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Kia ora Madeline

COVID-19 RECOVERY (FAST-TRACK CONSENTING) ACT 2020 – REQUEST FOR FURTHER INFORMATION – QUARTERDECK PROJECT

1. INTRODUCTION

- 1.1 We act for Box Property Investments Limited (“Box”) in relation to their proposed development of low-rise apartments (“the project”) at 30-40 Sandspit Road and 2-4 Reydon Place, Cockle Bay (“the Site”) in conjunction with Civix.
- 1.2 Thank you for your letter of 27 February 2023 addressed to Mr Mattison of Civix. We respond to the queries with the following headings.
- (a) Does the project trigger consent under the National Environmental Standards for Contaminated Soil¹ (Section 2);
 - (b) Easement on the record of title for 30 Sandspit Road (Section 3);
 - (c) Timeframe for owners consent for wastewater connection (Section 4);
 - (d) Timeframe for owners consent for tree removal (Section 5); and
 - (e) Relationship between Clearwater Construction (CCL) and Box (Section 6); and
 - (f) Development engineering information (Section 7).

2. DOES THE PROJECT TRIGGER CONSENT UNDER THE NES FOR CONTAMINATED SOIL?

- 2.1 Yes, the application will require consent under this regulation.

¹ Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

2.2 The Soil Contamination memos in **Appendices “S” and “T”** set out that there are two discrete areas of the site that present potential risk and would require remediation and refers to a PSI, a DSI and a Remediation Action Plan. Future land development is likely to be considered a restricted discretionary activity under Regulation 10 of the NES, where a detailed site investigation has been prepared, and the activity is not permitted or controlled under the NES CS.

2.3 The need for an application under the NES CS is listed in the application form in Part III in relation to the question / table:

*Please provide details of all rules consent is required under. Please note that Section 18(3)(a) of the Act details that the project **must not include** an activity that is described as a prohibited activity in the Resource Management Act 1991, regulations made under that Act (including a national environmental standard), or a plan or proposed plan.*

2.4 In addition, consent is required under the Auckland Unitary Plan, Contaminated Land E30.4.1(A6) – which is noted in the application form uploaded to the website.

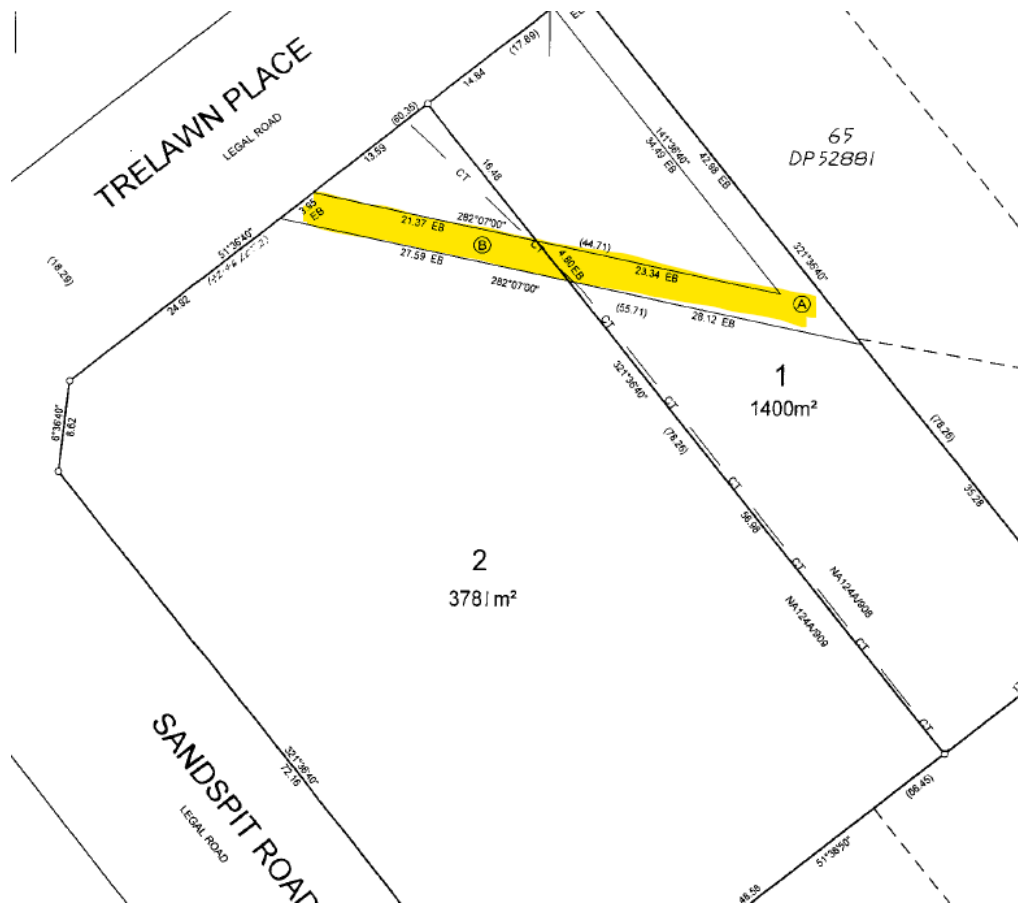
2.5 We have also located copies of the DSI and would be happy to provide a copy of that report if it would assist.

