

Regional Authority decision on resource consent for pergola on non-notified basis not unreasonable

Legislation	Ombudsmen Act 1975, Resource Management Act 1991
Agency	Local Authority
Ombudsman	Leo Donnelly
Case number(s)	446570 (previously unpublished)
Date	2017

Regional Authority's decision to grant resource consent for a pergola on a non-notified basis was reasonable in the circumstance—permitted baseline test under section 95E of the Resource Management Act 1991

The complainant's neighbour commenced construction of a pergola without required resource consent. When the requirement for consent became known, the complainant's neighbour sought their consent to the structure, but this consent was not provided. Nevertheless, the District Council subsequently granted retrospective consent, and the complainant made a complaint to the Ombudsman that this was unreasonable.

Section 95A of the Resource Management Act 1991 (RMA) states that a consent authority may disregard an adverse effect on an affected person when it results from a permitted activity for which resource consent is not required. In this case, the Council considered that the pergola met the definition of an accessory building, which was a permitted activity subject to certain size and storm-water limitations.

The Ombudsman noted that when deciding whether to notify the application, the Council only had to consider adverse effects on the complainant which went beyond those of an accessory building (the 'permitted baseline'). In making this comparative assessment, it was clear that the Council decided that the adverse effects of the pergola were less than minor and that notification was therefore not required. The Ombudsman concluded that the decision not to notify the application for resource consent appeared to have been open to the Council to have made. There was no need for a site inspection and the Council was entitled to disregard the

adverse effects of the pergola to the extent that they fell within the permitted baseline. The complaint was not sustained.

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