

Ref: 92932/1

19 August 2019

Auckland Council  
Mangere-Otahuhu Local Board  
By email

## **NORANA ESPLANADE WALKWAY**

- 1 We act for Mark Erskine, the principal of the Favona Ratepayers Group ("**FRG**").
- 2 We write in respect of the Norana Esplanade walkway ("**Walkway**"), which we understand the Auckland Council ("**Council**") intends to start constructing in the near future.
- 3 We write to request that construction of the Walkway not commence as, in our view, the Council and the Mangere-Otahuhu Local Board ("**MOLB**") have failed to comply with their legal obligations, follow proper process, and are proceeding with a project which is against the wishes, best interests, as well as safety and security of local business, property owners, residents, and other affected parties.

### **Failure to properly consider widespread opposition**

- 4 It is imperative that Council appreciates that there is substantial opposition to the Walkway. The 2016 FRG submission to Council was formally supported by a large number of affected individuals and businesses as are set out in the **schedule** to this letter. As you will see, the opposition is substantial both in terms of numbers and significance of the corporate entities.
- 5 Regrettably, documents indicate that Council staff have deliberately played down the level of opposition to the Walkway. For example, one document stated that the Walkway was only opposed by 5 submissions. Elsewhere it stated that "Mr Erskine produced a lengthy and unrelated submission". This can only be a reference to the FRG submission which was relevant and focussed on the Walkway.
- 6 Council records have failed to record Mr Erskine's attendance at meetings and have failed to properly record the level of opposition to the Walkway. This is contrary to the Public Records Act 2005.
- 7 It would appear that the MOLB was misled as to the support, or rather lack thereof, for the Walkway.

### **Failure to properly consult**

- 8 The decision to proceed with the Walkway came after a consultation process which can properly be described as "window dressing".

- 9 The period for consultation was unreasonably short, with only 8 working days given to prepare and submit a written submission.
- 10 Various businesses listed in the schedule have confirmed to our client that most were not consulted at all by the Council or MOLB concerning the Walkway. This is contrary to s 82 of the Local Government Act 2002.
- 11 Council have unlawfully failed to consult with Te Puea Memorial Marae representatives. Te Puea Memorial Marae (Tainui) are across the road (Miro Road) from the start point for the Walkway (Mahunga Drive). Mr Erskine, representing FRG, arranged an appointment through Council with the Chair of the MOLB, to facilitate overdue consultation with the local Tainui Marae Chairman. Prior to the meeting taking place, the MOLB Chair cancelled the meeting on the basis she considered “there was nothing more to discuss”. This cannot be proper consultation with Māori in accordance with the processes required by s 82(2) of the Local Government Act 2002.

#### **Proceeding on a non-notified basis**

- 12 Counsel granted itself resource consent for the two stages of the Walkway and did so on a non-notified basis.
- 13 From the decision, it appears that the resource consent application for Stage 1 was made prior to 1 October 2017. However, Council then went on to decide that the application only needed to proceed on a non-notified basis using the law as it changed on 1 October 2017. It is a general principle of law that enactments are not retrospective in their effect: Interpretation Act 1999, s 7.
- 14 In any event, even if the post 1 October 2017 law was to be applied to both resource consent applications, s 95A to s 95E of the Resource Management Act 1991 properly applied would require the applications to be publicly notified. That is because the adverse effects of the Walkway on affected persons will be more than minor.

#### **Decision unreasonable**

- 15 The Walkway is in substance a concealed path through a high crime area with multiple entry and exit points which can be accessed without restriction at all times.
- 16 The Walkway as consented has no lighting and no other safety or security features.
- 17 Council appear to have relied on the CPTED report prepared by a former staff member. This report is plainly inadequate and omits any proper consideration of the high crime locality of the proposed Walkway. There are 13 youth gangs operating in Mangere alone. Existing infrastructure such as toilet blocks, parks, and even bollards are routinely subject to damage and graffiti. The notion that a Walkway with no active safety features will be safe, not vandalised, and not result in an increase in crime is with respect incredible. It was unreasonable for Council to rely on this report. This is especially so where the majority of Auckland’s walkways are very poorly used and also have resulted in an increase in criminal activity. One Police report terms such walkways as “crime corridors”, a description which we suggest is very apt here. Examples of the experiences of others are to be found in the FRG submission ([www.favonaratepayers.co.nz](http://www.favonaratepayers.co.nz)).

