



Ref: A5637511

15 November 2024

Karen Arnold
Invercargill

By email: [REDACTED]

Tēnā koe Karen

Invercargill City Council Bylaw 2008/1 - Environmental Health

I refer to your letter of 7 November 2024, and have now had time to consider your letter, having come back from leave.

Your letter is in three parts so I will respond to each of the parts for ease of reference.

The parts are: the Bylaw, your proposed remedies and your LGOMIA request.

LGOMIA Request

I can confirm that your request is being actioned under the Local Government Official Information and Meetings Act 1987, and we will have the response to you before the 20 working days ends on 5 December 2024.

I do not otherwise intend to traverse this topic further.

The Bylaw

It will come as no surprise that I do not agree with your analysis of the Bylaw and consider it has been and remains valid.

You will also be aware that we have recently undertaken a round of consultation on this Bylaw as it has been due for review, and notwithstanding your views you do not appear to have made a submission and certainly did not ask to speak to the Hearing Panel.

You will recall Bylaws are subject to public consultation and we invite all members of the public to tell the Hearing Panel what they think, what they like and what they do not like. It is also a chance for issues such as you have raised to be considered by the Panel and be informed by staff.

It is correct to say that a Bylaw can only be made where there is an empowering provision in an Act that allows Council to make a Bylaw.

The vast majority of Council's powers (but certainly not all) are contained in the Local Government Act 2002. This Act also gives Council its broad Bylaws making powers.

Sections 145 states:

145 General bylaw-making power for territorial authorities:

A territorial authority may make bylaws for its district for 1 or more of the following purposes:

- (a) protecting the public from nuisance:*
- (b) protecting, promoting, and maintaining public health and safety:*
- (c) minimising the potential for offensive behaviour in public places.*

I am sure you will agree this is a very broad set of powers and allows councils the flexibility to have Bylaws that regulate matters that affect each district in a manner that is unique to that district.

Section 146 then sets out a range of specific matters that councils can make a Bylaw for, but it notes that in no way should it be read to limit those broad powers as set out above.

In addition to the Local Government Act 2002, Council also has Bylaw making powers under the Health Act 1956.

Section 64 sets out the broad powers for Council to make a Bylaw under that Act.

There are two key provisions in this section that Council is using:

64 Bylaws

- (1) Every local authority may, for the purposes of this Act, make bylaws for all or any of the following matters, namely:*
 - (a) improving, promoting, or protecting public health, and preventing or abating nuisances:*
 - ...*
 - (u) for preventing the outbreak or spread of disease by the agency of flies, mosquitoes, or other insects, or of rats, mice, or other vermin:*

In the Health Act, Nuisance is defined. Because it is a large section I have appended it to the back of this letter for your ease of reference. I draw your attention to Section 29:

- (b) where any accumulation or deposit is in such a state or is so situated as to be offensive or likely to be injurious to health:*
- (c) where any premises, including any accumulation or deposit thereon, are in such a state as to harbour or to be likely to harbour rats or other vermin:*
- (q) where there exists on any land or premises any condition giving rise or capable of giving rise to the breeding of flies or mosquitoes or suitable for the breeding of other insects, or of mites or ticks, which are capable of causing or transmitting disease.*

As these subsections demonstrate, Council has the clear power to protect the public from "nuisance" caused by any of these matters. All three apply to long grass of overgrown/abandoned sections.

As can clearly be seen across both Acts, the Bylaws empower Council to protect its residents from nuisance. Nuisance is not defined in the Local Government Act, but has definitions in the Health Act. Both focus on protecting the public from these things.

The Oxford online dictionary defines nuisance as: a person or thing causing inconvenience or annoyance.

Invercargill's residents have over many years now set out that for them an overgrown section is a nuisance that they wish to be protected from.

Looking at the broad powers in the Local Government Act and the more specific powers in the Health Act, as well as the general definition of nuisance (for the Local Government Act as it is not defined by that Act) I am satisfied that Council has validly made the Bylaw and it is not ultra-vires. Indeed, it is well within the power of Council to make this Bylaw and to protect the Community from the nuisance that is long grass, overgrown sections and indeed noxious weeds.

I note your points relating to the Environment Southland Regional Pest Plant Plan. Regional and Territorial authorities often have overlapping jurisdictions or interests that cross both sets of jurisdictions.

The use of the definition of noxious plant is done as a means to keep the same definition for ease of use amongst Southlanders. It does not in any way limit the wider scope of the Council Bylaw for long grass and overgrown sections. The noxious plants are often found in sections that are overgrown but not always.

I do note, as you will surely have done, that both Broom and Gorse are pest plants to be managed under sustained control under the 2019 Southland Regional Pest Management Plan. This means that both are considered pest plants under the regional plan, and it is therefore entirely correct for them to be targeted as part of an overgrown section.

Regarding your comment about the 2017 Bylaw being out of date, I note that the 2019 Regional Pest Management Plan became operative two years after the Council Bylaw, it is therefore understandable if the situation had changed. I do not believe anything turns on this, the Council Bylaw incorporated a reference to an older document that will generally remain incorporated and operative for that Bylaw. As it is the Bylaw was renewed this year and is now current with the current Regional Plan.

