

8.1 **NSW Companion Animals Act 1998 - Dangerous Dog Declaration.DOC**

enquiries refer

**Council Ranger**  
in reply please quote

**Dog - Dangerous**

21 March 2012

**REGISTERED MAIL**

Ms C Baker  
57 Jorgensons Lane  
BROOKLET NSW 2479

Dear Ms Baker

***Dangerous Dog Declaration***  
**Section 34, Companion Animals Act 1998 (NSW)**

**Name of Dog:** "Sparky" (the subject dog)

**Description of Dog:** Male, Bull Terrier (Staffordshire)

**Microchip Number:** 900006000071556

**Registered Owner:** Not Registered

**Person in Charge of Dog:** Ms Candy Baker

**Registered Premises:** Lot 5, DP 613633, No 57 Jorgensons Lane Brooklet (the subject premises)

**Date of Notice:** 21 March 2012

Council previously notified you on 3 March 2012 of its intention to give you a Dangerous Dog Declaration in respect of "Sparky", being a Bull Terrier (Staffordshire), and with Microchip Number 900006000071556, and usually kept at No 57 Jorgensons Lane Brooklet.

I acknowledge receipt of your written representations dated 5 March 2012. Your representations has been given due consideration and you were advised on the 16 March 2012 at a meeting with Council Officers, Kerri Watts and Joe Sabine, that Council will issue the Declaration as proposed.

cnr tamar & cherry streets, p.o. box 450, ballina nsw 2478 dx 27789, ballina • ph 02 6686 4444 • fax 02 6686 7035  
• council@ballina.nsw.gov.au • www.ballina.nsw.gov.au



**TAKE NOTICE THAT COUNCIL NOW GIVES YOU THE FOLLOWING DECLARATION:**

**The Declaration:**

1. That Ballina Shire Council declares "Sparky", being a Bull Terrier (Staffordshire), and with Microchip Number 900006000071556, and usually kept at 57 Jorgensons Lane Brooklet as a Dangerous Dog.

**Circumstances giving rise to the issue of the Declaration:**

A complaint has been received by Council concerning your dog, which has acted in a dangerous manner, within the meaning of a dangerous dog under the Companion Animals Act 1998 (NSW) ("the Act").

Council Rangers have been investigating a complaint regarding your dog, the subject dog, and an incident that occurred on the 17 February 2012.

I refer to an on site meeting undertaken by Council Ranger and yourself, Ms Candy Baker the person in charge of the subject dog, on 17 February 2012 at the subject premises.

You were advised at this meeting that Council was investigating the incident in which your dog, the subject dog, "Sparky", attacked and displayed unreasonable aggression to a cat, the injuries of which resulted in the death of the cat that was attacked.

**Reasons for the Declaration:**

Council's Authorised Officer has determined that this declaration is required for the following reasons:

1. The subject dog has displayed unreasonable aggression towards an animal (other than vermin).
2. The subject dog has without provocation attacked an animal (other than vermin).
3. The subject dog has without provocation has repeatedly threatened to attack an animal (other than vermin).
4. The subject dog has without provocation killed an animal (other than vermin).

## 8.1 NSW Companion Animals Act 1998 - Dangerous Dog Declaration.DOC

Page 3  
21 March 2012  
Candy Baker

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This declaration:

- a) Has effect from the 21 March 2012, or the date on which the declaration is given (whichever is later).
- b) Applies throughout NSW. It is not limited in its operation to the council area where the declaration was made.

### **What are the requirements of this Declaration:**

Under section 51 of the Act, you must comply with all of the following requirements within the time periods specified below.

Note: Schedule A of this declaration contains detailed specifications about the control requirements outlined below. However, you may also wish to seek and be guided by independent legal advice. It is also recommended that you keep any related documentation for your records – for example, the Notice of Intention to Declare a Dog to be a Dangerous Dog.

### **What must be done Immediately:**

1. Ensure that, while on the property on which it is ordinarily kept, the dog is kept in an enclosure that is sufficient to restrain the dog and prevent a child from having access to the dog.

Note: This requirement remains in force until the prescribed enclosure requirements in clause 24 of the Companion Animals Regulation 2008 are complied with (attached at Schedule A, Part 2).

