

Auckland City Council: Management of footpaths contracts

This is a report about an
independent inquiry carried out
under sections 16 and 18 of the
Public Audit Act 2001.

February 2010

ISBN 978-0-478-32646-8

Contents

Auditor-General's overview	5
Our recommendations	8
Part 1 – Introduction	9
How our inquiry came about	9
The scope of our inquiry	9
How we carried out our inquiry	10
Structure of our report	10
Part 2 – Overview of Auckland City Council's approach to footpaths work	13
Scale of footpaths work	13
Planning for footpaths work	15
Development of the Council's approach since the introduction of the Footpaths Policy in 2003	15
Where footpaths work fits in Auckland City Council's organisational structure	18
Policies and procedures for managing procurement, budgets, and expenditure for footpaths contracts	19
Computerised systems and databases to manage footpaths work	20
Scheduling and tracking footpaths work	21
Changes to contract arrangements for footpaths work	21
Contractors and terms of footpaths contracts	22
Payments for footpaths work	24
Contract quality plans	25
Timeline of main changes in the Council's approach to footpaths work and other matters relevant to our inquiry	25
Part 3 – Integrity of procurement and contract approval procedures	27
What we looked at	27
Our overall conclusions	28
Procedures for contracts from 1 July 2001 to 30 June 2004	28
Procedures for contracts from 1 July 2004 to 30 June 2009	29
Procedures for contracts from 1 July 2009	32
Use of probity auditing as part of the procurement process	35
Part 4 – Management of the two 2004-09 footpaths contracts	37
What we looked at	37
Overall conclusions	37
Expenditure on footpaths work under the Council's two 2004-09 footpaths contracts	38
Red footpaths work stopped in 2004	40
Payments made under the two 2004-09 footpaths contracts	41
The Council's contract claims and payment process	42
How the contract claims and payment process was applied	43
Did the Council pay too much for footpaths work in 2005/06?	46
Current status of payments for the Council's 2004-09 footpaths contracts	49
Changes to the Council's contract claims and payment process	50
Part 5 – Auckland City Council's response to issues about footpaths work	51
Our overall conclusions	51
How the Council generally identifies and responds to issues	51
How the Council responded to concerns about probity in relation to footpaths contracts	52
How the Council responded to allegations that it paid too much for footpaths work	54
How the Council responded to allegations about overlapping payments for work on kerbs and channels	56

Appendices

1 – Our terms of reference	59
2 – Monthly payments under Contracts 348 and 349, from 1 July 2004 to 30 June 2009	61
3 – Monthly payments under Contracts 348 and 349, between May 2005 and July 2006	63

Figures

1 – What Auckland City Council budgeted to spend, and actually spent, on footpaths from 2001/02 to 2008/09 and what it plans to spend from 2009/10 to 2011/12	14
2 – Summary of contract arrangements for general footpaths work for the periods before and after 2001/02	23
3 – Timeline of main changes in the Council's approach to footpaths work and matters arising	26
4 – Summary of expenditure on major components of work completed under the 2004-09 footpaths contracts	38
5 – Major elements of the footpaths and vehicle crossings component of expenditure (shown in Figure 4)	40
6 – Summary of payments made to the contractor under the two 2004-09 footpaths contracts	42
7 – Overview of the monthly contract claims and payment process	42

Auditor-General's overview

My predecessor, Kevin Brady, was asked by Auckland City Council (the Council) in May 2009 to carry out an inquiry into the Council's management of its footpaths contracts. He agreed to do so because of the nature of the concerns being raised and because of the scale of the Council's footpaths work.

We were aware of various allegations that the Council had mismanaged contracts for its footpaths work and that the topic had been of high public interest for some time. We were concerned that a large public entity, with responsibility for footpaths contracts worth millions of dollars, was continually attracting public criticism and that the allegations persisted.

Our inquiry aimed to understand the wider context of the Council's footpaths work, and to address several specific concerns. My staff looked in depth at the Council's management of footpaths contracts during the past eight years to see how the Council has developed its approach to footpaths work and whether there were any fundamental flaws in the systems and processes for current or historical contracts.

Overall conclusions

I am pleased to report that the Council's processes and procedures for managing footpaths work – while still evolving – are reasonable and have been applied adequately. We are satisfied that the Council has protected the interests of ratepayers throughout its management of footpaths contracts.

My staff found no fundamental flaws or gaps in the Council's contract management processes, no apparent evidence of corruption at any level, and no waste. However, in keeping with most large and complex asset management systems, we did find some areas where the Council can tidy up its administrative processes and have made a number of comments and suggestions and four recommendations for improvement.

Each of the concerns raised publicly had some basis in fact. However, the issues were not as serious as they appeared and all were dealt with appropriately. For example, the isolated instance of an individual accepting a gift did not compromise the 2009 footpaths contract tendering process. The matter was dealt with appropriately as a personnel issue and we are satisfied that the Council has the necessary controls and procedures in place to mitigate the potential for this type of situation to happen, and to mitigate any effect if it does happen.

The Council's response to the various allegations was adequate and reasonable and, in some instances, involved extensive investigation. However, the Council could have communicated better when addressing the public's and the news media's concerns.

Scale of Auckland's footpaths asset

Auckland's 2200km of footpaths represent a significant asset, with a replacement value of \$300 million. Since 2003, the Council's footpaths programme has changed from minor local renewals to area-based renewals. In 2006, the Council began a significant renewal programme requiring investment of more than \$50 million a year in 2006/07 and 2007/08. The Council has approved budgets of \$22.5 million each year on footpaths work from 2009/10 to 2011/12.

Renewing and maintaining an asset of this size effectively and continuously is a large and complex job. For the Council to get value for money and to protect the investment of its ratepayers, we expected footpaths work to be well planned and guided by a strategic approach in keeping with wider asset management practices. We also expected the Council and its staff to have high standards of contract management practices and personal conduct, supported by an integrated system, robust processes and procedures, and sufficient resources to do the job properly.

Reasonable processes and procedures were applied

The Council generally managed its footpaths work consistently with its wider strategic approach. It has reasonable and sensible processes and procedures that were applied during the eight-year period covered by our inquiry. These processes and procedures have been refined during the past eight years and are still evolving, but they are soundly based and heading in the right direction. We were also pleased that the Council was able to provide us with substantial evidence and documentation of those procedures being applied.

There was one occasion when the Council stopped using the colour red for footpaths work in certain areas, which was not envisaged by its Footpaths Policy at the time, and the Council did not amend the policy until 21 months later. The Council has acknowledged that this delay in changing the policy was not good practice, but the change from red to black footpath surfaces did have benefits.

There was some uncertainty, and different views, about what procedures should have applied to expenditure and payments at different times during the period my inquiry looked at. My staff also found some mixed practice in applying procedures, and their documentation. This is not surprising, because we looked at a long period, and the Council's procedures and personnel have changed during that time.

Mixed views about measurements of footpaths work

It is clear from our inquiry that there have been mixed views about the measurement of physical work completed and paid for under the Council's footpaths contracts. In response to allegations that it had paid too much for footpaths work in 2005/06, the Council remeasured the work that had been claimed for payment by the contractor. The work was later measured again and showed that the original measurements were correct within acceptable tolerances.

Overall, we are satisfied that the Council had a reasonable basis for the measurements it used to make payments under the 2004-09 footpaths contracts.

However, in our view, the Council should keep under review the level of resources that it needs to confirm measures effectively. This has been a theme running through the public concerns that have arisen, and also through the findings of other reviews of the Council's footpaths work. We note that the Council has recently employed a quantity surveyor to help with technical matters, including procurement and the review of contractor claims for footpaths work.

Reasonable response to allegations

The Council's own investigation of various allegations about its footpaths work has been extensive, and a reasonable response in the circumstances. Some of these allegations involved matters of probity. We consider that the Council's response to the individual matters of probity was reasonable. We encourage the Council to continue reinforcing the importance of appropriate standards of probity and conduct, to help reduce the likelihood of such issues arising in the future.

A number of people interviewed during our inquiry expressed concern about the lack of integration and consistency between the various ways issues get raised, investigated, and dealt with by the various parts of the Council. This included how the Council dealt with the public's and the news media's concerns. We encourage the Council to consider how it can resolve the lack of integration and consistency.

Acknowledgement

I appreciate the time and effort of all those who provided information to my staff, including employees past and present, and other parties.



Lyn Provost
Controller and Auditor-General

12 February 2010

Our recommendations

We recommend that Auckland City Council enhance its contract management and administrative processes to:

1. improve its process for approving contract values, including reconciliation of cumulative expenditure and contract values to better support the process.
2. reconcile information about completed footpaths work with financial information about payments for the work, before recording the information in asset databases.
3. improve the way it documents the raising and resolving of queries that arise during monthly reviews of contract claim files.
4. regularly reconcile cumulative amounts (both expenditure and contract values) for footpaths contracts, and clearly record the position agreed with the contractor in contract and financial documents.

Part 1

Introduction

- 1.1 In this Part, we explain:
- how our inquiry came about;
 - the scope of our inquiry;
 - how we carried out our inquiry; and
 - the structure of our report.

How our inquiry came about

- 1.2 In a letter dated 4 May 2009, the Chief Executive of Auckland City Council (the Council) asked the Auditor-General to investigate various matters relating to the Council's management of contracts to build and maintain footpaths in Auckland.
- 1.3 The Council wanted an independent audit carried out of the probity and processes relating to awarding its most recent footpaths contracts, after an allegation reported by news media that a Council staff member involved in the tendering process had not acted impartially. The Council was also concerned by other public allegations about its management of footpaths contracts, and assertions that it did not properly investigate claims made about Council staff and contractors in relation to those contracts.
- 1.4 We were aware of various allegations made in recent years that the Council had mismanaged contracts for its footpaths work. We were concerned that a large public entity, with responsibility for footpaths contracts worth millions of dollars, was continually attracting public criticism and that the allegations persisted despite evidence to the contrary from the Council's own auditing and external reviews. We considered that it was in the public interest to investigate and report on the allegations.
- 1.5 We decided to carry out an inquiry and set our terms of reference under sections 16(1) and 18(1) of the Public Audit Act 2001. The terms of reference are in Appendix 1.

The scope of our inquiry

- 1.6 Our inquiry took into account the eight years from 2001/02 to 2008/09. We chose this extended period because the Council's footpaths contracts are for a long period (typically a maximum term of five years) and so that we could better understand the context in which the Council organises its footpaths work.
- 1.7 We wanted to see whether specific aspects of the Council's footpaths work made sense in the overall context, and whether the detailed transactions that we considered had been dealt with in keeping with the Council's wider system of

policies and procedures. We note that the Council has progressively made changes to its approach to footpaths work during the eight-year period spanned by our inquiry.

1.8 We looked into allegations that:

- the behaviour of an individual Council staff member had compromised the integrity of the Council's procurement process for footpaths work;
- the Council paid too much for footpaths work in 2005/06; and
- the Council failed to respond appropriately to allegations about mismanagement of its footpaths work.

1.9 Our inquiry focused on the Council's procurement processes and financial management of its footpaths contracts. Specifically, we looked at how the Council:

- awarded the most recent footpaths contracts (for two years starting from 1 July 2009, with extensions possible to 30 June 2014); and
- managed contract payments in 2005/06 that related to two footpaths contracts for the five years starting 1 July 2004 (the 2004-09 footpaths contracts).

1.10 We did not look at the technical specifications or quality of the Council's footpaths work.

How we carried out our inquiry

1.11 We reviewed documents and interviewed Council staff, consultants and contractors to the Council, and former Council staff.

1.12 In June 2009, when we published our terms of reference, we also published details about how to contact us about our inquiry. A number of people took the opportunity to raise further issues. We considered the information provided by these people where the information was relevant to our inquiry.