As can be seen, Council has very broad powers to take steps to protect our community from a nuisance. For many years now, an overgrown section in long grass and other plants/ noxious or pest in urban parts of the City have been considered a nuisance.

The Acts give Council the power to take steps to protect the community from these nuisances.

Our community have accepted the Bylaw and the benefit it brings to ensure that the City is keep free from nuisance.

This issue sits squarely with the owner of a piece of land. As it is well known you cannot do things on your land that adversely affects others around you. Inaction has the same outcome as actively doing something. In this case, simply leaving a section to become overgrown so that it starts to impact neighbours, and long grass can start harbouring vermin which all trigger the need for the Bylaw and the powers it contains.

The Notice is a last step issues once all other engagement methods have failed to achieve any action being done. In your case, had you simply taken the step to mow / clear your section the Notice would not have been issued, had you engaged earlier when you were first notified that the section had been reported to Council the Notice would not have been issued.

In short Council's process allows many opportunities for the owner to do the right thing and clear/tidy their section before Council steps in, and Council only steps in because our community have told us this is what they expect us to do in these situations. The Act provides for this power and ability.

The Remedies Sought

I am well aware of the time you have spent on this issue, and also wish to acknowledge that because of some of your earlier concerns there have been process and procedure improvements in this area.

My offer for Council to cover half of the costs of the clearance that has been undertaken remains in place. Council only stepped in after repeated opportunities for you to clear the section yourself.

The property will remain on the inspection schedule until such time as there is reason for it not to be on it. Once a property remains clear at four subsequent inspections it drops off from the list. This is entirely in your hands.

The Notice issued in December 2023 has expired and has no further effect. The only ongoing effect is that the property is on the inspection list each year.

The offer to reduce the amount owed to half the value being \$2,660 remains open for you.

Council will not cover your legal costs you have incurred.

Conclusion

I, like you, would like this matter to be resolved.

To do so, the section must remain free of long grass. The Bylaw has a very generous threshold of 20 cm.

Yours faithfully



Michael Day
Chief Executive

Health Act 1956

Nuisances

29 Nuisances defined for purposes of this Act

Without limiting the meaning of the term **nuisance**, a nuisance shall be deemed to be created in any of the following cases, that is to say:

- (a) where any pool, ditch, gutter, watercourse, sanitary convenience, cesspool, drain, or vent pipe is in such a state or is so situated as to be offensive or likely to be injurious to health:
- (b) where any accumulation or deposit is in such a state or is so situated as to be offensive or likely to be injurious to health:
- (c) where any premises, including any accumulation or deposit thereon, are in such a state as to harbour or to be likely to harbour rats or other vermin:
- (d) where any premises are so situated, or are in such a state, as to be offensive or likely to be injurious to health:
- (e) [Repealed]
- (f) where any building or part of a building is so overcrowded as to be likely to be injurious to the health of the occupants, or does not, as regards air space, floor space, lighting, or ventilation, conform with the requirements of this or any other Act, or of any regulation or bylaw under this or any other Act:
- (g) where any factory, workroom, shop, office, warehouse, or other place of trade or business is not kept in a clean state, and free from any smell or leakage from any drain or sanitary convenience:
- (h) where any factory, workroom, shop, office, warehouse, or other place of trade or business is not provided with appliances so as to carry off in a harmless and inoffensive manner any fumes, gases, vapours, dust, or impurities generated therein:
- (i) where any factory, workroom, shop, office, warehouse, or other place of trade or business is so overcrowded while work is carried on therein, or is so badly lighted or ventilated, as to be likely to be injurious to the health of the persons employed therein:
- (j) where any buildings or premises used for the keeping of animals are so constructed, situated, used, or kept, or are in such a condition, as to be offensive or likely to be injurious to health:

Appendix 1

- (k) where any animal, or any carcass or part of a carcass, is so kept or allowed to remain as to be offensive or likely to be injurious to health:
- (ka) where any noise or vibration occurs in or is emitted from any building, premises, or land to a degree that is likely to be injurious to health:
- (l) where any trade, business, manufacture, or other undertaking is so carried on as to be unnecessarily offensive or likely to be injurious to health:
- (m) where any chimney, including the funnel of any ship and the chimney of a private dwellinghouse, sends out smoke in such quantity, or of such nature, or in such manner, as to be offensive or likely to be injurious to health, or in any manner contrary to any regulation or Act of Parliament:
- (n) where the burning of any waste material, rubbish, or refuse in connection with any trade, business, manufacture, or other undertaking produces smoke in such quantity, or of such nature, or in such manner, as to be offensive or likely to be injurious to health:
- (o) where any street, road, right of way, passage, yard, premises, or land is in such a state as to be offensive or likely to be injurious to health:
- (p) where any well or other source of water supply, or any cistern or other receptacle for water which is used or is likely to be used for domestic purposes or in the preparation of food, is so placed or constructed, or is in such a condition, as to render the water therein offensive, or liable to contamination, or likely to be injurious to health:
- (q) where there exists on any land or premises any condition giving rise or capable of giving rise to the breeding of flies or mosquitoes or suitable for the breeding of other insects, or of mites or ticks, which are capable of causing or transmitting disease.