

**DISTRICT PLAN AND REGULATORY COMMITTEE**

**SUPPLEMENTARY AGENDA**

26 May 2010

**ITEM NO:** 7A

---

**REPORT**



**TO** District Plan and Regulatory Committee  
**ON** 26 May 2010  
**FROM** Wayne Knightbridge– Animal Control/Bylaws Manager  
**APPROVED BY** Lloyd Barton – Director: Customer Services  
**SIGNATURE**

A handwritten signature in black ink, appearing to read "Lloyd Barton".

**SUBJECT** **APPEAL AGAINST BARK ABATEMENT NOTICE – C & B GRANT**  
**FILE REF** DC/1/1

---

**PURPOSE OF REPORT:**

<input type="checkbox"/> Information only	<input type="checkbox"/> Strategic decision	<input type="checkbox"/> Policy decision	<input checked="" type="checkbox"/> Statutory process
<input type="checkbox"/> Community issue	<input type="checkbox"/> Contract decision	<input type="checkbox"/> Delegation	<input type="checkbox"/> Appointment
<input type="checkbox"/> Administrative matter			

**IMPLICATIONS:**

(i)	Is this matter significant in terms of Council's Policy on Significance? No
(ii)	Implications in terms of Vision Rodney? No
(iii)	Implications in terms of Long Term Council Community Plan / Annual Plan? No
(iv)	Implications in terms of other Council Strategic documents or Council Policy? No
(v)	Is a budget amendment required? No

(vi)	Have the views of affected or interested persons been obtained and is any further public consultation required?
	No
(vii)	Does a decision on this matter require Auckland Transition Agency approval? (yes / no / advice being sought?)
	No

**FINANCIAL IMPLICATIONS:**

Capital cost implications	Not applicable
Is it currently budgeted for?	Not applicable
Funding source of capital costs	Not applicable
Ongoing operational cost implications	Not applicable
Is it currently budgeted for?	Not applicable
Funding and rating impact (whether resulting from capital expenditure or arising directly)	Not applicable

**SUMMARY:**

Colin Grant is the registered owner of a four year old female Springer Spaniel cross, named Molly. Following complaints of barking from Mr Grant's property at 6 Ocean View Road, Hatfields Beach a bark abatement notice was issued requiring the dog owner to abate the barking nuisance on the property. The dog owner has appealed against the notice issued under section 55 of the Dog Control Act 1996.

**RECOMMENDATION:**

**That the bark abatement notice issued to Colin Grant be upheld.**

**1.0 Background**

Under section 55 of the Dog Control Act 1996, where a dog control officer 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 dogs, the dog control officer may issue a notice requiring the dog owner to abate the barking nuisance on the property.

Any person on whom the notice is served under section 55(1) of the Act may, within seven days of receipt of the notice, object in writing to the territorial authority against the requirements of that notice.

The territorial authority shall consider the objection and may confirm, modify or cancel the notice.

No objection under section 55 of the Dog Control Act shall be considered unless seven days notice of the date, time 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.

As from the lodging of an objection with the territorial authority, and pending the receipt of a further notice upon determination of the objection, the notice setting out the requirements that are the subject of the objection shall be deemed to be suspended.

## **2.0 Issues**

The first complaint about a barking dog on Mr Grant's property was received on 9 March 2010. The complainant stated that the dog had been barking all weekend and that the "dog barks at anything that moves". The officer visited two near neighbours who offered comments such as "the dog barks at anything or anyone that goes past the property. It has been like this for a long time."

The officer talked to the dog owner, Colin Grant, who seemed to be aware that there was a problem with his dog barking and he asked about the use of bark collars. The dog owner subsequently purchased a bark collar soon after the officer's visit.

There was a short respite in the barking after this but another complaint was received on 18 March 2010. The complainant said the dog barked at people and vehicles all the time; however, the complainant indicated that there was some respite when Mr Grant was home in the evenings and at weekends. The barking was at its worst when Mr Grant was at work during the week.

The officer again spoke with at least three near neighbours who stated that the dog barked excessively.

The officer who investigated the incident said that Mrs Grant had little or no control over the dog during the time of her visit to the property as the dog barked continuously for over 10 minutes while the officer was speaking to Mrs Grant.

