

Dog Control Act Hearing Panel
DETERMINATIONS

Date: Thursday 21 June 2018
Time: 1pm
Venue: Committee Room 2, Level 2, Civic Offices,
53 Hereford Street, Christchurch

Present

Chairperson	Community Board Member Aaron Campbell
Members	Councillor Anne Galloway
	Community Board Member Melanie Coker

21 June 2018

Hearings Advisor
Mark Saunders
941 6436
Mark.Saunders@ccc.govt.nz
www.ccc.govt.nz

The objections were dealt with in the following order.

1. First Hearing - 1pm

Reconvened from 16 May 2018.

Hearing of an objection to the classification pursuant to section 33A(1)(b)(i) of the Dog Control Act 1996 of five-year-old, male, red coloured, Dogue de Bordeaux dog named "Justice", and three-year-old, female, tan coloured, Dogue de Bordeaux dog named "Maci", as menacing dogs

Hearing closed and decision reserved at 1:37pm

Refer page 3 below for the determination

2. Second Hearing - 2pm

Hearing of an objection to the notice issued pursuant to section 55(1) of the Dog Control Act 1996 to abate a nuisance created by the persistent and loud barking or howling of one-year-old, male, black and tan coloured, Doberman dog named "Soprano"

Hearing adjourned at 2:24pm and reconvened at 2:40pm

Hearing closed and decision reserved at 3:30pm

Refer page 13 below for the determination

BEFORE THE HEARINGS PANEL
OF THE CHRISTCHURCH CITY COUNCIL

18/685307

IN THE MATTER of the Dog Control Act 1996

AND

IN THE MATTER of an objection of SARITA BURROWS of Christchurch to the classification by the Christchurch City Council Animal Management Team under Section 33A(1)(b)(i) of her five-year-old, male, red coloured, Dogue de Bordeaux dog named 'Justice' as a menacing dog

AND

IN THE MATTER of an objection of SARITA BURROWS of Christchurch to the classification by the Christchurch City Council Animal Management Team under Section 33A(1)(b)(i) of her three-year-old, female, tan coloured, Dogue de Bordeaux dog named 'Maci' as menacing dog

Hearing: Committee Room 2, Level 2, Civic Offices
53 Hereford Street, Christchurch
21 June 2018 at 2pm

Panel: Community Board Member Aaron Campbell (Chairperson)
Councillor Anne Galloway
Community Board Member Melanie Coker

Appearances
for the Objector: Sarita Burrows (Objector)
(Objector's father)
for the Animal Management Team: Mark Vincent (Team Leader Animal Management Officer)
Jo Ward (Investigating Animal Management Officer)

Determination: 5 July 2018

Hearings Advisor: Mark Saunders

**DETERMINATION OF THE HEARINGS PANEL
OF THE CHRISTCHURCH CITY COUNCIL**
(Dog Control Act 1996, section 33B)

The classifications of both Justice and Maci as menacing are upheld

REASONS OF THE HEARINGS PANEL

INTRODUCTION

[1] The hearing was held to consider an objection received from dog owner, Sarita Burrows ('the Objector'), to the classification by the Christchurch City Council Animal Management Team under Section 33A(1)(b)(i) of the Dog Control Act 1996 ('the Act') of her five-year-old, male, red coloured, Dogue de Bordeaux dog named 'Justice', and three-year-old, female, tan coloured, Dogue de Bordeaux dog named 'Maci', as menacing dogs – which classification creates special obligations imposed on the dog owner by, and described within, Sections 33E-33F of the Act.

[2] Section 33A(1)(b)(i) of the Act, under which Justice and Maci were classified, relates to a dog that a territorial authority considers may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of an observed or reported behaviour of the dog. Under section 33A(2) of the Act a territorial authority may classify such a dog as 'menacing', and following a report that Justice and Maci had, on 3 February 2018, escaped their property and attacked the Victim's cat, George, the Senior Animal Management Officer under his delegated authority did so classify Justice and Maci as a 'menacing' dogs by causing to be given to the Objector notice of the classification and other prescribed matters, including her right to object to the classification under section 33B of the Act.

[3] The Objector exercised her right to object to the classification of Justice and Maci as 'menacing' and in accordance with her right to be heard in support of her objection it was referred to the Hearings Panel of the Christchurch City Council as the body with the delegated authority to hear and determine the objection. The Hearings Panel on 21 June 2018 heard the Objector's evidence and submissions, and also from the Animal Management Team, having previously received a report from Bill Kohi, Senior Animal Management Officer, together with the evidence collected by the Investigating Animal Management Officers, Kym Manuel and Jo Ward, relating to the incident and classification.

[4] This report notifies the determination of the Hearings Panel that the classification of the Objector's dogs, Justice and Maci, as 'menacing' is **upheld**, and the reasons for its determination in accordance with section 33B(3) of the Act.

BACKGROUND

[5] On 3 February 2018 at approximately 2:15pm, the Council received a complaint from the Complainant alleging that at approximately 1:50pm that day, the Objector's dogs had attacked his mother's cat, George, on or around his mother's driveway, causing injuries to George severe enough to warrant George being humanely euthanized as a result of the attack by Justice and Maci.

[6] The Council's Animal Management Team investigated the complaint and on the evidence it gathered determined that the alleged dog attack on the Complainant's mother's cat, George, did occur. The Officers further determined that the Objector's five-year-old, male, red coloured, Dogue de Bordeaux dog named 'Justice', and three-year-old, female, tan coloured, Dogue de Bordeaux dog named 'Maci', were the dogs that both attacked the cat, George, having escaped the Objector's property and come onto or around the Complainant's mother's driveway attacking George and causing George severe injuries warranting euthanizing him.

[7] The Council's Senior Animal Management Officer, considered the evidence collated by the Investigating Animal Management Officers, and considered that he had sufficient evidence to prove that

the dogs had not been under effective control and have both attacked and severely injured a domestic animal and so with delegated authority, classified the Objector's dogs, Justice and Maci, as 'menacing' in accordance with section 33A(1)(b)(i) of the Dog Control Act (which relates to a dog that a territorial authority considers may pose a threat because of an observed or reported behaviour of the dog).

[8] The Council received from the Objector a formal objection to the classification of her dogs, Justice and Maci, as 'menacing'. The objection triggered the appointment of a Hearings Panel to hear the objection with delegated authority to uphold or rescind the classification after having regard, pursuant to Section 33B(2) of the Act, to: (a) the evidence which formed the basis for the classification; (b) the steps taken by the owner to prevent any threat to the safety of persons or animals; (c) the matters relied on in support of the objection; and (d) any other relevant matters. The Hearings Panel had regard to these matters in reaching its determination as summarised in this report.

[9] The following report and assessment summarises a considerable volume of oral and written evidence and submissions presented to the Hearings Panel. It is not intended to be exhaustive in its scope, but rather to identify what were considered to be the salient comments.

THE HEARING

Submissions of the Animal Management Team

[10] Mark Vincent, Team Leader Animal Management, presented at the hearing for Bill Kohi, Senior Animal Management Officer, referring to Mr Kohi's written report circulated prior to the hearing. In the report relevant extracts from the Dog Control Act 1996 were provided for the Hearings Panel's information and consideration:

- Objects of the Act (Section 4)
- Obligations of Dog Owners (Section 5)
- Functions, duties and powers of territorial authorities (Section 6)
- Territorial authority may classify dog as menacing (Section 33A)
- Objection to classification of dog under section 33A (Section 33B)
- Effect of classification as menacing dog (Section 33E)
- Offence to fail to comply with section 33E(1) or Section 33EB (Section 33EC)

[11] Mr Vincent summarised for the Hearings Panel the facts on which the decision to classify the Objector's dogs as 'menacing' was based referring to Mr Kohi's report and the attachments thereto.

[12] Mr Kohi had summarised the facts of the central incident of 3 February 2018 as follows:

The Christchurch City Council received a complaint from [the Complainant] at approximately 0215 on Saturday 3rd February 2018.