Structure of our report

1.13 Our report discusses:

- the Council's approach to building and maintaining footpaths, including its overall strategies and plans, and its organisational, management, procedural, and contracting arrangements (see Part 2);
- how the Council applied its procedures for procurement and contracting when finalising new footpaths contracts and extending existing contracts (see Part 3);

- a detailed review of expenditure and payments made under the Council's two 2004-09 footpaths contracts (see Part 4); and
- the Council's response (including its own investigations) to various footpaths-related issues (see Part 5).

Part 2

Overview of Auckland City Council's approach to footpaths work

- 2.1 In this Part, we provide an overview of the Council's approach to building and maintaining footpaths, including aspects of its organisational structure, management, policies and procedures, and contracting arrangements. We also summarise the context and timing of matters that led to our inquiry.
- 2.2 The term "footpaths work" includes building and maintaining footpaths, vehicle crossings, kerbs and channels, service covers, new berms, and other work related to footpaths.

Scale of footpaths work

- 2.3 The Council manages roads and other transport-related assets that have a combined replacement value of \$1.9 billion. Footpaths are a significant part of this large asset base; they extend for about 2200km, cover an area of nearly five million square metres, and have a replacement value of about \$300 million.

Budgets and expenditure on footpaths work from 2001/02

- 2.4 In 2001/02, the Council spent \$6.4 million on its footpaths work. Expenditure peaked in 2007/08 at \$54.7 million before falling to \$28.6 million in 2008/09. The amount spent on footpaths work means that it is important for the Council to have robust processes for procurement and for managing related contracts, and effective and efficient ways to address any queries raised about such contracts.
- 2.5 The Council's procedures require that provision for footpaths work is made in its budget as a prerequisite for the approval of actual expenditure. In Figure 1, we set out the Council's annual budgets for footpaths work for the eight years from 2001/02 to 2011/12 and actual expenditure from 2001/02 to 2008/09. Figure 1 shows that actual expenditure (totalling \$191.9 million) broadly tracked the budget (totalling \$190.4 million) that the Council had provided for during this eight-year period.

Figure 1
What Auckland City Council budgeted to spend, and actually spent, on footpaths from 2001/02 to 2008/09 and what it plans to spend from 2009/10 to 2011/12*

	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	Budget 2009/10	Budget 2010/11	Budget 2011/12
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Budgets											
General											
- renew	4.950	6.150	9.345	9.752	9.907	31.347	30.000	24.360	22.513	22.513	22.513
- maintain	1.263	1.207	1.077	1.840	2.083	2.852	2.688	2.588	-	-	-
Queen St	n/a	n/a	n/a	0.780	11.450	14.323	15.957	1.309	n/a	n/a	n/a
Newmarket	n/a	n/a	n/a	-	-	0.926	4.169	0.140	n/a	n/a	n/a
Total budgets	\$6.2	\$7.4	\$10.4	\$12.4	\$23.4	\$49.4	\$52.8	\$28.4	\$22.5	\$22.5	\$22.5
Actual											
General											
- renew	5.049	6.783	10.002	9.807	9.978	31.658	30.784	24.435	n/a	n/a	n/a
- maintain	1.362	1.290	1.153	1.838	1.999	2.771	2.840	2.534	n/a	n/a	n/a
Queen St	n/a	n/a	n/a	0.559	5.492	17.972	17.047	0.553	n/a	n/a	n/a
Newmarket	n/a	n/a	n/a	-	0.025	0.831	4.029	1.087	n/a	n/a	n/a
Total actual	\$6.4	\$8.1	\$11.2	\$12.2	\$17.5	\$53.2	\$54.7	\$28.6	n/a	n/a	n/a

* Amounts are based on the Council's financial system, Annual Plan, and/or Annual Report.

- 2.6 Figure 1 shows that, in the five financial years up to and including 2005/06, the Council spent \$55.4 million on general footpaths upgrades.
- 2.7 The Council's 2006-16 long-term council community plan (LTCCP) proposed to upgrade 1500km of footpaths over 10 years at a cost of \$270 million. Accordingly, in the first year of the 2006-16 LTCCP (the 2006/07 financial year), there was a major increase in the annual amount the Council spent on its general footpaths work.
- 2.8 Expenditure on Queen Street footpaths is shown separately in Figure 1 to reflect the Council's focus on upgrading the city's central business district (CBD). It excludes additional expenditure on streetscape works.
- 2.9 In the five years from 2004/05 to 2008/09, the Council budgeted to spend \$43.8 million and actually spent \$41.6 million on CBD footpaths work. Problems with removing trees delayed the Council's CBD footpaths programme and reduced the amount spent.

Planning for footpaths work

- 2.10 The Council manages its roads and transport-related assets, including footpaths, through its Transport Asset Management Plan (TAMP), which it updates periodically as required. The TAMP contains management, engineering, and financial plans for the Council's assets, and is consistent with the Council's other relevant strategies, plans, policies, and requirements.

Development of the Council's approach since the introduction of the Footpaths Policy in 2003

- 2.11 Before 1 July 2003, the Council's footpaths work focused mainly on maintaining existing assets.

Introduction of the Footpaths Policy in 2003

- 2.12 In June 2003, the Council finalised its Footpaths Policy after extensive consultation.¹ The Footpaths Policy applied to the Council's footpaths work and was integrated into its footpaths contracts from then on.
- 2.13 The two main changes introduced in the Footpaths Policy were to:
- focus on area-based renewal rather than minor local renewal; and
 - enable the replacement of existing footpaths with new footpaths of the same colour, including red, particularly in the city's heritage and residential areas.

¹ Presented to the Auckland City Transport Committee, and approved, on 4 June 2003.

Assessment of the condition of footpaths in 2003/04

- 2.14 During 2003/04, the Council assessed the condition of the city's footpaths. The assessment showed that 70% of footpaths met the minimum acceptable standard (a rating of "good" or better, on a four-point rating scale).
- 2.15 The Council decided to significantly change its approach in keeping with its Footpaths Policy and fix the 30% of footpaths that were in an unacceptable condition.

Amendments to the Footpaths Policy in 2004

- 2.16 The Footpaths Policy was amended in September 2004. The amendment required the Council to consult with the relevant local Community Board on the choice of materials to be used.
- 2.17 The amended policy also clarified that the surface for vehicle crossings was to match the adjoining footpath surface. For example, where the Footpaths Policy required a red oxide exposed concrete footpath, it also required the adjoining vehicle crossing to be made of red oxide exposed concrete. The change was made in the interests of pedestrian safety because, where a vehicle crossing was a different colour to the footpath, this appeared to give priority to vehicles rather than pedestrians.

New five-point scale for rating the condition of footpaths

- 2.18 In 2006, at the time of preparing its 2006-16 LTCCP, the Council revised its system for rating the condition of footpaths. It adopted a five-point scale by introducing a new mid-point rating of "fair".
- 2.19 The "fair" rating was deemed to be the new minimum standard. Using this revised scale, the TAMP for 2006/07 shows that 93.3% of the Council's footpaths met the new minimum standard, with 72.2% assessed as "excellent" or "good" and requiring no maintenance.
- 2.20 The TAMP highlighted the general improvement in the proportion of footpaths rated as acceptable in the three years since the introduction of the 2003 Footpaths Policy.
- 2.21 The TAMP also noted that 6.7% of footpaths were still in an unacceptable condition, being "poor" or "very poor", and 21.1% of footpaths were assessed as "fair" and still needing maintenance. The TAMP proposed a significant level of renewal during the coming years.

Amendments to the Footpaths Policy in 2006

- 2.22 The Council decided to amend its Footpaths Policy again in August 2006.² From that time, all footpaths and vehicle crossings were to be made from exposed black chip concrete without coloured pigment (with some exceptions).
- 2.23 A paper³ by Council staff in May 2006 proposing changes to the Footpaths Policy explained that the exposed black chip concrete surface, while not the cheapest option, was cheaper than the red chip equivalent after allowing for the replacement of vehicle crossings to provide a consistent look and feel. The estimated cost of exposed black chip concrete was \$121,200 a kilometre – about \$61 a square metre – based on an average footpath width of two metres.

Review of the Footpaths Policy in 2009

- 2.24 The Council reviewed its Footpaths Policy in 2009, while preparing its final 2009-19 LTCCP. The purpose of the review was to consider using alternative surfaces for footpaths to make spending go further.
- 2.25 When we started our inquiry, the Council had not made any formal decision about changing surfaces for its footpaths, and continued to use the surfaces specified in the current Footpaths Policy. Since then, and after a review of the TAMP, the Council's Transport Committee and its Arts, Culture and Recreation Committee have noted a preferred option of broomed (rather than exposed aggregate) finish, with estimated savings of about \$400,000 each year.⁴ Detailed criteria for this revised surface and a formal Council decision are expected to be finalised in April 2010.

Consultation with the community

- 2.26 The Council prioritises and schedules its footpaths work based on the engineering assessment of the asset's condition. Individual communities have no direct involvement in the prioritisation and scheduling of footpaths work. However, the Council recognised when it introduced the Footpaths Policy in 2003 that footpaths work should be spread equitably throughout the city.
- 2.27 The public was consulted in the lead-up to the introduction of the Footpaths Policy in 2003. Since then, the public has also been involved in consultation to finalise the Council's LTCCPs, which set out the Council's broad approach to its footpaths work.

² Transport and Urban Linkages and Arts, Culture and Recreation Committees, 14 August 2006.

³ "Footpaths across the city", a paper to the joint extraordinary meeting –Transport and Urban Linkages/Arts, Culture and Recreation Committees, 9 May 2006.

⁴ Transport Committee resolution of 6 August 2009, and Arts, Culture and Recreation Committee, 9 September 2009.

- 2.28 The Council also provided for internal consultation with its Community Boards in the 2004 revision of the Footpaths Policy.

Where footpaths work fits in Auckland City Council's organisational structure

- 2.29 The Council's general footpaths work is carried out by the Transport division. Footpaths work in Queen Street is the responsibility of the Council's Arts, Culture and Recreation division.
- 2.30 The Council's Transport functions have been significantly reorganised since 2005. From February 1997 until January 2006, the functions were carried out by three units:
- Transport Planning;
 - Transport and Roding Services (TARS); and
 - Rapid Transport (subsequently merged with Transport Planning).
- 2.31 From July 2005, transport functions that had been spread across three other divisions (customer services, planning services, and enterprise services) were included and combined within the Transport division.

Reorganisation of transport functions in 2006

- 2.32 From February 2006, as part of its organisation-wide Re-alignment Project, the Council reorganised its transport functions into four units, and has retained that structure since then:
- Transport Strategy, Policy and Projects (since renamed Transport Policy) – to prepare strategies and policies, and develop new transport assets;
 - Transport Assets and Operations (since renamed Transport Assets) – to manage and optimise the use of transport assets;
 - Transport Programmes and Contracts (since renamed Transport Delivery) – to co-ordinate transport work programmes and manage contractors; and
 - Parking Operations (since renamed Parking) – to operate parking assets.
- 2.33 At the time of the reorganisation, the Council noted that it expected the Transport division to have an increased profile, and that the changes within the division were considered an important part of the Council's overall organisational transformation.
- 2.34 The reorganisation was introduced in the context of changing national and regional transport frameworks, including establishing the New Zealand Transport Agency (NZTA) and the Auckland Regional Transport Authority. The Council also

noted at the time that the reorganisation of the Transport division was expected to work well in the national and regional transport operating environment.

- 2.35 These organisational changes, in the 2005/06 financial year, happened just before the Council considerably increased the amount of footpaths work under the two 2004-09 footpaths contracts. The changes also coincided with other major project work within the wider Transport division, for example, Project Greenlane.⁵

Policies and procedures for managing procurement, budgets, and expenditure for footpaths contracts

- 2.36 The Council has established a range of policies and procedures that set out how it should manage procurement, approve budgets, and authorise expenditure for footpaths work. The Council progressively developed its approach using these policies and procedures during the eight-year period covered by our inquiry.

