
REPORT 6
(1215/52/IM)

DISPOSAL OF PROPERTY - 224 KARORI ROAD, KARORI

1. Purpose of Report

The purpose of this report is to seek the Strategy and Policy Committee's (SPC) agreement to recommend to Council pursuant to section 40 of the Public Works Act 1981 (PWA), that the Property at 224 Karori Road, Karori (the Property) is no longer required for a public work purpose, and to authorise Council officers to proceed with offer back investigations and disposal.

2. Executive Summary

The Property was acquired specifically for use as a pre school child care facility for Te Kohanga Reo O Karori in 1990, and was leased as a kohanga reo until 2007. In 2008 expressions of interest were publically invited from persons wishing to provide early childhood centre facilities. Two proposals were received but neither met the criteria.

Property Services were requested to commence the disposal process. The first step was to undertake public consultation inviting submissions in favour of, or against, the proposal to dispose of the Property. Four submissions were received, two were in support of the proposed sale, one opposed sale, and one requested that a registered interest on the title be removed prior to sale. The submissions received are detailed in section 5.6 of this report.

An oral submission relating to one of the written submissions was heard by SPC at its meeting on 18 February 2010. This was from the owner of 222A Karori Road, and related to a right of way that is registered on the titles of the 222A, 222B and the Property. The right of way allows for legal access to the Property over the shared driveway that belongs to 222A and 222B Karori Road.

Taking into account all matters (including the oral submission), it is recommended that the Property be declared surplus and be disposed of (subject to a legal right of way).

(Refer to Appendix 1 for aerial view. The shared driveway is shown red, car park area belonging to the Property is shown blue).

3. Recommendations

Officers recommend that the Committee:

1. *Receives the information.*
2. *Recommends that the Council:*
 - (a) *Declines the application by the owners of 228A and 228B Karori Road, Karori, that Council remove the right of way that Council enjoys over their land for the following reasons;*
 - i. *The Right of Way is still required to give access to the rear of the Property.*
 - ii. *Issues raised of noise and congestion have diminished on cessation of kohanga reo activities*
 - iii. *Risk of noise and congestion is lessened if the Property is in private ownership*
 - iv. *Removal of the Right of way would negatively impact on the value of the Property*
3. *Recommends that the Council pursuant to section 40 Public Works Act 1981:*
 - (a) *Agrees that the Property is not required for a public work and is surplus to requirements.*
 - (b) *Authorise Council officers to commission a section 40 report from a suitably qualified consultant to identify whether the Property must be offered back to a former owner or their successor in title, or whether an exemption from offer back applies under section 40(2), 40(3) or 40(4).*
 - (c) *Approves the disposal of the Property.*
 - (d) *Delegates to the Chief Executive Officer the power to take all actions necessary to sell the Property in accordance with the provisions of the Public Works Act.*

4. Background

4.1 Acquisition History

In late 1987 Te Kohanga Reo O Karori, commenced operating an early childhood centre in Karori. At that time this group operated in premises located at the rear of a building known as 'The Karori Community Lighthouse'. That building has since been demolished to enable landscaping to take place as part of the Karori library and community centre redevelopment. The premises were

not ideal as there was inadequate outdoor area, no running water, toilets or kitchen facilities. Those services had to be used in a nearby building. Despite those difficulties the pre-school thrived, and the number of children attending increased.

Te Kohanga Reo O Karori approached Council in mid 1988 seeking assistance with their search for more suitable premises. Council undertook a survey to explore possibilities for a more suitable site in Karori. The outcome of the survey was that the purchase and renovation of an existing house was considered ideal.

At the Council's Finance and Corporate Services Committee meeting on 7 September 1990, and Council meeting of 14 September 1990, approval was given for the purchase of a suitable property in Karori, for a maximum value of \$200,000, which would be leased to Te Kohanga Reo O Karori.

Several properties that were on the market at the time were considered, with the Property at 224 Karori Road eventually chosen, and purchased. The Property is a residential site, positioned on the western side of Karori Road. The section is 749m², described as Lot 2, D.P. 7303 and is held on Computer Freehold Register (CFR) WN389/185.