[The Complainant] has provided a formal statement at 1400 on Sunday 04 February 2018, where he states:

He was house sitting for his mother, at about 0150am he was in the kitchen preparing food for the cat when he heard a noise he describes as a cat fight coming from the driveway.

He has ran outside where he has seen two dogs that he described as 'Pitt Bull' type, tan dogs. He has stated that the dogs appeared to be dragging his mother's cat down the driveway.

[The Complainant] has followed the dogs out onto the berm where he has kicked one of the dogs away from the cat. He has then wrestled with the second dog until the cat was released.

Both dogs ran off towards [a nearby street]. The cat "George" ran and hid under a car parked on the side of the road.

[The Complainant] tried to retrieve the cat from under the car but was unable to coax him out. He has gone inside to phone his mother then returned to attempt to retrieve George a second time when both dogs have returned.

{The Complainant} has chased the dogs off and followed them to an address at [a private property].

He has stayed outside the address and waited for the animal management officer to arrive.

Animal management officer Kym Manuel has arrived at the scene and impounded both dogs.

Both dogs were identified by the officer using their microchip number records kept by the council.

An Impound notice was left at [the Objector's address], addressed to the dog owner on record advising that their dogs had been impounded in accordance with the Dog Control Act 1996. The notice also advised where and when the dogs could be claimed from the Christchurch City Council Animal Shelter

George the cat was taken to the afterhours vet but was euthanized as a result of the injuries sustained during the attack by these two dogs.

The dog owner claimed her dogs from the shelter and were released to her on the 5th February 2018 after a property inspection was conducted at [the Objector's address] by Officer Ward. The officer confirmed that there was a secure confinement area provided on the property for the dogs.

The dog owner passed on to the cat owner through the animal management officer an apology card, flowers and some fudge and have agreed to pay for the vet and cremation expenses incurred as a result of the attack. The cat owner's bank details were passed on by the animal management officer.

[13] At the hearing, Mr Vincent reported the above summary of the incident and the Senior Animal Management Officer's conclusion in his report to the Hearings Panel that:

The investigating officer has completed a report which in [his] opinion supports the decision that the 5 year old, entire male, Red, Dogue de Bordeaux Dog called "Justice", and a 3 year old, entire female, Tan, Dogue de Bordeaux Dog called "Maci" be classified as menacing in accordance with section 33A(1)(b)(i) of the Act.

This is the third incident that animal management have been made aware of. The previous two incidents involved these two dogs being at large in public places, attacking poultry and attacking another dog.

While both incidents were considered minor the owner was given a written warning notice in accordance with Sec 57 of the Dog Control Act 1996 on the 13th November 2017. This warning required the dog owner to ensure that the dogs must be contained securely within their property at all times in such a manner that they cannot leave the property freely without being under direct and effective control.

[His] decision to classify both these dogs has been made on the fact that each incident involving these dogs being at large and not under effective control has resulted in another animal being attacked. Each attack has escalated in severity and ultimately resulted in the death of a persons pet.

Accordingly, with the delegated authority given to me by the Christchurch City Council, the dogs referred to above has been classified as menacing in accordance with section 33A (1) (b) (i) of the Dog Control Act 1996.

[14] At the hearing Mr Vincent confirmed that both Justice and Maci had been appropriately classified as menacing since the evidence was that both were actively involved in the attack on George, even if one of them might have taken the lead more.

[15] The Hearings Panel undertook to be open-minded and to form its own view of whether the menacing dog classification was and is still appropriate having regard to the matters set out in Section 33B(2) of the Act as described further below.

Evidence of the Complainant

[16] Prior to the hearing, the Complainant had provided a written statement dated 4 February 2018 relating to the incident of 3 February 2018, which had assisted the Animal Management Team in their investigation and in summarising the facts as above, and which the Hearings Panel had opportunity to consider.

[17] Neither the Complainant nor Victim (the cat's, owner) were available for the hearing. Within his written statement, the Complainant noted that during his second attempt to coax George out from under the car (after going to call his mother, the Victim), when the dogs, Justice and Maci, returned, he yelled at them again and followed them, and at one point one the dogs challenged him and he had to physically kick it to get it away.

[18] A report from the After-Hours Veterinary Centre was in evidence relating to the injuries George the cat sustained on 3 February 2018, which read:

HISTORY:

Dog attack. Owners son was watching George and 2 dogs attacked.

PHYSICAL EXAM:

Taken to treatment and flow by O2 started

SpO2 with O2 85%

EENT: Pale pink mm with CRT=2

SC: Large amount of SC emphysema over entire thorax. Worse over left thorax.

CVP: Flail chest on left side. Heart sounds difficult to hear over harsh lung sounds. Harsh lung sounds on both sides of thorax. Dyspnoea with increased abdominal effort.

ABD: Increased abdominal effort when breathing. Bladder not palpable.

SC: 1.5 cm laceration on right flank, puncture wounds and laceration on right tarsus, multiple puncture wounds on right shoulder, and actively bleeding puncture wounds on ventral caudal abdomen on midline.

MS: no obvious fracture/dislocation palpated

ASSESSMENT: Multiple bite puncture wounds and lacerations, flail chest, SC emphysema, dyspnoea, harsh lung sounds, hypothermia

DIFFERENTIAL DIAGNOSES: Dog attack wounds. Pneumothorax, pulmonary contusions, collapsed lung(s), diaphragmatic hernia, internal bleeding, fractures (ribs, etc).

DIAGNOSIS: Multiple dog attack

PLAN:

Methadone 0.50 mg/kg IM given on presentation for pain

Discussed severity of wounds and treatments. Prognosis at this time (without diagnostics) would be guarded to poor.

Decision made to humanely euthanize.

IVC placed. Alfaxan followed by pentobarbitone.

FF cremation

The Objector

Evidence and Submissions of the Objector

[19] In initially raising her objection in writing, the Objector had submitted that:

I am writing to object to the classification under section 33A/33C of my two dogs de Bordeaux, Justice and Maci.

As you are aware there has been a few incidents concerning my dogs and not that I'm making excuses for their behaviour but I would like the chance to explain them.

The very first time they ever got out was when I was in the middle of shifting and the movers had not shut the gate, and Maci injured a chicken's leg but it was fine, a lady who witnessed said she wasn't aggressive towards it more so playing.

The second incident they had gone out through my gate to the golf course which was left open by my flatmate, Maci put a small puncher hole in a little dog, I took reasonable steps to ensure that would not happen again by kicking out my flatmate, may sound extreme but his sleepout was right by the

gate and I didn't want to risk that again, I also paid for the vet bill for the owners of the dog and had called the golf course to get in touch with them as I felt terrible.

Our recent incident being the death of a cat, which is totally heartbreaking, and as an animal lover I really feel for the owners and can't emphasize how bad I truly feel. Hence buying them chocys, flowers & a card not that that makes up for what happened but I wanted the owners to know I do care. My son had let them out for dinner and had not checked that the front gate was shut. As you can see, my dogs are not menacing dogs that try to escape at all as I've never had trouble with them till I moved, it has all been down to human era and I take full responsibility for that.

To ensure the dogs are under much tighter control I have now made the rule that no one but myself is to let them out so that I am sole responsible for them being kept safely contained in my property. They are also closed behind two sets of gates so that this cannot and will not happen again.

I am happy to abide by muzzling the dogs in public, paying the fines, paying vet bill etc but the one thing I'm objecting to is the neutering, these two dogs have cost me a lot of money which is something I invested in to be able to make a little bit of an income for my children and I. I absolutely love this breed, I have put a lot of time into them, researching etc and was not long off getting Maci registered within the kennels to become a professional breeder. They have awesome bloodlines and papers. I do not want to be some backyard breeder pumping out puppies or I would have done so by now, Maci is coming up 3 and is of age and only want to do one or two litters and then have her fixed, as she is also very much my pet too. They have beautiful natures and are both really well trained, well look after and loved dogs.

