

**IN THE MATTER** of an objection against the classification of a dog as menacing pursuant to section 33A of the Dog Control Act 1996 by Daniel Barber.

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

Chairperson Cr Janet Gibb  
Members Cr Crystal Beavis  
Cr Peter Thomson

**APOLOGIES**

None

**HEARING** at NGARUAWAHIA on 13<sup>th</sup> October 2023.

**APPEARANCES**

Mr Daniel Barber — Objector, Dog owner  
Ms Kirsty Ridling – Waikato District Council Senior Solicitor, to assist  
Mr Phil Greaves – Waikato District Council Animal Control Officer  
Ms Amanda Twiss – Waikato District Council Animal Control Officer

**IN ATTENDANCE:**

Ms Robyn Chisholm – Democracy Team, WDC

**DECISION OF THE SUB-COMMITTEE**

**Having considered the information presented in writing, and in person at the hearing, the Waikato District Council Regulatory Sub-Committee rescinds the menacing dog classification of the dog 'Rollo' imposed under s33A of the Dog Control Act 1996.**

**Introduction**

- [1] This decision relates to an incident that occurred on 13<sup>th</sup> June 2023, when a dog was alleged to have attacked and killed six chickens that were confined to the property of Mrs Hannah Wilton at 16 Pinnacle Hill Road, Pokeno. That property is a neighbouring property to the residence of Mr Barber at 20 Brljevich Road, Mangatawhiri.
- [2] Mrs Wilton, the complainant, contacted Waikato District Council's (**WDC**) call-centre and lodged a service request. It was alleged that the dog which had killed the chickens was Rollo, a black and white Alaskan Malamute, aged approximately 2 years and owned by Mr Barber.
- [3] Animal Control Officer Amanda Twiss (**ACO Twiss**) received the service request and spoke to Mrs Wilton. That same day, ACO Twiss, along with Animal Control Officer Pil Greeves (**ACO Greaves**) attended the property of Mr Barber and spoke with him. Mr Baber was visibly upset

and advised that he did not realise that rain had partially eroded the bank where the boundary fence between the properties was located. During that discussion, ACO Twiss explained to Mr Barber about a menacing classification and infringement.

- [4] Following an investigation by Animal Control staff, a classification of ‘menacing dog’ was imposed on Rollo on 18 July 2023 by the WDC Animal Control Team Leader in accordance with section 33A of the Dog Control Act 1996 (**Act**). On 4 August 2023, Mr Barber was hand delivered the menacing classification.
- [5] In accordance with section 33B of the Act, Mr Barber formally objected in writing to the menacing classification within the statutory time frame.

## **HEARING:**

### **Preliminary Matters**

- [6] WDC provided a written agenda to all parties and the hearing panel. The agenda contained such matters as statements, photos, classification documents, and extracts of legislation that pertained to the menacing classification and the objection process.
- [7] The Chair, Cr Gibb, stated the decision would be based on the written and oral evidence provided by the objector/s, and that of the WDC ACO’s, the Complainant, and witness statements and advice from Council legal staff. The Chair then outlined the structure of the hearing and introduced all those in the room.
- [8] The Chair acknowledged that Mr Barber (**Objector**) had presented supplementary photos prior to the hearing.

### **Objector – Mr Barber**

- [9] The Chair invited Mr Barber to present his objection. Mr Barber noted for the Sub-Committee his high functioning Autism (Aspergers) which can impact on how he communicates as he struggles to put things into words sometimes. He proceeded to read from his written notes.
- [10] The Objector stated that the information presented in the Agenda regarding Rollo is “conjecture” based on hearsay and speculation and there is no ‘proof’ of the incident that led to his dog’s menacing classification. It was noted by the Objector that Animal Control Officers (**ACO**) undertook no visual observations and sighted no evidence or proof that Rollo was responsible for the killing of the chickens and further noted that the ACO’s had acknowledged the lack of witnesses.
- [11] When referring to communications with ACO Twiss, the Objector stated that ACO Twiss had said there was not enough evidence for a court case. The Objector presented a timeline of dates for the events and correspondence relating to the hearing which illustrated that the Infringement Notice was received on 25 July 2023 and he received a call from ACO Twiss on 4 August 2023 advising that a menacing classification was being applied.

