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**REPORT 3**  
(1215/52/IM)

## **OPTIONS TO FACILITATE THE STOPPING AND SALE OF SURPLUS UNFORMED LEGAL ROAD**

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### **1. Purpose of Report**

The Committee is asked to recommend to Council that it agrees a package of measures to facilitate the stopping and sale of surplus unformed legal road, and that this is reflected in a revised Road Encroachment and Sales Policy. The Committee is also asked to agree to consult the public on a proposed leasing option for unformed legal road.

### **2. Executive Summary**

During public consultation on the review of the Road Encroachment and Sale Policy in mid-2010 there was overwhelming support for the Council facilitating the stopping and sale of unformed legal road (often referred to as “road reserve”). There can be significant benefits to both property owners and the Council from such sales.

The stopping process is laid out in legislation. It can be time consuming, uncertain, and expensive. The former Mayor wrote to the Minister of Local Government to explore whether changes could be made to the legislation. The Minister replied that *“due to other priorities, such a review is not part of the Government’s local government policy work programme at this stage.”*

A package of alternative measures is proposed to facilitate road stopping and sales. If agreed, property owners would benefit from having access to a more affordable opportunity to purchase land, which in some cases might be an attractive alternative to renting land under an encroachment licence.

As part of developing this package, officers also identified an opportunity to provide property owners with more enduring tenure of road reserve, without the need to go through a full stopping process. This option is leasing of surface unformed legal road. Officers recommend that the Committee agrees to consult the public on this option.

The key measures in the recommended package are:

- Applying continuous improvement to internal process to reduce time and costs (noting that significant improvements have already been achieved)
- Introducing a cost sharing regime, where the Council carries some of the costs of the road stopping process
- Allowing property owners to lock in land valuations for up to 18 months, subject to final survey
- Consulting on a proposal to allow property owners, at the Council's sole discretion, to lease unformed legal road (the "leasing proposal").

The leasing proposal, if adopted, would require sections to be added to the Road Encroachment and Sale Policy and minor amendments to the consolidated bylaw. No changes are proposed to the recently agreed framework for establishing rental fee rates (that is differentiated fees) for encroachment licences.

At its meeting of 7 April 2011, the Committee agreed to consult, as part of the 2012-2022 Long-term plan process, on a schedule of differentiated fee rates to be phased-in from 1 July 2012. Consultation on the leasing proposal and any associated bylaw changes could be included with this.

It is recommended that the first three measures outlined above be implemented immediately, since they are not significant decisions and are consistent with the overwhelming feedback received from last year's consultation process. Some minor amendments are recommended to the Road Encroachment and Sale Policy to reflect these measures (see appendix 1).

### **3. Recommendations**

Officers recommend that the Strategy and Policy Committee:

1. *Receive the information.*
2. *Agree to a package of initiatives to facilitate stopping and sales of surplus unformed legal road comprising:*
  - (a) *Applying a continuous improvement approach to internal Council processes to reduce processing times and costs where possible;*
  - (b) *Introducing a "cost sharing" regime where:*
    - (i) *prospective buyers have the opportunity to lock in a land valuation early in the road stopping process, and that valuation will be binding on both parties provided the road stopping is completed within 18 months and subject to final survey, though this period could be extended at the Council's*

*discretion where a stopping proposal is referred to the Environment Court;*

- (ii) property owners continue to meet costs as they are incurred, but a proportion of these costs will be deducted from the land valuation in order to establish a final settlement price;*
  - (iii) deductions are 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;*
  - (iv) for transactions below \$15,000 of land value, deductions, if any, would be by agreement between the Council and proponents, but would not exceed the deductions applicable using the formula above.*
- (c) Ensuring that when a proposal for road stopping and purchase is received, surrounding landowners are invited to also consider purchase options, if appropriate.*
- 3. Agree to recommend to Council that it adopts the amendments to the “Road Encroachment and Sale Policy” attached as appendix one to this report, which reflect the package of initiatives described above, and that the revised policy takes effect immediately.*
  - 4. Delegate to the Chief Executive Officer and Transport (public transport and roading) Portfolio leader, the authority to make editorial changes and any changes agreed by the Committee prior to the amendments attached as appendix one being referred to Council.*
  - 5. Agree to recommend to Council that it delegate to the Chief Executive Officer and Transport (public transport and roading) Portfolio leader, the authority to make editorial changes and any changes agreed by Council prior to the revised Road Encroachment and Sale Policy being released.*
  - 6. Note that officers will write to existing encroachment holders reminding them of the potential for road stopping and sale and advising them of the initiatives described above;*
  - 7. Agree to seek public feedback on the following “leasing proposal”:*
    - (a) allowing(at the Council’s sole discretion), property owners to lease unformed legal road, as an alternative to an encroachment licence;*
    - (b) in most instances property owners seeking exclusive private use of unformed legal road would have the option of pursuing either an encroachment licence or lease;*
    - (c) the Council may, at its discretion, decline to offer an encroachment licence and instead offer only a lease. The Council would generally exercise this discretion only where:*