As I said before it's all down to human era this has happened. They have not been raised with cats so as nature is they don't know how to be kind to them, just the same as cats don't think to be kind to birds before they kill them. The reason I decided to go into breeding, is [regarded as private], so this was my way for me to be able to provide for my children. I do not feel that neutering would alter their behaviour, this solely falls on me and being a more responsible dog owner which I will do everything in my power to ensure this never happens again.

[20] At the hearing the Objector's father gave evidence that he wouldn't have Justice and Maci around his grandchildren if they were vicious, indicating they are not. He further confirmed the accidental circumstances of their escape as described by his daughter, the Objector, noting that her son (his grandson) on the occasion of when George was attacked had innocently left the gate open when feeding the dogs, but his daughter had taken steps in regards to more secure containment since to ensure there was no longer the same possibility of escape.

[21] The Objector's father submitted that though the dogs were kicked by the Complainant they did not respond with aggression, suggesting a lack of aggressive inclination. The Objector's father also noted that it is the nature of dogs to chase cats and chickens.

[22] The Objector's father described how his daughter had saved and sacrificed to afford Justice and Maci, and how his daughter had gone to the effort of moving properties to enable Justice and Maci to be more securely contained.

[23] The Objector confirmed that Justice and Maci are a breeding pair, and how the neutering requirement would affect her income from breeding the pair, and how the income supports her children. The Objector further confirmed that she had since paid George's vet bill outlining the cost.

[24] The Objector noted her bond with Justice and Maci from a young age, while accepting the incident and saying how sorry she was, though pointing to the circumstances of her son innocently leaving the gate open, the dogs doing what was natural to them, and her efforts in going to the extent of ending her flatmate's tenancy as part of her efforts to ensure Justice and Maci were securely contained. The Objector noted that she had even moved properties to securely contain Justice and Maci and installed doorbells on the property gates, noting she is the only person who can open the gates, and she had attempted to train Justice and Maci to complement these steps, so altogether they are more securely contained and controlled now.

[25] The Objector indicated that she thought she had good containment for Justice and Maci, but had increased the containment at the new property further, with it now being necessary for two gates to be open before Justice and Maci could escape. The Objector confirmed that she would be happy to muzzle Justice and Maci and is principally objecting to the neutering requirement.

Reply from the Animal Management Team

[26] Mr Vincent confirmed that there is a separate process for the Objector to apply to specified senior staff for a waiver of just the neutering requirement (the Council's Dog Control Policy outlining the relevant considerations for the senior staff exercising the discretion with the default being that menacing dogs are required to be neutered unless the discretion of the relevant senior staff is separately sought and granted), and the Objector's efforts to contain the dogs was acknowledged.

Close of Hearing

[27] The Hearings Panel considered that it had all the information it needed to have regard to under section 33B(2) of the Act after considering the evidence, information and submissions available to it.

[28] The Hearings Panel closed the hearing and reserved its decision.

PANEL DELIBERATIONS

The evidence which formed the basis for the classification

[29] The evidence which formed the basis for the classification was not in the Panel's view in any doubt with regard to it supporting the assessment that Justice and Maci attacked the Victim's cat after wandering uncontrolled onto or around the Victim's driveway, and thus they accepted there was evidence supporting the assessment that Justice and Maci may pose a threat to domestic animals.

[30] The evidence suggested to the Hearings Panel that the incident resulted from Justice and Maci not being kept under control and that they could endanger domestic animals again if again not kept under control. The evidence suggested that Justice and Maci are a threat to other domestic animals as demonstrated by the incidents.

[31] The Hearings Panel, having regard to the evidence which formed the basis for the classification of Justice and Maci as 'menacing', considered that it was sufficient to form the basis for the Animal Management Team's classification, recognising that it would proceed to consider the Objector's evidence and her submissions in support of her objection to the classification.

Steps taken to prevent any threat to the safety of persons or animals

[32] It was not doubted that the Objector was sincere that she would from now on contain Justice and Maci. The Hearings Panel recognised that the Objector had completed steps to secure their property.

[33] The Hearings Panel considered the Objector's evidence and submissions in regard to the steps she had taken to prevent any further threat to the safety of animals. However, the Panel considered that the attack demonstrated that the Objector did not have Justice and Maci under effective control at the time of the incident to prevent the attack, and considered that reasonable steps to prevent any threat were not taken. Furthermore, the Panel had particular concern about dogs capable of the determined and persistent attack on George the cat that took the Complainant such effort to end and left George with such severe injuries that he had to be euthanized. The Hearings Panel did not feel the high level of confidence it would want to in respect of the steps taken that could justify de-classifying dogs that are potentially powerful, capable and inclined threats to other domestic animals.

[34] The Panel had regard to the objects and provisions of the Act, the nature of the attack and the resulting severe injuries inflicted to George. The Panel perceived a need to address the threat presented by the dogs. It recognised the difficulty and risk around constantly controlling dogs that displays such tendency, and the threat they presents when un-muzzled.

[35] In light of these various considerations speaking to the fact that Justice and Maci are a potential threat, the Hearing Panel considered that the steps taken by the Objector, though admirable, were not sufficient in all the circumstances of this case to persuade it to rescind the classification.

Matters relied on in support of the objection

[36] The Objector essentially accepted the Complainant's account of the incident to her credit; it also being to the credit of the Objector that she apologised to the Victim for the incident and took steps to try to address the harm caused.

[37] The Hearing Panel had regard to the matters relied on in support of the objection. The Panel appreciated the Objector's level of concern and commitment in respect of Justice and Maci, and was approving of the Objector's sincerity and constructive approach to the hearing process, much appreciating that the Objector has demonstrated some efforts to be a good and responsible dog owner. However, the Hearings Panel was mindful of the potential relevance of these determinations to the safety of the wider public, and was not persuaded Justice and Maci no longer had the propensity to attack and injure in similar, and potentially other, contexts. The Hearings Panel regarded that the nature and seriousness of the attack justified upholding the 'menacing' classification so as to require muzzling as a preventative measure.

[38] The Hearings Panel appreciated the Objector's submissions, but for reasons already canvassed above considered that they should not rescind the classification on the basis of those submissions all things considered. The Hearings Panel perceived that Justice and Maci had demonstrated a capacity for attacking other domestic animals unprovoked. The Hearings Panel considered that in light of the degree of injury to

George that Justice and Maci had caused, and the circumstances of wandering unto or around the Victim's driveway uncontrolled, the classification should be in place. The Panel note that classification is a preventative measure, and is not intended to be punitive; the Panel was encouraged by the Objector's efforts, but regarded that it should nonetheless uphold the classification having regard to the object of the Act to impose on dog owners obligations designed to ensure that dogs do not injure, endanger, or cause distress to any person, stock, poultry, domestic animal or protected wildlife.

Other relevant matters

[39] The Hearings Panel had regard to the evidence as a whole and considered that it had all the information it needed to have regard to under section 33B(2) of the Act. The Hearings Panel noted that every objection to a menacing dog classification is considered on its own merits and having regard to the circumstances particular to the case. The Hearings Panel, having regard to all relevant matters, considered that upholding, and not rescinding, the classification would be justified by the evidence and submissions and would align with the objects of the Act.

[40] It was to the credit of the Objector that she embraced the muzzling requirement and had still apparently taken such a serious and responsible attitude to securely containing Justice and Maci in moving house to a property where there were two secure gates containing them. The Panel were thus supportive of the Objector still having the opportunity to apply to senior staff for a waiver of just the neutering requirement, leaving the matter to the discretion of those senior staff, requesting that the Objector be advised of how to apply for the waiver. The Panel refrain from commenting on whether or not it considers the waiver should be granted as outside their delegation, and note that the Objector should rehearse anew in applying to senior staff her case that the neutering requirement would cause her a demonstrated potential financial loss.

