prosecuted
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Prosecuted

Infringement Type:	DOG
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Dog Infringements

Offence Code	Description
UN	Failure to register dog

Infringement

Infringement No.*

D503424



Primary Offender Name:

Byron Haika

Primary Offender Address:

Status

Prosecuted

Balance:

210.00

General

Animal ID:

75742

Mister - Alaskan Malamute - Black

Date:*

29/04/2020

Infringement ID:

386367

Time:*

11:30:00 AM

Date Paid:

Officer Code:

177

Officer 177

Balance:

210.00

Book ID:

Due Date:

03/07/2020

Import ID:

Status:

Prosecuted

Prosecuted

Infringement Type:

DOG

Dog Infringements

Offence Code	Description
► <u>FCC</u>	Failed to keep dog controlled or confined

Infringement

Infringement No.* 
 Primary Offender Name: **Byron Haka**
 Status **Prosecuted**
 Primary Offender Address:
 Balance: **210.00**

General

Animal ID: Mister - Alaskan Malamute - Black
 Date:* Infringement ID:
 Time:* Date Paid:
 Officer Code: Officer 177
 Balance: Book ID:
 Due Date: Import ID:
 Status: Prosecuted
 Infringement Type: Dog Infringements

Offence Code	Description
► <u>FCC</u>	Failed to keep dog controlled or confined

16 March 2021

Byron T Haika

Whangarei,



Forum North, Private Bag 9023
Whangarei 0148, New Zealand
P +64 9 430 4200
E mailroom@wdc.govt.nz
www.wdc.govt.nz

Dear Mr Haika

Objection to Disqualification from Dog Ownership

This letter is to let you know that Council has received your letter dated 9 March 2021 objecting to the notice of disqualification from dog ownership that was sent out to you dated 24 February.

You have sent in your objection within the required timeframe.

Your objection will be heard by a Council Committee (the Exemptions and Objections Committee) at 9.00 am on Tuesday 6th April 2021.

The hearing will be held in the Council Chambers, in Forum North, in Rust Avenue, Whangarei.

If you go up the stairs in the Forum North building to the Council Chamber reception area, you will be shown to a waiting room area where you can wait until the meeting begins. The Senior Democracy Advisor will meet you, and take you into the meeting and show you where to sit.

You may wish to bring a support person with you, and it is helpful to the committee if the comments and points you want to make to the committee have been written out beforehand.

It is preferred if you bring 7 copies of this. But if you are not able to make any copies then let the Senior Democracy Advisor know and copies can be made at the time for you by Council staff.

A report will be written by Council staff and a copy of this report will be sent out to you before the meeting so you know what information the Committee has beforehand.

You may wish to bring this letter with you on 6 April 2021 to give to the receptionist.

Yours faithfully

A handwritten signature in black ink, appearing to read "Reiner Mussle".

Reiner Mussle
Manager Health and Bylaws

10 MAR 2021

WHANGAREI
DISTRICT COUNCILTues 9th March 2021

Tena Koe

To whom it may concern,

I am writing this letter to acknowledge that a disqualification has been issued for the second time and I also wish to dispute such actions.

My first reason would be I do not understand how I can be disqualified to own a dog and then have a dog registered and placed back in my care. I was served papers by officer "John" after I had paid to register and release my dog. Officer "John" then forgot to instruct me and/or inform me of the details of papers which outlined my disqualification and reasons why. I was also not told that the 14 day period to dispute had begun well before I had been served papers.

It has been very stressful and time/resource consuming trying to figure out how and why such things have occurred. I am hoping to come to a resolution so matters do not become worse.

Mauri Ora,

Yours Faithfully

Byron Toko Haika

T
Dr
Whangarei



In reply please quote

Or ask for

24 February 2021

Byron Haika

Whangarei,

Forum North, Private Bag 9023

Whangarei 0148, New Zealand

P +64 9 430 4200

E mailroom@wdc.govt.nz

www.wdc.govt.nz

Dear Mr Haika

Disqualification from Dog Ownership

Council has reviewed the disqualification from dog ownership that was sent to you dated 19 October 2020 and has established that two infringements issued to you were written off. These were infringement numbers: D507218 and D507219, dated 10 June 2020.

Therefore, the original disqualification notice dated 19 October 2020 that was issued to you, has been rescinded.

In the normal course of events that would have been the end of the matter. **Unfortunately, however, Council records show that since that time there have been further infringements issued as follows:**

Date	Infringement Number	Description
10 January 2021	D507280	Failure to keep dog controlled or confined
16 December 2020	D506719, D507312, D507310,	Failure to register and microchip dogs:

When those recent infringements are combined with the two previous infringements set out below that were issued to you in April last year the threshold for consideration of disqualification or probationary ownership has been reached again.

Date	Infringement Number	Description
22 April 2020	D505398	Failure to keep dog controlled or confined
29 April 2020	D503424	Failure to keep dog controlled or confined

Please find attached a new notice of disqualification from dog ownership pursuant to section 25 of the Dog Control Act. This follows the issue of three or more infringement offences (not relating a single incident or occasion) to you within a continuous period of 24 months. The disqualification is for a period of 3 years from the date of the *third* infringement offence and so the disqualification will apply until 16 December 2023.

You are entitled to object to this new disqualification and for that disqualification to be heard. Objections are heard by way of a formal hearing and conducted by a Council Committee. Should you wish to exercise your right of objection further information is set out on the form attached.

If you wish to dispute any of the recent infringements dated December and January, that is a separate process and the dispute process is set out on the back of the infringement notice.

Yours faithfully



Reiner Mussle

Manager Health and Bylaws

Whangarei District Council Notice of disqualification from dog ownership

r 2

Section 25, Dog Control Act 1996

To Byron Haika

Address: [redacted], Whangarei

This is to notify you that you have been disqualified under section 25 of the Dog Control Act 1996 from owning any dog.

This follows—

- 3 or more infringement offences (not relating to a single incident or occasion) having been committed by you, within a continuous period of 24 months.

The disqualification will apply from 16th December 2020 until 16th December 2023.

A summary of the effect of the disqualification and your right to object is provided below.

Signature of officer of Whangarei District Council:



Date: 24/2/2021

Effect of disqualification

Section 28, Dog Control Act 1996

You are required to dispose of every dog owned by you within 14 days of the date of this notice.

However, you may not dispose of a dog—

- to a person who resides at the same address as you; or
- in a way that constitutes an offence against the Dog Control Act 1996 or any other Act.

You must not become the owner, even on a temporary basis, of any dog while you are disqualified. You may have possession of a dog only for the purpose of—

- preventing it from causing injury, damage, or distress; or
- returning, within 72 hours, a lost dog to a territorial authority for the purpose of restoring the dog to its owner.

You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you—

- fail to dispose of every dog owned by you within 14 days of this notice; or
- at any time while disqualified, become the owner of any dog; or

- dispose of a dog owned by you—
 - to a person who resides at the same address as you; or
 - in a manner that constitutes an offence against the Dog Control Act 1996 or any other Act.

If you are convicted of the first or second of these offences, your period of disqualification may be further extended.

You will also commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you dispose or give custody or possession of a dog to a person knowing that person to be disqualified from ownership under section 25 of the Dog Control Act 1996.

Full details of the effect of disqualification are provided in the Dog Control Act 1996.

