

Council accepts it should fix issue over storm water drain

Legislation	Ombudsmen Act 1975
Agency	Local authority
Ombudsman	John Robertson
Case number(s)	C2118
Date	1992

Stormwater drainage for potential subdivision—effect of conditions of previous subdivision consents—Council obligations to supply outfall

A resident approached the Ombudsman about his concerns regarding a problem with the disposal of stormwater. He had purchased his hillside section and built a substantial home in the 1940s. The area around the lower part of his section was steep and unstable, and remained undeveloped for many years. Stormwater from the house, garage and sealed areas was simply piped down towards the bottom of the section, and ran naturally across the paddocks to a nearby river. A good deal of stormwater from sections further up the hill also drained naturally down the complainant's section.

During the 1980s, the steep area was subdivided and houses were built on it so that by the time the Ombudsman's investigating officer inspected the site there was a well developed residential area surrounding the complainant's property. A private road serving this area ran directly below the lowest point of the property. The complainant wanted to sub-divide the land, selling the large house and building a smaller one. A problem arising was the absence of a stormwater outlet for the proposed subdivision. The obvious solution seemed to be to pipe it into the side channel of the private road below the complainant's property, particularly as residents along that road had expressed concern about damage done by uncontrolled stormwater flowing off the complainant's property. Not all the owners of the private road were, however, willing to agree to allow the complainant to direct water into the side channel.

The other alternative was to pipe the water to a private drain that had been constructed adjacent to the complainant's property during the 1980s subdivision. The owners of the land through which the private drain ran were willing to allow this, but at a price that the complainant considered exorbitant.

On consulting the Council, the complainant found some willingness to assist and discussions took place between Council staff, the complainant and other land owners with a view to finding a solution to the problem. The discussions were not successful and Council staff then considered recommending the Council use its powers under the Local Government Act (section 462(1)) to declare one of the possible outfalls a public drain. No progress was made with this proposal either and the complainant then came to the Ombudsman.

During the course of the investigation, the Ombudsman found that the Council or its predecessors had imposed conditions as to drainage on the consents for the various subdivisions surrounding the complainant's property. The purpose of the conditions was to ensure the stability of the land to be subdivided, but they also had the effect of providing easy access to stormwater drainage for other existing properties. Only the complainant's property and that of one neighbour were left without any such access.

The Ombudsman also found that one of subdivision consents had a condition that ought to have resulted in the provision of a stormwater drainage outlet for the complainant's existing buildings, but that the condition had not been enforced and the complainant had not been advised of its existence. A further condition to a different consent provided for the subdivider to check for and remedy certain land features that could result in the discharge of water onto the subdivision. There was some suggestion that if the subdivider had complied properly with this condition, one result would have been a drainage outlet for the complainant. The Ombudsman had to take into account the fact that some neighbouring downhill landowners appeared to be concerned about the discharge of stormwater from the complainant's land and that a solution to the problem would be of benefit to them as well as the complainant.

Finally, it was noted there was some ambiguity of attitude among Council staff. On at least two occasions, before and during the investigation, staff seemed prepared to recommend the use of the section 462(1) procedures to declare one of the private drains a public drain, but on each occasion the recommendation was withdrawn in the face of opposition from the owners of the drain. Unfortunately this served to strengthen the complainant's sense of grievance against the Council.

The Ombudsman formed the opinion that while the Council did not have statutory duty to solve the problem or believe that it should take steps to provide the complainant, free of charge, with the opportunity to connect into a stormwater drainage system, the course of events was such as to place an obligation on the Council to assist the complainant, and, indirectly, downhill residents.

The Ombudsman suggested to the Council that a satisfactory solution would either be some ex gratia assistance with the cost of connecting into the private drain, or the use of the section 462(1) procedure to declare the drain in the adjacent property a public drain.

The Council decided to take the latter option and set in motion the procedures to declare the drain a public drain. On this basis the complaint was regarded as resolved.

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