RESULT

[41] Having considered the objection of the Objector to the classification of her dogs, Justice and Maci, as 'menacing' dogs, together with the evidence and submissions of those who have written to the Council and/or appeared before the Hearings Panel, and having regard to the matters contained within the Dog Control Act 1996 and referred to in section 33B(2) of the Act, it is determined that the classification of the Objector's five-year-old, male, red coloured, Dogue de Bordeaux dog named 'Justice' as a menacing dog be **upheld**, and that the classification of the Objector's three-year-old, female, tan coloured, Dogue de Bordeaux dog named 'Maci' as a menacing dog also be **upheld**, for the reasons indicated herein and for the reason that the Hearings Panel considers that the dogs may pose a threat because of the reported behaviour of the dog.

CONFIRMED THIS 5TH DAY OF JULY 2018



AARON CAMPBELL
CHAIRPERSON

BEFORE THE HEARINGS PANEL
OF THE CHRISTCHURCH CITY COUNCIL

18/685333

IN THE MATTER of the Dog Control Act 1996

AND

IN THE MATTER of an objection of BRADLEY TUHI of Governors Bay to the notice given to him pursuant to Section 55(1)(b) requiring him to abate the nuisance being created by his male, one-year-old, black and tan coloured, Doberman dog named 'Soprano'

Hearing: Committee Room 2, Level 2, Civic Offices
53 Hereford Street, Christchurch
21 June 2018 at 2pm

Panel: Community Board Member Aaron Campbell (Chairperson)
Councillor Anne Galloway
Community Board Member Melanie Coker

Appearances: Bradley Tuhi (Objector)
(Objector's witness)
(Complainant)
(Complainant)
(Complainant)
Mark Vincent (Reporting Animal Management Officer)
Sean Quinn (Investigating Animal Management Officer)

Determination: 5 July 2018

Hearings Advisor: Mark Saunders

**DETERMINATION OF THE HEARINGS PANEL
OF THE CHRISTCHURCH CITY COUNCIL**
(Dog Control Act 1996, section 55)

The requirements of the notice relating to Soprano are modified and the modified requirements are set out herein

Christchurch City Council – Notice of Modified Abatement Requirements

Section 55(5), Dog Control Act 1996

To Bradley Tuhi

Address: ... Governors Bay

Dog: male, one-year-old, black and tan coloured, Doberman dog named 'Soprano'

This is to notify you¹ pursuant to section 55(5) of the Dog Control Act 1996 that, following the hearing of your objection pursuant to section 55(2) of the Dog Control Act 1996 to the abatement requirements previously notified to you relating to abating the nuisance being created by the dog it has been determined by the Hearings Panel of the Christchurch City Council that the abatement requirements relating to the dog are modified and the modified abatement requirements are that you must within 7 days of receipt of this notice–

1. Keep the dog securely inside the dwellinghouse at the above address (and take all other steps necessary to prevent the dog creating a barking nuisance for your neighbours), or otherwise not keep the dog at the above address, when you are not physically present at the above address (however, if a dedicated sitter is present on the property and actively training and monitoring the dog to prevent him creating a barking nuisance, as you must when you are at the above address, then it will be considered that requirement 2 below will apply instead of this requirement 1); and
2. When you (or a dedicated dog sitter as described above) are physically present at the above address, you (or the sitter) must not have the dog outside the dwellinghouse, or otherwise able to create a barking nuisance for your neighbours, unless you (or the sitter) are using an effective electronic barking prevention collar on the dog. Noting that the dog should not be left unmonitored wearing such collar, you (or the sitter) must actively monitor and train (including though positive reinforcement or similar in consultation with a trainer skilled in the use of electronic collars) the dog to deter barking when using the collar, and if the collar is ineffective you (or the sitter) must revert to requirement 1 above regardless of being physically present at the above address. Provided the collar is effective in abating the barking it may be one that delivers citronella spray, water spray, air pressure, high frequency sound or a shock if necessary.

In the event that the Christchurch City Council receives any further complaints relating to the dog barking or howling, this notice of modified abatement requirements shall not prevent the Council's Animal Management Team from giving at its discretion at any time a new notice under section 55(1)(b) of the Dog Control Act 1996, the requirements of which will apply in addition to the requirements set out above, and any objection to the new notice will not suspend the requirements set out above.

You are receiving this notice because the Council's Hearings Panel determined that there were reasonable grounds, following receipt of a complaint by a dog control officer, for believing that a nuisance was being created by the persistent and loud barking or howling of the dog, and further determined, after hearing

¹ For the purposes of the Dog Control Act 1996, you are the owner of a dog if—

- you own the dog; or
- you have the dog in your possession (otherwise than for a period not exceeding 72 hours for the purpose of preventing the dog causing injury, or damage, or distress, or for the sole purpose of restoring a lost dog to its owner); or
- you are the parent or guardian of a person under 16 who is the owner of the dog and who is a member of your household living with and dependent on you.

your objection to the abatement requirements the officer notified to you, that the abatement requirements should not be cancelled, but should be modified (albeit modestly to clarify and support the original abatement requirements).

The effect of this notice is further explained by referring to sections 55, 56 and 70 of the Dog Control Act 1996, relevant parts of which are provided below.

Inquiries in respect of this notice may be made to:

Team Leader Animal Management
Christchurch City Council, PO Box 73-037, Christchurch 8154

or by email to: animalmanagement@ccc.govt.nz

or by delivery to: the Civic Offices at 53 Hereford Street, Christchurch; a Council Service Centre; or the Council Animal Shelter at 10 Metro Place, Bromley, Christchurch.



Signature of Chairperson of the Hearings Panel of the Christchurch City Council

Date: 5 July 2018

Dog Control Act 1996, Section 55: Barking dogs

- (1) Where a dog control officer or dog ranger has received a complaint and has reasonable grounds for believing that a nuisance is being created by the persistent and loud barking or howling of any dog, the dog control officer or dog ranger may—
 - (a) enter at any reasonable time upon the land or premises, other than a dwellinghouse, on which the dog is kept, to inspect the conditions under which the dog is kept; and
 - (b) whether or not the dog control officer or dog ranger makes such entry, give the owner of the dog a written notice requiring that person to make such reasonable provision on the property to abate the nuisance as shall be specified in the notice or, if considered necessary, to remove the dog from the land or premises.
- (2) Any person on whom notice is served under subsection (1) may, within 7 days of the receipt of the notice, object in writing to the territorial authority against the requirements of that notice.
- (3) The territorial authority shall consider the objection and may confirm, modify, or cancel the notice.
- (4) No objection under this section shall be considered unless 7 days' notice of the date and time when and the place at which it is to be considered have been given to the objector, who shall be entitled to be represented and to be heard and may submit evidence and call witnesses in support of his or her objection.
- (5) Upon the determination of the objection, the territorial authority shall give to the objector a further notice stating the decision of the authority, and, if the effect of the decision is to modify the requirements of the dog control officer or dog ranger, shall set out those requirements as so modified.
- (6) As from the lodging of an objection with the territorial authority, and pending the receipt of a further notice upon the determination of the objection, the notice setting out the requirements that are the subject of the objection shall be deemed to be suspended.
- (7) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,500 who, having been served with a notice under this section,—
 - (a) fails or neglects to comply with that notice (not being a notice that has been suspended under subsection (6)) within 7 days of its receipt by that person;
 - (b) fails or neglects to comply with any notice as modified or confirmed by a territorial authority under subsection (3) within the time specified by the territorial authority.

Section 56: Removal of barking dog causing distress

- (1) This section shall apply in any case where, at any time after a notice under [section 55](#) has been issued,—
 - (a) the notice has not been cancelled under subsection (3) of that section; and
 - (b) the notice has not been complied with; and
 - (c) a dog control officer or dog ranger has received a further complaint and has reasonable grounds for believing that the nuisance in respect of which the notice is issued is continuing and is causing distress to any person.
- (2) In any case to which subsection (1) applies, the dog control officer or dog ranger may enter upon the land or premises on which the dog is kept and remove the dog and the dog shall be kept in custody under [section 70](#).
- (3) Nothing in this section shall authorise any dog control officer or dog ranger to enter any dwellinghouse unless—
 - (a) he or she is authorised to enter by a warrant issued by an issuing officer (within the meaning of [section 3](#) of the Search and Surveillance Act 2012) made on application by the dog ranger or dog

control officer in the manner provided for an application for a search warrant in [subpart 3](#) of Part 4 of the Search and Surveillance Act 2012; and

(b) he or she is accompanied by a constable.

