IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV 2019-404-0229
[2019] NZHC 600

IN THE MATTER	of Sections 319 and 320 of the Property Law Act 2007
AND IN THE MATTER	of an application under Part 19, Rule 19.5 High Court Rules
BETWEEN	BODY CORPORATE 329331 (IN ADMINISTRATION) Applicant
AND	ESCROW HOLDINGS FORTY-ONE LIMITED First Respondent
	KALLINA LIMITED Second Respondent

Hearing: 25 March 2019

Appearances: C P Brown and N J Foster for the Applicant
T J Herbert for the Respondents

Judgment: 28 March 2019

INTERIM JUDGMENT OF JAGOSE J

This judgment is delivered by me on 28 March 2019 at 10.30 am pursuant to r 11.5 of the High Court Rules.

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Registrar / Deputy Registrar

Solicitors/Counsel:
Wilson Harle, Auckland (Applicant)
T J Herbert, Barrister, Auckland (Respondents)

Copy to:
Goodwin Legal, Auckland (Respondents)

[1] The applicant Body Corporate seeks an order under s 320 of the Property Law Act 2007, authorising its entry onto the respondents' neighbouring land to carry out watertightness repairs to part of the structure on its land. The respondents resist on procedural and substantive grounds, doubting entry is reasonably necessary from the perspective of the respondents' otherwise "inviolate rights over their land".

[2] In this interim judgment, as indicated to counsel, I address the applicant's entitlement to enter the respondents' land. But I lack sufficient evidence for the mandatory content of any orders to be made under s 320. I therefore give directions to bring this proceeding to its conclusion.

Factual background

[3] The western face of the applicant's Ridge Apartments building abuts the respondents' parking building. The two-storey parking building also provides vehicular and pedestrian access and egress to the ground floor of the six-storey apartment building, which has four accommodation floors above (and an additional parking floor below). The parking and apartment buildings are respectively Lots 4 and 5 of a subdivision in Auckland's St Mary's Bay; the owners of Lots 2 and 3 are entitled to use and access designated parking spaces in the parking building.[1]

[4] As long ago as 3 February 2010, this Court settled a scheme under s 48 of the Unit Titles Act 1972 for reinstatement of the apartment building after incurring damage from absence or loss of watertightness.[2] In December 2010, the Auckland Council issued the Body Corporate and individual proprietors with a notice to fix under s 164 of the Building Act 2004. Such notice 'requires' recipients to remedy, correct, or properly comply with specified shortcomings.

[5] The scope of remedial works gradually was identified and unanimously agreed by owners in 2015, for development towards obtaining a building consent and tendering. The ultimately successful contractor, Brosnan Contracting Limited,

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1 *Escrow Holdings Forty-One Ltd v District Court at Auckland* [2016] NZSC 167, [2017] 1 NZLR 374 at [57].

2 *Body Corporate 329331 v Baddeley* HC Auckland CIV 2009-404-7379, 3 February 2010.

submitted tender documentation illustrating use of the upper floor of the carparking building for a "laydown area for 60 ton crane when needed", a "goods lift", and "material storage". That documentation also illustrated a "monorail scaffold" and its supports, as well as a "loading platform", seemingly in the airspace above the upper floor. An appendix to a draft scaffolding licence proposed by the respondents between all parties (including the contractor and project manager) illustrated a two-metre deep "scaffolding area" across the whole width of the eastern edge of the upper floor (abutting the western side of the apartment building), with a further one-metre deep "protected area".

[6] That appendix was replicated in the Body Corporate's written notice to the first respondent dated 20 July 2018, of its intention to apply for orders under s 319. The respondents' counsel, Tim Herbert, responded by letter of 30 July 2018 to say such intention appeared to 'renege' on an agreement reached between the Body Corporate and the respondents, "the terms of which were formally enshrined in the draft scaffolding licence that was provided to the Body Corporate on 22 June 2018".

[7] On 31 July 2018, the Body Corporate's solicitors rejected any agreement in those terms. Mr Herbert replied "my clients will now only accept entry on to their land on the basis of your client paying full monetary compensation". Such compensation was for delay to their intended development on the carparking site, and for lost profits.

[8] The remedial works contract later was waylaid by internal Body Corporate dissension, and risked termination. To avoid the contract's irrevocable loss, this Court appointed an administrator to assess its merits.[3] The administrator secured further terms for the eventual contract. The whole contract was not in evidence. Of some note is the entire apartment building has been delivered vacated to the contractor for the repairs.

