Komiti Tātari me te Māta Raru Tūpono / Audit and Risk Committee

OPEN MINUTE ITEM ATTACHMENTS

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Note: The attachments contained within this document are for consideration and should not be construed as Council policy unless and until adopted. Should Councillors require further information relating to any reports, please contact the relevant manager, Chairperson or Deputy Chairperson.
Atkinson Park a 1 Billion Dollar
Black Swan Risk

Chris Joel
Patumoa Rd
Attachment A

Contents

- Atkinson Park
- The problems
- Why is Council on the hook?
- What is the solution (CCTV & SLA)
What is Atkinson Park

- Native parkland & beach
- Atkinson park Gifted to ACC in 1913
- Tinderbox surrounded by tinderboxes
Attachment A

Item 5.1

General Problems

- 35 years of late night anti-social behaviour
- Noise
- Driving cars in bay
- Drunk driving
- Late night drinking
- Vandalism
- Camping
What Activity is a Risk to ACC

- Fires on beach (potential forest fire)
- Car Burning
- Fireworks

Under Deed of Gift ACC must prevent fires
Why is this Council’s Problem?

- Council park land
- Atkinson Park Deed of Gift 1913
  - Full time ranger
  - Ranger to:
    - Stop Fires (risk known for 105 years)
    - Control noise and monitor behaviour of park visitors
How ACC in Breach

- 71 years with a Ranger - 35 years without.
- ACC failure to police: camping, signage, everything.
- Pollution of bay. (Gen. Lack of care).
- Breach notice given.
ACC Risk Profile

- Tort to surrounding properties.
- Liability for fire.
- Liability to insurance cos.
- 1,000+ homes @1M$ each = $NZ 1 Billion.
- Manslaughter charges possible.
How can ACC Mitigate the Risk

ACC needs to be seen to act, to remove liability

- CCTV x 2
- SLA on response times that recognise Deed of Gift
- Replace signage (SLA)
On Risk in General in ACC

- Trying to action for 9 months.
- ACC staff: hard to conceptualise risk / action risk removal.
- opex is easy capex is hard (BAU easy / change hard)
- Can ACC Risk Committee encourage Parks to act?
Subject  Notification to Auckland City Council. You are in breach of  
Deed of Gift of Atkinson Park  

To  James Hassall (Director Regulatory Services ACC / CLO ACC)  

From  Chris Joel, 11 Paturea Rd, Titirangi  

Date  9/2/2019  

Purpose  
The purpose of this correspondence is—  
1. To formally inform Auckland City Council (ACC) that it is in breach  
of the Deed of Gift of Atkinson Park, and to outline actions needed to  
remedy those breaches.  
2. To explain those breaches so that this document can be shared with  
other organisations that may be impacted by ACC breach of the Deed  
of Gift:  
a. For example, to share this document with NZ Police so that they  
have it on hand, if they should have to consider a corporate  
manslaughter charge against ACC Officer(s) in the event of a fire  
leading to death;  
b. For example, to share this document with the Minister for Local  
Government, so that she can understand the fiscal liability that  
ACC might face, or might be passing on to central government;  
c. Other organisational examples include (but are not limited to) NZ  
Fire Service, ACC’s Auditors, NZ Insurance Council, etc.  

Nature of the Breach  
The appendixes at the bottom of this document details—  
• the history of Atkinson Park;  
• its Deed of Gift;  
• the nature of the breaches of the Deed of Gift by ACC.  

Actions needed to remedy the breach  
• Medium term – to install a CCTV system capable of monitoring the  
parking and beach areas at the bottom of Atkinson Park. (This is the
remedy that has worked well at Jenkins Bay, and is the action recommended by NZ Police Titirangi Community Constable.)

- Short term – until CCTV is installed, set up security or fire patrols at the beach area at night during summer (fire risk time).
- Urgent and ongoing – instruct ACC help desk not to refuse to action calls from residents of Paturoa Bay on the grounds that “Atkinson Park is a public space and Council is not responsible for security or camping [or other breach items] in a public space”.
- Urgent & ongoing – establish SLA’s that reflect the Deed of Gift and impose them on Council staff and ACC contractors (e.g. “an instance of report of camping, or anti-social behaviour, or fireworks, etc., in Atkinson Park must be investigated within x minutes.” Service Level to mimic having a Ranger based in the Park as in the Deed of Gift.
- Ongoing – continually replace vandalised signage in the park within a reasonable timeframe. Service Level to mimic having a Ranger based in the Park as in the Deed of Gift.

