

IN THE MATTER of the Dog Control Act 1996

AND

IN THE MATTER of an objection by Lee Maynard to a Dangerous dog Classification imposed on her dog Phoenix. Pursuant to section 31(1) of the Dog Control Act 1996 this dog has been classified as a dangerous dog.

BEFORE THE WAIKATO DISTRICT COUNCIL REGULATORY SUB COMMITTEE

Chairperson: Cr Dynes Fulton

Member: Cr Janet Gibb

HEARING at NGARUAWAHIA on 9th September 2019

APPEARANCES

Mr B Watene – Waikato District Council (Animal Control Team Leader)

Ms Kirsty Ridling– Waikato District Council (Senior Solicitor)

Marty Holmes (Animal Control officer)

Objector

Lee Maynard

Ken Maynard (support person)

Members of the public present

RESERVED DECISION OF THE SUB-COMMITTEE

Having considered the information presented in writing, and in person at the hearing, the sub-committee uphold the Dangerous dog Classification imposed under section 31 (1) of the Dog Control Act 1996 on the 4th April 2019.

The consequence of this decision is that the Notice of Classification of the dog Phoenix a black male Standard Poodle, as a Dangerous Dog is upheld.

Introduction

- [1] This decision relates to an objection by Lee Maynard seeking to have the classification of a dangerous dog imposed on her dog Phoenix rescinded.
- [2] The dog Phoenix is a black Standard Poodle registered to Lee Maynard at 1330 Waerenga Road Te Kauwhata. The classification was imposed by the Waikato District Council on the 4th April 2019.
- [2] The Council received the objection against the Notice of Classification of Phoenix as a Dangerous Dog from Lee Maynard on the 26th April 2019.
- [4] Phoenix is a four and a half year old dog. Ms Maynard's main objection is from the flow on effect that this classification would have, in particular the neutering of the dog.

Preliminary Matters

- [5] The Chair Dynes Fulton emphasised that the hearing was limited to considering only whether the decision that had been made by the Council to classify Ms Maynard dog Phoenix as a Dangerous dog was to be **upheld or rescinded**.
- [6] The Council's Animal Control team received two separate complaints regarding attacks on dogs from dog owners exercising their dogs in the Te Kauwhata dog park on Mahi Road, Te Kauwhata. The first incident occurred on the 12th March 2019. Christine Player, the owner of a Cavalier King Charles cross poodle dog, "Charlie" was exercising her dog off lead. The standard poodle had approached and started nipping the small poodle "Charlie" in the back causing him to become distressed. The owner managed to lift her dog up in her arms. Phoenix continued to jump up in an aggressive manner and biting at the tail of "Charlie." Phoenix had bitten the owner on the hands and caused bruising of Ms Player's arms and wrists. A Witness Statement was taken on the 18th March and a sworn Statement affirming this description of events has been signed by Ms Player on the 10th April 2019.
- [8] The Council's Animal Control team received a complaint about another incident at the same venue on 26th March 2019. This involved a dog attack reported by Mr Brad Dunlop. He had entered the park with his dog Leo still on a lead. The description taken from his Witness Statement described how the Standard Poodle ran over and latched onto his dog Leo, a Sydney Silky and started shaking him. Mr Dunlop described how he had to hit the offending dog and wrestle his dog out of the poodle's mouth.
- [9] This dog attack was observed by another dog owner Sarah Wakelin, who was exercising her dog in the park at the same time. Sarah Wakelin has provided a Witness Statement taken on the 3rd April 2019, which supports the account given by Brad Dunlop.

- [10] Using the description and other details given to them, the Animal Control team established through the National Dog Database that the dog being referred to was a Standard Poodle dog named Phoenix registered to Ms Maynard.
- [11] On the 27th of March the Council received information that a black Standard Poodle fitting the description of the attacking was being walked in the Te Kauwhata dog park. The Council animal control officer seized Phoenix on this occasion and took him to the Ngaruawahia dog pound. During the seizure of the dog the officer reported that the Phoenix acted aggressively towards her and had lunged at her while she attempted to put it on a lead.
- [12] On the 4th April 2019 the decision was made to classify Phoenix as a dangerous dog based on the evidence provided by the two complainants on separate occasions and on the officers observation of his behaviour.
- [13] Ms Maynard's written objection stated that *"I have no issue with Phoenix having to wear a muzzle, being on lead always and being secured in my property. I am not happy to have him de-sexed. This action would remove what has been my way of life – dog shows, for my whole adult and Phoenix's whole life too."*