[9] The remedial works contract now specifies "[i]t is agreed that the Contractor reasonably requires, for the period of the Contract Works, access and possession of 11 carparks on an adjoining property". These are illustrated by diagrams of the existing and proposed carpark layout on the parking building's second-level "podium". There

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3 *May v Body Corporate 329331* [2018] NZHC 2396.

are twenty existing carparks. Although the portions of the contract in evidence do not specify what requirement the contractor has for access and possession of the carparks, the diagram of the proposed layout illustrates scaffolding, a truck (seemingly in a fixed position, using outriggers for stability), a scissor lift, temporary fencing, and a skip bin, within a now 11-metre wide strip to the eastern edge of the podium.

Body Corporate's application

[10] The administrator gave fresh written notices to the respondents of intention to apply for orders under s 319 in January 2019. The new notices annexed the contract's diagram of the proposed layout. The orders sought are predicated on "the erection of fencing and construction of a scaffold [on the podium] to provide safe access to the western face of the [apartment] building".

[11] Although there has been continuing discussion between the parties (the Body Corporate represented by the administrator), they have not yet been fruitful, and may have been overtaken by the speed with which the present application (which embodies the intended orders) has come to hearing. The respondents' evidence is: they will lose income from their carpark development; the proposed entry will have impact on their tenants (who have leases or licences over the existing carparks); the physical expansion of the intrusion from three to eleven metres is inadequately explained; and the podium's construction may not bear the proposed works.

[12] The circumstances between the parties have continued to evolve. An initial reconfiguration of the respondents' remaining carparking spaces proposed nine carparks be allocated on the western balance of the podium; a subsequent proposal saw that reconfiguration reduce to five. There has been a suggestion the respondents' development could be programmed to occur in tandem with the Body Corporate's repairs. These and other developments have been addressed in further affidavits for both parties, whether or not strictly in reply or within appropriate expertise.

[13] Formally, the respondents additionally resist the application on grounds:[4]

(a) given agreement between the parties, the application is an abuse of process;

(b) no appropriate substitute for the affected carparks or adequate compensation is offered;

(c) their development intentions for their own land should take priority over the Body Corporate's need for entry; and

(d) their land is subject to an encumbrance and covenants, requiring the Auckland Council's consent to its use other than for carparking or access, but there is no evidence of such consent.

Abuse of process?

[14] I address at the outset the respondents' contention the application is an abuse of process, by resorting to the 2007 Act's processes when there is binding agreement between the parties authorising the applicant's entry to the respondents' land (or at least the applicant is estopped from denying the existence of such). Although no authority was cited for (or against) the proposition, I accept such is at least an arguable outworking of the principle of finality underlying exercise of judicial power to prevent abuses of process.[5] But the evidence does not establish anything like what may be qualifying finality.

[15] Against a background of a pre-existing dispute as to a light and air easement for the benefit of the apartment building over the parking building, and intended discussion of alternative carparking during remedial works, the respondents wished "to formalise an agreement". They wished to include in that agreement: an apology from the applicant for an allegation of fraud raised in other proceedings; permanent

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4 Opposition also was raised on grounds statutory notice had not been given to all occupiers. If those using the carparking building under leases and licences were to be considered occupiers, Duffy J dispensed with any requirement for their service (on condition they were provided with the proceeding's constituent documents): Minute, 7 March 2019. Such provision has occurred. In the event, two lessees filed a memorandum apprising me of their opposition to the revised carparking proposal as inadequate, which they requested I clarify, and would otherwise seek to be joined to the proceeding. None has.

5 *Chamberlains v Lai* [2006] NZSC 70, [2007] 2 NZLR 7 at [59] and [62].

replacement carparking; a costs indemnity; formalised easement and signage for the respondents on the applicant's land; and the parties' co-operation in seeking compensation for a failure to register the light and air easement.

[16] Meetings were held principally between the applicant's Angus Stuart Ogilvie (the Body Corporate's then chairperson) and the respondents' director, Humphrey John O'Leary. Mr O'Leary says Mr Ogilvie responded to the respondents' wishlist with words to the effect "I can't see any problem with that".