(3A) None of the following persons may act as an issuing officer under this section:

(a) the mayor or any elected member of the local authority that employs or engages the dog ranger or dog control officer; or

(b) any employee of the local authority that employs or engages the dog ranger or dog control officer.

(4) Where a dog is removed pursuant to subsection (2), the dog control officer or dog ranger shall give written notice in the prescribed form to the owner of the dog or, if the owner is not present, the person for the time being appearing to be in charge of the land or premises and, if no person is present on the property, shall leave such notice in some conspicuous place on the land or premises.

(5) The provisions of [subparts 1, 3, 7, 9, and 10](#) of Part 4 of the Search and Surveillance Act 2012 apply in respect of an authority applied for or issued under subsection (3).

Section 70: Custody of dog removed for barking

(1) Every dog removed under [section 56](#) shall be kept in custody and given proper care and exercise, whether in the facilities provided under [section 67](#) or otherwise but, except as provided in subsection (7) of this section, nothing in [section 69](#) shall apply to the dog.

(2) The owner of any dog which is, for the time being, kept in custody under subsection (1) may apply at any time to the territorial authority for the return of the dog.

(3) Where application is made under subsection (2) and the territorial authority is satisfied the return of the dog will not result in a resumption of the nuisance, the territorial authority shall, subject to subsection (6), return the dog.

(4) Any person who has sought the return of a dog under subsection (2) and is dissatisfied with the decision of the territorial authority may appeal to the District Court against that decision, and the District Court, in hearing the appeal, shall consider the matters specified in subsection (3) and any submission by the territorial authority in support of its decision and may uphold that decision or order the return of the dog.

(5) Subject to subsection (6), unless a dog is earlier returned pursuant to subsection (3) or subsection (4), the territorial authority shall keep the dog in custody until such time as it is satisfied—

(a) that proper provision in relation to the dog has been made on the property specified in the notice issued under [section 55](#); or

(b) that the owner has made arrangements for the dog to be kept on a property other than the property from which it was removed.

(6) Where the territorial authority has, under [section 68\(1\)\(b\)](#), set fees for the sustenance of impounded dogs, the territorial authority may apply those fees to the sustenance of any dog kept in custody under this section and may require the payment of those fees before any dog is returned under subsection (3) or subsection (5) or, unless the District Court orders otherwise, subsection (4).

(7) In any case where—

(a) the notice under [section 55](#) has not been complied with within 7 days of a conviction under subsection (7) of that section; or

(b) the territorial authority requires fees under subsection (6) to be paid before any dog is returned, and those fees have not been paid within 7 days of the receipt by the owner of written notice that the dog will be returned upon payment of those fees,—

the territorial authority may dispose of the dog in the manner authorised by [section 69](#), and subsections (4) to (6) of that section shall apply as if the dog had been disposed of under that section.

REASONS OF THE HEARINGS PANEL

INTRODUCTION

- [1] The hearing was held to consider the objection received from dog owner, Bradley Tuhi ('the Objector') to the notice issued under Section 55(1)(b) of the Dog Control Act 1996 ('the Act') requiring him to make specified provisions to abate the nuisance being created by the persistent and loud barking of his dog, 'Soprano'.
- [2] Section 55(1) of the Act is triggered where a dog control officer or dog ranger has received a complaint and has reasonable grounds for believing that a nuisance is being created by the persistent and loud barking or howling of any dog. Under section 55(1)(b) of the Act, the dog control officer or dog ranger may give the dog owner a written notice requiring that person to make such reasonable provision on the property to abate the nuisance as shall be specified in the notice or, if considered necessary, to remove the dog from the land or premises.
- [3] A dog control officer from the Christchurch City Council's Animal Management Team did receive a complaint relating to Soprano and assessed that they had reasonable grounds for believing that a nuisance was being created by the persistent and loud barking of Soprano, and the officer accordingly gave the Objector notice requiring the Objector, when they are away from their property, to house Soprano inside the house, and to use a working electronic barking prevention collar.
- [4] The Objector was advised of his right under section 55(2) of the Act to object to the requirements of the notice and the Objector exercised this right. Accordingly, his objection was referred to the Hearings Panel of the Christchurch City Council. The Panel on 21 June 2018 heard the Objector's evidence and submissions, and also heard from other witnesses to the reported nuisance and from the Animal Management Team, having considered the written evidence collated by Bill Kohi, Senior Animal Management Officer, relating to the reported nuisance that was allegedly being created by Soprano and the abatement notice issued in response.
- [5] This report notifies the reasons for the determination of the Hearings Panel to modify the abatement requirements and sets out the modified abatement requirements in accordance with section 55(5) of the Act.

BACKGROUND

- [6] In the period 28 September 2017 through 17 May 2018, the Council received 19 complaints relating to excessive barking of a dog at the Objector's property.
- [7] The Council's Animal Management Team investigated the complaints (three Animal Management Officers being involved over that time) and on the evidence it gathered determined that there were reasonable grounds for believing that a nuisance was being created by the persistent and loud barking of the Objector's dog, Soprano. Accordingly, on 18 May 2018, the Animal Management Team served an abatement notice in terms of section 55(1)(b) of the Act on the Objector in relation to his dog, Soprano, which set out specified requirements for abating the barking nuisance within 7 days:

1. Use working electronic barking prevention collar
2. House dog inside dwelling house when away from property

[8] The Council subsequently received from the Objector an objection to the requirements of the abatement notice, and accordingly a hearing was scheduled for the objection to be heard. The abatement notice had appended to it a summary of section 55 of the Dog Control Act 1996, including advice of: the right (and prescribed manner) to object to the notice; that the Objector was entitled to be represented and to be heard and submit evidence and call witnesses in support of his objection; that the Council would hear the objection and then confirm, modify or cancel the notice, giving a further notice of its determination and any modified abatement requirements; and that (as dictated by section 55(6) of the Act) lodging an objection to the notice would suspend it pending receipt of this notice of determination of the objection.

[9] The following report and assessment summarises a considerable volume of oral and written evidence and submissions presented to the hearing. It is not intended to be exhaustive in its scope, but rather to identify what were considered to be salient comments.

THE HEARING

Christchurch City Council Animal Management Team

[10] Mark Vincent, as the Reporting Animal Management Officer at the hearing, referred to the file prepared by Senior Animal Management Officer, Bill Kohi. Relevant parts the Dog Control Act 1996 were referred for the Panel's information and consideration.

- Objects of the Act (Section 4)
- Obligations of Dog Owners (Section 5) – emphasis added to the obligation on dog owners to take all reasonable steps to ensure the dog does not cause a nuisance to any other person, whether by persistent and loud barking or howling or by other means.
- Functions, duties and powers of territorial authorities (Section 6)
- Barking dogs (Section 55)

[11] Mr Vincent summarised for the Panel the facts on which the decision to issue the abatement notice was based referring to Mr Kohi's file and summarised the complaints received by the Animal Management Team relating to the Objector's dog, Soprano's barking while at the Objector's address:

The Christchurch City Council has received 19 excessive barking complaints and 1 Welfare complaint dated 28/09/2017 through 17/05/2018.

There have been three animal officers involved over the last nine months.

As per normal operating procedures the officers would always go to the area and look listen and learn.

Initially it was difficult for the officers to gather sufficient evidence of excessive barking but they continued to work with the complainants in an attempt to collect evidence.

The officers also communicated with the dog owner via telephone conversations or text messages.

The owner of the dog was issued with an animal management Barking Dog Complaint notice dated the 20 March 2018. This notice advised the dog owner that the council had received a complaint of excessive barking but we were unable to substantiate the degree of nuisance, if any, was being caused.

