



Simpson Grierson

INVESTIGATION REPORT

NZTA'S DEALINGS WITH
THE SKYPATH TRUST

May 2019

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1. INTRODUCTION

The New Zealand Transport Agency (**NZTA**) has instructed us to carry out an investigation into the relationship between NZTA and the SkyPath Trust.

- 1.1** Pursuant to the Terms of Reference developed in agreement with NZTA, the scope of this review is to carry out an investigation and review of NZTA's correspondence, files and any other relevant material to determine whether:
- (a) NZTA, through its employees or representatives, has entered into any commercial arrangements with the SkyPath Trust; and
 - (b) In particular, whether, in the context of dealings with the SkyPath Trust, any NZTA employee or representative has promised or created an expectation on the part of the SkyPath Trust that NZTA would procure it in any way to design, build or operate a SkyPath across the Auckland Harbour Bridge; and
 - (c) Whether there are any matters that the Chief Executive should be made aware of where NZTA employees or their representatives have acted in a way that undermines the reputation of the Agency.

2. SUMMARY OF FINDINGS

- 2.1** Our finding, from our review of the material we have been provided, is that NZTA has not entered into any commercial arrangements with the SkyPath Trust through its employees or representatives. While the SkyPath Trust made a number of offers to NZTA setting out terms for an agreement regarding the SkyPath Trust's intellectual property (**IP**), we have not come across any documentation in our review that suggests that any NZTA employee or representative signalled NZTA's assent to those terms, or entered into any other contractual arrangement.
- 2.2** There does appear to have been an expectation on the part of the SkyPath Trust that it would be procured to work on the delivery of the SkyPath. However, we have not identified any conduct or correspondence by NZTA personnel or representatives that made a commitment of this nature. Instead, the expectation arose from the SkyPath Trust's understanding of:
- (a) What NZTA's intentions were (it understood NZTA had committed to deliver the consented SkyPath); and
 - (b) The processes that would be required to do so (negotiate an agreement that provided for the purchase of IP and an ongoing role for the SkyPath Trust and its consultants).
- 2.3** While Bevan Woodward of the SkyPath Trust clearly feels a great deal of mistrust and frustration at his dealings with NZTA, we have not identified any conduct by NZTA employees or their representatives that could be said to undermine the reputation of the Agency. Instead, this is a situation where the SkyPath Trust had clear objectives it was seeking to achieve in the shortest timeframe possible:
- (a) NZTA's delivery of the consented SkyPath; and

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- (b) Negotiation of an agreement through which (among other things) NZTA would purchase the SkyPath Trust's IP and the Trust would secure a role in the delivery of the SkyPath;

while NZTA was not in a position to commit to either objective.

- 2.4 While we do not consider there is any specific conduct that needs to be drawn to the Chief Executive's attention, it is our view that this situation could have been managed more effectively, which may have prevented the deterioration of the relationship, the adverse publicity and NZTA's reputation being publicly undermined.

3. MATERIAL REVIEWED

- 3.1 We have reviewed correspondence, reports, file notes and hard copy files provided to us by NZTA, Chapman Tripp (NZTA's legal advisors) and Beca (consultant engineers engaged by NZTA). We have also reviewed SkyPath Trust's submission (and attachments) to this investigation, which was sent by email to Simpson Grierson on 11 April 2019, and further email correspondence (and attachments) sent by Mr Woodward to Simpson Grierson over the course of April and May 2019.
- 3.2 After carrying out a preliminary review of the material provided by NZTA, we submitted a request for further documentation on 2 April 2019. This material was all provided to the extent that it was available. During the course of our investigation, we also liaised with NZTA staff to request additional information and to ask questions regarding material that we had been provided.
- 3.3 We note that there were some limitations to NZTA's electronic file management system. In particular, NZTA IT personnel were unable to recover any relevant email correspondence from certain ex-NZTA employees who had had dealings with the SkyPath Trust prior to leaving NZTA.
- 3.4 We would like to record our appreciation to NZTA personnel for their diligence and responsiveness in making material available and responding to our information requests, and to the SkyPath Trust for the time spent in preparing its submission to our investigation.

