

**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 N Singh Sidhu.

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

Chairperson Cr Janet Gibb  
Members Cr Carolyn Eyre  
Cr Peter Thomson

**APOLOGIES**

None

**HEARING** at NGARUAWAHIA on 1<sup>st</sup> December 2023.

**APPEARANCES**

Mr N Singh Sidhu — Objector, Dog owner  
Ms S Kavanagh-Ward – Legal Counsel for the Objector  
Ms Christine Pidduck – Waikato District Council (WDC) Legal Counsel, to assist  
Ms Sarah Jones – WDC Senior Solicitor, to assist  
Mr Phil Greeves – WDC Acting Team Leader Animal Control  
Ms Amanda Davies - WDC Senior Animal Control Officer

**IN ATTENDANCE:**

Ms Robyn Chisholm – Democracy Team, WDC  
Mrs K Brotherston – Democracy Advisor, WDC  
Ms M Singh – supporter of Objector  
Mr J Berkett – supporter of Objector

**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 upholds the menacing dog classification of the dog ‘Marshall’ imposed under s33A of the Dog Control Act 1996.**

**Introduction**

The Objector was welcomed along with his support – his wife and a friend, and legal representative. Introductions of the Sub-Committee, WDC Legal, Democracy and Animal Control Teams.

- [1] New correspondence from the Complainant, Ms F Snape, was received on the morning of the hearing and this information was provided to Mr Sidhu and his Legal counsel for review. For all parties to consider the information the hearing was adjourned at 10.04am and resumed at 10.07am.
- [2] This decision relates to an incident that occurred on 14<sup>th</sup> August 2023. The complaint was lodged to WDC's afterhours service by a member of the public, Ms Fiona Snape who stated that her dog ("Wilbur") had been attacked by a German Shepherd ("Marshall")

## **HEARING:**

### **Preliminary Matters**

- [3] WDC provided a written agenda to all parties and the hearing panel. The agenda contained such matters as statements, photos, videos, classification documents, and extracts of legislation that pertained to the menacing classification and the objection process. The Objector's Legal Counsel provided a power point presentation which included more video evidence and submissions. This was also provided in advance of the hearing to WDC and the Sub-Committee.
- [4] The Chair, Cr Gibb, stated the decision would be based on the written and oral evidence provided by the Objector, and that of the WDC Animal Control Team, the Complainant, and witness statements and submissions from WDC legal staff. The Chair then outlined the structure of the hearing.

### **Objector – Mr Sidhu**

- [5] The Chair invited Mr Sidhu to present his objection. Mr Sidhu gave an account of the incident relating to the classification, from the time he received notification from WDC Animal Control that there had been an incident, to when he collected his dog from the pound in Ngaaruawaahia.
- [6] It was noted that Mr Sidhu had relayed his apologies to Ms Snape, Wilbur's owner, at her home and made enquiries into the wellbeing of Wilbur. He further noted there were no visible injuries on Wilbur when he visited Ms Snape.
- [7] Mr Sidhu advised that when picking up his dog, he was told by Senior Animal Control Officer ("SACO") Davies that usual practice was to keep a dog in the pound for longer, but his dog was released after consultation with Ms Snape, due to Marshall's good nature and assurances that Mr Sidhu was in control of Marshall and would fix the fence the next day.
- [8] It was reported that on Mr Sidhu's return to his home he checked the boundary collar his dog wore, it didn't beep and upon investigation learned there had been a power trip in the garage and the circuit breaker wasn't working which led to the dog collar not working and resulted in his dog being able to leave the property. Mr Sidhu acknowledged that the incident shouldn't have happened.
- [9] It was noted that Mr Sidhu's mother noticed Marshall leave the property and called him back. Marshall returned within a few seconds.
- [10] It was reported that Ms Snape came to Mr Sidhu's gate and was upset and yelling at Mr Sidhu's mother, who did not understand English very well.
- [11] It was advised Mr Sidhu has taken steps to ensure the incident cannot happen again and took the following day off work to buy supplies and make repairs to the fence where Marshall

escaped the property. He also went to Dog Masters, the boundary system supplier and purchased a training collar (over \$500) and his dog has had training using this collar since then.

