

ITEM 3. APPLICATION TO REVOKE DANGEROUS DOG DECLARATION**FILE NO: S084466****SUMMARY**

At its meeting on 26 August 2013, Council considered a request from Mr Lawrence Gibbons for the revocation of a dangerous dog declaration issued by the City of Sydney on 20 December 2011 for the dog Oscar.

At that meeting, Council resolved to defer determination of this application pending a number of actions being taken, including a physical examination and behavioural analysis of 'Oscar' by a Council appointed expert (see Attachment A).

Following consultation and agreement with Mr Gibbons, arrangements were made for Dr Gabrielle Carter, a veterinarian with a special interest and education in the field of animal behaviour, to undertake a physical examination and behavioural assessment of Oscar.

Dr Carter advised: "I do not see the need for stringent housing requirements imposed by the Dangerous Dog declaration" but recommended that other requirements and restrictions applicable to a "dangerous dog" should be retained.

New amendments to the Companion Animals Act 1998 have recently been enacted, which includes a new category of "menacing dog". The control requirements for a menacing dog are similar to dangerous dogs, with the exception that there is no prescribed enclosure for a menacing dog.

Dr Carter, together with previous assessments and the history relating to Oscar, supports that it may be appropriate to reclassify Oscar as a menacing dog. This reclassification would revoke the previous declaration of 20 December 2011 that Oscar is a dangerous dog.

It is proposed that an authorised officer of Council commences the process by which Oscar would be declared a menacing dog as defined in the amended *Companion Animals Act 1998*.

RECOMMENDATION

It is resolved that Council note that:

- (A) a physical examination and behavioural analysis has been undertaken for the dog Oscar by a suitably qualified Council appointed expert;
- (B) the Lord Mayor has written to the Minister for Local Government advocating amendments to the Companion Animals Act 1998;
- (C) amendments have been made to the Companion Animals Act 1998, which create a new category of "menacing dog";
- (D) the enclosure requirements that apply to a dangerous dog do not apply to the new category of menacing dog;

- (E) the City will notify its intention to declare Oscar a menacing dog pursuant to the *Companion Animals Act 1998*; and
- (F) the reclassification of Oscar as a menacing dog will revoke the previous declaration of 20 December 2011 that Oscar is a dangerous dog.

ATTACHMENTS

Attachment A: Resolution of Council – 26 August 2013

Attachment B: Lord Mayor's letter to the Minister for Local Government

Attachment C: Chief Executive of the Division of Local Government's reply

BACKGROUND

1. On 24 November 2011, the City issued a notice of intention to declare a dog dangerous in relation to a dog named Oscar owned by Mr Lawrence Gibbons.
2. On 20 December 2011, the City imposed a dangerous dog declaration on Mr Gibbons' dog.
3. On 21 February 2012, Mr Gibbons appealed to the Local Court seeking that the declaration be revoked.
4. On 20 December 2012 Magistrate O'Shane confirmed the City's decision to declare Oscar dangerous and ordered Mr Gibbons comply with the terms of the City's dangerous dog declaration.
5. On 25 January 2013, Mr Gibbons was ordered to pay Council's costs incurred in the proceedings.
6. Following the unsuccessful appeal in the Local Court, Mr Gibbons made application to Council to revoke the dangerous dog declaration.
7. The Department of Local Government has issued guidelines to assist Councils determine whether a dangerous dog declaration should be revoked. These guidelines include consideration of 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), and a behavioural assessment from a qualified professional.
8. The City elected to appoint a panel consisting of a dog behavioural expert from Melbourne, a manager from another council who is experienced in the operation of the Companion Animals Act and the City's Companion Animals Liaison Officer to review the application for revocation.
9. The City appointed panel unanimously recommended that the dangerous dog declaration should not be revoked, as it was not in the public interest to do so.
10. At its meeting on 26 August 2013, Council resolved to defer a determination on the application from Mr Gibbons, pending a number of actions being taken (see Attachment A). These actions are addressed below.

