



FLETCHER VAUTIER MOORE
LAWYERS

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Matter No	27321\107

30 November 2011

Attention: Mr J Andrew

Dear Jack

**ADCOCK & DONALDSON PROPERTIES LIMITED - APPLICATION FOR A REGIONAL
MOTORSPORT PARK AT STANLEY BROOK**

1. We have been asked to consider the legal access to land owned by Adcock & Donaldson Properties Limited (**ADPL**) at Stanley Brook described as Lots 1 and 2 DP 17074 (**ADPL land**).
2. ADPL can access its land from the Motueka Valley Highway via Olivers Road and a right of way over the areas marked H, J, G, F and E on DP 14500, a copy of which is attached. You will see from the plan that areas G, F and E intertwine with road vested in the Council so it is possible that in some places all or part of the access track is situated on legal road. The width of the right of way area varies. It is approximately 20.12 metres at the southern end of area H, and 26.26 metres at the northern end of area J. The right of way is mostly over Crown land, but a small section, being area J, is owned by Joanne and Stuart Bryant.
3. The areas marked E, F, G and H on DP 14500 are on Crown Land, which is subject to a Crown Forestry Licence in favour of Nelson Forests Limited. There is no underlying title for the land on which areas E, F, and G are situated so the terms of the easement are set out in deed of easement 13C/931, a copy of which is attached. Area H is part of the land described in certificates of title NL 72/21 and NL 72/22.
4. The area marked J on DP 14500 is part of the land described in certificate of title NL 41/189, which is owned by Mr and Mrs Bryant (**the Bryant land**).
5. The terms of the right of way over the Crown land are set out in Deed of Easement 13C/931. Under this easement the Crown permits the Grantee and 'secondary users' to drive over areas H, G, F, and E in order to get to the ADPL land. The Grantee is the person owning the ADPL land. Currently that is ADPL. The 'secondary users' are defined in the easement as:

Nelson
Level 1, 126 Trafalgar Street, Nelson 7010.
PO Box 90, Nelson 7040, DX WC 70009.
Tel: (03) 548 1469, Fax: (03) 548 2994

Richmond
265A Queen Street, Richmond 7020.
PO Box 3029, Richmond 7050, DX WC 71017.
Tel: (03) 543 8301, Fax: (03) 543 8302

Motueka
12 Wallace Street, Motueka 7110.
PO Box 23, Motueka 7143, DX WC 72002.
Tel: (03) 528 7030, Fax: (03) 528 9120

'the Grantee's servants, agents, employees, workers and contractors and any licensee, lessee or tenant of the Grantee, but only where (in any case) the Grantee has allowed such person or persons to use the right of way easement conferred by this Deed'.

6. We have been asked whether the right of way over the Crown land could be used by anyone that ADPL permits to carry out, or to watch, motorsport activities on the ADPL land. We have therefore considered whether those persons are secondary users for the purposes of the Crown easement.
7. If ADPL permits a person to do something on the ADPL land then that person is a licensee. A licence can be in writing, or it can be oral, or it can be implied from acceptance of a state of affairs. For example, ADPL could enter into a written agreement with a motorsport club that allows the club and its members to carry out motorsport activities on the ADPL land pursuant to the terms of the agreement. That is a contractual licence. Another example of a contractual licence is if a person buys a ticket from ADPL to come on to the ADPL land to watch motor racing.
8. Even where there is no contract, if ADPL permits people to enter onto the ADPL land in order to watch motorsport then there is a licence. It is sometimes referred to as a bare licence. The people that are allowed onto the ADPL land to carry out these activities are licensees, and provided that ADPL has also allowed them to use the right of way then they are secondary users for the purposes of the easement over the Crown land. That allows them to use the right of way but in doing so they will have to comply with the obligations imposed on secondary users under the Crown easement.
9. The easement over the Bryant land does not refer to secondary users, but the terms of that easement (implied by Schedule 7 Land Transfer Act 1952) permit the use of the right of way over area J by ADPL's servants, tenants, agents, workmen, licensees and invitees. People that ADPL allows to come on to its land to watch or carry out activities will be either licensees or invitees, and therefore entitled to use the right of way over the Bryant land.
10. You have asked us to comment on a letter that McFadden McMeekan Phillips wrote to ADPL on this matter, dated 16 November 2011. The writer of that letter concluded that members of groups or other persons who wish to access the proposed motorsport park could use the right of way in the event that licences were granted to them by ADPL. We agree with that conclusion, although for clarity we would point out that for a person to be a licensee of ADPL, ADPL must permit that person to do something on the ADPL land, not the easement area.
11. We have concluded that people that ADPL allows to carry out, or watch, activities on the ADPL land are licensees and that they can therefore use the right of way over the Crown land and the Bryant land in order to access the ADPL land. However, we cannot rule out the possibility of a dispute arising between ADPL and Nelson Forests Limited, or between ADPL and the Bryants, over compliance with the terms of the easements, or the number of people using the right of way.
12. Nelson Forests or the Bryants may take the view that the right of way is being used excessively, by numbers of people that were never contemplated when the easement was granted. They may consider that the number of people using the right of way to access the ADPL land interferes with their rights, and the rights of other persons that

use the right of way. If the matter went to court and the court came to the view that the number of users was excessive then it might issue an order declaring that ADPL cannot use the right of way in such a manner as to cause substantial interference with the use of the right of way by Nelson Forests Limited or to cause a nuisance to Nelson Forest Limited. However, the court would come to a conclusion based on the facts presented to it.

13. Nelson Forests, or the Bryants, might also apply to a court to modify, or to wholly or partially extinguish, the right of way easement because of a change in the nature or extent of the use of the ADPL land, or because the continuation of the easement would impede the reasonable use of the Crown forest land or the Bryant land from that contemplated when the easement was granted.
14. We mention these matters because they may arise if there is a substantial increase in the number of users of the right of way. However, these are matters that Nelson Forests, the Bryants, and ADPL can seek advice on from their own lawyers and we do not consider that it is the Council's role to provide that advice.

Yours sincerely
Fletcher Vautier Moore

A handwritten signature in black ink, appearing to read 'SR', with a stylized flourish at the end.

Stuart Ritchie
Partner