

Crane Airspace Licenses

Owners corporations are from time to time approached by developers carrying out developments on adjoining or nearby sites, requesting a licence to operate a crane over the owners corporation's property. It is common for developers to approach owners corporation representatives on-site, before legal advice has been obtained, seeking to have a licence deed executed by the owners corporation, which provides for little or no compensation and which fails to adequately address the safety, amenity and other issues involved.

As a practical matter, an owners corporation should probably negotiate with the developer, as there is the possibility of the developer obtaining rights pursuant to an application under various acts, including Section 88K of the Conveyancing Act 1919 or the Access to Neighbouring Land Act 2000 if unable to negotiate an agreement with the owners corporation. However, any such negotiations should be for the purpose of determining whether arrangements satisfactory to the owners corporation can be negotiated, as the owners corporation is under no obligation to grant such a licence unless and until ordered to do so by the Court and as there is little likelihood of the Court doing so if the developer does not properly address compensation, costs, safety and amenity issues. As it is not unknown for developers to withdraw from such negotiations after the owners corporation has incurred substantial legal and other costs, an owners corporation may wish to require a payment of an amount on account of costs as a condition of entering into such negotiations.

The key considerations for owners corporations in these situations are as follows:

1. Does the developer's proposal properly compensate the owners corporation? In our experience, owners corporations are often unaware that they are entitled to compensation, let alone the amount of compensation which is commonly negotiated. In addition to compensation for the safety and amenity issues which will inevitably arise from having a crane operate over the owners corporation's property, which will usually be expressed in terms of a licence fee, an owners corporation would properly seek reimbursement of resulting liabilities to third parties, including legal fees, managing agent's fees and fees payable to safety consultants.
2. Does the developer's proposal properly address amenity issues? For example:
 - a) What sort/size of crane does the developer propose?
 - b) During what hours does the developer propose to operate the crane?
 - c) Does the developer propose that loads be borne over the owners corporation's property or that the crane be allowed to wind vein over the property when not

in operation? In addition to bearing on safety issues, this would be relevant to the degree of level of dust/debris which the owners corporation can expect.

- d) Does the developer propose rock anchors to secure the crane?
- e) Does the developer propose signalling by whistle or radio? This will bear on the degree of noise which the owners corporation can expect.

3. Does the developer's proposal properly address safety issues? For example:

- a) Is the developer willing to reimburse the owners corporation's cost of engaging a safety consultant to carry out a risk audit for the purpose of identifying any safety issues and recommending appropriate precautions? Few owners corporations would have the expertise to do this without the assistance of a consultant.
- b) Is the developer willing to provide evidence of an appropriate licence, insurance, and a record of safe work in relation to the operator of the crane?
- c) Is the developer willing to comply with the owners corporation's directions for the purpose of ensuring safety on the owners corporation's property? An owners corporation should be aware that it has duties and liabilities under the Work Health and Safety Act 2011 and Work Health and Safety Regulation 2011 and needs to ensure that it is in a position to comply with those duties.

4. Does the draft licence deed provided by the developer adequately address these issues and the following issues?

- a) A specification of the crane which the developer will be allowed to operate?
- b) A specification of the permitted mode, area, and hours of operation?
- c) The developer's liability for any damage done to the owners corporation's property and indemnity in favour of the owners corporation in relation to claims made against the owners corporation by third parties.

We recommend that, if an owners corporation is approached by developer with a request for a crane licence, the owners corporation obtain legal advice before entering into any arrangements with the developer, in order to ensure that these issues are properly addressed.

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