



FLETCHER VAUTIER MOORE
LAWYERS

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Matter No	27321\107

23 September 2010

Attention: Mr D Ley

Dear Dugald

NEW ZEALAND CYCLE TRAIL PROJECT – NELSON CYCLE TRAILS TRUST

1. Earlier this year the Council entered into an agreement with the Ministry of Economic Development. The Ministry agreed to fund the construction of the Dun Mountain Cycle Trail and Stage 1 of the Tasman Loop Cycle Trail. In return, the Council agreed to complete the construction of those cycle trails in accordance with milestones and project tasks set out in the agreement.
2. On 22 July 2010, the Council passed a resolution instructing the Chief Executive to prepare a memorandum of understanding between the Council and the Nelson Cycle Trails Trust (**Trust**) for the project management, and ongoing maintenance, of Stage 1 of the Tasman Cycle Trail.
3. A memorandum of understanding is sometimes used when parties wish to record an understanding or arrangement between them, but neither party intends the document to be legally binding. That does not appear to be the case here. Our interpretation of the Council's resolution is that the Council wishes to appoint the Trust to project manage, and maintain, Stage 1 of the Tasman Cycle Trail. It wants a document prepared that records the terms of that appointment. There is nothing in the Council's resolution to suggest that it does not intend to be bound by the arrangement.
4. The Trust has sent the Council a draft memorandum of understanding. It appears that the intention of the Trust is to bind the Council to developing and promoting cycle facilities within Nelson City and Tasman District. The wording of the memorandum is unclear, and goes beyond the scope of the matters covered by the Council's resolution. We have advised the Council not to sign it.
5. If the Council wants to enter into a project management contract with the Trust, then we suggest using the contract for consultancy services published by the Association of Consulting Engineers and endorsed by the Auckland Region Contracts Group (a group comprising local authorities in the Auckland Region).

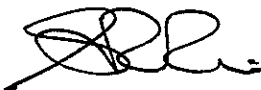
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6. You have told us that the Council would like the Trust to prepare contract documentation, prepare tender documents, evaluate tenders, monitor construction contracts, and process payment claims. It is also intended that the Trust obtains all resource consents, and the right of way easements in favour of the Council, that are necessary for the construction of Stage 1 of the Tasman Cycle Loop. These obligations can be recorded in the project management contract. However, we recommend that the Trust is required to obtain the Council's approval before sending out any documents intended to be signed by the Council, and before appointing any contractor.
7. The Council's resolution also instructed the Chief Executive to prepare a memorandum of understanding between the Council and the Trust for the ongoing maintenance of the cycle trail. We suggest that maintenance obligations are set out in a separate agreement. If the Council is not proposing to pay the Trust for maintenance services then that agreement will need to take the form of a deed. Let us know whether the Council would like us to prepare that maintenance agreement now, or wishes to leave the matter for further consideration once the cycle trail has been completed.
8. We note that the Crown is providing funding to the Council for construction of the Dun Mountain Cycle trail. You have mentioned that Nelson City Council is carrying out that work, which will be partly funded out of the money given to TDC by the Crown. As TDC is responsible to the Crown for the construction of the Dun Mountain cycle trail, we recommend that TDC asks NCC to sign a deed in which NCC agrees to comply with TDC's obligations under the Crown's funding agreement.
9. Please let us know how the Council wishes to proceed. We suggest that the Council gives the Chief Executive or the Council's Engineering Manager the authority to negotiate and sign the project management agreement with the Trust, and any agreement with NCC in relation to the Dun Mountain Cycle Trail.

Yours sincerely
Fletcher Vautier Moore



Stuart Ritchie
Partner