2. Ensure that at all times when the dog is away from the property where it is ordinarily kept:
  - (a) it is under the effective control of some competent person by means of an adequate chain, cord or leash
  - (b) it has a muzzle securely fixed on its mouth that will prevent it from biting any person or animal.

Note: A dog is not considered to be under 'effective control' if a person has two (2) dogs, one of which is the dog of the subject of the declaration, under his or her control at the one time.

3. Ensure that the dog is not at any time in the sole charge of a person under the age of 18 years.

### **What must be done within seven (7) days of this Declaration:**

Register the dog, if it is not already registered. The dog must be microchipped before you can register it.

## 8.1 NSW Companion Animals Act 1998 - Dangerous Dog Declaration.DOC

Page 4  
21 March 2012  
Candy Baker

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### **What must be done within twenty-eight (28) days of the date of this Declaration:**

1. Ensure the dog is desexed.
2. Ensure that one or more warning signs are displayed on the property where the dog is ordinarily kept showing the words 'Warning Dangerous Dog' in letters clearly visible from the boundaries of the property.

Note: Refer to clause 26 of the Companion Animals Regulation 2008 excerpt (attached at Schedule A, Part 2) for specifications.

3. Ensure that the dog at all times wears the distinctive collar prescribed by the regulations.

Note: Refer to clause 27 of the Companion Animals Regulation 2008 excerpt (attached as Schedule A, Part 2) for specifications.

### **What must be done within ninety (90) days of the date of this Declaration:**

Ensure the dog is kept in the prescribed enclosure, in accordance with the specifications set out in Schedule A, Part 2 (clause 24) to this declaration.

Note: The owner of a dangerous dog must obtain a one-off certificate of compliance issued by an authorised officer of this Council for the prescribed enclosure (see Schedule A, Part 2 for more information). Also, until this requirement is complied with, the dog must, while on the property where it is ordinarily kept, be kept in an enclosure that is sufficient to restrain the dog and prevent a child from having access to the dog.

### **What changes must be Notified:**

You are required to notify the Council of the area in which the dog is ordinarily kept of the following matters within the time specified:

- (a) That the dog, with or without provocation, has attacked or injured a person or animal (other than vermin) – notice to be given within 24 hours of the attack or injury.
- (b) That the dog cannot be found – notice to be given within 24 hours after the dog's absence is first noticed.
- (c) The dog has died – notice to be given as soon as practicable after the death.
- (d) That the dog is no longer being ordinarily kept in the council area – notice to be given as soon as practicable after the change in location.
- (e) That the dog is being ordinarily kept at a different location in the council area – notice to as soon as practicable after the change of location.

### **What happens if non compliant with these Requirements:**

There is a maximum penalty of \$16,500 for failing to comply with any of the requirements of this declaration.

An Authorised Council Officer may also seize and immediately destroy the dog if:

## 8.1 NSW Companion Animals Act 1998 - Dangerous Dog Declaration.DOC

Page 5  
21 March 2012  
Candy Baker

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- a) The dog attacks or bites a person or animal (other than vermin) without provocation (in accordance with section 58G(1) of the Act). A dangerous dog that attacks or bites a person or animal has demonstrated that it cannot be kept safely in the community.
- b) The control requirements for the dog are not complied with on at least 2 separate occasions over any period of 12 months (whether or not each occasion relates to the same requirement). However, if the dog has been seized on this ground, the authorised officer may authorise the destruction of the dog only if they are satisfied that it is reasonable to do so after appropriate enquiries have been made into the circumstances that resulted in the dog being seized.

If your dog is seized for any of these reasons, you cannot make a claim for the dog unless an authorised council officer is satisfied that each of the requirements set out in this declaration is capable of being complied with.

### **Legal Proceedings:**

A Council Declaration, once it is served, has the force of law and failure to comply with this Declaration is both an offence against the Act and a breach of the Act.

Council may commence criminal proceedings for an offence against this Act or commence proceedings to restrain any breach of the Act in Local Court.

### **Appeal of a Declaration:**

In the event that Council serves an Order under the Act, you and any person affected by the Order may appeal against this Order or a specified part of it, to a Local Court within 28 days after service of a declaration or within 28 days of Council's refusal to revoke a declaration.

