

**Preface: The following is not a report, but a statement which pinpoints firstly the HSWA 2015; Timeline of events; Responses of the MPT & MoE; standing view of the Education Brief- ( yet to be formalised); Response in brief from Crown appointed EBOT Advisor – Wayne to Richard Nowlands email March 5<sup>th</sup> 2019; Conclusion: HWSA Act sighting the terminology ‘ reasonably practicable’.**

### **1.1 What the Health and Safety at Work Act 2015 (HSWA) sets out to do**

It recognises that a well-functioning health and safety system relies

### **1.2 On participation, leadership, and accountability by government, business and workers.**

### **1.3 So far as is reasonably practicable (section 22 of HSWA)**

The primary duty of care requires a PCBU to ensure health and safety ‘as far as is reasonably practicable’. When used in this context, something is reasonably practicable if it is reasonably able to be done to ensure health and safety, having weighed up and considered all relevant matters, including:

- How likely are any hazards or risks to occur?
- How severe could the harm that might result from the hazard or risk be?
- What a person knows or ought to reasonably know about the risk and the ways of eliminating or minimising it
- What measures exist to eliminate or minimise the risk (control measures)?
- How available and suitable is the control measure(s)?

Lastly weigh up the cost:

- What is the cost of eliminating or minimising the risk?

I have read through the schedule of emails, the concept plans, and responses from the MoE, and I have been unable to find communication from either the Minister; the Ministry project team, and from Rob Giller and associates, the crown’s assurance, and their obligation as the PCBU to RUA EBOT identifying Health & Safety Hazards and Risks, specific to the leased premises of Atkinson Avenue Otahuhu.

From October 2018 up until March 6<sup>th</sup> 2019, no evidence is sighted of identifiable HEALTH & SAFETY Risks, and Hazards.

The trail of communication focusses on time constraints, achieving completion of the reconfiguration, and requesting urgent feedback from Rise UP Academy all in sundry.

There may be information or communication that I have not been privy to. However, my findings are that many of the concerns sent by the RUA EBOT; the parents, and other agencies, have been duplicated, but were not referenced to legal documents.

As a result I was appointed by the RUA EBOT, after the first viewing of the Concept Plans on February 12, to identify key elements of Hazards and Risks under the Health and Safety guidelines, most referenced to two documents, which to date have yet to be answered in its' entirety OR identified by the PCBU, that being the Ministry Project Team.

Before the March 6 Meeting, I submitted 3 documents that identified concerns, and questions regarding specific areas of the DSINZ requirements, and guidelines. The HSWA role of the PCBU under the MoE, and the Concept Plan, tabled with a letter to Richard.

Richard stated in his email this was not the request from the Ministry Project team, explaining an exhaustive amount of energy had gone into a document that was not relevant.

The outcome and the intention of the RUA EBOT as Ulu respectfully responded with was "Are we blameless?" That being the RUA EBOT.

To qualify this, could RUA EBOT guarantee with confidence that it had done everything as was **reasonably practical** to identify all known Health and Safety Hazards and Risk factors to ensure all duty of care, and due diligence under its' obligations, and responsibilities as a governing body had been fulfilled as an assurance to its' own stakeholders.

That the dialogue for the March 6 meeting would discuss the mitigation.

Those of us who were present at the March 6<sup>th</sup> Meeting were Ulu, Anna, Bruce, Taaulu, myself Anthea, and Richard.

A number of discussion points were put on the table;

- 1) The initial feedback from the Staff on the reconfiguration, which incorporated the First Floor. We had mistakenly assumed that the First floor was up for negotiation, from a prior discussion after the first viewing. Ministry Project Team Response Richard and Anthea: The first floor is not up for negotiation, as it is designated for other Educational purposes.
- 2) Ventilation and the overall of the current Heat Pumps on site. Team Response Richard and Anthea: Both ventilation systems will be kept and overhauled, with an ongoing maintenance programme.
- 3) Coverage of risks identified in the RUA EBOT documents  
Team Response Richard and Anthea: It was at this meeting that the Ministry Project Team conveyed that an External Health & Safety Provider had been appointed to undergo an Audit of the leased premises, Atkinson Avenue Otahuhu. There is no evidence, as far as I have found, that this key element had been offered in the six months leading up to the March 6 meeting. However as Richard pointed out, it is not common practice to conduct a Health and Safety Audit before occupancy.

There are other checks that are normally conducted under the Building Act, which only affect the Leasee, but does not affect the tenant.

