

## City Councillors can challenge Council's decisions through Council's Regulatory Committee, not Ombudsman

<b>Legislation</b>	Ombudsmen Act 1975, Resource Management Act 1991
<b>Agency</b>	Local authority
<b>Ombudsman</b>	Sir Brian Elwood
<b>Case number(s)</b>	W39518
<b>Date</b>	1998

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*Decision of Council not to notify application for resource consent—request by Councillor for review of decision—insufficient personal interest—Resource Management Act 1991, s 94—Ombudsmen Act 1975, s 17(1)(b)*

This case was triggered by the receipt by a City Council of an application for a resource consent for a new petrol station. Council officers, acting under delegated authority made a decision, not to require the application to be publicly notified. Section 94 of the *Resource Management Act 1991* provides that an application need not be notified if it relates to a discretionary or non-complying activity and:

- the consent authority is satisfied that the adverse effect on the environment will be minor; and
- written approval has been obtained from every person whom the consent authority is satisfied may be adversely effected by the granting of the consent.

A Councillor was dissatisfied with the decision not to notify the application. In particular, he disputed the assessment that the adverse effect on the environment would be minor, and suggested that the persons who may have been adversely affected by the granting of the consent were incorrectly identified. He therefore sought an investigation of the Council's decision with respect to notification.

From time to time Ombudsmen have investigated complaints against decisions not to notify applications for resource consent. It is important that local authorities take such decisions with

care, as those who might wish to make submissions on the application may only do so if the application is notified, and only in that circumstance will have rights of appeal to the Environment Court against the local authority's decision on the substance of the application.

In this instance, after undertaking initial inquiries, it did not seem appropriate to conduct an investigation. Firstly, it was questionable whether the complainant had a sufficient personal interest in the subject matter of the complaint. The provisions of the *Ombudsmen Act* relating to personal interest are not satisfied solely by the complainant being a Councillor in the city for which the application took place. Secondly, even if an investigation was undertaken and the view formed that the complaint could be sustained, no recommendation could be made to remedy the errors it was alleged had occurred. A resource consent, once granted, cannot be withdrawn by the Council. The only remedy is to have the Council's decision declared invalid, and the jurisdiction for that lies with the Courts.

In a case such as this where a Councillor is questioning the actions of the Council of which he or she is a member, it is open to that Councillor to raise the issue at full Council or Council committee meetings, and if other members share the concerns the Council may resolve to review its procedures. The Office of the Ombudsmen has limited resources and a high demand for its services. It is reasonable that those services be available primarily to members of the general public who do not have the same opportunities to raise their concerns, as does a Councillor.

In this case, the Council advised that the Councillor had not raised his concerns about the resource consent application with the Council's Regulatory Committee. As that was a suitable forum for the actions of the Council officers who processed the application to be reviewed, it was decided pursuant to section 17(1)(b) of the *Ombudsmen Act 1975* not to proceed with the investigation.

*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.*