



## SKYPATH - REMAINING UNSOLVED PROBLEMS

### INTRODUCTION

This memorandum is forwarded to you in response to its author being tasked by the Northcote Residents Association Inc. (NRA) executive, with writing to Council's new Councillors and Board Members, to acquaint those new representatives of the many problems associated with the SkyPath project. The memorandum also serves to remind re-elected Board Members and Councillors of those same problems - all of which have existed from the time the project was made public in early 2013 - none of which has yet been either addressed or solved, by either Council or the Applicant.

Additionally, SkyPath's promoters recently announced that their building contractor / partner has withdrawn from the project. That withdrawal begs the question as to why a major contractor, blessed with a medium sized project that has plenty of advance warning as to its construction commencement, has the blessing of both the Government and Council, has a Council underwrite and also has no competition - would ever dream of withdrawing from such a delicious construction arrangement.

The promoters claim that the contractors resiled from giving a fixed price. However, that overlooks the bald fact that the developer has yet to define its project. No contractor on Earth would be silly enough to give a fixed price for the work under those circumstances.

The contractor's withdrawal brings to mind, the withdrawal of SkyPath's previous financial backer, Infrasol (NZ) Ltd., a division of Hopper Developments Ltd. (Hoppers). Hoppers withdrew some years ago, "*following difficulties with the Trust as to interpretations of data relating to patronage and cost*" to quote its carefully worded explanation. It would come as no surprise if the project's contractors confronted the same type of difficulties with SkyPath's promoters. They have issued nothing better or other than preposterously exaggerated claims, for the four years NRA has dealt with them and are renowned for such conduct.

### NRA'S STANCE REGARDING SKYPATH

It needs to be said at the outset, that NRA has never been against the idea of facilitating the passage of pedestrians and cyclists from one side of the Waitemata Harbour to the other. That is unquestionably a good idea. SkyPath's many supporters obviously agree. However and fatally, those supporters, specifically including SkyPath's supporters from central and local Government and all members of the press to whom we have been exposed; have never acquainted themselves with the unresolvable design fatalities embodied in the SkyPath proposal. Those issues make SkyPath a hopelessly flawed proposal and a guaranteed failure, for the reasons set out in this paper.

Apart from SkyPath's very significant and unsolvable safety and environmental flaws, SkyPath's landing sites make no sense. No sense that is, apart from being the cheapest sites possible - but cheap at the cost of SkyPath's functionality and cheap at the direct and unnecessary cost of the suburbs in which it lands.

In very simple terms, SkyPath's landings need to be located where its patrons can readily get to, park and utilise the facility. That is why all tourism ventures are located and provided

with parking and appropriate visitor facilities such as ticketing, toilets, refreshments and other commercial add-ons such as hire (if needed). That is also why all tourism facilities are required by Council's planning regulations and statute, to include both on-site parking and ablution facilities - neither of which is planned for SkyPath.

The above-referred Council and statutory regulations for tourism facilities make sound sense. Council's obdurate wish to ignore those requirements makes no sense. Readily reviewable examples of appropriately compliant tourism facilities abound. The Waiheke and Auckland Central Ferry Terminals, the Auckland Museum, SkyTower, the Auckland Zoo and the Milford Sounds Terminal are all examples in NZ. The London Eye is one of thousands of international examples.

SkyPath's promoters and Auckland Council (SkyPath's underwriter) insist that SkyPath's tourism patronage will be about the largest in NZ and significantly larger than at any of the above-referred tourism sites (including the World famous London Eye, if you're gullible enough to believe the conclusions delivered by Council's patronage assessment "experts").

Locating SkyPath's entry portals at the end of a cul-de-sac suburb and in the middle of an already over-crowded marina area with no parking, toilets or any facilities whatsoever, amounts to nothing better than naïve, arrogant, inept and wholly non-compliant planning. A related siting consideration is that most SkyPath patrons coming from central Auckland to use SkyPath, would likely not want to end up in Northcote Point. They would likely prefer linking to the existing cycle paths off Esmond Road. Most patrons from the North Shore would likewise come from suburbs other than Northcote Point. Accordingly, the proposed terminals at Northcote Point and Westhaven are counter-intuitive in planning terms and worse, they prevent SkyPath from functioning optimally, if at all.