This notice did offer some advice to Mr Tuhi such as providing regular daily exercise, leaving the dog inside while at home alone, having a radio playing, engage a professional trainer and to talk to his neighbours in an attempt to get an idea of how his dog was acting when he wasn't at home.

The complaints were all sent a bark record sheet to complete. These sheets are for the person who is effected by the excessive barking to record that times, date and duration of any excessive barking.

There were eight (8) bark record sheets posted to several complainants. The council only received one of these sheets back. This sheet was received by the council on the 28 November 2017.

The officer has decided to install a bark recorder in the area to record the noise being generated by the dog.

The recorder was placed at a complainant's property on the 13 December 2017 and collected on the 19 December 2017. No evidence of excessive barking was recorded. The house sitter staying at the address where the bark recorder was installed advised the officer that the dog had been quiet so she didn't expect us to find any evidence.

The officer confirmed that there was no evidence on the recorder.

The officer continued to monitor the area but heard no evidence of excessive barking.

After several more complaints a second bark recorder was installed in the area on the 17 April 2018.

This recorder provided the officer with evidence of significant barking coming from the property of 11 Glas Brae.

The officer also received several emails and attachments from [one of the Complainants] dated 16 and 17 May 2018.

There are also media file attached to these emails provide as proof of the excessive barking the complainant has to contend with.

[12] It was reported that Mr Kohi and the investigating officers reviewed the evidence and complaints received and concluded that they had reasonable grounds for believing that a nuisance was being created by the persistent and loud barking of the Objector's dog, Soprano, and accordingly they decided to issue pursuant to section 55(1)(b) of the Dog Control Act 1996 an abatement notice on the Objector requiring the Objector, when away from the property, to house Soprano inside the house, and to use a working electronic barking prevention collar with Soprano. It was noted through Mr Vincent that Mr Tuhi had

engaged a professional dog trainer from Kuri, and as such the Animal Management Team had decided it was not necessary to include the requirement in the abatement notice to engage a trainer.

[13] At the hearing Mr Vincent noted that the abatement notice was served on the Objector on 18 May 2018, and that the number of complaints at the time of the hearing regarding Soprano's barking had increased to 22 complaints.

[14] Mr Vincent acknowledged the Objector's right under section 55 of the Dog Control Act to object to the abatement notice and be heard in respect of that objection in front of the Council's Hearings Panel as a body not involved in the original decision to issue the abatement notice and with the power to confirm, modify or cancel the notice after hearing the evidence.

[15] The Objector was provided with a copy of the record of complaints received by the Animal Management Team and available to the Panel at the hearing; the Panel adjourned at 2:24pm, reconvening at 2:40pm, allowing the Objector time to review that record. The Panel then had the Investigating Animal Management Officer speak to how the recording evidence was collected with indication how they conceal the recorder to prevent manipulation.

[16] Mr Vincent provided the Panel with his view of how electronic barking prevention collars should be used as a training tool to correct barking behaviour, indicating that he would not condone leaving the collar on the dog with no one home and present and training the dog. Mr Vincent explained how the collar might supplement active training to deter barking, and that other steps such as exercising the dog are a crucial part of correcting barking behaviour.

[17] The Investigating Officer indicated a view that the barking was likely linked to bad case of separation anxiety, noting that it can be understandable for a dog owner to not understand the extent of an issue that manifests principally when they are not present to the dog, but the sound recorder reveals the issue and the sound recordings collected had been time-consumingly listened to and alongside the barking record sheets and various emailed complaints from complainants considered eventually supported the conclusion that Soprano is creating a nuisance through persistent and loud barking.

[18] The Investigating Officer further explained his endeavours to personally spend time around the Objector's address to monitor the barking and gather evidence as to whether it was creating a nuisance and was persistent and loud, indicating that he had weighed the evidence from the complainants, the sound recorder he had concealed and his personal observations, in consultation with the other officers involved to inform the decision that there were reasonable grounds for believing a nuisance was being created by Soprano persistently and loudly barking as the basis for duly issuing the abatement notice on the Objector.

[19] The Animal Management also noted being in receipt of a complaint from as recently as the day prior to the hearing.

The Complainants

[20] Three Complainants gave evidence at the hearing outlining the various numbers of years they had lived in the neighbourhood and their family and work situations and the effect of the barking they say has

become problematic for them and their families in recent months since the complaints started and continuing to the date of the hearings.

[21] The Complainants conceded that there are other dogs in the area that bark, but with diligent owners who address the barking reasonably, such that they distinguished Soprano's barking as a nuisance in itself.

[22] The first Complainant observed that she had lived in the bay for six years, experiencing the bay before and besides the incidence of Soprano's barking as peaceful and quiet, and she'd had three children since coming to the bay. She described Soprano barking for hours at a time, and her family sitting through many family meals with Soprano barking and detracting from such family time.

[23] The first Complainant emphasised the seriousness of the negative effect of the barking on her family and work life, indicated that her and her husband work professional jobs and shifts and sleep is crucial for them, so Soprano's barking effects every aspect of their lives in its flow on effects and she has taken to occasionally going elsewhere to get some sleep. She also described trying to put her young son to bed and him specifically referring to Soprano's barking as a reason for not wanting to go to bed. She referred to being at her wits' end with Soprano.

[24] The first Complainant had sent in several videos of her yard with a dog barking audibly, a sample of which were played in the hearing. She indicated that in one video (not among the sample played at the hearing) a voice can be heard saying "shut up Soprano".

[25] The second Complainant indicated a lack of any doubt that it was Soprano that was the source of the problem barking as she could hear and see Soprano as the source of the problem barking.

[26] The third Complainant who'd lived in the area some 20 years indicated how the barking rebounds around the valley, though indicated that the difference between Soprano and other dogs is that Soprano barks like a machine gun for four hours at a time, remarking that it is remarkable any dog could sustain that. The Complainant indicated that Soprano's barking has compelled her at times to leave her home, where she works, to work elsewhere so as to escape Soprano's barking.

[27] The Complainant indicated there are were patches of time when Soprano's barking had abated, and with someone at home at the property there is not such an issue.

[28] The Complainants were supportive of the Objector using a barking prevention collar as part of the training to abate the barking, and emphasised a desire that the Objector should accept there is a problem and he should sort it out. The Complainants felt there were being ignored, and expressed concern that neighbours are getting angry and anxious in respect of Soprano's barking.

[29] A further complainant who did not present in person to the Panel (with the Panel accordingly giving less weigh to the evidence) wrote in as follows regarding Soprano:

I have only once complained to the council re this dog barking and that was in May 2018. The dog had barked for what seemed like the majority of the day and into the evening. I found the bark to be aggressive at times and stressed. I normally work in the city but was attempting to work from home that day hence my complaint when it was still occurring in the early evening.

I have tried to be understanding to the owners of the dog since they moved into [the] Lane. Initially the dog was barking daily but this has decreased considerably. I appreciate the steps they have taken to date in training a young dog. However many months have now passed and at times the barking is unacceptable. The constant barking tends to occur when the dog(s) are left for outside for long periods. The barking echoes in the valley and must sound louder for the residents on [nearby] lane.

I feel the owners need to take more steps to care for the dog(s) which appear to be left outside for long periods at times.

I am a dog owner and would be horrified if I was to discover my dog was barking and stressed to this extent while I was away from home.

The Objector

Evidence and Submissions of the Objector and their witness

[30] At the hearing the Objector indicated that he was not denying that Soprano barks, as all dogs do, but referred to a significant improvement in Soprano's amount of barking. He also referred to a dog barking on the other side of the valley, which Soprano barks back at, and referred to there being many dogs in the area, so though he accepted that Soprano was barking when the complaints started, he submitted that he has engaged a trainer and resolved the barking issue, and more recently the issue is Soprano being unfairly blamed for any and all barking from any dog in the area.

