

# THE REAL TRUTH

## SAVE OUR FIGS' RESPONSE TO BOB COOK'S "LITANY OF LIES"

Councillor Bob Cook's recently distributed "Litany of Lies" provides an all-too-rare opportunity for Save Our Figs to respond to some of the specific fallacies and flaws in the council's case for removing the Laman Street trees on the pretext of risk. If Cr Cook's "Litany of Lies" accurately reflects the thinking of the councillors who voted for the 12 July decision to remove the Laman Street trees on the grounds of risk, then it demonstrates yet again the legitimacy of the level of concern in the community about the basis for that decision, and about the competence of those involved in making it.

At the outset, we should note that not all of Cr Cook's assertions are false or flawed. For example, we strongly endorse Cr Cook's statement that most of the people opposed to the council's decision to remove the Laman St trees are normal decent people - though his insulting implication that the reason that these normal decent people feel as they do is due to some inadequacy on their part is regrettable. The fact that such a considerable body of "normal decent people" still remain unconvinced that the Laman St trees pose an unacceptable risk despite all the resources spent by council to persuade them to this view should be taken by a conscientious elected representative as at least an indicator that the council case may not be as strong as it appears, and that further review and assessment (by experts working independently of council) might be justified to satisfy the community that the right decision has been made, especially before more public money is wasted on removing the trees, and on developing and implementing an expensive plan (currently unfinished and unfunded) for their replacement.

To the discerning reader, a number of Cr Cook's assertions on the specific matters he raises actually provide a useful demonstration of the very opposite of what Cr Cook appears to be arguing (in fact, the accuracy of his document would be immeasurably improved by the mere transposition of his two column headings, "The Lies" and "The Facts").

However, the primary general benefit of Cr Cook's "Litany of Lies" is to illustrate and expose the range of techniques deployed by the council to persuade the community into believing that the Laman St trees pose an unacceptable risk. The table below deals with Cr Cook's points on an item by item basis. Cr Cook's vague referencing technique makes it difficult - and sometimes impossible - to trace specific alleged statements to check their accuracy and context. However, his material provides abundant examples of the kinds of false statements, irrelevancies, misleading partial truths, and *ad hominem* attacks that have characterised the prosecution of the tree removal case.

Cr Cook argues that "At no point has an irrefutable case been provided by SOF to overturn Council's body of evidence, just small 'nit-picking' of some points". Cr Cook has run this silly *ad ignorantium* line before, suggesting that SOF must present "an irrefutable case" *against* removing the trees, whilst accepting the flimsy, shoddy and contestable evidence that council has produced in *support* of its case to remove them. Cr Cook should know by now that risk assessment is not something that is susceptible to "irrefutable" proof on either side of the safe/dangerous debate. Nothing can prove irrefutably that a tree is safe or dangerous: there is no such thing as a tree that does not pose some level of risk, and it is impossible to prove to a level of absolute certainty that any tree is not risky. Cr Cook has not (or at least not yet) insisted that "irrefutable proof" be provided to justify the continued existence of all of the city's other mature street trees, so it is unclear why he insists that this should be required in relation to the Laman Street trees.

Individuals make countless decisions every day in which they consciously or unconsciously evaluate risks and balance them against perceived benefits (e.g., getting out of bed in the morning, drinking coffee, crossing a road, driving a car, lifting a weight, walking beneath a tree, etc.). Society also balances risks against benefits. In

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the case of the Laman St trees, council has erred on both sides of the "risk/benefit ledger": it has significantly *overstated* the level of risk posed by the trees, and significantly *undervalued* the benefits that the trees provide.

However, in a situation such as Laman St, where an existing asset is clearly highly valued by so many normal and decent people in the local community, the asset must be regarded as "innocent until proven guilty" (or until proven unacceptably risky, in this case). In such circumstances, the burden of proof clearly lies with those advocating removal of the asset, and the required standard of proof for justifying any removal of such valuable assets on the grounds of risk should be (at least) at the level of clear and convincing evidence. The council's case for removing the trees falls far short of this standard of proof - in fact, it would be unlikely to meet even the less rigorous "balance of probabilities" test.

Stripped of the myriad peripheral and trivial matters that Cr Cook raises in his "Litany of Lies" (e.g., his protestations that "no councillor is an ex-tree-cutter" or his need to confirm that "I am is not a murderer"), the argument he puts demonstrates that the council's case for removing the trees on the grounds of risk is vitiated by crucial and fatal flaws that Cr Cook and council officers have failed (or refused) to acknowledge and properly consider, including:

- the attempt to argue that because the trees may have an eccentric root plate, they are necessarily unstable (which is contrary to expert opinion, peer-reviewed journal literature, and the evidence of empirical observation and experience);
- the erroneous assertion (and cascading assumption behind subsequent council reports) that trees in Laman St were "windthrown" (i.e., their root plates tilted out of the ground), which has never happened to any tree in Laman St;
- the wide discrepancies, inflated multipliers and methodological flaws that have produced highly exaggerated risk of harm ratings (ROH) in the quantified tree risk assessment (QTRA) reports on which the council has relied. These deficiencies have been clearly identified by Prof Mark Stewart and Mark Hartley, but council has never acknowledged them;
- the attempt to use three minor branch falls during a single high wind event (and during a period of poor tree maintenance) to introduce branch failure as a relevant major risk factor, and to "justify" escalating the risk management response, without any expert advice, and despite council's own consulting arborists dismissing branch fall as a peripheral risk consideration;
- the misunderstanding and misapplication of casebook research methods in focussing entirely on rare instances of tree failures in the Newcastle area (especially during the extreme Pasha Bulker storm), thereby distorting the statistical reality of a relatively minor incidence of relevant risk-related tree failures in the Newcastle area over the past decade (this has been pointed out by Mark Hartley and others, and is evident from council's own data, once properly applied).

A significant number of highly qualified experts working independently of council have identified and confirmed these flaws in multiple forms and on numerous occasions. The total number of such experts who - working independently of council - have either identified major flaws in council's body of evidence, or have provided an alternative expert view, is more than twice the number of experts who have worked for council on the issue of the risk posed by the trees. Cr Cook's attempt to dismiss the views of these experts and the core deficiencies they have noted as "nit-picking" demonstrates his own unwillingness or inability to understand or to engage in genuine consideration of the key substantive issues involved. For many, it may explain why he has continued to obstruct any attempt to subject the council's case to genuine independent expert scrutiny, and for a proper risk assessment of the trees.

Like some other tree removal advocates (including some other councillors), Cr Cook has attempted to deflect argument on the substantive issues by resorting to *ad hominem* attacks (albeit usually vague and unsubstantiated, though on occasions specifically defamatory) against various organisations and individuals who have disagreed with council's position. Among other targets, his "Litany of Lies" questions the integrity of Save Our Figs and of those whom he considers SOF "members" and "leaders". Disregarding the fact that Cr Cook's understanding of what constitutes an SOF statement - and of who is and is not an "SOF member" - is only marginally more accurate than most of his assertions on the substantive issues, and ignoring his failure to provide any real evidence in his attempts to smear those who

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disagree with him, Cr Cook's attempt to occupy the high moral ground on matters of integrity ring particularly hollow, given his own failure to properly manage a pecuniary interest in relation to his participation in a council decision on a Sister Cities trip to Japan involving him and his spouse in February last year. In that matter, Cr Cook subsequently refused to clarify the public record on his initial failure to properly manage his conflict of interests, despite receiving counselling on the matter. Given this, and the fact that Cr Cook has previously found himself in a position in which he has had to retract statements against those he criticised, he would be well advised to avoid embarrassing himself by further attempts to smear normal and decent people who are simply trying to bring about a more reasoned and reasonable approach to council's custodianship of a major local asset.

