



Inappropriate public exclusion by local authority

Legislation	Local Government Official Information and Meetings Act 1987, ss 48(1)(d), 48(2)(a)(i)
Agency	Regional Council
Ombudsman	Sir Brian Elwood
Case number(s)	C3015
Date	August 1994

Decision of local authority’s Environmental and Planning Committee to exclude the public from part of a meeting at which a draft regional policy statement was considered—inappropriate use of s 48(1)(d)

This case concerned a decision of a local authority’s Environment and Planning Committee to exclude the public from part of a meeting at which a draft regional policy statement was considered. The committee specified its grounds for doing so as:

A right of appeal lies to a Tribunal against the final decision of the Council.

Section 48(1) of LGOIMA sets out the various grounds on which the public may legitimately be excluded from a meeting that they would otherwise be entitled to attend, including the following ground:

(d) That the exclusion of the public from the whole or the relevant part of the proceedings of the meeting is necessary to enable the local authority to deliberate in private on its decision or recommendation in any proceedings to which this paragraph applies.

Section 48(2)(a)(i) provides specifically that the above ground applies to ‘any proceedings where a right of appeal lies to any Court or tribunal against the final decision of the local authority in those proceedings’.

This provision is most commonly used in situations where a committee has before it an application for a resource consent and once the hearing has taken place in public, the committee members withdraw to deliberate in private on their decision or recommendation. The express wording of section 48(2)(a)(i) clearly contemplates that such deliberations are

entitled to protection even if a committee only makes a recommendation to the council and the council makes the final decision.

Some councillors took the view that they were involved in a process of evolving policies and rules which did give a right of appeal to the Planning Tribunal. However, it was difficult to accept that section 48(2)(a)(i) could be applied to discussions on a draft regional policy statement because section 48(2)(a)(i) refers to a right of appeal. On the other hand, clause 14 of the First Schedule of the Resource Management Act gives any person who has made a submission on a local authority's proposed policy statement or plan a right to refer matters to the Planning Tribunal.

The main purpose of section 48(2)(a)(i) appears to be to protect deliberations where an authority is acting quasi-judicially. Assuming, however, that for the purpose of section 48(2)(a)(i), a right to refer is the same as a right of appeal and that the process of producing a regional policy statement is properly described as '*proceedings*', it is necessary to consider the nature of the '*final decision*' to be reached at the conclusion of the process on which the committee's deliberations form part. In this case, the outcome of the process was a decision whether to approve and circulate the draft regional policy statement to the public for consultation purposes. There is no appeal or right of reference to the Planning Tribunal against such a decision.

As a result of the deliberations that took place, a regional policy statement would evolve and those dissatisfied with the contents of the final statement would have a right to refer matters to the Planning Tribunal. It could not be said in this instance, however, that the committee was deliberating on a decision or recommendation, either interim or final, against which there was a right of appeal to a court or tribunal nor that it was involved in proceedings where a final decision on the matters before it would be made by the full body of the council and would be subject to appeal.

The local authority's Environment and Planning Committee could not avail itself of the grounds specified in section 48(1)(d) of LGOIMA to exclude the public from its deliberations on the draft regional policy statement.

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