Hearing procedures

- [14] Ms Maynard explained that she had been a dog owner and show dog participant for a very long time. Phoenix is a four and a half year old dog and is now the only one she has. Until recent times she had four Standard Poodles.
- [15] Ms Maynard drew attention to the effects of a Dangerous Dog classification that has been imposed would have. Dog showing has been a way of life for her and for the whole of Phoenix's life. The dangerous dog classification requires Phoenix to be de sexed. Male show dogs need to be entire.
- [16] Ms Maynard spoke of her discussion with a veterinarian with regards to having Phoenix de sexed by a chemical castration process. This could mean that Phoenix may be able to continue to be shown as an entire dog as is required for a show dog.
- [17] Discussion with the Animal control team could not clarify if a neutering of a dog in this manner complied with Effects of Classification as a dangerous dog. Section 32 (1) (c) of the Dog Control Act 1996.
- [18] It was acknowledged by Ms Maynard that a Standard Poodle is a large dog and is by nature a hunting dog. It was not disputed that Phoenix had grabbed / latched on to the smaller dog Leo and shook him as described by the statement of Brad Dunlop.

[19] In her objection letter Ms Maynard maintained that the first dog Phoenix was aggressive towards had provoked him. She commented that *“Phoenix is not aware of his size in relation to others and retaliated”*.

[20] A verbal statement was given by Mr Maynard in support of Phoenix. He described him as being a lovely friendly and good natured dog.

[21] Ms Maynard requested that consideration be given to down grading the classification to menacing. That would not require the neutering of Phoenix and she could continue to show him.

[22] Ms Kirsty Ridling, senior solicitor for the Council advised that the Committee does not have any discretion under the Dog Control Act 1996 to add conditions, amendment or alter the classification. They are restricted to either upholding or rescinding the decision made by the Council’s Animal Control Team.

Reasons for the Decision

[23] In making its determination on this objection, the Committee must have regard to the following matters, as outlined in section 31(4) of the Dog Control Act 1996

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

(a) The evidence that formed the basis for the original classification: and

(b) Any step taken by the owner to prevent any threat to the safety of persons and animals: and

(c) The matter advanced in support of the objection: and

(d) Any other relevant matter

The Committee are restricted to two options in considering the objection;

- Uphold the classification
- Rescind the classification.

[24] In considering the objection by Ms Maynard, the Committee reviewed all of the written and verbal evidence presented by Ms Maynard and the evidence provided by the Animal Control team in relation to the original classification. Upon reviewing the evidence, the Committee is satisfied that there is a clear, un-disputed understanding of the incidents that led to the dangerous dog classification being imposed.

[25] The Committee had regards to section 31(1)(b) of the Dog Control Act 1996:

(1) The territorial authority must classify a dog as a dangerous dog if –

(b) the territorial authority has, on the basis of sworn evidence attesting to aggressive behaviour by the dog on 1 or more occasions, reasonable grounds to believe that the

dog constitutes a threat to the safety of any person, stock, poultry, domestic animal, or protected wildlife.

[26] The Committee considered it significant that the two reported incidences occurred within a short space of time. Phoenix displayed aggressive behaviour in the unprovoked attack on other dogs. On the first occasion a person who had removed her dog from the attack was also bitten and required medical attention.

These sworn statements have been referenced in paragraphs [7] and [8] above.

[27] On both occasions, the attacks occurred in a public place being the Te Kauwhata dog park. This is an area where dog owners could expect to have a safe off lead exercise place.

[28] The Committee considered that there was a high likelihood of Phoenix reoffending and a risk to public safety. We support the view of the Animal control team leader Brett Watene, that public safety has to outweigh the concerns of Ms Maynard in regard to the neutering of her dog.

[29] The Committee is satisfied that the Council's Animal Control team have applied the dangerous dog classification on Phoenix in accordance with the Dog Control Act 1996.

Note

[30] The Committee acknowledges that Ms Maynard is a responsible dog owner and that she had advised the hearing that she had a secure property for her dog Phoenix at her home address.

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Cr Dynes Fulton (Chairperson)