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REPORT 1  
(1215/53/IM)

**AIRSPACE ROAD STOPPING AND DISPOSAL UNDER THE  
PUBLIC WORKS ACT 1981, ADJOINING 1-15 PIPITEA STREET,  
THORNDON**

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**1. Purpose of Report**

The purpose of this report is to obtain Council approval to stop road air space and create a strata title over part of Pipitea Street and to sell that air space to the adjoining owner of 1-15 pipitea Street. The air space stopping is highlighted blue on the attached plans and elevations in Appendix 1.

**2. Executive Summary**

A new office complex is being built at 1-15 Pipitea Street. This is a joint venture between Pipitea Street Limited and the Wellington Tenths Trust, having jointly formed the development company Pipitea JV Limited.

Landowner approval was given by the Council to allow the company to erect part of the building over the footpath and road at a height that does not hinder pedestrian or vehicular traffic. This portion of the legal road, occupied in air space, is intended to be “stopped” and sold to the company.

In 2008 a lease of this road air space was agreed between the Council and the company to enable the development to proceed from a landowner’s perspective.

Now that the building is nearing completion, it is appropriate for the Committee to consider stopping the air space above road and selling this area to the adjoining landowner subject to statutory compliances.

Officer’s support the air space road stopping and sale.

**3. Recommendations**

Officers recommend that the Committee:

1. *Receive the information.*
2. *Recommend that Council;*
  - (a) *Agree that the area of road airspace (refer to the blue highlighted areas in Appendix 1), adjoining 1-15 Pipitea Street Thorndon, is no longer required for a Public Work.*

- (b) *Authorise Council officers to commission a section 40 report from a suitably qualified consultant to identify whether the road airspace must be offered back to its former owner or their successor, or whether an exemption from offer back applies under section 40(2), 40(3) or 40(4) of the Public Works Act 1981. Refer to Appendix 2.*
- (c) *Consent to the road stopping under sections 116-121 of the Public Works Act 1981 both as the owner of the road and as the Territorial Authority.*
- (d) *Delegate to the Chief Executive Officer the power to either offer the airspace 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), once the section 40 report has been received.*
- (e) *Delegate to the Chief Executive Officer the power to;*
  - (i) *negotiate the terms of sale and enter into a sale and purchase agreement in respect of the airspace stopped road, either with the former owner or their successor, or the owner of the adjoining Land.*
  - (ii) *request the Minister of Lands to stop the legal road air space and undertake all necessary action to give effect to the sale.*

#### **4. Background**

The application to stop this area of airspace was submitted by Pipitea JV Limited. Pipitea JV Limited is a company made up of 75% Pipitea Street Limited and 25% Wellington Tenths Trust. Pipitea JV Limited is constructing a new office building on their site at 1-15 Pipitea Street. While the ground floor of the building will remain within the Pipitea Street boundary the upper levels will extend over the boundary line and encroach into road airspace between 2 - 3.5 metres approximately. (Refer to the aerial map and elevations at Appendix 1 showing in blue the extent of the encroachment over road).

The building is nearing completion and the owner has an air space lease in place effective from April 2008 for an annual sum of \$23,625 inclusive of GST. The lease allows for commercial floor areas, roof top areas and building louvres. The subject air space is between levels 2-6 being located mainly within the glass facades fronting the road. The louvres, however, are attached to the glass facades and overhang the carriageway.

The air space road stopping will be for those areas of air space now occupied by the building and louvres. The total area of occupation will be subject to a final survey.

## **5. Discussion**

### **5.1 The Airspace Road Stopping Process**

The applicant is responsible for all the costs incurred to stop the road air space and amalgamate this with their adjoining property title.

The applicant is provided with as much information as possible at the start of the airspace road stopping process. This ensures they are fully aware of the airspace road stopping and sale requirements, timeframes and costs that will be incurred as part of this process. The applicant has agreed in writing to meet all of these requirements and costs.