The above problems led NRA to propose alternative solutions for SkyPath's entry portals. Those solutions wreck no suburb. They also work both well and easily. They work financially, functionally and environmentally - as well as safely. SkyPath fails hopelessly when measured against any of those criteria. We therefore suggest that in the interests of building a facility that works, Council should now (for the first time) take heed of and review NRA's suggested alternative solutions, which remedy SkyPath's enormous number of unsolved and unsolvable problems - inherently, easily, cost effectively and safely.

All the associations and clubs directly affected by SkyPath agree with NRA's objections to SkyPath. Those clubs and associations include the Royal New Zealand Yacht Squadron (RNZYS), Westhaven Marina users Association (WMUA), St Marys Bay Association (SMBA), Herne Bay Residents' Association (HBRA) and Little Shoal Bay Protection Society (LSBPS). Together with NRA, those groups and associations account for the democratically elected representation of well more than 10,000 citizens who in this instance, hold sufficiently serious concerns regarding SkyPath to warrant their serious objection to the proposal.

NRA has been very disappointed that the previous Council has not taken the time and effort to review the solutions to SkyPath's problems that NRA continuously raised and explained, for four years. Those solutions would not be well served by over-simplified explanations. However if Council opts to review them, we would be happy to re-explain them. Since those proposals solve all of SkyPath's unsolved problems, we reiterate our view that they should be reviewed.

For the whole of the time that NRA has iterated and reiterated the safety concerns and fundamental failures in the current proposal, the media has portrayed the NRA as a bunch of "NIMBYS". This smear campaign was admittedly effective, in deflecting attention away from the real issues. However as stated above, the NRA is not against SkyPath's stated objectives but rather, holds serious concerns that the current proposal simply and

unnecessarily fails to meet its stated objectives, whereas NRA's alternative proposals do meet them – easily and safely.

It must also be said that NRA was imposed upon by a small number of unblinking SkyPath supporters who happily breached normal standards of decency and the law, to disrupt NRA's opposition to SkyPath. For instance, several members of the NRA have experienced abuse such as having faeces smeared on their houses and broken glass put on their driveways. These actions are not remotely acceptable for a democratic process. Rather, they serve to demonstrate the mindless zealotry adopted by some of SkyPath's more fanatical supporters. NRA's executive also endured mindless zealotry and unethical conduct for the full year that its executive was occupied by a few SkyPath plants, whose sole objective was to disrupt and dislodge NRA's objection to SkyPath.

### **EXPLANATION OF SKYPATH'S PROBLEMS**

A straightforward way of summarising SkyPath's problems, is to point out that SkyPath started its public life on the basis of deliberate falsities, then grew and developed as a project comprised almost wholly of layer upon layer of falsities. Many regard those falsities to be issues of deliberate fraud. Nevertheless, this analysis will simply list them as falsities, leaving the reader to judge whether they are fraudulent or otherwise; profligate or otherwise; and whether the project has been naively, ineptly, greedily, and dangerously misconceived, or otherwise.

The SkyPath proposal started life headed and inspired by a convicted fraudster (Alex Swney). Mr. Swney had great connections, including the Council he was actively defrauding. In the spirit of Mr. Swney's conduct and as the following shows, SkyPath's life thereafter was one in which its falsities were welcomed, supported and aggressively worsened by Council. The costs of these issues (or rorts as some may describe them) are unwittingly funded by ratepayer cash.

In the process of reading the following, readers may care to ask themselves, "*Which of these falsities is of only minor concern?*" You may well disagree, but we think that all the listed falsities represent serious and important concerns. Additionally, since most of them are beyond resolution, the project itself is guaranteed to be a failure, if permitted to proceed in its present and naively designed form.

