

C/- PO [REDACTED]
Invercargill North
Invercargill 9841

01 April 2024

Michael Day
Chief Executive
Invercargill City Council
Michael.day@icc.govt.nz

Re: Complaint - Invercargill City Council Staff

This letter follows on from two in-person meetings I had with you on behalf of the [REDACTED], which owns a section at [REDACTED] Bluff. These occurred on January 18, 2024 and January 31, 2024. Also present was [REDACTED] trustee and lawyer Tony Irvine, and the council's in-house lawyer, Michael Morris.

The purpose of the meeting on January 18, 2024, was for me to give a courtesy "heads up" about concerns the trust had in its dealings with the Invercargill City Council in relation to gorse/noxious weeds at [REDACTED] St, and how council's own nuisance gorse/noxious weeds on adjacent reserve land was impacting on the trust's section.

At this stage it is appropriate for me to thank you and Michael Morris for meeting with us. The tone of the meeting was positive and cordial and I knew my concerns were heard and understood. This was confirmed at the follow-up meeting of January 31, 2024 when the following concessions were made:

- The three compliance notices issued by council (two in 2022+ one in 2023) to Hinahina Trust were unlawful and were in breach of the New Zealand Bill of Rights Act (NZBORA) in that they failed to explain when the 7-day period, during which an appeal could be lodged in the District Court, began and ended;
- That Invercargill City Council had an obligation to manage its gorse/noxious weeds as set out in Environment Southland's **Southland Regional Pest Management Plan** and had failed to do so until prompted by my complaint;
- That having failed to identify a very real conflict of interest when dealing with my concerns, three senior council staff members failed to manage the conflict and came to legal conclusions that ignored my position and favoured council's interpretation;
- That council staff failed to enforce the first compliance notice of May 2022 by remaining silent for five months;
- That council knew, prior to sending the second compliance notice in October 2022, that it was required to manage the gorse/noxious weeds on its reserve land that shared a boundary with ALL landowners, not just those who complained and

- Between the meetings of January 18, 2024 and January 31, 2024 representatives of organisations that own/manage reserve land on Bluff Hill had met with a view to developing a management plan regarding the gorse/noxious weeds. Those who attended included representatives from the city council, Department of Conservation and the Bluff Hill Environment Trust.

Background

To understand the depth of the trust's concerns and frustrations, it is necessary to add context to this situation. To be clear, the trust has never denied it has obligations as set out in the Environmental Health bylaw. Rather, the trust attempted to start a constructive dialogue with council given the fact it (council) required the trust to manage its gorse/noxious weeds on its side of the boundary, while council allowed its gorse/noxious weed-covered reserve land to spread unchecked:

10 May 2022: Hinahina Trust received an email notice from the Invercargill City Council, issued under the Environmental Health Bylaw 2008/1 demanding it complete the "necessary work" on the trust-owned section situated at [REDACTED] Bluff. The notice referred to previous letters/emails of 22.03.22 that had never been received.

On behalf of the trust, I immediately contacted the Environmental Compliance Officer [REDACTED] by phone. Following our conversation, I emailed [REDACTED] to confirm my view that council was to blame for the gorse and broom. I told her the section had been entirely clear when I bought it in January 2019 and I sent photos as evidence. (The section had been dug up for drainage to be laid).

[REDACTED] replied by email "Wow! It is a big difference..." She also contacted the roading department to ask about council's maintenance of its roading reserve on the land behind [REDACTED] St "...and this is their answer: "The paper road we would only pest Spray (Gorse etc) if requested..."

Having mulled the situation for a couple of hours, I sent an email to the Manager – Governance and Legal Michael Morris, cc'ing the chief executive Clare Hadley. I again stressed my belief that council's own reserve land was the cause of the problem and highlighted the apparent hypocrisy of the council deeming my section to be a risk to environmental health yet allowing its own hillside of gorse and broom to remain unchecked. I wrote: "I wish to engage in constructive dialogue about how council intends to fix the problem it has caused my property and how it will ensure this doesn't continue to happen."

The same day Michael Morris replied to my email, advising he had copied in Trudie Hurst – Group Manager Customer and Environment and Gillian Cavanagh "who is the manager for this area". He advised he would work with them and they "would come back to me".

I heard nothing for several months, until...

06 October 2022: The trust received another notice under the Environmental Health Bylaw. Again I emailed Michael Morris. He advised he "had referred this to the appropriate team to resolve and clearly that has not happened so I apologise for that". Once again, he advised he had copied in Gillian Cavanagh and Trudie Hurst and they would get back to me.

