

## Local Authority should share project overrun costs with residents

<b>Legislation</b>	Ombudsmen Act 1975
<b>Agency</b>	Local authority
<b>Ombudsman</b>	Sir Brian Elwood
<b>Case number(s)</b>	C2507
<b>Date</b>	1993

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*Complaint concerned water supply and sewerage scheme which involved 50/50 cost sharing between residents and Council—cost overrun occurred and residents asked to pay the entire overrun—Ombudsman considered this unreasonable, particularly as the residents not informed about the overrun and that the overrun amount should be shared 50/50 between Council and residents—Council accepted this view*

A group of residents of a small community complained that they had been misled about the extent of the contributions they would be expected to make to new water and sewerage schemes in their locality.

The community had originally disposed of its sewage by way of septic tanks, but this system had proved unsatisfactory and was rapidly becoming a health hazard. There were also problems with the water supply, drawn from a local creek. Plans were drawn up for a sewerage system to serve the community and the cost per section was calculated at about \$4,000. Plans were also drawn up for a water supply scheme, estimated to cost somewhat over \$4,000 per section. Although the residents accepted the need for the sewerage system, opinion was divided on the question of a new water supply. A number of property owners felt they could not afford the cost of both schemes.

In the meantime, as a result of negotiations between the owner of an adjoining block of land and the local authority, a proposal emerged under which the owner would subdivide the land and the local authority would be able to spread the cost of the water and sewerage schemes across the newly subdivided sections thereby lowering the cost per section to existing

residents. The owner of the block of land also agreed to make various other contributions, including donating land for the water supply reservoir, thus further reducing the cost of the scheme. In return, the local authority agreed to distribute the savings on a 50/50 basis between the existing section owners and the owner of the block of land to be subdivided. Although this arrangement would result in a higher cost per section for existing section owners than for purchasers of a section in the new subdivision, it was calculated that the cost per section in the old subdivision would drop to about \$3,500 for the sewerage scheme and to about \$2,800 for the water supply scheme. However, if this proposal was to proceed, residents had to approve it as a matter of urgency because eligibility for a subsidy for the water supply scheme from the Department of Health was about to expire.

The local authority arranged an urgent meeting with the residents to explain the benefits of the proposal. Although the basis on which the savings were to be shared was mentioned at the meeting, it was not emphasised, and no written material was given to those attending the meeting setting out the details of the proposal. On the basis of what was said, the majority of the residents, albeit with reservations, agreed to accept the proposal and the local authority proceeded on that basis. A letter was then sent to ratepayers confirming the decision to proceed with the proposal, but again details of the cost-sharing agreement were not given.

Work proceeded, and it appeared both schemes would be completed within budget. The owner of the newly subdivided land made the agreed contributions to the local authority which were accepted in full settlement of his obligations. Unfortunately, there were then cost overruns on both the schemes and the local authority sought to recover the extra costs from the complainants, bringing their contribution per section to more than \$6,500. When the residents found that they were being expected to pay more than twice the contribution being sought from the owners of sections in the new subdivision, they raised their concerns with the local authority and, being dissatisfied with the response they received, brought their complaint to the Ombudsmen.

The investigation found that there were deficiencies in the manner in which residents had been consulted and in the information given to them about the cost-sharing proposal negotiated between the local authority and the owner of the adjoining block of land. Ratepayers should have been given written details of the overall costs involved and how those costs were to be divided as between the ratepayers, the owner of the block of land and the local authority.

There was little doubt that the proposal itself was a good one which offered the residents both a sewerage and a water scheme at considerably less cost than would otherwise have been the case, even with the cost overruns. However, the residents had not been given an adequate opportunity to make an informed decision on whether or not to accept the proposal. Even if the residents had realised that they would only benefit from 50 per cent of the savings, they would not have expected liability for the whole of the cost overruns. The conclusion reached was that the residents' contribution to the cost overruns should be limited to 50 per cent and the local authority accepted this view.

*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.*