

Local Authority's efforts to mitigate effects of resource consent errors not unreasonable

Legislation	Ombudsmen Act 1975, Resource Management Act 1991
Agency	Local authority
Ombudsman	Leo Donnelly
Case number(s)	427931 (previously unpublished)
Date	2017

Local Authority decision about wall constructed on boundary—Council erred by not requiring resource consent and then offered assistance to owners to lodge application—complainant considered Council unfair not to offer assistance to him to oppose the consent

The complainant's neighbour constructed a wall on the boundary of their neighbouring properties after obtaining a building consent from the Council. However, as the wall was 2.5 metres high, it did not comply with the Council's District Plan requirements, and therefore it required resource consent. The Council recognised this error (following a complaint by the complainant to the Council) and offered to remedy the error by providing financial assistance for the owner to lodge a resource consent application.

The complainant believed that it was unreasonable for the Council to offer this to the owner/builder of the fence but not to him, the neighbour. He wanted financial assistance to oppose the resource consent application.

The Ombudsman agreed to investigate the matter and when he wrote to the Council, the complainant was then offered \$6000 by the Council towards his legal costs and to assist him to oppose the application. The complainant declined this offer and instead pursued the matter through the Ombudsman's office.

The Ombudsman found that the Council was not unreasonable only to make an offer to the resource consent applicant, for the error which had occurred. The Ombudsman noted that (a) the complainant had refused the \$6000 offer to him, and (b) that the Council had taken several steps to mitigate the effects of its original error prior by funding an independent hearing and

an independent report to be provided at that hearing. It was noted that the report concluded that the consent should be granted, but subject to conditions which would '*secure a more appropriate visual appearance for the submitters*'. Ultimately the consent was granted, subject to conditions which were satisfactory to the complainant.

The Ombudsman concluded that essentially, the Council placed the complainant in a position where he had the opportunity to comment on the resource consent application. This was the position that the complainant could reasonably expected to have been in, had the Council correctly applied its District Plan in the first instance.

In all the circumstances, the Ombudsman considered that the Council had taken appropriate steps to mitigate the harm that resulted from its error, and placed the complainant, as far as reasonably possible, in the position that he should have been in originally, had the Council not made its first error. The Ombudsman did not consider that the provision of financial assistance to the complainant by the Council was a necessary step to remedy the effects of its error on him. The complaint was not sustained.

This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.