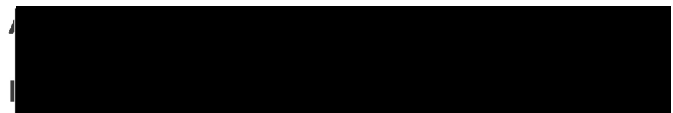


23 December 2016

Auckland Council
Private Bag 92300
Victoria Street West
AUCKLAND 1142



Partners

Craig Raymond Andrews
Victor Ross Alexander Bedford
Alissa Jane Bell
John Terence Burley
Anthony Charles Bennett Coupe
Brandon John Cullen
Peter Anthony Fuscic
Andrew John Knight
Matthew David Tetley-Jones
James David Turner
James Thomas Varney
John Woolley

Consultants

Geoffrey John Garland Baxter
Paul Ewen Callaghan
Garry William Davidson

Associates

Leanne Gay Burke
Anna Gael Carbon
Katheryn Louise Chivers
Jacqueline Dale
Steven Paul Graham
Robyn Anne Harré
Kishen Kommu
Dong-on Lee
Joshua Jeffery Muir

Dear

PROPOSED CONSTRUCTION WORK AFFECT 9 ASTLEY AVENUE, NEW LYNN, AUCKLAND - CLINKER PLACE STORMWATER PIPELINE - OBJECTION TO THE PROPOSED WORKS

1. We act for New Lynn Holdings Limited ("NLH"), the owner of the property at 9 Astley Avenue, New Lynn, Auckland (the "**Property**").

Proposed Works

2. We refer to the Local Government Act Notification, dated 13 December 2016 but only received by NLH on 16 December 2016 (the "**Notice**"), which outlines the proposed works, including the temporary structures, the permanent structures, the effect the works will have on the Property, and the estimated timeframes for completion of the works (the "**Proposed Works**").
3. In general terms, it appears that the Proposed Works consist of works under private land or under a building on private land that the Auckland Council considers necessary for sewage and stormwater drainage.

Objection to Proposed Works

4. Pursuant to Schedule 12 of the Local Government Act 2002 (the "**Act**"), NLH objects to the Proposed Works that affects the Property on the following grounds:
 - (a) The Proposed Works restrict NLH's tenant's, Croxley Stationery Limited's ("**Croxley**"), ability to move goods and services on an off the site.
 - (b) Croxley is a servicing operation. Part of the Property appears to be occupied (purportedly temporarily) under the Proposed Works, which could restrict movement of employees of Croxley. This may lead to obligations under the Health and Safety at Work Act 2015 for NHL as the owner of the Property. These obligations cannot be assessed without further information from the Auckland Council, including but not

L1612010.KK:kk

M C V E A G H F L E M I N G

limited to the actual duration of the Proposed Works (as opposed to broad estimates provided in the Notice).

- (c) The Council has not adequately justified why it is necessary for the Proposed Works to occupy the Property. The Proposed Works should therefore be constructed around the Property, not through the Property.
 - (d) The Proposed Works restrict the future developmental potential of the Property.
 - (e) Other grounds that arise once more details of the Proposed Works are disclosed by the Auckland Council.
5. Given the above objections to the Proposed Works, section 1(d)(i) – (ii) of Schedule 12 of the Act requires the Auckland Council *"must"*:
- (a) Appoint a day for hearing the objection; and
 - (b) Give NLH, as the objector, reasonable notice of the day, time, and place of hearing so as to enable the objector to attend the hearing.

Reservation of rights due to timing of service of the Notice

6. We also raise concerns in relation to the timing of service of the Notice on NLH. The Notice was served on NLH on 16 December 2016, the period immediately prior to the Christmas Holidays when it is well known that a vast majority of businesses in the country close. As such, our client has had to prepare and serve this objection with undue haste.
7. We consider this to be undue because the NLH is required to serve the Auckland Council with its objection to the Proposed Works *"within 1 month"* in accordance with section 1(d) of Schedule 12 of the Act. Under section 29 of the Interpretation Act 1999, a "month" is defined as a calendar month, meaning that the objection is due to be served by 16 January 2017, which is when NLH's lawyers (and most law firms) will just be re-opening after the Christmas Holidays.
8. NLH has not had a reasonable opportunity to gather evidence in respect of any breaches of its property rights or losses that it may suffer due to the Proposed Works. Neither has NLH had a reasonable opportunity to consider or consult with the occupiers of the Property, Croxley, in relation to:
- (a) What impact the Proposed Works will have on any rights Croxley has under its lease of the Property from NLH;
 - (b) Any health and safety issues;
 - (c) Other relevant matters that arise once more details of the Proposed Works are disclosed by the Auckland Council.
9. Accordingly, NLH reserves its rights entirely to be able to serve the Auckland Council further evidence and/or submissions in respect of any relevant matters in objecting to the Proposed Works after 16 January 2017.

McVEAGH FLEMING

10. As an aside, we require that you confirm that Croxley has been served with a similar Notice as required under section 1(b)(i) of Schedule 12 of the Act.
11. We look forward to receiving confirmation of receipt of this opposition and further details of the Proposed Works. Should you have any questions, please do not hesitate to contact us.

Yours faithfully
McVEAGH FLEMING



Kishen Kommu
Associate

Direct Dial: 306 6748
Direct Fax: 377 9956
email: kkommu@mcveaghflaming.co.nz

*This office will be closing for Christmas from close of business
Friday, 23 December 2016 and will reopen 8.30 am on
Monday, 16 January 2017. However, from 9 January 2017, there will be a
small number of partners and staff working through and available if required.*

*The partners and staff of McVeagh Fleming
extend best wishes for Christmas and a prosperous New Year.*