This air space road stopping is being completed using the public works act 1981. Under this legislation the Minister of Lands may choose to exercise his powers to stop the road. This differs from the usual process of calling for public objections and submissions under the Local Government Act 1974. In this instance because the proposed road stopping is one of air space and will not affect the public's ability to use the existing footpath and carriageway it is proposed to stop the road under the Public Works Act 1981. Under this process Council requests the Minister of Lands to stop the road and supplies the Minister with signed consents from neighbours.

### **5.2 Consultation**

As part of the airspace road stopping process under the Public Works act 1981 neighbouring property owners are given an opportunity to provide comments concerning the airspace road stopping application. Typically, these are the adjacent owners and the owners opposite the area proposed to be stopped. In this case two neighbours needed to be consulted; these were 4, 26 and 30 Pipitea Street along with 2 Murphy Street (all owned by the same owner) and 56 Mulgrave Street. The neighbours have not objected to the airspace road stopping proposal.

Consultation with the relevant Service Authorities and internal business units was also sought as part of this application.

Consent's have been obtained from:

#### ***Service Providers***

- Transfield (Telecom)
- United Networks
- Capacity
- WCC Treaty Relationships
- WCC Street Lighting
- Nova Gas
- Telstra Clear
- Powerco

### ***Business Units***

- WCC Public Drainage
- WCC Water Services
- WCC Road and Traffic

WCC Urban Development and Transport require that approved stormwater controls are provided to collect storm water run off from the building facades fronting legal road.

Officers are satisfied that the proposed portion of airspace adjacent to 1-15 Pipitea Street, Thorndon can be stopped and sold, provided all statutory and Council requirements are met.

### **5.3 Next Steps**

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

- Commission a Section 40 report
- Obtain the Chief Executive Officers' approval of the Section 40 report recommendations
- Obtain a valuation and prepare a sale and purchase agreement
- Undertake a survey to provide a survey office plan for the strata title of the air space area
- Request the Minister of Lands to stop the road
- Attend to settlement and transfer of the stopped road airspace

## **6. Conclusion**

In considering our obligations under the Public Works Act 1981, Council officers believe that the road airspace adjoining 1-15 Pipitea Street, Thorndon is no longer required for the Council's operational requirements and should be declared surplus.

It is recommended that the Regulatory Processes Committee recommends to Council that officers should proceed with the airspace road stopping and sale process under the Public Works Act 1981.

Contact Officer: *Jon Moser, 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 airspace, where surplus to strategic requirements, is mandated under the Council's 2004 Road Encroachment and Sale Policy*

### **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 airspace above the legal road. At this stage, the expected income from the sale of the airspace to the proponent has not been quantified as valuations are carried out at a later stage in the road stopping process. Many proponents decide not to proceed further with the purchase of the legal road once they have received a valuation from the Council. There are also possible rejection stages throughout the process.*

*There are no adverse financial implications imposed on the Council arising from this road stopping proposal. Most of the costs associated with this proposal will be met by the proponent including all survey, administration and legal costs. This proposal will benefit Council in financial terms as the proponent will purchase the stopped road airspace from the Council at market value, and will then pay rates on it in the future.*

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

*The Tenth Trust are a partner in this project.*

### **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 has been carried out as part of this application. Urban Development and Transport have one condition (refer to 5.2).*

*Service Authorities have been consulted. The proponents have agreed in writing to all conditions.*

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

*The Tenth Trust are a partner in this project. The Tenth Trust is a partner in the project and as such the negotiations represent the Council's commitment to the partner relationship with Iwi.*

