



ARMSTRONG MURRAY
LAWYERS

19 June 2018

The Windsor Park Board
c/o Bruce Mitchinson

By Email: bruce.mitchinson@gmail.com

RE EASEMENTS ETC. – WINDSOR PARK

We apologise for the delay in responding to Bruce's email of the 8th May. What we thought was going to be a relatively easy exercise became much more complex than at first thought, because of the number of changes in titles, easements etc. over the years.

Please find attached:

1. Copy Title 203647, which is the land owned by The Windsor Park Board ("the Board").
2. Copy Easement Certificate B969314.2.
3. Copy Title NA118B/588, which is the current title to the land owned by the Church.
4. Copy plan DP120879 Lot 1 on that plan is what the title to the Church's land used to look like and Lot 2 on the plan is what the Windsor Park Board's land used to look like.

The easements for carparking and rights of way, which are granted in favour of the Board over the land owned by the Church, are detailed in Easement Certificate B969314.2. The areas which we have highlighted in yellow on the copy of Plan 120879 are the areas in respect of which the Board has a right of way over the Church's land. The areas that we have highlighted in green on the copy of Plan 120879 are the areas over which the Board enjoys a carparking easement over the Church's land.

As noted above, Lots 1 and 2 on Plan 120879 do not correspond with the current size and shape of the land now owned by the Board and the Church. This is as a result of various subdivisions having been completed since Plan 120879 was completed. However, the easements have been "brought down" on to the new titles so the carparking and right of way easements described on Plan 120879 are still registered and in favour of the Board.

There is one oddity in all of this. The carparking easement includes all of the large rectangular part of the Church's land which is outlined, and hatched in green, on the copy of the plan and which is marked "Lot 1" (in fact, all of the Church's land is Lot 1, but that is not obvious from the plan). As is obvious from the current plan which is attached to the Church's title, not all of the land marked as Lot 1 on Plan 120879 is still owned by the Church. A significant portion of it appears to have been subdivided off, when Noel Williams Place was created and the residential subdivision associated with that road was completed. However, the easement is still, formally over the entire rectangular area marked Lot 1 on the copy of DP 120879. In our opinion, when

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the subdivisions were completed to create the piece of land now owned by the Church, the car parking easement should have been partially surrendered, to remove the easements from the bits of land no longer owned by the Council.

In respect of the carparking easement over that same area, it also seems odd to us that the carparking rights relate to the entire area – that does not appear to take into account the existence of the buildings on that area and the fact that you (presumably) are not welcome to park cars in those buildings. I must admit, from my knowledge of the area, we would not have expected the carpark easement to extend to and include the large rectangular area marked Lot 1 on Plan 120879.

The easements in place can only be adversely affected if the Board agrees to do so. The easements endure for all time, and any sale of the Church's property must be effected subject to the easements.

In Bruce's email correspondence, he also requested details of covenants affecting the Board's land. You will see, from the title, that the matters affecting it (other than Easement Certificate B969314.2) are:

1. Transfer B969314.3 - which grants an easement over the area marked B on the plan attached to the title. This is a small sliver of land adjacent to the Church's land over which there is a right of way granting access and egress to and from East Coast Road.
2. Deed C990259.8 (copy attached) - the First Schedule to this document records that the owner of the Board's property can never operate or permit the erection or operation of a Tavern or Liquor Wholesale Outlet on the Board's land.
3. Easement 6766540.16 – you will see that this land actually affects the properties immediately adjacent to the Board's land and records that the owners of those properties cannot object to the use of the Board's land for sport and other activities (including the use of lighting, generation of noise etc.).

The title documents do not provide any detail as to the zoning of the Board's land. The zoning might potentially affect the use to which the land can be put, or restrictions on that use. We suggest that investigation be carried out with the Council, to ascertain the details of that zoning, and we would be happy to undertake that work if you would like us to do so. Please advise.

If we can be of any further assistance otherwise we look forward to hearing from you.

Yours faithfully
ARMSTRONG MURRAY

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