- 2.37 Significant relevant policies and procedures are:

- the Council's Procurement Manual;⁶
- the New Zealand Transport Authority Interim Procurement Manual;⁷
- the Transfund New Zealand Competitive Pricing Procedures Manual;⁸
- the Council's Contract and Supplier Management Manual (CSM); and
- the Council's Delegations Register.⁹

Procurement manual

- 2.38 The Council's Procurement Manual contains procurement procedures that apply Council-wide, and was finalised in March 2009. The manual took effect after the start of the procurement process for the current footpaths contracts starting on 1 July 2009.
- 2.39 The Council's transport activities attract significant levels of funding from the National Land Transport Fund, administered by the NZTA and its predecessor organisations, under the Land Transport Management Act 2003, although only

5 Project Greenlane is a transport construction project to improve the road and transportation options in Greenlane and Great South Road.

6 The Procurement Manual was developed by the procurement team in the Council's Data Services division, and the latest version was finalised in March 2009. The manual follows the good practice guide *Procurement guidance for public entities*, published by the Controller and Auditor-General in June 2008.

7 Published October 2008.

8 Effective from 1 March 1997. Transfund New Zealand is one of NZTA's predecessor organisations.

9 Dated July 2002. Relevant sections of the Delegations Register are identical to its predecessor (which applied to the procurement leading to the award of the 2001 contracts), except that a new distinction was introduced between continuing contracts and lump sum contracts and the respective requirements that applied to each.

a small part of the Council's work on footpaths is NZTA-funded. The Council also receives funding for transport work from other sources under other legislation.

- 2.40 The Procurement Manual recognises such external funding sources and legislative provisions, and stipulates that where these require a particular procurement process, then the Council should use that process. Because the Council's Transport division deals regularly with the requirements of NZTA and its predecessor organisations, its practices are generally consistent with, and similar to, the procurement requirements for these agencies. The Council was also involved in piloting the NZTA's new procurement manual.

Contract and Supplier Management Manual and Delegations Register

- 2.41 The Council's main policies and procedures that apply to the 2004-09 footpaths contracts were those contained in the CSM and the Delegations Register.

Significant provisions are:

- relevant budgetary approval/provision is a prerequisite for the approval of expenditure;
- where the value exceeds \$200,000, public or invited tenders or requests for proposals will be called for:
 - the relevant director must approve the proposed procurement method;
 - a representative from the Risk and Assurance department must be present at the opening of the tenders or requests; and
 - recommendations shall be reported to the Council through the relevant committee for adoption or otherwise; and
- for high contract values (more than \$1 million):
 - contract documents must be approved by the city solicitors before calling for public or invited tenders, or issuing requests for proposals; and
 - tenders must be accepted by council resolution.

Computerised systems and databases to manage footpaths work

- 2.42 The Council has used a number of computerised systems and databases to manage its footpaths work:

- Roading Assessment and Maintenance Management database (RAMM database);¹⁰
- Footpaths Assets Maintenance Management database (FAMM database);
- the Primavera system; and
- RAMM Contractor.

¹⁰ The database is maintained by CJN Technologies Limited and accessed online by the Council's staff.

- 2.43 The RAMM database is the Council's primary register of transport assets, and provides a basis for ongoing management. The RAMM database is organised by sections that correspond with physical areas in the city. At first, the Council also used the RAMM database for recording complaints about its footpaths work.
- 2.44 During 2003, the Council established a new front-end to the RAMM database, to draw down data on footpaths only and to generate displays and reports. This front-end is generally referred to as the FAMM database.
- 2.45 During 2007/08, the Council introduced the Primavera system. This system is used to scope and instruct footpaths work, and for recording and monitoring completed work.
- 2.46 The scoping and monitoring part of the Council's approach was replaced by RAMM Contractor from 1 July 2009.

Scheduling and tracking footpaths work

- 2.47 As part of the Council's annual planning process, footpaths work is scoped for the forthcoming financial year, based on information from its asset databases. The Council consults the contractor on the annual programme, which is detailed by month and by RAMM section. Short-term scheduling of footpaths work is achieved through ongoing operational discussions between the Council's staff and the contractor.

Job tracking form

- 2.48 The Council's footpaths contracts require the contractor to manage the programming and construction of the specified work using a job tracking form issued by the contract engineer. This form evolved throughout the period of the 2004-09 footpaths contracts from being paper-based to online, through the Council's introduction of Primavera and more recently RAMM Contractor.

Changes to contract arrangements for footpaths work

- 2.49 During the eight-year period covered by our inquiry, the Council has altered the focus of its footpaths work, consistent with the development of its footpaths approach and wider strategies. The Council has also progressively revised its general procurement approach. All these changes have affected the way the Council has contracted for footpaths work.

Roading Assets Maintenance Plan

- 2.50 Until 2003/04, the Council's footpaths work included maintenance and some renewal work. From 1 July 2004, footpaths maintenance was under a separate contract.
- 2.51 Around this time, the Council's Transport division was developing a Roothing Assets Maintenance Plan (RAMP) to consolidate its approach to long-term maintenance in keeping with the Council's overall asset management plans.

Introduction of "smarter procurement"

- 2.52 In August 2007, the Council launched an initiative to achieve what it called "smarter procurement". This involved further organisational and procedural changes within the Transport division. It also resulted in the Council trying new types of contractual arrangements, including alliance agreements.

Contractors and terms of footpaths contracts

John Fillmore Contracting Limited

- 2.53 John Fillmore Contracting Limited has been a major provider of the Council's general footpaths maintenance and renewal work for more than 10 years, and has been the sole provider for the Council's footpaths renewal programme during most of that time. The company has done some work on CBD footpaths in conjunction with other contractors, and has carried out pavement works in St Patrick's Square. It has also sub-contracted to Fulton Hogan Limited for the Council's Central Connector project.

Contracts before 2001/02

- 2.54 Before 2001/02, the Council's footpaths work was carried out under three geographically-based contracts, fixed for periods of three years. Of these, one was completed by John Fillmore Contracting Limited, and the other two by City Contractors Limited. From 2001/02, John Fillmore Contracting Limited secured more of the Council's footpaths work. The contract arrangements are shown in Figure 2.

Figure 2
Summary of contract arrangements for general footpaths work for the periods before and after 2001/02

	Before 2001/02	2001/02 to 2003/04	2004/05 to 2008/09	After 2008/09
Contract terms (number of contracts)	Fixed three-year contracts (3)	Fixed three-year contracts (3)	Three-year contracts, with optional extensions for two additional years	Two-year contracts, with optional extensions for three additional years
Areas	3	2	2	2
Contractors (number of contracts)	City Contractors Limited (2)	n/a	n/a	n/a
	John Fillmore Contracting Limited (1)	John Fillmore Contracting Limited (2)	John Fillmore Contracting Limited (2)	John Fillmore Contracting Limited (2)
Original contract values	\$10.3m	\$14.1m	\$26.7m	\$19.8m
Final/current contract values	n/a	\$25.6m	\$106.2m*	n/a

* Combined, based on payments (\$105.7m) plus retentions (\$0.4m) plus disputed items (\$0.067m) – that is, before recent finalisation of claims and agreement of final values.

Contracts from 1 July 2009

- 2.55 The Council contracted John Fillmore Contracting Limited for its two current footpaths contracts starting from 1 July 2009, for an area covering two-thirds of the city's isthmus.
- 2.56 A separate alliance agreement was put in place for footpaths work in the western third of the isthmus, starting from 1 July 2009.¹¹ The alliance agreement¹² started on 1 July 2008 (but excluded footpaths in its first year). The agreement is for an initial term of five years, with an option to extend, and is between the Council, Leighton Contractors Pty Limited, Blacktop Construction Limited, and MWH.

11 For the area west of Grafton Gully and Dominion Road, including the CBD.

12 Includes work on general maintenance of all transport assets except signals and street lights; carriageway resurfacing and renewals; specialist surfacing treatment; footpaths and vehicle crossing renewals (from 1 July 2009); cycleway resurfacing and renewals; pavement marking; structural, drainage, and signage renewals; minor safety capital works; and Rugby World Cup-related capital works.

- 2.57 The two current footpaths contracts with John Fillmore Contracting Limited (both starting from 1 July 2009) are for an initial term of two years, with an option to extend for three years. The initial term is shorter than the three-year initial term for the preceding contracts. This decrease is intended to provide the Council with:
- ... the opportunity to introduce an alternative delivery method (possibly a further alliance) at the earliest practical time should the maintenance alliance prove successful in delivering better value to the rate payers over traditional forms of contract.*¹³

Payments for footpaths work

- 2.58 The Council pays for footpaths work through its financial system, called SAP. Payment requires approval by Council staff who have the appropriate level of delegated authority.
- 2.59 Contractors provide the Council's Transport division with an initial estimate of their claim for payment (for accrual purposes), and are required to formally submit their monthly claim for payment by the third working day of the next month. Payment is initiated by the Transport division's administration team, after the division's operational staff check the contractor's claim.
- 2.60 Payments are based on internally-generated invoices, self-billed by the Council (consistent with industry practice), which show the agreed value of work completed, less retention, plus GST. The invoices and related payments are generated by the Council's Data Services division, after signature by authorised staff.
- 2.61 Payments for footpaths work are generally made in keeping with the Council's routine payment timetable, in the period after the contractor makes a claim for payment.

Contract rates and retentions

- 2.62 The footpaths contracts include a schedule of rates, and the contractor is entitled to be paid the relevant rates within this schedule for the associated physical work completed.
- 2.63 Payments under the contract are subject to retentions, set at 10% of the contract value, but capped at \$200,000 for each contract, and with a defects period of 12 months. Claims by the contractor are generally paid on the 20th of the following month net of retentions, which are subsequently released to the contractor after satisfactory performance at the end of the defects period.

¹³ Procurement plan for the Transport division's road and footpaths term maintenance and renewal contracts, September 2008.

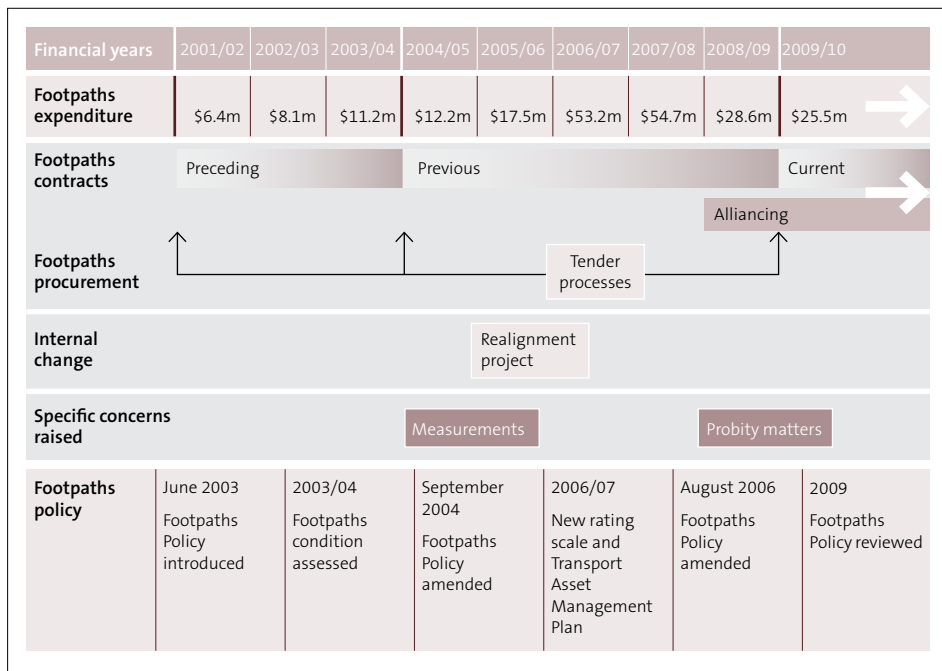
Contract quality plans

- 2.64 The Council's footpaths contracts specifically require plans to be in place to assure the quality of contract work (contract quality plans). One requirement of these plans is that the contractor must provide a system of internal auditing, by an independent auditor. We note that the independent auditor used by John Fillmore Contracting Limited for the 2004-09 footpaths contracts was T.P Civil Limited.
- 2.65 The audits required by the contract quality plans are performed on a sample basis and are required to cover at least 10% of each work category by quantity. Their aim is "... to verify work types/scheduling, quantities claimed, compliance with specifications ..."
- 2.66 Reports on the audits are required to be made available to the Council monthly, along with the claims for payment, to provide a basis for assurance over the Council's payments to contractors. Where an audit report is not provided with the claim then the Council is entitled to withhold payment until this is received.
- 2.67 The contract quality plans recognise the practical issue of allowing sufficient time to complete audits after each month-end, in the context of meeting the Council's timetable for making payments. The plans note that the audits will be "... one month in arrears to provide sufficient time to complete the audit after works have been completed."