- (i) *property owners propose using unformed legal road to meet any off-street parking requirements of a resource consent. Note that where a licence has previously been issued and a new application is received to use this licence to meet a new resource consent requirement, the Council may terminate the licence and offer only a lease as an alternative;*
  - (ii) *the land in question is of exceptionally high value compared to other unformed legal road land in the relevant suburb;*
- (d) *the duration of leases would be at the discretion of the Council, but would be for less than 35 years;*
  - (e) *the Council would retain the right to terminate leases with six-month's notice and any structures on the land would need to be removable within the 6 month notice period;*
  - (f) *costs incurred by the Council in processing lease applications would be recovered from applicants, with fees set as part of the annual plan or Long-term plan process;*
  - (g) *the fee for the lease would be based on a market valuation of the lease, taking into account any conditions imposed by Council in the lease;*
  - (h) *a one-off fee would be charged covering the lifetime of the lease (noting that the Council may allow payments to be spread over time at its discretion) and no further rental charges would be imposed;*
  - (i) *other lease conditions may be set at the Council's discretion;*
  - (j) *that the Wellington Consolidated Bylaw 2008, Part 5 Public Places, Section 17 "Encroachments" be amended to be consistent with the issuing of encroachment leases.*
9. *Agree that the "leasing proposal" be included in the consultation for setting road encroachment rental fee rates and transition measures, which was agreed by the Strategy and Policy Committee in April 2011 to be included in the 2012-22 Long-term plan process.*

#### **4. Background**

Wellington City Council owns more than 660 kilometres of legal road. For many years the Council has allowed unformed legal road to be used for activities other than roading – provided this does not unreasonably interfere with existing or possible future uses of the legal road. Generally, such uses are 'temporary' and are permitted under an encroachment licence that can be revoked with one month's notice.

In some cases property owners wish to use the land for more permanent uses like dwellings or commercial buildings. It is possible for unformed legal road to be stopped and sold to an adjacent property owner, so that more permanent uses of the land are possible. The Council first needs to be sure that the land will not be required for future public uses.

Where land is surplus there can be a number of advantages from stopping and sale, including:

- making land available for development while enhancing the city's compact nature
- property owners having certainty of tenure, so they may better manage land and any buildings on it
- reduced administration costs compared to licensing – currently about one third of revenue collected from encroachment rentals is needed for administration
- better management of surplus assets.

The process of road stopping is laid down in legislation. It can be time consuming and expensive, particularly if objections are received. SPC considered road stopping issues in May 2010. At that time the Committee, *inter alia*:

*“agreed to the Mayor writing to the Minister of Local Government, seeking support for a review of the legislation concerning road stopping, with a view to making the process less cumbersome and expensive while still protecting the broader public interest.”*

The former Mayor wrote to the Minister 16 June 2010. The Minister replied on 16 July noting that officials have previously considered this issue and that *“due to other priorities, such a review is not part of the Government's local government policy work programme at this stage.”*

In April 2011 the Council adopted a revised Road Encroachment and Sale Policy. When the Strategy and Policy Committee (SPC) considered the new policy it also agreed that officers develop options to facilitate the stopping and sale of surplus unformed legal road and report to the Committee by September 2011.

## **5. Discussion**

Public consultation undertaken in June 2010 revealed strong support for making it easier for unformed legal road to be stopped and purchased. There have been three key impediments to property owners pursuing road stopping:

- rental pricing for encroachment licences – which generally made it far cheaper to rent land than to stop and purchase it

- the uncertainty, duration and costs of the process – due principally to factors outside the Council’s control
- the commitment of the applicant and individual affordability.

Adoption of the new Road Encroachment and Sale Policy in April 2011 should partially address the first of these issues. Officers have identified a number of options to address the other impediments, which are discussed below.

