

What To Do When Neighbours Want Access To Your Land

Owners corporations and other property owners are often asked by the owner of an adjoining property, usually a developer, to allow access to their land. This can be temporary or permanent and can be for a variety of reasons, e.g. movement of workers, vehicles and/or materials to carry out works on the adjoining property, operation of a crane over the property to facilitate works on the adjoining property or running services and/or storm water under the property. Temporary access is generally granted by way of a licence, while permanent arrangements generally involve an easement. In either case, there are many complex legal and practical issues for an owner to resolve, about which legal advice is generally required and best obtained sooner rather than later.

Some tips:

- Various laws permit courts to order access to an adjoining property, including Section 88K of the Conveyancing Act 1919, Section 20 of the Dividing Fences Act 1991, Section 11 of the Access to Neighbouring Land Act 2000 and Section 40 of the Land and Environment Court Act 1979. It is unlikely that such an order would be made without reasonable efforts to negotiate an agreement on reasonable terms, e.g. properly addressing safety and other issues and making proper provision for compensation and reimbursement of legal and other costs. However, these provisions make it highly advisable for owners to negotiate such requests.
- That said, the request is generally for the sole benefit of the adjoining owner, with no benefit and possibly detriment to the owner of whom the request is made. It is not reasonable for the owner requesting access to expect the other owner to bear the cost or other disadvantage of the proposed arrangements, which should be addressed in the agreed access terms. Key issues include:
 - For strata owners corporations, the requirements of the Strata Schemes Management Act 2015 in relation to the grant of such rights.
 - Survey and land title issues, especially where an easement is requested.
 - Scope of access. This should be specified, e.g. permitted areas, operating hours and equipment types may need to be defined. For example, where a crane is proposed, the type of crane and whether it will transport materials over the property or just “wind vane” is important.
 - Technical issues. Owners may need to engage an appropriate consultant at the cost of the owner seeking access, e.g. a surveyor where an easement is proposed, a hydraulic expert where it involves storm water or a safety expert where a crane or other equipment is proposed.
 - Liability.
 - Safety.
 - Compensation. This may require engagement of a valuer.

- Reimbursement of legal fees, strata managing agent fees and other costs.
- Owners will generally not have the expertise to deal properly with all of these issues and should obtain legal advice as soon as an access request is made. In our experience, it is common for developers to attempt to persuade owners to execute a document, before proper legal advice is obtained, which gives the developer excessive rights, inadequate liability and no obligation to compensate the owner or even reimburse the owner's costs. Needless to say, owners will be in a much a better position if they take legal advice before signing anything.
- Owners can be caught in a trap where they are well down the track with negotiations and accruing legal and strata managing agent fees before the developer agrees to reasonable terms, putting the owner under pressure to agree to adverse terms in order to contain and recoup costs. To minimise this risk, owners should request written agreement from the developer to reimburse costs before commencing negotiations. They may also wish to consider requesting a trust account deposit to cover those costs.

The first thing an owner should do after receiving such a request is to contact a lawyer to request legal advice. The lawyer can assist with ensuring that the owner's rights are protected, with obtaining proper compensation and reimbursement of costs for the owner, with briefing the other expert consultants required and for strata owners corporations, ensuring compliance with the requirements of the Strata Schemes Management Act 2015. We have dealt with many such matters and could assist.

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Updated 24 October 2017