

10.1 Dog Attack Review - 14 Lydiate Street Noarlunga Downs

Update report following review of Council's actions.

This is an update on a previously reported project, concept or issue.

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File Reference:

Attachments: 1. Letter of instruction (2 pages)
2. Advice from Wallmans Lawyers (10 Pages)

1 Executive summary

1.1 Topic

Update report following review of Council's actions.

1.2 Context

Following a presentation to Council at its meeting of 1 September 2009 from a resident who was concerned about dogs at 14 Lydiate Street, Noarlunga Downs and the actions of council staff in investigating matters associated with those dogs, Council resolved:

- 1. That Council review the investigation of the matter of dog behaviour at 14 Lydiate Road, Noarlunga Downs including the viability of a dangerous dog order.*
- 2. That a report on this matter be presented to a future meeting of Council.*

Following the Council meeting, Wallmans Lawyers were engaged to undertake a review of the matter. A copy of the letter of instruction is contained at attachment 1.

Advice has now been received from Ms Cimon Burke of Wallmans Lawyers (attachment 2).

1.3 Suggested outcome

It is suggested that Council consider this item in Confidence. Section (ii) 90(3)(h) of the Local Government Act 1999 is suggested as the most appropriate to use for this purpose.

This item is presented as a confidential item because of legal advice provided as an attachment.

The possible implication of not considering this item in confidence is that should Council take a course of action in conflict with advice, the content of

the advice could be used against council in any subsequent appeal proceedings.

2 Recommendation(s)

1. That:

a. **under the provisions of Section 90(2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at the meeting in order to consider in confidence this item.**

b. **Council is satisfied that it is necessary that the public be excluded to enable Council to consider the information at the meeting on the following grounds:**

Section 90(3)(h) legal advice.

c. **accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.**

2. That the report be received and noted.

3. That the actions of council staff taken under the Dog and Cat Management Act in relation to the dogs at 14 Lydiate Street, Noarlunga Downs be endorsed.

1. That Council note that upon determination of the matter in accordance with this recommendation, the agenda report and attachments will no longer be confidential, and will be available to the public.

Key Factors

3 Discussion

To conduct a full review of the circumstances surrounding the incidents involving the dogs at 14 Lydiate Street, Noarlunga Downs it was considered that a legal expert would be able to provide the most comprehensive advice.

Given that Norman Waterhouse Lawyers had provided some advice during the initial investigation it was decided to engage Wallmans Lawyers to undertake this review to ensure Independence.

It can be seen from 2.4.5 and 2.4.6 of the legal advice that it is the solicitor's view that the Menacing Dog Order was appropriate in the circumstances.

At 2.4.7 we are advised that it would be inappropriate to issue dangerous dog orders unless the dogs are involved in further incidents and/or there is sufficient additional evidence to support such a course of action being taken.

In concluding the advice, Ms Burke has advised that the actions of staff were appropriate and reasonable in all the circumstances.

This report has been provided as a confidential item. Should Council accept the legal advice and endorse the staff actions in this matter it is intended that the report and attachments not remain confidential.

Should Council resolve to take a course of action that is contrary to the advice provided, there are some risks that the order could be successfully challenged particularly given that the owner has taken action already to comply with the menacing dog order we have issued. Whilst this action is not recommended on the basis of the review outcomes, in the event of Council withdrawing the menacing dog order and issuing a dangerous dog order, a resolution resolving to keep the document confidential until the conclusion of any legal action or appeal under the Act would be appropriate. A model resolution in this eventuality is provided below:

Replace part 3 of the recommendation with the following:

3. *That the actions of staff in relation to issue of orders under the Dog and Cat Management Act in relation to dogs at 14 Lydiate Street Noarlunga Downs, and the review of those actions by Wallmans Lawyers dated 1 October 2009, be noted, and that:*
 - (a) *Council considers that on balance a dangerous dog order be issued in relation to dogs kept at 14 Lydiate Street Noarlunga Downs, and that the menacing dog order issued under the Act be withdrawn*
 - (b) *The complainants in this matter be advised of Council's decision to withdraw the menacing dog order and issue a dangerous dog order under the Dog and Cat Management Act.*

Replace part 4 of the recommendation with the following:

4. *That an order be made under the provisions of Section 91(7) and (9) of the Local Government Act 1999 that the agenda report and attachments including the minutes and the report of the Council relating to discussion of the subject matter of the documents, having been dealt with on a confidential basis under Section 90 of the Act, should be kept confidential on the grounds of information contained in 90(3)(h) until conclusion of any legal action and appeal periods that may arise from the issue of an order under the Dog and Cat Management Act.*