### ***5.1 Deciding what land can be stopped and sold***

Proposals to stop road are assessed on a case-by-case basis, initially by officers before referral to Council. This includes determining whether the land is surplus or has any significant other values that would make it inappropriate for stopping and sale.

In practice this involves consultation with officers from the infrastructure, parks and gardens, development, planning and urban strategy business units. Broad internal consultation is necessary since unformed legal road can have a number of values beyond possible future roading which need to be evaluated.

These internal procedures have recently been reviewed and significant improvements have been made to processing times. Officers consider the revised system is now timely and appropriate in terms of protecting the public interest. This is especially so given that under the Local Government Act 1974, the road stopping process requires public consultation, consideration by Councillors, and then referral to the Environment Court should there be objections.

No changes to these assessment procedures are proposed. This means that applications for road stopping would continue to be evaluated on a case-by-case basis, rather than applying a formulaic or systematic assessment of unformed legal road suitable for stopping.

Further improvements to internal processes may be possible and officers will continue to apply a constant improvement approach to the handling of proposals. However, despite the improvements, many of the delays and costs of road stopping are not under the control of the Council.

### ***5.2 Options to Reduce Impediments to Road Stopping and Sales***

#### ***5.2.1 Encouraging multiple applications***

When a proposal is received for a road stopping, officers may contact neighbouring property owners and invite them to also consider road stopping and purchase. This has typically proved unsuccessful, so is not done as a matter of course. With recent changes to the encroachment fees regime and assuming

the other proposals discussed later in this paper are agreed, there may be more interest from surrounding property holders in land purchase.

Officers should therefore be proactive in seeking interest from property owners surrounding an area when a proposal for road stopping has been received.

### **5.2.2 Cost sharing**

At present property owners are required to pay both the freehold market value of land and the costs incurred in getting the land into an unencumbered state ready for sale. In effect the Council charges the maximum value the land has to a property owner plus significant extra costs. For example, in the 2010/11 year the estimated average total costs of stopping (borne by property owners) was \$12,000 compared to an average land sale price of \$47,275<sup>1</sup>.

Property owners may find road stopping and purchase more attractive if the total cost of the land (i.e. the purchase price plus costs of road stopping) is more in line with the land's total market value.

In addition, the Council's current policy is that land can be re-valued at the end of the stopping process. This is because road stopping can take many years (especially when proponents choose to delay some parts of the process) and in that time land values can change significantly. However, this policy also means that property owners are asked to accept the additional uncertainty of entering a process (and incurring expenses) without knowing the final cost of the land.

Analysis shows that the Council could change its approach to cost recovery and still be significantly better off financially compared to licensing the use of unformed legal road and receiving annual rentals (assuming the land in question can even be licensed).

For example, analysis of actual road stopping and sales data<sup>2</sup> shows that the income received from land sales between 2008/09 and 2010/11 was 110 percent higher than the net present value<sup>3</sup> (NPV) of the Council's potential rental income from the same land under an encroachment licence (assuming the flat rental fee policy). Even under the new differential fee structure<sup>4</sup>, the increase in value from stopping and sale compared to potential rental income is estimated as 60 percent.

These large increases in value are possible because the process of stopping unformed legal road and removing the encumbrances over it adds value to both the Council and the property owner considering purchasing the land. This

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1 These figures do not include a large area of land stopped in Newlands.

2 The data exclude a large land sale in Newlands. If this transaction were included the increase in value would be substantially greater than shown here. Only transactions for stopping and sale to adjacent property owners were included in the analysis.

<sup>3</sup> Net present value is the lump sum value in today's dollar terms of a future source of income. To calculate an NPV a discount rate must be assumed, in this case 7 percent.

4 Assumes the indicative fee rates and caps as presented in the SPC paper of 7 April 2011.

increase in value can more than compensate for the Council carrying some of the costs of road stopping. It also means the Council can accept some other modest risks, such as allowing property owners to lock in land values for a period, provided these are appropriately managed.

Officers consider that the following proposed changes would help address many of the issues discussed above, while still protecting the Council's financial position:

- prospective buyers would have the opportunity to lock in a land valuation early in the road stopping process, and that valuation would be binding provided the road stopping is completed within 18 months (this period could be extended at the Council's discretion if a stopping proposal is referred to the Environment Court). This would provide a degree of certainty to property owners and also an incentive to proceed with the process in a timely way.
- property owners continue to meet the costs of road stopping as they are incurred, but a proportion of these costs would be deducted from the land valuation in order to establish a final settlement price. By deducting costs at the time of settlement, the applicant rather than the Council carries the risk of sunk costs should the road stopping not proceed.
- deductions are proposed to 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.
- for low value transactions (below \$15,000 of land value), deductions, if any, would be by agreement between the Council and applicants, but would not exceed the deductions applicable using the formula above.

