

Rock Anchor & Scaffolding Licences

Further to the Bannermans article on [Crane Airspace Licences](#), owners can be approached by a developer carrying out development on an adjoining site, requesting a licence to install scaffolding upon or rock anchors beneath their land.

Adjoining owners and developers should make every effort to negotiate with each other, as failing agreement being reached there is the possibility of the developer obtaining rights to access the adjoining property pursuant to an order of the court under Section 88K of the Conveyancing Act 1919 or the Access to Neighbouring Land Act 2000 which can be expensive and time consuming court processes.

Issues that should be considered when negotiating the terms of a licence include:

1. Compensation

- a. Does the developer's proposal properly compensate the adjoining owner? If the adjoining owner and developer cannot reach agreement on an amount of compensation, often a deed can provide for a registered valuer to ascertain the amount of compensation payable.
- b. In addition to compensation the adjoining owner should seek reimbursement of all resulting liabilities to third parties, including legal fees, managing agents fees, increased insurance premiums, fees for dilapidation reports, fees payable to safety consultants, geotechnical engineers, valuers and any other experts engaged to provide advice regarding the developer's works and the licence.

2. Damage to the adjoining property

- a. The adjoining owner should consider obtaining dilapidation reports of their land and buildings or structures on their land, at the cost of the developer. The first report should be obtained prior to commencement of works and the second upon completion of the development. Dilapidation reports can then identify any damage that may have occurred as a result of the development. The licence should contain a requirement for the developer to rectify at their expense any damage to the adjoining owners property identified in the second report.

3. Present and future loss of amenity

Amenity issues to be considered include:

- a. Is it envisaged that any rock anchors installed in the adjoining property will be de-tensioned after use but remain in the land? If so, will the location of the rock anchors negatively impact on services or any future development of the adjoining property?

- b. Will the location of any scaffolding on the adjoining property require the removal of any trees or mature plants? If so, will the developer obtain all necessary approvals and upon removal of the scaffold, reinstate trees and shrubs with plants of the same size and variety?
- c. Will erection of any scaffold create issues with access to the adjoining owners land such as restrictions on vehicular or pedestrian access to car parking areas, buildings or parts of the common property?
- d. Will the proximity of the installation of rock anchors and the developers works likely cause any vibrations to the adjoining owners buildings? This will bear on the degree of inconvenience and potential damage.

4. Safety

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

- a. Is the developer willing to meet the cost of engaging a consultant geotechnical engineer to carry out a safety and risk audit for the purpose of identifying any safety issues and recommending appropriate precautions?
- b. Is the developer willing to comply with the adjoining owners directions for the purpose of ensuring safety on the adjoining owners's property. An owner 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.

5. Other issues

Does the draft licence deed provided by the developer adequately address the following:

- a. Specifications and location plans for the scaffolding and rock anchors?
- b. Provision for termination by the adjoining owner in the event of default or the insolvency of the developer?
- c. Adequacy of insurance including, at a minimum, a requirement for the adjoining owner to be noted as an interested party on the developer's insurance policies?
- d. The developer's liability for any damage done to the adjoining owner's property and indemnity in favour of the adjoining owner in relation to all claims made against it.

We recommend that developers address the above issues in any licence sought to minimise negotiations required and if you are an adjoining owner approached by a developer with a request for a scaffolding and/or rock anchor licence, you obtain legal advice before entering into any arrangements with the developer, in order to ensure that these issues are properly addressed.

Prepared by Bannermans Lawyers

4 December 2014