

IN THE MATTER of the Dog Control Act 1996

AND

IN THE MATTER of an objection by Megan Stevenson to a Notice of Classification of Dog as Menacing Dog pursuant to s33A(2) of the Act

BEFORE THE WAIKATO DISTRICT COUNCIL REGULATORY SUBCOMMITTEE

Chairperson: Cr Dynes Fulton

Member: Cr Janet Gibb

HEARING at NGARUAWAHIA on 21 November 2018.

APPEARANCES

Mr M Te Anga – Waikato District Council (Animal Control Team Leader)

Ms C Pidduck – Waikato District Council (Legal Counsel)

ABSENT

Megan Stevenson— Appellant Dog owner

RESERVED DECISION OF THE SUB-COMMITTEE

Having considered the information presented in writing, and in person at the hearing, the subcommittee uphold the Menacing dog Classification imposed under the Dog Control Act 1996.

The consequence of the decision is that the Notice of Classification of the dog 'Rex', a black male Australian Kelpie, as a Menacing Dog is upheld.

Introduction

- [1] This decision relates to a history of a dog Rex that has come to the attention of the Animal control officers. The dog Rex is registered to Mr James Massey and Megan Stevenson at the address of 31 Newton Street Ngaruawahia. There are two dogs registered at this property. There is a tan and white female corgi named Lacy and the black male Kelpie named Rex.
- [2] There has been three occasions where the dog Rex has been observed by the Animal Control officers. The first was on the 8th August 2017. On that occasion the dog rushed at the Animal Control Officers vehicle on arrival. The dog continued to show

aggressive behaviour but the Animal Control Officers managed to contain and temporarily secure the dog on the property under the house.

- [3] On the 7th September 2018 the Waikato District Council received a complaint from a member of the public that a black dog from the location of a property at 31 Newton Street was straying and tried to attack the complaint. Within 10 minutes of receiving the complaint the Animal Control Officers arrived at 31 Newton Street and found the dog located inside the front yard of the property.
- [4] The Animal Control Officer made an approach to the dog. The dog jumped the front picket fence and began displaying high levels of aggressive behaviour. This behaviour will be described later in this decision. Based on this observed aggressive behaviour the Council considered that this dog posed a threat to the public and issued a notice under s33A (2) of the Act classifying the dog Rex as a Menacing Dog.
- [5] The Council received a letter on the 28th September 2018 from the dog's owner Megan Stevenson objecting to the Menacing dog Classification that had been imposed on her dog Rex.

Preliminary Matters

- [6] At the commencement of the hearing the Committee were advised by Mr M Te Anga that the appellant Megan Stevenson would not be appearing at the hearing. He had spoken to Megan Stevenson that morning confirming that she was not attending.
- [7] The Chair Cr Fulton declared that the hearing would proceed with the absences of the objector. The decision would be based on the written evidence provided by the objector in the report and that of the Council Animal Control officer.

Megan Stevenson (Objector)

- [8] In Ms Stevenson's written evidence she believes that the classification is unfair and unjustified. She stated that Rex is a good dog that had no history of being threatening to anything or anyone. "There is no evidence Rex is a threat to the public, livestock poultry, pets or wild life." Her evidence noted the event where Rex "had a go" at the animal control officer was on private property and that this could not be used against him.
- [9] Her evidence stated that she had been contacted on Friday 7th September 2018 at approximately 4.00pm by an animal control officer. He advised that the neighbour directly across the road (Newton Street) had called to complain that her dog Rex had attacked her.
- [10] On the 4th September 2018 the same neighbour had threatened to shoot Megan Stevenson's dogs if they didn't stop barking. This was the second time that the

neighbour had made these threats. On this second occasion Ms Stevenson's partner James Massey called the police. The Police visited the neighbour on Wednesday 5th September.

- [11] Further in her evidence I quote, *"to protect ourselves and our animals from the neighbour we wanted to do everything we could to stop upsetting this neighbour by the dogs barking. We went out and purchased dog bones, dog toys and a bark sensor to go on the gate."*

It can also be noted from the photos supplied that a tarpaulin has been put over the gate endeavouring to mitigate Rex barking at persons walking past the property.

- [12] Ms Stevenson in her evidence stated that she had been advised that the officer was going to interview the complaint. She had requested to see the footage shot on the officer's body camera and requested a copy of the neighbour's statement. None of this was forthcoming and that the next contact from the Council officer was receiving a letter in her mailbox on the 22nd September 2018 notifying her that Rex had been classified as a menacing dog.