4.2 Lease History

The original lease to Te Kohanga Reo O Karori was for a period of five years, and commenced on 1 April 1991. The lease did not contain any further rights of renewal, and the lease arrangement rolled over annually after 31 March 1996. The rental throughout the entire duration of the lease was \$5,200 excl GST p.a. By April 2007 the rental arrears had reached an amount of \$13,000. After pursuing these arrears without success over a considerable period of time, officers had no choice but to give the kohanga a deadline to bring the rental payments up to date. That deadline was not met and the Property was then vacated. The Property now requires significant investment from Council in order to comply with current Ministry of Education (MOE) regulations for early childhood centres. In addition any new operator would need to apply for resource consent. A significant number of complaints were previously received when the kohanga reo was in operation. The complaints primarily related to noise and car parking on the shared driveway.

There is a right of way registered on the titles of the 222A, 222B and the Property. This enables This right of way was first registered in the late 1920's, and gives legal access for the Property to use the driveway belonging to 222A and 222B Karori Road, giving access to the rear of its section and in particular, a small sealed area used for car parking. The driveway was supposed to be used for access only, and kept clear at all times. However it was used for parking, and gravel was displaced by improper driving, which irritated the owners of the 222A and 222B Karori Road properties. In December 2006 officers investigated whether car park spaces on Karori Road outside the Property could be dedicated to the Kohanga Reo to assist with this problem. However that proposal was

dismissed as Council does not provide reserved on street parking for individual businesses or premises in this area.

4.3 Property Description

This house is of 1930's vintage, with bevel back weatherboard exterior cladding, and a painted corrugated iron roof. The section is completely fenced, and is lower than the level of Karori Road by approximately 1 – 2 metres. There is a bus stop located almost immediately outside the Property on Karori Road.

The Property has a current capital value of \$620,000 (09/10), a net book value of \$316,460.00 excl gst (as of 30 October 2009), with annual rates of \$2,601.18 incl gst.

4.4 Expressions of Interest

In April 2008 Council's City Communities business unit invited expressions of interest to establish another early childhood centre at the site. This was advertised in the Dominion Post on 24 April 2008. Two proposals were received, one from Kiwi Kids Childcare and Learning Centre being a commercial operator, and the other from St Mary's being a local church who operated an early childhood education centre, and who were seeking to expand its current operation into a second site in Karori.

Neither completely met the assessment criteria which were :

- Fit/Compliance with Wellington City Council's policies and strategies
- Compatibility of organisation and intended use with the area/site
- Organisation's financial viability and activity sustainability
- Confirmation of organisation's ability to upgrade and maintain the building
- Confirmation that the organisation is a licensed community childcare centre operator

It was then decided to investigate the sale option for the Property.

5. Discussion

5.1 Internal Council Consultation

The preliminary step in any potential disposal process is to undertake consultation with Council's business units. This is to confirm that the Property is no longer required for any other Council purpose, and to ensure that there are no special interests that need to be considered in the event of any sale. Relevant Council's business units have been given the opportunity to confirm whether they had any interest in the Property. All necessary business units have responded and confirmed that they have no interest in the Property.

5.2 Legislation

The Property was acquired specifically for use as a pre school child care facility. That use fits within the description of a 'community purpose' as described in section 138 LGA. Under section 138 "*land acquired or used principally for community, recreational, environmental, cultural, or spiritual purposes*" is further defined as being a 'park', requiring Council to consult with the public prior to any disposal.

Section 82 LGA outlines the 'Principles of Consultation' to be upheld, requiring any persons who may be affected by, or have an interest in the decision or matter be encouraged to present their views. To comply with Section 82 LGA, letters providing information on the proposed disposal, and inviting submissions were sent to residents in the immediate area, and also to the Karori Residents Association. Notices were placed in the 'Our Wellington Page' of The Dominion Post newspaper on Tuesday 7 and 28 July 2009, and in The Wellingtonian, on Thursday 16 July 2009. Information was also placed on the Council's web page.