10 October 2022: Gillian Cavanagh sent me an email acknowledging my concerns that the council's "unmaintained paper road" was causing weeds and gorse to encroach on my property. She advised she was "investigating this issue and have reached out to our Infrastructure Operations team to understand the maintenance schedule for the paper road." She said she would be in touch.

14 October 2022: Gillian sent an email regarding the paper road reserve behind my property. She advised "I can confirm that this area has been cleared of vegetation and planted in natives". She attached a photo and advised the notice against me stood. She advised she was willing to meet me on site if I wanted to.

I replied the same day, saying it was great news about the planting but that I still believed that the cause of the broom/gorse onto my section was from council's previously unmaintained reserve.

I advised I was happy for a contractor to go on my land to carry out the necessary work but didn't think it should be at my cost.

21 October 2022: Gillian sent an email saying she had been "researching" my concerns. That research consisted of assessing aerial photography and discussing the history of the site with the previous owner. As a result, she had determined there had always been gorse and broom on the site and she did not see a liability issue for council.

The same day I emailed Gillian and asked that she forward, urgently, transcripts of her conversations with the previous owner, copies of the aerial photos and other documents she had relied upon to make a determination "that flies in the face of common sense".

25 October 2022: Gillian responded that my request would be treated as an Official Information Act request but didn't think it would take "the 20 days allowed for under the legislation".

02 November 2022: Gillian replied with a decision on the Official Information Request. She sent a link to aerial photos of my section from 1962, 1996, 2001, 2006-07, 2011, 2014, 2016 and 2022. Also was a screenshot of a Google Earth image dated 13 January 2018.

There was no aerial information from 2019 when I purchased the section, 2020, or 2021.

There was also redacted notes from her conversation with the former owner which were inputted into the database AFTER I requested the information.

By now I was really frustrated. I sent Gillian another email suggesting her "investigation" was seriously flawed, was biased towards council's own interests and couldn't possibly be fair or impartial. I asked that she confirm that the documents she had sent was the sum total of "evidence" she relied upon.

18 November 2022: This time I received an email from Trudie Hurst. She confirmed she had consulted with the internal legal team which advised the decision was appropriate based on the information they had.

20 November 2022: I emailed Trudie and asked how the Invercargill City Council managed its gorse/broom problem.

24 November 2022: Trudie emailed advising the Bluff Hill reserve is zoned rural, its obligations set out under the Southland Regional Pest Management Plan 2019-2029 and enforced by Environment Southland. She referred to a Good Neighbour 10m buffer rule.

She said she needed time to check what records were held regarding how council, as landowner, had maintained the site, which she treated as an Official Information Act request.

12 December 2022: Trudie emailed, advising she could provide no evidence or records of council ever having undertaken maintenance work on its land.

I replied, again expressing my frustration about how unreasonable council had been, considering its very real conflict of interest. Again, I gave permission for council to clean up my section at its cost.

Trudie replied, advising council disagreed with my interpretation of the situation. She advised, because I had taken no action, council would engage a contractor to remove the weeds and this would be charged to me. She concluded: "...the decision is final and the charges will be returned to the landowner". She offered no right of appeal.

I asked: "Can you tell me your understanding of a 'conflict of interest' and how was it considered during your decision-making process?"

14 December 2022: Trudie advised she was struggling to see the relevance of the question (about conflict of interest). She declined to answer any other questions relating to this matter. She did advise I could contact the Ombudsman for concerns about the way I had been treated.

20 December 2022: I sent chief executive Clare Hadley a courtesy email advising I would be lodging a complaint with the Ombudsman Office.

21 December 2022: Clare Hadley thanked me for the advice. A complaint was lodged with the Ombudsman. (It's at this stage Hinahina Trust had to rely on the speed of the Office of the Ombudsman to deal with my complaint).

June 2023: The Ombudsman's finding was sent and explained that, contrary to Trudie Hurst's assertion that any complaint should be lodged with the Ombudsman, council's own complaint process said it should have been raised in the first place, with the chief executive.

21 December 2023: [REDACTED] Trust receives a notice to comply with the Environmental Health Bylaw. This time, the problem appeared to be long grass. The notice required it to be removed completely by January 18, 2024, even though the bylaw allows for grass less than 25cm high. Just as the previous two notices had failed to advise when the 7-day District Court appeal period began and finished, so too did this notice. It seemed no consideration was given to the fact the District Court closed for the Christmas/New Year period on December 23, 2023 and did not reopen until January 03, 2024. Nor were statutory holidays taken into account when the compliance date of January 18, 2024 was calculated.

