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**REPORT 4**  
*(1215/53/IM)*

## **ROAD STOPPING AND DISPOSAL – LEGAL ROAD ADJOINING 91 TIO TIO ROAD – SEATOUN**

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

The purpose of this report is to obtain agreement to authorise officers to proceed with the road stopping of an area of Council owned unformed legal road that adjoins numbers 91 and 93 Tio Tio Road, Seatoun (shown highlighted green and orange on Appendix 1), which is no longer required for Council's operational requirements.

As Council officers now wish to advance the road stopping, the further recommendations contained in this report are necessary.

### **2. Executive Summary**

An application to stop approximately 454m<sup>2</sup> area of unformed legal road was originally submitted by the owners of 93 Tio Tio Road, Seatoun. That application was the subject of an earlier report to the Regulatory Processes Committee and Council, and was for both the land shown green and orange on the aerial in Appendix 1.

Council officers now wish to advance the road stopping of the unformed road adjoining 91 and 93 Tio Tio Road, with the disposal of the area shown green now to the adjoining owners of 91 Tio Tio Road.

A section 40 report has been obtained. Officers are currently obtaining legal advice in respect of that report.

If the Chief Executive Officer (CEO) agrees with the legal advice, and the additional resolutions contained in this report are approved, then officers will proceed with the road stopping and sale.

### **3. Recommendations**

It is recommended that the Committee:

- 1. Receives the information.*

2. *Recommends to Council that it:*

- (a) *Approves the disposal of the Road Land described as approximately 454m<sup>2</sup> (subject to survey) of unformed legal road adjoining 91 and 93 Tio Tio Road, Seatoun.*
- (b) *Delegates to the Chief Executive Officer the power to either offer the Road Land back to its former owner or their successor, or to approve the exercise of an exemption from offer back under section 40(2), 40(3) or 40(4) (if appropriate).*
- (c) *Authorises 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.*
- (d) *Delegates 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 and no objections being received.*
- (e) *Delegates to the Chief Executive Officer the power to negotiate the terms of sale 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(s) of the Adjoining Land, provided any such agreement is conditional upon the road being stopped.*

3. *Notes that if objections are received and the applicant wishes to continue with the road stopping, a further report will be presented to the Committee for consideration.*

#### **4. Background**

An application to stop a 454m<sup>2</sup> area of unformed legal road was submitted by the adjoining land owner at 93 Tio Tio Road, Seatoun. This road stopping was the subject of an earlier report to Regulatory Processes Committee and Council (refer to the minutes in appendices 2 and 3).

While that application was progressing, the owners of 91 Tio Tio Road whose property is located on the opposite side of the subject unformed legal road indicated that they too would like to purchase part of the land. The owners of these two properties reached agreement that 91 Tio Tio Road would pursue the purchase of the land shown green, while 93 Tio Tio Road would pursue the purchase of the land shown orange. The owners of 93 Tio Tio Road subsequently advised that they had decided to sell their property, and withdrew their road stopping application.

As the original application by 93 Tio Tio Road had already progressed through several of the early steps of the road stopping process, this meant that the

subsequent application from 91 Tio Tio Road did not need to repeat those steps, so could commence where the other had concluded.

While the current application by 91 Tio Tio Road relates to only the land shown green, being approximately 350m<sup>2</sup> in size, as the land shown orange had already been declared surplus as well, officers recommend that both areas are still stopped rather than leave the orange area remaining as an odd shaped area of unformed legal road. While the current owners of 93 Tio Tio Road are no longer interested in stopping and purchasing the land shown orange, there is still a deck and part garage belonging to their property built on it. When the 93 Tio Tio Road property is sold, the new owners may be interested in purchasing the land shown orange to guarantee their long term use of it rather than continue with an encroachment licence. If that is the case, if it has been stopped and vested as fee simple, it would be a straightforward process to proceed with a sale, rather than have to commence a further road stopping process for just that area.

Under the LGA local authorities are permitted to sell portions of legal road which they no longer require for roading purposes or another public work.

A section 40 report has been obtained. Officers are to seek legal advice on some aspects of the section 40 report, particularly relating to having to offer land back where internal business units had wanted to impose significant conditions, as in the no build condition that Urban Development has requested. Prior to obtaining this information, officers will firstly confirm whether there are any former owners or their successors still alive.

If the CEO agrees that the matter can proceed,, officers will proceed with the road stopping and sale process prescribed under section 342 and section 345, and the Tenth Schedule of the LGA.