Right of objection to disqualification

Section 26, Dog Control Act 1996

You may object to the disqualification by lodging a written objection with the Whangarei District Council setting out the grounds on which you object. You are entitled to be heard in support of your objection and will be notified of the time and place when your objection will be heard. No objection can be lodged within 12 months of the hearing of any previous objection to the disqualification. If an objection is lodged within 14 days after the date of this notice, the requirement to dispose of every dog owned by you will be suspended until the Whangarei District Council has determined the objection.

There is a further right of appeal to a District Court if you are dissatisfied with the decision of the Whangarei District Council on your objection.

Schedule form 3: substituted, on 1 November 2004, by regulation 3 of the Dog Control (Prescribed Forms) Amendment Regulations 2004 (SR 2004/354).



In reply please quote

Or ask for

24 November 2020

B T Haika

Private

Whangarei,

Forum North, Private Bag 9023

Whangarei 0148, New Zealand

P +64 9 430 4200

E mailroom@wdc.govt.nz

www.wdc.govt.nz

Dear Mr Haika

Objection to Disqualification from Dog Ownership

Further to Council's earlier letter acknowledging that your objection to disqualification was received within sufficient time, Council notes that you have been issued two recent infringement notices relating to an incident on 10 June 2020.

The process for objecting to the infringements if you wish to object to these also, is set out on the back of the infringement notices. Should you wish to pursue an objection to the infringements, you would need to request a court hearing, which must also be done in writing.

Yours faithfully

A handwritten signature in black ink, appearing to read "Reiner Mussle".

Reiner Mussle
Manager Health and Bylaws



In reply please quote

Or ask for

24 November 2020

B T Haika

Whangarei,

Forum North, Private Bag 9023

Whangarei 0148, New Zealand

P +64 9 430 4200

E mailroom@wdc.govt.nz

www.wdc.govt.nz

Dear Mr Haika

Objection to Disqualification from Dog Ownership

The purpose of this letter is to acknowledge that Council has received your letter dated 30 October 2020 objecting to the notice of disqualification from dog ownership that was served on 20 October 2020.

Council notes that you have lodged your objection within the required timeframe, and will respond again more fully in due course.

Yours faithfully

A handwritten signature in black ink, appearing to read "Reiner Mussle".

Reiner Mussle
Manager Health and Bylaws

30/10/20

Dear
Mauri

Tera Koe,

To whom it may concern, I am writing on behalf of my right to own or possess a dog under my title. I believe you wish to disqualify me as dog owner, and have yet to understand why the last incident that I could see recorded was on 10th June 2020, and the date recorded on papers served was 19th October 2020. Which confused me as my dog was on probation during the time for an alleged attack on livestock nearby where I live, which I am still awaiting results from Armagard. I was surprised to receive a letter of release for my dog, but instead got served papers I do not understand. How my dog went from being on probation to now I am being disqualified, I feel as I have

been bullied and harassed by Armagard because of their treatment towards my dog and I.

I would like to reply such miscommunication or misunderstanding by way of hearing. My overall goal or intention is to provide evidence that I am capable of being a compliant and responsible dog owner.

To: Hei Mauri Ora

Byron Toko Hika

D505398
D503424
D507218

In reply please quote

Or ask for:

Nina Darling - Bylaws Enforcement Co-ordinator



19th October 2020

Byron Haika

Whangarei

Forum North, Private Bag 90:

Whangarei 0148, New Zealand

P +64 9 430 4200

E mailroom@wdc.govt.nz

www.wdc.govt.nz

Dear Byron Haika

Disqualification as Dog Owner

Please find attached a notice of disqualification from dog ownership pursuant to section 25 of the Dog Control Act 1996.

This follows the issue of three or more infringement offences (not relating to a single incident or occasion) to you within a continuous period of 24 months.

The infringement notices that have been issued to you are set out below:

Date:	Infringement No:	Description:
22 nd April 2020	D505398	Failing to keep dog Controlled or Confined
29 th April 2020	D503424	Failing to keep dog Controlled or Confined
10 th June 2020	D507218	Failing to keep dog Controlled or Confined

The disqualification is for a period of 3 years from the date of the third infringement offence and so the disqualification will apply until 10th June 2023.

You are entitled to object to this classification and for your objection to be heard. Objections are heard by way of a formal hearing and conducted by a Council Committee. Should you wish to exercise your right of objection, further information is set out in the notification form attached.

Yours faithfully

Reiner Mussle
Manager - Health and Bylaws

Whangarei District Council Notice of disqualification from dog ownership

r 2

Section 25, Dog Control Act 1996

To Byron Haika

Address. , Whangarei

This is to notify you that you have been disqualified under section 25 of the Dog Control Act 1996 from owning any dog.

This follows—

- 3 or more infringement offences (not relating to a single incident or occasion) having been committed by you, within a continuous period of 24 months.

The disqualification will apply from 10th June 2020 until 10th June 2023.

A summary of the effect of the disqualification and your right to object is provided below.

Signature of officer of Whangarei District Council:

Date: 19/10/2020



Effect of disqualification

Section 28, Dog Control Act 1996

You are required to dispose of every dog owned by you within 14 days of the date of this notice.

However, you may not dispose of a dog—

- to a person who resides at the same address as you; or
- in a way that constitutes an offence against the Dog Control Act 1996 or any other Act.

You must not become the owner, even on a temporary basis, of any dog while you are disqualified. You may have possession of a dog only for the purpose of—

- preventing it from causing injury, damage, or distress; or
- returning, within 72 hours, a lost dog to a territorial authority for the purpose of restoring the dog to its owner.

You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you—

- fail to dispose of every dog owned by you within 14 days of this notice; or
- at any time while disqualified, become the owner of any dog; or
- dispose of a dog owned by you—
 - to a person who resides at the same address as you; or
 - in a manner that constitutes an offence against the Dog Control Act 1996 or any other Act.

If you are convicted of the first or second of these offences, your period of disqualification may be further extended.

You will also commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you dispose or give custody or possession of a dog to a person knowing that person to be disqualified from ownership under section 25 of the Dog Control Act 1996.

Full details of the effect of disqualification are provided in the Dog Control Act 1996.

Right of objection to disqualification

Section 26, Dog Control Act 1996

You may object to the disqualification by lodging a written objection with the Whangarei District Council setting out the grounds on which you object. You are entitled to be heard in support of your objection and will be notified of the time and place when your objection will be heard. No objection can be lodged within 12 months of the hearing of any previous objection to the disqualification. If an objection is lodged within 14 days after the date of this notice, the requirement to dispose of every dog owned by you will be suspended until the Whangarei District Council has determined the objection.

There is a further right of appeal to a District Court if you are dissatisfied with the decision of the Whangarei District Council on your objection.

Schedule form 3: substituted, on 1 November 2004, by regulation 3 of the Dog Control (Prescribed Forms) Amendment Regulations 2004 (SR 2004/354).

