

PROCEDURE NO: **37.0**
PROCEDURE TITLE: **Barking Dogs**
ADOPTED: **MINUTE NO: General Manager’s Delegation**
 PREVIOUS PROCEDURE

ADOPTED:

MINUTE:

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1.0 Related Procedures

- 1.1 Corporate OH&S Policy
- 1.2 Customer Request System
- 1.3 Safety Requirements for Inspection Staff
- 1.4 Seizure & Impounding of Companion Animals
- 1.5 Dangerous Dogs
- 1.6 Restricted Breed Dogs

2.0 Definitions

2.1 Authorised Officer

Is an employee of Camden Council duly authorised by the General Manager for the purposes of the enforcement of the provisions of this Act, or an officer of the NSW Police Force.

2.2 Companion Animal

A dog or a cat as defined by the Companion Animals Act 1998.

2.3 CRMS

Customer Request Management System is a computer based software program utilised by Council for the management of incoming requests from the public etc.

2.4 CSO

Customer Service Officer.

2.5 LGA

Camden Local Government Area.

2.6 CAR

NSW Companion Animals Register.

2.7 Identified Animal

An animal implanted with a microchip as prescribed by the Companion Animals Act & Regulations.

2.8 Informant

Is a person who lodges a complaint or informs Council of the issue.

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2.9 Witness

A person who has given, or agreed to give evidence/information in relation to a matter which is being investigated.

2.10 Dog Owner

Each of the following persons is the owner of a companion animal (the owner of the animal in the sense of being the owner of the animal as personal property):

- the person by whom the animal is ordinarily kept; and
- the registered owner of the animal.

2.11 The Act

The Companion Animals Act 1998.

2.12 Nuisance Order

An order in the approved form to the owner of the dog requiring the owner to prevent the behaviour that is alleged to constitute the nuisance.

2.13 Nuisance Dog

For the purpose of a barking dog complaint, a nuisance dog is defined as “a dog that makes a noise, by barking or otherwise, that persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any other premises”.

2.14 Barking Dog

A dog that makes a noise, by barking or otherwise, that persistently occurs.

2.15 PIN

Penalty Infringement Notice.

3.0 Purpose

This procedure details the process for the investigation of barking dog complaints within the Camden Local Government Area. This procedure does not apply to commercial premises such as dog boarding and/or training facilities. (These may be dealt with by Council under the provisions of the Protection of the Environment Operations Act.) The intention of this Procedure is to establish a concise but equitable process for the thorough investigation of an issue that a resident may have cause to complain about.

The community has an expectation that, should they call Council's attention to a matter which is having an adverse impact on their amenity or of reasonable residential expectations, Council will then act in the interests of the community as a whole to remedy the situation.

To proceed with regulatory action Council **MUST** be of the opinion that a nuisance so referred constitutes a public nuisance. It is not the purpose of this Procedure to act as a solution to all matters brought before Council irrespective of the evidence. In all communities disputes arise where one person is aggrieved by another. Council's charter is to act on behalf of the community as a whole and not on the desire or wishes of any one individual or party.

4.0 Introduction

It is a natural action of dogs to bark. However, this behaviour can cause distress and discomfort to people. This is a result or function of the time of the day and/or the duration of that barking. Dogs do not bark 'all day' but generally bark as a result of external stimuli for example:-

- Hearing another dog bark;
- The presence of a cat;
- The presence of a bird; or
- Persons approaching or passing by the place of residence.

Other behavioural issues include:-

- Boredom;
- Lack of physical exercise;
- Being lonely and wanting company; and
- Lack of training.

It is an inherent responsibility of the dog owner to minimise any adverse affects that may be attributed to any of the above causes for nuisance behaviour.

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4.1 What Constitutes a Nuisance

The issue of the barking of dog is capable of being addressed by Council under the provisions of The Companion Animals Act 1998. For the purposes of Section 21 of the Act, *“a nuisance dog is defined as one (or more) that is making a noise, by barking or otherwise, that persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any other premises”*.

