

ITEM 4. APPLICATION TO REVOKE DANGEROUS DOG DECLARATION**FILE NO: S084466****SUMMARY**

Mr Lawrence Gibbons has applied to the Council for the revocation of a dangerous dog declaration issued by the City of Sydney in December 2011 for the dog "Oscar". A decision to revoke a dangerous dog declaration can only be made by the Courts or Council under the *Companion Animals Act 1998*.

Mr Gibbons has previously appealed unsuccessfully to the Local Court seeking that the Court set aside the declaration.

Under the provisions of the *Companion Animals Act 1998*, the owner of a dog which has been declared dangerous by a council may, 12 months after the declaration is made, make an application to that council to have the dangerous dog declaration revoked.

An expert panel, which had no prior dealings with Mr Gibbons, has considered Mr Gibbons' application and reported back its unanimous findings to the City, which form the basis of this recommendation.

RECOMMENDATION

It is resolved that Council does not revoke the dangerous dog declaration made on 20 December 2011 for the dog 'Oscar' for the reasons outlined in the subject report.

ATTACHMENTS

Attachment A: Copy of the notice of intention to declare a dog dangerous.

Attachment B: Copy of the dangerous dog declaration.

Attachment C: Chronological sequence of events.

Attachment D: Circular from the Department of Local Government dated 20 July 2006.

Attachment E: Circular from the Department of Local Government dated 3 June 2011.

Attachment F: Extract of the *Companion Animals Act 1998* and the *Companion Animals Regulations 2008* setting out the enclosure, signs, collar, lead and muzzle requirements for a dangerous dog.

Attachment G: Extract of the *Companion Animals Act 1998* outlining when a council may revoke a dangerous dog application.

Attachment H: The Department of Local Government guidelines for the revocation of a dangerous dog declaration.

Attachment I: Copy of the letter sent to the expert panel members.

Attachment J: Email from Mr Gibbons to the City dated 4 January 2013.

Attachment K: Email from Mr Gibbons to the City dated 26 February 2013.

Attachment L: Report from Dr Seksel.

Attachment M: Report of the expert panel.

Attachment N: Letters to Mr Gibbons of 31 January 2013 and 3 May 2013.

BACKGROUND

1. On 24 November 2011, following four complaints of attacks by the same dog on a person, two dogs and a cat, the City issued a notice of intention to declare a dog dangerous in relation to a dog named "Oscar" owned by Mr Lawrence Gibbons. A copy of the notice of intention sent to Mr Gibbons, which set out what control measures would be required should the declaration be issued, is at Attachment A.
2. On 20 December 2011, the City imposed a dangerous dog declaration on Mr Gibbons' dog. A copy of the declaration, which also sets out what control measures were required for the dog, is at Attachment B.
3. The incidents that gave rise to the declaration involved three attacks on animals and one attack on a person:
 - (a) 28 October 2007 – a complaint was received that a male black and tan, German-Shepherd Cross subsequently identified as "Oscar" had entered the backyard of a property owner and attacked a cat;
 - (b) 7 January 2010 – a complaint was received alleging that a dog had been attacked by Oscar on Palmer Lane, Darlinghurst and bitten on the hind leg;
 - (c) 11 May 2010 – a complaint was received alleging that a dog had been attacked on 22 April 2010 by Oscar and required veterinary treatment to its hind leg; and
 - (d) 13 September 2011 – a complaint was received from a member of the public alleging that he had been bitten on the leg by a dog (identified to be Oscar) on 6 September 2011 while he was walking down Little Oxford Street, Darlinghurst.
4. A chronology at Attachment C further details these incidents and the investigation and response by the City.
5. On 21 February 2012, Mr Gibbons appealed to the Local Court seeking that the declaration be revoked. In defending the City's decision to declare the dog dangerous in the Local Court, witness statements were tendered on behalf of the three animal owners and dog attack victim in respect of these four incidents, together with statements of the investigating officers. Each witness was cross-examined by Mr Gibbons' legal representative in the appeal. After three days of hearing evidence from civilian complainants and City Rangers, Magistrate O'Shane found that there had been four proven attacks. On 20 December 2012, her Honour confirmed the City's decision to declare Oscar dangerous and ordered that Mr Gibbons comply with the terms of the City's dangerous dog declaration. On 25 January 2013, the Local Court ordered that Mr Gibbons pay the City's cost of these proceedings. Those costs have not yet been paid, as the amount is in dispute and the City must obtain an assessment of costs.
6. In making the declaration, the City was complying with its obligations to respond to community concerns about dogs not under effective control. These obligations are set out in circulars from the Department of Local Government, reproduced at Attachments D and E.