[17] Mr Ogilvie says he told Mr O'Leary he was negotiating on behalf of the Body Corporate committee, without authority to bind the Body Corporate. He says he provided a detailed response to each issue, noting in particular he told Mr O'Leary "[he] would convey everything [Mr O'Leary] had raised to the committee, but [he] suspected there would be no appetite [to conflate other matters] with an agreement regarding the erection of scaffolding". Mr Ogilvie considered the matters should be addressed separately, any agreement formally to be established in writing after Body Corporate committee approval. That was in April/May 2018.

[18] In May/June 2018, Mr Ogilvie pursued alternative carparking proposals with Mr O'Leary. Mr O'Leary agreed to reserve the light and air easement issues, but raised issues over fire rating (which seem to have been resolved by regulatory requirements). Meanwhile the Body Corporate risked increased costs from the contractor's continued lack of access to Lot 4 after June 2018. Mr Ogilvie told Mr O'Leary his first priority was resolving the alternative carparking issue, but his discussions with other Body Corporate committee members indicated serious consideration would be given to the other issues.

[19] At that point Mr O'Leary said Mr Ogilvie's own apology met his requirements on that front, but he wanted the formalised easement as part of the deal. And he wanted the Body Corporate also to waive opposition to his intended development of the carparking building, raising a further two floors against the apartment building. Mr Ogilvie was of the view both issues would require owner consent, and were not capable of being addressed by the committee alone. Instead the Body Corporate's project manager would provide its new carparking proposal, which Mr Ogilvie

forwarded to Mr O'Leary under cover of an email stating "I think we are almost there. Do let me know you[r] thoughts".

[20] Mr O'Leary confirmed the carparking arrangements, and suggested his solicitors draft the agreement. The resultant draft scaffolding licence included grant of easement to the respondents as a precondition to the licence, and required the Body Corporate's reasonable consent to and assistance with the respondents' proposed development of further carparking decks. Mr Ogilvie responded "[w]e envisage some changes to the document". But within a month, the committee members all were swept from office.

[21] I can identify nothing in the evidence coming close to agreement such as would make the application an abuse of process. If oral agreement between the two men extended to those matters Mr Ogilvie considered were beyond the committee's jurisdiction, the dealings seem quite plain any binding agreement was to be settled in writing with Body Corporate committee approval. That is how the draft scaffolding licence was presented by Mr O'Leary: to be "[s]igned for and on behalf of Body Corporate Number 329331, by its authorised committee members", plural, and not by Mr Ogilvie alone.

[22] And Mr O'Leary only rejoins Mr Ogilvie "led me to believe that he was delegated with full authority to negotiate," not settle, and "it was extremely unlikely [the committee members] would not follow his recommendation". That contradicts any proposition an agreement between Mr Ogilvie and Mr O'Leary could bind the Body Corporate. And even a context-free reading of Mr Ogilvie's "I can't see any problem with that" and "I think we are almost there" is far too light a straw on which to construct the very significant agreement – extending to constraint on exercise of owners' property rights – for which Mr O'Leary contends; even more so, to support a claim of abuse of process.

[23] The application is not brought in abuse of process.

The relevant law

[24] Sections 319 and 320 of the Property Law Act provide:

319 Owner or occupier of land may apply to court for order authorising entry onto or over neighbouring land

(1) A person may apply to a court for an order under section 320 if the person is an owner or occupier of any land who wishes to enter onto or over any neighbouring land for any of the following purposes:

(a) to erect, repair, alter, add to, paint, or demolish the whole or any part of any structure on the applicant's land; or

(b) to do any other necessary or desirable thing in relation to the applicant's land.

(2) An application under subsection (1) may be made only if the applicant has given at least 5 working days' written notice of intention to apply for the order to—

(a) the owner of the neighbouring land; and

(b) if the owner is not the occupier of the neighbouring land, the occupier of that land.

(3) The written notice required by subsection (2) must adequately inform the owner and, if applicable, the occupier of the neighbouring land of all the following matters:

(a) the nature of the proposed work:

(b) how the work is proposed to be undertaken:

(c) the time during which the work is proposed to be undertaken:

(d) the measures that are proposed to be taken to maintain adequate access to the neighbouring land.

(4) In this section and section 320, neighbouring land means any land for which the order is sought whether or not it adjoins the applicant's land.

320 Powers of court making order authorising entry onto or over neighbouring land

(1) On an application under section 319(1), the court may make an order authorising the applicant to do either or both of the following things:

(a) to enter and re-enter onto or over the neighbouring land at reasonable times, with or without any employees, agents, or contractors and any aircraft, boats, vehicles, appliances, machinery, and equipment that are reasonably necessary for the purposes specified in the order:

(b) to store on the neighbouring land any materials required for the purposes, and in the quantities, specified in the order.

