

ATTACHMENT J

**EMAIL FROM MR GIBBONS TO THE CITY
DATED 4 JANUARY 2013**

ATTACHMENT J

From: Lawrence Gibbons [REDACTED]
Sent: Friday, 4 January 2013 4:32 PM
To: Monica Barone
Cc: Alex Greenwich; ElectorateOffice Sydney; Clover Moore; Robyn Kemmis; Robert Kok; John Mant; Jenny Green; Irene Doutney; Edward Mandla; Christine Forster; Linda Scott; Angela Vithoulkas
Subject: Request to remove Dangerous Dog Declaration

Dear Monica,

I am writing to formally ask that you lift a Dangerous Dog declaration which the City of Sydney imposed on my dog Oscar over a year ago and that you amicably agree to settle an ongoing dispute which has dragged on for more than a year. In reviewing your decision, I would ask you to consider:

1) Under the Animal Companion Act of NSW, Council has the option of lifting a Dangerous Dog declaration one year after it is issued. http://www.austlii.edu.au/au/legis/nsw/consol_act/caa1998174/s39.html The order was put in place on Dec 20, 2011 and there have been no incidents since. The two alleged incidents occurred when Oscar was with my former partner, who is very much out of the picture now. I am a responsible member of the local community, who has control of his dog at all times. Council could easily revoke the order.

2) Council's case against me was heard by the controversial magistrate Pat O'Shane, who will be retiring from the bench in January before the Parliament can formally vote to remove her. <http://www.theaustralian.com.au/news/breaking-news/magistrate-oshane-not-impartial-hearing/story-fn3dxiwe-1226539626673> We believe that there were a number of errors in her judgement giving us substantial grounds for an appeal in the event that you are unwilling to settle amicably with me:

· Magistrate O'Shane refused as irrelevant evidence that the person who had allegedly been bitten approached, taunted and provoked Oscar on a separate occasion. In late November 2011 several people witnessed Chris Penty, the alleged victim, taunt and tease Oscar in Harmony Park, Surry Hills.

· She thought it was irrelevant that Council said the alleged biting incident took place in three different locations (imagine any other criminal trial being run like that). Council claimed that the incident occurred at Little Oxford Street and Crown Street, at Arnold Place and Crown and at Arnold Place and Riley Street

· She thought it irrelevant that the alleged victim said he had been bitten on different parts of his leg on different occasions, accepted as evidence a blurry photo of a small mark on a leg that was not consistent with a dog bite and didn't care that there wasn't even a medical report

· She was unconcerned that Council withheld the original interview book until after the witness had been cross examined and that when it was presented the document had been altered without explanation.

· She would not allow expert witnesses to give evidence that the dog (Mr Benson) with whom Oscar fought on a separate occasion was a shar pei, a difficult to manage, fighting breed. <http://au.answers.yahoo.com/question/index?qid=20090929185036AAuoGte>

· She refused to allow the owner of the shar pei to make the point that she had only contacted Council rangers because she was irritated that my former partner had not paid her vet bill following the fight between her dog Mr Benson and Oscar

· Magistrate O'Shane did not allow me to call a single witness (six people had waited to give evidence) but allowed the Council to cross examine six rangers (most of whom had never come into contact with Oscar) over four days

· In handing down her judgement, Ms O'Shane appeared confused as to whether or not my other dog Felix (and not Oscar) may have bitten Mr Benson and mistakenly thought Mr Benson (a shar pei Chinese fighting dog) was a human being, demonstrating she was completely unfamiliar with the facts of the case

· In handing down her judgement, Ms O'Shane mistakenly assumed she was only reviewing Council's administrative decision and failed to grasp that she was presiding over a quasi-criminal hearing

· In handing down her judgement, Ms O'Shane erred in believing that the court did not have the discretion to overturn the dangerous dog declaration

· In handing down her judgement, Ms O'Shane mistakenly believed that there was no appeal process against her decision since she mistakenly assumed it was merely an administrative review.

