

Ahad Khan

From: Barry Kaye <barrykaye@xtra.co.nz>
Sent: Tuesday, 8 March 2016 4:09 p.m.
To: Robert Andrews
Cc: Ahad Khan
Subject: MEDIATION SUMMARY LETTER 8 March 2016 19B BANKS ROAD
Attachments: MEDIATION SUMMARY LETTER 8 March 2016 19B BANKS ROAD.pdf

No resolution likely on this matter so a hearing obviously needs scheduling.

Regards

Barry

BARRY KAYE

Independent Hearings Commissioner

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LOCAL GOVERNMENT MATTERS
COUNCIL & ENVIRONMENT COURT
HEARINGS

Robert Andrews

Resolutions Team Manager

Projects, Practice and Resolutions | Resource Consents

Auckland

8 March 2016

Dear Robert

19B Banks Road Mt Wellington

I am reporting back on the request for me to facilitate mediation in regards to the provision of stormwater to 19b Banks Road Mt Wellington though adjoining properties at 13 Banks Road and 33 Barrack Road.

The prospective developers have engaged with the neighbours with no agreements being reached.

I carried out a site visit and met with Mr. Taylor at 13 Banks Road. I explained the process and also the benefits for his land in having a stormwater connection available. That was relevant in that he advised me he was attempting to sell the land to the highest bidder developer. I left him with A3 plans showing the pipe route and also an aerial upon which I marked up the route. I advised him that I was going to get in touch with Mr. Wong the owner of 33 Barrack Road.

I emailed Mr. Wong and received a prompt response (attached) in which he advised that he was working with Mr. Taylor to get a purchaser lined up for both of their properties. He advised that only then could the matter of access be finalized once a new owner needed was in place. I replied to Mr. Wong setting out the relevant LGA provisions so that he was fully aware of the Councils ability to

require access through the subject sites. I also sent him a copy of the formal s460 application form signed by the applicant. I have not received any reply to that last email.

In my opinion there is unlikely to be any timely resolution of the matter with these parties and the hearing process needs to be used to resolve the matter one way or the other.

A handwritten signature in black ink, appearing to read "Barry Kaye". The signature is fluid and cursive, with a long horizontal stroke at the end.

Regards

Barry Kaye

Independent Hearings Commissioner

8 March 2016

Hi Barry,

This is to acknowledge the receipt of your advice.

This letter is just to let you know Mr Taylor's and my own thoughts on this matter.

Over the last year or two, I have been in discussion with Mr Taylor whose section my one abuts directly onto, actively exploring the potential to sell our two sections together as a package to a developer who may be able to use the combined section to greater advantage (than each section separately). We believe that as a package $1 + 1 = \text{more than } 2$, so to speak.

Therefore, in this Plan, we believe that having a storm-water pipe as proposed by 19B Banks Street, will limit a developer's options and de-value our own Plan. It would be preferred, in our mind, that once we have found this developer and he has formulated his own plans, he can then work out with 19B Banks Street a mutually acceptable solution.

Regards,
Paul Wong

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From: Barry Kaye [<mailto:barrykaye@xtra.co.nz>]

Sent: Saturday, 5 March 2016 11:32 AM

To: Paul Wong

Cc: barry.kaye@xtra.co.nz

Subject: 33 BARRACK ROAD AND NEIGHBOURS REQUEST FOR ACCESS TO PIPE STORMWATER

Hi Paul

I have been appointed by Auckland Council as an independent mediator to see if I can assist in resolving the matter related to the developer/owners of 19B Banks Street who want access over your land to pipe stormwater.

I visited Mr Taylor at 13 Banks Road and discussed the benefit in the future of having access to stormwater pipes on your land in terms of future development capacity.

I advised him I will convey to the developer of 19b Banks Rd that to make any progress they need to put a formal offer in writing addressing;

1. Compensation that is offered
2. Guarantees re site remediation
3. Any other matters such as duration of works and effects on your enjoyment of the properties while it happens.

As you may be aware if a negotiated settlement does not occur then the Council will hold a hearing to determine the matter and based on past experience is likely to decide that access has to be granted-and on that process there is (no) opportunity to negotiate with the developer on any compensation-solely site remediation matters.

If you wish to discuss this further please advise a suitable time to call you with a couple of choices in case I can't do one.

Regards

Barry

Thanks Paul

I appreciate the information particularly as I was not aware of your joint marketing/sell strategy. I would imagine that the developer for 19b Bank Street is unlikely to want to wait until you sell both properties to a common developer and then deal with them given the uncertainty over time frames.

