

Local Authority required to ensure potable water condition meets standards

Legislation	Ombudsmen Act 1975
Agency	Local authority
Ombudsman	Sir Brian Elwood
Case number(s)	C5288
Date	1999

Complaint about potable water condition of subdivision consent where supply did not meet requirements under New Zealand Drinking Water Standards 1984 (revised 2005 and 2008)—Ombudsman found local authority failed to interpret data correctly before issuing resource consent on the subdivision—the water quality was substandard and the local authority provided incorrect advice about improving the quality—the local authority was required to compensate the complainants who had to obtain potable water from another source

The complaint in this case was that a District Council failed to ensure that the condition of a subdivision consent that a potable water supply be provided was met. The Council granted consent subject to conditions which included:

Water supply. That the subdivider shall provide a potable domestic water supply to lots 2, 3, 4, 6, 9, and 10. Water quality shall comply with the New Zealand Drinking Water Standards both chemically and bacteriologically.

The complainants had signed a sale and purchase agreement subject to the condition that the subdividers complied with the conditions of the resource consent. Water quality tests carried out for the Council identified some areas of non-compliance with the then New Zealand Drinking Water Standards, namely, excessive levels of iron, manganese and turbidity. The subdividers installed a filter and when the water was retested the local authority advised the subdividers that the water now complied with the conditions of the subdivision consent.

The complainants completed the purchase of the property and built their house, but after two weeks in residence the water was found to be objectionable. Crusty deposits began forming on

taps and tubs, and their hot water cylinder cracked. The local authority advised them that later test results suggested that excessive sodium bicarbonate in the water appeared to be interfering with the filter. The usual water softeners could not be used because, when combined with an elevated level of sodium, the water becomes salt water. As a last resort the water was treated with ozone in an endeavour to make it potable, but it had the effect of turning bromates in the water into carcinogenic bromides. The complainants received technical advice that there was no practical way of treating the water to make it potable.

The complainants contended that the local authority had failed to apply the 1984 Drinking Water Standards relating to levels of sodium and water hardness and that it erred in advising the subdividers that the water complied with the standards and the conditions of the subdivision consent.

The inquiries undertaken gave no indication that the local authority gave consideration to the well-established link between excessive alkalinity levels and water hardness. The local authority said due to its officer's limited knowledge of water chemistry at the time, it had relied on its advisers in respect of non-complying chemical levels. However, as consent authorities decide whether or not water is potable and whether conditions of a consent have been met, it is only reasonable that their decisions are able to be relied on. Before advising the subdividers the water complied with the conditions of the subdivision consent the local authority failed to ensure the water met the New Zealand Drinking Water Standards which the local authority had adopted as its determinant of potable water. The consequences were to the material detriment of the complainants both in terms of their having to obtain an alternative temporary water supply, and in the associated costs they had incurred. The complaint was sustained and the local authority referred the case to its insurers.

Comment

Drinking water standards were revised in 2005 and 2008. See *Drinking Water Standards for NZ 2005 (revised 2008)*.

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