Ultimately, Cr Cook's "Litany of Lies" demonstrates the scale of ignorance and irrationality with which fig supporters have had to deal, and the magnitude of the challenge we must confront in exposing the continuing intransigence of the tree removal advocates, and the clear deficiencies in their case for removing the trees on the pretext that they pose an unacceptable risk. The need for a genuinely independent expert review of the evidence, and a fresh risk assessment of the trees is clearly supported by the weight of expert opinion, public opinion, logic, empirical observation and common sense. Any councillor who has previously favoured tree removal who still takes their role as an elected representative seriously, and who retains any genuine care for the public interest and some capacity for genuine critical reflection, should pause to reconsider their position, and the extent that they have been misled in this matter to this point.

Given their past record on this issue, and the previous reluctance of those councillors to engage in genuine discussion and consideration of this matter, we're not holding our breath. However, Save Our Figs remains willing at any time to discuss or debate any of the matters raised here, or any other matter related to the Laman Street trees.

The following table provides each item from the table in Cr Cook's "Litany of Lies" in full, under the first two columns, and responds to it in the third column (headed "The Real Truth").

Please feel free to distribute this document to anyone who you think would be interested in the real truth (rather than the "Cooked facts") about the Laman Street trees.

John Sutton  
Public Officer  
Save Our Figs  
December 2011

Note - for the purpose of clarification:

- the only members of Save Our Figs identified in Cr Cook's Litany of Lies are Caity Raschke, John Sutton and Margaret Henry. Cr Cook appears to be under the misapprehension that a number of others whom he quotes (e.g., E. Glatfelter-Jones) are SOF members, but this is not the case. Even in the case of the cited SOF members, the communications to which Cr Cook refers were sometimes undertaken in their individual capacities, rather than in any capacity as official SOF representatives. Cr Cook is entirely responsible for any confusion here, since official SOF communications are always clearly identified as such (as this one is).
- Save Our Figs does not have a Facebook page, or an official website - though we are aware (and very appreciative) of sites being operated by active fig supporters, a number of whom are Save Our Figs members. These sites often publish information supportive of, and in some cases generated by, Save Our Figs. However, they were not established by SOF, and SOF exercises no technical, administrative or editorial control over them.

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THE ALLEGED "LIES"	THE COOKED "FACTS"	THE REAL TRUTH
<p>1 Council has not seriously considered all the SOF expert reports. E Glatfelter-Jones 17 Nov 11</p>	<p>All SOF documents have been fully considered. P Pearce email to E Glatfelter-Jones 25 Nov 11</p>	<p>We are not aware of specific source of this claim, but SOF agrees that the views of external independent experts (i.e., those not paid for by council) have not been <i>seriously considered</i> by council (e.g., Mark Hartley's two reports, Prof Mark Stewart's critique of the risk assessment calculations). It is hardly surprising that the General Manager (Phil Pearce) would claim that these documents have been "fully considered". Mr Pearce has only recently taken up his position as General Manager and is dependent on advice from other council staff on this matter. Cr Cook should be ensuring the rigor of the evidence that council staff have provided on this matter, rather than uncritically accepting and channelling staff views, as he does here and throughout his "Litany of Lies".</p>
<p>2 Council did not provide the SOF expert reports to Statewide Mutual. SOF E Glatfelter-Jones Nov 11</p>	<p>All SOF documents were provided to Statewide Mutual. Memo F Cordingley 21 June 2011</p>	<p>SOF has not made this statement, and E Glatfelter-Jones is not a member of SOF. The Council did (eventually) provide external reports (some of which were SOF reports) to Statewide Mutual. However, they sent them to Statewide Mutual accompanied by a note that stated that none of these documents were accepted by Council, effectively signaling to the insurer that they (i.e., the client) really didn't want Statewide to take any serious notice of them.</p>
<p>Because a tree did not fall over it did not fail. M Hartley</p>	<p>Tree failure is a structural failure or physical breakage of the tree trunk, one or more branches, or one or more tree roots. Root failure encompasses broken roots, cut roots, and root plate lifting out of the ground (wind-throw).</p>	<p>The history of the Laman Street trees is important when assessing the risk that they pose. Council's experts have erroneously accepted that trees on Laman Street have previously "failed" due to windthrow (see for example Peer Review by Integrated Vegetation Management dated 10 December 2009). However, it is necessary to be clear about what is meant by "failure" to ensure that a proper assessment of current risk is made.</p> <p>Pictures of <u>uprooted</u> fig trees appear in the case book history referred to by Newcastle City Council. For example, a picture of an uprooted fig tree in Bruce Street, Cooks Hill, is said in the case book history to have "failed". No such failure incident has ever happened in Laman St, and the council has applied the term "failure" to both minor and major incidents, which has created confusion and exaggerated perceptions of risk. Mark Hartley and others have contested the council claim that two trees on Laman St were <u>windthrown</u> - "that is, the root-plate was tilted out of the ground", as claimed by Marsden (2009, p.21). Marsden goes on to claim that "Other Hill's Figs elsewhere on Laman Street and on Bruce Street failed in the same manner in the same storm". Again, this is simply not true - the only Hill's figs on Laman Street and Bruce Street that were windthrown (i.e., their root-plate tilted out of the ground) were two trees on Bruce Street. All the available empirical evidence indicates that Mr Hartley and others are right about this crucial claim (which cascades through subsequent council documents), and that Mr Marsden and council are wrong. No tree on Laman Street has ever done what the council is claiming has happened, and what they argue is likely to happen unless the trees are removed. The historical record does not support the council case.</p>

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<p>4 NCC has based their claims on the advice of a single arborist. SOF Online poll</p>	<p>Four independent arborists have provided reports on the trees. Refer to reports on NCC website</p>	<p>There is no "SOF online poll" and SOF is unaware of the basis for this claim, despite several requests to track this down. We are aware of several slightly different texts for the long-running petition that was lodged with (and subsequently shredded by) Newcastle Council, none of which make this claim. This claim has been alleged before (e.g., by Cr Mike King at a Council meeting) but requests to him to clarify it have not been answered. Moreover, there are no <i>independent</i> arborist reports on the NCC website. The arborists who have provided reports for council have done so under contract from council, working according to a council brief in conjunction with council staff, and paid with council money. Cr Cook is well aware this. They are, of course, not "independent".</p>
<p>5 SOF were not given opportunity to develop alternative risk management strategies. M Henry 24 Jul 11</p>	<p>At the working party meetings every idea offered by SOF was discussed and considered. Minutes of LSTWP.</p>	<p>The nature of the discussion and consideration of the contributions of community representatives (and some expert representatives) at the Laman Street Working Party by council staff was often dismissive and insulting. Council officers provided incorrect and misleading information to the working party. Risk management strategies arise from an appropriate assessment of the level of risk. Cr Cook repeatedly joined with council staff to vote against proposals put on several occasions to the Laman St Working Party for an independent expert review of council's risk assessments, and for an independent assessment of the risk. He has repeatedly opposed any attempt to do this, and has also joined with staff to oppose alternative risk management strategies (e.g., closure of Laman St as a road). The working party procedures allowed council staff to vote, and staff (together with Cr Cook) voted as a bloc to defeat proposals put by community members. The Acting General Manager, Rob Noble, eventually recommended that council staff should not be able to vote on such bodies.</p>
<p>6 No trees in Laman Street failed. M Hartley</p>	<p>Failure of roots by lifting out of the ground is classified as tree failure. Four trees in Laman St failed in 2007. Witnessed by arborist P Hewitt --- now Asst Commissioner Land &amp; Environment court. Ken James confirmed they were classed as failures after seeing the photos.</p>	<p>This is one of the great lies on which council's case against the trees has been built. By juxtaposing two comments that have nothing to do with each other, Cr Cook is misleading people into making a false connection. When a tree's roots lift out of the ground, that is certainly a "tree failure" (known as "windthrow"). However, photographic evidence from several sources shows that no tree in Laman St suffered "failure of roots by lifting out of the ground" in 2007, as Cr Cook claims here. According to council's own reports (Marsden, July 2007), two (not four, as claimed here) trees had gaps between the trees and the kerb (one gap was 5mm, one gap was 15mm) following the 2007 Pasha Bulker storm. Marsden himself indicated that the reason for this gap was not clear. Two trees were then removed, and another (further along Laman St) was monitored for a period. It is still standing today. Dr Ken James has previously expressed concerns about the way his name and comments have been used by council in this issue, and has dissociated himself from the council's campaign to remove the trees.</p>

