

2 February 2017

Auckland Council  
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**ATTENTION:** Luke Cutfield  
Solicitor

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Dear Luke

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

1. We refer to your letter dated 12 January 2017. As you are aware, counsel has only just returned from overseas on 27 January 2017, hence the slight delay in responding.
2. In relation to paragraph 8 of your letter and the proposal to have a meeting with our client and Croxley, our client would be prepared to attend on the following basis:
  - (a) Any meeting is conducted on a without prejudice basis;
  - (b) All relevant documents that the Council has in its possession and/or proposes to rely on are disclosed to our client at least 10 working days prior to such a meeting (though if expert opinion is required, our client reserves the right to seek more time). These documents should include, but are not limited to:
    - (i) Documents that justify the Council's position in paragraph 5 of your letter, including the reasons set out in paragraphs 5(a)-(c) as to why the proposed option was selected and considered the most favourable by the Council;
    - (ii) Documents justifying the proposed "*conservative estimation of 7 months*" (see: paragraph 4 of your letter) for the construction programme and the increase of that timeframe to approximately 9 months as per your email of 20 January 2017;
    - (iii) Documents justifying the Council's position in respect of the scaling back of the temporary occupation of the area as per paragraph 4 of your letter;

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- (iv) Documents in relation to the Council's proposed compensation amount in respect of the loss of utility and injurious affectation that our client and/or Croxley will suffer (which our client intends to claim).
  - (c) After receiving full disclosure of the documents, our client and Croxley must have a reasonable opportunity to seek legal and expert advice, and raise questions in respect of those documents.
3. Without disclosure of the relevant documents, our client will not be in a position to respond substantively to nor formulate its own position on the relevant issues, including compensation for the loss of utility and injurious affectation. As such, without prior disclosure of the relevant documents, any meeting is unlikely to be productive and/or result in any resolution of the issues.
  4. Accordingly, please confirm that the Council is willing to meet with our client and Croxley on the basis set out in paragraph 2 above. Should the Council accept, then we anticipate being able to arrange a meeting date and location after we have had an opportunity to review the documents from Council.
  5. In relation to paragraph 7 of your letter, at this stage the tentative hearing date of 9 March 2017 appears unrealistic given that relevant documents will need to be disclosed by Council and a reasonable opportunity will need to be afforded to our client to be able to seek legal advice and advice from experts, and to consider any new matters that come to light. Accordingly, a tentative hearing date in May 2017 would appear to be more reasonable and fair in the circumstances.
  6. We look forward to hearing from you.

Yours faithfully  
**McVEAGH FLEMING**



**Kishen Kommu**  
**Associate**

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