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## **ROAD STOPPING AND ACQUISITION – LEGAL ROAD ADJOINING 1 FRANKLYN ROAD, TAWA**

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### **1. Purpose of report**

The purpose of this report is to 1. Obtain agreement that approximately 135 m<sup>2</sup> of Council owned unformed legal road land adjoining 1 Franklyn Road, Tawa, Wellington (the Land), is no longer required for Council's operational requirements and 2. To authorise officers to proceed with the offer back investigations and eventual road stopping and sale, and 3. Obtain agreement to acquire approximately 18 m<sup>2</sup> of land from the same property to be vested in Council as road.

Refer Appendix 1 for an aerial plan with the Land proposed to be stopped and sold shaded blue, and the land proposed to be acquired shown shaded red.

### **2. Executive summary**

The key question for Council is whether the road land is surplus to requirements for a public work, and if so, whether it will support commencement of the road stopping procedures under the Local Government Act 1974 (LGA).

An application has been made to Council by the owners of 1 Franklyn Road, Tawa, to stop a portion of unformed legal road adjoining their property in Franklyn Road. The owners currently have use of the land under an encroachment licence. They have no plans to seek subdivision and have made their road stopping application to give them security of ownership.

Internal business units and external service authorities have been consulted. All support the disposal with Road and Traffic Maintenance proposing that road land in Chester Road also be stopped and sold, and a small area of land on the Chester Road / Franklyn Road / Hampton Hill Road intersection be purchased to assist with future options for improving this intersection.

Parks and Gardens required a conservation covenant to protect vegetation and mature trees that are on the Chester Road land.

The immediate neighbours have been advised, and they along with any other interested party such as the Tawa Progressive and Ratepayers Association will be sent advice and have the opportunity to comment when the full public consultation is carried out later in the process. The Tawa Community Board have endorsed the proposal.

It is proposed that the area of unformed legal road land proposed to be stopped will be sold, and the area on the Chester Road / Franklyn Road / Hampton Hill Road corner will be purchased at current market valuation.

### **3. Recommendations**

Officers recommend that the Regulatory Processes Committee:

1. *Receive the information.*
2. *Recommend that Council:*
  - (a) *Agree that approximately 55 m<sup>2</sup> (subject to survey) of unformed legal road land in Franklyn Road, and approximately 80 m<sup>2</sup> in Chester Road (Road Land) adjoining 1 Franklyn Road (Adjoining Land) are not required for a Public Work.*
  - (b) *Approve the disposal of the Road Land.*
  - (c) *Authorise Council officers to commission a section 40 Public Works Act 1981 (PWA) report from suitably qualified consultants to identify whether the area of unformed legal road land must be offered back to its former owner or their successor, or whether exemptions from offer back applies.*
  - (d) *Delegate to the Chief Executive Officer the power to either offer the Road Land back to its former owner(s) or their successor(s), or to approve the exercise of exemptions from offer back under section 40(2), 40(3), or 40(4) PWA(if appropriate).*
  - (f) *Authorise Council officers to initiate the road stopping process for the Road Land in accordance with Section 342 and the Tenth Schedule of the Local Government Act 1974.*
  - (f) *Delegate to the Chief Executive Officer the power to formally approve the road stopping, and issue the public notice to declare the Road Land stopped as road, subject to all statutory and Council requirements being met with no objections being received.*
  - (g) *Note that if objections are received to the road stopping and the applicant wishes to continue with the road stopping, a further report will be presented to the Committee for consideration.*
  - (h) *If no objections are received during the consultation period then it delegates to the Chief Executive Office the power to negotiate the terms of sale, impose any reasonable covenants, and enter into a sale and purchase agreement in respect of the Road Land, either with the former owner, or their successor, or the owner of 1 Franklyn Road, provided any such agreement is conditional upon the road being stopped.*

- (i) *Agree to the acquisition of approximately 18 m<sup>2</sup> of land currently held in Computer Freehold Register WN551/275, for that land to be vested in the Wellington City Council as road.*
- (j) *Delegate to the Chief Executive Officer the power to negotiate and finalise the terms of the acquisition described in (i) above, and enter into a sale and purchase agreement, by way of exchange.*

#### **4. Background**

Council has received a road stopping application to 'stop' unformed legal road adjoining 1 Franklyn Road, from the owners of the property. The legal description of 1 Franklyn Road, is Lot 238 DP 10265 being held on Computer Freehold Register WN551/275.

