

**IN THE MATTER** of the Dog Control Act 1996

**AND**

**IN THE MATTER** of an objection by Ms Courtney Keating to a Menacing dog Classification imposed on her dog Memphis. Pursuant to section 33A (2) of the Dog Control Act 1996 this dog has been classified as a menacing dog.

**BEFORE THE WAIKATO DISTRICT COUNCIL REGULATORY SUB COMMITTEE**

Chairperson: Cr Dynes Fulton

Members: Cr Jan Sedgwick, Cr Janet Gibb

**HEARING** at NGARUAWAHIA on 19 September 2019.

**APPEARANCES**

Ms K Ridley – Waikato District Council (Senior Solicitor)

Mr Brett Watene, Mr Mark Te Anga, Ms Tracey Oakes – Waikato District Council (Animal Control Team)

Ms Courtney Keating – Appellant Dog owner

**RESERVED DECISION OF THE SUB-COMMITTEE**

**Having considered the information presented in writing, and in person at the hearing, the sub-committee rescind 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**The consequence of the decision is that the Notice of Classification of the dog Memphis as a Menacing dog will be rescinded effective from receipt of this decision.**

**Introduction**

- [1] This decision relates to an appeal by Courtney Keating for the removal of a classification of “menacing” which was imposed on her dog Memphis by the Waikato District Council Animal Control Team Leader on 16 April 2019 following two incidents that occurred at the Waikato District Council (**Council**) “Pups Pool Party” held at the Ngaruawahia Pools, Market Street on 31 March 2019 (**Party**).
- [2] Memphis is a 2 year old Red and Black German Shepherd dog, registered to Ms Courtney Keating and Ms Lauren Hazelwood (**Owners**) of 4 Kereru Street Frankton Hamilton, and kept at that property.

- [3] In Ms Keating's letter of objection she asked for an opportunity to present her version of the events that occurred on that day. She thought that it was particularly strange that she had not been asked for her input to the process before the dog was deemed as menacing.

### **Preliminary Matters**

- [4] Council's Animal Control Officer (ACO) Amanda Davis made two written statements outlining the behaviour of Memphis at the Party. Based on this behaviour, the Council issued a Notice of Classification under s33A (2) of the Dog Control Act 1996 classifying Memphis as a Menacing Dog.
- [5] The Council received a letter of objection from Ms Keating on 29 April 2019 objecting to the Menacing dog classification which had been imposed on Memphis.
- [6] The Chair, Cr Fulton stated any decision made by the Committee would be based on the written and oral evidence provided by the objector, the Council's ACO's, witness statements and advice from Council's legal staff.

### **Hearing procedures**

- [7] Ms Keating gave evidence that Memphis had been extensively socialised since 4 months old, attending puppy preschool, basic dog obedience course, off lead training course, Waikato Canine obedience club course and Harmony two-week training camp. She noted also that Memphis regularly attends Hamilton Hounds doggy day care and Pooch Pack day trips every week.
- [8] Ms Keating said she was disappointed she was not asked for a statement by the ACO at the time of the incidents, but was asked to leave the pool area with Memphis.
- [9] Ms Keating said that she believed Memphis was under appropriate control and was socialising with other dogs in an appropriate way, including the adjacent Rottweilers of Ms Woods.
- [10] A man and his small child approached Memphis, she believes, with the intention of showing him to his child. She noted that the man approached Memphis from behind without warning, whilst Memphis was focused on his lost toy and was startled. Because he was startled, Memphis turned and lunged towards the man and his child.
- [11] Ms Keating indicated Memphis was wearing a harness which said "Do Not Pet" but that, like all other dogs, he was off leash. When asked by Cr Fulton why Memphis was wearing a harness with that written on it, Ms Keating explained that the harness was purchased with three choices of optional writing, and this was simply the one they had chosen to put on his harness. Ms Keating said "they did not mind people petting Memphis but only when he is aware and sniffed their hand first, like any other dog".

- [12] Ms Keating said the man who approached Memphis did neither of these things, and that she and her partner were standing one metre either side of Memphis. Her partner immediately restrained Memphis.
- [13] Following this incident, in a time frame she estimated to be approximately 20 seconds, her partner began to walk towards their belongings. Standing in their way were the two Rottweilers and their owner, Ms Woods. Memphis began barking at the two Rottweilers, who barked also. In response to the claim by Ms Woods, Ms Keating denies that Memphis bit or hurt her. The Committee noted that there was no evidence to support Ms Wood's claim.
- [14] In summary Ms Keating's objection was that Memphis was approached inappropriately; was in an area of high excitement, with many dogs present; was wearing a harness and, further, that there was no evidence of contact with Ms Woods.
- [15] The Committee asked ACO Oakes about the Party. In particular, they wanted to know whether all dogs were on leash when coming into the facility and what guidelines were issued to attendees. ACO Oakes advised that there were around 70 dogs present at the time, and that to her knowledge there was no information provided to attendees on what the requirements were regarding behaviour, or leashing. She stated that in advertising the event the information said dogs must be well socialised.
- [16] Ms Woods, gave written evidence in support of the ACO. She said in her statement that she had observed the incident with the man and boy. In the second incident Ms Woods evidence spoke in terms of the dogs' positions 20 seconds later and states that she was crouched down. In her statement, Ms Woods noted that she recalled her dog Gia who had moved towards Memphis. She said Memphis moved towards her and she felt the dog make contact with her hip. There was no evidence of any marks.

### **Reasons for the Decision**

- [17] When making its determination on this objection, the Committee must have regard to section 33B (2) of the Dog Control Act 1996 which provides:
- (2) *The territorial authority considering an objection under subsection (1) may uphold or rescind the classification, and in making its determination 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.*
- [18] Based on the written and oral evidence provided by the objector and the Council's Animal Control Team, the Committee is not persuaded that Memphis poses a threat to any person, stock, poultry, domestic animal, or protected wildlife, and therefore rescinds the menacing classification for the following reasons:

- a) There was an element of unexpected surprise by the young boy and his father approaching from behind contributed to the dog Memphis' actions. The environment was an unusual one, of high excitement, with 70+ dogs in attendance.
- b) The Owners of Memphis were beside him and that the sudden and unannounced arrival of the man and child, startled the dog. The Owners had control of the dog and there was no contact with the child or the man.
- c) The Committee accepts that the action of Memphis lunging at the child would have given the child and his parent a fright but notes that, despite attempts to contact them, no complaint has been received in relation to this specific incident.
- d) The commotion caused the Rottweilers nearby to bark and contributed to the situation. The Committee is of the view that the contact between Memphis and Ms Wood was not significant in nature and notes the circumstances of three large dogs together in an excitable situation. There was no suggestion of any serious injury to Ms Woods although the Committee accepts Ms Woods got a fright.
- e) These incidents were observed at a distance by the attending ACO. The Committee concludes that there was too much circumstantial evidence relied upon by the Animal Control Team when imposing the menacing classification on Memphis.
- f) The Committee is satisfied that the owners of Memphis have demonstrated with their actions, training and socialising of him that they take their responsibilities and liabilities of owning Memphis very seriously.

**SIGNED ON BEHALF OF THE REGULATORY SUB-COMMITTEE:**

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Cr Dynes Fulton (Chairperson)