

Council agrees to provide building consent at no cost

Legislation	Ombudsmen Act 1975, Building Act 1991
Agency	Local authority
Ombudsman	Mel Smith
Case number(s)	C7383
Date	2004

Couple's spouting on outbuilding needed to be replaced—City Council advised that a building consent was required—complaint made that this was unreasonable—officials met onsite to examine outbuilding and property—an already approved storm water drain was identified and Council agreed to issue building consent at no cost to couple—complaint resolved

A couple had an outbuilding dating from early last century on their property that had spouting which had disintegrated over the years. Their neighbour, onto whose property the storm water ran, asked the Council to require them to replace the spouting. The Council notified the couple and was given an assurance that they would do this. However, the Council then advised that they would need a building consent. The couple complained that this was unreasonable as the building pre-dated any statutory requirements for building consents in respect of such outbuildings. They further argued that they already had an approved storm water outfall to which the spouting used to lead, which is both clearly visible on the drainage plan and exists in a physical sense.

The Council remained of the view that a building consent, and possibly a resource consent, was required. As a result, the couple wrote to the Ombudsman requesting an investigation of this decision.

The Ombudsman wrote to the Council requesting a report explaining the basis for its belief that the outbuilding required a consent. The Council provided a copy of its letter to the couple which referred to the requirements in the *Building Act 1991* that building work may not be carried out except in accordance with a building consent issued by the territorial authority

under that Act. The Council noted that this requirement applies irrespective of the age of the building upon which the building work is to be carried out.

After reviewing the relevant provisions of the *Building Act*, the Ombudsman then arranged for a meeting onsite between his officials and those of the Council's Building Enforcement section. The officials examined the relevant outbuilding and were able to identify the approved outfall. The Ombudsman considered that while a building consent was necessary, the Council agreed that, as a result of the site inspection, it would issue a building consent at no cost to the couple for spouting and drainage on the outbuilding, conditional upon a new gutter being sited entirely on the couple's property and the spouting being housed in an existing rafter and connected into a field tile drain. When the Council accepted this suggestion, the investigation was discontinued on the basis that the complaint had been resolved.

Comment

The Council did advise the couple that there were certain circumstances where a building consent was not required, namely where the building work comprises any lawful repair with comparable materials or replacement with a comparable component or assembly in the same position. This was not the case here.

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