
ROAD STOPPING AND DISPOSAL THE LOCAL GOVERNMENT ACT 1974: LEGAL ROAD ADJOINING 227 NEWLANDS ROAD, NEWLANDS

1. Purpose of Report

This report seeks the Committee to recommend to Council to declare surplus an area of approximately 1,368 m² of legal road currently used as car parking and garden adjoining 227 Newlands Road, Newlands (coloured green on the aerial photo in Appendix 1), and to authorise officers to proceed to commence the road stopping procedures and eventual sale.

2. Executive Summary

An application has been made to Council by Newtown Holdings Limited, a wholly owned subsidiary of Foodstuffs, for Council to stop a portion of legal road adjoining their property at 227 Newlands Road, Newlands. Once stopped the road would be sold to the applicant to facilitate development of a supermarket, subject to the resource consent process.

The potential development is identified in the Draft Newlands Centre Plan and is considered a key element in the revitalisation of the Newlands Shopping Centre.

The key question for Council is whether the 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).

Internal consultation has resulted in all Business Units of Council supporting the disposal. External utility providers have no objection to the proposed road stopping.

If the road stopping proposal is successful, then any funds received by Council from the sale would be used to fund improvements to the remaining car park, and public space that are proposed in the Draft Newlands Centre Plan.

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3. Recommendations

It is recommended that the Committee:

1. *Receives the information.*
2. *Recommends that the Council, pursuant to section 40 of the Public Works Act 1981:*
 - (a) *Agrees that the 1,368 m² area of unformed road (Road Land) adjoining 227 Newlands Road, Newlands is not required for a public work.*
 - (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 under section 40(2), 40(3) or 40(4).*
3. *Recommends that the Council:*
 - (a) *Approves the disposal of the Road Land.*
 - (b) *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.*
 - (c) *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.*
 - (d) *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, with the owner of the Adjoining Land, provided any such agreement is conditional upon the road being stopped.*
 - (e) *Agrees that any funds the Council receives as a result of this disposal, will be used to contribute towards upgrading the remaining car park, and the public space of the Newlands Centre as proposed in the Draft Newlands Centre Plan.*
4. *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

The application to stop this area of road that is currently used as a car park and garden, has been submitted by Newtown Holdings Limited. Newtown Holdings

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Limited own the adjoining property at 227 Newlands Road and are wholly owned by Foodstuffs (Wgtn) Co-operative Society Limited (Foodstuffs).

If Foodstuff's road stopping application is successful they intend to build a supermarket on the site. Note that the small rectangular shaped area coloured grey in the larger area proposed to be stopped as shown in appendix 1 is the existing public toilets. It is proposed that these facilities will be relocated as part of Foodstuff's resource consent application.

Foodstuffs have previously operated a supermarket at this centre, but this was closed approximately twenty years ago, and Newlands has not had a supermarket since. Foodstuffs have indicated that changes in the supermarket industry, and to the demographic of Newlands, means that the establishment of a supermarket is viable.

The number of existing car parking spaces that would be removed as a result of this road stopping application would be approximately 33. The number of new car parking spaces that the applicant intends to provide in the proposed new supermarkets basement is 76. The applicant has proposed that all shoppers at the centre should be able to use any car park, i.e. at the centre generally or in the basement of the supermarket, but that a P90 time limited should apply. If the road stopping proposal is successful, when the road land is stopped and amalgamated with the applicant's adjoining land, it is proposed that an encumbrance be registered on the title of the amalgamated land to ensure that all users of the centre will have access to all car parks (including the supermarkets basement carpark) for short term parking. As some of the existing car parks are used for long term parking during the day, this could result in objections when the consultation road stopping is carried out. Please refer to section 5.3 below.

Council is also working on a long term development plan for the Newlands centre. Encouraging private property owners to invest in the area is a key part of that planning, so the Foodstuffs proposal is seen as a key part of commencing new development in the area.