Applying the proposed "deduction formula" to actual road stopping and sales over the last three years shows that even after making deductions there is still a 46 percent increase in value compared to the potential value of receiving rentals. More analysis on the implications of the proposed formula is provided in table 1 below.

As an instrument to facilitate stopping and sales of unformed legal road, the cost sharing proposal above is likely to be both reasonably attractive from a property owner's perspective and create overall financial benefit to the Council by facilitating more stopping and sale transactions.

**Table 1: Analysis of the Effect of Proposed Cost Sharing Regime on Actual Road Stopping and Sale Transactions**

Sale	Area (m <sup>2</sup> )	NPV of theoretical rental income <sup>1</sup>	Land purchase price (actual value of land)	Costs recovered from purchaser <sup>2</sup>	Additional costs to purchaser <sup>3</sup>	Total cost to purchaser – without deductions	% total cost compared to actual value of land <sup>4</sup>	Proposed deduction amount <sup>5</sup>	Council's income after deductions <sup>6</sup>	Total cost to purchaser - with deductions	% total cost (with deductions) compared to actual value of land <sup>7</sup>
1	134	\$47,900	\$157,300	\$7,200	\$5,500	\$170,000	108	\$12500	\$152,000	\$157,500	100
2	66	\$14,100	\$21,400	\$4,300	“	\$31,200	146	\$3710	\$22,000	\$27,500	128
3	80	\$17,100	\$97,400	\$4,500	“	\$107,400	110	\$10000	\$91,900	\$97,400	100
4	141	\$23,200	\$38,900	\$7,600	“	\$51,900	134	\$6328	\$40,100	\$45,600	117
5	138	\$29,600	\$44,000	\$7,400	“	\$56,900	129	\$7100	\$44,300	\$49,800	113
6	56	\$12,000	\$38,000	\$6,600	“	\$50,100	132	\$6200	\$38,400	\$43,900	116
7	225	\$64,300	\$85,000	\$11,500	“	\$102,000	120	\$12500	\$84,000	\$89,500	105
8	201	\$33,000	\$60,000	\$8,300	“	\$73,800	123	\$9500	\$58,800	\$64,300	107
9	183	\$78,400	\$70,000	\$12,200	“	\$87,700	125	\$11000	\$71,200	\$76,700	110
<b>Totals</b>	<b>1224</b>	<b>\$319,600</b>	<b>\$611,900</b>	<b>\$69,700</b>	<b>\$49,500</b>	<b>\$731,100</b>	<b>125 (avg)</b>	<b>\$82,500</b>	<b>\$599,100</b>	<b>\$648,600</b>	<b>110 (avg)</b>

1 NPV of possible rental income is broadly equivalent to a theoretical amount the land would worth today if it were being rented on a ongoing basis to generate the (indicative) differential rental rates provided in the April 2011 SPC paper on Road Encroachment Policy.

2 These are the costs incurred by Council in processing road stopping applications which are recovered from applicants. Note that generally not all internal staff time costs are recovered.

3 These are the estimated additional costs incurred by applicants, and include such things as legal fees and surveying costs.

4 This column compares the actual costs of road stopping and purchase incurred by an applicant with the market value of the land being purchased. It shows that purchasers currently have to spend on average 25% more than the land's actual market value in order to purchase it.

5 The proposed deduction amount is 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.

6 This column shows the total income the council would receive after making the proposed deductions. Even after making deductions for costs, the Council would still generate a 46% higher value by selling the land rather than receiving rentals for it (assuming it could be rented).

7 After deductions purchasers would need to spend, on average, 10% more than the land's market value in order to purchase it.

### **5.3 Additional Tenure Option – Leasing the Surface of Unformed Legal Road**

During the development of the above proposals, officers identified an additional option which could provide a form of tenure part way between an encroachment license (with one-month's notice of termination) and permanent stopping and purchase. That option is leasing the surface of unformed legal road.