Whangarei District Council

Request

Appendix D

Request Number: AC073876
Priority: Routine
Date Received: 21/05/2019 02:40.38 pm
Resp Workgroup: WDC.RM.EN
Source: Phone
Raised By:
Status: Past
User ID: Post Event Post Event Armourguard
Group: Animals
Category: Dog Complaint
Sub Categories: Wandering

Related AR:

Property Number: 16863
Property Address: Whangarei 0112
Property Description:
Land Number:
Caller Name:
Home Phone:
Caller Address: Invalid Address
Work Phone:
Mobile:
Email:
Fax:

Request Details:

Wandering. 1 x Alsatian x with 1 blue eye. Pitbull x black with white chest. Come from R.O.W. In comps backyard. (Fenced)

Comments:

Date	Type	Feedback \ Comments
21/05/2019 02:40.38 pm	CRMComment	20/05/19 12:40 Aroha/169. Arrived at above address, spoke with caller. Caller showed officer his back yard where dogs access property. Picture attached. Officer went through gap in fence, located dogs at address stated. Both dogs non reg/chip. Owner Baron Hika informed of FCC and cost of infringements. Also cost of reg \$11 and \$20 chipping. Informed Baron to secure dogs on property and given 1 month to reg & chip due to financial reasons. Follow up with Baron 20/06/19
03/07/2019 08:44.02 am	CRMComment	02/07/19 Check of Tech 1, dogs not reg'd, called Baron, no answer, txt sent to confirm reg, no response.
03/07/2019 08:44.39 am	CRMComment	Infringements sent for non reg/non chip. Both dogs.

Event History:

36 Whangarei District Council Request

Request Number: AC078904
Priority: Routine
Date Received: 08/05/2020 08:45.20 am
Resp Workgroup: WDC.RM.EN
Source: Phone
Raised By:
Status: Past
User ID: Post Event Post Event Armourguard
Group: Animals
Category: Dog Complaint
Sub Categories: Wandering

Related AR:

Property Number: 17981
Property Address: Whangarei 0112
Property Description:
Land Number:
Caller Name:
Home Phone:
Caller Address: Invalid Address
Work Phone:
Mobile:
Fax:
Email:

Request Details:

Impound Pen 17
 7/5/20 15:31 John/140
 Huntaway husky cross entire (M) 1 blue eye 1 brown eye. Please can officer come collect dog from road, dog is secured on a lead.

Comments:

Date	Type	Feedback \ Comments
08/05/2020 08:45.24 am	CRMComment	Impound Pen 17 7/5/20 15:31 John/140 Dog impounded.
11/05/2020 12:11.14 pm	CRMClosure	
12/05/2020 04:49.16 pm	CRMComment	08/05/20 John/140. 'Mister' released with warning. SF.

Event History:

Description	Status	Decision	Commenced Finalised	Target Date	Role Name User
Refer to (email)	Past	Referred	08/05/2020 08:45.24 am 08/05/2020 08:45.26 am		
Accept/Reassign	Past	Accept	08/05/2020 08:45.00 am 08/05/2020 08:45.47 am	12/05/2020 08:45.00 am	
Acknowledge Caller	Past	N/A	08/05/2020 08:45.48 am 08/05/2020 08:45.52 am		

Whangarei District Council³⁷ Request

Request Number: AC077875
Priority: Urgent
Date Received: 17/02/2020 09:51.50 am
Resp Workgroup: WDC.RM.EN
Source: Phone
Raised By:
Status: Past
User ID: Post Event Post Event Armourguard
Group: Animals
Category: Dog Complaint
Sub Categories: Attack

Related AR:

Property Number: 16885
Property Address: Whangarei 0112
Property Description:
Land Number:
Caller Name:
Home Phone:
Caller Address:
Work Phone:
Mobile:
Email:
Fax:

Request Details:

Attack Impound Pen 13
 15/02/20 11:35 Steve177
 Sheep x1 badly injured, will be put down.

Comments:

Date	Type	Feedback \ Comments
17/02/2020 09:51.53 am	CRMComment	<p>Attack Impound Pen 13 15/02/20 11:35 Steve177 Arrived at property 12:05 and spoke with ... showed me the mauled sheep and said ... was organising a friend to come and Euth it in half an hour. They were both out between 08:30 and 11:30 and arrived home to find the sheep mauled. They have 3 other sheep on the property and fear for their safety. While talking, a neighbour brought a dog over to us who had been wandering on their property ... The Husky/Huntaway x had no blood on mouth or teeth but his face was wet. ... said a creek runs between ... The dog has been tied up ... since about 09:30. I checked for a chip (non loca) and impounded the dog. ... confirmed the ... had no dogs and no one had seen this dog before. Is said i would deliver a trap today. To ensure no other dogs are wandering in the area. 16:00 Dropped off trap and set will paper work Tuesday as owner at 6/60 concert.</p>
05/03/2020 02:28.21 pm	CRMComment	17/02/20 Aimee/92. Attack not witnesses, unable to hold dog. Phoned comp. - left message. Spoke to Biron Hika (PIC) who does not have fees of \$281. SF.
05/03/2020 02:46.34 pm	CRMComment	<p>19/02/20 09:45 Steve/177. Family came into pound to pay for release of 'Mister'. Microchipped and released. 16:30 Spoke with ... and informed ... that the dog 'Mister' (which had been wandering in ... area was impounded 15/02/20). Had been released this morning due to no evidence to hold the dog for the sheep attack. ... was disappointed but understood the reasons. ... asked if ... could keep the dog trap I set for ... on Saturday and I said ... could keep on site for 2 weeks. will sign loan agreement 20/02/20. SF.</p>
05/03/2020 02:47.11 pm	CRMComment	29/02/20 Cage picked up . SF.
17/04/2020 02:50.31 pm	CRMComment	15/02/20 Steve/177. WAN8346 issued for 'Mister'. SF.
17/04/2020 04:34.57 pm	CRMClosure	17/04/20 Steve/177. Wandering notice issued. Close. SF.

4.2 Objection to Menacing Dog Classification – ‘Horse’ – Report on fulfilment of conditions

Meeting: Exemptions and Objections Committee

Date of meeting: 6 April 2021

Reporting officer: Reiner Mussle

1 Purpose

To report back on the fulfilment of conditions to a Decision of the Exemptions and Objections Committee.

2 Recommendations

That the Committee

- a) Receives this report
- b) Determines if condition c) set out by the Exemptions and Objections Committee on 20 November 2020 (Appendix B) has been met to the satisfaction of the Committee so that the menacing classification imposed on the dog ‘Horse’ may now be rescinded
- c) Notes the information provided to the committee in respect to the related but separate signage issue (Appendix E).

3 Background

On 4 November 2020 this committee considered the report attached as ‘Appendix A’.

On 20 November 2020 the committee issued the decision attached as ‘Appendix B’. The decision determined that the menacing classification imposed on the dog ‘Horse’ would be rescinded, subject to the owner complying with certain conditions which included condition c).

Condition c) requires that the dog ‘Horse’: - *‘can be contained within a suitably fenced portion of the immediate property surrounding the dwelling house, when not under supervision. The fencing provided to be inspected by, and to the satisfaction, of the Animal Control Officer.’*

Council’s Dog Management and Enforcement Contractor (Armourguard) provided a report dated 25 January 2021 relating to another dog alleged to be ‘Snoop’ (not ‘Horse’) belonging to the Butlers. That report records the dog ‘Snoop’ had allegedly wandered from the property at 436 Glenmohr Road on 20 December 2020.

The contractor's file for this incident is attached as Appendix 'C'. The file includes an email sent by the complainant to Council on 20 December 2020 regarding the incident.