Timeline of main changes in the Council's approach to footpaths work and other matters relevant to our inquiry

- 2.68 Figure 3 summarises the timing of the main changes that the Council made to its approach to footpaths work. It also shows the timing of matters that were the subject of allegations being raised when we started our inquiry. The two main allegations were:
- **Measurements:** It was alleged that the Council had paid too much for footpaths work in 2005/06 because some measurements of completed footpaths work were over-stated.
 - **Probity:** It was alleged that the conduct of a Council staff member, who accepted a gift from a tenderer, had compromised the integrity of the Council's procurement of footpaths work in 2009.

Figure 3
Timeline of main changes in the Council's approach to footpaths work and matters arising



Part 3

Integrity of procurement and contract approval procedures

- 3.1 Various allegations were made publicly that the Council had mismanaged the tendering and awarding of its footpaths contracts. One allegation of a probity nature was that an individual staff member had compromised the integrity of the Council's procurement process by accepting a gift of a Christmas ham from a tenderer during the process of awarding the current footpaths contracts (starting from 1 July 2009).
- 3.2 Given the nature of the allegations, we decided to look in depth at the Council's procurement and contract approval procedures. We reviewed the procurement process leading up to the Council's decision to award three separate sets of footpaths contracts – for both of the current contracts and the two preceding sets of contracts. We wanted to establish whether there was any indications of wrongdoing during procurement and, if so, to what extent.
- 3.3 We also wanted to see whether the Council had procurement procedures that would limit the potential impact of any wrongdoing, and that the Council properly followed these procedures for its footpaths contracts.
- 3.4 Allegations were also made publicly that the Council had paid too much for footpaths work in 2005/06. Given these allegations, which we also address in Part 4, we wanted to see that spending on footpaths work properly followed the Council's approval procedures.

What we looked at

- 3.5 In this Part, we discuss how the Council applied its procurement procedures leading up to the awarding of three sets of footpaths contracts, and, where applicable, the Council's decisions to extend existing contracts or significantly increase their contract values. The three contract periods we assessed in detail were:
- 1 July 2001 to 30 June 2004;
 - 1 July 2004 to 30 June 2009; and
 - 1 July 2009 and beyond.
- 3.6 We also discuss whether the Council properly applied its procedures for probity auditing to provide assurance over the procurement process for its footpaths contracts.

Our overall conclusions

- 3.7 The Council's procurement and approval procedures require that, for contracts as large as the footpaths contracts, the work must be subject to tender or request for proposal, and tenders must be accepted by resolution of the Council before contracts are awarded.
- 3.8 Generally, the Council followed its procedures and applied them in a sufficiently robust way leading up to the award of footpaths contracts from 2001 to 2009. It also generally followed its approval procedures for extending and changing the value of contracts during this time.
- 3.9 Overall, we did not find a fundamental flaw or gap in the Council's procurement and contract approval procedures.
- 3.10 However, we did find areas where the Council's administration of contracts and monitoring of budgets needs to be tightened to ensure that councillors are fully informed when approving contract values.
- 3.11 We consider that Council staff should ensure that they provide councillors with more accurate information about cumulative expenditure and values during the process of approving contract values.

Procedures for contracts from 1 July 2001 to 30 June 2004

- 3.12 From 1 July 2001 to 30 June 2004, the Council's city footpaths work was covered by two geographic contracts for a fixed three-year term. These contracts resulted from reorganising the Council's footpaths work from three previous geographic areas¹⁴ into two new ones, and were for citywide footpaths and car-park maintenance works, including asset renewals.
- 3.13 A report by Council staff dated 5 June 2001 made a recommendation for awarding the two contracts. The report noted that the Council's use of longer-term contracts (for the previous three years) had resulted in cost savings, and that the rationalisation of contracts from three to two years would result in improved planning and co-ordination of the footpaths work.
- 3.14 On 13 June 2001, the Transport and Roading Committee adopted the Council staff's recommendation.

¹⁴ Two of these earlier contracts were completed by City Contractors Limited, and the third by John Fillmore Contracting Limited.

- 3.15 At its full meeting on 14 June 2001, the Council awarded the two footpaths contracts starting on 1 July 2001 (TARS/00/255 and TARS/00/256)¹⁵ to John Fillmore Contracting Limited.¹⁶
- 3.16 In our view, the Council followed its procedures and applied them as it should have to the footpaths contracts starting from 1 July 2001.

Procedures for contracts from 1 July 2004 to 30 June 2009

- 3.17 From 1 July 2004, the Council's city footpaths work was covered by two contracts for three years, with an option to extend for up to two years.
- 3.18 On 5 May 2004, the Transport Committee adopted the Council staff's recommendation to award the footpaths contracts and the decision was subsequently agreed to by the full Council at its meeting of 27 May 2004.
- 3.19 Both footpaths contracts – TARS/03/348 (Contract 348) and TARS/03/349 (Contract 349)¹⁷ – were awarded to John Fillmore Contracting Limited.¹⁸ The awarding of the contracts reflected an offer by the tenderer to deduct \$100,000 a year from the combined value of the contracts, should both contracts be awarded together.
- 3.20 The Council subsequently decided to take the option to extend both of the contracts for the two additional years.

Significant increase in original contract values

- 3.21 During the 2006/07 financial year, the Council began spending significantly more on its footpaths work than was provided for in the original contract values (see paragraphs 2.7 and 2.20-2.21). This meant that the Council needed to approve significant increases in contract values for that period in keeping with its Delegations Register.
- 3.22 The Council told us that, since 2004, the Transport division had been following a streamlined approval process for situations involving frequent revisions to contract values. This streamlined process was recommended by the Transport division and approved by the previous Assurance Services division. The recommended approach suggested a basis for removing the requirement for increases to contract values to be referred back to the Council, as long as the

15 Covering respectively Avondale/Roskill, Balmoral and Penrose wards; and Western Bays, Hobson, and Eastern Bays wards.

16 These were respectively for the sums of \$8,610,210 and \$5,445,112 (a combined total of \$14.1 million) plus GST.

17 Covering respectively Area 1 – Hobson, Eastern Bays, and Western Bays; and Area 2 – Avondale, Eden-Albert, and Tamaki-Maungakiekie.

18 These were respectively for the sums of \$13,641,840 and \$13,033,050 (a combined total of \$26.7 million) plus GST, plus a CPI cost inflation adjustment as provided for in the contract.

increases were within approved budget. The recommended approach was not formally proposed to or adopted by the Council, but became the practice of the Transport division during this period.

- 3.23 The Transport division's streamlined process was considered inappropriate by the current Risk and Assurance department and accordingly the practice has stopped.
- 3.24 The Council retrospectively approved significant increases in the values of footpaths contracts to account for 2006/07 expenditure on 28 June 2007, at the same time as it agreed to new contract values for the 2007/08 financial year.
- 3.25 The cumulative contract values approved on this basis to the end of 2006/07 totalled \$52.5 million.¹⁹ The approved amount exceeded and therefore covered the cumulative total value of work done in the first three years of the footpaths contracts of \$52.3 million, and cumulative payments of \$51.1 million.²⁰
- 3.26 We are satisfied that the Council had budgeted for the footpaths work. Although there were some uncertainties about the process, the expenditure was in keeping with the Council's intentions and ultimately the Council's approval.

Extending the contracts

- 3.27 In the period leading up to the end of the initial three-year term of the footpaths contracts (up to 30 June 2007), the Council had to decide whether to extend the footpaths contracts for the final two years, and also whether to approve further significant increases in the contract values during these final two years. Because of the financial significance of these decisions, the Council's procedures required both decisions to be made by the full Council.
- 3.28 The Council confirmed extension of the footpaths contracts for both the 2007/08 and 2008/09 financial years (at the same time as extending the Transport division's other main contracts) on 28 June 2007.
- 3.29 The report by Council staff to this meeting noted that:
- By extending these contracts, Council will gain the benefit of the current contract rates, which are market competitive and direct cost savings from a reduced tendering frequency. In addition, the Transport division will achieve alignment of all physical works term contracts and provide a window of opportunity to consider more innovative methods of service delivery, such as an alliance agreement for a third of the isthmus to improve service delivery performance and reduce costs during a five-year term.²¹*

19 \$34.940 million in relation to Contract 348, and \$17.609 million in relation to Contract 349.

20 Contract 348 expenditure slightly exceeds this amount by \$0.2 million, while Contract 349 expenditure is significantly lower.

21 Extension of the Transport division's physical works and professional services term contracts, 19 June 2007.

- 3.30 The report by Council staff also noted that the market was very buoyant at the time and that, should the Council go to the market, rates could be 20% higher than those in the existing footpaths contracts.

Contract extension bypassed committee process

- 3.31 The full Council meeting on 28 June 2007 approved this contract extension without first reporting through the Transport and Urban Linkages Committee, as envisaged by the Council's procedures. The report by Council staff explains that this was because of the timing of the budget proposals for 2007/08, the timing of the market reviews, the sub-committee meeting schedule, and the need to finalise the contractual arrangements by the start of the new financial year.
- 3.32 We consider that, although the Council did not follow its usual procedure of reporting through the committee, this was a reasonable action under the circumstances. The full Council meeting had the authority to make the decision and the elected members were in an informed position to decide the matter.

Notifying the contractor about the contract extension

- 3.33 Council staff notified the contractor on 29 June 2007 about the contract extension, but only in relation to the 2007/08 financial year. The Council has been unable to locate any formal notification to the contractor in relation to the extension of the contract for the 2008/09 financial year.
- 3.34 In our view, it would have been good practice for the Council to have kept a record of any advice informing the contractor about the contract extension.

Further revised contract values based on understated amounts

- 3.35 The Council approved further revised contract values for the footpaths (and other Transport division) contracts for the 2008/09 financial year on 28 August 2008. These revised contract values were anticipated and reflected in the Council's budget for that financial year.
- 3.36 The contract values approved at the 28 August 2008 meeting accounted for cumulative work of \$82.6 million to 30 June 2008.²² This is less than the Council's record of the cumulative total value of work done in the first three years of the footpaths contracts of \$83.7 million (see paragraph 4.10 and Figure 4), and less than the recorded amount of cumulative payments of \$84.9 million (see paragraph 4.23 and Figure 6, extracted from the Council's financial system).

²² Contract 348 – \$58.848 million, and Contract 349 – \$23.755 million.

- 3.37 In our view, therefore, the contract values approved by the Council at its meeting on 28 August 2008 must have been understated by an amount of up to \$2.3 million (that is, Contract 348 payments exceeded the approved amount by \$2 million, while Contract 349 payments exceeded the amount by \$0.3 million). Council staff have told us that the numbers presented to the Council may have excluded certain work completed under the footpaths contracts. However, we have not been provided with a reconciliation that confirms that these exclusions adequately explain the differences. Furthermore, it was not made clear in the Council papers that there were any such exclusions from the numbers.

