

Local Authority determines adverse effect for non-notified resource consent

Legislation	Ombudsmen Act 1975, Resource Management Act 1991
Agency	Local authority
Ombudsman	Sir Brian Elwood
Case number(s)	C3944
Date	1998

Non-notified resource consent application for consent to erect second storey to property—neighbour denied objection and appeal rights—interpretation of s 94 of the Resource Management Act 1991

In this case the local authority dealt with an application for the addition of a second storey to a property on a non-notified basis. The neighbouring property owner complained because he had thereby been denied an opportunity to object or to appeal to the Environment Court.

The investigation focussed on whether the local authority had complied with the statutory requirements of section 94 of the *Resource Management Act 1991* which provides that where an application for a resource consent is processed on a non-notified basis, written approval should be obtained from every person whom the consent authority is satisfied may be adversely affected, unless the authority considers that it is unreasonable in the circumstances to require the obtaining of such approval.

In this case the local authority officer's reports on whether or not the application should proceed on a non-notified basis and on the application for consent were provided to the relevant committee on the same day. The report on whether or not the application should proceed on a non-notified basis did not address the question of the effects of the application on other parties. However, although the report on the application for consent noted that the proposal had an effect on the visual amenity enjoyed from adjoining sites and that the development would result in a large dominating structure, it stated that any effects arising from the proposal were not considered to be adverse ones.

The local authority said it had not obtained written approval from adjoining property owners because it had not considered that the consent application would result in any adverse effects on anyone else. However, there was no evidence to show that it had addressed the relevant issues in reaching that conclusion, particularly when the report on the consent had identified that the proposal would have some effects on the adjoining sites.

The local authority offered to seek a declaration from the Environment Court on the interpretation of the RMA and to pay the complainants costs associated with such action. As this was the appropriate forum in which to determine the issue, the investigation of the complaint was discontinued.

Comment

This case is one of an increasing number of complaints which arise essentially from a difference of view as between individuals and local authorities as to whether an individual may be adversely affected by the granting of a resource consent. Some local authorities have interpreted the legislation as meaning that if they are satisfied that there is only a minor effect on a person, consent to the application need not be obtained. However, the legislation requires local authorities to obtain written approval 'from every person whom the consent authority is satisfied may be adversely affected'. It does not define the magnitude or severity of the adverse effect.

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