

Administrative error leading to loss of opportunity to name a road

Legislation	Ombudsmen Act 1975
Agency	Kaipara District Council
Ombudsman	Leo Donnelly
Case number(s)	446866
Date	February 2018

Summary

In mid-2016, the owners of land containing a private road became aware that Kaipara District Council (the Council) had excluded them from a consultation process that it had initiated among residents earlier that year to determine a name for the road. As a result, the road was assigned an official name by the Council without input from the road's owners (the owners).

The owners requested that, as the major stakeholders, they be allowed to change the road name to one of their choosing. The Council admitted that it had erred in not initially identifying them as the owners of the road, and invited them to apply to re-name the road. The Council selected two of the owners' suggested names and put them to a vote among the affected residents, against the existing name. This process resulted in the existing road name being retained.

The Ombudsman formed the opinion that the Council had acted unreasonably in failing to correctly identify, at the initial stages of naming the road, the owner of the property on which the road is situated. The Council had therefore also unreasonably named the road without consulting its owners.

The Ombudsman also formed the opinion that by failing to explain to the owners that the names they had submitted would be put to vote against the existing road name, the Council allowed them to believe that their privilege to name the road had been restored. This deprived them of the opportunity to advance their complaint with the Council or to seek recourse via another avenue, such as legal remedy.

These administrative errors lead to the Ombudsman forming a final opinion that the Council had acted unreasonably. The Ombudsman made recommendations to the Council aimed at

restoring the road owners' privilege to name their road, and to avoid similar oversights by the Council occurring in the future. The Council accepted these recommendations.

Background

1. According to Land Information New Zealand guidelines,¹ a private road needs to be named '*if six or more addressable sites are accessed off it, or are likely to be accessed off it in the future.*' On this basis, the Council determined that the owners' road needed to be named, and initiated a consultation process with those it identified as stakeholders. In this case, road residents were identified but, due to an oversight by the Council, the owners of the road were not.
2. Upon becoming aware that the road they owned had been assigned a name as a result of a consultation process from which they were excluded, the owners complained to the Council. The Council acknowledged its error in not identifying them during the consultation process. As a matter of practice, the owners would have been the only party asked to submit name suggestions for the road, had they been correctly identified as the road-owners by the Council.
3. By way of remedy, the Council invited the owners to submit an application to re-name the road, as per its road-naming process. The owners understood that they would be allowed to re-name the road upon approval from the Council of any of the three names they submitted. The process the Council actually followed, however, was to select two of the three names suggested by the owners and to put them to a vote amongst stakeholders against the existing road name.
4. The owners pointed out that voters would be biased toward the existing name. The majority of those balloted opted to retain the existing road name, and some referred to a possible cost in changing their address.
5. In response to a further complaint from the owners, the Council advised that it considered it had employed a fair and reasonable process to address its initial error.

Investigation

6. The Ombudsman undertook inquiries with the Council, which uncovered further errors made in the course of responding to the owners' complaint. In addition to the error of failing to correctly identify the road's owners, the Council failed to advise that the names submitted in the application to re-name the road would be subject to a vote, and that the ballot would include the existing road name.
7. The Council also represented to the owners that the names submitted in their application, being of Māori origin, had been submitted to local iwi for approval. However,

¹ <https://www.linz.govt.nz/kb/704>

the Council had not done so. The owners therefore believed that their application was progressing as normal for a period of several months when, in reality, no progress was being made by the Council.

8. The Ombudsman formed a provisional opinion that, in failing to identify the owners at the initial stages, and failing to provide a resolution that would restore the owners' ability to name their road, the Council had acted unreasonably. In response, the Council submitted that there was no codified practice or legal requirement that gave a road owner the sole right to name their road.
9. The Ombudsman acknowledged that neither Council policy, nor law, limits the right to name a road to the road owner. However, based on discussions with Council staff, the Ombudsman established that the Council's practice was to identify the owner of a road which required naming, in order that they could enjoy the privilege of naming their road, subject to the Council's approval of the name. The only reason for this not occurring in this case was the Council's own administrative errors, and the Council should have taken all reasonable steps to remedy its maladministration. The Ombudsman also considered that a road-owner has a reasonable expectation to be considered the primary stakeholder in the process of naming their road.

Outcome

10. The Ombudsman confirmed his final opinion that the Council had acted unreasonably, and recommended that the Council:
 - apologise to the road owners for its administrative errors;
 - invite the road owners to submit an application to re-name the road and ensure that, if suggested names are required to be put to vote amongst stakeholders, the existing road name is not included as an option; and
 - amend internal documents relating to road-naming processes to include a prompt to Council staff to establish road-ownership.
11. The Council accepted the Ombudsman's recommendations and, as at May 2018, has initiated the process of re-naming the road.