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<p>7 Council can get another insurer for these trees. Several emails</p>	<p>Council's broker investigated insurance options world-wide and received no options. Letter from Broker JLT 10 August 2011</p>	<p>Who are these "several emails" from? SOF has never made this alleged statement. Even if others did, it hardly constitutes a "lie" (certainly when compared to the great lie above). Council should not need another insurer, it simply needs to give the insurer correct and balanced information about the real level of risk posed by the trees, rather than continuing to promote the currently flawed documentation. The insurers have continually said that they are prepared to consider any further evidence in this matter, but Cr Cook and others have continually obstructed attempts to provide them with genuinely independent expert evidence. The dramatically escalated risk management regime introduced after a minor branch fall incident early this year was not supported by any expert recommendation (even council's own) - it appears to have been initiated by council officers, rather than at the insistence of the insurers.</p>
<p>8 The council arborist reports are not a real independent assessment. Many emails</p>	<p>All arborists are independent, they are responsible for the reports they provide. Council has engaged a panel of independent experts through an open tendering process. Refer to consultant reports</p>	<p>"Who pays the piper calls the tune"; "Whose bread I eat his song I sing". These well known sayings capture the flaw in Cr Cook's view here. SOF does not agree that "all arborists are independent". The experts engaged by council were all contracted to, and paid by, council, and they work according to a brief provided by council, and in association with council staff. The naivety of Cr Cook's view here should be of great concern to any member of the community, given that one of the key roles of an elected representative is to be a watchdog over council administration on behalf of the community. The public interest must come before "reputational implications". Two obvious examples demonstrate that council reports are not independent. Firstly, GBG Australia produced two Ground Penetrating Radar reports (dated 14/12/2009 and 19/02/2010) which Council later declared "superseded" by the final report, which was altered after consultation with council staff to suggest that the Laman Street trees did not have extensive root systems. When the original report was later revealed (after a Freedom of Information request), it stated that the trees had a moderately extensive root system. Secondly, when Craig Hallam from ENSPEC inspected the trees he advised that he was told by Council staff whilst inspecting them that they were not safe and posed a risk. He has told SOF that he felt that he was being pressurised to form a similar view.</p>

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<p>9 Laman St trees were planted by World War 1 diggers. Several emails</p>	<p>The trees were planted at the direction of the then as part of a city greening project. Confirmed by David Dial military historian.</p>	<p>SOF has never made the claim alleged by Cr Cook, and we are aware that the trees were planted as part of a historic tree planting program in the term of the then Mayor, Alderman Parker. The current approach by Cr Cook and other tree removal advocates pays little respect to that important phase of Newcastle's urban and horticultural history, and to the legacy left by his civic predecessors. The council (including Cr Cook) has done nothing to progress the recommendation in council's own heritage study that the Laman St trees should be officially classified as an item of local heritage significance in the Newcastle Local Environmental Plan (LEP).</p>
<p>10 Removal of Trees is based on a series of reports that make a false claim that removal is the only option. SOF E Glatfelter---Jones Nov 11</p>	<p>The claim that the root plate is defective has been proven. A range of experts advise that rectifying the root plate is not viable and as the trees are nearing the end of their SULE, removal is the best long-term option. Refer independent arborist reports.</p>	<p>Claims that the root plates of the trees are defective have not been "proven", as Cr Cook asserts. In fact, a suppressed ground penetrating radar report (only released by council under a Freedom of Information application) stated that there was evidence of a "moderately extensive" root system, even in the area where roots would not be expected to be found. Furthermore, Council has chosen to disregard evidence that trees with eccentric (note, not "defective", as stated by Cr Cook) root plates are not therefore unstable, and that trees (especially vigorous root spreaders such as Hills fig) are self-correcting organisms that will adapt to meet their stability needs by growing deeper vertical roots and horizontal roots at deeper levels (in this case, beneath the road base). The SULE (Safe Useful Life Expectancy) ratings given to the trees by council arborists have been very inconsistent. One of Council's reports (Integrated Vegetation Management report dated 10 December 2009) makes the point that the use of SULE ratings have been challenged in recent times (paragraph 2.3). The same trees, under the same circumstances, have been allocated widely discrepant SULE ratings by the same arborist, without any apparent questions or concerns being raised by Cr Cook and other tree removal advocates. Note that Cr Cook seems willing to accept council initiated SULE ratings, but rejects the views of the arborist who invented the SULE system (Jeremy Barrell), who has stated (YouTube interview) that he sees no grounds for removing the Laman St trees, and that he believes that - properly managed - the trees would last, safely, for many more years. [Note that apparently Mr Barrell does not himself use the SULE system any more].</p>

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<p>11 Removal is contrary to 'scientific evidence'. Email 20 Sept 11</p>	<p>No scientific evidence has been provided by SOF.</p>	<p>The source of the alleged email is not identified by Cr Cook, so it is not clear if this was from SOF. However, we would agree with the statement that removal is contrary to the available scientific evidence.</p> <p>SOF has provided a range of evidence, including arboricultural evidence containing technical arboricultural information and QTRA risk calculations . If Cr Cook is going to claim that "no scientific evidence as been provided by SOF", he should state what he considers to be "scientific evidence", and identify what "scientific evidence" the council has provided to justify the removal of the trees, since much of council's evidence is similar in nature to the type of evidence that SOF has presented.</p> <p>Other external individuals and organisations (independent of council) have also provided other forms of evidence (including Prof Mark Stewart, a civil engineer who specialises in risk assessment, and Bill Jordan, a civil engineer who has studied the effects of wind on large objects).</p> <p>Some of that body of evidence against removing the trees is scientific, some is related to other aspects of the argument (e.g., the heritage value of the trees), and some of it critiques the factuality, logic and methodology of council's evidence.</p> <p>Removal of the trees is contrary to the body of evidence (scientific and otherwise) provided by SOF and these external independent experts.</p> <p>Some of council's own "scientific evidence" (e.g., the suppressed GPR report) is inconsistent with council's argument regarding alleged root plate eccentricity, and some of its evidence has been developed in a clearly "unscientific" way (e.g., flawed QTRA calculations, misuse of casebook history examples of tree failures whilst ignoring the more relevant statistical reality of the relative historical lack of tree failures, etc).</p> <p>Council has rejected or ignored a number of opportunities to gather "scientific evidence" on the trees, including an offer by Statewide Insurance to fund dynamic testing, and another opportunity to inspect the trees using an investigative method employed by Brisbane City Council. Of course, council has also rejected the assistance offered by the NSW Premier, which also may have included some form of scientific evidence.</p>