The original application concerned approximately 55 m<sup>2</sup> land in Franklyn Road used by the applicants by way of encroachment licence for lawn, garden and driveway. The applicants have said that they have no intention to seek subdivision, but have made the application to give them long term certainty.

Road and Traffic Maintenance further proposed that approximately 80 m<sup>2</sup> road land in Chester Road also be stopped for the purpose of aligning the road boundaries.

Road and Traffic Maintenance also recommended that Council acquire approximately 18 m<sup>2</sup> Chester Road / Franklyn Road / Hampton Hill Road intersection be purchased to assist with future options for improving this intersection.

#### **5. Discussion**

##### **5.1 Consultation and Engagement**

As part of the road stopping process service authorities, internal business units, and immediate neighbours are given an opportunity to provide comments. All internal business units gave their unconditional approval, with the exception of Parks and Gardens who require all trees and vegetation on the Road Land proposed to be stopped in Chester Road be protected. It is therefore proposed that a conservation covenant be registered on the title.

All relevant service authorities have given their consent.

The immediate neighbours have been advised of the proposal, no responses have been received to date. These neighbours will have the opportunity to comment when full public consultation is carried out later in the process. Advice will be sent to the Tawa Progressive and Ratepayers Association at that time.

The Tawa Community Board endorsed this proposal at their meeting held on 14 March 2013.

##### **5.2 Financial considerations**

In August 2011 new cost sharing incentives for road stoppings were approved by Council. The cost sharing incentives mean that some costs paid by applicants in

the past are now deducted. In this case the value of the land proposed to be sold will be more than \$15,000, so the deduction will be the lesser of actual costs; or an amount calculated as 15 percent of the land value plus \$500; up to a maximum deduction of \$12,500. The amount of the deduction will be determined at the end of the road stopping process when all of the costs are known.

### **5.3 *Climate change impacts and considerations***

There are no climate change impacts.

### **5.4 *Long-term plan considerations***

This proposed road stopping has no overall impact on the LTP.

## **6. Conclusion**

Officers believe that approximately 55 m<sup>2</sup> (subject to survey) of unformed legal road land in Franklyn Road, and approximately 80 m<sup>2</sup> in Chester Road are no longer needed for Council's operational requirements and should be declared surplus, stopped and sold to the adjoining owners, and approximately 18 m<sup>2</sup> land on the Chester Road / Franklyn Road / Hampton Hill Road intersection be acquired.

It is therefore recommended that the Regulatory Processes Committee recommends to Council that approximately 135 m<sup>2</sup> of unformed legal road adjoining 1 Franklyn Road be declared surplus, and that officers can proceed to initiate the road stopping procedure, and eventual sale, and that approximately 18 m<sup>2</sup> of land be acquired from 1 Franklyn Road.

Contact Officer: *Paul Davidson, Property Advisor, Property Services*

## SUPPORTING INFORMATION

### 1) Strategic fit / Strategic outcome

*In line with the Council's financial principles, assets that are declared surplus to strategic or operational requirements are sold.*

*The sale of legal road, where surplus to strategic requirements, is mandated under the Council's 2011 Road Encroachment and Sale Policy.*

### 2) LTP/Annual Plan reference and long term financial impact

*Provision for undertaking this work is contained within the overall organisational budget. There are no adverse financial implications imposed on the Council arising from this road stopping proposal. This proposal will benefit the Council in financial terms as the applicant will purchase the stopped road from the Council at market value, and will then pay rates on it in the future.*

### 3) Treaty of Waitangi considerations

*There are no Treaty of Waitangi implications.*

### 4) Decision-making

*This is not a significant decision. This report sets out the Council's options under the relevant legislation and under the Council's 2011 Road Encroachment and Sale Policy.*

### 5) Consultation

#### a) General consultation

*Consultation with the relevant internal business units has been carried out as part of this application. Parks and Gardens have given their consent subject to the existing vegetation and trees on the road land in Chester Road being protected. Service Authorities have been consulted.*

#### b) Consultation with Maori

*Given the size, shape and situation of the road land proposed to be stopped meaning that it would not be able to be a standalone site local IWI have not been consulted with.*

### 6) Legal implications

*There are no significant legal implications arising from this matter. Compliance with the LGA and Section 40 PWA considerations will address relevant issues.*

### 7) Consistency with existing policy

*The recommendations of this report are consistent with WCC policy.*



# APPENDIX 1