If a resolution is passed that the Property is not required for a public work, and is surplus to requirements then section 40 PWA investigations would need to be carried out to confirm whether there is a requirement to offer the Property back to a former owner or their successors. If there is a section 40 obligation the Property would be offered back. If not, the Property could be sold on the open market under section 42 of the Public works Act.

5.3 Significance Policy/ Strategic Assets

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

5.4 Valuation of property

A current market valuation of the Property has been obtained from Darroch NZ Ltd. They have valued the Property to have a current market value of \$ 600,000.

This valuation also considers whether there would be any change in value, should the right of way be removed from the title. If this was removed then Darroch NZ Ltd believe the current market value would then be \$540,000.

The legal costs to remove the right of way from the three titles have been estimated to be \$500 - \$750 excl GST plus disbursements. Note that the submission from 222A and 222B Karori Road proposes that Council would only pay for a third of the legal costs.

5.5 Offer Back

If Council resolves that the Property is no longer required for a public work, and subsequent offer back investigations result in the Property having to be offered back to a former owner or their successors, then a current market valuation would be obtained from a registered valuer to determine its value on the date that it was declared surplus. If the Property is not required to be offered back to a former owner or their successors, the Property could be sold on the open market.

5.6 Submissions

Following the consultation described in point 5.2 above four submissions were received. Two brief submissions were made online supporting the proposal to sell the Property. Written submissions were received from St Mary's, and from the owners of 222A and 222B Karori Road. The submission from St Mary's had not supported the sale, and had proposed that the Council retain the Property, and lease it to them to use to operate an early childhood centre. St Mary's subsequently withdrew their submission. The submission from the owners of 222A and 222B Karori Road requests that a right of way to use their shared driveway in favour of the Property, be removed prior to its sale.

The submission from the owners of 222A and 222B Karori Road is summarised below. Refer to 5.6.2 for Council officers response to the submission.

5.6.1 222A and 222B Karori Road written submission

This submission asks that prior to listing the Property for sale the Council remove the right of way that is registered on the title (s) for the owner of 224 Karori Road to access the driveway at 222A and 222B Karori Road. Also that Council as the registered owner of the Property pay a third share of the legal costs associated.

(Refer to Appendix 2 for a copy of the submission)

5.6.2 222A Karori Road oral submission of 18 February 2010 (on behalf of 222B Karori Road)

The oral submission by the owner of 222A Karori Road raised the following points that had not previously been covered in their written submission.

- It is a fire service requirement that driveways are not blocked.
- If Council did view the proposal to remove the right of way, then they would be open to increasing their contribution towards the costs of doing that.

5.6.3 Council officer's response to the submission received from the owners of 222A and 222B Karori Road

- It was a condition of the original Town Planning consent (Issued 12 December 1990) that the driveway be kept clear of vehicles at all times and only used by staff members of the Kohanga Reo.
- Officers are aware of the subsequent issues relating to the shared driveway when the childcare centre was operating, and Council contributed towards maintenance as required.
- Alternative options for parking were considered without success. Under Council Bylaw Part 7 Traffic: Section 11, Council does not approve car parking on legal road for any specific business or retailer. Property owners can apply for a road encroachment on unformed legal road to provide off-street parking for its own parking requirement, but as there is no unformed legal road in this situation, an encroachment licence was not an option.
- The issues relating to the access over the shared driveway are contributing factors that led to the officers' decision that the Property was not an ideal site to re-establish an early childcare centre.
- Access to the car park area at the rear of the Property is important to be retained, as the value of the Property would be significantly reduced if this legal access is removed as it provides for the only off street car parking the Property currently has.
- While there is room on the Property to build a garage, because of the difference in ground levels between it and Karori Road, either a timber deck, or a backfilled concrete foundation to create a building platform would be required to be able to construct a garage. Such foundation work in addition to any building costs for a garage would be significant.
- It is believed that when the Property is returned to private ownership, the use of the driveway would become minimal in comparison to when the Kohanga Reo operated, and hence should not be blocked in the future.

