

IN THE MATTER of the Dog Control Act
1996

AND

IN THE MATTER of an objection to a
Notice of Classification of Menacing Dog
pursuant to s33A (2) of the Act.

Objector

AND

WAIKATO DISTRICT COUNCIL

Respondent

**BEFORE THE WAIKATO DISTRICT COUNCIL REGULATORY
SUBCOMMITTEE**

Hearing held in the Council Chambers, District Office, 15 Galileo Street, Ngaruawahia on
TUESDAY 12 MARCH 2019.

Present:

Cr D Fulton (Chairperson)
Cr J Sedgwick

Attending:

Ms C Pidduck (Waikato District Council – Legal Counsel)
Ms A Davis (Waikato District Council – Animal Control Team)
Mr J Newell (Waikato District Council – Animal Control Team)
Mrs LM Wainwright (Committee Secretary)
Ms R Van De Pas (Appellant Dog Owner)
Ms H Didsbury (Appellant Dog Owner at the time of the incident)

RESERVED DECISION OF THE SUBCOMMITTEE

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 Controlled Act 1996.

The consequence of the decision is that the Notice of Classification of the dog 'Jax', a white and brown male Red Heeler collie cross dog, as a Menacing Dog is **NOT** upheld.

Introduction

- [1] This decision relates to the history of a dog Jax during October – December 2018. Jax was, at that time, registered to Ms Hope Didsbury of 14 Upper Wainui Road, Raglan, and kept at that property.
- [2] There have been three occasions where the dog Jax has come to the notice of Animal Control officers. The first was on 24 October 2018 when Waikato District Council received a request (DOGS1192/19 from Peter Donald Williams complaining that Jax was not contained and was straying.
- [3] The second was on 17 November 2018, when Waikato District Council Animal Control was contacted by the owner, Ms Didsbury, reporting Jax missing.
- [4] The third, on 18 November was when Jax' behaviour caused an injury incident. This behaviour will be described later in this decision. Based on this behaviour the Council considered this dog posed a threat to the public and issued a notice under s33A (2) of the Act classifying the dog Jax as a Menacing Dog.
- [5] The Council received a letter on 7 January 2018 from the dog's owner, Mrs Van de Pas, objecting to the Menacing dog Classification that had been imposed on the dog Jax.

Preliminary Matters

- [6] The committee noted that the victim's mother had confirmed she did not wish to appear. The dog Jax has previously been owned by Mrs Van de Pas and had, subsequent to the incident, been returned to Mrs Van de Pas' rural property and a change of ownership effected; hence both were attending. The Chair, Cr Fulton, declared that evidence from both parties was admissible.
- (7) Ms Pidduck indicated that, whilst the hearing report indicated there were no recorded complaints about Jax, this was not correct. She indicated that Jax had come to Animal Control attention twice previous to this incident and tabled documents to support this.

[8] Cr Fulton stated the decision would be based on the written and oral evidence provided by the objector/s, that of the victim's mother, and that of the Council Animal Control officer and legal staff.

Ms Raewyn Van de Pas (Objector)

- [9] In Mrs Van de Pas' written evidence she said she believed that the classification was unfair and unjustified. She stated that Jax is a young dog, with no history of threatening or menacing behaviour. "He was brought up on a farm, with a family of five children. Jax loves to be around machinery and run alongside. We were concerned he might get run over, so I reluctantly rehomed Jax where I knew he would be loved and well cared for."
- [10] Her evidence stated that when Jax was in her care, he had regular contact with "a considerable number of people ranging from small children to elderly people from all walks of life. Myself, family and staff have never seen Jax show any menacing or aggressive behaviour to any person or animal".
- [11] Ms Didsbury described the incident that led to Jax 'classification as menacing. She said on 18 November 2018 she was getting Jax out of the car in her driveway at 14 Upper Wainui Road, Raglan when he ran out onto the road and rushed at the bicycle ridden by a nine-year-old boy, causing the boy to startle. The boy fell off the bicycle, breaking two bones in his arm. Ms Didsbury secured Jax, then drove the injured boy to his home and spoke with his mother.
- [12] In written evidence in a witness statement dated 16 January 2019. The victim's mother Ms Vicki Greetis of 56 Upper Wainui Road Raglan said "the dog came out of 14 Upper Wainui Road and grabbed hold of his (her son's) bike tyre. The dog was barking and growling and my son went over the handlebars off his bike into the road and was hurt. After the dog grabbed by son Sam, he then went after my elder son (12) and grabbed his tyre also, Ollie tried to hit the dog off with his bike."
- [13] Ms Didsbury stated that she had recently moved into the property at 14 Upper Wainui Road, and had been in the process of speaking with the landlord about fencing or other ways to contain Jax. Ms Didsbury asserted she had recently started training Jax; that he was a frequent participant in a local dog walking group – both with herself, and others taking him - and that Jax had displayed friendly behaviours within that group and positive behaviour in public places.
- [14] Ms Didsbury said she took full responsibility for the unfortunate incident and understood the consequences of owning a young and active farm dog.
- [15] Jax was impounded by Waikato District Council Animal Control on 20th November. On 4 December Jax was classified by Mark Te Anga, Animal Control Team Leader as a menacing dog under section 33A (2) of the Dog Control Act 1996.

