

Our ref: 0555/01



16 May 2014

Serenity Retreat Limited

By Email: andielusby@slingshot.co.nz

Dear Andrea,

Re: Right of Way 206A Silverstream Falls Row, Whenuakite

You have requested our advice in respect of the following information sought by Thames Coromandel District Council's planners, KTB Planning, in respect of your land use consent application for a function facility on above property:

"Right of way and Lot 50

...

- b) It is also requested that the applicant provides confirmation of the legal arrangement of the Right of Way Easement Agreements and the ability/rights of other parties to approve, restrict or possibly refuse access to the visitors to the proposed facility."

The above property, which is legally described as Lot 17 DP 401573 and currently contained in certificate of title 409423 **attached (Property)**, has the benefit of a registered right of way easement over parts of Lot 50 DP 401573 currently contained in certificate of title 409413 **attached (Lot 50)**.

A copy of the registered easement setting out the rules in respect of the right of way is **attached (Easement)**. The rules provide the owner of the Property and its invitees with the unrestricted right to use the formed carriageway on Lot 50 to gain access to and from the Property by normal means i.e. by foot or standard motor vehicle etc, as well as the right to use other areas of Lot 50 for recreational purposes. This is provided for in clauses 5.2 and 5.3 of the Easement.

There is nothing in the rules which gives the owner of Lot 50 or any other users of the right of way the ability to approve, restrict or possibly refuse use of right of way by the owner of the Property and its invitees, as long as the rules are complied with.

In some cases, there is a common law right for users of a right of way to object to the use of it by an owner of a property that has the benefit of it and/or that owners invitees. However, this right only exists in circumstances where:

1. there has been a change in use of the property that has the benefit of the right of way;
2. such change has resulted in an excessive use of the right of way to the extent that it interferes with other users rights to use it; and

3. such change in use of the property could not have been reasonably contemplated by the parties at the time the right of way was granted.

We do not consider that this common law right of objection would apply in the current circumstances. This is partly due to the fact that, at the time the right of way was granted, there was (and still is) a land covenant registered over the Property which sets provisions in respect of the use of the Property (**attached**). The provisions specifically provide for commercial activities to be carried out on the Property. This is provided for in clause 1(p) of the land covenant. Accordingly, it could not be said that the proposed use of the Property as a function facility (which is a commercial activity) could not have been contemplated by the parties at the time the right of way was granted.

We note that the rules also set out how the right of way is to be maintained, as well as how the costs of such maintenance is to be paid for between the users. This is provided for in clauses 5.4-5.7 of the rules. Please let us know if you would like us to provide further information in this regard.

We look forward to hearing from you.

In the meantime, please contact us if you have any queries or would to discuss further.

Yours sincerely,

Neverman Bennett



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