



Waitakere City Council  
*Te Taiāo o Waitakere*

## NOTICE OF MEETING

# FINANCE AND OPERATIONAL PERFORMANCE COMMITTEE

I hereby give notice that a meeting of the Finance and Operational Performance Committee will be held on:-

**DATE:** Friday, 19 December 2008 **TIME:** 9.30 am

**MEETING ROOM:** Waitemata Room

**VENUE:** Waitakere Central, 6 Henderson Valley Road, Henderson, Waitakere

to hear submissions on Alterations To Road Levels In Rankin Avenue, Memorial Drive, Hetana Street, Totara Avenue, And Clark Street, New Lynn and to take any necessary action connected therewith.

12 December 2008

Carmen Fernandes  
**COMMITTEE SECRETARY**

Telephone (09) 836 8000 extn 8887

### MEMBERSHIP:

Councillors	RI	Clow (Chairman)
	JM	Clews, QSO, JP (Deputy Chairman)
	DQ	Battersby, JP
	BA	Brady, JP
	MFP	Chan, JP
	LA	Cooper, JP
	AK	Corban, OBE, JP
	RP	Dallow, QPM, JP
	WW	Flaunty, QSM, JP
	PA	Hulse
	MM	Jolley
	JP	Lawley, JP
	PG	Mitchell
	VS	Neeson, JP

Mayor RA Harvey, QSO, JP (ex officio)

(Quorum 5 members)

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(Meeting Room could be subject to change)

(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

**AGENDA FOR A MEETING OF THE FINANCE AND OPERATIONAL PERFORMANCE  
COMMITTEE TO BE HELD IN THE WAITEMATA ROOM AT WAITAKERE CENTRAL,  
6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON FRIDAY,  
19 DECEMBER 2008, COMMENCING AT 9.30 AM**

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**AGENDA FOR A MEETING OF THE FINANCE AND OPERATIONAL PERFORMANCE COMMITTEE TO BE HELD IN THE WAITEMATA ROOM AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE, ON FRIDAY, 19 DECEMBER 2008, COMMENCING AT 9.30 AM**

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**1 APOLOGIES**



**2 CONFLICTS OF INTEREST**

The Council has acknowledged in its Code of Conduct that Elected Members need to be vigilant to stand aside from decision making when a conflict arises between their role as a member of the Council and any private or other external interest they might have. This note is provided as a reminder to members to check that no such conflicts arise in relation to any items on this agenda.



**3 NEW LYNN RAIL TRENCH: RANKIN AVENUE, MEMORIAL DRIVE, HETANA STREET, TOTARA AVENUE, AND CLARK STREET ROAD LEVELS**

**GLOSSARY**

AMP Capital Property Portfolio Limited	(AMP)
Planet Kids Limited	(PKL)
Mayceys Confectionary Limited	(MCL)
Transit Oriented Development	(TOD)
The Local Government Act 1974	(the Act)

**EXECUTIVE SUMMARY**

The purpose of this report is to advise the Finance and Operational Performance Committee of the responses received to Council's notification of ONTRACK's intended alterations to road levels in Rankin Avenue, Memorial Drive, Hetana Street, Totara Avenue, and Clark Street, to enable construction of the proposed rail trench through New Lynn.

The report recommends that the new road levels be approved, subject to certain conditions.

The report also provides the basis for hearing of submissions as required by section 330 of the Local Government Act 1974 (the Act).

**RECOMMENDATIONS**

It is recommended that the Finance and Operational Performance Committee resolve to:

1. **Receive** the New Lynn Rail Trench: Rankin Avenue, Memorial Drive, Hetana Street, Totara Avenue, And Clark Street Road Levels report.

A1-A53

2. **Receive** the information provided by the submitters.
3. **Approve** the proposed new road levels for Rankin Avenue, Memorial Drive, Hetana Street, Totara Avenue, and Clark Street, as presented in ONTRACK Plans numbered 39104415-CK-239 to CK-248 inclusive as shown in the ONTRACK Driveway Report attached at pages A1 to A53 of the agenda report.
4. **Agree** that the Director: City Services be delegated authority to:
  - approve all ONTRACK construction plans for changes to access, drainage, parking, structures, landscaping, and any other element to be changed within or affecting these properties, after further consultation with owners and occupiers, including the consultation requested by AMP Capital Property Portfolio Limited.
  - decide appropriate modification of ONTRACK construction plans, with decisions on costs for additional investigation, design, and construction in order to mitigate as far as is practicable issues raised in the submissions received.