Where it can be established, by way of evidence, that the behaviour of a dog or dogs is such that there is an adverse impact on the residential amenity of other persons, Council may conduct an investigation to establish the extent and level of that impact. This may be done by way of a neighbourhood survey where surrounding residents are requested to complete a record of the times and the impact of the barking.

Council will use discretion in each individual case as to whether, and at what stage, this level of investigation is commenced. The determination of such is entirely at the discretion of the investigating Officer based on all of the circumstances including the application of the relevant provisions of the Companion Animals Act.

4.2 What does not constitute a Nuisance

Council will not undertake investigations where the barking of the dog is ‘one-off’ or where it can be shown that peculiar and/or temporary circumstances exist.

For example, a dog is barking at:-

- emergency vehicle sirens;
- the mail delivery person;
- hot air balloons in the area;
- fireworks in the neighbourhood; or
- the temporary absence of occupant of the premises.

There may be numerous other examples where the behaviour of the dog does not constitute a nuisance and this may be determined by an Officer attending the site and through discussions with the owner of the subject animal.

Before taking action, Council must be of the opinion that the behaviour of the dog is persistent, affecting a number of persons and on a regular and ongoing basis.

5.0 Procedure

The Procedure for the investigation of barking dogs is designed to formalise how Council deals with barking dog complaints within the LGA. It is intended that the Procedure be followed by Council Officers in the course of conducting their duties.

It is recommended that in all instances, where a person wishes to lodge a complaint regarding the barking of a dog, the informant be requested (where appropriate) to personally approach the owner of the offending dog **prior** to lodging a complaint with Council. It has been recognised that in many instances the owner of the offending dog is unaware that their dog is causing a nuisance to the community.

It is also worthy to remember that the off-site activities of people widely differ. Some people work night shift and sleep during the day when the owner of the dog may be at work. Sleep deprivation often leads to a quick escalation of a dispute where there is little tolerance given to the offending dog. Furthermore, once Council becomes involved, the situation often becomes adversarial from the outset.

It is not the intention of this Procedure to become an avenue for people who are aggrieved by another to have Council become involved in order to intimidate or harass another resident. **Should Council form the view that continued complaints by one person about another are malicious or vexatious, then Council may refuse to act on that complaint or any further complaints from that person in regards to that issue.**

5.1 Receipt of Written Advice/Complaint

Council usually becomes aware of a barking dog complaint by a resident lodging the complaint with Council in person, on the telephone or in writing. Given the increasing number of ill-founded and malicious **verbal** complaints this Procedure adopts the approach that all complaints must be lodged in a written format and following a template that is set out at the end of this document.

Council's records officers will log any complaints received on Council's electronic document management system. Occasionally complaints may come directly to the environmental administration officer or rangers directly in the course of their duties. However, once again, the complainant will be asked to complete the appropriate form with the relevant information.

The receipt of information is as follows:

- The written enquiry/complaint is to be logged on Council's electronic document management system. The notification form shall contain the location of the offending dog as well as the relevant details of the complaint including the dog's breed, size, colour and any particular times of the day the dog barks. The CRMS is allocated to the environmental health administration officer.
- The environmental health administration officer will conduct an investigation using Council's records to verify whether Council has received any prior complaints about the barking dog and record the information on the CRMS. The officer will

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also check whether a dog is registered to the property using the Companion Animals Register.

- In the instance of an initial complaint the environmental health administration officer will deal with the complaint by posting the owner of the dog the appropriate advisory letter which will also grant the dog owner 28 days to register the dog if not already registered. Anecdotal evidence indicates that approximately 80% of all complaints about barking dogs is resolved at this stage and very few escalate through to further action.
- The complainant will receive an acknowledgement letter which details the procedure to be taken should they wish to lodge another complaint.
- On the receipt of a second complaint, the environmental health administration officer will note the CRMS any relevant information and forward the CRMS to an authorised officer for further action.
- The authorised officer will attend the dog owners' property to verify the complaint and to inform the dog owner of the second complaint and the barking dog procedure.
- The authorised officer will contact the informant (complainant) to explain the barking dog procedure and importance of barking dog surveys. The officer will then post the barking dog survey using [template D3447](#) to the informant and neighbouring residents, will include a reply paid envelope and will diarise the return date for follow up.
- The authorised officer's action will depend on reliable evidence being submitted by neighbours and the informant. Whether or not supporting surveys or information are received, the officer shall contact the parties involved **in writing** informing them of the outcome and/or any further action to be taken.