- [12] It was noted there have been no further complaints since the incident and his dog plays with small as well as large dogs at Doggy Daycare, without incident. This was backed up by a video showing Marshall playing at the daycare and a reference supplied by the daycare owner.
- [13] It was queried whether this incident was the first time his dog had escaped, and Mr Sidhu confirmed that to his knowledge it was. He further noted that the property has been refenced with wooden fencing, being a second security layer in addition to existing electronic fencing.
- [14] Mr Sidhu clarified that the gate and electronic boundary fence was installed when he first got Marshall in recognition that he is a big breed of dog. Discussion followed regarding the electronic collar and the evidence that at some stage the collar's charge ran out. Mr Sidhu advised that a charge on collar would usually last two weeks however to be careful they charge it weekly.
- [15] Discussion was held regarding how the dog knew the collar wasn't working, how he knew immediately where the hole in the fence was, whether under normal circumstances Marshall would come straight away when called. Mr Sidhu confirmed he has good control of Marshall and this is a one off incident. Marshall is regularly taken to the Cambridge dog park and he plays with other dogs with no problem.
- [16] Mr Sidhu advised he has actively been training Marshall using the training collar since August 2023 and in general this has been effective, even stopping unnecessary barking.
- [17] The lawyer acting for the Objector (Ms Kavanagh-Ward) presented the slide show to the sub-committee. (The slide show consisted of 45 slides including video clips of the incident and training since and submissions)
- [18] Ms Kavanagh-Ward gave a review of Ms Snape's witness statement and proposed that if Ms Snape's dog had been pinned down as claimed, there should be more evidence of injury and the statement appears contrary to the vet report. She stated that in her opinion Ms Snape's dog would have been quiet when attacked, as stated, noting that she didn't think this was likely due to normal fear reactions.
- [19] It was proposed that the vet report was based only on allegations made by Ms Snape and the photo does not support a bite. That it was not specified in the vet report that the wound was from a bite. She submits the wound could be from road metal or a claw contact.
- [20] Ms Kavanagh-Ward submitted that if Mr Sidhu's dog was menacing it would have gone back out under the fence again, noting that the video footage supplied by Mr Sidhu shows the dog is off the property for approx. 10 seconds and out of sight for 2 seconds.
- [21] It was advised that Mr Sidhu has gone above and beyond to ensure that an incident cannot happen again including additional wire fencing and electronic training device.
- [22] The panel asked for clarifications and explanations at different stages of the video presentation.

#### **Questions and discussion of the Sub-Committee:**

[23] It was noted that:

- Marshall is 5 years old and boundary measures have been in place during the time he has lived there;
- Marshall appeared familiar with the break in the hedge;

- The hedge used to be thicker but was trimmed in February/March 2023 and now thinner has exposed the hole in the hedge, unnoticed by the owners until now;
- The training collar work with Marshall is progressing from evidence shown in the video footage;
- There is a second level of security around the boundary now;
- The dog is reportedly always on a lead when off the owners' property unless at the dog park or at the doggy daycare, where there have been no previous aggressive incidents;
- There has been no evidence that Marshall has bitten before, and other people have visited their property with dogs and encountered no issues;
- There were affidavits and good references received regarding Marshall's behaviour which were reviewed on the power-point presentation and read by the Sub-Committee, including from the doggy daycare he attends; and
- Confirmation was given to the Sub-Committee by WDC Senior Solicitor that a Menacing Classification means a muzzle must be worn in all public places, and that a doggy daycare is a private facility so unless the business owner requests it, a muzzle is not required to be worn on that property.

The hearing was adjourned for a break at 11.13am and resumed at 11.23am

#### **Animal Control gave a verbal report and answered questions**

- [24] An account of timeline and events from the day of the incident was provided by Senior Animal Control Officer (SACO) Davis. It was noted that the dog was excited but there were no problems in handling Marshall.
- [25] It was advised Marshall was impounded until Mr Sidhu came to the office and the dog was released to Mr Sidhu on the understanding that the repairs to the fence would be done the next day.
- [26] It was noted that the video footage of Marshall leaving the property was given to the WDC Animal Control Team. SACO Davies discussed the incident with her Team Leader and a decision was made to classify Marshall as a Menacing Dog noting he was a 'territorial' dog and knew how to escape from the property. It was noted that to Mr Sidhu's dog his home is his territory, and it was therefore considered to be the reason that the dog's behaviour was considered territorial aggression.
- [27] It was confirmed that when SACO Davies came to Mr Sidhu's property to uplift Marshall, he was in his kennel / run. SACO Davies confirmed that it was decided to release Marshall due to her confidence that the dog would be under control.
- [28] It was noted by the Sub-Committee that the Menacing Classification requires a muzzle to be worn in public places not on private property, therefore the classification would not have prevented the alleged incident. However, if the dog were to re-offend then the classification gives additional powers and support to Animal Control.
- [29] It was advised that the fence had been previously inspected and after being questioned on whether Mr Sidhu could do anymore than he has done to mitigate further incidents, SACO Davies replied she wouldn't be able to comment until she inspected the property. That an electronic collar is only as good as when it is charged and advised that animals can smell electricity and know when an electric fence is on or not.

