

Entered by Board Secretary

# Approval to execute a Deed of Covenant for the Otahuhu Transport Interchange (1 Walmsley Road)

For decision:

For noting:

## Ngā tūtohunga / Recommendations

That the Auckland Transport Board (board):

- a) Approves Auckland Transport (**AT**) entering into a Deed of Covenant **Attachment 1**, with Auckland Council whereby AT covenants to observe and perform the obligations and requirements under an encumbrance instrument.
- b) Notes that the encumbrance instrument is to be registered against the title for the property at 1 Walmsley Road, Otahuhu (**Property**), and is required pursuant to a building consent condition for Auckland Transport's works at the Property for the bus-train interchange facility at Ōtāhuhu train station.
- c) Appoints two (2) directors to execute the Deed of Covenant.

## Te whakarāpopototanga matua / Executive summary

1. This report seeks board approval to a Deed of Covenant required to be registered to obtain the Code Compliance Certificate for the completed bus – train interchange at Ōtāhuhu (BTI).
2. Under the terms of the Deed of Covenant, AT covenants to observe and perform the obligations and requirements of the encumbrance in relation to inspection, servicing and maintenance of the stormwater and wastewater systems required for the BTI.
3. Evidence of registration of the encumbrance against the Record of Title for the Property is required to enable AT to apply for a building Code Compliance Certificate (**CCC**) for the Works.
4. AT delegations require all Deeds to be approved by the Board.

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## **Ngā tuhinga ō mua / Previous deliberations**

5. There are no previous deliberations applicable to this request for AT to execute a Deed of Covenant with Auckland Council.

## **Te horopaki me te tīaroaro rautaki / Context and strategic alignment**

6. The project involved the construction of a new bus-train interchange (BTI) facility at Ōtāhuhu train station necessary for the implementation of the Southern New Network. Construction of the BTI began in November 2015 and was completed in November 2016. All defect notification periods concluded in November 2018.

## **Ngā matapakinga me ngā tātaritanga / Discussion and analysis**

7. BTI construction was completed in November 2016 and a Certificate for Public Use (CPU) obtained to allow operation of the new station until a Code Compliance Certificate (CCC) was received for the works.
8. A condition of the building consent for the BTI was that the Property owner register an encumbrance against the Property title in relation to ongoing maintenance of a stormwater rain garden and wetland system and a pump wastewater system for the BTI. Due to delays within the project delivery team, and complexities with the land holdings, the encumbrance has not yet been registered.
9. Council's Legal team have now prepared the required stormwater/wastewater encumbrance with Auckland Council as encumbrancer and encumbrancee and AT as covenantor. As AT does not own land, to enable AT to be a registered party to the encumbrance, AT is required to enter into a Deed of Covenant that will be attached to the encumbrance instrument and registered against the Record of Title for the Property.
10. AT covenants to maintain the stormwater and wastewater facility.
11. Following execution of the Deed of Covenant, a CCC application can be submitted to Council for the BTI works, concluding all elements of the building consent for the BTI.
12. AT Legal Services has reviewed the Encumbrance instrument and Deed of Covenant and confirms that the document it is in order for execution by the board under delegated authority.

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## **Ngā tūraru matua / Key risks and mitigations**

13. The existing CPU for the BTI is due to expire shortly and it is unlikely that Council building services will approve a further extension. Failure to execute the Deed of Covenant to enable registration of the encumbrance will prevent a CCC application being approved and the Ōtāhuhu station would be non-compliant with the building code and could not remain open to the public.
14. There are no significant risks with AT entering into the Deed of Covenant as it is simply a legal mechanism to secure an obligation AT already hold to operate and maintain the stormwater and wastewater facility.

## **Ngā ritenga-ā-pūtea me ngā rauemi / Financial and resource impacts**

15. AT will be responsible for ongoing maintenance and opex obligations for the stormwater and wastewater facility at the Property. This has been accounted for in the asset team operational budget and that team has been undertaking this since November 2016. No additional financial expenditure is expected.

## **Ngā whaiwhakaaro o te taiao me te panonitanga o te āhuarangi / Environment and climate change considerations**

16. No perceived impacts.

## **Ngā reo o mana whenua rātou ko ngā mema pooti, ko ngā roopu kei raro i te maru o te Kaunihera, ko ngā hāpori katoa / Voice of mana whenua, elected members, Council Controlled Organisations, customer and community**

17. Mana whenua, Local Boards, the community and relevant Council Controlled Organisations were closely engaged during the project. No significant engagement has occurred with these partners and stakeholders since the Works were completed in November 2016. But as the registration of the encumbrance is required as a condition of consent no further consultation is required.

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## Ngā whaiwhakaaro haumaruru me ngā whaiwhakaaro hauora / Health, safety and wellbeing considerations

18. No perceived impacts to be considered.




### Ā muri ake nei / Next steps

19. The board appoints two (2) Directors to execute the Deed of Covenant, which will be attached to the stormwater/wastewater Encumbrance instrument
20. The encumbrance instrument and Deed of Covenant will be registered against the Property title and satisfy the condition in building consent to enable AT to obtain CCC for the BTI.

### Te whakapiringa / Attachment

Attachment number	Description
1	Deed of Covenant and Encumbrance instrument

### Te pou whenua tuhinga / Document ownership

Submitted by	Gaylene Pinker <b>Legal Executive – Legal Services</b>	
	Jane Small <b>Group Manager Property and Planning</b>	
Recommended by	Mark Lambert <b>Executive General Manager Integrated Networks</b>	
	Shane Ellison <b>Chief Executive</b>	