The officer's notes of the discussion with the complainant in that incident, record as follows:

'[...]The offending dog was a friendly whippet type dog (smaller than 'Horse'). [The complainant] had sighted it on Glenmohr Road and been worried it would be hit by a car, [and] has tried to return it to 436 Glenmohr Road. This has been unsuccessful and the dog has followed the [complainant] towards her home before Carla and Craig have pulled up in their vehicle and collected the dog.

[Complainant] has stated the dog was friendly and her main concern was that 'Horse' would be able to get out or follow this dog out [...].'

Subsequent to this, the inspection required under condition c) of this Committee's decision of 20 November 2020, took place at 436 Glenmohr Rod on 27 January 2021. Senior Animal Control Officer, Shaun Holland recorded that the inspection was 'passed'. Mr Holland's notes are attached as 'Appendix 'D'.

Both Mrs Butler and the complainant in the 20 December 2020 incident were offered the opportunity to attend this meeting and to answer any questions the Committee might have. Both parties expressed a preference not to attend. However, both will be sent a copy of this report ahead of the meeting with advice that as a public meeting they may attend if they wish.

4 Discussion

Staff wish to ensure that this Committee is satisfied pursuant to condition c) of its decision of 20 November 2020 that the dog 'Horse' *'can be contained'* within a suitably fenced portion of the immediate property surrounding the dwelling house, when not under supervision.

As noted above, Senior Animal Control Officer, Shaun Holland carried out an inspection of the property on 27 January 2020 and recorded that the inspection was 'passed'. Mr Holland's notes are attached as 'Appendix 'D'.

While there has been a subsequent alleged wandering incident involving a dog from 436 Glenmohr Road the dog was not 'Horse' and was described as friendly.

However as concern was expressed by that complainant as to how this reflected on the Butler's ability to keep any of their dogs including 'Horse' contained, it was thought prudent to make the Committee aware of the alleged incident.

Other Matters

In its decision dated 20 November 2020, the Committee noted that a related but separate signage issue was outside this Committee's jurisdiction and the matter was therefore to be referred internally within Council for further follow-up.

The Manager Health and Bylaws and the Northland Transport Agency Manager Strategy and Planning have conferred, and reached consensus on that matter. A record of the consensus reached is attached as Appendix F for this Committee's information.

5 Significance and engagement

The decisions or matters of this Agenda do not trigger the significance criteria outlined in Council's Significance and Engagement Policy, and the public will be informed via Agenda publication on the website.

6 Attachments

Appendix A – Report to this Committee of 4 November 2020

Appendix B – Decision of this Committee on 20 November 2020

Appendix C – Officer's Property Inspection Report of 436 Glenmohr Road on 27 January 2021

Appendix D- Armourguard File for alleged wandering incident on 25 January 2021

Appendix E – Memo recording consensus reached by Manager Health and Bylaws and Northland
Transport Agency Manager Strategy and Planning dated 19 March 2021

4.2 Objection to Menacing Dog Classification

Meeting: Exemptions and Objections Committee
Date of meeting: 4 November 2020
Reporting officer: Nina Darling, Bylaws Enforcement Co-ordinator
 Reiner Mussle, Manager – Health and Bylaws

Time	Hearing	Name
10.30am	Objection to Menacing Dog Classification (Sections 33A and 33B of the Dog Control Act 1996)	Carla Butler

Hearing Procedure

Objection under the Dog Control Act 1996

- 1 The Chairperson opens the proceedings by introducing the committee and asks parties to introduce themselves and their witnesses.
- 2 Staff will briefly outline the objection.
- 3 The Council Officer's/Contractor's report, which has been circulated prior to the hearing, is taken as read.
- 4 The objector presents his/her case including any supporting evidence from witnesses.
- 5 Council officers/contractors will speak on his/her report and is available to answer questions.
- 6 Only the objector is given the opportunity to have a right to reply. This gives him/her the chance to clarify matters raised in the Council Officer's/Contractor's report but not to present new evidence.
- 7 Final questions of clarification.
- 8 The Chairperson adjourns the hearing to deliberate on its decision based on the evidence submitted, following which the objector will be notified in writing of the decision.

A written decision will be issued as soon as practicable.

Report to Exemptions and Objections Committee

1 Introduction

The purpose of this hearing is to hear and determine the objection made by Carla Butler to a menacing classification imposed by letter dated 31 August 2020 (**Attachment One**) against her dog 'Horse'.

2 Background

S33A of the Dog Control Act 1996 ('the Act') provides that a territorial authority may classify a dog as menacing where it considers that the dog may pose a threat to any person, (or stock, poultry, domestic animal, or protected wildlife) because of any observed or reported behaviour of the dog.

If a dog is classified as menacing under s33A of the Act, 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).

Under S33B of the Act Mrs Butler was entitled to object within 14 days of receiving the classification and has the right to be heard. The classification notice is dated 31 August 2020 and Mrs Butler lodged an objection on 7 September 2020 (**Attachment Two**) and therefore lodged her objection in sufficient time.

3 Statutory Considerations

Section 33B gives the power to the Committee to consider the objection, which may uphold or rescind the classification. In making its determination the committee 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.

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.

4 Discussion

4.1 Classification

The classification of the dog 'Horse' as menacing followed an incident that occurred on 20 March 2020. A copy of a statement from the victim and his wife and also Mrs Butler's statement is attached (**Attachment Three**). The victim reported that 'Horse' was one of three dogs that rushed him and his own dog. The other two dogs have since passed away. It is not alleged that the dog 'Horse' injured the victim dog. The victim stated that:

'[...]That is when the third dog 'Horse' then came running down the driveway and onto the road and came round behind us and tried to get a grip on the back of [victim dog's name] above the tail when I grabbed 'Horse's collar and gave it a twist to let go of [victim dog's name] [...]

The incident occurred on a track that diverges off a 'paper' road within the Butler's property ('the track'). Maps attached (**Attachment Four**).

The track which cuts through the Butler's property over which there is a right of way was created for forestry access for the forestry company its employees, agents, invitees and contractors (**Attachment Five**). Local people, however, are known to use the track. This is a practice which Council understands the Butler's would like to discourage and prevent, however the track remains accessible to the public.

It is important to note that 'Public Place' is specifically defined within the Dog Control Act 1996:

public place—

- a) means a place that, at any material time, is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from that place; and
- b) includes any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle carrying or available to carry passengers for reward

However, it is not a requirement under the Act that an observed or reported behaviour of a dog occur in a public place for a menacing classification to be imposed.

Where an incident must occur in a 'public place' for a sanction to be imposed this is specified in the Act. For example, a charge of 'rushing' under s57A of the Act may only be laid in the District Court where the incident occurred in a 'public place'.

Under s33A of the Act a territorial authority may classify a dog as menacing where it considers that the dog may pose a threat to any person, (or stock, poultry, domestic animal, or protected wildlife) because of any observed or reported behaviour of the dog.

4.2 Other History

The dog 'Horse' was classified as menacing based on the incident that occurred on 20 March 2020.

However, a previous incident involving the dog 'Horse' was reported to Council on 12 August 2018 and another incident on 5 February 2018 which Armourguard's Senior Dog Control Officer has advised links to the dog 'Horse' in Council systems. A copy of the Customer Request Memos are attached (**Attachment Six**).

4.3 Assessment

As noted above, in making its determination the committee 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.