[31] The Objector submitted that there were instances of him being notified of Soprano barking at times when it could not have been Soprano because he was inside or otherwise with the Objector at the time and not barking. The Objector conceded that Soprano will still bark from time to time, but didn't accept the barking complaints from June 2018 could be attributed to Soprano, including the one from the day before the hearing given that he was home.

[32] The Objector's witness as someone who had stayed at the Objector's address and looked after Soprano on occasion supported the Objector's statement that there had been significant improvement with Soprano barking (i.e. significantly reduced barking), indicating that Soprano is still a puppy, and suggesting that using a barking prevention collar would be inhumane.

[33] The Objector indicated that Soprano still gets some check-up training following the earlier more substantive training to deal with the barking, he had been doing some homework tasks with Soprano suggested by the trainer, and there are times when he thinks Soprano should bark, such as if a cat or magpie comes onto the property. The Objector also referred to an excavator operating nearby and exacerbating the issue recently.

[34] The Objector submitted that he doesn't think the barking will be an ongoing issue and continues to object to using a barking prevention collar, regarding that a dogs needs to bark at times. The Objector also clarified in reply to the Panel that he does not have the option to take Soprano off the property for any useful period.

The Response of the Complainants and Animal Management Team to the Objector's Evidence and Submissions

[35] The first Complainant indicated that they did not feel Soprano's barking has improved (i.e. abated), referring to various instances of Soprano barking that month including the instance she recorded with the voice heard saying "shut up Soprano". She raised the long time it had taken for action to be taken, and submitted that there is an issue regardless of whether the excavator is operating that the Objector referred to.

[36] The Animal Management Team maintained the view that there is a significant issue of Soprano barking arising from a bad case of separation anxiety, and though they had endeavoured to work with the Objector and were supportive of his training efforts, regarded that the many ongoing and duly investigated complaints warranted the abatement requirements.

Close of Hearing

[37] The Panel closed the hearing and reserved its decision until after the Objector had opportunity to make any further final written submissions or submit any additional evidence to be received within a week for the Panel to consider on the papers before deliberating on the matter, conceiving that it was appropriate in its discretion to allow the additional time and opportunity to respond to the substantial evidence presented at the hearing, which included reference to very recent complaints of Soprano barking.

[38] The Objector responded submitting in respect of the details of the complaints that in regard to many there was no possible way, as he put it, that the problem was Soprano as he contended Soprano had not been at the premises at the relevant times. The Objector suggested that he had not seen substantial evidence of Soprano barking, indicating that short clip sound recordings, short videos of just his house and a photo of a dog on a fence lacked credibility. The Objector also asked that if the requirement to use a bark prevention collar was confirmed that the requirement be given an expiry, submitting that a puppy will grow out of this phase or learn after wearing such a collar for a period. The Objector also noted that he had sought further advice from another behaviourist who is confident she can solve the issue.

[39] The Objector also provided a written statement from his witness stating that:

I can confirm that on the 5th, 7th and 16th of May 2018, Soprano was under my supervision.

On the dates given above, Soprano resided at my home in Cashmere. Soprano was in my company for the duration of the dates provided. 7am until 8pm on all 3 occasions.

Please do not hesitate to be in contact for further information if required.

Mr Kohi for the Animal Management Team did not seek to dispute these claims of the Objector's witness, noting that an Officer visited the Objector's property on 7 May 2018 and confirmed that Soprano was not present at the time of the visit; there was no reliance on a complaint from 5 May 2018; and again an Officer confirmed Soprano was not present at the time of visit on 16 May 2018. Mr Kohi submitted that Soprano not being at the property on 7 and 16 May 2018 as dates the complainants had complained on or about did

not indicate there is not a problem, as complainants will often call the day following incident or be similarly imprecise.

[40] The Panel at the conclusion of that additional time and opportunity given to the Objector considered that it had all the information it needed to have regard to after considering the evidence, information and submissions available to it.

PANEL DELIBERATIONS

The evidence which formed the basis for the issuing the abatement notice

[41] The evidence which formed the basis for issuing the abatement notice was in the Panel's view sufficient to support the assessment that the Objector's dog, Soprano, was the dog whose barking was the source of reasonable complaints and the Panel regarded that the Investigating Officers had reasonable grounds for believing that a nuisance was being created by the persistent and loud barking of Soprano and for issuing the abatement notice. The Panel accepted that there was some doubt and imprecision around some of the Complainants complaints

[42] The Panel noted the time and care that the Animal Management Team took in investigating the alleged barking nuisance, and were impressed with the process that took fair and appropriate time and steps to assess the complaints, to try to work with all involved to address the issue, and to ensure that the proper standard of a nuisance created by persistent and loud barking was met for issuing the abatement notice.

[43] While it may be regrettable that the Complainants have experienced the barking for so long, the Panel commended the Animal Management Team for refraining from issuing the abatement notice until the evidence had been fairly tested and the legal test for issuing a notice satisfied. The Panel approached the objection with an open mind being prepared to throw doubt on the evidence of barking and offering the Objector opportunity to contradict it, but the Objector's submissions were unequal to undermining the belief that there had been a nuisance. The Panel condoned that the standard for a nuisance being created in this sense requires more legally than mere annoyance and point the Complainants and the Objector to the need for the Animal Management Team to ensure the legal test had been met; the Panel regarding that it clearly had been met because of the appropriate time and care taken as supported by evidence that the Panel assessed as credible and persuasive.

[44] The Objector was correct in his submissions that it can be appropriate or at least excusable and certainly not basis for an abatement notice for a dog to bark occasionally and in response to an intruding presence, but the Panel believed that Soprano had been barking persistently and loudly creating a serious nuisance for the neighbours. Indeed the Panel did not see this as a borderline case; though the evidence was initially patchy justifying the time it took for the abatement notice to be issued, the evidence that came to be collected very clearly was reasonable grounds for the notice, and the abatement requirements notified were cautiously and fairly restrained.

[45] The Panel conceived to keep the abatement requirements essentially the same, but modified them to allow for some clarifications, including to address the animal welfare considerations the Objector commendably raised. Though the Panel were tempted (but resisted) in respect of the possibility of modifying the requirements toward being more imposing recognising the significance of the barking

nuisance, the dramatic and unacceptable impact of it on the neighbours, and its roots in a suspected bad case of separation anxiety in Soprano that might be conceived as a source of suffering for Soprano that the Panel would hope the Objector would address through seeking out whether a dog day care facility or trainer felt they could ease Soprano's anxiety.

[46] The Panel conceived to note in the modified abatement requirements the advice against unmonitored use of the barking prevention collar; the responsibility is on the Objector to ensure Soprano's welfare. The Panel does not condone the unmonitored or unskilled use of such a collar, and it should be used in conjunction with good training. The Objector is entirely responsible for attending to Soprano's welfare; the abatement requirements do not excuse or encourage maltreatment, and it is admirable that the Objector abhors cruelty, but no case was made out that a collar is inherently in breach of animal welfare legislation, and if the Objector can find another solution while complying with the modified abatement requirements, the Panel would congratulate him, but they conceive the abatement requirements should stand in the background.

[47] Though slightly beyond its scope, the Panel would caution against the Objector getting another dog to give Soprano company given the risk that dogs can set each other off in respect of barking. If the Objector cannot afford dog day care or to have someone more consistently home with Soprano to provide company and training, the Panel suggest the Objector consider rehoming him, albeit with care as to finding him the best new home possible, though this is only a suggestion, and not intending to be critical, noting the efforts the Objector has made to train Soprano and the indications that the Objector clearly cares for his dog and endeavours to do what is best for him – the Objector is to be commended in this respect.

Matters relied on in support of the objection

[48] The Panel duly considered the Objector's (and his witness's) evidence and submissions advanced in support of his objection, but were not persuaded to cancel the notice. The Panel regarded that it was likely there had been some improvement (abatement) in respect of the barking at times since the Objector had started to address the issue proactively, but the Panel believes there is an ongoing nuisance being created by Soprano barking persistently and loudly.