### **Power to Give Effect to a Declaration:**

You are advised that should you fail to comply with the Declaration once it is served, Ballina Shire Council has the legal authority under the provisions of Section 52 of the Act seize a dangerous dog and to only release the dog once all of the required control requirements have been complied with.

### **Continuing Effect of a Declaration:**

A declaration specifies a time by which, or period within which, the declaration must be complied with continues to have effect for the life of the dog or until the declaration is revoked.

### **Declaration revoked:**

A declaration can not be revoked until 12 months after the date of the declaration. After that time, you can apply to the council of the area where the dog is ordinarily kept (whether or not it is the council whose authorised officer made this declaration) to have this declaration revoked. This council must consider your application and advise you of its decision as soon as practicable.

**8.1 NSW Companion Animals Act 1998 - Dangerous Dog Declaration.DOC**

Page 6  
21 March 2012  
Candy Baker

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For further information, please contact Kerri Watts, on telephone (02) 6686 1210 during office hours Monday to Friday.

Yours faithfully



**Kerri Watts**  
**Senior Environmental Health Officer**  
**Public & Environmental Health Services**

Encl: Schedule A, Part 1 and A Part 2, excerpts from Companion Animals Act 1998 (NSW) and Companion Animals Regulation 2008 (NSW)

**INFORMATION ABOUT THIS NOTICE**  
**Schedule A, Part 1**  
**Companion Animals Act 1998 (NSW)**

**Section 51 - Owner of dangerous dog must comply with control requirements**

(1) The owner of a dog that is declared to be dangerous under this Act must ensure that each of the following requirements is complied with while the declaration is in force:

- (a) The dog must be desexed (if it is not already desexed) within 28 days after it is declared a dangerous dog. If the owner appeals against the declaration, the operation of this paragraph is stayed until the appeal is either withdrawn or determined.
- (b) The dog must not at any time be in the sole charge of a person under the age of 18 years.
- (c) **Enclosure requirements**

While the dog is on property on which the dog is ordinarily kept, the dog must be kept in an enclosure that complies with the requirements prescribed by the regulations. The owner has 3 months from the date on which the dog is declared dangerous to comply. In the case of an existing dangerous dog, the owner has 6 months from the relevant date to comply.

**Note.** A certificate of compliance in relation to the prescribed enclosure must be obtained by the owner of the dog—see section 58H.

(c1) Until such time as the requirement under paragraph (c) is complied with, the dog must, while on property on which it is ordinarily kept, be kept in an enclosure that is sufficient to restrain the dog and prevent a child from having access to the dog.

(d) One or more signs must be displayed on that property showing the words "Warning Dangerous Dog" in letters clearly visible from the boundaries of the property on which the dog is ordinarily kept or, if the regulations provide for the signs required by this paragraph, complying with the regulations.

(d1) **Distinctive collar must be worn**

The dog must at all times wear a collar of the kind prescribed by the regulations.

(e) **Dog must be kept on lead and be muzzled**

Whenever the dog is outside its enclosure, the dog:

- (i) must be under the effective control of some competent person by means of an adequate chain, cord or leash that is attached to the dog and that is being held by (or secured to) the person, and
- (ii) must be muzzled in a manner that is sufficient to prevent it from biting any person or animal.

For the purposes of this paragraph, a dog is not considered to be under the effective control of a person if the person has more than 2 dogs (one of which is the dangerous dog) under his or her control at the one time.

(f)–(h) (Repealed)

(i) The owner must notify the council of the area in which the dog is ordinarily kept of the following matters within the time specified in relation to each of those matters:

- (i) that the dog (with or without provocation) has attacked or injured a person or an animal (other than vermin)—notice to be given within 24 hours after the attack or injury,
- (ii) that the dog cannot be found—notice to be given within 24 hours after the dog's absence is first noticed,
- (iii) that the dog has died—notice to be given as soon as practicable after the death,
- (iv) (Repealed)
- (v) that the dog is no longer being ordinarily kept in the area of the council—notice to be given as soon as practicable after the change of location,
- (vi) that the dog is being ordinarily kept at a different location in the area of the council—notice to be given as soon as practicable after the change of location.

(j) If the owner intends to keep the dog in the area of a council that is not the area in which the dog was ordinarily kept when the declaration was made, the owner must notify the council of the area in which the dog is intended to be ordinarily kept of his or her intention to do so.