3. **EASEMENT ON THE RECORD OF TITLE FOR 30 SANDSPIT ROAD**

3.1 In question 2, you ask - the record of title for 30 Sandspit Road shows an easement on the plan, but the easement is not listed on the title itself. Is this easement in place and, if so, do you anticipate that it will impact your ability to deliver the project?

3.2 Thank you for identifying this and we can see that it is somewhat unclear. 30 Sandspit Road is legally described as lot 2 DP 334191 (title reference 140265). This plan is shown on page 3 of Appendix B to the application uploaded on MfE’s web-portal.

3.3 We understand that you are referring to the easement marked A and B, as shown below:



- 3.4 That easement is described on the title plan as follows (note the reference to transfer A405583:

EXISTING EASEMENT		
PURPOSE	SHOWN	CREATED BY
DRAINAGE	(A) (B)	TRANSFER A405583

NEW C'sT ALLOCATED	
LOT 1	140264
LOT 2	140265

- 3.5 We have obtained a copy of the historical title for Lot 2 Deposited Plan 195099 (Identifier NZ124A/909), a copy of which is included as **Annexure 1**. This historical title is listed as a prior reference to the current title, see below an extract from page 2 of Appendix B to the application uploaded on MfE's web-portal:

Identifier 140265
Land Registration District North Auckland
Date Issued 27 September 2005

Prior References

NA124A/908 NA124A/909

Estate Fee Simple
Area 3781 square metres more or less
Legal Description Lot 2 Deposited Plan 334191
Registered Owners
Box Property Investments Limited

- 3.6 The historical title document provided includes "6587287.4 Surrender of the drainage right created by Transfer A405583 - 27.9.2005 at 9:00 am". That is the same transfer number as is recorded on the title plan.

Interests

Fencing Agreement in Transfer 590622

K115716 Building Line Restriction

Subject to a drainage right (in gross) over part marked A on DP 195099 in favour of Howick Borough Council created by Transfer A405583 - 27.9.2005 at 9:00 am

The easements created by Transfer A405583 are subject to Section 351E (1) (a) Municipal Corporations Act 1954
6587287.1 Certificate pursuant to Section 224(c) Resource Management Act 1991 (affects DP 334191) - 27.9.2005 at 9:00 am

6587287.4 Surrender of the drainage right created by Transfer A405583 - 27.9.2005 at 9:00 am

6587287.6 Transfer of part Lot 1 DP 334191 to Erindi Construction Limited - 27.9.2005 at 9:00 am

6587287.7 CTs issued - 27.9.2005 at 9:00 am

- 3.7 As a result, it is our view that the transfer easement shown on the title plan has been surrendered. That is consistent with the instruments listed on the title. It appears that when the new title was issued for this parcel in 2005, the title plan was not updated to remove the easement. A copy of the agreement to cancel this easement is attached as **Annexure 2**.