Please note that the CCTV system connected to NZ Police is a proven system recommended by NZ Police. It would not make sense to try to impose a 1914 solution on a 2019 problem (i.e. to insist on an onsite Ranger with a horse in the park and a horse, etc.). However, ACC could take a literal view of the Deed of Gift and revert back to this original solution.

Putting in CCTV is also cost effective, as it is monitored and run by NZ Police. For 20 – 50K of capex, ACC could remove itself from a billion-dollar liability and from possible charges of corporate manslaughter.

**This is a potential billion-dollar breach**

The recent campfire in California that wiped out the town of Paradise is a good example of how a fire in a forest can wipe out a lot of homes (and kill some people as well). Recent examples in Northland and Nelson also point to the obvious danger of forest fire.

Given that areas in Titirangi and in the Waitakere Ranges (connected by forest and regeneration in the land surrounding Atkinson Park) have in excess of 1,000 homes, with an average value of about $1,000,000, that is a billion-dollar contingent liability to ACC.

If council does nothing about this 34-year-old breach of the Deed of Gift, and there is a fire, ACC is on the hook to IAG and to other reinsurers for
1 billion NZD. That is, ACC has a written agreement and responsibility to protect these houses from fire coming from its park. Council has a responsibility in tort with residents about this specific issue, and by extension the tort is with residents’ insurance companies.

Council may not be too concerned about a resident like myself saying that Council is in breach of the Deed of Gift; however, after a fire, Council could be facing a QC from IAG, whose discovery would be a great deal more than the contents of this letter (though of course this letter is in part intended to show other organisations that ACC had clear knowledge of its responsibilities under the Deed of Gift).

Council must also consider that the continued breach opens council officers up to charges of corporate manslaughter (if death should result from fire that Council did not take reasonable measures to prevent, especially when Council had agreed in writing to undertake those measures in perpetuity).

Other information sought
I hereby make a formal request for the name of Council’s insurer (or reinsurer), so I can inform them of Council’s breach of the Deed of Gift.
Appendix I

History of the Park and the Deed of Gift

1911 – Henry Atkinson puts the area known as “Atkinson Park” (or Atkinson Botanical Gardens) into trust.

1913 – Feb. 3 Auckland City Council Mayor, Chris Parr, suggested to Atkinson that he gift the park to the people of Auckland, so that the park was “vested in the city for all time” (source NZ Herald).

1913 – Feb. 17 Atkinson and his trustees write to Auckland City Council offering the Park to ACC along with a Deed of Gift of the Park.

NB: the Deed of Gift document has now been lost by ACC. However, Council’s losing the Deed document does not exactly help Council to claim that they are following the Deed, when ACC hasn’t even got the document.

However, a letter written on 9 Feb, 1914 by ACC Engineer M. Inst to the Mayor, records the process for the gifting of the Park. Inst outlines some of the conditions that Atkinson had stipulated (others of which can also be shown by reference to other documents of the day, such as articles in the NZ Herald, the Auckland Star and other Council correspondence). For more detailed information on the Deed of Gift, see the book “Atkinson Park and Life at Patorea Bay: 1910 – 1980” by Lynnette Sollitt-Morris.

June 1913 – the Mayor (in NZ Herald), inspecting the Park and looking for a place for the Ranger to live, says it is “necessary, indeed essential, the Ranger should live in or at least at the entrance to the park… so that he is on hand to prevent fires and other mischief”.

First Ranger (McAbe) is installed in 1914. He lives on Park Road (at the entrance to the Park in a cottage that ACC buys from Atkinson, at cost, for 400 pounds, specifically for the Ranger to live there.

Feb. 1914 – The Park opens to the public.

1915 – Council passes a number of bylaws to support the running of the Park. These bylaws are in line with the Deed of Gift and follow on from Atkinson writing to the Titirangi Parks Committee (which Atkinson, the Mayor, the Deputy Mayor and several councillors were on), saying, “Your man McAbe is a good man, but without the relevant rules he is
powerless to prevent...”. ACC then passed bylaws related to the Park, including banning camping and banning fires in the park.

At its height of popularity in the 1920 and 1930s, the Park was getting 10,000 to 20,000 visitors a day.