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<p>12 SOF represent the majority and are not a vocal minority. Many emails</p>	<p>Active membership is less than 200. Assuming petition of 13,000 supporters, represents less than 10% of residents.</p>	<p>Cr Cook gives no source given for these figures of "active membership", but it is nonsense in any case to use the membership of an organisation as the sole criterion for whether that organisation represents a majority view on a particular matter. The number of active members of human rights organisations represents a tiny number of the human population, but that does not mean that most people don't support human rights. Public opinion is generally measured by relative and sampled responses.</p> <p>The petition to which Cr Cook refers is the largest petition ever presented to Newcastle Council. Cr Cook is also well aware that council's own (and only) Public Voice survey on whether people wanted the Laman St figs to stay or go indicated that only 4% of respondents agreed with the proposal to remove them.</p> <p>In the face of this evidence, what evidence can Cr Cook point to that demonstrates that SOF does <i>not</i> represent the majority? What evidence is there that the majority support <i>removing</i> the trees? On the basis of the kind of evidence Cr Cook invokes here, the available evidence suggests that the vast majority of Novocastrians would prefer to keep the Laman St trees if possible, and thta the advocates for removing the trees represent a miniscule minority of the Newcastle community (how many signatures have they been able to collect for removing the trees? How many "active members" or identified supporters do the anti-fig group have compared to the pro-fig groups?)</p>
<p>13 Roads Act --- S88 is a 'loophole' – a little used section of the roads act. J Sutton SOF 24 Nov 10</p>	<p>The Roads Act is regularly used by road authorities to manage that particular setting – street trees.</p>	<p>There is no precedent for any previous use of S.88 of the Roads Act for the purpose of removing such a significant group of trees in Newcastle.</p> <p>S.88 gives road authorities the legal right to remove trees for the purpose of road works, or to remove a "traffic hazard". It was clearly intended to allow road authorities to deal with road works, or emergency situations where a tree presents an immediate or imminent danger to motorists or pedestrians. To misuse this power (as the council is in this case) to remove highly significant trees that do not present any significant danger is an unethical use of a legal loophole. The judge in the Land and Environment Court case noted that this could not happen under the equivalent provision in the Victorian Roads Act. As a specific result of Newcastle Council's misuse of this provision, the NSW parliament will be debating a proposed amendment to S.88 of the Roads Act next year to try to close this loophole.</p>

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<p>14 Dynamic Testing will provide definitive, un---arguable, scientific data showing for once and for all whether the Laman St Figs are safe or not. R Fidyk 2 Aug 11</p>	<p>ENSPEC is assumed leader in dynamic testing in Australia and was asked to provide details of proposed tests. ENSPEC has not provided details of their proposed methods or expected results. This technology is in its early stages and there is no body of evidence against which to compare results and make predictions. Report to UPDAC 7 July 2011</p>	<p>ENSPEC has already expressed concerns about probity aspects of council's handling of their involvement in this matter, and their understanding of what council expected them to do. It became clear to them that council was not going to engage them to conduct dynamic testing on the Laman St trees, so they saw no point in providing detailed information at the time. They have subsequently responded to the points council raised. Our understanding is that dynamic testing is widely used and accepted as an appropriate technology for investigating tree stability, including by other councils and by insurance companies. Council's failure to accept the offer by Statewide Insurance to fund such testing remains one of the most revealing incidents in the sad tale of the way Newcastle council has mishandled this matter.</p>
<p>15 The trees already removed can be replaced. LSTWP 20 Apr 11</p>	<p>Root vaults cannot be constructed over 11Kva power mains. Presentation to LSTWP</p>	<p>This may or may not be so - SOF is aware of a range of views (in both the community and among experts) about how to deal with this underground infrastructure, including power mains. But it is a discussion that has no bearing on the issue of whether the current trees pose an unacceptable risk or not.</p>
<p>16 Laman Street trees are listed heritage trees. Various emails</p>	<p>Heritage report confirms no listing. Heritas report 19 February 2010</p>	<p>SOF has never claimed that the trees are "listed" heritage trees, though given their obvious heritage value it is not surprising that many people do assume that they are an officially listed heritage item. SOF has drawn attention to this very fact, because, as Cr Cook is well aware, council's own heritage report (the Heritas report that he cites here) concludes that the trees are of local heritage significance, and recommends that they be listed as heritage items in the Newcastle LEP. Council has done nothing to pursue that recommendation. Cr Cook's failure to mention this is an example of a selective and partial truth constituting a seriously misleading lie by omission.</p>

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<p>17 Aerial roots will grow in 3 months. SOF public voice 14 December 2010</p>	<p>Confirmed by Brisbane Council, aerial roots take years to grow and usually not suitable for structural support. Not recommended in roadway.</p>	<p>The SOF representative who gave this Public Voice presentation said that aerial root growth was variable and that if a root had already started to develop then the process could be as fast as 3-6 months to ground, using peat moss in suitable piping. The roots take more time to thicken into trunks. In relation to Cr Cook's rejoinder, SOF is not aware of any "confirmation by Brisbane City Council", and Cr Cook does not give any traceable reference for this.</p> <p>We are not aware of the nature, context or origin of any recommendation against aerial roots in roadway, as Cr Cook claims.</p> <p>The issue of initiating a pilot/experimental test of encouraging aerial root growth on some Hills figs was discussed in the Laman St Working Party, but council staff never did this.</p> <p>What Cr Cook does not note is that council staff argued that aerial roots would not grow from the Laman St trees, in the face of clear evidence of such roots in the same species further along the same street (and elsewhere around Newcastle). Their reluctance to accept clear evidence of what happens with similar trees in similar situations in this matter stands in stark contradiction to their avid acceptance (and consequent misuse) of the relevance of dissimilar cases of alleged tree failures elsewhere around Newcastle to try to justify removing the Laman St trees.</p>
<p>18 Staged removal will retain the cathedral arch. Several emails and verbal claims.</p>	<p>Removal of five SULE 4 trees will completely destroy the cathedral arch. Refer image of plan with 5 trees removed.</p>	<p>Which "image of plan with 5 trees removed"?</p> <p>The full range of options for - and the viability of - staged removal of the trees have never been fully considered, discussed or evaluated, due to the constant crisis mode that council's handling of this issue has imposed on the process - arising from council's refusal to consider the real risk posed by the trees, and its determination to remove all the trees as soon as possible.</p>
<p>19 A pull test is the only way to test tree stability. M Hartley report.</p>	<p>Expert engineers reported that the branch structure of figs made pull testing impractical, and council rejected the proposal. Goddard Partners report 10 December 10</p>	<p>Cr Cook does not identify which "Hartley report" he is referring to here. Neither of the two reports provided by Mark Hartley (one in August 2010 and the other in September 2011) mentions a pull test.</p> <p>The viability of a pull test was examined, and it was concluded that it would not be viable for the Laman St trees. SOF accepted that conclusion. Other more viable technologies have been proposed for scientifically testing the trees, but these have been rejected by Council.</p>
<p>20 Council rejected Statewide Mutual offer of \$35,000 for dynamic testing. Many emails and verbal claims.</p>	<p>The offer was withdrawn by the insurer once it had considered the information it requested from Council. Letter from Statewide Mutual 19 July 11</p>	<p>Council failed to accept the offer by Statewide Mutual when it was on the table. Instead of responding positively (and not even indicating a general in-principle willingness to take up the offer), council staff delivered a barrage of questions, in a classic "looking a gift horse in the mouth" response. The insurer then withdrew the offer.</p>