These matters are reviewed below:

The evidence which formed the basis for the classification

As noted above the classification was imposed based on the behaviour of the dog reported by the victim in the incident on 20 March 2020 (**Attachment Three**)

Any steps taken by the owner to prevent any threat to the safety of persons or animals

It is acknowledged that in December 2018 the Butler's erected a sign which advised 'Keep out Trespassers may be Prosecuted'. Following internal advice provided by Council's roading department this sign was requested to be taken down by the Manager Health and Bylaws.

However, the sign was not augmented with any fencing or barrier, or other measure to exclude the public. (Any such barrier would also however need to continue to provide for allow for access to the actual continuation the unformed or 'paper' road that runs down the side of the Butlers boundary.)

In her statement Mrs Butler states that while over approximately four years the victim had permission to walk his dog on their property in 2019 the forestry block began to be milled and forestry workers asked them to prohibit access due to health and safety concerns. Mrs Butler notes in her statement that the forestry company installed a sign that states dogs are prohibited.

It is also noted that the dog owner arrived at the scene of the incident on 20 March 2020 and called the three dogs including 'Horse', taking them away in her vehicle, preventing any further escalation of that incident.

Other matters

In the absence of an appropriate physical barrier that is effective in preventing public access to the track it is submitted that the dog 'Horse' needs to be kept within a properly fenced area and should be muzzled when in a public place.

The matters relied on in support of the objection

The committee must consider the information set out in Mrs Butler's objection dated 7 September 2020. (**Attachment two**).

4.4 Impact of the Menacing Classification within the Butler's own Property Boundary

It is acknowledged that if the interpretation of a 'Public Place' set out in the Act is applied strictly to the track within the Butler's own property then the dog owner would be required to muzzle her dog within her own property boundary in areas that the public use from time to time.

However, so long as the dog 'Horse' is:

- contained or confined within a suitably fenced portion of the property at all times to protect members of the public who may use or wander onto either the track, or who may choose to

access the unformed 'paper' road that runs down the side of the property; and

- is kept under the immediate, continuous, and effective control of the dog owner herself at all other times on the property

then the muzzling of the dog 'Horse' while it is within the dog owner's own property boundary is not anticipated.

Recommendation

That the Committee:

- a) hear the objection to the menacing classification against the dog 'Horse' owned by Carla Butler.

Following deliberations:

That the Committee:

- a Determine that the menacing dog classification imposed on the dog 'Horse' owned by Carla Butler on 31 August 2020, be **either** upheld or not upheld; and
- b If upheld, determine if a clarification regarding the circumstances in which muzzling within the dog owner's own property boundary is required should be issued.

Attachments

Attachment One - Menacing classification imposed by letter dated 31 August 2020

Attachment Two - Objection received on 7 September 2020

Attachment Three - Copy of a statement from the victim and his wife, and also Mrs Butler

Attachment Four - Maps depicting the property, paper road, right of way and location of incident

Attachment Five - Title information showing right of way in favour of forestry company

Attachment Six - Customer Request Memos – previous incidents concerning 'Horse' in 2018

Appendix B

Report and Decision of the Whangarei District Council through its Exemptions and Objections Committee Meeting held in the Council Chambers, Forum North, Whangarei on 4 November 2020 Commencing at 9.30am

A Committee of the Whangarei District Council was convened to determine an objection to a Classification of a Menacing Dog lodged by Carla Butler in accordance with Sections 33A and 33B of the Dog Control Act 1996

Present	Hearings Committee Councillor Shelley Deeming (Chairperson) Her Worship the Mayor Sheryl Mai Councillor Ken Couper Councillor Greg Innes
Applicants	Carla and Craig Butler
In Attendance	Nina Darling, (Bylaws Enforcement Co-ordinator), Reiner Mussle (Manager Health and Bylaws), Peter Banks (Animal Management Executive Officer – Armourguard), Shaun Holland (Animal Control Officer – Armourguard) and C Brindle (Senior Democracy Adviser)

1 Objection

The hearing is to consider an objection received from Carla Butler, to a notice issued by an Animal Control Officer under Section 33A of the Dog Control Act 1996, classifying her dog 'Horse' as menacing.

2 Staff report

Nina Darling, Bylaws Enforcement Co-ordinator referred to the written report circulated to all parties prior to the hearing. She referred to the relevant extracts from the Dog Control Act 1996, including the statutory considerations the committee must have regard to in making its determination.

Shaun Holland, Animal Control Officer provided some background to the incident leading to the recommendation to classify the dog Horse as menacing. He advised the purpose of the menacing dog classification is to keep the community safe and his recommendation is that the way to manage this particular dog's behaviour, is through a menacing classification.

The incident occurred on a track that diverges off a 'paper road' within the Butlers property.

The Committee asked Mr Holland to explain the meaning in practical terms of the effect of classification as menacing dog. It was explained by Mr Holland that the dog would be required to be muzzled in all public places. A muzzle is not required when a dog is on private property. In addition the dog would be required to be de-sexed.

3 Presentation of objection

Carla Butler tabled and read from a written statement in support of her objection. Key points of her submission are:

- The incident took place on private land
- The other party did not have permission to enter the Butler's property
- There is an ongoing issue with the public accessing the Butler's property without permission
- The two other dogs involved in the incident have since passed away
- The dog kennels have been relocated and are now incorporated within a dog proof area.

Carla and Craig Butler responded to questions from the Committee. They confirmed the dog rarely leaves the Butler's property. Their preference would be not de-sex the dog due to his age and questioned whether de-sexing would work in an older dog.

Mr Holland advised the classification was imposed based on the behaviour of the dog as reported and reiterated the importance of keeping people safe including people who access the Butler's property by right.

In response to the Committee's question on why muzzling is an issue Carla thought it unfair that the dog should have to be muzzled whilst on their own private land.

Mr Holland gave his opinion on the effect de-sexing can have on the behaviour of dogs, which is, they can be less aggressive in the case of male dogs.

Mr Mussle advised it was more about having the dog under control whilst crossing the track, that the dog would only be muzzled when on the track, it's about managing the risk and protecting Horse's future.

The committee determined

The Committee, having heard the objection to the menacing classification of the dog 'Horse' determine that the menacing classification imposed on the dog 'Horse' is **rescinded**, subject to the owner complying with the following conditions:

- a) That the dog 'Horse' is kept under control at all times, as required under the Dog Control Act 1996, and
- b) is kept under control at all times when traversing the public place (the track splitting the Butler's land effectively into two parts), and
- c) can be contained within a suitably fenced portion of the immediate property surrounding the dwelling house, when not under supervision. The fencing provided to be inspected by, and to the satisfaction, of the Animal Control Officer.

In reaching the decision the committee had regard to the matters set out in section 33B(2) of the Dog Control Act including:

- the matters put forward by Carla and Craig Butler in support of their objection
- matters put forward by Carla and Craig Butler in relation to any steps taken by the owner to prevent any threat to the safety of persons or animals
- the evidence that formed the basis of the classification set out in the reporting officer's report.

The Committee noted:

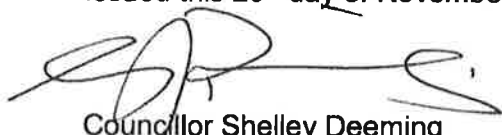
- since the incident occurred the Butler's have installed some additional fencing to contain the dog on their property
- the other two dogs involved in the incident have since passed away.

The Committee also noted that whilst the matter of signage is outside the Committee's jurisdiction, it has been referred internally.

Right of appeal

There is no statutory right of appeal.