In the investigation of a complaint or request, Council will not proceed past the first advisory letter stage unless the investigating Officer is supported by more than one complainant from different households and that there is clear evidence in the mind of the Officer that a legitimate prima facie case exists.

Should the matter proceed to the issuing of Nuisance Orders under the provisions of the Companion Animals Act then court action may result either by way of appeal or prosecution. In any such occurrence, it is imperative that Council's action is supported by more than one other independent party.

Failure in having such support **may** lead to the Magistrate ruling that the matter is a 'neighbour dispute' which **may** lead to an unfavourable finding and **may** lead to Council being subject to costs of the other party. It must be recognised that a prima facie case must be proven 'beyond reasonable doubt' by Council as any such action falls to the criminal burden of proof.

5.2 Anonymous Complaints

Council generally does not undertake or embark on regulatory action based on anonymous complaints. There is an absolute need to base any regulatory action on credible and reliable information and evidence. Should a customer refuse to provide personal details then Council Officers are unable to rely on any information given. In

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addition to the above Council makes a practice of providing follow up advice as to the action taken and, in the absence of the complainant's details, the providing of this advice is not possible. Furthermore, Council is unable to verify whether the actions taken by Council have produced an improvement.

Reference to an anonymous complaint means where the identity, residential address or other relevant detail has not been provided. It is becoming prevalent that requests for Council intervention are being lodged using email. Quite often these emails lack critical information that makes investigation of a complaint difficult, dangerous or exceptionally time-consuming for Council staff.

In relation to barking dogs it is difficult for Officers to establish 'beyond reasonable doubt' that a problem exists unless such investigation is supported by other independent parties. The time and the duration of any barking is highly variable and is difficult for Council Officers to prove. Accordingly, Officers are reluctant to act on anonymous complaints past the point of drawing the complaint to the attention of the owner of the dog in question. Acting on anonymous complaints places questions as to the veracity of the complaint and whether it is reasonable for Council to commence regulatory action.

5.4 Protection of Personal Information

An Officer is not at liberty to divulge the names, address or details of any person to a third party. The protection of privacy is seen as a crucial element in the discharging of duties by Council Officers. The Freedom of Information Act and the Government Information Privacy Act each have varying provisions that deal with personal information and the disclosure of that information. Persons who are concerned in this regard are best advised to seek further information by contacting Council's Public Officer.

However, in view of section 5.3, it is considered imperative that sufficient details of the complaint are provided to enable Council to adequately investigate the complaint.

Whilst the personal details of any complainant are not released as a matter of course, it must be borne in mind that any information provided to Council may be used as information at any court hearing or Council may issue a subpoena to a complainant to appear at court should the matter not be amicably resolved beforehand.

5.5 Community Justice Centre (CJC)

Often the relationship between neighbours deteriorates to such a degree that numerous issues are raised by either party as evidence that Council should act in a particular way. The barking of a dog should not be used as an issue over a dispute relating to other behaviour. For example: trees over hanging a boundary, dilapidated boundary fencing, unkempt lawn and general maintenance of the dwelling.

Particularly in these circumstances there is merit in Council making a recommendation that, where there is insufficient evidence for Council to pursue action, the dog owner and the Informant may attend mediation conducted by the CJC. This process is based on the willingness of both parties to attend mediation and to be bound by the outcome of any hearings. Council is not party to these proceedings but supports the concept.

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5.6 Regulatory Action and Evidence

Council will not pursue regulatory action based on insufficient or unreliable information or evidence. An Authorised Officer must be satisfied of the existence of a breach of the legislation before proceeding and must be supported by members of the public who are prepared to attend court to attest to the severity of the alleged nuisance caused by the barking of a dog. In these circumstances Council must prove the offence 'beyond reasonable doubt' to the court. This burden of proof can be difficult and a precautionary approach is taken to ensure that public funds are not used trying to prosecute a poorly justified case.