The Council has received a legal opinion from DLA Phillips Fox which concludes that:

“...the Council does have the power to lease legal road”

“Surface leases are expressly authorised by section 345 of the LGA 1974....  
Section 345(1)(c) relevantly states:

- (1) ... where in forming a new road, or in diverting or stopping or diminishing the width of any existing road, any part thereof is no longer required as a road, the council may-
- (c) Grant a lease of that part, or any part thereof, for such term and on such conditions as it thinks fit for use for any purpose to which the council may apply land, either under this Act or any other enactment.

“...this power can be exercised where it is considered that unformed legal road is no longer required as a road and that it is appropriate to diminish the width of the road under section 319(1)(e) (i.e. by grant a lease of part of it). We do not consider that it is necessary to actually stop the road before granting a lease under section 345(1)(c). We are aware that the Council has exercised this leasing power in various locations throughout Wellington City in the past.”

“The primary restraints on the Council's leasing power under section 345(1)(c) of the LGA 1974 are:

- 1.1 the need to reach and record the view that the land in question is no longer required for road;
- 1.2 the need for the area of road in question to be associated with: new formation, a diversion, a stopping, or a diminishment of width;
- 1.3 the need to comply with the requirements of the RMA, which may involve the need for a subdivision consent where a lease period (including renewals) is to exceed 35 years. Whether a consent requirement arises will also depend on the relevant district plan requirements at the time.”

The Council already leases airspace (mainly for balconies) and subsoil for the duration of a building's life. Legal advice confirms that a similar approach is possible for road surface leases.

There are, however, a number of practical and legal constraints on leasing the surface of unformed legal road. The first is that if a lease is beyond 35 years, then a subdivision consent is required. This would involve creating separate titles over legal road, something that may be costly, would require resource consent (possibly notified) under the District Plan, and is generally considered problematic from a legal perspective. If Council wishes to pursue the leases option, it is recommended that leases be for a period of less than 35 years.

Shorter duration leases are also more consistent with the land's status as legal road – and the commensurate legislative and common law restraints associated with legal road. The Council retaining a termination clause in any lease agreement would also be consistent with the land's legal road status. A six-month notice period for termination is recommended as this is consistent with existing policy on airspace and subsoil leases.

Finally, conditions limiting what could be done on leased land should also be consistent with existing leases for airspace and subsoil. At their core, these conditions mean that whatever is built on leased land can be practically removed within a six month notice period.

Notwithstanding limitations on the use of leases, officers consider that they offer a number of significant advantages over licences in some circumstances. These include:

- giving property owners a legal interest in the area covered by the lease – without the need for a road stopping. This may be seen as attractive by some owners wanting to make longer-term investments on leased land.
- allowing areas of leased land to be valued on a case-by-case basis and one-off charges to be applied on the basis of those valuations (this is the same approach applied to new airspace leases).

This last point may be particularly applicable where the land will be used by a developer to meet the off-street parking resource consent requirements of a subdivision or development. In such circumstances the marginal value of the unformed legal road may be especially high since it can be used to allow an entire site to be developed. Consequently, developers may be reluctant to enter a lease (valued on a case-by-case basis) instead preferring a licence where the cost of occupying the land is generally lower and future owners, rather than the developer, are responsible for paying any fees. In such cases:

- property developers would capture most of the value of the Council's unformed legal road asset; and

- future property owners may have ongoing obligations in respect of holding encroachment licences (to meet parking consent conditions) that they are not fully aware of when they purchase a property.

The lease option allows the Council to address both these issues and also provides assurance that any off-street parking requirements will be met at least for the duration of the lease.

Officers consider, therefore, that the Council should retain the discretion to offer only leases to property owners where the value of unformed legal road is not reasonably reflected in rental fee rates, and in particular where unformed legal road is proposed to be used to meet off-street parking requirements of resource consents.

Allowing leases of surface unformed legal road would be a new policy and would require consultation with the public. It would also require a modest change to the relevant section of the Wellington consolidated bylaw, in order to reference leases as well as licences.