Issued this 20th day of November 2020



Councillor Shelley Deeming
 Chairperson



Dog Incident

☒ WHANGAREI DISTRICT
☐ KAIPARA DISTRICT

PEN #

CRM #

Officer

Shawn 142

Date

25/01/21 S ☒ M T W T F S

Dispatch Number

Time received

9:00

Actioned

10:00

Arrived

10:30

Completed

10:50

Complainants Name

Address

Phone Number

021 911 579

Email

Complainant to be advised? ☐ Yes

Time / date contacted

Dog(s) are at

Dog Owner Name

Jacob Butler / Carla Butler

Address

436 Glenmohr road, Waipu

Phone Number

DOB

4/08/02

Type of complaint:

☐ Attack

☐ Patrol

☐ Into Refuse

☐ Rushing

☐ Collection

☐ Trap

☒ Wandering

☐ Revisit

☐ Worriying Stock

☐ Barking

☐ Unregistered

☐ Conditions

Action:

☐ Barking Notice Served

☐ Seizure/Impounded

☐ Infringements Issued

☐ Revisit Required

Complaint

tan whippet type dog wandering on
Glenmohr road by 436

Dog Details:

Tech One ID

77075

Registration Number

☐ Male

☒ Female

Name

Snoop

Microchip

Breed

whip/ACA7

Result

Property check / owner spoken to

Colour

tan

Result Date

27/01/21

Officers Comments

Contacted
had occurred 20/12 (same day email sent)

Canine Health Check:

Body Score 1-5:

☐ Very Poor

☐ Poor

☐ Normal

☐ + Weight

☐ ++ Weight

Demeanor:

☐ Normal

☐ Timid

☐ Aggressive

☐ Other

General Body:

☐ Healthy

☐ Poor

☐ Wounds

☐ Other

Returned to Owner

/ /

Time

Receipt Number

The offending dog was a friendly whippet type dog (smaller than horse) held sighted it on Glenmore road and being worried it would be hit by a car has tried to return it to 436 Glenmore road. This has been unsuccessful and the dog has followed towards home before Carla and Craig have pulled up in their vehicle and collected the dog.

has stated the dog was friendly and her main concern was that horse would be able to get out or follow this dog out.

Officer contacted Carla, property check in relation to exemption committee recommendation C organised for Wed 27th 9am. Officer spoke to Carla in regards to incident she was aware and advised it was snoop and she is a new dog and got out briefly before they collected.

27/01 property check carried out, property secured both dogs (horse/snoop) sighted.

11:00 contacted complainant advised officer 142 had spoken to dog owner and carried out property check, seemed satisfied with outcome.

NFA recommended

Shaun Holland

From: Nina Darling
Sent: Wednesday, 20 January 2021 9:38 am
To: Shaun Holland
Subject: Glenmohr Road - Further incident

From: Nina Darling
Sent: Friday, 8 January 2021 3:09 PM
To: Peter Banks <peter.banks@wdc.govt.nz>
Cc: Reiner Mussle <Reiner.Mussle@wdc.govt.nz>; Shaun Holland <shaun.holland@wdc.govt.nz>
Subject: Glenmohr Road - Further incident

Hi Peter,

Apologies if there is an update further down on my email but this email reminds me that a dog control officer was going to check the fencing at Glenmohr Road so that we could report back to the committee.

In addition this separate recent wandering incident also now needs to be followed up with on where the incident occurred and what impact if any this has on the fencing assesement.

establish the facts and if an infringement for FCC is appropriate depending

From:
Sent: Sunday, 20 December 2020 12:57 PM
To: Nina Darling <nina.darling@wdc.govt.nz>
Subject: Re: Hearing to objection to menacing classification as a result of the incident in March

EXTERNAL: This email originated from outside Whangarei District Council. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Merry Christmas Nina

here from Glenmohr Rd.

Sad to report I have heard nothing yet again, regarding the outcome over the dog issue in Glenmohr Rd. Council surely must have made a decision on this given it started 2019.

I was walking along our road with our dog and a young dog came in front of me.

As I knew it belonged to Craig and family I tried to get it back to bottom of their driveway and yelled for them to come and get it with no response.

I eventually went home and it followed me. It had no collar or Council tag on it.

As I were walking Craig and Carla came around the corner, their car and stopped and Carla picked the dog up. I was told this was their son's dog.

This is going to be a further issue but I am more concerned with Horse and where we are at with dangerous dog title for him.

Could you please get someone to contact me or at least for you to contact me as I have a permit to walk in the forest but want to know what is happening with horse. As you can see yet again we are not informed even though this case is well documented now.

On Tuesday, 3 November 2020, 09:20:02 am NZDT, Nina Darling <nina.darling@wdc.govt.nz> wrote:

Thank you for getting back to me and letting me know.

Council will let you know the outcome once the Committee has made a decision on the objection and that decision has been released.

Regards



Appendix D

Dog Incident

☒ WHANGAREI DISTRICT
☐ KAIPARA DISTRICT

PEN #

CRM #

Officer Shawn 142Date 27 / 01 / 21 S M T W T F S

Dispatch Number

Time received 8:30 Actioned 8:30 Arrived 9:00 Completed 10:00Complainants Name WDC PW2

Address

Phone Number

Email

Complainant to be advised? ☐ Yes

Time / date contacted

Dog(s) are at

Dog Owner Name Jacob ButlerAddress 436 Glen Mohr Road, WaipuaPhone Number 02102915734 DOB 4/08/02Type of complaint: Property check PW2

- | | | |
|------------------------------------|---------------------------------------|--|
| <input type="checkbox"/> Attack | <input type="checkbox"/> Patrol | <input type="checkbox"/> Into Refuse |
| <input type="checkbox"/> Rushing | <input type="checkbox"/> Collection | <input type="checkbox"/> Trap |
| <input type="checkbox"/> Wandering | <input type="checkbox"/> Revisit | <input type="checkbox"/> Worring Stock |
| <input type="checkbox"/> Barking | <input type="checkbox"/> Unregistered | <input type="checkbox"/> Conditions |

Action:

- ☐ Barking Notice Served
☐ Seizure/Impounded
☐ Infringements Issued
☐ Revisit Required

Complaint Property check Follow up to ensure Horse can be contained in a suitable fenced area.