(k) The dog must, regardless of its age, be registered under this Act (if not already so registered) within 7 days after it is declared a dangerous dog.

**Note.** Section 11 also requires the owner of a dog to notify the Director-General within 7 days after a Court declares the dog a dangerous dog or revokes the declaration. If the order is made or revoked by a council, the council is required to notify the Director-General (see section 40).

(2) An owner of a dog who does not comply with any of the requirements of this section is guilty of an offence.

Maximum penalty: 150 penalty units.

(3) **Exemption from being on lead and muzzled while hunting**

In the case of a dog that has been declared dangerous on the ground that it is kept or used for the purposes of hunting, the requirements imposed under subsection (1) (e) do not apply while the dog is actually engaged in lawful hunting.

(4) The requirements imposed under this section on the owner of a dangerous dog are additional to the other requirements of this Act imposed on the owner of a dog.

(5) In subsection (1) (c):

**existing dangerous dog** means a dog that is the subject of a declaration by a council or court under this Part and in force immediately before the relevant date.

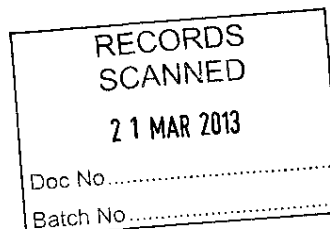
**relevant date** means the date on which this subsection (as inserted by the Companion Animals Amendment Act 2005) commences.

20 MAR 2013  
RECORDS

**Candida Baker**  
PO Box 500  
Bangalow  
NSW 2479  
Mob: 0401056894  
Email: [cbaker@bigpond.net.au](mailto:cbaker@bigpond.net.au)  
[www.candidabaker.com](http://www.candidabaker.com)

Tuesday March 19, 2013

Kerri Watts  
Senior Environmental Health Officer  
Ballina Shire Council  
PO Box 450  
Ballina NSW 2478



Dear Kerri

**Re: Sparky's Dangerous Dog charge**

I am writing in regard to the declaration of 21<sup>st</sup> March, 2012, in which Sparky was declared to be dangerous, and formally requesting that the Council review this charge with a view to having it removed.

In the past year I have personally undertaken training of Sparky, which I then consolidated with three training sessions with Sarah Rutten from Paw Power, and I attach her report for your reference. I have kept Sparky as he should be kept as a dangerous dog and have complied with every step of the proceedings.

I have also attached a letter from Sharon Hampton, the owner of Newrybar Produce, whose horse was here for a few months during the attacks on Sparky by Ozzie. I have also attached a letter from Natalie Chinnery, whose dog, Bundles, came to stay a few weeks ago having never met Sparky before, and a letter from one of my helpers who has been with me for the past few months, as well as the information once more from last year.



I would very much like to come and present the case for Sparky – perhaps with Sparky himself, who will speak for himself in his friendly and cheerful manner more than perhaps I ever could.

I also have pictures and video of Sparky playing with my little dogs, and with Bundles, and photographs of him with my cat, with whom he is on very friendly terms. I have no hesitation leaving him in the cat's company at any time. What occurred with the Colbert's cat was an unfortunate and regrettable incident. Sparky is a year older now (at three) and a year better trained, and is (obviously) never off the lead, other than in our garden, and it was a one-off situation that will never occur again.

I am happy to email photographs and also to drop in a disc with photos and movies on, or email them.

Sparky has proved himself safe around babies, toddlers, children, horses, adults, dogs and my cat for his entire life. I would respectfully request that this charge be removed.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Candida Baker', written in a cursive style.

Candida Baker

14<sup>th</sup> March 2013

The General Manager  
Ballina Shire Council  
PO Box 450  
BALLINA NSW 2478

Dear Sir/Madam,

**RE: "Sparky" Baker – 57 Jorgensens Lane, Brooklet**

Following on from "Sparky's" initial assessment back in March 2012 and his subsequent Dangerous Dog declaration, please find below my follow up report regarding the three (3) private lessons conducted with Candy and "Sparky" over the last few months.

