

Dog Control Act Hearings Panel DETERMINATIONS

Date: Friday 5 June 2020
Time: 3pm
Venue: Council Chambers, Level 2, Civic Offices,
53 Hereford Street, Christchurch

Present

Chairperson	Councillor Anne Galloway
Members	Community Board Member Tim Lindley

Hearings Advisor

Mark Saunders
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Election of a Chair

It was resolved on the motion of Community Board Member Tim Lindley, seconded by Councillor Anne Galloway, that Councillor Anne Galloway be appointed Chairperson of the Hearings Panel for the hearings scheduled for this date..

The objections were dealt with in the following order.

1. First Hearing - regarding a dog named "Phife" - 3pm

Hearing of the dog owner's objection to the classification pursuant to section 33A(1)(b)(i) of the Dog Control Act 1996 of seven-year-old, male, tan-and-black-coloured, German Shepherd, named "Phife", as a menacing dog.

The first hearing was adjourned and the decision reserved at 3.49pm.

Refer page 3 below for the determination relating to Phife.

2. Second Hearing - regarding a dog named "Brandy" - 4pm

Hearing of the dog owner's 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 attributed to eight-year-old, female, brown-coloured, Greyhound, named "Brandy".

The second hearing was adjourned and the decision reserved at 4.45pm

Refer page 15 below for the determination relating to Brandy.

**BEFORE THE HEARINGS PANEL
OF THE CHRISTCHURCH CITY COUNCIL**

20/770766

IN THE MATTER of the Dog Control Act 1996

A N D

IN THE MATTER of an objection of LUKE MOORE of Christchurch to the classification by the Christchurch City Council Animal Management Team under Section 33A(1)(b)(i) of his seven-year-old, male, tan-and-black-coloured, German Shepherd, named 'Phife' as a menacing dog

Hearing: Council Chambers, Level 2, Civic Offices
53 Hereford Street, Christchurch
5 June 2020 at 3pm

Panel: Councillor Anne Galloway (Chairperson)
Community Board Member Tim Lindley

Appearances
for the Objectors: Luke Moore (Objector)
(Objector's partner)
for the Animal Management Team: Chris Todd (Acting Reporting Animal Management Officer)
Nina McDrury (Investigating Animal Management Officer)

Determination: 23 June 2020

Hearings Advisor: Mark Saunders

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

The classification of Phife as menacing is upheld

REASONS OF THE HEARINGS PANEL

INTRODUCTION

[1] The hearing was held to consider an objection received from dog owners, Luke Moore and his partner ('the Objectors'), 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 their seven-year-old, male, tan-and-black-coloured, German Shepherd, named 'Phife' as a 'menacing' dog – 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 Phife was 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 Phife had, on 14 December 2019, attacked another dog, the Senior Animal Management Officer under his delegated authority did so classify Phife as a 'menacing' dog by causing to be given to the Objector, Mr Moore (as the registered owner of Phife), notice of the classifications and other prescribed matters, including his right to object to the classifications under section 33B of the Act.

[3] The Objectors exercised their right to object to the classification of Phife as 'menacing' and in accordance with their right to be heard in support of their objection they were 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 5 June 2020 heard the Objectors' evidence and submissions, and also heard from the Animal Management Team, having previously received a report from Bill Kohi, Senior Animal Management Officer, together with the evidence collected by Animal Management Officer, Nina McDrury, relating to the incident and classifications.

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

BACKGROUND

[5] On 14 December 2019, the Council received a complaint from the Complainant alleging that that day his dog, a Chihuahua named 'Bubbles', had died after being attacked by another dog. The Objector, Mr Moore, that day freely exchanged contact details with the Complainant, apologised to him, and taking responsibility for his dog, Phife, committing the attack, immediately paid the veterinarian expenses for Bubbles. On 16 December 2019 Mr Moore gave a statement to the Investigating Animal Management Officer relating to the incident.

[6] The Officer investigated the complaint and on the evidence and admissions gathered determined that the alleged dog attack on the Complainant's dog did occur. The Officer further determined that the Objectors' dog, Phife, attacked the Complainant's dog, Bubbles, causing Bubbles to die as a result of bite injuries as indicated by the photographs and other evidence provided. The Investigating Officer in this connection considered that because of the reported attack, Phife may pose a threat to one or other of the

types of sentient being the Act has designs to ensure are not injured, endangered or caused distress, i.e. a person, stock, poultry, domestic animal, or protected wildlife.

[7] The Council's Senior Animal Management Officer considered the evidence collated by the Investigating Animal Management Officer, and was satisfied that he had sufficient evidence that Phife attacked and killed the Complainant's dog and considered because of this reported attack that Phife may pose a threat to a person, stock, poultry, domestic animal, or protected wildlife, and so with delegated authority, classified the Objectors' dog, Phife, 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 Objectors a formal objection to the classification of their dog, Phife, 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 or to present a transcript, but rather to summarise and identify what were considered to be the salient points.

THE HEARING

Submissions of the Animal Management Team

[10] Animal Management Officer, Chris Todd, acting at the hearing for reporting officer, Mr Kohi, referred to Mr Kohi's written report circulated prior to it. 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 Kohi's report summarised for the Hearings Panel the facts on which the decision to classify the Objectors' dog as 'menacing' was based referring to the evidence, statements and Investigating Officer's notes attached thereto. Mr Kohi's report noted the graphic nature of the photographs of Bubbles following the incident indicating the extent of fatal injuries caused.