## **5. Discussion**

The next steps in the road stopping and sale process are as follows:

- Obtain legal advice on the section 40 offer back requirements, and proceed based on that advice.
- If any section 40 offeree does not wish to purchase the land, then prepare a sale and purchase agreement with the adjoining owner.
- Undertake a survey and carry out public notification of the intent to stop the road
- Receive objections (if any) and attend to the Environment Court hearing (if required)
- Undertake public notification that road is stopped
- Attend to settlement and transfer of the stopped road

## **6. Conclusion**

The unformed legal road adjoining 91 and 93 Tio Tio Road, Seatoun is no longer required for a public work by Council. Completion of the road stopping process for the whole area should be progressed. Once stopped the sale of the unformed road should be progressed, to either the former owner, or their successors. If no former owners or their successors are alive or are interested in a re-purchase, then approximately 350m<sup>2</sup> should be sold to the adjoining owner at 91 Tio Tio Road now, with the balance to be sold at a later date.

It is therefore requested that the Regulatory Process Committee recommends to the Council that officers proceed with the road stopping and sale process under the Local Government Act 1974.

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.*

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

*Provision for undertaking this work is contained within the overall organisational budget.*

*This report is a step towards the possible sale of the legal road. At this stage, the expected income from the sale of the road to the applicant has not been quantified as valuations are carried out at a later stage in the road stopping process. Many applicants decide not to proceed further with the purchase of the legal road once they have received a valuation from the Council.*

*There are no adverse financial implications imposed on the Council arising from this road stopping proposal. All of the costs associated with this proposal will be met by the applicant including all survey, administration and legal costs. This proposal will benefit 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 2004 Road Encroachment and Sale Policy.*

### **5) Consultation**

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

*Consultation with the relevant Internal Business Units, the Wellington Tenth and Ngati Toa has been carried out as part of this application. They have all advised that they have no objection to the proposed road stopping.*

*Neighbours and Service Authorities have been consulted and a number of conditions have been noted.*

*The applicants have agreed in writing to these conditions.*

### **6) Legal Implications**

*Any legal implications were addressed in the previous report to Regulatory Process Committee meeting of 22 August 2007.*

**APPENDIX 1**  
Aerial photograph



## APPENDIX 2

Minutes – Regulatory Processes Committee meeting - 22 August 2007



## REGULATORY PROCESSES COMMITTEE

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### MINUTES

WEDNESDAY 22 AUGUST 2007

1.01PM

Committee Room 1  
Ground Floor, Council Offices  
101 Wakefield Street  
Wellington

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**PRESENT:**

Councillor Gill (Chair)  
Councillor Cook  
Councillor Goulden (1.04 – 1.10pm)  
Councillor Morrison  
Councillor Pepperell (1.02 – 1.10pm)  
Councillor Wade-Brown

**APOLOGIES:**

Mayor Prendergast  
Councillor Armstrong  
Councillor Foster

074/07RP **APOLOGIES**  
(1215/53/IM)

**RESOLVED:**

*THAT the Regulatory Processes Committee:*

- 1. Accept apologies for absence from Mayor Prendergast and Councillors Armstrong and Foster.*

7. *Delegate to the Chief Executive Officer the power to negotiate the terms of sale and enter into a sale and purchase agreement, provided any such agreement is conditional upon the road being stopped.*

081/07RP **PROPERTY FOR DISPOSAL UNDER THE PUBLIC WORKS ACT 1981 AND THE LOCAL GOVERNMENT ACT 1974: LEGAL ROAD ADJOINING 93 TIO TIO ROAD – SEATOUN**

Report of Wendy O’Neill – Property Adviser, Parking and Property Services.

(1215/53/IM)

(REPORT 4)

**RESOLVED AND RECOMMENDED TO COUNCIL:**

*THAT the Regulatory Processes Committee:*

1. *Receive the information.*
2. *Recommend that the Council, pursuant to section 40 of the Public Works Act 1981:*
  - (a) *Agree that the area of approximately 454m<sup>2</sup> of unformed legal road adjoining 93 Tio Tio Road, Seatoun is not required for a Public Work (refer Appendix 1).*

*Note: 93 Tio Tio Road, Seatoun is described as Lot 1 DP 83848, being Computer Freehold Register WN50D/988.*

  - (b) *Authorise Council officers to commission a section 40 report from suitably qualified consultants to identify whether the land must be offered back to its former owner or their successor, or whether an exemption from offer back applies.*
3. *Note that once the section 40 report has been received, a report will be presented to the Chief Executive Officer for approval under delegated authority to either offer the land back to its former owner or their successor, or to approve the exemption from offer back.*
4. *Authorise Council officers to initiate the road stopping process in accordance with Section 342 and the Tenth Schedule of the Local Government Act 1974.*
5. *Subject to all statutory and Council requirements being met and no objections to the road stopping being received, Council delegates to the Chief Executive Officer the power to formally approve the road stopping and issue the public notice to declare the road stopped.*