#### BACKGROUND

1. At its meeting held on Wednesday, 15 October 2008, the Council passed the following resolution:

*The Council resolved to:*

*“6. **Agree** that the process for changing road levels of Totara Avenue, Clark Street, Rankin Avenue,, Memorial Drive and Hetana Street, as set out in the Local Government Act 1974, Thirteenth Schedule, be implemented”.*

1773/2008

A54-A62

2. The public notification procedure undertaken pursuant to section 330 of the Act has been implemented and 4 written responses have been received. Copies of these responses are shown in attachment at pages A54 to A62.
3. The affected owners and occupiers were issued with a report on the effects of the proposed road level changes and proposed remedial measures, and notices to the same effect were published in the New Zealand Herald on 18 November 2008, and the Western Leader on 21 November 2008.
4. The written responses are listed as follows:
  - 3060 Great North Road, AMP Capital Property Portfolio Limited (AMP), 8 December 2008;
  - 1B Rankin Avenue Planet Kids Limited (PKL), 9 December 2008;
  - 12/1C Rankin Avenue (Albert Deng), 8 December 2008; and
  - Hetana Street Maceys Confectionery Limited (MCL), 5 December 2008.
5. The issues raised in these responses must be resolved by the Finance and Operational Performance Committee. The Committee's resolutions are binding and cannot be appealed.

## DECISION MAKING

### Section 330 of the Local Government Act 1974

6. The process for modifying new road levels is set out in section 330 of the Act, as follows:
- i. The Council shall publish in the district a notice of its intention to fix the level, describing there the road by name and situation, and the proposed level thereof, by reference to plans to be open for inspection at a place named in the notice.*
  - ii. The Council shall in the notice appoint a day, not being less than one month after the publication of the notice, at which it hear all objections to the proposed level by persons affected thereby.*
  - iii. The Council shall forthwith after the publication of the notice serve a notice in the same form on the occupiers of all land adjoining that part of the road the level of which is proposed to be fixed and, in the case of any such land of which the occupier is not also the owner, on the owner also, so far as they can be ascertained.*
  - iv. All such objections must be in writing, addressed to and sent to the Council not less than 10 days before the day of meeting hereinafter referred to.*
  - v. The Council shall hold a meeting on the day so notified, at which all persons having so made objections shall be entitled to be heard in support thereof.*
  - vi. At that meeting the Council may, after considering all such objections, resolve to abandon the proposed level, or to adopt it with any alterations it thinks fit.*
  - vii. The Council shall publicly notify the level so fixed, and shall in the notice refer to a plan to be deposited at the office of the Council and to be open for inspection.”*

### Road Level Plans for Inspection

A1-A53

7. ONTRACK plans numbered 39104415-CK-239 to CK-248 show the proposed road levels but are not construction plans. Sufficient information is provided to broadly assess the impact of the road level changes on frontage properties. Construction plans detailing the proposed on and off road works must be produced for Council's approval prior to implementation.
8. In regard to the Driveway report dated 29 September 2008, shown in attachment at pages A1 to A53 and the works proposed in Totara Avenue, the footpath proposed along the northern side is not dependent on the proposed change to road levels. It is a matter beyond the scope of this report and requires separate authority. Detailed design of this footpath is proceeding in parallel and in consultation with AMP.
9. Another relevant matter proceeding independently in consultation with AMP is a proposal to close an existing Totara Avenue entrance and develop a replacement signal controlled access as part of the new Totara Avenue / Hetana Street intersection. Again the resolution of this issue is beyond the scope of this report.

### Options Identified

10. There are no practical alternatives to the general road levels proposed by ONTRACK as these are determined by the gradients of the New Lynn rail trench and the geometry of existing roads.
11. It is feasible to carry out some adjustments to access points and these will be required where that is technically possible to mitigate any adverse effects on properties. These matters have been substantially identified, are all considered to be capable of effective resolution and will be the subject of detailed design in due course.

