



Opinion finds community can't take legal action against Lyndoch board

Description



Carol Altmann – The Terrier

The community cannot take the Lyndoch Living board to court on behalf of Lyndoch unless they are a general member or board member of Lyndoch, a legal opinion has concluded.

This means the chance for a collective, community court action against the board has come to an end.

Readers will recall that in March, \$12,000 was raised in crowdfunding to secure a top barrister's opinion on whether the board had breached its responsibilities, both individually and collectively.

[For clarity, this opinion applies to *a community action on behalf of Lyndoch*, not individuals or an individual taking legal action against Lyndoch, which is a separate issue.]

The argument was the board was failing to uphold the original spirit of Lyndoch by its mass rejection of general member applications last year.

The barrister's opinion started a step back, looking at whether the community could even take legal action against the board on behalf of Lyndoch.

It found they could not:

"...your clients would have no standing to bring any proceedings on behalf of [Lyndoch] if they were not members or directors," he wrote.

Unfortunately, according to the opinion, the only possible paths remaining for the community are difficult, potentially very expensive, and most likely futile.

"The best they could do is write to the Attorney-General as protector of charitable trusts and provide their complaints to the Attorney-General and hope that the Attorney took some action or at least investigated – there would be no guarantees that anything would come of it," the barrister wrote.

He then went on to say:

"They could, if they desired, ask the Attorney-General for her fiat (*an official order*) to commence a proceeding in her name, but a representative would have to be identified as a plaintiff and that person would be liable for costs and to indemnify the Attorney.

"Further, a fiat would only be granted if it could be shown that there was some reasonable basis to commence an action...That could only be achieved after significant investigations are undertaken to identify the directors and members ... and any conduct which may provide a basis for complaint – which will not be easy.

"This may all be a moot point for your clients at this stage, but it does seem like they would have had a significant hill to climb."

A significant hill to climb.

It says it all.

The community has been climbing hills for the past four years to bring greater light and transparency into Lyndoch Living's board.

We are still climbing.

Note: The crowdfunding balance is lodged in trust with a Warrnambool legal firm. This fund will now be used as a Lyndoch Fighting Fund for future actions and challenges on behalf of the community, residents or staff as the need arises. I will be sure to keep you fully informed, as always.

Second note: The online petition to remove the board and replace it with an administrator is here. (Scroll down to sign). <https://tinyurl.com/3nwac5nc> You can also sign a paper copy this Sunday, 24 July, from 11am to 1pm at the Wbool Civic Green.

Category

1. Opinion

Tags

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