[16] After the incident, ownership of Jax was transferred back to Mrs Raewyn van de Pas who had owned Jax previously. This occurred on the day Jax was released from being impounded, 13 December 2018.

Christine Pidduck, Waikato District Council Legal Counsel

[17] Ms Pidduck noted the menacing classification had been imposed as a result of Jax's rushing behaviour. She submitted that the incident leading to the imposition of the menacing classification was not an isolated incident, with him having been reported as having a propensity to road, and reported previous aggressive behaviour. Ms Pidduck stated that the evidence supported the menacing classification appropriately imposed and should be upheld.

Jo Newell, Animal Control officer, Waikato District Council

[17] Ms Newell explained that the Animal Control team "thought long and hard about imposing the classification". Contributing factors were that the victim had suffered injury as a result of Jax' rushing at him, and that the dog was unrestrained in a public area. Ms Newell noted there was a short distance between Ms Didsbury's car and the road. The bicycle was travelling downhill and Jax's behaviour caused the incident.

[18] In Ms Newell's oral evidence, she said she was told that Jax had moved towards the boy as he fell on the ground, and the boy's brother used his own bicycle to create a barrier. "As part of our process we visited the property and spoke to Ms Didsbury on the phone."

[19] The Committee asked Animal Control officers, and Ms Pidduck, to explain the meaning in practical terms of s33E Effect of classification as menacing dog.. It was explained by 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] Ms Pidduck referred the hearing committee to s33E of the Dog Control Act 1996:

s33E Effect of classification as menacing dog

(1) If a dog is classified as a menacing dog under section 33A or section 33C, 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

[21] The hearing committee asked Ms Didsbury if she had a muzzle for Jax, since he was now classified as menacing. She stated that she did.

[22] The hearing committee noted that s33E (b) was not applicable as Jax had been neutered and veterinary confirmation was presented.

[23] Letters of support for Jax' behaviour in public places were tabled at the hearing by Mrs Van de Pas and Ms Didsbury and became part of the evidence.

Statutory Consideration

[24] 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.

[25] The Committee has reviewed the written evidence presented by the objector Mrs Van de Pas, and Ms Didsbury in support, and that supplied at the hearing by Animal Control officers, a written witness statement by Ms Grettis of her son's experience of the incident and the advice by Ms C Pidduck. We are satisfied that there is a clear understanding of the incidents that led to the menacing classification being imposed.

[26] There were no other matters that the Committee considered relevant to this matter when making a determination on it. (21) The Committee has only two options in considering the objection to the menacing classification:

- Uphold the menacing classification
- Rescind the classification

Reasons for the Decision

[27] The hearing committee did not have to determine the two varying accounts of the accident itself. But we did determine that Jax' action had contributed to the accident, which caused injury to the boy.

[28] The objector, Mrs Van de Pas states that Jax is a young dog of approximately two years and was brought up on a large farm. He had not shown previous aggressive behaviour and had no history of being threatening towards people, but was known to chase moving farm vehicles.

[29] Ms Didsbury has taken the step of returning Jax to his previous owner, Mrs Van de Pas who is now the registered owner of the dog.

[30] Mrs Van de Pas and Ms Didsbury are adamant that they are in the process of training Jax to verbal commands to manage his impulsive behaviour around moving objects.

[31] Jax appears to now have a stable living environment and increased opportunity to socialise in a rural environment with farm workers and visitors.

[32] The Committee determines that the dog Jax is not likely to cause harm or incident to the general public, noting that compliance with Waikato District Council Dog Control bylaws is required.

SIGNED ON BEHALF OF THE REGULATORY SUBCOMMITTEE:

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Cr D Fulton (Chairperson)