- [12] The dates relating to the hearing were noted as being time sensitive. The Objector noted that he made a request under the Local Government Official Information and Meetings Act request (**LGOIMA**) and did not receive the documentation until the last legal day according to the process. Receipt of the agenda for the hearing was noted by the Objector as a working day late.
- [13] In relation to documented emails from witnesses and the dog's behaviour, The Objector advised that his dog has never charged or snapped at the fence line or displayed any aggressive behaviour. Additionally, there is someone home with the dog all day.
- [14] The Objector advised that he used to frequent the Pokeno Domain Dog Park with his dog and there are sheep and cattle nearby which his dog has never showed any interest in.
- [15] The Objector also confirmed that he is not comfortable going out in public with his dog anymore because he is afraid of being shunned because of the muzzle that his dog is now required to wear. He noted that since his dog has been classified as menacing, he has not taken his dog to an off-leash area due to perceived stigma.
- [16] The Objector noted for the Committee the character references he had obtained and emphasised the tone of the references to positively support the character of the dog.
- [17] It was the Objectors belief that if neighbours had been concerned about his dog worrying livestock, they should have alerted him – and he has never been alerted. The Objector believed the land under a section of the fence had eroded as a result of severe rain at that time and that this may have been how the dog escaped. This had been the only time the dog had left the property on its own. He also advised that he undertook regular checks on the boundary fences and that he believes fences should be a shared responsibility with neighbours.
- [18] Regarding claims from another neighbour that his dog stalked the next-door neighbour's daughter on the fence line, the Objector advised that he is not convinced this is genuine and he feels that in general his character has been slandered by false claims and information that has been spread. He noted that he has been in the community for 14 years and he is feeling the effects of stress and anxiety caused by the classification of his dog.
- [19] The Objector advised that he does not believe a lifelong classification should be enforced when there is no evidence that Rollo was responsible for the killing of the chickens.
- [20] The actions of the Complainant, Ms Wilton was raised by the Objector, including what he believed to be disingenuous claims of previous unrelated incidents, thought to be about other dogs, referenced in this case. The Objector advised that he has received threats to his dog's life, including his dog being shot and overall believes this is a result of his dog being portrayed negatively by the Complainant.

- [21] Other dogs have been reported wandering in the community/area on Facebook and the Objector believes that it is plausible that it was another dog that killed the chickens, again citing the lack of witnesses to the incident or proof that Rollo was responsible.
- [22] The Objector provided letters of support and three written references for Rollo, all of which provided support for the good character of the dog. One of the written references was from the rural postal person who described Rollo as 'placid', even when she entered the gate with parcels, and another was from a woman who runs a childcare on her property saying the dog has never exhibited anti-social or aggressive behaviour even when the children are 'running around excited'. The Objector noted that his dog has no previous history, has been well socialised and advised the dog is trusted around children.
- [23] Precedents of a similar case wa's noted by the Objector for the Committees reference. He states he found a case of a Mr Joseph Bridgeman from Ngaruawahia. In this case Ms Tracey Oakes clarified what is taken into account in the classification of a menacing dog. That being the level of aggression displayed, the location public or private, the dog owner's response and any previous history; an officers observed behaviour of the dog. The Objector applied this criteria to this situation. He stated no-one witnessed or saw any aggressive behaviour and there is no proof that his dog committed any aggressive act; the location of the alleged incident was on private property; the Objector stated his response was immediate with all action taken to secure his property and show sympathy to the Wiltons; his dog has no previous history; no officer or any representative from Animal Control or the Council has ever seen or observed Rollo or asked to see Rollo.
- [24] The Objector set out the actions which he had undertaken in the week following the alleged incident to show responsibility and to ensure that Rollo would be unable to leave his property again. Those actions included:
- Strengthening of his property fencing;
  - Purchase of a dog run where his dog is kept if no one is home;
  - Reinforcement of the area under the fence line;
  - Purchase of waratahs and wire to create a new fence line within the existing fenced area and noted electronic gates; and
  - Upgraded GPS tracking
- Additionally, the Objector advised the Sub-Committee that Rollo is always fully controlled and on a leash (attached to his belt) in public.
- [25] The Objector stated that it was his belief that the Animal Control Team Leader felt that a dangerous dog classification was out of the question due to the menacing classification being the most appropriate.
- [26] In conclusion the Objector believed that the classification should be rescinded based on his arguments.
- [27] The Chairperson received a copy of the Objectors notes for the hearing.

