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| Local Authority not unreasonable to grant non-notified resource consent despite neighbour’s objections |
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| Legislation Ombudsmen Act 1975, Resource Management Act 1991  Agency Local authority  Ombudsman Anand Satyanand  Case number(s) A6192  Date 1998 |

*Local Authority granted non-notifiable resource consent for building extension where complainant claimed the structure would block his lake views. Council correctly applied s 94(2)(b) when it determined that no persons would be affected by the building because the adverse effect of the proposal on the environment was minor—allowing the proposal to proceed on a non-notified basis was not unreasonable*

This complaint by the owner of a lakeside property was directed at the failure of the local authority to require notification of a resource consent application made by the complainant’s neighbours. The complainant contended that a non-notified resource consent should not be issued where there was any chance that an affected party would have a reasonable case for objection. He considered that there were good grounds for objection to the application in question.

The decision not to notify the application for a resource consent was made pursuant to section 94(2) of the *Resource Management Act* which provided-

 (2) An application for a resource consent need not be notified in accordance with section 93, if the application relates to a discretionary activity or a non-complying activity and -

  (a) The consent authority is satisfied that the adverse effect on the environment of the activity for which consent is sought will be minor; and

  (b) Written approval has been obtained from every person whom the consent authority is satisfied may be adversely affected by the granting of the resource consent unless the authority considers it is unreasonable in the circumstances to require the obtaining of every such approval.’

The investigation revealed that there was an application for building consent to undertake the additions to the neighbours’ cottage. The proposal was scrutinised by planning staff to ascertain compliance with the District Plan.

In terms of section 94(2)(a), the local authority looked at the proposal in terms of the effect on the view from the lake, in relation to a possible extension of an existing esplanade reserve immediately adjacent to the site, and in relation to the adjoining property. It concluded that all the above were of a minor effect on the environment.

In considering section 94(2)(b), the local authority’s examination of the proposal found that no persons were considered to be affected as the proposal was shielded to a large extent by native vegetation on the common boundary to the west, and the proposal could not be seen from the property to the east. Any views that would be lost would be lost in any case by a conforming position. Furthermore, the owner of the adjoining property looked across the reserve in front of the property to the lake and the view through the applicants’ property from the complainant’s residence was one already obscured by vegetation on both properties, and by existing buildings on the applicants’ property.

In the light of the foregoing, the view was formed that the local authority did not appear to have acted unreasonably or contrary to law in concluding that the adverse effect of the proposal on the environment was minor. The view that no-one would be adversely affected by the granting of the resource consent and therefore allowing the proposal to proceed on a non-notified basis was upheld.

*This case note is published under the authority of the* [*Ombudsmen Rules 1989*](http://legislation.govt.nz/regulation/public/1989/0064/latest/DLM129834.html?src=qs)*. 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.*