[12] Mr Kohi summarised the facts of the central incident of 14 December 2019 as follows:

The Christchurch City Council received a complaint from [the Complainant] at 2251 on Saturday 14 December 2020. Reporting that his dog (a Chihuahua) had died after being attacked by another dog in Jellie Park.

The attack occurred at about 2030 on the 14th December 2020.

The complainant has given a formal statement to the investigating officer on Monday 16th December 2019.

In his statement [the Complainant] has stated that he was walking his Chihuahua dog called Bubbles (off leash) in Jellie Park.

He was less than a metre away from his dog and he was walking towards the wooded area from the recreation centre side of the park.

Bubbles was sniffing the ground when a larger dog approached them from behind. The dog has rushed up to Bubbles and stood its ground.

He has suddenly grabbed Bubbles and has run off with him in its mouth. The dog has run up to its owner, dropping Bubbles on the ground.

[The Complainant] has picked his dog up. His dog was struggling to breathe and unfortunately died before he got back to his car.

[The Complainant] has taken his dog to the afterhours emergency vet in Disraeli Street, Christchurch.

The owner of the attacking dog has called the afterhours vet and spoken to [the Complainant], they have exchanged details and the veterinarian expenses were paid by the attacking dog owner.

The attacking dog owner, Mr Luke Moore has given a formal statement to the investigating officer 1615 on Monday 16th December 2019.

Mr Moore has stated that he was walking his dog off leash near the high performance sports centre at about 2030 on Saturday the 14th December 2019.

His dog, a German Shepherd Cross Breed dog was running free in the park, with his leash attached but dragging on the ground. He was approximately 50 metres away from his dog.

Mr Moore was distracted while walking and talking to his brother. He has heard a commotion further across the park and has looked up to see his dog (Phife) running towards him with another dog in his mouth.

He has yelled at Phife to "Drop It!" which he immediately did. He has secured his dog and passed it to his brother.

He has approached the owner who had picked up his dog at this point. Mr Moore has apologised and suggest the dog should be taken to afterhours vet.

Mr Moore has phoned the vet on behalf of [the Complainant] and advised them that a small dog was being brought in by its owner after it was attacked by another (his) dog.

They have exchanged phone numbers.

Mr Moore paid the veterinarian account over the phone. But unfortunately Bubbles did not survive and died before reaching the vet clinic.

[13] At the hearing, Mr Todd read the above summary of the incident and the conclusion in Mr Kohi's report to the Hearings Panel that:

The investigating officer has completed a report which includes a copy of the Hybris job notes and photographs provided by [the Complainant], a map of the Jellie Park area (highlighting the general area where the incident has occurred).

I have considered all the evidence, accordingly, with delegated authority, I classified the dog known as 'Phife' as menacing in accordance with section 33A(1)(b)(ii) of the Dog Control Act 1996.

[14] The Complainant was not in attendance at the hearing, but the accounts of the incident were not in dispute, so the Panel were satisfied they had sufficient evidence of the incident.

[15] The Hearings Panel undertook to be open-minded in hearing the objection 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] The Complainant gave a statement to the Investigating Officer on 16 December 2019 stating that:

On 14 December 2019 at 8.30pm I was walking my dog Bubbles, a male, tan and white Chihuahua at Jellie Park. I was walking towards the woods from the rec centre side. The incident happened with a matter of seconds. Bubbles was off lead but I was standing less than a metre away from him. Bubbles was sniffing at the ground. A big dog came from a blind spot from the left. The dog was medium sized, boxer type dog, brown, short haired wearing a rope around its neck. The rope was long and on the ground.

The dog rushed at Bubbles and paused for a second. It then took a bite and grabbed Bubbles around his middle. The dog picked up Bubbles in its mouth. I tried to punch the dog but it started to run away. I chased after it. The dog still had Bubbles in its mouth. The owner was about 20 metres away. The dog ran towards the owner. The dog let go of Bubbles.

I picked up Bubbles and he was barely breathing. I think Bubbles has passed before I got into my car. The owner of the dog was a young male. He called after hours vet. I gave the man my number and he called me so I had his number in my phone. I drive to after hours vet with Bubbles. The dog owner paid the vet bill.

The Objector

Evidence and Submissions of the Objector

[17] In initially raising their objection in writing, the Objectors had written that:

We are writing in regards to the incident that occurred at Jellie Park, Christchurch on 14th December 2019.

We acknowledge the seriousness of the situation and we are doing, and will continue to do for as long as we are dog owners, everything we can to mitigate our only dog, *Phife*, causing any harm to another dog in future.

- We purchased a muzzle on 15th December and have trained *Phife* to accept wearing this
- We have booked *Phife* in to be neutered on Thursday 13th February 2020
- *Phife* has been kept on a lead at all times since the incident, except when on either our own property or the private property where Lydia grazes her horses (where fencing/gates separate both these private properties from public spaces).

Phife is a much-loved member of our family and this out of character incident and the subsequent classification is deeply upsetting to us. We have expressed our deepest sympathies to the other party involved for their loss.

This incident is particularly upsetting to us as *Phife* has a long history of being an extremely gentle and tolerant dog with all kinds of livestock, as well children of all ages.

He attended Puppy School between the ages of 12-20 weeks through our local vet, he has regularly spent time in boarding kennels and he has grown up socialising with neighbouring dogs of all breeds and sizes (Sheepdogs, Huntaways, Jack Russells, Terriers, Shih Tzus, Pomeranians, French Bulldogs, Pugs, Rottweiler's, Labradors, and Mastiffs).

