

## Local Authority did not act unreasonably in remedying damage following tree removal

<b>Legislation</b>	Ombudsmen Act 1975
<b>Agency</b>	Local authority
<b>Ombudsman</b>	Leo Donnelly
<b>Case number(s)</b>	436209 (previously unpublished)
<b>Date</b>	2017

*Local Authority—removal of two pohutukawa trees—Council agreed to mitigate loss of these in conjunction with the land owner—Ombudsman considered Council did not act unreasonably*

In a city suburb, developers removed two pohutukawa trees and, allegedly, other vegetation for a building development. The complainant believed that this ‘deforestation’ of the area meant the slope was destabilised and prone to erosion, there was a loss of privacy, and the aesthetics and other amenities were eliminated. The Council had already been informed of the tree felling, had investigated the matter and was working with the property owners to mitigate the damage. However the complainant believed that the Council’s investigation was inadequate with regard to: its consideration of the extent of the damage; its acceptance of the mitigation planting plan (rather than requiring that the site was restored to its original condition), and; the enforcement decisions taken.

The Ombudsman investigated this complaint. He noted that the Council was working with the owner to restore and repair the damage. It was not contested that the developers admitted to having caused damage and that the owners were willing to work with the Council to mitigate the damage. Council had sought expert opinion on appropriate remedial works. It was also apparent that while the Council had considered alleged damage to other vegetation, it only had ‘clear, reliable evidence’ to prove the removal of two pohutukawa trees and not other vegetation. The Ombudsman did not consider the Council’s conclusion in this respect was unreasonable. It was noted that the complaint which the complainant had put to the Council, along with the supporting photographs, did not provide a detailed account of what vegetation had been removed and when.

The complainant wanted the area to be restored to its original condition. The Ombudsman advised the complainant that this was not a realistic remedy when it comes to the removal of trees and vegetation, particularly of a historic nature.

The Ombudsman could not criticise the Council on administrative grounds for using its discretion to determine that the mitigation planting plan would be the most appropriate method to remedy the alleged damage, having followed its enforcement policy. Given the uncertainty around what damage occurred, the limitations of what damage could be proven by Council, the concerns about time limits for prosecution even for the provable damage, and the willingness of the developers to accept responsibility for causing some damage and work towards remedying it, the Ombudsman did not believe that the Council had acted unreasonably in this regard. The complaint was not sustained.

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