5.7 LTCCP Implications

Any sale proceeds generated will be used to offset Council borrowing, and costs will be offset against sale proceeds.

5.8 Options

The options available to Council are –

5.8.1 Reject the submission from the owners of 222A and 222B Karori Road, to remove the right of way over the shared driveway, and pass a resolution to dispose of the Property.

5.8.2 Accept the submission from 222A and 222B Karori Road to remove the right of way over the shared driveway, and pass a resolution to dispose of the Property.

5.8.3 Reject the submission from 222A and 222B Karori Road, to remove the right of way over the shared driveway, and retain the Property. This is not a practical option as Council business units have previously been consulted, and none had a use for it. If Council did decide to retain the Property, then an allowance would need to be made to contribute to maintenance of the shared driveway. This has been estimated would cost \$200 - \$300 P.A to replace gravel.

5.8.4 Accept the submission from 222A and 222B Karori Road to remove the right of way over the shared driveway, and retain the Property. Again this is not a practical option as Council business units have previously been consulted, and none had a use for it.

Consideration of the above options.

This committee paper primarily concerns itself on whether the Property is surplus to Council's requirements and can be disposed. Retaining the right of way guarantees vehicular access to the rear of the Property. Removal of the access would diminish the value of the Property. For the owners whose properties are the subject of the right of way, the ideal solution is for removal of the right. If the Property reverts to residential use then this would restore those owners to the position they were in before Council brought the Property and established a kohanga reo. All things considered it is recommended that the Property be sold and the right of way retained.

5.9 Next Steps

If the recommendations of this report are accepted and a resolution to dispose of the Property is passed, then the next steps would be as below -

1. Investigate and implement any section 40 offer back obligations.
2. Report to the Chief Executive Officer, with a recommendation to either proceed with an offer back, or to agree that an exemption applies.
3. If no offer back exemption is applicable, offer the Property back to the former owner or their successors at current market value.
4. If an offer back exemption is applicable, or the former owner or their successors are not interested in a re-purchase, then decide on the best marketing methodology.
5. Engage real estate agents.
6. Market property.
7. Sale to new owner.

6. Conclusion

It is recommended that the Strategy and Policy Committee recommend to Council that, under section 40 of the PWA, the Council owned property at 224 Karori Road, Karori is not required for a public work, is surplus to the Council's requirements and can be sold. It is also recommended that the submission received from the owners of 222A and 222B Karori Road, be declined for the reasons given in 5.6.3.

If this recommendation is accepted officers will then investigate whether any offer back obligations exist. Once offer back investigations are completed a further report would be presented to the Chief Executive Officer with a recommendation to either proceed with an offer back, or to agree that an exemption applies. If an exemption applies, or the former owner(s) decline repurchasing, officers will then proceed with the disposal of the Property on the open market.

Contact Officers : *Paul Davidson, Property Advisor, Property Projects*
: *Steve Bill, Senior Advisor, City Communities*

Supporting Information

1) Strategic Fit / Strategic Outcome

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

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

Sale proceeds generated will be used to offset Council borrowing.

3) Treaty of Waitangi considerations

There are no Treaty of Waitangi implications

4) Decision-Making

The report reflects the views and preferences of those with an interest in this matter who have been consulted with.

5) Consultation

a) General Consultation

Relevant Council business units have been given the opportunity to demonstrate whether they have an interest in this property. All necessary business units have responded confirming that there is no interest.

Council officers have carried out a public consultation process in accordance with the requirements of Section 138 of the Local Government Act 2002.

b) Consultation with Maori

Treaty Relations were provided with details of this proposal and had no objections to the proposed sale.

6) Legal Implications

Any Sale and Purchase Agreements will be prepared by the Council's Solicitor's. A Solicitor's Certificate will be obtained before any documentation is signed.

7) Consistency with existing policy

This report recommends measures which are consistent with existing Wellington City Council policy for the disposal of surplus property.