Our conclusions

- 3.38 Overall, expenditure on footpaths work for 2007/08 and 2008/09 was broadly in line with the Council's budget. The most significant variances from budget were in relation to the separate footpaths work in the CBD.
- 3.39 In our view, the Council generally followed its procedures and applied them as it should have to the footpaths contracts starting from 1 July 2004.
- 3.40 However, some of the information provided by Council staff to councillors about contract values and expenditure for which approval was being sought was incorrect. Although this was not desirable for the purposes of making decisions to approve contract values, the differences were not significant and the overall expenditure was broadly in line with the Council's budget provisions and therefore the Council's intentions.

Recommendation 1

We recommend that Auckland City Council improve its process for approving contract values, including reconciliation of cumulative expenditure and contract values to better support the process.

Procedures for contracts from 1 July 2009

- 3.41 From 1 July 2009, the Council's city footpaths work is covered by two contracts for a period of two years, with the option to extend for up to a further three years. These contracts cover two geographic areas. These areas are currently smaller than those covered by the previous contracts, because footpaths work for a third of the isthmus is now dealt with under the Council's alliance agreement.

Transport Committee's recommendations

- 3.42 An extraordinary Transport Committee meeting on 25 March 2009 considered recommendations to the full Council about the approval of all of the Transport division's new term contracts. There were 10 contracts in all; two were for footpaths work.
- 3.43 The Council adopted the Transport Committee's report²³ at the full Council meeting on 26 March 2009, and noted:
- A. *That in order to allow the Transport Committee the opportunity to familiarise itself with material presented and to ensure probity, the awarding of ... (8 of the 10 contracts) ... be deferred to a meeting of the Transport Committee (if necessary a special meeting to be called).*
 - B. *That the Council delegates authority to approve the awarding of ... (the 8 contracts) ... to the Transport Committee in order for the contracts to be implemented on 1 July 2009.*
 - C. *That the council defer making a decision on ... (the two footpaths contracts) ... until the 23 April Council meeting.*
 - D. *That the Chief Executive be requested to provide a report and recommendation to a meeting of the Transport Committee and Council that gives assurance as to the probity of all contracts regarding the approval and awarding of ... (these) ... contracts.*

Consideration by the full Council

- 3.44 The Council deferred making a decision at the 26 March 2009 full Council meeting, to allow additional time to consider a number of allegations that were being raised about the Council's footpaths work.
- 3.45 At the full Council meeting on 23 April 2009, the Chief Executive's report requested by the 26 March meeting was tabled and provided the assurances that the meeting had sought.
- 3.46 A memo from the Chair of the Transport Committee was tabled. The memo's intended purpose was to give members a full update on the process for the proposed awarding of the footpaths contracts, and to support the recommendations of the Chief Executive. A number of documents were attached to the memo; they related to various allegations about the Council's footpaths work. The documents included "... a list of ... answers to [a journalist's] questions ... for your information and to ensure you are all aware and informed ..."

²³ Report No. 1/2009 relating to the Supplier Recommendations Report for 10 asset maintenance and renewal term contracts, street lighting design, and planning.

- 3.47 The Council meeting also noted that it was now satisfied for the awarding of contracts to proceed in the circumstances. The minutes of the meeting note that:
- (i) *... in order to procure services that are essential for maintaining and improving a safe and effective footpaths network in Auckland City, a comprehensive, competitive tender process to obtain best value for Auckland City ratepayers has been undertaken.*
 - (ii) *The excellent financial results achieved for council's ratepayers as a result of this tender process, generating substantial multi year savings, together with the maintenance of high standards of customer service in the way footpaths work is undertaken.*
 - (iii) *That in view of various allegations made about the procurement process, and given the council's commitment to high standards of probity, council's Risk and Assurance manager obtained an independent audit of the procurement process ... and that the outcome of the review ... is that the process in arriving at the preferred tenderers has achieved suitable standards of probity.*
 - (iv) *That the Chief Executive will continue to investigate any current or future allegations relating to the council's procurement processes in accordance with normal practice with appropriate reporting to relevant council committees, and further notes the Chief Executive's assurance that none of the investigations of allegations made to date have any impact on the probity of the process leading to the recommendation regarding the footpaths contract.*
 - (v) *That the Chief Executive's undertaking that the suggestions made ... for further improvement for council's procurement process will be incorporated into the council's business rules.*

- 3.48 The full Council meeting on 23 April 2009 awarded the two footpaths contracts (PW/08/589 and PW/08/591)²⁴ to John Fillmore Contracting Limited.²⁵

Our conclusions

- 3.49 In our view, the Council followed its procurement procedures and applied them in a sufficiently robust way. We are also satisfied that the Council had an appropriate basis for deciding to proceed with awarding of the footpaths contracts.

²⁴ Covering respectively the southern and eastern area of the isthmus.

²⁵ These were respectively for the sums of \$8,018,500 and \$11,753,400 plus GST on the basis that both contracts are awarded, and with a 10% allowance for cost fluctuations, unforeseen circumstances, and minor works (a combined value of \$19.8 million).

Use of probity auditing as part of the procurement process

- 3.50 In assessing the probity of the Council's procurement procedures for footpaths work, we considered the Council's use of probity auditing, particularly for the contracts starting from 1 July 2009.
- 3.51 A probity audit is a procedure designed to assure high standards of probity throughout a tendering process. The probity auditor generally carries out the role as the tender process proceeds (real-time).

Council procedures for probity auditing

- 3.52 The Council's current Procurement Manual requires that:
- A probity auditor should be appointed at the start of the procurement and noted in the procurement plan ... A probity auditor is required for all procurements exceeding \$4m, or high/very high risk and unique or unusual procurements or if there is significant potential for the process to be challenged.*
- 3.53 Under the Council's procedures, the conduct of a probity audit, properly documented in the relevant procurement plan and the probity audit scope, is a consideration in the classification of risk (the probity audit contributes to mitigating risk) for continuing contracts and the delegation levels that apply to them. However, major contracts of the size of the Council's footpaths contracts required the highest level of approval by the full Council, regardless of whether a probity audit was carried out.

Probity auditing for footpaths contracts starting from 1 July 2001 and 1 July 2004

- 3.54 The report by Council staff supporting the Council's decision to award the footpaths contracts starting in 2001 also confirms that probity reviews were used during this procurement.
- 3.55 Although not required under the Council's procedures at the time, probity reviews were carried out by the Council's Risk and Assurance department for the procurement that led to the award of the two contracts starting on 1 July 2004. These reviews are referred to in the reports by Council staff recommending that the Council award the contracts. The probity reviews also confirm that the procurement plan was complied with and that all probity requirements had been met.

Probity auditing for the contracts from 2009

- 3.56 The requirement to appoint a probity auditor did not apply to the footpaths contracts that started on 1 July 2009 because the procurement process for these contracts had already begun before the new procedures in the Procurement Manual applied.
- 3.57 The Council did not appoint a real-time probity auditor during the procurement process for the footpaths contracts starting on 1 July 2009. However, the Council did engage an external probity auditor to check that the correct process had been followed before it awarded the contracts. This action was in response to allegations about a lack of probity that were raised around this time.
- 3.58 The probity auditor reported on 24 March 2009, and the Council noted the probity auditor's conclusion when it finally awarded the 2009 footpaths contracts.
- 3.59 The Council also appointed the same probity auditor to carry out due diligence for a range of proposed Transport division procurements, including the procurement process leading to the award of the 2009 footpaths contracts. The Council believes this work neutralised any potential benefit that would have been achieved by a real-time probity audit.
- 3.60 The Council's procedures applicable to the contracts starting in 2009 do not require the Council to conduct probity reviews for major procurements. However, the Council procedures do make it mandatory for Council staff to consider using a probity audit.
- 3.61 For the 2009 procurement, the procurement plan confirms that such consideration took place and that the probity audit would be limited to the Risk and Assurance department attending the opening of tenders. This is also a core requirement of the Council's Delegations Register.

Our conclusions

- 3.62 In our view, the Council took a reasonable approach by not appointing a real-time probity auditor for the footpaths contracts starting in 2009, as it had done for its earlier footpaths procurement process. The requirement to do so was not in place at the time, and the Council took appropriate steps to ensure that the procurement process was carried out properly.

Part 4

Management of the two 2004-09 footpaths contracts

4.1 Allegations were made that the Council had spent too much on footpaths work completed in 2005/06. Given these allegations, which we also address in Part 3, we decided to review all payments made by the Council under the two 2004-09 footpaths contracts.

4.2 We wanted to see whether the Council had an effective process in place to ensure that payments made under the two 2004-09 footpaths contracts were appropriate and that the Council had followed the process.

What we looked at

4.3 In this Part, we discuss:

- overall expenditure on the two 2004-09 footpaths contracts;
- the stopping of red footpaths work in 2004;
- payments made under the two 2004-09 footpaths contracts;
- the Council's contract claims and payment process and how they were applied;
- whether the Council paid too much for footpaths work in 2005/06;
- the current status of payments for the two 2004-09 footpaths contracts; and
- changes to the Council's contract claims and payments process.

Overall conclusions

4.4 In general, we found that the Council had adequate contract claims and payment procedures in place and followed them.

4.5 However, we did find that there was some uncertainty, and different views, about what were the relevant procedures that should have applied to payments at different times throughout the duration of the two 2004-09 footpaths contracts.

4.6 We also found mixed practice in how the Council's procedures were applied and how they were administered, particularly in the way that documents relating to the contracts were completed and filed. This could partly reflect the historical nature of many of these documents and changes in personnel.

4.7 We have made recommendations for the Council to improve its administration of footpaths contracts in some areas.

4.8 In response to allegations that it had paid too much for footpaths work in 2005/06, the Council remeasured the work that had been claimed for payment by the contractor. The work was later measured again and showed that the original measurements were correct within acceptable tolerances.

- 4.9 Overall, we are satisfied that the Council had a reasonable basis for the measurements it used to make payments under the 2004-09 footpaths contracts. We are satisfied that any over-payments were within acceptable amounts.

Expenditure on footpaths work under the Council's two 2004-09 footpaths contracts

- 4.10 We looked in detail at the Council's expenditure on footpaths work for the five-year period covered by the two 2004-09 footpaths contracts. Figure 4 summarises expenditure by the cost of each major component of footpaths work in each financial year from 1 July 2004 to 30 June 2009.

Figure 4

Summary of expenditure on major components of work completed under the 2004-09 footpaths contracts

	2004/05 \$million	2005/06 \$million	2006/07 \$million	2007/08 \$million	2008/09 \$million
Footpaths and vehicles crossings	5.7	6.8	21.9	18.8	13.2
Kerbs and channels	1.0	0.6	3.7	6.1	3.5
Service covers	0.4	0.4	1.7	1.3	1.0
Bluestone removal	0.1	0.1	1.2	1.8	0.9
Overhead and underground	0.2	1.7	0.7	0.0	0.0
New berm	0.2	0.3	1.2	1.9	1.5
Other work	1.6	1.3	1.5	1.5	2.2
Total expenditure (\$106.0 million)	9.2	11.2	31.9	31.4	22.3
Cumulative expenditure	9.2	20.4	52.3	83.7	106.0

- 4.11 Figure 4 is based on a combination of information from monthly contract claims and the Council's FAMM database, compiled for the Council by Opus International Consultants Limited.
- 4.12 By comparing this information with the actual payments made under the two 2004-09 footpaths contracts, we have noted differences (that is, the data used to produce the summary in Figure 4 totals \$106 million and the total actual payments shown in Figure 6 total \$105.7 million). We consider that the differences could reflect incorrect data in the Council's asset databases.