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<p>21 If council had been more open and consultative – the \$168,000 L&amp;E court action would have been avoided. J Sutton SOF 24 November 2010</p>	<p>Council's decision was made after extensive open consultation, and only a different council decision would have prevented the court case. Charette 19/20 Mar 10, open workshop 20 July 10.</p>	<p>The proposal to remove the trees has never been placed on formal public exhibition. The Land and Environment court action taken by the Parks and Playgrounds Movement was over the Council's use of s.88 of the Roads Act to remove the trees. The Council did not state that it was intending to use that legislation - and thereby circumvent normal planning approval processes - until immediately before they announced the imminent removal of the trees. They rejected requests not to proceed in that way, and to instead follow the normal procedures under the Environmental Planning and Assessment Act (including formal public exhibition and submissions). They refused to do this, and therefore left the community (represented in this case by the Parks and Playgrounds Movement) with no alternative other than to take the matter to court.</p> <p>If the council had not chosen to use s.88 of the Roads Act, there would clearly have been no basis for its use of that section of the Act to be legally challenged, so Cr Cook's assertion here is manifestly false.</p> <p>What Cr Cook regards as "extensive open consultation" included a Newcastle Voice survey that indicated that the vast majority of respondents did not support removal of the trees, and a charette (cited by Cr Cook) at which a clear majority of participants expressed the wish to retain the trees if possible. The "open workshop" on 20 July cited by Cr Cook was not a community consultation event - it was a meeting of councillors that the community could attend only as observers.</p>
<p>22 Dynamic testing will determine if risk exists. Many emails and verbal claims.</p>	<p>Dynamic testing of Figs in roads has not been undertaken, and no data analysis exists. Brisbane Council describes dynamic testing as not suitable for Laman St. K James presentation to LSTWP 3 May 11</p>	<p>Cr Cook gives no traceable source for the Brisbane Council reference. Dynamic testing is commonly used and accepted (including by councils) as a valuable and viable risk investigation method.</p> <p>Craig Hallam from ENSPEC came to Newcastle, viewed the trees and told SOF that he could conduct dynamic testing on the trees.</p> <p>Dr Ken James has previously indicated his concerns about how comments he has made on the issue of the Laman St trees have been used out of context by tree removal advocates. (Cr Cook has previously had to retract comments he made regarding ENSPEC's involvement in this matter).</p>

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<p>23 Dennis Marsden marked 35 trees at Ryde for immediate removal. SOF public voice 14 December 2010</p>	<p>No trees were marked for removal. Marsden's report proves this. Marsden report via F Cordingley memo 31 May 11</p>	<p>None of the Marsden reports on Newcastle Council's website refers to Ryde, so it is unclear which "Marsden report" Cr Cook is referring to in claiming that it "proves" something about what happened at Ryde. However, Ryde Council documents record that when Mr Marsden did do some work for Ryde Council in 2004 he identified "urgent works required to be undertaken on thirty-six trees in category one – dead, declining or otherwise hazardous". After sonic tomography testing, only four trees were found to be category one. The SOF presentation was using this example to demonstrate that visual assessment methods are variable, and that engaging evidenced based technologies can be beneficial. Cr Cook has voted against the use of evidence based technologies in Laman St.</p>
<p>24 Cost of dynamic testing is \$14,000. SOF C Raschke 17 July 11</p>	<p>Each test is quoted at \$14,400 (plus council costs) and minimum of two, up to 6 tests are required. ENSPEC Quote 10 May 11</p>	<p>The proposition that a minimum of six tests would be required came from Newcastle Council staff, not from ENSPEC. ENSPEC believed that between one and two tests would be required. Council officers recommended against dynamic testing, and Cr Cook voted to support their recommendation.</p>
<p>25 The THS report has been misrepresented as claiming the trees have to go. SOF E Glatfelter---Jones Nov 11</p>	<p>The THS report was specifically asked to determine the viability of a restraint system, in an attempt to avoid removing the trees. THS report 9 July 2010</p>	<p>SOF is not aware of the details and context of Mr E Glatfelter-Jones' statement (the relevance of the reference to "SOF" in Cr Cook's citation is unclear), but it would appear that Cr Cook agrees that the THS report is not relevant to the argument of the level of risk posed by the trees, and that any attempt to associate it with such an argument would constitute misrepresentation. We agree.</p>
<p>26 A pull test will determine if the trees are safe. SOF Nov 10, M Hartley, many emails.</p>	<p>Expert consultant engineer Morgan Sheehy studied methods for conducting pull tests on Laman St trees and concluded that branch structure made it unviable. Partridge Partners report 10 December 2010</p>	<p>Pull tests are used elsewhere to test tree stability. When a pull test was suggested as a possible way of investigating the safety of the Laman St trees, SOF supported consideration of such testing (as we support any proper method of investigating their stability). Once this was demonstrated not to be viable for the Laman St trees, SOF accepted that, and has not subsequently advocated a pull test. Cr Cook's reference to SOF here simply gives "Nov 10", but neglects to state the form and date of the statement he is supposedly quoting. This is (unfortunately typically) highly misleading.</p>

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<p>27 Council decision of 14 December was ignored by management. M Henry Herald July 2010</p>	<p>Laman Street Working Party held many meetings to implement the decision of 14 December, attempting to resolve issues related to implementing the council decision. Many staff spent considerable time. Refer minutes of working party.</p>	<p>Council staff delayed calling the first meeting of the Laman Street Working Party until late April 2011, more than four months after the council decision to establish it. It held only five meetings (not "many", as Cr Cook claims). The minutes of the working party meetings show that council staff on the Laman Street Working Party repeatedly voted as a bloc (supported by Cr Cook) against proposals from community representatives for an independent expert review of the council's risk assessments (first proposed in May, and then in June, and then again , and for a proper evaluation of the risk posed by the trees. Council staff routinely rejected suggestions offered at working party meetings for less extreme risk management methods, and did not offer any positive suggestions themselves as to how the 14 December resolution might be implemented. Council staff never implemented the decision (from the 14 December 2010 resolution) that recognised that "the ongoing management and assessment of the Laman Street trees needs to be conducted from a tree preservation perspective and by a qualified organisation with a proven tree preservation standpoint": no such organisation was engaged. It became clear to community representatives (and to most of the external expert representatives) that council staff were not genuinely committed to the 14 December council resolution.</p>
<p>28 \$650,000 spent so far is the result of management refusal to follow direction of council. M Henry Jul 11</p>	<p>Most of the cost at that time had been incurred developing reports, extensive community consultation, in court action, and servicing the working party. All at the specific direction of council. Memo on costs 6 July 2011</p>	<p>Contrary to Cr Cook's claim, most of the reports prepared up to that time were initiated by council staff, not by the elected council, and the court action - which could easily have been avoided by council not invoking s.88 of the Roads Act to remove the trees - was not supported by any "specific direction of council". Again contrary to Cr Cook's claim, the community consultation was not at all "extensive", and has still not involved any formal public exhibition or public submissions on the proposal to remove the trees, as would apply in the case of a normal development proposal.</p>