On the same day that afternoon, of the March 6 Meeting, Wayne Gribble, who is the appointed Crown Agent Advisor for the RUA EBOT responded to Richards email. With time constraints at the meeting, it was not possible to discuss the contents of his response. But I would like it to be noted that Wayne (in summary) covered the following:

As an agent of the Crown appointed to provide advice and guidance to the RUA EBOT, Wayne identified the role of governance, its' obligations, in ensuring A School Board's objectives under the following sections 1A, 60A, 61, 62 are pursuant:

For the purpose of being as succinct as one can be this is in summary form:

Wayne Gribble also outlined a number of legal documents, and compliance issues, which has yet to be addressed from the MoE as responses of compliance, and Health and Safety Issues.

What is clearly evident is a Crown Agent provided support to the RUA EBOT, by clarifying the Boards roles and responsibilities, identifying what the Education Act states School Boards are expected to undertake in its' role of Governance.

May I also point out the following which Wayne included in his response?

**The Board is required to focus on its role as a Crown Entity with responsibility under Schedule 6, Part 5 of the Education Act 1989 to ensure that the school is a physically and emotionally safe place for all students and staff.**

Can the Ministry Project Team provide documentation under the following in relation to all concerns submitted by RUA EBOT Stakeholders, and questions in the documents that were submitted, that has yet to be answered?

If yes, please provide documentation,

If no, will this be included in the external Health & Safety Provider's report?

We await with anticipation on the Report from the External Health & Safety Provider.

The HEALTH AND SAFETY AT WORK ACT 2015 A practical guide for boards of trustees and school leaders set out by the MoE, have very clear guidelines for BOARDS to ensure that all reasonably practical in relation to the duty of the PCBU that being RUA EBOT, to its' own stakeholders that the following is adhered to, which I quote from the Health & Safety ACT as follows:

• ***Meaning of reasonably practicable***

- In this Act, unless the context otherwise requires, **reasonably practicable**, in relation to a duty of a PCBU set out in [subpart 2 of Part 2](#), means that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters, including....

Can Rob Giller and associates say with reasonably practicable action they did everything within their power to address, mitigate, minimise, count the cost as an assurance that all Health and Safety hazards and risks have been mitigated?

If there is evidence RUA EBOT would like to sight this documentation.

### ***The Education Brief***

I am yet to establish or conclude whether there has been negligence without prejudice by the MoE' to the cultural competencies **responsiveness** to Rise UP Academy, given that there are students and families who have chosen Rise UP Academy for its' unique inclusivity, attuned to the cultural competencies and practices that are pedagogically relevant to RUA.

### ***The TAPASA DOCUMENT***

Signed off by Jenny Salesa the Associate Minister of Education herself being of Pasifika heritage, in 2018, is a classic example of a document published by the MoE which identifies, many features, but significantly, the SUCCESS COMPASS OF A PASIFIKA STUDENT.

What is very clear is PACIFIKA LEARNER, PARENTS, FAMILIES, AND COMMUNITIES make up the inner circle, and the heartbeat in which a Pacifica student operates successfully, this is what Rise Up Academy practises, breathes, lives, it is a lifestyle from my observations.

### ***I conclude with the following rhetoric***

Has the PCBU that being the MoE conducted itself as is **reasonably practicable** to effect a reasonable understanding of its' own to cause, significant behavioural change in the manner of conduct to the Cultural Competencies of the Rise UP Academy, given that the MoE has created, and formalised Education documents around our Maori and Pasifika students, parents, and communities to create paradigm shifts in the thinking and responsiveness of its own stakeholders, specifically for the well-being of our Maori and Pasifika students?

In conclusion I return to the following:

### ***1.3 So far as is reasonably practicable (section 22 of HSWA)***

The primary duty of care requires a PCBU to ensure health and safety 'as far as is reasonably practicable'. When used in this context, something is reasonably practicable if it is reasonably able to be done to ensure health and safety, having weighed up and considered all relevant matters, including:

- ***How likely are any hazards or risks to occur?***
- ***How severe could the harm that might result from the hazard or risk be?***
- ***What a person knows or ought to reasonably know about the risk and the ways of eliminating or minimising it***
- ***What measures exist to eliminate or minimise the risk (control measures)?***

- *How available and suitable is the control measure(s)?*

*Lastly weigh up the cost:*

- *What is the cost of eliminating or minimising the risk?*

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Contractor to RUA EBOT

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