It was this day, I emailed on behalf of the trust, Invercargill City Council chief executive Michael Day to request a meeting in the new year. The email was acknowledged with a promise it would be organised when he was back from the holiday period.

It is at this point that I didn't expect anything else to happen, except it did...

22 December 2023: Jonathan Shaw, Group Manager – Consenting and Environment, sent an email to me advising Michael Day had asked him to look at records relating to [REDACTED] "so that he (Michael Day) may better understand the situation prior to arranging a meeting with you as per your request."

He then asked if he could "beg your patience" and allow time for him to review the records and speak with the Environment Team.

In my reply dated the same day, I suggested he did nothing until I had discussed my concerns with Michael.

11 January 2024: Jonathan Shaw sent an email advising he had reviewed the records and correspondence, that council maintained its position “on the matter”. (The “matter” being the control of gorse and broom on Hinahina Trust’s Bluff land and NOT council’s maintenance of its own noxious weeds on reserve land). He offered that it was my “prerogative” to continue to pursue a complaint with the Ombudsman, that costs (\$5000+) council had previously incurred clearing [REDACTED] St in January 2023, “need to be paid as soon as possible to prevent any further action.”

He concluded the email: “I respectfully draw your attention to the fact that action to control gorse and broom on your property and recovery of the costs involved cannot be stayed pending the outcome of this process.”

18 January 2024: First meeting occurred with Michael Day during which he apologised for the correspondence Jonathan Shaw emailed on 11 January, 2024 and advised it should never have been sent. Michael Day also confirmed that he had requested the notice issued on 21 December 2023, be put on hold.

The issue

Michael, the issue that remains unresolved, is the way I (on behalf of the trust) was dealt with by senior council staff during a period spanning almost two years.

My request of May 2022, to have constructive dialogue with council to discuss its gorse/noxious weeds problem was promised but ignored. The compliance notice was never enforced.

Not only did three senior staffers (Gillian Cavanagh, Trudie Hurst and Jonathan Shaw) fail to identify they had very real conflicts of interest while they considered whether council’s own gorse/noxious weeds were impacting [REDACTED] St, it very much felt they were using legislation – and the powers council has – as a weapon to intimidate.

Gillian Cavanagh failed to advise that the clearing of a small strip of land behind [REDACTED] St – which was planted with natives – was undertaken because Environment Southland had advised Invercargill City Council that it WAS required to manage the area as a result of the concerns I raised, but weren’t acknowledged, in May 2022.

Gillian Cavanagh conducted “an investigation” that she was not qualified to undertake and came to conclusions that favoured council and denied me an opportunity to inform the inquiry.

Trudie Hurst continued the failure with: deception by omission, when she failed to disclose Environment Southland’s view about what the city council’s obligations were in managing its Bluff Hill land; when she refused to consider whether or not she had a conflict of interest; when she incorrectly advised that I should complain to the Ombudsman and when she blocked me from sending her any further correspondence.

Jonathan Shaw then made a bad situation worse, when he injected himself into the situation and, instead of following the chief executive’s request for records that would help get (you) up to speed ahead of a January 2024 meeting with me, Jonathan Shaw conducted his own “investigation” and relied on “facts” which were untrue. As a result, he reached a conclusion which would have excluded my meeting with you, incorrectly advised I should complain to the

Ombudsman and then threatened to take further action against the Trust, if the cost of clearing the section in January 2023, remained unpaid.

Given that this was my personal experience, which I knew how to escalate when the timing was right, I have grave concerns about how other ratepayers are treated when they raise issues about council's responsibilities and obligations. Add to that the question of how many compliance notices have been issued where rights have been breached by the council failing to give proper notice regarding the appeal process? And finally, the failure of senior council staff to recognise a REAL conflict of interest, when a perceived conflict is serious, must surely raise alarm bells about the quality of decision-making they are making and how it may impact unfairly/unjustifiably on the good people of this city.

I thank you for the positive steps both you and Michael Morris have taken to date to address some of my concerns and trust that the work will continue when it comes to creating a positive council culture, with a focus on how staff treats Invercargill citizens.

Regards

Karen Arnold

On behalf of [REDACTED]

DEAR MICHAEL...PODCAST