Under the sections 342 and 345 LGA local authorities are permitted to sell portions of stopped road on successful completion of a process which invites public submissions either for or against the proposal and on having first complied with any obligations under section 40 Public Works Act.

5. Discussion

5.1 The road stopping process

The applicant (i.e. the party who has applied to the Council to buy the legal road) is responsible for all of the costs involved in processing their request to change the designation of the legal road and then purchase the freehold land to amalgamate with their adjoining property title.

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

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5.2 This application

The area of legal road proposed to be stopped is an irregular shaped parcel of land, approximately 1,368m² in size (subject to survey), refer to aerial view in appendix 1), adjoining the western boundary of the applicant's property at 227 Newlands Road. Note that this area is comprised of two separate parcels having areas of approximately, 1,338m² being Part Lot 10 D.P 27667, and 30m² being Part Section 12 Porirua District.

If the road stopping and sale are successful, the stopped road land will be amalgamated with this adjoining property.

5.3 Consultation

As part of the road stopping process, service authorities, internal business units, and neighbouring property owners/occupiers are given an opportunity to provide comments concerning the road stopping application. Internal business units have no requirement for this land. There is support for the land being used to support the Newlands centre revitalisation.

Full public consultation for road stopping proposals is carried out in accordance with the Tenth Schedule LGA.

As the current land use is car parking, and some members of the public use it for an unofficial 'park and ride', it is expected there will be submissions on this aspect. To mitigate concerns that are likely to be raised regarding the impact on car parking, it is not proposed to launch the road stopping proposal until investigations into alternative provision as part of the redevelopment have advanced to a stage that could give some members of the public comfort that Council has adequately addressed the car parking issue.

In accordance with the Tenth Schedule of the LGA signs would be placed on the land, advertisements placed in newspapers, and all the property owners and occupiers of the businesses located at the centre, and also the property owners and occupiers of the properties situated on the streets directly surrounding the centre will be notified.

Prior to submitting a resource consent for their development Foodstuffs hosted a meeting to present its development plans to identify possible objections. Attendance was by invitation only, and these were sent to the owners and occupiers of property in McMillan Court, and the streets that border it. Council used this opportunity to also present its long term development plans for the centre as a whole. The meeting took place on 19 October 2009, Councillor Foster chaired the meeting and the road stopping proposal was included in both Foodstuffs and Council's presentations.

Consultation with the relevant service authorities and internal business units has been obtained as below.

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Conditional consent has been obtained from:

<i>Service Provider / Business Unit</i>	<i>Condition</i>
Wellington Electricity Lines Limited	There are overhead electricity lines in the vicinity, Wellington Electricity Lines Limited had no objections subject to their normal provisions being complied with.
Transfield Services	No objections to the work proceeding. It should be noted that there are cables, ducting and a manhole in the vicinity of the proposed building area. To move these assets is a major undertaking and could cost in excess of \$100,000 and take five months to complete.
Powerco Limited	The proposal could conflict with Powerco's gas network in the vicinity. Powerco would not allow the service to be built over. The service can be relocated but would need to be completed at a time and day convenient for the end customer.
WCC Public Drainage	No water mains in area proposed to be stopped, but there is public sewer and storm water drains located in the area proposed to be stopped. Review of GIS shows the storm water pipe was outside of the area, but the sewer pipe is within the area. Building over or near this drain would be subject to prior approval of the Public Drainage Engineer, Public Drainage Team, Infrastructure.
WCC Road and Traffic	<p>A 22 metre Road Reserve width is to be retained in Bracken Road (This is the required width for a Collector road in Council's Code of Practice for Land Development)</p> <p>A set back of at least 3.0 metres from the front edge of the existing public footpath is required. The existing footpath may not be moved towards the formed road due to visibility and grade reasons. Rather the footpath may be widened up to 3.0 metres away from the road where the existing footpath is less than 3.0 metres wide. Council's Code of Practice for Land Development requires a 4 metre wide footpath in Suburban Centres however a 1.0 metre reduction is considered reasonable due to the likely absence of kerb side parking and car door interference on this corner site.</p> <p>Sufficient clearance between the existing block of shops and the proposed supermarket for truck movements.</p>