4. EXCLUSIONS

- 4.1 The SkyPath Trust has raised two issues in its correspondence with NZTA and Simpson Grierson and in media statements during the course of our review that are outside the scope of Terms of Reference and so are not addressed in this report:
 - (a) Whether NZTA has infringed on any IP rights held by the SkyPath Trust; and
 - (b) The degree of familiarity that NZTA has with the design of the SkyPath. This issue has arisen in the context of requests by NZTA to be allowed to:
 - (i) Review and assess the SkyPath Trust's IP (including the design and supporting documentation) to complete its due diligence and business case analysis of the various options for a walking and cycling pathway over the Auckland Harbour Bridge; and

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- (ii) Make payment once it has confirmed it will proceed with the SkyPath option.¹

5. REFERENCES TO NZTA PERSONNEL

5.1 At NZTA's request, this report does not include the names of the NZTA personnel referred to. Instead it refers to each individual by an alias ("Person A" etc). That information has been provided separately to NZTA.

6. BACKGROUND

The SkyPath Trust

6.1 The Auckland Harbour Bridge Pathway (**AHBP**) was incorporated under the Charitable Trusts Act 1957 on 4 May 2010. It changed its name to SkyPath on 8 March 2016. To avoid confusion, this report uses the name "SkyPath Trust" to describe the organisation (including its predecessor organisation AHBP) and "SkyPath" to describe the project.

6.2 The objectives of the SkyPath Trust are set out in its constitution as follows:

- (a) To provide walking and cycling access across the Auckland Harbour Bridge for the benefit of the public;
- (b) To support the improvement of walking and cycling in Auckland;
- (c) To give grants to promote walking and cycling in New Zealand as funding allows; and
- (d) To take such actions as the Board constituted herein consider necessary to further the above aims and objectives.

6.3 The SkyPath Trust developed the concept for the SkyPath. The SkyPath is a pedestrian and cycle pathway across the Auckland Harbour Bridge with three components:

- (a) The Northern landing at Northcote Point;
- (b) A 4m wide path, constructed of composite materials, that would be affixed underneath the southbound 'clip-on' (the colloquial term given to the extension bridges of the Auckland Harbour Bridge); and
- (c) The Southern Landing at Westhaven Drive.

6.4 Mr Woodward is the Project Director for SkyPath. He is a trustee of, and has been the primary point of contact for, the SkyPath Trust.

6.5 Auckland Council (via Independent Hearings Commissioners) granted resource consent to construct, maintain and operate a combined pedestrian/cycle pathway across the Auckland Harbour Bridge on 1 July 2015. Woodward Infrastructure Limited was the consent applicant, not the SkyPath Trust.² The Environment Court upheld the decision to grant consent and

¹ For example, a letter sent by Michael Stiassny, then Chair of NZTA, to Mr Woodward on 6 March 2019 advised NZTA is prepared to pay for the SkyPath Trust's IP but "only if we can assess it and it is the best option available".

² We understand this was because of funding arrangements that were then in place.

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dismissed the Northcote Point Heritage Preservation Society Inc's appeal on 15 December 2016³.

NZTA involvement

6.6 NZTA was a submitter, and presented evidence and legal submissions at the Auckland Council hearing. NZTA's submission supported the application "in part", provided appropriate conditions addressing NZTA's concerns were imposed.