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<p>29 Management is refusing to accept anything else. M Henry Jul 11</p>	<p>All options have been considered and evaluated through many reports and meetings. UPDAC considered all alternatives and recommended 'whole of Street replacement'. Memo to UPDAC 4 July 2011</p>	<p>The council has not "thoroughly evaluated" all options: they have actively resisted options that would allow the risk assessments to be reviewed, and for the risk to be properly re-evaluated, and have refused to accept that their evidence contains clear flaws in both factuality and methodology, even where these flaws have been identified by highly qualified and experienced experts working independently of council. It has become evident to many that the council often uses the word "considered" to refer to cursory and tokenistic gestures of "consideration". UPDAC received one-sided advocacy information from council staff (including some of the same staff who were repeatedly voting against independent expert review and assessment in Laman St Working Party meetings). Some of the important decisions on Laman St taken at UPDAC meetings were decided in the absence of many committee members (especially community representatives).</p>
<p>30 There is evidence of Conflict of Interest issues; whereby one councillor is an ex---tree--- cutter. SOF Online poll</p>	<p>No evidence or detail has ever been offered. Wild accusations without substance. No councillor is an ex--- tree cutter.</p>	<p>Cr Cook gives no traceable reference for this allegation. SOF has not operated an online poll, and we are not aware of any such allegation on any online poll conducted by tree supporters. It is unclear why Cr Cook feels the need to confirm that "no councillor is an ex-tree cutter". Suffice to say that those in the community who understand that the prefix "ex-" refers to something that is in the past are likely to agree with Cr Cook's denial that the tree cutting days of some of the councillors are behind them.</p>
<p>31 Resubmitting a motion having similar effect to an unrescindable motion within 90 days is not unlawful. J Tate October 2011</p>	<p>Two legal opinions by senior counsel demonstrate that sections 378 and 238 of the local government act were breached. This was upheld by a decision of council.</p>	<p>SOF cannot corroborate this claim from Cr Cook's vague reference, but we agree that the Local Government Act does place restrictions on motions that constitute altering or rescinding motions. The application of those statutory provisions are largely untested in the courts, and are the subject of lively disagreement and debate among legal practitioners. The "two legal opinions" cited by Cr Cook were actually from a single legal practitioner with a particular (and very expansive) view of what constitutes an altering or rescinding motion. Other practitioners - including counsel more senior than the council's - have disagreed with his advice. In any case, it appears that Cr Cook does not understand the crucial difference between legal advice and court findings. Legal advice cannot "demonstrate" (as he claims) a breach of any Act - only a court of competent jurisdiction can do that.</p>

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<p>32 Council have secretly and unlawfully tried to rid the trees to make way for a redevelopment of Laman street to comprise shops and cafes. SOF Facebook</p>	<p>Repaving and planting new trees has been openly discussed. Extensions to the art gallery provide for 'shops and café' in Darby St, none in Laman St. Refer to Art Gallery design drawings</p>	<p>SOF does not have a Facebook site (Cr Cook appears to be confused about this), and is not aware of any basis for this allegation.</p> <p>The council's legal right to use the loophole in s.88 of the Roads Act has been confirmed by the Land and Environment Court. SOF has argued that council's use of that loophole to remove such significant trees on the grounds of risk is unethical, and treats both the city's heritage and the wishes of the local community with contempt. Since the grounds for doing this are so demonstrably flimsy and flawed, and since the council has been so clearly unreasonable in the way they have handled this matter, is natural that people will speculate about what might motivate the obstinacy and intransigence of those involved. SOF has never argued that the extensions to the Art Gallery (to which Cr Cook refers here) has proposed "shops and café in Darby St". However, proposals for a European style boulevard and an Anzac Centennial Place have emerged concurrently with the proposal to remove the trees, so it is perfectly understandable that people might assume that these would form at least part of the motivation for removing the trees. It is clear that Council has lodged an application with the Anzac Centenary Commission which has not been shared with the Newcastle public. This application was lodged on the day that Parks and Playgrounds movement took Newcastle City Council to Court about its right to remove the trees. The Council nevertheless lodged the application and advised the Commission that the trees would be removed.</p>
<p>33 They say the cost of Third Party Determination is \$70,000. J Tate 29 Aug 11</p>	<p>Estimate was \$50,000 to \$70,000 – or less, depending on legal representation required by terms of mediation agreement wording. Memo M Coates 24 Aug 11</p>	<p>We are not familiar with the quoted statement attributed to the Lord Mayor. Presumably, "they" refers to the council officers. It appears that Cr Cook substantially agrees with Cr Tate's statement here. However, Cr Cook omits to mention that the community estimate (obtained from actual consultation with relevant service providers, rather from the vague estimation process used by council) indicated a cost of around \$20,000 - \$25,000, and that the proposal put to council (opposed by Cr Cook) involved the community contributing half of the cost, and capped council's maximum expenditure at \$20,000. Cr Cook still voted against it.</p>



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<p>34 They've never made a decision on what they want to do – they just want to cut down the trees. D Lithgow 29 Aug 11</p>	<p>On 17 August 2010 council resolved to undertake 'whole of street replacement' of Laman St trees. Option 2C concept plan was discussed at workshop on 20 July 2010.</p>	<p>Mr Lithgow's statement presumably related to council's failure to formally adopt any long term plan for the future development of Laman St.</p> <p>Cr Cook's reference to a concept plan that "was discussed" at a workshop on 20 July 2010 underlines the truth of Mr Lithgow's point: the council has made no <i>decision</i> on what they want to do with Laman St after the trees have been removed. They have decided (without placing the proposal on public exhibition) to remove the trees before any future plan has been adopted, contrary to their own consultant's (Swain's) recommendation (made in two reports) that the trees should be retained until a replacement plan has been approved and implemented.</p> <p>Mr Lithgow's point (made in August) is valid even to this day: council has not formally adopted any plan for what will happen in Laman St after the trees have been removed, and no budget has been allocated to do anything.</p>
<p>35 Council accepts or rejects Visual Tree Assessments (VTA) based on the conclusion the VTA comes to. SOF E Glatfelter---Jones Nov 11</p>	<p>VTA is only one form of assessment. All assessments are included and considered as a whole, not individually. In fact VTA is a multi--staged process that includes a range of investigations to confirm assumptions. Email from P Pearce to E Glatfelter---Jones 25 Nov 11</p>	<p>Agreed, though this does not disprove Mr Glatfelter-Jones' point, which was to do with council cherry-picking VTA conclusions.</p> <p>Visual Tree Assessments have consistently confirmed the general health of the trees, and have offered substantial evidence that council's extreme response to the fall of three minor branches during a single high wind event was a panic reaction to an imagined threat.</p> <p>Considering all assessments as a whole body of evidence (including those produced independently of council), the case for removing the trees is flimsy, and based on flawed evidence and methodology. However, council has obstructed any such comprehensive approach, constantly refusing to subject its evidence to genuine independent scrutiny.</p>

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<p>36 Laman Street trees can be pruned. M Hartley 19 June 11 and others</p>	<p>Due to the size of these tree limbs, extent of pruning required is classified as lopping, which is not allowable by Australian Standards. The lopping required to ensure safety of the trees would remove the cathedral arch and would be necessary on an annual basis. UPDAC – refer mins attachment C 7 July 11</p>	<p>This is disputed by highly qualified and experienced arborists, working independently of council, who believe that canopy trimming (not lopping) is an entirely practical and suitable (though probably unnecessary) means of reducing wind loads on the trees.</p>
<p>37 SOF agree to abide by decision of mediation. SOF prior to mediation</p>	<p>Agreement from mediation was that council would decide if third party determination was required. This was not accepted or abided by SOF.</p>	<p>This is untrue, and Cr Cook should retract this allegation, which attempts to rewrite the history of this matter. Cr Cook is well aware that the outcome from the mediation was that the option of third party determination would be put to the Council. Councillor Cook made it plain that he would not agree to any third party assessment of the trees and therefore no consensus on undertaking third party determination could be reached at the mediation. It was Councillor Cook who refused to agree to arrive at a “decision”. SOF did <i>not</i> agree (as Cr Cook misleadingly implies) that it would accept council's <i>refusal</i> of undertaking a third party determination - in the same way as Cr Cook himself did not agree to be bound to support the option when it was put to council.</p>

