



HURUNUI
District Council

FOR AN EXTRAORDINARY MEETING OF THE:

**REGULATORY
COMMITTEE**

AGENDA

TO BE HELD ON:

**WEDNESDAY 17 AUGUST 2011
COMMENCING AT 11.30AM**

IN THE COUNCIL CHAMBERS, 66 CARTERS ROAD, AMBERLEY.

In Hurunui we live the lives the rest of the world would love to live

REGULATORY COMMITTEE

For the meeting timetable and order of business please refer to the back page fold-out.

Committee Membership:

Cr R Little (Chairperson)
Mayor W Dalley
Cr Marie Black
Cr Russell Black
Cr Gary Cooper
Cr Vince Daly
Cr Dick Davison
Cr Jim Harré
Cr Michael Malthus
Cr Judith McKendry

Quorum: no less than 5 members

**EXTRAORDINARY REGULATORY COMMITTEE
WEDNESDAY 17 AUGUST 2011 AT 11.30AM**

TIMETABLE & ORDER OF BUSINESS

Time	Item
11.30am	Meeting Commences.
12.30pm	Lunch.

ITEM	ORDER OF BUSINESS	Pages
	<ul style="list-style-type: none">• Apologies• Urgent Business• Conflict of Interest Declarations• Recording Device	
1.	Business 1.1 Objection by W D Morgan to being issued with a Notice to Abate a Barking Nuisance under Section 55(1)(b) of the Dog Control Act 1996.....	1 - 10

Guidelines from Hurunui District Council's Significance Policy:

The Committee, in considering each matter, must be:

- a. Satisfied that it has sufficient information about the practicable options and their benefits, costs and impacts, bearing in mind the significance of the decisions.
- b. Satisfied that it knows enough about and will give adequate consideration to the views and preferences of affected and interested parties bearing in mind the significance of the decisions to be made.

Questions

- a. Does the Committee have sufficient information about the issue, proposal, decisions or other matter?
- b. Does the issue, proposal, decisions or other matter:
 - affect all or a large portion of the community in a far-reaching way?
 - have a potential impact or consequence on the affected persons (being a number of persons) that is substantial?
 - have financial implications on the Council's resources that would be substantial?
 - generate (or would be expected to generate) a high degree of controversy?
 - fail to flow logically or consequentially from a decision in the Hurunui Community Plan?

Evaluation

Council officers preparing these reports will have regard to Council's policy on significance. Committee members will make the final assessment on whether the subject under consideration is to be regarded as being significant or not. Unless a Committee explicitly determines that the subject under consideration is to be deemed significant then the subject will be deemed as not being significant.



HURUNUI

District Council

Meeting Date:

17 August 2011

REPORT TO: Regulatory Committee

SUBJECT: Objection by W D Morgan to being issued with a Notice to Abate a Barking Nuisance under Section 55(1)(b) of the Dog Control Act 1996

REPORT BY: Administration Officer

Signature: Author
Jo Retallick

Manager
Judith Batchelor

Summary Report

During the months of April, May and June 2011 the Council's Dog Control Officer Garry Woods attended complaints regarding barking dogs on the property of Mr W D Morgan located at 58D Osborne Road Amberley.

When each of these complaints was investigated the Dog Control Officer discussed with Mr Morgan options to minimise the barking nuisance including the use of bark collars.

On 16 June 2011 Mr and Mrs Morgan were issued with an Abate Barking Nuisance notice under section 55(1)(b) of the Dog Control Act 1996. This notice required Mr and Mrs Morgan to use bark collars or to rehouse the dogs when there is no one at home to control the barking nuisance.

Mr Morgan has objected to the requirements of the notice under section 55(2). Mr Morgan submitted his objection in writing within the timeframe stipulated in the Act and a hearing is now required to confirm, modify or cancel the notice by the Hearing Committee as provided for under Section 55(3) of the Act.

Recommendation

THAT THE COMMITTEE DETERMINE IF THE NOTICE OF REQUIREMENT TO ABATE BARKING NUISANCE ISSUED TO MR AND MRS MORGAN OF 58D OSBORNE ROAD, AMBERLEY SHOULD BE CONFIRMED, MODIFIED OR CANCELLED IN ACCORDANCE WITH SECTION 55(3) OF THE DOG CONTROL ACT 1996.

BACKGROUND

The Morgan's have two female German Shepherd dogs - Shiloh registration 114559 and Poppy registration 114560.

During the months of April and May the Hurunui District Council's Dog Control Contractor received barking dog complaints from 58D Osborne Road, Amberley (attached as Appendix 1).

