

Local Authority unreasonable to review peppercorn rental without prior notice

Legislation	Ombudsmen Act 1975
Agency	Local Authority
Ombudsman	David McGee
Case number(s)	W61218 (previously unpublished)
Date	2009

Peppercorn rent paid to Council for encroachment licence fee for garage—Council increased amount—inconsistent process—Ombudsman viewed increase unreasonable because of lack of notice

The complainant had for many years paid to the Council a peppercorn fee of \$2.25 per annum as an encroachment licence fee for her garage, which encroached partially onto road reserve. The Council began progressively reviewing these encroachment agreements and increasing the annual fees to the market rate then being charged to other encroachments (\$125.00).

The Council's previous practice had been to only make an increase in the annual licence fee and enter into a new encroachment agreement with the property owner when it was informed of a change in the ownership of the property. There were therefore a large number of property owners paying the current rate of \$125.00 per annum, which had applied for the past two financial years.

The complainant's concerns related to both the amount of the increase and the lack of prior notice before the next financial year commenced. The complainant had never had any increase made in the fee she was paying since originally moving into the property over 20 years earlier.

The Ombudsman was of the opinion that it was in the public interest that as far as possible, there was consistency and equality throughout the city in regard to encroachment licence fees being paid by all property owners concerned. The complaint in so far as the amount of the fee increase was not sustained.

However, the Ombudsman also formed the opinion that because of the lack of prior notice of the increased fee, and because the complainant had promptly paid the peppercorn fee of \$2.25 as soon as it had been invoiced for the ensuing financial year, the date on which the new fee of \$125.00 should take effect, should be postponed to the next financial year.

The Council accepted the Ombudsman's opinion and postponed the date accordingly.

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