An abbreviated catalogue of the falsities upon which SkyPath is based, follows:

#### ***Falsity #1 - The claim that SkyPath is safe***

1. Apart from the fact that nobody has yet determined if SkyPath can be attached to the Bridge with acceptable structural safety, SkyPath also grossly fails to comply with :
  - i. Council's pathway safety regulations regarding acceptable gradient, width, curve radii and clear height.
  - ii. Fire and egress regulations.

And additionally:

- iii. SkyPath's customers will be exposed to injury and possible fatality, in the event that the superstructure of large yachts continue to collide with the bridge as they currently do, every couple of weeks. With SkyPath installed, such collisions will be into SkyPath, not the Bridge. As acknowledged by even SkyPath's structural spokespeople, SkyPath will not withstand such impacts. Nor will the people hit by those vessels.

2. With reference to current Health and Safety obligations, serious and / or fatal accidents on SkyPath, will result in Council, NZTA and NZFS consenting officers being criminally liable for offences that carry jail terms.
3. NRA notes that if at any time when the SkyPath pathway is packed and the need for emergency exit arises, or panicked exit occurs; many people will be crushed on SkyPath. SkyPath's patronage figures assure that SkyPath will be *packed* every summer weekend, permanently. Observers may agree with us that Council's patronage assessments are fanciful nonsense but that notwithstanding, Council describes them as "*conservative*" assessments or in other words, as *under-estimates*.

***Falsity #2 - Council's illegal vote to underwrite SkyPath***

1. NRA engaged a legal specialist in the area of Government and Local Government regulation, Dr. Grant Hewison, to advise both NRA and Council, regarding Council's intended vote in support of underwriting SkyPath.
2. When Council voted on this issue in July 2016, Dr. Hewison explained very firmly, in writing, that were Council to vote in support of underwriting SkyPath, it would do so in breach of the statute that governs Council's entitlements and Government-delegated authority.
3. Dr. Hewison was emphatic. It was his stated and pre-eminent opinion that, "*Council must not take this vote*".
4. Council obviously decided it could get away with breaking the law, and took the vote regardless.
5. Council didn't even bother to attempt to address Dr. Hewison's stated legal position, with its own legal rebuttal. Instead, Councillor Mike Lee was left to simply state on Council's behalf that he disagreed with Dr. Hewison's legal opinion. Mike might know what it takes to be a wharfie, but he is certainly not qualified to rebut any legal opinion, let alone any specialist and expert legal opinion regarding Government regulation.
6. Normal business prudence and adequate governance, would dictate that before entering into any underwrite, the underwriter (Council in this case) would need to know likely capital costs, running costs and revenue, with very high levels of certainty. However, not one of the Council members who took and supported the SkyPath underwrite vote, knew the outcome of any of the above-referred issues even vaguely, let alone accurately.
7. Naturally, in instances where Council is prepared to flagrantly break the law to have its way, its ratepayers are effectively stripped of their fundamental rights.
8. The previous Council administration was hell-bent on stripping SkyPath objectors of their rights. The underwrite vote, while extreme, was merely one example of many, that illustrated Council's deliberate abuse of both its obligations and its ratepayers.
9. Had Council acted legally and not taken the vote, it could not have continued with the Resource Consent Appeal at the Environment Court. Indeed, had Council acted legally and not provided its underwrite for SkyPath until due statutory process had been undertaken, the SkyPath Resource Consent could not now exist.

***Falsity #3 - The claim that SkyPath was and is a private-enterprise development.***

1. Although SkyPath was at one stage funded by private enterprise, that backing was withdrawn years ago, long before the SkyPath proposal was made public, early in 2013.
2. The then-funder, Infrasol NZ Ltd, a division of Hopper Brothers Ltd. (Hoppers) withdrew early, "*following difficulties with the Trust as to interpretations of data relating to patronage and cost*" to quote their carefully worded explanation.
3. When Hoppers withdrew, SkyPath stopped being a private-enterprise development.

4. Regardless of the awkward fact outlined above however, and long after Hoppers' withdrawal, SkyPath's developers and Council falsely publicised the project as a private enterprise, self-sustaining development - both of which assertions were plainly untrue.
5. SkyPath has and will continue to rely wholly upon Council's underwrite. Without Council's underwrite, SkyPath would not and could not exist.