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WCC Parks and Gardens	<p>Compensation planting for the loss of any vegetation to be included in the final design of the area.</p> <p>The eight mature trees identified require transplanting and relocating within the design.</p> <p>A detailed landscape plan, to be signed off by Parks and Gardens to include the following; Transplanted trees from site, Plant species, Plant quantities & grades, Locations, and any tree pit details.</p> <p>A protection plan is required for any vegetation/trees which are remaining on site during construction to ensure they are not damaged, this should include the transplanted trees.</p> <p>The existing cabbage trees along the shop frontages can be removed but some new tree planting, similar to the existing, would need to be set back along the same area.</p> <p>All tree work is to be carried out by professional arboricultural contractors and Treescape will be the nominated contractor to carry out the transplanting.</p>
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Unconditional consent has been obtained from:

- WCC Treaty Relationships
- WCC Development Planning & Compliance
- Capacity
- Telstra Clear
- WCC Street Lighting

Officers are satisfied that if the above Service Authority requirements are met, the proposed portion of Newlands Road, Newlands can be stopped and sold, provided all statutory and Council requirements are met.

5.4 Significance Policy/ Strategic Assets

Under Council's Significance Policy, the sale of this Road Land would not be deemed significant.

The proposal is to stop and sell some road land currently used for car parking. That is neither significant nor strategic in itself, therefore the sale could proceed subject only to the decision that it is no longer required for a public work, and compliance with the provisions of the Public Works Act 1981, and the Local Government Act 1974 Road Stopping.

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5.5 Next Steps

Should resolution be passed declaring that the land is surplus to Council's requirements, the next steps in the road stopping and sale process are as follows:

- Commission a section 40 report.
- Obtain the Chief Executive Officer's approval of section 40 report recommendations.
- Obtain a valuation and prepare a sale and purchase agreement
- Undertake survey and 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 the road is stopped
- Obtain a final valuation (if required)
- Attend to settlement and transfer of the stopped road

6. Conclusion

In considering our obligations under the PWA, and LGA, Council officers believe that the Council owned legal road adjoining 227 Newlands Road, Newlands is no longer required for the Council's operational requirements and could be declared surplus.

The stopping and sale of the road land to the adjoining owner will facilitate the development of a supermarket. Such development will assist in the revitalisation of the Newlands Centre and improve it as a focal point for the Newlands community.

It is therefore recommended that the Regulatory Processes Committee recommends to Council that the land is declared surplus, and that officers can proceed to initiate the road stopping procedure and sale to the adjoining land owner.

Contact Officer: Paul Davidson, Property Advisor, Property Services

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Supporting Information
<p>1) Strategic Fit / Strategic Outcome <i>In line with the Council's financial principles, assets that are declared surplus to strategic or operational requirements are sold.</i></p>
<p>2) LTCCP/Annual Plan reference and long term financial impact <i>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 also possible rejection stages throughout the process.</i></p> <p><i>The costs associated with this proposal will be met by the applicant including all survey, administration and legal costs. 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.</i></p>
<p>3) Treaty of Waitangi considerations <i>There are no Treaty of Waitangi implications.</i></p>
<p>4) Decision-Making <i>This report concerns the road stopping proposal only. The applicant has submitted a resource consent application for its proposed development of a supermarket which will be dealt with separately.</i></p>
<p>5) Consultation <i>Consultation with the relevant internal business units has been carried out as part of this application. They have all advised that they have no objection to the proposed road stopping, with the consents from Roading and Traffic Maintenance, Parks and Gardens, and Public Drainage subject to certain conditions.</i></p> <p><i>Service Authorities have been consulted and a number of conditions have been noted.</i></p>
<p>6) Legal Implications <i>All legal implications relevant to this road stopping such as public consultation requirements and offer back investigations have been considered and are contained in this report.</i></p>

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APPENDIX 1

AERIAL PHOTOGRAPH



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APPENDIX 2 (continued)

Meeting Minutes - Regulatory Processes Committee 9 December 2009, and Council 11 December 2009.