(2) An order under subsection (1) must specify—

(a) how and when entry is to be made; and

(b) any other conditions that the court thinks fit to impose.

(3) Those conditions may relate to all or any of the following matters:

(a) the period of time during which the entry onto or over the neighbouring land is authorised:

(b) the hours of the day or night during which the work may be done:

(c) the preservation of the safety of persons or property on the neighbouring land:

(d) the maintenance of adequate access to the neighbouring land:

(e) the restoration of the neighbouring land to its former condition:

(f) the provision of security or indemnity to secure the performance of any condition of the order:

(g) the making good of any damage caused by the entry onto or over the neighbouring land or the reimbursement of the owner and, if applicable, the occupier of the neighbouring land for any costs, expenses, or loss arising from the entry:

(h) any other relevant matters.

(4) Before exercising any powers conferred by an order made under subsection (1), the applicant must serve the order on the owner and, if applicable, the occupier of the neighbouring land concerned.

[25] There is a paucity of caselaw on the sections, or their predecessor, s 128 of the Property Law Act 1952. At the time of its repeal, s 128 provided:

128 District Court may authorise entry for erecting or repairing buildings, etc

(1) The owner of any land may at any time apply to a District Court for an order authorising him, or any person authorised by him in writing in that behalf, to enter upon any adjoining land for the purpose of erecting, repairing, adding to, or painting the whole or any other part of any building, wall, fence or other structure on the applicant's land, and to do on the land so entered upon such things as may reasonably be considered necessary for any such purpose as aforesaid.

(2) On any such application the Court may make such order as it thinks fit. Any such order, or any provision thereof, may be made upon and subject to such terms and conditions as the Court thinks fit.

(3) Every application under this section shall be made by originating application in accordance with the rules of procedure for the time being in force under the District Courts Act 1947. The Court, for the purposes of hearing and determining the application, shall have all the powers vested in it in its ordinary civil jurisdiction.

> (4) For the purposes of this section, the term owner, in relation to any land, means any person registered under the Land Transfer Act 1952 as the proprietor of an estate in fee simple in the land or as lessee or mortgagee of the land, or any person who is for the time being entitled to receive the rent of the land, or any person who is for the time being entitled to receive the rent of the land, whether on his own account or as agent or trustee for or mortgagee of any other person, or who would be entitled so to receive the rent if the land were let, or any tenant of the land bound by any express or implied covenant to keep any building thereon in repair.

[26] The principal authority relates to s 128. In *De Richaumont Investment Co Ltd v OTW Advertising Ltd*, after a careful review of the circumstances of s 128's enactment, and its single prior judicial consideration, Priestley J concluded:[6]

> What the section empowers the Court to permit is entry on to adjoining land for specific activities. An order is required from a Court to authorise what would otherwise be a clear trespass. The specified activities are contained in the verb forms "erecting, repairing, adding to, or painting". The object of the permitted activity is the whole or part of any "building, wall, fence, or other structure".
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> …
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> … The balancing exercise which s 128(1) requires the Court to undertake is to consider whether the order being sought authorises entry which is "reasonably ... necessary for such a purpose ...".
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> …
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> In my view a correct interpretative analysis of s 128 requires the Court, as its starting point, to regard the appellant's property rights as inviolate. The Court must recognise that the respondent is only entitled to an order if it is for the purpose specified by Parliament. There is the further requirement that the order is reasonably necessary in the circumstances of the case.

[27] Albeit in a costs judgment arising from s 128 orders obtained by consent, in *Norfolk Trustee Company Ltd v Tattersfield Securities Ltd*, His Honour indicated respondents' "legitimate and specific concerns on safety and use … needed at least to be considered and addressed" in articulating proposed s 128(2) conditions: "[i]t was not, in my judgment, sufficient for the appellants to state they would abide by all

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6 *De Richaumont Investment Co Ltd v OTW Advertising Ltd* [2001] 2 NZLR 831 (HC) at [54], [56] and [59].

consents, bylaws, and relevant safety and other regulations applying".[7] Also relevant was the extent of proposed intrusion.[8]

[28] The Judge affirmed compensation was available to be ordered under s 128(2).[9] That now is put beyond any doubt by s 320(3)(g). But s 319(1) offers a significantly wider ambit for entry to neighbouring land than s 128's "things as may reasonably be considered necessary" for the specified purposes on the applicant's land. If entry is available for any "necessary or desirable" cause in relation to the applicant's land, little weight can be attributed to the neighbour's "inviolate" property rights.