3) My legal counsel believes that these and other similar errors provide ample grounds for an appeal against Magistrate O'Shane's judgement, should you be unwilling to amicably settle the matter with me. According to a recent report in the Sydney Morning Herald, a staggering 88% of all cases to the Supreme Court involving Pat O'Shane are successfully overturned upon appeal. "The analysis shows Supreme Court judges have criticised her for refusing to allow prosecutors to call witnesses, dismissing a charge without proper regard to the law, denying the prosecution procedural fairness and failing to give reasons. Other criticism included a failure to comprehend the basis of the prosecution case or the evidence before her, use of intemperate language and making numerous errors of law."
<http://www.smh.com.au/nsw/majority-of-appeals-against-oshane-decisions-upheld-20120207-1r5l7.html#ixzz2FelNPGXG> Many of these same reasons form the basis of an appeal which is being prepared by my legal counsel.

4) To add injury to insult, Council is attempting to get a \$5000 legal cost order against me. Until the last day of the hearing, the City's lawyer (Kane Ganville) stated that the City was seeking to have my dog removed from me, which would have meant he would have died in the pound one way or the other. We had no choice but to fight. The last matter to be decided by Magistrate O'Shane before she retires from the bench will be whether or not to award costs for six rangers sitting in the Downing Centre for four days. Imagine all the parking notices that could have been written. Needless to say, if costs are awarded we will add it to the appeal.

5) The orders that Council is attempting to enforce against me are unwarranted and unreasonable. Based on comments made about me in the courtroom waiting room by Council rangers (witnesses will provide statements if you wish) I believe Council's rangers have taken the case against me personally and appear to have a vendetta against me. They want me to build an expensive container to lock Oscar up in, which would take up my entire back yard. I live in a small terrace which has a self contained court yard. We are not talking about a suburban house with a large backyard that a dog could get out of. These rules were not made with small terraces or apartments in mind. Oscar frets with the muzzle on because he has a bad overbite and it annoys him. To not allow him off his lead so he can roll in the grass is cruel. Further Council rangers seek to humiliate me by having me place a DANGEROUS DOG warning sign on my house and by forcing me to walk Oscar with a DANGEROUS DOG warning collar. Have a look at a youtube video we made of Oscar socialising. You tell me if this looks like a dangerous dog: <http://youtu.be/IhI-1LBpuzg>

6) My entire experience calls into question the way in which Council administers the Animal Companion Act. The Council ranger who came to assess Oscar (Vjendra Kumar) stated he was afraid of dogs in front of a witness. He was trembling and his hand was shaking so badly when Oscar's chip had to be scanned that I offered to do it myself. There is no way that Mr Kumar was raised around pets or that he owns a pet himself. I am genuinely concerned that Council puts Mr Kumar in contact with large dogs which clearly terrify him. During our meeting, Oscar leaned on the leg of the ranger who accompanied Mr Kumar prompting the second ranger to state, "Oscar has a lovely temperament." Why isn't Council employing animal behaviourists rather than parking infringement officers with no real animal training to assess whether or not dogs are a danger to the community? I would encourage Council to review

the Australian Veterinary Association's recommendations for temperament testing of dogs and training of dog owners rather than using the blunt and repressive "Dangerous Dog Declaration" which is offered as an option but is not required under state law
<http://www.ava.com.au/mediarelease/fact-sheet-dangerous-dogs-sensible-solution>

7) I would also encourage Council to review the processes in place around the issuing of Dangerous Dog notices. When Council issued me with its initial infringement notice, I was not supplied with an incident report or location. Can you imagine a parking ticket without a location? Council refused to provide me with basic information about the alleged incidents; denying requests through freedom of information applications and even failed to produce all evidence in response to a court subpoena. How can you be charged for a quasi-criminal offence without getting any basic information from the government agency that is charging you with an offence?

Under the Animal Companion Act of NSW, issuing Dangerous Dog orders is entirely at the discretion of a local Council and the Act gives Councils the further discretion of removing these orders after a year. I find it ironic that Clover Moore's Council is enforcing the Animal Companion Act of NSW to the letter of the law. As an MP and animal rights advocate she fought against the draconian nature of the Animal Companion Act, but as Lord Mayor she runs a Council that is killing dogs and issuing "dangerous dog" orders around incidents and not serious criminal matters.

Call me old fashioned. I think governments should only ever constrain citizens' civil liberties if they have a damned good reason. The City of Sydney has run a quasi-criminal case against me and my dog Oscar without conducting a fair trial. We have been denied due process along the way. I, for one, will not be muzzled.

I would appreciate it if you would agree to drop this matter amicably. I am also sending this correspondence to my democratically elected representatives in the hopes that they will urge you drop this matter as well.

Yours Sincerely,

Lawrence Gibbons