

11 May 2005

File Ref. 33-15-07

**TO THE CHAIRPERSON AND MEMBERS  
OF THE REGULATORY COMMITTEE**

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**OBJECTION TO NOTICE TO ABATE NUISANCE CAUSED BY  
BARKING DOG  
OWNER: ANNE MAXWELL**

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**1 PROPOSAL**

To consider an objection from Mrs Anne Maxwell regarding a "Notice to Abate Nuisance Caused by Barking Dog" for her dog "Patch", issued by Council staff pursuant to Section 55 of the Dog Control Act 1996.

**2 SUMMARY**

**2.1** Council staff received complaints from February 2005 about Ms Maxwell's dog "Patch" barking persistently whenever her owner was out. The barking was said to improve a little following animal control staff discussions with the owner, however the problem was not resolved to a satisfactory level. Written confirmation of some dates and times of barking was provided by a complainant to Council on 8 April 2005, and a "Notice to Abate Nuisance caused by Barking Dog" was subsequently issued to the dog owner on 13 April 2005 (Appendices 1 and 2). The Notice required that the dog be supervised on the property and not cause a disturbance to neighbours. No complaints have been received by Council since the Notice was issued. An objection to the Notice was received by Council on 20 April 2005 (Appendix 3).

**2.2** The report concludes by recommending that the Notice be upheld.

**3 RECOMMENDATION**

*That*

a) *The report of the Environmental Safety Manager dated 11 May 2005 be received.*

b) *the Regulatory Committee uphold the "Notice to Abate Nuisance caused by Barking Dog" issued on 13 April 2005 pursuant to Section 55*

*of the Dog Control Act 1996 for a Jack Russell dog "Patch" owned by Anne Maxwell, residing at 1 Hulme Place, Cambridge.*

#### **4 LEGAL**

Section 55 of the Dog Control Act 1996 states:

- (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) of this section 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 summary 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) of this section) 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) of this section within the time specified by the territorial authority.

## **5 COUNCIL POLICY**

There is no current Council policy relevant to this issue.

## **6 BACKGROUND**

- 6.1** On 14 February 2005 Council staff received a complaint that a dog living at 1 Hulme Place, Cambridge was barking persistently whenever the owners were out. Animal control staff visited the property on 15 February 2005 and found the dog to be in good condition and physically well cared for. A card was left at the property and Ms Maxwell, the dog owner, phoned the animal control officer on 16 February to discuss the matter. She advised she had recently moved into town and made some changes to her life-style, and the dog was having to adjust to living in town and not having company during the day. Ms Maxwell was concerned about the issue and was given some suggestions to try and alleviate the problem.
- 6.2** A call had also previously been made to Council's after-hours service about the dog on 8 February 2005 from a different complainant, however the location of the problem dog was not known at that time. This complainant has since advised that they do not want to take the matter further. They initially complained because they were worried about the welfare of the dog, but they have since observed that the dog is cared for and do not want to cause any trouble for the owner.
- 6.3** The animal control officer contacted the second complainant, who advised that the dog had been particularly bad the night before, but as a dog owner himself he wanted to allow time for the owner to resolve the problem without "stirring up any trouble". He agreed that he would give Council time to work with the owner and that he would receive an update after a further week.
- 6.4** A further follow-up call was made to the second complainant on 2 March 2005. He felt there had been some improvement initially, but the dog was still causing a nuisance with its persistent barking and had been particularly bad again one evening a few days prior. Following this conversation a letter was sent to the owner (Appendix 4), and a barking complaint form was sent to Mr and Mrs Brown.
- 6.5** On 8 April 2005 the complainants (Kevin and Helen Brown) returned the completed barking complaint form which included written evidence of persistent barking i.e. recorded dates and times of barking (Appendix 1) over a period of several weeks. Council staff were satisfied that they had reasonable grounds to believe that a nuisance was being created, as detailed in the Dog Control Act 1996. A Notice to Abate Nuisance Caused by Barking Dog (Appendix 2) was issued by Council to the dog owner on 13 April 2005.
- 6.6** Council staff contacted other close neighbours in the area. One neighbour had no problem with any dogs in the area, and one other

neighbour advised the dog had “driven them insane” with the continual barking at first, particularly at night, but had improved and was not so much of a nuisance now. They did not wish to be involved any further. Other neighbours were unable to be contacted.

- 6.7** The dog owner, Ms Maxwell, lodged an objection to the Notice on 20 April 2005. Ms Maxwell was unaware of the identity of the complainants, but she advised she had cause to suspect a neighbour at 5 Hulme Place had been feeding her dog which was exacerbating the barking problem, and this formed the basis of her objection. The complainants live at 5 Hulme Place, Cambridge. No other information has been included in the objection. The location of the properties is shown on Appendix 5.
- 6.8** Mrs Brown was advised that an objection had been received, and she stated that since the notice had been issued the dog had not caused any problems. During a further conversation on 28 April 2005 she again stated that the dog had been quiet for that further period of time. Mrs Brown expressed reluctance on her and her husband’s part to continue with a hearing given that the problem had been resolved.
- 6.9** Staff contacted Ms Maxwell who explained she had been following the requirements of the notice but the conditions placed on her were very difficult to adhere to and were causing her considerable stress in trying to do so. Ms Maxwell is struggling to meet the requirements of the notice and therefore still wants to proceed with her objection as she is entitled to do.
- 6.10** On 9 May 2005 Council staff asked Mrs Brown about the dog owner’s allegation of her feeding the dog on a regular basis. Mrs Brown advised she had attempted to give the dog a food treat on one occasion only, and on that occasion she had fallen in the process, causing herself physical injury, and she had not attempted it again.

## **7 COMMENT**

- 7.1** Ms Maxwell has only lived at this address a relatively short time but previously resided in the Waipa District and had a good record as Patch’s owner for over 10 years. In November 2004 Patch was impounded having been picked up outside her owner’s property, but there have been no further occurrences of this nature that Council is aware of. When Ms Maxwell claimed her dog from the pound she sought advice from animal control staff at the time on how to successfully settle her dog into her new environment.
- 7.2** The objection contains an allegation regarding the feeding of the dog, which has been refuted apart from one occasion. The barking problem existed for a number of weeks. The cause of the dog’s alleged barking is likely to be the result of a combination of factors including stress from the change in environment, boredom, and loneliness (given that the dog previously had company). The log completed by the complainants show the barking as often being between 5pm and 7/8pm, so it may be that the dog was on its own at that time as well as during the day whilst Ms Maxwell is at work.

7.3 The barking has not been happening since the Notice was issued, as steps have been taken by Ms Maxwell to comply with the Notice. If the Notice is not upheld, then there is every reason to believe that the problem will resume. Ms Maxwell has acknowledged to Council staff that the barking is a problem, and mentioned looking at options such as daycare for the dog or a dog-sitter, however no consideration is given to such other options in the objection. The Notice has not required the owner to remove the dog from the property, rather that the dog be supervised or in an environment where it is not causing a nuisance to neighbours. Ms Maxwell has advised that she is taking the dog to work with her which is difficult, and that is understandable, but there are other actions that can be taken, such as consulting a dog behaviourist.

## 8 CONCLUSION

Since the Notice to Abate Nuisance was issued, the barking problem has ceased which demonstrates that the conditions outlined in the Notice have proved to be a suitable means of resolving the issue on a permanent basis. It is recommended that the notice be upheld.

Jennie McFarlane  
**ENVIRONMENTAL SAFETY MANAGER**

Approved for Regulatory Committee Agenda



Garry Dyet  
**DEPUTY CHIEF EXECUTIVE**