4. **ANTICIPATED TIMEFRAMES TO OBTAIN THE NECESSARY LANDOWNER APPROVALS FOR THE INSTALLATION OF A NEW WASTEWATER PIPE OVER A NEIGHBOURING SITE**

- 4.1 In relation to the new Wastewater pipe:

- (a) Annexure P to the Fast-track application uploaded to MfE's portal provides an engineering serviceability report. Page 3 of that reports addresses wastewater and it advises that:

if the required neighbour's approval was unable to be achieved, the following wastewater discharge options can be considered:

1. Raise the RL of the 12 terraced houses to an RL of 51.5 (by 2.8m) to enable a gravity system and connection into existing WWMH 479007 to be achieved.

2. Install a Wastewater pump and holding tank system to maintain current proposed terraced house RL's and pump wastewater into existing WWMH 479007, entirely within the site.

3. An alternative discharge option is to utilise the wastewater system to the western side of Sandspit Rd, connecting into manhole WWMH 499572, the merits of this option can be explored in detailed design as it will require pumps and tanks and road crossings.

- (b) As a result, it is clear that there are design alternatives for the potential wastewater line through the adjacent property. However access through the adjoining land is the most efficient conventional path.
- (c) Box proposes ensuring that the resource consent plans enable all 3 of the above options, so that there will be no need to delay seeking resource consent for the development.
- (d) Box would expect that during the detailed design phase (building consent) of the project, commencing immediately after RC approval and within 3 months we would have neighbours approval for the new wastewater connection.
- (e) If Neighbours approval is not granted per the resource consent (if granted), Box would implement one of the other design options, above.

5. **ANTICIPATED TIMEFRAMES TO OBTAIN THE NECESSARY LANDOWNER APPROVAL FOR TREE REMOVAL**

- 5.1 Consultation has commenced in regards to the removal of trees outside of the applicants land, as evidenced in **Annexure 3**, where in principal approval has been reached with a Council officer to remove a tree in the berm on Reydon Place (see email chain included as Annexure 3). The Applicant has focused on this tree initially as it impacts on the location of the proposed vehicle access to Reydon Place.
- 5.2 Box would expect to continue engagement with the owner of any other trees which might be directly or indirectly affected. We would expect that those approvals would either be secured during the resource consent process or within 3 months after that process.
- 5.3 It is forecast that the trees would be removed prior to or simultaneously with the commencement of demolition / earthworks.

- 5.4 For completeness, if resource consent is granted to remove street trees, Box is probably entitled to have the trees removed pursuant to the doctrine of *frontager* rights as set out in *Fuller v MacLeod* [1981] 1 NZLR 390.

6. RELATIONSHIP BETWEEN BOX AND CLEARWATER CONSTRUCTION

- 6.1 The Companies have a common major shareholder/beneficiary and funder being Sullivan Family Trust No. 1. Michael Sullivan is a Trustee of Sullivan Family Trust No. 1 (“SFT”).

- 6.2 Michael Sullivan (in his capacity as a trustee, we are advised) is:

- (a) Listed as a 75% shareholder of Box Property Investments Limited. See link to the Companies Office website in the footnote;²
- (b) Listed as a joint owner of 51.33% of the shares in Clearwater Construction Limited, with Duthco Trustees (Sullivan) Limited – this is because trustees of trusts are listed as owners, rather than trusts. Again, please see link to the relevant page of the Companies Office website in the footnote; and ³
- (c) Listed as a director of both Box Property Investments Limited and Clearwater Construction Limited.

- 6.3 Box is intended as the land acquisition and consenting entity. For construction, Box will work with other entities owned by the Sullivan Family Trust including Clearwater Construction. At present Box has not decided on the exact arrangement, but Box will leverage off Clearwater’s and SFT’s relationship with tier 1 banks for funding (if required), while using internal sources available from the Sullivan Family Trust for any non financial institution funding or equity.

- 6.4 To provide an example of the ability of SFT to secure funding for the development, we refer to the letter from Clearwater Construction refers to a number of recent projects, such as the “Outlook” Apartments in Orakei and “Elmstone” Apartments in Remuera, “Wairua One” Apartments in Remuera and “One St Stephens” Apartments in Parnell. We are advised that:

- (a) The Outlook Apartments had a development cost of circa ^{s 9(2)(b)(iii)} which was funded by approximately ^{s 9(2)(b)(iii)} of tier 1 bank funding and ^{s 9(2)(b)(iii)} of funding through internal group sources (SFT owned / related entity sources).
- (b) The Elmstone Apartments had a development cost of circa ^{s 9(2)(b)(iii)} which was funded by approximately ^{s 9(2)(b)(iii)} of tier 1 bank funding and ^{s 9(2)(b)(iii)} of funding through internal group sources (SFT owned / related entity sources).