REGULATORY PROCESSES COMMITTEE

MINUTES

WEDNESDAY 9 DECEMBER 2009

1.01PM – 2.33PM

(1.22PM – 2.33PM PUBLIC EXCLUDED)

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

PRESENT:

Councillor Gill (Chair) (1.01pm – 1.24pm, 1.28pm – 2.33pm)
Councillor Best (1.01pm – 2.33pm)
Councillor Cook (1.01pm – 2.02pm, 2.03pm – 2.33pm)
Councillor Goulden (Deputy Chair) (1.01pm – 2.33pm)
Councillor Pannett (1.01pm – 2.33pm)
Councillor Wain (1.01pm – 1.47pm)

APOLOGIES:

Mayor Prendergast
Councillor Wain (early departure)

IN ATTENDANCE:

Councillor Foster (1.01pm – 1.17pm, 1.26pm – 1.54pm, 1.56pm – 2.28pm)
Councillor Wade-Brown (1.01pm – 1.17pm, 1.26pm – 2.13pm)

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Sub-sub-leases to: *Kaizen Academy NZ Ltd [martial arts]
KGC Tennis Ltd [canteen]
Strike Sports Wellington Limited [pro
shop]*

4. *Note that any approval to grant the lease is conditional on:*
- (i) *The lease being publicly notified in accordance with section 119 and 120 of the Reserves Act 1977.*
 - (ii) *There being no sustained objections resulting from the abovementioned consultation or notification.*
 - (iii) *The legal and advertising costs associated with preparing the lease are met by the Lessee.*

078/09RP **ROAD STOPPING AND DISPOSAL – THE LOCAL GOVERNMENT ACT 1974: LEGAL ROAD ADJOINING 227 NEWLANDS ROAD, NEWLANDS** (1.18PM – 1.19PM)
Report of Paul Davidson – Property Adviser, Property Services.
(1215/53/IM) (REPORT 2)

Moved Councillor Gill, seconded Councillor Best, the substantive motion.

The substantive motion was put and declared CARRIED.

RESOLVED:

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 1,368 m² area of unformed road (Road Land) adjoining 227 Newlands Road, Newlands is not required for a public work.*
 - (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 under section 40(2), 40(3) or 40(4).*
3. *Recommend that the Council:*
 - (a) *Approve the disposal of the Road Land.*

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- (b) *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.*
 - (c) *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 and no objections being received.*
 - (d) *Delegate 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, with the owner of the Adjoining Land, provided any such agreement is conditional upon the road being stopped.*
 - (e) *Agree that any funds the Council receives as a result of this disposal, will be used to contribute towards upgrading the remaining car park, and the public space of the Newlands Centre as proposed in the Draft Newlands Centre Plan.*
4. *Note 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.*

079/09RP **ROAD STOPPING AND DISPOSAL – THE LOCAL GOVERNMENT ACT 1974: LEGAL ROAD ADJOINING 13 TANNADYCE STREET, STRATHMORE** (1.19PM – 1.20PM)
Report of Paul Davidson – Property Adviser, Property Services.
(1215/53/IM) (REPORT 3)

Moved Councillor Gill, seconded Councillor Wain, the substantive motion.

The substantive motion was put and declared CARRIED.

