

Local Authority fails to independently assess affected parties to a resource consent application

Legislation	Ombudsmen Act 1975, Resource Management Act 1991
Agency	Local Authority
Ombudsman	David McGee
Case number(s)	319457 (previously unpublished)
Date	2013

Local Authority failed to independently identify the parties affected by a resource consent application—applicant had provided Council with a list of affected parties which the Council accepted without independently identifying those parties

The complainants owned a lifestyle block and in September 2011 they observed earthmoving equipment arriving at the top of the hill in a paddock within clear view of their house. They contacted the Council and were informed that a resource consent had been granted for the construction of a milk powder plant. The complainants asked the Ombudsman to consider their complaint about the Council's decision not to notify them of the resource consent, and in particular that they were not identified as 'affected parties'. They were also concerned about a lack of documentation relating to these decisions.

The Ombudsman did not form a view as to whether or not the complainants were affected parties in terms of the Resource Management Act but rather, considered whether the Council followed a reasonable administrative process when making its decision that they were not. The Council was unable to provide information to the Ombudsman to show how the Council arrived at its decision about which parties had been affected by the application. There appeared to be no documentation available relating to possible affected parties and it seemed that the Council's assessment as to who was an affected party relied almost entirely on the information provided by the applicant.

There were other residences identified in the applicant's application from which approval had not been obtained but which the applicant had felt obliged to identify in the application. The Ombudsman considered that in these circumstances some positive steps to establish their status were called for.

The Ombudsman appreciated that the Council was confining its consideration of the application to the effects of excess heights of the building rather than the activities to be carried on at the site, but considered that this would seem to warrant a greater concern with the visual impact of the development and perhaps to have extended, rather than restricted, the area of concern. For this reason, it was the impact from surrounding houses that was particularly significant.

One of the conditions of the grant of consent was that the applicant would submit a landscape plan for the site. During the investigation, the Ombudsman commented that this might go some way to mitigating the visual effect of the construction on the complainants. The Ombudsman also suggested that the Council meet with the complainants, and the Council agreed to do so.

At the meeting, the complainant pointed out that they had purchased their property because of the view and this had been 'destroyed' by the dairy building which had devalued their property. The Council explained that it was comfortable that the process followed was '*robust and the decision sound*' and that there was a plan of the proposed planting programme that was intended to soften the building (although this would take some years to grow to full height and would never be of a height to block visibility). The Ombudsman was advised that at this meeting there was some discussion about compensation, and an agreement for the developer to employ a valuer to make an assessment of the impact of the building on the value of the property.

The complaint was sustained because the Ombudsman considered that there was a lack of documentation evidencing that the Council had taken into account whether the complainants were parties who were affected by the resource consent lodged by the applicant. However, it was not possible for the Ombudsman to recommend that the consent be overturned or withdrawn because the Council would have no legal basis to do so.

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.