
REPORT 6
(1215/53/IM)

ROAD STOPPING AND DISPOSAL - LEGAL ROAD ADJOINING 45 MOXHAM AVENUE, HATAITAI

1. Purpose of Report

The purpose of this report is to seek the Committee's recommendation to Council that approximately 26m² (subject to survey) of unformed legal road land (the Land) in Moxham Avenue, Hataitai, is no longer required for operational requirements, and that it be 'stopped' and sold to the owners of the adjoining 45 Moxham Avenue and amalgamated with that property.

Refer to Appendix 1 for an aerial plan with the subject area of unformed legal road land shown coloured red.

2. Executive Summary

An application has been made to Council by the owners of 45 Moxham Avenue, Hataitai to stop a portion of unformed legal road adjoining their property. The owners currently have use of the land under an encroachment licence.

The key question for Council is whether this area of land is surplus to requirements for a public work, and if so, whether it will support commencement of the road stopping procedures under the Public Works Act 1981 (PWA).

Internal business units and external service authorities have been consulted and all support the disposal, with minimal conditions requested to be imposed.

The PWA process does not require public consultation. This process is considered suitable as there are no affects on any of the adjoining neighbours, or members of the public resulting from the proposal. A retaining wall has bordered the subject land for many decades. The wall and the subject land are an integral part of the applicant's front yard. The wall was recently replaced by Council and will remain for the foreseeable future therefore the use does not change.

Refer to Appendix 2 for photographs of the retaining wall.

3. Recommendations

Officers recommend that the Regulatory Processes Committee:

1. *Receive the information.*
2. *Recommend to Council that it:*
 - (a) *Agree that approximately 26m² (subject to survey) of unformed legal road land adjoining 45 Moxham Avenue, Hataitai, is not required for a Public Work.*
 - (b) *Approve the disposal of the approximately 26m² of unformed legal road land adjoining 45 Moxham Avenue, Hataitai, to the owner of that property.*
 - (c) *Authorise Council officers to undertake a section 40 PWA report to identify whether the area of unformed legal road land must be offered back to its former owner or their successor, or whether exemptions from offer back applies.*
 - (d) *Delegate to the Chief Executive Officer the power to either offer the area of unformed legal road land back to its former owner(s) or their successor(s), or to approve the exercise of exemptions from offer back under section 40(2), 40(3), or 40(4) PWA (if appropriate).*
 - (e) *Authorise Council officers to initiate the road stopping process for the area of unformed legal road in accordance with the Public Works Act 1981.*
 - (f) *Delegate to the Chief Executive Officer the power to formally approve the road stopping, and issue the public notice to declare the area of unformed legal road land stopped as road, subject to all statutory and Council requirements being met with no objections being received.*
 - (g) *Delegate to the Chief Executive Office the power to complete the terms of sale, impose any reasonable covenants, in respect of the unformed legal road land adjoining 45 Moxham Avenue, either with the former owner, or their successor, or the owner of 45 Moxham Avenue, provided any such agreement is conditional upon the road being stopped.*

4. Background

Council has received a road stopping application to 'stop' unformed legal road adjoining 45 Moxham Avenue, Hataitai, from the owners of that property. The legal description of 45 Moxham Avenue is Lot 1. D.P 5966 held on Computer Freehold Register WN483/278.

The total area of the unformed legal road adjoining 45 Moxham Avenue proposed to be stopped is approximately 26m² (subject to survey). The Land is currently used by the applicant under an encroachment licence. The Land has a concrete retaining wall bordering it with a timber fence on top.

In 2010 the retaining wall was in such a poor condition that it was considered a safety risk, so Council replaced it. At that time the owners of 45 Moxham Avenue signed an agreement giving them options to either commence a road stopping, or continue with their encroachment licence and contribute a lump sum towards the replacement of the retaining wall. The applicant's are the only privately owned property who benefit from the retaining wall. They have chosen to pursue the road stopping.

5. Discussion

5.1 Consultation and Engagement

As part of the road stopping process service authorities, internal business units are given an opportunity to provide preliminary comments.

All internal business units gave their unconditional approval.

All relevant service authorities have given their consent, with standard conditions applying.

As the proposal is being carried out under the PWA process there will be no public consultation. However, out of courtesy immediate neighbours have still been sent written advice. Doing this is viewed favourably by LINZ when they are transferring the land later in the process, to confirm that there are no issues affecting the neighbours.

5.2 Financial Considerations

The costs associated with road stopping the unformed legal road land adjoining 45 Moxham Avenue will be met by the applicant. The proceeds of the land will be received by Council.

5.3 Climate Change Impacts and Considerations

There are no climate change impacts.

5.4 Long-Term Council Community Plan Considerations

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

5.5 Significance Policy/ Strategic Assets

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

6. Conclusion

Officers believe that approximately 26m² (subject to survey) of unformed legal road adjoining 45 Moxham Avenue is no longer needed for Council's

operational requirements and that it could be declared surplus, stopped and sold to the applicant.

It is therefore recommended that the Regulatory Processes Committee recommends to Council that the approximately 26m² area of road land adjoining number 45 Moxham Avenue, Hataitai be stopped.

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

Supporting Information

1) Strategic Fit / Strategic Outcome

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

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

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

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

There are no adverse financial implications imposed on the Council arising from this road stopping proposal. Most of the costs associated with this proposal will be met by the applicant including 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.

3) Treaty of Waitangi considerations

There are no Treaty of Waitangi implications.

4) Decision-Making

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

5) Consultation

a) General Consultation

Consultation with the relevant internal business units and service authorities has been carried out as part of this application.

b) Consultation with Maori

Local IWI have been consulted with and have given unconditional consent.

6) Legal Implications

There are no significant legal implications arising from this matter.

7) Consistency with existing policy

The recommendations of this report are consistent with WCC policy.



APPENDIX 2

