What's a Crane Between Neighbours Worth?

Q: **Are developers required to seek consent from adjoining owners prior to operating cranes over your property?**

A: The land owner of a non-strata title building or the owners corporation of a strata title building will normally own the air-space that a crane would swing through and their consent is required.

Q: **How do you protect yourself?**

A. A licence agreement should be entered between you and the developer and/or contractor to protect yourself and to ensure you are covered to remedy any damage caused by the crane or issues arising with the crane operation. To ensure all legal issues are covered you should obtain legal advice before entering any agreement with the adjoining owner or contractor.

Q. **Can you negotiate compensation as part of a licence agreement?**

A. Yes. Developers are required to make 'a reasonable effort to reach agreement with every person whose consent to access is required as to the access and carrying out of the work' prior to seeking a neighbouring land access order.

Whilst there is no set method of calculating licence fees and no real guidance from the Courts, Parramatta City Council includes a set monthly rate for allowing a crane swing over Council land. These rates could be used as a guide when negotiating compensation e.g. $3,795.00 per month as a tower crane monthly fee for 'slewing over council property without work zone' and $770.00 per month for 'slewing over council property with work zone'.

Other reasonable factors to be taken into consideration when negotiating a licence fee include:

- Vicinity of the development site to the owner's land;
- Other construction methods that can substitute the use of cranes;
- Whether the height or arm swing of the crane constitutes as an intrusion to the ordinary use of the owner's land causing insecurity to owners and other amenity issues such as loss of privacy, peaceful and quiet enjoyment of land;
- Diminished value of the affected land in rental values and property prices; and
- Any other inconveniences or disturbances on the affected land (eg. traffic flow, temporary pedestrian/entry road blocks etc).

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Q: **Can you use the commercial benefit to be gained by the developer from the grant of licence as leverage to derive a compensation payment?**

A: No. Case law has established that the monetary amount for loss of enjoyment of land must NOT be so high that it holds the developer to ransom, negotiation for a licence fee must be done in good faith.

Please note that under the Access to Neighbouring Lands Act 2000, the Local Court has no jurisdiction to order compensation unless actual damage/loss has occurred arising from the granting of the licence or orders for access being granted by the Court with no compensation payable 'merely for loss of privacy or inconvenience suffered by the owner solely as a result of the access'.

There are no NSW decisions presently supporting the view that developers are required to pay compensation for the inconvenience suffered by owners as a result of crane works and whilst QLD cases on hand also only show that developers are required to make 'nominal' compensation payments to owners for the loss in the quiet enjoyment of land.

For further information please consider this article: Crane Airspace Licences

Key takeaways

- Developers must seek consent from adjoining owners before operating cranes over their property.
- A licence agreement is essential to protect property owners from potential damage caused by crane operations.
- Compensation can be negotiated as part of a licence agreement, but must be reasonable and in good faith.
- Case law indicates that developers are not typically required to pay for inconvenience unless actual damage occurs.
- Local councils provide guidelines for calculating crane licence fees, which can assist in negotiations.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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