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<p>38 Council is destroying one of Newcastle's best streets. Email 25 Aug 11</p>	<p>The street will be enhanced by reconstruction with carefully planted new trees (Hills Figs), with improved amenity and access from new paving. Refer Concept Streetscape Plans Option C</p>	<p>To the best of our knowledge, the concept streetscape plans to which Cr Cook refers here have not been formally adopted by council. In fact, no plan for the future of Laman St has been adopted, and no funding has been set aside for any such plan.</p> <p>Cr Cook criticises fig supporters for asserting or implying that decisions about the future of the area are not being made openly, but confidently asserts here that the area will be enhanced with improved amenity and access from new paving, in the absence of any formal council decision to that effect.</p> <p>SOF (and most Novocastrians) would prefer the existing trees to be retained, and incorporated into any future design for Laman St. Increased amenity and new paving can be provided with the existing trees in place, in a way that will build from the existing beauty of the street.</p>
<p>39 This indicates a degree of corruption in Newcastle council. Email SOF member 25 Aug 11</p>	<p>No evidence of this statement has been forthcoming as requested, and is typical of many more wild unsubstantiated claims or statements.</p>	<p>SOF is unaware of this alleged statement, or of the so-called "SOF member" who allegedly said it, or of the nature and source of the apparent "request" to which Cr Cook refers. It is not an official SOF position.</p> <p>However, where people see the kind of extreme unreasonableness that has characterised council's approach to this issue, it is normal and natural for them to seek some rational explanation for such behaviour, and to consider the possibility that corruption may be involved.</p>
<p>40 The only way to measure stability is to measure deviation. R Fidyk 26 Aug 11</p>	<p>Dynamic testing using accelerometers is a new tool within arboriculture. It has not been sufficiently proven for street trees. 'if you can see the failure you are way beyond the failure threshold'. Ken James 3 May 2011</p>	<p>SOF is not familiar with the quoted statement, but the relevance of Cr Cook's response to Mr Fidyk's alleged statement is unclear: Mr Fidyk apparently asserted that stability can only be measured by measuring deviation, but Cr Cook uses this to question dynamic testing.</p> <p>In any case, dynamic testing is an accepted means of measuring tree stability.</p> <p>SOF cannot corroborate Cr Cook's claim that dynamic testing "has not been sufficiently proven for street trees", and we note that he does not cite any source for this claim.</p> <p>The relevance of the alleged quote from Ken James is also unclear - however, Dr James has previously expressed concerns about the way in which comments by him have been used out of context by tree removal advocates in support of council's case for removing the trees.</p>
<p>41 ENSPEC's dynamic testing is accepted by council's insurer. R Fidyk 26 Aug 11</p>	<p>Statewide Mutual declined to support dynamic testing. Notes of meeting GM &amp; LM with Statewide 22 Jul 11</p>	<p>Statewide Mutual offered to provide a grant of \$35,000 to Newcastle Council to pay for dynamic testing. This was retracted only after Newcastle Council officers failed to accept the grant. Mr Craig Hallam (from ENSPEC) has raised probity questions about the manner in which this was done.</p>

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<p>42 Council has not been open and transparent. Various emails</p>	<p>Charette, council meetings, working party meetings and workshops have all been open to public. All reports and minutes of meetings are on council web.</p>	<p>Council has a statutory requirement to make minutes of meetings publicly available. SOF and other members of the community have appreciated the availability of most (though not all, as Cr Cook maintains) of the reports on the Laman St issue on council's website. However, council suppressed the original Ground Penetrating Radar report that concluded that the trees had "a moderately extensive root system", and only released it (long after it was produced) after a formal Freedom of Information request.</p> <p>Cr Cook has himself indicated (in his "Litany of Lies" document) an apparent decision to improve amenity and provide paving on Laman St after the trees have been removed, in the absence of any publicly available formal council decision to implement that plan.</p> <p>A grant application to the Federal government for an Anzac Centennial Place was made without any reference to - or approval from - the elected council, and in a way that misrepresented the outcome of the charette to which Cr Cook refers.</p> <p>Most significantly, of course, the council is using s.88 of the Roads Act to remove the trees on the pretext of risk, allowing it to circumvent the normal requirements of the Environmental Planning and Assessment Act (including its formal mandatory public consultation process, such as public exhibition and public submissions).</p>
<p>43 Trees are being removed to develop ANZAC Centennial Place. SOF Facebook Oct 11</p>	<p>A community committee developed a submission to the call for proposals by Federal Government, without decision by council. This was after council's decision to replace the trees. Not related. Refer to ANZAC Centennial Place submission.</p>	<p>Cr Cook's statement that the submission for an ANZAC Centennial Place was "not related" to the decision to remove the trees is demonstrably untrue: the submission itself (which is not on the council website) specifically refers to the intention to remove the trees, and is clearly and explicitly related to that proposal.</p> <p>SOF agrees that the submission was lodged without decision by the elected council, and apparently without the knowledge of at least a significant number of elected councillors. We share the community's concern at this example of lack of transparency and accountability.</p>

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<p>44 They say the cost to do dynamic testing is \$90,000, we know it won't cost that much. J Tate 29 Aug 11</p>	<p>Each test costs \$14,400 and the price for each of up to six tests is listed. The upper limit of \$93,600 includes security and travel costs. Memo to UPDAC 12 May 2011</p>	<p>It appears that Cr Cook agrees - in general terms - with the amount cited by Cr Tate here. Presumably, Cr Tate's point here is that council's cost estimates on such matters are often inflated (as they were with their estimate of the cost of the Independent Expert Assessment Process). Cr Cook labels this "a lie" with no substantiation.</p>
<p>45 A blind person could see that the Laman Street trees are structurally sound. C Hallam ENSPEC Herald 28 June 11</p>	<p>C Hallam has not investigated or reported on Laman St trees. As a respected consulting arborist he has made an unsubstantiated statement. Herald 28 June 2011</p>	<p>As Cr Cook concedes, Craig Hallam is a respected consulting arborist. Mr Hallam has inspected the Laman St trees on a number of occasions, and he has expressed his professional opinion that the trees are structurally sound. He is qualified to make such statements.</p> <p>Cr Cook's statement that Mr Hallam has made an "unsubstantiated statement" is most peculiar given the number of such statements routinely made by Cr Cook himself, in this "Litany of Lies" and on other occasions, in areas in which Cr Cook has no relevant professional qualifications or experience. Cr Cook's inclusion of Mr Hallam's statement in a column headed "The Lies" is highly defamatory and insulting to Mr Hallam, who is suitably qualified to express an expert opinion about the structural soundness of the trees.</p> <p>Despite our concerns about the errors and flaws in the work of council's consulting arborists, SOF has not attempted to portray their work as "lies" or to depict them as "liars" - we simply contend - on the basis of evidence, logic and expert advice - that they are wrong.</p> <p>We have not even accused Cr Cook of lying, despite the many errors and misleading statements he has made, since we have accorded him the benefit of the doubt that these problems arise from his inability or unwillingness to understand the evidence, or his concerns about the reputational implications for those who have provided that evidence, and from his obvious desire to create a "blank slate" for redeveloping Laman St, and a consequent predisposition to uncritically accept even flawed evidence that might support the removal of the trees on the pretext of risk.</p> <p>We wonder whether Cr Cook even asked Mr Hallam to explain or substantiate his statement before branding it a "lie"?</p>