He has also grown up with Lydia's six nieces and nephews who are all aged from newborn to 11 years old and who very much enjoy playing with *Phife*, riding him like a horse, playing tug of war with his toys, throwing him a ball, etc.

Phife has never shown anything but patience, gentleness and tolerance in any of these situations.

On the property where Lydia has been grazing her horses since 2016, there are 20+ free-range chickens and their chicks who roam the entire property, 6 llamas, 5 sheep, 12 horses, and 3 other dogs who live onsite – a three month old un-neutered male springer spaniel, an eight year old un-neutered male cocker spaniel, and a 12 year old spade female greyhound. *Phife* has only ever positively co-existed with all of these animals because we have disciplined him to do so.

Phife is referred to by those who know him as a gentle giant. Despite his size and obvious capacity for strength, he has a very soft mouth; he is able to carry eggs without cracking them and people often comment on how gentle he is when accepting food from them.

We are animal lovers and Lydia is a Pro-Am equestrienne athlete who trains, competes and manages her team of equines to the top level of Eventing competition in New Zealand.

This incident, as well as being deeply distressing, has the potential to harm Lydia's reputation as a horse trainer. *Phife* regularly accompanies Lydia to her competitions and trainings in public places, as do all other riders' dogs, and if classified he will have to do so wearing a muzzle, which people will likely ask about because they know him to be so social with all the other dogs who also frequent horse events.

Lydia was at home at the time of the incident and Luke did not witness the incident.

We understand the other dog was very old (17 years of age), and small, and we can only hope it passed quickly and did not suffer.

Following the incident, *Phife* brought the dog straight to Luke and released it immediately when commanded by Luke to do so.

Luke immediately expressed that he was sorry to the dog's owner and called the afterhours vet to alert them that the dog was being brought in.

We paid for all associated vet and cremation costs to try and alleviate some of the stress surrounding the situation.

We reiterated our deepest sympathies to the owner the following day (via text message), and asked whether there was anything more we could do.

After this incident, our behaviour as dog owners has changed significantly and we no longer wish to ever have *Phife* off lead in public again. He will only ever be exercised off-lead on private property, or on-lead in public.

We are in full support of people and animal's rights to protection under the Council's classifications and believe they are necessary.

However, we wish to object to the issuing of such classification to *Phife* on the following grounds:

1. We respectfully ask for reconsideration of classification.
2. We believe a warning is sufficient given:
 - a. This is an out of character incident – *Phife* has a long history of being gentle and tolerant around people and animals in both public or private spaces, even when provoked. Please find attached/enclosed photos and videos of *Phife*.
 - b. Regardless of classification we are, and will continue to, take the measures outlined within the classification to ensure no harm is caused by our dog in the future.
 - c. Lydia is a professional horse trainer and this incident could potentially affect her reputation and long-term livelihood.
 - d. We can't help but wonder whether a younger/stronger/fitter dog would have suffered the same tragic outcome.
 - e. References for Luke, Lydia, and *Phife* are available upon request.

Thank you for taking the time to read and consider our letter.

[18] At the hearing the Objectors submitted that *Phife* is a good dog, and great with other dogs and people. They indicated that they are deeply devastated by what has happened, and intend to be the most responsible dog owners here forward. *Phife* accompanies the Objectors to horse-centred events, and they would like the opportunity to take their own responsible steps, rather than have the classification upheld.

[19] Mr Moore took full responsibility for the incident and for not having Phife under control to prevent it at the time. Mr Moore described that it was getting dark when the incident occurred, he was playing Frisbee with his brother, and Phife was off leash, though he had been off leash before, and it had never crossed his mind that such an incident could happen or be in Phife's nature in respect of another dog.

[20] The Objectors confirmed that since the incident, Phife has never been off lead again, and never will be now. The Objectors recognised the risk of accidents happening, and so intended to prevent them entirely by removing Phife from such situations.

[21] The Objectors noted that Phife is seven years old, and is getting old, and they intend to adapt and restrict his behaviour to address the incident and prevent recurrence. They had trained him to accept a muzzle and it had been their intention to have him neutered, though their circumstances owing to COVID-19 had simply presented complication to their intention in this respect to date. However, they are willing to do whatever necessary in professional opinion to address the issue.

[22] The Objectors confirmed they had no reason leading up to the incident to think Phife might engage in such behaviour. They noted that he has had 'rough and tumbles' with other dogs, but they presented no cause for concern that he could intentionally injure another dog.

[23] The Panel invited the Objectors to speculate on what Phife's intention might have been in initiating the incident. The Objectors acknowledged that Phife has caught pest rabbits and a hedgehog in the past, and Mr Moore had wondered if Phife could have mistaken Bubbles for such an animal, but in reflection had ceased to think such could be the case. The Objectors clarified that the rabbits Phife chased were pest ones in a farming context, and Phife had never chased another dog or pet.

[24] The Panel explored Mr Moore's partner's concern that the classification affected her career, and the Objectors explained the connection and when and how Phife would intersect in that respect, and their feeling of failing in this incident. They repeated that there had never been an issue with Phife before to indicate any risk; indeed he had shown a tendency to be very gentle. The Objectors openly did not dispute the incident, but with them considering that it affected their livelihood, they wanted to know if there is an alternative solution.

[25] The Panel tried to further probe the Objectors' belief that their livelihood would be affected, and the Objectors indicated that it was in relation the perception of them and their relevant abilities, indicating that Phife is well known in this connection, and his classification would create a perception, whether warranted or not, that would have a material effect.

