

Jacob Paget

From: Samantha Maxwell
Sent: Monday, 11 July 2022 2:19 pm
To: Fast Track Consenting
Subject: FW: [COMMERCIAL]FTCA East Coast Heights Project [MERWNZ-MERWLIB.FID629819]
Attachments: 088.23-additonal_info_fully_signed_road_agreement_39_small_road.pdf

Hi Jake,

I can't remember if I already asked you to file this email from Amy – if not could you please file it!

Ngā mihi nui,
Samantha Maxwell (she/her)
Analyst
Fast Track Consenting Team

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s 9(2)(a) | mfe.govt.nz

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From: Amy Dresser s 9(2)(a)
Sent: Friday, 8 July 2022 3:47 pm
To: Samantha Maxwell s 9(2)(a)
Cc: Stephanie de Groot s 9(2)(a)
Subject: FW: [COMMERCIAL]FTCA East Coast Heights Project [MERWNZ-MERWLIB.FID629819]

Kia ora Samantha

Thanks again for your time to discuss the East Coast Heights query earlier this week.

We understand BRL has lodged a fast-track referral application for the East Coast Heights project and has included the **attached** agreement in their application. An application under the Fast-track Act must describe the applicant's legal interest (if any) in the land on which the project will occur, including a statement of how that affects the applicant's ability to undertake the work (s 20(3)(k)).

You have asked whether the attached agreement provides BRL with the necessary legal interests in the land to construct the road.

We have reviewed the agreement and consider that the agreement provides the necessary legal interests for BRL to construct the road over BRL and CCCT's land. It provides for BRL to construct the road and any associated works (2.1.b and 2.1.c) and access CCCCT's land as necessary to undertake the works (cl 2.2) and arrange for the title to be vested in the Council. The agreement requires the parties to assign their rights and obligations under the agreement if either party's interest in the property is transferred (cl 3); this provides certainty that a future owner of CCCT's land will be bound by the agreement.

However, we note the following:

- (a) The agreement requires BRL to obtain consents from Auckland Council (cl 2.1.a). The term 'consents' is broad, and likely to include resource consents and other permissions. However, the agreement does refer to 'Auckland Council consents' – and under the fast-track process, the Panel would consider and grant the subdivision consent instead of Auckland Council. We want to bring this to your attention, but we do not expect it would be fatal to constructing the road under the agreement as the Council will be enforcing and monitoring any consents issued by the Panel and it will practically be treated as if it were a resource consent granted Auckland Council.
- (b) The agreement indicates that the road 'will later be vested to the Council (cl 2.1.b) but it does not include a positive obligation for BRL to vest the road in the Council. The agreement also does not expressly provide for the ongoing use, access and maintenance of the road or the specific standards to which the road will be constructed; if it is vested in the Council it is assumed that it will be a public road, but this is not expressly clear from the agreement. Again, this will not affect BRL's interest in the land (which is the consideration under s 20(3)(k) but we wanted to bring it to your attention. If CCCT were to resist the vesting of the road in the Council, we anticipate an argument could be made based on cl 2.1.b that the intention of the parties under the agreement was that the road would be vested in the Council.

We also wanted to note that the agreement only relates to 39 Small Road. Have you considered whether any permissions might be needed from other owners of adjoining properties to construct the road? For instance, it looks like (from the plan attached to the agreement) the proposed new road may also be on part of 53 Small Road (record of title 962821), which is separately owned.

I'm happy to discuss – please give me a call if you have any questions.

Ngā mihi
Amy

Amy Dresser (she/her)

Solicitor

T s 9(2)(a)

s 9(2)(a)

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From: Samantha Maxwell s 9(2)(a)

Sent: Tuesday, 5 July 2022 2:47 PM

To: Amy Dresser s 9(2)(a)

Subject: RE: [COMMERCIAL]FTCA East Coast Heights Project [MERWNZ-MERWLIB.FID629819]

Kia ora Amy,

Thank you, I'll give you a call at 4 if you're still available then?

Ngā mihi nui,
Samantha Maxwell (she/her)
Analyst
Fast Track Consenting Team

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From: Amy Dresser s 9(2)(a)
Sent: Tuesday, 5 July 2022 1:04 pm
To: Samantha Maxwell s 9(2)(a)
Subject: FW: [COMMERCIAL]FTCA East Coast Heights Project [MERWNZ-MERWLIB.FID629819]

MFE CYBER SECURITY WARNING

This email originated from outside our organisation. Please take extra care when clicking on any links or opening any attachments.

Hi Samantha

Thanks again for your email below.

I've taken a look at the **attached** agreement. Before setting out a formal response, can you please confirm what aspect of the agreement you would like me to consider. Would you like us to advise whether the agreement is consistent with requirements of a fast-track application (including under s 20(3)(k) to set out the applicant's legal interest in the land), or another specific query about the requirements under the Act, or undertake a review of the contract in light of the legal requirements for construction and vesting of a road? Please let me know.

Please let me know if it is easier to discuss this over the phone – I should be available all afternoon if you wanted to give me a call.

Ngā mihi
Amy

Amy Dresser (she/her)

Solicitor

T s 9(2)(a)

S 9(2)(a)

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From: Samantha Maxwell s 9(2)(a)
Sent: Monday, 4 July 2022 11:47 AM
To: Amy Dresser s 9(2)(a)
Cc: Fast Track Consenting <fasttrackconsenting@mfe.govt.nz>
Subject: [COMMERCIAL]FTCA East Coast Heights Project

Kia ora Amy,

I was wondering you could please have a look at the document provided by the applicant, which is an agreement with the owner of an adjoining property (39 Small Road) to complete earthworks, which involves the construction of a road to vest to Auckland Council.

Ngā mihi nui,

Samantha Maxwell (she/her)

Analyst

Fast Track Consenting Team

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