RESOLVED:

THAT the Regulatory Processes Committee:

- 1. *Receive the information.*
- 2. *Recommend that Council:*
 - (a) *Approve the disposal of the Road Land described as approximately 160m² (subject to survey) of unformed legal road adjoining 13 Tannadyce Street.*

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COUNCIL

MINUTES

FRIDAY 11 DECEMBER 2009

1.04PM – 3.08PM
(2.53PM – 3.08PM – PUBLIC EXCLUDED)

Council Chamber
First Floor, Town Hall
Wakefield Street
Wellington

PRESENT:

Mayor Prendergast (1.04pm – 3.08pm)
Councillor Ahipene-Mercer (1.04pm – 3.08pm)
Councillor Best (2.25pm – 3.08pm)
Councillor Cook (1.04pm – 1.38pm, 1.39pm – 3.08pm)
Councillor Coughlan (1.04pm – 3.08pm)
Councillor Foster (1.04pm – 3.08pm)
Councillor Gill (1.04pm – 3.08pm)
Councillor Goulden (1.04pm – 3.08pm)
Councillor McKinnon (1.04pm – 3.08pm)
Councillor Morrison (1.04pm – 3.08pm)
Councillor Pannett (1.04pm – 3.08pm)
Councillor Pepperell (1.04pm – 3.08pm)
Councillor Ritchie (1.04pm – 1.32pm, 1.35pm – 2.49pm)
Councillor Wade-Brown (1.04pm – 3.08pm)
Councillor Wain (1.04pm – 3.08pm)

APOLOGIES:

Councillor Best (for lateness)
Councillor Ritchie (early departure)

declaration does not take effect until the appeal period of one month has closed or, if an appeal is lodged, the determination of the appeal

- (c) *Note that the declaration will be given effect following completion of the work required to construct the bus carriage way*
- (d) *Agree to redevelop lower Cuba Street as a shared space and that the design of the shared space be based on scenario 2 as set out in the Statement of Proposal (Proposed Revocation of the Pedestrian Status of Manners Mall – attached as appendix 1) conditional upon the declaration to revoke the pedestrian mall status of Manners Mall being made by Council*
- (e) *Note the 2009/19 Long Term Council Community Plan includes provision of \$11.135m for the Golden Mile project which includes construction of the bus corridor through Manners Mall and shared space in lower Cuba Street as well as other public space (Willis, Dixon, Mercer Streets) and transport improvements (pedestrian crossings and intersection improvements)*
- (f) *Note that resolutions under the Wellington Consolidated Bylaw 2008 (Part 7, Traffic) will be required to give effect to the proposal and will be reported to the Strategy and Policy Committee in March 2010.*

7. *See Part B*

- 154/09C **REGULATORY PROCESSES COMMITTEE**
Meeting of Wednesday 9 December 2009
(1215/11/IM) (REPORT 8)
1. **ITEM 078/09RP ROAD STOPPING AND DISPOSAL – THE LOCAL GOVERNMENT ACT 1974: LEGAL ROAD ADJOINING 227 NEWLANDS ROAD, NEWLANDS**
(1215/53/IM) (REPORT 2)
- Moved Councillor Gill, seconded Councillor Wain the substantive motion.**

The substantive motion was put.

Voting for: Mayor Prendergast, Councillors Ahipene-Mercer, Best, Cook, Coughlan, Foster, Gill, Goulden, McKinnon, Morrison, Pannett, Pepperell, Ritchie, Wade-Brown and Wain.

Voting against: Nil

Majority Vote: 15:0

The substantive motion was declared CARRIED.

RESOLVED:

THAT Council:

1. *See Part B*
2. *Pursuant to section 40 of the Public Works Act 1981:*
 - (a) *Agree that the 1,368 m² area of unformed road (Road Land) adjoining 227 Newlands Road, Newlands is not required for a public work.*
 - (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 under section 40(2), 40(3) or 40(4).*
3.
 - (a) *Approve the disposal of the Road Land.*
 - (b) *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.*
 - (c) *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 and no objections being received.*
 - (d) *Delegate 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, with the owner of the Adjoining Land, provided any such agreement is conditional upon the road being stopped.*