### **6) Legal Implications**

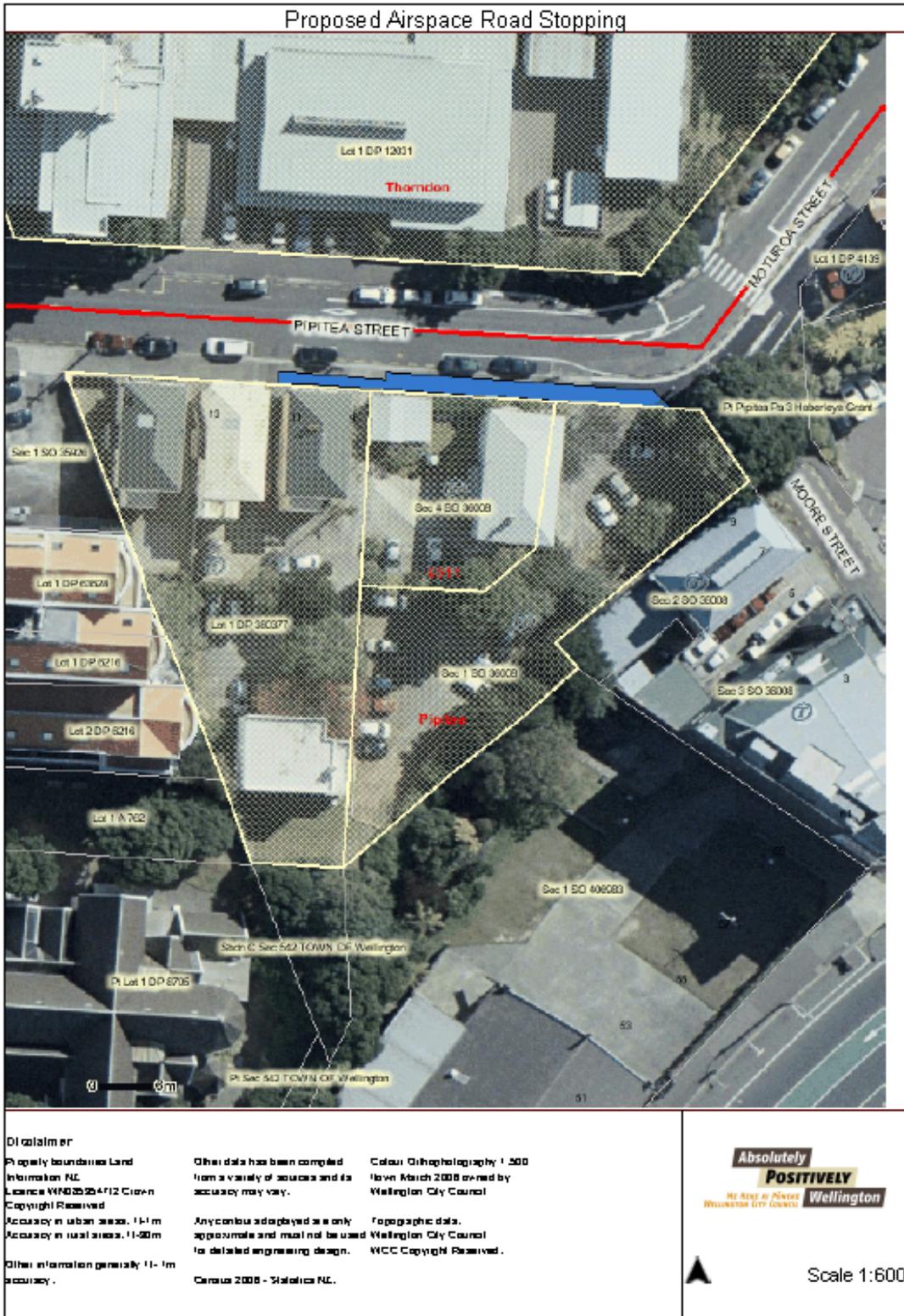
*The Council's lawyers have been consulted during the development of this report and involved in negotiations to date.*