In order to make sure you are fully informed and in case you have not seen it before I set out below the most relevant sections of the Local Government Act 1974 and 2002 respectively that apply to this issue.

I note that the developer at 19b Bank Street has formally applied to the Council under the s460 provisions.

As it appears there is no likelihood that you, at the least, will agree to the pipe going through your land at this time, and noting that even Mr Taylor did, it will not provide the necessary full connection, I will advise the Council accordingly and leave it to the process that s460 sets out.

Thanks for your fast response to my email.

Regards

Barry Kaye

Local Government Act 1974

s460 Construction of private drains through adjoining premises

(1) Where, in the opinion of the council, the only practical route of any new private drain is through 1 or more adjoining premises, and any owner or owners of any of those premises will not consent to its construction, the council may, pursuant to a resolution in that behalf, of which notice shall be given to the owner or owners withholding his or their consent as aforesaid, enter upon his or their premises and execute, provide, and do all or any of the works, materials,

and things which the council considers necessary, in order that the drain shall be laid in an efficient manner.

(2) Before passing a resolution under subsection (1), the council shall give to every owner refusing his consent as aforesaid an opportunity to be heard before a committee of the council.

(3) The cost incurred by the council in carrying out the said work, including the payment of compensation for injurious affection to any premises through which the drain is laid, shall be payable by the council in the first instance, and may be recovered by it from the owner of the land to be served by the private drain; and section 465 shall apply with respect to the amount so recoverable as if it were an advance made by the council under section 463.

(4) If agreement cannot be reached between the council and any claimant for any such injurious affection, the matter shall be determined as if the work were a public work and the claim were a claim for injurious affection in respect thereof under the Public Works Act 1981.

Compare: 1954 No 75 s 226; 1956 No 54 s 253

Section 460: inserted, on 1 April 1980, by section 2 of the Local Government Amendment Act 1979 (1979 No 59).

Section 460(4): amended, on 1 February 1982, pursuant to section 248(1) of the Public Works Act 1981 (1981 No 35).

461 Further provisions with respect to private drains

(1) Where any private drain constructed with the consent of the owners of all the lands affected or constructed by the council pursuant to section 460 passes through or serves separately-owned premises, there shall be attached to each and all of the lands served by that private drain the following rights, namely:

(a) a right to the free and uninterrupted use of that private drain; and
(b) a right for the occupiers or any of them to enter upon all lands served by that drain, or through which it passes, for the purpose of relaying or effecting necessary repairs to the drain; and

(c) a right to contribution from the owners or occupiers of other lands so served by that drain towards the cost of executing, providing, and doing all or any of the things required in respect of the drain by this Part or any bylaw; and

(d) a right to contribution from the owners or occupiers of those other lands towards the cost of all necessary relaying of or repairs to the drain; and

(e) a right to the recovery from the owners or occupiers of other lands through which that drain passes but which are not served by the drain of the cost of any repairs to the drain necessitated by any wilful or negligent act of those owners or occupiers,—

and those rights, upon a certificate being furnished by the principal administrative officer that any of the lands is actually served by that drain, together with such plans (if any) as the District Land Registrar requires, shall be registered by the District Land Registrar against the titles to all the other lands so served by the drain, and also, in the case of the right to free and uninterrupted use of the drain and the right to enter upon land to effect necessary relaying or repairs, or to recover under paragraph (e) the cost of any repairs to the drain, against

the titles to the lands through which the drain passes.

(2) The District Land Registrar, on the receipt by him of a certificate signed by the principal administrative officer that any of the said lands is actually served by that private drain, shall enter on the register and upon the outstanding duplicate certificate of title for that land, which certificate of title shall be produced to him for that purpose,—

(a) particulars of the certificate given by the principal administrative officer; and

(b) a memorandum that there are attached to the land the rights specified in subsection (1).

(3) If any question arises as to the liability of any owner or occupier under any provision of subsection (1), a District Court shall have jurisdiction to hear and determine the question, and the decision of the court shall be final.

Compare: 1954 No 76 s 227; 1956 No 64 s 254

Section 461: inserted, on 1 April 1980, by section 2 of the Local Government Amendment Act 1979 (1979 No 59).

Section 461(1): amended, on 19 January 1981, pursuant to section 2(2) of the Local Government Amendment Act 1980 (1980 No 82).

Section 461(1): amended, on 19 January 1981, by section 39 of the Local Government Amendment Act 1980 (1980 No 82).

Section 461(2): amended, on 19 January 1981, pursuant to section 2(2) of the Local Government Amendment Act 1980 (1980 No 82).