[49] The Panel were not persuaded by the Objector's suggestion that Soprano was being blamed for every other dog in the area barking; the account of the Complainants as to the degree of Soprano's barking, its source with Soprano, and its dramatic and unacceptable effects on their lives was in the Panel's views genuine, sober and sobering, even if occasionally mistaken in regard to when Soprano was barking or at least in mysterious disagreement with the Objector's evidence. However, the mistakes and/or mysteries were assessed by the Panel as minor and not suggesting bad faith, and even if they did suggest any exaggeration or similar, the Panel gave appropriately limited weight and due consideration around evidence from complainants and looked carefully for proper investigative measures from Animal Management to gain some objectivity.

[50] The Panel recognised that the Animal Management Team had not really explained the discrepancies between the Objector's and Complainants' evidence, but did not consider they needed to, being satisfied with their investigation, which the Panel appropriately reviewed. The Panel simply did not need the full weight and number of the Complainants' complaints to appropriately essentially confirm the abatement requirements so the Panel could accept and believe the additional evidence from the Objector's witness

around the dates in May Soprano was not at the Objector's address before nonetheless deciding that there were and are reasonable grounds for believing that the abatement requirements are warranted. It was understandable the Objector challenging the complaints, but the Panel were satisfied the Animal Management Team did not issue the notice till the legal test was passed and collected sufficiently objective evidence; referencing the large number of complaints does not mean multiple justified complaints were necessary.

[51] The Objector intimated a degree of acceptance that there had been a barking issue; he was within his rights to put forward improvement as a basis for his objection, but the Panel had discretion to decline to cancel the abatement notice regardless of any improvement since the legal test had been met perceiving that enforceable abatement measures needed to be in place to responsibly uphold the purposes of the Dog Control Act as what the community were entitled to expect for its wellbeing. The Objector must understand the obligation the Act expressly imposes on a dog owner to take all reasonable steps to ensure their dog does not cause a nuisance to any other person, whether by persistent and loud barking or howling or by other means. The Panel thus saw the abatement requirements not as extraordinary or punitive, but as necessary in the circumstances seeing that the onus is on the Objector to 'ensure' Soprano is not causing nuisance by taking 'all reasonable steps' and the Panel should exercise their discretion under the Act to advance the Act's purposes taking on the cue to take all reasonable steps to ensure Soprano does not cause a nuisance.

[52] The Objector may have commendably undertaken some training with Soprano, but his attitude and actions fell disappointing short of what was warranted in the face of the reasonable, patient and compelling petitions of his neighbours. The aspect of the Objector's defence that he regards Soprano should be free to bark at cats and magpies coming onto his property and apparent lack of compassion, understanding and appropriate proactivity in response to the dramatic effect of the barking on his neighbours was most disappointing for the Panel. However, the Panel could understand how the Objector was defensive in face of the allegations of his neighbours which sometimes naturally lacked precision, and respected the Objector defending himself appropriately recognising that by the time the Animal Management Team have taken the time necessary to work to the legal standard in these matters there will often be frustration among both the dog owner and the neighbours.

[53] The Objector entirely failed to persuade the Panel that the abatement requirements were unnecessary or unwarranted, and the Panel might have considered harsher requirements being imposed on the Objector, but kept in sight that it is important to do right by Soprano as well as the neighbours, and stepping back considered that the Objector was well-intentioned and accepted that there could be doubt in regard of some of the complaints that the Objector could question, but the Panel considered that the degree of reasonable doubt that could be raised did not persuade it to cancel or reduce the abatement requirements.

Other relevant matters

[54] The Panel was concerned about the distress, annoyance and harm to quality of life the barking nuisance had caused the Complainants, and expressed a wish to fairly address and abate that distress, annoyance and harm, recognising it was not acceptable and recognising the obligation of dog owners set out in section 5(1)(e) of the Act "to take all reasonable steps to ensure that the dog does not cause a nuisance to any other person, whether by persistent and loud barking or howling or by any other means"

and the object of the Act as set out in section 4 to “...to make better provision for the care and control of dogs—...by imposing on the owners of dogs, obligations designed to ensure that dogs do not cause a nuisance to any person...”.

[55] The Panel were concerned by the anger one of the complainants reported perceiving in another neighbour not present at the hearing. The Panel would urge the Objector, the Complainants and all neighbours to exercise calm, understanding and patience (and consider their actions before acting and consider each other’s grievances and perspectives) as the Panel perceived all concerned to be trying to do the right thing or fairly questioning allegations or asserting their rights, but the Objector should embrace this decision. Even allowing for the possibility that some allegations may have been or seemed misdirected, the Panel were quite sure the required threshold had been met for issuing the abatement notice even if the more questionable complaints were discounted. There was clearly evidence warranting the notice, and the Panel considered that even if they gave the Objector the benefit of the doubt that Soprano had improved and been incorrectly blamed on occasion, they would still see essentially the same abatement requirements as imposed as being warranted, proportional and fair in all the circumstances.

[56] The Objector should recognise their opportunity to ease the anger and distress in their community by being proactive in complying with the requirements and finding other solutions for Soprano, while hopefully the community will understand the Objector’s admirable concern for Soprano and his fairly exercised right to question the complaints and evidence, though the Panel find them substantially justified.

[57] The Panel considered the perspective discernible from some of the evidence suggesting the Objector’s hope that Soprano would grow out of the behaviour, but saw that perspective as misguidedly optimistic, though confirming that the Objector was trying to act reasonably. The Panel considered the Objector’s approach mistaken, though were understanding how the mistake was reasonably made; they found credibility in the suggestion that Soprano suffers badly from separation anxiety, which he cannot be expected to simply grow out of; the circumstances and responsible care the Animal Management Team took in collecting the evidence had meant plenty of time had been allowed for the Panel to consider the matter at a time when the situation was clear enough.

RESULT

[58] Having considered the objection of the Objector to the requirements of the abatement notice issued relating to his dog, Soprano, together with the evidence and submissions of those who have written to the Council and/or appeared before the Panel, and having regard to the provisions of the Dog Control Act 1996, it is determined that the abatement requirements relating to Soprano are **modified** as set out in the above Notice of Modified Abatement Requirements. The Panel considering that the investigating officer had reasonable grounds for believing that a nuisance was being created by the persistent and loud barking of Soprano. The Panel saw insufficient credibility in the objection, regarding with disappointment that the Objector’s steps and attitude fell short of what he should have put forward to meet the extraordinary negative effect of the barking nuisance that the Panel were satisfied Soprano has been the substantive cause of.

[59] The Panel would have simply confirmed the original abatement requirements but conceived to modify them to clarify how the Objector should responsibly in consideration of both Soprano’s and his neighbours’ welfare use an effective electronic barking prevention collar to abate the barking nuisance if he

cannot supplement Soprano's training with regular removal to a dog day care facility capable of managing his barking and separation anxiety and exercising him during the day. The Panel would encourage the Objector to explore such options as it was naturally reluctant to require an electronic collar, but listened to the Objector's representations he has no immediate options for temporary removal and so restrains the encouragement to a recommendation, rather than requirement.

[60] The Panel conceives that responsibly training with an effective barking prevention collar would in the circumstances be able to be done humanely and is warranted, though if the Objector finds himself incapable of training Soprano with such aid with due attention and regards Soprano to be suffering under the requirements because he cannot give the consistent attention needed for a such a dog with an ingraining barking response to separation anxiety, then the Panel would encourage the Objector to consider doing due diligence on re-homing Soprano to an owner with the necessary time and skill to overcome Soprano's issues. Equally the Panel would suggest consideration to temporary relocation for the purpose of training if the option presents on the Objector's investigation into the possibly, as this might allow better opportunity for abating the barking through preferable positive reinforcement such that the collar will be little imposition on return to the property, but the Panel considered that the neighbours cannot be left to bear the risk to their quality of life surrounding allowing the Objector further convenience to abate the barking on his own property without an electronic aid.

CONFIRMED THIS 5TH DAY OF JULY 2018



AARON CAMPBELL
CHAIRPERSON