As well as using these lessons as an opportunity for further training, I was able to further assess "Sparky" in a variety of situations, many of which he had not been in previously. These sessions were all conducted on lead, however I requested that he be not be muzzled in order to assess "Sparky's" responses accurately.

Candy, "Sparky" and I met on the 13<sup>th</sup> December 2012 to conduct our first of three private lessons. During this lesson we reviewed where "Sparky" was up to and did some work on basic commands such as "sit", "drop" and come when called, of which he did very well. During the course of the lesson a couple of dogs walked past, to which "Sparky" showed normal signs of interest and was wagging his tail in a friendly manner. He didn't get overly excited, didn't cry, whine, growl, bark or vocalize in any way. While we did not allow any interaction at this time, he appeared happy to see them and interested in saying "hello".

Our second lesson was scheduled for 28<sup>th</sup> February 2013. During this lesson we took a walk along the river to assess how "Sparky" was on lead around other people and dogs in a normal "suburban" environment. "Sparky" did exceptionally well. He was interested in the sights and smells around him, but did not pull on lead. He walked past people calmly, wagging his tail. He even had the opportunity to meet a couple of dogs which he did in a very friendly manner.

Our final lesson occurred this morning. As he had done so well with our other appointments, I brought my own dog along with me so that the dogs could walk together. When we arrived, "Sparky" wandered up to my dog (a pug) and politely sniffed her. He showed no sign of aggression or antisocial behaviour. Our two dogs walked very calmly and politely side by side the entire walk. At one point along the walk two off lead dogs (a Red Heeler and a Terrier mix) emerged from the sand dunes and made a beeline for "Sparky". The Red Heeler rushed up to him in a manner that was a little forceful and the Terrier stood close by barking. "Sparky" stood relaxed but still, allowing the Red Heeler to sniff him. He also allowed the Terrier mix to come up to him for a sniff. Once they had done so, he gave them a brief sniff and continued on his way. Once again, at no time did "Sparky" show any aggression towards either of these other dogs.

In all my dealings with "Sparky" thus far, I have found him to be friendly and polite, both towards humans and other dogs. However due to his past digression, I would recommend that "Sparky" continue to remain on lead when off his property, ensure that all fencing remains secure and that he not be allowed to roam freely and wander off his property unsupervised. As Candy is aware of the higher management requirements necessary with owning a bull breed and has already been adhering to these recommendations, I would suggest that she continue to do so.

-2-

I am more than happy to elaborate further on my notes should it be necessary. I can be contacted on 6681 5336 or 0405 535 336.

Yours faithfully

**Ms Sarah Rutten Dip CBST  
Paw Power Dog Training  
Diploma Canine Behaviour Science & Technology  
Certificate IV Delta Accredited Dog Behavioural Trainer  
Member Association of Animal Behaviour Professionals (AABP)  
Member Association of Pet Dog Trainers (Australia) (APDT)  
Member Delta Pet Dog Trainers Association (DPDTA)**

This letter has been compiled from observations and information gained on the day of the assessment. Paw Power Dog Training Ballina takes all care when making these observations but cannot predict the circumstances and situations which may arise in the future and thus cannot be held liable for anything that may happen as a result.

*Natalie Chinnery  
4 Cedar Crescent  
Ballina  
NSW 2478  
Telephone: 0410197050*

March 12, 2013

**TO WHOM IT MAY CONCERN**

This letter is to confirm that last weekend I left our family dog Bundles, a miniature male eight-year-old desexed black poodle, at Candy Baker's property for the weekend. Bundles had never been to the property before or met Candy's dogs.

I was going away to Melbourne for the weekend, and my parents were also away, and having known Candy's three dogs, including Sparky, for the past three years, I had no hesitation in leaving Bundles in her care.

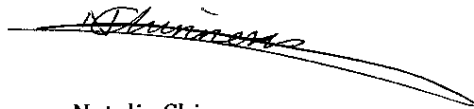
In fact, when I dropped Bundles off, Candy was at the shop and her son Sam (my friend) was there - he introduced the dogs to each other in the garden, and they were all immediately at home together. Sparky was the friendliest of the three and showed no aggression to Bundles at all, wagging his tail and licking him as if he had known him for years.

Candy asked me if it was fine by me if Bundles slept with the other dogs in the barn, and I said it would be fine. She also walked Bundles with the other dogs, and I could tell when I picked him up on the Sunday afternoon that he had been completely happy and safe there.