Section 461(2)(a): amended, on 19 January 1981, pursuant to section 2(2) of the Local Government Amendment Act 1980 (1980 No 82).

Section 461(3): amended, on 1 April 1980, pursuant to section 18(2) of the District Courts Amendment Act 1979 (1979 No 125).

462 Council may declare private drain to be public drain

(1) The council may, by resolution passed at a meeting of which at least 14 days' public notice has been given, declare any specified private drain in the district to be a public drain.

(2) For the purposes of this section, every drain constructed for State housing purposes

under the Housing Act 1955 and serving 2 or more properties, or carrying water from any road channel or sump over or under any land to a watercourse or public drain, shall be deemed to be a private drain.

(3) Where a certificate under section 461 in relation to any private drain has been entered on the register pursuant to that section or the corresponding provisions of any former enactment and the drain has been declared to be a public drain pursuant to subsection (1),—

(a) the principal administrative officer shall send to the District Land Registrar an authenticated copy of the resolution under that subsection; and

(b) the District Land Registrar shall enter on the register and on the outstanding certificates of title to the lands served by that drain (which shall be produced to him for the purpose) a memorandum that the drain has become a public drain.

Compare: 1954 No 76 s 228; 1955 No 51 s 13(1); 1956 No 64 s 255

Section 462: inserted, on 1 April 1980, by section 2 of the Local Government Amendment Act 1979 (1979 No 59).

Section 462(3)(a): amended, on 19 January 1981, pursuant to section 2(2) of the Local Government Amendment Act 1980 (1980 No 82).

LGA 2002

181 Construction of works on private land

- (1) A local authority may construct works on or under private land or under a building on private land that it considers necessary for—
- (a) the supply by territorial authorities of water by means of reticulated systems;
 - (b) the supply of water through water races;
 - (c) trade wastes disposal;
 - (d) land drainage and rivers clearance.
- (2) A territorial authority may construct works on or under private land or under a building on private land that it considers necessary for sewage and stormwater drainage.
- (3) A local authority or a territorial authority, as the case may be, must not exercise the power in subsection (1) or subsection (2) unless it has—
- (a) the prior written consent of the owner of the land to the construction of the work; or
 - (b) complied with the requirements of Schedule 12.

(4) A local authority may enter the land to inspect, alter, renew, repair, or clean any work constructed under this section or under the corresponding provision of a former Act.

(5) The power in subsection (4) must not be exercised without first giving reasonable notice of the intention to enter the land to the owner and occupier (if any).

(6) This section applies subject to the Public Works Act 1981 as to compensation for injurious affection to land.

Compare: 1974 No 66 s 708

Section 181(1)(a): substituted, on 7 July 2004, by section 18 of the Local Government Act 2002 Amendment Act 2004 (2004 No 63).

Schedule 12

Conditions of constructing or undertaking works on private land without the owner's consent

s 181(3)(b)

1 For the purposes of section 181(3)(b), the requirements are as follows:

(a) a description of the works, accompanied by a plan (in the case of any works to be constructed), showing how they affect any land or building, must be deposited for public inspection at a place within the district in which the works are to be undertaken:

(b) the territorial authority must give notice in writing of the intention to construct the works (referring to a plan and description of the works and where the plan and description can be viewed)—

(i) to the occupier of the land or building unless there is no occupier or, after all reasonable steps have been taken, the occupier cannot be found; and

(ii) to the owner if known;

(c) however, if there is a change of occupier, it is not necessary to give notice to any subsequent occupier before the work is done:

(d) if, within 1 month after the notice is given, the occupier or owner serves on the territorial authority a written objection to the proposed works, the territorial authority must—

(i) appoint a day for hearing the objection; and
(ii) give to the objector reasonable notice of the day, time, and place
of hearing so as to enable the objector to attend the hearing;
(e) the territorial authority must hold a meeting on the day appointed, and
may, after hearing any person making any objection, if present, determine—
(i) to abandon the works proposed; or
(ii) to proceed with the works proposed, with or without any alterations
that the territorial authority thinks fit.

2 A person who is aggrieved by a determination of the territorial authority under
clause 1(e) to proceed with the works proposed (with or without alterations)
may appeal to a District Court against the determination within 14 days after
the date of the determination.

3 Pending the decision of the court on the appeal, the territorial authority must
not proceed with the works.

4 On the hearing of the appeal, the court, whose decision is final, may confirm or
amend or set aside the determination of the territorial authority.

BARRY KAYE

INDEPENDENT HEARINGS COMMISSIONER

BARRY KAYE ASSOCIATES LTD