6. *Note that if objections are received and the proponent wishes to continue with the road stopping, a further report will be presented to Committee for consideration.*
7. *Note that a condition will be placed in the road stopping agreement to place an covenant on the stopped road to protect existing vegetation and prevent any further development of the site.*
8. *Delegate to the Chief Executive Officer the power to negotiate the terms of sale and enter into a sale and purchase agreement, provided any such agreement is conditional upon the road being stopped.*

082/07RP **PROPERTY FOR DISPOSAL UNDER THE PUBLIC WORKS ACT 1981 AND THE LOCAL GOVERNMENT ACT 1974: LEGAL ROAD ADJOINING 130 CHURCHILL DRIVE – CROFTON DOWNS**  
 Report of Wendy O'Neill – Property Adviser, Parking and Property Services.  
 (1215/53/IM) (REPORT 5)

**RESOLVED AND RECOMMENDED TO COUNCIL:**

*THAT the Regulatory Processes Committee:*

1. *Receive the information.*
2. *Recommend that the Council, pursuant to section 40 of the Public Works Act 1981:*
  - (a) *Agree that the area of approximately 1301m<sup>2</sup> of unformed legal road adjoining 130 Churchill Drive, Crofton Downs is not required for a Public Work (refer Appendix 1).*
  - Note: 130 Churchill Drive, Crofton Downs is described as Lot 1 DP 54008, being Computer Freehold Register WN22D/220.*
  - (b) *Authorise Council officers to commission a section 40 report from suitably qualified consultants to identify whether the land must be offered back to its former owner or their successor, or whether an exemption from offer back applies.*
3. *Note that once the section 40 report has been received, a report will be presented to the Chief Executive Officer for approval under delegated authority to either offer the land back to its former owner or their successor, or to approve the exemption from offer back.*
4. *Authorise Council officers to initiate the road stopping process in accordance with Section 342 and the Tenth Schedule of the Local Government Act 1974.*

## APPENDIX 3

Minutes – Council meeting -- 29 August 2007



COUNCIL

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## MINUTES

WEDNESDAY 29 AUGUST 2007

5.30 – 6.55PM

Council Chamber  
First Floor, Town Hall  
Wakefield Street  
Wellington

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### PRESENT:

Mayor Prendergast  
Councillor Ahipene-Mercer (6.25 – 6.55pm.)  
Councillor Armstrong  
Councillor Cook  
Councillor Foster (5.37 – 6.55pm.)  
Councillor Gill  
Councillor Goulden  
Councillor McKinnon  
Councillor Morrison  
Councillor Pepperell  
Councillor Ritchie (5.35 – 6.55pm.)  
Councillor Ruben  
Councillor Shaw  
Councillor Wade-Brown

### APOLOGIES:

Councillor Ahipene-Mercer (for lateness)  
Councillor Wain

*must be offered back to its former owner or their successor, or whether an exemption from offer back applies.*

2. **ITEM 080/07RP PROPERTY FOR DISPOSAL UNDER THE PUBLIC WORKS ACT 1981 AND THE LOCAL GOVERNMENT ACT 1974:  
LEGAL ROAD ADJOINING 65 TOTARA ROAD - MIRAMAR  
(1215/53/IM)(REPORT 3)**

*THAT Council:*

1. *Pursuant to section 40 of the Public Works Act 1981:*

- (a) *Agree that the area of approximately 55m<sup>2</sup> of unformed legal road adjoining 65 Totara Road, Miramar is not required for a Public Work (refer Appendix 2 of the report).*

*Note: 65 Totara Road, Miramar is described as Lot 1 DP 27874, being Computer Freehold Register WNF1/1109.*

- (b) *Authorise Council officers to commission a section 40 report from suitably qualified consultants to identify whether the land must be offered back to its former owner or their successor, or whether an exemption from offer back applies.*

3. **ITEM 081/07RP PROPERTY FOR DISPOSAL UNDER THE PUBLIC WORKS ACT 1981 AND THE LOCAL GOVERNMENT ACT 1974:  
LEGAL ROAD ADJOINING 93 TIO TIO ROAD – SEATOUN  
(1215/53/IM) (REPORT 4)**

*THAT Council:*

1. *Pursuant to section 40 of the Public Works Act 1981:*

- (a) *Agree that the area of approximately 454m<sup>2</sup> of unformed legal road adjoining 93 Tio Tio Road, Seatoun is not required for a Public Work (refer Appendix 3 of the report).*

*Note: 93 Tio Tio Road, Seatoun is described as Lot 1 DP 83848, being Computer Freehold Register WN50D/988.*

- (b) *Authorise Council officers to commission a section 40 report from suitably qualified consultants to identify whether the land must be offered back to its former owner or their successor, or whether an exemption from offer back applies.*

4. **ITEM 082/07RP PROPERTY FOR DISPOSAL UNDER THE PUBLIC WORKS ACT 1981 AND THE LOCAL GOVERNMENT ACT 1974:**