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<p>46 Opinions of UK experts David Cashman, Jeremy Barrell were not considered. SOF E Glatfelter---Jones Jul 11</p>	<p>A YouTube video was considered of a discussion of opinions following a site visit. No submission, report or analysis was provided. Email from I McKenzie 31 July 11</p>	<p>The reference to SOF here is unclear. The YouTube video interview with Jeremy Barrell and David Cashman is an extensive interview, canvassing a range of relevant issues. Among other statements, Jeremy Barrell (a highly experienced and internationally recognised arborist who invented the SULE system used by council to rate the life-expectancy of the Laman St trees) stated that he could not understand why removal of the Laman St trees was even being considered, and that - properly managed - the trees were likely to live for many more years. Cr Cook does not explain how this video "was considered", but council's consideration of advice by external experts working independently of council has typically been embarrassingly superficial, arrogant and dismissive.</p>
<p>47 Opinions of engineers expert in wind effects and risk management (Stewart &amp; Jordan), were not seriously considered. SOF E Glatfelter---Jones Jul 11</p>	<p>Council received a presentation by these experts and asked many questions. Their documents were provided to council, and were considered. Presentation 19 July 2011</p>	<p>The quoted statement says <i>seriously</i> considered. The kind of tokenistic "tick a box" consideration to which Cr Cook refers is not <i>serious</i> consideration. The council resolution to remove the trees was made on the same night as Prof Stewart and Mr Jordan gave their presentation to council.</p>

**SAVE OUR FIGS' RESPONSE TO BOB COOK'S "LITANY OF LIES"**

<b>THE ALLEGED "LIES"</b>	<b>THE COOKED "FACTS"</b>	<b>THE REAL TRUTH</b>
<p>48 SOF has not --- and would not --- engage in or encourage threatening or abusive behaviour or language. C Raschke Media Release 30 Aug 11</p>	<p>SOF leaders use megaphones at all rallies to motivate and encourage supporters to express themselves. The holders of the megaphone become responsible for the behaviour of the group. Collection of recordings of megaphone in action.</p>	<p>SOF is unaware of the "collection of recordings of megaphone in action" to which Cr Cook refers here, but we would be most appreciative of a copy.</p> <p>Throughout this issue, SOF has actively encouraged those who are concerned about council's failure to deal properly with this issue to express themselves in a peaceful non-violent manner. We stand by the statement quoted by Cr Cook, and we note that Cr Cook provides no substantiation that it is - as he alleges - a lie.</p> <p>It is unclear how Cr Cook sees that using megaphones at rallies to encourage supporters to express themselves peacefully and non-violently is even a problem. If megaphones were not used to do this, it would reduce the chances of people hearing these messages.</p> <p>Cr Cook does not identify the nature of the "behaviour of the group" for which he believes "SOF leaders" are responsible, but our view is that the vast majority of fig supporters have conducted themselves with dignity and civility, often in the face of significant provocation. Many allegations have been levelled against fig tree supporters that have not been substantiated.</p> <p>Even if this were otherwise, the general proposition that "holders of the megaphone become responsible for the behaviour of the group" is patently ridiculous. SOF does not hold Cr Cook personally responsible for abuse and threats that have been directed at some fig supporters by tree removal advocates over this issue, arising from the misinformation for which he and council officers have been responsible.</p>

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<p>49 SOF agrees to not commence court proceedings as result of agreement with General Manager for Expert Evaluation. Signed agreement 21 Oct 2011</p>	<p>Court proceedings were commenced on 2 November 11. Withdrawn by SOF on 2 December 11. Memo P Pearce 2 December 2011</p>	<p>This is another preposterous misrepresentation.</p> <p>The signed agreement to which Cr Cook refers was with the General Manager to undertake expert evaluation, and was conditional on the undertaking of that expert evaluation. It was not an open-ended agreement never to commence legal proceedings, whether or not the evaluation was undertaken.</p> <p>The signed agreement expired (at the General Manager's insistence) when he established that the only mutually acceptable arborist on the list of three provided to SOF was not available to undertake the evaluation.</p> <p>SOF requested the General Manager on at least three separate occasions to continue with the expert evaluation process under the same agreement (which included the agreement not to commence court proceedings), but the General Manager would not do this. It was the General Manager, not SOF, who wished to discontinue the agreement that contained the undertaking to which Cr Cook refers.</p> <p>If the expert evaluation process had been undertaken in accordance with the agreement, SOF would have been bound by the agreement not to commence court proceedings on the outcome of that evaluation. However, the evaluation was not undertaken, and Cr Cook has seriously misrepresented the nature of the undertaking that SOF made here, as he has similarly (above) misrepresented SOF's undertaking in relation to the outcome of the previous mediation process.</p>



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<b>THE ALLEGED "LIES"</b>	<b>THE COOKED "FACTS"</b>	<b>THE REAL TRUTH</b>
<p>50 Murderer, Murderer! You are a murderer! SOF legal representative, in Laman St, with witnesses. 7 Oct 11</p>	<p>This is a serious lie, I am not a murderer.</p>	<p>We are not familiar with the relevant details of this allegation, but the date cited was the day when tree loppers first moved in to remove the Laman St trees, and anger was understandably running high, especially against those (such as Cr Cook) who were held to be primarily responsible for what people saw as an act of official vandalism against much valued and loved community assets.</p> <p>Cr Cook appeared at the Dawson St end of Laman St on that day, presumably to witness the fulfilment of his campaign to have the trees removed, though many of the "normal and decent people" who were present felt that he had come to gloat, and were incredulous at what they saw as Cr Cook's insensitive and provocative presence.</p> <p>Cr Cook was actively encouraged to leave the scene, but declined to do so, in circumstances in which he must have known his continued presence would be provocative to many of those present.</p> <p>For the record, Save Our Figs has no evidence or suspicion that Cr Cook is a murderer, and we are somewhat surprised that Cr Cook felt the need to confirm that he is not. However, his hypersensitivity to this may be psychologically explicable as arising from a reaction to an unconscious sense of guilt on his part for the role he has played in council's decision to unnecessarily destroy a valuable and much loved community asset.</p>
<p>51 Councillors were deceived by the YouTube video that stated that wind was "a significant risk [to the trees] if the Gallery is removed". SOF E Glatfelter---Jones Nov 11</p>	<p>The gallery is not being removed and the wind study is not used to define risk on the trees. P Pearce 25 Nov 11</p>	<p>SOF has been arguing for some time that - except for the fact that it indicates that the Laman St trees that lie in the windshadow of the current Art Gallery and Library buildings are safer than they would otherwise be - the council's wind study is largely irrelevant to the current debate over the risk posed by the trees.</p> <p>We are especially pleased to note that Cr Cook now apparently accepts this, and that use of it in such a context would amount to deception (as Mr Glatfelter-Jones apparently stated).</p> <p>We therefore look forward to an appropriate modification and correction by Cr Cook of his own YouTube video that highlights that wind study, and states that it indicated a significant risk to the trees from wind (which it did not).</p> <p>We also look forward to the removal of this largely irrelevant study from the list that constitutes the "body of evidence" that council refers to whenever specific studies on the risk posed by the trees are critiqued and found wanting.</p>