***Falsity #4 - The claim that SkyPath is not a publicly funded development***

1. Despite the developer's and Council's loud claims to the contrary, SkyPath's funding is overwhelmingly if not wholly drawn from the public purse.
2. To our (unavoidably incomplete) knowledge, Council has spent about \$2M on the project, NZTA in excess of \$1M, the Ministry for the Environment approximately \$0.25M. The project's financial backer, Morrison & Co., intends to deploy the NZ Superannuation Fund (a public fund) to fund the project - but ONLY if its expenditure is underwritten by Council - Nice work if you can get it !!.
3. Council fudged responses to Official Information Act applications regarding SkyPath's funding - allegedly illegally as it happens.
4. Accordingly, the actual sums of public money expenditure directed to propping-up SkyPath remain hidden, at Council's allegedly illegal behest.
5. SkyPath's funder requires and has been shielded from financial risk, by Council's underwrite.

***Falsity #5 - SkyPath's patronage projections***

1. Whereas experts who have researched and reviewed this issue consider the Council-funded patronage projections to be silly nonsense, Council obdurately claims them to be "*conservative*" or in other words, claims that actual patronage will exceed their projections.
2. The Council-funded projections claim that by year 5, SkyPath will enjoy a patronage of 15,000 uses (averaged over) every day of the year.
3. 15,000 is approximately the averaged Eden Park crowd, depending on what is happening in any given year. Eden Park has relatively very few events per year. SkyPath claims Eden Park levels of patronage averaged over every day of the year.
4. When we checked three years ago, Auckland's most intensively used tourism and leisure facility (the Auckland Museum), achieved crowds of approximately 15,000 on just one day of the year - not every day of the year. That peak patronage day is Anzac Day.
5. The Auckland Museum's next highest patronage day is a wet Boxing Day, when it achieved approximately 9,000 visitors. 9000 visitors happens to be the number of patronage uses projected for SkyPath every summer weekend day, in year 1.
6. To pretend that SkyPath could overwhelmingly out-perform Eden Park and the city's most popular tourism / visitor attraction, while being an inaccessible, steep, charged, cramped and mediocre attraction with no parking and absolutely no facilities; is effectively to pretend that fantasy on steroids is reality. NRA took the trouble to point this out to Council three years ago, to no avail.

***Falsity #6 - The claim that SkyPath needs neither parking nor traffic management***

1. Council's parking regulations are clear: *Tourism facilities are required to provide their own parking on their own commercially zoned land at the rate of 1 carpark per four visitors at peak hours - with no exceptions.*
2. SkyPath's peak loading prediction (Year 20) is 46,000 patrons per weekend day, every weekend, all summer. SkyPath's projections claim that approximately 70% of those patrons will arrive at SkyPath by vehicles. While this proposed peak loading figure is some years away, significant amounts of parking needs to be provided as soon as the SkyPath opens, just as Council's regulations require.

3. To comply, the SkyPath developer would be required to provide many hectares of parking at both ends of its facility, on its own commercially zoned land. No such land or land availability exists.
4. The Applicant wishes to provide absolutely no parking. Council supports that position - in the face of both its own regulations, and common sense - both of which demand extensive provision for on-site parking.
5. The exit times from Northcote Point every peak weekend (Year 20), is approximately 5 hours - if such traffic loads could enter Northcote Point - which they could not.
6. Plainly, parking provision and workable traffic management planning continue to be both necessary and absent, while also being permanently unachievable.