- 18 In terms of safety and security, it is worth comparing the Walkway with the Mangere Bridge Cycleway. This cycleway / walkway has been built into the side of the new Mangere Bridge under the traffic lanes above. It is administered by the New Zealand Transit Agency.
- 19 The area has been a location for crime, drug users, sex workers, anti-social activities, dumping of rubbish, rough sleepers, dangerous dogs, and people and animals using the location as a toilet. All these activities have been carried on despite the high volume of passing traffic and boats, and the built up nature of the area including apartments, motel, bar etc. NZTA, being aware of this, has cleaned out, water blasted and painted the entire 750m of the walkway. It has sign written the walkway, installed higher barriers for safety along the entire length, installed monitored CCTV cameras, and constructed pleasant entry features at either end of the MBC (curved staircase, murals, decorative panels etc). Most significantly, NZTA has installed 24/7 security guards at either end of the walkway in rotating shifts who are in radio / phone contact to monitor people crossing the walkway.
- 20 In comparison the Norana Walkway, which is just 250m away, has none of these safety features. It is in a more isolated and dangerous locality although at present the overgrown nature of the space limits its use for anti-social activities.
- 21 In short, Council's decision to proceed is unreasonable. It is acting against its fiduciary duty owed to ratepayers to act in their interests. It will not promote the "social, economic, environmental, and cultural well-being of communities" as is required by s 10(1)(b) of the Local Government Act 2002. It is contrary to many of the principles related to local authorities set out in s 14(1) of the Local Government Act 2002 (see in particular paragraphs (a) to (d) and (f), (g) and (h)).
- 22 Instead, the FRG considers that Council would do better to prioritise upgrading the 1960s era roads and arterials in the Favona area and throughout Auckland. Spending money on the Walkway would seem to be inconsistent with the prudent financial management obligation in s 101(1) of the Local Government Act 2002.

### **Summary**

- 23 By pushing ahead with the Walkway, Council will be creating a nuisance for which it could be liable to affected landowners and occupiers. It could also be potentially liable to those same landowners and occupiers in negligence.
- 24 The Council and the MOLB are on notice that proceeding with the planned Walkway is unlawful.
- 25 Our client will engage the FRG signatories and supporters to seek their consensus decision on how they wish to respond to the Council conduct in this matter. Options include, either alone or in tandem with other similar ratepayer groups who are facing similar behaviour from Council, applying to the Minister to exercise her powers under Part 10 of the Local Government Act 2002.
- 26 We respectfully suggest that Council and MOLB cease the planned construction forthwith. We would ask this request to be answered by Council with a matter of urgency, due to the imminent start of construction by the appointed contractor, CLL Ltd and for the substantial risks posed by this Walkway to the local business and residential communities, the consulate of the Government of Samoa, and Te Puea Memorial Marae.

27 We reserve our client's rights.

Yours faithfully  
**HENDERSON REEVES**

A handwritten signature in blue ink that reads "Jeremy Browne". The signature is written in a cursive, flowing style.

**Jeremy Browne**  
**Director**

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Copy to: CLL Limited

## **SCHEDULE**

### **Businesses:**

1. Special Steels and Metals Ltd.
2. Viking Steels Ltd.
3. Quality Heat Treatments Ltd.
4. Fletcher Cyclone Wire Ltd.
5. I-Trans NZ Ltd.
6. Global Campers Ltd (Name changed to Travel & Tourism Group Ltd).
7. CMI Fasteners Ltd.
8. CMA Recycling Ltd
9. Nufab Engineering Ltd.
10. Tanker Engineering Ltd.
11. Blackstone Ventures Ltd.
12. Asset Disposals Ltd
13. Gilbert Engineering Ltd.
14. STL Linehaul Ltd.
15. Steam Brewing Company Ltd.
16. Skookum NZ Ltd.
17. Hallmark Limousines Ltd.
18. Favona Foodmarket.
19. Super Retail Group NZ Ltd.
20. Barton Growers Ltd.
21. Starmotors Automotive Workshop Ltd
22. Chemstore Ltd.
23. SeacoWilson Ltd.
24. Bonfiglioli NZ Ltd.