[26] The Objectors did not dispute that the incident was menacing and tragic, and considered that the safest thing was to remove Phife from public. They noted that they were deeply sorry for the incident.

Reply from the Animal Management Team

[27] The Animal Management Officers acknowledged that the Objectors have helpfully taken full responsibility, freely cooperating and assisting, and had been proactive in mitigating the distress of the

incident, paying the vet bill for Bubbles immediately. The Panel allowed questioning around the last vet check done on Phife, with Mr Todd mentioning that sometimes dogs react to pain in difficult ways, suggesting that the Objectors ensure vet checks cover whether there could be any presence of pain-inducing illness common to German Shepherds.

RESERVED DECISION

[28] 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.

[29] The Hearings Panel reserved its decision, which it now conveys as the decision to uphold the classification of Phife as ‘menacing’ for the reasons that follow. The Panel’s reasons are grouped under headings of the matters the Panel had regard to and without seeking to repeat all the evidence and submissions pertaining to these summarised above, which the Panel had due regard to.

The evidence which formed the basis for the classification

[30] The evidence which formed the basis for the classification of Phife as ‘menacing’ was straightforward and agreed in indicating that Bubbles died as a result of severe injuries sustained from Phife’s random attack on Bubbles.

[31] The Panel were satisfied that the evidence suggested that Phife may pose a threat to other domestic animals. The lethal injuries to the Complainant’s dog easily justified classification. The evidence suggested to the Hearings Panel that the incident resulted from Phife not being kept under control and he could endanger another domestic animal again if again not kept under control. It was to the credit of the Objectors though that they accepted responsibility for the incident.

[32] The Panel could accept the incident arose from a mistake by Mr Moore, and he did not have previous indication that Phife was disposed to commit a lethal attack on another dog. The Panel would not intend classification to punish Phife for what cannot be changed, as it is a preventative tool. The Panel can accept that the attack was out of character for Phife, but it is an issue in itself that the lethal attack was so random and inexplicable, as that would suggest that such a preventative tool is necessary, given the difficulty of otherwise avoiding random and inexplicable acts. The Panel’s inquiry is broader than the incident alone; it focuses on whether Phife may pose a threat going forward that classification serves to prevent recurrence of.

[33] The Hearings Panel, having regard to the evidence which formed the basis for the classification of Phife as ‘menacing’, considered that it was sufficient to form the basis for the Animal Management Team’s classification of Phife, recognising that it would proceed to consider the Objectors’ evidence and their submissions in support of their objection to the classification.

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

[34] It was not doubted that the Objectors were sincere that they would from now on control Phife. The Hearings Panel recognised that the Objectors were otherwise responsible dog owners who had learnt the danger of complacency, and were persons capable and positively inclined to heed that lesson, admiring their dedication to animals, and noting their good backgrounds and lack of prior incident.

[35] The Hearings Panel accordingly considered the Objectors' submissions in regard to the steps they were taking to prevent any further threat. However, the Panel considered that the attack demonstrated that Mr Moore did not have Phife under effective control at the time of the incident to prevent the attack, and considered that reasonable steps to prevent the threat were not taken. Mr Moore may not have understood that Phife was such a threat, but such lack of predictability lies behind the requirement to maintain effective control of a dog.

[36] The Panel perceived a continuing risk that the steps suggested could not entirely eliminate given that accidents or lapses may happen and it is unfair that potential victims of such bear that risk. Clearly the Objectors intended to eliminate the risk, but the lethal nature of the attack and it being on another dog inclined the Panel in its deliberations to favour classification, rather than simply relying on the Objectors' representations.

[37] The Panel regarded the Objectors as credible, and having the best intentions, but given the nature of the attack the Panel would have required the highest level of convincing that the threat had been entirely eliminated to rescind a 'menacing' classification, which it had not reached. Even classification of a dog as 'menacing' does not entirely eliminate all risk.

[38] The Panel can only uphold or rescind the 'menacing' classification in dealing with the objection and is not tasked to comment further, but notes that the classification will not entirely substitute for Objectors taking other steps, and the Panel was pleased to be dealing with responsible, honest and competent Objectors who it perceived would take the other steps necessary, now understanding the risk of unpredictability Phife poses.

[39] It is a true mystery why Phife would suddenly decide to treat another dog as it did Bubbles, and it is highly regrettable that Bubbles has passed away as a result and that it has been proper to classify Phife. It does not need to reflect badly on the Objectors that a switch was flicked in Phife's head to trigger behaviour that appears like an attack on prey; it is the nature of dogs to commit such attacks as they once needed to simply to eat.

[40] Dogs are unpredictable and preventative steps are more important than the general public realise; classification is a preventative tool, and the Panel favours upholding it simply as such and not to punish or to stigmatize. The Panel regrets the label 'menacing'; it does not pass that as a judgment in the ordinary sense of the word, though it is satisfied that Phife may pose a threat to small domestic animals, which appear at risk of triggering what is perhaps Phife's instinctual prey drive that is in need of control.

[41] Though the Panel has considered the steps taken by the Objectors, having also considered the objects of the Dog Control Act and the seriousness of the incident, it is not persuaded to rescind the classification by the responsible steps the Objectors are now taking with respect to Phife.

Matters relied on in support of the objection

[42] It was very much to the credit of the Objectors that they were helpful and proactive in taking responsibility for the incident and resulting costs immediately. The Panel were impressed by the Objectors' apologetic, honest and empathic presentation. They were equally impressed by the mature factual account from the Complainant, admiring the civility and maturity of how all involved handled what was clearly a distressing incident.

