

Local Authority not unreasonable to allow retrospective consents on building already constructed

Legislation	Ombudsmen Act 1975, Resource Management Act 1991
Agency	Local authority
Ombudsman	Beverley Wakem
Case number(s)	A13053 (previously unpublished)
Date	2009

Local Authority issued an abatement notice to developers—Ombudsman concludes it was reasonable for Council to allow building to proceed while consent process completed—Council acted in accordance with the Resource Management Act (RMA)

A developer was in the process of building on a property next to the complainant, who claimed that the building was not compliant with Building Act 2004. As a result of his complaints to the Council, the Council issued an abatement notice to the developer. The builder continued to build the two floors being complained about while the subsequent consent process was underway.

The Council granted building consent retrospectively (when the work had been completed). The complainant believed that work should have stopped while the consent process was underway.

The Ombudsman was not persuaded that the Council's approach in this case was unreasonable. This was because it was apparent that the Council had worked closely with the developer and had every confidence that the developer would cooperate in terms of achieving compliance and applying the necessary consents. The abatement notice required the developer to take all necessary actions to ensure the construction complied with the rules and standards of the District Plan. Furthermore, the consents were never a guarantee that the development would comply. The Ombudsman noted the pertinent factor in terms of achieving compliance was the issuance of the abatement notice. It was also noted that while the

complainant had 'strong views' about the development, the project was allowed for under the District Plan.

The complaint was not sustained. However the Ombudsman noted that the complainant should take some comfort from the fact that his concerns about the development had led to the abatement notice being issued in the first instance. The Ombudsman concluded that it was open to the Council to allow the complainant's neighbour (the developer) to deal with the identified infringements by way of application for a resource consent. This is the legal option under the RMA and is commonly resorted to in this type of situation.

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