[29] Also, if entry to neighbouring land is permissible either for the specified activities on the applicant's land "*or* … to do any other necessary or desirable thing in relation to the applicant's land" (emphasis added), necessity or desirability does not expressly condition s 319(1)(a)'s specified purposes as 'reasonable necessity' did entry under s 128. Section 319(1)(b)'s use of "other" may allow the inference. But then it is only the necessity or desirability of the specified purposes for entry, and not entry itself. 'Reasonable necessity' appears only in s320(1)(a), as conditioning what may be brought with a person authorised to enter neighbouring land.[10]

[30] Yet the section relies for entry on exercise of the Court's discretion, which must have some principled foundation. In *Guo v Bourke*, the Court of Appeal observed generally the 2007 Act gives courts "a range of special powers to deal with issues that often arise between neighbours".[11] This included s 320, which it described as empowering "orders authorising owners of adjoining properties to enter onto each other's land where reasonably necessary in connection with work required on their own property".[12] But the Court went on to say:[13]

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7 *Norfolk Trustee Company Ltd v Tattersfield Securities Ltd* HC Auckland CIV 2004-404-3668, 30 March 2005 at [59].

8 At [60].

9 At [37].

10 The paragraph is not happily constructed: 'reasonable necessity' also purports to condition what a person may omit to bring – "or without" – onto or over the neighbouring land. But that is meaningless. I take the paragraph to intend a person may be authorised to enter the land, including in the form of persons or things "reasonably necessary for the purposes specified in the order".

11 *Guo v Bourke* [2017] NZCA 609, (2017) 19 NZCPR 168 at [11].

12 At [11(c)].

13 At [12].

> The powers are remedial, and hence are typically expressed in broad terms. Generally, relief may be granted when the court considers it just and equitable, and orders may be made on such terms and conditions as the court thinks fit. The courts are therefore empowered to make pragmatic but principled decisions in circumstances where … neighbours are unable to resolve differences that have arisen.

[31] I would apply that test to the present application.

Discussion

[32] There can be no doubt the applicant wishes to enter onto or over the respondents' land to repair the structure on its land.

[33] The Body Corporate's notice addresses s 319(3)'s mandatory requirements as follows:

(a) the nature of the proposed work:

> The work on the applicant's property includes the recladding of the external wall of the building on the base land for the applicant in accordance with a building consent issued for that work by the Auckland Council … "the Repairs").

(b) how the work is proposed to be undertaken:

> The works on the respondent's property is the erection of fencing and construction of a scaffold to provide safe access to the western face of the building on the base land of the body corporate to permit the contractors engaged by the applicant to undertake the Repairs, with the scaffold to be erected on that part of the adjoining land marked as "SCAFFOLDING" on the plan attached marked "A".

(c) the time during which the work is proposed to be undertaken:

> The time during which the works will be undertaken is the period of 72 weeks from the latter of:
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> (i) 5 working days after this Notice; or
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> (ii) 5 working days after an order of the Court made under s 320 Property Law Act 2007; or
>
> (iii) The date that the scaffolding is erected on the adjoining property;
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> provided that the applicant will use its best endeavours to complete the works earlier.

As to s 319(3)(d)'s "the measures that are proposed to be taken to maintain adequate access to the neighbouring land", the Body Corporate proposed "[a]dequate access to the respondent's land and or alternative use of land are particularised in the proposed order set out in the schedule to this notice". There, the respondents would have rights of access to inspect the scaffolding.[14] It also proposed access to 11 alternative car parking spaces in Lot 5.

[34] The Body Corporate's evidence is scaffolding requires to be erected against at least the western wall of the apartment building. That is necessarily over, and likely also onto, the easternmost three metres of the respondents' land. Thus neither can there be any doubt such entry is necessary, particularly given the regulatory requirement for the repairs. Orders permitting such entry would be just and equitable.

[35] Mr Herbert said in oral submission "nobody has issues with the three metres of scaffolding required". But as to the balance of the entry – the additional eight metres, and the identified plant – there is no additional evidence. Rather the evidence in dispute has focused on alternative arrangements for carparking, and the parking building's structural limitations.