Dog Details:Tech One ID 67101 / 77075 Registration Number ✓ / ✓ ☒ Male ☐ FemaleName Horie / SnoopMicrochip ✓ / ✓Breed Ridge / WhipResult Property check passedColour BOL / tanResult Date 27 / 01 / 21**Officers Comments**

Property at top (see map D.E.) is fully fenced. There is wooden rail fence at

Canine Health Check:

- | | | | | | |
|-----------------|------------------------------------|--------------------------------|-------------------------------------|-----------------------------------|------------------------------------|
| Body Score 1-5: | <input type="checkbox"/> Very Poor | <input type="checkbox"/> Poor | <input type="checkbox"/> Normal | <input type="checkbox"/> + Weight | <input type="checkbox"/> ++ Weight |
| Demeanor: | <input type="checkbox"/> Normal | <input type="checkbox"/> Timid | <input type="checkbox"/> Aggressive | <input type="checkbox"/> Other | |
| General Body: | <input type="checkbox"/> Healthy | <input type="checkbox"/> Poor | <input type="checkbox"/> Wounds | <input type="checkbox"/> Other | |

Returned to Owner / /

Time

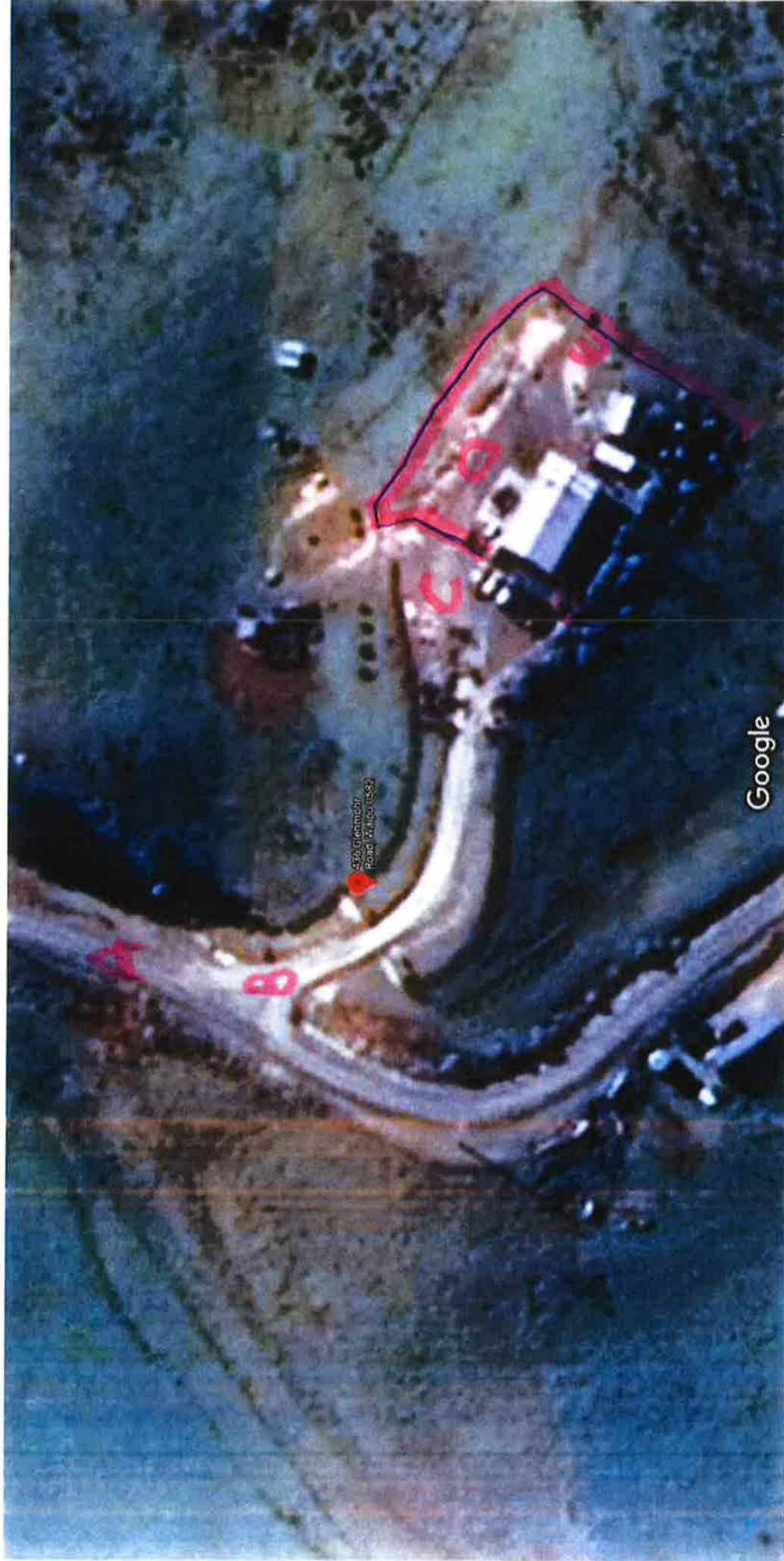
Receipt Number

Notes:

front with a "Beware of dog sign" next to the gate entrance. The left, right and rear of the property is fenced with seven wire, this is electrified and suitable to contain a dog. Currently there is 2 dogs residing at the address, only horse would be considered territorial. Both dogs were kenneled and on a chain during officers visit, neither dog reacted to the officer.

Property check is passed.