### 3060 Great North Road (AMP)

A54-A62

12. The level change on the Totara Avenue centre line, between Memorial Drive and Veronica Street is an increase of up to 140 millimetres (at Memorial Drive), but generally less than 90 millimetres.
13. AMP's concerns with regard to 3060 Great North Road are detailed in AMP's written submission in attachment at pages A54 to A62.
14. The substantive points made are summarised below:
  - AMP is not opposed in principle to Council proposing to fix new road levels.
  - AMP wishes to ensure Council takes all necessary and appropriate steps to conduct the works so that associated effects do not adversely impact on LynnMall or the flexibility for future use of the AMP site.
  - AMP seeks further information in the form of detailed design plans and peer review thereof especially with regard to the following concerns:
    - a. Possible loss of car parking;
    - b. Possible loss of landscaping;
    - c. Possible reduced vehicle height clearance;
    - d. Possible reduced turning space for parking; and
    - e. Possible increased risk of flooding.
15. In regard to item (c) Car Parking, (b) Landscaping, and (d) Turning Space: these relate to the proposed footpath along the northern side of Totara Avenue, do not relate to the proposed road level changes and are beyond the scope of this report. These matters are currently being progressed separately in detail and in consultation with AMP.
16. In regard to item (c) Height Clearance and (e) Flooding: the approval of detailed construction plans is proposed to be delegated to the Director: City Services following further consultation over these detailed plans with AMP. These concerns, from the data provided in this report, are not expected to prove problematical. Plan 3910415-CK-239 indicates no change in driveway level at the position of the overhead parking deck and that the driveway will be graded down from the boundary to the line of the water channel on the northern side of Totara Avenue. ONTRACK has, in response to the AMP submission, provided Council with calculations demonstrating that the proposed water channelling along the north side of Totara Avenue will have ample capacity for the projected flows.

17. AMP seeks Council's agreement to certain preconditions as listed below:
- (a) A detailed agreed Construction Management Plan with meaningful input by AMP to minimise disruption to LynnMall operations including inconvenience to customers;
  - (b) A Traffic Management Plan with meaningful input by AMP because the proposed works will affect vehicle access to LynnMall;
  - (c) A warranty from Council that works will be carried out in accordance with best practice, relevant design and engineering standards and with an ongoing warranty for the quality of the works for a period of time after works completion;
  - (d) A warranty that all passenger and service vehicles currently accessing Lynn Mall continue to be able to do so safely and without restriction;
  - (e) Warranties and indemnities against flooding and compensation for flooding effects reasonably attributable to the subject works;
  - (f) A warranty against loss of car parks and compensation for any reduction in the number of car parks in the event of a new footpath being constructed; and
  - (g) A warranty that Council will provide an agreed standard of landscaping in the event of a new footpath being constructed.
18. The request that there be preconditions to the Council's decision to raise the road level indicates a misunderstanding of the process under section 330 LGA 74. The decision to be made by the Council is whether or not to raise the road. If the road must be raised because there are no other practical alternatives then 2 consequences flow:
- adjoining land owners may be entitled to compensation for injurious affection under section 63 of the Public Works Act 1981 (PWA) and in that case the issue will be whether the relevant public work is the work in the rail corridor or the construction of the road at the new level; and
  - Council may undertake work on adjoining land to address any consequential access issues arising as a consequence of the raising of the road level. To the extent that work is done by the Council it is mitigating any liability it may have for compensation. If, after all the work has been completed the adjoining land owners are substantially restored to their former position no claim for compensation will lie.
19. It follows that once a decision is made to raise the road level detailed design work can be completed in consultation with adjoining land owners. Preparation of a construction management plan ("precondition (a)") and traffic management plan ("precondition" (b)) are a normal and typical part of any contract for the construction of the works, again after consultation with adjoining land owners. The physical works contract will require the contractor to achieve appropriate standards of work ("precondition" (e)) and require the contractor to work closely with the Council and the adjoining land owner to ensure that any disruption caused by the proposed works is minimised as far as practicable. These matters follow as a normal part of the Council's dealings with adjoining land owners in relation to works within the road and to the extent necessary on any adjoining land.
20. The issue raised in "precondition" (d) Continued Safe and Efficient Vehicular Access will be addressed through the approval of the detailed design plans and is not expected to be problematical. Plan 3910415-CK-239 indicates no change in driveway level at the position of the overhead parking deck. Drainage issues

