

## Local Authority unreasonable to note requirement for fencing on LIM without inspection

<b>Legislation</b>	Ombudsmen Act 1975, Fencing of Swimming Pools Act 1987, Local Government Official Information and Meetings Act 1987
<b>Ombudsman</b>	David McGee
<b>Case number(s)</b>	321310
<b>Date</b>	2013

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*Whether Local Authority reasonable to include information on Land Information Memorandum ('LIM') when property had not been properly inspected—Ombudsman found the Council had no justification for including notation on the LIM and action unreasonable*

This complaint related to a Council's interpretation and application of the Fencing of Swimming Pools Act 1987 (the FOSPA) to properties adjoining storm water detention ponds in its district.

The Council identified certain properties which bordered storm water detention ponds and so may require fencing under the FOSPA. The Council wrote to the property owners and placed a notation on the LIM relating to each property, stating that the property may require fencing to comply with the FOSPA.

The Ombudsman considered that the Council acted unreasonably by placing such a notation on the property owners' LIMs without further investigation, and in doing so did not discharge its obligations to ensure compliance with the FOSPA.

However, the Ombudsman made it clear that his finding did not concern whether the complainant's property did or did not need to be fenced under the FOSPA. If the Council considers that it may, the Council should initiate action under the FOSPA. But the Ombudsman concluded that it is not reasonable (or practicable) to employ LIMs to bring about the public safety protections that the FOSPA was designed to effect.

The Council accepted the Ombudsman's provisional opinion and agreed to withdraw the information regarding potential FOSP Act liabilities from the 122 properties previously

identified and write to the property owners advising this has been done and explaining the reasons why. The Council agreed that the letter will also outline the following steps which the Council should take, namely, that Council:

Conduct a detailed desktop review of the 122 properties to further assess the nature of the ponds and determine, on a case by case basis, whether the unique nature of each reveals whether a house or other structure is being used in association with the pond;

Where it can be determined this is not the case no further action will be taken; and

Where it appears there may be such an association, the Council will write to the property owners and advise them of the situation, advising that Council officers will be in contact to arrange a time to inspect the pond to establish if there are any requirements to fence the pond under the FOSP Act.

The Council advised that Letters were sent to all properties before the end of May 2013. The desktop survey was to take longer but, subject to other workloads, this would be completed and letters sent, where required, by 31 August 2013. Inspections that may be required were to be arranged with property owners within a reasonable timeframe following the despatch of the letters.

As the Council has agreed to remove the information from the LIMs, review each of the affected properties, and take further action where necessary through inspection to ensure compliance with the FOSPA, the Ombudsman took no further action and the complaint was closed.

### **Comment**

A full Final Opinion is published on the Ombudsman's website.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*