Such consultation could be included in the consultation process for setting encroachment rental fee rates and transition measures, which was agreed by the Strategy and Policy Committee in April 2011. Officers recommend that a proposal to allow surface lease of unformed legal road be included in the LTP process based on the following key elements:

- allowing (at the Council's sole discretion), property owners to lease unformed legal road, as an alternative to an encroachment licence;
- in most instances property owners seeking exclusive private use of unformed legal road would have the option of pursuing either an encroachment licence or lease;
- the Council may, at its discretion, decline to offer an encroachment licence and instead offer only a lease. The Council would generally exercise this discretion only where:
  - property owners propose using unformed legal road to meet any off-street parking requirements of a resource consent. Note that where a licence has previously been issued and a new application is received to use this licence to meet a new resource consent requirement, the Council may terminate the licence and offer only a lease as an alternative;
  - the land in question is of exceptionally high value compared to other unformed legal road land in the relevant suburb;
- the duration of leases would be at the discretion of the Council, but would be for less than 35 years;
- the Council would retain the right to terminate leases with six-month's notice and any structures on the land would need to be removable within the six month notice period;

- costs incurred by the Council in processing lease applications would be recovered from applicants, with fees set as part of the annual plan or Long-term plan process;
- the fee for the lease would be based on a market valuation of the lease, taking into account any conditions imposed by Council in the lease;
- a one-off fee would be charged covering the lifetime of the lease (noting that the Council may allow payments to be spread over time at its discretion) and no further rental charges would be imposed;
- other lease conditions may be set at the Council's discretion;
- that the Wellington Consolidated Bylaw 2008, Part 5 "Public Places, Section 17 "Encroachments" be amended to be consistent with the issuing of encroachment leases.

#### **5.4 Package of Initiatives**

The options discussed above are not mutually exclusive. If the Council wishes to facilitate road stopping and sales it would be most effective to employ a package of measures.

Currently, the Council completes less than 10 road stoppings and sales to adjacent property owners each year. The combination of a new approach to setting rental fee rates, cost sharing, and other proposals has the potential to increase this number substantially. This may have resource implications, though any increased resource needs should, over time, be fully recovered from increased revenue and cost recovery.

#### **5.5 Consultation and Engagement**

In June 2010 the Council consulted on possible changes to the road encroachment and sales policy. Many submitters wanted road stopping and purchase made more attractive for property owners. Indeed this was a widely held view amongst the 182 written submission received by the Council. Only one submitter was opposed. Other commonly expressed views included:

- the current process is uncertain, too long, and too expensive
- putting all costs on landowners is unfair when it is the Council that is selling the land and getting the financial benefit - Council should share the costs
- a more attractive road stopping and sale mechanism should be established before any major review of fees – this would give property owners options to buy land if the fee structure is onerous.

This feedback suggests that the proposal for the Council to share costs of road stopping is likely to be widely supported. In light of the specific feedback received, it is proposed that further consultation not be undertaken on

proposals to facilitate the stopping and sale of unformed legal road. This would mean a revised policy incorporating the changes recommended in this paper could be implemented immediately.

As noted above, consultation using the special consultative procedure would be necessary on any proposal to allow surface leases of unformed legal road, and consequential amendments to the Wellington consolidated bylaw. This could be included in the 2012-22 LTP process.

### **5.6 Financial Considerations**

The measures proposed in this paper, along with the already agreed changes to the approach to setting rental fees, may significantly increase road stopping proposals. This could have resource implications for the Council though any increased costs are expected to be offset by cost recovery and increased revenue.

Unformed legal road is currently recognised on the Council's balance sheet as a capital asset. It is valued by multiplying the area of road by half the average land value per square metre in a suburb as at 2005.

Comparing actual sales over the last three years (less assumed deductions for costs) with book values shows that stopping and sale increased value by 63 percent. This implies that overall, encouraging more road stopping and sales should create a gain on sale compared to book value. It would also have significant cashflow benefits.

### **5.6 Climate Change Impacts and Considerations**

No significant climate change implications are identified as a result of this paper. Making land available for development within the existing city boundaries is consistent with a strategy of promoting compact urban form, which in turn is consistent with developing a city that allows efficient public transport, active modes of transport, and short travel distances.

### **5.7 Long-Term Council Community Plan Considerations**

There are no LTP considerations arising from this paper. The Council's policy statement on the funding of capital expenditure (see page 8 Vol. 2 of the LTCCP 2009-19) states that "*the funding of capital expenditure from the sale of surplus assets is decided on a case-by-case basis. Funds received from the sale of surplus assets that are not applied to the funding of capital expenditure shall be used to repay borrowings.*"

## **6. Conclusion**

The Council facilitating the stopping and sale of surplus unformed legal road has received wide public support. It also has a number of benefits for the Council and ratepayers. It is recommended that the Committee support a package of measures to facilitate road stopping and sale and that these measures take effect immediately. It is also recommended that the Committee agrees to consult on a proposal to allow surface leases of unformed legal road.