5.7 How long will the process take?

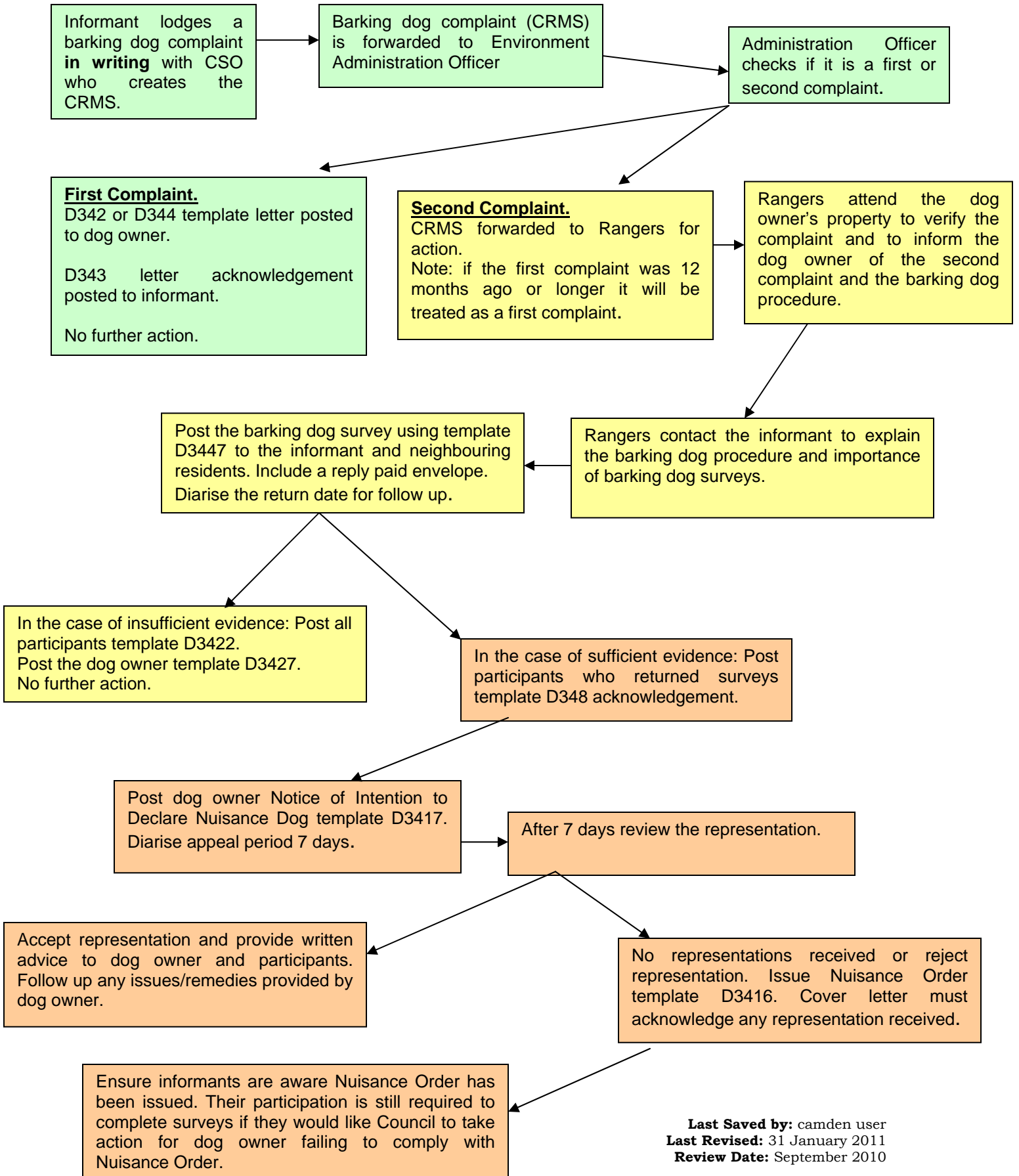
After a dog owner receives initial notification that there is an issue, the dog owner will be granted some time to attempt to alleviate the issue.