Appendix 1

Aerial view of 224 Karori Road, Karori



224 Karori Road
Karori, Wellington

0 5 10 20
metres
scale 1:500

LEGEND

- Parcel Boundaries
- Car Parks
- Shared Driveway

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MAP PRODUCED BY:
GIS Operations Team
Wellington City Council
101 Wukuhoi Street
WELLINGTON, NZ

ORIGINAL MAP SIZE: A4
AUTHOR: PETROV20
DATE: November 2009
REFERENCE: INFRAN431

Absolutely
POSITIVELY
All Plans in Accordance with the Resource Management Act 1976

Appendix 2

Submission from 222A and 222B Karori Road

**Submission Concerning Disposal of WCC Property:
224 Karori Road, Wellington 6012
(Lot 2 DP 7303, CT WN389/185)**

1. We would ask that prior to listing the property for sale the Council give urgent attention to removing the right of passage from the title for the owner of 224 Karori Road to access our shared driveway in order to park at the rear of the Council's property.
2. That the Council as the registered owner of the property pay a 1/3 share of the legal costs associated with an amendment to the Certificate of Title removing this right of passage.
3. That the Council does not seek to leave this as a decision for the new owner of the property. This would be inequitable and very unfair on our property rights as the legal owners of the driveway for the reasons set out below.

Reasons for proposed change:

4. The current parking area is not a properly constructed park permitting quick and easy access.

Its continued use as a car park is problematic for all concerned: us and whoever is residing at 224 Karori Road. The space does not allow for vehicle turning and easy entrance and exit. Vehicles have to reverse onto the busy Karori Road presenting a hazard to other cars and passing pedestrians.
5. The obvious parking space for access to this property is from Karori Road and it is an opportunity for the new property owner to add value by removing one of the large trees that currently shade the front lawn and build a double garage. We put these considerations to previous WCC property managers on-site who agreed a garage would be the most sensible solution.
6. Legal ownership of the driveway is jointly vested in the owners of the properties at 222A Karori Road and 222B Karori Road. The present situation of allowing a vehicle to cross our driveway creates additional upkeep and maintenance costs on the owners of the driveway. These are:
 - i. The cost of regularly laying gravel.
 - ii. The repositioning of border rocks that become dislodged as vehicles access the driveway from the rear parking area at 224 Karori Road.
 - iii. The *spraying* of gravel and *gouging* of the driveway as vehicles lose traction trying to reverse out of the de facto parking space.

- iv. Weeding and repositioning of the border rocks on both sides of the driveway to prevent grass seeding on the gravel surface.
- v. Regular spraying of the driveway surface using weed killers to prevent grass growth.
- vi. Ongoing garden maintenance including the pruning, and removal of tree growth and garden weeds on both sides of the driveway.
- vii. Regular removal of paper litter and rubbish that blows in off the street.

Social and neighbourly considerations.

7. We consider that the Wellington City Council (WCC) has always adhered to good neighbourhood principles and assisted with a 1/3 share of the cost of laying gravel. WCC have also been responsive to issues concerning their tenants. In particular:
 - i. More than two vehicles parked in the rear parking space so that the second vehicle protrudes either partially (or completely), making access difficult or impossible.
 - ii. Vehicles frequently getting stuck when they cannot gain traction to reverse. On occasions the driveway has been blocked for long periods as the vehicles are neither wholly in or wholly out of the area being used as a de facto car park.
 - iii. Additional vehicles parking in the driveway for long periods believing that it is incumbent on the property owners at 222A and 222B Karori Road to come and ask them to move.
 - iv. Vehicle owners on occasion displaying resentment and not being in a hurry to remove vehicles parked in the manner referred to in (iii) above, when reasonably asked to.
8. For the reasons set out above it is in our view highly desirable to remove the right of passage from the title at this time. A new owner may well be a respectful and dutiful neighbour but equally they may not. It is important not to create the presumption during the sale process that purchase of the property confers a rear carpark.
9. It is submitted that the best way to ensure safe and effective access to these three properties is for the WCC to accede to our joint submission to take real and practical steps to remove the right of passage for vehicles accessing the property at 224 Karori Road, before it is listed for sale.