Mr M Te Anga – Animal Control Team Leader

- [13] Mr Te Anga directed the committee to his report in the hearing agenda. He explained the history with the dog. The first encounter with the dog Rex was on the 7th August 2017. Council had received a complaint that the dog had been running loose all day. It had been aggressive to other dogs.
- [14] On responding to that call the dog Rex had rushed at the animal control officer's vehicle on arrival and continued to show aggressive behaviour. The dog jumped back into the property and went under the house. The officer secured the dog under the house and left a note explaining what action had been taken.
- [15] Council received a complaint on the 7th September 2018 at 2.50pm from a member of the public about a straying dog that had tried to attack the complaint. The address was identified as being 31 Newton Street Ngauruawahia. The animal control team responded within ten minutes and arrived at approximately 3.00pm.
- [16] Mr Te Anga explained the circumstances of the 7th September which led to the dog Rex being classified as a menacing dog. Quoting from the witness statement animal control officer Tracey Oakes explains.....*it circled around me growling and barking. Its hackles were up and its head was in a low position. I could see the dog's canines as its lips were lifted and rolled back.*

Further she described.....*it rushed at me and got within two feet of me. It had stiff legs and was barking, growling and I could see its teeth. It was making direct eye contact. I pulled my bite stick to chase it off as I was very worried it would try to bite me.*

Based on the animal control officers observation of the behaviour of the dog a notice of Classification of Dog as Menacing Dog was issued on the 14th September 2018.

- [17] The hearing was shown a short video filmed three days later when the dog was again outside the property on the 10th September. The video showed that when the animal control officer got out of the vehicle and went to approach the dog the animal Rex displayed a high level of aggression.
- [18] To get a better understanding the committee asked Mr Te Anga to explain the various signs and actions of an aggressive dog that were shown in the video.
- [19] The Committee asked Mr Te Anga to explain the meaning in practical terms of s33E Effect of classification as menacing dog. It was noted at this point that the dog Rex has been de-sexed. It was explained by Mr Te Anga and Council's Legal Counsel that the dog would be required to be muzzled in all public places. It applies when in any public place or in any public shared right of way, where it must be muzzled and on a lead or caged. A muzzle is not required when a dog is on any private property.
- [20] It was also explained that the confinement on private property needed to be in a way that allowed any person to gain access safely to the front door of the house.
- [21] The Committee asked Legal Counsel to outline clearly what the options are for the Committee. She stated the Committee has only two options in considering the objection to the menacing classification:
- Uphold the menacing classification
 - Rescind the classification
- [22] The Committee asked Legal Counsel to outline clearly if there were any further options available to the objector Ms Stevenson.

In response Ms Pidduck advised that the decision of the committee regarding the imposition of the menacing classification is final.

Statutory Consideration


- [23] In making its determination on this objection, the Committee must have regard to the following matters, as outlined in section 33B (2) of the Dog Control Act 1996:
- 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.

- [24] The Committee has reviewed the written evidence presented by the objector Ms Stevenson and that supplied at the hearing by Mr Te Anga and the advice by Ms C Pidduck. We are satisfied that there is a clear, un-disputed understanding of the incidents that led to the menacing classification being imposed.
- [25] There were no other matters that the Committee considered relevant to this matter when making a determination on it.

Reasons for the Decision

- [26] The Committee notes that the objector, Ms Stevenson, disputes the facts that her dog had shown aggressive behaviour and had no history of being threat to anything or anybody. Ms Stevenson, disputes that the behaviour exhibited by Rex is aggressive.
- [27] The Committee notes that Ms Stevenson has taken further steps to contain Rex in the property, but the Committee is not confident that Rex's containment system are sufficient or sound if he is determined to leave the property.
- [28] Improvements have been made to make the property more secure for the containment of Rex. This does not address the aggressive behaviour that has been recorded by the animal control officer and supported in a video shown at the hearing.
- [29] The Committee determines that when in public Rex is likely to show the same behaviour he has demonstrated to date and the public can only be protected by the muzzling of Rex.

SIGNED ON BEHALF OF THE REGULATORY SUBCOMMITTEE:


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Cr Dynes Fulton (Chairperson)


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Date