6.7 After the grant of consent, NZTA was an interested party in the Environment Court proceedings under section 274 of the Resource Management Act 1991. It presented legal submissions but not evidence. NZTA's legal counsel described its interest in the Environment Court proceedings in its legal submissions to the Environment Court as follows:⁴

1. *The NZ Transport Agency's interest in this appeal arises as a result of the following:*
 - 1.1 *The Transport Agency is the 'owner' and manager of the Auckland Harbour Bridge (Bridge), a critical asset and physical resource to which the proposed SkyPath structure will attach. The Bridge also forms part of the Auckland motorway network; and*
 - 1.2 *As part of its statutory obligations under the Land Transport Management Act 2003 (LTMA), the Transport Agency supports active modes of transport, which are an increasingly important component of the land transport system.*

6.8 On 23 August 2018 Transport Minister Phil Twyford and Acting Associate Transport Minister James Shaw announced that the Government intended to fully fund a walking and cycling link across the Auckland Harbour Bridge, as part of a \$390 million investment in walking and cycling projects nationwide over a three year period.⁵ \$67 million was allocated to develop the project in the 2018-2021 National Land Transport Programme.⁶

7. RELATIONSHIP BETWEEN NZTA AND THE SKYPATH TRUST

7.1 The relationship between NZTA and the SkyPath Trust is longstanding. A walking and cycling connection over the Auckland Harbour Bridge has been the subject of discussions between the SkyPath Trust, NZTA, Auckland Council and their consultants and representatives over a number of years, preceding the 2010 establishment of the AHBP. These discussions have involved various conceptual ideas and delivery models, but the SkyPath was the first project to proceed to the consenting stage. Over the course of the years the relationship between the SkyPath Trust (and predecessor organisations) and NZTA appears to have fluctuated, with periods of time where the relationship was constructive and at other points less so.

7.2 In particular, the relationship became strained after the 31 October 2008 decision of NZTA's Board that on the basis of the available information, the provision of walking and cycling facilities on the Auckland Harbour Bridge would not be pursued by NZTA at that time. This was particularly in light of concerns about the structural capacity of the Auckland Harbour Bridge (and the clip ons in particular) to accommodate it. Mr Woodward expressed concerns to NZTA at the time about the internal NZTA processes that led to the Board making this decision and reiterated those concerns to us. However, as set out in the Terms of Reference, the focus of this review is the SkyPath, and the dealings between NZTA and the SkyPath Trust in relation

³ *Northcote Point Heritage Preservation Society Incorporated v Auckland Council* [2016] NZEnvC 248.

⁴ Opening Legal Submissions on behalf of the New Zealand Transport Agency, 31 October 2016, at [1].

⁵ <https://www.beehive.govt.nz/release/government-fully-fund-skypath-part-390m-investment-walking-and-cycling>

⁶ NZTA, *National Land Transport Programme 2018-21*, at 47.

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to that project. We have therefore not gone into any detail around the circumstances surrounding these concerns.

- 7.3** From our review of the correspondence provided to us, it appears that NZTA and the SkyPath Trust representatives were in regular telephone and email contact over the course of 2017 and 2018, and in particular the latter half of 2018 after the August 2018 announcement described above.
- 7.4** The key focus of this correspondence was the IP held by the SkyPath Trust in the SkyPath design. Email correspondence from Mr Woodward on behalf of the SkyPath Trust on 19 February, 16 May, 23 June, 2 October, 21 November and 22 November 2018 set out proposed terms for an agreement between NZTA and the SkyPath Trust to purchase this IP.
- 7.5** At some point in late 2018 the relationship between NZTA and the SkyPath Trust appeared to break down. The key factor in this deterioration appears to be the SkyPath Trust's frustration that an agreement had not been concluded and a perception that NZTA was carrying out work on the project without the SkyPath Trust's involvement and in breach of its IP rights.
- 7.6** It was during this time that NZTA implemented a policy of requiring all communications with Mr Woodward to be carried out via NZTA's established channels for communications under the Official Information Act 1982. This meant that all of Mr Woodward's emails to NZTA personnel were forwarded to Ministerial Services, who provided a response within the timeframes under that Act. Mr Woodward was no longer able to communicate directly with the NZTA personnel he had been dealing with.
- 7.7** It appears that the purpose of this policy was to better coordinate responses to the large volumes of email correspondence being received from Mr Woodward. However, this policy further weakened the relationship and created a great deal of frustration on the part of Mr Woodward. The situation was exacerbated when an internal NZTA email referring to the policy was mistakenly forwarded to an associate of Mr Woodward.
- 7.8** By the start of 2019 it was clear that the relationship was significantly compromised. Mr Woodward's perception of the relationship is described in emails to NZTA personnel on:
- (a) 19 February 2019, in which Mr Woodward notes that "We are keen to see SkyPath become a success story for NZTA but our working relationship is unravelling and SkyPath has stalled"; and
 - (b) 20 February 2019, in which Mr Woodward comments that:

*"I know that some people in NZTA dislike SkyPath and/or me. Whilst we are prepared to wrestle with the opponents to SkyPath, we would rather work in partnership. Together we can deliver a success story for NZTA."*⁸
- 7.9** On 25 February 2019 Mark Ratcliffe, NZTA's Interim Chief Executive, sent a letter to the SkyPath Trust confirming that NZTA did not wish to proceed on the terms proposed in the SkyPath Trust's 22 November 2018 letter. The letter also advised that NZTA was preparing a

7 Email Bevan Woodward to Person C (NZTA) 19 February 2019.

8 Email Bevan Woodward to Person C (NZTA) 20 February 2019.

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Detailed Business Case for a walking and cycling facility across the Auckland Harbour Bridge and was evaluating a number of options (i.e. not only the SkyPath). The letter noted:

The outcome of the Business Case will determine which option is progressed to implementation. The consented SkyPath option may, or may not, ultimately be the recommended option taken forward. Because of this, NZTA is not prepared to commit to paying for intellectual property rights that may attach to any option (including the consented SkyPath) until the Business Case phase is complete and an option is selected to be implemented.

7.10 On the same date NZTA issued a media release confirming that NZTA was considering multiple options:⁹

The NZ Transport Agency is reviewing the design options for a shared path for people on foot, bikes and other active modes, over the Auckland Harbour Bridge.

Work is well underway on a business case which was started last year into the eagerly anticipated walking and cycling path over the Waitemata Harbour to meet the Government's priority to create more active transport choices for Aucklanders and deliver critical missing links in the urban cycle network in areas of high demand for example, between Auckland's North Shore and City Centre.

*NZ Transport Agency's General Manager, System Design and Delivery, Brett Gliddon says **the business case is assessing a number of options, including the SkyPath concept which was developed by the SkyPath Trust.** The SkyPath proposal is a 1km long, 4m wide path, attached underneath the southbound 'clip-on' of the Auckland Harbour Bridge, between Westhaven and Northcote Point.*

Mr Gliddon says the Transport Agency understands Aucklanders are very eager to cross the harbour on foot, their bikes and their scooters, and the Agency is determined to make the right decision for this important link in Auckland's transport system.

"We are working hard to make that happen as quickly as possible for the Aucklanders who have waited years for that opportunity as well as for new generations who are keen to leave the car at home.

"So far, the business case process has been looking at a number of design options that could be possible, and we need to do more work before we know the right design to take forward. We want to get it right the first time, including the right width so more people can use it without restrictions, as well as the best materials to build the structure."

Funding is already included in the National Land Transport Plan and the Transport Agency Board will consider the outcomes of the business case by the middle of this year.

*The earliest construction could start on a walking and cycling path over the Auckland Harbour Bridge is late 2020. However, more will be known when the business case is complete which will recommend **which option to take forward.***

[Emphasis added]

7.11 It appears that until this letter and media release the SkyPath Trust was unaware that NZTA was considering other options for a walking and cycling connection across the Auckland Harbour Bridge. This is a key issue and is discussed later in this report.