[36] Yet plainly I require such detail beyond the three-metre strip, because my order must specify at least:

(a) the purposes for which entry and re-entry onto or over the respondents' land to a sufficient degree to be able to discern what entry, and of what personnel and plant, may be claimed 'reasonably necessary';[15]

(b) any materials, and their quantities, required for those purposes to be stored on the respondents' land;[16] and

(c) how and when entry is to be made.[17]

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14 The proposed order also would grant the applicant emergency access, but presumably to the balance of Lot 4 not subject to the order.
15 Property Law Act 2007, s 320(1)(a).
16 Section 320(1)(b).
17 Section 320(2)(a).

Conditions can also be expected to be imposed to address any other constraints required of such entry or re-entry. But the conditions proposed in the application primarily are focused on construction and maintenance of the scaffolding itself. (Other proposed conditions – *eg*, for indemnity and insurance – are self-evident.)

[37] Given Mr Herbert's concession – under s 320(1)(a), and on the evidence presently before me – I conceivably could order the applicant may, through its employees, agents, or contractors, enter and re-enter:

(a) onto or over the easternmost three metres of the upper deck of the respondents' parking building on Lot 4;

(b) from the abutting connection at the ground floor of its apartment building on Lot 5;

(c) at any time during normal construction working hours;

(d) for the purpose of erecting, maintaining, using, dismantling, and removing scaffolding across the western perimeter wall of its building;

(e) in compliance with the applicable Method Statement, regulatory consent(s), and scaffolding suppliers' requirements;

(f) with any vehicles, appliances, machinery or equipment reasonably necessary for that purpose, such not to exceed a uniformly distributed design live load of 250kgs/m^2, a maximum single weight of 2,500kgs, and a concentrated load of 900kg;

(g) during the 72 weeks after commencement of the scaffolding's construction.

Whether that would be sufficient for the applicant is a matter for it. I apprehend it will not. Notably, s 320(2)(a)'s 'how' is achieved only by internal access from the apartment building. External access would require using parking easements beyond the three-metre strip, presently limited to "reasonable vehicular and pedestrian access and egress" for carpark access, not scaffolding construction and use. Yet no proposed conditions address that external access.

[38] If the extent of my indicated order is insufficient for the Body Corporate's purposes, then its application presently has misfired. Without being directive, it may be an application for entry to construct and use scaffolding on a neighbouring property could be supported by the signalled "Method Statement", comprehensively outlining all intended activities on the property and certified as fit for purpose by some appropriately qualified independent professional. If not incorporated in that statement, terms and conditions of any regulatory consents for construction and use of the scaffolding could also be identified. So too could any requirements imposed by the scaffolding's supplier. All that seems necessary to establish the mandatory detail of any order, for entry in compliance with those conditions, subject to any additional reasonable requirements raised by the respondents.

[39] To be clear, I do not see establishment of alternative carparking arrangements a condition of entry. Instead, such would mitigate against the applicant's liability to reimburse the neighbouring owner or occupiers "for any costs, expenses, or loss arising from the entry".[18] Neither do I see co-ordination of the applicant's repair with the respondents' development a condition of entry. If co-ordination offers some desirable economy, it may be adopted by agreement. If its absence imposes some cost on the respondents, such is reimbursable. Leave should be reserved for the making of any such claim(s).

[40] Last – as discussed with counsel, to avoid this Court's minute supervision of ongoing building arrangements – it would be desirable to appoint an independent professional with authority to make day-to-day decisions on conduct of entry under any order, in compliance with its conditions.

Result

[41] It is just and equitable the applicant be authorised under s 320 of the Property Law Act 2007 to enter part of the respondents' land (Lot 4, Deposited Plan 126975 in the North Auckland Land Registry), to repair the building on its land (Lot 5, Deposited Plan 126975 in the North Auckland Land Registry).

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[18] Property Law Act 2007, s 320(3)(g).

Next steps

[42] Terms and conditions for such entry require further evidential support, as indicated in this judgment. I direct the parties to submit (desirably joint) memoranda, setting out a timetable for filing and service of such evidence and draft terms and conditions proposed for an order to be made under s 320, within ten working days of this judgment. Any further memoranda are to be filed and served within five working days of receipt of that to which they are responding.

Costs

[43] Costs are reserved for determination in conjunction with my final judgment on the present application.

—Jagose J