mentioned in “precondition” (e) will also be confirmed in the usual way through the approval of the detailed design plans and is not expected to be problematical. Plan 3910415-CK-239 indicates the driveway will be graded down from the boundary to the line of the water channel on the northern side of Totara Avenue. ONTRACK has been requested to provide the drainage demand to capacity ratio prior to the Council’s hearing.

21. As noted previously “preconditions” (f) Car parking and (g) Landscaping relate to the footpath proposed for the northern side of Totara Avenue which as explained above is not within the scope of this report and being considered separately in consultation with AMP.
22. It is also noted that the “preconditions” seek a range of warranties and an indemnity be provided by the Council in respect of the proposed works. The Legal Services Manager advises that the request for warranties and an indemnity goes too far in the context of a public work being undertaken by the Council in the context of its statutory and common law powers. The Council will manage the process to the best of its ability in consultation with affected adjoining owners. If at the end of the day AMP remains aggrieved about any matter it is entitled to make a claim for compensation, which will arise in the context of the Act and the Public Works Act 1981.
23. In conclusion, sufficient information has been provided to confirm that any adverse affects from the raising of the road can be adequately addressed and if not so addressed may be able to be compensated.

#### **1B Rankin Avenue (PKL)**

24. The level change on the Rankin Avenue centre line, at the present entrance to 1B Rankin Avenue is an increase of 80 millimetres. At the kerb line the increase is 300 millimetres owing to the deletion of the existing vehicle crossing and the installation of a normal kerb.
25. The proposal to replace the driveway between Rankin Avenue and 1B Rankin Avenue with a new driveway in Ambrico Place is an inherent consequence of the roading concept plan for the New Lynn Transit Oriented Development (TOD) approved by Council in October 2007 (reference Beca plan 3121038-C-022 showing the extension of Clark Street to Great North Road, also Beca plan 3121038-C-112 2008 for the detailed design layout of the ultimate Rankin/Clark intersection) as shown in attachment at pages A63 to A64. The existing driveway crossing is not compatible with the operation of the fully developed Clark/Rankin intersection, or the approved location for the bus layover on the western side of Rankin Avenue.
26. The concerns of PKL in its submission relate not to the effects of a level change but to the effects of the New Lynn TOD roading plan, and perceived adverse traffic effects from the new Ambrico Place driveway as follows:

- (a) Additional traffic past the Lollipops building from the ONTRACK Park-and Ride;
- (b) Limited width of the existing driveway for this traffic;
- (c) Potential for this traffic to crash into the Lollipops building where children sleep; and
- (d) Potential for pedestrian vehicle crashes in the driveway.

27. These matters cannot be considered in relation to this report and its resolutions which are concerned in terms of the Act with the effect of the 300 millimetres increase in level at the existing vehicle crossing as a result of the ONTRACK rail trench design.

A63-A64

28. There will be interim traffic conditions during construction when the road level is raised and the current use of the existing driveway will remain. In this case safe practical access can be and will need to be maintained through the implementation of approved Temporary Traffic Management Plans. This will be possible through the construction of an appropriate temporary vehicle crossing in Rankin Avenue and control of traffic movements to and from this crossing. This temporary vehicle crossing will be able to remain in place until a decision is made to commence construction of the Clark Street extension, which will not occur prior to 2012.
29. It is appropriate that Council continue with its efforts to consult with and keep PKL informed in regard to the changes to occur that may affect its operations.