The Abate Barking Nuisance Notice was issued on 16 June 2011 (attached as Appendix 2) because the dogs were causing a nuisance from incessant barking, mostly when Mr and Mrs Morgan were not on the property. To abate the nuisance Mr and Mrs Morgan were served a notice under Section 55(1)(b) of the Dog Control Act 1996 which required them to remove the dogs from their property at 58D Osborne Road, Amberley when there is nobody at the property. When there is somebody at the property they are required to use bark collars or rehouse the dogs to control the barking nuisance.

Rather than removing the dogs from the property when Mr and Mrs Morgan are not there and using bark collars or rehousing the dogs to control the barking nuisance, Mr and Mrs Morgan have opted to muzzle the above dogs to reduce the barking, which does not meet the requirements of the notice.

Mr and Mrs Morgan have forwarded a letter (attached as Appendix 3) to the Council giving the reasons they believe their dogs are barking and the process they use to abate the barking nuisance. Council staff have treated their letter as an objection against the requirements of the notice and arranged this hearing to hear the objection.

Under section 55(3) of the Dog Control Act 1996 the territorial authority may consider any objection to the requirements of a notice, issued under Section 55(1)(b). Mr and Mrs Morgan have requested to make an oral submission.

OPTIONS CONSIDERED

Do Nothing

Section 55(2) of the Dog Control Act provides for the right of any person to object to the requirements of a notice.

To not consider Mr and Mrs Morgan's objection to the requirements of the Abate Barking Nuisance notice and conditions would be contrary to Section 55(3) of the Dog Control Act 1996.

Option 1

To consider through the hearing process provided under section 55(3) of the Act if the Abate Barking Nuisance notice issued on Mr and Mrs Morgan for their dogs be upheld, modified or cancelled.

This would allow for Mr and Mrs Morgan's objection to be considered by the committee under section 55(3) of the Dog Control Act 1996.

Option 2

If the committee upholds the Abate Barking Nuisance notice, section 56 of the Dog Control Act 1996 provides for the Council to remove the dogs from the property if failure to comply with the notice is proven.

POLICY AND PLAN CONSIDERATIONS

The recommendations of the report comply with the Hurunui District Council Dog Control policy.

SIGNIFICANCE

The recommendation is not deemed significant, according to the Hurunui District Council Significance Policy.

MĀORI IMPLICATIONS

There are no implications for Māori.

FINANCIAL CONSIDERATIONS

The matter is provided for in the approved annual plan and is within budget.

CONCLUSION

After considering all issues, options and the known views of those affected, as well as giving consideration to the level of significance and the legal and financial implications, the recommendation of this report is

THAT THE COMMITTEE DETERMINE IF THE NOTICE OF REQUIREMENT TO ABATE BARKING NUISANCE ISSUED TO MR AND MRS MORGAN OF 58D OSBORNE ROAD, AMBERLEY SHOULD BE CONFIRMED, MODIFIED OR CANCELED IN ACCORDANCE WITH SECTION 55(3) OF THE DOG CONTROL ACT 1996.

APPENDICES

- 1 Copy of Summary of Facts by the dog contractor, Garry Woods.
- 2 Copy of the Notice of Requirement to Abate Barking Nuisance notice.
- 3 Mr and Mrs Morgan's letter of objection relating to the notice.
- 4 Copies of sections 55 and 56 of the Dog Control Act 1996.

APPENDIX 1
EVIDENCE FOR HEARING -
JILLIAN ANN AND WAYNE DESMOND MORGAN
ABATE BARKING NUISANCE NOTICE

Background

Four complaints related to two German Shepherd dogs barking were received by the Council from neighbours of Mr and Mrs Morgan, 58D Osborne Road, Amberley.

The complaints centred around the persistent barking of the two dogs owned and housed on the property occupied by Mr and Mrs Morgan. The problem mainly occurred when the owners were absent from the property.

6 April 2011, 8.38am

A complaint was received from a neighbour that the dogs were barking. The dog control contractor reported that the dogs were barking when the Morgans were away from the property. He spoke to Mr Morgan who advised they had moved out from Christchurch because of the dogs barking and talked of getting barking collars.

11th April 2011, 5.30pm

A complaint was received from a neighbour that the dogs were barking. This was the second time the dog control contractor had visited the site. During this visit he monitored for 20 minutes and reported no barking. The contractor talked to Mr Morgan who advised he was going to shift the kennels and once again talked of barking collars.

12th May 2011, 8.30am

A complaint was received from a neighbour that the dogs were barking. The dog control contractor phoned and also visited the Morgans. Mr Morgan advised he was going to get bark collars. The dog control contractor phoned Mr Morgan on 16th May with details of a company that can supply the bark collars.

14th June 2011, 11.35am

A complaint was received from a neighbour that the dogs were barking. The dog control contractor visited but no body answered the door. Left a card asking the Morgan's to phone him. But no contact was made.