Titirangi Beach is now one of 17 Auckland beaches that is permanently closed to swimming, and where it is dangerous and prohibited to eat seafood from the bay. This degradation of the bay is caused by Auckland Council’s sewage system. Clearly visitor numbers to the beach and the park are much diminished.

In 1985, the last Titirangi Park Ranger (who lived at 2 Mahoe Road) died in harness. He was not replaced by Council who presumably disestablished the position.

**Summary of The Deed of Gift:**
Atkinson Park (roughly 30 acres of botanic gardens) was to –

- Be kept as a scenic reserve in perpetuity;
- Have a road from Park Road down to the beach to be built (now called Titirangi Beach road): Atkinson and the Council both contributed to the cost of building the road;
- Allow no fires to be lit in the park.
- Allow no camping in the park;
- Have a Caretaker employed on site by ACC: by the Park’s opening in 1914, this was upgraded to a “Ranger”, and he had the powers of a special constable, whose job (according to the Mayor) was to patrol the park all day on horseback in summer, to ensure that visitors were well behaved, and in winter, to repair the tracks;

The Deed was designed to protect the land next to the Park, near the beach, from danger of fire and from the nuisance of camping, noise, et al., caused by visitors to the park. (Atkinson’s family owned and lived on this land, next to the Park, so he was especially keen to ensure that those next to the Park were not disturbed by park visitors). The three relevant streets next to the Park of Paturoa Road, Aydon Road and Mahoe Road. It should be noted that the writer is the owner of one of these houses, and so has standing, and that a responsibility in tort exists from the ACC to the writer of this breach notice.

It was also noted in the letter from ACC to Atkinson, accepting his Gift and the terms of the Deed of Gift, that they highlighted the many virtues of the Park and said, “Visitors to the park should zealously guard this...
heritage and thus prevent the mutilation which careless persons are apt to indulge in.”

That is, Council did not merely accept undertaking the Terms of the Deed of Gift, it acknowledged the issues that it would face, and in effect, in its enthusiastic response, it reinforced that it understood the importance of the place that it was going to look after, and that it would do what would be needed to look after the Park.
Appendix II
How has the Deed been implemented or breached?

For 71 years (from 1914–85), there was a Ranger based in the Park. He
oversaw the Park and ensured that there were no fires and no camping,
and that people behaved themselves. Issues (camping, fires, noise, et al.)
were resolved locally and promptly.

Council also enacted bylaws for the Park (mostly around the time of the
Park’s opening). Council also initially had a heavy-hitters committee of
Councillors, who looked after Atkinson Park, Mount Atkinson and the
Reservoir, all of which were donated by Atkinson.

So for 71 years, the councils (ACC and WCC) made a reasonable effort
to implement the Deed of Gift.

In 1985, the Ranger died on the job, and this was, Council decided, to be
the last Ranger. So by not having a Ranger, there has been a technical
breach of the Deed of Gift for 34 years by Council.

However, Council could reasonably argue that it is the spirit of the Deed
of Gift that is the most important, i.e. as long as the park is looked after
and functioning well, then the Deed is not really being broken merely by
the absence of a Ranger. Sadly, it is the spirit of the Deed of Gift that is in
constant breach by ACC. Some of the issues have been ongoing over the
last 30-plus years.

- Fires are being lit on the beach late at night. These have been next to a
  native forest and next to houses that are in an SEA filled with
  regenerating bush, none of which can be cleared, and so is basically a
  tinderbox waiting to go up, an obvious health and safety calamity with
  the potential to cause death and the destruction to property. Just to be
  clear here, I am asserting that ACC has been, and is being, wilfully
  negligent in relation to a fire risk that ACC has acknowledged for
  more than 105 years, and which could lead to death, and thus to
  corporate manslaughter charges.

- Cars are being set ablaze (both in the bay and in the main carpark).
  Exploding cars are also an obvious fire risk.