25. Dixie Cummings Ltd.
26. Field Rubber Ltd.
27. Bizzy Kidz Childcare.
28. Larson Juhl NZ Ltd.
29. Gartner Superlux Ltd.
30. Matthews Packaging Ltd.
31. All Scaffolding Ltd.
32. Bob Hunkin Engineering Ltd.
33. Beachcroft Engineering Ltd.
34. Beachcroft Engineering Ltd Staff (9 X).
35. Flag Forwards Ltd.
36. New Image Asia Ltd.
37. I. H Wedding & Sons Ltd.
38. Dieselworks Ltd.
39. Dyverse Dentures Ltd.
40. Insurance Council of New Zealand.
41. Samoa Consulate General.
42. Te Puea Memorial Marae.

Residents:

1. M. Erskine (Beach Road)
2. U. Naran (works at Beach Road)
3. M. Norrington (works at Beach Road).
4. J. Miller (works at Beach Road)
5. M. Taylor (works at Beach Road)
6. J. Kelly (works at Beach Road).
7. D. Barton (Favona Road)

8. P. McGuinness (Favona Road).
9. S. Singh (Favona Road)
10. J. Allan (Merchant Ave)
11. G. J Cranston (Favona Road).
12. J. Martin (Norana Ave)
13. Y. Taifinofu (Mahunga Drive)
14. D Lang Sui (Mahunga Drive).
15. M. Lang Sui (Mahunga Drive).
16. A. Ma (Mahunga Drive)
17. J. Lee (Mahunga Drive).
18. J. Cowan (Mahunga Drive).
19. A. Wilson (Mona Ave)
20. L. Nicolson (Mona Ave)
21. A. Mathewson (Mona Ave)
22. Faolotoi Reupena Pogi, Samoa Consul General (Norana Ave).
23. M. White (Lolim Place).
24. A. Yergis (Lolim Place).
25. P. Field (Rymer Place)
26. T. Lameko (Hastie Ave).
27. N. Pollington (Hastie Ave).
28. R. McDowell (Mahunga Drive).
29. B. Wedding (Mangere Bridge)
30. J. Wedding (Mangere bridge)
31. I. Wedding (Mangere).
32. R. Currie (Seacliffe Ave).

Confidential Signatories: (Companies concerned that opposing Council projects will adversely effect their business income)

1. Confidential 1
2. Confidential 2
3. Confidential 3

Supporting Independent Submitters: (Have prepared and lodged their own submissions opposing the proposed cycleway / walkway)

1. Dow Chemicals NZ Ltd.
2. Samoa Consulate General.
3. Chemical Care and Storage Ltd.
4. Bizzy Kidz Childcare.
5. National Road Carriers Association.
6. Others we are not currently aware of (a LGOIMA request will identify).

Timed Out Submitters: (Unable to finalize consideration to supporting submission prior to 5PM, 18 November 2016)

1. Progressive Enterprises NZ Ltd. (Logistics Team fully committed on earthquake planning / logistics – not enough time to complete).
2. Pacific Steel (NZ) Ltd (Management team committed to large critical projects – not enough time to complete)
3. Turners and Growers Global Ltd. (Landlord to be involved in process – not enough time to complete).
4. Danone Nutricia (Landlord to be involved in process – not enough time to complete).
5. Lord's Church of Auckland (Insufficient time for Church senior administrators to progress consideration – not enough time to complete).
6. Many other businesses and residents in the area. (All too pre-occupied with own workplace and / or personal commitments to find time prior to 5PM, 18 November 2016 to study submission and decide to support.