² <https://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/1812164/shareholdings>

³

<https://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/3716478/shareholdings?backurl=H4sIAAAAAAAAAAC2MTQoCMQyFb9ONizlBEHHhZhBBLxDSOMVpUpt0ZG5vUHfv53tvanhnm0hrQymhJLHY181M5ijZOw5%2BdYYWLx4IOkFtAT1Rue%2BixXzPsilSsK8ohDnCWovEDGn72q7xYHBYZ7%2F%2Furow05dR%2FvFxjR6FEfVZ%2BEzVoYPTKdampsAAAA%3D>

- (c) The Wairua One Apartments (1 month from completion) has a development cost of ^{s 9(2)(b)(ii)}, which was wholly funded by internal group sources (SFT owned / related entity sources).
- (d) The One St Stephens Apartments currently under construction has a development cost ^{s 9(2)(b)(ii)}, which is being funded by approximately ^{s 9(2)(b)(ii)} of tier 1 bank funding and ^{s 9(2)(b)(ii)} of funding through internal group sources (SFT owned / related entity sources).

6.5 If you require any further information re the financial capacity of SFT and hence Box, can you provide some guidance on the nature and detail of what is needed and we will have SFT's accountants Chapman Atkins or Solicitors Duthie Whyte provide it to you.

6.6 The information in this, section 6, section of our letter contains information which impacts the privacy of natural persons and which otherwise could be used for improper gain or advantage and we ask that this section be redacted from any release of information pursuant to section 9 of the Official Information Act 1983.

7. DEVELOPMENT ENGINEERING

7.1 Box is in discussions with Watercare regarding the capacity of water and wastewater and we thought that you might find it helpful if we provided an update on this topic:

- (a) Based on previous reporting and DHL's assessment it appears that there is capacity in the system. We have located Auckland Council's Development Engineering Report of the 3 waters impact of a previous proposal for 54 units, attached as **Annexure 4**. That report shows that the site has capacity for at least that many units as recently as November 2020.
- (b) We anticipate that Watercare will seek that a full capacity assessment is undertaken for the development. That seems to be a common approach now for fast-track projects in Auckland. We understand that the Minister commonly fast-tracks projects and imposes a requirement to address those matters prior to filing resource consent. For example East Coast Heights, Silverdale (Schedule 62) and Kepa Road Apartments (Schedule 56) both include a requirement for an assessment of the relevant infrastructure for three waters services that:
 - (i) Identifies the existing condition and capacity of the relevant infrastructure; and
 - (ii) Identifies any upgrades to the relevant infrastructure that are required in connection with the subdivision and the housing development; and
 - (iii) Identifies any funding required to carry out those upgrades (including who will provide that funding); and
 - (iv) Contains information on any discussions held, and any agreements made, between the authorised person and Auckland Council or Watercare Services Limited (or both) about the relevant infrastructure (including discussions and agreements about the matters referred to in subparagraphs (i) to (iii)).

- (c) Box would have no issues with the Minister imposing a similar obligation; it is clear that an analysis at the level of detail requested by Watercare is best left for the resource consent detailed design and assessment phase.

8. CONCLUSION

- 8.1 We recognise that the ability of an applicant to implement any consent is important to MfE.
- 8.2 Please let us know if the above explanation is unsatisfactory or insufficiently detailed as we would welcome the opportunity to address any subsequent queries.

Nga mihi / kind regards



Andrew Braggins

Director

The Environmental Lawyers

s 9(2)(a)



www.theenvironmentallawyers.co.nz

List of Annexures:

Annexure 1: Historical title for Lot 2 Deposited Plan 195099 (Identifier NZ124A/909)

Annexure 2: Copy of the agreement to cancel the easement

Annexure 3: Correspondence with Auckland Council

Annexure 4: Development Engineering Assessment for previous development