- [30] Upon querying the puncture wound SACO Davies advised it is consistent with what they would expect to see from a territorial bite. It was refuted that SACO Davies said to Mr Sidhu that Marshall was not an aggressive dog.
- [40] It was noted that the Complainant Ms Snape had indicated that previous complaints had been made to WDC about Marshall and SACO Davies confirmed receipts of those however none were pursued due to lack of precise details. The timing of those complaints was queried by the Sub-Committee – did they come in after the incident involving Ms Snape and Wilbur?
- [41] The Sub-Committee asked about the nature of Marshall’s tail wagging. It was clarified that there is a common misconception regarding a dog’s tail wagging and in fact can reflect aggression and not always a happy dog. It depends on other factors like ears pricked up and stalking and other behaviour.
- [42] It was noted that the term ‘menacing’ does not have to include a dog bite and that menacing can be a perceived threat. All factors are taken into account.
- [43] It was queried whether the alleged incident could have happened in the two second space of time when Marshall was out of sight in the video. SACO Davis confirmed that was enough time.
- [44] Other queries involved automatic gate, collar device workings, animal fur being trimmed so collar works well, three stage process with collar alerts.
- [45] Mr Sidhu’s Legal Counsel spoke to precedent being set in previous Sub-Committee hearing.

#### **WDC Legal comments**

- [46] WDC Senior Solicitor reiterated section 33A of Dog Control Act 1996 (“the Act”) and related it to the reported behaviour overview and review of the incident.
- [47] It was noted that with respect to the CCTV footage of the dog’s behaviour, SACO Davies’ experience of aggressive behaviour traits gives credibility to her report. Territorial behaviour and indications being tail high and up were noted.
- [48] It was noted that behaviour by Marshall toward human’s is different behaviour toward another dog and Marshall showing no aggression on being uplifted is irrelevant.
- [49] It was advised that the vet report is consistent with the account from Ms Snape and the consistency of the wound with it being from a bite was also noted.
- [50] It was clear that Marshall knew how to get out of the property and the size difference between the two dogs was noted.
- [51] That a muzzle is not required at doggy daycare unless specifically requested by the business, as it is private property, and that muzzle training is less invasive than electric training.
- [52] The Sub-Committee was advised they are not bound by precedent and that WDC does not dispute the steps taken by Mr Sidhu since the incident to prevent any threat to the safety of persons or animals.
- [53] It was queried whether complaints after an incident could be taken into consideration by the Sub-Committee and WDC Senior Solicitor advised that section 33B of the Act outlines what the Sub-Committee must have regard to, and this includes any other relevant matters, and it is up to the Sub-Committee to determine how much weight is attributed to such complaints in arriving at its decision.

## **Other**

- [54] The date of the social media post, as referenced in Ms Snape's correspondence was confirmed as being 15<sup>th</sup> August 2023. The day after the incident. It was agreed by the Sub-Committee and the Objector that no further documented evidence of other complaints is required and that verbal submission is sufficient.
- [55] Regarding the precedent referenced Mr Sidhu's Legal Counsel noted that WDC is not bound by precedent however, felt it was relevant as the other incident involved a child and was more serious.

The hearing was adjourned at 12.06pm

## **Deliberations**

The Sub-Committee undertook deliberations on all evidence presented.

### **Reasons and decision:**

- [56] Having regard to the matters in section 33B of the Act, the Sub-Committee has considered the evidence presented at the hearing, and notes the following:
- a) The Sub-Committee is satisfied that an incident took place. The Sub-Committee agreed that on the balance of probability Marshall is likely to have made contact with Wilbur in the time he was not sighted in the video. The wound on Wilbur could be a bite or claw puncture wound or a gravel wound from being pinned to the ground. It is noted that SACO Davis evidence was that the wound was what you would expect to see from a territorial bite mark. The Sub-Committee concluded there was a threat to and / or an attack on Wilbur by Marshall.
  - b) 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 fixed and strengthened the boundary fence, purchased an electronic training collar, and began a training programme with Marshall, offered apologies and paid the vet bill. Marshall is neutered and is always on a leash when walking in public unless in a dog park.
  - c) The Sub-Committee has taken into account the letters of support and the nature of the references on behalf of Marshall stating there is no evidence of any negative behaviour with people or other animals. It acknowledges verbal comments by those in attendance.
  - d) The Sub-Committee has also considered all written and verbal statements along with photographs of Marshall socialising with other animals and in the videos provided. The Sub-Committee's opinion is that requiring Marshall to wear a muzzle in public would not change the circumstances that led to the situation that occurred. Notwithstanding this the behaviour

displayed by Marshall during the incident on 14 August 2023 where there was a threat to and / or an attack on Wilbur is of concern to the Sub-Committee

- e) The Sub-Committee has taken into account the statements of SACO Davies and Acting Animal Control Team Leader Greeves at the hearing that Marshall showed territorial aggression as evidenced in the CCTV footage provided. The Sub-Committee is relying on the expert knowledge of SACO Davis and Acting Animal Control Team Leader Greeves in respect of Marshall's behaviour.
- f) Based on the above reasons, the majority decision of the Sub-Committee is that the classification of Marshall as a menacing dog pursuant to s33A of the Act is **upheld**.

Dated at Ngaruawahia this 14<sup>th</sup> day of December 2023



Janet Gibb  
Chairperson