The barking can not be stopped immediately and may take time for the behavioural change. Council does not have any powers at any stage to remove a dog from the premises due to excessive barking. If an order is issued the dog owner may take various steps to alleviate the barking depending on the individual circumstances. Should the dog owner be receiving dog training or similar, Council must allow a reasonable time for the dog to be trained and/or the habit to be changed. So the length of time the process will take can vary on the circumstances, the dog owner's willingness to alleviate the issue and the dog's characteristics.

5.8 Private Legal Action

Where it is found that a complaint relies solely on the testimony of one party, it is unreasonable to expect that Council Officers proceed with action and potentially use public resources spending money to defend or to prosecute. Individual private action through the local court is available to any individual and it may be suggested by Council Officers that a complainant should consider such avenue.

Such private or civil action taken by a complainant has the burden of proof based on the 'balance of probabilities'.



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6.0 Incident Reporting

Any incidents which occur during the investigation should be reported to the Manager or Supervisor as soon as practical. The Investigating Officer shall make appropriate notations in his/her “contemporaneous note book” in sufficient detail to rely on such information should the matter proceed to court.

The Officer shall record such things as:

- Name of person;
- address;
- time;
- date;
- brief details of discussion; and
- any admissions made with reference to a warning if given.

The Investigating Officer shall also make appropriate notations on the CRMS so that the actions taken in the field, that lead to the creation of letters/notices on the Council database, are recorded for viewing by other Council Officers.

7.0 Enforcement

The powers under which a Council Officer deals with a Barking/Nuisance animal are contained in the NSW Companion Animals Act 1998 (“the Act”) (Attachment 1). A duly appointed Officer has been delegated authority by the General Manager to undertake the duties as prescribed and to apply the appropriate legislative provisions of the Act.

Action will be based on the rules of evidence as set out above. Should a person be found in breach of the legislation then it is at the Authorised Officer’s discretion as to what action will be taken.

This may either be in the form of:

- the issuing of a proposed nuisance order;
- serving a nuisance order;
- Penalty Infringement Notice (PIN);
- recommendation to Council for prosecution;
- the issuing of a formal warning; or
- no action at all.

In any circumstance, the actions of the Officer shall be based on the evidence at hand and the merit of the specific situation. At all times the Officer shall act with complete probity and without fear or favour. Any regulatory action is to be tempered by an ideal to achieve the most desirable outcome for the community and any one perpetrator should

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not be sanctioned or targeted for action for any other reason other than a breach or non-compliance.

8.0 Notice/Order

Should the issuing of letters and site visits fail to produce an outcome then the process relies on the administrative provisions of the Act vide Section 21 where a Nuisance Order may be issued to the owner of a dog for an offence under this Section. The Authorised Officer must follow the procedure for issuing Nuisance Dog Order as set out in Section 21 A of the Act.

9.0 SEINS – Penalty Infringement Notices

Section 21 of the Act provides for a Nuisance Order to be issued to the owner. An Order remains in force for 6 months after it is issued. The owner of a dog must comply with an Order issued to the owner under this Section and must continue to comply with the Order whilst it is in force. A Penalty Infringement Notice may be issued for non-compliance or maximum penalty requested in a Court of Law.

10.0 Occupational Health & Safety Requirements

In accordance with Corporate Policy ALL OFFICERS MUST ADHERE TO RELEVANT OH&S Requirements.

