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| Local Authority issued a Project Information Memorandum (PIM) unlawfully |
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| Legislation Ombudsmen Act 1975, Building Act 1991, Local Government Official Information and Meetings Act 1987  Agency Local authority  Ombudsman Sir Brian Elwood  Case number(s) A5727  Date 1997 |

*Property developer changed basis of development and obtained new Project Information Memorandum (PIM) containing conditions not prescribed in s 31(2) of the Building Act 1991—complainant considered the contents of the PIM unauthorised as the changes had not been agreed to by purchasers of the owner developing the property and action incurring legal expenses—Ombudsman found PIM not issued lawfully but agreed for Authority to amend the PIM to comply with LGOIMA—complainant offered ex gratia payment in recognition of legal costs incurred*

The complainant was a solicitor acting for clients who had entered into an agreement to purchase a commercial property from developers who were erecting multi-unit buildings on a site and subdividing them. As part of the agreement with the developer the buildings were to be completed in accordance with the Building Code and the relevant building consents and code compliance certificates were to have been issued. Shortly before the buildings were completed, the developer’s solicitors advised the purchasers that the local authority wanted all purchasers of the lots created by the subdivision to accept certain covenants relating to the structural integrity of the buildings on the lots. The covenants were rejected by the purchasers, but at the time of settlement the solicitor was advised that the local authority had issued a further building consent for the property to which it had attached a PIM imposing conditions requiring the owners to carry out certain reinstatement work in the event of the buildings being modified or damaged.

A PIM is issued by a local authority and contains information identifying any relevant features of the land on which building work is proposed and details of authorisations or requirements of the local authority concerning the building work or use of the building. The solicitor considered the contents of the PIM to be unauthorised and sought an investigation of the local authority’s actions.

Inquiries disclosed that the developer had applied for building consent on the basis that the buildings would all be contained on one lot. The local authority processed the application on that basis, but in the meantime the developer subdivided the property. When the local authority’s building and planning departments compared notes and realised the buildings had been subdivided into units which were to be sold separately, the local authority requested the developer to provide a revised design showing compliance with the Building Code in relation to the new lots created by the subdivision. Construction was therefore well underway when the developer submitted a further application for building consent, showing alterations to the structural bracing of the buildings. The local authority issued the consent when the building was almost completed on the understanding negotiated with the developer that purchasers would be asked to accept covenants relating to the protection of the structural bracing. When it became clear that some purchasers would not accept the covenants, the local authority decided to issue the PIM, with a view to advising future owners of the interdependency of the buildings.

After reviewing section 31(2) of the *Building Act 1991*, which prescribes the content of a PIM, it was apparent that there was no provision for conditions of the type included by the local authority and that therefore the PIM had not been issued lawfully. However, it appeared that the local authority could include information about the structural bracing of the buildings in any Land Information Memorandum issued pursuant to section 44A of the *Local Government Official Information and Meetings Act 1987* in relation to the properties. The local authority accepted the view formed and agreed to amend the PIM to comply with the statute. In recognition of the legal expense incurred by the complainant’s clients, the local authority agreed to make an ex gratia payment of $500.

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