Inspection of Oscar by suitably qualified expert

11. Dr Gabrielle Carter, a veterinarian with a special interest and training in the field of animal behaviour, undertook a physical examination and behavioural analysis, including a temperament assessment, of Oscar on 24 October 2013.
12. Dr Carter advised that she does "... not see the need for stringent housing requirements imposed by the Dangerous Dog declaration", but recommended that other requirements and restrictions similar to a dangerous dog should be retained.
13. Dr Carter also recommended the following actions:
 - (a) repairs be made to the existing fencing in the rear yard of Oscar's residence to afford safer and more secure confinement whilst Oscar is living there;

- (b) at all times when in public, Oscar be walked on leash and wear a basket muzzle;
- (c) at all times, Oscar be supervised and handled with awareness and avoidance of situations that may cause Oscar to use aggression;
- (d) Oscar should wear a 'Give Me Space' collar, lead or jacket, or equivalent when in public;
- (e) Oscar should never be left unsupervised in public or tethered in a public place; and
- (f) Oscar's arthritic (and any other) pain conditions be managed appropriately under the direction of a veterinary surgeon, as necessary.

Inspection of property on which Oscar is kept

14. A City Ranger inspected Mr Gibbons' property on 25 October 2013, and found that the backyard could serve as an enclosure, the warning sign and restraint mechanisms (muzzle and lead), met the requirements of the *Companion Animals Act 1998*.

Letter to Minister for Local Government by Lord Mayor

15. The Lord Mayor wrote to the Minister for Local Government on 24 September 2013 advocating for amendments to the *Companion Animals Act 1998* (see Attachment B). A reply was received on 16 October outlining the introduction of legislation to create a menacing dog category (see Attachment C).

Amendments to Companion Animals Act 1998

16. On 18 November 2013, amendments to the *Companion Animals Act 1998*, which make provisions for menacing, dangerous and restricted dogs and the duties and responsibilities of their owners, took effect.
17. The amendments introduce the new category of menacing dog. Pursuant to section 33A of the Act, a dog is "menacing" if it:
 - (a) has displayed unreasonable aggression towards a person or animal (other than vermin); or
 - (b) has, without provocation, attacked a person or animal (other than vermin) but without causing serious injury or death.
18. The control requirements for dangerous dogs apply to menacing dogs, with the exception that there is no prescribed enclosure for a menacing dog. The dog must however, when it is on property in which it is ordinarily kept and is not under the effective control of a person of or above the age of 18 years, be enclosed in a manner that is sufficient to restrain the dog and prevent a child from having access to the dog.

Proposed reclassification of Oscar from dangerous to menacing dog

19. The amending provisions anticipate that a dog that has been declared dangerous could fall within the definition of a menacing dog. The report of Dr Carter, together with previous assessments and the history relating to Oscar, supports that it may be appropriate to reclassify Oscar as a menacing dog. This reclassification would revoke the dangerous dog declaration of 20 December 2011.
20. It is proposed that an authorised officer notify of the City's intention to declare Oscar a menacing dog pursuant to the *Companion Animals Act 1998*. Mr Gibbons will have seven days to respond to this notice with written representations, which must be taken into account prior to declaring Oscar a menacing dog. If Oscar is declared a menacing dog, Mr Gibbons will be required to implement control measures for Oscar in the public domain, but will not be required to keep Oscar in the enclosure prescribed by clause 26 of the *Companion Animals Regulation 1998* at his residence.

FINANCIAL IMPLICATIONS

21. Recovery by the City of costs awarded by the Court as a result of the proceedings brought by Mr Gibbons in 2012 will be sought through a process of costs assessment and determination by a costs assessor.

RELEVANT LEGISLATION

22. The *Companion Animals Act 1998* and *Companion Animals Regulation 1998*.

OPTIONS

23. Council has the option of:
 - (a) retaining the existing dangerous dog declaration;
 - (b) revoking the dangerous dog declaration and removing the requirement for any control measures on Oscar; or
 - (c) noting that the City will notify of its intention to declare Oscar a menacing dog pursuant to the *Companion Animals Act 1998*.

RISKS

24. Should there be no control measures imposed in the management of Oscar, there is a risk he will continue to display aggression when confronted with unpredictable stimuli or anxiety, resulting in possible further attacks on an animal or person.
25. If Oscar is involved in a further attack on an animal or person, the injured person or owner of an injured animal may seek compensation.

GARRY HARDING

Director City Operations