- 4.13 In our view, the Council needs to be satisfied that only correct information about completed work is recorded in its asset databases. If the Council records information about partially completed work or incorrect information and relies on it later, the Council risks making poor decisions related to managing its assets. To ensure that the information is correct before it is entered into the asset databases, we consider that the Council should consider improving its process for reconciling the relevant information.
-

Recommendation 2

We recommend that Auckland City Council reconcile information about completed footpaths work with financial information about payments for the work, before recording the information in asset databases.

Footpaths and vehicles crossings expenditure

- 4.14 The major costs under the 2004-09 footpaths contracts were for footpaths and vehicle crossings. Significant work on kerbs and channels was also completed under the 2004-09 footpaths contracts, particularly in the contracts' later years.
- 4.15 The Council's work on kerbs and channels is usually dealt with under its roading contracts, although it can be done as part of footpaths work. At times, work to renew footpaths involved replacing kerbs and channels, and it was more efficient and expedient to do this under the footpaths contracts. In this situation, the work to replace kerbs and channels overlapped with the footpaths renewals. The contractor claimed, and received, the appropriate rates for the kerb and channel work and the footpaths work, without adjustment to reflect the overlap area. We discuss this overlap further in paragraphs 4.72-4.74 and 5.28-5.36.

Figure 5
Major elements of the footpaths and vehicle crossings component of expenditure (shown in Figure 4)

	2004/05 \$million	2005/06 \$million	2006/07 \$million	2007/08 \$million	2008/09 \$million
Red oxide exposed footpaths	1.1	0.0	0.0	0.0	0.0
Black oxide exposed footpaths	1.9	3.9	11.9	9.6	6.5
Residential vehicle crossings	2.3	2.5	9.1	8.4	6.2
Other work	0.4	0.4	0.9	0.8	0.5
Total cost of footpaths and vehicles crossings (\$66.4m)	5.7	6.8	21.9	18.8	13.2
	square metres	square metres	square metres	square metres	square metres
Quantity of footpaths and vehicle crossings (Total 882,096 square metres)	85,763	97,918	291,015	244,902	162,498
	\$/sq metre	\$/sq metre	\$/sq metre	\$/sq metre	\$/sq metre
Average cost of footpaths and vehicle crossings* (Overall average = \$75/square metre)	66	69	75	77	81

* Average costs depend on work mix, and do not necessarily equate to specific contract rates.

Red footpaths work stopped in 2004

- 4.16 We understand that the Council stopped using red oxide for footpaths work in November 2004 after a personal complaint by a Council staff member. The complaint highlighted that it was difficult to achieve the appropriate standard and consistency of finish required by the recently revised Footpaths Policy, when using red oxide.
- 4.17 The complaint caused all work on red chip footpaths to be immediately stopped and prompted Council staff to reconsider the Footpaths Policy. Changing the policy formally took 21 months, although the change that was eventually ratified (to use black oxide for all footpaths work) was applied in practice immediately following the complaint.
- 4.18 Footpaths work under one of the Council's two footpaths contracts (Contract 348, covering the area where the complaint had arisen) was temporarily suspended.

The contractor was stood down between 19-26 November while the footpaths work was rescheduled to footpaths work designated as black chip.

- 4.19 The Council told us that its rescheduled work was able to be accommodated within the Council's approach to prioritisation and equitable distribution of footpaths work across the city.

Compensation paid to contractor

- 4.20 The Council paid compensation of \$118,150 to the contractor for temporarily suspending footpaths work while the footpaths work was rescheduled.

Changes to the Footpaths Policy were not made in a timely way

- 4.21 The Council has told us that, once it became clear that a quick solution to the problem could not be found, it should have formally reconsidered its Footpaths Policy, and that it should have revised its Footpaths Policy in a more timely way.
- 4.22 We agree. In our view, the problem identified with the application of the Council's recently revised Footpaths Policy in November 2004 should have been identified earlier, and dealt with in a more timely way.

Payments made under the two 2004-09 footpaths contracts

- 4.23 We have prepared a summary of the monthly payments²⁶ to the contractor under the two footpaths contracts starting on 1 July 2004.²⁷

²⁶ Based on gross payments, netted down for GST, to reflect the underlying work being paid for.

²⁷ Source: The Council's financial system; excluding an additional \$5.140 million paid to John Fillmore Contracting Limited in relation to Queen Street work during the five-year period, and \$0.009 million in relation to Newmarket.

Figure 6

Summary of payments made to the contractor under the two 2004-09 footpaths contracts

Contract	Original budget \$m	2004/05 actual \$m	2005/06 actual \$m	2006/07 actual \$m	2007/08 actual \$m	2008/09 actual \$m	Total paid \$m
348	13.7	4.9	5.8	24.4	25.7	14.9	75.7
349	13.0	4.7	5.8	5.5	8.1	5.9	30.0
Total	26.7	9.6	11.6	29.9	33.8	20.8	105.7
Cumulative payments		9.6	21.2	51.1	84.9	105.7	

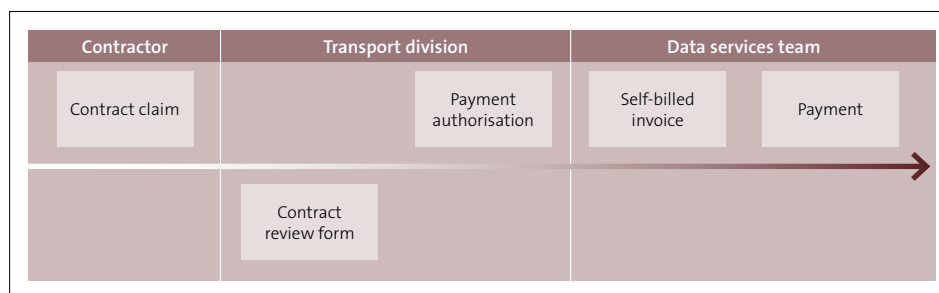
- 4.24 The Council typically made one payment under each contract each month. The main monthly payment covers work done by the contractor in the previous month. In some months, no payments were made because no work was done in the previous month. In some months, more than one payment was made to cover additional matters such as administration charges and escalation costs.
- 4.25 A breakdown of the monthly payments made under Contracts 348 and 349 is provided in Appendix 2 (2004-09) and Appendix 3 (2005/06).
- 4.26 As a result of the Council's 2006/07 TAMP (see paragraphs 2.7 and 2.20-2.21), the Council significantly increased the amount of footpaths work during the course of the 2004-09 footpaths contracts and, therefore, needed to significantly increase contract values to accommodate higher levels of expenditure. The Council approved these higher contract values (see paragraphs 3.21-3.26).

The Council's contract claims and payment process

- 4.27 For each of the Council's payments to the contractor under the footpaths contracts, we checked to see that payment was supported by documentation, and authorised in compliance with the Council's relevant procedures.

Figure 7

Overview of the monthly contract claims and payment process



- 4.28 The Council's monthly contract procedures include a focus on two matters:
- paying the contractor appropriate amounts for work done, based on payment authorisations; and
 - confirming a number of matters relating to the monthly contract claims, based on contract review forms.
- 4.29 The Council requires designated staff to sign payment authorisations and contract review forms to confirm that the relevant steps have been followed during the authorisation process.

Use of job tracking forms

- 4.30 The Council's job tracking form (see paragraph 2.48) provides a basis for summarising the physical measurement of footpaths work planned and completed, as required by the footpaths contracts. Such information is needed by the Council in a way that is consistent with the Council's asset databases.
- 4.31 The Council did not retain job tracking forms in a significant number of months during the period covered by our inquiry. Council staff told us that this was because there was no need to do so, once the process of checking the contractor's claims for payment, and of inputting the relevant works data into the Council's systems, was complete. This process of checking involved sighting evidence of approval and signature of the contract review form and the payment authorisations. In our view, the Council should have retained these documents.

How the contract claims and payment process was applied

Mixed practices relating to payment procedures, documents, and contract files

- 4.32 Generally, we found mixed practices in completion of the documentation and the way it was filed. While in many instances documents that we wanted to look at were located, they were not always readily accessible. This theme is consistent with the findings of some of the reviews carried out by the Council's Risk and Assurance department, and with the findings from other external reviews commissioned by the Council.
- 4.33 We consider that there have been times when the Council's procedures were uncertain, and there were different views about what were the relevant procedures that should have applied to expenditure and payments. In one sense this was not surprising because we have looked at a five-year period and there has been significant change in procedures and personnel during that time. We note that the Council has been evolving and improving its procedures relating to footpaths contracts in more recent times.

- 4.34 We were not given a clear definition of what the various signatures on the payment authorisations and the contract review forms were intended to represent, nor how the two forms related to each other (for example, authorisation or confirmation that data had been checked). From our discussions with Council staff, it was clear that there were different views on what the signatures represented.
- 4.35 The Transport division has produced guidance on its current procedures, and makes these available to staff online through its Transport manual. However, the Council has been unable to locate complete policies or guidance that would have applied to its footpaths work during the earlier periods covered by our inquiry.

Review of contract files

- 4.36 For each month of the five-year period of the footpaths contracts, we generally saw evidence that Council staff had reviewed contract files. This evidence included the relevant signatures of at least three staff members on each contract review form.
- 4.37 Up to 2007, where the monthly value of work was in excess of an amount specified on the contract review form (\$400,000 or \$600,000), an additional Council staff member (usually a Group Manager) signed. The Council has been unable to identify the source of these financial limits that were applied in practice before 2007. From 2007 onwards, the contract review form was changed to remove the specified financial limits.

Monthly payment queries

- 4.38 From our discussions with staff and former staff, we are aware that the Council's monthly payment processes and timetable creates pressure to defer the full resolution of any issues until following payment periods. We have also noted above that audits under the contract quality plans (see paragraphs 2.64-2.67) are effectively one month in arrears.
- 4.39 On the monthly claim files we reviewed, we found evidence that claims for payment by the contractor were being scrutinised by the Council's staff before being finalised. In particular, we noted that amounts were being queried and, in some instances, withheld from some of the Council's payments, or paid subject to subsequent clarification with the contractor.
- 4.40 The documentation in the claim files, including the files for subsequent months, did not always provide information about the ultimate resolution of these matters. Nor did the monthly sign-offs require confirmation from staff that such issues from previous months had been satisfactorily resolved.

- 4.41 The individual queried items that we noted on the contract claim files have been provided to the Council.

Our conclusions

- 4.42 In summary, the Council had substantial records to support payments made under the 2004-09 footpaths contracts, although the documents were not in all cases readily accessible. We also found significant evidence of procedures being applied and the involvement of a wide range of Council staff in this.
- 4.43 There were no fundamental flaws or gaps in the Council's contract management process. However, there were areas where the Council could generally improve consistency of practice. In particular, the Council needs to improve how it records queries being raised during monthly reviews of contract claims, and the resolution of these queries.

Recommendation 3

We recommend that Auckland City Council improve the way it documents the raising and resolving of queries that arise during monthly reviews of contract claim files.

Comparison of cumulative payments and values

- 4.44 We compared the Council's record of the cumulative values of work done, as reflected on its progress payment schedules, with the actual cumulative payments.
- 4.45 We note that the Council's progress payment schedules and the contractor's cumulative claims for payment were in agreement, but that both differed by \$1.4 million from the actual total cumulative payments made under the footpaths contracts at the end of the 2004-09 period.²⁸
- 4.46 We also noted a difference of \$2 million within the Council's month-60 progress payment schedule, between total cumulative payments (paid and claimed, including month 60) under the footpaths contracts and the total contract sums.²⁹ As month-60 is the last month of the five-year period of the 2004-09 footpaths contracts, we would have expected a close alignment between these two numbers.
- 4.47 The Council has advised us that the cumulative numbers in the progress payment schedule are updated manually, and that it is likely that errors were made in these updates in earlier months that remained unidentified and unadjusted.

