What's an Easement Between Neighbours Worth?

Question: What is the definition of an easement?

Answer: An easement gives a right to cross or otherwise use someone else's land for a specific purpose.

Question: What are the requirements for an easement?

Answer: Section 88 of the Conveyancing Act provides that for an easement to be valid it must clearly identify the following:

a. the land with the benefit of the easement;
b. the land with the burden of the easement; and
c. the persons (if any) whose consent to a release, variation, or modification of the easement or restriction is required.

Question: Who is required to consent to an easement?

Answer: The owner(s) of the land to be benefited by an easement and the owner(s) of the land to be burdened by an easement will be required to provide their consent to the creation of the easement. However other relevant stakeholders with an interest in the land such as mortgagees or certain lease holders may also be required to provide their consent to the creation of an easement.

Question: What powers does the Court have to create easements?

Answer: Under section 88K the Conveyancing Act 1919 (NSW):

1. The Court may make an order imposing an easement over land if the easement is reasonably necessary for the effective use or development of other land that will have the benefit of the easement.

2. Such an order may be made only if the Court is satisfied that:
   a. use of the land having the benefit of the easement will not be inconsistent with the public interest, and
   b. the owner of the land to be burdened by the easement and each other person having an estate or interest in that land that is evidenced by an instrument registered in the General Register of Deeds or the Register kept under the Real Property Act 1900 can be adequately compensated for any loss or other disadvantage that will arise from imposition of the easement, and

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c. all reasonable attempts have been made by the applicant for the order to obtain the easement or an easement having the same effect but have been unsuccessful.

3. Also note the costs of the proceedings are generally payable by the party who commences the proceedings

Question: What type of compensation can I expect if I go to Court?

The following compensation amounts for easements have been ordered by the Courts:

Case	Locality	Easement Type	Approx. dimensions	Compensation Paid
A.T.B. Morton Pty Ltd v Community Association DP270447 (No 2) [2018] NSWLEC 87	Hexham	Right of Carriageway	370m length x 10m width.	$262,000.00
Shi v ABI-K Pty Ltd [2014] NSWCA 293	Carlingford	Easement to Drain Water	53.61m length x 0.9m width	$21,500.00
Gordon and Others v Shaheen and Another [2005] NSWSC 1328	Werrington	Easement to Drain Water	2.0m width variable length split across two properties	$16,000.00
The Owners - Strata Plan 61233 v Arcidiacono (No 2) [2019] NSWSC 1876	Sydney	Easements for repairs, services, overhanging structures and encroaching structures	N/A	$8,000.00

Question: What kind of compensation can I expect by negotiating the easement outside of Court?

The following compensation amounts for easements have been agreed to by the parties without proceeding to Court:

Year	Locality	Easement Type	Approx. dimensions	Compensation Paid
2019	Castle Hill	Easement to Drain Water	47.56m length x 1.00m width	$62,800.00 (split between 3 owners and the Owners Corporation)
2020	West Ryde	Easement to Drain Water	11.74m length x 1.5m width x 1m depth	$17,400.00

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2018	Epping	Easement to Drain Water	40m length x 1m width	$14,600.00
2019	Crows Nest	Easement to Drain Water over existing line of pipes	Existing section of pipe adjacent to the Lot	$9,500.00

For more information regarding easements, please contact one of our North Sydney Lawyers on 02 9929 0226 or at enquiries@bannermans.com.au.

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Key takeaways

- An easement grants the right to use someone else's land for a specific purpose.
- Consent from both the benefited and burdened landowners is required for an easement.
- The Court can impose an easement if it is necessary for the effective use of the benefited land.
- Compensation for easements can vary significantly based on type and locality.
- Negotiated easements can lead to different compensation amounts compared to court-ordered easements.

****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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