**Questions and discussion of the Committee:**

- [28] The Objector clarified that it was his mother who noticed the dog was missing from the property and subsequently found the dog in the chicken run. He also confirmed that his mother assumed that Rollo had killed the chickens but did not see it happen.
- [29] ACO Twiss confirmed that the conversation whereby the statement was made that there was “not enough evidence for a court case” was during a phone call on 4 August 2023. ACO Twiss further confirmed that the statement was made in reference to the fact that there was not enough evidence for a destruction order.
- [30] With regards to the Infringement Notice, ACO Twiss also confirmed that it does not contain any reference to the menacing classification and it was received on 25 July 2023, before the classification was imposed.
- [31] The Objector was asked if he thought his mother’s statement of the dog being found lying amongst dead chickens was an unfair speculation? The Objector responded that it was just a statement of facts. His own apology was a reaction to a stressful situation which after calming down and rationally considering the events, he stands by the fact no one witnessed the event, so there is doubt as to Rollo’s actions.
- [32] The Sub-Committee asked whether there was any other evidence or anything else the Objector knows that could have happened, other than what his mother speculated/saw? The Objector referenced hearing about other dogs bothering livestock and previous complaints made by the Complainant of other dogs outside her property. The Objector stated that he feels like his dog has been targeted and not been treated as innocent until proven guilty, emphasising again that there were no eyewitnesses or sworn testimony as to the incident itself.
- [33] The Sub-Committee asked the Senior Solicitor to confirm what the burden of proof was in these matters and asked if it was on the balance of probability or beyond reasonable doubt. The Senior Solicitor confirmed that there is nothing in legislation, but it does not have to be beyond reasonable doubt. The Senior Solicitor agreed to check on legislation and further confirmed that the legislation allows the Sub-Committee has discretion in terms of the classification.
- [34] There was discussion between the Sub-Committee and the Objector regarding the assumption of the Objector’s mother that Rollo had killed the chickens and the Objector’s level of actions taken since the alleged incident. The Committee agreed that the Objector has taken the classification seriously and has taken all possible actions to prevent the dog being around native birds or other birds and poultry.
- [35] The Objector further noted that Rollo had never shown any interest previously in any birds, including ducks and geese. The Sub-Committee asked the Objector whether he had taken action to try to desensitise Rollo to birds and the Objector noted that this has not been possible as the dog shows no interest in birds.
- [36] Further emphasis was given by the Objector to having done everything in his power to ensure the alleged incident could not happen again, including only walking his dog in residential areas and when out in public the leash is attached to his belt.

[37] When questioned by the Sub-Committee about the dog at the time of the incident, the Objector advised that his mother did not see any feathers or blood on Rollo.

[38] The Sub-Committee sought clarification in relation to the timing of the dog being on the neighbour's porch and how the dog's paw prints were observed on the porch. The Objector noted that his mother took the dog with her when she went to look for the neighbours to tell them what she had found.

#### **Animal Control Officer – Amanda Twiss**

[39] The Committee took the ACO's written evidence as read and asked if she had any further comments. ACO Twiss gave a verbal report and answered questions of the Committee.

[40] ACO Twiss provided an explanation to the Sub-Committee in relation to the timeline of the alleged incident. ACO Twiss confirmed that it began with the phone call from the complainant regarding a dog killing her chickens, at which time the complainant advised that she did not sight the incident. ACO Twiss further confirmed that when she and ACO Greeves visited the Objectors property there was discussion with the Objector about how the dog got out. An Infringement Notice was issued to the Objector at a later date and the menacing classification imposed later again.

[41] It was noted by the Sub-Committee that there was not enough evidence for court proceedings in relation to a destruction order but there was enough evidence regarding posing a threat, to enforce a menacing classification.

[42] ACO Twiss provided further clarification that other neighbours had sent email to WDC after the Complainant spoke to WDC. It was also noted by ACO Twiss that although nobody saw the killing of the chickens, it was considered the dog "may pose a threat" as stated in the Act.

