

IN THE MATTER of the Dog Control Act 1996

AND

IN THE MATTER of an objection against the classification of a dog as menacing pursuant to section 33B(1)(a) of the Dog Control Act 1996.

BETWEEN **Esther Schonberger**

Objector

AND **Waikato District Council**

Respondent

**BEFORE THE WAIKATO DISTRICT COUNCIL REGULATORY
SUBCOMMITTEE.**

Chairperson Cr Noel Smith
Members Cr Jan Sedgwick
Cr Janet Gibb

HEARING at Ngaruawahia on 19 February 2021

APPEARANCES:

Ms E Schonberger, Objector
Mr S Doll, Witness for the Objector
Ms T Oakes, Team Leader, Animal Control Officer, Waikato District Council
Ms A Davis, Animal Control Officer, Waikato District Council
Ms C Pidduck, Legal Counsel for Waikato District Council

DECISION

Pursuant to Section 33B(2) of the Dog Control Act 1996 the Regulatory Subcommittee upholds the classification of the dog, known as 'Casper', as a menacing dog.

Introduction:

[1] On the 18th November 2020 an incident was reported to Waikato District Council Animal Control Officers that a neighbour's dog had attacked and mauled a cat at 49 Lily Street, Raglan. An Animal Control officer attended shortly after the incident was reported, and as a result of the taking of a statement from the owner of a cat a male person was spoken to at the address of 77 Wallis Street, Raglan. The dog, identified in these proceedings as Casper, a white 'Spoodle' was found at the premises. As Casper was not registered he was seized and transported to the Council pound at Ngaruawahia. Casper was subsequently released once he had been registered and confirmed as being microchipped. Casper was classified as a menacing dog on 26 November 2020. Ms Schonberger objected to the classification which necessitated a hearing before the Council's Regulatory Subcommittee (the Committee).

[2] The Committee was presented with a Council agenda which contained, amongst other correspondence, a copy of the complaint, extracts of legislation, Animal Control Officer's statement, a copy of the menacing dog classification notification to Ms Schonberger, her written objection and photos taken by Animal Control Officers as well as other associated documents, photos and emails provided by Ms Schonberger.

[3] The only witnesses, Mr Glen Schnuriger was not present at the hearing to give evidence or provide the Committee with the opportunity to clarify any aspect of his witness statements.

HEARING:

Objector – Ms Schonberger

[4] At the commencement of the hearing the Chairperson outlined how the hearing would take place.

[5] Ms Schonberger began her objection by stating she was sorry for what had happened to the complainant's cat. She was concerned that the Council documents showed her in bad light. She told the Committee that she rented the property she lives in and that she had made contact with her landlord many times in the past two years. The landlord was slow to fix or raise fences and other gaps in the boundary fencing which made it difficult for her to contain Casper within the property.

[6] Ms Schonberger went on to tell the Committee that on the day of the event she and a friend had been at the beach where she regularly walks her dog off lead. Upon her return she attempted to find both leads, as she has two dogs, before letting them out of her car. She found one but could not find the other. After some time she decided to risk letting Casper out of the car without a lead while she continued looking for it. Her friend, Mr Stephen Doll, also got out of the car to look for the lead. It was at that time Mr Doll noted he had been sitting on the lead.

[7] From information contained in a statement taken from Mr Schnuriger, the owner of the cat attacked by Casper, the Committee was aware that Mr Schnuriger had been alerted to a growling noise outside his dwelling and his cat making hissing noises. Ms Schonberger stated it was about this time that her neighbour, Mr Glen Schnuriger, came out of his front door and abused both herself and Mr Doll. Ms Schonberger was apprehensive and didn't feel safe remaining outside so she went inside her dwelling. She stated she had no time to apologise.

[8] Ms Schonberger commented that she now has both Casper and her other dog on a leash whenever she has them off her property. Casper was always microchipped, has been de-sexed and is contained at all times when on her property.

[9] Ms Schonberger stated she was sad about the incident and wished that both parties could be at peace with each other. She commented that she believed she had done all that she could to make sure it doesn't happen again.

[10] In response to questions from the Committee, Ms Schonberger acknowledged that it had been a risk to let Casper out of the car without having him on a lead. She acknowledged that there were two people, her and Mr Doll and that there were two adults to manage those dogs at the time they arrived home. Ms Schonberger responded that Casper just got out quicker than she could restrain him.

Witness - Stephen Doll

[11] Mr Stephen Doll stated that he was a friend of Ms Schonberger's and that he had accompanied her to walk her two dogs at the beach. Upon their return to Ms Schonberger's home they could only find one lead for the two dogs. He was not aware he was sitting on the second lead until he got out of the car. He took responsibility for the lead not being available to Ms Schonberger to leash 'Casper'. He stated that Ms Schonberger opened the back door of her car and Casper jumped out and ran off. He noted Casper run towards the neighbour's property. The neighbour gave Casper a kick and chased him away. Mr Doll managed to grab hold of Casper and took him into Ms Schonberger's house.