[43] The unreserved manner in which the Objectors took responsibility at the hearing spoke to their high character, and it would be deeply regrettable and inaccurate for the classification to damage the Objectors' reputation. The incident could have happened to anyone, even to an animal trainer; the mistake was simply to not be prepared for the unpredictable by having Phife under close control in the context he was.

[44] Furthermore, Mr Moore's partner was not present during the incident, and so it is no reflection at all on her. It would have required magical powers on her part to prevent the incident; control of even the best trained dog needs to be exercised in the moment by the person present, and it would be absurd for anyone to expect the Objector's partner to have prevented the attack when she was not there. A reasonable, rational person would not have a diminished view of the Objectors' abilities or character as a result of the incident, so the Panel was not prepared to rescind the classification to prevent unwarranted reputational damage.

[45] It is admirable for a dog owner to be dedicated to controlling a dog when problematic behaviour surfaces, and the Objectors should be proud to be seen exemplifying compliance with the classification. All dogs need to be controlled and prevented from biting; reasonable, intelligent people see the naivety in owners who think their dog entirely safe, and are comforted by owners who take preventative steps. People know that they cannot really fully know a dog's mind and predict its behaviour, and so being reasonable, see that muzzling is not a sign of failure, but of an owner who is less naïve than others.

[46] Sensible people seek out dog training because dogs are a mystery to them; the Panel encourages the Objectors to be proud of muzzling. People are open to being persuaded that muzzling is modelling good responsible dog ownership, and the Objectors would be excellent role models for people to more readily use appropriate muzzling to prevent unintended incidents such as this one. So many cases come to the Panel because people do not understand the risk and unpredictability of an uncontrolled dog.

[47] The Panel in the circumstances of the incident, having considered the matters relied on in support of the objection, see fit to uphold the classification regardless of this, but invite the Objectors to endeavour to find a way to reinterpret the classification as an opportunity to promote that muzzling is consistent with being a good owner of a good dog. It may not always be necessary, but it would easily be more normalised as a responsible precaution to a natural prey drive when openly used with appropriate

confidence. This promotion of such responsibility would help address social naivety around dogs, letting people know it is a sign of a good owner to not be too trusting of your dog. Such confident demonstration of use of a muzzle encouraging others to think on these matters, could go a long way to preventing other dogs being caught up in such unfortunate incidents.

[48] The Panel note again that classification is a preventative measure, and is not intended to be punitive; the Panel was encouraged by the Objectors' responsibility, reparations and apology, but regarded that it should nonetheless uphold the classification of Phife 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

[49] 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 of Phife would be justified by the evidence and submissions and would align with the objects of the Act.

RESULT

[48] Having considered the objection of the Objectors to the classification of their dog, Phife, as a 'menacing' dog, together with the evidence and submissions collated by the Animal Management Team, 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 Objectors' seven-year-old, male, tan-and-black-coloured, German Shepherd, named 'Phife' as a 'menacing' dog is **upheld** for the reasons indicated herein and for the reason that the Hearings Panel considers because of the reported incident that Phife may pose a threat to one or other of the types of sentient being the Act has designs to ensure are not injured, endangered or caused distress, i.e. a person, stock, poultry, domestic animal, or protected wildlife.

CONFIRMED THIS 23RD DAY OF JUNE 2020



COUNCILLOR ANNE GALLOWAY
CHAIRPERSON

**BEFORE THE HEARINGS PANEL
OF THE CHRISTCHURCH CITY COUNCIL**

20/770769

IN THE MATTER

of the Dog Control Act 1996

AND

IN THE MATTER

of an objection of YVONNE JAEGER of Christchurch to a notice issued to her by a Christchurch City Council dog control officer pursuant to Section 55(1)(b) requiring her to make specified provision on her property to abate nuisance barking attributed to her female, eight-year-old, brown-coloured, Greyhound dog named 'Brandy'

Hearing: Council Chambers, Level 2, Civic Offices
53 Hereford Street, Christchurch
5 June 2020 at 4pm

Panel: Councillor Anne Galloway (Chairperson)
Community Board Member Tim Lindley

Appearances: Yvonne Jaeger (Objector)
Chris Todd (Acting Reporting Animal Management Officer)
Gail O'Keefe (Investigating Animal Management Officer)

Determination: 23 June 2020

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 Brandy 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: Yvonne Geraldine Jaeger

Address:

Dog: female, eight-year-old, brown-coloured, Greyhound dog named 'Brandy'

This is to notify you¹ pursuant to section 55(5) of the Dog Control Act 1996 that, following the hearing of your objection to the abatement requirements previously notified to you relating to abating the nuisance barking attributed to Brandy it has been determined by the Hearings Panel of the Christchurch City Council that the barking abatement requirements are not cancelled, but are **modified** and the modified abatement requirements are that **you must within 7 days of receipt of this notice–**

- 1. Not leave Brandy outside on your property, unless she is wearing an effective, working correction collar;² and**
- 2. Use the correction collar in accordance with the Animal Welfare (Dogs) Code of Welfare³ and the advice of the Council's Animal Management Team and your veterinarian, or otherwise not leave Brandy outside on your property (this also being the resulting requirement if you or they deem a correction collar unsuitable to Brandy's disposition).**

You are encouraged to consult with the Animal Management Team in correcting Brandy's barking nuisance, and to attend to Brandy's essential daily exercise and mental stimulation as part of her correction and welfare. Subject to the provisions of the Code of Welfare: Dogs, and the advice of the Animal Management Team and your veterinarian, it is recommended that:

- If it is financially viable for you, you should give Brandy some time at a dog day care, with a dog sitter/walker, and/or with a professional trainer who specialises in barking correction. Correction collars are not intended for prolonged use; use should be in conjunction with your training and monitoring of Brandy to ensure the collar is effective (to abate the nuisance) and appropriate (not unduly distressing) to her particular, individual disposition (if it is not, you must not leave Brandy outside on your property);
- If you must be out for a prolonged period during the day, you should use a dog day care or dog sitter, rather than leave Brandy alone on your property outside wearing the correction collar, or

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.