***Falsity #7 - The claim that SkyPath needs no public toilet facilities***

1. To counter objections that the SkyPath developers proposed to provide no toilets for up to 46,000 patrons per weekend day, all summer, those developers slipped in a late proposal for just **one** toilet.
2. Council's regulatory arm advised that the provision of toilets would be "*preferable*".
3. Had Council's regulatory arm been adequately knowledgeable of the regulations it is supposed to adjudicate upon, it would have known that Council has no discretionary authority in this matter but rather, that toilet provision for tourism facilities is compulsorily mandated by Statute.
4. In SkyPath's case, such toilet provision would amount to large commercial toilet blocks at both ends of the SkyPath facility, rather than just one toilet for the 46,000 people that facility is required to service every summer weekend day (by Year 20). Even at a small proportion of that number there would be a need for significant toilet facilities.
5. Even *temporary* tourism and leisure operations such as the Sculpture in the Gulf, Sculpture on the Shore events and the Weetabix Kids Triathlon, include significant provision for parking and toilets, which are routinely used to capacity and beyond.

***Falsity #8 - SkyPath's capital cost projections***

1. SkyPath's capital cost is currently and falsely claimed by the project's developer, to be \$33M.
2. NRA has been calling for SkyPath's projected costs to be validated and duly supported by quantity surveyors' estimates for four years, to no avail.
3. All developers of significant projects necessarily determine accurate costs for their projects at the outset, because they simply have to, for the viability of their development companies. Neither SkyPath's developers nor Council has.
4. It is obvious and known, that SkyPath's developer's current capital cost estimates are grossly inaccurate, as noted in more detail following.

***Falsity #9 - The claim that SkyPath is a financially self-supporting proposal***

1. For SkyPath to be financially self-supporting, both its projected capital cost and its projected patronage / revenue, would need to be reliably accurate. However, those critical projections are grossly inaccurate.
2. With reference to reliable data, it appears that the current patronage projections are over-pumped approximately **ten-fold**, and its capital costs are under-estimated, also approximately **ten-fold**.
3. If SkyPath's capital cost is indeed up to ten times greater than currently claimed and if its patronage is approximately 10% of that cited in its business plan, the annual Council top-up requirement for SkyPath's operation will change from being insignificant, to one which requires its so-called financier / risk-taker to be topped-up in the sum of tens of millions of dollars per annum - unwittingly - by Auckland City's long-suffering ratepayers.
4. SkyPath's funding guarantor is Council - which organisation is in turn, funded by unwitting ratepayers.

5. SkyPath's funder / risk-taker has effectively demanded that it take no risk whatsoever and will take no risk, if it finally achieves the Council underwrite it demands, as a pre-condition to investing in SkyPath.
6. Although Councillors will not be personally exposed by the above-referred fiscal naivety and irresponsibility, Auckland's ratepayers will.

***Falsity #10 - NZTA's claim that SkyPath can be attached to the Auckland Harbour Bridge clip-ons***

1. SkyPath cannot and will not proceed to construction, unless and until NZTA provides its License to Occupy the Auckland Harbour Bridge.
2. NZTA is on record as having confirmed the following contradictory statements :
  - i. *"That were SkyPath attached to the bridge, the bridge and particularly its box girders, would need strengthening.*
  - ii. *That the Bridge's Box girders cannot physically accommodate any further strengthening, except at fixing points."*
3. The Environment Court Judge who adjudicated over the Appeal, agreed that if SkyPath cannot proceed for reasons of the Bridge's structural inadequacy, appellants should not be forced to waste the time and money required for the Appeal.
4. The Environment Court Judge also ruled that if NZTA confirmed that SkyPath could not be attached to the Bridge, the Appeal would be over.
5. NZTA has political masters to answer to. Its lawyers eventually confirmed that SkyPath could *possibly* attached to the bridge - *if and if and but and but and notwithstanding and if and if and but*.
6. Although NZTA's announcement could be taken by nobody that SkyPath can be attached to the Bridge and notwithstanding the Judge's previous and unequivocal statements on this issue, the Judge took NZTA's highly conditional and effectively meaningless statement as being good enough, for the purpose of proceeding with the appeal.
7. It could be expected that any construction expert responsible for the structural integrity of the Bridge and the proposed attachment of SkyPath; would never dream of regarding NZTA's highly conditional statement as meaning that the attachment was possible. Rather, such professionals would likely regard NZTA's statement as a red-flag statement of considerable uncertainty.
8. The real and final test however, is whether or not NZTA ever provides its License to Occupy.
9. According to NRA's (international) bridge design expert, NZTA is most unlikely to ever approve the attachment of SkyPath, principally because of the enormous structural risks associated with such attachment, with particular reference to the clip-on's known metal fatigue problems and the huge dynamic loadings SkyPath would impose upon the Bridge's fatigued structure.
10. Numerous examples of metal fatigue failures around the world came with no pre-warning, and were catastrophic.
11. NRA's bridge design expert stated that anywhere else in the Western World, the assessment of whether or not SkyPath's attachment to the bridge is an acceptable risk, would be peer reviewed by an international panel of bridge design experts.
12. Instead of requiring the immediately above (and normal) standard before exposing everyone to millions of dollars of litigation, the Appeal Judge accepted the highly conditional supposition provided by NZTA's legal advocates, whose structural knowledge likely amounts to nothing.
13. Whereas NZTA's assurance was adequate for the Judge, any construction professionals who were required to accept responsibility for the Bridge's structural integrity and safety would certainly not regard it as adequate.
14. It follows that the Environment Court Judge allowed the Appeal to proceed, absent of the structural assurance he plainly stipulated as a necessary pre-condition, to the Appeal proceeding.