## **3.0 Options**

The Council has the following three choices:

- (a) confirm the notice;
- (b) modify the notice; or
- (c) cancel the notice.

## **4.0 Conclusion**

Several neighbours confirm there is a barking nuisance on the property at 6 Ocean View Road, Hatfields Beach.

This has been an ongoing problem for neighbours covering a period of many months. After seeking the views of several near neighbours and experiencing the barking first hand, it was the officer's opinion that the barking constituted a barking nuisance as defined in the Dog Control Act 1996.

The Council has a responsibility to ensure that any statutory nuisance is abated. In this case a notice to abate the nuisance was issued to the dog's owner, Colin Grant.

Mr Grant has been given seven days to abate the barking nuisance on the property. During the appeal period Mr Grant has exercised his right to appeal against the bark abatement notice.

Sufficient evidence exists to support the issuing of the notice to abate the barking nuisance and it is recommended that the bark abatement notice be upheld.

ITEM NO: 8A

REPORT



**TO** District Plan and Regulatory Committee  
**ON** 26 May 2010  
**FROM** Wayne Knightbridge – Animal Control/Bylaws Manager  
**APPROVED BY** Lloyd Barton – Director: Customer Services  
**SIGNATURE**

A handwritten signature in black ink, appearing to read "Lloyd Barton".

**SUBJECT** APPEAL AGAINST MENACING DOG CLASSIFICATION – BRIAN FIELD  
**FILE REF** DC/9/2

**PURPOSE OF REPORT:**

<input type="checkbox"/> Information only	<input type="checkbox"/> Strategic decision	<input type="checkbox"/> Policy decision	<input checked="" type="checkbox"/> Statutory process
<input type="checkbox"/> Community issue	<input type="checkbox"/> Contract decision	<input type="checkbox"/> Delegation	<input type="checkbox"/> Appointment
<input type="checkbox"/> Administrative matter			

**IMPLICATIONS:**

(i)	Is this matter significant in terms of Council's Policy on Significance? No
(ii)	Implications in terms of Vision Rodney? No
(iii)	Implications in terms of Long Term Council Community Plan / Annual Plan? No
(iv)	Implications in terms of other Council Strategic documents or Council Policy? No
(v)	Is a budget amendment required? No
(vi)	Have the views of affected or interested persons been obtained and is any further public consultation required? No
(vii)	Does a decision on this matter require Auckland Transition Agency approval? (yes / no / advice being sought?) No

## FINANCIAL IMPLICATIONS:

Capital cost implications	Not applicable
Is it currently budgeted for?	Not applicable
Funding source of capital costs	Not applicable
Ongoing operational cost implications	Not applicable
Is it currently budgeted for?	Not applicable
Funding and rating impact (whether resulting from capital expenditure or arising directly)	Not applicable

---

## SUMMARY:

Brian Field is the owner of a nearly three year old neutered male German Shepherd, named Cash. Mr Field has appealed under section 33B of the Dog Control Act 1996 against the classification of his dog as a menacing dog under section 33A. The Council may either uphold or rescind the classification.

## RECOMMENDATION:

**That the menacing dog classification under section 33A of the Dog Control Act 1996 against the dog known as Cash, be upheld.**

---

### 1.0 Background

Section 33A of the Dog Control Act 1996 states:

*'This section applies to a dog that –*

- (a) has not been declared a dangerous dog under section 31; but*
- (b) a territorial authority considers may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of –*
  - (i) any observed or reported behaviour of the dog; or*
  - (ii) any characteristics typically associated with the dogs breed or type.'*

Section 33B states:

- (1) If a dog is classified as a menacing dog under section 33A the owner*
  - (a) may within 14 days of receiving the notice of the classification, object in writing to the territorial authority in regard to the classification; and*
  - (b) has the right to be heard in support of the objection.*
- (2) The territorial authority considering an objection under subsection (1) may uphold or rescind the classification, and in making its determination must have regard to*
  - (a) the evidence which formed the basis for the classification; and*
  - (b) any steps taken by the owner to prevent any threat to the safety of persons or animals;*
  - (c) the matters relied upon in support of the objection;*
  - (d) any other relevant matters.*

