

Local Authority rejects Ombudsman’s recommendation to monitor nuisance as required under RMA

Legislation	Ombudsmen Act 1975, Resource Management Act 1991
Agency	Local authority
Ombudsman	Anand Satyanand
Case number(s)	A5246
Date	1997

Local Authority failed to respond to complaints from residents about dust and noise nuisance. What it should have done was to consider complaints from residents by undertaking relevant surveys and tests to determine the extent of the problem being complained about (this is a responsibility under ss17 and 35 of the Resource Management Act 1991)—complaint sustained—Ombudsman recommended the Local Authority monitor noise and nuisance effects—recommendation rejected

In this case, a group of residents petitioned their local authority with a view to it taking action to minimise the adverse effects they were suffering as a result of increased heavy truck movements along their street. After considering the petition, the Works and Services Committee decided not to take any action, partly because it did not consider the data presented by the petitioners sufficient to warrant action, partly because of the importance to the local economy of the work undertaken by the trucks, and also because there was no alternative access to the industrial site located at the end of the street in question. The Committee’s minutes showed that it was intended to monitor the situation, discuss ways of minimising the impact of the trucking operations with the company concerned, and investigate road safety issues raised by the petitioners.

One of the residents then approached the Ministry for the Environment for advice, and the Ministry corresponded with the local authority about the authority’s duty to ensure that steps are taken to mitigate any adverse effect on the environment and its ability to take enforcement action under the *Resource Management Act* (RMA). However, the local authority, while acknowledging that it had the power to control nuisance characteristics of vehicles on

roads by issuing an abatement notice against the activity concerned, did not consider it reasonable to do so in this case. In support of its decision it argued that no objective measurements of the effects of the trucks had been supplied; the end of the street had been industrially zoned land for a considerable number of years; it was not clear how many residents in fact objected to the trucks; the concentrated use of the road by heavy traffic was for short periods each month; and there were significant benefits to the community of the business in which the trucks were involved. At this point the matter was referred to the Ombudsman for investigation.

The Ombudsman found that upon receipt of a complaint from a resident about the adverse effect of an activity in terms of section 17 of the Act, the local authority's enforcement officers would investigate the matter to determine if the complaint had substance. However, in this case the local authority had not monitored the effect of the trucks and no noise equipment had been used, notwithstanding a performance measurement in its Annual Plan in relation to section 35 of the RMA of initiating the investigation of unreasonable noise (i.e. industrial noise) within 72 hours of receipt of a complaint.

The Authority claimed it did not need to issue an abatement notice because no objective measurements of the noise and nuisance effects had been supplied. However there is an obligation under the RMA to respond to a complaint by undertaking its own noise tests and traffic counts. In the circumstances, the Ombudsman formed a provisional view that Authority was unreasonable not to comply with the RMA and the complaint should be sustained. The Authority rejected this view, claiming that no useful purpose would be achieved by monitoring traffic because it could not control the cause of road noise unless it introduced a bylaw and it was not prepared to do so. Also, the traffic was generated by an industrial activity allowed in the District Plan, and to introduce a bylaw to enable it to take enforcement action in this case would put ratepayers to considerable expense and could lead to similar situations arising in other parts of the locality.

However, the Ombudsman concluded that the Authority had overlooked its responsibilities under the RMA and all that was being asked in this case was for the Authority to monitor the situation to determine the nature and extent of the problem. The question of how any problem might be mitigated could not be addressed until it was established that a problem existed. Accordingly, the provisional view was confirmed; the complaint sustained; and a recommendation made that the Local Authority should conduct a survey to monitor the noise and nuisance effects of the trucks. The local authority rejected the recommendation.

Comment

As the Authority decided to make the Ombudsman's report public, recourse was not had in this case to the provisions of section 23 of the *Ombudsmen Act 1975*, which authorises an Ombudsman to require publication of a summary of the Ombudsman's report and recommendation where a Local Authority declines to give effect to a recommendation.

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