**Falsity #11 - The claim that the Resource Consent procedure was appropriate for SkyPath**

1. According to NRA's legal experts, SkyPath's Resource Consent hearing was ultra vires, because SkyPath is a *public work*, not the *private enterprise venture* Council and the developer claimed it to be.
2. The planning consent process for *public works* is the "Notice of Requirement" process, not the "Resource Consent" process.
3. Council's so-called "*independent regulatory arm*" incorrectly directed that SkyPath's consent be processed via the Resource Consent process.
4. The *Resource Consent* process is inherently skewed in favour of well-funded applicants and is judged with reference to regulations that effectively encourage and permit non-compliance - as Council would certainly have known.
5. Council was at pains to avoid the correct "Notice of Requirement" process. One obvious reason for Council's obstruction in this regard, is that the "Notice of Requirement" process is required to commence with an open and proper evaluation of "Alternative Solutions".
6. NRA painstakingly provided and explained such alternatives for years. Alternatives that wrecked no suburb. Alternatives that worked financially, functionally, environmentally and **safely**. SkyPath satisfies none of those criteria and never could.
7. Council's purportedly "*independent*" regulatory arm knowingly and incorrectly directed SkyPath's consent process down the wrong processing path.
8. The literally millions of dollars of expenditure incurred by parties having to deal with that incorrect process, was an unwarranted burden deliberately imposed upon Auckland Council's ratepayers, by Auckland Council - and in particular, by Council's "*regulatory arm*" - which is required to be "*independent*", while its actions plainly indicate otherwise.

**Falsity #12 - Council's very late claim that SkyPath is a permissible, conditional use.**

1. Right up until the Appeal hearing, SkyPath had been treated and applied for, as a non-complying activity.
2. Just one week prior to the Appeal hearing - after all evidence had been presented - Council announced that it had been successful in introducing pathways as permitted activities adjacent to motorways.
3. Council argued that this made SkyPath a permitted, conditional activity, rather than a non-complying activity.
4. This planning manoeuvre was nothing better than a nifty stunt, which perpetuated the misleading myth that SkyPath is nothing more problematic than a pathway.
5. However, the Applicant's own patronage statistics confirm that 87.5% of SkyPath's peak crowds (which last all summer) are comprised of tourism and leisure uses.
6. According to the Applicant's statistics, SkyPath will be by far the most intensely used tourism and leisure venture in the city and in all likelihood, in the Country.
7. Plainly, SkyPath is not a simple pathway. **It is a tourism venture.**
8. As a tourism venture, SkyPath is a non-compliant activity. It follows, that SkyPath is indeed a non-compliant activity.
9. Calling SkyPath a simple pathway, is akin to calling a supermarket a community facility for people to walk in.
10. However, accounting for the real usage of a supermarket, such developments are required to provide their own parking on their own site, for obvious reasons. Strict controls ensure that the environment into which supermarkets are placed, are not unduly disrupted by the supermarket's commercial purposes, or its necessary parking.
11. Similarly, and for the same reasons, tourism facilities are not permitted in protected residential zones - specifically including Northcote Point.