⁹ <https://www.nzta.govt.nz/media-releases/nz-transport-agency-reviewing-options-for-walking-and-cycling-path-over-the-auckland-harbour-bridge/>

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7.12 Upon receiving the media release, Mr Woodward immediately contacted NZTA to request clarification regarding the meaning of the phrase used in the release: “design options that could be possible”¹⁰. He also wrote to the Minister of Transport to request his intervention.¹¹ The following day the SkyPath Trust released a statement on its website regarding “NZTA’s surprise announcement of wanting to revisit the design options” and characterising it as a “disingenuous ploy to derail SkyPath”.¹²

8. COMMERCIAL ARRANGEMENTS

8.1 The first question in the Terms of Reference is whether NZTA, through its employees or representatives, has entered into any commercial arrangements with the SkyPath Trust.

8.2 Our finding is that this has not occurred. While the SkyPath Trust made a number of offers to NZTA setting out terms for an agreement, we have not come across any documentation in our review that suggests that any NZTA employee or representative signalled NZTA’s assent to those terms, or entered into any other contractual arrangement.

8.3 This conclusion is supported by the fact that the SkyPath Trust has continued to request that an agreement be concluded between the two parties. The most recent example is a letter of 23 April 2019, which Simpson Grierson was copied in on, from Mr Woodward on behalf of the SkyPath Trust to Michael Stiasny, then Chair of NZTA, requesting that NZTA immediately acquire a license to use the SkyPath Trust’s IP.

9. CREATION OF EXPECTATIONS

9.1 The second question in the Terms of Reference is more nuanced: whether, in the context of dealings with the SkyPath Trust, any NZTA employee or representative has promised or created an expectation on the part of the SkyPath Trust that NZTA would procure it in any way to design, build or operate a SkyPath across the Auckland Harbour Bridge.

9.2 From our review, it appears that the SkyPath Trust had the following expectations:

- (a) That the Minister of Transport’s press release of 23 August 2018, and the allocation of funding in the 2018-2021 National Land Transport Programme, meant that NZTA was committed to specifically delivering the SkyPath, as approved by the Environment Court in 2016, rather than a more general commitment to deliver a pedestrian and cycling connection over the Auckland Harbour Bridge;
- (b) That the SkyPath Trust and its consultants would work with NZTA to achieve delivery of the SkyPath, and that this ongoing relationship would be provided for in an agreement to be negotiated between NZTA and the SkyPath Trust; and
- (c) That agreement would also provide for the purchase of the SkyPath Trust’s IP.

9.3 The issue is whether these expectations were the result of any actions by NZTA employees or representatives. There are two key questions to be answered, which are addressed below.

10 Email Bevan Woodward to Person D (NZTA) 25 February 2019.

11 Email Bevan Woodward to Hon Phil Twyford 25 February 2019.

12 <http://www.skypath.org.nz/2019/02/calling-on-minister-twyford-to-stop-nzta-delaying-skypath/>

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Did NZTA create an expectation that an agreement would be negotiated?