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

*This report is not inconsistent with any existing WCC policies.*

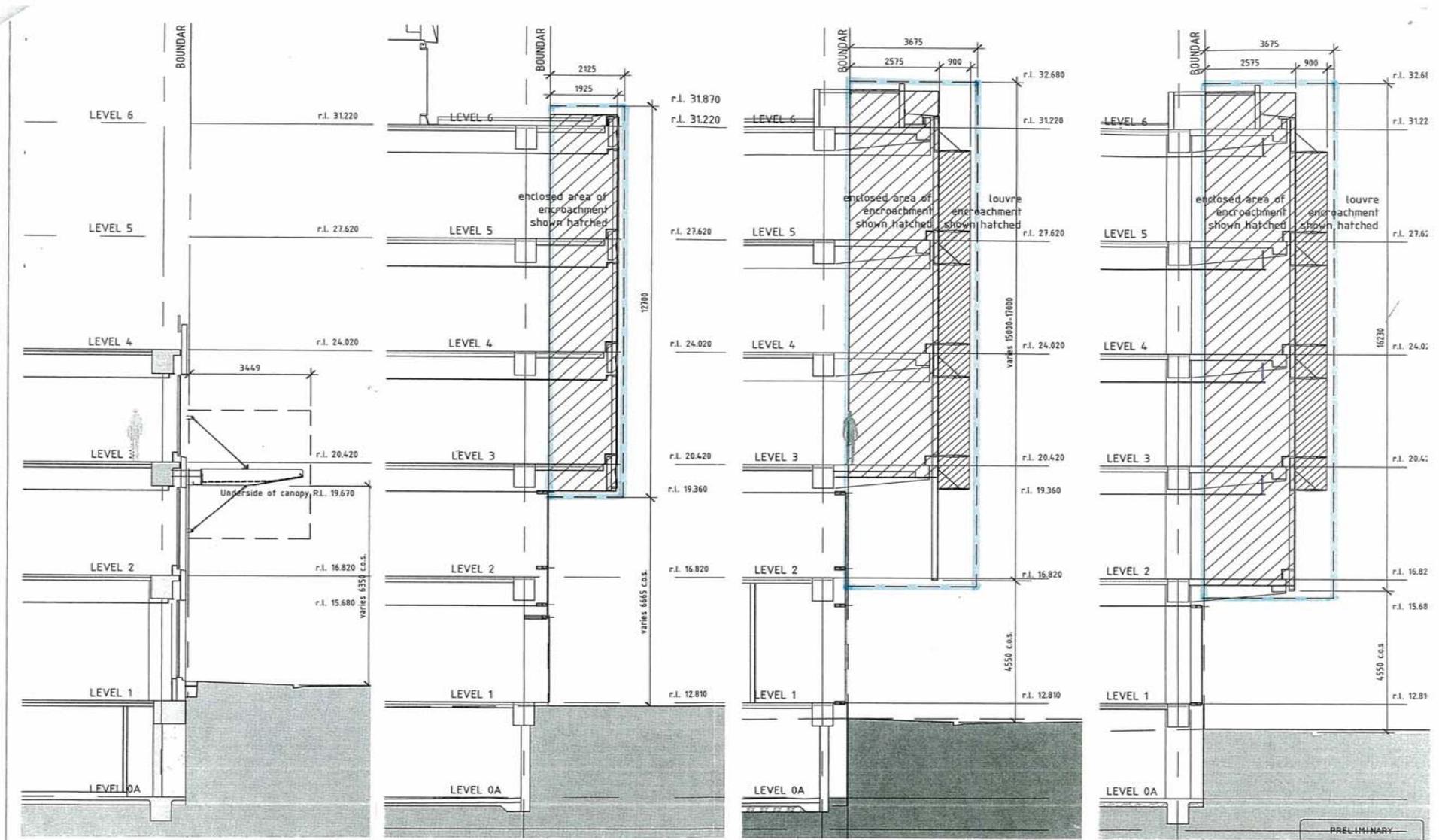


# APPENDIX 1





# APPENDIX 1



PRELIMINARY

Consultants for Existing Services  
 National Services Consultants Ltd  
 Level 10, Grand Pacific Tower  
 111 Queen Street, Wellington  
 PO Box 1224 Corporation Road Centre  
 Wellington 6140  
 Tel: 01 379 0000

**Pipitea Plaza**  
 for Redwood Group  
 1-18 Pipitea Street, Hutt, Wellington

Rev.	Reason	Date
A	Information	20/03/21
B	Information	02/04/21
C	Information	18/04/21
D	Final encroachment	03/05/21
E	Team area hatched	18/05/21

**athfield architects limited**  
 100 Avenue Street  
 PO Box 1010, Wellington  
 PO Box 1010  
 Wellington 6140  
 Tel: 01 371 1000  
 info@athfieldarchitects.co.nz

Key plan



scale: 1:125 @ A1 / 1:250 @ A3  
**Pipitea St**  
 encroachment sections

05-51  
 SK 215



# APPENDIX 2

## SECTION 40 OBLIGATIONS UNDER THE PUBLIC WORKS ACT 1981

### Section 40 Obligations under The Public Works Act 1981

The Public Works Act 1981, and its predecessors, has played a large part in the development of New Zealand's infrastructure. It has enabled land to be acquired, either by agreement or by compulsion, for the construction of local or public works.