16th June 2011

A letter and Abate Barking Nuisance Notice was sent to Mr and Mrs Morgan at the above address. The Abate Barking Nuisance Notice issued under Section 55(1)(b) of the Dog Control Act 1996 required the Morgans to remove the dogs "Shiloh", German Shepherd and "Poppy", German Shepherd, from their property at 58D Osborne Road, Amberley when there is nobody at the property and when there is

somebody at the property to use bark collars or re house the dogs to control the barking nuisance.

22nd June 2011

The Council received a letter from Mr Morgan presenting his reasons why the German Shepherd dogs were barking and noted that when they were away from the property they would put muzzles on the dogs to restrict their barking to a minimum. At the time of the letter they had been unable to get the right bark collar for the right price and hoped that the muzzling would be OK.

21st July 2011

The Council wrote to Mr and Mrs Morgan advising them that the requirements of their letter did not meet the Abate Barking Nuisance Notice issued on 16th June so consequently we were treating their letter as an objection under Section 55(3) of the Dog Control Act 1996.

The letter informed Mr and Mrs Morgan that the recommendation to the hearing will be that the Notice be modified to allow the dogs to remain on the property wearing the barking collars at all times.

NOTICE OF REQUIREMENT TO ABATE BARKING NUISANCE

SECTION 55 (1) (b) DOG CONTROL ACT 1996

To : JILLIAN ANN MORGAN AND WAYNE DESMOND MORGAN

ADDRESS : 58D OSBORNE ROAD, AMBERLEY

ABATE BARKING NUISANCE

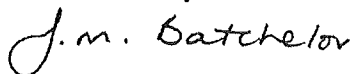
The Council considers the dogs being kept on the above property are causing a nuisance from incessant barking, mostly when you leave the property. To abate the nuisance you are required under Section 55 (1) (b) of the Dog Control Act 1996 to remove the dogs, detailed below, from your property at 58D Osborne Road, Amberley when there is nobody at the property and when there is somebody at the property use bark collars or re house the dogs to control the barking nuisance.

Name	Breed	Colour	Sex	Age
Shiloh	German Shepherd	Black/Gold	Female	Approximately 3 years old
Poppy	German Shepherd	Black/Gold	Female	Approximately 3 years old

Under Section 55 (2) of the Dog Control Act 1996 you may, within 7 days of the receipt of this notice, lodge with the Hurunui District Council an objection in writing against the requirements of this notice.

Failure to comply with this notice will result in the dog being removed from the property under Section 56 of the Dog Control Act 1996.

Yours sincerely



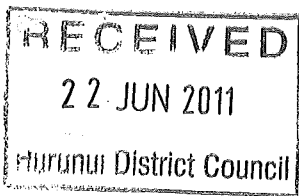
Judith Batchelor
MANAGER ENVIRONMENTAL SERVICES

16th June 2011

Date Notice Delivered _____ Signature _____
Dog Control Contractor

CONTACT DETAILS :

DOG CONTROL CONTRACTOR : Garry Woods ph 033148647, cellphone 021873040
ADMINISTRATION OFFICER : Ann Duncan ph 033148816.



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W.D Morgan
58d Osborne Rd
Amberley.

To whom it may concern,

re: - Dog Barking.

We have 2 German Shephard Dogs. They are family Pets, but, by nature they are guard dogs.

We have housed them in a dog run and kept them within our property. We are surrounded by other dogs which also bark. We have a menagerie of animals and birds which surround our property. Roosters start calling around 4:30 am. Our dogs become protective. When we are away we have put dog muzzels on them - restricting their barking to a minimum. The problem seems to have started when one of our neighbours built a Pig sty & Pig Run over a period of 3 to 4 weeks. Now these pigs are in plain view of our dogs and seem to be in "their face" as it were. What are the rules about pigs and their closeness to neighbouring properties. ?

We are responsible dog owners who care about our dogs. Our immediate next door neighbour has sheep which he lets roam freely right beside us. Maybe he should be more responsible.

As yet we have been unable to get the right bark collar for the right price. They seem very expensive. We hoped that the muzzles would be ok. They certainly improve things.

On the Tuesday mentioned, my daughter was home and I suggest no barking on that day. When your contractor came to our house and knocked on the door they certainly would have barked at him but the neighbours would not have heard my ^{dogs} bark because my daughter was home all day.

We had a prowler, robber at our property and our dogs are a good deterrent. The police were called.

We will still endeavour to get dog collars to prevent barking and for the mornings we are away - the dogs are in the garage.

W. Large 021 254 9655.

Extracts Dog Control Act 1996

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 dwelling house, 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 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 as 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.

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 in writing to do so by a Justice or Community Magistrate, who shall not grant such an authority unless the Justice or Community Magistrate is satisfied that the requirements of subsection (1) have been met; and
- (b) he or she is accompanied by a constable.

(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.