- 9.4** The SkyPath Trust alleges that NZTA created the expectation that NZTA would sign an agreement on standard commercial terms to use the SkyPath Trust's IP. The opening paragraphs of the SkyPath Trust's submission to this review states that "NZTA staff strung the process along...whilst making unauthorised use and claiming ownership of the Trust's IP...before advising after some 6 months that it intended to renege on acquiring the legal right to use of the Trust's IP".
- 9.5** Person A was the SkyPath Trust's key point of contact at NZTA over this period. The SkyPath Trust's submission to this investigation attached a number of emails that Mr Woodward received from Person A.
- 9.6** We have reviewed all of the correspondence between Person A and Mr Woodward provided by NZTA and the SkyPath Trust. The following pieces of correspondence stand out:
- (a) Email correspondence from Person A to Mr Woodward on 20 September 2018 requested that the SkyPath Trust provide a "proposal of IP transfer letter" and advising that upon receipt of that letter NZTA can "review the proposal in detail". The SkyPath Trust's interpretation of this email was that NZTA accepted the need for an IP agreement;¹³
 - (b) An email from Person A on 8 November 2018 responded to Mr Woodward's request that the agreement between the SkyPath Trust and NZTA include provision for open days by noting the request and making a suggestion of how that could be implemented in a future agreement. The SkyPath Trust attached this email to its submission as an example of how NZTA staff "strung the process along";¹⁴
 - (c) An email from Person A to Mr Woodward on 19 November 2018 provided comments on the content of a media release the SkyPath Trust was drafting. Mr Woodward had sent a bullet point list of matters that would be covered in the release, the second of which was "We fully support NZTA's objective to deliver SkyPath as per the consent conditions determined by the Court of Appeal".¹⁵ Person A's email reply on the same day did not dispute this, instead Person A stated that "Bullet points 2-4 seem adequate to describe what is happening";
 - (d) An email from Person A to Mr Woodward on 20 November 2018 asked Mr Woodward to send Person A a revised offer letter on terms specified by Person A. This correspondence was also included in the SkyPath Trust's submission to our investigation.¹⁶ The SkyPath Trust provided a revised offer letter on 21 November 2018;¹⁷
 - (e) The SkyPath Trust issued a further revised offer letter on 22 November 2018 after a telephone discussion between Mr Woodward and Person A earlier that day;¹⁸ and

13 SkyPath Trust Submission into Independent investigation re SkyPath, 11 April 2019.

14 SkyPath Submission, at [1] and Attachment 1C.

15 It is assumed that this quotation should refer to the "Court on Appeal" rather than the "Court of Appeal".

16 SkyPath Submission, Attachment 1C.

17 Attached to an email from Bevan Woodward to Person A, 21 November 2018.

18 We requested Person A's notes from that telephone call (and any others with Mr Woodward) but have been advised that these cannot be located.

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- (f) On 30 November 2018 Person A provided feedback on a draft press release prepared by the SkyPath Trust.¹⁹ His revised version did not make any changes to the quote attributed to Mr Woodward that the SkyPath Trust “fully support NZTA’s objective to deliver SkyPath per the consent conditions determined by the Court of Appeal”.²⁰

9.7 The email correspondence we have reviewed also reveals a dispute over the content of a telephone discussion on 7 November 2018 between Mr Woodward and Person A. Email correspondence from Mr Woodward of 19 and 21 November 2018 to Person A referred to Person A having advised him that an IP agreement would be signed “before Christmas”. A subsequent email of 3 December 2018 records Mr Woodward’s recollection that “[Person A] advised “Don’t fret” as the IP agreement would be sorted “this side of Christmas””. Subsequent email correspondence from Person A to Mr Woodward disputed that they had made a commitment of this nature.²¹

9.8 Our conclusions from our analysis of this correspondence is that:

- (a) We have found no evidence of any deliberateness on the part of any NZTA employee, including Person A, to mislead Mr Woodward. It appears Person A was simply trying to progress discussions and be as responsive as they could be (within the confines of their instructions) to Mr Woodward’s correspondence, so that if they received confirmation from the NZTA Board/Legal advisors that NZTA was willing to proceed, the agreement could be negotiated relatively quickly;
- (b) Person A repeatedly advised that there were further processes to go through before an agreement could be negotiated and executed. For example, emails to Mr Woodward on 15 October 2018 advised that they were “seeking internal feedback”, and on 3 December 2018 advised that the issue “is still with the Lawyers”.²² An internal NZTA email from Person A to a colleague on 3 December 2018 reporting on their discussions with Mr Woodward said that “[Mr Woodward] wanted [an agreement prior to Christmas 2018] but I have never agreed and have always made it clear that any decision would sit with Fergus or the Board” (sic);
- (c) The key issue appears to be the uncertainty and frustration created by Person A being unable to confirm NZTA’s position on the draft agreements being proposed by the SkyPath Trust, or to give indications of the likely timing for a response. It is not a case of Person A having deliberately misled the SkyPath Trust or having committed to entering into an agreement and reneging as alleged by the SkyPath Trust’s submission;
- (d) This interpretation is supported by meeting notes provided to us as follows:
- (i) Person A’s notes from a 22 June 2018 meeting with Mr Woodward records: “I confirmed that at this time no Agency employees have any permissions to commence any negotiations around the purchase of IP or seeking a licence to use the IP from the SkyPath Trust”;²³