The main intention of the Public Works Act 1981 regarding surplus land is that it must be offered for repurchase to the person from whom it was acquired, or the successor of that person, if it is not exempt under the grounds set out in the Act.

Section 40 of the Public Works Act 1981 deals with the disposal of land that is no longer required for the public work for which it is held, or any other public work.

Under section 40 Council is required to:

- (a) identify what land is subject to section 40;
- (b) determine when the offer-back obligations under section 40 are triggered;
- (c) investigate the circumstances surrounding the acquisition, use and characteristics of the land in order to determine whether any exceptions to the offer-back requirement apply as per section 40 (2); and
- (d) determine the appropriate course of action in relation to any affected land.

### **What Land is Subject to section 40?**

All land held by Council for any public work will be subject to section 40. The land need not have been acquired specifically for a public work nor does it need to be designated formally as such.

Local and public works are:

**"Local work"** means a work constructed or intended to be constructed by or under the control of a local authority, or for the time being under the control of a local authority:

**"Public work"** means every Government work or local work that the Crown or any local authority is authorised to construct, undertake, establish, manage, operate, or maintain. It also includes every use of land and anything else required directly or indirectly for any such Government work or local work or use, including those required by any Education Authority within the meaning of the Education Act 1964 and any university within the meaning of the Universities Act 1961 (abridged definition).

The purpose for which Council holds any particular land needs to be considered objectively.

### **When is an Offer-Back Triggered Under section 40?**

Council must proceed under section 40 when the pre-conditions in Section 40(1) are satisfied, namely when the land in question:

## APPENDIX 2

- (a) is no longer required for the public work for which it is held; and
- (b) is not required for any other public work; and
- (c) is not required for any exchange under s105 of the Public Works Act 1981.

The Courts have not yet defined the phrase “required for any other public work”. However Council’s legal advisors have recommended that the Land Information New Zealand guideline be followed to interpret this requirement. Their interpretation is as follows:

- The land has been designated for another public work; or
- Written notification has been given of another public work requirement; and
- Council has demonstrated that there is an actual need for the land, or
- Council has demonstrated that the land will be used for the purpose, within a reasonable timeframe.

Council is legally obliged to follow the sales process with due expedition once it has established that the three pre-conditions in section 40 (1) have been satisfied. Having satisfied the above pre-conditions, Council is under a duty (subject to the discretion of section 40 (2) and section 40 (4)) to endeavour to sell the land back to the former owner or their successors, in a timely manner.

### **Exemptions to Offer-Back Requirements – Section 40(2) and (4)**

Once the affected land has been declared surplus, a decision must be made as to whether or not the land must be offered back to its former owner(s) in accordance with section 40. This is a decision for Council and must be made after suitably qualified agents have made full investigations.

Land can be exempted from an offer-back where:

- (a) It would be impracticable, unreasonable or unfair to do so; or
- (b) There has been a significant change in the character of the land for the purposes of, or in connection with, the public work for which it was acquired or held; or
- (c) It is believed on reasonable grounds that, because of the size, shape or situation of the land that it could not be expected to be sold to any person who did not own land adjacent to the land being sold. Hence the land may be sold to an adjoining owner.

### **Sale of Land**

If a property is not exempt under section 40(2) or (4), the property must be offered back to the previous owner(s) or their successors as per section 40(2). This may require further investigation to locate the appropriate person(s) for the offer-back to occur. Once the offer-back is made, the offeree has a certain amount of time to accept the offer.

Where an offer under Section 40(2) is not accepted within the timeframe or is declined outright, or where an exemption to offer-back applies, the land may be sold to the owner of adjacent land, or by public auction, public tender or by private treaty.