436 Glenmohr Road



Map data ©2021, Map data ©2021 10 m













Horse (67101) kennel and
chain

Officer 142 925 27/01/21

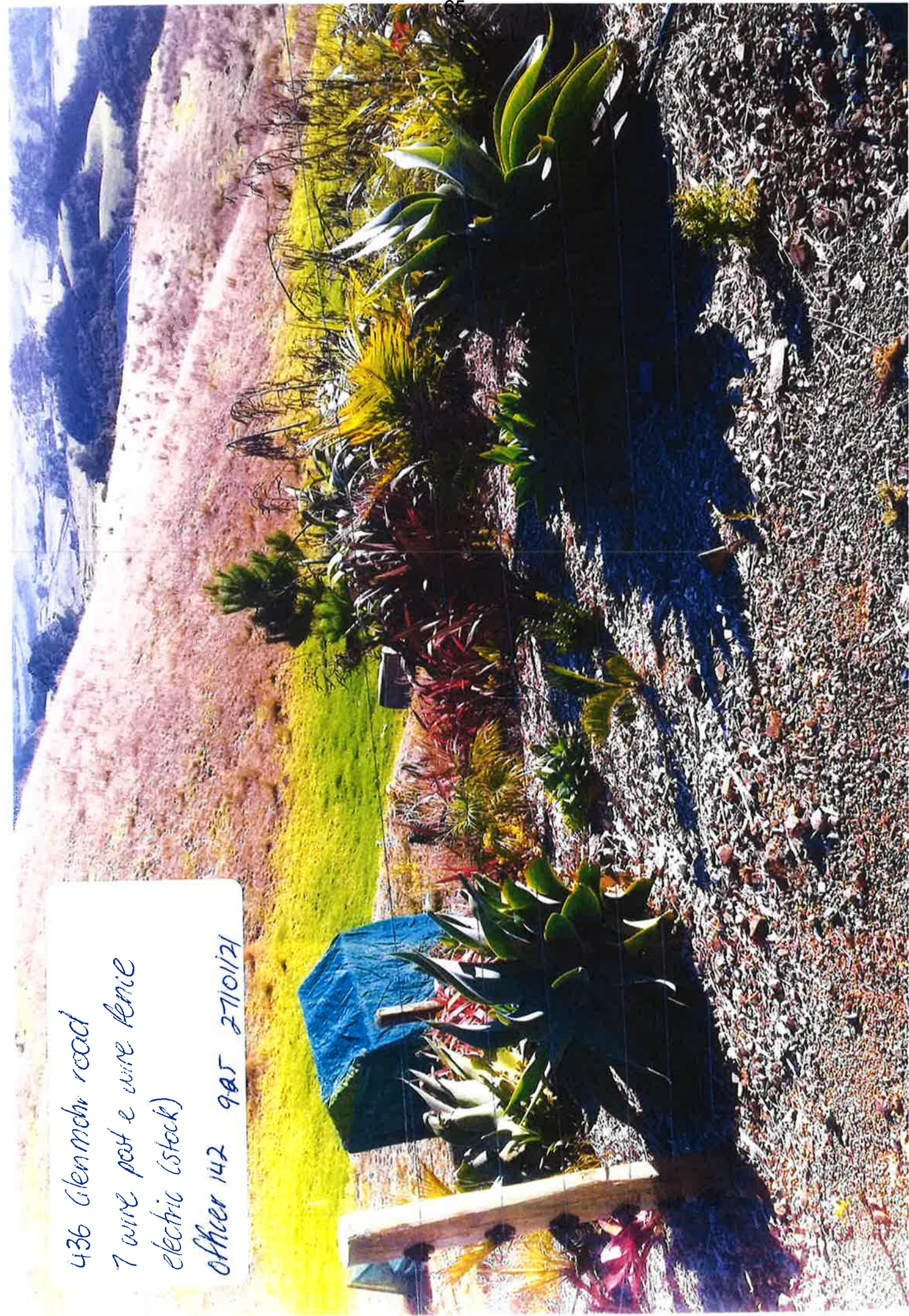
Snoop (71075), kennel
and chain

Officer 142

925 2710121



436 Glenmohr road
7 wire post & wire fence
electric (stock)
officer 142 945 2710124



Memorandum

To Reiner Mussle – Manager Health and Bylaws
From Nina Darling – Bylaws Enforcement Co-ordinator
Copies Jeff Devine – Manager Strategy and Planning
Subject **Signage – 436 Glenmohr Road**
Date 19 March 2021

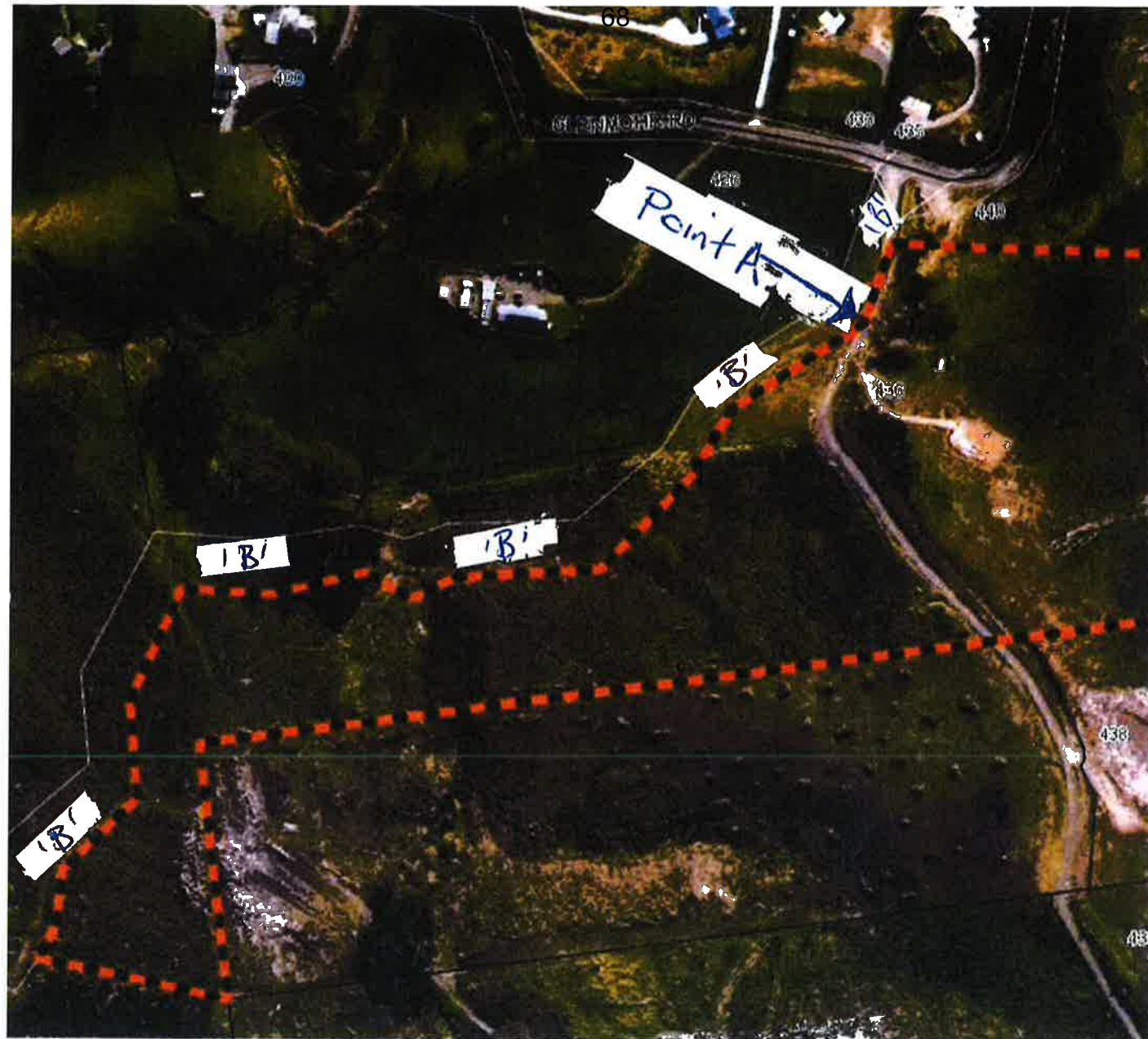
This memorandum records that on 12 March 2021 consensus was reached that Council has no objection to signage being erected forward of 'Point A' (refer appendix E1 attached) by the owners of 436 Glenmohr Road within their own private land (subject to all Resource Management Act/District Plan requirements being met).

Council requires that any such signage is positioned sufficiently forward of 'Point A' to:

- avoid being directly on the boundary with legal road reserve, and
- to avoid creating confusion that the land which is legal (unformed) road and highlighted as 'B' (on the appendix attached) is anything other than legal road.

Council requests that care is taken so that it is clear to members of the public that:

- continuation along the formed track within the Butler's property, entails entry on to private land and is therefore subject to the appropriate authorisations or permissions.



RESOLUTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following parts of 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:

1.	The making available of information would be likely to unreasonably prejudice the commercial position of persons who are the subject of the information. {Section 7(2)(c)}
2.	To enable the council (the committee) to carry on without prejudice or disadvantage commercial negotiations. {(Section 7(2)(i))}.
3.	To protect the privacy of natural persons. {Section 7(2)(a)}.
4.	Publicity prior to successful prosecution of the individuals named would be contrary to the laws of natural justice and may constitute contempt of court. {Section 48(1)(b)}.
5.	To protect information which is the subject to an obligation of confidence, the publication of such information would be likely to prejudice the supply of information from the same source and it is in the public interest that such information should continue to be supplied. {Section 7(2)(c)(i)}.
6.	In order to maintain legal professional privilege. {Section 2(g)}.
7.	To enable the council to carry on without prejudice or disadvantage, negotiations {Section 7(2)(i)}.

Resolution to allow members of the public to remain

If the council/committee wishes members of the public to remain during discussion of confidential items the following additional recommendation will need to be passed:

Move/Second

"That _____ be permitted to remain at this meeting, after the public has been excluded, because of his/her/their knowledge of Item _____.

This knowledge, which will be of assistance in relation to the matter to be discussed, is relevant to that matter because _____.

Note:

Every resolution to exclude the public shall be put at a time when the meeting is open to the public.