- Cars are being driven inside the bay (at low tide), e.g. doing ‘donuts’
  at high speed, killing wildlife, threatening the life of other users of the
  bay, et al.
Audit and Risk Committee
26 February 2019

- Cars are being tipped over (one involved an attempt to tip a resident’s car down a cliff – it was left suspended on a fence 30m above an area of beach that public walk on).
- Late night noise, which can be five nights a week and any time from 7 p.m. to 5 a.m. This is both drunken or drugged shouting and from car stereos or mp3 players.
- Late night gatherings, which can be from five to 200 people, at the beach late at night.
- Vandalism (especially of ACC signs).
- ACC signs are not being replaced in a timely manner (signs for – no camping, no fires, liquor ban, no swimming, don’t eat the shellfish – which at the time of writing are all missing or are partially missing, i.e. existing in one place but removed in another). These signs have been missing for many months, and phone-calls to 301-0101 have not made them reappear. The health and safety of intermittent Park users are also put at risk by ACC’s failing to action this, as both adults and children are basically swimming in sewerage, for the want of proper signage by ACC.
- Graffiti.
- Verbal and physical threats to residents bordering the park.
- The park (especially the beach) is not safe to visit after dark. Many of the residents are retired, and they are effectively imprisoned after dark.
- High-speed cars (with drunk drivers) are going up and down winding, narrow roads, with ravines and cliffs on one side of the road, to and from the beach.
- Camping is banned in the Deed of Gift (and in a 1915 ACC bylaw specific to Atkinson Park, supporting the Deed), but ACC staff have no knowledge of the Deed and so do not implement the ban when called about caravans and campervans staying in the Park, or about tents on the beach. In fact, ACC staff seem trained to refuse any complaint [about noise, fire, fireworks, camping etc.] that any resident makes or has made over the last 30 years. Despite there being a clear tort between ACC and the residents bordering the park. Further, the time for ACC to take action over any issue would have been unacceptable to the people in 1915 (let alone in the modern world). For example, on 2 February, 1919, about 20 people were camping on the beachfront in about six tents, including one for communal eating (no doubt including some means of fire). Eventually, after much pressing, ACC employee Vinod issued an incident number, 8100354947. However, he added that the timeline for investigation was three days. Obviously, three days to investigate is unacceptable, and would never have been acceptable with a Ranger onsite. If
Council wishes to avoid having a Ranger on site, it needs at least to mimic the response times of having a Ranger on site (using technology to take up the slack).

- Beach pollution – When the Park and beach were handed to ACC in 1913, they had pristine water and golden sand. Now in 2019, Paturaoa Bay and Titirangi Beach are two of New Zealand’s most polluted beaches. It is permanently closed to swimming, to eating seafood caught there, and to other water activities. The cause of pollution of Paturaoa Bay is from the ACC sewage system (i.e. ACC is responsible both for protecting the beach and for causing the pollution of the beach and bay). I realise that fixing this particular breach (of a polluted bay) is not a swift thing and will involve many millions of dollars. However, I mention this breach because one line of argument ACC could run about their other breaches is – “Well, this used to be an important beach, but now it’s not important, and so we resource it in accordance with that.” Obviously this not only ignores the explicit breach of promise to residents, but it would also be tantamount to arguing something like – “Well, now that we [ACC] have ruined the bay with our pollution, why should we look after the beach area?” That is not much of an argument for ACC to run with.

As this is a formal notice of a breach from a party with standing in this matter, I would be grateful if you would acknowledge receipt of this breach notice by way of return email.

Further I request that you (or a relevant ACC representative who has the DFA to act) either –

- Within 14 days, meet me for a discussion of these breaches and how ACC could rectify these breaches; or
- Within 14 days, send me a written reply as to how ACC intends to rectify these breaches.

I would also, in the interim, be very happy to discuss the above with yourself or with a relevant ACC representative, via phone.

Kind regards,

Chris Joel,
11 Paturaoa Road.
Titirangi.
0204 111 9751
chrisjoel77@gmail.com
Audit and Risk Committee
26 February 2019

Attachment B

Item 5.1

[Text of the document is not clearly visible due to quality of the image.]
26 February 2019

Item 5.1

The Body Corporate shall appoint and at all times shall employ a...
Item 5.1

The Audit and Risk Committee met on 26 February 2019.

It was decided that the minutes be recorded for the purpose of publication.

Agenda items were:

1. Review of the implementation of the Audit and Risk Committee's recommendations
2. Update on the progress of the external audit
3. Discussion on the performance of internal controls
4. Approval of the budget for the next financial year
5. Review of the performance of the external auditor

The Audit and Risk Committee recommended:

1. That the budget for the next financial year be approved
2. That the performance of the external auditor be noted
3. That the implementation of the Audit and Risk Committee's recommendations be monitored

The meeting was adjourned.

