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IS YOUR NEIGHBOUR DENYING YOU ACCESS?

INTRODUCTION

Developers and contractors may require access to an adjoining property for construction purposes such as:

- installing rock anchors beneath the adjoining property;
- erecting, scaffolding or hoarding on the boundary of the sites;
- having a crane swing overhanging an adjoining property; and
- access for drainage, electricity and roads.

This article sets out the steps contractors should take to seek access consent from their neighbours and the options available if access is denied.

WHAT IS THE FIRST STEP A CONTRACTOR SHOULD TAKE?

The first step is to simply explain to your neighbour why access is required and for how long. If they give you consent, you should request their consent in writing.

If that fails, offer to enter an access deed with the neighbour which includes an indemnity for any loss or damage that they suffer from providing you access (including loss to property or personal injury).

If the neighbour still refuses, the only step that remains available to contractors is to seek the access order from the Court.

NEIGHBOURING LAND ACCESS AND UTILITY SERVICE ACCESS ORDERS

When access is sought on a temporary basis for carrying out work on a neighbour's land (such as installing rock anchors, crane jib swinging and erection of scaffolding,

contractors can apply to the Local Court for a “neighbouring land access order” or a “utility service access order” under the *Access to Neighbouring Land Act 2000*.

REQUIREMENTS

In granting an access order, the Court needs to be satisfied that:

1. access to the adjoining land is required for carrying out work;
2. reasonable efforts have been made with the neighbour person whose consent is required to access the neighbouring land; and
3. you have given at least 21 days’ notice to your neighbour of the lodgement of your court application and the terms of the orders you seek.

EASEMENTS IN THE SUPREME COURT

When permanent access is required, you should seek an easement. An easement can be granted by the Supreme Court under section 88K(1) of the *Conveyancing Act 1919* (NSW).

REQUIREMENTS

In granting an easement, the Court needs to be satisfied that:

1. the easement is reasonably necessary for the effective use and development of the land;
2. the easement is not inconsistent with the public interest. In other words, it must not interrupt any activity of the public;
3. the owner of the adjoining land and those with registered interests in the neighbouring land will be compensated for

the loss and/or disadvantage resulting from the easement; and

4. you have made reasonable attempts to obtain consent to register the easement with the neighbour.

In granting an easement, the Court will also consider whether the easement will interfere with the existing property rights of a landowner.

LIABILITY FOR COSTS

Costs incurred in obtaining an easement or access order from the Court are usually payable by the person seeking access to neighbouring land.

The total fees payable will usually cover the legal fees incurred during negotiations, expert costs and preparation and court appearances.

Those seeking access to their neighbour’s land can choose from access orders or easements. However, to minimise legal costs, people seeking access to neighbouring land should engage in meaningful negotiations with their neighbours.

For more information

For more information on access issues during construction, contact our Principal Solicitor/Director

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