I have never seen Sparky act with any aggression towards any dog or any other animal, or to any humans either, during my visits to Candy's house to see Sam. He has always been a happy, playful, friendly and gentle dog.

Please call me if you need any further information.

Yours faithfully



Natalie Chinnery

**Newrybar Produce Pty Ltd**

ABN : 16 002 130 850

9 Old Pacific Highway  
Newrybar NSW 2479  
Tel: 02 6687 1342  
Fax: 02 6687 2037

19 March, 2013

To Whom it may concern,

I would like to tell you about my personal experience with Candida Baker's dog Sparky.

In March and April of 2012 I was boarding my horse, Sam at Candida's property. I came in contact with Sparky twice a day every day for that period of time.

Sparky is one of the happiest, friendliest least dangerous dog's I have ever come across. Each afternoon that my two children, Damon aged 12years old and Sophie aged 8years old came with me they would play with sparky. He would always come up to greet us with a wagging tail and then lay down for my kids to rub his belly.

The morning that sparky was attacked by the neighbour's dog I had just come back with the horse from a ride to find Candida extremely upset about the encounter with the neighbour's dog. I was one of three people that went to look for Sparky. On our return we found Sparky at the house with major life threatening wounds. He was in shock and in a very bad way.

I was there whilst Sparky was recovering. He was in so much pain but still would lay on his bed and wag his tail when we went to check on him. He never once showed any signs of aggression even though he was in terrible pain.

Sparky is a beautiful little dog. You can almost see him smile when you approach him. I strongly feel that the dangerous dog status that he

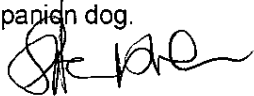
• Page 2

March 19, 2013

currently has is the biggest joke. Honestly the only way that dog is dangerous is if you got sick from him licking you.

I hope that common sense prevails here and the dangerous dog status is dropped.

Sparky is so lovable he could be used in an old peoples home as a companion dog.



Sharon Hampton

**Newrybar Produce Pty Ltd**



10 May 2012.

To whom it may concern,

I have been asked to prepare a behavioural report for "Sparky" Baker, a 2 year old entire male Staffordshire Terrier belonging to Mrs C. Baker of 57 Jorgensens Lane , Brooklet.

I have had extensive dealings with Sparky over the month of April 2012 while he recovered from wounds that had been inflicted during an attack by another dog. Sparky was hospitalized for 3 days and seen periodically over the next 3 weeks while the healing was monitored.

We found him to be a very receptive patient. In spite of significant pain there was no suggestion of aggression while his wounds were tended.

During the period of his stay in hospital he demonstrated himself to be well socialized with humans and other canines. We had no occasion to expose him to felines.

I have not observed him except in the confines of the Veterinary Hospital. This limits the scope of my opinion.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Ian King".

Ian King B.V.Sc.

Superintendent Ballina Veterinary Hospital

Amandine Barre  
c/o Candy Baker  
57 Jorgensen's Lane  
Brooklet  
NSW 2479

Email: [amandinenova@gmail.com](mailto:amandinenova@gmail.com)  
Tel: 0404100619

**TO WHOM IT MAY CONCERN**

This is to confirm that I have been staying at Candy Baker's house as a helper for the past two months.

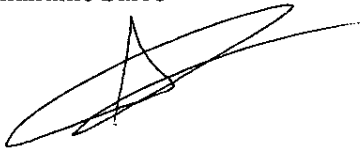
In that time I have had plenty of interaction with all three of Candy's dogs, including Sparky, and from the first moment that I met Sparky when he brought his ball to me to throw, he has been a completely friendly and non-aggressive dog.

As someone whose family owns dogs at home, I am familiar with many different types of dogs, and I have witnessed Sparky being friendly with children, adults, horses and other dogs, as well as to Candy's cat. He has never shown anybody or anything any aggression during my time here. Candy looks after her dogs with a high level of care and attention, and all of them are well-loved family pets.

I am happy to be contacted to confirm this verbally and to confirm everything I have written.

Yours faithfully

Amandine Barre

A handwritten signature in black ink, appearing to be 'Amandine Barre', written over a horizontal line.