19 Email Person A to Bevan Woodward 30 November 2018.

20 It is assumed that this quotation should refer to the “Court on Appeal” rather than the “Court of Appeal”.

21 Email Person A to Bevan Woodward 3 December 2018.

22 Person A also sent an email to Mr Woodward on 22 November 2018 confirming that NZTA was seeking legal advice.

23 These notes were set out in an email from Person A to NZTA’s legal advisors on 27 June 2018 reporting on the 22 June 2018 meeting.

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- (ii) Person B's (a consultant to NZTA) notes from the same meeting record "[Person A] not authorised to negotiate on IP but still want to progress. Waiting on response from Board"; and
- (iii) Person B's notes from a 3 August 2018 meeting record that Person A advised Mr Woodward they did not "yet have permission to enter into formal negotiations around IP transfer".

9.9 Unfortunately we were not provided with meeting notes from the latter part of 2018 to review. We were advised that the meetings held between Person A and Mr Woodward during that period were informal relationship meetings without agendas, minutes or meeting notes.

Did NZTA create an expectation that the SkyPath Trust would be procured to design, build or operate the SkyPath?

9.10 We have not located any correspondence that would have, in our view, created an expectation that the SkyPath Trust would be procured in any way to design, build or operate the SkyPath.

9.11 However, it appears that that NZTA's public commitment in 2018 to the delivery of the "SkyPath", rather than more generic references to a walking and cycling pathway over the Auckland Harbour Bridge, created an expectation on the part of the SkyPath Trust that it was the consented project that NZTA would be delivering. NZTA then continued to use the term "SkyPath" to describe the project in its media communications and in communications with the SkyPath Trust. As has been discussed earlier, the SkyPath Trust was then taken by surprise in February 2019 when it discovered that NZTA was undertaking an exercise through which options other than the SkyPath were being considered.

9.12 Following on from SkyPath's expectation that NZTA would be delivering the SkyPath, the SkyPath Trust's perception was that:

- (a) NZTA could not deliver the "SkyPath" without an agreement with the SkyPath Trust (because the SkyPath Trust owned the IP in the design); and
- (b) A condition of that agreement would be an ongoing role for the SkyPath Trust and its consultants Reset Urban Design.²⁴

9.13 In this way there does appear to have been an expectation on the part of the SkyPath Trust that it would be procured to work on the delivery of the SkyPath. However, we have not identified any conduct or correspondence by NZTA personnel that made a commitment of this nature. Instead, the expectation arose from SkyPath's understanding of:

- (a) What NZTA's intentions were (to deliver the consented SkyPath); and
- (b) The processes that would be required to do so (negotiate an agreement that provided for the purchase of IP and a role for the SkyPath Trust and its consultants).

9.14 As became evident in February 2019, the reality was quite different. NZTA intended to deliver a walking and cycling pathway over the Auckland Harbour Bridge but had internal processes it needed to go through before it could confirm whether the SkyPath was the option it would proceed with.

24 See email from Bevan Woodward to Person B 16 May 2018.

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9.15 The SkyPath Trust’s incorrect understanding of these issues was caused in part by a lack of communication from NZTA. There appears to be a real perception from the SkyPath Trust and its advisors that they were not being kept “in the loop” about what NZTA’s intentions were regarding the project. For example:

(a) Emails to Person A from one of the SkyPath Trust’s consultants reveal a great deal of concern about the work that was being done by Monk Mackenzie (consultant architects engaged by NZTA) without their involvement:

(i) on 9 December 2018 the consultant wrote to Person A to advise “I tried to correspond with [Monk Mackenzie] but he didn’t return my calls or emails...not sure what is going on there”²⁵; and