12. In zones where tourism facilities are permitted, they are required to locate their own parking on their own commercially zoned land at a rate of one carpark per four patrons at peak-use times.
13. There is no commercially zoned land on Northcote Point and the SkyPath developer does not hold and could not purchase such land in any event.
14. Were SkyPath treated as the non-compliant activity it certainly is, there is no chance it could have satisfied the criteria required for non-complying activities, as stipulated at s104D of the RMA.
15. Were both Statute and Council's regulations to mean what they say, SkyPath would not be permitted to be located on or to have its use and effects predicate upon Northcote Point.
16. The plain implication of Council's aggressive stance in favour of SkyPath, is that Council considers itself to be above the law, and that it has no qualms in using its ratepayer funding, to squash its ratepayers' objections to Council's Wild-West thinking.

***Falsity #13 - The claim that SkyPath complies with its Resource Consent obligations***

1. Apart from the many other RMA failures particularised in this paper :
  - i. SkyPath's proposed pathway fails to collect and reticulate stormwater. Rather, the developer wishes to dump its stormwater into the Waitemata Harbour.
  - ii. The above violates RMA regulations.
  - iii.** To comply with RMA regulations, SkyPath would need reticulated stormwater disposal. In turn, that would result in the SkyPath pathway structure imposing upon the bridge's minimum air-draft above the harbour, which transgression is not permissible.
  - iv.** If the RMA's requirements mean anything, this issue alone could make SkyPath's construction an impossibility.

***Falsity #14 - The claim that SkyPath has been rigorously tested and approved by appropriate Authorities, including the Environment Court***

1. Council ran its Resource Consent hearing in 2015.
2. Council engaged its own "*independent*" commissioners to hear the matter.
3. NRA and its fellow organisations WMUA and SMBA, sought to have the commissioners drawn from people other than those Council habitually employs, to achieve a suitable level of "*independence*", as is required of the panel.
4. Council ignored our request and engaged a non-independent panel, as noted following.
5. The Chair of the commissioners' panel, was engaged not just by Council, but also by one of the active proponents for the SkyPath proposal - NZTA.
6. That Chairperson should have declared her conflicted position and withdrawn, rather than inflicting that conflict upon SkyPath's objectors, undeclared.

*Then later:*

7. The Environment Court (which adjudicated over the Appeal to Council's decision) heard and ruled upon none of the issues outlined in this memorandum.
8. That is so, because both Council and the Applicant used their illegally funded position at Appeal (item 2 above refers) to blackmail NRA into withdrawing from the appeal.
9. They did that, by the Applicant's legal counsel threatening to recover their costs, "*to the full extent possible*", in the event that NRA lost its appeal.
10. Since that threat came from parties with bottomless Council funding and since the outcomes of all litigated matters are characteristically determined by funding, it behoved NRA to withdraw.

11. The quantum of costs referred to by the above-referred threats, was expected to amount to approximately \$5M, and were expected to fall directly to the accounts of NRA's experts.
12. Three senior and separate legal counsel who specialise in RMA litigation confirmed the fact that those experts would be exposed to the above costs.

***Falsity #15 - The claim that Auckland Transport's (AT's) proposed "Safe Cycle Route" down Queen Street Northcote Point, is needed to improve cyclist safety on Northcote Point***