² A correction collar in this context is a bark-activated, anti-barking electronic training device.

³ <https://www.mpi.govt.nz/dmsdocument/1428/direct>

else leave her inside (containing the noise, where she need not wear the correction collar), provided she is still getting her essential daily exercise; and

- If you successfully engage a professional trainer to correct Brandy's barking behaviour, or otherwise prevent your neighbours being subjected to the uncorrected behaviour, such that further complaint warranting enforcement action is not received, there will not be cause to enforce the requirement to wear the correction collar, though the requirement will remain in place as an enforcement tool that the Animal Management Team may employ as they see fit to address any further barking complaint.

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 has been created by the persistent and loud barking of Brandy, and further determined, after hearing your objection to the abatement requirements the officer notified to you, that the abatement requirements should not be cancelled, but should be modified to the above requirements, and this notifies you that they are modified as set out above.

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.

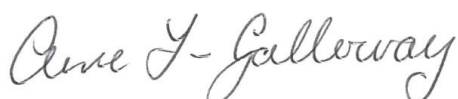
Inquiries in respect of this notice may be made to:

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
Councillor Anne Galloway

Date: 23 June 2020

REASONS OF THE HEARINGS PANEL

INTRODUCTION

[1] The hearing was held to consider the objection received from dog owner, Yvonne Jaeger ('the Objector') to the notice issued by a Christchurch City Council dog control officer under section 55(1)(b) of the Dog Control Act 1996 ('the Act') requiring the Objector to make specified provisions on her property to abate the nuisance being created by the persistent and loud barking of her dog, 'Brandy'.

[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 a 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 Brandy and assessed that they had reasonable grounds for believing that a nuisance was being created by the persistent and loud barking of Brandy, and the officer accordingly gave the Objector notice (the 'officer's abatement notice') requiring that:

- *Brandy must not be left outside, especially in the mornings whilst you are sleeping, unless she has a working bark collar on.*
- *It would be preferable that she is kept inside whilst you are sleeping to prevent loud and persistent barking causing a nuisance.*
- *Please ensure Brandy is getting adequate exercise and mental stimulation daily.*

[4] The Objector was advised of her right under section 55(2) of the Act to object to the requirements of the officer's abatement notice and the Objector exercised this right. Accordingly, her objection was referred to the Hearings Panel of the Christchurch City Council. The Panel on 5 June 2020 heard the Objector's evidence and submissions, and also heard from the Animal Management Team, having considered the written evidence collated and reported on by Bill Kohi, Animal Management Team Leader, relating to the reported nuisance that was allegedly being created by Brandy and the officer's abatement notice issued in response.

[5] This report notifies the reasons for the determination of the Hearings Panel to not cancel, and to modify, the officer's abatement requirements and sets out the modified abatement requirements in accordance with section 55(5) of the Act.

[6] 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

[7] Chris Todd, as the Acting Reporting Animal Management Officer at the hearing, referred to the file prepared by Animal Management Team Leader, Bill Kohi. Relevant parts the Dog Control Act 1996 were referred to for the Panel's information and consideration:

- Objects of the Act (Section 4) – emphasis added to the object of the Act to impose obligation on dog owners designed to ensure dogs do not cause a nuisance to any person.
- 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(1))

[11] Mr Todd referred the Panel to the facts on which the decision to issue the officer's abatement notice was based, reading Mr Kohi's report and referencing the file collating the complaints received and evidence and notes collected and made by the Animal Management Team relating to Brandy's barking while at the Objector's address:

The Christchurch City Council has received seven (7) barking nuisance complaints caused by a dog at [the Objector's address] between 21 January 2020 and 10 October 2018.

Animal Management Officers have gone to the area to monitor (Look, Listen and Learn).

Animal Management have a policy to provide the dog owner advice and suggest different ways the owner can approach such complaints in an attempt to find a solution to mitigate the nuisance being caused.

The tickets that are attached to [Mr Kohi's] report are a summary of each complaint received and the action the officer has taken.

It appears that Ms Jaeger has made some attempt to mitigate the nuisance being caused by her dog immediately after the Dog Control Officer has called and discussed the complaints.

However the nuisance eventually starts again which requires further visits from a Dog Control Officer. An alleged barking nuisance letter was left at the property, 10 October 2019, reminding the dog owner of advice previously given.

Ms Jaeger has admitted that her dog barks. She has told the officer that she works nights and when she gets home she puts her dog outside for the day. The dog knows that she is inside and barks to get her attention.

Bark Record Sheets have been sent to the complainant. The complainant was initially reluctant to complete these sheets but did eventually agree to complete after about their third complaint.

No Bark records Sheets were received by animal management.

The officer visited the property several times to collect evidence with varying success

A survey the neighbourhood advising that she was investigating a dog nuisance complaint in the area and asking if they were experiencing any nuisance from a dog in the area.

