

Chairperson and Committee Members
APPEALS COMMITTEE

Meeting Status: **Public**

Purpose of Report: For Decision

RENSHAW OBJECTION TO DOG NOISE ABATEMENT NOTICE

PURPOSE OF REPORT

1. This report seeks to provide the Committee with the background information relating to a Noise Abatement Notice being issued to Mr and Mrs Renshaw under Section 55 of the Dog Control Act 1996 (the Act), and to provide a recommendation as to whether that Notice should be upheld.

SIGNIFICANCE OF DECISION

2. The Council's Significance Policy is not triggered by this report.

BACKGROUND

3. Mr Robert James Renshaw is the registered owner of the dog Lou, a female, tan, Labrador retriever and Kasimir a black, poodle.
4. Mrs Gaye Marilyn Renshaw is the registered owner of the dog Kayla, a female, white, Samoyed.
5. Mrs Renshaw moved from Hamilton in 2006 to live with Mr Renshaw at 46 Cedar Drive, along with her two dogs; Kayla and Sade, the black Chow Chow. Sade has since died.
6. From 2006 to July 2011 Council have received 40 dog noise complaints. These complaints are in relation to the loud and persistent barking of at one stage, four dogs housed on their property at 46 Cedar Drive. See attached Appendix 1.
7. Mr and Mrs Renshaw have never held a Special Licence to keep more than two dogs on their property, which has also been the subject of complaints from the neighbouring properties. Mr Renshaw did, in 2005, hold a special licence to keep three dogs on his property. This license expired on 30 April 2006. See attached Appendix 2.
8. The barking issue is a factor when considering the issue of Special Licence, and getting the neighbours to agree to the third or subsequent dog/s. The fewer dogs on a property generally means less nuisance caused to the neighbourhood.
9. Since 2006 various warranted Animal Control Officers and Council staff have worked with the Renshaws, undertaking numerous property visits and written

correspondence. A resolution has never been reached due to staff turnover and also because at times there has been a temporary reduction in barking. Mr Renshaw has written to the Ombudsman, and Privacy Commissioner and has submitted various Official Information Requests. During these processes there have been changes in staff, and the new staff member has had to start from scratch. Additionally complainants have advised that they haven't always complained because they have been frustrated at what they considered was a lack of action or drawn out process by Council.

10. On July 2011 a letter of complaint was addressed to Community Services Group Manager, Tamsin Evans. This letter was regarding the loud and persistent barking from the Renshaw residence of 46 Cedar Drive and also that they did not have a Special License to keep the three dogs. Another concern of the complainants was that Council appeared to be doing nothing to resolve these two issues.
11. From the time of this complaint letter an Animal Control Officer has worked with the Renshaws to reduce the barking to a tolerable level through the use of an electronic bark collar fitted to Kayla the Samoyed. One of the complaints advised Animal Control that with the use of this bark collar the barking reduced to a tolerable level.
12. After making progress on reducing the barking Animal Control requested that Mr Renshaw apply for a Special License to keep more than two dogs, he has refused to apply for this license.
13. Following a complaint on 26 September 2011 that the three dogs; Kayla, Lou and Kasimir, had been barking for approximately three hours in the morning, Mr and Mrs Renshaw were issued with a Noise Abatement Notice. They were also issued with a notice to remove one of the three dogs until they had a permit to house the third. See attached Appendix 3.
14. Mr and Mrs Renshaw have objected to this noise abatement notice in writing and included Affidavits from both Robert and Marilyn in support of their objection. See attached Appendix 4.
15. On Monday 17 October 2011 Council staff were advised by Mr Renshaw that Kasimir had died at home that morning. This has been confirmed by the Raumati Vet, as Kasimir's body was taken there to be cremated.
16. As at the time of writing, Animal Control is still receiving complaints about the excessive barking from the remaining Renshaw dogs. This is because the persistent barker is Kayla. Bark Monitor Forms are being completed even during this hearing process. Please refer to Appendix 5. Note; Up-to-date information from these forms will be tabled at the meeting.

CONSIDERATIONS

17. A barking nuisance is still being caused to the three close neighbours of 46 Cedar Drive

18. The reduction to two dogs on the property only negates the requirement for a Special License to keep more than two dogs. It does not lessen the requirement for the Renshaws to comply with the Noise Abatement Notice.
19. Once a Noise Abatement Notice is issued, the dog's owner is required to abate the barking nuisance within seven days of the date of Notice. If Council receive a further substantiated complaint regarding dog noise from the address given notice, Animal Control can then legally uplift and impound the dog/s. The dog can be returned to the owner once they can prove that by returning the dog the barking nuisance will be abated.
20. The neighbouring properties to 46 Cedar Drive are still complaining of the Renshaws dogs barking excessively and as the nuisance is continuing it is recommended that the abatement notice be upheld.

Financial Considerations

21. There are no financial considerations.

Legal Considerations

22. Section 55 of the Dog Control Act states:

'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 and 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 being 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 who 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 (sic: 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 with the time specified by the territorial authority.*

Delegation

- 23. The committee may make a decision on this matter under Section B5 of the Governance Structure 2010-2013.

Dog Owners Objections Hearings

- 7.1 *Authority to hear and adjudicate objections from dog owners to classifications of dog owners and/or dogs under the Dog Control Act 1996, within the following prescribed terms of reference:*

- 7.1.6 *Section 55 (2) Barking Dog Abatement Notice.*

Consultation

- 24. There are no consultation requirements.

Policy Implications

- 25. There are no policy implications.

Publicity Considerations

- 26. There are no publicity implications.

RECOMMENDATIONS

- 27. That the Committee upholds the Noise Abatement Notice issued to Mr and Mrs Renshaw in accordance with section 55 of the Dog Control Act 1996.

Report prepared by:

Approved for submission by:

Julie Toseland

Ken Smith

Acting Senior Animal Control Officer

Regulatory Manager

ATTACHMENTS:

- Appendix 1 List of service request/ complaints against Renshaw dogs.
- Appendix 2 Special License (2005) to keep more than 2 dogs.
- Appendix 3 Noise Abatement Notice.
- Appendix 4 Mr and Mrs Renshaw's Objection to Noise Abatement Notice.
- Appendix 5 Bark Monitor Forms completed by complainants.