



Our ref KSO 10228831
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25 February 2022

Brisbane City Council
GPO Box 1434
Brisbane QLD 40001

Copy

Katherine.Thompson@brisbane.qld.gov.au

Attention: Katherine Thompson

Dear Katherine

Body Corporate for St James' Estate – Pedestrian Bridge proposed trustee lease with the Brisbane City Council

We refer to our client's draft key terms regarding the above proposed trustee lease with the Brisbane City Council (**Council**) in respect of a pedestrian bridge (**Bridge**) located on land reserved to the Council for park and recreation purposes and properly described as Lot 21 on SL811444 (forming part of Lot 33 on SP110622), which were provided to the Council on 29 September 2021.

Background

1. As you may be aware, our client seeks the proposed trustee lease with the Council so that it may repair, maintain and secure access and usage rights to the Bridge for the body corporate's members.

Timeline of matter

2. Prior to our engagement in April 2020, we understand:
 - (a) in August 2019, the Council was made aware of their responsibilities regarding the Bridge by the State Land Asset Management;
 - (b) following this, our client had been in contact with and had received inconsistent advice from the Council as to the status of the Bridge.
3. On 30 April 2020, we contacted the Council to investigate the potential for an easement (or something similar) to facilitate exclusive use of the Bridge for the body corporate's members, including maintenance and repair responsibilities and the ability to lodge any necessary associated development and/or building applications to be granted to our client.
4. On 22 June 2020, the Council advised the matter was referred to the Council's City Planning department.
5. On 30 June 2020, the Council provided correspondence advising:
 - (a) as the underlying land was State-owned, the proposed easement over the Bridge needed to be between the State and our client, to which the Council's consent would be required;
 - (b) the Council was supportive of the proposal for our client to take responsibility for the maintenance of the Bridge and of the preparation of the appropriate

mechanism to allow this, including providing advice to this effect and/or becoming a party to discussions with the State, if required.

6. On 13 November 2020, we lodged an application on behalf of our client with the Department of Resources (**Department**) for an easement over the Bridge, being part of a Reserve for Park and Recreation.
7. On 9 March 2021, the Department advised:
 - (a) it did not agree to granting an easement for a private purpose over State land and had considered other land tenure options but did not consider any of them to be suitable in the circumstances;
 - (b) the Council, as trustee for the reserve, was the entity responsible for the Bridge, the State had advised the Council of this and, given the condition of the Bridge, advised that it needed to repair or remove the Bridge.
8. On 18 March 2021, the matter was discussed with a Council officer who advised the Council would continue its discussions with the State to ascertain whether the impasse as to who was responsible for the Bridge could be resolved.
9. On 30 March 2021, the Council advised the matter had been referred to the relevant parts of the Council.
10. On 22 April 2021, the Council advised the matter had been handed to the Council's City Legal branch.
11. On 4 May 2021, the Council advised the State had suggested a trustee lease between the Council, as trustee, and our client be considered and that this was being considered by the Council.
12. On 31 May 2021, the Council advised it was corresponding with the State in respect of the obligations of the parties and would provide an update once a response was received.
13. On 4 June 2021, the Department formally refused the application for an easement over the Bridge because the Department considered the proposed easement would not provide for exclusive use. In addition to this, the Department stated the Bridge was located on the reserve with the Council as trustee and was the responsibility of the Council, including liability.
14. On 19 July 2021, the Council advised it had received an initial response from the State but that subsequent further queries raised by the Council were being considered.
15. On 2 September 2021, the Council:
 - (a) advised it received a response from the State on 31 August 2021, which further clarified the necessary tenure of the Bridge; and
 - (b) requested our client's key commercial terms regarding a trustee lease.
16. On 29 September 2021, we provided our client's draft key terms in respect of the trustee lease to the Council.
17. On 8 November 2021, the Council's solicitor advised the proposed key terms were being reviewed.

18. On 26 November 2021, the Council's solicitor advised the review was complete and was awaiting instructions and/or clarification on various points.
19. On 3 December 2021, the Council's solicitor advised the Council was considering progression of the matter in regard to obtaining the Council's approval, which was required prior to the finalisation of any proposed lease terms.
20. On 22 February 2022, the Council's solicitor advised the Council was considering options of how to progress the matter including delegation requirements.
21. Between 13 October 2021 and 22 February 2022, we sent 12 follow-up emails and left several voicemail messages which have not been returned with the Council's solicitor, to which no meaningful response has been provided.

Current liability for the Bridge

22. Our client remains willing to work with the Council to implement a formal mechanism which allows it to take responsibility for the Bridge and its maintenance.
23. However, until such a mechanism is in place, and given our client has over the past 3 years taken all reasonable measures at its own cost to achieve a solution (with nothing implemented to date), we confirm the Council remains liable for the Bridge and its maintenance.
24. We also confirm the Council's assurances that it will not take steps to remove the Bridge without further reference to our client.

Our client's position

25. To date, we understand our client has incurred legal, professional and engineering costs in excess of \$40,000 in attempting to resolve this matter and, having regard to the above timeline, our client's frustrations as to the lack of progress in this matter are understandable.
26. As a consequence, our client is unwilling to incur further expenditure and has decided to pause pursuing this matter through legal channels until there is a positive response from the Council.
27. We are instructed to advise as follows:

'As you are aware we have been committed to working cooperatively with the Council to ensure the bridge can remain in situ and have shown willingness to 'take on' responsibility and cost for its maintenance.

We were led to believe that as Trustee the Council was supportive of our proposal to take on these responsibilities and would assist in the preparation of an appropriate mechanism to allow this.

Regretfully this no longer appears to be true as there has been no meaningful communication from the Council in the past four months.

The Council were made aware of their responsibilities by State Land Asset Management in August 2019. The State has determined that all liability rests with the Council. This has probably been the case since the passing of the Land Act in 1994.

We have incurred legal, professional, and engineering costs in excess of \$40,000 since January 2019 and are unwilling to incur further expenses until there is a positive response from the Council.'

28. As such, please direct all future correspondences in respect of this matter to our client at stjames4069@gmail.com.

Yours faithfully



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per **Leanne O'Neill**
Partner