



A3624644

24 November 2021

MEMO TO: Trudie Hurst, GM Customer and Environment
Rhianon Suter, Manager Strategy and Policy

MEMO FROM: Michael Morris, Legal Counsel

**BLAKCBURN V INVERCARGILL CITY COUNCIL
BYLAW NOTICE APPEAL**

Background

On 2 September 2020, Council issued a notice to Mr Blackburn that he must remove the two sheep he had on his property at [REDACTED] Invercargill, after repeated complaints about then leaving and going to neighbours or being on the road.

The Notice provides that the person receiving this notice may appeal it to the District Court.

Mr Blackburn did so.

A Hearing was held in the District Court on Friday 17 November 2021.

The Appeal was struck out for want of Jurisdiction by His Honour Judge Tohey.

During the hearing, His Honour made a number of comments about the Keeping of Animals Bylaw.

Jurisdiction

There is an issue with our Notices issued under the Bylaw. There is no power in the Local Government Act 2002, Health Act 1956 or the Bylaws Act 1910 that gives jurisdiction to the District Court to hear appeals against a notice issued under a Bylaw.

This means that the Court had no power to hear the appeal. I have spoken to Raewyn Thompson and asked her to change the pathway template for this notice.

Recommendation

Going forward we should offer an appeal to the Hearings Panel of Council to determine, much in the same way that appeals against decisions to classify a dog are handled.

The Bylaw Provisions

The Judge was critical of the very general powers set out in the Bylaw. He felt there should be a much greater level of specificity in a Bylaw when Council is going to impose non-appealable notices on people keeping animals.

The Judge also commented on the power to order the removal of the sheep.

The power in the Bylaw was to impose a limit. His Honour said that a limit implies at least one, not zero.

His Honour felt, that a limit of zero is not how the public would interpret the use of the term limit.

Recommendation

If we still intend to have the power to order the removal of animals like sheep we should say '*impose a limit or order the removal of*'.

Bylaw Review

I understand that the Bylaw is for review in 2022.

Based on the Court process there will need to be some redrafting of the Bylaw to provide greater certainty around the powers that we wish to use.

Michael Morris
LEGAL COUNSEL