



5 February, 2019

Mr Mark Ratcliffe
CEO, NZTA

Via email

COMMERCIAL IN CONFIDENCE:

Unauthorised use of SkyPath Trust's intellectual property and project information

Dear Mark,

SkyPath Trust's willingness to enter into a trusted and cooperative relationship with NZTA for the use of the Trust's intellectual property (IP) and project information has left the Trust exposed to NZTA taking liberties and not reciprocating in good faith.

Summary of events:

- a) Since February 2018 we have advised NZTA that the Trust's IP for the SkyPath design, engineering & related project information from inception through to granting of its resource consent is valued at \$1.6M + GST. This figure is the cost of the Trust's expenses and consultants (including interest) per the amounts shown in the **attached** letter. There is no risk premium nor mark-up sought.
- b) We have explained to NZTA how we had a similar arrangement for the use of the Trust's IP with Morrison & Co (PIP) until the PPP was terminated when Downer withdrew.
- c) Since July 2018 there have been a number of meetings between NZTA and the SkyPath Trust design team to share project information on the basis that an IP agreement would be forthcoming. The most recent meeting was at Core Builders in Warkworth on 19 October 2018, Robert Strong advised that he expected to have an IP agreement ready within two weeks and that project meetings would soon begin involving SkyPath Trust.
- d) In a phone conversation on 7 November 2018, NZTA's Robert Strong advised that an IP agreement would be in place by Christmas (2018).
- e) In an email dated 20 November 2018, Robert Strong asked whether we would we accept 25% now and 75% when the Detailed Business Case is signed off. With some reluctance but to help expedite the delivery of SkyPath, we agreed to this and issued as updated offer letter (see **attached**).
- f) In mid November 2018 we learnt (via a 3rd party) that NZTA had appointed architects Monk Mackenzie to work on SkyPath and began project meetings excluding SkyPath Trust. Hence we subsequently wrote to Monk Mackenzie asking them not deal with SkyPath's IP until ownership of the IP has been transfer to NZTA.
- g) In an email dated 30 November 2018, with still no IP agreement in sight, Robert Strong advised that the due date of June 2019 for completing SkyPath's Detailed Business Case *"was based on the Agency accessing and using SkyPath Trust information & engaging some of the Trust's consultants."*
- h) In early December 2018, Robert Strong advised that an IP agreement would not be forthcoming until sometime in the New Year and that NZTA was only using the SkyPath design and engineering information that "was available in the public domain."
- i) On 3 December 2018 we advised NZTA's Brett Gliddon that without an agreement for the use of the Trust's IP then NZTA must not engage consultants or staff to work on the design and project knowledge developed by the Trust and its consultants.

- j) From mid December 2018, SkyPath Trust has been the subject of an NZTA Communications Policy that requires all correspondence to go via NZTA's Official Correspondence Unit. The effect of this policy has been to prevent communication between SkyPath Trust and NZTA.

Fundamental issues:

1. In an email dated 30 November 2018, Robert Strong advised that the due date of June 2019 for completing SkyPath's Detailed Business Case "*was based on the Agency accessing and using SkyPath Trust information & engaging some of the Trust's consultants.*"

By not entering into an agreement for the use of the Trust's IP whilst at the same time advising that a refusal by the Trust to allow NZTA to use SkyPath's IP will delay SkyPath, NZTA could be perceived as not acting in good faith to SkyPath Trust - nor with the people of Auckland and NZTA's Ministers who eagerly await the opening of SkyPath.

2. In a phone conversation in early December 2018, Robert Strong advised that NZTA was only using the SkyPath design and engineering information that "was available in the public domain."

It is flawed logic for NZTA to assume that all publicly available material on SkyPath has no intellectual property rights. This highlights the basis that NZTA has been using SkyPath's IP on an unauthorised basis to date, and is at odds with the recognition from Robert Strong's email dated 20 November 2018) of the requirement for NZTA to acquire an IP licence from the Trust:

"Would it be possible to send me a revised offer letter confirming that the Trust is seeking a 25% advance payment at the signing of any agreement to cover an interim IP licence, with the remaining 75% to be paid within 28 days of the Board formally confirming approval to proceed to implementation of the SkyPath after the DBC phase is complete."

Resolution

The solution to this situation (which has prevented progress on SkyPath since early December 2018) is simple: NZTA promptly acquires the rights to use SkyPath Trust's intellectual property and project information which NZTA states it needs per points 1 and 2 above.

We are writing to request your assistance rather than having to escalate this matter further. We seriously want SkyPath to be a success story for NZTA.

Please advise by February 11 as time is not on our side.

Yours faithfully,



Bevan Woodward
SkyPath Trustee and Project Director
bevan@skypath.org.nz
Mobile: 021 122 6040

CC: Christine Rose, Chair, SkyPath Trust