²⁸ Payments are lower by \$1.4 million in relation to Contract 348, and higher by \$2.8 million in relation to Contract 349.

²⁹ \$1.2 million for Contract 348 and \$0.8 million for Contract 349.

Our conclusions

- 4.48 In our view, the Council should at all times have a clear position on the cumulative value of its contracts and related expenditure.
- 4.49 We have also noted in Part 3 that Council staff did not provide accurate information about cumulative values to councillors when seeking contract approvals. Although this is not good practice, we are satisfied that the matter is of an administrative nature that did not pose a major risk and would not have led to serious consequences. It could be remedied by reconciling relevant sets of information.

Recommendation 4

We recommend that Auckland City Council regularly reconcile cumulative amounts (both expenditure and contract values) for footpaths contracts, and clearly record the position agreed with the contractor in contract and financial documents.

Did the Council pay too much for footpaths work in 2005/06?

Allegations about measurements for footpaths work

- 4.50 We looked into an allegation that the Council paid too much for footpaths work because the measurements were over-stated in certain claims for payment.
- 4.51 Questions about this matter first arose internally during the 2005/06 financial year, the second year of the 2004-09 footpaths contracts.
- 4.52 The internal questions were raised by a newly appointed Contract Manager who joined the Council just before June 2005, and continued to be raised until he left the Council in June 2006. These questions surfaced publicly in later years. They related to whether the measurements underpinning payments by the Council were over-stated and, therefore, whether the payments made by the Council exceeded the value of the physical work completed by the contractor.
- 4.53 The contractor provides the Council with measurements of the footpaths work completed to support the monthly claims for payment. These measurements are fundamental in determining how much the Council pays the contractor, as the payment rates that are specified in the footpaths contracts are applied automatically to the measurements submitted with the claim.

Evidence of contract reviews

- 4.54 We decided to look in detail at the payments made under the 2004-09 footpaths contracts from May 2005 to July 2006 (the period of employment of the Contract Manager who raised questions about the measurements).
- 4.55 As discussed in paragraphs 4.36-4.37, we saw evidence that contract review forms had been completed for the whole five-year period covered by the 2004-09 footpaths contracts, including this narrower period. We also looked at the individual payments in each month from May 2005 to July 2006, and the payment authorisations and documentation that supported them.
- 4.56 For each contract, there was at least one monthly payment during this period, with the exception of July 2005 for Contract 348. In September 2005, two payments were made under Contract 349; the additional payment (of \$112,280) was for escalation costs.
- 4.57 In May 2005, the Council agreed to a contract variation of \$118,150 for Contract 348 to allow for payment of compensation to the contractor. This compensation was the result of the Council temporarily suspending its footpaths work (between 19 and 26 November 2004) while work was rescheduled to footpaths work designated as black chip (see paragraphs 4.16-4.22).
- 4.58 We were originally unable to find all relevant documentation for one payment of \$56,073 for escalation costs made in September 2005 under Contract 348. The documents that we saw initially were those dealing with the payment authorisation. Council staff subsequently found the contract review form, which was misfiled with the documentation for a subsequent month.

Evidence of payment authorisation

- 4.59 As noted above, the Council's procedures at this time did not make clear what the relationship was between payment authorisation and finalisation of the contract review form. It is also unclear how or whether this misfiling reflected the process followed at the time the payment was authorised.
- 4.60 Payments by the Council from May 2005 to July 2006 were recommended for payment by the Contract Manager. In all cases, there were at least two other signatures by Transport division staff on the payment authorisation. Typically, these signatures were from the Contract Services Manager and a Group Manager, and were in addition to the signatures required on the contract review form.
- 4.61 We generally found that the Council's payments were supported by a final version of the spreadsheets, including measurements, prepared by the contractor to

underpin the claims for payment. Some differences were evident (see paragraphs 4.38-4.41).

- 4.62 We also found copies on the Council's files of each month's independent audit report covering the work completed the previous month, in keeping with the contract quality plans. These generally showed that no major issues were raised about measurements.

Remeasurement to check claims

- 4.63 The questions raised by the Contract Manager between June 2005 and June 2006 prompted the Council to devote additional resources to the process of checking the contractor's claims for payment, particularly the measurements of work done.
- 4.64 This Contract Manager arranged the remeasurement of a number of sites and compared the results with the measurements underpinning the contractor's claims for payment. This comparison highlighted significant differences between the two sets of measurements, beyond acceptable tolerances, suggesting that the Council had overpaid for the work completed on the respective sites. The Council notified the contractor about its concerns, and advised that it was reviewing the matter in detail.

Second remeasurement carried out

- 4.65 A process of remeasuring a number of specified sites was initiated that involved the Council's staff and representatives of the contractor, and also drawing on the work of the independent auditor under the contract quality plans. These remeasurements ultimately reconfirmed that the measurements underpinning the contractor's claims for payment by the Council were within acceptable tolerances.

Our conclusions

- 4.66 It is clear from our inquiry that there have been mixed views about the physical measurements of work completed under the Council's footpaths contracts, and about how the Council confirms that physical measurements of work proposed by the contractor provide a reasonable basis for making payments to the contractor.
- 4.67 In our view, the Council had a reasonable basis for being satisfied about the measurements it used to make payments under the 2004-09 footpaths contracts.
- 4.68 However, we consider that the Council needs to keep under review how it verifies measurements for its footpaths work, and the level of resources that it needs to do so effectively.

- 4.69 The level of resources allocated to confirming measurements has been a theme among the concerns raised and the findings of other reviews relating to the Council's footpaths work.
- 4.70 We note that the Council has recently decided to employ a quantity surveyor to assist with procurement and review of contract claims for footpaths work.

Current status of payments for the Council's 2004-09 footpaths contracts

- 4.71 On 30 June 2009, the last day of the Council's 2004-09 footpaths contracts, the financial amounts outstanding were:
- provision for the final month's work for which two payments were made in July 2009 totalling \$1,469,478;³⁰
 - the maximum retentions of \$200,000 for each of the two contracts. Half of these amounts have been released to the contractor since 30 June 2009; and
 - an amount of \$60,734.82,³¹ which was provided for but not paid, because the Council was querying this with the contractor and seeking more information.
- 4.72 In addition, the Council was at that time considering potential recovery from the contractor of money paid in relation to overlapping work on kerbs and channels. This was the subject of a technical review by a Council-appointed consultant. The contractor also submitted a claim for additional payment from the Council after 30 June 2009.
- 4.73 The Council commissioned a second technical review to ascertain the value of its claim relating to work on kerbs and channels, and to assess the contractor's claim for additional payment. The outcome from these two matters – resulting in an overall amount of \$360,971 in favour of the contractor and therefore payable by the Council – is discussed later in this report (see paragraphs 5.28-5.36).
- 4.74 After the Council and the contractor agreed and settled these matters, the only year of the five-year contract for which the final account is outstanding at the time of finalising our inquiry is for the final year ended 30 June 2009.

Our conclusion

- 4.75 We are satisfied that the Council has taken reasonable steps to address and/or recover the appropriate outstanding amounts.

30 Contract 348: \$940,597; Contract 349: \$528,881.

31 Contract 348: \$27,460; Contract 349: \$33,275.

Changes to the Council's contract claims and payment process

- 4.76 While reviewing the contract claim files, we noted that there have been changes in the layout of the documentation supporting the contract payments. In August 2007, the Council introduced a new monthly assurance summary. This specifies, in detail, the steps that Council staff need to complete while reviewing each month's contract claims.
- 4.77 The job tracking form has evolved during the life of the footpaths contracts and has effectively moved online, with shared access for the Council and the contractor, since the Council introduced Primavera (during 2007/08) followed by RAMM Contractor (from 1 July 2009).
- 4.78 In the early years of the footpaths contracts, and before the introduction of the Council's new database systems, the information used to scope and schedule footpaths work was limited, and did not provide a good or consistent basis for monitoring and agreeing the actual physical work completed.
- 4.79 We were also told that in more recent years, and enabled by these new database systems, the Council has been able to more clearly specify the work needed, based on more reliable data and joint site visits with the contractor, before the work is carried out. Furthermore, once the work is carried out, the Council is more easily able to check that the measures of work completed, and subject to claim for payment by the contractor, are in line with expectations and are appropriate.

Our conclusions

- 4.80 In our view, the Council has improved its procedures for managing footpaths contracts and the way that it has applied those procedures during the eight-year period considered by our inquiry.
- 4.81 However, in keeping with most large and complex asset management systems, there are a number of places where the Council can tidy up its administrative processes. In this report, we have made a number of comments and suggestions and four recommendations for improvement.

Part 5

Auckland City Council's response to issues about footpaths work

5.1 In this Part, we discuss:

- how the Council generally identifies and responds to issues;
- how the Council responded to concerns about probity in relation to the footpaths contracts;
- how the Council responded to allegations that it paid too much for footpaths work in 2005/06; and
- how the Council responded to claims about overlapping payments for work on kerbs and channels.

5.2 The Council has had to deal with a range of issues that have arisen about its footpaths work. A number of these issues have been raised as queries in the public domain.

Our overall conclusions

5.3 Generally, the work that the Council has done to investigate various issues relating to its footpaths work has been extensive and reasonable. Overall, we are satisfied with the Council's response to the individual matters raised and have concluded that the overall integrity of the Council's procedures was not undermined.

5.4 However, a number of people we interviewed raised concerns about the lack of integration and consistency between the various ways that issues get raised and dealt with by the various parts of the Council. Accordingly, we consider that the Council may wish to consider how it can address these concerns.

5.5 Some of the allegations raised about the Council's footpaths contracts involved matters of probity. Although we consider that the Council's response to the individual allegations has been reasonable, we nevertheless encourage the Council to continue its efforts to reinforce the importance of maintaining appropriate standards of probity and conduct. This should help to reduce the likelihood of such issues arising in the future.

How the Council generally identifies and responds to issues

5.6 The Council's involvement in footpaths work has been the subject of extensive queries raised both internally and publicly, over and above those that were the immediate focus for our inquiry. As a result, the Council has done extensive work to address the matters raised.

- 5.7 The relevant Council procedures cover:
- media queries and communications;
 - personnel policies, including code of conduct, ethics, conflicts of interest, gifts and inducements;
 - the provisions of the Protected Disclosures Act 2000; and
 - the provisions of the Local Government Information and Meetings Act 1987.
- 5.8 The Council's Risk and Assurance department carries out an annual programme of planned work, and also responds to issues that arise during the year. The department maintains a log of issues, and tracks and records the resolution of these issues. Other parts of the Council have different ways of identifying and tracking the resolution of issues.

How the Council responded to concerns about probity in relation to footpaths contracts

- 5.9 At the time we began our inquiry, concerns were being raised about probity aspects in the context of the imminent award of contracts starting on 1 July 2009.
- 5.10 We discussed the Council's approach to probity audits as part of its procurement process for these footpaths contracts in paragraphs 3.50-3.62.

Results of the Risk and Assurance department's investigations

- 5.11 The Council's Risk and Assurance department has carried out various investigations about matters of probity for the Council's footpaths contracts. Some of these reviews were looking at:
- **Review of compliance with the Council's Media Policy:** This review was carried out in response to extensive media interest in the Council's footpaths work, which led to protracted dealings between Council staff and the media. The review found that Council staff had generally complied with the Council's Media Policy. It suggested some improvements for the Council to make in the way it handles media liaison.
 - **Review of compliance with the Council's policy for communications, ethics, and integrity:** This review considered the actions of key members of the Transport division during the footpaths tender process. It found no evidence of breaches of the code of conduct, partiality with respect to potential suppliers, conflicts of interest, or inappropriate behaviour.
 - **Review of integrity of processes around and control of footpaths contracts:** This review concluded that there was adequate monitoring, management, and control of footpaths contracts (with appropriate vetting around price, quality,

and site safety) and that the Council had appropriate processes for contract payments. It also found that there was no evidence of conflicts of interest for contract managers, unethical behaviour, or inappropriate relationships.

