

Local Authority required to clarify ‘original ground level’ for purposes of resource consents under District Plans

Legislation	Ombudsmen Act 1975
Agency	Local authority
Ombudsman	Sir Brian Elwood
Case number(s)	C4618
Date	1998

Points of reference for measurements for height dispensations—need for clarity in district plans

The complainants had consented to their neighbours’ application for a resource consent to build a house which exceeded the height control plane of the Transitional District Plan. The house plans which the complainants had seen showed a maximum height of 3.5 metres from the original ground level. However, the complainants alleged that the local authority had approved a height which exceeded this. They said there was a foundation of some 600mm above the visual ground level which had not appeared on the plans and that the visual ground level was not the original ground level. Considerable fill had been placed on the section and this had not been taken into account when measuring the height.

In essence, the complaint arose because of a difference of view as to what constituted ‘the original mean ground level’ for the purposes of the Transitional District Plan which provided that for all buildings in the ‘Residential’ zone ‘the maximum height along the line of the minimum side yard shall be 3.5 metres above the original mean ground level, prior to excavation or filling.’ The local authority maintained that any excavation or filling undertaken before the date on which the Plan became operative was not relevant because the means of measurement only became law at that point. In this case, the backfilling of the section had taken place some five years before the Plan under which the consent was granted became operative.

Given the cut and fill nature of many New Zealand subdivisions, the argument advanced by the complainants that the land should be considered as if it were in its ‘original’ state, was difficult

to sustain. On the other hand, it was also difficult to accept the local authority's position that 'the original mean ground level' was the level on the date on which the District Plan became operative. It might equally be argued from a practical standpoint that it should be the level prior to any excavation or filling contemplated by the application for consent. The complaint was not sustained.

Comment

In the circumstances, while the complaint could not be sustained, the local authority was invited to consider, at an appropriate time, amending its District Plan to clarify the point of reference from which measurements are to be taken. It confirmed that the amendment would be made when finalising its Proposed District Plan.

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