(ii) similarly on 28 January 2019 they wrote to Person A to advise “I haven’t been in the loop of what’s happening with SkyPath...I am also anxious as to what Beca and Monk/McKenzie are doing as I have tried to openly correspond with Monk McKenzie but with little success – they seem to be holding back”²⁶;

(b) In a letter from Mr Woodward to Mr Ratcliffe on 5 February 2019, Mr Woodward advises that the SkyPath Trust had learnt from a third party that NZTA has appointed Monk Mackenzie to work on the project and was convening meetings to which the SkyPath Trust had not been invited;

(c) In an email to the Minister of Transport on 13 February 2019 Mr Woodward advised “We are struggling to understand what is happening at NZTA”; and

(d) The SkyPath Trust’s evident surprise to find out on 25 February 2019 from a letter from Mr Ratcliffe and a press release that NZTA were considering other options (i.e. that the SkyPath was not the only option on the table).²⁷

9.16 In our view, this perception was correct. NZTA did not make the internal processes it needed to go through before it could confirm it would be delivering the consented SkyPath clear to the SkyPath Trust. As NZTA got further down the path with these internal processes this made the SkyPath Trust feel like there was work being done ‘behind its back’ and that it was being excluded. This contributed to the sentiments of mistrust and frustration and the deterioration of the relationship.

9.17 Our conclusion, therefore, is that while the SkyPath Trust may have had an expectation that it would be procured, this was based on a misapprehension about NZTA’s intentions (because of a lack of clear communication from the beginning) rather than specific dealings with any NZTA employee or representative.

25 Email SkyPath consultant to Person A 9 December 2018.

26 Email SkyPath consultant to Person A 28 January 2019.

27 See paragraph 7.9 above.

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10. NZTA REPUTATION

10.1 The final question in our Terms of Reference was whether there are any matters that the Chief Executive should be made aware of where NZTA employees or their representatives have acted in a way that undermines the reputation of the Agency.

10.2 Our finding is that while Mr Woodward clearly feels a great deal of mistrust and frustration at his dealings with NZTA, we have not identified any specific conduct by NZTA employees or their representatives that could be said to undermine the reputation of the Agency. Instead, this is a situation where the SkyPath Trust had clear objectives it was seeking to achieve in the shortest timeframe possible:

- (a) NZTA's delivery of the consented SkyPath; and
- (b) Negotiation of an agreement through which (among other things) NZTA would purchase the SkyPath Trust's IP and the Trust would secure a role in the delivery of the SkyPath;

while NZTA was not in a position to commit to either objective.

10.3 While we do not consider there is any specific conduct that needs to be drawn to the Chief Executive's attention, it is our view that this situation could have been managed more effectively, which may have prevented the deterioration of the relationship, the adverse publicity and NZTA's reputation being publicly undermined by Mr Woodward in particular.

10.4 There is clear room for improvement in NZTA's communication and relationship management practices (both at an individual and Agency-wide level).

10.5 As far as the SkyPath Trust was concerned, the hard work of securing the resource consent and the necessary funding was complete and the SkyPath could now get underway. The SkyPath Trust had an expectation that the next steps would be negotiating an agreement with NZTA and then commencing detailed design.

10.6 It does not appear to have been communicated to the SkyPath Trust that NZTA still had its processes to go through, and that NZTA would need to do further work and look at other options before it could proceed. The Government funding announcement, and NZTA's previous involvement as a third party in the development of the SkyPath concept and the resource consent process, did not mean NZTA could skip these processes.

10.7 As soon as the August 2018 announcement was made, NZTA personnel should have sat down with SkyPath Trust representatives to discuss what needed to be done before NZTA could confirm it was going to proceed with the consented SkyPath. The failure to do so, and the relationship breakdown that ultimately resulted, has caused reputational damage to NZTA that could have been avoided.

Bill Loutit
17 May 2019