There were three returned calls to the officer confirming that the dog from [the Objector's address] was barking persistently, usually when the owner was at home.

The Officer also installed a recording device at a property in [the adjoining street] on the 22 January 2020. The recorder was removed on the 24th January 2020.

The officer has collected evidence from the recorder that supported that a nuisance was being caused by persistent and loud barking of a dog from [the Objector's address]. This recording [in partial extracts was] played for the panel.

[12] It was reported that Mr Kohi and the investigating officer 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, Brandy, and accordingly they decided to issue pursuant to section 55(1)(b) of the Dog Control Act 1996 the officer's abatement notice on the Objector. Mr Kohi's report stating that:

On the 29 January 2020, in accordance with Section 55(1)(b) of the Dog Control Act 1996, a notice was served on the dog owner, Ms Yvonne Geraldine Jaeger to take all reasonable steps to abate the nuisance caused by excessive barking of her dog. The abatement notice required the dog owner to:

- Not leave Brandy outside, especially in the mornings whilst you are sleeping, unless she has a working correction collar on.*
- It would be preferable that she is kept inside whilst you are sleeping to prevent loud and persistent barking causing a nuisance.*
- To ensure Brandy is getting adequate exercise and mental stimulation daily.*

[14] Mr Todd acknowledged the Objector's right under section 55 of the Dog Control Act to object to the officer's 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 officer's abatement notice and with the power to confirm, modify or cancel the notice after hearing the evidence.

[15] The Panel then listened to random segments of the recording evidence of barking attributed to Brandy that the Investigating Animal Management Officer had collected from a property adjoining the rear of the Objector's, with the Officer's explanation as to how the recording evidence was collected to attribute it to Brandy, and with clarification around how the recorder collates sequences of barking together when activated by it, though with the ability of the listener to discern the persistence of individual sequences of barking.

The Complainants

[16] The Complainants did not themselves present to the hearing; the Animal Management Team presented the evidence and complaints initiating their investigation which had concluded that a nuisance was being created by Brandy engaging in loud and persistent barking making reasonable in their decision the provisions of the officer's abatement notice.

The Objector

Evidence and Submissions of the Objector

[17] In originally submitting her objection in writing, the Objector wrote that:

To whom it may concern

I am hereby objecting to the abatement notice I received on 28th January 2020. I do understand that my dog is barking sometimes but I would consider it within reason and she has been well behaved lately. I also think it necessary to point out that there are several dogs within the neighborhood and Brandy is not the only one barking occasionally. I give my dog plenty attention and I think keeping her inside the house more often than I do already would not be beneficial for her mental stimulation. I also need to mention that one of my neighbors likes to write hateful little notes and attaches them to my door, always anonymous of course...For further discussion feel free to contact me via email or phone.

[18] At the hearing the Objector indicated that she is aware that Brandy barks in a reactive manner to a variety of ordinary noises and sights she encounters outside, including being set off by other dogs barking. She admitted that Brandy might have the loudest bark, but submitted that there are other dogs in the neighbourhood that bark, including some straight across from her, while conceding they are not as noisy, and Brandy has a tendency to really go at it.

[19] The Objector indicated that she is not working the hours anymore that gave rise to the focus of the officer's abatement notice as to when she was inside sleeping while Brandy was outside, so those remarks in the notice relating essentially to her needing to sleep in the daytime when she was leaving Brandy outside were no longer valid, since her working situation had relevantly changed as a result of COVID-19. The Objector confirming that the change is permanent.

[20] The Objector noted issues she had had with the complaining neighbours, referring to an angry letter left at her door, and a general unpopularity with those neighbours, who were considered to take particular interest in her affairs. She noted that she had always had Brandy while there, and the foremost complaining neighbour moved in later, though she and they do not know each other and she keeps to herself.

[21] The Objector confirmed that the pattern and behaviour with her and Brandy in lockdown had been different to before, and outlined the history to her ownership of Brandy, noting that Brandy's loud bark relates to her breeding for pig hunting, though Brandy had not been properly trained in this respect. The Objector offered insight into how an early trainer of Brandy had treated her in a manner that made her

concerned about the prospect of using a correction collar, as that past training showed evidence of inducing distress.

[22] The Objector gave some further evidence that other dogs were setting Brandy off, indicating there are sometimes dogs kept by the neighbour behind, which she suggested had a tendency when there to run along the fence barking, though she believed the neighbour no longer has their dogs doing that.

[23] The Panel queried the Objector about the number of complaints and an appearance of unresponsiveness on her part, and the Objector explained about the strange hours she had been working and her uncertainty when she could call and engage with the Animal Management Team with her unavailability in normal working hours.

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

[24] The Animal Management Officers were invited to reply to the Objector's evidence and submissions, and noted that there are about six dogs in the surrounding area with no complaints pertaining to any barking of these other dogs, and with four neighbours identifying the instigating barking dog as Brandy.

[25] The Officers did not discount that the Objector's situation had changed in lockdown, but were concerned to prevent the nuisance barking re-emerging, submitting that the abatement requirements in the officer's abatement notice are not intrusive or difficult, and they were concerned about prospect of needing to recommence an enforcement process from the start again if the notice was cancelled.

[26] The Officers explained how correction collars work, and their steps to check that the collars they recommend do not harm the dog. They noted that they have a brand they loan to owners when it is available. The Investigating Officer noted that they had not received complaint since the issue of the officer's abatement notice.

