



DURAL LEGAL
CENTRE

Experience Excellence!

EASEMENTS

CAN MY NEIGHBOUR OBTAIN RIGHTS OVER MY LAND?

Many home owners may not be aware that their neighbours or developers of adjoining properties may be able to obtain easements over their property.

Easements may be obtained by applying under S.88K of the Conveyancing Act and may be temporary for the duration of the construction process, to permit access during construction, or to allow for activities essential to the building process such as scaffolding or a crane sweep, or they may be permanent, for example for a right of way or a drainage easement.

It is important to note that whilst there are provisions relating to the need for adequate compensation for the owner of the affected land, the courts also look at the actions of both parties during the negotiation prior to the application to court.

The party applying for the easement must make reasonable offers to compensate the owner or the easement and generally pays costs, but in extreme cases the unreasonable actions of the affected owner may influence the Courts attitude in this regard.

Land owners and developers may also have access to rights to utilise neighbouring property under Access to Neighbouring Land Act 2000. This act does not allow for the granting of an easement, but it is possible to apply to the Local Court for an order enabling a person (a developer or a neighbour) to enter onto neighbouring land. This can either be by :

- ⇒ A neighbouring Land Access Order entitling applicants to enter neighbouring land for the purpose of carrying out work on the applicants' own land (either by the owner or an occupier with the consent of the owner), or;
- ⇒ A Utility Service Access Order enabling access onto neighbouring land to carry out work on a utility service that runs through neighbouring land.

Whilst the Court can impose whatever conditions it decides are necessary, perhaps including insurance and reinstatement of the land, and the neighbouring owner may seek compensation, costs are awarded at the courts discretion. The rights are temporary and not permanent, but can be utilised particularly where it is only short term access that is required. The types of works under s.12 of the Act encompass virtually anything, including:

“Carrying out work of construction, repair, maintenance, improvement, decoration, alteration, adjustment, renewal or demolition of buildings and other structures...”

Unlike the Conveyancing Act or Land and Environment Court Act, the access to Neighbouring Land Act does not entitle the owner of the land to compensation for loss of privacy or inconvenience. Additionally, the court can consider whether an owner's refusal to consent to access was unreasonable in the circumstances, and may award costs against them.

If you are asked to consent to access or to an easement, or if you wish to obtain rights if access to carry our work on your land, we can assist you.



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