- **Review of allegations of conflicts of interest relating to a Council staff member attending a 2007 Rugby Sevens event:** The review concluded that the staff member attended in a personal capacity.
- **Review of integrity of the tender process for the 2009 footpaths contracts:** This review investigated allegations that a Council staff member involved in the 2009 footpaths contract procurement process attended a Christmas function hosted by John Fillmore Contracting Limited and received a ham. The review considered compliance with Council procedures during the 2009 footpaths contracts tender process, potential conflicts of interest and any effect on tender evaluation, and compliance with the Council's Gifts and Inducements Policy. The review found non-compliance with the Gifts and Inducements Policy, and the matter was subsequently dealt with as a personnel issue. The review noted improvements to be made to the Council's conflicts of interest procedures. However, the review found that the isolated incident had not undermined overall compliance with the Council's procurement procedures.

Independent review of tendering processes for all transport contracts starting from 1 July 2009

- 5.12 The Council commissioned a further review by Christmas Gouwland Limited (referred to in the Chief Executive's report to the Council meeting on 23 April 2009), which was completed in March 2009. This review considered due diligence of transport contracts – process and evaluation of preferred tenderers. This review covered all transport contracts that were being procured starting from 1 July 2009.
- 5.13 The summary findings for this review noted nothing of any concern in relation to any of the preferred tenderers, and that some issues identified in relation to one of the tenderers had been satisfactorily resolved. It also recommended some areas for improvement, which the Council has endorsed.

Our conclusions

- 5.14 We are satisfied with the Council's approach to dealing with the probity concerns raised and with the integrity of the Risk and Assurance department's investigations and the independent review of the tendering process for the 2009 footpaths contracts. We consider that each area that was investigated has been dealt with appropriately.
- 5.15 In our view, the Council's response to these concerns about probity has been adequate, reasonable, and, in many instances, extensive.

How the Council responded to allegations that it paid too much for footpaths work

- 5.16 We have explained in Part 4 how the Council responded to questions about footpaths measurements during 2005/06. In this Part, we discuss the investigations carried out by the Council's Risk and Assurance department.
- 5.17 After the initial questions were raised internally, and the Transport division's allocation of additional resource to checking measures, the Council's Risk and Assurance department became aware of these allegations and carried out initial inquiries into the matter. The Risk and Assurance department concluded that there were no grounds to investigate further as the Transport division had the matter in hand.
- 5.18 We have noted that neither the Contract Manager nor the Transport division raised this matter directly with the Risk and Assurance department at the time, and that the involvement of the Risk and Assurance department was at its own instigation.

Review of the Transport division's investigation

- 5.19 Allegations about over-claimed measurements resurfaced publicly in mid-2007. The Council's Risk and Assurance department investigated the contract payment processes and the Transport division's investigation of the matter raised, concluding that "... the investigation ... did not substantiate any anomalies and ... the matter was satisfactorily concluded ...".³²
- 5.20 The report also noted that:
[The] review was hampered by the lack of documentation on the contract files ... [including] ... meeting minutes ... correspondence ... [and the Transport division's] ... investigative documents not being found ...
- 5.21 The report also noted the following concerns about the Transport division's investigation:
- the length of time taken for the investigation – the investigation effectively continued up to January 2007, the date at which the contractor was formally notified that no further investigation of measurements was being carried out;³³
 - the involvement in the investigation of the contract engineer's representative, rather than an independent person; and
 - the lack of formal documentation.
- 5.22 In carrying out these reviews, the Risk and Assurance department took assurance from the process of auditing included in the contract quality plans, and from the

³² Review into Transport contractor payment processes and TARS investigation into contract claims, 11 May 2007.

³³ This notification was by letter dated 18 January 2007.

Council's payment approval processes. The reviews did not include detailed testing of these processes, and we are satisfied that the Risk and Assurance department had reasonable grounds for not doing so at the time.

- 5.23 We have, nevertheless, considered both these processes in carrying out our inquiry, and have explained them above. We have no problem with how the Council applied these processes overall.
- 5.24 The Council's Risk and Assurance department also reconfirmed its earlier investigations into alleged over-claimed measures in 2009, before the Council finalised its decision about the award of new transport contracts.³⁴

External review findings

- 5.25 This follow-up work by the Risk and Assurance department also referred to a review by Opus International Consultants Limited, carried out for the Transport division.³⁵ This review considered the documents relating to the progress claims investigation by the Transport division between 2005 and 2007. It notes that, despite missing documentation, "... there is sufficient information available to enable ... a definitive opinion ...".
- 5.26 The consultant's review also endorsed the findings of the 2007 Risk and Assurance department's report and concluded as follows:
- In summary, the matter, while not being handled in an entirely professional manner, was resolved adequately according to my reading of the information available. The different footpaths measurement audits carried out by ACC staff, JFC and TP Civil were all within allowable tolerances and sufficiently independent of each other. Based on said audits the initial anomalies raised were unable to be substantiated. I feel that ACC could have better managed the investigation (particularly with respect to communication with JFC). However these internal operational issues did not alter the ultimate outcome, which in my opinion was the only logical one based on the evidence presented.*
- 5.27 In our view, the Council's response to these matters has been reasonable and we are satisfied with the conduct and findings of the various investigations and reviews.

³⁴ Transport Media Inquiries in relation to an alleged overpayment on footpaths contracts TARS/04/348 and TARS/04/349, 4 May 2009.

³⁵ Opus International Consultants Limited, TARS investigation into contractor claim for footpaths contracts 348 and 349 (2005-2007) – Review of Facts, 30 March 2009.

How the Council responded to allegations about overlapping payments for work on kerbs and channels

- 5.28 On 18 June 2009, a headline in the New Zealand Herald alleged: “City pays twice for some footpaths work”. The allegation was that the Council’s footpaths contracts do not allow for the situation where work on kerbs and channels is done at the same time as work on the adjoining footpath. There is a small area of overlap between these works, and the contractor can claim for the kerb and channel work and the footpath work without adjustment to reflect the overlap area, thereby receiving payment twice for the same work.
- 5.29 In response to this allegation, the Council commissioned an external review. Because this allegation and review arose while we were conducting our inquiry, we agreed with the Council that we would consider the scope and findings from the review to the extent necessary, given the respective areas of focus for the review and our inquiry.

External review findings

- 5.30 The findings from the review were published by the Council on 9 August 2009. The key findings and recommendations from the review were that:
- there is an overlap, resulting in an estimated overpayment by the Council to the contractor of \$140,000, which needed to be further substantiated;
 - the Council was aware of the overlap, but effectively decided not to pursue the matter with the contractor at the time, and this decision was a reasonable commercial decision in the circumstances;
 - the overpayment could nevertheless be pursued by the Council with a view to reaching a fair and reasonable agreement with the contractor, in accordance with the contract. However, this could trigger counter-claims by the contractor, which the Council would need to consider in deciding whether to pursue the matter;
 - the matter should have been resolved earlier, and should be now, by amending the standard engineering details and the rates included in the footpaths contracts, to cover the situation where footpaths work on kerbs and channels and roading work are done at the same time;
 - that the management, administration, and supervision of the Council’s footpaths contracts appears to have been significantly improved during the previous two years; and
 - there were a number of other areas for improvement.

Additional resources

- 5.31 One of the recommendations from this review was that the Council should employ additional resources on its footpaths contracts. This included the use of a specialist quantity surveyor to assist with procurement and with reviewing claims by the contractor, and the greater use of auditing and on-site inspections to identify and resolve issues that arise.
- 5.32 We note that the Council has recently decided to increase its staffing levels for footpaths, through the recruitment of a quantity surveyor. The Council has noted that, with the new contract rates for footpaths effective under the current contracts, there is a higher variation risk. The Council believes that the additional resource will help it to manage this risk.

Second review commissioned

- 5.33 After the external review, the Council decided to pursue the overpayment with the contractor, and the contractor decided to counter-claim against the Council.
- 5.34 The Council later commissioned a second review, to ascertain the value of the Council's claim against the contractor in relation to work on kerbs and channels, and to assess the contractor's counter-claim against the Council.
- 5.35 This second review was finalised on 12 October 2009. The Council proceeded to negotiate and agree a settlement with the contractor covering all claims later that month. The final outcome was a payment by the Council of \$360,971 to the contractor. This settlement finalised outstanding contractual matters between the Council and the contractor up to 30 June 2008. The final account for the year ended 30 June 2009 is still to be agreed, and there could be additional claims relating to this final year.

Our conclusion

- 5.36 In our view, the Council's response to these matters has been reasonable and it has taken sensible steps to further improve its management of footpaths work.

Appendix 1

Our terms of reference

Inquiry into Auckland City Council's management of footpaths contracts

10 June 2009

The Auditor-General has decided to carry out an inquiry into the management by Auckland City Council (the Council) of contracts to build and maintain footpaths. This document sets out the terms of reference for the inquiry.

Background

On 4 May 2009, the Council wrote to the Auditor-General asking him to investigate how the Council entered into and managed some of its footpaths contracts, and how the Council investigated claims made about Council staff and contractors in relation to those contracts.

Concerns had been raised publicly about:

- the integrity of the Council's processes for tendering footpaths contracts;
- alleged overpayments on an earlier footpaths contract; and
- the adequacy of the Council's investigation of these matters.

The inquiry

The inquiry will be conducted under sections 16(1) and 18(1) of the Public Audit Act 2001. The inquiry will examine aspects of:

- the tendering processes that led to the relevant footpaths contracts being awarded;
- the processes for managing those contracts, including payments made under them; and
- the internal investigations and reviews already carried out by the Council in relation to these contracts.

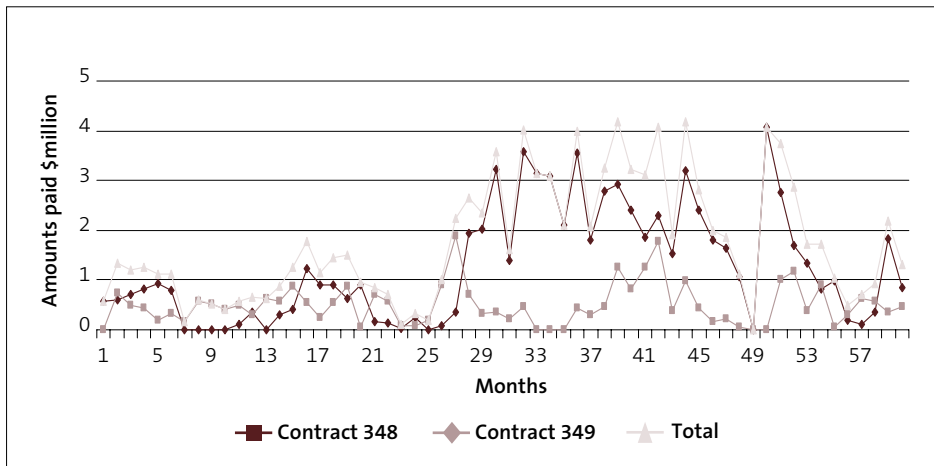
The inquiry will also consider any other matters that the Auditor-General considers it desirable to report on.

The Auditor-General will decide on the appropriate manner in which to report the findings once the inquiry has been completed.

Appendix 2

Monthly payments under Contracts 348 and 349, from 1 July 2004 to 30 June 2009

The graph below shows the monthly payments under Contracts 348 and 349 from 1 July 2004 to 30 June 2009.



Appendix 3

Monthly payments under Contracts 348 and 349, between May 2005 and July 2006

The graph below shows the monthly payments under Contracts 348 and 349 between May 2005 and July 2006.