[End of minutes]
and otherwise improve the same and to execute such other works thereon as
may be deemed expedient with all the powers in that behalf of an absolute
deed of trust.

2. The Body Corporate shall have and enjoy the exercise of all or any of
such powers of management and other powers last mentioned, as far as
the same be exercised by any person or persons and to pay the expenses
incurred in the exercise of the powers of management and other powers ....

3. The said body corporate shall and may, from time to time, do and
execute all such acts and deeds for the purpose of managing and adminis-
ttering and improving the said trust property and generally causing carrying
into execution the purposes and objects of these presents in such manner as ...

4. The Body Corporate shall observe the rights, powers, and duties of
the Board of Directors, and shall conduct its business as the Board of
Directors may from time to time direct.

5. The Body Corporate shall keep books and accounts and such records
as shall be necessary for the full and proper conduct of its business and
affairs, and shall render accounts to the Audit and Risk Committee.

6. The Body Corporate shall pay all debts and liabilities of the said
Trust Property and the said lands, and shall duly perform and discharge all
such duties and obligations as are required by law.

7. The Body Corporate shall not alienate, mortgage, or encumber any
portion of the said Trust Property and the said lands, except with the
written consent of the Audit and Risk Committee.

8. The Body Corporate shall not enter into any contract or agreement
which may be detrimental to the interests of the said Trust Property and the
said lands, without the written consent of the Audit and Risk Committee.

9. The Body Corporate shall keep and maintain such books and records
as shall be necessary for the full and proper conduct of its business and
affairs, and shall render accounts to the Audit and Risk Committee.

10. The Body Corporate shall pay all debts and liabilities of the said
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which may be detrimental to the interests of the said Trust Property and the
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affairs, and shall render accounts to the Audit and Risk Committee.

14. The Body Corporate shall pay all debts and liabilities of the said
Trust Property and the said lands, and shall duly perform and discharge all
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15. The Body Corporate shall not alienate, mortgage, or encumber any
portion of the said Trust Property and the said lands, except with the
written consent of the Audit and Risk Committee.

16. The Body Corporate shall not enter into any contract or agreement
which may be detrimental to the interests of the said Trust Property and the
said lands, without the written consent of the Audit and Risk Committee.

17. The Body Corporate shall keep and maintain such books and records
as shall be necessary for the full and proper conduct of its business and
affairs, and shall render accounts to the Audit and Risk Committee.
Attachment B

Item 5.1

In witness whereof the parties hereto have hereunto subscribed their names and attesting their seals the day and year hereof written.

[Signature]

[Signature]

[Signature]
... to the烟花表演 with the Chinese and the November 2018 fire in the city. The next meeting will be on 26th August 2019.

Audit and Risk Committee
26 February 2019

Attachment B
Item 5.1
Attachment B

Item 5.1

THE AUCKLAND CITY COUNCIL

with

H. W. ATKINSON & OTHERS

DECLARATION OF TRUST

Thomas Cotter,
Auckland.
Constable William Flapper
Tiritiri Community Constable
New Lynn Police

Friday, 1 February, 2019

To whom it may concern

I have been the Tiritiri Community Constable for 4 years, working closely with the local business’s and residence during this time. This letter is in support of the suggestion of having CCTV installed as part of a prevention initiative in the Tiritiri Beach area.

A main strategy of the New Zealand Police is our ‘Prevention First’ model, the key to this is taking every opportunity to prevent harm. To do this we focus on people and building partnerships. By having a CCTV system in place through the Tiritiri Beach area would forefoot the partnership between the local residence and Police in activity monitoring unwanted behaviour in the area and allowing Police to intervene at the earliest opportunity.

I believe that the proposed idea of having CCTV installed through the public space around Tiritiri Beach will not only hold those responsible for unwanted activity accountable but will also prevent individuals from engaging in this behaviour once they know that they are under surveillance.

Neighbouring Jenkins Bay has had a great result from the installation of CCTV cameras being put up by the boat ramp. Police have noted a great reduction in the calls for service to this location.

Kind Regards

Constable William Flapper
Tiritiri Community Constable

Safer Communities Together

NZ POLICE WAITAKERE AREA
7 Buscomb Avenue, P O Box 21-162, Henderson, Auckland
Telephone: 09 839 0800 Facsimile: 09 837 4953