[12] Mr Doll commented that neither he nor Ms Schonberger could talk to the neighbour as he, the neighbour, was so upset. He didn't see Casper maul the neighbour's cat. Leashing of the dogs was now very important and since 18 November Mr Doll is unaware of any further events between Casper and the neighbour's cat.

Objector - Ms Schonberger

[13] Ms Schonberger, in response to questions from the Committee, stated that she had never seen an incident, including the one on 18 November 2020, between Casper and the neighbour's cat. On each occasion an incident had 'occurred' it was the neighbour who told her that one had occurred. She commented that cats are always fighting in her neighbourhood and they get injuries from time to time. She stated that it was only because her neighbour had supposedly heard and seen each incident that anyone else knows about it. She again confirmed she did not hear or see anything on the morning of 18 November, stating she had her back to the neighbour's property. She confirmed the neighbour's dwelling was no more than probably five meters from where her car was parked. She stated she did not hear Casper attack the cat.

Animal Control Team Leader – Tracey Oakes

[14] Ms Oakes opened her comments by stating that Ms Schonberger had not taken enough steps to prevent Casper from attacking her neighbour's cat. Ms Oakes referred the Committee to the cat owner's statement which outlined a series of attacks and the details of the attack on 18 November 2020.

[15] Ms Oakes then summarised why Casper had been classified as a menacing dog. She spoke of the conversations between staff and Ms Schonberger where staff had given lots of advice on how to control and contain Casper. She spoke of the lack of action from Ms Schonberger, Ms Schonberger's own admissions of the previous events, the level of aggression, Casper being a threat to domestic animals and thus a need for him to wear a muzzle in a public place.

Animal Control Officer – Amanda Davis

[16] Ms Davis's brief of evidence, having been pre-circulated, was taken as read and she answered question from the Committee. Ms Davis told the Committee that Casper weighed 14kg and was knee high to an adult. Ms Davis confirmed that as at 18 November 2020, Casper was unregistered, and that after being seized on 18 November 2020 he was released back to Ms Schonberger the following day.

RIGHT OF REPLY – Ms Schonberger

[17] Ms Schonberger attempted to clarify her comments 'Risk It'. She stated she was always using those words in various situations, including at work where some level of risk was always required. She stated it was an accident and was genuinely sorry for what happened to the cat. She had always responded whenever she was made aware of an 'incident' and where necessary contacted her landlord to effect alterations when required. Ms Schonberger now has Casper on a long lead unable to run freely whenever he was off her property. She stated that being required to muzzle Casper would not enhance the issue. The wearing of a muzzle was a life sentence for Casper and Casper would feel miserable if he had to wear a muzzle every time he went out.

[18] Responding to further questions from the Committee, Ms Schonberger stated that Casper was normally run on the beach off leash. She went on to state that most dog owners will tell you not to approach their dog if they don't like strangers. As most dog owners don't like their dogs on a leash Ms Schonberger wanted to also be able to run Casper off leash on the beach at any time. She finished her right of reply with the comment that people often came up to Casper to pat him when he was on the beach.

LEGISLATION: S33A Dog Control Act 1996

[19] *Territorial Authority may classify a dog as menacing*
(1) *This section applies to a dog that –*
(a) *has not been classified as a dangerous dog under section 31; but*
(b) *a territorial authority consider may pose a threat to any person, stock, poultry, **domestic animal**, or protected wildlife because of –*
(i) *any observed or reported behaviour of the dog,*

[20] On 26 November 2020, Tracey Oakes, Animal Control Team Leader, Waikato District Council undertook a classification exercise with respect of Casper. As a result Ms Oakes issued a notice, on 26 November 2020, under s33A of the Dog Control Act 1996 classifying Casper as a menacing dog. Notice of the classification was sent to Ms Schonberger and she responded by objecting to the classification.

REASONS FOR DECISION:

[21] Ms Schonberger has accepted that her dog Casper has previously attacked the neighbour's cat on three occasions. On the occasion which resulted in the classification of Casper as menacing Ms Schonberger was some five meters away but claims not to have seen or heard the 'attack'.

[22] The Committee finds, on balance, that the four 'attacks' complained of have occurred and that Casper is the dog involved in all four incidents.

[23] The Committee notes that following the 18 November 2020 attack Casper has been de-sexed, that being one of the requirements of the menacing classification. The only additional requirement for Casper under the classification is that he be muzzled in public.

[24] Ms Schonberger's evidence including her written and emailed comments to the Committee have confirmed the four incidents. However nowhere has she shown that the processes undertaken by the Council officers has been deficient in the classification of Casper as a menacing dog.

[25] The role of the Committee is to review the classification and determine whether the classification should be upheld or dismissed. The Committee finds no grounds to rescind the classification.

DECISION:

[26] Pursuant to Section 33B(2) of the Dog Control Act 1996 the Regulatory Subcommittee upholds the classification of the dog, known as 'Casper', as a menacing dog.

A handwritten signature in black ink, appearing to read 'Noel Smith', is written over a light grey rectangular background.

Noel Smith
Chairperson
Regulatory Subcommittee
Waikato District Council
08 March 2021