

Council not unreasonable to claim entitlement to non-refundable deposit

Legislation	Ombudsmen Act 1975
Agency	Local authority
Ombudsman	Nadja Tollemarche
Case number(s)	A3090
Date	1992

Unreasonable tendering of land when possible contract entered into – title of land not held by Council

The complaint was from a person who had approached the Council about purchasing or leasing a piece of land which he believed was owned by the Council. The Council indicated its willingness to consider this course and requested a \$300 non-refundable deposit ‘to start the process’. The deposit was paid, and a valuation carried out by Valuation New Zealand. Some months later another would-be purchaser indicated to the Council that it was interested in the land, on the grounds that as owners of the surrounding land, the loss of existing access through the sale would impede their farming operation. The complainant was subsequently advised that as another party was interested, the Council considered: ‘*Where there is more than one party interested, it seems the only fair thing to do is to dispose of that property by tender.*’

The matter was discussed with a solicitor and resulted in the complainant writing to the Council advising that the solicitor considered a contract had been entered into between Council and himself.

At about this time the Council requested its legal counsel to search the title and advise the procedure required to sell the block, while attempting to seek a compromise between the two buyers. This was not successful and Council reported that it did not believe it entered into a contract to sell to the complainant but rather an undertaking to investigate the possibility of a saleable property. The title search may prove that the land cannot be sold.

A legal opinion obtained by the Ombudsman endorsed the opinion received by the Council, that it did not seem likely that the payment of the \$300.00 non-refundable deposit without agreement on further terms would, even if the land were not reserve land, constituted a binding agreement. The Council had done no more than offer to negotiate a sale. In the Ombudsman's view, the reference to 'non-refundable deposit' made sense only in the context of a situation where neither party was bound to complete the sale if they chose not to, and was intended to indicate that if no sale eventuated, the money would be used to defray the Council's costs in the negotiations, whereas if a contract were subsequently entered into, it would be treated as a payment on account of the purchase.

Accordingly the Ombudsman formed the preliminary view that the Council had not acted unreasonably in this matter. The complainant was offered an opportunity to comment before this view was finalised. While nothing he stated caused the Ombudsman to change her view, a somewhat surprising item of information altered the outcome of the investigation substantially.

Before confirming the final view, the Ombudsman checked the results of the title search, which revealed that the title was not in fact, held by the Council and that the land in question belonged to the Crown.

Discussions with the General Manager led to the Council's decision to hand the matter over to the Department of Survey and Land Information, along with the names of the two interested parties. The complainant was advised accordingly and received a refund of the \$300.00 fee from the Council, despite the fact that it was non-refundable.

For the above stated reasons, the investigation was discontinued.

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