*The territorial authority must, as soon as practicable, given written notice to the owner of –*

- (a) its determination of the objection;*
- (b) the reasons for its determination.'*

On 25 February 2010, the complainant states she was walking her dog back towards her vehicle in a carpark in Bluegum Avenue, Silverdale. There was a water truck connected to a water fill point parked near her vehicle. As she reached the rear of her vehicle she saw a black and tan German Shepherd come trotting out from behind the trailer unit of the water truck. As soon as the German

Shepherd saw her dog it raced towards the complainant's dog. The complainant yelled at the dog as it approached but it made no difference. The German Shepherd attacked her dog causing her dog to yelp. The complainant started hitting the German Shepherd and yelling at the dog. The complainant stated that because the truck motor was running at the time the owner of the German Shepherd may not have been able to hear her. The attack subsided for a brief moment and the complainant managed to push her dog under her vehicle with her foot. The German Shepherd went around to the other side of the vehicle during which time the complainant managed to secure her dog inside her vehicle. The owner of the German Shepherd then came around from behind his truck and the complainant informed him that his German Shepherd had attacked her dog. He replied that his dog would not do that and that she would have to prove that in court.

At the time the German Shepherd continued to pace around her vehicle. The owner of the German Shepherd then yelled at his dog, opened the truck door, picked up his dog and put it in the truck. He then checked the complainant's dog for injuries.

The owner of the German Shepherd told the complainant that his dog was a failed Police dog. He said it would not bite her dog because the dog was released from Police dog training because it would not bite.

The attack aggravated a previous injury on the complainant's dog causing the dog to limp for a time afterwards. The complainant's report is attached as **Appendix 1**.

The complainant and her dog have been traumatically affected by this incident and she has not yet returned to this area where she previously walked her dog for over 10 years.

Mr Field's position is that his dog, Cash, did not attack the complainant's dog. He says that he let his dog out of his truck for a drink of water. As he completed filling his tanker he saw that Cash had wandered over near a neighbouring vehicle. He says he whistled and Cash returned. He then put Cash in the truck.

He then says a woman approached him and informed him that Cash had attacked her dog. Mr Field says that he heard no yelling, barking or other dog sounds during this episode. The woman then indicated she would report the matter to the Council. Mr Field's report is attached as **Appendix 2**.

The German Shepherd was not registered at the time of the offence and the dog owner has been issued infringement notices for keeping an unregistered dog and not having his dog under control.

The Council has a role in protecting the general welfare of the community. While parts of the witness statements are contradictory, on balance the report writer is of the view that it is very likely that the German Shepherd has attacked the complainant's dog in an unprovoked manner. It has maintained the attack even when attempts were made to curtail the incident. The dog has then shown continued interest in the complainant's dog until secured in the water truck. The complainant has a right to visit a public place without the fear of having her dog attacked by another dog.

In the writer's experience, dogs selected for Police dog training all show a heightened level of aggression and prey drive instincts and are selected on that basis.

## **2.0 Issues**

While this is the first recorded complaint about Cash, the evidence suggests it is a dog that is aggressive in certain circumstances. Its history is somewhat uncertain due to the fact that the dog has not previously been registered.

Dogs trained as Police dogs are selected because of specific traits they demonstrate including aggression and high prey drive. A dog will not make it through the initial selection process unless it possesses these qualities. As an ex-Police dog this animal would need to be retrained to not be aggressive to other animals. It would seem reasonable that, placed in a similar situation in future, similarly aggressive behaviour could be expected from the dog.

The Dog Control Act 1996 has placed greater emphasis on ensuring that people and their animals can go freely about their business without feeling endangered or at risk of a dog attack. In this case Cash was running loose in a public place and attacked another dog being walked by its owner

### **3.0 Options**

The Council has the following two options:

- (a) uphold the menacing dog classification; or
- (b) rescind the menacing dog classification.

### **4.0 Conclusion**

It is very likely that the dog known as Cash attacked another dog in a public place. The attack was unprovoked and sustained until the dog owner managed to get her dog into her vehicle.

The Council has a duty to ensure that aggressive dogs do not pose a threat to the wider community. In this case classification as a menacing dog will impose the conditions needed to ensure public safety. It is recommend that the menacing dog classification be upheld.