#### **12/1C Rankin Avenue (Albert Deng)**

30. The level change on the Rankin Avenue centre line, at the present entrance to 1C Rankin Avenue is an increase of 80 millimetres. At the kerb line the increase is 300 millimetres owing to the deletion of the existing vehicle crossing and the installation of a normal kerb.
31. The proposal to replace the driveway between Rankin Avenue and 1C Rankin Avenue with a new driveway in Ambrico Place is an inherent consequence of the roading concept plan for the New Lynn TOD approved by Council in October 2007 (reference Beca plan 3121038-C-022 showing the extension of Clark Street to Great North Road, also Beca plan 3121038-C-132 2008 for the detailed design layout of the ultimate Rankin/Clark intersection). The existing driveway crossing is not compatible with the operation of the developed Clark/Rankin intersection and the extension of Clark Street.
32. The concerns of Mr Deng in his submission relate not to the effects of a level change but to the effects of the New Lynn TOD roading plan, and perceived adverse traffic effects from the new Ambrico Place driveway as follows:
- Inconvenience to movement in and out of 1C Rankin Avenue; and
  - Reduction in parking capacity.
33. Mr Deng also refers to a lack of courtesy by some existing construction workers, a lack of consultation and information about the construction, and the harm this work is doing now to New Lynn.
34. These matters cannot be considered in relation to this report and its resolutions which are concerned in terms of the Local Government Act 1974 with the effect of the final 300 millimetres increase in level at the existing vehicle crossing as a result of the ONTRACK rail trench design.
35. There will be interim traffic conditions during construction when the road level is raised and the current use of the existing driveway will remain. In this case safe practical access can be and will need to be maintained through the implementation of approved Temporary Traffic Management Plans. This will be possible through the construction of an appropriate temporary vehicle crossing in Rankin Avenue and control of traffic movements to and from this crossing. This temporary vehicle crossing will be able to remain in place until a decision is made to commence construction of the Clark Street extension, which will not occur prior to 2012.

36. In conclusion, it is appropriate that Council continue with its efforts to consult with and assist the residents of 1C Rankin Avenue in regard to the changes proposed to access to their property both as a consequence of the raising of the road level and the New Lynn TOD plan. This will include development of the design for the Ambrico Place access that considers concerns such as the potential loss of parking referred to by Mr Deng.

#### **4 Hetana Street (MCL)**

*A1 to A53*

37. The level change on the Hetana Street centre line, at northern end of the 4 Hetana Street frontage is an increase of 130 millimetres. ONTRACK plan 3910415-CK-243, reproduced in attachment at pages A1 to A53, shows that at the kerb line a small reduction in level is proposed and the existing vehicle crossing will be reconstructed to ensure complete compatibility, at the property boundary, with the existing forecourt. The forecourt is a loading area for goods vehicles servicing the confectionary warehouse at the subject address.
38. The concerns of MCL in its submission are as follow:
- Details of proposed contours for the forecourt at 4 Hetana Street; and
  - Details of overland water flows at 4 Hetana Street and 1 Puriri Street.
39. At a consultation meeting of Maceys, ONTRACK and Council representatives on 3 December 2008 at Mayceys head office these issues were addressed. The new storm water control systems were explained with reference to plans of new pipe lines, surface contours, and catch pit locations. Forecourt details were to be confirmed with additional documented information, but as stated above ONTRACK plan 3910415-CK-243 actually confirms that there will be no change to the existing forecourt.
40. In conclusion, sufficient information has been provided to confirm that the proposed remedial works will be effective. The Council will however consult again with MCL during the detailed design stage.

#### **STRATEGIC CONTEXT**

41. The New Lynn TOD project is aligned with the sustainable and integrated transport community outcome and a number of strategies, as follows:
- The Regional Growth Strategy, whereby New Lynn has been identified as a regional growth centre;
  - The Regional Land Transport Strategy;
  - The Council's Transport Strategy; and
  - Council's plans for urban intensification and economic developments.

#### **CONSULTATION**

42. ONTRACK's double-tracking concept plan for New Lynn and Council's New Lynn TOD plan have been widely and frequently publicised and consulted.

#### **RESOURCES**

43. All remedial works proposed are to be funded by ONTRACK, or by Council in terms of the Annual Plan 2008/2009 line item the New Lynn TOD.

## IMPLEMENTATION ISSUES

44. The only implementation issue is that detailed construction drawings and specifications are subject to approval by the Director: City Services and taking into account further consultation with the affected parties including AMP over the developed detailed designs.

**Report prepared by:** Ross Hill, Programme Manager: Transportation Development.