In addition to the above, Rangers are to observe the following:

- a. Park their vehicle in a safe location and in a manner that does not obstruct pedestrians and/or other motorists;
- b. Always consider the safety of officers a priority. In the event of an imminent hostile threat, the Officer is to remove themselves from the situation and MUST report the incident to the Senior immediately thereafter and Police (if required);
- c. When entering the subject premise the Officer is to exercise caution in terms of the potential of an unprovoked dog attack; and
- d. Approach the premise by way of knocking on the front door or ringing the door bell, if there is one. Do not enter the rear yard area without consent but by all means make all available observations to establish that there is a dog on the premise that it roughly matches the description given by the complainant;

Policy No 1618 – Occupational Health and Safety Policy

OHS Authorised Statement – OHS Consultation

OHS Authorised Statement – Dissemination of OHS information

OHS Authorised Statement – Accident, Injury, Incident, Hazard Reporting

OHS Authorised Statement – OH&S Records

OHS Authorised Statement – Sun Protection

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OHS Authorised Statement – Working in Hot Conditions
OHS Authorised Statement – Personal Protective Equipment (PPE)
OHS Authorised Statement – Noise Management and Hearing Conservation Program
Occupational Health and Safety Act 2000
Occupational Health and Safety Regulation 2001
WorkCover Guide – Violence in the Workplace 2002

11.0 Attachments

11.1 The Companion Animals Act 1998

11.2 The Companion Animals Regulations 1999

11.3 Alleged Noise Nuisance Letter. Template D342

11.4 Alleged barking dogs letter to Informant. Template D343

11.5 Alleged barking dogs & Unregistered letter to POI template D344

11.6 Barking Dog second Complaint. Template D3447

11.7 Barking dog survey results to Informant. Template D3422

11.8 Barking dog survey results to POI. Template D3427

11.9 Intention to Declare Dog Nuisance. Template D3417

11.10 Nuisance Dog Order. Template D3416

11.11 Barking Dog Incident Sheet

11.12 Barking Dog Nuisance Complaint Form

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Barking Dog Nuisance Complaint Form

APPLICANT DETAILS

Title: **Given Name(s)** **Surname / Last Name**

Company Name:

Contact Address: **Unit** / **House** - **Number**

Street

Suburb: **State:** **Postcode:**

Phone: ***Fax** ***Mobile**

***Email:**

*Voluntary information only. (Assists with timely processing of your application. See Privacy and Personal Information Act Statement over)

DETAILS OF OFFENDING DOG/S

I hereby advise Council that dog(s) which are ordinarily kept at the property known as:
 House No: _____ Street: _____ Suburb: _____
 persistently and unreasonably interfere with the peace and comfort of my premises and is/are a
 problem for the following reasons: *(describe when and how the barking affects you)*

There is/are _____ dog(s) that are ordinarily kept at the abovementioned address, the
 alleged offending dog(s) is/are described as:

Dog 1) Breed _____ sex _____ age _____

Dog 2) Breed _____ sex _____ age _____

Dog 3) Breed _____ sex _____ age _____

Others: _____

Owners often don't know that their dog is barking excessively, as it is usually when they are away from their premises.

I **have / have not** approached the owner/s of the dog/s and the response was: _____

Barking dogs are a very difficult issue for Council to deal with because:

- There are different ideas from residents about what consists of too much barking;
- Gathering evidence can be time-consuming and difficult for the residents involved;
- Council require a written record from other neighbours to prove the barking is persistent enough to verify the dog is barking to a nuisance level; and
- Many residents are reluctant to become involved. All dogs are expected to bark but, without the written evidence, Council is not in a position to prove that the dog is barking to an unacceptable level.

Council wishes to advise you of your right to take independent action and, should you wish to pursue the matter on a civil basis, you may make an appointment to speak to the Chamber Magistrate at the Camden Local Court.

DECLARATION

I hereby request Camden Council to further investigate this complaint on my behalf. Should it be necessary to instigate court proceedings if the barking persists I undertake to:

- (a) give further detailed information to the Council as requested by the Authorised Officer;
- (b) appear in Court to give evidence as a witness to the truth and validity of the complaint.

Signed: _____

Dated: _____

Privacy Statement: Council is collecting the personal information on this form for the purpose of gathering information applicable to the complaint. The information will be used for actioning the complaint and will not be disclosed to any other party except required by law. If you fail to provide this information, no action will be taken in regard to this complaint.

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