1. When AT's subject proposal was aired :
  - i. AT's statistics (taken over 10 years) confirmed that there had been no reported cyclist accidents on Northcote Point, for the duration of AT's surveys.
  - ii. The average cyclist usage during the week was 1.5 cyclists per day and 2.5 cyclists per day during the weekend.
  - iii. There were 2000 written objections to the proposal - gathered within Northcote Point - whose population is approximately 2,500.
  - iv. The above-referred 2000 objections were counted by Council at its resource consent hearing, as one vote.
  - v. Council counted and publicised the developer's support for SkyPath as 10,000 votes, despite the fact that that support was in the form of 15-second electronic votes coming from all over the World.
  - vi. Many of those votes came from people who didn't even realise that they had supported the SkyPath proposal.
  - vii. To facilitate the cycleway, AT's proposed cycle route eliminated one of the two exit lanes from Northcote Point while increasing vehicular traffic on Northcote Point, by thousands of percent.
  - viii. AT's proposed cycle route is riddled with serious safety hazards, all of which have effectively been ignored by AT, in direct violation of Council's obligations to public health and safety and the statute that governs those issues.
2. Plainly, AT's so-called "*safe cycle route*" on Northcote Point, is required solely for SkyPath.
3. Absent of SkyPath, the proposed route down Northcote Point would be a \$4m waste of both amenity and money.
4. The latest iteration of AT's "*safe cycle route*" retains many unresolved and unresolvable design problems which, if installed, will increase safety hazards for all users of the area, including motorists, pedestrians and cyclists.
5. The estimated cost for the total cycleway has increased from \$4M to \$8M, while its only significant changes have occurred in Northcote Point. To date, those changes have failed to either resolve the design's initial problems, or to explain how the proposal could ever be "*safe*", let alone *more safe* than the existing accident-free arrangements for the area.
6. The misnamed "*Safe*" Cycle Path is now under construction, yet AT has failed to show anyone what its complete proposal is. The last time it did so, AT received 2000 objections. So at least they know how to avoid trouble until it's too late for anyone to fix anything.
7. Publicity made available to the public immediately prior to construction revealed that the Stafford Road / Queen Street intersection remains effectively unresolved, omitted plans for the Northern half of Northcote Point and never included necessary and overdue traffic management plans for this significant imposition upon Northcote Point.

***Falsity #16 - The claim that Council's conduct regarding SkyPath has been appropriate and in the best interests of its ratepayers***

1. The above should more than suffice to establish that Council's conduct in support of SkyPath has been reprehensible, inexcusable and to an alarming extent, illegal.

2. NRA's Executive trusts that all the above reminds Auckland Council's current Mayor, Councillors and Community Board Members of the comfort and willingness the previous administration showed for abusing its legal, fiduciary and managerial obligations.
3. It is also recommended that Council's elected representatives bear in mind that those of its ratepayers who suffered the consequences of the above-referred Council connivances and deliberate abuses, are not prepared to be trampled underfoot yet again, by this administration.
4. Council is reminded that NRA and its fellow objectors have always supported the idea of facilitating the passage of pedestrians and cyclists from one side of the harbour to the other.
5. That is why we recommended financially, functionally, environmentally sound and safe ways of achieving those objectives - the achievement of which is not possible via SkyPath.
6. NRA also objects to the rorts and falsities that SkyPath represents, promotes and which SkyPath's developer seeks to gain from financially. As with all great scams, Councillors are reminded to "*follow the money*". In this regard and simple though it is, its about time Council became familiar with SkyPath's real capital and running costs. Council is after all, underwriting those issues.
7. NRA's position is supported by every organisation directly affected by SkyPath and includes RNZYS, WMUA, SMBA, HBRA, and LSBPS. Those Associations democratically represent well more than 10,000 concerned citizens, a great many of whom are not without significant influence in the City.
8. Council's abuse of those Associations has not and will not readily be forgotten.
9. We suggest that even for its own sake, Council should heed NRA's suggested remedies to SkyPath's enormous number of unsolved and unsolvable problems. Apart from anything else, our solutions work. SkyPath's don't.
10. Our suggestions come from experts in their fields, who have high levels of competence in the fields of strategic infrastructural planning, crowd control, crowd safety and fiscal management.
11. All the above serves to illustrate in abbreviated form, the extent to which appropriate standards of professionalism have not been adopted by Council-funded personnel and experts.



**Kevin Clarke**

Chair, NRA Inc. SkyPath Appeal Committee