[43] The Sub-Committee queried whether there have there been other calls in the past regarding unidentified dogs in the same road, e.g. dogs showing aggression to stock and it was confirmed that complaints had been received with those dogs being subsequently sighted.

[44] The Sub-Committee was noted that the LGOIMA request by the Objector was not recorded in hearing documentation. However, it was clarified that the Objector became aware of previous complaints through the information provided in response to his LGOIMA request. It was further noted that the LGOIMA information was redacted but the information which accompanied the Agenda was not and, as such, the dates indicated that those complaints were not about his dog, Rollo.

[45] The Sub-Committee then asked questions of the ACO's in relation to chickens being confined. It was confirmed by ACO Greaves that it is more likely an animal, such as a dog, would react to the panic of a confined animal. In questioning whether dogs are able to be trained not to react

under these circumstances, ACO Greaves advised that an expert would need to confirm, but he had never seen dog aversion training referencing an hysterical animal.

[46] Both ACO Twiss and Greaves confirmed that they have not met Rollo as the incident did not involve a person.

[47] The Sub-Committee also noted that a menacing classification requires a muzzle to be worn in public but not on private property. It was acknowledged that if a menacing classification had been applied, the situation would be likely to still have occurred as Rollo would not require muzzling on his own property.

#### **Objector – Mr Barber**

[48] In response to further questions, the Objector shared what his high functioning Autism means in terms of how he follows instructions and his understanding of responsibilities in terms of his dog. He described himself as being “more hyper aware of keeping my dog safe.” He had plans to apply to be a responsible dog owner until the incident and noted that because his dog helped his social interactions, it was positive for his Autism. Normal stressful situations were made easier by having a dog with him, but this classification has meant his confidence/ability to handle social interactions had changed back/regressed.

[49] Weather events were noted as the reason the fencing failed and the Objector stated that he feels that he is a responsible dog owner. It was confirmed that if no one is on the property, the dog is now put in the dog run or inside the house. The dog run is located approx. 1m from the boundary and there is no other practical site for it to be.

[50] The Objector was offered a final opportunity to comment or pose a question before the hearing closed but advised that he had none.

[51] The Chair explained a decision would be made by the Sub-Committee and he would be advised as soon as practical.

#### **Reasons and decision:**

[52] Taking into account the matters in section 33B of the Act, the Sub-Committee has considered the evidence presented at the hearing, and notes the following:

1. The Sub-Committee is satisfied that an incident took place. The Sub-Committee agreed that on the balance of probability Rollo is likely to have been the dog that attacked and killed the chickens. Despite the fact no-one saw the incident, he was found sitting in the coop among the carcasses.
2. The Sub-Committee determines that the objector presents as a good owner who has done everything in his power to prevent any possible future incident of this kind. Following the incident, the Objector immediately purchased a closed dog run, fixed and strengthened the boundary fence, upgraded the GPS tracker and electronic gates plus reinforced a new fence line, offered reparation and an apology due to the circumstantial evidence pointing to Rollo.

3. Rollo is already neutered and is always on a leash attached to his owner's belt when walking in public. The only exception is in a closed and fenced off-leash dog park.
4. The Sub-Committee has taken into account the letters of support and the nature of the references on behalf of Rollo stating there is no evidence of any negative behaviour with people or other animals.
5. The Sub-Committee has also considered all written and verbal statements along with photographs of Rollo socialising with other animals. Our opinion is that requiring Rollo to wear a muzzle in public would not change the circumstances that led to the situation that occurred.
6. The Sub-committee has taken into account the statements of ACOs Twiss and Greaves at the hearing that Rollo and / or any usually well-behaved and trained dog is likely to react to caged birds/animals exhibiting panic behaviour at an unexpected threat.
7. The Sub-Committee has also considered the Objector's autism and the impact that has on him as a dog owner and notes that upholding a menacing classification would cause a detrimental effect on Mr Barber's quality of life for no apparent benefit.
8. Based on the above reasons, the decision of the Sub-Committee is that the classification of Rollo as a menacing dog pursuant to s33A of the Act is **rescinded**.

Dated at Ngaruawahia this 9th day of November 2023



Janet Gibb  
Chairperson