7. The requirements imposed on the owner of a 'dangerous dog' are set out in section 51 of the *Companion Animals Act 1998* and further particularised in Clauses 24, 26 and 27 of the *Companion Animals Regulation 2008* (refer Attachment F).
8. In addition to the appeal rights exercised by Mr Gibbons in the Local Court, section 39 of the *Companion Animals Act 1998* (refer Attachment G) provides that the owner of a dog which has been declared dangerous by a council may, 12 months after the declaration is made, make an application to that council to have the dangerous dog declaration revoked.
9. Mr Gibbons made an application to the City for the declaration to be revoked.
10. Pursuant to an application to the Council under section 39(2) of the *Companion Animals Act 1998* (refer Attachment G), only the Council can revoke the declaration if satisfied that it is appropriate to do so.
11. Guidelines from the Department of Local Government for the revocation of a dangerous dog declaration are set out at Attachment H. In assessing an application to revoke the declaration, Council considers the circumstances under which the declaration was issued, the dog's current circumstances and behaviour in relation to the original declaration, including any behavioural training which may have occurred, as well as a behavioural assessment from a qualified professional. It is a matter for each council as to how it takes these issues into consideration; and the City elected to appoint an expert panel to consider this application.
12. The panel consisted of a dog behavioural expert from Melbourne, a manager/operations co-ordinator from another council who is experienced in the operation of the Companion Animals Act and the City's Companion Animals Liaison Officer.
13. The letter to the panel, setting out the review process and documents to be reviewed as part of their considerations, is included at Attachment I.
14. The material submitted by Mr Gibbons in support of his application, including the report of Dr Kersti Seksel, is provided at Attachments J, K and L.
15. Following independent review of relevant documentation by panellists, the panel convened and considered the application. The panel unanimously recommended that the declaration should not be revoked, as it is not in the public interest to do so. The panel report is provided at Attachment M.
16. In reaching their recommendation, the panel formed the view that there is a continuing risk of Oscar being aggressive owing to factors including:
 - (a) Oscar is recognised as an anxious dog;
 - (b) Oscar is about nine years old and noted to be suffering from arthritis, a condition that can be painful for dogs and is likely to increase the chances of anxiety and aggression;
 - (c) Oscar has a history of behaving aggressively when confronted with situations that make him uncomfortable, including feeling anxious; and

- (d) these factors, combined with the unpredictable stimuli experienced in everyday situations, increase the risk of Oscar being aggressive again. Consequently, the Panel cannot be confident that, in his current state, Oscar is no longer a danger to the public.
17. The report of Dr Seksel makes a number of recommendations in relation to the care and control of Oscar. The actions recommended do not satisfy the requirements for a “dangerous dog” within the meaning of s51 of the Companion Animals Act 1998 (refer Attachment F). It is not enough that a property be securely fenced. The Act requires that dangerous dogs must be kept within a prescribed enclosure. Since the Court decision of 20 December 2012 confirming the terms of the declaration, the City has advised Mr Gibbons on 31 January 2013 and 3 May 2013 that he is obliged to comply with all of the terms of the declaration and that failure to do so is breach of the Act (see Attachment N).
18. No further supporting documents or materials have been provided by Mr Gibbons to the City. The City has received no evidence demonstrating that any of the recommendations made by Dr Seksel have been pursued. These recommendations included a proposal that Mr Gibbons arrange for Oscar to have a “complete physical examination” and to “undertake training to the equivalent of the Canine Good Citizens (CGC) certification with a qualified CGC instructor.”
19. No evidence has been received from Mr Gibbons that he has implemented any of the control measures required by the existing dangerous dog declaration. An external visual inspection of Mr Gibbons premises on 12 August 2013 confirmed that warning signs that there is a dangerous dog have still not been erected.

KEY IMPLICATIONS

Risks

20. Should the control measures required by the existing dangerous dog declaration not be implemented, there is a risk that Oscar will display aggression when confronted with unpredictable stimuli resulting in a further attack on an animal or person.
21. If the dangerous dog declaration is revoked and Oscar is involved in a further attack on an animal or person, Council and individual Councillors could be sued for damages.

RELEVANT LEGISLATION

22. Section 41(3) of the Companion Animals Act provides that the fact that an appeal is pending does not affect a dog’s status as a dangerous dog and does not affect the owner’s obligations under the Companion Animals Act as the owner of a dangerous dog.
23. The owner of a dangerous dog who fails to comply with the requirements relating to dangerous dogs is guilty of an offence that carries a maximum penalty of \$16,500.

24. An authorised officer can seize a dangerous dog if satisfied that any of the requirements that relate to dangerous dogs have not been complied with. A claim for the return of the dog can only be made if the authorised officer is satisfied that all of the requirements in relation to dangerous dogs are capable of being complied with. If a dog is not validly claimed within the meaning of the Act, it can be destroyed.

OPTIONS

25. The Council has the option of either revoking the dangerous dog declaration or leaving it in place.
26. If Council revokes the dangerous dog declaration and the dog subsequently attacks an animal or person, the City may again issue a notice of intention to declare the dog dangerous.

GARRY HARDING

Director City Operations

Alan Coleman, Manager, City Rangers