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2 March 2017

Auckland Council
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ATTENTION: Luke Cutfield

EMAIL: luke.cutfield@aucklandcouncil.govt.nz

Dear Luke

9 ASTLEY AVENUE, NEW LYNN - NEW LYNN HOLDINGS LIMITED - OBJECTION TO PROPOSED STORMWATER WORKS

1. We refer to your letter dated Friday, 15 February 2017. We thank you for providing in that letter some of the documents that our client will require to come to an informed decision as to whether to withdraw its objection to the proposed works (as set out in the notice dated 23 December 2016).

Requirement for expert review of the documents

2. Having conducted a preliminary review of the documents provided, our client instructs that it requires the documents to be reviewed by an expert engineer, who our client is in the process of instructing. We are advised that the preliminary estimate for when a report can be expected from the expert engineer is between late March 2017 and early April 2017.
3. At this stage, our client is particularly concerned that the justifications for choosing the current option as the Council's preferred option does not appear to be fully analysed. This is because options 12 and 13 from the "options analysis summary report" do not appear to have been subject to any formal analysis or mentioned in any design reports. It is understood that these two options did not require the proposed works to pass through our client's property. Our client considers this to be a significant issue and accordingly requires time to seek its own engineer's report in relation to this (and any other issues that may come to light). This issue only became apparent, and only could have been discovered, upon receipt of the documents by us on 15 February 2017.
4. Further, it appears that this issue goes to the crux of the issue to be determined under s 181 of the Local Government Act 2002 (the "LGA"), being the necessity of the proposed works on the private land.

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M c V E A G H F L E M I N G**Proposed hearing on 9 March 2017**

5. As you are aware, in order for the Council to proceed with the proposed works, agreement will need to be reached between all affected parties, including our clients as owners of the land. Alternatively, our client's objections will need to be addressed and determined at a hearing in accordance with the process under the 12th Schedule of the Local Government Act 2002 (the "LGA") (see: section 181(3) of the LGA).
6. As already advised in our 2 February 2017 letter, it is clear that the proposed 9 March 2017 hearing date would cause significant prejudice to our client as they would not have the ability to seek their expert engineer's opinion on what are significant and technical documents that have only recently been provided to us. As discussed above, these documents raise issues that go to the crux of the matter to be determined under s 181 of the LGA.
7. Further, any suggestion by the Council that the proposed works need to be urgently commenced (and therefore the proposed 9 March hearing going ahead) appears to be contradicted by the following facts:
 - (a) As noted in the "Options Analysis Summary Report", the options as to how to conduct the proposed works have been "investigated between 2010 and 2016", a period of 6 years.
 - (b) The Local Government Act Notification, dated 13 December 2016 (but only served on 16 December 2016), refers to a "recent meeting on 13 October 2016" and "prior meetings and correspondence since March 2015". It would be expected that had the proposed works been urgent, service of the notification under the Schedule 12 LGA process would have occurred much earlier, and not in the period immediately prior to the Christmas Holidays. These procedural concerns were raised in our notice of objection dated 23 December 2016.
 - (c) The 13 December 2016 Local Government Act Notification only notes an anticipated construction start of mid-2017. Moreover, no substantive reasons for urgency, beyond the Council's mere stated preference, have been provided.
 - (d) At the time of writing, no formal notice of hearing setting out the date, venue, hearing materials or the procedure of the hearing has been served on us. We are unaware of any scheduled hearing date nor any correspondence from Council's democracy services as advised in your e-mail of 9 February 2017.
8. Accordingly, a hearing in May 2017, as previously suggested by us, to address the owner of the private land's legitimate concerns would not prejudice any party. In any event, for the hearing to be procedurally fair and reasonable, our client must have a reasonable opportunity to prepare adequately for any hearing under Schedule 12 of the LGA. We are advised that that preparation will require the consultation of experts.
9. Should the Council insist that this proposed hearing go ahead on 9 March 2017, our client will appear under protest, having not had a reasonable opportunity to prepare evidence in support of its objection to the Council's proposed works on its private land. We therefore reserve our client's rights entirely to present this letter to seek indemnity/increased costs against the Council and in support of judicial review proceedings, including potentially an application for interim relief under the Judicature Act 1908/Senior Courts Acts 2016.

McVEAGH FLEMING**The Council's valuation evidence**

10. Council have not provided any valuation evidence despite having apparently been in correspondence with our client since about March 2015 in respect of compensation for injurious affectation (see: paragraph 1 of the Local Government Act Notification). Our client also advises that it met with the Council's valuer about 8 months ago to discuss this issue.
11. It is therefore surprising that the valuation report referred to in paragraph [8] of the Council's 15 February 2017 letter has not been prepared earlier. Even if this is a separate issue for procedural purposes, our client considers this issue to be relevant to its consideration of whether to withdraw its objection to the proposed works. We therefore invite the Council to provide this valuation evidence before any scheduled special Council hearing date in May 2017, so that our client has the opportunity to make a fully informed decision as to whether to withdraw its objection.

Proposed without prejudice meeting in the week of 6 March 2017

12. We are instructed that our client considers a without prejudice meeting on the basis set out in our 2 February 2017 letter and the Council's 15 February 2017 letter unlikely to be helpful until its expert engineer has had an opportunity to review the documents provided by the Council. As such, our client will not be in a position to attend such a meeting in the week commencing on 6 March 2017, but it will consider doing so at a later date.
13. In the meantime, we look forward to confirmation that the proposed hearing date of 9 March 2017 has been scheduled for a later date in May 2017.

Yours faithfully
McVEAGH FLEMING



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Associate

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