



11 April, 2019

### **Submission into Independent investigation re SkyPath.**

#### **NZTA has acted in bad faith in order to use SkyPath Trust's Intellectual Property (IP) on an unauthorised basis without payment.**

Per Robert Strong's e-mail dated 20 September 2018 (**Attachment 1B**) NZTA accepting the need for an IP agreement, and per his e-mail dated 20 November 2018 (**Attachment 1D**) suggesting payment terms, NZTA understood the requirement for (and created the expectation for) an agreement on standard commercial terms to use the Trust's IP.

However instead of acting on that understanding:

1. NZTA staff strung the process along (see examples per **Attachments 1A, 1C and 1E**) whilst making unauthorised use and claiming ownership of the Trust's IP (**Attachment 2A - 2C**), before advising after some 6 months that it intended to renege on acquiring the legal right to use of the Trust's IP.
2. The reason given by NZTA in its letter dated 6 March 2019 was that they didn't know the SkyPath design. Per our response letter dated 7 March 2019, this is manifestly untrue, as NZTA and its consultants have been engaged with the SkyPath Trust's design proposal since 2010 in a series of joint reviews and its own compliance checks per **Attachments 3A – 3H**. NZTA also supported the public notified resource consent (funded by Auckland Council) for the Skypath design.
3. The NZTA letter dated 6 March 2018 is particularly misleading when it states:
  - a) "the Trust has not yet allowed the Transport Agency to access or assess the necessary information", the Trust has been exceedingly cooperative per the email chain in **Attachment 1A**. Despite Robert Strong's advice on 27 June 2018 that "The Agency will formally respond to you shortly", it did not.

Furthermore on that same day Robert Strong was proactively seeking information on SkyPath's design per his email in **Attachment 3D**. The Trust has made strenuous efforts to resolve the situation per **Attachment 1E**.

- b) "The Transport Agency has also sought permission to engage with the consultants who designed SkyPath and this has also not taken place" however we have no record of NZTA asking for such permission throughout 2018, yet NZTA covertly organised a series of four meetings between Monk MacKenzie, Beca and the Trust's consultant Reset Urban Design in November 2018. These meetings were organised without the authorisation or knowledge of the Trust per **Attachment 2C**.
    - c) "I cannot, and will not, allow public money to be used to pay for information that we have not assessed and may not be of value" however the very same letter advises NZTA staff have reviewed the SkyPath option. NZTA knows SkyPath inside out, as evidenced by **Attachments 3A to 3H**, and advised in our response letter dated 7 March 2019.

- d) The letters states "As you know the NZ Transport Agency has commenced a single stage business case" However is incorrect, the CEO's letter dated 25 February 2019 states "As you know the NZ Transport Agency is preparing a Detailed Business Case" and all prior NZTA correspondence has referred to the Detailed Business Case.
4. NZTA has misled the general public in its Media release (dated 25 February 2019, **Attachment 4A**) by announcing that "we need to do more work before we know the right design to take forward". Per our advice above, NZTA has been involved in each step of the development of the SkyPath design and Auckland Council's consenting process to put forward the optimal design solution.

We have written to NZTA seeking remedy for the Trust and its 11 consultants for the unauthorised use of the Trust's IP.

Given Auckland Council's involvement with SkyPath we request that you seek a submission from Stephen Town & Chris Darby (both cc'ed).

Please do not hesitate to contact me with any questions or requests for elaboration. We have a lot more material (a decade's worth) but have sought to keep our submission concise.

Signed,



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**CC: Stephen Town, Auckland Council  
Christine Rose, Chair, SkyPath Trust**

**Chris Darby, Auckland Council**