RESERVED DECISION

[27] The Hearings Panel considered that it had all the information it needed to have regard to under section 55(3) of the Act after considering the evidence, information and submissions available to it.

[28] The Hearings Panel reserved its decision, which it now conveys as the decision to modify, and not cancel, the requirements of the officer's abatement notice for the reasons that follow without seeking to repeat the evidence and submissions which the Panel had due regard to in forming its decision.

[29] The evidence which formed the basis for issuing the officer's abatement notice was in the Panel's view sufficient to support the assessment that the Objector's dog, Brandy, was the dog whose barking was the source of complaint and the Panel regarded that the Investigating Officer had reasonable grounds for believing that a nuisance was being created by the persistent and loud barking of Brandy and for issuing the officer's abatement notice.

[30] The Objector acknowledged that Brandy's barking is loud, and the Panel was persuaded by the recording evidence that it is sufficiently persistent to have warranted the issue of the officer's abatement

notice. The Objector's evidence gave some suggestion that Brandy's barking is merely reactive, which could have denied that it is a persistent and a nuisance, but the recording and overall evidence convinced the Panel that Brandy's barking was fairly classed as persistent and is not merely reactive.

[31] Barking is a natural behaviour for a dog, and the Panel would not support the classification of normal, natural barking behaviour as persistent and a nuisance. There should be a fair degree of give and take between neighbours before barking should be classed a nuisance, and the Panel was concerned whether the primary complainant had been appropriately tolerant in this case, but was persuaded that the Animal Management Team had widely and thoroughly investigated the complaints sufficient to overcome their concern and to establish that a nuisance was being created by barking behaviour that is not normal and is in need of correction.

[32] The Panel detected and shared the Objector's concern about the requirement to use a correction collar, but considered that the Animal Management Team had appropriately required it as an option of last resort, short of removal. The Panel recognised that the Objector's circumstances had evolved such that the wording of the abatement requirements appear to no longer apply to the Objector's working patterns and the Objector is not in the same need of leaving Brandy outside, but the Panel saw fit to leave the enforcement tool in place in case the Objector's work patterns needed to revert to a state in which the nuisance would re-emerge if uncorrected.

[33] The Panel considered alternative requirements, preferring that positive reinforcement training or use of a dog day care would be employed before a correction collar is resorted to, and they would encourage the Objector to employ those if financially viable and to consult with the Animal Management Team in correcting Brandy's behaviour. However, in the circumstances the Panel did not see fit to set down as strict requirements the demands and expense of professional training or using a dog day care when the Objector is apparently currently positioned to attend to exercising and spending time with Brandy herself during the day.

[34] The Objector may regard a correction collar as a last resort and endeavour to invest in positive reinforcement training instead, along with essential daily exercise, mental stimulation, and use of a dog day care or dog sitter/walker when she cannot spend the time with Brandy herself in an active capacity. But it had also been demonstrated that having an abatement notice in place was important in this case to encourage action, and the Panel agreed that the abatement requirements should not be cancelled and the enforcement tool should not be lost in this situation where the investigation of the complaints had been appropriately robust and long-lasting to test the situation and favour alternative cooperative solutions.

[35] The Panel encourages the Objector to consult with the Animal Management Team as she needs. The Panel was impressed with the Objector's concern for Brandy, and modified the abatement requirements to reflect the Objector's changed circumstances and her concern for Brandy's welfare, adding some recommendations (subject to the requirements of the relevant Code of Welfare and the advice of the Animal Management Team the Objector is encouraged to seek in conjunction with any advice of her veterinarian to assess Brandy's particular response) around the use of a correction collar

and the alternative options that are consistent with leaving the abatement requirements in place as an enforcement tool if needed.

[36] The Panel considered alternatives that could have included the cancellation of the notice, but at a practical level did not consider them best suited to the Objector's circumstances; they considered that the modified abatement requirements they have set out are warranted and give appropriate qualification around ensuring Brandy's welfare.

[37] It is reasonable to expect that the Objector's circumstances will change again, and it is reasonable to make provision now to leave an enforcement tool in place and to encourage correction or prevention of the barking nuisance. Moreover, it would be a concern if the Panel cancelled the notice, leading to further complaints that ultimately resulted in removal of Brandy from the property; the Panel detected a bond between Brandy and the Objector, and it did not see fit to take steps itself, or fail to take steps, that could lead more quickly to removal.

[38] The Panel considers that its modified abatement requirements speak to its concern that dog owners need to be proactive, cooperative and broad-thinking to address nuisance barking. The Objector is clearly a dedicated and caring dog owner; Brandy's barking may speak to a degree of boredom or anxiety that the Objector has understandably found difficult to avoid with the demands of her working life.

[39] The Panel hopes its modified abatement requirements, while being a baseline enforcement tool, also encourage the Objector to work with the Animal Management Team in future, and encourage the Objector to spend quality time with Brandy and invest in her, suggesting it will be mutually beneficial to them both, given that the nuisance barking may have indicated a boredom or separation anxiety that could have been distressing Brandy.

RESULT

[40] Having considered the objection of the Objector to the requirements of the officer's abatement notice issued by the Animal Management Team relating to her dog, Brandy, and having regard to the provisions of the Dog Control Act 1996, it is determined that the barking abatement requirements relating to Brandy 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 Brandy, but circumstances had evolved warranting some minor modification of the requirements, though retention of the restriction on leaving Brandy outside on the Objector's property remains reasonable.

CONFIRMED THIS 23RD DAY OF JUNE 2020



COUNCILLOR ANNE GALLOWAY
CHAIRPERSON