Contact Officer: *Bryan Smith, Principal Advisor, Policy*

## Supporting Information

### **1) Strategic Fit / Strategic Outcome**

The proposals support the Council's long term objectives of encouraging compact urban form. They also assist with the Council's cashflow by facilitating the disposal of surplus assets at values that are expected to generate surpluses compared to balance sheet asset values.

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

There are no significant LTP or annual plan implications arising from this report. In the long term the recommendations should increase the value of Council assets. Any increased resource requirements (such as additional staffing to process applications) would be recovered from increased revenue and costs recovery.

### **3) Treaty of Waitangi considerations**

No Treaty of Waitangi issues arise as a result of this paper. Treaty of Waitangi issues, including specific consultation requirements, can be considered on a case-by-case basis when proposals are received to stop and purchase unformed legal road.

### **4) Decision-Making**

This is not a significant decision. The information provided in the report is considered appropriate in order to make the recommended decisions.

### **5) Consultation**

#### **a) General Consultation**

Consultation was undertaken in June 2010 on the review of the Council's road encroachment and sale policy. That consultation indicated overwhelming support for the Council facilitating the stopping and sale of surplus unformed legal road. The proposal to allow surface leases of unformed legal road will require public consultation.

#### **b) Consultation with Maori**

No specific consultation has been undertaken with Maori.

### **6) Legal Implications**

Council's legal advisors have been consulted during the development of this report.

### **7) Consistency with existing policy**

This report is consistent with Council's existing policies.

## **Proposed amendments to the “Road Encroachment and Sale Policy, April 2011”**

Replace section 7 with the following (note that new text is highlighted and deletion of existing text is shown as a strikethrough):

### **7. SALE OF LEGAL ROAD**

The Council may sell legal road to a property owner when it considers that the land is not needed for utilities, roads or footpaths in the future and private occupation will not compromise the amenity or environmental values.

The sale of legal road for private use is a legal process which is outlined in Annex 2. It is subject to statutory and planning requirements and requires the section of road to be legally ‘stopped’<sup>5</sup>. The process, under the Tenth Schedule of the Local Government Act 1974, can involve appeals to the Environment Court. The Public Works Act also provides a mechanism for stopping legal roads. The Council will generally apply the Local Government Act process for the stopping and sale of unformed legal road.

Eligibility to purchase any surplus legal road from the Council (unless it can be subdivided for use as a building site) is limited to the adjoining property owner. ~~Most of the costs associated with road stopping and the amalgamation with the existing title have to be met by the purchaser.~~

Costs associated with road stopping and amalgamation of land with an existing title must be met by the purchaser. The Council will make a deduction for costs from the land valuation in accordance with the following policy:

- o property owners meet costs as they are incurred, but a proportion of these costs will be deducted from the land valuation in order to establish a final settlement price;
- o deductions are 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;
- o for transactions below \$15,000 of land value, deductions, if any, will be by agreement between the Council and applicants, but will not exceed the deductions applicable using the formula above.

The sale of any legal road will not generally be permitted where public utilities (such as pipes and cables) are located underneath, unless the prospective purchaser undertakes to relocate the services at their cost or an easement or other arrangement satisfactory to the utility operator(s) can be agreed. The Council will also need to be satisfied that the land is not likely to be required for the location of services at any point in the future.

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<sup>5</sup> Changing the status of land from legal road to freehold land.

## APPENDIX 1

The market value of legal road being sold by the Council will be determined by an independent registered valuer who is a member of the New Zealand Institute of Valuers. Valuations for establishing the price for purchase are based on the added value to the existing title - based on valuations before and after the addition of the land.

Prospective purchasers have the opportunity to lock in a land valuation early in the road stopping process, and that valuation will be binding on both parties provided the road stopping is completed within 18 months, subject to final survey. This period may be extended at the Council's discretion, for example where a stopping proposal is referred to the Environment Court. Where road stopping takes longer than 18 months, the Council may require any existing valuation to be updated before land is transferred, and the final settlement price will be based on the latest land valuation.

Amend Annex 2 "Summary of Process for Sale or Legal Road" by adding the highlighted text to the last paragraph as described below:

The legal costs incurred by the Council will be recovered from the applicant, but may be included in any estimation of costs for the purposes of applying the costs deduction policy described in section 7 above.